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Defining Sexual Rights (in Marriage)

Deevia Bhana

Politics, Rights And Identity About Same- Sex Marriage In South Africa

Vasu R and Z Cakatha

Exploring Kenyan Attitudes to Sexuality Issues

Nyokabi K, S Chebet,
J Godia and
B O. Hagembe,

The new face of marriage? Same-sex couple displaying their rings.

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In This Issue

Editorial

3. The Relevance of Sexual Health and Rights in Marriage in Africa.

Feature

4. Defining Sexual Rights (in Marriage)

Issue In Focus

7. 'Even animals of the same sex don't take this route': Politics, Rights and Identity About Same-Sex Marriage in South Africa

Research Notes

- 11 Common Beliefs on Sex Outside Marriage, Homosexuality, Masturbation and Female Genital Mutilation (FGM) in Kenya¹

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The new face of marriage? Same-sex couple displaying their rings.

Photo: courtesy of behind the desk

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The Relevance of Sexual Health and Rights in Marriage in Africa.

By Richmond Tiemoko

Marriage remains the most widely recognised social framework for reproduction and sexual relationship in Africa, where nearly all individuals experience marital union at one time or the other in their life time. Available data from Demographic and Health survey (DHS) collected between 2000-2005 shows that by aged 50 years, over 95 persons of in Africa had experienced marital life except in South Africa where the proportion is about 88 percent. This means individuals are likely to spend their adulthood and sexual life in marital union. Meanwhile reproductive health's indicators for Africa are alarming as shown in the UN Millennium Development Goals report and other available data like the World Bank's Human Development Reports. Child marriage still remains widespread and maternal mortality is still high (930/100,000 live births in 2000 in Sub-Saharan Africa) despite some remarkable progress in North Africa. In sub-Saharan Africa maternal mortality is still high and access to reproductive health service is still problematic. For many married women, sexual relationship is hardly enjoyable i.e. it is more of a conjugal function than an activity and many are in violent relationships. It is therefore appropriate and timely to address sexual and reproductive health and rights issues within marriage.

Marriage is an evolving institution and there are various debates highlighting the politics of marriage. The question of the type of union to be recognised as socially or morally acceptable, has become a recurrent issue in many parts of Africa as have the following questions like what marriage is and who should be married to whom, where and how?

For instance, informal unions, secret marriages and cohabiting have become common categories in the study of marriage. Besides the conceptual issue, recent available data indicate that a significant number of individuals spend part of their sexual lives outside marriage because their first marriage is delayed

or/and when they get married the union could be prematurely interrupted by divorce, separation or death of the partner. To what extent do these forms of and change in marriage promote or discourage individual sexual and reproductive health and rights in Africa?

New issues and concerns in the socio-economic and epidemiological environment have also renewed interest in the marriage institution. The spread of the HIV virus and the increasing social-economic transformations have also re-enforced the role and conception of this social institutions. HIV Prevention measures such as Abstinence until marriage and sticking to one's spouse implicitly glorifies marriage as the most

HIV Prevention measures such as Abstinence until marriage and sticking to one's spouse implicitly glorifies marriage as the most protective environment against the virus.

protective environment against the virus. However, for marriage to provide effective protection against the virus, partners need to fully enjoy their sexual life and companionship within marriage; and for marriage to remain meaningful and relevant to individuals, especially to the younger generation, it has to promote sexual and reproductive health of each of the partners and protect their rights to sexual pleasure.

Surprisingly sexual rights within marriage remain far from being fulfilled. Within marriage the free choice of partner may be already determined, but the crucial aspects of rights as related to

when, where and how to engage in a fulfilling and pleasurable sexuality are yet to be enjoyed by many partners. The Nigeria Demographic and Health Survey in 2003[1] revealed that 45.4 % of women and 37.3% of men believe that a wife is not justified in refusing sex with her husband if she is tired or not in the mood. Sexual activity for the woman is viewed as more of an obligation than a choice.

Sexual rights in marriage is not the only burning issue related to marriage and long-term relationships, African authorities and societies have been struggling with the choice of a guiding framework to use in accepting or condemning long-term sexual relationships. This is because of the ambivalence to secular or non secular states. As indicated in this issue African countries have diverse legal positions on sex-same relationship and indeed on the nature of relationships that qualify as marriage and when such relationships becomes marriage. The main question many people are struggling with is whether recognising same-sex relationship will be a threat to heterosexual marriage or and more importantly, the family.

From the religious, moral and traditional perspectives there may be an already available answer but African scholars are yet to provide an evidence-based answer from proven scientific investigation.

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¹ORC Macro, 2007. MEASURE DHS STATcompiler. <http://www.measuredhs.com>, June 14 2007

By Deevia Bhana



Some of the participants in the 2006 Sexuality Institute on Sexual and reproductive health and Rights in Marriage

The Notion of Sexual Rights

In the context of the calamitous effects of the HIV/AIDS pandemic in sub-Saharan Africa particularly on African women [1], the question of sexuality and sexual rights have become important areas of research and intervention. Since the first declaration of sexual rights in the Beijing Platform for Action and its subsequent articulation in the United Nations Department of Public Information [2] document, the notion of sexual rights remains a contested field with many African countries reformulating and reframing the notion of sexual rights.

Sexual Rights in Marriage

What does 'sexual rights' mean and how does it manifest within socially sanctioned relations such as marriage? Can marriage in its current heterosexual context produce an environment to support sexual rights? How are sexual rights asserted, negotiated and challenged

within marriage? Marital relations are gendered and sexualized producing and reproducing inequalities. In the African context, discussion around sexuality and sexual rights has been generated through fear, disease and danger. Pleasure and agency have received minimal attention with pleasure being the site of the male domain.

In fact, sexuality is often considered to be a location for women's subordination. Through the institution of heterosexual marriage, female sexuality is often placed under the husband's control, with women often seen as sexual objects without the right to deny sex and sexual activity. Being a wife in other words is an entitlement to male sexual pleasure and for patrilineal procreation. However, caution must be raised in constructing women as victims within marriage, unable to act and without sexual agency [3]. Progressive states too, recognise that marriage often involves unequal sexual relations and in South

Africa marital rape recognises women's freedom and sexual agency.

African Sexuality

African sexuality has historically been under censure. The colonialists' constructions and perceptions of Africans as hypersexual led to intensified surveillance and repression of African sexuality with the female body being controlled and restricted while at the same time constructing a rampant African male sexuality exhibiting lust, desire, and danger.

HIV/AIDS has reframed and reinvented this censure around African sexuality. Sexual pleasure and desire have been marginalized as discourses of fear, danger and death gain in momentum. The institution of marriage is under attack as HIV/AIDS infections within marriage point to the highly unequal and gendered nature, not only of the infection but also of marriage. One key strategy in reducing HIV/AIDS risk is to delay sexual intercourse.

Many prevention programmes talk of abstinence and the need to delay sex until marriage. Not only is marriage regarded as the only sanctioned institution permitting sexual freedoms but also one that is safe from HIV. Yet as research shows, girls and women both in and out of marriage between the ages of 15-24 face heightened risk [1]. Women in marriage are not safe from sexual diseases. Across Africa, unstable family structures, urban migration, unemployment, war and disease have wreaked havoc upon social relations as social relations respond to structural and social inequalities. Women's vulnerability to HIV/AIDS within these fragile social contexts and the inability to negotiate sex produces unequal gender relations and questions the ability of sexual rights within marriage.

Political Landscape

At the political level, longstanding traditions of male domination and cultural systems supporting gender and sexual inequalities are being challenged.

Of course this is not true for all countries and all contexts and there is unevenness in how gender and sexual equality are being brought to the political landscape. Female genital cutting for example has increasingly come under attack and in many countries this has been criminalized. The political environment in countries like South Africa for example has produced a context which is supportive of gender equality yet South Africa has the highest rates of prevalence in terms of rape, sexual violence and HIV/AIDS.

Domestic violence is endemic as well. Gender relations are thus changing for better or worse. These changes are dependent upon the particular political and social context and the changes are not linear. Gender and sexual relations within marriage are thus impacted upon by discourses of equality but also by existing unequal patterns which remain resilient. Gender relations are thus changing and being contested. Within these changing contexts, is it possible for marriage as an institution to produce equitable and harmonious gender and sexual relations? Gender and sexual rights and marriage cannot be considered separately. Sexuality and sexual rights in marriage are key components of gender relations. And gender relations are key to understanding the ways in which race and class are developed. Marriage is thus not simply about the negotiation of heterosexual relations but these negotiations are situated within a context-social, political and economic. The ways in which men and women in marriage negotiate relations is impacted by the social context within which marriage is framed.

Within the context of political, social and economic transformation, men and women's roles in marriage are being redefined and fragmented. In some African contexts fundamental ideas about sex, marriage and gender have been radically reinvented. It is important to stress that there are different versions of marriage which defy dominant notions of monogamous heterosexually sanctioned relations. In many parts of Africa the existence of polygamous or customary marriages works to redefine the dominant concept of marriage although largely within hetero-normative constructions.

The obstacles to knowing about homosexual relations/marriages are especially formidable in some contexts in Africa where silence and deep seated prejudices around homosexuality persist. The legitimacy of the progressive political systems, like those in South Africa for

example, has been brought into question as debates about rights and sexual rights continue. In South Africa, same sex couples are now officially able to marry with the same rights as heterosexual couples after the signing of the Civil Union Act into law on 1 December 2006.

Research Needed

New research is needed to explore these new configurations of marriage and how sexual rights are managed within lesbian, gay and transgendered relations. New ways of understanding marriage, love and intimacy are thus becoming more evident while there is also evidence of religious and political resurgence. African patriarchy like Robert Mugabe and Sam Nujoma being examples of heterosexual fundamentalists with the desire to invent a heterosexually pure Africa.

Conflicting Definitions

Conflicting definitions of what sexual rights are and how they are to be realized remain an important area of growth, contestation and limitation. How is it possible to sustain a definition of sexual rights as the domain of women only?

The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence [2: Par 96].

The formulation of sexual rights that applies to women only and framed within the reference of violence is problematic. While it remains true that women and girls in sub-Saharan Africa are particularly vulnerable to social economic distress and violence and to HIV/AIDS risk, it is nevertheless important to shift discussion to articulate agency and sexual desire and pleasure rather than protection from disease, harm and danger.

Arnfred [3] shows how women in marital relations in Mozambique for example use tradition, food and sex as instances of female power. She argues that modern African women are able to seek sexual autonomy and do so using certain aspects of African 'tradition'. The question of sexual rights requires far more sophistication than that which constructs women as subordinated and ignores men within its definition. Sexual rights then are on the agenda being contested, fragmented and developed.

Power Relations

The definition of sexual rights which makes men invisible is simplistic. The progress towards including men in

development and men in HIV/AIDS prevention programmes is beginning to take place. The need to incorporate men into intervention programmes has become important in development contexts. The problem with excluding men from the definition of sexual rights is that the assumption is that women control their bodies, their health and their ability to ensure sexual well being. However these assumptions have significantly limited the impact of interventions aimed at reducing domestic violence and addressing HIV/AIDS. Within heterosexual marriage women's control of their body, of pleasure and desire is inextricable linked to men's ability to control.

Marriage is about gender and sexuality and power is invested in these relations. Power relations between men and women take on multiple forms and research shows that these are commonly manifested through sexual and physical violence [4]. The construction of rampant heterosexual masculinity based upon violence and multiple sexual partners is very much part of marriage. In fact the construction of familiar notions of being a husband and wife, man and woman are debilitating as it increases women's vulnerability not only to disease but to violence.

Versions of femininity make it difficult for example for women to be assertive and make important decisions in the household. Traditional notions of carer and nurturer persist with women being subordinated and thus unable to negotiate sexual rights. Men who are constructed as aggressive, tough and breadwinners often make decisions, expect subservience and use harsh means to assert their status. Power relations between men and women take multiple forms within marriage and are commonly manifested through sexual and physical violence. The problem around marriage and violence is that it disables women's ability to negotiate sexual activities and increases vulnerability to HIV/AIDS. Within the context of extreme poverty, unemployment and social distress, violence is often a readily available 'resource' to ensure power over women. Men use violence to subordinate and control women in marriage.

He forced me to sleep with him in his home, he beat me, made me take off my clothes, then made me lie on the bed and forced himself on top of me [5: p.42].

Violence as Strategy

Instances of intimate partner violence

have reached epidemic proportions. Kaye et al (2005) show that changing gender relations in Uganda related to urban migration, changing cultural values and men's unemployment increase women's vulnerability to domestic violence. While there are legal resources to assist women, the reporting of violence is low. In a study of intimate partner violence, Jewkes [4] argues that violence is often used as a strategy in conflict. This study shows that violence occurs in conflicts about finances, jealousy and when women assert themselves or transgress the normative constructions of gender identities, then violence is often used.

Alcohol abuse is also related to violence in marriages. It is incorrect to assume that women who are economically empowered will end abusive marriages. In fact, there is no linear relationship between marriage, violence and poverty. Why do women stay in abusive relationships? It is important to note that particular understanding of femininity and the ways in which the roles of wife/mother/caregiver are locked into these meanings impact on women's ability to end marriages. Economic dependence is cited as a chief reason why women stay. Changing sexual rights in marriage is thus linked to broader social and economic change in African countries.

This does not mean necessarily that women who are more empowered educationally, economically and socially are most protected. Research shows that even women in these categories remain in violent relationships. [4]. Emotional and social investment in the institution of marriage remains an important reason why women stay. While the institution of marriage is failing, the more it fails the more it has become necessary. In other words marriage is still regarded as an important social institution sanctioned by religion, the state and other institutions. Stigma, exclusion and loneliness are also important in reasons why women choose to live in unhappy and violent marriages.

The idea of regular sex has not featured much in discussions about why women choose to stay but the idea of sex, intimacy and love (even violent love) remains attractive to women whose femininity is constructed in ways that prohibit more than one sexual partner. Moreover, multiple sexual partners is against the idea of an honorable femininity and these notions of what it means to be married and stay married (despite its violence and its failings) continue to frame the way many women think and act. So male violence becomes

endemic and flourishes.

Jewkes adds that violence is frequently used as a means to resolve a male crisis. This crisis is not simply a crisis in identity but located within the social and economic context which frames masculinity and femininity. The broader social and economic context are important in understanding the use of violence. While it is important to stress again that violence in marriage is not simplistically a problem with lower social status and/or unemployment but that the crisis in masculinity is engendered through unemployment, and a context where men feel threatened and emasculated. In the South African literature, it is argued that the emasculation of black men in particular is the effect of colonization and a racist landscape which positioned white men in superior positions. While the context of democracy has changed these gender relations, the remnants of colonialism, apartheid and the increasing unemployment and poverty that many men find themselves in, increases the crisis in masculinity and the use of violence. However, the broader social context of war, conflict and a situation which is tolerant of violence allows violence to flourish.

Realising Rights in Marriage

The political/personal debates around sexuality and sexual rights have been important in opening up discussion around the realization of rights within the institution of marriage. In the context of substantial evidence of violence in heterosexual marriage and relations [5, 4, 6], is it possible for marriage as an institution to produce equitable and harmonious gender and sexual relations and pleasure? Gender violence is an intractable problem within (hetero)-sexual marriages and reduces the ability of women in particular to negotiate sexuality.

If sexual rights in heterosexual marriage are to become more effective, it requires necessarily addressing issues of gender, class and violence; and for attention to focus on men too. Sexuality and sexual rights in marriage is a key component of gender relations. Gender relations is key to understanding the ways in which race and class are developed. Marriage is thus located within the complexities of social, political and economic contexts. The ways in which men and women negotiate marital relations is impacted by the social context within which marriage is framed.

The question of sexual wellbeing and

sexual rights within marriage are thus difficult to explore without its relationship with gender and within the broader social and economic context. Changing sexual relations in marriage is thus linked to changing social and economic contexts. It is important to realize that there is need to make men and women aware of rights and how sexual rights are rights within marriage too. This demands a massive education ensuring that both men and women are aware of how sexuality can be negotiated and adjusted within the broad parameters of human rights approach. This involves addressing issues around gender inequalities within marriage. It will require a complete overhaul of systems of power which continue to marginalize women and construct women as sexual objects. Men need to be incorporated into these programmes.

Involving Men

Without men's involvement there can be little change as gender relations are socially constructed with both men and women highly invested in particular ways of being husband and wife. These programmes of course are not easy. Why will men for example want to give up on the notion of entitlement, power and privilege that marriage offers to them? The commitment towards sexual and gender justice and the realizations of rights in marriage are important. In the light of high rates of divorce it remains to be seen if sexual rights can be realized within the context of heterosexual marriages which are unequal and unfair particularly to women.

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'Even animals of the same sex don't take this route': Politics, Rights and Identity About Same-Sex Marriage in South Africa

By: Vasu Reddy and Zethu Cakatha



Copyright: Placard (KwaZulu-Natal Coalition for Gay & Lesbian Equality Picket Against Mugabe) in 1999 (image by the National Coalition for Gay and Lesbian Equality)

Introduction

The Supreme Court of Appeal in 2004 declared the common-law definition of marriage unconstitutional. This decision followed an appeal by Marie Fourie and her partner, Cecilia Bonthuys, which resulted in mixed public reaction. Phumlani Nxumalo (74) from Orlando West, not too far from Johannesburg, was appalled at the court's verdict: "Even animals of the same sex don't take this route. We have lost ubuntu bethu" [1]. Unsurprisingly, a lesbian couple, Mbali Nkosi (19) and Joy Mbatha (18) said they were overwhelmed by the outcome: "We were thinking of eloping because we always felt that South African law was insular and unfair to us. But now we are relieved because it is no longer only about the so-called straight people" [2].

The idea that 'ubuntu' (humaneness or humanity) is lost through the accrual of

rights for lesbians and gays, suggests that such rights, according to their opponents, should not be guaranteed. That the virtues of 'ubuntu' are only morally sanctioned within a heteronormative model implies, in our view, a very limited perspective on equality and human rights.

Legal victories and policy reform have benefited the construction of lesbian and gay identities in South Africa (see table 1). Such victories have progressively promoted claims to citizenship and nationhood.

However, the struggle for identity is reinforced in the case for same-sex marriage. Elsewhere in Africa, Anglican Archbishop Peter Akinola of Nigeria claimed the US Episcopal Church created a 'new religion' by confirming openly gay Bishop Gene Robinson in November 2003 in New Hampshire [3].

Same-sex marriage connects two central ideas: first, the history and meaning of homosexuality; and second, the history and meaning of marriage.

In most African states homosexuality is still criminalised and even actively policed. Such criminalisation is fuelled by the notion of the 'un-Africanness' of homosexuality, despite overwhelming evidence of the historically traceable presence of African lesbians and gays, and of same-sex practices on our continent.

The main issue about homosexuality in most parts of Africa less its denial than the fact that homosexuality is viewed in heteropatriarchal terms as a *behaviour* rather than an *identity*. Such a perception characterises homosexuality as a perverse desire associated with pathology, and signals a return to a biomedical and non-cultural understanding of human sexuality. The case for 'marriage' in many African countries remains a distant ideal, given the prohibition and criminalisation of same-sex practices. Our sexualities, by no means representative of a uniform experience, confirm that pleasure, desire, and belonging reflect deep-seated political conflicts over identity, bodily integrity and morality [4].

The far-reaching judgements (table 1) since the formal adoption of the South African Constitution have systematically advanced the administration of justice that facilitates identity formation for lesbians and gays. While the apartheid social and legal system criminalised homosexuality, the post-apartheid landscape has shown progressive decriminalisation which recognises lesbian and gay identities [5].

'First it was the abortion law, now same-sex couples can marry'

As an institution marriage is an

important property of the state. Such an institution is also accorded a special privilege by most religions. Viewed as an arrangement for procreation and the nurture of children, marriage is seen by patriarchal organizations and traditions as a part of the natural order requiring a mixed-gender relationship (man and woman). Marriage is not simply a symbolic institution that affords a legal status to a civil relationship, but also raises jurisprudential issues about the State's relationship to its citizens.

Marriage rights do not apply to most gay and lesbian couples because same-sex relationships falls outside the scope of the legal definition of marriage. The case for the redefinition of marriage in South Africa is in some respects a test for the post-apartheid state's recognition of lesbian and gay citizens as full members of the polity. The Constitutional Court (hereafter CC) decision of 8 December 2005 in favour of same-sex marriages demonstrates this. The decision of the CC upholds a Supreme Court of Appeal ruling in November 2004 that said same-sex couples could get married following the application by lesbian couple Marie Fourie and Cecilia Bonthuys.

The 2005 decision by the CC requested that courts change the common law definition of marriage from being a 'union between a man and a woman' to

a 'union between two persons.' The CC indicated that it was the task of the South African parliament to make the necessary changes within twelve months. Legal reform resulting from this positive decision by the court strengthened the development of lesbian and identities further by securing rights that strengthen citizenship. It is for these reasons that it is difficult to erase sexuality from its relationship to the law and citizenship.

The meanings attached to marriage revealed in the debates on marriage equality are important. A cursory review of public opinion suggests that same-sex marriage turns on basic attitudes towards sexuality and gender.

At the heart of the gay and lesbian lobby's defence is the right for everyone to choose the circumstances in which they live their lives. Marriage is one possibility of a full citizenship (which includes the right to equality and privacy). This view is underpinned by the conception of the gay rights movement as a public demand for respect for homosexuals (which includes the right to dignity). Consequently, the primary benefit of marriage is the extension of citizenship rights that facilitate the assimilation of gay and lesbian individuals into the mainstream of society. Such a view does not imply that all lesbians and gays

endorse marriage; for many, the need for marriage is disputed, as it signals the assimilation of a heterosexual model.

Some feminists view marriage as an institution which regulates and controls sexuality (female sexuality especially) and strictly imposes a gendered division of labour (even though this is changing, the situation of many women in such relationships remains unchanged). The 'marriage' strategy, especially as advanced by many activists, seems to be motivated by the need for the normalisation of homosexuality.

In contrast, homophobic arguments mobilised against same-sex marriage are informed by fears of reproductive relations, gender roles, and the role of children and adoption, and are voiced usually in terms of a moral/religious perspective. For example, Johanna Bonoko stated that "first it was the abortion law, now same-sex couples can marry [...] we're heading for disaster" [6]. In the same interview, Carol Makhanya cautioned that the decision reflected that the decision was one of "the signs of doom and corruption [...] man has turned his face from God".

The focal point of the social structure of marriage, for those opposed to same-sex unions, is a traditional understanding of the family.



Zapiro Cartoon (Sunday Times, 17 September 2006)

Underlining the fear of equal marriage rights is a moral panic that introduces the notion of the family into the dispute about marriage. To some extent the debate about same-sex marriage invariably slips into a moral argument about what constitutes a family. In the case against same sex marriage, 'family' is conceived as a social institution, biologically determined in terms of patriarchy. Marriage is viewed as a space for the moral development of heterosexual parents and their children.

The Civil Union Bill in South Africa

Despite ongoing public debate about the issue, South African lesbians and gays woke up to new possibilities on 30 November, 2006, after Deputy President of South Africa, Phumzile Mlambo-Ngcuka (acting as president on this occasion) signed the Civil Union Bill into law in Pretoria on 29 November.

The new Civil Union Act of 2006 provides for the formal and legal recognition of gay and lesbian partnerships with the same rights as conventional marriages. Among some of its provisions are the following:

- Any two people aged at least 18 may enter a single civil partnership which they could call a marriage which will carry all the rights of a marriage of the existing Marriage Act. Partners may legally refer to each other as husband, wife, spouse or partner.
- Any marriage officer may solemnise such a union under the Civil Union Act, and such an officer may equally register objection to the law and decline to officiate at a same-sex marriage.
- Churches are not obliged to register under the Civil Union Act, but they may do so if they choose.
- Partners wishing to marry need only produce a South African identity document or an affidavit confirming their identity.
- People who previously married under the Marriage Act or Civil Union Act will need to produce proof of divorce or a certificate confirming the death of a previous partner if they wish to remarry.
- The ceremony requires a taking of hands but not an exchange of rings and is completed with the question

('Do you A take B as your lawful spouse (or civil partner if the couple prefer the term)' and is sealed with the traditional words: 'I do'.

The Civil Union Bill means that the traditional Marriage Act remains intact and available only to heterosexual couples. It provides separately for a civil partnership or marriage for same-sex couples, to the disappointment of many activists. Despite this limitation, the parallel marriage law catering for lesbians and gays suggests an affirmation of identity in the progressive development of a rights-centred jurisprudence. The institution of marriage implies a practical and symbolic guarantee of equality for two people of the same-sex to formalise their commitment to each other. The question of *choice* therefore remains central.

Conclusion

The legal recognition of a civil union for lesbians and gays suggests a journey towards social justice. Marriage is a dynamic institution, always in transition, and is increasingly losing some of its sacred appeal and becoming secularised. The latter, in our view, is not a sign of weakness in the institution but rather a reflection of its response to social change and growing inclusiveness. We have witnessed changes to the nuclear family, alternative family arrangements, and new ways of being in the world in the broad development of our sexualities.

The case for same-sex marriage reflects much contestation (most recently reflected in the Nigerian bill to ban same-sex marriage). We must remain vigilant about the prospect that *rights* do not necessarily sustain *justice*. The victory in South Africa confirms developing freedoms for lesbians and gays, but does not resolve the persistent threat of homophobia, prejudice, stigma and persecution, reinforced by religious and cultural intolerance. The leader of the Council of Traditional Leaders of South Africa, Patekile Holomisa, recently stated at a national congress that the Constitutional Court erred in ruling civil unions between same-sex partners be legalised: "We will continue to inform our people this is something we don't support [...] It is taboo [...] If you accept this [being gay], you might as well accept people having sex with their relatives or with

animals for that matter." [7]

Sadly, such views reconfirm for us the need to hold onto struggles for rights, to reinforce public education, and to challenge discrimination. The journey means that democracy comes with risks that we must continuously fight to protect.

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REGION WATCH

REGION WATCH: LEGAL DIVERSITY ON SEXUAL DIVERSITIES IN AFRICA.



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Common Beliefs on Sex Outside Marriage, Homosexuality, Masturbation and Female Genital Mutilation (FGM) in Kenya¹

By Dr. Nyokabi Kamau, Susan Chebet, Jane Godia and Bilhah Om'imbango Hagembe



Kenya has more than 40 ethnic groups, each having some distinct differences in their beliefs and engagement with issues of sexuality issues. However, there still exists some commonalities that cut across the entire country.

Sex Outside Marriage

This is conceptualised in this report as compromising of premarital, post marital, and 'sex outside marriage' for

the already married.

Pre-Marital Sex

It is the common belief that a lot of young Kenyans are engaging in premarital sex. However, the fact that there may be much sexual activity amongst unmarried people has not changed society's attitude towards this behaviour. It is still viewed as immoral. Religion plays a major role in sustaining the moral attitudes and total condemnation of pre-marital sex. This total condemnation of premarital sex is not always supported by comprehensive sexuality education programs.

At this point, it might be appropriate to define sexuality education as discussed at the Cairo Sexuality Institute. World Health Organisation (WHO) has come up with a working definition of Comprehensive Sexuality Education as 'a planned process of education that fosters the acquisition of factual information, the formation of positive attitudes, beliefs and values, as well as the development of skills to cope with the biological, psychological, socio-cultural and spiritual aspects of human sexuality'. The main goal of sexuality education is the promotion of sexual health by providing learners with

opportunities to:

- Develop a positive and factual view of sexuality.
- Acquire the information and skills they need to take care of their sexual health, including preventing HIV and AIDS.
- Respect and value themselves and others, and
- Acquire the skills needed to make healthy decisions about their sexual health and behavior.

Currently most of the sexuality education programs available in Kenya seem to focus only on the moral aspects. Many religious organizations seem to feel that they have a responsibility to take charge of the sexuality education programmes. The prevailing attitude also seems to be that adults should impart this education to young people.

All through the 1990's and into the 21st century, the country witnessed several debates that came up when sex education was suggested for primary school students. Religious bodies felt that anything called sex education would encourage immorality among the youth. Our problem with this kind of approach is that it does not take into consideration all the aspects of sexuality education listed above. When sexuality education is comprehensive and not only focusing on the sexual act and its immorality, it is more likely to have much more lasting and positive impact on people's attitudes and behaviors; not only in adolescence but throughout the lifespan.

The participants at the sexuality institute in Cairo agreed that comprehensive sexuality education is one of the ways that African countries can begin to tackle problems of unintended pregnancies, HIV and AIDS and other STIs and indeed promote sexual health amongst their populations. The Institute acknowledged that these achievements would best be achieved if sexual rights are factored into the information

package. These rights include all persons, young and old, married or single, male or female and of whatever sexual orientation.

It was agreed that sexuality education in Kenya is sometimes hampered by the many religious denominations that preach against it. There seems to be a lack of understanding about what sexuality education entails with many religious leaders and their followers feeling that it would promote immorality.

Unfortunately, dissemination of these religion-generated messages is not usually well coordinated; thus they seem to fall on deaf ears, since young people continue to engage in premarital sex. This is evidenced by the large numbers of unintended pregnancies, many of which get terminated in backstreet clinics; the high rates of HIV infections amongst the 15-24 year olds, and an increasing number of girls dropping out of schools due to these unintended pregnancies.

Sex Outside Marriage

The common belief in Kenya is that it is mostly married men who have sex outside marriage, whereas married women are generally viewed as remaining faithful to their marriage vows. Sex outside marriage by men is generally tolerated as long as they do not get caught. In the case of women, this is seen as totally unacceptable and no one sympathises with a woman who seeks any sexual pleasure outside of her marital bed. Much wife battering is associated with men suspecting that their wives have been unfaithful.

However, it was noted that among the Luo people, there is a silent or subtle permission granted to wives, whose husbands work away from home, to have a 'friend' who looks after her in his absence. This 'friend' has permission to look after the woman's needs; including sexual needs. This practice may be dying out now, especially with the HIV and AIDS challenge. Among the Kikuyu people, it was also mentioned

that in the past, a man would allow visitor-friends who are his peers have sexual intercourse with his wives. However, these privileges were not to be enjoyed without the knowledge and permission of the husband.

An area that requires much research is married women who are engaged in extramarital sex. This is an area also characterised by great silence many women tend to keep their sexual relationships very secret. Radio call-in shows have recently revealed that extramarital affairs by women may not be as isolated as is commonly believed.

Sex After Marriage

Those who fall into this category are widows, widowers and divorced or separated people. Again the common belief is that men cannot survive without sex, and usually when they no longer live with their marriage partners they are expected to find another one to satisfy their needs. The situation is different for women who are generally expected to stay without sex. This is especially worse for older widows whose adult children seem resent their mothers getting married; especially to younger men.

The case of Wambui Otieno, a 69-year-old Kenyan widow who married a 28-year-old man was cited as an example of the extent to which the Kenyan society refuses to accept that older women have sexual needs. This marriage was much publicised by the media and this generated much public debate and reactions. Many people reacted with a lot of anger and disgust against the woman. She was accused of going against African culture. Sadly, the mother of the young man died of a heart attack the day after the wedding. It was believed that the shock may have aggravated an existing heart condition. Generally older women tend to be viewed as asexual.

Homosexuality

Homosexuality remains a taboo subject in Kenya and, although some men are recognised as homosexuals, lesbianism

is hardly acknowledged. Homosexuality is illegal in Kenya, but in recent years some articles have been published in the local newspapers about the lives of men and women living in homosexual relationships.

However, this is an area surrounded by even more stigma and silence. Even those who give interviews to the press do not disclose their true identities for fear of societal hatred and anger. In Kenya, homosexuality is suppressed as an alternative expression of sexuality identity because of the isolation and conspiracy of silence that surrounds the issue.

All the religions in Kenya actively condemn homosexuality. Recently, Kenya's draft constitution was rejected by religious leaders on the basis that it was encouraging homosexuality by not actively condemning it.

Masturbation

This is another area shrouded in silence. However, it is expected that men and boys can and do masturbate. Girls and women are not even expected to think about it; and are not expected to masturbate. Thus, this is not an issue that would normally be discussed in the public domain.

FGM (and FGC)

Female Genital Mutilation (FGM) and Female Genital Cutting (FGC) were common amongst several communities in Kenya. The common perception is that the practice has reduced since it has been made illegal. However, research continues to show that the practice is still prevalent in some communities.

The reasons given for the practice of FGM and FGC vary from community to community and may include the following: initiation of girls into womanhood; the fact that the shedding of blood is viewed as a blessing that

paves the way for a young woman to be able to bear children; a mark of belonging to a certain community for example among the Kalenjin, if a woman from another community desires to marry into the Kalenjin community, she would be 'cut' as a mark of 'belonging'; to reduce the sexual urge in women so that they would remain faithful to their husbands.

Currently, there are groups that organise initiation ceremonies without the 'cut' for girls and these forums are used for sex education. One of the participants, Susan Chebet, runs such a program among the Kalenjin people under the auspices of her community-based organisation - *Tumdo Ne Leel* Support Group (TNLSG).

Conclusion

As a group, we felt that there is need for more education about sexual rights and a need to counter the morality discourse prevalent in Kenya. The working definition of sexual rights available on the website of WHO reads in part: 'to embrace certain human rights that are already recognized in national laws,

international human rights documents and other consensus documents. The responsible exercise of human rights requires that all persons respect the rights of others'. These include the right of all persons to be:

- Free of coercion
- Discrimination and violence
- Respect for bodily integrity
- Choice of partner
- Enter into marriage only with the full and free consent of both persons;
- Decide whether or not, and when to have children
- Pursue a satisfying, safe and pleasurable sexual life.

As Kenyans we felt that with a rights approach to sexuality education, then all people will be empowered to make informed decisions that they will find most suitable to their different situations, cultural, spiritual and political contexts.

“ ... Kenyan society refuses to accept that older women have sexual needs ”

This report was compiled by Dr. Nyokabi Kamau, Susan Chebet, Jane Godia and Bilhah Om'mbango Hagembe, Kenyan participants who attended the ARSRC's Sexuality Institute which took place in Cairo, Egypt November 2006.

Western journalists have a poor reputation for their coverage of Africa. Stories often cater to and exploit popular imagery of the continent as a place of savage violence, corruption, decrepitude and victimization. Coverage of the HIV/AIDS pandemic is particularly weak. If it happens at all, coverage tends to emphasize Africans' supposedly exotic and dangerous sexuality (baby rape, widow inheritance, widow cleansing and the like). That narrative line is typically counterbalanced with stirring stories of selfless white people who go to help.

African journalists are not necessarily much better in their coverage of the many sensitive issues that swirl around HIV/AIDS. Not only are they typically under-resourced, but many are also operating in political contexts where the traditions of a free press and free speech are weakened if not directly opposed by the state. Moreover, so much stigma and prejudice is attached to the behaviours which fuel the spread of the disease that a careless story or two can easily incite scapegoating or denial. African journalists have, in some notorious cases, fanned flames of xenophobia, tribalism, and the flat denial of scientific evidence. A particularly inaccurate and dangerous idea that still circulates in some venues is that there is no connection between HIV and AIDS, and that Western scientists and drug companies who make that connection are engaged in a conspiracy to exploit or even to wipe out Africans entirely.

The issues are obviously far more complex. In this article I would like to focus on one of those issues that tends to be under-reported both in the West and in Africa. That is the struggle to extend the framework of human rights to include sexual rights for everyone, including sexual minorities such as lesbians, gays, bisexuals, transsexuals and intersexed people (LGBTI). Despite the dismal record of failure, homophobic reactions, or "gay imperialism" often reported in the media, there have been some very dramatic, home-grown African successes in this struggle in recent

years.

For example, in 2006 South Africa joined a select group of countries in the world, and became the first nation in Africa to legalize same-sex marriage. This was the culmination of an almost unbroken string of legal and political triumphs for LGBTI persons beginning in 1996, when protection against discrimination on the basis of sexual orientation was enshrined in the national constitution (again, South Africa was one of the pioneers of this action).

At the other extreme, the federal government of Nigeria began debate on a bill to criminalize not just same-sex marriage, but anyone who supports it. The bill is so draconian that it would outlaw the registration of gay clubs, societies or organizations and the dissemination, even indirectly, of information pertaining to "same sex amorous relationship [sic]." With a potential penalty of five years in prison, it would likely preclude the development of safer sex education or prevention strategies even in well-known places of homosexual high-risk activity (prisons, notably).

African LGBTI activists and their allies are not taking the challenge lightly. Local and pan-African networks have begun to coalesce to fight both state-backed homophobia and silences around LGBTI issues in debates about human rights and public health. The clearest expressions can be found in the cybersphere, for example on the website *B e h i n d t h e M a s k* (<http://www.mask.org.za/>), to which many non-Africans and Africans living in the Diaspora contribute. Other initiatives include the Coalition of A f r i c a L e s b i a n s (<http://www.iglhrc.org/site/iglhrc/section.php?id=5&detail=535>), the African Regional Sexuality Resource Centre (<http://www.arsrc.org/>) and the International Resource Network (<http://www.irnweb.org/links.htm>). The latter aims to develop an African regional network linked up with other IRN regional networks around the world. Together with major Western donors and solidarity groups, they are

working to expand and protect sexual rights in countries where these concepts are not only new but are also often seen as threatening by the majority of the population.

Networks of activists and researchers, specifically in francophone or lusophone Africa, have yet to emerge. Nonetheless, challenges to state-backed homophobia and stereotyping in the African media have begun to appear on the website *le seminaire gai* out of France (http://semgai.free.fr/doc_et_pdf/C_G_il_etait_une_fois.pdf).

Journalists have a big role to play in this pan-African coming out: first, by reporting fairly on these developments (that is, resisting any impulse or editorial pressures to exaggerate or sensationalize the conflicts); and second, helping in the long-term project of dismantling decades of popular prejudice. This would include learning about the kind of diversity that is typically hidden within such broad terms as "gay" or "homosexual," and directly challenging harmful myths and prejudices that actively discourage open-minded research and reportage. One of the biggest such prejudices in the African media today, for example, is the idea that homosexuality is a Western practice being pushed on Africa. In this view, human rights for LGBTI individuals are a new form of Western imperialism that undermines African culture and sovereignty.

LGBTI activists at the inaugural IRN workshop in Dakar in February 2007 were virtually unanimous about the critical importance of clearly and irrefutably demonstrating the falseness of the "Western gay imperialism" conspiracy theory. This can be done through careful historical and ethnographic research that shows long traditions of same-sex sexuality and social tolerance in Africa. That academic scholarship must then be interpreted for popular audiences, which is where the need for properly sensitized local journalists is greatest.

Western media have a role in the project as well. For example, mainstream accounts in the West tend to passively accept the notion that

(Cont'd on pg 15)

Homosexuality, human rights and the media in Africa

“African AIDS” is only transmitted heterosexually. It assumes that Africans are so sensitive to the taboo topic of homosexuality that they have to be protected from free speech and knowledge about the real world. Both points are demonstrably false and patronizing. Constantly re-iterating or uncritically assuming them ensures continued denial of education, research, and policy in favour of the rights of sexual minorities.

Western journalists may of course feel they are respecting African culture by keeping quiet. In this case, however, their politeness is contributing to a collective silence that consigns millions of Africans to death by ignorance.

Figures don't lie, they say, but liars figure. I am therefore wary of bringing numbers into the debate. At this point, however, it is sobering to recall that there now are an estimated 27 million Africans with HIV or AIDS. Looking only at the lowest reasonable estimations of male-male transmission of HIV, and disregarding all the indirect

effects of homophobia or male-male transmission of other STI's or issues arising from female-female sexual relationships, this still means the blindspot toward same-sex sexuality in Africa is costing a lot of lives. Even if only 2% of infections can in any way be attributed to male-male sexuality, that percentage translates into over a half of a million people who are already sick and dying from a preventable disease. That number is roughly the same as the entire number of people living with HIV and AIDS in Western Europe.

Political figures, including high profile scientists and diplomats associated with UNAIDS or other multilateral institutions, are clearly constrained from speaking the truth, the whole truth, and nothing but the truth on delicate matters like sexuality. Journalists, however, should be expected to push the envelope. Indeed, there are some innovative and exciting programmes currently in place to improve the quality of reporting on HIV/AIDS in general, and specifically to recognize

outstanding achievement in African HIV/AIDS journalism (see the Henry J. Kaiser Family Foundation for an example:

<http://www.kff.org/hiv/aids/index.cfm>). Another excellent resource, out of Ottawa, is the Interagency Coalition on AIDS and Development. It produces a primer written for non-specialists on how homophobia and heterosexism put the majority population at heightened risk of HIV/AIDS (http://www.icad-cisd.com/content/pub_details.cfm?ID=113&CAT=9&lang=e).

Winning human rights for sexual minorities is an important movement in Africa that not only improves the circumstances of LGBTI persons but also for women, children and other marginalized or stigmatized minorities.

Marc Epprecht is associate professor in the department of History and the Development Studies Programme. Queen's University.

NOTES TO CONTRIBUTORS

Guidelines for submissions

ARSRC welcome submissions related to the future issues of the Magazine and also other areas of sexuality, sexual health and rights in Africa. These articles should be objective, analytical and reflect current issues and debates i.e. taking a broader approach to sexuality and taking the sexuality discourse beyond health to integrate the expression of sexuality without guilt or fear.

Priority would be given to previously unpublished articles while already published material might be considered based on the relevance of the subject area to ARSRC's work, accompanied by details of where to seek permission for its reprint. Presently we are seeking articles on:

- Sexual Health and Rights in Marriage
- This issue of the magazine will critically explore sexuality in marriage from the right and health perspective. Contributions will interrogate the relevance of sexual rights in marriage in Africa as well as the extent to which marriage promote sexual health and rights. The magazine will also discuss

various existing frameworks (legal, religious, traditional) of marriage and their contributions to the promotion of sexual rights.

Socialization and sexual expression

This issue will discuss male and female socialization in Africa. It will investigate sexuality education/information and sexual script included in children's socialization and how this in turn affects sexual expressions.

Sexual Pleasure and Fantasy in Africa: Then and Now

The existence of sexual pleasure and fantasy in African Sexual scripts is increasingly being acknowledged. Contrary to some beliefs, sexual pleasure and sexual fantasy are not the invention of the younger generations nor are they imported. This issue of the Magazine aims to discuss, document, explore and analyze sexual pleasure and fantasy in historical and contemporary Africa.

Safety and sexuality

Violence is increasingly endangering individual and collective sexual experiences. The name of the *Project*

Alert on Violence Against Women' annual publication on violent acts against women in Nigeria *No Safe Haven'* aptly capture the insecurity inherent in an environment that harbours or promotes acts of violence against women. Addressing sexual violence in Africa requires understanding the notions of safety, space and sexuality. This Issue of the magazine will focus on space, safety and sexuality.

Length:

Feature article : 1,000 - 1,500 words
Research issues : 800 - 1,000 words
Opinion articles : 400 - 500 words

Pictures:

Pictures are welcome with or without articles and appropriate credit would be given if the picture is used.

Presentation:

An abstract with your name, contact address, phone number, email address and short personal bio as you would like it to appear on the list of contributors should also be submitted.

***** All contributors would be sent a copy of the issue with their published articles.

Call for Papers: Sexuality, Poverty and Accountability in Africa Abuja Nigeria, Africa Regional Sexuality Resource Centre , Deadline:31 July 2007

3RD African Conference on Sexual Health and Rights
Sexuality, Poverty and Accountability in Africa
4th -7th February 2008, Abuja, Nigeria

Call for Abstracts

The Africa Regional Sexuality Resource Centre (ARSRC), a project of Action Health Incorporated (AHI), under the auspices of the African Federation for Sexual Health and Rights is pleased to call for abstracts for the 3rd African Conference on Sexual Health and Rights to be held in February 2008 in Abuja Nigeria. The theme of this conference is "*Sexuality, Poverty and Accountability in Africa.*"

Individuals and institutions wishing to submit abstracts for oral and poster presentations at the conference are invited to make their submissions. As a requirement for acceptance, the abstract must cover the proposed thematic areas; set out the general interest for the participants at the conference; describe the contents of the presentation and its contributions to the theme of Sexuality, Poverty and Accountability in Africa. The conference will focus especially on issues affecting women and youth. Any research undertaken must have pertinent arguments and show originality and innovation.

Relevant sub-themes and topics for the conference include, but will not be limited to:

1. Law, Sexuality and Health
 - * Laws and legal issues around sexuality and sexual health
 - * Protection of sexual health and rights
 - * Sexualities challenging legal boundaries
 - * Sexuality, law and secularization
2. Poverty, Reproduction and Family
 - * Political economy of reproduction
 - * Access to reproductive services and technology
 - * Social power, relationships, and reproductive choice
3. Youth and Sexualities
 - * Youth sexual desire and expression
 - * Young people's sexual health
 - * Participation and young people's sexual well-being
 - * Intergenerational relationships
4. Sexuality Education
 - * Local discourses and politics of sexuality education
4. Cost and benefits of sexuality education
 - * Sexual literacy
 - * Media, technology and sexuality education
5. Vulnerabilities, Youth and Sexuality
 - * Sexual health and rights of vulnerable youth
 - * Social and economic exclusion and youth's sexual well-being
6. Women's Sexuality
 - * Body, health and well-being
 - * Women's rights to pleasure and desire
 - * Femininity and sexual expression

7. Gender Based Violence
 - * Sexual violence
 - * Forced marriage
 - * Harmful practices and sexual well-being
8. HIV and AIDS, Rights and Accountability
 - * Culture, pleasure and HIV prevention
 - * Access to treatment and care
 - * HIV and Sexual rights
 - * HIV and Reproductive Health and rights
9. (Im)Mobility, Sexuality and well-being
 - * Migration and sexual well-being
 - * Forced migration, Trafficking and sexual health and Rights
 - * Sexuality and well-being in chronic illness

Abstract Format:

1. Abstract should be submitted for both poster and oral presentations
2. Abstract should be submitted in English or French.
3. Content of abstract:
 - Conference Sub-theme under which the abstract is submitted
 - Abstract Title
 - Type of presentation (oral or poster presentation).
 - The names of the authors (presenting author should appear first), institutions, city, and country.
 - Abstracts should be no longer than 400 words.
 - All abstracts should include separate paragraphs describing:
 - Background and objectives
 - Issues/methods
 - Findings
 - Conclusions

Abstracts reporting on scientific research should also include a description of methods and/ or materials immediately following the introduction.

Be sure to include 5 key words describing your presentation in the designated box and up to 3 numbers from the scientific topics chart that best reflect the content of your proposed presentation.

Indicate audio visual equipment required for your presentation. If you plan to use videotape, specify the system and format

Abstracts should be sent by July 31st 2007 to:
Conference Coordinator
3rd Africa Conference on Sexual Health and Rights
Tel: 234 1 774 3745 Fax: 234 342 5496
Email: Conference@actionhealthinc.org
Receipt of all abstracts will be promptly acknowledged.