

UGANDA'S ANTI-HOMOSEXUALITY BILL THE GREAT DIVIDE

A COMPILATION BY THE CIVIL SOCIETY COALITION ON HUMAN RIGHTS AND CONSTITUTIONAL LAW

to protect the cherished culture of the people of Uganda... religious, and traditional family values of the people... against the attempts of sexual rights activists seeking... of sexual promiscuity on the people of Uganda... conviction to suffer death... with the offence under the...

Clergy: Jail gays, don't hang them

Forbidden love

Don't kill in God's name

Gay refuses to return to Uganda

Homosexuals face death penalty

Some facts about homosexuality

- Homosexuality is the romantic or sexual attraction to or behaviour with members of the same sex, situationally or as an enduring disposition.
- A sexual orientation, homosexuality is considered to be within the heterosexual-homosexual continuum of sexuality and refers to an individual's identity based on those attractions, membership in a community of who share them.
- The prevalence of homosexuality is difficult to determine accurately. Studies suggest between two and ten percent of the population are of the degree of homosexual orientation, though in many cultures homosexual relations have been prevalent since the animal kingdom.
- Homosexuality is widely accepted in the animal kingdom.
- Throughout history, individuals of homosexuality have been condemned according to societies' sexual norms. When projects were seen as a way to society when condemned, and some homosexual behaviour was prohibited by law. Since the 20th century, homosexuality has been gradually decriminalised in many countries.
- However, the legal status of sexual relations varies widely and there remain many...

2 NATIONAL NEWS
The New Vision, Thursday, October 15, 2009

By Mary Karugaba and Catherine Bekunda

AGGRAVATED homosexuality will be punished by death, according to the Anti-Homosexuality Bill 2009, which also carries the death sentence. The Bill, entitled the Anti-Homosexuality Bill 2009, also states that anyone who "sponsors homosexuality" is liable to imprisonment for seven years. "The same applies to anybody who 'aids, abets, counsels or assists' in the commission of such sexual relations in public institutions and other places where the offender is a business or NGO, an officer of a religious institution or a member of a church or other religious organisation."

2 RED PEPPER, TUESDAY, JUNE 02, 2009

KAVAN

DECEMBER 2009

Civil Society Coalition on Human Rights and Constitutional Law



REFUGEE LAW PROJECT



AWDF



FIDA UGANDA



Centre for Women in Governance (CEWIGO)

Integrity Uganda

Spectrum Uganda

Uganda Feminist Forum

National Guidance & Empowerment Network of People Living with HIV/AIDS (NGEN+)

Center for Land Economy and Rights of Women (CLEAR - Uganda)



National Coalition of Women Living with HIV/AIDS (NACWOLA)

National Association of Women's Organisation in Uganda (NAWOU)

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“We should remind them (the donors) that there is integrity to be defended and threats are not the way to go. If one chooses to withdraw their aid, they are free because Ugandans do not want to engage in anal sex. We do not care.” **Ethics and Integrity Minister James Nsaba Buturo**

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“It would therefore be dangerous for the State to visit people’s bedrooms every night to ensure that sex is enjoyed only through the legislated style.”

Andrew Mwenda, *The Independent*

“Uganda is a democratic country with a remarkable and wise people, and in a democracy everyone has a right to speak up. For these reasons, I urge you, the pastors of Uganda, to speak out against the proposed law.”

Pastor Rick Warren, author of *The Purpose Driven Life*

“If you agree to steal, to an extent that you allow corruption, open theft of public goods and money to be the norm, then who are you to condemn those who are not even harming society” **Hon Prof. Ogenga Latigo, Leader of the Opposition**

“It’s profoundly ironic that the country that’s seen as emblematic of success in fighting the [HIV/AIDS] pandemic is now contemplating such a decisive step backwards.”

Stephen Lewis, Co-Director of AIDS-Free World

“Those sitting back and thinking, ‘Get them Bahati!’ may be shocked one day when it is them that this law throws in jail.”

Dr. Sylvia Tamale, Makerere University

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“What is the magic of this new legislation? We believe that the strategy is education and not legislation. Most likely we are going to have another redundant legislation that we can’t enforce. How is government going to go into people’s bedrooms and police them?”

**Livingstone Sewanyana,
Foundation for Human Rights Initiative**

“We used to have very few homosexuals traditionally. They were not persecuted but were not encouraged either because it was clear that is not how God arranged things to be.”

President Yoweri Museveni



“We are happy that we are involved in this issue of attacking homosexuality head on ... It is not an easy task. Combating homosexuality is not easy. There is massive recruitment in schools – mostly single-sex schools.”

Hon. David Bahati, author of the Anti-Homosexuality Bill

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“Overall, the proposed legislation is of shocking severity and I can’t see how it could be supported by any Anglican who is committed to what the Communion has said in recent decades.”

Dr. Rowan Williams, Archbishop of Canterbury

“I believe, and I am raising the bar, that we must laugh at this MP and others like him: laugh and stay sane.”

John Nagenda, presidential advisor

APPENDIX The Anti-Homosexuality Bill, 2009, Full Text

EDITOR’S NOTE: Many of the following articles have been shortened in the interest of space.

**DID
YOU
KNOW...**

Two-thirds of Uganda’s tabled Anti-Homosexuality Bill is comprised of legislation already in the statute books?

If your child or grand-child turns out to be gay, you could find yourself having to choose between going to prison or sending that child to prison?

PREAMBLE TO THE ANTI-HOMOSEXUALITY BILL, 2009

The object of this Bill is to establish a comprehensive consolidated legislation to protect the traditional family by prohibiting (i) any form of sexual relations between persons of the same sex; and (ii) the promotion or recognition of such sexual relations in public institutions and other places through or with the support of any Government entity in Uganda or any non governmental organization inside or outside the country.

This Bill aims at strengthening the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family.

This legislation further recognizes the fact that same sex attraction is not an innate and immutable characteristic.

The Bill further aims at providing a comprehensive and enhanced legislation to protect the cherished culture of the people of Uganda, legal, religious, and traditional family values of the people of Uganda against the attempts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.

There is also need to protect the children and youths of Uganda who are made vulnerable to sexual abuse and deviation as a result of cultural changes, uncensored information technologies, parentless child developmental settings and increasing attempts by homosexuals to raise children in homosexual relationships through adoption, foster care, or otherwise.

UGANDA'S ANTI-HOMOSEXUALITY BILL: THE GREAT DIVIDE

INTRODUCTION

"Should Uganda kill the gays or kill the Bill?" That is the question which this compilation of differing positions on the Anti-Homosexuality Bill aims to help readers think through.

With only a few notable exceptions, which are reprinted here for all readers' benefit, Uganda's mainstream media has maximised the voice of those who oppose homosexuality, and minimised the voice of those who, in the name of human rights and constitutionalism, beg to differ.

To fill in some of the gaps, the Coalition for Human Rights and Constitutional Law has put together this compilation of key statements and opinions on the Anti-Homosexuality Bill currently before Uganda's Parliament. For those who have not yet read the Bill in its entirety, the text is provided in an annex to this compilation.

While some people argue that Ugandans are uniformly homophobic, this compilation shows that this is not the case. Many thinking Ugandans oppose this Bill, and their viewpoints are reflected here. The Compilation also brings together in one place the various voices of outrage that have been expressed in Churches, in NGOs, and by Governments around the world.

The Civil Society Coalition on Human Rights and Constitutional Law

December 2009

From a speech given at the launch of the 2009 UNDP Human Development and Migration Report, Serena Hotel, Kampala, 17 December 2009

“As some of you will be aware, Burundi and in its most regrettably extreme expression, Uganda, have embarked on legislating – or reinforcing existing legislation – against homosexuality. Whether you like it or not, homosexuality is a reality. Live with it. To legislate against sex between consenting adults, as though we do not have already have sufficient – and much more serious - moral issues to deal with, is really to misunderstand the meaning of prioritization, or perhaps more seriously, as Professor Ogenga Latigo recently pointed out, to indulge in diversionary tactics.



Moses Chrispus Okello
Refugee Law Project,
Coalition Member

“I personally don’t care what Mwanga does with David or John-Paul. As long as the individuals concerned respect my liberty, I will respect their liberty, freedom and choice of happiness. What the Bahati Bill promises is to take things to an unwarranted level. It drains our energy, it re-directs attention but above all, it focuses our attention on the human rights situation in Uganda, which is perhaps the only positive

thing to come out of the proposed anti-gay legislation.

“You may think the above is a digression, but it is not. If the proposed anti-gay legislation is passed into law, it is going to lead to a fairly massive exodus of people from this country. Most of us probably underestimate the number of people who will be affected if this bill is passed into law, for gay people, just like heterosexuals, do not advertise their sexuality. We should perhaps remind ourselves that exclusion and discrimination on the basis of sexuality is a ground for refugee status under the 1951 Refugee Convention. If we go down this path, we can only expect people migration, of professionals, doctors, teachers and peasants - and perhaps even Bahati’s children and grand-children, for af-

WHAT THE BILL SAYS ON AGGRAVATED HOMOSEXUALITY...

A person commits the offense of aggravated homosexuality where the person against whom the offence is committed is below the age of 18 years; the offender is a person living with HIV; ... the offender is a serial offender

[The offender] shall be liable on conviction to suffer death. Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status.

WHAT THE BILL SAYS ON FAILURE TO DISCLOSE THE OFFENCE...

A person in authority, who being aware of the commission of any offence under this Act, omits to report the offence to the relevant authorities within twenty-four hours of having first had that knowledge, commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding three years.

ANTI-HOMOSEXUALITY OR ANTI-HUMAN RIGHTS BILL?

Statement by the Civil Society Coalition on Human Rights and Constitutional Law, 23 October 2009

Hon. Bahati's Anti-Homosexuality Bill which was tabled in Parliament on October 14, 2009, and is currently before the Legal and Parliamentary Affairs Committee of Parliament covers much more than the title alone proclaims. A much better title for this bill would have been the 'Anti Civil Society Bill, the 'Anti Public Health Bill,' or the 'Anti-Constitution Bill.' Perhaps more simply it should be called the Anti Human Rights Bill. As a matter of fact, this bill represents one of the most serious attacks to date on the 1995 Constitution and on the key human rights protections enshrined in the Constitution including:

Article 20: Fundamental rights and freedoms are inherent and not granted by the State

Article 21: Right to Equality and Freedom from discrimination

Article 22: The Right to Life (the death penalty provisions)

Article 27: The Right to Privacy

Article 29: Right to freedom of conscience, expression, movement, religion, assembly and association (this includes freedom of speech, Academic freedom and media freedom)

Article 30: Right to Education

Article 32: Affirmative Action in favour of marginalised groups and Article 36 on the Rights of Minorities

Let us think for a moment of who—quite apart from the homosexuals it claims as its target—this bill puts at risk:

- any parent who does not denounce their lesbian daughter or gay son to the authorities: Failure to do so s/he will be fined Ush 5,000,000/= or put away for three years;

- any teacher who does not report a lesbian or gay pupil to the authorities within 24 hours: Failure to do so s/he will be fined Ush 5,000,000/= or put away for three years in prison;

- any landlord or landlady who happens to give housing to a suspected homosexual risks seven years of imprisonment;

- any Local Council I – V Chairperson or Executive member who does not denounce somebody accused of same-sex attraction or activity risks imprisonment or a heavy fine;

- any medical doctor who seeks to prevent the spread of HIV/AIDS through working with what are known as most at risk populations, risks her or his career;

- all civil society leaders, whether in a Community Based Organisation, NGO, or academic institution; if their organisations seek to have a comprehensive position on sexual and reproductive health, they risk seeing their organisations closed down;

- any human rights activist who seeks to promote an understanding of the indivisibility and inalienability of human rights would be judged to be promoting homosexuals and homosexuality, and be punished accordingly;

- any religious leader who seeks to provide guidance and counselling to people who are unsure of their sexuality, would be regarded as promoting homosexuality and punished accordingly;

- any Member of Parliament or other public figure who is sent a pornographic article, picture or video will become vulnerable to blackmail and witch-hunts;

- any media house that publishes 'pornographic' materials risks

losing its certificate of registration and the editor will be liable to seven years in jail;

- any internet café operator who fails to prevent a customer from accessing a pornographic website, or a dating site, could be accused of 'participating in the production, procuring, marketing, broadcasting, disseminating and publishing of pornographic materials for purposes of promoting homosexuality'; their business licence could be revoked and they themselves could land in prison.

- any Person alleged to be a homosexual is at risk of LIFE IMPRISONMENT and, in some circumstances, the DEATH PENALTY

In short, this bill targets everybody, and involves everybody: it cannot be implemented without making every citizen spy on his or her neighbours. The last time this was done was in the Amin era, where everyone very quickly became an 'enemy of the state'. It amounts to a direct invasion of our homes, and will promote blackmail, false accusations and outright intimidation of certain members of the population. Do Ugandans really want to mimic the practices of the Khartoum regime? Have we already forgotten the sex police of Apartheid South Africa, who smashed their way into people's bedrooms in an attempt to prevent interracial sex?

And what about our standing in the eyes of the world? The Bill calls for Uganda to nullify any international treaties, protocols, declarations and conventions which are believed to be 'contradictory to the spirit and provisions' of the bill. In reality, this would involve Uganda withdrawing from:

The Universal Declaration of Human Rights;

The International Covenant on Civil and Political Rights and its protocols;

The International Covenant on Economic, Social and Cultural Rights;

The Convention on the Elimination of all Forms of Discrimination Against Women;

The Convention on the Rights of the Child, and

The African Charter on Human and Peoples' Rights

In sum, the Bahati Bill is profoundly unconstitutional. It is a major stumbling block to the development of a vibrant human rights movement in Uganda, and a serious threat to Uganda's developing democratic status. If passed, this law would not only prove difficult to implement, it would also consume resources and attention which would be better directed at more pressing issues of human rights abuse, corruption, electoral reform, domestic relations and freedom of the press.

Regardless of our personal moral beliefs and values, we the undersigned organisations are standing up in defence of Democracy, our Constitution and its enshrined principles of human dignity, equality, freedom and justice for all.

STATEMENT BY THE CENTRE FOR HUMAN RIGHTS, UNIVERSITY OF PRETORIA 24 October 2009

The Centre for Human Rights, University of Pretoria, has taken note of the introduction into the Ugandan Parliament of the 'Anti Homosexuality Bill, 2009'. We are of the very strong view that this Bill should not be adopted. It not only violates the Ugandan Constitution and Uganda's international human rights obligations, but also stifles debate, undermines civil society and demeans the common citizenship of all Ugandans.

THE OFFENCE OF HOMOSEXUALITY

The Bill criminalises certain acts as 'offences of homosexuality', and allows for the imposition of life imprisonment (clause 2). The fact is: Uganda's Penal Code, in article 145(a) already criminalizes 'carnal knowledge of any person against the order of nature' - a charge used to prosecute, persecute and blackmail LGBT people with the threat of life imprisonment. In so far as the Bill merely restates the existing law, it is redundant and contradicts the principle that laws should only be adopted to address a "nuisance" that has previously not been legislated upon.

The Bill however goes further than the existing law by criminalising, with a potential life imprisonment, 'touch[ing] another person with the intention of committing the act of homosexuality'. The punishment of life imprisonment is clearly disproportionate with such an offence. In any event, it would be almost impossible to establish such an 'intention', making the application of this part of the Bill arbitrary and open to abuse. The existing law has already been employed in an arbitrary way, and the Bill will just exacerbate that effect. Over the recent months increased campaigns of violence have continued uncontrolled. The violence directed at homosexual Ugandans has resulted in the unwarranted arrests of many people; there are eight ongoing cases in various courts all over Uganda of which four accused persons are unable to meet the harsh bail conditions set against them. These acts of violence have now resulted in the deaths of several homosexual people, such as Brian Pande at Mbale Hospital as he awaited trial.

THE OFFENCE OF FAILURE TO REPORT HOMOSEXUALITY

The Bill also sets up a system of civilian surveillance,

compelling citizens to report each others' conduct (clause 14). According to the Bill, any person in authority who fails to report known violations of the law within 24 hours will also be subject to a significant fine and up to 3 years in prison - even when this means turning in their colleagues, family, or friends. More shocking, the Bill claims jurisdiction over Ugandans who violate its provisions while outside of the country. This aspect of the Bill is overbroad and makes potential criminals of all Ugandans. By intruding into the private sphere, the Bill violates the right to privacy.

Nullification of international law agreements

In one sweep, the Bill further proposes to expunge the effect of international law obligations already undertaken by Uganda. In the Bill, clause 18 stipulates that any international agreement contrary to the Act will be 'null and void'. This is a step unprecedented in international law, and flies in the face of the principles of the Vienna Convention on the Law of Treaties. The Bill's revocation of international law commitments would also seriously undermine the country's reputation and credibility in the international arena.

The Anti Homosexuality Bill is ill-conceived and in many ways redundant. It is not clear how it will achieve its stated aim, namely to protect the 'traditional family' (Preamble). There is no evidence that the institution of marriage in Uganda is so fragile that its survival depends on the draconian measures proposed in the Bill. The Bill does little more than to entrench stigma and prejudice, which will polarise the Ugandan society further and undermine public health efforts to combat the spread of HIV. It places a total ban on public discussion of an issue whose existence cannot be wished away. The Bill is an unprecedented attempt to drive a wedge between members of sexual minorities and their friends and family. It exemplifies the approach of a totalitarian regime in its broad scope and disproportionate prescribed punishment, including the death penalty. It is an example of ostrich politics, in that it aims to legislate way part of social reality. If the Bill is adopted, it will make Uganda a pariah in the international community. We therefore urge the Ugandan Parliament to reject this Bill in its entirety.

UGANDAN GOVERNMENT: LET THE PEOPLE DECIDE

Statement made by the Minister for Ethics and Integrity Hon. Nsaba Buturo to members of the press at the Uganda Media Centre on Thursday 3 December 2009

There is a Bill in Parliament known as the Anti-Homosexuality Bill. This subject is causing a great deal of interest around the world. The people of Uganda believe that practicing anal sex at the expense of heterosexual sex is not a normal practice. Ugandans know or believe that homosexuality involves practices that are dangerous and high risk to the human body which is designed for heterosexual functions. Ugandans also believe that anal sexual intercourse, foreign objects used in

sexual intercourse and promiscuity do not deserve to be defended at all. Having said that, it is clear to many of us that the over reaction so far is not surprising to us. Uganda accepts that in some countries it is normal practice for men and women with women. It is often defended that imperatives of human

"If we accept that homosexuals are a minority group then robbers are going to come to us to say that 'we too are a minority group'."

Hon. Nsaba Buturo
Minister of Ethics & Integrity

rights defend this practice. We do not believe so in Uganda. Majority of Ugandans hate to see the promotion of illegalities that they consider as dysfunctional, abnormal and unhealthy.

Ever since the Bill on Homosexuality was presented in Parliament, there have been various reactions as well as over-reactions from countries which are annoyed at our independence to enact our Laws. Consequently, we hear they are threatening to take action against Uganda. It is revealing that support to Uganda literally translated means that it is on condition that Uganda should do the bidding of givers of such support regardless of what Ugandans themselves think. It is also revealing that support which would benefit countless number of orphans, children and mothers can be withdrawn simply because Government is protecting its citizens against vices such as homosexuality. Government has been clear about this matter that homosexuality or homosexual practices will not be promoted, encouraged

and recommended to the people of Uganda.

Finally, on the issue of the Bill, those who are promising threats to the people of Uganda need to be helped to understand that the Bill is going through the normal democratic process of debate. The Bill is not the final document that will become Law. If there is belief that threats will influence Parliament to debate against the wishes of Uganda, those responsible for such threats should forget. We should all wait to see how Members of Parliament will acquit themselves over this matter.

ETHICS MINISTER: UN SPREADING HOMOSEXUALITY

From AFP News Service

Kampala - Ugandan Ethics Minister James Nsaba Buturo alleged on Friday that some United Nations member states were engaged in a covert campaign to spread homosexuality around the world.

"At the United Nations there are attempts by some nations to impose homosexuality on the rest of us," he told reporters. "We have learned that they want to smuggle in provisions on homosexuality." He said he was particularly concerned about an ongoing UN conference on population. "We got to learn from our sources that there are interests that want to use that conference to bring in issues that will protect homosexuals," he said.

Buturo spoke on Thursday to Uganda's UN ambassador and reminded him of the country's position that homosexuality is "unnatural, abnormal, illegal, dangerous, and dirty". Buturo also hit back on Friday against a Ugandan gay rights groups who recently made a public call for equal rights.

"We deserve equal rights and protection under the law and constitution. We don't deserve to be demonised and falsely accused in the name of ignorance of who and what we are," Lesbian Gay Bisexual Transgender Intersex Ugandans had said in a statement on Wednesday.

Buturo responded by insisting that the constitution affords no rights to sexual minorities. "It is not true," he said. "They have been making claims that they are protected as a minority group. If we accept that homosex-

Obama: I oppose Uganda's gay Bill

The Daily Monitor, 16 December 2009



FACE OFF: Bahati's (L) Anti-Homosexuality Bill has drawn global criticism even from US President Barack Obama (R).
FILE PHOTOS

Archbishop Williams, Clinton join list of critics

Rodney Muhumuza
Kampala

International opposition against Ndoorwa West MP David Bahati's proposed anti-gay law continued to grow steadily, drawing support from such unlikely quarters as the White House.

The growing list now includes US President Barack Obama, US Secretary of State Hillary Clinton, Anglican leader Rowan Williams, some US senators, and several newspapers.

Buturo's U-turn

The pressure from these and other sources was being felt in Kampala, with Ethics Minister Nsaba Buturo now saying he would remain silent about the proposed law until it has been passed or defeated.

"Overall, the proposed legislation is of shocking severity and I can't see how it could be supported by any Anglican who is committed to what the Communion has said in recent decades," Dr Rowan Williams, the Archbishop of

uals are a minority group then robbers are going to come to us to say that 'we too are a minority group'."

The minister said that Uganda would pass a law that further criminalises homosexuality. "Our current laws are weak," he said. Buturo has previously said that homosexuality threatens the future of civilisation because homosexual sex does not produce children, and called for the criminalisation of mini-skirts because they can cause traffic accidents by distracting male drivers.

Countries in the region where evangelical churches are powerful have recently mounted what rights groups describe as a crackdown on homosexuals.

HAVING CONSIDERED ANTI-GAY LEGISLATION, RWANDA NOW SAYS...

"The government I serve and speak for on certain issues cannot and will not in any way criminalize homosexuality; sexual orientation is a private matter and each individual has his or her own orientation - that is not a State matter at all."

Justice Minister
Tharisse Karugarama

The New Times, 19 December 2009