

**A Publication of
Human Rights
Awareness And
Promotion Forum
(HRAPF)**



THE HUMAN RIGHTS ADVOCATE

**BEYOND QUORUM: WHY
THE ANTI-HOMOSEXUALITY
ACT 2014 WAS
UNCONSTITUTIONAL**

**SECOND ISSUE
MARCH 2015**

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EDITOR'S NOTE

Welcome to the second issue of the Human Rights Advocate. The Human Rights Advocate is a bi-annual human rights magazine produced by Human Rights Awareness and Promotion Forum-Uganda (HRAPF). It is produced under the legislative Advocacy and Networking Program.

HRAPF is an independent, not-for-profit, non-partisan, and non-governmental organisation. It is fully incorporated under the laws of Uganda. HRAPF focuses on human rights awareness, advocacy and access to justice for marginalised groups. It employs legal aid services, legal and policy analysis, legal research and documentation, and strategic litigation to further its objectives.

This magazine focuses on legislative review and advocacy in favour of marginalized groups. Each edition features writers on a topical legislative issue that concerns marginalised groups in order to advocate for laws that promote human rights and access to justice for all.

This second edition of the Human Rights Advocate magazine is dedicated to reasons why the Anti-Homosexuality Act 2014 (AHA) was unconstitutional, even beyond the issue of quorum. The Anti-Homosexuality Act was passed by Parliament on December 20, 2013 and signed by the President on February 24, 2014. It became operational on March 10, 2014. On 11th March 2014, HRAPF and 9 others challenged the

law in the Constitutional Court and on 1st August 2014, the law was declared unconstitutional. This was on the basis that the Act was passed by the legislature without following the procedures provided for in the Constitution and under the rules of Procedure of Parliament as regards quorum.

The Act sought to “prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters.” The Act created offenses including: homosexuality, aggravated homosexuality, and attempt to commit homosexuality. It also created the offences of aiding and abetting homosexuality, conspiracy to engage in homosexuality, having or conducting a same-sex marriage, promotion of homosexuality, among others. All the offences could result in fines and prison sentences ranging from five years to life imprisonment.

The law was a direct attack on the rights to: equality and freedom from discrimination, privacy, press freedom, freedom of expression, assembly and association, property, freedom from cruel, inhuman and degrading punishment, and civic participation. Above all, the Act would institutionalise a culture of hatred and legitimise discrimination against one of the most marginalised groups in Ugandan society.

The petition that nullified the Act is officially

cited as *Prof. J. Oloka Onyango, Hon. Fox Odoi-Owyelowo, Prof. Morris Ogenga-Latigo, Andrew M. Mwenda, Dr. Paul Semugoma, Jacqueline Kasha Nabagesera, Julian Pepe Onziema, Frank Mugisha, Human Rights Awareness and Promotion Forum and the Centre for Health, Human Rights and Development (CEHURD) v Attorney General, Constitutional Petition No. 008 of 2014*. The Petitioners were: a law professor, one of the MPs who authored the minority report on the Anti Homosexuality Bill 2009, a former leader of the opposition in the eighth parliament, a journalist and media house owner, a HIV activist for men who have sex with men, a gay activist, a trans activist, a lesbian activist, an organisation offering legal aid services to marginalised groups, and an organisation working on health issues respectively. It was filed on 11th April 2014; a day after the Act came into force. The case was heard and judgment delivered on August 1st 2014, leading to annulment of the law.

The law was also challenged at the East African Court of Justice. The reference was filed on April 25, 2014 by HRAPF. It is officially cited as *Human Rights Awareness and Promotion Forum (HRAPF) vs. Attorney General of the Republic of Uganda, Reference No. 006 of 2014*. It contends that Uganda was in violation of the Treaty for the Establishment of the East African Community by enacting the AHA, and that certain provisions of Uganda's AHA are in violation of the Treaty for the Establishment of the East African Community in Articles 6(d), 7(2) and 8(1)(c), which provisions enjoin partner states to govern their populace on the principles of good governance, democracy, the rule of law, social justice

and maintenance of universally accepted standards of human rights which include inter alia, provision of equal opportunities and gender equality as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. However, this case has not been heard by the Court.

This second edition of the Human Rights Advocate contains the editorial, feature, two opinion articles and three commentaries. It also includes articles on experiences of living with the AHA, the AHA from international law perspective, legislative history and updates on two cases filed against the annulled Anti-Homosexuality Act 2014.

In the editorial, the editorial team explores reasons why the AHA was unconstitutional beyond quorum. The feature describes the contents of the AHA. The first opinion article reveals that almost all Ugandans could easily fall foul of the provisions of the Act, yet the second opinion article weighs the implications of the law on public health in Uganda. In commentaries, the first article exposes the time bomb of the death sentence that was hidden in Section 5(1) of the Act, the second article illuminates the experience of judges in South Africa with discriminatory apartheid laws and advised Uganda's judges to recognise the AHA as a tool of oppression and marginalization, and the third article assesses the implications of the Anti-Homosexuality Act on the right to health of Ugandans. Under real life experiences, there is an article, which profiles the harsh effects of living with the law for LGBTI persons, including what marginalised people have already experienced since the passing of the law. Under international law perspective, there is an article discussing the

effects of the AHA from an international law perspective while under legislative history, there is an article which journals the genesis and impact of recent legislation in Uganda. Case updates I and II gives an overview and update of the cases filed against the AHA in the Constitutional Court of Uganda and the East African Court of Justice. Finally, the press statement released by HRAPF on International Women's Day 2014 is included in the appendix.

Although the AHA has been annulled, these articles remain relevant for several reasons. First, the AHA was annulled based on the issue of procedure under which it was passed rather than substantive, grounds. These articles chronicle the harmful effects of the AHA and the ways in which it violated the Ugandan constitution as well as Uganda's international obligations; as such, the AHA was unacceptable for reasons outside of and more significant than quorum. Second, the AHA motivated and legitimised human rights violations against individuals and continues to do so, despite having been annulled. Third, a similar bill is being proposed to be tabled before Parliament in the near future—in fact, a new draft bill entitled The Prohibition of Promotion of Unnatural Sexual Practices was recently leaked to the media, which though not owned by any entity is substantially similar to and, in some ways, worse than, the AHA.¹ Thus, a comprehensive examination of the AHA remains necessary.

We hope that readers find this to be a useful resource in analysing the legal and

¹ PROHIBITION OF PROMOTION OF UNNATURAL SEXUAL PRACTICES BILL, 2014 (Oct. 29, 2014), available at <http://www.scribd.com/doc/245855111/The-Prohibition-of-Promotion-of-Unnatural-Sexual-Practices-Bill-of-2014>.

human rights implications of the Anti-Homosexuality Act, and any similar anti-homosexuality laws that may emerge. We also hope that the issue will open people's eyes to the dangers that such laws pose to every Ugandan. Finally, we hope that this information can be used in advocacy against laws aimed at stigmatising and marginalising people.

HRAPF would also like to acknowledge the contributors of articles to this issue of the magazine. Prof. J. Oloka Onyango of the School of Law, Makerere University; Dr. Stella Nyanzi (PhD) of the Institute of Social Research, Makerere University; Dr. Paul Semugoma; Mr. Francis Tumwesige Ateenyi; Mr. Edward Mwebaza; Ms. Linette Du Toit, Ms. Joaninne Nanyange, Ms. Asia Russel of Health Gap and Ms. Jenevieve Discar. HRAPF also acknowledges the contribution of HRAPF members, the Board of Directors and staff who helped in compiling, contributing to and reviewing this magazine.

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EDITORIAL:

BEYOND QUORUM: REASONS WHY THE ANTI-HOMOSEXUALITY ACT WOULD BE UNCONSTITUTIONAL

When the Anti-Homosexuality Act 2014 (AHA) was nullified by the Constitutional Court on the 1st of August 2013, the issue of quorum was the only one judged on to declare it unconstitutional. However, this was only one of ten grounds that were laid down by the petitioners challenging the constitutionality of this Act. It is thus unfortunate that the nine other issues were not considered.

Whereas the Constitution protects all people from any kind of discrimination, the AHA fuelled inequality and discrimination. After the passage of the AHA, cases of discrimination and human rights violations spiked against people who identify as or were suspected to be LGBTI. From January to July 2014, HRAPF recorded an increase in human rights violations against persons suspected to be LGBTI in Uganda. The victims were subjected to brutal arrests, evictions, family abandonment, loss of employment, detention without trial, restricted health services, mob action, media harassment, blackmail, extortion, and other human rights violations and inhumane treatment.

The Constitution is very clear: "...a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability."¹ Article 32(1) continues that ,"

... the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them." In the AHA, the state would violate this mandate.

In defining and criminalising consensual same-sex sexual activity between adults in private, sections 1, 2 and 4 of the now nullified AHA contravened the right to equality before the law without discrimination and the right to privacy guaranteed under the Constitution. Section 3(1)(b) of the Act would promote discrimination against people living with HIV/AIDS. Such discrimination and stigmatisation is harmful to the entire society because the prevalence of HIV/AIDS is highest among men who have sex with men than any other most-at-risk population group and due to stigma most of them have sex with women too.

Section 5(1) of the Act was a ticking time bomb that could result into grievous bodily harm and death for LGBTI persons. This section provided that "a victim of homosexuality shall not be penalised for any crime committed as a direct result of his or her involvement in homosexuality." A victim of homosexuality according to the Act includes someone who is involved in homosexual activities against his or her

¹ Article 21(2) of the Constitution of the Republic of Uganda 1995

will. This provision essentially meant that if someone is engaged in homosexual activities against their will, they can do anything to the offender. The victims were being allowed, by law, to commit crimes if they find themselves involved in homosexual activities against their will. They can do anything and this includes maiming or killing of the supposed offender. The danger with such a provision is that it is the perfect excuse for violence against LGBTI or suspected persons. Anyone accused of violence against LGBTI or suspected LGBTI persons only needed to put up such a defence, and they would be exonerated.

Sections 7 and 13(1) & (2) of the Act criminalised aiding, abetting, counselling, procuring and promotion of homosexuality. These offences were overly broad and penalised legitimate debate, professional counsel, HIV-related service provision and access to health services in contravention of the principle of legality, the freedoms of expression, thought, assembly and association, and the right to civic participation guaranteed under principle XIV of the National Objectives and Directive Principles of State Policy and other Articles of the Constitution of the Republic of Uganda 1995. Under these provisions, the work of all care providers including teachers, religious leaders, doctors and lawyers among others would be criminalised.

Section 11 of the Act classified houses or rooms as brothels merely on the basis of occupation by homosexuals. This created an offence that was overly broad and in contravention of the principle of legality

guaranteed under article 28(12) of the Constitution; and was in contravention of the rights to property and privacy. Innocent entrepreneurs providing accommodation services like lodges and guest houses would end up in prison for seven years.

The provisions of the Anti-Homosexuality Act also further contravene Uganda's obligations under international human rights instruments ratified or assented to by Uganda. These include; the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights and the Rights of Women in Africa, the UN Covenant on Civil and Political Rights, and the UN Covenant on Economic, Social, and Cultural Rights. All these instruments protect the rights to equality and non-discrimination.

As various individuals and groups contemplate returning this law or a similar law to parliament, they should pay considerable attention to the human rights concerns raised above. The criminalisation of consensual same sex relations and service provision to LGBTI groups or individuals undermines fundamental human rights enshrined in our supreme law - the Constitution and international human rights instruments that Uganda ratified.

Indeed since provisions of the nullified law are being challenged in the East African Court of Justice, it would only be prudent to await that regional court's decision before going ahead with plans to return the same law to the legislature.

FEATURE:

**THE ANTI-HOMOSEXUALITY
ACT 2014: AN OVERVIEW**



by **Edward Mwebaza**

Head, Legislative Advocacy & Networking, HRAPF

Introduction

The Anti-Homosexuality Act 2014 (AHA) was first tabled before the Parliament of Uganda as a private member's bill by Hon. David Bahati, Member of Parliament for Ndorwa East Constituency, Kabale District in October 2009. The tabling of the bill drew mixed reactions. On one hand, it was highly supported by religious leaders and conservative moralists. These groups based their arguments on religious and cultural values and the need for the protection of children and the 'traditional African family'. On the other hand, it drew outright rejection and opposition from human rights activists all over the world. Its provisions were criticised by many media houses, researchers and leaders including US President Barack Obama¹, UK Prime Minister Gordon Brown, and Archbishop Desmond Tutu.²

In 2009, members of civil society formed the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) to advocate against the Bill. The Coalition argued that the Bill's provisions violated fundamental human rights enshrined in Uganda's Constitution and international

human rights instruments that Uganda had ratified. The severe opposition and advocacy against the bill led to President Museveni's request to Parliament to 'go slow on the bill' since it had become a sensitive foreign policy issue.³ From January 2010, the Government was seen as slowly distancing itself from the bill. A cabinet subcommittee issued a report to the effect that the Bill was redundant. That committee recommended that the Bill be dropped.⁴

In Parliament, the Bill had been referred to the Committee on Legal and Parliamentary Affairs. The work of the Committee was to collect views from stakeholders and compile a report for the second reading of the Bill. Before the committee could present the report, the 8th Parliament came to an end. Nevertheless, the Speaker of the 9th Parliament, Hon. Rebecca Kadaga, allowed a motion to 'save' all bills from the 8th Parliament.⁵ The Committee's report was presented to the 9th Parliament together with the original text of the bill, and it was reintroduced by a resolution of Parliament

¹ Reuters: Obama Condemns Uganda anti-gay bill as "odious", Reuters Feb 4th, 2010, <http://www.reuters.com/article/2010/02/04/us-uganda-gays-obama-idUSTRE6134EZ20100204>. Accessed 2nd March 2014

² Timeslive: "Tutu likens Uganda Anti Gay Bill to apartheid laws" <http://www.timeslive.co.za/africa/2012/12/12/tutu-likens-uganda-anti-gay-Bill-to-apartheid-laws>. Accessed 2nd March 2014.

³ 'Newvision: Museveni warns NRM on Homo Bill' New vision Jan 12, 2010, <http://www.newvision.co.ug/D/8/12/706894>. Accessed 3rd March 2014.

⁴ 'Uganda's Cabinet and Parliament at odds over anti-gay bill', <http://www.patheos.com/blogs/warrenthrockmorton/2011/08/22/ugandas-cabinet-and-parliament-at-odds-over-anti-gay-bill/>. Accessed 4th March 2014.

⁵ Parliamentary Debates (Hansard) Official report, third session-second meeting, Friday, 20 December 2013

on 31 October 2011.

On Friday, December 20, 2013, the Bill was tabled before parliament once again. This time it passed.⁶ During the session, a minority report was presented under Rule 194(1) of the Rules of Procedure of Parliament. The report recommended that the Bill be rejected in its entirety since “what two consenting adults do in the privacy of their bedrooms should not be the business of parliament.”⁷ The report further revealed that the Bill violates provisions of Article 27 of the Constitution of Uganda and contravenes many international conventions and treaties ratified by Uganda.⁸ The report was not discussed.⁹

Some voices of reason and caution were raised during the passing of the Bill. Prime Minister and leader of government business in parliament, Hon. Patrick Amama Mbabazi’s was one of these. He stated that: “Madam Chair, I rise on a point of procedure because I was not aware that this bill was on the order paper for today. If I had been aware, I would have informed the House, as we had indicated before, that we have a few issues on which we are still having consultations.”¹⁰ He also noted that there was no adequate quorum to pass the law. In his words he said, “I have raised a matter of quorum. You cannot

raise a matter of quorum and it is ignored. That is a fact. So, I have raised it and I want to repeat that this house does not have a quorum now.”¹¹

Despite all cautions and calls by human rights activists and world leaders to President Museveni not to assent to the law, on February 24, 2014 the Anti-Homosexuality Bill 2009 was signed into law. It became operational on March 10th. On March 11, 2014 HRAPF and other 9 petitioners under the stewardship of the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) filed a petition in the Constitutional Court against the act. The petition was heard on July 30-31, 2014 and its judgment delivered on August 1, 2014 annulling the Act. But what exactly was contained in the controversial Anti-Homosexuality Act 2014?

What the AHA actually contained

The AHA contained 15 sections distributed in four parts. It was 11 pages long. According to the long title of the Act, the AHA was intended “to prohibit any form of sexual relations between persons of the same sex, prohibit the promotion or recognition of such relations and to provide for other related matters.”

Section 1 provided for interpretations of key terms as used in the Act.¹² For purposes of this overview, I will pick just a few that are closely related to the subject of homosexuality. Homosexuality was interpreted to mean “same gender or same sex sexual acts”. A Homosexual was “a person who engages or attempts to engage in same gender sexual activity”. A serial offender was defined to refer to “a

⁶ Above

⁷ Above.

⁸ Article 27 guarantees the right to privacy of person, home and other property.

⁹ After Hon. Mwiru had presented the minority report, the Speaker asked other Members of Parliament to have comments or just to proceed to the committee stage. They unanimously chose proceeding to committee stage and the report was not referred to anymore. See Parliamentary Debates (Hansard)

¹⁰ Parliamentary Debates (Hansard) Official report, third session-second meeting, Friday, 20 December 2013

¹¹ Above.

¹² The Anti-Homosexuality Act 2014, Section 1

person who has previous convictions of the offence of homosexuality or related offences". The meaning of a sexual act was broadly defined to mean: a) physical sexual activity that does not necessarily culminate in intercourse and may include the touching of another's breast, vagina, penis or anus; b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ; and c) the unlawful use of any object or organ by a person on another person's sexual organ or anus or mouth". Touching was interpreted to include touching: "a) with any part of the body; b) with anything else; and c) through anything". It went further to state that it "in particular includes touching amounting to penetration of any sexual organ, anus or mouth". The Act entirely interpreted homosexuality in terms of sexual acts as opposed to a form of sexual orientation.

It prescribed a life sentence to any person who commits the offence of homosexuality.¹³ According to the Act, a person commits the offence of homosexuality if he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption,¹⁴ uses any object or sexual contraption to penetrate or stimulate sexual organ of a person of the same sex;¹⁵ or if he or she touches another person with the intention of committing the act of homosexuality.¹⁶

The Act also created the offence of aggravated homosexuality. This offence is committed where the 'victim' is below

¹³ No. 12 above, Section 2(2)

¹⁴ Above, section 2(1)(a)

¹⁵ Above, Section 2(1)(b)

¹⁶ Above, Section 2(1)(c)

the age of 18 years;¹⁷ where the offender is a person living with HIV;¹⁸ where the offender is a parent or guardian of the person against whom the offence is committed;¹⁹ or where the offender is a person in authority over the person against whom the offence is committed.²⁰ Aggravated homosexuality also applies when the "victim" of the offence is a person with disability;²¹ where the offender is a serial offender;²² or when the offender uses any "drug, matter or thing with intent to stupefy or overpower the victim so as to enable any person to have unlawful carnal connection with any person of the same sex."²³ The punishment for this offence was revised from the death penalty (which had previously earned the Bill the gruesome nickname of the 'Kill the Gays Bill') to life imprisonment.²⁴ The Act also mandated compulsory HIV testing for everyone charged with the offence of aggravated homosexuality.²⁵

The Act further created the offence of attempt to commit homosexuality and attempted aggravated homosexuality.²⁶ The punishment for attempted homosexuality would be imprisonment for seven years,²⁷ while that for attempted aggravated homosexuality would be imprisonment for life.²⁸

¹⁷ Above, Section 3(a)

¹⁸ Above, Section 3(b)

¹⁹ Above, Section 3(c)

²⁰ Above, Section 3(d)

²¹ Above, Section 3(e)

²² Above, Section 3(f)

²³ Above, Section 3(g)

²⁴ Above, Section 3(2)

²⁵ Above, Section 3(3)

²⁶ Above, Section 4

²⁷ Above, Section 4(1)

²⁸ Above, Section 4(2)

The Act claimed to protect, assist, and compensate victims of homosexuality.²⁹ It exonerated the victim from any crime committed as a direct result of his or her involvement in homosexuality,³⁰ assisted him/her to participate in appropriate stages of the criminal proceedings,³¹ and provided compensation for any physical, sexual or psychological harm.³² It would afford discretion to courts to determine the amount of compensation to the victim.

Section 6 (1) of the AHA provided for the right to privacy of the victim. The offender's right to privacy was neglected. It barred any form of publishing materials concerning the identity of the victim without the authority of the victim or court.³³ It prescribed a fine not exceeding two hundred and fifty currency points on conviction.³⁴

The Act also created the offence of aiding and abetting homosexuality.³⁵ The offence would be committed by any person "who aids, abets, counsels or procures another to engage in acts of homosexuality." It prescribed imprisonment for seven years upon conviction. The offences of conspiracy to engage in homosexuality,³⁶ procuring homosexuality by threats,³⁷ and detention with intent to commit homosexuality were also created under Part III.³⁸ Convictions for all of these offences could result in a prison sentence of seven years.

²⁹ Above, Section 5

³⁰ Above, Section 5(1)

³¹ Above, Section 5 (2)

³² Above, Section 5 (3)

³³ Above, Section 6(3). This was ideally a good provision

³⁴ One currency point is equal to twenty thousand shillings.

³⁵ Above, Section 7

³⁶ Above, Section 8

³⁷ Above, Section 9

³⁸ Above, Section 10

The Act also would create offences for other people other than 'Homosexuals'. In Section 11, owners of houses and apartments could be sentenced to seven years in prison if their "brothels" are used by homosexuals.³⁹ This is very disturbing as any landlord or landlady would be expected to know if inhabitants of the rooms committed homosexuality.

Even though same-sex marriages were already prohibited under the constitution in Uganda, the Act would criminalise any person or institution conducting a wedding ceremony between people of the same sex. Individuals would be liable to imprisonment for a maximum of seven years and institutions could have their licenses revoked⁴⁰

Another serious offence that the AHA would create is the promotion of homosexuality.⁴¹ The offence would occur if a person participated in production, procuring, marketing, broadcasting, publishing of pornographic materials for purposes of promoting homosexuality⁴² funded or sponsored homosexuality or other related activities;⁴³ offered premises and other related fixed and movable assets for purposes of homosexuality;⁴⁴ used electronic devices to promote homosexuality,⁴⁵ acted as an accomplice or attempted to promote; or in any way abetted homosexuality and related practices.⁴⁶

³⁹ Above, Section 11(1)

⁴⁰ Above, Section 12 (2)

⁴¹ Above, Section (13)

⁴² Above, Section 13 (1)(a)

⁴³ Above, Section 13 (1)(b)

⁴⁴ Above, Section 13 (1)(c)

⁴⁵ Above, Section 13(1)(d)

⁴⁶ Above, Section 13 (1)(e)

The punishment prescribed here was a fine for five thousand currency points or imprisonment for a minimum of five years and maximum of seven years or both fine and imprisonment. Corporate bodies, businesses, associations or non-government organisations convicted could have their certificates of registration cancelled and their proprietors imprisoned for seven years.⁴⁷ This section meant that human rights groups and other organisations seeking to promote tolerance and put an end to violence on the basis of sexual orientation and gender identity, as well as organisations providing other social services to lesbian, gay, bisexual and transgender (LGBT) people, could easily be shut down, and their directors and key staff could face prison sentences of five to seven years.

The law had even affected Ugandans in the diaspora. It provided for extradition of offenders if any of the above offences were committed in other states with in which Uganda has extradition treaties.⁴⁸ All people, homosexual or not, who commit any of the offences in another country, would be brought back to Uganda to be tried.

Finally, the Act instructed the minister to make regulations by statutory instrument for its execution.⁴⁹

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The law had even affected Ugandans in the diaspora. It provided for extradition of offenders if any of the above offences were committed in other countries where Uganda has extradition treaties.

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⁴⁷ Above, Section 13(2)

⁴⁸ Above, Section 14

⁴⁹ Above, Section 15

OPINION:

THE ANTI-HOMOSEXUALITY ACT WAS A THREAT TO EVERYONE*



by **Francis Tumwesige Ateenyi**

Advocate of the High Court of Uganda, and former Legal Officer, HRAPF

*** An earlier version of this article appeared in the Observer newspaper of Wednesday, April 3, 2014**

When the Anti-Homosexuality Bill was presented in Parliament in September 2009, three aspects were prominent: the death penalty, the nullification of international human rights treaties, and its extra-territorial application to crimes committed outside Uganda. Due to relentless pressure from civil society and the international community, the first two of these provisions were dropped from the law, which was ultimately passed by Parliament in December 2013. However, one offence, which never attracted much attention, promotion of homosexuality, made it into the final text. While this article cannot provide a full consideration of the would be legal and human rights implications of the Anti-Homosexuality Act 2014, here is a brief scrutiny of the offence of promoting homosexuality. Of particular concern is the scope of this offence, which was vague and infinite.

The offence prohibited participating in “production, procuring, marketing, broadcasting, disseminating and publishing, pornographic materials for purposes of promoting homosexuality.”

It also covered funding or sponsoring homosexuality or other related activities, offering premises and other related fixed or movable assets for purposes of homosexuality, or promoting homosexuality. It was also illegal to use electronic means such as internet, films, mobile phones for purposes of homosexuality or promoting homosexuality. Attempting to promote homosexuality or acting as an accomplice were the other components of the offence.

What exactly constituted this offence? For example, could publishing of this article in this magazine have offended the law? What would be the fate of an individual who would be found in possession of a magazine containing this article? The answer is not an easy one to find and therein laid the problem with the offence of promoting homosexuality. It was vague and wide sweeping.

For a criminal provision to pass the test of validity, its wording and definition of an offence must be clear enough for an ordinary person to grasp the nature and extent of prohibited conduct. Article 28(12) of our constitution states as much.

In fact article 28(12) was the basis for the Supreme Court to strike out the offence of sedition from the Penal Code. Among other things, the Court said the language was far too broad. "It is so wide and catches everybody to the extent that it incriminates

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It is so wide and catches everybody to the extent that it incriminates a person in the enjoyment of one's right of expression of thought.

”

a person in the enjoyment of one's right of expression of thought." (See *Onyango Obbo & Another vs Attorney General*). The trouble with a section such as this is that it is so boundless in its application that anyone can fall foul of the law regardless of their individual persuasion about the correctness of homosexuality. A mild accusation coupled with overzealous police officers and tired magistrates could land many innocent suspects in jail.

This was worrying given the ongoing abuse of the existing anti-sodomy law in Section 145 of the Penal Code. In 2014, Human Rights Awareness and Promotion Forum (HRAPF) and the Civil Society Coalition on Human Rights and Constitutional Law (CSCRCL) released the findings of a study which revealed that during the five-year period between from 2007 to 2011, there were numerous arrests of individuals suspected to be homosexuals, but not a single conviction or acquittal was available on any court record in Kampala, the sample area. No sodomy case was found to have gone to full trial; rather, the law was used to abuse our criminal justice system. Interpreting the findings, the Executive Director of HRAPF, Mr. Adrian Jjuuko, noted "What this means is that the law is used to perpetrate extortion, blackmail and bribery." Once arrested, a suspect has limited options either to buy their freedom by way of a hefty "police bond" or a police mediated settlement with the complainant, or they are sent on remand to languish in jail until court dismisses the case for lack of prosecution.

I call upon all Ugandans to address the issue of homosexuality with reason as opposed to passion because the possible consequences are not just for the homosexuals but for all persons in Uganda and beyond.

OPINION:

THE ANTI-HOMOSEXUALITY ACT WAS AN ATTACK ON UGANDANS' HEALTH RIGHTS

by **Asia Russell**
Health Gap



As with many laws focused on scapegoating and inflaming hatred against an unpopular minority, an unstated goal of the Government of Uganda in passing the Anti-Homosexuality Act ("the Act") was to score political gain – particularly in the lead up to the 2016 elections.

Robust challenges in the Constitutional Court and the East African Court of Justice were fundamental measures for dismantling the Act. But in the meantime, its enforcement had triggered backlash, retaliation, and rights violations for lesbian, gay, bisexual, or transgender (LGBT) Ugandans and their communities.

In particular, the grave consequences for access to essential preventative and curative health services – and for public health more broadly – had already begun to emerge, as had advocates' demands for corrective action by the government.

While the Ministry of Health had

pledged publicly in the days after the President assented to the Act that the new law "should not affect" access to health services, this pledge had not been upheld because the government had made no efforts to assert that health facilities were environments where the Act could not be enforced. Such inaction had rendered the Ministry's promise hollow.

The Act had already exacerbated the marginalisation, discrimination and exclusion of people known to be or suspected of being lesbian, gay, bisexual or transgender with due increased criminal sanctions for consensual sexual activities between people of the same sex. The resulting fear of violence, recrimination, and abuse deters LGBT people from seeking

health services.

Importantly, the Act's clauses that prohibited the "promotion of homosexuality" as well as "aiding and abetting homosexuality" would criminalise urgently needed service delivery and make patients, health workers, and civil society organizations vulnerable to hefty fines, substantial prison time, and de-registration.

This Act would sabotage targeted service delivery for LGBT groups, carrying a disastrous impact on the response of the nation as a whole to HIV as well as other public health priorities. This clause would also put international and National Health Service providers funded by international donors at risk of criminal prosecution if they discussed homosexuality in the course of their work.

A daytime police raid on April 3, 2014 of the Makerere University - Walter Reed

Medical Research Project clinic in Nakasero, triggered by allegations of 'illegal homosexual research,' provided a dramatic early example of the risk of the Act to access to services and to scientific research approved by the Government of Uganda. The research project, funded by the US Department of Defense, had been targeted because it was providing services for marginalized groups and doing research with those patient populations – the very services government promised“ should not be affected” under the law.

Just weeks later, deeply flawed draft guidelines on health service delivery for 'homosexual Ugandans' by the Ministry of Health had assigned health workers a front line role in enforcing the law – contradicting the pledge made by Government. Those draft guidelines had been put on hold due to criticism while advocates push for a government commitment to non-enforcement of the law in the health sector, pending a ruling in Constitutional Court on the petition for injunctive relief.

Laws and policies that increase stigma and discrimination among

LGBT communities mean they are less able to access health services because of fear of arrest, intimidation, violence, and discrimination. For example, men who have sex with men in Uganda report higher HIV prevalence and higher rates of syphilis and other sexually transmitted infections than the general population.¹ HIV prevalence among men who have sex with men in Kampala is 13%, more than three times the average prevalence among heterosexual men in Kampala (4.1%) and about twice as high as the national average of 7.3%. After years of success in the fight against HIV, Uganda's incidence rate has been rising since 2005—contrary to the trends of virtually all other countries with a high HIV burden in Sub-Saharan Africa.²

All people need essential health services, not the criminalization and discrimination the Act would foment.

¹ Hladik W, Barker J, Ssenkusu JM, Opio A, Tappero JW, et al. (2012) HIV Infection among Men Who Have Sex with Men in Kampala, Uganda—A Respondent Driven Sampling Survey. PLoS ONE 7(5): e38143. doi:10.1371/journal.pone.0038143

² WHO: Global HIV/AIDS Response, Epidemic Update and Health Sector Progress Towards Universal Access, Progress Report, 2011. p. 12-17.

Furthermore, driving lesbian, gay, bisexual and transgender communities away from services would endanger not only them but also the Ugandan population at large – approximately 75% of men who have sex with men participating in a recent serosurvey report having sex with women as well as men.³ Discrimination undermines their health as well as the public health of the population of Uganda as a whole.

The Act's anti-promotion clause would even threaten urgently needed service delivery, including models of care supported by the Government of Uganda, which recently announced plans to implement government-funded clinics designed to reach men who have sex with men and sex workers.⁴

A health worker's basic ethical obligations not to discriminate in the provision of medical services and to protect patient confidentiality are paramount – but the Act would create a culture of fear of arrest and imprisonment among service providers. While a

³ Above

⁴ Outrage, scepticism at Uganda U-turn on LGBTI clinics," 9 Dec 2013. Available at: <http://www.irinnews.org/report/99289/outrage-scepticism-at-uganda-u-turn-on-lgbti-clinics>

clause was removed from earlier versions of the Act that anyone suspected of being homosexual must be reported to the police, the clauses prohibiting promotion and aiding and abetting homosexuality would still create chilling effects. Several health care service providers were reporting privately that they had decided to reluctantly suspend provision of LGBT health outreach services out of fear. For example, the U.S. government announced on March 24 that a CDC-funded survey of men who have sex with men had been suspended.

Ugandans seeking health services in the public and private sectors had frequently reported being questioned by health workers about their sexual activities and marital status, which would create a legitimate fear of retaliation and discrimination for sexual minorities if they are honest about their sexual orientation. Unfortunately, this climate of fear would increase now that the Act had the force of law.

Scientific research also shows a powerful association between homophobic abuse and violence and increased vulnerability to

HIV. This is not due to an intrinsic condition of homosexuality but a harmful effect of homophobia. For example, men who have sex with men in Kampala who have experienced verbal or physical homophobic abuse are five times more likely to be HIV positive than men who have sex with men who have not experienced such abuse.⁵ This indicates a strong association between stigma and intolerance with the risk of HIV infection. Hatred and stigma drive vulnerable and isolated communities from essential preventative and curative health services. This is what the act would drive.

The Act's harmful consequences for the right to health for all Ugandans provided compelling evidence of the urgent need to repeal this dangerous law – in addition to the threats it posed to the fundamental freedoms that should be enjoyed by all Ugandans. The fragile gains made by the LGBT and public health advocacy community in challenging the Ministry of Health and

the Uganda AIDS Commission to support sexual minorities as at-risk populations requiring evidence-based treatment and prevention interventions were being threatened. Because these populations are enumerated in national policy documents, advocates would work to defend their right to access essential health services despite the Act and would still pressure the government to deliver on its political statements to protect access to health services.

⁵ Above, note 2.

COMMENTARY:

**LET'S KILL THE GAYS:
THE WOULD BE
IMPLICATIONS OF SECTION
5 (1) OF THE ANTI
HOMOSEXUALITY ACT 2014**



by **Joanne Nanyange**

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At its first tabling in Parliament, the Anti-Homosexuality Bill had provisions for the death penalty for the offence of aggravated homosexuality. This prompted the media to dub it the 'Kill the Gays' Bill'. In December 2013, there were amendments by Parliament that removed the death penalty, so the Bill no longer called for the killing of the gays--at least so we thought! On a close analysis of the final law however, it is evident that the Act would still 'allow' killing of the gays, albeit in a subtle way. The word 'gays' is used in this article to embrace the whole spectrum of LGBTIQ persons.

This subtle death sentence for the gays was embedded--very silently--in Section 5(1) of the now nullified Act. This section provided that "a victim of homosexuality *shall not* be penalized for *any* crime committed as a direct result of his or her involvement in homosexuality" (emphasis provided) This provision had for the most part gone unnoticed by both pro-gay rights groups and anti-gay rights groups. However, it was a ticking time bomb; in fact, it could easily have been the most dangerous provision in the Anti Homosexuality Act 2014 had it not been nullified.

A "victim" of homosexuality according to the Act was someone who is involved in "homosexual activities" against his or her will. It is not clear what was meant by "homosexual activities," and this could even make it more dangerous because it could mean anything. Therefore anyone could claim to be a

victim. This provision in essence meant that if someone was engaged in homosexual activities against their will, they had a free pass to do anything that they found necessary to get themselves out of such situations. In this context, anything meant something illegal, even a crime as expressly stipulated in the section itself. So-called victims were being allowed, by law, to commit crimes if they found themselves involved in homosexual activities against their will!

This provision can be compared to defences like provocation, self-defence and the discussed gay panic defence. In all these defences, defendants claim that they were in a situation where they had no choice but to commit a crime. The gay panic defence goes further to impute an unstable state of mind created by perceptions of homosexuality towards the defendant. These perceptions make the defendant so furious and disgusted that they lose their mind temporarily. Of course there is no scientific proof that gay actions can make someone insane; and in fact, this defence is slowly being erased from a number of jurisdictions for its absurdity.

What was significantly different between these defences and section 5(1) is the fact that these defences do not take away all liability from the perpetrator. They are merely used as mitigating factors to lessen the crime and the sentence. The person still remains criminally liable for the crime they committed. On the other hand, section 5(1) extinguished

all liability on the part of the offender. The section made this clear by using words like 'shall' and 'any'. So if someone kills a gay person for making advances towards them, this section could not be used to convict such person of a lesser offence like manslaughter. No! That person would absolutely have no case to answer! They could not be penalised for any crime if they are victims.

The section would legitimise homophobia and justify violence against gay people. It would rationalise prejudice and imply that on homophobic and prejudicial premises, someone was being allowed to commit crimes. One did not have to be in danger to commit the crime like in the case of self-defence. One did not have to be extremely provoked to the standards enforced by court. One just had not to like gay people! One just had to show that he or she was a victim of 'homosexual activities' and needed to repel such behaviour! And all would be forgiven.

This section would give homophobes an open licence to satisfy their prejudicial anger. The legislature had joined the hate campaign against homosexuality and had gone a step further by implying that the lives and welfare of gay people and perceived gay people were worthless than those of others. The section would put the lives and welfare of gay people in jeopardy. Anyone could do anything to them and they would not be penalised.

This section was arguably the most dangerous section in this law. It was worse than the death sentence. The death sentence came after due process, in a court of law, with a judge that might not allow prejudice to overshadow reason. This section, however, would put the death sentence in the hands of angry mobs and homophobic minds. It would allow people with already established hate to decide what to do whenever they

would be 'victimised' by the vice of homosexuality. This situation was akin to giving an untrained person a gun and telling them to shoot whoever they feel like.

Gay people have a semblance of rights and protection. Crimes are not randomly committed against them because perpetrators know that they would be held accountable. We have precedents where courts have held that an LGBT individual's rights have been violated. But now with this section, that era would be gone. Gay people could be violated on the basis of this section and they would have no recourse because the perpetrators would be justified.

This provision would leave gay people helpless and hopeless with no protection whatsoever. This is an endangered community that needs protection from the moralists and religious and cultural fanatics who are the majority in Uganda. What the gay people need most is a safe place to run to and a place to seek refuge when things get bad--not a law that would put them in more trouble. They need their rights respected, like they are entitled to. Section 15 (6) (d) of the Equal Opportunities Commission Act 2007 which limits LGBTI persons' access to the Commission and the criminalisation of homosexuality were enough to make gay people drown in doubt and self-pity. This section would make it worse and throw them in a panic! They would not be sure what was defined as homosexual behaviour, who may be a victim, and what crimes would have been committed against them.

As the law was annulled, we celebrated the removal of the death penalty. 'Kill the gays' might have no longer been in black and white in the Anti-Homosexuality Act 2014, but with section 5 (1), it was just a matter of time!

COMMENTARY:
JUSTICE AT THE FALL OF A GAVEL: WHAT UGANDAN JUDGES COULD LEARN FROM SOUTH AFRICA IN DEALING WITH ANTI-HOMOSEXUALITY LEGISLATION

 by **Linette du Toit**
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What happens if the positive laws of a country are no longer in step with justice? What should a judge do about laws, duly enacted by Parliament, which prescribe discrimination, the deprivation of fundamental rights of certain members of society, and the brutal enforcement of inequality? The aim of this article is to consider the potential role of the Ugandan judiciary in upholding justice in the face of the laws like the now nullified Anti-Homosexuality Act.

The marginalisation of a group by means of blatantly unjust laws is not unique to Uganda. In fact, there runs a clear line of similarity between the denial of rights that the Ugandan LGBTI community suffers under anti-homosexuality legislation and the oppression suffered by black South Africans under apartheid laws.¹ Due to the

similarity of these situations, it may be worthwhile to take a look at how some principled South African judges dealt with their pre-democratic predicament.

Prior to 1994, the sovereign South African Parliament enacted a plethora of laws in order to enforce severe racial discrimination.² When it came to interpreting these laws, positivism was the dominant legal philosophy.³ This means that the generally accepted role of judges was to mechanically find and apply the will of the legislature.⁴ This approach allowed judges, who failed to acknowledge their creative role in the law-making process, to apply statutes, which suppressed liberty and equality without bearing the moral responsibility for what ensued.⁵

In the early 1970s, Professor John Dugard called upon judges to trade this strict positive approach to legal interpretation for a more value-oriented approach.⁶ He encouraged the judiciary to be guided by the legal values and principles "which promote the worth of the individual,"⁷ and listed some of these principles as freedom from arbitrary arrest and detention without trial, freedom from cruel and unusual punishment, equality before the law, freedom of assembly, and freedom of movement.⁸

Some principled judges succeeded in curtailing the effects of apartheid legislation by invoking the technical rules of statutory interpretation. A

¹ I specifically refer to the Anti-Homosexuality Act, 2014 and clause 15(6)(d) of the Equal Opportunities Commission Act, 2007.

² This legislation include the Natives Land Act, 1913 and the Natives (Urban Areas) Act, 1923.

³ Dugard J "The judicial process, positivism and civil liberty" South African Law Journal (1971) 187.

⁴ As above.

⁵ Dugard (n 3 above) 187.

⁶ Dugard is a South African professor of International Law who has authored a comprehensive study of the law of apartheid.

⁷ Dugard expresses that these jural postulates "form part of our legal heritage and are designed to foster the basic political and legal ideal of modern Western society..." (n 3 above) 197.

⁸ Other principles are the right to legal interpretation when the individual's liberty is at stake, the right to be heard in one's own defence before one's liberty is curtailed and freedom of speech and literary expression. Dugard (n 3 above) 197.

prime example of how legal values can triumph over an unjust law at the instance of the judiciary is found in the 1972 case of *S v Ffrench-Beytagh*.⁹ Justice Edwin Cameron¹⁰ gives a colourful retelling of this case in his recent publication *Justice: A Personal Account*.¹¹ In this case, a reverend was put on trial for allegedly breaching the Terrorism Act of 1967 by providing money to members of a banned anti-apartheid organisation. The purpose of the Terrorism Act was to suppress any activity, which opposed the apartheid regime. The Act had wide provisions to the effect that a person committed the crime of terrorism if he took any action which “aided” or “encouraged” someone else to commit an act with that intent.¹² This provision could potentially be interpreted to mean that a person who provided an anti-apartheid combatant with a meal and some money could be guilty of terrorism. Justice Cameron notes that such a broad interpretation could have resulted in a complete stifling of the resistance movement, as ordinary

citizens would have been too afraid of prosecution to offer any support to those on the frontlines.¹³ However, the Appellate Division, instead of mechanically applying the provisions of the Terrorism Act, chose to make a value judgment and interpreted the Act accordingly. The Chief Justice delivered a judgement that a person could only be successfully prosecuted for “aiding” and “encouraging” terroristic activities if it could be shown that this help actually resulted in unlawful deeds on the part of an anti-apartheid combatant.¹⁴ Justice Cameron notes that it would have been extremely difficult for the prosecution to prove that the help of a non-combatant, in whichever form, actually resulted in terrorist activities.¹⁵ By setting this high bar for proving the “aiding” and “encouraging” of acts of terrorism, the Court made the continued provision of vital material support to anti-apartheid movements possible, without which their efforts could not have succeeded.¹⁶

It was foreseeable that the Ugandan judiciary will also be tasked with defining the borders of an unjust law as soon as a case on “the promotion of homosexuality” in Section 13 of the Anti-Homosexuality Act comes before it.¹⁷ The Ugandan Parliament clearly intended the activities of nongovernmental organisations which advocate for the human rights of the LGBTI community to be criminalised by this provision. However, Ugandan judges may still choose to interpret the provisions of the Act in accordance with transcending legal values and principles rather than the exact intentions of the legislature. Better yet, if the Ugandan judiciary could deal with the constitutional petition and application with a permanent injunction, the interpretation of its draconian provisions may not even be necessary.¹⁸

Unlike the apartheid judges, the Ugandan judiciary need not search as far as Dugard’s suggested judicial postulates or universally accepted

⁹ 1972 (3) SA 430 (A).

¹⁰ Justice Cameron has been one of the 11 justices of the Constitutional Court of South Africa since 2009.

¹¹ Cameron, E *Justice: A personal account* (2014, Tafelberg, Cape Town) 13-29.

¹² Section 2(1)(a) of the Terrorism Act 83 of 1967.

¹³ Cameron (n 11 above) 23.

¹⁴ *S v Ffrench-Beytagh* (n 9 above) at p.439.

¹⁵ Cameron (n 11 above) 27.

¹⁶ Cameron (n 11 above) 29.

¹⁷ Section 13 of the Anti-Homosexuality Act criminalizes the promotion of homosexuality which could easily be interpreted to extend to the activities of nongovernmental organisations which advocate for the rights of the LGBTI community.

¹⁸ On 11 March 2014, a constitutional petition was filed challenging the constitutionality of the Anti-Homosexuality Act. An application was also made for a permanent injunction against media houses from publishing pictures, names, and addresses of suspected homosexuals.

legal values in order to defuse unjust laws. These transcending principles, which promote the wellbeing and free development of the individual, are neatly codified and protected in Uganda's supreme law.¹⁹ The Ugandan Constitution not only provides for equal protection of the law and a vast number of fundamental rights,²⁰ but it also acknowledges the existence of universal democratic values and principles to which every democratic society adheres.²¹

The High Court has lit a flame of hope in the battle against the Anti-Homosexuality Act by affirming that the rights in the Ugandan Constitution apply equally to everyone regardless of their sexual orientation.²² However, the Constitutional Court's delay in delivering judgment in a case which involves

the constitutionality of legislation which infringes upon the fundamental right of minorities, paint a less encouraging picture.²³ A judiciary committed to universal legal values, or simply the values and provisions of its Constitution, ought to be active in ensuring that unjust laws are disposed of as expeditiously as possible.

If it was possible for South African judges, in the pre-democratic era, to create a safeguard for legal rights which were threatened by a sovereign Parliament, the Ugandan judiciary can do the same (and much more!) to ensure that justice prevails in the face of the laws like the now nullified Anti-Homosexuality Act simply by upholding their Constitution.

¹⁹ The Constitution of the Republic of Uganda, 1995.

²⁰ Article 21 ensures equal protection of the law and prohibits discrimination. Chapter 4 of the Constitution also enshrines fundamental rights such as the right to privacy (Article 27), freedom of expression and association (Article 29), and the protection of personal liberty (Article 23).

²¹ Article 43, which is the general limitation on fundamental and other rights and freedoms, provides that no person shall prejudice the public interest in the exercise of his rights and freedoms. It also provides that the public interest shall not permit the limitation of rights and freedoms beyond what is acceptable in a free and democratic society.

²² *Kasha Jaqueline and Others v Giles Muhame and Another*. This case was heard prior to the enactment of the Anti-Homosexuality Act.

²³ *Adrian Jjuuko v Attorney General*. In this case, a constitutional petition was brought against section 15(6)(d) of the Equal Opportunities Commission Act, which excludes certain minorities from the functioning of the Equal Opportunities Commission. The matter was filed in January 2009 only to be heard in October 2011, and the judgment has not yet been delivered.

COMMENTARY: THE ANTI-HOMOSEXUALITY ACT 2014 & THE HEALTH OF UGANDANS

by Dr. Paul Semugoma

Uganda Medical doctor, leading HIV activist and the 5th petitioner in the case that led to the nullification of the Anti-Homosexuality Act, 2014.



Introduction

There was robust discussion in Uganda on the passage and effects of the Anti-Homosexuality Act (AHA) 2014. Possible effects on health have been alluded to, but mainly in light of cuts in foreign aid. What was not been widely discussed are the actual health impacts on Ugandans as individuals, communities, and the country. The AHA would have had health implications for all of us Ugandans with severe implications on our collective sexual health, Sexually Transmitted Infections (STIs), and HIV.

The Individual

When someone goes to see a doctor, one goes as an individual. Health workers evaluate you in knowledge of your unique characteristics and personality. This is our responsibility. The more we see you as a unique human being, the better our interventions are on your behalf.

Homosexuality is a normal variation of human behavior and sexuality. To many Ugandans, this may sound like a radical and false statement. But it was settled as long ago as 1973 (DSM3); and in 1990 the 43rd World Health Assembly endorsed its de-classification as a disease by the World Health Organisation (WHO), which keeps the International Classification of Disease (ICD-10).¹

¹ Wikipedia: 'Psychology' available at <http://en.wikipedia.org/wiki/Homosexuality#Psychology> accessed 4th April 2014.

Homosexuality is not a disease, nor a disorder. Doctors don't 'treat' homosexuality. For each unique individual consulting with a physician, there is slight but important chance that they are homosexual in sexual orientation. This may modify the diagnosis and treatment they need.

As doctors, we cannot condemn our patients. We shouldn't push our morals on our patients. We shouldn't treat them differently because they differ from others.

But, doctors and health workers are humans. We stay in the communities we all live in. We can also be as homophobic, uncaring and unsympathetic as many Ugandans who are demonstrating and shouting 'No Gays.'² We can believe the myths of the terrible evil of homosexuals and can be biased when faced with a homosexual patient.

Understandably, a gay Ugandan would be unwilling to tell their health worker that they are gay. Stressed by conditions at home, church, or work, they may have difficulties in their neighborhoods, but still find it impossible to talk about it with health care providers, fearing (realistically) that the providers are also homophobic.³

² Buzzfeed. Uganda celebrates anti-gay law with five hour ceremony available at <http://www.buzzfeed.com/lesterfeder/uganda-celebrates-anti-gay-law-with-five-hour-ceremony>. <http://www.monitor.co.ug/News/National/I-signed-anti-gay-law-to-reaffirm-Uganda-sovereignty/-/688334/2264484/-/38sap7/-/index.html>. Accessed 4th April 2014

In addition, as a result of our environment, many of our health care workers simply don't appreciate that a homosexual Ugandan is not 'sick' because of their homosexuality. Their sexual orientation is a normal variation of what is normal for humanity. Such a health worker may focus on 'treating' the sexual orientation, not only giving a wrong diagnosis but also making things worse for the patient.

There have been reports of health care workers refusing treatment to gay people when they realise that they are gay. There have also been reports of health care workers reporting gay patients. Because of their sexual orientation, patients become 'criminals' that need to be reported to the police instead of being given treatment. Mandatory reporting was removed from the final version of the Anti-Homosexuality Act, but it still created an atmosphere of fear and anxiety for any gay person trying to talk to a health practitioner in Uganda. What if one had an anal issue? Would the health worker be sympathetic? Or would they ask others to come see this 'homo' or even report to police without giving treatment? These are all thoughts that would go through the mind of a gay Ugandan trying to access health care in Uganda in the presence of such a law. It is thus understandable that many people are reluctant to access health services, especially with respect to Sexually Transmitted Infections (STIs). This has been reported again and again in research on the continent and elsewhere. It affects the health of the individual, making it more likely for them to come in later, with more severe diseases and when symptoms are

³ King R, Barker J, Nakayiwa S, Katuntu D, Lubwama G, et al. (2013) Men at Risk; a Qualitative Study on HIV Risk, Gender Identity and Violence among Men Who Have Sex with Men Who Report High Risk Behavior in Kampala, Uganda. PLoS ONE 8(12): e82937. doi:10.1371/journal.pone.0082937

more complicated.

A study done amongst gay men in Kampala reports them being discriminated against at Mulago National Referral Hospital. They have been made to wait, mocked, and denied services simply because they are known to be gay. The myth that all Ugandans receive the same services (or lack of services) is simply a myth. Those who are known to be gay may actually receive no services at all, or services can be so difficult to access that they choose not to go.⁴ The AHA would have legalised and legitimised such discrimination.

On April 4, 2014, Ugandan police raided a research clinic providing HIV prevention, care and treatment in Kampala. Because it provided equal services to heterosexual and homosexual Ugandans, the police accused the Makerere University Walter Reed Project of 'training youths into homosexuality.'⁵ Sadly, this was foreseeable under the AHA, as was predicted in an article I co-authored in 2012.⁶

These are just a few examples of the problems faced by gay Ugandans. They report discrimination by the health services in all of our research. This discrimination is not recognised by the health sector, who have again and again said that there is no discrimination. The Minister of Health had said that there would be no problem in services to gay Ugandans after the law was passed.⁷ But within a month the clinic was raided and

⁴ King R, Barker J, Nakayiwa S, Katuntu D, Lubwama G, et al. (2013) Men at Risk; a Qualitative Study on HIV Risk, Gender Identity and Violence among Men Who Have Sex with Men Who Report High Risk Behavior in Kampala, Uganda. PLoS ONE 8(12): e82937. doi:10.1371/journal.pone.0082937

⁵ Pink News: Ugandan police raids US funded HIV Project accused of training homosexuals available at <http://www.pinknews.co.uk/2014/04/04/ugandan-police-raid-us-funded-hiv-project-accused-of-training-homosexuals/>. Accessed 10th April 2014.

⁶ Paul Semugoma, Chris Beyrer & Stefan Baral (2012): Assessing the effects of anti-homosexuality legislation in Uganda on HIV prevention, treatment, and care services, SAHARA-J: Journal of Social Aspects of HIV/AIDS: An Open Access Journal, 9:3, 173-176

⁷ BBC: Uganda says health care is for all despite anti-gay laws. Available at <http://www.bbc.com/news/world-africa-26349166>. Accessed on 10th April 2014.

closed as a result.⁸

Social Support & Social Capital

As a human being, no person is an island. You live in a family, with relatives. You have neighbours and live in a community. You go out to drink or church with friends. All these people contribute to your emotional health and wellbeing.

Before the signing of the Bill, and after the AHA became law, there had been an outbreak of violence against people who are presumed to be homosexual in Uganda. This is because the intense debate and condemnation has stigmatised these communities. They are pariahs, outcasts, people who are undesirable. For those who are known to be gay, the consequences may be as bad as being asked to leave the house you rent by the Local Council authorities,⁹ or even the landlord.¹⁰ (The AHA criminalised a landlord renting to a known homosexual person). One may fall foul of 'mob justice', beaten by people on the streets.

The intensely hostile environment of Uganda makes most gay Ugandans react by staying in the closet. They hide from their families and friends. They get married to the opposite sex. This constant hiding is stressful. It was increased by the AHA, which criminalised and provided punishment as the punishment for same-sex sexual activities. The AHA would remove social supports from affected individuals. Family and friends could not be trusted. Churches and mosques would no longer be of help. The gay Ugandan

had to learn to hide at all times more so with such a law. It would have been more hard for them to build what is called 'social capital' by investing in friends, family and society for support, because they might be 'found out' as gay and punished. It might have been from something as simple as touching, the 'homosexual touch' which would be criminalised by life imprisonment.¹¹ These issues are very real for all gay Ugandans. They lead to problems with coping, including drinking, taking recreational drugs excessively, risky sexual activities and other behaviors.

STIs and HIV STIs

All normal adult human beings have a sex drive. It is normal, expressed in our sexuality, our ability to be attracted to other human beings, have sex with them, form stable relationships, and create families. This desire and drive is normal, occurring for heterosexual as well as homosexual Ugandans.

Having sex puts one at risk of Sexually Transmitted Infections (STIs/STDs). Many Ugandan health practitioners may have no clue about how an STI may be different for a homosexual Ugandan. The AHA would even have made it more difficult for them to learn since their behavior would be interpreted as breaking the law. Many Ugandans who may get an STI from a homosexual encounter may have found it difficult to tell their health worker exactly how they got the problem. This makes diagnosis difficult. When we treat STIs, we usually tell a person to inform or bring their sex partners for treatment. Was the gay Ugandan going to tell their Health worker that they are gay with such a law? Would

⁸ Pink News: US state department suspends Ugandan HIV organisation over police raid. Available at <http://www.pinknews.co.uk/2014/04/05/us-state-department-suspends-ugandan-hiv-organisation-over-police-raid/>. Accessed on 20th March 2014

⁹ Word Press: Another eviction letter available at <http://sebaspace.wordpress.com/2014/03/09/another-eviction-letter>. Accessed 26 Mar 2014.

¹⁰ Sebaspace.wordpress.com: Ugandan lesbian evicted because of new-anti gay law. available at <http://sebaspace.wordpress.com/ugandan-lesbian-evicted-because-of-new-anti-gay-law/> Accessed 05th March 2014.

¹¹ Anti-Homosexuality Act. Section 2(1)(c).

they? Was the health worker going to tell others, or going to tell police? If an STI is not well treated, then it is a problem for the individual as well as the community. Sexual networks include heterosexuals as well as those who are homosexual. It is not only gay Ugandans communities, but all of us who are affected. As you may realise, this problem is even worse for HIV treatment and prevention.

HIV

Since the HIV epidemic was recognised in 1981, it was clear that it was spread through sex, and that one high risk group was men who have sex with men (MSM). Nowadays we call this a 'Key Population' and MSM are more highly affected by HIV than many other groups.

Unfortunately, stigma and prejudice about gay sex has been so prevalent in Africa that we have not studied this high risk population. In Uganda, the first study under tough conditions in 2005 was stopped before it was finished because the press reported that it was a 'census' of gay men. In 2008-2009, another study was done with HIV testing. It was difficult to finish because gay men in Uganda hid and were afraid to come out. The study revealed that gay men in Kampala are three times more likely to be HIV positive, but that many do not know how to protect themselves from HIV. Qualitative results also highlighted discrimination in the health sector. Being denied health care and health information, and hiding from family, friends, and community and society, were among the litany of reasons why this high risk population is not getting HIV treatment and prevention.

Underlying this is the 'illegality' associated

with the anti-sodomy parts of the Penal Code inherited from our colonial masters. The AHA would even be a tougher law aimed to make all homosexual sex illegal. But, making something 'illegal' does not mean it will no longer happen. Prostitution in Uganda is illegal, but it is common.

Marginalising a key population and denying them HIV treatment and care because of this law would have severe implications for public health. Doing HIV prevention amongst gay men would be criminalised, making health service providers guilty of 'promoting homosexuality'. Most research targeting gay Ugandans had been stopped. It was believed that the research would only make the men more vulnerable and unsafe, and that researchers would also be unsafe.¹² Not only were gay Ugandans targeted and their conditions made worse, but researchers could be put at risk of arrest for doing scientific research.

This is in effect was not only criminalising gay Ugandans, but it was criminalising those who for any reason are researching or intervening on their behalf.

The overall effect would be that we as Ugandans have this key population within our midst. They are hidden and cannot come out. We cannot reach them, because we too would also be criminalised. So they don't know how to have safer sex (which is criminal), but they will continue having unsafe sex, getting STIs/STDs and HIV. STI and HIV infection rates are especially high in same-sex prisons, so imprisoning people would not stop infections from spreading or reaching the broader community.

¹² Advocate.com: US formally responds to Uganda's Jail gays law available at <http://www.advocate.com/world/us-formally-responds-ugandas-jail-gays-law>. Accessed 24th March 2014.

REAL LIFE EXPERIENCES:

LIVING WITH THE NEW ANTI-HOMOSEXUALITY ACT (2014): EXPERIENCES OF UGANDAN LGBTIQ

by **Stella Nyanzi (PhD)**

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Human rights advocates who believe in the need for protection against discrimination on grounds of non-heteronormative sexual orientation and non-conforming gender identity had variously described the Anti-Homosexuality Bill (2009) (AHB) as a 'bad law,' 'Draconian legislation,' 'threat to peaceful coexistence of diversity,' 'human rights violation,' 'Kill the gays bill,' 'anti-human rights,' 'anti-democracy,' 'anti-public health,' 'anti-constitutional agenda,' which was 'heinous,' 'prejudiced,' 'rooted in biased judgments and spurious accusations rather than facts and reality,' 'fuelling sentiments of hatred and persecution in the name of culture,' and 'provided for targeted discrimination of sexual and gender minorities.' These descriptions were previously hypothetical because this proposed legal reform had not yet become law. However, on 24th February 2014, President Yoweri Museveni assented to an amended version of the bill, thereby giving license to a new repressive regime of monitoring, surveillance, arrest, penalizing and deterring alternative sexualities in Uganda using the legal tool of the Anti-Homosexuality Act (2014) (AHA). Ugandans had been living with the new law for less than three months, but we had already seen dramatic effects.

This essay is an exploration of the immediate consequences of the AHA on Uganda's same-sex loving individuals

and communities before it was annulled. I discuss the experiences of individuals and groups belonging to the local Lesbian, Gay, Bisexual, Trans, Intersex and Queer (LGBTIQ) communities. In the essay, the names of individuals have been changed to protect identities, ensure anonymity and maintain the confidentiality of sexual minorities.

Closure and reduced operations of LGBTI support groups

In the period following the passing of the AHB by a tiny group of Members of Parliament in December 2013, several grassroots organizations run for and by same-sex loving Ugandans collected their materials, equipment, documentation, records and publications and stored them away for safekeeping. Organizational banners, posters, advertisements, brochures, handbills, reports and other materials used for LGBTIQ advocacy and lobbying were pulled down, packed into boxes and transported away from operational premises in preparation for eventual raids by police. While a few organisations made advance preparations of digitising their records and documentation through scanning, digital photography and backing up onto secure servers, most others resorted to destroying any potentially incriminating materials through burning. Employees of two LGBTIQ organizations report below.

Program Officer: When we heard that

Parliament had passed the bill and it was only left with signing by the President, we had a meeting where we decided as a collective that we should burn up all our materials which refer to our daily work of raising community awareness about the rights of homosexual youths in Uganda. When the bill became a law, we burnt up all those documents because we did not want to give anybody evidence to come and arrest us. So we collected all the materials, records, receipts with people's names, our clients and members' records - everything like that - we used some petrol and lit a match. The fire burnt up the documents completely and only left ashes behind.

Administrator: The day after the president put his signature on the law, we met in the office with the different assistants. We decided to collect two to four boxes of important documents, including the financial records, bank documents, daily operations, lists of our members and their contact details and activities, any reports detailing our activities, the DVDs and CDs for safe-sex education and anything that would be used to blame us for promoting homosexuality. We boxed and sealed these materials, drove them to one of our allies for storage. The office was left bare, with only condoms and some furniture.

Many LGBTIQ support organisations had closed their operational offices as a measure of safety. Staff members were advised not to report for work until further notice. Some other offices were converted into residential premises as a decoy of ongoing work. A few others had transferred their offices into new premises that did not necessarily reveal the nature of work carried on. Of those LGBTIQ organizations that continued working, operations were reduced and

restricted to providing essential services to members and clients. Lobbying, advocacy, networking and consultations were transformed from organizational offices to homes of residence, internet cafes, restaurants and hotels, as well as to the internet through mailing lists, email, and social media.

These precautionary measures were neither driven by paranoia nor extreme reactions considering the numerous articulated threats of Rev. Fr. Simon Lokodo, the Minister of Ethics and Integrity, to shut down and de-register 38 civil society organizations known to support and work for LGBTIQ rights in Uganda. Furthermore, the infiltration, raiding by police officers and subsequent shutting down of the Walter Reed Research Project on 4th April 2014 gave currency to fears by LGBTIQ organizations.

Arbitrary arrests

The arbitrary arrest of LGBTIQ individuals and couples had increased. When asked to name the offense or crime that the arrested person committed, it is evident that these people were often handcuffed and taken away for unnamed crimes upon the moment of arrest. It is only during processing at the police station or police post, when the charge-sheet is produced that the arrested persons discover their alleged crime. Yummy Tuhairwe, a 25-year-old trans-woman explains below.

Yummy Tuhairwe: When I was arrested in the market area in Kisenyi slum, the policemen just put me on the back of the kabandaali police truck. They were shouting at me to stop walking like a woman, to stop making myself act as a woman. They looked at my arms, the way

I grow and sharpen my long fingernails, my plaited hair, my soft face and they concluded for themselves what they wanted. They shouted at me to show them my husbands so that they can come and arrest them for sodomy.

Interviewer: But what were you arrested for?

Yummy Tuhairwe: What can I tell you? I was walking freely in the Kikuubo back alley, not minding anyone. Then they came and took me away. Later when I was at the police giving the statement, they told me that I was lucky that they only charged me for being idle and disorderly instead of homosexuality because the new law has started. But can these people really just find me walking and they arrest me for homosexuality? It is our lawyers who helped me to get a bail from the police after two days of being arrested.

Several LGBTIQ people have been arrested for unnamed crimes and detained without knowledge of their offenses. When arrested, many LGBTIQ individuals are subjected to intrusive bodily searches aimed at ascertaining their 'true gender,' as well as invasive manual examinations of the anus and genitalia to provide evidence for sodomy. Furthermore, beatings, insults and torture have been experienced during violent and traumatizing interrogation processes. Many LGBTIQ individuals who were arrested prior to the commencement of the Anti-Homosexuality Act (2014) were fearful that the proceedings and judgments of their cases would be influenced by the new stricter legal regime.

Exorbitant bail and police fees

Arrests do not only occur in public spaces, but also from the privacy of homes.

Late one night, Jacquie and Sheelah, two lesbians in a relationship and living in the same house, were arrested together and taken from the safety of their residence by men wearing police uniforms. Although they were not caught having sexual intercourse, both were accused of homosexuality during an intimidating four hours of riding through the night. The police officials asked for an exorbitant amount of money totaling One Million Uganda Shillings (1,000,000/= UGX) in order to release the lesbian couple and drop any charges from being made at the police station. Exorbitant bail prices, high police fees and the lack of enough sureties are common challenges faced by LGBTIQ individuals who are arrested and charged for offenses related to homosexuality.

Extortion and blackmail

Other than bail, police officers and security personnel had reportedly extorted huge sums of money from individuals known or suspected to be involved in homosexual activities. These cash payments are non-negotiable in order for the police officers to remain silent about and not arrest or pursue investigations into the alleged homosexuality. In many instances, the victim of extortion is an otherwise aggrieved LGBTIQ individual reporting a suspect or offender who instead turns the tables by revealing or alluding to the accuser's homosexual practice. Dr. Julius Bwogi, a medical officer working at the main national referral hospital at Mulago reveals his ordeal below.

Dr. Julius Bwogi: The last time we had sex, Yassin must have drugged me because I passed out and when I gained consciousness my television set, laptop, music system, micro-wave oven and electric shavers were all stolen. The doors were wide open. It was shocking. I think he

made a copy of my keys before that. When I said that I was going to report him to the police, this thief threatened to tell the police about my homosexual practice. So I kept quiet because I did not want to lose my job at the hospital. My colleagues, superiors, nurses, students and patients at the hospital do not know about my bisexuality.

Interviewer: But if you did not report him to the police, how do you know that he was not just bluffing and that he would really have outed you to the police?

Dr. Julius Bwogi: It happened to me recently. Another young man I have been dating also stole my touch-screen phones and he threatened me that he will report to the police if I take the case there. I actually reported to the police officers who helped me to track down my touch-screen phone. He had given it to his cousin. When the cousin pointed to my ex-lover, this young man told the police officers during the investigation that I am a pedophile who loves sodomizing much younger boys than me. He told the police investigators that I gave him the phone in exchange for sex with him. The policeman in charge of the investigation changed his attitude toward me, asked me to stop the case, drop the charges and pay some money to quiet down my ex-lover who was talking about suing me for homosexuality. He asked me for a million shillings. I negotiated for much less, arguing that I could never afford such money. We agreed on four hundred thousand Uganda Shillings to keep him quiet. I paid half the money and gave him my bicycle as collateral until I have paid up all the money at the end of this month when I receive my salary. I am paying the installments through the police officer. The case just turned against me when the police officer heard that I have sex with

young men.

Although police officers conduct extortion, money is mostly solicited and extorted from homosexual Ugandans by fellow members of the LGBTIQ community. Extortionists mainly comprise current same-sex partners, or aggrieved ex-partners, particularly in asymmetrical relationships involving significant differences in age, class, social status or income levels. These extortionists claim to have photographic, film, financial, communication or other evidence incriminating their targeted victims. They repeatedly threaten to leak this evidence to the police, public media, employers, spouses, religious leaders or to others in authority. Threats were issued verbally, via text messages, telephone calls, Facebook, email and other social media. In order to conceal their homosexuality from the public and from authorities, victims silence their blackmailers by paying considerable amounts of money. Extortion and blackmail by either current or previous same-sex partners is much more prevalent among gay men and transgender women than among lesbian women and transgender men in Uganda. The evidence availed in several police cases and public media outings were produced upon the refusal of targeted victims to pay extortionists and blackmailers.

Forced or pretend bisexuality

In order to avoid public surveillance and scrutiny, some individuals within the LGBTIQ communities in Uganda had adopted the decoy of publicizing their newfound heterosexuality. Partnerships with members of the opposite sex had quickly been forged in order to pass off as being in stable heterosexual relationships.

Some of these newfound heterosexual partnerships are created with members of the opposite sex from within the LGBTIQ community. For example, Christine, a leader within the lesbian community, paired off in an assumed heterosexual union with Donald from the gay community. This charade was carried right to their rural-based hometowns, where traditional rites in preparation for the marriage ceremony were held. They circulated as a new heterosexual partnership in public spaces, sharing their couple portrait pictures on social media in order to pass as heterosexuals and thus avoid public scrutiny. Such heterosexual performances have also become important facades to sell to concerned parents, family, relatives, and colleagues – some of whom of whom have previously been responsible for pressuring, intimidating, threatening or outing LGBTIQ people.

Public media outings

Immediately after President Museveni assented to the AHA, the public media resumed broadcasting and publishing series discussing and debating the consequences of this new law upon individuals, social groups and Ugandan society as a whole. Of particular public concern was the impact of the new legislation on individuals, groups and institutions known to either be homosexual or else those who supported sexual minority rights. As journalists, editors and public media houses excessively exercised their rights to freedom of speech and expression, the right to privacy of LGBTIQ people and their allies were violated.

Print media outlets overstepped the boundaries of responsible journalism by repeatedly disclosing the names, pictures and personal details of several individuals

they reported to be homosexuals or promoters of homosexuality. Specifically, the English tabloids called the Red Pepper, Hello, and Kampala Sun, an English daily newspaper called the Monitor and a Luganda language tabloid called Kamunye contained the details of several LGBTIQ individuals and their allies. The Red Pepper was most virulent in this period, publishing defamatory stories about diverse aspects of homosexuals' lifestyle in Uganda on a daily basis until a petition was filed in the Constitution Court against the AHA on 11th March 2014. The petition sought an injunction against public media houses publishing defamatory reports about individuals perceived to be homosexual.

Evictions from residences

The AHA had created new groups of outlawed Ugandan subjects with numerous crimes and harsh penalties written in the law. It also created another avenue for people in authority to delineate and cordon off those individuals deemed fit to associate with and those who were criminalized by the new law. Depending on a leader's sensibilities and understanding of human rights, boundaries were drawn concerning those whose sexuality was acceptable versus that which was not.

Many of the individuals who were forcefully outed in the public media received security threats of beatings, being reported to the police, as well as intimidation, verbal insults and physical abuse. Landlords, neighbours and residential area leaders variously demanded that some of these exposed individuals leave their premises, or altogether vacate from their locality. Landlords issued immediate eviction orders, regardless of any current tenancy

agreements, or balances of paid rent. Eviction letters were rarely issued. Many threatened individuals reported violent verbal evictions implemented by rowdy groups of people, sometimes including Local Council (LC) I officials or police officers. Violence and mob justice were widely feared, particularly by LGBTIQ youths who lived in crowded peri-urban areas. Nature Rainbow, a 25-year-old cross-dresser and gay man explains his predicament below.

Nature Rainbow: My photos appeared in the Red Pepper newspaper. I was living with my friend in a Kazigoone-roomed house which he was renting. We lived in a line of one-roomed houses facing another line of the same. When the boys at the shop saw the Red Pepper story, they started gossiping loudly. They made a loud discussion about homos. They shouted at me when I was passing by their shop. I had not yet seen the newspaper. Then my friends started calling me to tell me about the story. I froze because I feared what my parents would say if they saw me. I passed by a newspaper vendor and bought the paper. I was shocked to see my pictures taken at Pride 2013. I was only wearing glitter for a shirt. My chest was bare. I was smiling proudly and there was a handsome man standing behind me. I was in the picture with a man whom I don't even know. When I got home, I could hear the neighbourhood women talking and could hear them saying that all this while they did not know that I was a spoil person using my buttocks to make money. They said they were not going to allow me to live among them and their young sons. One of them called the landlord on the phone. That is when I quickly packed a small polythene bag of clothes and I left.

Given the lack of due notice to leave, many evicted homosexual Ugandans were caught unawares and thus ill-prepared to transfer their belongings. Several lacked money and requisite knowledge to adequately search for and acquire alternative instantaneous accommodation. Some were unable to afford the transport costs for transferring their property to a new safe location. While some sought refuge with their family and relatives in rural areas, many others were unable to return to their homes because some family members were homophobic and previously caused the painful departure of the homosexual relative. There were also a few instances of families issuing ultimatums to their children to either denounce homosexuality or else leave the family home.

In this case, LGBTIQ individuals' right to safe housing and shelter was violated. Furthermore, their security of person and property were undermined. Emergency evacuation out of unsafe or violent environments, relocation to immediate temporary safe shelter, and acquisition of alternative affordable longer-term secure housing were among the most urgent security requirements of Uganda's LGBTIQ community in the aftermath of the AHA. Sadly, the local LGBTIQ movements and its allies were ill-prepared to adequately tackle this security need with emergency response. Earlier negative experiences with different models of safe-houses for LGBTIQ individuals facing securing threats paralyzed effective strategizing to address this need.

Termination from employment, and expulsion from schools

There was an increase in reported unexplained terminations from

employment by employers who were skeptical about employing same-sex loving individuals. Furthermore, LGBTIQ Ugandans were expelled from schools and institutions of higher learning after the advent of the AHA. A few others lost prestigious opportunities when their homosexuality or involvement in LGBTIQ rights advocacy was publicized. Ashley Nakato explains her loss below.

Ashley Nakato: I am a lesbian, the type called a dyke. I am also a fine artist. Oh yes, I graduated from Makerere University with a bachelor's degree and I had started to pursue my graduate studies. Anyway, I was very honoured to receive a prestigious residency program that would further develop my knowledge, skills and expertise in fine art. And then my picture was shown in the newspapers when we had gone to the Constitutional Court to petition against the Anti-Homosexuality Act. Another picture of mine appeared in another local tabloid under the heading 'Normal by day, Lesbian by night.' Believe it or not, but then the administrators of my residency called me and asked about the allegations in these newspapers. I said I was an advocate of LGBTIQ rights. And I lost my residency just like that. It is a very painful loss for me as a professional, but then the struggle for human rights must continue.

Fleeing from Uganda to seek asylum

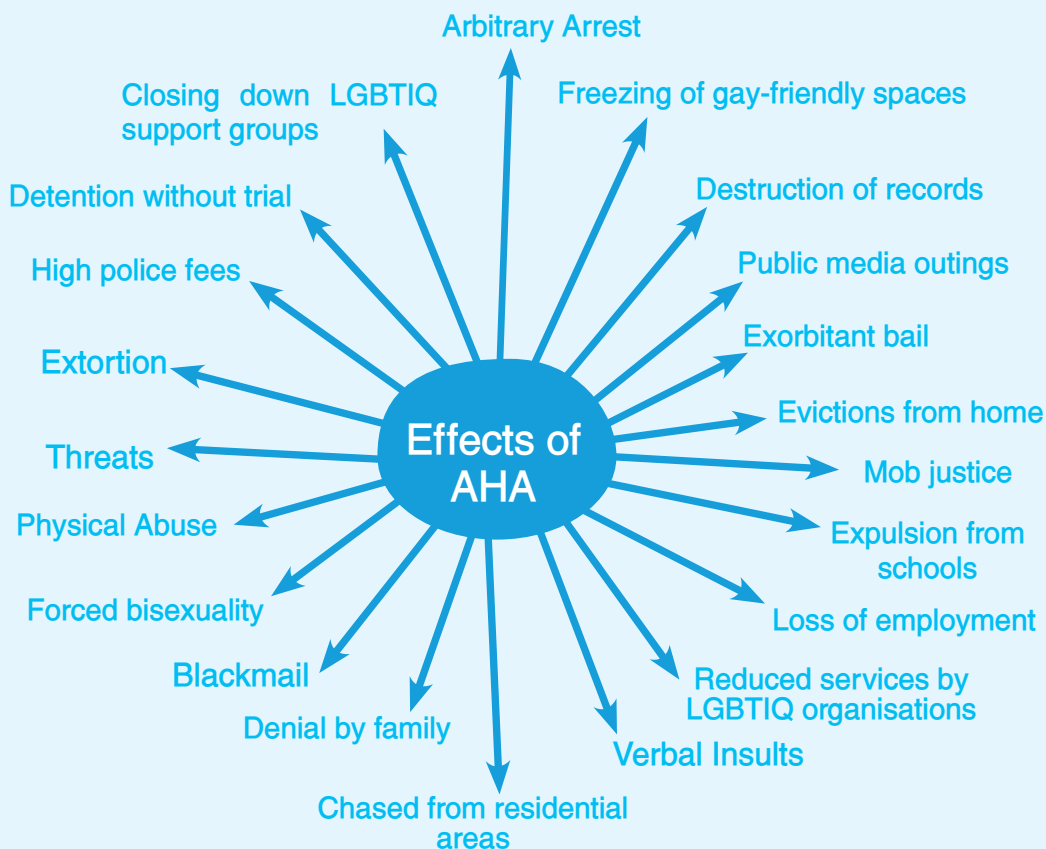
Faced with growing fear, intimidation and the range of specific forms of persecution highlighted above, several LGBTIQ individuals fled from Uganda in search of asylum in other countries. Although the exodus of same-sex loving individuals started in the late 1990s in response to President Yoweri Museveni's order to arrest all homosexuals after a wedding

of two gay men was published in the public media, the numbers of homosexual Ugandans living the country has swelled after the advent of the AHA. Individuals with personal means or the help of others purchased air-tickets, obtained short-term visas and left the country. Many processed their applications for asylum, refugee status, or naturalized citizenship after arriving at their destination countries that observe gay rights in Europe, North America, Asia and South Africa. Several others without a lot of wealth fled into refugee settlements or camps in neighbouring, Kenya where their plight sometimes multiplied. Many other homosexual Ugandans, who remained in the country, dream, plan, strategise and attempt to join the exodus of LGBTIQ people from the country. However, some bold individuals chose to remain in the country and do their advocacy and re-strategising for LGBTIQ rights, wellbeing and citizenship. Thus the country has lost several able-bodied nationals who were contributing towards the national development project simply because their sexual orientation was outlawed by the AHA

Conclusion: The persecution of LGBTIQ Ugandans rises

Prior to its passing as law within the statute books of Uganda, the AHB was variously critiqued by human rights advocates and pro-gay rights activists. They predicted that this proposed legislation aimed at further marginalizing a small minority group based on the re-criminalization of their non-heteronormative sexual orientations and non-conforming gender identities. In this essay, I have explored and identified several specific forms of persecution that same-sex loving individuals in Uganda have faced since the passing of the AHA.

Figure 1:
A star-diagram of the effects of Anti-Homosexuality Act (2014) on
LGBTIQ in Uganda



As summarised in figure 1 above, individuals and groups within Uganda's LGBTIQ communities faced a range of persecutions and violations of their human rights including closure of some LGBTIQ support groups, reduced operations and services of some LGBTIQ organizations, freezing of gay-friendly social spaces, destruction of documentation and materials, arbitrary arrests, arrests for unnamed crimes, exorbitant bail, high un-receipted police fees, extortion, blackmail, threats of arrest and reporting, confusions by justice officials over which laws to apply in the trial and prosecution of individuals arrested before the new law, forceful

public media outings, forced bisexuality, verbal abuse, physical violence, mob justice, eviction from residencies, termination of employment, expulsion from school, denial by family or relatives, flight and exodus from Uganda in search of asylum in more tolerant countries. The AHA was challenged by a petition filed within the Constitutional Court of Uganda. The varied experiences of individuals and groups of people belonging to Uganda's LGBTIQ communities that are highlighted within this essay proffer a purposive sample of human rights violations that have been conducted in the short period following the signing of this Draconian law.

INTERNATIONAL LAW PERSPECTIVE:

THE ANTI-HOMOSEXUALITY ACT: IN VIOLATION OF INTERNATIONAL LAW



by **Jenevieve Discar**

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Introduction

Uganda's anti-homosexuality movement has become infamous in the international community. In Uganda, lesbian, gay, bisexual, transgender and intersex (LGBTI) people and their supporters suffer severe marginalisation, widespread discrimination, hate crime violence, and arrests and detention.¹ Uganda criminalises homosexuality and more than four-fifths of the population believe homosexuality to be morally unacceptable.

This article seeks to examine the ways in which the now nullified Anti-Homosexuality Act, 2014 (AHA) would violate rights that are guaranteed by international treaties to which Uganda is party. Furthermore, this article will demonstrate that, by passing the AHA, Uganda reneged on international obligations and damaged foreign relations.

Relevant background

In 2009, a group of American preachers traveled to Uganda for an anti-homosexuality conference and helped Ugandan legislators draft an anti-homosexuality bill under which those convicted of homosexuality could be put to

death.² In February 2014, Ugandan President Yoweri Museveni signed into law the highly controversial Anti-Homosexuality Act.³ Though the final version was modified such that "aggravated homosexuality" was punishable by life in prison rather than a death sentence, the bill was widely criticised as draconian.⁴ Among other harsh provisions, the AHA imposed jail terms of up to life for "aggravated homosexuality," which includes gay sex with a minor or while HIV-positive. The AHA also criminalised "promoting homosexuality" and "aiding and abetting homosexuality," effectively silencing LGBTI activists. Additionally, the AHA criminalised keeping any home, room, or place "for the purposes of homosexuality," which led Ugandan landlords to evict LGBTI tenants.⁵

Furthermore, the AHA fueled violence against the LGBTI community in Uganda. Newspapers printed the names, addresses, and photos of suspected homosexuals,

¹ Communities Under Siege: LGBTI Rights Abuses in Uganda, HUMAN RIGHTS FIRST, available at <http://www.humanrightsfirst.org/wp-content/uploads/Discrimination-against-LGBTI-Ugandans-FINAL.pdf>. Accessed 6th Dec. 2014

² Jeffrey Gettleman, Uganda Anti-Gay Law Struck Down by Court, THE NEW YORK TIMES, available at http://www.nytimes.com/world/africa/uganda-anti-gay-law-struck-down-by-court.html?_r=0. Accessed 1st August 2014

³ Alexis Okeowo, A Precarious End to Uganda's Anti-Gay Act, THE NEW YORKER (Aug. 5, 2014), <http://www.newyorker.com/news/news-desk/end-ugandas-anti-homosexuality-act-now>.

⁴ See Jeffrey Gettleman, Uganda Anti-Gay Law Struck Down by Court, THE NEW YORK TIMES. Available at http://www.nytimes.com/2014/08/02/world/africa/uganda-anti-gay-law-struck-down-by-court.html?_r=0. Accessed 1st August 2014.

⁵ Alexis Okeowo, A Precarious End to Uganda's Anti-Gay Act, THE NEW YORKER available at <http://www.newyorker.com/news/news-desk/end-ugandas-anti-homosexuality-act-now>; Neela Ghoshal & Maria Burnett, Is It Now Legal to Be Gay in Uganda?, HUMAN RIGHTS WATCH available at <http://www.hrw.org/news/2014/08/07/it-now-legal-be-gay-uganda>. Accessed 5th August 2014 and 7th August 2014 respectively.

triggering violent community reactions.⁶ Sexual Minorities Uganda reported more than 162 incidents of anti-LGBTI violence following the passing of the Anti-Homosexuality Act, an increase from the mere 19 incidents of similar targeted violence that Sexual Minorities Uganda reported in 2012.⁷ These violent incidents include an attempted lynching, violent mob attacks, arrests, firings, evictions, suicides, and arson.

In August 2014, the AHA was annulled, but on grounds of the procedure through which it was passed and not on grounds of its contents. Under Section 145 of Uganda's Penal Code, homosexuality remains illegal and punishable by life imprisonment.⁸ Additionally, a similar bill is anticipated to surface before Parliament in the near future.

Internationally recognized rights violated by the Anti-Homosexuality Act

Uganda has ratified or assented to a wide range of international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture, and other Cruel, Inhuman or

Degrading Treatment or Punishment (CAT).⁹ The Anti-Homosexuality Act violated a number of fundamental human rights, recognised as such by the various international treaties to which Uganda is party. These include the following: the right to freedom from discrimination; the right to freedom of expression; the right to freedom of association; the right to privacy; the right to work; the right to health; the right to housing, and; the right to property. The AHA's violations of the right to privacy, the right to health and the right to adequate housing are further discussed below.

Right to privacy

The right to privacy is guaranteed by Article 17 of the ICCPR, which states that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation" and that "everyone has the right to protection of the law against such interference or attacks."¹⁰ Furthermore, in the seminal case of *Toonen v. Australia*, the UN Human Rights Committee expressly held that laws prohibiting consensual sex between adults of the same sex violate the right to privacy, as guaranteed by international human rights law.¹¹ Thus, due to its criminalisation of consensual sex between same sex adults in Sections 2 and 4, the Anti-Homosexuality Act was a clear violation of the right to privacy.

Right to health

The right to health is protected by Article 16 of the ACHPR, Article 12 of the ICESCR, Articles 11 (1) (f), 12, and 14 (2) (b) of

⁶ Mariah Blake, Meet the American Pastor Behind Uganda's Anti-Gay Crackdown, MOTHER JONES, available at <http://www.motherjones.com/politics/2014/03/scott-lively-anti-gay-law-uganda>. Accessed 10th March 2014, 5:30 AM

⁷ SunniveBrydum, Tenfold Spike in Anti-LGBT Attacks in Uganda Since Antigay Law's Passage, ADVOCATE (May 12, 2014, 3:35 PM), Available at <http://www.advocate.com/world/2014/05/12/tenfold-spike-anti-lgbt-attacks-uganda-antigay-laws-passage>. Accessed 20th Feb. 2015

⁸ Chris Johnston, Uganda holds first pride rally after 'abominable' anti-gay law overturned, THE GUARDIAN (Aug. 9, 2014, 11:12 AM), <http://www.theguardian.com/world/2014/aug/09/uganda-first-gay-pride-rally-law-overturned>. Accessed 21st Feb. 2015.

⁹ Fact Sheet: Health and Human Rights in Uganda, WORLD HEALTH ORGANIZATION.

¹⁰ International Covenant on Civil and Political Rights (Dec. 16, 1966), available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed on 20th Feb 2015

¹¹ See *Toonen v Australia*, Human Rights Committee, 1994.

CEDAW, the ICCPR, the ACHPR and CAT.¹² Specifically, Article 12(1) of the ICESCR calls upon state parties to recognise the right to “the enjoyment of the highest attainable standard of physical and mental health.” Additionally, according to the African Commission, state parties have an affirmative obligation to “respect, protect, promote and fulfil” the rights guaranteed by the ACHPR, which include the right to health, and state parties must “take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.” Thus, limiting access to healthcare constitutes a violation of the right to health, guaranteed by international law.

After the enactment of the AHA, Women Arise for Change identified seven clinics that refused to extend medical treatment to lesbian and bisexual sex workers.¹³ Some medical providers suspended services to LGBTI out of fear of stigmatization, while others simply allowed the AHA to validate existing prejudices. Additionally, due to the harsh provisions of the AHA and the climate that it created, LGBTI people avoided HIV/AIDS clinics, fearing that the police would raid the clinic and arrest the patients.¹⁴ In fact, Icebreakers, an LGBTI support organization that runs a sexually transmitted infections clinic and provides free medication to LGBTI people, experienced a 50 percent decline in the number of LGBTI people who visited the clinic while the AHA was in force.¹⁵ Thus, the Anti-Homosexuality Act severely limited LGBTI access to healthcare, in violation of

international law, both due to providers’ reticence to treat LGBTI people and LGBTI patients’ reasonable fear of being arrested.

Right to adequate housing

Adequate housing was recognised as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights.¹⁶ Article 11 of the ICESCR, considered to be the central instrument for the protection of the right to adequate housing, refers to “the right of everyone to an adequate standard of living for himself and his family, including... housing.”¹⁷ The right to adequate housing is also recognised in Article 17 of the ICCPR and Articles 14(2) and 15(2) of CEDAW.¹⁸ Significantly, the United Nations Committee on Economic, Social and Cultural Rights, has declared that the right to adequate housing includes “protection against forced evictions,” defined as the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”¹⁹ Having ratified or assented to the ICESCR, the ICCPR, and CEDAW, Uganda is committed to protect the right to adequate housing and protect its people against forced evictions.

Under Section 11 of the Anti-Homosexuality Act, keeping any home, room, or place “for the purposes of homosexuality” was punishable for up to seven years in prison and a landlord who “induces or knowingly

¹² Fact Sheet: Health and Human Rights in Uganda, WORLD HEALTH ORGANIZATION.

¹³ Uganda: Rule by Law: Discriminatory Legislation and Legitimized Abuses in Uganda, Amnesty International (Oct. 16, 2014), <http://www.amnesty.org/en/library/info/AFR59/006/2014/en>. Accessed 24th February 2015

¹⁴ Above.

¹⁵ Above.

¹⁶ The Right to Adequate Housing, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (May 2014), available at http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf.

¹⁷ Above.

¹⁸ Above.

¹⁹ Above.

suffers any man or woman to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man or woman of the same sex...commits a felony and is liable, on conviction, to imprisonment for five years.”²⁰ Following the enactment of the AHA, scores of Ugandan landlords evicted their LGBTI tenants.²¹ While some landlords refused to house LGBTI people due to fear of prosecution under the AHA, others forced tenants out due to pressure from the community and others simply allowed the AHA to validate existing prejudices. The result was devastating for the LGBTI community; in fact, eighty per cent of the requests for assistance received by the National LGBTI Security Team involved relocation.²² The AHA further prevented evicted LGBTI tenants from seeking legal recourse, since such evictions appeared to be prescribed by the AHA and, if they brought forth a complaint, LGBTI people would likely face arrest. Thus, the AHA represented a severe violation of the right to adequate housing guaranteed by international law.

Effect of the Anti-Homosexuality Act on foreign policy

The international community has recognised the ways in which Uganda’s anti-homosexuality laws violate human rights and has condemned the laws accordingly, Amnesty International stating that such laws “threaten the core of human rights in

Uganda” and various other rights groups calling the laws “abominable.”²³

Significantly, many Western donors have withdrawn or redirected aid in response to Uganda’s anti-homosexuality laws. Foreign aid funds approximately 20 percent of Uganda’s annual state budget.²⁴ After President Museveni signed the Anti-Homosexuality Act into law, Uganda lost nearly \$200 million in aid donations from Europe and North America.²⁵ In fact, the Ugandan shilling depreciated by 2% a mere day after President Museveni signed the Anti-Homosexuality Act into law.²⁶

Specifically, the World Bank froze a £60 million new loan to the country, while its experts analysed whether the new legislation would adversely affect development strategies.²⁷ The Netherlands and Norway froze aid to the Ugandan government as well.²⁸ The UK also cut off all of its direct budget

²³ Uganda: Rule by Law: Discriminatory Legislation and Legitimized Abuses in Uganda, Amnesty International (Oct. 16, 2014), <http://www.amnesty.org/en/library/info/AFR59/006/2014/en>; Chris Johnston, Uganda holds first pride rally after ‘abominable’ anti-gay law overturned, THE GUARDIAN (Aug. 9, 2014, 11:12 AM), <http://www.theguardian.com/world/2014/aug/09/uganda-first-gay-pride-rally-law-overturned>. Accessed 20th Feb. 2015

²⁴ Sweden resumes aid to Uganda after suspending it over anti-gay law, BUSINESS INSIDER (July 28, 2014, 9:04 AM), <http://www.businessinsider.com/r-sweden-resumes-aid-to-uganda-after-suspending-it-over-anti-gay-law-2014-28>. Accessed 24th Feb. 2015

²⁵ Thom Senzee, The state of LGBT equality in Africa, LGBT WEEKLY (Nov. 17, 2014), <http://lgbtweekly.com/2014/11/17/the-state-of-lgbt-equality-in-africa>. Accessed 20th Feb. 2015.

²⁶ Gibson Ncube, Hypocrisies and contradictions: Western aid and LGBT rights in Africa, CONSULTANCY AFRICA INTELLIGENCE (Apr. 14, 2014, 2:48 PM), http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=1673:hypocrisies-and-contradictions-western-aid-and-lgbt-rights-in-africa&catid=91:rights-in-focus&Itemid=296. Accessed 20th Feb. 2015

²⁷ Mike Pflanz, Keep your gays and keep your aid, Uganda tells the West, TELEGRAPH (Feb. 28, 2014, 3:45 PM), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/uganda/10668278/Keep-your-gays-and-keep-your-aid-Uganda-tells-the-West.html>. Accessed 26th Feb. 2015.

²⁸ Above.

²⁰ THE ANTI-HOMOSEXUALITY ACT 2014, available at <http://www.refworld.org/pdfid/530c4bc64.pdf>. Accessed at 25th Feb. 2015

²¹ Alexis Okeowo, A Precarious End to Uganda’s Anti-Gay Act, THE NEW YORKER (Aug. 5, 2014), <http://www.newyorker.com/news/news-desk/end-ugandas-anti-homosexuality-act-now;NeelaGhoshal&MariaBurnett,IsItNowLegaltoBeGayinUganda?>, HUMAN RIGHTS WATCH (Aug. 7, 2014), <http://www.hrw.org/news/2014/08/07/it-now-legal-be-gay-uganda>. Accessed 23rd Feb. 2015

²² Uganda: Rule by Law: Discriminatory Legislation and Legitimized Abuses in Uganda, Amnesty International (Oct. 16, 2014), <http://www.amnesty.org/en/library/info/AFR59/006/2014/en>. Accessed 20th Feb. 2015

support to the Ugandan government.²⁹ According to a representative for the UK Department for International Development, the UK will only provide direct support to other governments when they meet “a specific set of principles, including upholding human rights.”³⁰ Earlier in the year, Sweden also suspended aid to Uganda but, after further consideration, decided to provide 1.35 billion crowns over the next five years specifically to “improve child and maternal health, sustainable growth and employment.”³¹

The US responded with a multi-pronged approach.³² Among other measures, the US discontinued a \$2.4 million program that supported the Uganda Police Force community-policing program.³³ According to the White House blog, this was in response to government concerns regarding “the extent to which the Ugandan police may be involved in abusive activities undertaken in the name of implementing the [Anti-Homosexuality Act].”³⁴ The US also redirected funds that had previously supported the Ministry of Health and other health programming, citing concerns regarding equal access.³⁵

Denmark and Norway similarly redirected aid, the former giving the equivalent of \$10 million originally intended for

the Uganda government to human rights organizations and private sector organizations instead, and the latter suspending \$9 million in aid to Uganda and increasing funding for human rights and democracy groups.³⁶

Although President Museveni claims that he is not concerned about foreign aid, stating that “Uganda is growing in spite of the ‘aid’ cuts,” he has expressed concern that Uganda’s anti-homosexuality laws may negatively impact international trade.³⁷ President Museveni has noted that “homosexual lobby” can “intimidate potential buyers from buying from us” and furthermore, has recognized that “they have already started.”³⁸

Conclusion

The AHA infringed upon fundamental human rights and, as such, had a negative impact on Uganda’s foreign relations, damaging international perceptions of Uganda as well as the economy. Recognizing this, Ugandan leadership must consider Uganda’s international obligations and the potential backlash before passing a similar bill.

²⁹ Above.

³⁰ Above.

³¹ Sweden resumes aid to Uganda after suspending it over anti-gay law, BUSINESS INSIDER (July 28, 2014, 9:04 AM), <http://www.businessinsider.com/r-sweden-resumes-aid-to-uganda-after-suspending-it-over-anti-gay-law-2014-28>. Accessed 23rd Feb. 2015

³² See Grant Harris & Stephen Pomper, Further U.S. Efforts to Protect Human Rights in Uganda, THE WHITE HOUSE BLOG (June 19, 2014, 2:04 PM), <http://www.whitehouse.gov/blog/2014/06/19/further-us-efforts-protect-human-rights-uganda>. Accessed 24th Feb. 2015.

³³ Above.

³⁴ Above.

³⁵ Above.

³⁶ Jill Mahoney, Uganda’s anti-gay law causes significant cuts to foreign aid, THE GLOBE AND MAIL (last updated Feb. 26, 2014, 1:10 PM), <http://www.theglobeandmail.com/news/world/ugandas-anti-gay-law-causes-significant-cuts-to-foreign-aid/article17112073>. Accessed Feb 20th 2015.

³⁷ Zack Ford, Ugandan President Worries Anti-Gay Laws Might Lead to International Trade Boycotts, THINK PROGRESS (Oct. 7, 2014), <http://thinkprogress.org/lgbt/2014/10/07/3576274/uganda-museveni-gay-rights-trade>. Accessed 27th Feb. 2015.

³⁸ Above.

LEGISLATIVE HISTORY:

THE BROADER PICTURE: UNDERSTANDING THE GENESIS AND IMPACT OF RECENT LEGISLATION IN UGANDA

by Professor J. Oloka-Onyango

Makerere University School of Law and the first petitioner in the case that nullified the Anti-Homosexuality Act 2014



Introduction

Most recent commentary on Uganda has focused on the passing of the Anti-homosexuality Act (AHA)—a piece of legislation that drew a barrage of criticism from many countries in the West, but marshaled popular support and acclaim at home. Western reaction focused mainly on the human rights implications of legislation once dubbed the ‘Kill-the-gays’ bill, which represented a significant step back in the protection of sexual minorities on the continent. However, the nearly-exclusive focus on the rights of LGBTI individuals failed to take account of the broader political context within which the AHA was enacted. It also did not place the passage of the law against the backdrop of the enactment of two other pieces of legislation that have significant implications for politics and the democratic struggle in Uganda. The first of these is the Public Order and Management Act (POMA), which came into force on October 2, 2013, while the second is the Anti-Pornography Act (APA), which was signed into law on February 6, 2014, barely two weeks before President Museveni’s dramatic and public signing of the anti-gay law.

On the face of it, the three laws apply to different categories of people. The POMA ostensibly applies to dissidents, protestors, and what the Inspector General of Police has described as ‘hooligans.’ The APA

targets porn-dealers, newspapers like the notorious tabloid Red Pepper, and people who, according to the Minister of Ethics and Integrity, (former) Rev. Father Simon Lokodo, publicly expose their ‘private bodily parts’ for ‘...primary sexual excitement.’ On its part, the AHA focuses on homosexuals who Ugandan society prefers to view as ‘deviants’ and ‘perverts.’ Two out of three of the laws refer to issues of morality and social order, which Lokodo declared to have reached a stage of national disintegration.

Although more directly political, the POMA is intricately linked to the other two. Indeed, each of the laws affects all Ugandans, regardless of political opinion or status, sexual preference or position. It affects Ugandans whether they wear shorts or trousers, burkas or saris, busutis or mushanana. And they apply to Ugandans whether or not they have ever watched a pornographic movie. Finally, they are of concern whether or not one believes in human rights. This essay demonstrates why.

The Public Order and Management Act

The long title to the POMA stipulates that it was designed to ‘... provide for the regulation of public meetings; to provide for the duties and responsibilities of police, organizers and participants in relation to public meetings; [and] to prescribe measures for safeguarding public order.’

A short trip back in history will show that the POMA was designed in the heat of the Walk-to-Work (W2W) protests led by opposition leader Colonel (rtd.) Kizza Besigye. Besigye has thrice stood in elections against President Museveni; the latest in a controversial poll on 18 February, 2011, won by the incumbent.¹ In a broad sense, the POMA can therefore be referred to as the Anti-Besigye Act or the 'ABA,' as it was clearly designed to tighten the grip of the police and security forces in the wake of popular protests that rocked the country in the aftermath of the election. In its earlier manifestation—with provisions that barred three people from holding a meeting without police permission—it reflected a government in an extreme state of panic as the winds from the 'Arab Spring' in North Africa blew further South.

Despite its professed noble intentions with regard to the maintenance of law and order, the ABA/POMA is a fatally flawed piece of legislation for several reasons. In the first instance, the Act reverses the basic premise on which the right to freedom of peaceful assembly is based. This is done by making people who wish to demonstrate or protest against the government seek permission from the police in order to stage such actions. In other words, the ABA/POMA forces those who oppose the government and want to translate such opposition into protest to justify why they should not be stopped from protesting. In diverse countries around the world, this colonial mode of policing has long been changed. Thus, the Act should instead be compelling the police to give sound reasons for refusing a protest to take place. Objective rather than subjective factors should be the only mitigating factors in giving expression to this basic democratic

¹ See J. Oloka-Onyango (2012), 'Uganda Elections: 'An Exercise in Shame-faced Endorsement,' in Firoze Manji & Sokari Ekine (eds.), *AFRICAN AWAKENINGS: THE EMERGING REVOLUTIONS*, Pambazuka Press, Oxford, at 111-115.

right.

Secondly, the ABA/POMA places an inordinate degree of discretionary power with the police, and specifically with the Inspector General of Police. This is obviously problematic because it makes the IGP prosecutor and judge in his own cause, violating basic principles of natural justice. Thirdly, the law gives lower-ranking police officers the perfect excuse for not taking action to support human rights. Rather, they are encouraged to curtail them. Hence, the first words out of the mouths of officers charged with breaking up an opposition demonstration are: 'I'm (simply) acting on orders from above.'

Aside from the contents of the Act, there is another dimension that is often lost in the discussion. A recent Constitutional Court case challenged the excessive powers of the police, especially those in Section 32 of the Police Act, which allowed the Inspector General of Police to prohibit the convening of an assembly allegedly "on reasonable grounds." Agreeing that this provision was unconstitutional, Justice Mpagi Bahegeine stated,

Where individuals assemble, if the police entertain a "reasonable belief" that some disturbances might occur during the assembly, all that can be done is to provide security and supervision in anticipation of disturbances. It is the paramount duty of the police to maintain law and order but not to curtail people's enshrined freedoms and liberties on mere anticipatory grounds which might turn out to be false. Lawful assemblies should not be dispersed under any circumstances. Most importantly in such cases the conveners of the assemblies can be required to give an undertaking for good behavior and in

default face the law.²

In complete defiance of the court judgment, Section 3 of the ABA/POMA gives the IGP (or an authorised officer) the power to regulate the conduct of all public meetings in accordance with the law, effectively reintroducing the repealed Section 32. The reintroduction of this provision of the law is in direct violation of Article 92 of the 1995 Constitution of Uganda, which provides that 'Parliament shall not pass any law to alter the decision or judgment of any court...' To make matters worse, the definitions of places of assembly and the types of prohibited meetings covered in the Act are so broad as to embrace any kind of gathering and to subject them wholly to the subjective belief of the Police and not to any objective standard of oversight. The ABA/POMA thus introduces a slippery slope of growing infractions, and is a perfect representation of a downward slide in the protections of fundamental human rights in the country.

The Anti-Pornography Act

Although largely ignored outside Uganda, the APA produced the most immediate and vocal reaction from the domestic public, particularly from women and human rights activists.³ The provisions in the Act most responsible for this development are the definition of the term 'pornography' and section 13 of the Act, which stipulated the penalty for the offence. The passing of the law was met by vigilante acts of undressing women by street mobs, of police officers stopping women in the street and ordering them to return home and

² See *MuwangaKivumbi v. AG*, [Constitutional Petition No.9 of 2005], accessed at: <http://www.ulii.org/ug/judgment/constitutional-court/2008/4>. 20th Feb 2014

³ See Stella Mukasa, 'Anti-Pornography Act a setback for gains made in women's rights,' <http://www.monitor.co.ug/OpEd/Commentary/Anti-Pornography-Act-a-setback/-/689364/2249082/-/aywph5/-/index.html>. 5th Feb. 2014

change their clothes, and even the case of a judicial officer summarily sentencing two women in her courtroom to a 3-hour imprisonment for wearing miniskirts!⁴ It is this upsurge in sexual harassment and the imposition of a de facto dress code on women that is most problematic from a legal and human rights point of view.

Although the government attempted to claim that the law neither imposed a dress code nor was addressed to women, the above actions pointed to the opposite result. Indeed, the language of the Act opens it up to 'unrestrained interpretation.'⁵ Such interpretation is available to anyone regardless of whether or not they are a government official, but also to all kinds of actions that such a person deems fit in the circumstances. Government assertions that the Act was gender neutral and had only been 'misunderstood' by the public obviously raises the question as to why it was only women and not men targeted by the mobs. Secondly, few other laws in recent Ugandan history have caused as much confusion in terms of interpretation and enforcement as did the APA, engulfing both the police and the judiciary as part of the general public confusion. What is even more surprising is how such a discriminatory law escaped the attention of not only the Attorney General but also of the many women representatives in Parliament.

After all is said and done, there can be little doubt that the law is in fact inherently discriminatory and amounts to an attack on women's personal autonomy and expression. But worse, according to Stella Mukasa,

⁴ See Malik Jingo, 'Women get three-hour jail term for wearing miniskirts' Daily Monitor, March 7, 2014

⁵ Jimmy Senteza, 'Language in the Law Against Pornography is Vague, Biased,' New Vision, March 4, 2014 at 12.

The Anti-Pornography Act clearly set the stage for a rollback of women's personhood and autonomy as upheld by our constitutional guarantees on equality before and under the law, including laws that protect women from sexual and gender-based violence, intimate partner violence, and Female Genital Mutilation, to mention a few.

It is nevertheless naïve to view the passing of the APA in isolation. Rather, its enactment must be married to the broader attack on the rights of women and the failure of the State in Uganda to effectively ensure that issues concerning women's security, autonomy and well-being are better protected. It is part and parcel of the traditional attempts of the patriarchal state to regulate and control women's sexuality and reproductive capacities. Hence, the NRM government has still failed to enact a progressive law on marriage and divorce and has instead reverted to passing laws which undermine, marginalise and directly discriminate against women. The government's condemnation of the reported unlawful acts by the public were too little, too late and only a smokescreen to protect a regime that has abandoned the cause of the protection of women's rights. Ironically—and to underscore the interconnectedness between the laws under discussion—the Police invoked the ABA/POMA in order to prevent women human rights activists from protesting the APA!⁶

The Anti-Homosexuality Act

Few recent laws passed by the Parliament of Uganda have caused as much controversy as the Anti-Homosexuality Act both domestically and internationally. Together with several other activists, I challenged the constitutionality of the law on grounds, inter alia, relating to the

supremacy of the Constitution, violation of the principles of equality and freedom from discrimination, and the right to privacy. Its annulment was a triumph of constitutionalism and rule of law. The Act had gone so far as criminalising touching by a person of the same sex and other offences that were overly broad. Problems were also being raised with the criminalisation of consensual same sex/gender sexual activities among adults in which one is a person living with HIV or in which one is a person with disability, and with creating a compulsory HIV test for all homosexual suspects. Finally, by criminalising so-called aiding, abetting, counselling, procuring and promotion of homosexuality, the AHA would create offences that could capture virtually anybody. It would also have penalized legitimate debate and professional counsel in direct contravention of the principles of legality, the freedoms of expression, thought, assembly and association, academic freedom and the right to civic participation. The Act went over the top in classifying houses or rooms as brothels merely on the basis of occupation by homosexuals, thereby collapsing the distinction between sex for love or pleasure with sex for sale. It would basically create victimless crimes against people who are otherwise law-abiding citizens of society.

But the AHA would be more problematic at a broader level in that it would institutionalise homophobia and thereby promote a culture of hatred against LGBTI individuals. Like the ABA/POMA and the APA, the AHA was motivated by hatred, discriminatory impulses, and the overarching desire to suppress and dominate political and civil society. It is in this respect that we have to turn from only looking at the law to a critical

⁶ Kashmira Gander, 'Uganda mini-skirt ban: Protests after women are assaulted and forced to undress in public,' accessed at: <http://www.independent.co.uk/news/world/africa/uganda-miniskirt-ban-protests-after-women-are-assaulted-and-forced-to-undress-in-public-9155773.html> accessed 6th Feb. 2014.

examination of the politics that led to the passing of the Act, especially given that so much of the story has been told from the perspective of Western critics.

Law, Sex And Politics: Unveiling The Other Side Of The Story

When the Anti-Homosexuality Bill first made an appearance in 2009, the Government distanced itself from the action in the claim that it was a private member's bill. Subsequently, and following increased pressure from Western governments, President Museveni met his party's Members of Parliament and advised them that the matter had become a foreign policy issue which should be left to him to resolve. For some unknown reason, however, the President did not take concrete steps to stop the process of moving the Bill through the various stages of legislative action. Thus, he was caught off guard when the Speaker of Parliament, Rebecca Kadaga—considered a potential rival for the office of President in the 2016 elections—promised to give Ugandans a 'Christmas gift' with the law and indeed passed it in a hastily convened session of the House on December 20, 2013. President Museveni was livid and chastised the Speaker for passing a law without the necessary quorum,⁷ but was now backed into a corner as Ugandan law states that all legislation must be assented to by the President. The question became to sign or not to?

In trying to balance what had become a domestically hot political potato with the growing external pressure from the West, Museveni sought recourse in what he

⁷ See letter from the President of Uganda to the Speaker and members of Parliament, dated December 28, 2013, <http://wp.patheos.com.s3.amazonaws.com/blogs/warrenthrockmorton/files/2014/01/presidents-letter-on-the-ahb.pdf> at p.3; accessed 7th Feb. 2014. 'How can you "pass" law without the quorum of Parliament after it has been pointed out? What sort of Parliament is this? How can Parliament be the one to break the Constitution and the Law repeatedly?'

called 'science' over 'emotion' by setting up a panel of Ugandan scientists to advise whether homosexuality was genetic or behavioural.⁸ The presentation of the Panel's report coincided with a retreat of ruling party MP's where it became apparent that a second rival to the Presidential throne had emerged, Prime Minister Amama Mbabazi, who was greeted on arrival at the meeting by chants of "Our Man!"

Returning briefly to the Panel, what did the scientists commissioned by the President say? In a twelve-page report, the following were the main conclusions of the study:

- a. There is no definitive gene responsible for homosexuality;
- b. Homosexuality is not a disease;
- c. Homosexuality is not an abnormality;
- d. In every society, there is a small number of people with homosexual tendencies;
- e. Homosexuality can be influenced by environmental factors (e.g. culture, religion, information, peer pressure);
- f. The practise needs regulation like any other human behaviour, especially to protect the vulnerable; and
- g. There is a need for studies to address sexualities in the African context.

Following the presentation of the report, the President declared: "The scientists have spoken: I will sign the bill," to rapturous applause from his partisan audience. Interestingly, the Presidential statement in relaying his decision to the Ugandan public stated: "Homosexuality is not a disease but merely an abnormal behavior which may be learned through experiences in life."

What did this mean? First of all, the President deliberately distorted the message which

⁸ cf. SulaimanKakire (interview), 'Fox Odoi: Why the Antigay Law is Illegal,' *The Observer*, March 24-25, 2014, at 23-24.

the scientists had given him.⁹ Secondly, the President clearly abandoned the key message being sent by the scientists both about the multiplicity of explanations for homosexuality and about the need for more sobriety on the issue than the legal/punitive approach, and he substituted it with a political/populist message that would earn him political points against his two main rivals for the presidency, Speaker Kadaga and Premier Mbabazi.

Thus, although the debate about the APA and the AHA has been mainly about sex, in my view that is not the real issue at stake.¹⁰ Rather, the focus on sex served as a major point of distraction from more important issues of governance and democracy. Focusing on sex—especially when it is represented as ‘deviant’ or ‘abnormal’ as the President did—helped to find a scapegoat for the larger problems of governance and democratic failures that are rife in contemporary Uganda. As Dr. Sylvia Tamale points out:

Intensive scrutiny, regulation and control of non-conforming sexualities and gender identities reflect both a deep historical connection to colonial structures of governance and marginalization, and to more contemporary attempts to control the body. In this way, sexuality is deployed as a tool for perpetuating patriarchy, inequality, and injustice and to consolidate the process of othering.¹¹

Focusing on sex also provides an escape route for a President who after 28 years in power is finding himself increasingly backed into a

⁹ Michael Balter, ‘Science Misused to Justify Ugandan Antigay Law’, in *Science* (www.sciencemag.org), Vol.343, February 28, 2014, at p.956.

¹⁰ Godwin Murunga, ‘The Issue is Not Sex but the Social Consequences of Homosexual Acts’, *Saturday Nation*, March 1, 2014 at 14.

¹¹ Sylvia Tamale, ‘Standing, Sitting and Sleeping: Unveiling the Politics of Sexuality and Gender Identity in Africa’, Nelson Mandela Lecture on Human Rights presented at the Pennsylvania State University, USA, November 2, 2011, at 1-2.

corner by rivals within his own party who are asking the question: Why not me? Finally, the AHA fits precisely into what has been described as the “Anwar Ibrahim Syndrome,”¹² i.e., the use of sexual-oriented legislation to penalize legitimate forms of political opposition. It is only a short step away for those who oppose President Museveni—male or female—from being charged with aggravated homosexual rape. In sum, the AHA can be added to the other arsenal of punitive laws to curtail the expression of democratic opposition to the government of the day.

Conclusion

Although the preceding analysis has largely looked at the individual aspects of each of these laws, there is a larger picture. In other words, by focusing in on the individual Acts, we could fail to see the forest for the trees. Taken together, the enactment of these laws reveals a definite and clear pattern of desperate measures in desperate times. It is not surprising that such desperation has culminated in proposals for a new law to instill ‘Patriotism’ among Ugandans, which will simply add to the arsenal of legislation deployable against political opponents. Nor is it surprising that there are rumors that the next round of constitutional amendments will target the age limit of 75 years old – which President Museveni will cross during his next tenure in office. At the same time, the NRM government is strenuously resisting any serious discussion on reforming the skewed rules governing the electoral process. In the final analysis, the spate of legislative action by the NRM government is not accidental; it simply represents the next stage of total dictatorship.

¹² Ibrahim was Deputy Prime Minister to Malaysian dictator Mahatir bin Mohamed and was charged with sodomy when he criticized the latter over his dictatorial methods of governance.

CASE UPDATE I: **NULLIFICATION OF THE ANTI-HOMOSEXUALITY ACT 2014: THE CASE OF PROF. J. OLOKA ONYANGO AND 9 OTHERS V. ATTORNEY GENERAL**



HRAPF Legal Officer (c) Ms. Fridah Mutesi in the Constitutional Court during the hearing of a petition against the Anti-Homosexuality Act 2014.

The Petition

The case of *Prof. J. Oloka-Onyango and 9 others v. Attorney General, Constitutional Petition NO. 8 of 2014* was filed on March 11, 2014 under the auspices of the Civil Society Coalition on Human Rights and Constitutional Law. It challenges the constitutionality of Uganda's Anti-Homosexuality Act 2014 (AHA) and its contravention of the fundamental human rights. This challenge was brought before Uganda's Constitutional Court by eight citizens of Uganda and two mainstream human rights organisations as petitioners. The individuals are: Prof. J Oloka-Onyango of the School of Law Makerere University; Hon. Fox Odoi-Oywelowo, Member of Parliament; Andrew MujuniMwenda, Independent Journalist and Proprietor of The Independent News Magazine; Prof. Morris Ogenga Latigo, former Leader of Opposition in Parliament; Dr. Paul Nsubuga Semugoma, medical

doctor; and Jacqueline Kasha Nabagesera, Julian Pepe Onziema and Frank Mugisha, who are all human rights activists. The two organisations are: Human Rights Awareness & Promotion Forum (HRAPF) and Centre for Health, Human Rights & Development (CEHURD). The case was heard and judgment delivered on August 1st 2014, leading to annulment of the law.

Background to the Petition

When the Parliament of Uganda passed the Anti-Homosexuality Bill 2009 without quorum and with flagrant violations of human rights, civil society and human rights advocates took these concerns to the President, who promised to deal with Parliament on the matter. However, in what was viewed as a sudden change of heart, the President signed the Bill into law on February 24, 2014, thereby enacting the AHA.

The AHA sought to “prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters.” It creates offenses that include: The offence of homosexuality, aggravated homosexuality, attempt to commit homosexuality, aiding and abetting homosexuality, conspiracy to engage in homosexuality, same sex marriage, promotion of homosexuality, procuring homosexuality by threats, and detention with intent to commit homosexuality. All the offences attract sentences of five years to life imprisonment and heavy fines.

The petitioners and the other persons who opposed the Act found it to be a direct attack on the right to freedom from discrimination, right to privacy, press freedom, freedom of expression, assembly and association, right to property, right to equality before the law without discrimination, freedom from cruel, inhuman and degrading punishment, and right to civic participation. It thereby contravened the Constitution of the Republic of Uganda and Uganda’s ratified obligations in international human rights treaties. Above all, the Act institutionalised a culture of hatred and legitimises discrimination against LGBTI persons in society. The Act also suppressed individuals and groups legitimately working to promote human rights and democracy.

The legal basis of the petition

This petition was filed in the Constitutional Court of Uganda under Articles 137(1) & (3) (a) and (b), (4) of Constitution of Uganda and the Constitutional Court (Petitions and References) Rules, S.I. 91/2005.

Article 137(1) & (3)(a) and (b) and (4) of the Constitution of the Republic of Uganda provide that:

(1) Any question as to the interpretation of this constitution shall be determined by the Court of Appeal sitting as the constitutional court.

(2) A person who alleges that -

(a) an Act of parliament or any other law or anything in or done under the authority of any law; or

(b) any act or omission by any person or authority,

is inconsistent with or in contravention of a provision of this constitution, may petition the constitutional court for a declaration to that effect, and for redress where appropriate.

(3) Where upon the determination of the petition under clause (3) of this article the constitutional court considers that there is need for redress in addition to the declaration sought, the constitutional court may-

(a) grant an order of redress; or

(b) reference the matter to the high court to investigate and determine the appropriate redress.

These provisions apply to matters that call for constitutional interpretation. The Ugandan Constitution allows any person or organization, even if that person is not affected by a law, to bring a case against the violation of the rights of another person or persons.

The petition is also grounded in Article 2 of the Constitution, which provides that the Constitution is the supreme law of Uganda and that any law that is inconsistent with it is void to the extent of its inconsistency.

Legal remedies sought

The petitioners sought the following remedies from the Constitutional Court:

1. A declaration that the Anti-Homosexuality Act 2014 is unconstitutional;
2. Permanently staying the operationalization of the Anti-Homosexuality Act 2014;
3. Permanently staying the gazetting of the Anti-Homosexuality Act, 2014. This may be impossible since by the time the petition was filed, the Act had been already gazetted;
4. Permanently prohibiting any person, organization, company and/or entity to write, publish, or mount a campaign against adult persons who profess and engage in consensual same sex/gender sexual activity among themselves as adults;
5. Permanent injunction and/or gagging order against persons, organisations, or companies restraining them from publishing, or writing in the print and electronic media, including the internet, articles, letters, against adult persons who profess and engage in consensual same sex/gender sexual activity among themselves as adults, which may bring such persons into public ridicule, odium and hatred;
6. Any other relief that the Court may deem fit

Results of the petition

The petition against the Anti-Homosexuality Act was heard by the Constitutional court on July 30th - 31st 2014. On 1st August 2014, the Court delivered its judgment in the petition.

It was heard and decided by a panel of five Judges composed of: Hon. Justice Mr. Stephen Kavuma, Hon. Justice Augustine Nshimye, Hon. Justice Ruby Opio Awere, Hon. Lady Justice Solomy Balungi Bbosa and Hon. Justice Eldad Mwanguhya delivered its judgment and unanimously found that the passing of the Anti-Homosexuality Act 2014 without the required quorum was in contravention of the Constitution. That though the burden of proof to prove that there was no quorum was on the petitioners, there is an exception where the respondent does not expressly deny the allegations. They noted that in this case, the Attorney General did not deny the allegation that there was no quorum, and as such this fact was taken as admitted. Again since this was a civil matter, the standard of proof was 'balance of probabilities' and so the affidavits of Hon. Fox Odoi and the Hansards were enough to prove the absence of quorum. The Court also found that the act of the Hon. Speaker of Parliament of not entertaining the question of quorum when it was raised was an illegality under the Parliamentary Rules of Procedure and this rendered the enacting process and the resulting Act a nullity. The court did not find it necessary to consider the other issues raised in the petition because this would be an academic exercise.

With that judgment, the Anti-Homosexuality Act ceased being law in Uganda.

The Lawyers:

The petitioners were represented by a team of Seven lawyers. These were: Ladislaus Rwakafuzi, Dr. Henry Onoria, Caleb Alaka, Nicholas Opiyo, John Francis Onyango, Adrian Jjuuko and Fridah Mutesi.

The state was represented by Principal State Attorney, Patricia Mutesi

CASE UPDATE II:
**CHALLENGING THE ANTI-HOMOSEXUALITY
 ACT IN INTERNATIONAL COURTS:
 THE CASE OF HUMAN RIGHTS AWARENESS
 AND PROMOTION FORUM V. ATTORNEY
 GENERAL OF UGANDA, REFERENCE NO. 6
 OF 2014**


Some of the petitioners in court during the delivery of the ruling at the Constitutional Court.

The Reference

Soon after the Petition challenging the Anti-Homosexuality Act was filed before the Constitutional Court, Human Rights Awareness and Promotion Forum under the umbrella of the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) filed a reference before the East African Court of Justice. The Reference contends that Uganda is in violation of the Treaty for the Establishment of the East African Community by enacting the Anti-Homosexuality Act 2014, certain provisions of which are inconsistent with the

obligations specified in the treaty. The Reference, contends that certain provisions of Uganda's Anti-Homosexuality Act of 2014 are in violation of Articles 6(d), 7(2) and 8(1) (c) of the Treaty, which require partner states to enforce principles of good governance, democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights. These include the provision of equal opportunities and gender equality, as well as the recognition, promotion and protection of human rights in accordance with the provisions of the African Charter on Human

and Peoples' Rights. This case has not yet been heard by the court.

Legal Basis of the Reference

This petition was filed under Article 6(d), 7(2), and 30(1) of the Treaty for the Establishment of the East African Community and Rule 24 (1), (2), (3), (4) of the East African Court of Justice Rules of Procedure 2013.

Article 6(d) of the Treaty for the establishment of the East African Community stipulates the principles of the community as: "Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice,

equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights." Article 7(2) of the Treaty enjoins all partner states of the East African Community to: "abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights."

Article 30 of the treaty further states that: "Subject to the provisions of Article 27 of this Treaty, any person who is resident in a Partner State may refer for determination by the Court, the legality of any Act, regulation, directive, decision or action of a Partner State or an institution of the Community on the grounds that such Act, regulation, directive, decision or action is unlawful or is an infringement of the provisions of this Treaty."

The East African Court of Justice Rules and Procedures (r.24) provide that: "A reference by a Partner State, the Secretary

General References or any person under Articles 28, 29, 30 respectively of the Treaty shall be instituted by lodging in the Court a statement of reference."

This reference argues that in enacting the Anti-Homosexuality Act 2014, Uganda was in contravention of the Treaty for the Establishment of the East African Community that enjoins partner states to govern their populations on the principles of good governance, democracy, the rule of law, social justice, and the maintenance of universally accepted standards of human rights, which include provision of equal opportunities and gender equality as well as the recognition, promotion and protection of human rights in accordance with the provisions of the African Charter on Human and People's Rights.

The legal remedies sought

The applicant seeks the following remedies from the court.

1. A declaration that section 1, 2, 4, 2(1)(c), 3(1)(b), 3(1)(e), 4(2) and 5(1) of the Anti-Homosexuality Act 2014 violate article

6(d) of the Treaty to the Establishment of the East African Community on the principles of good governance, rule of law, social justice and the maintenance of universally accepted standards of human rights, which include provision of equal opportunities and gender equality as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;

2. A declaration that sections 7 and 13(1) and (2) of the Anti-Homosexuality Act 2014 and its spirit of encouraging homophobia violate Article 7(2) of the Treaty for the Establishment of the East African Community that enjoins governments to abide by the rule of law, social justice and the maintenance of universally accepted standards of human rights;

3. Any other reliefs that the court may deem fit.

Current status of the application

The Reference at the East African Court of Justice has not yet been fixed for hearing.

APPENDIX:

HRAPF'S WOMEN'S DAY 2014 PRESS STATEMENT THE RECENT LAWS AND EQUALITY FOR ALL WOMEN: ARE WE PROGRESSING OR RETROGRESSING?

Every 8th of March, the world comes together to mark International Women's Day to celebrate the social, political and economic achievements of women while focusing world attention on areas requiring further action. The first International Women's Day was held in 1911. The theme for 2014 is Inspiring Change.

Human Rights Awareness and Promotion Forum (HRAPF) joins the rest of the world to celebrate International Women's Day 2014 with a self-evaluation phrase: "The recent laws and equality for all women: Are we progressing or retrogressing?" and a commitment to eliminate all forms of discrimination against all women through the law.

The struggle for equality of women started more than a generation ago. Since then, it has generated positive gains, but the world is still unequal. This inequality is still curtailing full equality for women and therefore instigates violence and abuse of their rights.

In 1945, the Universal Declaration of Human Rights (UDHR) was promulgated. The Declaration stated that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. The human rights regime is therefore a booster to the struggle for equality of women.

On 18th December 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by

the United Nations General Assembly and ratified by Uganda on 22nd July 1985. Article 1 of CEDAW states that "For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

While Uganda has had progress in as far as equality of women is concerned, we are witnessing a back track in the commitment to the protection and observance of human rights for all people, which obviously is bound to affect rights of women as well. A number of new laws have been recently passed, which have a detrimental effect on the advancement of women and these are:

The Anti-Homosexuality Act 2014: The law violates the rights of Ugandans including lesbian women and transgender women to non-discrimination, dignity of the person and privacy. It legitimises hatred, violence and the persecution of marginalised groups. It restricts civil society space for human rights organisations, prohibits dialogue and suffocates freedom of expression and association for the very organisations that have fought so hard for the rights of women. It also discourages health service providers from handling sexual and reproductive health issues for women who may be regarded as lesbian or transgender,

through the largely far reaching provisions on aiding, abetting, procuring and counseling as well as promotion of homosexuality.

The Anti-Pornography Act 2014:

Expressly and implicitly, the law mainly focuses on women, and has indeed seen vigilante groups of youth all over Uganda undress or attempt to undress women. The law has taken the country steps back in the struggle for equality and empowerment of women. It takes us back to a period where women were restricted on what to do, including what they can wear and how they can present themselves.

The Public Order Management Act 2013:

This restricts the space available to women and other persons to discuss political issues. It is a direct attack on the freedom of assembly and expression and it limits the citizen's role in governance and demanding for accountability from the state contrary to article 29 of the Constitution on freedom of expression, assembly and conscience. It should be recalled that the women's movement has achieved what they have achieved because of expression of their point of view through demonstrations and awareness. An example is the recent stoppage of a protest over the Anti-Pornography Act in Kampala which was led by women.

The Equal Opportunities Commission Act 2007:

This includes Section 15(6)(d) which prevents the Equal Opportunities Commission from investigating matters involving behaviour that is regarded 'immoral and socially harmful' or 'unacceptable' by the majority of the cultural groupings and social communities in Uganda. This provision undermines the very object and purpose for which the Commission was set up, which is to redress power imbalances created in

society by culture and history. The section reinforces power imbalances and inequalities among marginalised Ugandans, rather than addressing them by subjecting the investigation of cases concerning minorities to the views of the majority. This section was challenged in the case of Jjuuko Adrian vs. Attorney General of 2009 but judgment has not been delivered to date.

Other equally detrimental laws are being considered by Parliament. These include the HIV/AIDS (Control and Prevention) Bill 2010, which undermines patients' rights, dignity of the person and general human rights principles which should underpin any legislation in a democratic society. Provisions for mandatory testing and forced disclosure of test results violate the right to privacy under Article 27 and personal dignity under Article 24 of the Constitution. Practically, these provisions could have a counter-productive effect with people avoiding public health facilities and resorting to informal and unlicensed establishments, which may frustrate the purpose and spirit of the bill. Since women are the majority users of the testing services, this may have an everlasting negative effect on their health.

As we celebrate this year's Women's Day, let us all remember that the struggle for equality of women has been shaped through human rights and the law. Enacting laws that may bring about marginalisation and discrimination of women is something that we should desist from if women are to attain full equality.

We therefore call upon the government to repeal these laws or the particular provisions of these laws that promote discrimination against women and other marginalised groups.

ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM (HRAPF)

Legal status

Human Rights Awareness and Promotion Forum - Uganda (HRAPF) is an independent, nonpartisan, non-governmental organisation. It is incorporated under the laws of Uganda. HRAPF is specifically interested in human rights awareness and advocacy for the most marginalised in society. It works with likeminded organisations and institutions to further its interest. It employs legal and policy analysis, legal aid, legal research and documentation, and strategic litigation to further these ends.

VISION:

A society where the human rights of all persons including marginalised groups are valued and respected

MISSION:

To promote respect and observance of human rights of marginalised groups through legal and legislative advocacy, research and documentation, legal and human rights awareness, capacity building and partnerships.

SLOGAN:

'Taking Human Rights to all'

ORGANISATIONAL OBJECTIVES:

1. To sensitise Ugandans on the international and national human rights regime in order to promote a culture of respect for human rights of marginalised groups.
2. To undertake research and document human rights abuses suffered by marginalised groups for appropriate remedial action.
3. To influence legal and policy developments in Uganda to ensure compliance with human rights principles.
4. To offer legal assistance to marginalised groups in order to enhance access to justice.
5. To share information and best practices on the rights of marginalised groups in order to strengthen the human rights movement in Uganda.
6. To network and collaborate with key strategic partners, government, communities and individuals at a national, regional and international level.
7. To build a strong and vibrant human rights organisation.

VALUES:

1. Non-discrimination
2. Equal opportunities
3. Justice
4. Practical Approach
5. Team work

PROGRAMS

1. Access to Justice Program

The objective of this program is 'To promote sustainable access to justice for marginalised groups in Uganda specifically: sexual minorities, poor women and children living with HIV/AIDS and poor men and women and the elderly'.

It focuses on: criminal justice, land justice, family justice (HIV/AIDS related) and sexual and gender-based violence.

The program employs: legal assistance, strategic interest litigation, research and documentation, legal and human rights education and information, education and communication material development, and legal aid advocacy to achieve its objectives.

2. Legislative Advocacy and Networking Program

The objective of this program is 'To work with likeminded organisations and institutions to advocate for and influence the adoption of policies and legislation that promote equality and non-discrimination in order to prevent discrimination of marginalised groups.'

Under this program, HRAPF undertakes advocacy to influence legislative reform of laws/proposed bills such as: the Anti-Homosexuality Bill, 2009, the HIV/AIDS Prevention and Control Bill, 2010, the Equal Opportunities Commission Act, 2007, Sexual Offences Bill, the Public Order Management Bill, 2009, and the Legal Aid Bill, among others.

The program employs: legal and policy analysis, legal research and documentation, strategic interest litigation, and partnerships to achieve its objectives.

3. Organisational Development and Capacity Building Program as described below:

The Objective of this program is to create the appropriate institutional structures and organisational framework for the efficient and effective implementation of the program activities and realisation of the program Goal.

It focuses on five priority areas: Policy Development, Human Resource Management and Development, Strengthening Governance Structures & Building membership, Strengthening HRAPF's Monitoring and Evaluation Systems, and Increasing Resources for Increased Needs.

ORGANISATIONAL STRUCTURE

The General Assembly

This is the supreme policy-making body of the organization. It is made up of all members. Currently HRAPF has 50 members. Membership is open to all persons interested in human rights awareness, promotion and advocacy.

The Board of Directors (BOD)

The BOD is responsible for the day-to-day running of the organisation. The BOD is composed of seven members: the Chairperson, who is a co-opted member, the Vice Chairperson, the Secretary General, the Treasurer, two other members, and the Executive Director as ex-officio.

The Secretariat

This is the implementing body of the Organisation. It is headed by the Executive Director and is currently made up of 19 staff members.



CONTACT INFORMATION

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