

LGBTI RIGHTS AND THE POWER OF THE PEOPLE

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INTRODUCTION

2015 was an unprecedented year for global decision-making, all of which have the potential to influence issues of human rights, poverty, inequality and development in Africa.

Three years of global intergovernmental negotiations all came to a head with the signing of three critical agreements. The first of these was the Addis Ababa Action Agenda, adopted at the Third International Conference on Financing for Development, which laid out the roadmap for the realisation of the post 2015 development agenda.

This was followed in August 2015 by a commitment by states to the modalities for ‘Transforming our World’ over the next 15 years. The resulting 2030 Agenda for Sustainable Development was adopted at the United Nations (UN) by heads of states and governments on 25 September 2015. The new plan includes 17 integrated Sustainable Development Goals (SDGs) and 169 associated targets, which take over from the Millennium Development Goals, which ended in 2015.

The third global development - the legalisation of same sex marriages across the entirety of the United States - was one that was important on many levels, as it gave hope in countries where most people are battling to access even their basic human rights.

For many lesbian, gay, bisexual, transgender and intersex (LGBTI) people around the world, who sometimes feel their struggle is insurmountable, the US Supreme Court ruling was inspiring, as it was evidence of what could be achieved with consistent, organised advocacy and campaigning.

On 26 June 2015, five of the nine Supreme Court Judges ruled that the right to marriage equality was enshrined in the United States Constitution under the equal protection clause of the 14th Amendment. The case was known as Obergefell v. Hodges, after an Ohio man who sued the state to get his name listed on his late husband’s death certificate.

The historic ruling expanded the recognition of gay marriages beyond the 37 states where it was legal to all 50 states, and affords same-sex couples the same rights and benefits long conferred on heterosexual unions. Important to note is that the Supreme Court ruling was the tipping point following decades of campaigning by LGBTI activists.

LGBTI and human rights activists around the world joined the United States in celebrating the decision, which gave hope to embattled LGBTI Africans, for whom 2015 was a year of tightening laws against them and a continuation of violence and insecurity.

CHANGE DOES NOT HAPPEN OVERNIGHT

What the United States Supreme Court ruling underscored is that change is a process, and often a long sequence of events and actions. In this case, it was decades of consistent pressure, litigation and activism.

Justice Kennedy was the author of all three of the US Supreme Court's previous gay rights landmarks, on the right to marry, and two preceding rulings leading up to it, and in his rulings he spoke of a vision of a living Constitution, one that evolves with societal changes.

LGBTI RIGHTS IN AFRICA

The point made by Justice Kennedy regarding the evolution of societal changes is important to note, especially for the LGBTI movement in Africa, where progress can be slow and often classified as having a 'one step forward two steps backwards' success rate.

And while there is often frustration at the slow pace of change, it is important to note that just a few years ago there was no LGBTI movement on the continent. That has changed. African LGBTI people and human rights defenders are definitely growing in numbers and becoming stronger as a continent wide movement, and are attempting to assert their rights more openly.

In Africa, LGBTI people face massive challenges. These include the criminalisation of same-sex relationships, sodomy laws, homophobia, exclusion and violence, including state sponsored violence. State sponsored violence and homophobia tend to rear their ugly heads in the lead up to elections, especially in countries where the leaders are determined to stay in power. They use their LGBTI citizens as scapegoats and often incite violence against them as a ploy to distract the voters from all that is wrong with the country and their leadership.

In May 2015 the Gambian President, Yahya Jammeh, while addressing a rally in the town of Farafeni, delivered a dire and chilling warning to homosexuals living in his country; "If you do it [in the Gambia] I will slit your throat... if you are a man and want to marry another man in this country and we catch you, no one will ever set eyes on you again."

President Jammeh is not alone. There are a number of African leaders who use election platforms to spew hatred against their LGBTI citizens. In 2015 Amnesty International investigated the human rights situation in 160 countries and territories worldwide. In Africa the report concluded that legal rights were diminishing for LGBTI people across the continent.

According to Amnesty there are presently four countries in Africa where homosexuality is punishable by death, 35 where it is illegal and punishable by up to 14 years imprisonment, only 19 countries where it has been legalised and one country, South Africa, where LGBTI people have the same rights as heterosexual people. Even in countries with progressive legal frameworks, social acceptance of LGBTI citizens is often low and levels of violence high.

THE NON-LEGAL CHALLENGES FACING LGBTI AFRICANS

LGBTI people in Africa face inequality before the law, but also a range of non-legal issues. These non-legal issues are often rooted in issues that all Africans face, such as poverty and inequality.

LGBTI people are confronted with an aggravation of challenges, being both African and LGBTI, which are fuelled by harsh legal frameworks and hostile social environments. In that sense, LGBTI Africans face an added burden of stigma, violence and exclusion.

The majority of African countries have a poor record around socio-economic and political rights. States' responsiveness to citizens' needs is generally weak. In addition to the socio-economic situation, African leaders do not speak the language of human rights, and many of the challenges that are framed in this language are dismissed by some leaders, who claim Africa has bigger issues to deal with such as poverty, HIV/AIDS and inequality.

Media, particularly state-owned media, also play a huge role in fuelling homophobia, giving a platform to homophobic politicians. Access to independent, unbiased sources of information and media, particularly in rural areas, is low and citizens are often unaware of their rights.

The state of civil society in many African countries, and especially civil society that focuses on LGBTI rights, continues to be weak and requires support. The voices of LGBTI Africans, both within mainstream human rights bodies, and the LGBTI caucus itself, continue to be weak, fragmented and sometimes inaudible.

Religion, particularly orthodox and evangelical churches, continue to have a negative influence on LGBTI rights, and in particular in strengthening the belief that LGBTI people are 'un-African' and un-Godly'.

A LIGHT AT THE END OF THE TUNNEL

But it is not all gloom and doom, and advances need to be recognised and applauded. In Africa, the battle for basic human rights is not one that is faced by the LGBTI community alone. It is rather that for LGBTI Africans, the situation is further exacerbated by societal attitudes towards LGBTI people. The fight for basic human rights is a universal one, hence any gains made in tackling LGBTI issues will benefit not only people from that community, but also Africans in general.

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To this end there have been some positive developments. One worth noting took place in Southern Africa, where in August 2015 there was a breakthrough at the Civil Society Forum that precedes the Southern African Development Community (SADC) Heads of State and Government Summit, which took place in Botswana.

The Civil Society Forum, which is organised by the SADC Council of Non-Governmental Organisations (SADC-CNGO), the churches, represented by the Economic Justice Network of the Fellowship of Christian Councils in East and Southern Africa and the Southern African Trade Union Coordination Council, included, for the first time ever, a session in the programme on ‘Securing Justice for All: The Rights of Minorities Under Threat’.

This session placed the issue of the rights of LGBTI southern Africans at the centre of its discussions. The inclusion of a session on minority groups was in and of itself an achievement. In past years, LGBTI rights and voices have been totally absent at SADC meetings. The attempt by SADC-CNGO to include a recommendation on LGBTI rights in the communiqué, although blocked by trade union and church representatives, was also an important first.

Another development, also in Southern Africa, was the hosting of the 18th International Conference on AIDS and STIs in Africa (ICASA), which took place in Zimbabwe from 29 November to 4 December 2015.

It was especially important for the LGBTI community in the country as the generally homophobic ZANU-PF government of Robert Mugabe surprisingly asked the Gay and Lesbians of Zimbabwe (GALZ) to be in charge of all ‘special’ sessions, including training the police and immigration officials on sensitive and respectful treatment of all key populations that arrived for ICASA.

For the first time in 30 years, GALZ was able to meet with key government officials, including the Ministers of Tourism and Health. This gave them a unique opportunity to discuss key issues for the LGBTI community. GALZ and the Sexual Rights Centre have said the holding of ICASA in the country was beneficial to the LGBTI movement, as well as that of the HIV/AIDS, sex workers and health movements.

Benefits highlighted by the organisations included being able to raise awareness, not only among the public but also government officials, of issues facing key populations, as well as an improvement in the relationships between government officials and organisations of key populations.

Samuel Matsikure from GALZ commented, “There is such a negative perception out there about LGBTI organisations like GALZ and what we do, and it is usually centred around us wanting to convert people or to being rapists and paedophiles – and there were many police and Central Intelligence Organization officials deployed who were actually surprised that all we were doing was raising awareness and providing people with information and there was nothing sordid or untoward about what we were doing. I believe this helped in changing perceptions around what we did as an organisation.”

THE ROLE OF DONORS

Activists would not have made progress without support from the international donor community. Historically, international donors have played a major role in supporting the LGBTI movement in Africa. Only two decades ago, the LGBTI movement on the continent was weak and fragmented. Donor support has been instrumental in building a sense of movement. But while great strides have been made, the battle is far from being won, and lasting change requires sustained investment and support. The US example regarding the right to marry is evidence of the fact that change is possible but it takes time and requires resources.

A major challenge confronting the human rights movement globally is diminishing donor support and a shift in donor focus. International events such as the Syrian refugee crisis, the global economic crisis and the fight against terrorism have seen many international donor budgets being cut substantially. Africa has not escaped unscathed.

Continued donor support to the LGBTI movement in Africa is critical. It is helpful if donors do not see the battle by LGBTI Africans to access their basic rights as separate to that being waged by Africans in general. Donors need to bear in mind that support to the LGBTI movement will benefit the advancement of basic human rights in Africa as a whole.

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However, it is not just about continued support, but also about consistent focus. Sometimes donors can unwittingly become part of the problem. Zimbabwe is one example of this happening. LGBTI and human rights activists report that accessing funding to continue with their work has become a major challenge. They cite donor inconsistency as the major problem, saying that before the 2013 elections, donors would not fund them unless they adopted a confrontational and adversarial response to government.

But since ZANU-PF won the elections, donors are reported to have changed their approach completely. They now insist that funding is conditional on civil society engaging directly with government and the ruling party. As Chester Samba of GALZ commented, “They first wanted us to be antagonistic and confrontational towards the government... and now they want the reverse. Now we have to engage with government in order to get funding.”

Jestina Mukoko of the Zimbabwe Peace Project also noted that prevailing inconsistencies by some donors, brought on by changes in the global context, have resulted in many organisations being unable to continue with the work they have been doing.

RECOMMENDATIONS

The attainment of basic human and development rights for all LGBTI Africans is possible, but given the complexities of the context, there is need for sustained action. It is important not to separate the LGBTI struggle from the one being faced by all Africans. The strengthening of LGBTI people and organisations will contribute greatly to the struggle faced by all.

There is also need to work on strengthening the LGBTI movement in Africa and to ensure that it is strategically linked to similar movements around the globe. The establishment of Pan African ILGA (the African region of the International Lesbian and Gay Association) in 2015 is a great step forward and this work needs to be expanded and supported. There is a lot that the African LGBTI movement can share with and learn from the global movement.

For change to take place there is a need to focus on building strong LGBTI focused institutions and organisations. Many of the LGBTI organisations in Africa have been set up by activists in reaction to personal experiences with homophobia, stigma or violence. These organisations tend to be personality driven and often struggle to keep afloat or deliver when the leader is unavailable or out of action. Hence there is a need to support activist organisations to develop into stronger institutions with proper succession planning and with increased capacity to provide sustained and high impact results. There is also a need to support new and emerging activists and organisations, as this will contribute to the building of a diverse and more effective movement.

This development needs to be resourced, and donors need to be consistent in providing long-term support to the LGBTI movement in Africa. One way for donors to see value for money and greater impact would be to link human rights to development rights. Not only would this counter the refrain from African leaders that development trumps human rights concerns, but it would also ensure the LGBTI community is included in development planning and processes. The SDGs provide one such opportunity.

There is also a need for the African LGBTI movement to strengthen and build on their work of engaging African leaders at regional bodies such as SADC, the African Union and the African Commission on Human and Peoples' Rights. This work then needs to be built into a cohesive strategy for engagement at the global level, such as with the United Nations Human Rights Commission and other UN bodies, to derive maximum impact. In short, leaders need to be held to account at all levels.

The fight for basic human rights for LGBTI people on the African continent is not a pipe dream: it is possible. But it requires everyone to come together and jointly confront the hurdles. History has shown that the power of the people can shift nations, and Africa has the power and the people to do this.