

POLICY, RELIGIOUS
AND CULTURAL
DISCRIMINATION
AGAINST THE
LGBTI: **A CASE
STUDY OF
BUGANDA REGION**



UNIVERSAL COALITION OF AFFIRMING AFRICANS UGANDA (UCAA UG)

November 2023

“ *So long as people face criminalisation, bias and violence based on their sexual orientation, gender identity and sex characteristics, we must redouble our efforts to end these violations,* ”

Antonio Guterres, UN Secretary General, on 25 September 2018.

ABOUT UCAA-UG

The Universal Coalition of Affirming Africans Uganda (UCAA_UG) is an independent and non-partisan human rights organization which seeks to advocate for the respect of human rights of the most marginalised with a specific focus on LGBTI people, Women and Persons with Special Needs in Uganda using a faith-based approach. The organization is duly incorporated under the Companies Act.

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B. LIST OF ACRONYMS

AHA	The Anti-Homosexuality Act, 2023
CSOs	Civil Society Organizations
FGD	Focus Group Discussions
HIV	Human Immunodeficiency Virus
HRCU	Human Rights Center Uganda
KIIs	Key Informant interviews
LGBTQ	Lesbians Gays Bisexual Transgender and Queer persons
SGBV	Sexual and gender based violence
SOGIE	Sexual Orientation and Gender Identity/ Expression
SRH	Sexual and Reproductive Health
UCAA-UG	Universal Coalition of Affirming Africans Uganda

EXECUTIVE SUMMARY

The criminalisation of homosexuality was introduced by the British colonial government, which imported the laws England (and other English colonies at the time) to Uganda, a then British protectorate. When Uganda gained independence in 1962, we retained those laws, and have thus continued to criminalise sexual activity between persons of the same sex.

The continued criminalisation of homosexuality in Uganda feeds a steadily growing culture of contempt for, discrimination against and hostility towards LGBTQ persons, and this aggression and resentment manifests through policy, religion and culture.

At policy level, this deep-rooted prejudice has led to the enactment of the draconian Anti-Homosexuality Act (AHA), 2023, which provides for severe penalties for homosexuality (imprisonment for the entire natural life of a person without the possibility of release); the death penalty for what is defined as aggravated homosexuality, and imprisonment for up to 20 years for 'promotion of homosexuality'. This law attracted worldwide attention and just condemnation because it poses a threat to the very existence and the rights of LGBTQ persons in Uganda, and is a flagrant violation of international human rights principles and standards as enshrined under several treaties to which Uganda is a state party.

Despite all the global condemnation, the legislation attracted country wide support from cultural and religious leaders as well as the wider community, all of whom were resolutely united in their view that same-sex unions are "un-African and immoral" and "unnatural", and that homosexuality runs counter to God's holy order and cultural values of procreation and continuity. Additionally, the rhetoric around the AHA 2023 was framed primarily as a matter of protecting children from sexual exploitation, abuse and harassment, referred to in the law as 'recruitment' or child grooming.

All these factors work together to create an environment of extreme tension and fear for LGBTQ persons in Uganda, which has resulted,

predictably, in a lack of access to services and resources for members of the LGBTQ community.

Key recommendations

To Judiciary

- Hear and determine the petitions challenging the Anti-Homosexuality Act, 2023 which remains a significant bottleneck to the enjoyment of various rights of LGBTQ individuals.

To Parliament

- Refrain from making legislations that promote discrimination and violence against persons on the basis of their real or presumed sexual orientation and gender identity/ expression.

Civil Society

- Continue with the advocacy aimed at the nullification of the Anti-Homosexuality Act, 2023.

Religious leaders

- Reach out to fellow leaders on a one-one basis and deliberate on the best course in advancing a doctrine of love for all of God's creations, regardless of diversity.

Cultural institutions

- Cultural leaders and institutions need to make an effort to convey to their peoples the importance of tolerance and acceptance for persons across their diversities through maintaining inclusivity in all institutional programs, as well as refraining from contributing to homophobic rhetoric in the public sphere.

1. CHAPTER ONE

1.0. Introduction

On 2nd May 2023, the Parliament of Uganda passed the Anti-Homosexuality Bill, 2023, which was assented to by the President on the 26th of May 2023 and formally gazetted as the Anti Homosexuality, Act, 2023 on 30th May 2023. This was the second time that Uganda has passed such a law, with the first attempt at this law having been enacted in December 2013, although it was struck down by the Constitutional Court in 2014. These laws have been passed in addition to the ‘anti-sodomy’ provisions of the Penal Code Act, Cap 120, which outlaws having ‘carnal knowledge against the order of nature’ in section 145, with a penalty of up to life imprisonment.

Many provisions of the Anti-Homosexuality Act, 2023 blatantly violate rights to equality, non-discrimination, dignity, and privacy, among other rights, allowing intrusion into the private sexual lives of the (LGBTQ) persons.¹ Through the new crime of “promotion of homosexuality,”² the new law also seeks to criminalize allyship with as well as civil society organising by LGBTQ+ people in Uganda, violating rights to free association and expression. In many ways, the Anti-Homosexuality Act, 2023 has institutionalized and legalized discrimination and violence against LGBTQ persons in Uganda, and has in practice emboldened state and non-state actors to harass and commit various acts of violence against LGBTQ persons.³

In Uganda, there have been efforts to fight for visibility, recognition, equity, and equality of LGBTQ persons since around 2009. Although in many ways the movement has made significant strides towards securing inclusion and protection of LGBTQ persons against violence and abuse

1 Human Rights Awareness and Promotion Forum (HRAPF), A legal and human rights analysis of the Anti-Homosexuality Bill, 2023 as enacted by parliament, March 2023, at p. 2. Available at <https://hrapf.org/legal-policy-analyses/>.

2 The Anti Homosexuality Act, 2023, section 11.

3 See generally Human Rights Awareness and Promotion Forum, (Monthly) Report(s) on violence on the basis of SOGIE (from June to November 2023), available at <https://hrapf.org/violation-reports/>.

both at policy and community levels, LGBTQ persons are still stigmatized, discriminated against, and deprived of their human rights, particularly within the field of SRHR, using religion, policy and culture as a justification. Religious books such as the Bible and Qur'an are being used to fuel hate for LGBTQ persons, claiming that they are condemned and destined for hell (Leviticus 18:22, for instance).

Government policy as laid down in sections 145 and 146 of the Penal Code Act, Cap 120 and the recently enacted AHA is firmly in favour of the criminalisation of same-sex sexual activity, as well as a wide range of support services for and advocacy in favour of LGBTQ persons. In addition, majority of Ugandans have continued to think of homosexuality as a concept more as Western culture rather than something intrinsic to a small percentage of Africans as well, thus leading to a perception of LGBTQ persons, homosexuality/ bisexuality, transgender identities as well as any other sexualities beyond the cisgender heteronormative standard as deviant (and potentially contagious) behavior, or as a form of mental illness, rather than a natural variation.

It is however important to note that, to a bigger extent, stigma and discrimination against LGBTQ people, whether expressed through the law or through culture, is fundamentally and intrinsically based in religion, and the cover of religious values has been used to justify and sanction grave violations against individuals on the basis of their real or presumed SOGIE.

According to the 2014 population census, 84% of Uganda's population are Christians, 14% are Muslim and 2% believe subscribe to traditional and/ or other belief systems. This implies that religion has a significant influence on over 98% of the country's population, and as a result, religion-based homophobia remains a major factor in the violations of the rights of LGBTQ people in Uganda.¹ As a result of this bias and the violence that has accompanied it over the years, the community of LGBTQ people in Uganda have been denied the opportunity to exercise their creativity and innovation, harness their full potential in various social and economic fields, freely share opinions and views and otherwise participate meaningfully in society, all of which would have enabled a more positive and healthier human experience, both for LGBTQ persons and the general community.

¹ See for instance Human Rights Awareness and Promotion Forum, Uganda report(s) on human rights violations based on sexual orientation and gender identity, available at <https://hrapf.org/violation-reports/>.

1.1. Objective

The objective of the study was to provide a holistic understanding of the phenomenon of religious, policy and culturally based stigma and discrimination against LGBTQ people in Uganda.

1.2. Methodology

The research adopted a qualitative approach of data collection. The primary respondents who provided data for this study were religious leaders, cultural leaders, LGBTQ people, civil society organisations, academia and members of the general public. Respondents were primarily engaged through in-depth KIIs in order to determine their views and experiences of stigma against LGBTQ persons in Uganda with the religious, cultural and policy frameworks. Respondents were also engaged through FGDs for a more interactive and wider view of experiences of stigma and discrimination.

15 LGBTQ people, 10 religious leaders, 4 cultural leaders, 6 persons from civil society and academia as well as 10 people from the general public were interviewed for this study. In addition, 3 police officers and 2 state prosecutors were purposively selected and interviewed as secondary respondents because of their role in implementation of existing laws and policies.

The interviews were conducted in the form of structured interviews. Some of the interviews were administered face to face while some were conducted through a targeted questionnaire, which was shared with the respondents via email.

2. CHAPTER TWO: DISCRIMINATION IN LAWS AND POLICIES

2.0 The genesis of anti-LGBTQ Legislation in Uganda

The Penal Code Act, cap 120 of the laws of Uganda, was adopted on the 15th of June, 1950¹ by the Government of Uganda and was, for 55 years, the single source of law regulating sexual activity between persons of the same sex in Uganda, until this position was altered by the 2005 amendment of the Constitution of the Republic of Uganda to prohibit marriage between persons of the same sex.² This was followed less than 10 years later with an even greater change, when the Anti-Homosexuality Act, 2014, was enacted.

Prior to these two enactments, however, the position of the law, as provided under section 145 of the Penal Code Act, was that ‘carnal knowledge against the order of nature’ was criminalised, although there was no effort made to define what this in reality meant.³ The specific provision of the law states:

‘Any person who has carnal knowledge of any person against the order of nature commits an offence and is liable to imprisonment for life.’⁴

Section 145(c) criminalises permitting a male person to have carnal knowledge of one against the order of nature, while section 146 criminalises the attempt to have carnal knowledge against the order of nature, a felony that is punishable by imprisonment for a term of up to seven (7) years. This was the law that was used to police sexuality and

sexual conduct among persons of the same sex, and was a tool of oppression against LGBTQ persons across the country, with LGBTQ

1 ICRC, International Humanitarian Law Databases, available at <https://ihl-databases.icrc.org/en/national-practice/penal-code-act-1950#:~:text=On%2015%20June%201950%2C%20the,adopted%20the%20Penal%20Code%20Act.>

2 Article 31(2)(a).

3 See Human Rights Awareness and Promotion Forum, ‘Protecting “morals” by dehumanising suspected LGBTI persons: A critique of the enforcement of the laws criminalising same-sex conduct in Uganda, Kampala, 2013 at page 30.

4 Section 145(a) of the Penal Code Act, Cap 120.

people being arrested and charged under the law even without proof of engaging in any prohibited conduct, but rather on the mere fact that they ‘appeared’ to be homosexuals.¹

In 2009, the Hon. David Bahati tabled the Anti-Homosexuality Bill No.18. He argued that there were insufficiencies within the Penal Code Act in prohibiting the act of ‘homosexuality’ on so far as it did not prohibit the promotion of homosexuality. The long title to the Act read in part:

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations ...²

The Bill was signed into law by the President on February 24th, 2014, having been enacted by Parliament in December 2013, and came into force on March 10th, 2014.³ The law created the offences of homosexuality, aggravated homosexuality, conspiracy to commit homosexuality, attempt to commit homosexuality, aiding and abetting homosexuality, procuring homosexuality by threats and same sex marriages, among others. The law remained in force until the 1st of August 2014, when it was nullified by the Constitutional Court on grounds of lack of quorum as the minimum number of Parliamentarians required to vote was lacking.⁴

However, some researchers such as Neela Ghoshal of Human Rights Watch argued at the time that the judges’ ruling was just a temporary respite, as the law could be presented again in Parliament despite it being nullified on procedural grounds.⁵ Indeed, nine (9) years down the road, it found its way back in Parliament through a Private Member’s Bill introduced by Hon. Asuman Basalirwa (Bugiri Municipality) on 28th February 2023 and gazette on 3rd March 2023. The bill was passed by Parliament on 2nd May, signed by the President on 26th May and gazette on 30th May, on which date it came into force.

The AHA 2023 Act presents new extreme and stringent penalties, including the death penalty for aggravated homosexuality as defined in section 3 of the Act (covering circumstances that amount to defilement,

¹ n 7 above.

² The Anti Homosexuality Act, 2014, Long Title (page 3).

³ Refworld, Country Information and Guidance; Uganda: Sexual Orientation and Gender Identity, August 2014, at page 5, available at <https://www.refworld.org/pdfid/53fc864d4.pdf>.

⁴ Oloka-Onyango & 9 Ors vs. Attorney General (Constitutional Petition No.8 of 2014) [2014] UGSC 14 (1 August 2014).

⁵ Human Rights Watch, ‘Is it now legal to be gay in Uganda?’ by Neela Ghoshal, 7th August 2014, available at <https://www.hrw.org/news/2014/08/07/it-now-legal-be-gay-uganda>.

rape, incest/ sex with a person over whom ones holds guardianship, parental or other authority, as well as consensual intercourse with a person with a disability, a person with a mental illness, a person of advanced age, etc.) Attempted aggravated homosexuality carries a penalty of imprisonment for a term not exceeding fourteen (14) years, while the offence of homosexuality is punishable by up to life imprisonment in section 2 of the Act (defined to mean ‘imprisonment for the entire natural life of the offender without the possibility of release’ in section 1), and an attempt to commit the offence of homosexuality carries a penalty of up to 10 years’ imprisonment.

Since the Anti Homosexuality Bill 2023 was first tabled in Parliament in February 2023, LGBTQ persons have experienced intensified violence and discrimination. As such, violations and abuses continue to escalate, compounded by social and traditional media sensationalizing arrests of LGBTI and parading people to humiliate them before the public.¹ Local authorities and security agencies such as the Police have also conducted raids of LGBTI housing shelters and civic organizations.

Through the crime of “promotion of homosexuality,” the new law criminalizes allyship with LGBTI people by anyone, violating rights to free association and expression. This has resulted in harassment even of health workers for merely providing support to LGBTQ persons.² The law further mandates all persons to report anyone suspected of homosexuality and in these ways, the Anti-Homosexuality Act of 2023 institutionalizes discrimination and violence against LGBTI persons in Uganda and emboldens state and non-state actors to harass and violate the rights of LGBTQ persons.

“Advocacy for LGBTI rights is currently a tricky trade. At any one point, you can be arrested and charged under the new law for promotion of homosexuality. I think the law was hurriedly passed without extensive consultations. The law is being challenged in court but the fear remains. It’s now hard to openly talk about gay rights in a meeting.”³

¹ See for instance, Human Rights Awareness and Promotion Forum, Arrests, evictions and violence: Report of violations against LGBTQ persons for the first month following the passing of Uganda’s Anti-Homosexuality Bill, 2023, available at <https://hrapf.org/violation-reports/>.

² Human Rights Awareness and Promotion Forum, Report on cases of violence and violations based on real or presumed sexual orientation and/ or gender identity during the month of November 2023, available at <https://hrapf.org/violation-reports/>.

³ Interview with a staff from Human Rights Center Uganda.

A report by the Strategic Response Team indicates that, between 01 January 2023 and 31 August 2023, 306 violations and abuses were reported against LGBTI persons based on their sexual orientation and gender identity in Uganda, with state actors accounting for 25 of the 306 violations, which suggests a sharp shift towards establishing non-state actors as the main rights abusers of LGBTI persons.¹ Contextually, according to the Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity 2021, in 2021, state actors accounted for over 176 violations, while non-state actors accounted for over 77 rights abuses.²

In 2020, state actors accounted for 196 violations, while non-state actors were responsible for 93 rights breaches. While the number of state actor violations is perhaps lower than anticipated, state actors in the form of political leaders and government institution heads have used public spaces and positions to spread hate speech and rouse the public against LGBTI persons, partly explaining the rise of the homophobic craze among Ugandans. The increase in violations by non-state actors is an indictment of the state's core mandate to protect all Ugandans from violating their rights.³

The state is legally obligated to protect all persons from violations of their rights, both by state and non-state actors.⁴ As the custodian of justice, through the Judiciary and other relevant government bodies, the state is mandated to provide redress where rights have been violated – and the state has increasingly failed on this front.⁵

On a good note, the Director of Public Prosecution (DPP) has directed that all files with charges preferred under the Anti-Homosexuality Act should first be submitted to headquarters with a written legal opinion for further guidance before a decision to charge is made.

This follows an increase in number of indiscriminate prosecutions under the Act. She noted that, “the AHA only criminalizes offenses where a sexual act has been performed. The term “sexual act” is defined under section 1 of the Act.

1 Strategic Response Team, *Lives at Risk: A report on documented human rights violations and Abuses of lesbian, gay, bisexual, transgender, intersex and queer plus persons (LGBTQI+) in Uganda*, September 2023, Kampala. Available at <https://www.kuchutimes.com/pdfs/lives-at-risk-srt-report/>.

2 Human Rights Awareness and Promotion Forum, *Uganda report of human rights violations based on sexual orientation and gender identity, 2021*, available at <https://hrapf.org/violation-reports/>.

3 Human Rights Awareness and Promotion Forum, *Uganda report of human rights violations based on sexual orientation and gender identity, 2020*, available at <https://hrapf.org/violation-reports/>.

4 Article 20, 1995 Constitution of the Republic of Uganda.

5 n 18 above.

It is also important to note that sections 2(5) and 3(5) of the AHA provide that “for the avoidance of doubt, a person who is alleged or suspected of being a homosexual and who has not committed a sexual act with another person of the same sex does not commit the offence of homosexuality under this section,” a letter dated August 25, 2023, to Prosecutors in the ODPP reads in part.¹

2.1 Conclusion

Proponents of the AHA have argued that homosexuality is a threat to the traditional family setting and the younger generation, and that it is not an innate and immutable characteristic,² but rather a learnt deviant behavior. This school of thought tends to front the idea that homosexuality is a moral failing, rather than a natural variation on the spectrum of human sexuality, and the same thinking has been applied to transgender and gender non-conforming/ queer identities. It is on this basis that there seems to exist the belief that stringent criminal laws can ‘curb’ homosexuality, and stop the ‘recruitment’ of people into homosexuality. There can however be no denying the adverse effects that such legislative practices have had on the lives and rights of LGBTQ persons in Uganda.

2.2 Recommendations

To Judiciary

- Hear and determine the petitions challenging the Anti-Homosexuality Act, 2023 which remains a significant bottleneck to the enjoyment of various rights of LGBTQ individuals.

To Parliament

- Refrain from making legislations that promote discrimination and violence against persons on the basis of their real or presumed sexual orientation and gender identity/ expression.

Civil Society

¹ DPP directs on prosecution of homosexuality cases. September 2, 2023 <https://chimpreports.com/dpp-directs-on-prosecution-of-homosexuality-cases>

² See Memorandum to the Anti Homosexuality Bill, 2023.

- Continue with the advocacy aimed at the nullification of the Anti-Homosexuality Act, 2023.

Religious leaders

- Reach out to fellow leaders on a one-one basis and deliberate on the best course in advancing a doctrine of love for all of God's creations, regardless of diversity.

Cultural institutions

- Cultural leaders and institutions need to make an effort to convey to their peoples the importance of tolerance and acceptance for persons across their diversities through maintaining inclusivity in all institutional programs, as well as refraining from contributing to homophobic rhetoric in the public sphere.

3. CHAPTER THREE: RELIGIOUS DISCRIMINATION

3.0 Introduction

About four-fifths of Uganda’s population is Christian, primarily divided between Roman Catholics and Protestants (mostly Anglicans but also including Pentecostals, Seventh-day Adventists, Baptists, and Presbyterians). About one-eighth of the population is Muslim. Most of the remainder practice traditional religions. Religious leaders wield huge influence within their congregations, and wield great influence on community beliefs and social behaviors primarily because they occupy a position of trust within the communities they serve. They are recognized as critical gatekeepers with regards to addressing developmental and societal issues, including poverty, morality, health and many other spheres, and they thus hold great sway over the society’s understanding of sex and sexuality. Religious leaders have the ability to cause change with regards to values, societal norms, and attitudes towards non-conforming groups in the context of religion.

3.1 Religious context of the LGBTQ community

In Africa, recent legal and political struggles around LGBTQ persons often feature religious leaders as key actors in campaigns that instigate hate speech against and contribute to the marginalization of LGBTI communities.¹ They actively support and promote anti LGBTI legislation

and policies, and seem to be drivers of “homophobia spectacle” across the continent, as they have been greatly associated with anti-LGBTI stances.² For example, in Uganda and Kenya, the Anglican Church rebuked the Church of England for its decision to allow the blessing of same sex unions; with the Church of Uganda threatening to break apart from the Church of England to avoid being ‘dragged’ into sin.³

1 Adriaan V. Klinken, Barbara B, and Damaris P, *Religious leaders as agents of LGBTIQ inclusion in East Africa*, African Affairs, 2 May 2023, Oxford University Press, 122/487, 299-312 <http://www.academic.oup.com/afraf/article/122/487/299/7148158byquestion27September2023/>

2 Above.

3 The Standard, *Church of Uganda responds to Church of England’s decision to bless same-sex unions*, statement by the Most

Additionally, religious critics of LGBTI communities in both Islam and Christianity base their arguments on a 'traditional' view of marriage and sex as designed for man and woman, and the story of Prophet Lot or Lut in the Bible or Qur'an.

“And (remember) Lut (Lot)! When he said to his people, ‘Do you commit Al-Fahishah (evil, great sin, every kind of unlawful sexual intercourse, sodomy) while you see (one another doing evil without any screen). Do you practice your lusts on men instead of women? Nay, but you are a people who behave senselessly.’ There was no other answer given by his people except that they said: ‘Drive out the family of Lut (Lot) from your city. Truly, these are men who want to be clean and pure!’ So We saved him and his family, except his wife. We destined her to be of those who remained behind. And We rained down on them a rain (of stones). So evil was the rain of those who were warned [al-Naml 27:54-58].”

In Uganda, the religious leaders' extremism has been more evident in the national discussion of sexual orientation and gender identity, spurred by the enactment of the Anti-Homosexuality Act. The gay community in Uganda has been violently condemned by religious leaders who outrightly denounce sexual minorities and spread a message of hate.¹ Though it can't be said that all religious leaders or believers condemn the LGBTQ community, over 96% of Ugandans believe that “homosexuality as a way of life isn't acceptable and is irreligious.”²

Even before the enactment of the Anti-Homosexuality Act 2023, public demonstrations by the religious faithful, particularly the Muslim and Anglican communities, greatly instigated the hatred the general community holds against the LGBTQ people.³ It is only the Catholic church which has not come out to strongly condemn homosexuality as compared to other religious sects. Even amongst the Pentecostals, some pastors have stood out strongly to bring out the message of condemnation of the LGBTQ community, even making submissions

Rev. Dr. Stephen Samuel Kaziimba, Archbishop of the Church of Uganda, 10th February 2023 <http://www.churchofuganda.org/blog/2023/02/10/response-to-church-of-englands-decision-to-bless-same-sex-unions/>.

1 Daniella Zalcmán, Faces of faith: Where religious leaders in Uganda stand on LGBT rights, October 2, 2014 <http://www.pulitzercenter.org/stories/faces-faith-where-religious-leaders-uganda-stand-lgbt-rights/>

2 Interview with one gay religious leader.

3 Shabibah Nakirigya, Muslims to hold anti-gay protests today, The Daily Monitor, February 24, 2023 <https://www.monitor.co.ug/uganda/news/national/muslims-to-hold-anti-gay-protests-today-4135600>.

before the parliament in support of the Anti-Homosexuality Bill (as it then was).¹

One respondent shared his personal experience on how he was dismissed from the seminary on discovering that he was gay.

“I was terminated from the Church when I was remaining with one year to become a priest. On my dismissal, I joined the orthodox church. However, the Orthodox Church of Uganda is homophobic, while the Orthodox Church of America is inclusive and accommodative and so I became associated with it. As a religious leader, I face discrimination. I lost most of my friends and many scorned me. I lost donor support as some of my friends wrote to them speaking ill of me. Even in areas of operation when carrying out some activities intending to bring the community together, I am usually left out in such engagements as they don’t support my stand on inclusivity. Other groups don’t admit you once they discover your sexual orientation.”

Religious leaders are also relying on some Bible verses to condemn homosexuality, such as the story of Sodom and Gomorrah in Genesis; 1Corinthians:6:16; Jude 1:7; and Matthew 10:15, among others, all suggesting that homosexuality is a sin, and that homosexuals may not enter heaven. Although affirming faith leaders maintain that this is all a misreading and misinterpretation of the bible, and that there is in fact no real reason to believe that the sin of Sodom and Gomorrah was homosexuality, many LGBTQ people nevertheless find themselves unable to participate effectively in religious settings and to fully enjoy the exercise of their faith in fellowship with others. One respondent shared;

“...This is a distortion and misinterpretation of the Scriptures. Religious leaders are strong and they can’t be queried. The congregation only swallows what is told and that is why many have left the congregation and die/ suffer in silence. To us, the church which was place of hope, refugee and solace has unfortunately been our condemnation and we therefore can’t be comfortable in such an atmosphere. The religious leaders have condemned us to death and hell.”

¹ Parliament of Uganda, Report of the Sectoral Committee on Legal and Parliamentary Affairs on the Anti-Homosexuality Bill, 2023, April 2023.

Homosexuality in Islam like it is in Christianity is seen as a sin. Sheikh XXX noted that;

“Islam’s position on homosexuality has always been clear and perspicuous from the time of the revelation of the Quran to our Prophet Mohammad (peace be upon him), 1,400 years ago, to this very day. The Islamic perspective is also consistent with Judaic and Biblical perspectives as stipulated in the holy scriptures”.

Another respondent, who is also a believer in both Islam and traditional religion, argued that;

“There is need for a non-biased study on whether homosexuality is an influence or some people are born homosexuals. The whole idea of following religion without questioning some theories needs to stop. Some concepts in both the Bible and the Qur’an don’t make sense because they were developed to make us follow their beliefs and abandon our beliefs and traditions. We also need to study whether homosexuality existed before or its foreign. That will help us understand why we need to detest or embrace it.”

Another respondent noted that;

“Apart from the story of prophet Lut and the Qur’an verse on marriage between man and woman, I don’t know of any other specific provision that prohibits homosexuality in Islam. It might be detested because the people of Prophet Lut wanted to use it as a punishment against the Angels who had come to visit the Prophet.”

Another respondent also noted that;

“Being gay does not stop me from being religious. All that God wants from us is to treat one another justly. My sexuality should not be related to my beliefs. I was born gay, even God knows. My beliefs are between me and my God. I thought churches are meant for sinners? If they think we are sinners, then let them encourage us to go to church. There are a lot of things that people aren’t condemning like men marrying more than one wife and they go ahead to even accept them in church;

accept tithe from them. People eat pork, rabbits and other things that are prohibited in the book of Leviticus.”¹

3.2 Conclusion

Religion has greatly been used to castigate the LGBTQ community, who feel alienated and always targeted by the summons of hate by religious leaders. It is thus fair to conclude that stigma against LGBTQ persons within the religious sphere is a far reaching and deeply embedded phenomenon that has made it very difficult for LGBTQ people to fully integrate and comfortably participate in public religious life, despite an apparent desire on the part of many of the respondents to do so. The influence of religion on the legal and policy framework can also not be ignored or downplayed, particularly in light of the role that the religious community played in the run up to the enactment of the AHA 2023, a clear indication of the influence of religion on all spheres of public life.

3.3 Recommendations

Religious leaders

- Reach out to fellow leaders on a one-one basis and deliberate on the best course in advancing a doctrine of love for all of God’s creations, regardless of diversity.

¹ Interview with a catholic gay respondent.

4. CHAPTER FOUR: CULTURAL DISCRIMINATION

4.0 Introduction

Africa as a region has often been characterized as being hostile to rights of sexual minorities, with African law makers always using culture to justify the violation of the rights of LGBTI people.¹ Same-sex relationships are viewed as wholly foreign, conceptually developed and promoted by the western world. Thus, whenever western leaders call on African leaders to revise laws and policies that target LGBTQ people, to legalise same-sex sexual relations or otherwise provide for protections for the rights of LGBTQ persons, the response of African governments tends to always centre around cultural differences.²

4.1 Cultural perspective of LGBTQ community

Research evidence suggests that homosexuality and transgender identities existed in pre-colonial African, and that the same were accepted, even though they were not necessarily celebrated.³ The myth of homosexuality being un-African is hooked on an old practice of selectively invoking African culture by those in power,⁴ usually as a way of justifying human rights violations or other excesses of the state, and it is always “un-African” whenever there is an assertion of rights relating to reproductive autonomy and sexual sovereignty. This uniform invocation of culture to challenge sexuality is despite the abundant evidence that Africa is made up of thousands of ethnic groups with rich and diverse cultures, as well as sexualities.⁵

1 Tyler Walton, Sexual minorities and the right to culture in African states, 2018.

2 Above.

3 Kate Hairsine, Why Africa is a difficult place for homosexuals?, 12th April, 2019, <http://www.dw.com/en/why-is-homosexuality-still-taboo-in-many-african-countries/a-51528737/>.

4 Dr. Sylvia Tamale, *Homosexuality is not un-African*, 20th March 2015 <http://www.boell.de/en/2015/03/02/homosexuality-is-not-un-african/>.

5 Above.

Dr. Sylvia Tamale, a renowned Ugandan scholar, states that African history is replete with examples of erotic and non-erotic same-sex relationships, and that homosexuality was neither fully condoned nor totally suppressed. It was acknowledged by multiple ethnic groups in Uganda including the Langi, Iteso, Bahima, Banyoro, and the Baganda.¹ For example, during the precolonial times, the effeminate males “mudoko dako” among the Langi of northern Uganda were treated as “women”, and could marry men. In Buganda (one of the largest traditional kingdoms in Uganda), “it was an open secret” that Kabaka Mwangi II, ruler of the latter half 19th century was gay.²

The evolution of language, it is alleged, is another factor pointing to the fact that homosexuality as a practice may indeed have existed long before English became a language of common usage in Uganda, with several cultures and tribes having words within their own languages to describe the practice. Among the Baganda, for instance, ‘*ebisiyaga*’ has long been used to refer to homosexuality, a term with no negative or positive connotations in its ordinary usage, while among the Ankole, homosexuals are referred to in their mother tongue by the rather derogative moniker of ‘*ebitingwa*’.

On the other hand, the respondents from Buganda Kingdom administration, who shared their views in their individual capacity and not on behalf of the Kingdom, indicated that traditionally, homosexuality isn't accepted in the region, and is an anomaly. One respondent in particular maintained that homosexuality was alien to Buganda and that they had never come across any Luganda sayings/ idioms that reference homosexuality, yet Luganda as a language has a rich vocabulary, with proverbs and sayings referencing almost everything in normal day to day life. The respondent further shared:

“The word ebisiyaga can be used to encompass all words used in homosexuality. I don't believe that (our) language can be so limited. If it was normal, Buganda would have diction describing all those words...”

Another respondent maintained that the Kabaka of Buganda has historically been a beloved figure, and the subjects of the Kabaka were always eager to emulate their king, and that if homosexuality was

1 Nakisanze Segawa, ‘Uganda denounces homosexuality, but experts say it's not new in Africa’, Global Press Journal, December 19, 2016 <http://www.globalpressjournal.com/africa/uganda-denounces-gays-experts-say-homosexuality-long-africa/>.

2 n 35 above.

practiced by a Kabaka of Buganda, it would have eventually been practiced by his subjects as well:

“If indeed Mwanga was gay and was practicing homosexuality, it would have been prominent and today, there would have been an account of the same. The subjects would dearly have done it as well, thus making it easy to spread within the Kingdom.”

Of course, it is important to note that these respondents appeared to understand homosexuality more as a ‘practice’ that could be copied and emulated rather than an orientation that does or does not exist and can therefore not be learned, thus giving credence to the argument that homosexuality would have spread throughout Buganda if a King engaged in it. This argument is in tandem with the previously discussed idea, which in large part influenced the movers of the AHA 2023, that homosexuality is not an ‘innate and immutable characteristic’.¹

Despite all the cultural arguments for and against same-sex attraction, there is strong opposition to homosexuality as a concept within the Ugandan cultural settings, and significant condemnation of LGBTQ persons, with the ‘western import’ discourse stemming mainly from the cultural perspective. This discrimination has also bled into the religious sphere, but more significantly has influenced developments within the law making processes, as seen during the process of the enactment of the Anti-Homosexuality Act, 2023. According to the mover of the Bill, the Bill was intended at least in part to protect cultural values. The memorandum to the AHB 2023 reads in part:

The object of the Bill is to establish a comprehensive and enhanced legislation to protect the traditional family by—

...

*protecting the **cherished culture of the people of Uganda**, legal, religious, and traditional family values of Ugandans against the acts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.*
... (emphasis added).

It is therefore clear that the general community in Uganda remains biased against LGBTQ persons, to the extent that families of LGBTQ people often feel the need to disown their LGBTQ children, or at least

¹ Memorandum to the Anti Homosexuality Bill, 2023.

distance themselves from them, both due to their own beliefs but also as a way to avoid public condemnation/ ostracism. One respondent's experience clearly demonstrated this when they shared:

"I realized that I was different at the age of 11 years. My mother realized it and my father also knew about it and he hated and resented me so much. I believe my father was very much exposed as he was more educated. For harmony, my mother sent me to Kabale to my grandmother for 4 years. When I came back from Kabale, my brother who is a Catholic Priest in Nairobi, sponsored my education. During my holidays, I used to go to my father's place. Unfortunately, with time I lost contact with my parents. I left for Nairobi after completing Senior Six and was completely cut off from my people..."

For many LGBTQ people, the discrimination and bias presents either as threats of violence or as real violence against individuals on the basis of their SOGIE. In some cases, such violence is so pervasive as to force LGBTQ persons to leave the communities in which they were raised/ have been living in favour of communities that would consider them relative strangers. One respondent demonstrated this difficulty when they shared;

"Where I currently reside, I encountered challenges with political and religious leaders. One time, I was forced to run away from the village as one of the political leaders of the region was following me up. I was scared for my life and my return was negotiated by my brother..."

On the other hand, a different kingdom official noted that there was room within the culture for acceptance of LGBTQ persons, because the Kabaka had never come out to publicly condemn any of his subjects just because of their sexual orientation. According to this respondent:

*"Time has come for the African culture to accept and embrace the issue [of sexual and gender diversity] as we are sons and daughters of the African soil. We are given birth to by African parents. We have children and daughters and they want good things from them when they are well off. Like the Luganda saying, **"azaala ekibi akiwoongerera"**. ... We must be ready to allow that these are our children."*

4.2 Conclusion

It is apparent that, on the cultural front, there is a lot that must be done to protect the rights of LGBTQ people, because the cultures of the majority of people in Uganda have been interpreted in a reified way that is absolutely exclusive of LGBTQ people and unbending towards acceptance of diversity, and yet this is not necessarily true of culture as it was before the influence of religious extremism. It is clear from the discussions with the kingdom officials from Buganda, for instance, that there is certainly room within the framework for acceptance of and care for the LGBTQ people within Uganda. It would however require extensive effort on the part of the kingdom leadership to influence attitudinal change among the general population.

African is not exclusive of, nor punitive to, LGBTQ persons. It is just a question of individuals and institutions, particularly those that are looked up to and trusted as custodians of our cultural beliefs and values, making a conscious effort to include and welcome LGBTQ persons, and support their right to fully participate in cultural life.

4.3 Recommendation

- Cultural leaders and institutions need to make an effort to convey to their peoples the importance of tolerance and acceptance for persons across their diversities through maintaining inclusivity in all institutional programs, as well as refraining from contributing to homophobic rhetoric in the public sphere.

5. CONCLUSION

A lot can be said about LGBTQ people and their place within the socio-legal, religious and cultural context in Uganda. The debate around the origin of homosexuality in Uganda continues to rage, with the majority firmly maintaining the view that homosexuality has been taught to Ugandans, and Africans at large, by Western powers as a way of asserting a cultural imperialism on the peoples of Africa. There is a continuing refusal on the part of the vast majority of African communities to understand, and thus accept, sexual and gender diversity as an integral part of human nature and natural diversity, and the insistence on viewing homosexuality, bisexuality, transgender identities or any other identity that is not specifically cisgender and heterosexual as a learned deviant behavior has a lot to do with society's perception of LGBTQ people.

At present, this view of SOGIE issues has led to the deep seated belief that LGBTQ people are merely confused, have been mis-influenced, are being abused or are otherwise victims of older, more powerful or richer parties who are making conscious deliberate efforts to 'teach' the younger, more vulnerable members of the society to be homosexuals, and as such, the reactions have been predictable: on the policy front, the law makers have strived to resolve this problem by instituting punitive laws to discourage people from 'learning the vice'; on the religious front, public condemnation coupled with the threat of eternal damnation has been employed against LGBTQ people, with great psychological impact, to try and discourage homosexuality; while on the cultural front, communities have used the same public condemnation as well as a form of social ostracism that excludes LGBTQ persons from any semblance of a social or cultural life, thus depriving them of the usual social protection networks.

This matter cannot be resolved through one approach only. It is necessary that all stakeholders come together to address the issue of systemic and institutionalized homophobia in Uganda by addressing the myths and misconceptions around the concepts of SOGIE, which have fueled our legal, religious and cultural responses, in order to work towards more just and inclusive societies. To this end, religious leaders

are called on to reexamine their own views of the biblical teachings on love and acceptance; and cultural leaders are called upon to reexamine the current issues in light of the age-old African spirit of 'ubuntu', which among the Baganda is more commonly understood as 'obuntu bulamu', in order to make space for love and acceptance of LGBTQ persons within our socio-cultural spheres. Political leaders are enjoined to avoid institutionalizing social biases through laws and policies that further marginalise and victimize LGBTQ persons, and instead focus on addressing historical biases and abuses against LGBTQ persons through affirmative action.

None of us can be truly free until we all are free, and it is vital that this message is understood in the three contexts discussed in this report.



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