

Recent instances and legal status of LGBTQ persons in Tanzania.

THE acronym LGBTQ which stands for Lesbian, Gay, Bisexual, Transgender and Queer or Questioning persons is currently a buzzword across the world. The movement seeks recognition for people who engage in and legalization of sexual relations between people of the same sex as well as rights to form unions and family.

In recent months, LGBTQ movement caused eruption of hot discussions and debates and divided races, regions, countries, religious denominations and their leaders, families as well as friends.

With exception of South Africa, African countries have on numerous occasions expressed their displeasure on the LGBTQ movement. Many still remember the strong stand against LGBTQ expressed by Qatar which hosted the 2022 FIFA World Cup. The German national team had to look for a different plane to fly to Qatar as their plane had a rainbow flag normally used by individuals, groups or organizations that that in one way or another, support LGBTQ.

Here in East Africa, there was applause in Uganda recently when the country's parliament endorsed anti-homosexuality bill proposing harsh penalties. And across the border in Kenya, people went to the streets to protest against the country's Supreme Court ruling that Kenyans were free to form and register an LGBTQ union.

Now, what is the legal status of LGBTQ persons here in Tanzania? We have heard individual citizens, politicians and religious leaders from various dominations send strong messages against LGBTQ but the question is: do their messages have back up of the law?

Although there is no specific law dealing with LGBTQ, there are various laws which prohibit and criminalize some activities or practices and rights sought by the said group.

Firstly, the Law of Marriage Act Cap 29 which is the governing law in marital affairs, under section 9, recognizes marriage as a union between man and woman. This law recognizes both monogamous and polygamous marriages but not union between man and man or woman and woman.



AUTHOR

EMMANUEL G. MBUGA
PARTNER

QUALIFICATIONS

LLB | PDGL

EXPERTISE

LITIGATION | CORPORATE

CONTACTS

+255 715 346 061
mrindoko@legisattorneys.co.tz



Golden Tulip Dar City Center,
4th Floor 11104 Jamhuri St.

Its implication is that there is no way same sex marriages can get recognition of the law, protection and privileges which are accorded to married couples. In other words, people of the same sex cannot have a lawful marriage in Tanzania.

Secondly, there are acts or habits that are associated with LGBTQ rights and most of them are forbidden and have been categorized as criminal offences. The Penal Code Cap 16 R.E. 2022 under section 154 provides for an offence of unnatural offence and any person who has carnal knowledge of any person against the order of nature is liable to the offence and the punishment to this is 30 years imprisonment and if the said act is committed with or to a child, its punishment is life imprisonment.

The key ingredients of this offence is the actual act of having the carnal knowledge against order of nature and giving permission or consenting to a person to have such carnal knowledge against the order of nature.

Further, any attempt to commit unnatural offence like an attempt of have same gender sexual intercourse, even an attempt if established, the same is an offence punishable under section 155 of the law with not less than 20 years imprisonment. Also, any indecent practice between persons of the same sex in public or private or any attempt thereto is also punishable under section 157 and its punishment is imprisonment for five years.

Courts of law have on several times and for ages litigated cases related to these offences and issued judgments and in the process pronounced various principles guiding the circumstances surrounding this issue.

Something to note is that court of law does not circumvent the law but interpret or apply the law and proof of an offence is of paramount importance.

In a 1983 case in Singida Region, an accused person was a male dressed in female clothes and identified himself. He was brought to court to answer charges of unnatural offence and despite being found with unusually wide hole in his genital parts, the court held inter alia that for one to be found guilty, establishment of consent or permit for a man to use the said part is mandatory to convict an accused person.

In a criminal appeal of 2015, the court held that despite the accused man being found with sperms on his behind yet he had no any bruises to show penetration which is mandatory, the court held that still there was evidence of attempted intent to commit unnatural offence thus the appellant was imprisoned for 20 years.

In a recent criminal application instituted by the Republic, the court granted an order that one is to be mandatorily subjected to medical diagnosis to ascertain engagement in homosexuality, although this approach is still questionable and has caused hot debates among members of the public.

In another case of Republic vs Suleiman Mustafa Mtipa before the Newala District Court in Mtwara Region, the accused person was imprisoned for 30 years after admitting that he allowed various men to have carnal knowledge with him against the order of nature.

Although these acts are covered in separate laws, it is time the state enacted a new specific law that can address this matter as at present, there are hundred ways to circumvent the law. Currently, for one to be held liable of the offences, one has to prove the act and permission given to commit such act.

In other words, this law seeks to punish victims and not perpetrators of the offence. Bearing in mind that issues related to same sex relationships are done very discreetly, there is a need for the enactment of a new law which is more preventive to address this issue broadly.

Medical diagnosis or expert opinion should be given considerable weight unless a person appeals or brings a counter report sufficient to repudiate what was placed before as to his or her engagement in the said act.

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