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An evaluation of the impact that the political system has on the social reality of intersex people in Uganda and South Africa

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The Internship

Information about the business

The Lesben und Schwulen Verband Deutschland (LSVD) e.V.¹ is with 4,300 members the biggest organization for lesbians and gays in Germany. It was founded in 1990 in Leipzig as gay organization for the German Democratic Republic (GDR) before it was in 1999 extended to all of Germany.

The organization has 9 employees, 4 of which work in the main office in Berlin and 5 who work in the Bundesgeschäftsstelle (national headquarter) in Cologne. 7 employees have a permanent position at the LSVD, whereas 2 only have a temporary employment agreement. 3 employees work full time, the other 6 have a half time position with 20-30 working hours per week.

The LSVD is organized federally, with one national branch and regional branches in almost every federal state.

Advocating for lesbians and gays to grant them equal rights and to allow an equal participation in society without having to hide and/or being discriminated is what the LSVD is working for.

Work Description

The employees of the LSVD work in management, press and public relations, administration, finances, accountancy, project management, coordination, and graphics and design.

During my internship I helped with press and public relations. My job consisted of reading several documents and brochures and summarizing those for the website of the Hirschfeld Eddy Stiftung, the human rights branch of the LSVD, or writing entries for the LSVD blog. When summarizing a survey the Ugandan Support Initiative for People with congenital Disorders (SIPD) had conducted about the situation of intersex people in Uganda, Kenya, and Rwanda I found my topic for my Facharbeit.

¹ Eingetragener Verein – a formally registered organization in Germany that does not aim to make any profit

Evaluation

Introduction

Worldwide the situation of intersex people is widely overlooked. In LGBTI organizing it often does not earn much more than a mentioning², only few countries offer a legal recognition of intersex people and in even fewer countries a registration as something other than male or female is possible. Also, non-consensual genital mutilation of intersex children still is a global problem threatening the mental and physical well-being of intersex individuals throughout their lives.³

But how does the social reality of intersex people really look like, and how does the legal situation in a country influence the quality of life of intersex individuals?

Presumably the life of intersex people should be of much higher quality in a more liberal country that offers recognition of intersex people and legally protects them from discrimination. To see if this is really the case I took a closer look on the social reality of intersex people in Uganda and South Africa.

Whereas Uganda is known for its conservative politics, especially regarding LGBT people, the post-apartheid constitution of South Africa is widely regarded as the most progressive constitution in the world.

For my research I used several brochures, articles, and survey reports, most of which were provided by the LSVD.

The two main sources I used were the report of the Baseline Survey conducted by the Ugandan Support Initiative for people with congenital Disorders (SIPD)⁴ and a report by Gender Dynamix, Iranti-ORG, and the Legal Resource Centre (LRC) on the struggle of transgender and intersexual people in South Africa⁵.

It posed however as difficulty that the sources did either not include any exact numbers, or contradicting ones.

Technical terms will be explained in the glossary.

² f.ex. in SMUG, 2014

³ See Eisfeld, Gunther, Shlasko, 2013

⁴ SIPD, 2015-2016

⁵ SIPD, 2015-2016

Main Part

Uganda

Political System, especially regarding LGBTIQ+

Since 1991 Uganda is a presidential republic that shows democratic as well as totalitarian signs. The president is since 1986, the end of the previous totalitarian system, Yoweri Museveni.⁶

LGBTIQ+ people have no protection under Ugandan law.

Under Section 145 of the Penal Code, Act 1950 which was constructed by the British government during the time of colonialism in Uganda, but is still in use today “carnal knowledge against the order of nature”⁷ between two man is punishable with imprisonment for life. This is a similar law as can be found in Penal Codes of multiple former British colonies and protectorates.

In 2009 David Bahati, member of the Ugandan parliament, introduced the Anti Homosexuality Act, 2009 – a law that, if passed, would broaden criminalization of same sex relationships and make “aggravated homosexuality” punishable with the death sentence.⁸ However the following international outcry prevented a passing of the law until December 2013. Nonetheless it was passed in a revised version without the possibility of being sentenced to death.⁹

The introduction and passing of the law led to increased stigmatization and discrimination of LGBT people which showed in several cases of arrests, eviction, violence, and public discrimination of LGBT people throughout the country, including several newspapers publishing photographs of LGB people and therefore publicly outing them.

In August 2014 the Ugandan Constitutional Court annulled the law, because there had not been enough lawmakers present to vote when it had been passed. Nevertheless the political and social climate remained dangerous for LGBT people.¹⁰

This lack of acceptance for LGBT people originates in originally American Christian fundamental communities whose influence increased under Museveni. Those communities do not directly discriminate intersexuality, but do not spend it understanding either.¹¹

There has not been a legal clause recognizing the existence of intersex people in Uganda until 2015 when the Registration of Persons Act, 2015 was passed. This clause however uses stigmatizing language (specifically the term “hermaphrodite”) to state the possibility to change the legal sex of a child born intersex after they¹² have had sex reassignment

⁶ See Lassotta, 2016

⁷ The Penal Code, Act 1950, Cap. 120, p. 68, Section 145

⁸ Wright, Zouhali-Worral, 2012

⁹ See AWDF, a.o., 2013

¹⁰ See SMUG, 2014

¹¹ Kaggwa, 2016

¹² Usage of they as gender neutral pronoun

surgery. Legal change of your registration papers is not allowed without said surgery and a registration as something other than male or female is not possible either.¹³ Also, someone who is not a child anymore cannot undergo this procedure.¹⁴

The Support Initiative for people with congenital Disorders (SIPD) is the only organization in East Africa that focuses solely on the situation of intersex people. Their continued advocacy has shown some influence on the Ugandan parliament leading to the recognition of the existence of intersex people in the Registration of Persons Act, 2015.¹⁵

Social Reality of Intersex People

No matter if you live in rural or urban Uganda, superstition towards intersex people is an issue all over the country. Due to cultural beliefs an intersex child is often seen as witch or victim of witchcraft. Their birth is seen as a bad omen for the family and a punishment for a crime the mother has committed in her current or previous life. Therefore the mother is in many cases excluded from the community which is essential to ensure survival.

To prevent this kind of exclusion many mothers choose to either kill or abandon their children if they are born intersex. There are varying information about if the majority of intersex children get killed after their birth or “only” 4%, which could be because the people questioned where those that survived.¹⁶

Many mothers try to hide the fact that their child is born intersex, but this can pose as quite difficult, if not impossible, if the intersex characteristics are visible at the time of birth – since every birth is generally a traditional feast in rural Uganda.¹⁷

In addition to that about 55% of all women in Uganda deliver with the help of Traditional Birth Attendees instead of medical health providers and while they are more affordable and easier accessible for the women, they are usually not properly schooled and do not have decent knowledge about intersexuality. They therefore tend to make uninformed recommendations about the treatment of the newborn children.¹⁸

The majority of intersex children that survive childhood are forced to live a life of isolation and secrecy often far apart from the rest of their family and community.¹⁹

In addition to the issues that are limited to the cultural characteristics of Uganda remains the issue of nonconsensual genital mutilation, aka sex reassignment surgery conducted either on a child that is too young to give their consent or an individual that has not gotten sufficient information about the procedure.

On the one hand many of those surgeries go wrong causing the child numerous medical

¹³ See Registration of Persons Act, 2015, Uganda, p. 28, Section 38

¹⁴ See SIPD, 2015-2016, p. 12

¹⁵ See *ibid.*, pp. 13, 24

¹⁶ See *ibid.*, pp. 6-7, 14

¹⁷ See *ibid.*, p. 20

¹⁸ See *ibid.*

¹⁹ See *ibid.*, p. 14

complications throughout their further lives and leaving their genitals looking mutilated, on the other hand leave the surgeries the children in most cases with mental scarring or severe traumata, especially if it turns out that the sex the child was assigned throughout the surgery does not match the gender they grow to identify with later in their life, or if they experience biological changes throughout puberty that usually correlate to the opposing sex.²⁰

Even most Ugandan doctors that practice these surgical procedures lack the knowledge to provide the parents of an intersex child or a grown intersex person with the profound understanding needed to make an informed decision.²¹

There also is a lack of proper health care in, primarily rural, Uganda leading to greater health risks for intersex people, especially those that have undergone sex reassignment surgery.²²

Especially due to physical changes during puberty many intersex people in Uganda face severe discrimination, including physical and sexual harassment – in several cases even rape.²³

90% of all teenagers questioned in the baseline survey were forced to drop out of school due to the lack of gender neutral facilities and severe discrimination by the teachers and fellow students.²⁴

All these factors in combination with the constant question about the meaning of their intersex characteristics in regards to their identity and gender leads to a great number of intersex people suffering from severe anxiety, depression, and/or suicidal thoughts.²⁵

Relationship between Political Situation and Social Reality

The lack of legal recognition and protection of intersex people as equal human beings enables further discrimination and stigmatization of intersex individuals resulting in a high level of social violence against intersex individuals.

That there is no proper education of society in communities and schools additionally preserves the superstitious beliefs and prejudices towards intersexuality.

Government guidance for medical practitioners about sex reassignment surgery of intersex people could minimize the physical and medical issues many intersex people have to face throughout their lives.

²⁰ See Delly, 2015

²¹ See SIPD, 2015-2016, p. 19

²² See Mott, 2017

²³ See Kaggwa, 2016

²⁴ See Mott, 2017

²⁵ See SIPD, 2015-2016, p. 21

Active persecution of people physically/sexually harassing, raping, abandoning, or murdering intersex people would also set a warning sign for future cases and limit the number of those occurrences.

South Africa

Political System, especially regarding LGBTIQ+

South Africa is a unitary parliamentary republic since 1999, currently under President Jacob Zuma.²⁶

The South African constitution which was created by former President Nelson Mandela and his post-apartheid government is widely regarded as the most progressive constitution in the world,²⁷ especially because of Section 9 – the Equality clause – which declares it illegal to “discriminate directly or indirectly against someone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”²⁸

However until 2006 “sex” was to be understood in its legal definition, not including intersex people. Since sex was part of the definition of being human as well, there was a complete lack of recognition of intersex people as human beings – therefore denying them all basic human rights, including the right to live. In January 2006 however it was added to the Judicial Matters Amendment Act, 2005 that “sex” was to include intersex people as well. With this simple annexation intersex people did not only gain legal recognition as human beings, but also all rights connected to that – including protection against discrimination based on their sex.²⁹

Nonetheless there does not exist a specific law for the registration of intersex children and legal registration is only possible as either male or female. It is however possible to legally change your gender without having undergone any medical procedures. In reality this possibility faces many challenges when officials of the Department of Home Affairs deny people the change of their legal gender, because the phrasing of the law does not explain clearly enough that surgery is not necessary for the legal change of your registration papers. Additionally a legal change of your sex can take between 2 and 7 years after being accepted, whereas the average waiting time on most alterations of identity documents is only three months.³⁰

Just like in Uganda people that identify as something beyond the gender binary cannot register as the gender they identify as.

In general South Africa is a quite liberal country in regards to LGBT rights, having full equality in marriage and adoption rights. They do however tend to focus solely on LGB people, often confusing TI issues with issues of sexual orientation.^{31 32}

²⁶ Porsche-Ludwig, 2016

²⁷ N.N., 2016

²⁸ Constitution of the Republic of South Africa, 1996, Cap. 2, p.5, Section 9

²⁹ Gross, 2009

³⁰ See Gender Dynamix, Iranti-ORG, LRC, February 2016, pp. 7-8

³¹ See Arasa, Gender Dynamix, Iranti-ORG, LRC, April 2016

There is also no legal process for married TI people that undergo sex reassignment surgery to simply changing their marital status from being in a heterosexual marriage into being in a same sex marriage without first getting divorced.³³

TI people also do not have the possibility to change their matriculation certificate for their final high school certificate after changing their legal sex and/or forename. If they apply for a job or financial help with said certificate they are expected to prove that the certificate is theirs and therefore to give disclosure about private details concerning their gender identity and/or bodily characteristics.³⁴

The South African health care system does also not provide sufficient offers to the special needs of TI people as they are not specified as vulnerable group under the National Health Act.³⁵

Social Reality of Intersex People

Intersexual individuals face a serious risk of verbal, physical, and sexual violence and even death in South Africa.³⁶

There are also several cases suggesting that in some, primarily rural, areas intersex children may be killed shortly after their birth. In a survey conducted in 2010 in the rural John Taolo Gaetsewe district 88 out of 90 questioned midwives stated that they would murder an infant that was born intersex before telling the mother it had been stillborn.³⁷

There is little to no education about intersexuality in primary and high schools creating a hostile learning environment for intersex students. Many intersex teenagers face discrimination from fellow students, especially in high schools. The severity of the bullying depends however on “several factors including the type of school and the way the [...] intersex youth expresses their gender identity.”³⁸

There are however individual teachers that try to protect their intersex students from discrimination, but there is not a system to ensure consistent support from the teaching staff.³⁹

By not learning about gender and body variances many intersex students tend to feel pressured into undergoing sex reassignment surgeries which they regret later on in their lives. They may also feel isolated and/or abnormal.⁴⁰

This feeling is amplified due to sex segregation through school uniforms and bathrooms, as well as the refusal to use a student’s correct pronouns.

³² See Gender Dynamix, Iranti-ORG, LRC, February 2016, pp. 4-5

³³ See *ibid.*, pp. 8-9

³⁴ See *ibid.*, p. 17

³⁵ See *ibid.*, p. 24

³⁶ See *ibid.*, p. 10

³⁷ See John, 2012

³⁸ Gender Dynamix, Iranti-ORG, LRC, February 2016, p. 15

³⁹ See *ibid.*

⁴⁰ See *ibid.* pp. 15-16

Many intersex students choose not to go to school bathrooms at all which can cause serious health issues.⁴¹

There have also been some reports of intersex youth being sexually harassed at school and some individuals have felt forced to drop out of school in order to remain safe.⁴²

Just like in Uganda most intersex people in South Africa undergo nonconsensual genital mutilation.⁴³

There is an approach to more informed consent before undergoing sex reassignment surgery in South Africa. This approach focuses however almost exclusively on educating the parents of intersex children about the possible risks of such a surgery despite focusing on the right of self-determination of the child leaving the decision over the child's body almost exclusively in the hands of medical practitioners and parents.⁴⁴

Older intersex adolescents are in many cases pressured by doctors into undergoing the procedure before receiving sufficient information.⁴⁵

Due to discrimination at home and work intersex people are at a high risk of being homeless and many homeless shelters do discriminate against intersex people.⁴⁶

Furthermore if there shows inconsistency of a person's legal sex on different identification documents they may face difficulties applying for work, housing, or welfare.⁴⁷

Relationship between Political Situation and Social Reality

Even though the South African constitution is known for being very progressive discrimination of intersex people is still a big issue in South Africa.

It is easily recognizable that the lack of specific focus on intersex people of the government directly influences the lack of education of society.

⁴¹ See *ibid.*, p. 16

⁴² See *ibid.*, p. 17

⁴³ See *ibid.*, p. 18-19

⁴⁴ See *ibid.*, p. 20

⁴⁵ See *ibid.*, p. 21

⁴⁶ See *ibid.*, p. 27

⁴⁷ See *ibid.*

Comparison and Conclusion

Due to the more progressive political system there is noticeably less discrimination of intersex people in South Africa than there is in Uganda.

Intersex students in South Africa have a much higher chance of graduating from high school and in several cases they even get active support and protection from their teachers.

Therefore the laws that South Africa has for the recognition and protection of intersex individuals and the active persecution of people that physically or sexually harass intersex people seem to have a positive influence on the social reality of intersex people.

Nonetheless there are still many similar issues that intersex people face in South Africa and Uganda.

Active discrimination is a high risk in both countries and especially nonconsensual genital mutilation poses a threat to intersex people in both countries.

Nevertheless the risk of severe discrimination appears to be a lot higher in Uganda.

Although the killing of intersex children does occur in South Africa, it appears to be limited on the rural areas of the country, whereas it is fairly common all over Uganda.

In both countries discrimination shows especially in those areas where specific recognition and legal guidance for the approach of intersex individuals does not or not sufficiently exist, or not enough information is provided.

This shows that a simple law recognizing the existence of intersex people and even one that promises protection against discrimination alone does not do the trick. Instead there need to be specific and precise clauses in all areas of life including, but not limited to, housing, health care, and protection from discrimination and harassment. Officials working in those areas, as well as government officials (especially in the Department of Home Affairs) do also need to be schooled on how to handle those issues.

To prevent erasure from society of people that do not fit the gender binary there needs to be a way to legally register as something other than male or female. Additionally, both countries must decrease the difficulty of changing your legal sex on your identification documents.

There also needs to be more room for people that do not fit the idea of binary gender identities or body variations in public spaces such as bathrooms, schools, dormitories, and homeless shelters. To prevent stigmatization and discrimination and to limit the feeling of being abnormal the variations of sex and gender must be added to school curriculums and active advocacy and education in, especially rural, communities must be provided.

In addition schools need a precise, standardized system to protect their students from discrimination based on their intersexuality.

Health practitioners need to be more educated about intersexuality and the physical and mental risks of sex reassignment surgery. Said surgeries should not be legal to be undergone by individuals that have not reached an age where they are able to give their full informed consent as long as they are not medically necessary. Also, more sources should be provided for people planning to undergo such surgeries to reach a point of actual knowledge about the outcome of the surgery.

The government of both countries must publicly condemn intersexphobia and discrimination of intersex people and start programs fighting those. Both the governments as well as LGBTIQ+ rights organizations need to stop to only mention intersexuality under said umbrella term while almost exclusively focusing on the situation of LGB people.

Public advocacy and inclusion of intersex people in the media and basic social contact would also greatly improve the societal view of intersex people.

Matching the legal state in which South Africa currently is would be a first aim for Uganda to improve the situation of intersex people in the country. This however cannot be the end goal.

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Glossary

Gender: Socially male and/or female identification, the way a person sees themselves, does not have to match their sex

Gender binary: The two binary genders are male and female. There are however multiple gender identities in between those two (or apart from them). People that identify with an identity other than the binary genders, or with no identity at all, are described as nonbinary or gender non conforming.

Intersex, Intersexuality: Intersexuality describes all kinds of physical variations where the body is not clearly definable as either male or female. Some kinds are unable to oversee at births others may not be recognized in the entire life of the intersex person. Intersex people may identify with any gender identity.

Legal sex: The sex stated on your legal papers, does not have to match your biological sex and in most cases aims to rather match a person's gender

LGBTIQ+: Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and others; Variations possible regarding to what group of people is referred to

Nonconsensual genital mutilation: In this context that means that an intersex person undergoes a surgery that changes their outer sex characteristics so that they appear in a way society views as a normal male or female body without being able to give full, properly informed consent. This may be, because they were a) too young to decide for themselves, b) they were pressured into undergoing the surgery, or c) they did not receive sufficient information about the surgery.

Sex: Biological male and/or female characteristics, a person's sex does not have to be the same as their gender

Sex reassignment surgery: A surgery a transgender or intersex person undergoes to make their body match the gender they identify with. If an intersex person however undergoes this procedure without proper consent it is nonconsensual genital mutilation.

Declaration

I hereby declare that I have written and composed the paper at hand without any help and that I have not used any sources other than those cited in the Bibliography. I especially ensure that I have cited all literal and/or analogous quotations.

_____, _____
Place Date

Signature