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Lessons Learned

An analysis of the engagement with and progress
made at the African Commission on Human
and Peoples' Rights:
A Kenyan activist's perspective

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BACKGROUND ON THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (ACHPR)¹ is made up of 11 independent human rights experts. The body was established under Article 30 of the African Charter on Human and Peoples' Rights,² and its secretariat is situated in Banjul, the Gambia. The ACHPR is tasked with the twin mandates of protecting and promoting human rights in Africa. The Commission sits twice every year for a period of two weeks per session. Each session is preceded by the three-day 'NGO Forum' organised by the African Centre for Democracy and Human Rights Studies (ACDHRS).³ The civil society organisations (CSOs) that attend such gatherings use the opportunity to organise parallel meetings during the NGO Forum and ACHPR sessions in order to draw from the diverse pool of experts who are in attendance. The ACHPR can provide advisory opinions, adopt resolutions and make recommendations to African States.

ACTIVITIES CARRIED OUT

In 2013, three Kenyan activists advocating for the advancement of the human rights of sexual and gender minorities (SGMs) committed to engaging at the ACHPR for a period of two years. This commitment was through a program called Pan-African Advocacy Programme (PAAP), which was supported by both UHAI/EASHRI and COC Netherlands. The programme focused not only on Kenya but targeted activists within the broader East African Region (Kenya, Tanzania, Uganda, Burundi and Rwanda) as well. All activists were selected by UHAI/EASHRI based on a set of criteria laid out in a Call for Applications.⁴ These criteria included, but were not limited to, their willingness to engage throughout the programme and their commitment to their respective movements back at home.

After the selection of the activists from all the five East African countries, UHAI/EASHRI organised a pre-planning meeting where the activists received training on both African human rights mechanisms and international human rights mechanisms. During this time the activists clarified, together with the coordinator from UHAI/EASHRI, why and how they were going to engage at the ACHPR. The activists attended the 54th Ordinary Session of the ACHPR in the Gambia, the 55th Ordinary Session in Angola, the 56th Ordinary Session in the Gambia and the 57th Ordinary Session in the Gambia. Between the sessions, activists engaged in country activities which included providing civic education to organisations working to advance the human rights of SGMs and targeting decision makers and even the SGMs themselves.

The Kenyan activists also engaged in community consultations, asking SGMs what they wanted to have pointed out at the ACHPR sessions. There were also outreach initiatives with key stakeholders such as the Kenya National Commission on Human Rights (KNCHR) and the Kenyan Attorney General's Office to ensure that the activists' engagement would not be limited to the periods during the sessions in April/May and October/November. The activists made sure they invited the Commissioners from the KNCHR to their respective organisation's events. The community-based organisation Persons Marginalised and Aggrieved (PEMA) Kenya present the report *The Issue Is Violence*⁵ to the KNCHR, for example. Along with representatives from other organisations, one of the activists from the National Gay and Lesbian Human Rights Commission (NGLHRC) held a meeting with the Attorney General to follow up on the Universal Periodic Review (UPR) recommendations regarding anti-discrimination laws.

1. <http://www.achpr.org>

2. <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>

3. <http://www.acdhrs.org>

4. <http://www.uhai-eashri.org/ENG/7-programmes/14-support-programme-for-pan-african-lgbti-advocacy-communique-and-call-for-applications>

5. <https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast>

Before the Pan-African Advocacy Programme (PAAP) there had been continuous work at the regional level to advocate for the passage of a Resolution by the ACHPR that would ensure that SGM would continue to be protected as stipulated in the African Charter on Human and Peoples' Rights. This included activists representing organisations from South Africa, Nigeria, Uganda, Burundi, Kenya and other parts of Africa.

By engaging at the ACHPR, activists working to advance the human rights of SGM are able to add their voices, along with input from their respective countries in terms of the violations faced by SGM, to the already growing chorus of activists at the ACHPR who are advocating in the area of sexual orientation and gender identity and expression (SOGIE). This meant that the push for an ACHPR Resolution to protect SGMs would have more voices and be backed by more data on the violence against them in Kenya and other parts of Africa. A Resolution passed in an African human rights system would also have more buy-in: as these African Commissioners are appointed by African heads of state, their work could not be termed 'un-African'. The persistent notion that homosexuality is somehow 'un-African' has resulted in the lack of an African human rights instrument that can be used to advocate for the human rights of SGMs.

The main objective of having a Resolution passed was to have a solid basis for advocacy work in Kenya and to ensure that local activists engaging in SOGIE work and civil society organisations would use the same instrument to urge both state and non-state actors to respect, protect and promote the human rights of all Kenyans, regardless of their real or perceived sexual orientation or gender identity.

Between 2013 and 2015, Eric Gitari (of the NGLHRC), Esther Adhiambo (formerly of PEMA Kenya, now with the Initiative for Equality and Non-Discrimination) and Alexandra Ogeta (of JINSIANGU) engaged at the ACHPR sessions, country planning meetings and strategy meetings organised by UHAI/EASHRI to ensure that the time they spent attending the sessions would not be wasted and that the activists would have a set agenda to pursue during the session. By engaging with the regional human rights mechanisms it was hoped that both state and non-state actors would respect the regional body and work to stop violence based on a person's real or perceived sexual orientation or gender identity. For example, the activists engaged with African Commissioner Lawrence Mute, a Kenyan and the working group chairperson of the Committee for Prevention of Torture in Africa, to provide him with information and data on the forms of torture that LGBT individuals faced in Kenya (both citizens and refugees who crossed over from Uganda) after the Anti-Homosexuality Bill (AHB) was tabled.

It is important to note in this regard that a lot of work had already been done by other activists at the ACHPR since 2006⁶ and that it was not just the two-year engagement by Kenya activists that led to the changes. Shadow reports had been submitted, commissioners were lobbied, country research reports on violence were submitted,⁷ commissioners were invited for in-country visits, and partnerships and networks were built that lasted beyond the ACHPR sessions.

HOW IT WAS DONE AND WHAT WAS ACHIEVED

As mentioned before, the three Kenyan activists took part in the Pan-African Advocacy Programme (PAAP), which sought to ensure that activists from the East African region would commit to engaging at the ACHPR for a period of two years. They received training on regional and international human rights mechanisms (i.e. the ACHPR and the UNHRC) to ensure that they would understand what it meant to be engaged in these spaces and what to expect while engaging with these human rights instruments.

The training equipped the activists with knowledge about the commissioners, even providing information on which commissioners were more friendly towards and understanding of the human rights of SGMs and which ones needed to be further engaged with to develop their understanding about the needs of SGMs. Together with the others from East Africa, the Kenyan activists too part in pre-session planning meetings which involved looking at the specific country contexts and helping each other understand their struggles and how they could engage their respective governments to address violations at the country level using decisions made at the regional level.

In connection with the NGO Forum's sessions for special interest groups, the activists agreed on who would attend which group's sessions to ensure that violations against SGMs would be represented in all relevant groups (including refugees, people living with HIV/AIDS and women) since some violations and discrimination cut across the various lines. This approach worked well and reminded the activists that an intersectional and holistic approach is important. It also showed CSOs working on other thematic areas that the SGMs valued other human rights and were not just focused on the human rights of SGMs.

6. http://agi.ac.za/sites/agi.ac.za/files/2_case_study_sibongile_ndashe.pdf

7. http://www.cal.org.za/wp-content/uploads/2013/07/English-SOGI-Booklet.small_.pdf

Human rights are universal and are not simply granted by the state. Using the above-mentioned strategy, the activists were able to show that human rights violations and discrimination were interlinked and that the human rights that SGMs were asking for were no different from the human rights that everyone else was asking and pushing for. This strategy also helped us realise the intersectionality of human rights: you are first a woman before you are a lesbian, for example. A human rights defender defends human rights regardless of the specific area of human rights work he or she is engaged in; there is no such thing as a lesser human rights defender.

This strategy also gave activists an opportunity to support the human rights agenda of other groups by attending meetings organised by other mainstream human rights organisations and not just focusing on the human rights of SGMs. This was a clear indication that SOGIE activists were interested in human rights in general, and not just in some specific set of rights pertaining only to SOGIE. The other CSOs also perceived that we were not isolated and unrelated in our advocacy work and they agreed to support the human rights of SGMs.

Those PAAP activists whose countries were coming up for review at the ACHPR received assistance and technical support in writing brief reports from the other activists who were there. Those reports were distributed to the commissioners, providing them with information that they could use to formulate questions for the governments concerned.

Kenya came up for review during the 57th Ordinary session held in Banjul, the Gambia (4–18 November 2015). Kenya's report covered the period 2008–2014. Unfortunately, the state report made no mention of any human violations or discrimination in Kenya. Together with other human rights organisations in Kenya, the Kenyan LGBTI activists wrote a status report that was distributed to strategic commissioners, as per their mandate. This strategy worked. One of the concerns indicated in the report related to two Kenyan men who had been suspected of same-sex activity and who had been subjected to inhuman and degrading treatment by state agents when they were forced to undergo anal testing.

Another concern addressed there was the shrinking space for civil society. This was part of the status report mentioning the challenges that the NGLHRC was facing in terms of becoming registered as an NGO in Kenya. Since the state of Kenya indicated that everyone is protected under the Constitution, it was important to raise these concerns while the country was being reviewed.

In between sessions, as well as after each session, debriefing meetings between the PAAP activists were coordinated by UHAI/EASHRI to ensure that the objectives set during the pre-session meetings were achieved and to ensure that any challenges would be mitigated for better engagement during the next session. The meetings were also used to make country plans on what actions would be taken when activists got back home.

Activists needed to be consistently present at and participate in the session and pre-planning meetings. It was also important for them to understand what a specific country needed to achieve and not just an individual or an organisation. Therefore, activists who were conversant with the ACHPR process offered explanations of and clarifications on that process to those PAAP activists who were still having difficulties understanding it. It was important to have a facilitator and a rapporteur from UHAI/EASHRI to ensure that things would happen as planned and within the stipulated timeline, as everyone was busy with organisational activities and were therefore sometimes apt to put the activities of the ACHPR on hold.

Tasks were also divided amongst the three Kenyan activists when it came to implementing country activities. The country activities included but were not limited to: 1) educating SGMs and their affiliated partners in Kisumu, Eldoret, Nakuru and Meru on the content and importance of Resolution 275 and on how it can be used for advocacy with different stakeholders; 2) offering paralegal training and workshops on the needs of the transgender individuals; 3) educating the SOGIE community about the gains made by the transgender community in Kenya. This ensured that the activists who were part of the PAAP were not seen as standing alone; their activities were seen as feeding into the work of the larger Kenyan SOGIE movement.

It is important to note that when the activities started, each of the Kenyan activists was at a different level in terms of their engagement at the ACHPR. There was a need to ensure that the activist who was engaging for the first time was always kept up to date on what was happening and informed of the relevance and importance of the ACHPR in the work happening at the grass-roots level.

In time, the Kenyan PAAP team became more synchronised and its members were able to work together, even though they each represented different organisations with different objectives.

For example they managed to come up with a civic-education programme and a training about Resolution 275.⁸ In addition, working together at the ACHPR enhanced their team spirit, especially when it came to working for SGMs in Kenya. For example, with regard to litigation or to engaging other stakeholders like the magistrates and Kenyan police, the activists agreed that it would be useful for their advocacy work to have a common agenda with those stakeholders; litigation against violence towards LGBTI individuals in Kenya was chosen as a common agenda item, as it cuts across all SOGIE work.

During the period of activity concerned (2013–2015), by far the strongest and most exhaustive pro-LGBT rights decision of the African Commission came in 2014 with its Resolution 275 on 'Protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity'.

The strategies applied, which stress that human rights are interlinked and that there are no specific SOGIE rights, showed that many African states are not in compliance with the African Charter by violating the human rights of SGMs, and that by not prosecuting those who violate the human rights of SGMs, the national governments in Africa are themselves violating the human rights of SGMs.

ANALYSIS, LESSONS LEARNED AND THE WAY FORWARD

- The activities of linking the regional work with the local work went well when the activists were actively and consistently engaging in the programme. Since the programme, however, the coordinated work has stopped. It is important for activists to institutionalise the work at the ACHPR. To sustain this, the organisations that work to advance the human rights of SGM need to have consistent funded programmes and activities for engaging with the regional and international human rights mechanisms.
- There is a need to train organisations on African human rights mechanisms and on how to lobby and advocate for those at the ACHPR, but there is also a need to ensure the proper monitoring, evaluation and documentation of the work that is being carried out. This needs to be done at the organisational level to ensure that 1) the organisations will understand what these mechanisms are and be able to include the ACHPR in their programming;

2) SOGIE activists will understand exactly what the mandate of the ACHPR is and what takes place during the sessions; and 3) lesbian, gay, bisexual, transgender and gender non-conforming individuals (LGBTGN) will understand the reasons for and the importance of engaging with the human rights mechanisms and how such engagement in the sessions can benefit the work being done at the country level.

- As trans, intersex and gender non-conforming people are underrepresented at the ACHPR, there is a need to explore why they are underrepresented.
- The LGB organisations in Africa need to do a self-assessment on how patriarchy and homophobia affect the scope of their programmes and the representation of transgender issues in their daily work.
- Country follow-ups need to happen immediately, once meaningful networks and partnerships have been established. Activists should not wait until the next session to reach out to their partners from mainstream human rights organisations whom they have engaged with at the ACHPR, but rather engage with those partners further as soon as they get back to their respective countries.
- It is important to find out if SOGIE activists from East Africa and other parts of Africa will be attending the ACHPR session and if they have any plans or strategies and then to try to support or coordinate with those plans, because in the end we are all working for the benefit of SOGIE individuals in the African continent.
- It is important for LGBT activists in Africa to establish and maintain working relationships with ACHPR commissioners on a consistent basis, as those will help when they need to reach out to those commissioners on an issue that falls within their mandate.
- Activists should not attend the ACHPR sessions simply on account of their sexual orientation or gender identity (for example to ensure that transgender people, gays, lesbians, etc. are represented at those sessions) but rather because they have been trained and therefore have credibility, content, voice, competence and gravitas.

8. <http://www.achpr.org/sessions/55th/resolutions/275/>

ORGANISATIONAL BACKGROUND

The three Kenyan activists from the PAAP represented the following LGBTI organisations in Kenya:

The Initiative for Equality and Non-Discrimination (INEND) is a local not-for-profit organisation founded in 2014 that does research and undertakes strategic actions to achieve equality, acceptance and inclusion in Kenya's coastal region. INEND shares experiences and collaborates with other stakeholders in an effort to encourage tolerance and non-discrimination and to bring about the acceptance and inclusion of SGMs.

INEND recognises the universality of human rights in the pursuit of democracy through the participation of everyone in an open, just and democratic society. In the current context, however, many SGMs have not had the opportunity to engage openly due to laws, policies and attitudes which criminalise certain activities and people, resulting in their being subject to threats, insecurity and harassment. As a consequence, SGMs – who are seen not to conform to societal norms – have been forced to operate underground and under high risk, merely because of their sexual orientation and/or gender identity.

The mission of INEND is to create an enabling environment where sexual and gender minorities are respected and treated with worth and where they peacefully co-exist within the society, through advocacy, knowledge generation, communication, community engagement and the strengthening of community systems.

The NGLHRC announced its foundation at the inaugural Gay and Lesbian Awards ceremony in December 2012. Held in Nairobi's City Hall, the awards ceremony affirmed the Kenyanness of the LGBTIQ community while demanding their inclusion in public and social organising spaces. Since then, NGLHRC has been encouraging diversity and agitating for public dialogue on sex, sexuality, gender and non-conformity.

The NGLHRC began its work by conducting a nine-month study to understand the needs and priorities of the LGBTIQ community. Their study found that *the current punitive criminal laws against expressions of same sex intimacy* were a major barrier to equality. In effect, these laws convey to Kenyan society that LGBTIQ persons 'are criminals', and should be treated 'as you would a criminal'. This has allowed for ongoing and unfettered discrimination of the community.

The NGLHRC's key objectives are:

1. to achieve policy and legal reforms towards equality and the full inclusion of SGMs through strategic litigation, legal clinics, research and documentation, and urgent action missions
2. to promote the freedom of expression and association by building the LGBTIQ movement and culture in Kenya through activities and calendar events
3. to encourage the political and civic participation of LGBTIQ individuals and communities in Kenya through dialogue, lobbying, civic education and technical support to LGBTIQ political aspirants

The mission of the NGLHRC is to promote and protect the equality and inclusion of LGBTIQ individuals and communities in Kenya, and to advance their meaningful participation in society.

Jinsiangu is a Nairobi-based social justice organisation formed in 2012 that works to create awareness of and respect for transgender, intersex and gender non-conforming (ITGNC) people in Kenya. Its name is a combination of the Swahili words *jinsia yangu*, meaning 'my gender'. It is committed to ITGNC-led, anti-oppressive organising. The group strives to develop and create spaces and platforms within Kenya in which all citizens will be free to determine and express their own gender. The vision of Jinsiangu is 'a world that celebrates diversity, promotes bodily autonomy and ensures equal treatment and protection for all', while its mission is 'to create safe spaces for ITGNC persons through the provision of health services, psychosocial support, advocacy and education in Kenya.' As an organisation, Jinsiangu is committed to the following values: confidentiality, integrity, perseverance, self-determination, equality, openness, accountability and love.

PEMA Kenya is a community-based organisation founded in 2008 by a group of gay men who came together to honour the memory of another gay man whose family had shunned him, refusing to give him a decent burial because of his sexual orientation. Originally known as 'the Brotherhood', the group evolved into PEMA Kenya when the gay men were joined by the lesbians, bisexuals and transgender people. PEMA Kenya is an individual membership organisation currently comprised of 211 members of the SOGIE community who live and/or work in Mombasa County and its environs.

PEMA Kenya's vision is an empowered society that embraces justice, equity and diversity. Its mission is to champion the inclusion of SGMs by providing them with the space they need for advocacy, networking and capacity building and by providing the general society with the tools and information they need.

PEMA Kenya operates in the following four strategic areas:

1. Policy advocacy – this involves advocating for the human rights of SGMs through various sensitisation trainings and workshops given to stakeholders who are directly or indirectly involved in human rights issues.
2. Comprehensive health for SGMs – this involves ensuring that all SGMs have access to (and are willing to access) healthcare and medical attention as and when needed.
3. Economic and social empowerment – one of the main gaps in the LGBTI community is the lack of economic empowerment and opportunities that would give the LGBTI community in Kenya financial ability to cater to their own basic day-to-day needs. This would facilitate mechanisms to engage PEMA's membership with forums on economic empowerment and enable members to develop and/or utilise their skill set.
4. Efficient and effective utilisation of PEMA Kenya's internal and external resources – to ensure maximum achievement of its objectives, PEMA Kenya intends to find ways of effectively and efficiently acquiring, maintaining and improving its resource base to enable smooth implementation of its activities.

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44. Service Delivery and Uptake for MSM and MSW at the Ishtar-MSM Wellness Community Space in Nairobi (Kenya)
43. Raising awareness of stakeholders and mobilization of transgender and intersex communities
42. LGBTI refugee programme
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40. Integrated Training for Health Care Providers in South Africa
39. A comparison of urban and rural LGBT support groups in Botswana
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36. Lessons learned at Equidad's HIV/STI testing centres for MSM in Ecuador
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27. OUT's Peer Education Programme for MSM / LGBT's in Tshwane, Pretoria
26. The Pink Ballot Agreement
25. Peer Education Programme (Malawi)
24. Schorer Monitor
23. Health, culture and network: Interventions with homosexuals living with HIV/AIDS at Rio de Janeiro polyclinics
22. Telling a story about sex, advocating for prevention activities – informational materials about safe sex and harm reduction for gay men and MSM from 14 to 24 years.
21. Mainstreaming of LGBTI/MSM/WSW issues in all areas of service provision: Empowering Service Providers and Policy Makers in Botswana through trainings
20. Now we are talking! – Developing skills and facing challenges.
19. Towards a Comprehensive Health Care Service Model for Transgender People in Ecuador
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15. Prevention Images: notes about a photography workshop with young MSM and people living with HIV/AIDS in Rio de Janeiro
14. Advocacy campaign to prohibit hate lyrics targeted at men having sex with men during a dance hall concert in Suriname.
13. Interactions between young multipliers and young gays and bisexuals in internal and external activities in Rio de Janeiro (Brazil).
12. Information Stands: Prevention Project aimed at young gay men from Tegucigalpa (Honduras)
11. Ndim'lo (This is me) Photovoice with lesbian and bisexual women in the Western Cape, South Africa
10. Me&3 Campaign for lesbian and gay individuals in Pretoria (South Africa)
9. Sensitization of the National Police by transgender organizations in Ecuador
8. Exercising 'Knowledges': Implementing training and prevention activities.
7. Public Incidence Activities: In search of public spaces accessible to teenagers with same sex feelings in the Greater Metropolitan area of Costa Rica. "Specific Case: Incidence with the National Institute for Women - INAMU - Costa Rica"
6. My body, your body, our sex: A Sexual Health Needs Assessment For Lesbians and Women Who Have Sex With Women, Durban, South Africa
5. Working with buddy groups in Zimbabwe
4. 'MAN TO MAN', a joint approach on sexual health of MSM in the Netherlands via the Internet
3. Lessons learned from project "Visual information on sexual health and the exercise of citizenship by the GLBTI beneficiaries of the Organization in Quito, Ecuador".
2. Coffee afternoons: Prevention Project aimed at young gay men from Tegucigalpa (Honduras)
1. Womyn2Womyn (W2W) quarterly open day, for lesbian and bisexual (LB) women at the Prism Lifestyle Centre in Hatfield, Pretoria (South Africa)

available at:

<http://lessons-learned.wikispaces.com/English>