

Lesbians, Gays and Bisexuals of Botswana: Progressive Steps by the Botswana Court of Appeal towards Recognition and Advancement of Fundamental Human Rights of the Most Vulnerable within Society

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Abstract : Throughout Africa, several countries continue to have laws which criminalise same-sex sexual activities, which increases the vulnerability of the LGBT community to stigma, discrimination, and persecution. These criminal provisions often form the basis upon which states deny LGBT activists the right to freely associate with other like-minded individuals and form organizations that protect their interests and advocate for the rights and aspirations of the LGBT community. Over the past year, however, there has been significant progress in the advancement of universal, fundamental rights of LGBT persons throughout Africa. In many instances, these advancements came about through the bravery of activists who have publically insisted (in environments where same-sex sexual practices are criminalised) that their rights should be respected. Where meaningful engagement with the State was fruitless, activists took their plight to the judiciary and have successfully sought to uphold the fundamental rights of LGBT persons, paving the way for a more inclusive and tolerant society. Litigation Progress: Botswana is a prime example. For several years, the State denied a group of LGBT activists their right to freely associate and form their organisation Lesbians, Gays, and Bisexuals of Botswana (LEGABIBO), which aimed to promote the interests of the LGBT community in Botswana. In March 2016, the Botswana Court of Appeal found that the government's refusal to register LEGABIBO violated the activists' right to associate freely. The Court held that the right freedom of association applies to all persons regardless of their sexual orientation or gender identity. It does not matter that the views of the organisation are unpopular or unacceptable amongst the majority. In particular, the Court rejected the government of Botswana's contention that registering LEGABIBO would disturb public peace and is contrary to public morality. Quite remarkably, the Court of Appeal recognised that while LGBT individuals are a minority group within the country, they are nonetheless persons entitled to constitutional protections of their dignity, regardless of whether they are unacceptable to others on religious or any other grounds. Furthermore, the Court held that human rights and fundamental freedoms are granted to all, including criminals or social outcasts because the denial of an individual's humanity is the denial of their human dignity. This is crucial observation by the Court of Appeal, as once it is accepted that human rights apply to all human beings, then it becomes much easier for vulnerable groups to assert their own rights. Conclusion: The Botswana Court of Appeal decision, therefore, represents significant progress in the promotion of the rights of lesbian, gay, bisexual and transgender persons. The judgment has broader implications for many other countries which do not provide recognition of sexual minorities. It highlights the State's duty to uphold basic rights and to ensure dignity, tolerance, and acceptance for marginalised persons.

Keywords : acceptance, freedom of association, freedom of expression, fundamental rights and freedoms, gender identity, human rights are universal, inclusive, inherent human dignity, progress, sexual orientation, tolerance

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