

# UGANDA'S ANTI-LGBTI ACT, 2023: A DISTURBING SETBACK FOR HUMAN RIGHTS

## 1.0 INTRODUCTION

On 29 May 2023, the President of Uganda, Yoweri Museveni, officially signed into law the Anti-Homosexuality Act of 2023 – a piece of legislation aimed at the decimation of basic human rights that are central to the lives of LGBTI persons in Uganda.<sup>1</sup> This new Act<sup>2</sup> is a devastating blow to the human rights project, violating several key human rights, particularly the rights to life, privacy, equality, sexual autonomy, dignity, freedom of expression, and freedom from discrimination. The Act solidifies and emboldens perpetrators of violence against LGBTI persons in Uganda, many of which are being displaced, in search of safer homes.

## 1.1 HISTORICAL CONTEXT

This Act is the latest in a long line of successive attempts by the government of Uganda to foreclose on the human rights of sexual minorities. Previous attempts include the 2009 Anti-Homosexuality Bill, which was signed into law in 2014, and was soon thereafter struck down by the Constitutional Court for procedural reasons.<sup>3</sup>

The Act is also a direct product of Uganda's colonial history, which has left an indelible imprint on its legal and social-economic structures. The British colonial administration was the first to introduce penal laws criminalising homosexuality, and these have been subsequently inherited into the independent Ugandan State's legal framework.<sup>4</sup> Today, these colonial-era norms are reinforced by contemporary political and religious discourse, framing homosexuality as un-African, pathological, criminal, and a threat to family values.

## 2.0 THE DISTURBING PROVISIONS OF THE ACT

The Act's provisions are deeply disturbing. At sections 2 and 3, the Act creates the criminal offense of homosexuality and aggravated homosexuality, punishable by severe legal sanctions including life imprisonment and the death penalty.

For same-sex conduct classified as 'aggravated homosexuality,' a conviction will attract the death penalty, including for repeat offenders, *i.e.*, homosexual sexual conduct committed by a person with a previous conviction of homosexuality. For homosexuality<sup>5</sup> (same-sex sexual conduct/sexual intercourse), the Act prescribed life imprisonment; and the Act is silent on the possibility of release.<sup>6</sup> Any incomplete attempts at homosexuality (including flirting, texting, or making any sexual advance with someone of the same sex) will attract a prison sentence of no less than 10 years.<sup>7</sup> For children

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<sup>1</sup> Samuel Okiror, 'Ugandan President Signs Anti-LGBTQ+ Law with Death Penalty for Same-Sex Acts' *The Guardian* (29 May 2023) <<https://www.theguardian.com/global-development/2023/may/29/ugandan-president-yoweri-museveni-anti-lgbtq-bill-death-penalty>> accessed 4 June 2023.

<sup>2</sup> Anti-Homosexuality Bill, 2023, Available from <https://chapterfouruganda.org/sites/default/files/downloads/The-Anti-Homosexuality-Bill-2023-latest-version.pdf>

<sup>3</sup> 'Uganda Court Annuls Anti-Homosexuality Law' *BBC News* (1 August 2014) <<https://www.bbc.com/news/world-africa-28605400>> accessed 4 June 2023.

<sup>4</sup> Kalembe Kizito, 'Bequeathed Legacies: Colonialism and State Led Homophobia in Uganda' (2017) 15 *Surveillance & Society* 567.

<sup>5</sup> Section 2 of the Act defines the 'offence' of homosexuality as a person performing a sexual act or allowing a person of the same sex to perform a sexual act on him or her. Under the Act, this 'offence' will attract life imprisonment.

<sup>6</sup> Section 2(2).

<sup>7</sup> Section 2(3).

convicted of homosexuality, the Act imposes a three-year prison sentence.<sup>8</sup> Consent is no defense for any of these ‘offenses.’ The blunt implication is that any consenting person, engaged in a private consensual same-sex relationship, in the privacy of their own bedroom, can end up in prison for life, subject to corrective homosexual rehabilitation, or suffer the death penalty.

The Act further prescribes up to 20 years imprisonment for promoting homosexuality, with an interpretation broad enough to encompass most advocacy work by human rights defenders and rights-based NGOs.<sup>9</sup> This is a poorly disguised attempt to further foreclose and censure the work of Civil Society Organisations and human rights defenders working on LGBTI/sexual minority rights, health rights, or human rights.

The Act makes it a legal duty to report to the police any acts of homosexuality where a person knows or suspects that a person has committed or intends to commit homosexuality.<sup>10</sup> The Act also makes it illegal to lease, sub-lease or allow any building to be used for homosexuality or the promotion thereof.<sup>11</sup> In reality, many LGBTI persons have been evicted from their homes, or reported to the police by landlords and neighbours, experiences which are often accompanied by violence and other humiliating treatment. Healthcare workers and other service providers are also denying services to LGBTI persons, creating a situation of absolute oppression and marginalisation for sexual minorities. Only after the (mostly unsuccessful) intervention of some Western States, had the mere identification as gay been removed from the legal text – not much of a victory for human rights.

### 3.0 THE ACT'S BLATANT VIOLATIONS OF HUMAN RIGHTS

The Act's provisions are extreme, amounting to several blatant violations of fundamental human rights. As a point of departure, the provisions of the Act are a blatant violation of several human rights treaties to which Uganda is a State Party. Various UN expert reports have consistently emphasized that criminalising same-sex relations and transgender identities not only violates the human rights of LGBTI individuals but also perpetuates gender-based violence and discrimination.<sup>12</sup>

Correspondingly, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has consistently reiterated that the criminalisation of LGBTI individuals constitutes a violation of their human rights, encompassing the rights to privacy, non-discrimination, freedom of expression, and freedom from torture or other cruel, inhuman, or degrading treatment or punishment.<sup>13</sup>

The Act violates the right to privacy in various ways: by criminalizing consensual same-sex relationships and infringing upon individuals’ autonomy to engage in private sexual conduct without state interference in deeply private matters, by imposing a duty to report on individuals’ private sexual

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<sup>8</sup> Section 4.

<sup>9</sup> Section 11.

<sup>10</sup> Section 14.

<sup>11</sup> Section 11(2)(d).

<sup>12</sup> UN Human Rights Council, Report of the United Nations High Commissioner for Human Rights, Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, A/HRC/19/41, Available at [https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41\\_English.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/19session/A.HRC.19.41_English.pdf); UNHCR, “Protecting persons with diverse sexual orientations and gender identities: a global report on UNHCR’s efforts to protect lesbian, gay, bisexual, transgender and intersex asylum seekers and refugees”, pg. 13.

<sup>13</sup> UN General Assembly, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/72/172, July 2017; Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/35/36, June 2017; ‘First United Nations Expert on Sexual Orientation Presents Inaugural Human Rights Report to Third Committee, as Others Tackle Justice, Environment Concerns | UN Press’ <<https://press.un.org/en/2018/gashc4243.doc.htm>> accessed 14 June 2023.

activities, which creates an atmosphere of fear, surveillance, and intrusion into the personal lives of individuals, which in turn impedes their ability to express themselves privately and freely without fear of persecution or violence.<sup>14</sup>

By imposing severe penalties and potentially the death penalty, the Act also violates Article 5 of the African Charter on Human and Peoples' Rights (African Charter) which specifically protects the inherent dignity and right to freedom from cruel, inhuman, or degrading treatment.<sup>15</sup> The UN Commission on Human Rights and the UN Human Rights Committee have confirmed that use of the death penalty for non-violent acts, including sexual relations between consenting adults, constitutes a violation of international human rights law.<sup>16</sup> Moreover, resolutions adopted by the UN Human Rights Council and UN General Assembly similarly called for the abolition of the death penalty.<sup>17</sup>

By failing to recognise and protect LGBTI children, the Act infringes on the 'Best Interest' of the Child and fails to protect them from all forms of violence, as required by the Convention on the Rights of the Child (CRC) – to which Uganda is also a member State. LGBTI children in Uganda already face significant vulnerability and need protection, it's difficult to comprehend how criminalising them is in any way in their best interest.

#### 4.0 A POLITICAL SMOKE SCREEN

It's difficult to overlook the political implications and motivations behind the Act. While it's ostensibly aimed at protecting the 'traditional family,' this doesn't hold on closer examination. Like many African countries, Uganda grapples with a host of socio-economic issues that affect people's everyday lives. Significant economic challenges, corruption, healthcare concerns, education deficits, and issues of human rights are all areas that require urgent attention.<sup>18</sup> However, the timely passing of the Act has conveniently shifted the attention away from these pressing problems, arguably serving as a political smoke screen.

By targeting the LGBTI community, a social group already marginalised and vulnerable, the government has effectively created a scapegoat, to distract from the more fundamental societal and governance issues that plague the current administration.<sup>19</sup> This political tactic is not unique to Uganda; governments worldwide have historically used divisive issues to distract public attention from critical matters.

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<sup>14</sup> *Toonen v. Australia*, Human Rights Committee, CCPR/C/50/D/488/1992, para. 8.2.

<sup>15</sup> This also amounts to a violation of Article 7 of the ICCPR, and Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

<sup>16</sup> Commission on Human Rights resolutions 2002/77, para. 4 (c); 2003/67, para. 4 (d); 2004/67, para. 4 (f); and 2005/59, para. 7 (f). See also the concluding observations of the Human Rights Committee on the Sudan (CCPR/C/SDN/CO/3), para. 19.

<sup>17</sup> 'A/77/274: Secretary-General's Report on a Moratorium on the Use of the Death Penalty' (OHCHR) <<https://www.ohchr.org/en/node/103842>> accessed 12 June 2023; 'UN Experts Call for Complete Abolition of Death Penalty as "Only Viable Path" | UN News' (10 October 2022) <<https://news.un.org/en/story/2022/10/1129382>> accessed 14 June 2023.

<sup>18</sup> 'Common Country Analysis Uganda' (United Nations Uganda 2020) <<https://www.undp.org/sites/g/files/zskgke326/files/2023-05/UNDP-UG-CCARReport-2023.pdf>>.

<sup>19</sup> Niza Nondo · CBC Radio · 'Anti-LGBTQ Bill Passed in Uganda Used as "low-Hanging Fruit" to Distract Public, Researcher Says | CBC Radio' (CBC, 24 March 2023) <<https://www.cbc.ca/radio/thecurrent/lgbtq-distraction-uganda-anti-gay-bill-1.6790215>> accessed 4 June 2023.

## 5.0 CONCLUSION

As we shed light on this alarming situation, it is crucial that international pressure continues to hold the Ugandan government accountable for its actions. This Act is not just an issue for Uganda; it is a global human rights concern. The bill has been condemned by several countries across the globe, including the European Union, as well as various local and international NGOs.<sup>20</sup>

As we begin our reflection on Pride month, we must stand in solidarity with the LGBTI community in Uganda and demand the respect for human rights that every person deserves. One way to do this, in my view, is to recognize the agency and diversity of local actors and to support them in shaping and contesting this discourse. At a time when sexual diversity is under sustained attack across the globe, our advocacy and support for the human rights of LGBTI persons in Uganda must be renewed.

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<sup>20</sup> 'MEPs Strongly Condemn Anti-LGBTIQ Bill in Uganda | News | European Parliament' (20 April 2023) <<https://www.europarl.europa.eu/news/en/press-room/20230414IPR80130/meps-strongly-condemn-anti-lgbtiq-bill-in-uganda>> accessed 4 June 2023; The White House, 'Statement from President Joe Biden on the Enactment of Uganda's Anti-Homosexuality Act' (*The White House*, 29 May 2023) <<https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/29/statement-from-president-joe-biden-on-the-enactment-of-ugandas-anti-homosexuality-act/>> accessed 4 June 2023; AfricaNews, 'South African Activists Demonstrate against Uganda's Anti-Gay Bill' (*Africanews*, 4 April 2023) <<https://www.africanews.com/2023/04/04/south-african-activists-demonstrate-against-ugandas-anti-gay-bill/>> accessed 4 June 2023.