TEN REASONS WHY KENYA SHOULD DECRIMINALIZE HOMOSEXUALITY
[a youth perspective]

OVERVIEW

Consentual same-sex conduct is still illegal in about 38 African countries Including Kenya. Only about 16 African countries have no criminal law against homosexuality. Over the past five years, we have seen attempts to further criminalize consented homosexual acts in Uganda, Liberia, Nigeria, South Sudan and Burindi. At the same time muslim countries such as Mali, Jordan, Indonesia, Turkey and Albania do not have criminal laws against consented homosexual acts between adults. Just about two months ago, a newly ordained leader of the Anglican believers in Nairobi publicly declared that their church (The Anglican Church) will not support homosexuality in its entirety. While it is not clear whether this position will be in place through his tenure alone or not, it openly reiterated the anti-gay position that has been taken by the larger Faith community. Also in a joint press statement between the US president and President Kenyatta at the State House in Kenya, the president of Kenya said that the issue of gay relationships and homosexuality are a 'non-issue' in the national development agenda (going forward). While 'non-issue' in Mr. Kenyatta's context still remain indefinite, Kenya's penal code 162, 163 and 165 stand against same-sex conduct even between consenting adults. As a result gay youth in Kenya continue to experience stigma and discrimation since many do not know the difference being gay and having anal sex.. Gay youth from grassroot communities bear some of the greatest challenges ranging from those supported by random individuals and organized groups, to those supported by the larger government system. Well, not so fast homophobic communities, there have been concrete commitments to adjust policies to protect same-sex activities between consenting adults.

KELIN moved to court to help protect men who have sex with men (MsM) from profound unconsented exposure in the event that MsM service providers are compelled to use biometric data systems, which are strongly frontered by the Ministry of Health and some of her partners. The data collected (which is usually fingerprints and/or eye scans) has a high potential of revealing accurate information about MsM individuals, and the MsM service providers do not have control of the data surrendered to the government -who is both legally and socially opposed to same-sex practice between consenting adults. Human rights advocates such as the National Gay and Lesbian Human Rights Commission (NGLHRC) have moved to court to challenge and remove laws prohibiting adults from consentually engaging in same-sex practices. This is the closest effort human rights activities have come to realizing equal sexual rights and having those rights respected by everyone within Kenya's intenational boarders and; within public service authorities such as the Kenya Police Service.

Gay and Lesbian youth in Nairobi still continue to be victims of violence and bias based on their known and/or perceived sexual orientation. Backed by homophobic individuals and the larger system, gay youth in Nairobi communities (including gay immigrant youth) continue to lag behind in youth social develoment, access to social services and certain immigration services. A large number of unemployed and 'O' level gay youth have turned to sex work as a means to catch up with the highly competitive local economy -that mostly rewards those who observe culture and higher education. And according to a court ruling in Mombasa, if a gay person is suspected of having anal sex, anal testing can be carried out by relevant authorities with or without the consent of suspects. In order to realize equal sexual rights and equal social opportunities, gay youth have taken their collective position and listed the following benefits if anti-gay laws are removed.

1. ***Will improve access to and appreciation for education.***

Most gay youth grow up believeing that they have to hide their sexual identity or otherwise face rejection and punishment. This internalized stigma extends to social spheres where many gay youth fear appearing in social spaces and some social centers. Some gay youth fear attending college or university because they may find it difficult to hide their sexual orientation and some of its social characteristics. Experiences from those who have been outed by schoolmates and biased sex education have made some gay youth in Nairobi shy of attending college. Decriminalization of homosexual acts between consenting adults would give courage to those gay youth who do not want to go to college even when they can afford it. It will also help to shape policies in learning institutions to protect every student regardless of sexual orientation, and ensure academic syllabus are comprehensive.

2. ***Will jumpstart and advance social development of gay youth.***

Social stigma, internalized stigma and persistent homophobia has contributed to poor development of individual gay youth in Nairobi. There is profound fear of coming out, accepting one self and pursuing activities such as enterprenuership and civil activism. Most gay youth believe (some through experience) that if they start a micro business or start an organized group that looks into their issues, they might become victims of homophobic bias, abuse or violence from individuals or public officials. This fear is mainly supported by the fact that an anti-gay liberty law is still in place and gay people are not the best in the eye of the larger homophobic communities. As a result, gay youth have not developed their social agency to pursue happiness. Gay youth opt to form secret groups which cannot properly air their social concerns. These hidden groups with real concerns are hardly recognized by those supporting youth, and youth development agencies such as Ministry of Youth. A change to the anti-gay law would boost confidence of self driven gay youth, give safer space for gay youth to organize themselves and start self-help projects. Decriminalixing homosexuality will be a great stress-reliever to many gay youth who are uncertain about the day they will be attacked or arrested on suspiscion of engaging in gay sex.

3. ***Will improve local economy.***

Some organized groups and coorporations are still shy of making major decisions to invest in Kenya – especially those who have inclusive investment policies and those cooporations owned by gay couples or individuals. While there is no currency labelled 'gay money,' inclusive investors and gay investments in Kenya would open job oppportunities to vulnerable groups and the less vulnerable people. Kenya's economy today awards higher education than ever before. Some public job advertisemnts have a requirement of more than 10 years experience and as a result the red tape cuts out many youth. Inclusive investors and gay couples who plan to invest in Kenya will offer better opportunities to youth who have such challenges beyond their control. Gay youth with enterprenural ambitions will have courage to approach investors and start businesses with no fear of legal bias. Gay businessmen or leaders will also look inward and invest in local businesses as opposed to saving their money in off-shore accounts because of lack of security at home.

4. ***Will strengthen families and faith communities.***

The family is the basic fundamental social unit in Kenya. Yet the family has been the greatest source of discomfort to most gay youth who insist on being their true selves. Many families still remain ignorant on issues of diversity of sexuality and gender identity. In fact, it is difficult for most families to believe that men who marry women and have children could as well be gay. As a result some gay youth have committed suicide due to family pressure to conform and/or marry someone of a gender or sexuality they do not prefer. Some gay youth have run away from home and gone to live in the streets. Some have moved out of their family home and opt for relatives, friends or adults who could get abusive. Anti-homosexuality has made families live in denial and some siblings are usually perceived as better than others. Most churches and who attract a lot of families have also taken the position that being gay and characteristiocs that of are evil and that parents should take action against it. Some lesbian girls are pressured to get a male boyfriend or get married to a man in order to conform to religious practices and family traditions. The removal of anti-gay law in Kenya would give opportunity to educate families on diversity of their children and nurtiure their youth rigtfully. Families will be legally and morally encouraged to be proud of and support their gay sons and daughters; and respect their choices and/or preferences. As a result there will be less hate and conflict between gay youth and their parents/relatives/guardians and less gay youth will run away from home or fear expressing themselves at home. On the other hand religious institutions within Keny'a international boarders will have to respect, protect and observe that law of the land like any other institution.

5. ***Will improve access to social justice and enjoyment of fundamental rights.***

Because of discrimination, gay youth have profound fear of seeking assistance from authorities in the event of sexual violence. It is difficult for a gay youth to approach the Police and narrate an abusive ordeal with canal knowledge details because already gay people are discriminated, stigmatiozed and the law has harsh penalty for anal sex.Most times, cases of violence against gay youth hardly make it through the judicial process because of bias of fears. Some police authorities and concerned people do not take violence against gay youth as serious as they do take cases from other social groups. In fact according to PEMA Kenya's report on violence, the police in Kenya make a substantial contribution to the total organized and random violence against gay people annuallly. Apart from 'corrective rape' of lesbian/bisexual girls, fundamental rights provisions for life and right to choice remain under threat as long as there is a law prohibiting sexual activities between consenting adults. A change on the penal code 162-165 of Kenya would adjust police operation policies and control homophobic harrassment and arbitrary arrests amongst gay youth and male sex workers. Gay youth will be free to choose their partners and live in their communities without the constant fear of breaking the law and spending 14 years of their youthful lives in jail.

6. ***Will improve peace and relations between law enforcement and youth.***

Most gay youth fear law enforment authorities because of the history of violence and bias from them. Some gay youth could be radicalized and hate their own police and judicial servants. The police are meant to protect every person. Judicial servants are also charged with ensuring fairness to every person. In deed the police and the judicial system as a whole should be the one of the safest refuge point for gay youth. Biased judgements, disregard for constitituional provisions in Chapter Four (4) of the Kenyan Constitution 2010, police harrasment and arbitrary arrests have kept gay youth away and gay youth grow up hating and or doubting the police. After decriminalizing consented sexual acts of gay adults, civil movements will have a better chance to educate the law enforcement on sexual and gender diversity. The judiciary will be more willing to listen to concerns of gay youth and ensure justice is served. This turn around will make gay youth appreciate law enforcement and see each other as mutual friends. Chances of radicalizing the youth against their own law enforcement system will also be reduced to a substantial level.

7. ***Will open minority groups to research and social studies.***

There are serious personal and social challenges within the gay community. Ranging from health to security and to psychosocial issues. Some challenges of psychosocial nature (stigma, depression, PTSD, Self-confidence, skills, etc) and health (abortion, HIV.AIDS, STDs etc) may require short-term and long-term scientific approach. Researchers or bodies that study community challenges for the better do not have sufficient access to and trust of gay youth because of the complexities involved in working with gay youth on sexual issues in a country where, even consentual gay sex is criminalized. This gap has seen gay youth continue to face unique mental challenges, challenges with controlling HIV/AIDS among other health problems. A change of sexual laws will encourage research bodies to feel secure when looking into behaviours and activities of gay youth that can be used to protect them. The change will also make gay youth be more confident and willing to participate in studies based on their sexual orientation (and its activities) without fear of legal or social implications.

8. ***Will improve access and enjoyment of key social services.***

Gay youth do not fully enjoy some public services because of their sexual orientation. As a result, many other gay youth have been shy of seeking some social services from public service providers because they fear being outed, stigmatized or handed over to the police. Most people do not understand the difference between sexual identity of a gay person and anal sex between gay people. Certain infections and or health issues of gay youth also keeps them away from public service providers and opt for private or community centers that may not be fully equipped or have limited services. Gay people in Kenya are also not allowed to adopt children despite a high number of homeless children with many others living in the streets. Removing laws decriminalixing consentual homosexual acts between adults will get gay people a step closer to adjusting marriage and adoption laws since marriage is a union for spouses, not genders. Gay youth will also be powered to approach public service providers (even with their partners) and enjoy public services which are supported by their taxes.

9. ***Will shape immigration policies.***

Kenya is a host to the largest refugee population in Africa, most of who come from the Great Lakes Region. Among these refugees are gay refugees who mostly run away from anti-gay law and its consequences in Uganda, Rwanda, Congo and Somalia among others. Even in the country of asylum (Kenya), gay refugee youth still face stigma and discrimination because of their known or perceived gender identity. Their dreams of living with a partner of their choice is cut short by some of both Kenyan and protection policies. Decriminalizing homosexual acts between consenting adults will encourage integration of gay couples seeking assylum in Kenya because they will worry less about their sexuality. Gay assylum seekers (who mostly opt for resettlement) will have less urgency to go through the process and some may instead ask for support with integration into local communities. Stress among gay refugees will also be reduced since they will feel more secure if not totally safe.

10. ***Will encourage patriotism.***

Gay youth will put their efforts to educate every person about diversity after the laws are removed. It will show everyone that Kenya is practically inclusive, willing to listen and is willing to commit to her words of peace, love and equality in the constitution and the national anthem. Every gay person who has had doubts or hate because of violence and discrimination will suddenly love their country. It will be a great day for Kenyans to know that their country will have climbed higher in the ladder of Freedom and our reputation in the Community of Nations will get better. Our country will directly give us the responsibility to stand up and protect everyone regardless of their sexual orientationm and will cement our reputation as a beacon of opportunity in the Great Lakes Region.

Important References and Links

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3. *Question on homosexuality (Kenyan president's response):* *https://www.youtube.com/watch?v=MsWlHVF8Q9Y*

4. *'This issue of violence' –PEMA Kenya:* *https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast*

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6. *Force anal examination of gay Kenyans:* *https://www.hrw.org/news/2016/06/16/kenya-court-upholds-forced-anal-exams*

7. *Constitution of Kenya 2010:* *http://kenyalaw.org/kl/index.php?id=398*