

LGBTQI rights are human rights: A Namibian perspective

Wesley R. Pieters⁵

University of Namibia

ABSTRACT

The Namibian Constitution has been noted to be modern, progressive and internationally exemplary but fails to include and recognise the rights of the Lesbian, Gay, Bisexual, Transgender, Queer and Intersex (LGBTQI) community. Chapter III of the Namibian Constitution, which is based on the Universal Declaration of Human Rights, focuses on “Fundamental Human Rights and Freedoms” and these rights were the “very principles Namibians had fought for” (Geingob, 2004, p. 135). During the apartheid regime, many Namibians were not privileged to enjoy these basic human rights since oppression and discrimination against “different” people was the order of the day. Even though the fight for political independence is over, the fight for equality and inclusivity still continues. This paper explores the Fundamental Human Rights and Freedoms in the Namibian Constitution; extracting key information from other legal instruments to highlight the inherent contradictions in the protection of certain rights. It specifically focuses on the right to be free from discrimination of any kind and the right to assembly and association (marriage). This paper recommends that sodomy be decriminalised, same-sex

⁵ Dr Wesley R. Pieters is a Senior Industrial/Organisational Psychology lecturer in the Faculty of Humanities and Social Sciences (Human Sciences Department- Psychology Section). His research interests include organisational effectiveness, education and positive psychology. Email: wpieters@unam.na

marriages and joint adoption (same sex) be legalised in Namibia since the criminalisation and illegality of these add to extreme intolerance of differences, discrimination, exclusion and societal divide.

Keywords: LGBTQI, same-sex marriages, same-sex adoption, discrimination, sodomy, immoral practices.

Out-Right Namibia (2017) noted in their annual report that LGBTQI youth are more likely to engage in drug abuse because of what has been termed minority stress. Minority stress is experienced by individuals belonging to a certain group that is stigmatised in society. Yet, there is lack of awareness about this in the general population. A baseline study conducted by Nakuta (2013) indicated that 73.2% of the people sampled in their study are under the impression that people with a different sexual orientation have equal rights within Namibia. This indicates that many people are not aware of the discriminatory nature of some of our laws in Namibia (Hubbard, 2015). Many people are aware of their rights but are less informed when it comes to the rights of others. On 6 to 9 September 2018, the LGBTQI community gathered in Windhoek to discuss ways to decriminalise consensual same-sex practices (Out-Right Namibia, 2017).

Matthews, Clemons and Avery (2017) note that it is evident that the LGBTQI community experiences high levels of discrimination, marginalisation and social exclusion within Namibia. Their study respondents, especially participants from Zambia and those who

attend religious activities frequently, had negative attitudes towards individuals from the LGBTQI community. The strong negative attitudes from male participants in Matthews et al.'s (2017) study could be due to perceived representation of masculinity or other religious factors.

The preamble to the Namibian Constitution recognises the importance of democracy, unity and integrity of ALL Namibians, yet there is still widespread discrimination, victimisation and degradation of fellow Namibians. The preamble reads as follows:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace; Whereas the said rights include the right of the individual to life, liberty and the pursuit of happiness, regardless of race, colour, ethnic origin, sex, religion, creed or social or economic status (The Namibian Constitution, 1990, p. 5).

If we as a nation aim to achieve economic independence, peace, stability and preserve a healthy nation, we need to refrain from discriminatory behaviour and from impeding the rights of fellow Namibians. Working together towards economic and social independence, Namibians are more likely to reach her national developmental goals.

This paper is aimed at enlightening the Namibian nation about the fundamental human rights of the LGBTQI community. This paper also aims to document and discuss some challenges regarding

our laws whilst sensitizing the Namibian nation about the rights of the marginalised and discriminated LGBTQI community. It is based on these aims that it is envisaged that this paper may influence future research in this area specifically within Namibia with the ultimate goal of impacting legislation within Namibia through the Law Reform and Development Commission.

The paper starts off by providing some background information and discussing some literature with specific focus on the fundamental human rights and freedoms as presented in the Namibian Constitution. A discussion of the negative effects of discriminatory practices against the LGBTQI community will follow and conclusions based on the literature will be presented.

LITERATURE REVIEW

In order to effectively understand the dynamics around same sex relationships, this paper will start by defining some key terms. Hubbard (2015) explained that sexual orientation deals with the sex of the person with whom you are sexually or romantically attracted to based on your sex in relation to theirs. The acronym LGBTQI stands for lesbian, gay, bisexual, transgender, queer and intersex. It refers to individuals based on their sexual orientation. The terms LGBTQI will also be used in this paper to be inclusive of all sexual orientation groups that do not conform to the perceived “norm” of heterosexual males and females. *Lesbianism* is defined as a female sexual identity and orientation on an emotional, sexual, intellectual, emotional and physical level between two females (Hubbard, 2015). The term *gay* is used to refer to two males that are sexually, physically, emotionally

and intellectually attracted to each other. The terms may be used to refer to homosexual females; however, some regard the term to be more applicable to homosexual males. *Bisexuality* refers to a sexual orientation and identity that deals with a sexual, emotional, physical and intellectual attraction to both males and females on various levels. *Transgender* is an inclusive term used to refer to an orientation that includes a variety of identities and experiences such as transitional female-to-male or male-to-female, cross-dressers, drag kings and queens, gender-queers and others (Hubbard, 2015). *Queer* is a term used to describe people that do not have a normative gender identity, sexual orientation or sexual anatomy. Queer individuals may include gay men, lesbians, bisexual people, transgender people and other identities. *Intersex* is a term used to refer to people that are born with chromosomes, genitalia or secondary sexual characteristics that does not conform to the typical male or female body. *Homophobia* is a fear, hatred or discomfort towards people that love or sexually desire people from the same sex group (Hubbard, 2015).

Namibia is regarded as a democratic and secular state. Chapter 1, article 1 of the Namibian Constitution states that; The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary State founded upon the principles of democracy, the rule of law and justice for all (The Namibian Constitution, 1990, p. 6). Van Heerden (2015) indicates that to be a secular state means that the state is neutral when it comes to matters such as religion. This also means that there is a separation between church and state. Religious ideologies and practices should not interfere or influence affairs of the state, nor should the state

interfere in religious affairs. Approximately 86.5% of Namibians identify/claim to be Christian making it more likely that even though we claim to be a secular state, religious beliefs of policy makers and government officials may influence their role.

Many who are against the LGBTQI community often use tradition as grounds to deny the LGBTQI community equal rights. Helie (2012) noted that traditions and beliefs are not fixed in time but should be allowed to change as society evolves. What benefit does it serve to hold on to practices and beliefs that do not build or grow a nation?

METHODOLOGY

This study made use of desk research that involves collecting relevant data (literature) on the topic and discussing the literature to elaborate on the aims of the study (Travis, 2016). The design also involved critical analysis which are perspectives intended to address social problems and inequities with a view to proffering solutions (Treadwell, 2014).

DISCUSSION

Fundamental Human Rights and Freedoms

President Hage Geingob (2004, p. 135) indicated that fundamental human rights and freedoms are the “very principles that Namibians fought for.” Knowing how inhumane and unbearable the colonial era was for many Namibians, questions exist as to why we

would want to go back to practices where fellow Namibians are exposed to inhumane and unbearable treatment. The people elected into office need to uphold the rights and freedoms of all and not be misdirected by their own personal or prejudicial views. More so as Chapter 3, article 5 of the Namibian Constitution emphasises the importance and need for public institutions, legal bodies and all Namibians to uphold and respect human rights and freedoms:

The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Namibia, and shall be enforceable by the Courts in the manner hereinafter prescribed (The Namibian Constitution, 1990, p. 9) .

In 2001, it was reported that the founding president declared that homosexuals and lesbians are not allowed in the Republic of Namibia (BBC, 2001). Police officers were also ordered to arrest, deport and imprison homosexuals and lesbians (BBC, 2001). The Minister of Home Affairs also denied the existence of Black gay and lesbian Namibians, informing police officers to *eliminate* [emphasis added] gays from Namibia (Matthews et al., 2017, p. 188). It is shocking to see that senior officials, elected by the people, would be so intolerant and are seen to be threatening the existence of fellow Namibians. Chapter 3, article 6 of the Namibian Constitution deals with protection of life. It prescribes that:

The right to life shall be respected and protected. No law may prescribe death as a competent sentence. No Court or Tribunal shall have the power to impose a sentence of death upon any person. No executions shall take place in Namibia (The Namibian Constitution, 1990, pp. 6-7).

To eliminate gays from Namibia, in the sense of killing them, would be unconstitutional and no law may be passed to allow for this. Chapter 19, article 131 of the Namibian Constitution makes it clear that no changes shall be made to Chapter 3 of the Namibian Constitution if it aims to diminish or detract from the fundamental rights and freedoms. These threats and discriminations do not end with senior government officials but also extend to other government officials entrusted to render a service to the Namibian public. Apart from the inflexible reasoning of some politicians, religion also plays its part in fuelling the divide and marginalisation of fellow Namibians.

Van Heerden (2015) indicates that as a secular state, Namibian public services should be available to all Namibians and not be provided or withheld depending on religious beliefs or sexual orientation of the client/patient. The denied or inhumane treatment at police stations, schools or hospitals goes against what the Namibian Constitution stands for. The preamble of the Namibian Constitution reads as follows:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is indispensable for freedom, justice and peace; Whereas the said rights include the right of the individual to life, liberty and

the pursuit of happiness, regardless of race, colour, ethnic origin, sex, religion, creed or social or economic status (The Namibian Constitution, 1990, p. 5).

The Namibian Constitution emphasises the importance of respect for human dignity. Chapter 3, article 8, section 1 and 2 reads as follows:

(1) The dignity of all persons shall be inviolable. (2) (a) In any judicial proceedings or in other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed. (b) No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment (The Namibian Constitution, 1990, p.10)

This article of the Namibian Constitution stipulates that the degrading and humiliating treatment towards the LGBTQI community is unacceptable and unconstitutional.

Barel (2009) as cited in Matthews et al. (2017) asserts that, LGBTQI individuals experience marginalisation and social exclusion within Namibia. Barel (2009) reports that gay men experience stigma and discrimination when visiting health facilities. This negatively impacts help-seeking behaviour, perpetuating the negative impact of sexually transmitted and treatable diseases. The same study reports that gay men experience human rights violations and physical abuse from government officials and police officers. Members of the LGBTQI community do not want special rights or laws, they only want access to the same rights and laws as all Namibians.

The Namibian Constitution highlights the importance of equality and that no man or woman is above the law. As Namibians, we are privy to the same rights however, we need to remain cognisant of the fact that our rights should not impede the rights of others. Chapter 3, article 10, sub-article 1 and 2 of the Namibian Constitution explains the equality and freedom from discrimination of all Namibians. It reads as follows: “(1) All persons shall be equal before the law. (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status” (The Namibian Constitution, 1990, p.10-11).

Hubbard (2015) notes that even though Chapter 3, article 10, section 2 indicates “sex”, this may be interpreted to include sexual orientation like it applies to other countries and under international law. This is also supported by Chapter 3, article 10, section 1 indicating that all persons are equal. Discrimination and marginalisation do not only present itself in the practices of our state employees but also in our laws.

Hubbard (2000) explains that sodomy is part of the Roman-Dutch common law taken up by Namibia at independence. Sodomy is regarded as illegal within Namibia. Sodomy was the legal label given to all and any “unnatural” sexual offences which include masturbation, oral sex, anal intercourse between homosexual and heterosexual individuals, sexual intercourse with animals and heterosexual intercourse between Christians and Jews. Sodomy these days, however, only refers to anal intercourse between gay men with unnatural sexual offences specifically focusing on sexual activity

between men. When these sexual activities take place between a man and woman or between two women it is not regarded as illegal. Sodomy contradicts Chapter 3, article 21, section 1(a) of the Namibian Constitution's fundamental freedoms which state that: "(1) All persons shall have the right to: (a) freedom of speech and expression..." (The Namibian Constitution, 1990, pp. 14-15).

If it is the choice of two consenting adults to engage in anal intercourse as a way to express their affection towards each other, this should be respected as indicated by the Namibian Constitution. Sodomy also contradicts Chapter 3, article 10, section 1 and 2 of the Namibian Constitution. It states that all persons shall be equal before the law. Sodomy applies only to anal intercourse between gay men. It, however, excludes anal intercourse between a man and a woman or two women. A law should not discriminate against any Namibian as stipulated in Chapter 3, article 10, section 2 of the Namibian Constitution that speaks about non-discrimination based on the grounds of sex or any other characteristic.

To effectively enforce sodomy within Namibia can be cumbersome as it encroaches on the right to privacy in addition to being impractical. According the Namibian Constitution, Chapter 3, article 13, section 1:

No persons shall be subject to interference within the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the protection of health

or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others (The Namibian Constitution, 1990, p.12).

In order for the police and law enforcement agencies to effectively police sodomy within Namibia, they would need to effectively monitor sexual activity within the bedrooms of Namibians. They would need to ensure that proof is available and/or arrest these individuals whilst engaging in anal intercourse.

Hubbard (2000) notes that this seemed to be how sodomy was policed during the apartheid era to prevent sex between people of different races. Going back to the days of apartheid, discrimination and marginalisation would seem repulsive considering the progress Namibia has made from the time before independence. The right to privacy may thus be denied and this goes against the letter and spirit of the Namibian Constitution, Chapter 3, article 13, section 1, which states that privacy can only be invaded

in the interests of national security, public safety or the economic wellbeing of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others (The Namibian Constitution, 1990, p.12).

Two consenting adults' expressing their affection for one another seems not to qualify as "threatening the interest of national security, public safety or economic wellbeing of the country." The law on sodomy should be repealed since it perpetuates the political discourse

and discrimination against the LGBTQI community. It perpetuates discrimination, the spread of sexually transmitted diseases and violation of human rights. Just like the Namibian nation is changing and becoming more acceptable of diverse individuals, so too should the laws of the country be changed with time. Many countries around the world are changing the sodomy law for these and other reasons. The law on sodomy continues to create societal divide and it is impractical to enforce. Hubbard (2015) indicates that between 2003 and 2012, four to five arrests have been made for sodomy. This indicates that this law that is impractical and ineffective should be abrogated.

Apart from the right to expression, LGBTQI individuals also want to have equal access to the right to marriage. Currently, Namibia practices two kinds of marriages which are, civil and customary marriage. Civil marriage specifically indicates that marriage takes place between one man and one woman. In customary marriages, marriage can be polygamous with one man getting married to more than one woman. Marriages between homosexual couples are not allowed under civil and customary marriages within Namibia. Chapter 3, article 14, section 1 to 3 of the Namibian Constitution discusses the right to marriage and family.

(1) Men and women of full age, without any limitation due to race, colour, ethnic origin, nationality, religion, creed or social or economic status shall have the right to marry and to found a family. They shall be entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be

entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group/unit of society and is entitled to protection by society and the State (The Namibian Constitution, 1990, p.12).

Section 1 stipulates that men and women of full age should be allowed to marry and form a family, but it does not dictate that marriage should be between a man and a woman. It is based on religious beliefs that the interpretation of the law is seen to regard marriage to be between a man and a woman. If two consenting males or two consenting females decide to get married and form a family, it should be respected and allowed within Namibia. Chapter 3, article 21 section 1(e) discusses the fundamental freedoms. It specifically states that (1) All persons shall have the right to: (e) freedom of association, which shall include freedom to form and join associations or unions, including trade unions and political parties (The Namibian Constitution, 1990, p.15). All Namibians are free to associate with whomever they choose, and this should include two consenting males or two consenting females. This is once again where rigid religious beliefs dictate and negatively influence how the laws of a country are implemented or interpreted.

It has been argued that it is important to have a legal system that recognises one form of legal partnership (marriage) instead of having one for homosexual and one for heterosexual unions. This would be a system that is sustainable and ends sexual apartheid and discrimination (Bereford & Falkus, 2009). The same is needed in

Namibia - a legal system that recognises homosexual unions the same way it does heterosexual unions thus ending discriminatory practices and allowing all citizens to have access to equal rights. The right to association is further denied when considering adoption within Namibia.

In Namibia, when gay or lesbian couples decide to adopt a child, the legal rights can only be awarded to one of the adopting parents. Gay and lesbian parents equally care for and love the children that they adopt and should enjoy equal legal status and rights as parents. To comply with some of the legal requirements within Namibia, it is only the legally adopting parent that may sign or consent to travel, medical examination or other activities. This undermines the role of the second adopting parent and may cause negative consequences for the child should the legally adopting parent die. Chapter 3, article 14, section 3 indicates that the family is the natural and fundamental group/unit of society and should be protected by society and the State. In Namibia, there are many children living on the street, orphans and homeless children that could benefit from a loving home even if they were to have two mothers or two fathers. We, as a society, should look out for the children's best interest and not use the law as a way to punish or victimise those who we do not identify with. Children should be allowed to be adopted by same-sex couples; the best interest of the child should be considered. Further consideration should be made of the fact that same-sex couples may provide a safe and stable family home which children need.

The Child Care and Protection Act of 2015; Chapter 10, Article 52 indicates that a married couple may apply jointly to become foster parents. Considering that Namibia does not recognise marriage between a man and another man or a woman and another woman; gay and lesbian couples will not be able to jointly foster a child in Namibia (Child Care and Protection Act, 2015). It may take some time and money, but aggrieved individuals should seek justice if their fundamental human rights and freedoms are violated.

Chapter 3, article 25, article 2 to 4 of the Namibian Constitution specifies how the fundamental human rights and freedoms may be enforced. The Office of the Ombudsman also serves a key role which is mainly focused on

complaints relating to the failure to achieve balanced structuring and equal access or fair administration in the Public Service Commission, Defense Force, Prison Service and the Police Force, can also be investigated, while investigation of complaints related to private institutions and individuals are limited to human rights violations (Office of the Ombudsman, par. 5).

If aggrieved, individuals do not come forward and report these cases, the law cannot be challenged nor can these injustices be corrected. Chapter 3, Article 25, section 2 to 4 states that...

...(2) Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent Court to

enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.

(3) Subject to the provisions of this Constitution, the Court referred to in SubArticle (2) hereof shall have the power to make all such orders as shall be necessary and appropriate to secure such applicants the enjoyment of the rights and freedoms conferred on them under the provisions of this Constitution, should the Court come to the conclusion that such rights or freedoms have been unlawfully denied or violated, or that grounds exist for the protection of such rights or freedoms by interdict.

(4) The power of the Court shall include the power to award monetary compensation in respect of any damage suffered by the aggrieved persons in consequence of such unlawful denial or violation of their fundamental rights and freedoms, where it considers such an award to be appropriate in the circumstances of particular cases (The Namibian Constitution, 1990, p. 17).

Effects of Discriminatory Practices against the LGBTQI Community

In a study conducted in Indonesia, Malaysia, Myanmar, Thailand and Vietnam, it was found that LGBTQI individuals

experience higher levels of mental problems such as depression and suicide attempts; and engage in substance misuse (drugs and alcohol) (Peltzer & Pengpid, 2016). This indicates that due to the possible marginalisation and discrimination against homosexual individuals, these individuals make use of unhealthy ways to cope and at times consider suicide as the only solution.

Nel, Rich and Joubert (2007) found that due to marginalisation and fear of discrimination, many LGBTQI individuals experience low self-esteem, self-devaluation, isolation, lack of trust, perceived rejection and difficulties with family interactions. Considering that Namibia has gone through similar experiences during colonial rule, it seems unreasonable to want to continue practicing strict religious beliefs or laws that perpetuate discrimination, psychological abuse and the violation of human rights of fellow Namibians.

Anya (2014) indicated that same-sex couples experienced difficulty when travelling or working in a different country especially if they are moving from a country where their union is recognised to a country that does not recognise the rights of same-sex couples. Considering that some countries recognise same-sex marriages and that heterosexual couples do not have to go through these same challenges, it would result in some same-sex couples not wanting to live, work or travel to Namibia. Considering the number of countries that recognise same-sex marriages, Namibia might be faced with tourists refraining from visiting Namibia and possibly some expatriates may not consider working or living in Namibia. This does not only impact on the image of the country but possible revenue

from tourists, possible employees and organisations wanting to invest in our country may go elsewhere. Juan et al. (2007) found that many of the participants in their study, predominantly gay men, were highly educated and occupied good positions within different organisations. These are the individuals that we discriminate against and expect to live life as sub-standard citizens when they can contribute equally, if not more, to the Gross Domestic Product of the country.

In addition, homosexuals are at higher risk of contracting HIV when compared to heterosexuals. In South Africa, there has been an increase in the prevalence of HIV between 2002 and 2007. Scholars posit that in order to curb the spread of HIV, the LGBTQI community should be more involved in the formulation of programmes and policies to ensure that they are effective and uphold the rights and privacy of the LGBTQI community (Balogun & Durojaye, 2011; Mprah, 2016). The law on sodomy encourages secrecy, perpetuates risky sexual behaviour and hampers help-seeking behaviour. When health professionals at hospitals and clinics withhold medical care from members of the LGBTQI community, it perpetuates the spread of diseases and goes against what the Namibian Constitution stipulates regarding discrimination and the provision of services (Matthews et al., 2017). During the annual World AIDS day celebration (1 December 2017), members from the LGBTQI community in Windhoek and Walvis Bay celebrated the day by participating in voluntary counselling and testing and the celebrations involved dissemination of information about pre-exposure prophylaxis and going for health check-ups (Out-Right Namibia, 2017). It was also noted that in order for the Ministry of Health and Social Services of Namibia to reduce the spread of

HIV/AIDS they need to transform and include the LGBTQI community to ensure effective prevention and treatment (Out-Right Namibia, 2017).

Corrective rape is an act of sexual aggression against lesbian women by men to punish and demonstrate how sexual intercourse is “meant” to take place - between a man and a woman and not two women. Some of these women in South Africa have been raped and killed because of discriminatory and intolerable views by the male perpetrators (Mwambene & Wheal, 2015). Kisting (2018) reported a similar incident where members of the LGBTQI community continue to be marginalised and discriminated against. In some families, gay boys may be threatened by their fathers to stop being gay otherwise the father would “beat the gay out of him”. These acts of violence/hate crimes continue to advance the stigma and discrimination against the LGBTQI community. This also disrupts the lives of these LGBTQI individuals to live a “normal” life without fear or threat from family members and other members of the Namibian society.

Ohms (2008) conducted a study on lesbian couples that experience domestic violence in their relationships. This study found that there are similarities in domestic violence incidences between heterosexual couples and LGBTQI couples hence, there is a need for interventions to be specifically tailored towards lesbian victims and perpetrators of domestic violence. Society believes that women are nurturing, non-violent and altruistic thus, they cannot be perpetrators of domestic violence but rather victims. “Silencing domestic violence

re-victimises victims and strengthens perpetrators” (Ohms, 2008, p. 96). As a society, we need to challenge our societal taboos, recognise that LGBTQI individuals are part of our society and should have equal rights. Interventions relating to domestic violence are developed focusing on heterosexual couples and not homosexual couples. Cases of domestic violence and rape amongst homosexual couples may go unreported and perpetrators may not get the needed help to curb violence within our society. The law should protect minorities and the vulnerable.

The Combating of Domestic Violence Act of 2003 excludes the LGBTQI community. The Act does not make provision for same sex relationships and protection from domestic violence. A domestic relationship is characterised by being married; which is not allowed or recognised for the LGBTQI community in Namibia; should be in a relationship with someone of different/opposite sex; and exclude romantic or sexual relationships for people that are in a relationship with someone from the same sex (Combating of Domestic Violence Act, 2003). Considering how the Act defines domestic violence, it is worrying that the LGBTQI community is excluded. The acts of physical assault/abuse, sexual assault/abuse, economic abuse, harassment, intimidation, trespassing and psychological/emotional abuse may exist in LGBTQI relationships.

CONCLUSION AND RECOMMENDATIONS

“Until homosexuals are treated the same as their heterosexual counterparts, the notion of a universality of human rights is fatally flawed” (Dicklitch, Yost, & Dougan, 2012, p. 470). People, no matter their sexual orientation, need to be treated equally and it is the responsibility of all office bearers and the legislature of Namibia to enforce these laws. There is a need for NGOs, government and pro-LGBTQI communities to educate the public about sexuality so as to reduce stigma and discrimination against the LGBTQI community.

The Transgender day of Remembrance was celebrated in Namibia by members of the LGBTQI community. The celebrations included education about mental health, stigma, stress related to transgender identity disorder and challenges related to being transgender (Out-Right Namibia, 2017). Members from the LGBTQI community were accompanied by family and friends as a sign of support but also in an effort to educate people about the rights of LGBTQI members as well as to reduce stigmatization and discrimination.

Religious beliefs, negative attitudes towards LGBTQI individuals, social norms and discriminatory laws perpetuate stigmatization and violence against LGBTQI individuals (Kugara, Netshandama, & Matshidze, 2017; Mapayi, Aginni, Akinsulore, & Aloba, 2016). There continues to be a need to: keep religious and matters of the state separate (law); the need for sensitising the public about sexual orientation and clarification of homophobic

misconceptions; and for the courts, judges, office bearers and legal practitioners to uphold the laws of Namibia. It has been argued that when religion interferes with policies, institutions and the law, the law is likely to be driven by religious ideologies which undermine, criminalise and prosecute sexual minorities (Tamale, 2014). Helie (2012) noted that the people within society whose voices are usually heard are those with the economic, social and political power. All societies have multiple cultures and it is usually the sub-cultures that are sacrificed at the expense of the dominant culture/s. "The political manipulation of "tradition" and "culture" increases discrimination and provides legitimacy to those who target less powerful members of a community" (Helie, 2012, p. 59).

The rights of all Namibians need to be upheld no matter the sexual orientation of the individual. As expected for all Namibians, the right to privacy and expression should be allowed and respected. Freedom of association, sense of belonging, the establishment of a family should not be limited to the majority but it should be open to all Namibians. When two consenting adults choose to get married, this choice should be respected and upheld within a democratic Namibia that claims to respect the fundamental human rights and freedoms of all Namibians.

Adoption by gay and lesbian couples should be allowed since not permitting this violates their rights and may hold significant negative repercussions for the child. Chapter 19, article 131 of the Namibian Constitution reads as follows:

No repeal or amendment of any of the provisions of Chapter 3 hereof, in so far as such repeal or amendment diminishes or detracts from the fundamental rights and freedoms contained and defined in that Chapter, shall be permissible under this Constitution, and no such purported repeal or amendment shall be valid or have any force or effect (The Namibian Constitution, 1990, p.56).

This means that the fundamental human rights and freedoms may not be altered, or another law be passed that infringes on Chapter 3 of the Namibian Constitution. Changing of a law should rectify injustice or enhance a current right but not take away from it. Considering the discussion above, some of our laws do conflict with the fundamental human rights and freedoms of some Namibians. The Law reform commission of Namibia should make it a point of duty to influence legislation and policy within Namibia. However, it is the responsibility of aggrieved citizens to report these cases to ensure that these injustices can be challenged and corrected where needed. If no one is willing to report and challenge these injustices, little to no law reform can take place.

Moscato (2010) indicates that the law around same-sex marriages and family law are influenced by religious and societal values, political morality and the interests of government. Considering that Namibians mostly follow Christian beliefs and the existence of an anti-LGBTQI government; some members of society remain ignorant about the violation of human rights of the LGBTQI community and the path to true freedom, equality and societal unity seems challenging.

Legislation and governance around the world is changing and, with time, it is believed that Namibia will be a country where ALL citizens will enjoy equality.

There is a need to conduct more research amongst the Namibian LGBTQI community since there is limited research focused on their experiences, challenges and how best to include/involve the community as an equal part of our society. Research should also focus on how to avoid the negative effects of discriminatory behaviour against the LGBTQI community.

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