

#AfricaMonth: The state of LGBT rights in Africa

Opinion article by Dr Claire Westman, Postdoctoral Research Fellow, Free State Centre for Human Rights, University of the Free State

The socio-political and developmental health of a nation can be determined by the lived experiences of, and rights afforded to, the most marginalised within that nation. On the African continent, some of the most marginalised individuals are those belonging to the lesbian, gay, bisexual, and transgender (LGBT) community. While the health of the people of the continent has been brought into even sharper focus since the beginning of 2020 in light of the COVID-19 pandemic, it is clear that the developmental goals of the continent are threatened by the ongoing exclusion and marginalisation of, and violence against, members of the LGBT community.

While discrimination and violence against LGBT persons is not a new phenomenon, there have been an alarming number of murders and crimes perpetrated against gay, lesbian, and transgender individuals over the past few months. In South Africa alone, within the first two and a half months of 2021, at least six murders of LGBT individuals occurred. Similarly, studies have shown that approximately ten lesbian women are raped per week in South Africa in an attempt to 'cure' them of their homosexuality and to punish them for their defiance of heterosexual norms (ActionAid, 2009). Across the rest of the continent, violence and discrimination against LGBT individuals is correspondingly rife, with one recent example being the attack on the [Kakuma Refugee](#) camp in Kenya, where many displaced LGBT individuals live. This attack led to the death of one gay man and the serious injury of another.

Legislation related to LGBT rights varies across the African continent, with some countries adopting extreme forms of legal punishment, including the death penalty and lengthy prison sentences, while others, such as South Africa, constitutionally protect the rights of LGBT individuals and legally recognise same-sex marriages. A notable statistic emerging from a report compiled by [The International Lesbian, Gay, Bisexual, Trans and Intersex Association](#) (ILGA, 2019) shows that of Africa's 54 countries, same-sex relations are only legal in 22 countries and are punishable by death or lengthy prison terms in countries such as Uganda, Nigeria, and Togo.

While Africa's legal responses to LGBT lives are often criticised by the Western world, the laws proscribing and criminalising same-sex relationships and LGBT behaviour and expressions are, in fact, one of the many lingering effects of colonialism that have been uncritically adopted within post-colonial Africa. For example, many former British colonies, such as Kenya, Uganda, Ghana, and Nigeria, continue to uphold colonial-era anti-sodomy penal codes, which punish actions 'against the order of nature' – that is, homosexual relationships and acts. Such penal codes were imposed in British colonies during the 19th and 20th centuries, and despite

independence from Britain, many countries still enforce these penal codes and prosecute those who transgress these laws. Under the inherited British anti-sodomy laws, Kenya, as an example, prosecuted 595 people between 2010 and 2014 (Kushner, 2019). As a result of these colonial-era laws, homosexuality has misguidedly come to be recognised as un-African and a 'threat' to African values.

While the legal status of LGBT individuals varies from country to country, several legal instruments aim to ensure equality and to protect the rights of all individuals across the continent. Legal frameworks such as [Agenda 2063: the Africa we want](#), [the African Charter on Human and Peoples' Rights](#), and the African Charter on Democracy have been adopted and ratified by members of the African Union with the aim of guaranteeing human rights across the continent, including the rights of LGBT individuals. These frameworks explicitly use terms such as 'all' and 'every human being' to ensure inclusivity and rights for all, regardless of gender identity or sexual orientation (Izugbara et al., 2020). However, while these frameworks aspire to freedom, rights, and equality for all, there is no specific mention of the LGBT community, which leaves room for discrimination against members of this community (Izugbara et al., 2020). Similarly, while these frameworks are in place to protect the rights and equality of all citizens of the African Union, the ideals of inclusivity and equality are often not adopted or upheld by national governments.

Furthermore, even where rights and protection are legally afforded to LGBT individuals by national governments, discrimination and violence persist. South Africa, for example, is praised for being progressive in the rights and protection afforded to members of the LGBT community through its Constitution; however, when viewed in the light of the ongoing violence committed against gay, lesbian, and transgender individuals, it is clear that these legal rights and protection do not extend to the social level and to the actual lived experiences of the LGBT community.

It is, therefore, important to understand the more deeply rooted reasons for this violence and discrimination. The work of Judith Butler (2004, 2020) provides one perspective on why the LGBT community is marginalised and victimised. She argues that within all societies there are certain individuals who are positioned as legitimate and grievable, while others are recognised as un-grievable and are, consequently, not considered legitimate citizens of the society. Those who are grievable, such as heterosexual white men in patriarchal societies, for example, are considered worthy of rights and protection, while those who do not conform to the logic of heteronormative patriarchy are un-grievable, and so the upholding of their rights and freedoms is denied based on the notion that they are not legitimate citizens of the nation. The lingering effects of racist, sexist, and puritanical colonial impositions, combined with the heteronormative patriarchal foundation of many African countries, have led to the LGBT community being among those considered (most) un-grievable, and therefore, (most) unworthy of rights, recognition, and freedom.

The question thus becomes – if members of the LGBT community are already marginalised and considered un-grievable and therefore not worthy of the rights and protection granted to legitimate citizens, can there be any possibility of their rights being upheld, even where these are enshrined constitutionally or through other legal instruments?

While the legal and judicial systems in Africa play an important role in the ways in which LGBT individuals are treated, it is also clear that the law can only function to prevent such crimes and ensure the safety of LGBT individuals to a certain extent. The question then is, what more can

be done to protect the rights, freedom, and ultimately, the lives of LGBT individuals across the continent? The obvious place to begin is with the decriminalising of same-sex relationships and the implementation of harsher punishments for those who commit hate crimes against the LGBT community, along with a more holistic approach that aims to conscientise people around LGBT issues and lives. Beyond legislation, there is a dire need for social, religious, and cultural acceptance of LGBT individuals. However, altering long-standing cultural and traditional beliefs and social constructs that marginalise and demonise LGBT individuals poses an enormous challenge, and as mentioned, cannot be done through legislation alone.

One of the ways through which cultural and social acceptance is being sought is the use of art and visual activism. In South Africa, visual activism relating to LGBT lives is seen in the work of artists such as Nicholas Hlobo, the well-known photography of Zanele Muholi, and performances by Mamela Nyamza. Across the African continent, various alternative forms of resistance and LGBT visibility are emerging through, for example, pride parades, visual and political activism, and the recognition of the existence of LGBT individuals within pre-colonial African societies. These forms of resistance challenge the notions that homosexuality is un-African and a Western import, create agency for LGBT individuals, and lead to an increased visibility of the subjective, lived experiences of these individuals. These forms of resistance, therefore, play an integral role in the acceptance and equality of LGBT individuals on a more social and cultural level.

Clearly, there is still much work that needs to be done legally to guarantee that LGBT individuals are afforded rights and freedoms, but it is also vital that policies and programmes are developed to aid in increasing the acceptance of LGBT individuals on a social level. Without social, cultural, and religious change, legal measures alone will not end the violence and discrimination faced by the LGBT community. Overall, lesbian, gay, and transgender individuals need to be recognised as an important and natural part of African cultures and societies so that they can be positioned as grievable, legitimate citizens who are worthy of rights. Until this happens, Africa cannot truly say that it is free from colonial impositions and ideologies.

Photo caption:

Dr Claire Westman is a Postdoctoral Research Fellow in the Free State Centre for Human Rights, University of the Free State (UFS).

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