

HIGHLIGHT

TOWARDS RESPECT FOR HUMAN DIVERSITY

Human rights are built on two fundamental values: human dignity and equality of all human beings. The worth of human beings is not determined by any other person, but by the very fact of being human. Human beings are also diverse in nature: in sexual orientation, gender identity, and expression. Human rights should therefore apply to all humans, irrespective of their sexual orientation, gender identity, or expression. However, this is a claim that has yet to be realised for many people who continue to be discriminated against because they do not conform to rigid categorizations of sexuality and gender.

Governments are supposed to protect human rights. Many governments have adopted constitutions that recognise human dignity and equality. Yet in *The Attorney General of Botswana v. Thuto Rammoge and 19 Others*, the Attorney General of Botswana tried to argue that the Constitution of Botswana did not apply to persons of non-heterosexual orientation. This reflects a pervasive attitude in governments driven by politicians who do not believe in the human dignity and equality stipulated by their own constitutions.

Persons of non-heterosexual orientation, or whose gender identity and expression does not conform to some traditional gender notions, continue to face government-sponsored hate and victimization. Sometimes this has been indirect, for instance through a refusal to recognise the rights to association and expression such as in the *Rammoge* cases in Botswana, the *Gitari* case and *Ex-parte Transgender Education and Advocacy* case in Kenya, and the *Kasonkomona* case in Zambia. Apart from criminalizing sexual conduct, governments deploy other laws to prevent LGBTI persons from enjoying their right to association and expression. In the *Kasonkomona* case, the government used vagrancy laws to try and deny persons the right to talk freely about LGBTI rights.

In all the above mentioned cases, the courts applied human rights norms to the issues raised before them and vindicated the claims that LGBTI persons are deserving of human rights because they are in the first place, human beings. However, the case of *C.O.L. & G.M.N.*, where the Kenyan Court upheld the constitutionality of the law compelling anal examinations in order to prove homosexual behaviour, indicates that there is a great deal that has to be done to secure enjoyment of rights of all persons including decriminalization of sexual conduct involving non-heterosexual intimacy, and also recognition of gender diversity.⁹³ The victories in these cases are significant as they are beacons of light in the midst of pervasive discrimination against LGBTI persons. The positive judgments refresh the obligations of governments to be faithful to their own constitutions to respect the fundamental values of human dignity and equality of all persons, regardless of sexual orientation, gender identity and expression. This negative judgement, though, calls for vigilance to realise human rights for everyone.