

THE ANTI-HOMOSEXUALITY BILL 2023(UGANDA)

DETAILED
REPORT



Prepared By:
LET'S WALK UGANDA
LEGAL TEAM

SUMMARY NOTE

The Ugandan LGBTQI+ community is confronted with life-threatening dangers in light of the proposed “Anti-Homosexuality Bill 2023” and calls for internationally concerted action.

Current Situation of LGBTQI+ Community in Uganda

The LGBTQI+ community is under real and imminent attack. The security of many community members is dire since the initiation of the religious and state inspired homophobia. An increase in violation of human rights can be observed, which makes the country more and more unliveable for members of the LGBTQI+ community. In the course of the last months, many queer people have been attacked by mobs, driven out of places of accommodation, denied access to health services, entertainment facilities, and being forcefully outed. While this can be traced to a general spread of homophobia in the society by reactionary private and religious forces, Ugandan state institutions increasingly take the centre role in the persecution of LGBTQI+ lives. A recent government report has recently recommended the closure of LGBTQI+ friendly organisations. The violent atmosphere currently culminates in the proposition of the “Anti-Homosexuality Bill” in the Ugandan parliament.

The “Anti-Homosexuality Bill”

The tabled “Anti-Homosexuality Bill 2023” criminalises same sex relations, Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, Intersex Plus gender identities by imposing imprisonment for ten years. Some MPs have suggested adjustments asking for imprisonment for life and death penalty. The Bill further criminalises being an ally to the LGBTQI+ community whether by providing medical care, housing, legal services, associating, making any queer friendly expression on any media. This is punishable up to 5 years imprisonment as this is considered aiding, abetting, procuring, and promoting of homosexuality. For these, the bill further demands extradition from other countries.

While existing legislation is already criminalising homosexuality in Uganda, this bill symbolises a heavy reinforcement and has sparked already homophobic media discourses and several acts of mob-violence within the

past weeks. Ugandan civil society actors anticipate the passing of the Bill in the Ugandan parliament by April 2023. While some hope that it will be challenged in the Constitutional Court, already its passing brings life threatening danger to the Ugandan LGBTQI+ community. Not least, lessons from the temporary passing of the unconstitutional anti-homosexuality bill 2013 show that with the passing of the bill, the LGBTQI+ community needs to struggle against mass imprisonment and police violence as well as mob-violence and widespread homelessness. The Ugandan LGBTQI+ community therefore urgently requires widespread international support to prevent the passing of the bill and to prepare for an emergency in case of its passing.

Needs of the LGBTQI+ Community

- + The bill be dropped through international, regional and local collective efforts.
- + International awareness and solidarity enhancing the security of the LGBTQI+ community.
- + Legal support of LGBTQI+ members who are likely to or facing unlawful kinds of violence in Uganda.
- + Possibilities for safe escape from the country for emergency protection and support.
- + Logistical support for the LGBTQI+ organisations and allies to ensure continuity of their services towards the LGBTQI+ community.
- + Raising awareness among the unaware LGBTQI+ community members in Uganda about the effects of the Anti-Homosexuality Bill.

CONTENT

Summary Note.....	2
Abbreviations.....	4
1 Introduction.....	5
2 What Proponents of the Bill have said.....	5
3 Content of the Bill.....	8
4 (In-)Compatibility with the Constitution of Uganda.....	14
5 International Instruments on Non-discrimination.....	15
6 Implications of the Bill on Economic Social and Cultural Rights of LGBTQ+ persons.....	19
7 Conclusion.....	20
8 Recommendations.....	20

Abbreviations

ACHPR	African Charter on Human and People’s Rights
ACP-EU	Africa Caribbean Pacific (ACP) – European Union (EU)
CRPD	Convention on the Rights of Persons with Disabilities
CSOs	Civil Society Organizations
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTQ	Lesbian Gay Bisexual Transgender Queer-Questioning Intersex
NGOs	Non-Governmental Organizations

A DIGEST OF THE ANTI-HOMOSEXUALITY BILL 2023, UGANDA

1 Introduction

On the 28th of February 2023, a member of Uganda’s parliament was granted permission by the speaker of the house to introduce a bill termed the Anti-Homosexuality Bill of 2023. Following a green light from the government, the mover of the bill tabled it on the 9th of March 2023 for the first reading and then forwarded the committee in charge of drafting bills. This means that the Bill should be scrutinized by the committee of Parliament and encourage public input before it is taken back to the full house of parliament. Before we delve into some of the absurd provisions of this bill, I will highlight some of the events and comments that have led to the urgency of this bill.

2 What the key proponents of the Law have said.

October 2022: The Deputy Speaker of Parliament vows to fight against homosexuality while attending the ACP-EU conference.¹

In January 2023: Pictures of two high school girls holding hands at a school prom party started trending on social media.

January 2023: A WhatsApp message from a mother alleging that her son was sodomized in one of the elite schools in Uganda leaked.

On 24th January: The Deputy of Parliament stated:

“I am getting painful stories about homosexuality and many people are dying in silence. It seems our schools have been infiltrated and recruitment centers are open. It’s extremely sad. Our children have been grabbed and sodomized,”

“... We are going to see how we work with the government and stop homosexuality. We must protect our children, save humanity and our country,”

He called for the investigation of NGOs involved in the "promotion" of homosexuality and reiterated the statements he made in Parliament, on his Twitter account.

¹ <https://www.parliament.go.ug/news/6240/we-oppose-ACP-EU-agreement-homosexuality-taye-bwa>.

10th February 2023: In a Press conference responding to the decision of the Church of England to bless same-sex unions, the Archbishop of the Church of Uganda stated:

“Finally, now that our children are back in school, beware of the well-funded Gay organizations that are recruiting our children into homosexuality. Not only in Kampala, but all over the country. They target our poverty and promise our youth money.”

15th of February 2023: The interreligious Council of Uganda vows to support an Anti-gay law and calls for. Sheikh Shaban Mubaje, Mufti of Uganda states,²

"But it (law) is still our stand and as religious leaders, we urge the government and his Excellence the President that if it means bringing back that law, we are in support because that law will bury the LGBTQ practice in Uganda,"

16th of February 2023: President Museveni hails the church leaders for their opposition to homosexuality:³

"We are not going to follow people who are lost. These Europeans are not normal, they don't listen."

“We have been telling them ‘Please, this problem of homosexuality is not something that you should normalize and celebrate,” he said, adding, “They (Western countries) don’t listen, they don’t respect other people’s views and they want to turn the abnormal into normal and force it on others. We shall not agree.”

24th February 2023:

Muslim faithful hold demonstrations across the country against ‘Homosexuality.’

Mufti of Uganda Sheikh Shaban Ramadhan Mubaje asks Parliament for a law that prescribes the death penalty for homosexuality.⁴

28th February 2023: MP Asumani Basalriwa is granted leave to introduce a Bill entitled The Anti-Homosexuality Bill of 2023. During the session, the speakers emphasize that voting on the Bill shall be by open voting so that people see who is against it.

² Dorothy Nagitta & Peter Sserugo, “Religious leaders to return anti-gay Bill to Parliament,” Daily Monitor, February 16 2023, <https://www.monitor.co.ug/uganda/news/national/religious-leaders-to-return-anti-gay-bill-to-parliament-4125868>.

³ Tobias Jolly Owiny, “Museveni: Uganda won’t support homosexuality,” Daily Monitor February 23 2023, <https://www.monitor.co.ug/uganda/news/national/museveni-uganda-won-t-support-homosexuality--4127004>.

⁴ <https://www.ntv.co.ug/ug/news/national/muslim-leaders-decry-promotion-of-homosexuality-4136866>.

9th March 2023: The mover of the Bill tables it for first reading together with a certificate of final implication from the government. The Certificate gives a green light for the enacting of the bill. On that day the speaker states:⁵

“I want to urge MPs [that] don’t get intimidated, we are doing this for humanity, we are here to represent people out there. We are the voice of the voiceless. We have our Bill that is going to come; the Executive promised that they will bring the certificate and I can ably report that the certificate was delivered,”

“I will ask the committee to ensure there is sufficient public hearing on this Bill, nothing should be hidden. Accord people a public hearing, let the public come and express their views, including the homos, allow them to come, please listen to them,”

She added:

“We don’t want that scenario that they weren’t heard as if they are doing something that is legal. So, we want them to be heard even in their illegality, even in their immorality, let us hear them.”

Before those statements, the Speaker stated that the voting will be in the open so that the people know which member of parliament is a homo:

“All the members will vote by tally; we will call a person and the person will vote. We do not want the technicalities of saying there was no quorum. This is the time you are going to show us whether you are a homo, or you are not.”⁶

Following the inciting statements from religious and political leaders, there have been a series of attacks on people who are perceived to belong to the LGBTQ community. A case in point is when a mob stormed a school that was rumored to have a lesbian teacher.⁷

⁵ Arthur Arnold Wadero, “Govt okays new anti-gay Bill,” Daily Monitor, March 10 2023, <https://www.monitor.co.ug/uganda/news/national/govt-okays-new-anti-gay-bill-4153176>.

⁶ <https://twitter.com/pwatchug/status/1633793124307722242?s=20>.

⁷ Tausi Nakato, “Parents storm school over suspected lesbian teacher,” Daily Monitor, March 04 2023, <https://www.monitor.co.ug/uganda/news/national/parents-storm-school-over-suspected-lesbian-teacher-4145828>.

3 Content of the Bill

Having highlighted the statements of the key leaders in the enactment of the law, I now highlight some of the provisions of the Bill itself.

In the preamble to the Bill, the drafters make problematic texts that are important to highlight. It is stated in the principles of the Bill **'that same-sex attraction is not innate and immutable' and that the bill seeks to protect the cultural, religious, and traditional family values of Uganda against the rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.'** It further adds that the bill seeks to protect children and youth from sexual abuse through homosexuality.

The long title of the Act states that the Act is **'to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of sexual relations between persons of the same sex; and for related matters.'**

The Bill then goes on to make definitions of the keywords used in the Bill in the following terms.

The offence of Homosexuality

It defines homosexuals as people who engage or attempt to engage in same-gender sexual activity and homosexuality to mean same-gender or same-sex sexual acts. There is no mention or recognition of sexual orientation in the Bill.

Clause 2 spells out what is categorized as the offence of homosexuality and this among others includes.

- i. Touching another person with the intention of committing the act of homosexuality
- ii. Holding out as a lesbian, gay, transgender, queer or any other sexual or gender identity that is contrary to the binary categories of male and female.

In the definition section, touching another person is defined to include touching any part of the body.

(b) with anything else.

(c) through anything.

and includes touching amounting to penetration of any sexual organ, anus, or mouth.

This in essence means that anything can be understood to be touching with the intent to commit the act of homosexuality. It matters not what is being used to touch and where. It opens floodgates of interpretations. If one's foe interprets shaking hands as touching with the intent to commit homosexuality, a person can be said to have committed an offence of homosexuality.

Another problematic sub-clause is where identifying oneself outside the binary conventions of male or female is criminalized. The bill only recognizes two gender identities; male and female and anything outside is criminalized. Once the Bill becomes law, it will be punishable by ten years of imprisonment for someone to identify as transgender, gay, lesbian, Queer, intersex, or any other sexual and gender identity.

It is important to note that the bill does not make any distinction between Sex Orientation and Gender identity. These are confusingly interwoven together to mean the same thing—homosexuality.

Aggravated Homosexuality per clause 3

The bill restates the position of the Penal Code Act Cap 120 on defilement, aggravated defilement, and aggravated rape. The bill further criminalizes having HIV. It states that a person **commits the offence of aggravated homosexuality where— the 'offender' is a person living with HIV.**⁸ This provision does not have a clear definition of who an offender is when two persons are involved in consensual sex. No criterion is given to determine who the offender is. Secondly, this further marginalizes queer persons living with HIV by making them an intersection of many criminal offences.

Thirdly, **clause 3(3) makes testing for HIV mandatory** for a person charged with aggravated homosexuality. It is important to note that engaging in same-sex intercourse whilst having HIV is already an aggravating factor. So, for the police to reach the certainty of anyone's HIV status, HIV testing is mandatory for everyone who will be charged under the law. It is also unclear what will happen when the parties involved are all living with HIV.

Criminalizing HIV status goes against set constitutional safeguards including freedom from discrimination, the principle of legality, and very importantly, it goes against the presumption of innocence.

The offence of aggravated homosexuality carries a sentence of imprisonment of ten years.

⁸ Clause 3 subclause 1(b) of the Bill.

Clause 6 of the bill states that consent by a victim is not a defense. The words used in this clause are vague and contradict those used in the definition section. In the definition clause, a victim is defined to include someone who is involved in ‘homosexual activities’ without ‘his or her’ will.⁹ The same act then states that consent by a victim is not a defense. This creates two confusing paradoxes; how will a victim be identified? And how possible is it that someone already considered a victim can raise the defense of consent? These two provisions are redundant.

Clause 8 provides that any person who aids, abets, counsels, or procures, another to commit the offence of homosexuality is liable to imprisonment for two years. It is not clear what amounts to aiding, abetting, counselling, or procuring but these undefined terms can lead to wide scopes of criminalization. Holding a conference or being sympathetic to a queer person or advocating for LGBTQ rights can be considered aiding and abetting.¹⁰

“Promotion”

Clause 14 is yet another problematic provision. From its title ‘Promoting Homosexuality, the clause uses a wide term which is not clearly defined. Given its implication to the queer community and anyone that advocates or sympathizes with the community, this provision is reproduced herein verbatim:

Promotion of homosexuality

(1) A person who—

(a) participates in the production, procuring, marketing, broadcasting, disseminating, publishing of pornographic materials for purposes of promoting homosexuality.

(b) funds or sponsors homosexuality or other related activities.

(c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality.

(d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality; or

(e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices.

⁹ Clause 2

¹⁰ HRAPF, A LEGAL AND HUMAN RIGHTS ANALYSIS OF THE ANTI-HOMOSEXUALITY BILL, 2023. p.9. No citation was available.

commits an offence and is liable, on conviction, to a fine not exceeding five thousand currency points or imprisonment for a term not exceeding five years, or both.

The overarching word from the clause is 'promoting.' The import of this section is that should anyone post something connected to the LGBTQ, or homosexuality, that can be considered promoting homosexuality and is punishable up to imprisonment of five years. The clause makes it a criminal offence to make a post on homosexuality or anything queer. This is broad and lives room for arbitrary arrests and convictions.

Sub-clause 1(c) further criminalizes the letting of premises to any member of the LGBTQ community. The clause is to the effect that anyone who offers their premises for purpose of homosexuality commits an offence. It matters does not whether a landlord is not aware that someone is a homosexual, for as long as it is found that they offered their premises to any person of the queer community, that landlord is an accomplice of the crime of homosexuality.

Sub-clause 2(a) imputes criminal responsibility on a director of a body corporate for example an NGO, Company, Church, or any other entity who is to be seen as a promoter of homosexuality. Therefore, this bans any advocacy on matters affecting the LGBTQ community for example, health rights, housing, fair treatment, and legal representation, among others. All these services can be considered a promotion of homosexuality.

The sub-clause 2(b) also states that an entity that is involved in the promotion of homosexuality shall have its registration revoked by order of the court. The current NGOs, Associations and companies that are currently and that will continue to be involved in the provision of services to members of the LGBTQ community shall have their registration revoked immediately after the bill is made law. Not only shall their certificates be revoked but also their directors will face imprisonment of up to five years.

This provision aims not only to criminalize advocating for LGBTQ rights among the LGBTQ community but also to criminalize being an ally. This means that laws, doctors, counsellors, church officials, public servants, owners of hotels, and any other group that offers services to a queer person whether knowing that person to be queer or not is culpable of a crime and can face up to five years in prison.

Clause 15 of the Bill grants the court special powers to give regard to the rehabilitation of someone convicted of the offence of Homosexuality and that court may order the minister of ethics to facilitate the rehabilitation. It is not clear the form of rehabilitation being referred to in the Bill. However, it is

important to note that forceful rehabilitation of queer often takes the form of conversion therapy—a practice that has been considered harmful.¹¹

Clause 16 provides for the extradition of people charged with a criminal offence under the Act. Therefore, if person X is accused of homosexuality in Uganda and flees the country to another country where Uganda has an extradition treaty, that person X can be returned to Uganda to be put on trial. Equally, the Uganda government will be required by this law to extradite those individuals accused of homosexuality. Given the current wave of Anti-Homosexuality laws in Africa, queer people will not be safe in many African countries.

The bill is inhuman and a direct attack on the inalienable rights of queer people in Uganda. The time of this bill coincided with a Supreme Court ruling in Kenya which categorically stated that members of the LGBTQ community deserve their constitutional guaranteed rights like anyone else.¹²

How does this Law compare to other laws?

The main argument of proponents of this law is that it is meant to protect children from sexual abuse by homosexuals.¹³ This is an old-age narrative that is not unique to Uganda. Using the protection of children is the easier way of selling the bill because everyone cherishes children and would frown at any abuse of a child. We, therefore, interrogate whether indeed there haven't been any laws that protect children against abuse.

Protection of Children

The Penal Code Act.

Section 129 of the Penal Code Act cap 120 of Uganda imposes a penalty of life imprisonment to any person found guilty of performing a sexual act with another person who is below the age of eighteen years. This is the offence of defilement. The offence is not gender specific and gives enough room for interpretation. In essence, the framers of the Penal code in not being specific on gender and sex understood that abuse of children can be diverse and can include heterosexual and homosexual abuse. Section 132 of the same Act further criminalizes the sexual exploitation of girls. It does not matter whether such exploitation is someone of the same sex or gender.

¹¹ APA. Commission on Psychotherapy by Psychiatrists. "Position statement on therapies focused on attempts to change sexual orientation (reparative or conversion therapies)." Am J Psychiatry. 2000 Oct;157(10):1719-21. PMID: 11183192.

¹² NGOs Co-Ordination Board V Eric Gitari & Ors, Petition No. 16 Of 2019.

¹³ Principle 1(d) of the Anti-Homosexuality Bill 2023.

The Children's Act 2016 as Amended

Section 8A of the Act criminalizes engaging a child in any work or trade that exposes a child to activities of sexual nature whether paid or not. The section proceeds to state that it is unlawful for any person to—¹⁴ induce or coerce a child to engage in any sexual activity, to use children in prostitution or other unlawful sexual practices, and to use children in pornographic performances or materials. This is punishable by imprisonment of up to five years.

Similarly, Section 7 of the Children Act as amended in mandatory terms prohibits exposing children to any cultural or customary practice that is harmful to the health, well-being, education, or social-economic development of the child.

Section 8 also categorically prohibits the employment or the engaging of children in any activity that may be harmful or hazardous to them. Sexual abuse is among the envisaged harmful and hazardous engagements per subsection 3 of the same Act.

The Act applies to all forms of sexual exploitation including heterosexual and homosexual exploitation of minors.

Further, the Prevention of Trafficking in Persons Act of 2009 criminalizes the trafficking of children and imposes the death penalty on anyone found guilty of that offence.¹⁵

Other laws also prohibit the involvement of minors in any sexual acts or arrangements connected thereto. The Marriage Act similarly prohibits any child marriages. The Constitution also prohibits any cultural or religious practices that are harmful to people below the age of 18 years. So, one then asks why the bill is being introduced under the pretext of protecting children yet there is already a plethora of laws that protect children from exploitation and sexual abuse.

It is important to also point out other laws that are not necessarily on children but criminalize non-consensual sex. Section 123 of the Penal Code criminalizes non-consensual sex and puts the death sentence on the offender. Similarly, section 125 criminalizes attempted rape and imposes life imprisonment. The same Penal Code Act imposes a sentence of seven years imprisonment on a person found guilty of abducting another person male or female to have sexual intercourse with them.

¹⁴ Section 8A of Children's Act 9 of 2016

¹⁵ Section 4 & 5 of the Prevention of Trafficking in Persons Act 2009.

In a nutshell, as far as the Anti-Homosexuality Bill is for the protection of children against sexual abuse and the protection of adults against non-consensual sex, there are laws in Uganda intended to address that.

Penal Code and Criminalizing sex between persons of the same sex

Sexual intercourse between persons of the same sex is already criminalized in Uganda under Section 145 of the Penal Code Act. This colonial provision that criminalizes consensual sex between persons of the same sex has been declared unconstitutional in other commonwealth jurisdictions including India. The Indian Supreme court stated:

*Section 377 of the Penal Code (Uganda's Section 145 of the Penal Code), in so far as it criminalizes consensual sexual conduct between adults of the same sex, is unconstitutional.*¹⁶

4 (In-)Compatibility with the Constitution of Uganda

The Constitution of Uganda is set against the background of tyranny, oppression and exploitation and it was founded on the commitment to the principles of unity, peace, equality, democracy, freedom, social justice, and progress.

For that matter, the constitution entrenches key components that cannot be rewritten or removed; among these; the Bill of Rights, the sovereignty of the people, the arms of government, regular elections, and peaceful transfer of power among others.¹⁷ The Bill of Rights is an essential part of any constitution and cannot be done away with.¹⁸ Therefore, an Act of parliament that re-writes or erodes the freedoms guaranteed in the Bill of Rights is prima facie unconstitutional. We, therefore, analyze the extent to which the Anti-Homosexuality Bill 2023 attempts to erode the guaranteed rights in the constitution of Uganda.

Article 20 of the Constitution of Uganda is emphatic in stating that fundamental rights and freedoms of the individual are inherent and not granted by the State.¹⁹ And proceeds to mandate the state through its organs,

¹⁶ Navtej Singh Johar & Ors. versus Union of India & Secretary Ministry of Law and Justice, AIR 2018 SC 4321.

¹⁷ Benson Tusasirwe(LLD), "Constitution amendment is void as it violates 'basic structure' doctrine," Monitor, October 24, 2017, <https://www.monitor.co.ug/uganda/oped/commentary/constitution-amendment-is-void-as-it-violates-basic-structure-doctrine-1723286>.

¹⁸ Benson Tusasirwe (LLD), *The Basic Structure Doctrine and Constitutional Restraint in Uganda: The "Age Limit" Case*, EALR VOL. 46. No.1 June 2019.

¹⁹ Article 20(1) of the Constitution of Uganda, 1995.

agencies, and departments to respect, uphold and promote the rights.²⁰ It also enjoins every person to respect the rights of others.

Article 21(1) stipulates that all persons are equal before and under the law in all spheres of life and shall enjoy equal protection of the law. Clause 2 of Article 21 in strong and mandatory terms prohibits discrimination on the ground of sex, race, color, ethnic origin, tribe, birth, creed, or religion, social or economic standing, political opinion, or disability. The list of grounds for non-discrimination is endless and can be interpreted to include on grounds of sexual orientation. Whereas this non-discrimination on the ground of sexual orientation is not expressed in the Constitution of Uganda, Article 45 of the same constitution can suffice. That provision states that the rights, duties, declarations, obligations and guarantees mentioned in the Constitution do not exclude those not specifically mentioned.

Whereas the issue of non-discrimination on grounds of sexual orientation has not been specifically determined by courts in Uganda, the supreme court of Kenya is instructive. The Supreme court of Kenya in *NGOs Co-Ordination Board V Eric Gitari & Others*,²¹ has stated that:

an interpretation of non-discrimination which excludes people based on their sexual orientation would conflict with the principles of human dignity, inclusiveness, equality, human rights, and non-discrimination.

*To put it another way, allowing discrimination based on sexual orientation would be counter to these constitutional principles.*²²

5 International Instruments on Non-discrimination

Uganda recognizes the obligations and application of International legal instruments.²³ In the same ambit, International instruments that Uganda is party to obligate the state to ensure non-discrimination of people regardless of race, gender, sex, language, political or other opinions, national or social origin, property, birth or other status.²⁴ **The International Covenant on Economic Social and Cultural Rights** requires states to guarantee rights in the covenant without discrimination of any kind as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.²⁵ The UN Human Rights Committee (HRC) has also advised against discrimination on grounds of sex, race, language,

²⁰ Ibid, Article 20(2).

²¹ Petition No. 16 Of 2019.

²² Ibid, Para 79.

²³ Objective XXXVIII of the National Objective and Directive Principles of State Policy.

²⁴ Article 26 of the International Covenant on Civil and Political Rights.

²⁵ Article 2 of the International Covenant on Economic Social and Cultural Rights.

political opinion and any other status.²⁶ General Comment No.3 has included sexual orientation among the grounds for non-discrimination.²⁷ Uganda is also party to The Convention on the Rights of Persons with Disabilities which further mandates non-discrimination.

The African Charter on Human and People's Rights equally entitles every person equal protection before the law and every person is entitled to full dignity.²⁸

Therefore, in so far as the clauses of the Anti-Homosexuality Bill particularly clause 2, which prohibits persons from engaging in consensual same sex is counter to the constitution of Uganda and the above-mentioned international instruments. Whereas heterosexual persons are afforded this right, the same is not for homosexual persons. Further, the clauses criminalizing LGBTQI+ identities run counter to the constitution of Uganda and international instruments that Uganda is a party to. Clause 3 as far as it considers persons living with HIV liable for aggravated homosexuality, discriminates against such persons. As mentioned above, one of the persons being charged with homosexuality being a person living with HIV, automatically makes them culpable for aggravated homosexuality.

Clause 3(1)(e) of the Anti-Homosexuality bill automatically makes a person with a disability who engages in consensual same-sex relations with another, a victim of aggravated homosexuality. This is discriminatory and goes counter to the obligation taken by Uganda among them the obligation of prohibiting all discrimination based on disability.²⁹

Clause 4 of the bill criminalizes persons who offer premises and other related fixed or movable assets to homosexuals hence discriminating against LGBTQ+ persons. All the clauses that criminalize persons who associate with LGBTQ+ persons further drive queer people to the fringes of society, and this is discriminatory and against international Human Rights law.

Freedom from Torture

Freedom from torture, cruel, inhuman, and degrading treatment is a guaranteed right in the Constitution of Uganda,³⁰ the International Covenant on Civil and Political Rights,³¹ African Charter on Human and Peoples' Rights. Discrimination on grounds of sexual orientation is psychologically harmful

²⁶ UN Human Rights Committee (HRC) CCPR General Comment No. 18: Non-discrimination, 10 November 1989.

²⁷ UN Committee on the Rights of Persons with Disabilities (CRPD), *General comment No. 3 (2016), Article 6: Women and girls with disabilities*, 2 September 2016, CRPD/C/GC/3.

²⁸ Articles 2, 3, and 4 of the African Charter on Human and Peoples Rights.

²⁹ Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD).

³⁰ Articles 24 and 44 of the Constitution of Uganda 1995.

³¹ Articles 7 & 10(1) of the ICCPR.

and negatively affects human dignity and personhood.³² Torture can include severe pain or suffering whether physical or mental,³³ Therefore, Anti-gay laws occasion severe mental distress to LGBTQ+ because of the constant fear of persecution. Further, the Anti-homosexuality bill 2023 in stating that LGBTQ+ persons should not exist, is to deny the humanity and human dignity of LGBTQ+ persons. That constitutes torture.

Additionally, requiring LGBTQ+ persons to have mandatory HIV testing is disproportionately discriminatory and further making persons living with HIV aggravated offenders of Homosexuality is inhuman, cruel, and degrading for it imposes a heavy punishment on such persons simply because they are living with HIV.

Important to note, General Comment No.20 has stipulated that extradition exposes individuals to danger of torture or cruel, inhuman, or degrading treatment or punishment and therefore states must not expose persons to such dangers.³⁴

Further, the bill in giving powers to the court to order the rehabilitation of homosexual persons has the effect of exposing such persons to the harmful practice of **conversion therapy**. Conversion Therapy is based on the conception that homosexual orientation is a mental disorder that should be rectified.³⁵ That someone who experiences that 'mental disorder' should go through restorative therapy or rehabilitation that would make them heterosexual. It has been severally stated that conversion therapy or rehabilitation of LGBTQ+ persons for purpose of making such persons straight constitutes torture. ³⁶ To that extent, **clause 15** gives of court power to order rehabilitation implies subjecting LGBTQ+ persons to conversion therapy. Needless to state, the principles of the bill are informed by the school of thought that homosexuality is 'not an innate and immutable characteristic.'³⁷

Freedom of Association, Expression, Assembly, Speech

Whereas the freedom of expression, association, peaceful assembly, and free speech are guaranteed rights under the Constitution of Uganda,³⁸ and other regional and international instruments, the bill unjustifiably erodes those

³² Vriend v. Alberta, [1998] 1 S.C.R. 493.

³³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

³⁴ UN Human Rights Committee (HRC), *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, para.9.

³⁵ Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies). (2000)

³⁶ Ilias Trispiotis, Craig Purshouse, "Conversion Therapy' As Degrading Treatment," *Oxford Journal of Legal Studies*, Volume 42, Issue 1, Spring 2022, Pages 104–132.

³⁷ Supra.

³⁸ Article 29 of the Constitution of Uganda 1995.

freedoms. Clause 14(1)(d) imputes criminal liability punishable by up to five years to any person who 'uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality.' This criminalizes any expression or speech which is considered a promotion of homosexuality. The same clause 14(1)(e) states that any person 'who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices' shall be sentenced to imprisonment up to five years. This broad clause criminalizes any expression or association that is viewed as promoting homosexuality. It is apt to say, anyone wearing any color perceived to belong to the LGBTQ+ community or having gatherings perceived to be in furtherance of homosexuality shall be imprisoned.

A foreboding of what will be the norm in Uganda after the enactment of that law happened in Burundi where members of LGBTQ+-friendly CSOs who were having a meeting in a hotel were arrested under the pretext that they are performing and promoting homosexual acts.³⁹ Suffice it to note that already a report by the NGO Bureau in Uganda has listed organizations that should be closed for 'promoting homosexuality' and has recommended charges and sanctions on the directors.⁴⁰ Even before clause 14(2) which provides for the closure of LGBTQ+ friendly NGOs and sanctions of their directors is made law, entities are being targeted. Among the entities under imminent closure, are Human Rights Awareness and Promotion Forum, Let's Walk Uganda, and Uganda Key Population Consortium.⁴¹

Privacy is arguably the most abused right when it comes to Anti-gay laws all over the world. The Supreme court of India has restated the primacy of the right to privacy thus:

*The right to privacy and the protection of sexual orientation lies at the core of fundamental rights...*⁴²

The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realization of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgement of the State's respect for the capacity of the individual to make independent choices. The right to privacy may be construed to signify that not only are

³⁹ Africanews, "Burundi's homosexuality crackdown: 24 people prosecuted," Africanews, March 9 2023, <https://www.africanews.com/2023/03/09/burundis-homosexuality-crackdown-24-people-prosecuted/>.

⁴⁰ Jacobs Odongo Seaman, "Leaked report shows intent to criminalise gay activities," Monitor, February 12, 2023, <https://www.monitor.co.ug/uganda/news/national/leaked-report-shows-intent-to-criminalise-gay-activities-4120836>.

⁴¹ Ibid.

⁴² Supra 16, para 55.

*certain acts no longer immoral but that there also exists an affirmative moral right to do them.*⁴³

The Anti- Homosexuality bill 2023 in denying two consenting adults the opportunity to make decisions about their bodies, takes away their bodily autonomy and is a violation of the right to privacy.

6 Implication of the bill on Economic Social and Cultural Rights of LGBTQ+ persons

Work

The ICESCR obligates states to undertake steps with achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.⁴⁴ The same instrument as enunciated above enjoins states to do away with discrimination of persons on a variety of grounds and any other status which by construction includes the ground of sexual orientation.

By the bill criminalizing any association with LGBTQ+ persons by calling such relations or understandings ‘abetting, being an accomplice,’ the bill seeks to render LGBTQ+ persons unemployed. For those engaged in self-employment or business, the bill seeks to draw away their clients by criminalizing anyone who associates with such persons.

The bar to forming entities that are associated with or consisting of LGBTQ+ persons have the effect of denying LGBTQ+ persons of work. It will also burden LGBTQ+ persons with the brunt of unequal treatment in works spaces.

Hosing

Whereas adequate housing constitutes an adequate standard of living,⁴⁵ and whereas it is part of the right to life, the bill in clause 14(1)(c) estops any person from letting out their premises to a person considered a homosexual or face imprisonment. This will leave many queer persons without shelter.

Health

The state is obligated to ensure that every individual attains the highest attainable standard of physical and mental health.⁴⁶ However, the bill by implication states that those who offer health services to LGBTQ+ aid, abet, procure, counsel, and consequently promote homosexuality. This will

⁴³ Ibid para 64.

⁴⁴ Article 2 of the ICESCR.

⁴⁵ Ibid, Article 11.

⁴⁶ Ibid, Article 12.

effectively drive LGBTQ+ persons away from accessing health care. Equally, health facilities will reject them for fear of retribution. Already, senior government officials in Uganda have called for the denial of health care to homosexual persons.⁴⁷ Furthermore, provisions of the bill that target persons living with HIV will drive such persons away from accessing health care.⁴⁸

7 Conclusion

The Anti- Homosexuality bill of 2023 infringes on several rights. Consequently, it infringes on the Bill of Rights as enshrined in the Constitution of Uganda because of the principle of indivisibility of rights. It denies LGBTQ+ persons protection under the law, it denies LGBTQ+ persons recognition as people who share in humanity. It is against the background of several studies that have shown that homosexuality is part of humanity and that any criminalization or discrimination should be avoided. Many of the proponents of this bill including the Speaker of Parliament of Uganda base their stance on religious views. Ironically, the Speaker professes Catholicism a religion whose own catechism is against discriminatory laws.⁴⁹ Therefore, the bill has no basis except that of persecution of LGBTQ+ persons. It is deeply embedded in heteronormativity and religious fundamentalism.

8 Recommendations

1. The Bill should be dropped immediately for being redundant, inhuman, and contrary to the Constitution of Uganda, and regional, and international Human Rights instruments.
2. International Partners should engage with the Parliament of Uganda not to enact the Anti-Homosexuality Act 2023.
3. Section 145 of the Penal Code Act cap 120 should be repealed for eroding the constitutional rights of LGBTQ+ persons by criminalizing consensual sex between persons of the same sex.
4. Sanctions should be imposed on the government of Uganda and its officials for failing to honor its international obligations to respect and protect human rights.
5. The LGBTQ+ community in Uganda be given all the necessary support required to push back against this tyranny and the necessary

⁴⁷Rajab Mukombozi, "Don't treat homosexuals in our facilities, says Maj Gen Takirwa," Monitor, February 7 2023, <https://www.monitor.co.ug/uganda/news/national/don-t-treat-homosexuals-in-our-facilities-says-maj-gen-takirwa-4114502>.

⁴⁸ Supra 10, P. 19.

⁴⁹ CATECHISM OF THE CATHOLIC CHURCH, Para, 2357 to 2359.

assistance to ensure the continued enjoyment of rights that accrue to everyone by being human.

6. We call on the Development Partners and Donor Countries to invoke their commitments under R2P and freeze development aid because the basis of development aid is good governance and respect for human rights. The law and described current process in Uganda and in its Parliament clearly show that Uganda does not meet these conditions and therefore does not deserve the aid.
7. The key promoters of this Bill and their immediate family members should be put under immediate travel bans as they are a danger to the global community by outrightly promoting hate, human rights violations as seen in the media and their pronouncements.



LET'S WALK UGANDA (LWU)

Silence Equals Death, Action Equals Life

Contact

Email: lwuganda@gmail.com

Tel: +256-756 975 678/+256-200 903 700

Website: www.lwuganda.org

Twitter: [@LWUGANDA](https://twitter.com/LWUGANDA)

Facebook: [@Let's Walk Uganda](https://www.facebook.com/Let's-Walk-Uganda)

Instagram: [@Let's Walk Uganda](https://www.instagram.com/Let's-Walk-Uganda)