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The social-political dynamics of the anti-homosexuality legislation in Uganda

Stella Nyanzi and Andrew Karamagi

abstract

Legislative treatment of homosexual citizens of Uganda was variously categorised as vitriolic homophobia by the international LGBTIQ movement and human rights advocates. Extreme proposed penalties (including death, extradition and life imprisonment) contained in the Anti-Homosexuality Bill (2009), which was amended and then passed as the Anti-Homosexuality Act (2014), sought to institutionalise State-inspired homophobia through legislation. Scholarship of the legal regime governing non-heteronormative sexualities in Uganda narrowly focuses on interpreting the law and its implications on individual homosexuals. Less analytical attention is focused on diverse appropriations of power and powerlessness by varied actors within the societal, national and international contexts in which this law was negotiated.

Based on triangulation of ethnographic fieldwork conducted by an anthropologist and social justice activism by a legal scholar, this article critically analyses the social and political dynamics of the deeply polarised recriminalisation of homosexuality to move and sway diverse citizenry within and outside of Uganda. After discussing the contents, context and historical developments of the anti-homosexuality laws, as well as the constitutional petition that led to its annulment, we analyse the attendant contestations and debates within Parliament, the executive, judiciary and society. The varied, contradictory and opposing standpoints towards recriminalising homosexuality highlight the practical impossibility of generalising any social unit within Uganda as homogenously homophobic or universally opposed to same-sex practices. While proponents of anti-homosexuality legislation mobilised their position to sway candidates to give them votes during elections, opponents of the law built their social-political acumen as defenders of minority human rights, and stewards of good governance in the country. This legislative process was appropriated for political expediency by diverse actors. In conclusion, we assert that the anti-homosexuality law became a paradoxical symbol for nationalism, sovereignty, economic autonomy, Africanness, traditional culture, Christian conservatism, progressiveness, propriety, defiant sexualities, foreign intervention, and neo-imperialism.

keywords

Anti-Homosexuality Act, politics of law-making, Uganda, homosexual, legal reform

Introduction

Recent legislative reforms and processes targeting the recriminalisation of homosexuality earned Uganda the notoriety of being “the world’s worst place to be gay” (Mills, 2011). According to Jjuuko (2013:388) “perhaps more than any other country, Uganda is legally and socially hostile to homosexuals.”

Legislature’s treatment of homosexual citizens in Uganda is sharply divided into pro-homosexuality and anti-homosexuality camps at the local grassroots, nation-state, African continent and global levels. Summarising its functions, Nyanzi (2014:37) described the Anti-Homosexuality Bill as “a strategy to curb the infiltration, normalization and legitimization of non-heteronormative possibilities in the

imagination of the Ugandan nation.” For Mubangizi and Twinomugisha (2011:342) this bill was “a legal instrument that promotes homophobia ... [and] contravenes international human rights law.” Jjuuko’s (2013:392) symbolic description was that the bill “hangs over the heads of the human rights community in Uganda like the legendary sword of Damocles.”

There is a paucity of scholarship about the contemporary legal regime governing non-heteronormative sexualities in Uganda. The bulk of this work is produced by foreign-based non-Ugandans (Nyanzi 2015), lacks historicity and historiography (Tamale 2013:34-35), erroneously conflates the Bill with the Act (e.g. Ewins 2011), and overly concentrates on legal studies, yet this narrow legalistic paradigm ignores the diverse and non-legal components of sexuality, and lacks the nuanced emic interpretations of insiders. This context-specific gap, evident in Uganda, mirrors Amory’s (1997:5) earlier observation that African Studies contains a “studied avoidance of research on homosexuality and the down-right heterosexual panic concerning the issue ...”.

Based on our positionality as Ugandan scholars at Makerere University in Kampala, we provide a nuanced, emic, historicised and contextualised critique of the social-political dynamics within developments of Uganda’s anti-homosexuality legislation. We triangulate ethnography conducted since 2009 about the lived experiences of same-sex-loving and gender non-conforming individuals with insights drawn from social justice activism within citizen-led movements in urban and rural Uganda.

The article contains four sections. After distinguishing between the Anti-Homosexuality Bill (2009) and Anti-Homosexuality Act (2014), we historically trace development of this legislation. We discuss sites of contestation in the enactment process, specifically the Majority and Minority Reports, and the Constitutional Court Petition leading to annulment of the anti-homosexuality law in Uganda. Thereafter we examine how local politicians manipulated anti-homosexuality legislation to advance their political positions. The workings of power and powerlessness undergird our overall analysis.

Progression from the Anti-Homosexuality Bill (2009) to the Anti-Homosexuality Act (2014)

Contrary to existent conflation between the Anti-Homosexuality Bill (2009) and Anti-Homosexuality Act (2014), there are important differences between these two forms of legislation. While a bill is a proposed law before Parliament for discussion, review and amendment, an act is the ultimate product passed by majority parliamentary vote, assented to by the President’s signature and published in the Gazette. A bill has no force of law, but an act guides local enforcers of justice, law and order within a State. Although a bill has no legal efficacy, analysing it is important because it reveals the original intention and spirit of its drafters — which detail is omitted in the final text.

The Anti-Homosexuality Bill was tabled in Uganda’s Parliament on 14 October 2009 by David Bahati, a born-again Anglican Mukiga representative of Ndoorwa West, belonging to the ruling party, the National Resistance Movement (NRM). It was a culmination of conservative Christian rightists’ mobilising and organising that emerged from a March 2009 conference entitled ‘Exposing the Homosexual Agenda’ convened by Family Life Network and featuring anti-gay and ex-gay American evangelists (Sharlet, 2010:43-48; Kaoma, 2009).

The proposed death penalty for aggravated homosexuality earned this bill the name ‘Kill Gay Bill’ and flagged the extremes to which homophobic Ugandan legislators were willing to go in their public fight against homosexuality. Several other crimes and penalties were proposed, as summarised in Table 1 (Tamale, 2009; Mubangizi and Twinomugisha, 2011; Jjuuko, 2013).

Several differences exist between the Bill and the Act. Firstly, the proposed death penalty was dropped from the enacted law and replaced with life imprisonment as well as mandatory testing for HIV/AIDS. A new crime of conducting same-sex marriage was proposed, with penalties of 5–7 years’ imprisonment and cancellation of licence. The crime ‘failure to disclose in 24 hours knowledge of homosexuality’ was omitted (*detailed comparisons are in our forthcoming paper*).

After four years of debate, review and shelving, the Anti-Homosexuality Bill was

Table 1: Summarised comparison of Uganda’s Anti-Homosexuality Bill and Anti-Homosexuality Act

OFFENCE	Anti-Homosexuality Bill (2009) penalty	Anti-Homosexuality Act (2014) penalty
Homosexuality	Life imprisonment	Life imprisonment
Aggravated homosexuality	Death penalty	Life imprisonment + HIV test
Attempt to commit homosexuality	7 years’ imprisonment	7 years’ imprisonment
Attempt to commit aggravated homosexuality	Life imprisonment	Life imprisonment
Breach of confidentiality	US\$ 5,000,000 fine	US\$ 5,000,000 fine
Aiding and abetting	7 years’ imprisonment	7 years’ imprisonment
Conspiracy to engage in homosexuality	7 years imprisonment	7 years’ imprisonment
Detention with intent to commit homosexuality	7 years’ imprisonment	7 years’ imprisonment
Procuring homosexuality by threats	7 years’ imprisonment	7 years’ imprisonment
Keeping space used as brothel for homosexuality	7 years’ imprisonment	7 years’ imprisonment
Own, assist, manage space used for homosexuality	5 years imprisonment	5 years’ imprisonment
Same-sex marriage	Life imprisonment	Life imprisonment
Promotion of homosexuality	5–7 years’ imprisonment, US\$ 100,000,000 fine + cancellation of registration certificate	5–7 years’ imprisonment, US\$ 100,000,000 fine + cancellation of registration certificate
Failure to disclose in 24 hours knowledge of homosexuality	3 years’ imprisonment or US\$ 5,000,000 fine	N/A
Conducting same-sex marriage	N/A	5–7 years’ imprisonment + cancellation of licence

silently sneaked into Parliament although not on the advertised Order of Business. It was passed by a small sitting on 20 December 2013. President Museveni assented to this law on 24 February 2014 (Figure 1), in the limelight of local and international public media that widely broadcast his action. He claimed that his decision to assent to this law was informed by scientific evidence,¹ although critics highlight that the scientists’ report was largely misrepresented for political expediency (e.g. Rao, 2014). The Anti-Homosexuality Act (2014) (Figure 2) had a short lifespan. It was annulled on 1 August 2014

following a petition filed in the Constitutional Court.

Historical trajectory of Uganda’s anti-homosexuality legislation

The Anti-Homosexuality Bill (2009) was not introducing criminalisation of non-heteronormativity into Uganda for the first time; rather, it was recriminalising same-sex conduct using harsher penalties for newly framed aspects of homosexuality. Mubangizi and Twinomugisha (2011:331)



Figure 1. Uganda's President Yoweri Museveni signs the Anti-Homosexuality Bill on 24 February 2014 in Entebbe. Photo: Isaac Kasamani/AFP.

suggest that this bill intended to “broaden the criminalization of homosexuality”. A major critique was the bill’s monotonous replication of existent laws within Uganda’s statutes (Tamale, 2009).

To pre-empt such critique, the bill’s drafters inserted a clause entitled ‘Defects in Existent Law’ stating that:

This proposed legislation is designed to fill the gaps in the provisions of other laws in Uganda e.g. the Penal Code Act Cap. 120. The Penal Code Act (Cap 120) has no comprehensive provision catering for anti homosexuality... and lacks provisions for penalizing the procurement, promoting, disseminating literature and other pantographic materials concerning the offences of homosexuality. Hence the need for legislation to provide for charging, investigating, prosecuting, convicting and sentencing offenders. This legislation comes to complement and supplement the provisions of the Constitution of Uganda and the Penal Code Act Cap 120 by not only criminalizing

same-sex marriages but also same-sex sexual acts and other related acts.

What specific laws addressing same-sex sexuality existed before 2009? Section 15(2) of the 1902 Order in Council established application of British law to its colonies including Uganda (Jjuuko, 2013:387–388). Prudish statutes enacted under Britain’s protection and subsequent colonial rule were inherited during Uganda’s flag independence. Tamale (2013: 36) explains that “... it is not homosexuality that was exported to Africa from Europe, but rather legalized homophobia that was exported in the form of Western codified and religious laws.” Engendering Victorian moral panics, the law criminalised forms of sexual activity deemed ‘unnatural’ within Britain’s social-legal and historical context. Adopted in June 1950, Uganda’s Penal Code is a colonial relic. While not specifically naming same-sex acts, this law is often interpreted to refer to homosexuality (Mubangizi and Twinomugisha, 2011:331). For example, Mujuzi (2009:278) asserts that “homosexuality is punishable as

UGANDA:

FACTS ON THE NEW EXTREME ANTI-GAY LAW



The "Anti-Homosexuality Act" punishes lesbian, gay and bi people with:



LIFE IMPRISONMENT
If you engage in a sexual act with a person of the same gender



LIFE IMPRISONMENT
If you get married to a person of the same gender



LIFE IMPRISONMENT
If you touch another person of the same gender with 'intent' to engage in a sexual act

It also threatens anyone who tries to support LGBT people with a fine or:



7 YEARS IN JAIL
If you officiate a marriage between people of the same gender



7 YEARS IN JAIL
If you try to aid or counsel LGBT people



5-7 YEARS IN JAIL
If you offer premises or supplies to LGBT related activities



5-7 YEARS IN JAIL
For directors of any business or NGO who supports LGBT people

ASK UGANDAN AND WORLD LEADERS TO PROTECT LGBT UGANDANS SIGN THE PETITION NOW

allout.org/kill-the-bill

ALL OUT

Figure 2. Poster by allout.org asking for support for a petition against the Anti-Homosexuality Act. See <https://allout.org/en/>

an ‘unnatural offence’ under section 145 of the Penal Code Act”. This section states:

145. Unnatural offences: Any person who
- (a) has carnal knowledge of any person against the order of nature;
 - (b) has carnal knowledge of an animal; or
 - (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence, and is liable to imprisonment for life.

Section 146 criminalises attempt to commit unnatural offences which is penalised with maximum imprisonment for seven years. Section 148 penalises gross indecency. Mubangizi and Twinomugisha (2011:340) highlight that rather than explicitly mentioning homosexuality, the Penal Code contains “thinly veiled provisions which could be interpreted in a discriminatory manner”.

Neither sexual orientation nor non-conforming gender identity is included in the grounds for protection against discrimination within the Ugandan Constitution (Mujuzi, 2009:280; Mubangizi and Twinomugisha, 2011:339; Jjuuko, 2013:398). However, 2005 constitutional amendments to the marriage clause outlawed same-sex marriages. Article 31(1) of the Constitution defines marriage in heterosexual terms: “Men and women of the age of eighteen years and above have a right to marry and to found a family.” Another amendment inserted Article 2(a), which succinctly outlaws same-sex marriage, stating: “Marriage between persons of the same sex is prohibited.”

Mujuzi’s (2009:281-284) analysis reveals that the Constitutional Review Commission, the Constituent Assembly which reviewed the draft Constitution in 1994, and the Government’s White Paper response to the Commission’s report all disapproved same-sex marriages for fear of likely societal destruction similar to the scriptural towns of Sodom and Gomorrah.

Bahati’s proposed law built on this antecedent. After its first reading in October 2009, the Anti-Homosexuality Bill was referred to the Committee of Legal and Parliamentary Affairs. Thereafter it was reintroduced in the ninth Parliament through a Resolution of Parliament on 31 October 2011. After reshelving it was read a third time and passed on 20 December 2013. Shattering widespread blanket assertions about the homophobic Ugandan nation, there was considerable debate about some of

the bill’s proposals. Legislators debated specific clauses of this bill.

Two important documents evince the parliamentary debate, namely 1) *Majority Report of the Sectoral Committee on Legal and Parliamentary Affairs of the Anti-Homosexuality Bill, 2009*, dated November 2012, and 2) *Minority Report by Members of the Sectoral Committee on Legal and Parliamentary Affairs of the Anti-Homosexuality Bill, 2009*.

The Majority Report

The Committee on Legal and Parliamentary Affairs’ analysis was informed by memoranda from diverse stakeholders, namely the Ministry of Justice and Constitutional Affairs, Uganda Law Reform Commission, Uganda Human Rights Commission, Uganda Prison Service, Civil Society Coalition on Human Rights and Constitutional Law, and National Association of Social Workers of Uganda.

The Majority Report contains five critical observations. Firstly, the death sentence relieves offenders from punishment. Secondly, proving an attempt to commit either homosexuality or aggravated homosexuality is difficult. Thirdly, requiring professionals to report knowledge about homosexual activity within 24 hours compromises their ethics of confidentiality. Fourthly, extraterritorial jurisdiction is difficult to implement considering Uganda’s limited capacity. Lastly, nullification of treaties, protocols, declarations and conventions inconsistent with the bill contravened Article 287 of the Constitution, which obliges Uganda to subscribe to its international obligations to treaties ratified before the 1995 Constitution.

This committee recommended that Parliament passes the bill subject to 23 suggested amendments. Criticism contained within the Majority Report reveals apparent questioning of, debate about and disagreement with aspects of the Anti-Homosexuality Bill. Given that the committee comprised Members of Parliament, it is not only erroneous but also misleading to claim that all of Uganda’s legislators were in agreement with the homophobic spirit and letter of this bill.

The Minority Report

Further shattering the stereotype of Uganda’s overly homophobic legislators is the *Minority Report by Members of the Sectoral Committee on Legal and Parliamentary Affairs of the Anti-Homosexuality Bill, 2009*. Provisions for

dissent during analysis of a bill before a committee of Parliament are contained in Rule 194(1) of the Rules of Procedure of Parliament, which states:

Any Member or Members dissenting from the opinion of a majority of a Committee may state in writing the reasons for his or her or their dissent, and the statements of reasons shall be appended to the report of the Committee.

This Minority Report was authored by four Members of Parliament, none of whom belonged to the NRM. These were Otada Sam Amooti – an independent, representing Kibanda; Fox Odoi Oywelowo – another independent, representing West Budama North; Abdu Katuntu – from the opposition party called Federation for Democratic Change (FDC), representing Bugweri; and Krispus Ayena – from another opposition party called Uganda People’s Congress, representing Oyam North. The Minority Report’s authors disagreed with the majority recommendation to pass the Anti-Homosexuality Bill (2009). Instead they recommended that “the Bill be rejected by this House and no further consideration of the same be done.”

This recommendation was based on six points of dissent from the majority position of the Committee. Firstly, the State must not be allowed into the bedrooms of people. Secondly, matters of sexual intercourse between two consenting adults may neither be restricted nor reduced into a hard rule about what is permitted, considering ambivalence around oral sex, consensual anal sex, use of fingers or sex toys and other contraptions, bondage/sadomasochism. Thirdly, although protecting children from recruitment by homosexuals is important, the bill lacked relevant clauses to achieve this. Fourthly, the bill contravened several international conventions already ratified by Uganda. Fifthly, the bill discriminated against and persecuted homosexuals rather than offering State avenues to reform them or protect children who are victims of recruitment, funding and other acts of homosexuality. Lastly, Uganda’s laws already prohibited homosexuality: the bill lacked value. The Minority Report recommended deleting all the Anti-Homosexuality Bill’s 18 clauses. The authors proposed a five-pronged law targeting the protection of children against recruitment into homosexuality,

for the Committee on Gender, Labour and Social Development which was considering a Bill on Children.

Noteworthy is that plenary discussions on the floor of Parliament arising from the two committee reports caused revisions which determined the final text of the enacted law.

The Constitutional Petition and annulment of the Anti-Homosexuality Act (2014)

Subsequent to the presidential assent to the Anti-Homosexuality Act (2014), members of Uganda’s LGBTIQ movement, their allies and human rights defenders advanced diverse strategic responses to politics, law, public media, societal perceptions, security and emergency response for the community. Organised within the Legal Committee of the Civil Society Coalition on Human Rights and Constitutional Law (The Coalition), evidential affidavits were collated for petitioning the Constitutional Court to repeal the new law. Article 137 (1) and (3) (a) and (b) of the Constitution provide for petitioning the Constitutional Court against an Act of Parliament or any other law alleged to be inconsistent with or in contravention of constitutional provisions.

On 11 March 2014 ten petitioners filed their Constitutional Petition No. 08 of 2014 (Figure 3). In addition to alleging the unconstitutionality of the process of enacting the Anti-Homosexuality Act (2014), the petitioners also alleged that this law violated Ugandans’ constitutional rights to privacy and dignity; freedom from discrimination; freedom from cruel, inhuman and degrading treatment; freedom of expression, thought, assembly and association; and the presumption of innocence until proved guilty. The petitioners were:

- Joe Oloka-Onyango: Human Rights and Constitutional Law professor at Makerere University,
- Fox Odoi-Oywelowo: ninth parliament member who chaired the Rules and Privileges Committee, and Minority Report co-author,
- Andrew Mwenda: journalist and freedom of expression advocate,
- Morris Ogenga-Latigo: Entomology and Ecology associate professor and Leader of Opposition in eighth Parliament,

- Paul Nsubuga Semugoma: gay physician treating homosexuals and global HIV/AIDS activist,
- Jacqueline Nabagesera Kasha: lesbian LGBTIQ rights activist and Uganda's first lesbian support organisation founder,
- Julian Pepe Onziema: transsexual LGBTIQ rights activist at Sexual Minorities Uganda (SMUG),
- Frank Mugisha: gay LGBTIQ rights activist and Director of SMUG,
- Human Rights Awareness and Promotion Forum (HRAPF), a local grassroots organisation offering minorities free legal aid, and
- Centre for Health, Human Rights and Development (CEHURD), a local grassroots organisation advocating for health rights.

The petition's first hearing was initially scheduled for September 2014. However, petitioners were hastily summoned before the Constitutional Court on 29 July 2014 (Figure 4). Speculative interpretations of this sudden prioritisation indicated that the timing was strategically aimed at repairing President Museveni's damaged international reputation. Rescheduling of the hearing conveniently forwarded it to a date just before the seminal US-Africa Leaders Summit held in Washington between 4 and 6 August 2014. The summit

gathered national leaders from 50 African countries and focused on trade, investment opportunities, security and democratic development.

Petitioners' advocates were Ladislaus Rwakafuuzi, Caleb Alaka, Nicholas Opiyo, John Francis Onyango and Fredah Mutesi. The Attorney General, who legally represents the Ugandan Government, was the respondent in this petition, and was represented by two State attorneys, namely Patricia Mutesi and Elisha Bafilawala.

The bench comprised five judges, namely Steven B. Kavuma, who was the Acting Deputy Chief Justice, A. S. Nshimye, Eldad Mwangusya, Rubby Aweri Opiyo and Solomy Balungi Bossa. Of these five, two judges were presidential appointments, thereby heightening the speculative intrigue surrounding the politics at play within the hearing and judgment of this petition. Anti-gay leaders questioned the independence of the judiciary from acting on alleged directives from the executive arm of government.

The petitioners stated 14 allegations of unconstitutionality of the Anti-Homosexuality Act (2014). Their five-pronged orders prayed the Constitutional Court to permanently stay the operationalisation and gazetting of this law, prohibit campaigns against consenting adults who engage in same-sex activities, and a permanent injunction or gagging order against outing same-sex-loving individuals in the public media. The judges categorised the issues into two subsets: technicalities of enacting the law, and substantive contents. The hearing started with the first category of issues for judgment, which was:

that the Anti-Homosexuality Act 2014 was enacted without quorum in the House and in a manner that is inconsistent with and in contravention of Articles 2(1) and (2) and 88 of the Constitution of the Republic of Uganda 1995 and Rule 23 of the Parliamentary Rules of Procedure (Petition No. 8 of 2014)

The judges ruled that on the question of lack of quorum when enacting the Anti-Homosexuality Act on 20 December 2013, the actions of the ninth Parliament of Uganda were inconsistent with and in contravention of the Constitution and Parliamentary Rules of Procedure. Thus this law was declared null and void. Furthermore, the Speaker of

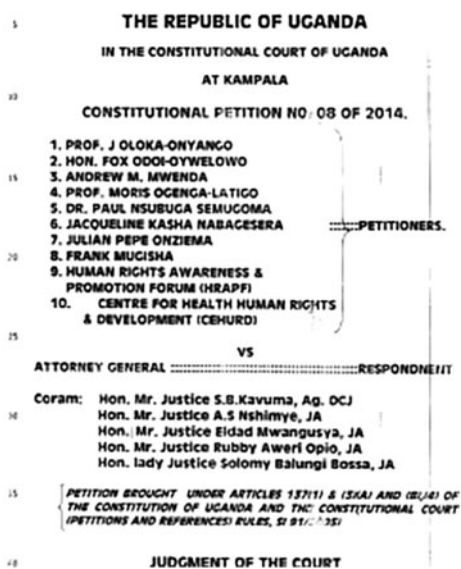


Figure 3. Constitutional Petition No. 08 of 2014.



Figure 4. Ugandan human rights and gay rights activists attend the petition hearing at the Constitutional Court on 29 July 2014. Photo: Isaac Kasamani/AFP.

Parliament's act of refusing to entertain three objections about the lack of quorum was an illegality which tainted the enactment process, rendering this law a nullity. The Anti-Homosexuality Act (2014) was thus unconstitutional. This judgment sufficed to dispose and resolve the whole petition without proceeding to the substantive contents.

Immediately after this annulment the anti-gay lobby within Parliament mounted populist action led by Latif Ssebagala to collect signatures of Members of Parliament lobbying the Speaker to re-table the bill. They reasoned that if the annulment was based on the procedural technicality, then quorum would be attained. To date nothing has come of this populist action.

The social-political context of Uganda's anti-homosexuality law

Anti-homosexuality legislation does not develop in a vacuum. Contextual factors advancing heteronormativity and patriarchy propel it. Legacies of colonial laws aside, scholars associate homophobia with two main factors – conservative traditional culture and dominant religious interpretations (Tamale, 2009; Mubangizi and Twinomugisha, 2011:331; Nyanzi, 2013;

Jjuuko, 2013:383). Discussing the 2005 same-sex marriage prohibitions, Mujuzi (2009:282) explains that:

... the move by the government to expressly prohibit same-sex marriages indicates that the religious, cultural and psychological background of the government officials could have been influential in making them view same-sex relationships as a social problem that had to be prevented by prohibiting one of its ultimate objectives – same-sex marriages.

Conservative pro-natalist family values collided with growing homophobia against increasing local LGBTIQ movement visibility, organising and support. The consequent tensions were manipulated by local politicians interested in advancing their political agendas in an undemocratic regime. Political appropriation of the debate politicised homosexuality. Therefore, analysing Uganda's anti-homosexuality legislation in isolation of the wider national political dynamics of governance and democracy is foolhardy.

Next we examine how key politicians appropriated the anti-homosexuality legislative processes within their own politics.

President Museveni's appropriation of anti-homosexuality legislation

Presidential and constituent elections infused this matrix. Having ruled Uganda since 1986, removed presidential term limits from the Constitution in 2005, and announced his intentions to rerun for the presidency in 2011 and 2016, Yoweri Museveni appropriated the anti-homosexuality legislation as his bargaining chip. He was embroiled in the politics of balancing his popularity among the local Ugandan citizenry and the globalised international human rights community generally represented by North American and Western European interests.

Relying on stereotypical caricatures of Uganda's homophobic population, Museveni projected himself internally as a fervent supporter of outlawing homosexuality. The voting masses' local perceptions were crucial to securing the presidency. Being locally perceived as opposed to anti-homosexuality legislation would cost him popularity among Ugandan voters.

President Museveni was also keen for the approval of western development aid partners – the main elections budget donors, and presidential campaign funders. Many bilateral aid donors opposed the anti-homosexuality legislation (Ewins, 2011). Thus the widely publicised presidential assent to the anti-homosexuality law was a performance aimed at boosting Museveni's popularity among Ugandan voters. It reiterated Uganda's sovereignty, thereby building solidarity with other anticolonialist and antineo-imperialist opponents of homosexuality, particularly in Africa. However, it also antagonised bilateral partners opposed to criminalising homosexuality.

Speaker Kadaga's political posturing of outlawing homosexuality to protect Uganda's sovereignty

The mantra of safeguarding Uganda's sovereignty from neo-imperialism symbolised by the imposed western decadence of homosexuality was rampantly echoed by local anti-gay leaders. According to Nyanzi (2014) the idiom of protecting Uganda's sovereignty from western immorality was congealed and circulated as the duty of patriots. National sovereignty was appropriated to sugarcoat religious homophobia and thereby win the hearts and votes of Ugandans. Guarding national sovereignty

became synonymous with fighting against homosexuality.

A key leader of Uganda's anti-gay movement who passionately defended anti-homosexuality legislation was Speaker of Parliament, Rebecca Kadaga. Her famous rebuttal to John Baird, the Canadian Minister of Foreign Affairs during the 127th Inter-Parliamentary Union's Assembly held in Quebec in October 2012 hiked her rising national popularity. Baird criticised Uganda's treatment of homosexuals, and the parliamentarians' entertaining of the Anti-Homosexuality Bill (2009). In response, Kadaga told off her host by reminding him that Uganda was a sovereign country:

When we came for this Assembly, to which we were invited, we expected respect for our sovereignty, our values and our country. I, therefore on behalf of the Ugandan delegation, and indeed the people of Uganda, protest in the strongest terms the arrogance exhibited by the Foreign Minister of Canada, who spent most of his time attacking Uganda and promoting homosexuality... Let me clarify that as a Speaker of Parliament, it is my responsibility to protect the rights of Members of Parliament, hence I cannot deny them the right to move Private Members Bills ... Mr President, if homosexuality is a value for the people of Canada, they should not seek to force Uganda to embrace it. We are not a colony or protectorate of Canada. The subject under discussion is 'Citizenship, Identity and Linguistic and Cultural Diversity in a Globalised World'. Please stick to it. Please respect our sovereign rights, our cultural values and societal norms. (Kadaga, 2012)²

A jubilant throng of anti-gay lobbyists received her at the airport. She thrilled them with her promised Christmas gift of Parliament's passing of the anti-homosexuality law that year. The Speaker of Parliament was widely reported to be considering vying for the 2016 presidency against Museveni.

President Museveni retaliated by authoring and exposing through the local public media his letter dated 28 December 2014 and addressed to Parliament,³ in which he acknowledged receipt of the passed Anti-Homosexuality Bill. Museveni also squarely laid the blame for the passing of this legislation

on the Speaker's failure to listen to his instructions to shelve the bill, and her failure to control the fervent anti-homosexuality camp which she led within Parliament.

Further eroding her credibility was the Constitutional Court ruling which categorically pronounced that the Speaker of Parliament acted illegally when she ignored three objections about lack of quorum during the parliamentary voting to pass the Anti-Homosexuality Bill (2009). Rebecca Kadaga's piety-laced aspirations for presidency were thus quashed using the very anti-homosexuality legislation she fervently supported.

Prime Minister Amama Mbabazi's ambivalent opposition to the anti-homosexuality laws

Prime Minister Amama Mbabazi's ambivalent roles within the development trajectory of Uganda's anti-homosexuality legislation highlight the danger of a single narrative within context-specific knowledge production. Although he is among the NRM's long-standing leadership, this Prime Minister (who was also Leader of Government Business in Parliament during the lifetime of the Anti-Homosexuality Bill) is the one who repeatedly challenged the Speaker of Parliament about lack of quorum during the voting for this legislation. In retrospect, Amama Mbabazi generated strong evidence for the petitioners' allegations of unconstitutionality of the enactment processes Parliament undertook to pass the anti-homosexuality law without quorum. His passionate objections recorded in the Hansard were variously quoted in the Constitutional Court by members of both the bench and bar.

Unlike other members of the NRM caucus who urgently demanded the passing of the Anti-Homosexuality Bill, Prime Minister Amama Mbabazi was central to implementing the presidential delaying tactic of perpetually shelving this bill. Stalling the enactment process was a diplomatic ploy deterring harsh sanctions of powerful bilateral development partners. Furthermore, it also worked in favour of corrupt government officials, because resurrecting the Anti-Homosexuality Bill in public discussions was a decoy to dissuade Uganda's masses from demanding and demonstrating against lack of transparency,

accountability and good governance (Tamale, 2013).

Amama Mbabazi increasingly became one of the government officials against enacting anti-homosexuality law. He was outspoken against the bill at home in Uganda, abroad and on social media. The local LGBTIQ movement started counting on him as an ally within Parliament and government leadership.

Similar to the Speaker of Parliament, the Prime Minister steadfastly gained popularity as another potential 2016 presidential candidate. More dangerous than the Speaker, Amama Mbabazi's popularity divided the NRM caucus' support – either for him or the incumbent. Feeling threatened, President Museveni unceremoniously terminated Mbabazi's appointment as Prime Minister via letter on 18 September 2014.

The politics of raising popularity to win constituency elections

Homosexuality is intermingled with politics in Uganda. Contestants in the 2011 elections declared their stance. Seeking cheap popularity, some promised to work towards passing the Anti-Homosexuality Bill if elected into Parliament. Predictably, many contestants standing on the NRM card denigrated homosexuality based on conservative religious and cultural values and a homophobic patriotic nationalism. Discussing dominant projections of Ugandan nationals, Nyanzi (2014:37) explains that:

When the human body is imagined within the dominant discursive productions of the Ugandan nation, it is as a beautiful black, African, heterosexual body. Essentialist configurations homogeneously posit the Ugandan citizenry as black masculine men whose sole sexual desire is for their black feminine women. The singular aim of sexual intercourse within this national imaginary is procreation leading to heterosexual progeny who contribute to development and modernization within the nation-building project. Non-heteronormative sexual orientations and gender-nonconforming identities are erased from prevalent caricatures of the Ugandan nation.

Interestingly, Kizza Besigye, the FDC opposition leader, framed the protection of homosexual citizens as a matter of human rights.



Figure 5. Members of Uganda's LGBTI community and LGBTI rights activists react as the anti-homosexuality law is declared null and void by the Constitutional Court. Photograph: Isaac Kasamani/AFP.

He publicly challenged oppression of homosexual Ugandans, thereby aligning himself with the local LGBTIQ movement (Figure 5).

When bilateral aid became dependent upon protection of homosexual Ugandans

Beyond politicisation of homosexuality within Uganda's borders is national posturing within global geopolitics of sexual minority rights. President Museveni increasingly framed homosexuality as a foreign policy issue. Most recently the president recast homosexuality as a pacifier rather than infuriation for Uganda's foreign trade partners.⁴

The question of foreignness within the debate on homosexuality in Uganda is paradoxical because both anti-gay and pro-gay camps partnered with foreign allies sympathetic to their divergent causes. Diplomatic, military and economic sanctions were enforced to pressure Uganda's Government to reject anti-homosexuality legislation. The United Kingdom, United States of America, Sweden, Denmark, The Netherlands and Ireland either withdrew or redirected their foreign aid from the public government fund to progressive civil society organisations. Collaborations between the LGBTI movement and diverse foreign

partners challenged criminalisation of homosexuality (Jjuuko, 2013).

Similarly, conservative western foreigners, particularly the American Christian Rightists, actively catalysed recriminalisation of homosexuality by heightening its social-cultural disapproval in Ugandan society (Sharlet, 2010; Kaoma, 2009).

Discussion: Of pawns, smoke-screens, trees and forests

The contemporary question of recriminalising homosexuality in Uganda is not merely about homosexual acts or same-sex-loving people. Rather it is a highly politicised and political question appropriated by politicians advancing their advantage within an undemocratic 39-year-old regime. In this article we have examined how key actors within Uganda's executive, legislature and judiciary crafted, represented, circulated, appropriated, instrumentalised and deployed the metaphor of homosexuality to stake their political claims over diverse audiences. Politicians who decampaigned the legitimacy and equal citizenship of same-sex-loving Ugandans confirmed Tamale's (2013:31) assertion that "homophobia has become a political tool used by conservative politicians to promote self-serving agendas." The politicisation and publicisation

of recriminalising homosexuality in Uganda is really about nationalism, sovereignty, morality, propriety, control, political expediency, politicking before voters, foreign relations, bilateral aid, neo-imperial power, human rights, and piety. This question is ultimately about the power to define or resist boundaries of belonging and exclusion in post-independence Uganda.

The methodological strength of this article rests in the researchers' location and long-term situatedness within Uganda's erratic sociopolitical tides. Beyond being mere observers, our disparate participation and active involvement in separate but related political contestations sharpens our analysis as scholars. Our positionality as researchers offers the advantages of long-term embeddedness within the study context, awareness of long-term histories informing the debate, fluency in the local languages and media of engaging the topic, exposure to a plethora of often opposing and diverse perspectives, and the attendant shifts in stance of key players – all advantages of ethnographic fieldwork. Ethnographic methods are thus important because they are able to enrich gender, legal and sexuality studies. In an attempt to delimit our subjective biases we have paid attention to the varied positions and arguments in and around the homosexuality debate.

Within this broader social-political framing of Uganda's anti-homosexuality law, homosexual people are pawns at the mercy of pious politicians canvassing for votes by politicising their phobias using legislative and electoral processes. Protecting homosexuals in Uganda became a bargaining chip for powerful bilateral partners who withdrew, withheld or redirected their development aid from the public fund, leaving many poor Ugandans abhorrent of the idea of homosexuals. While foreign pressure had the desired effect of stalling the legislative processes and contributing to the annulment of the Anti-Homosexuality Act (2014), the withdrawal of foreign aid from the public budget also had the unforeseen effect of transferring blame for public financing deficits onto already stigmatised LGBTIQ Ugandans (Jjuuko, 2013; Tamale, 2013).

Political muscle wielded to recriminalise or decriminalise homosexuality in Uganda flagged tensions between protecting national sovereignty versus universally protecting sexual minority rights. If conservative religious and cultural norms support widespread local

opposition to homosexuality, Uganda's location within a globalising world necessarily creates contradictions brought by advances within the international arena to protect against discrimination on grounds of alternative sexual orientation and non-conforming gender identity. The ironic lesson from the historical continuities within our statute books is that homophobic legislation is a legacy of former colonisers who now pressure Uganda to revoke anti-homosexuality laws.

Laws are not enacted in vacuums. Politics of religious homophobia cannot be underplayed within analyses of the context informing the recriminalisation of homosexualities in Uganda. Framed as sin against God and mankind, and thus punishable akin to the biblical cities of Sodom and Gomorrah, homosexuality and same-sex-loving individuals clearly came under institutionalised attack launched by members of conservative religions. This was evident at the March 2009 conference 'Exposing the Homosexual Agenda' organised by Family Life Network and hosting anti-gay and ex-gay American preachers who ignited the organised fight against homosexuality, as well as the March 2014 National Parade and Thanksgiving Prayer Rally organised by the Inter-Religious and Cultural Leaders Alliance to thank President Museveni for assenting to the anti-homosexuality law.

Consolidating this fundamentalist mission with purported protection of the nation's children from predatory homosexual recruiters, the anti-homosexuality campaign gained virulent forcefulness. The strategic militant approach of Uganda's organised anti-gay factions coalesced into an oppressive machinery, heightening the torture of same-sex-loving individuals and communities. Human rights violations against LGBTIQ individuals and groups skyrocketed with developments in the anti-homosexuality legislation. This echoes Amory's (1997:5) claim that "sexual orientation has become a cause, or perhaps an excuse, for political persecution and personal violence in diverse African contexts."

Infusing religious homophobia into national politics, elections and legislative processes eroded the governance principle of secular nations which insists on the separation of church and State. Foreign religions assimilated and Africanised in post-independence Uganda became the foundation for criminalising same-sex-loving Ugandan citizens. Other than anti-theological anomalies or criminalised nationalism,

what alternatives were left for imagining Queer Ugandan possibilities, let alone Queer Christian Ugandan ones?

Contesting stereotypical generalisations about the homophobic Ugandan nation, our foregoing analysis uncovers rich emic evidence of nuanced debate among Uganda's citizenry, dissent within Parliament, projected willingness to learn from science, existence of progressive members of the judiciary and legislature, and visible individuals and civil society organisations that support LGBTIQ rights. These are important ingredients of a vibrant local LGBTIQ movement comprising people who stand to defend the rights of sexual minorities. Solid opposition to institutionalised homophobia grew among local same-sex-loving citizens and their allies, even within the increasing authoritarian rule of President Museveni and the NRM.

The Majority and Minority Reports of the Sectoral Committee on Legal and Parliamentary Affairs of the Anti-Homosexuality Bill of 2009 reveal the complexities within legislative developments of Uganda's anti-homosexuality law. They reveal contestation against specific proposals of the bill, including the death penalty, difficulty of proving certain proposed crimes, and practical challenges of extraterritorial jurisdiction and extradition. The debates were evident within the Majority Report. The Minority Report highlights dissent against the majority recommendation to pass an amended version of the Anti-Homosexuality Bill. The Minority Report insisted on Parliament's rejection of this proposed law. The four authors of the Minority Report importantly attest to the presence of local Ugandan legislators who stood their ground in Parliament against the Anti-Homosexuality Bill. This is in sharp contrast to sweeping statements such as Sharlet's (2010:36) assertion that the Bill had "near-unanimous support in Parliament". In spite of their problematic imbibing and reproduction of widespread misconceptions about recruitment of children into homosexuality, it is important that these Members of Parliament articulated their dissent and its justifications. The dissent within the Minority Report shatters blanket generalisations that universalise homophobia to all Uganda's legislators.

Further fracturing widespread stereotypes of Uganda's homophobic populace, the demographic composition (including gender, sexual orientation, age, class, ethnicity, and political party affiliation) of constitutional petitioners highlights the diversity of local Ugandans

opposed to institutionalising legalisation of persecution against homosexuals. Legislators, academic professors and a public media personality allied with same-sex-loving Ugandans and local grassroots organisations to challenge the constitutionality of the Anti-Homosexuality Act (2014). In addition, the availability of local legal experts interested in representing the petitioners further attests to existing professional support for homosexuals when professionally providing services to same-sex-loving individuals in the country was highly criminalised.

While the local contestations are crucial to but often ignored in analyses of the social-political dynamics of Uganda's anti-homosexuality law, the politics of power and powerlessness at national level are both intriguing and revelatory. The two presidential appointments on the bench of judges, the rescheduling of the hearing and hastened judgment of the Constitutional Petition brought by Oloka-Onyango and nine others versus the Attorney General, and the naming of the Speaker of Parliament for engaging in illegal procedures must be read as carefully orchestrated political maneuvers undertaken to further solidify and entrench Yoweri Museveni as sole candidate from his NRM party for Uganda's presidential seat in 2016.

While homophobia spurs the politics of homosexuality in Uganda, there are three alternative interpretations of why homosexuality is being mobilised as a platform for strategic bargaining between different actors. Firstly, homosexuality presents an easy tool that rogue regimes marshal to divert attention (criticism) away from domestic governance failure(s). Furthermore, homosexuality threatens male dominance, deflates misogyny and presents a plausible threat to the patriarchal social order. Therefore it presents fertile ground for the cultivation of populist support from those who stand to gain from the status quo. Finally, the growing momentum of a movement for equal sexual citizenship galvanises political power, public visibility and transgressive activism.

Notes

1. Scientists' Report available at <http://www.boxturtlebulletin.com/btb/wp-content/uploads/2014/02/UgandaScientificReportOnHomosexuality.pdf>.
2. The full text of the Speaker's speech is available at <http://www.parliament.go.ug/new/index.php/about-parliament/parliamentary-news/124-speaker>

clarifies-uganda-parliament-s-stand-on-homosexuality.

3. A copy of President Yoweri Museveni's complete letter written to acknowledge receipt of the passed bill is available at http://www.ugandans4rights.org/attachments/President_Museveni_letter_to_the_speaker_after_the_passage_of_the_anti_homosexuality%20bill.pdf
4. For details see <http://www.newvision.co.ug/news/660387-museveni-calls-for-fresh-debate-on-homosexuality.html>.

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