

## **INFORMED BY HETEROSEXUAL MORAL NORMS? RAISING SOME MORAL QUESTIONS FOR TRADITIONAL LEADERS, LAWYERS AND THE GENERAL PUBLIC IN BOTSWANA**

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### **ABSTRACT**

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This paper argues that using heterosexual norms on homosexual persons amounts to discriminating against this group. Botswana is among the thirty countries in Africa that criminalize homosexuality and same sex sexual acts. The paper seeks to raise moral questions with regard to how lawyers and the general public in Botswana normalize heteronormativity and discuss the implications heterosexual moral norms on homosexual persons. It argues that, even though equality is a value that is applauded in Botswana, gays are not accorded the same dignity and respect that are rendered to the rest of the community. The paper establishes heterosexual moral norms as a solution against stigmatization against homosexuals in Botswana and proposes Christian ethical directives for equal treatment and good relations between human beings.

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**Key words:** Homosexuality, heterosexuality, norms, stigma

### **Introduction**

This paper is motivated by the way in which people normalize heterosexuality. Heterosexism, which refers to processes that perpetually grants privileges to heterosexuals in the expense of homosexuals and other sexual minorities, appears to be the main oppressor in the context of homosexuality (Riter & Turnolrump, 2002). It is therefore high time people understand the oppressive influence that heterosexism may have on our dealings with gays. Given the absence of extensive research on homosexuality in Botswana, in 2014 I undertook a study on Christianity and the gay community in Gaborone. The study drew on interview data produced with the general public and thirteen lawyers in Botswana. The questions were facilitated by semi-structured interview. For lawyers, the questions focused on law and homosexuality in Botswana. The interviews took a conversational form with participants raising issues which they thought were important. The participants were informed about the purpose of the study. The researcher did not force the participants to fill the questionnaire. A consent form was read and signed by each participant before the interview. To deliberate on this issue, therefore this paper will: - a) define key words, b) assess what lawyers are saying on homosexuality, c) discuss views on the law and homosexuality and d) provide Christian ethical directives.

### **Understanding key words**

The word homosexuality has its origins in Europe. It is an invented word, mixing Greek "homos" which translates as "equal/of the same kind/one" and Latin "sexus" translated as "gender" (Bellis, 2002:16). According to the Oxford Dictionary (1990:373), homosexuality is characterized by sexual attraction between people of the same sex. Green (2012:157) provides a broader meaning

of the term in the Dictionary of Scripture and Ethics. He defines homosexuality as a relational and sexual orientation towards a member of the same sex. In women this sexual attraction to one's own sex is referred to as Lesbianism. Both sexes however, use the term "gay". Men and women who are attracted to both sexes are referred to as –bisexual|| while those attracted to the opposite sex are called "heterosexuals| (Bellis, 2002:16).

In deliberating on heterosexuality, the Blue Book of the Presbyterian Church contends that heterosexual people –feel attracted to individuals of the opposite gender|| (Blue Book, 2007:9). This understanding differs with Belli's which talks about heterosexuals being attracted to the opposite gender not sex. It could be argued that sex and gender are words that carry two different meanings. Sex is the biological and physiological characteristics that define men and women while gender has to do with socially constructed roles, behaviour, activities and attributes that are considered appropriate for men and women by the society (Muller, 2016:1&28). This suggests that humanity is born with sex not with gender. Homosexuality and heterosexuality are sexual orientations. Sexual orientation has to do with that part is within us that determines who we are and whom we are drawn to (Blue Book, 2007:9). This suggests that there are no external factors that can determine our sexual orientation.

However, Halpern argues that sexuality is a cultural production. He maintains that sexuality is determined and must conform to the expectations of a society. He says, –Masculinity is the aggregate combining the congruent functions of penetration, activity, dominance and social precedence [while] femininity signifies penetrability, passivity, submission and social subordination|| (1990:130). This understanding is problematic because other males are passive and penetrated during sexual activity and not all females are submissive and being penetrated. Those who do not fall under that societal norm therefore may be stigmatized.

Dube (2003: 86) makes it clear that ours is a patriarchal world with an exceptionally strong emphasis on masculinity. In our community for instance, mostly the qualities of bravery and fearlessness are attributed to men. People are socialized one way or the other in the normalcy of heterosexual identity and have been trained to reject any homosexual characteristics, especially those involving emotional expression. Men are taught not to cry because crying is for women (ibid, 86). However, gay men display a totally different attitude; they celebrate masculinity and femininity respectively in everything they do (D'Augelli 1994: 317). This character disposition may one way or the other lead to the stigmatization of gays in Botswana.

Stigma is a social construction where a social disgrace and discredit are enacted towards people who are identified to possess –undesirable difference.|| This social label taints others as people of less value (Goffman, 1963). Based on Goffman's definition, it can be argued that stigma is the practice of treating other people differently. This happens when people devalue others because they are associated with a certain behavior. In a context which is predominantly heterosexual,

homosexuals may be treated differently and mostly with disgrace because they possess different attributes. In this regard, negative attitudes about homosexuality can lead to rejection by friends and family members. Therefore, much stigma towards gays has its roots in societal norms.

Norms are prescribed patterns of behavior that are to govern a group of people. They are normally prescribed by some members and enforced on everyone (Becker & Becker, 2001). This means that a norm could be regarded as a governing conduct between people of different social positions. Jackson (2003:105) wrote, "Normative heterosexuality regulates those kept within its boundaries as well as marginalizing and sanctioning those outside them." In other words, heteronormativity affects individuals regardless of sexual orientation, proscribing and requiring different kinds of actions and experiences based on gender, and creating categories of acceptable and unacceptable groups of people. In such societies, heterosexuality is the foundation of social order and compulsory behaviour. Therefore, societies that are hesitant to endorse moral pluralism may end up stigmatizing gays.

## **Background**

This section seeks to discuss how normativity of heterosexuality had impacted on the gay community in Botswana. Starting with the law, homosexuality is, generally speaking, criminalised. Botswana is against same sex sexual activities. In 1994, the Botswana police entered Utjiwa Kanane's bedroom in order to punish his homosexual behaviour. Kanane was arrested and charged with engaging in unnatural acts and indecent practices between males under sections 164 and 167 of the Botswana Penal Code. The Penal Code criminalizes same-sex sexual conducts in private between consenting adults. Section 167 of the Penal Code Act, Chapter 8 of the Laws of Botswana, states that,

Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence (Botswana Penal Code, § 167, Chapter 8:01).

The above text implies that the Laws of Botswana discriminate and stigmatize homosexuals on the basis of how they have sex. That became clear in 1998 and thereafter many gays came out of the closet. More than 600 of them are members of the Lesbians, Gays and Bisexuals in Botswana (LeGaBiBo), a group that protects the rights of lesbians, gays and bisexual persons (Ditshwanelo information sheet, page 1). Foreman (1999: 27) reports that within each society in the world 5 to 10% of the population is engaging in same-sex sexual relations. Other researchers however argue that it is 2 to 10% (Scanzoni and Mollenkott 1989:4) of the population which is engaging in same sex sexual relations. Using the latter report therefore, 2% of 2,000 000 (the population of Botswana), means that 40 000 Batswana could be inclined toward same sex sexual activities. Information about gays in Botswana is difficult to obtain mainly for the fact that homosexual sex act is a crime.

According to the Penal Code 1998: Section 21, homosexual sex act is punished by imprisonment for a term not exceeding seven years. It is from this background that gays are stigmatized by many in the community. Socially, anti-gay behaviour is also manifested at the work place. This was particularly evident from 1995 to 1998 when homosexual behaviour was discouraged regularly. For instance, The Daily News (03/02/1995:2) reported that the Office of the President threatened gay and lesbian public servants that they would face disciplinary action at work if they engaged in homosexual activities. According to a press release published by LeGaBiBo, on November 7, 2006, a lesbian young woman was escorted out of a night club in Gaborone on the grounds that she was –a lesbian.¶ The owner of the club identified her as she was queuing for a drink. He pushed her and touched her chest saying, –Identify yourself? Are you a man or a woman? We don't allow lesbians here.¶ She was then thrown out of the premises by a security guard. This lady could not report the case to the police because there is no law that recognizes the rights of non-heterosexual people.

Another gay person, Phillip Pote in a penal discussion hosted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) at the Phakalane Golf Resort in Gaborone, said that being gay is like a curse. He noted that gays are not allowed any freedom at all. They are not protected at school and they are encouraged to behave as heterosexuals (Pote, panel discussion, 22/08/2014).

The general public has a very negative view of the gay community to the point of hating them and not wishing them to exist. This is seen in the homophobic statements uttered by a number of people including some Members of Parliament (MPs). For instance, Pono Moathodi, the former MP for Tonota and Deputy Speaker of the Botswana National Assembly, is reported to have said that he hates gays and lesbians and he wants them killed and further he would never tolerate gays and that they are demonic and evil (BONELA information sheet, 2011).

Apart from being socially discriminated and stigmatised, gays are also denied health care services. At a meeting organized by LeGaBiBo at the Big Five Lodge in Gaborone on the 13<sup>th</sup> March, 2014, it was reported that health services are denied to the gay community. For example, Caine Youngman, a self-distinguished gay man in Botswana and Director of LeGaBiBo, reported that a gay young man who went to a clinic in Palapye village seeking medical attention, was not given medication for his illness. When he told the nurse that he was homosexual and that he might have been infected by a sexually transmitted disease through anal sex she was shocked. Instead of helping the patient, the nurse went out of the consultation room to tell her colleagues about what she had just heard. As the young man was sitting in the consultation room, the nurse came in, looked at him with great disdain and went out again. Moved by shame, the young man left the clinic without treatment even though he was in great pain.

According to Youngman, one of the consequences of this deplorable treatment is that the gay

community in Botswana is facing many cases of suicide, depression, abuse and discrimination at health care facilities. This is because homosexuals are alienated from the rest of the community. At this meeting, Youngman urged LeGaBiBo organization to work closely with the health care service providers so that they can be well informed and better equipped to deal with the health and human rights needs of the LeGaBiBo (Youngman, 18/03/2014).

Ehlers carried out a research on the well-being of homosexual people in Botswana. His findings acknowledge the complexity of the health needs of homosexual people. Such health needs include the need for health education. He maintains that homosexual people in Botswana are convinced that the promotion of human rights, including the right to have same-sex relationships, should be addressed in order to increase the effectiveness of HIV and AIDS prevention projects with gays, lesbians and bisexuals. Moreover, as per the research findings, the health care needs of the estimated 40 000 gays in Botswana cannot be met because of stigma and discrimination (Ehlers, 2001:848-856).

To make matters worse, the same discrimination, stigma and abuse, which the gay community face in society generally, are also found in the Church. As a result, they do not receive adequate pastoral care services. This shows that the majority of pastors in churches in Botswana have explicit anti-gay views because of their religious views on homosexuality. The pastors' negative attitude towards homosexuals prevents them from attending to the pastoral needs of gays in their respective congregations. Studies (Lease, Home &Noffsinger-Frazer, 2005:378-388) show that although religion and spirituality can be helpful to gay people, negative attitudes towards homosexuality in religious settings can lead to adverse health effects.

The researcher has observed that the pastors' negative views on homosexuality are the main reason for the negligence of the gay community. At present it is estimated that there are, approximately 600 active members of lesbians, gays, bisexuals, transgendered and intersexed (LGBTI) people in Gaborone. More than half of those registered with LeGaBiBo are Christians and most of them belong to different churches in the city (Mosweu, interview 03/03/2014). Generally, although many homosexuals in Gaborone feel a bit free to express themselves, they do not have a sense of belonging in their churches. In some of the churches in Gaborone, gays and lesbians are likened to donkeys and dogs in sermons and counseling (Tshola, interview 03/082014). Homosexuality is considered as unbiblical therefore a sin against God. This attitude towards homosexuals has resulted in homophobia and hatred against the gay community. As a result, a number of homosexuals have tried to commit suicide. Anti-gay views are frequently expressed in sermons during which people are told that since homosexuals cannot have babies, they are not participating in God's work of creation as demanded in Gen. 1:26-28. They are therefore sinners.

Anti-gay feelings in the churches have made gays and lesbians a community with a high risk of

suicide. In the process of counseling and preaching a lot of harm is caused to the gay community. At a penal discussion that was hosted by the University of Botswana in the Library Auditorium in February 2013, Reverend Biggie Butale, a member of the Evangelical Fellowship in Botswana (EFB) characterized homosexuality as unnatural, uncultural, immoral, depravity, and an abomination. He argued that Botswana will not condone homosexuals and would not even be allowed to parade if they wanted to do so in Botswana. He made it absolutely clear that homosexuals are not welcome in Botswana. Thus, the social pressure on homosexuals at home, church, and the law has forced many of them to live secret lives. It is evident that gays are facing stigma in different places including church, employment and in society at large. The following part will discuss how law and lawyers in Botswana stigmatize gays.

### **Lawyers on homosexuality**

At least, thirteen respondents clearly stated that homosexuality is illegal in Botswana. They argued that not only does the Bible and culture condemn it, the law also condemns homosexuality. With reference to these three authoritative sources, they reckoned that they should urge the government of Botswana not to ever condone same sex acts. It appears that the law of Botswana criminalizes homosexuality. Section 164 (c) of the Penal Code provides that,

Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits any other person to have carnal knowledge of him or her against the order of nature; is guilty of an offence and is liable to imprisonment for a term not exceeding seven years (Botswana Penal Code, § 164, Chapter 8:01).

Section 167 also provides:

Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.

The declaration of the Penal Code of Botswana regarding homosexuality is liable to different interpretations and understandings. The law describes unnatural acts as the ones that are criminalized. There is a widespread belief that this is directed to all sexual minorities including gay persons. On the 15<sup>th</sup> of November 2014, the researcher had an opportunity to interview five lawyers in Gaborone in order to get their understanding of both sections 164 and 167 of the Penal Code.

All participants agreed that homosexual acts are interpreted to mean carnal knowledge against the order of nature as well as an act which is grossly indecent. When asked about their understanding of the phrase, –order of nature,|| three respondents maintained that sexual relations that are in accordance with the order of nature are those that are between males and females, not

between people of the same sex. Advocate Lungisani Mthimkhulu emphasized that men and women were meant for each other for procreation purposes not for leisure and sexual gratification (interview, 15/11/2014).

On the other hand, Advocate Lone Masire argued that anal sexual intercourse is regarded as unnatural to many. However, Masire added that there are some heterosexual couples who prefer anal sex not only as one of the styles of making love, but as the predominant style of making love. He also mentioned that among many styles of sexual intercourse found within heterosexuals, there are –blow jobs, where a man or a partner plays with a penis until he ejaculates.

According to Masire is not natural because sperms are thrown away. Other styles include sucking and licking which sometimes up until the climax is reached. All these styles are regarded as unnatural because no child can be produced through such sexual acts (interview, 10/02/2014). Uyapo Ndadi, a human rights lawyer, argued that the law of Botswana is not fair on the gay community because heterosexual couples also engage in anal sex. He, however, failed to understand why it is okay for heterosexual couples to have anal sex with their heterosexual counterparts but it is not okay for gays to engage in anal sex. He argued that if gays are to be jailed for anal sexual act, many people should be jailed as well (interview, 10/02/2014).

On reflection of the views of the participants, the researcher has established that what has been customary over long periods of time comes to be seen as natural. In a panel discussion held at the University of Botswana Library auditorium on the 29<sup>th</sup> of October 2014, Joseph Gaie argued that much of our human thinking about human nature is faulty because we often have opinions which need to be tested and questioned. He affirmed that we rarely, in everyday life have the skill or opportunity to test them.

Moral repugnance is also associated with what seems unnatural and in this sense the questions of morality are confused with those of acceptability. Section 167 characterizes homosexuality as an act of gross indecency. Reflecting on this, Advocate Richard Butale mentioned that the criminal law has as its basis the public morality or moral values or norms as cherished by Botswana and is influenced by the culture of the people in Botswana.

Butale maintained that the conduct of any person that is seen to threaten the fabric of a society is what is prescribed under the criminal law of the society concerned. In this regard, the identification of any such moral values or norms as being of importance to the welfare of society as a whole and for the promotion of the dignity, rights and freedoms of its members is the preserve of Botswana (interview, 10/02/2014).

Therefore, this suggests that the duty of the law is to deal with activities which are against the

public order and decency or expose the ordinary citizen to what is offensive or injurious. This study reckons that the views of lawyers on gays and the law of Botswana are backed by the usage of Tswana ethical principles and culture.

After a careful understanding and analysis of the views of lawyers who participated in the study, it can be maintained that it is the community which comes up with ethical principles and moral judgments. Most of their principles are built on heterosexual relationships and norms. The law in Botswana allows only heterosexual relationships (Quansah 2004:201). According to Quansah,

Sexual behavior in society is generally predicated on heterosexuality and as a result, any exhibition of homosexual tendencies is regarded as deviant behavior and an affront to morals and decency. In regulating sexual behavior between consenting adult males and females, the law performs the function of prohibition through the criminalization of homosexual activity and attempts to organize relationships in the public and private sphere through legal engineering (2004:202).

The text above shows that the stance that the society takes against homosexuality is perpetrated by the statutory law. Nevertheless, it is generally accepted that people should abide by the law. It can thus be concluded that homosexuality is not acceptable to many Batswana and can be argued that being acceptable is not necessarily synonymous to being natural or moral. It is from this background that Nyarenchi (2004: 46) is convinced that the questions of morality are confused with those of acceptability. Moreover, considering the stiff punishment given by the law to those who are caught in homosexual sexual act, it is the researcher's opinion that gay sexual relationships are taking place in private places and mostly at night so that law enforcement agents may not see such events. However, true that may be, the provisions of the Penal Code seem to contradict fundamental human rights. The right to privacy, non-discrimination, equality, human dignity, freedom of association, assembly and movement, and the prohibition against torture are all fundamental rights that should be applied to all citizens regardless of sexual orientation (1966 Constitution of Botswana).

### **Views on the law and homosexuality**

In an interview (09/05/2014) with Onkokame Ratanang Mosweu, the programme Coordinator of the Lesbian, Gays, Bisexuals, Transgendered and Intersexed Health and Human Rights programme, noted that they live in fear as the gay community because they are not free. They believe that they are being listened to when they communicate among each other. Consequently, they are not free to express their sexuality. This kind of life is not healthy because it is like they are prisoners who are chained for life. They are chained not only by Christian doctrines but also by the societal culture.

Adding on that, Lame Charmaine Olebile, a lesbian woman and an Advocacy Officer at The Botswana Network on Ethics, Law and HIV and AIDS (BONELA), feels that the law of Botswana is being unfair on them as the gay community. She outlines that they are forced to live

a life of celibacy because the Constitution does not necessarily condemn homosexuality; homosexual sexual acts are the ones which are prohibited. As a homosexual community, they can freely move around and tell people that they are gay and no one would arrest them. They can only be arrested when found in the act (Interview, 09/05/2014).

Olebile also queried the interpretation of the law. She argues that the law is not clear on what is –unnatural|| or –natural||; what is –gross indecency|| or –decency|| and what criteria was used to come to that law. Whose principles were used to make that decision, were they considering issues of pluralism and ecumenism? –How about issues of inclusion and celebrating diversity? How is homosexuality not decent if it is?|| (Interview, 09/05/2014).

President Ian Khama has indicated that he does not think being gay is illegal and if gays are seen, they should not be arrested although there are certain acts, which are performed by gays which are illegal. He advised the nation to appreciate that even gays should have their privacy because being gay is private (The Voice, 12 November, 2010).

On 9<sup>th</sup> November 2011, the researcher attended a penal discussion held at the University of Botswana themed; –Homosexuality: The personal is political.|| Duma Boko, a human rights lawyer, spoke boldly that homosexuality should be legalized. The lawyer felt that the community of Botswana should be taught about homosexuality. He was convinced that by the year 2014, more Botswana would be tolerating homosexuals. Boko maintained that it is only through the people at the grassroots level that homosexuality would be legalized in Botswana. This is because Botswana is a democratic government of the people for the people by the people. Through politicians, the issue of homosexuality could be taken to parliament.

In support of Boko’s argument which shows the need for persuading the masses to legalize homosexuality, Richard Molomo, a lawyer and a lecturer at the University of Botswana said that although Botswana are still holding the principle of governance of the people by the people, the majority rule does not apply on this particular issue because the majority is not always right (Interview, 09/05/2014). On the issue of privacy, Boko is convinced that gays are denied their right to privacy and freedom that are enjoyed by heterosexuals (Penal discussion, 09/11/2011).

In summary, there are three main points raised in the above discussions that need to be highlighted. Firstly, only a man and a woman are culturally expected to have sexual relationships. Secondly, the main purpose for sexual relationships is childbearing. The assertion is that traditional Tswana people had only one sexual identity and it was not one that was necessitated by the individual but by deep rooted cultural norms and values. Hence everyone is born heterosexual and is supposed to get married and raise a family. The whole idea is that Tswana society is exclusively heterosexual and had cultural and spiritual pillars that supported the institution of marriage. Botswana culture dictates that people should procreate.

However, it could be argued that as a norm, procreation should not be made to apply to everyone. There are people who would not procreate for several reasons including celibacy and barrenness. Colluci (2004:35) argues that the problem is in the definition of what constitutes family since it usually forces people to have their own children. According to Colluci, this criterion overlooks those who are not able to have children of their own for biological and health reasons. Besides, nowhere in the Bible is mentioned that Jesus had a family and children not alone Paul.

### **Christian ethical directives**

Paul reminds us, and it is as fitting for our discussion of this section as it is a reminder for this whole subject matter, –there is no longer Greek and Jew, circumcised and uncircumcised, barbarian, Scythian, slave and free, but Christ is all and in all!! (Col. 3:11). In reflecting on ethical matters relating to the sexual dimension of our lives, people should recognize the complex, ambiguous, tragic, and sinful nature of existence. We know that in a broken and sinful world we are so often unfaithful, we discern wrongly. In this broken world we are also well aware of the fact that we cannot always choose between right and wrong, good and bad only. So often the context of the moral landscape is that of complexity and ambiguity. More than often we have to choose between less wrong and more wrong. We also have to choose between less right and more right. We have to prioritize and choose the most appropriate response in a specific time and place.

This recognition of our own shortcomings helps us to guard against judgementalism and the stereotyping, stigmatization and even demonization of others, especially those who differ from us. In the tragic, complex and ambiguous context within which moral deliberation takes place, we guard against two more dangers, namely that of relativism and absolutism. Recognition of the complex nature of the moral life, acceptance that we sometimes have to choose between more wrong and less wrong, acceptance of ambiguity does not imply moral relativism, lawlessness, an –everything goes approach which teaches that nothing is wrong and nothing is right anymore. On the other hand we also guard against the temptation to get rid of ambiguity by opting for absolutism that is taking decisions that pretend to be the absolute truth, whilst all other views are considered to be absolutely wrong and demonic. To steer our ship between the rocks of relativism and absolutism we need wisdom. In new situations and contexts Scripture needs to be interpreted afresh through various exegetical methods and through the interpretation of specific parts of Scripture in the light of the whole, and in the light of the central message of salvation in Jesus Christ.

### **Conclusion**

This paper tried to explore on two sexual orientations, homosexuality and heterosexuality somehow having different understanding of the nature of family and relationship. Instead of

acknowledging, celebrating their differences, heterosexual world view is used to downgrade and condemn homosexuality. It had established that using our cultural norms to condemn homosexuality is problematic because it would cause more harm to the gay community instead of seeking truth for all people. It is therefore imperative to reflect on Christian directives that could inform us on how we should live with each other. The paper also challenges us not to confuse what is commonly accepted from what is wrong. From our discussion, it could be maintained that judging homosexuality through heterosexual lens or world view is unjust to homosexual people. Although stemming from the same culture, the same cultural values and norms are shaping the principles of the community on the expense of those who are different from the mainstream of the community; culture informs morality of the people, but culture has always changed.

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