

UGANDA:

ANTI-HOMOSEXUALITY ACT

Kaleidoscope Trust Briefing, February 2014

KEY POINTS:

The Anti-Homosexuality Bill was passed by the Ugandan Parliament in December 2013. It has now been signed into law by President Museveni. The Act will: -

- Greatly expand the range of same-sex sexual activities that are punishable by life imprisonment, including “touching with the intention” of committing homosexual acts.
- Define a new crime of ‘aggravated homosexuality’: those who are HIV positive; those who are a parent or authority figure; those who have sex with those under 18 years old; repeat offenders; those who have sex with disabled people (consensual or not) with the penalty to be life imprisonment.
- Criminalise ‘promoting homosexuality’, effectively criminalising care and counselling and discouraging assembly and advocacy by LGBT or LGBT-sympathetic agencies, media organisations, NGOs and civil society groups. Any organisation trying to work with LGBT people, will risk losing its license. Individuals found guilty of ‘promotion’ face five to seven years in jail.

KEY RECOMMENDATIONS:

For government:

- To condemn the Act in the strongest possible terms, both publicly and privately.
- To explore ways to re-direct aid to key civil society actors.
- To investigate issuing travel advisories about travel to Uganda warning of the risks the Act poses to British citizens on the basis of their real or perceived sexual orientation and gender identity.
- To temporarily recall the UK High Commissioner in order to consult strategically on the Act, in consultation with partners from the EU, US and other European countries.
- To consider whether the Act’s key supporters - particularly the Speaker Rebecca Kadaga and the Bill’s sponsor David Bahati MP - should be permitted visas to travel to the UK.

For individuals:

- Show support for Ugandan organisations by following them on social media and sending them messages of support
- Stay informed of events by following the Kaleidoscope Trust on social media and by signing up to our alert list
- Support the Kaleidoscope Trust’s work in Uganda by donating to us at www.kaleidoscopetrust.com/donate

REVIVAL OF THE ANTI-HOMOSEXUALITY BILL

In December last year, members of Uganda's Parliament passed the infamous 'Anti-Homosexuality' Bill. Although the death penalty has been removed from the Bill, it still includes provisions that grossly violate the fundamental human rights of Ugandan citizens, contradicting numerous international human rights treaties and sections of Uganda's own constitution. On the 24th of February, President Yoweri Museveni signed the bill into law. The new law represents a grave assault on the human rights of LGBT Ugandans, their friends families and allies. It seriously undermines the fight against HIV/AIDS and will damage the economic and other interests of the country.

The Act expands the range of criminalised same-sex activities and provide harsher punishments upon conviction, including life in prison.¹ The Act's criminalisation of the "promotion" of same-sex relations threatens the existence of civil society in Uganda, prohibiting free expression of progressive positions on human rights and the rights of sexual and gender minorities. It puts individuals and organisations that challenge the official position on LGBTI rights and promote tolerance and understanding at risk of closure and prison sentences, while undermining efforts to provide healthcare for the LGBT community. The passage of the bill into law has contributed to an environment that heightens stigma, discrimination, and violence targeted towards the LGBT community, their family, friends, and supporters. The Ugandan press has begun to 'out' prominent members of the LGBT community, tacitly encouraging vigilantism and mob violence.

BACKGROUND

In many African countries the legal status of LGBT people is characterised by human rights abuses and fear. Political, religious and community leaders have joined forces to condemn homosexuality describing the practice as un-African, a taboo and an imported Western disease. Many of the existing sodomy laws have remained in place from colonial legacies. These laws are now often used to defend local and traditional culture and values, when in fact many pre-colonial societies accepted or tolerated same-sex relations.² The use of anti-sodomy laws and penal codes in many African countries has often led to unnecessary persecution of and violence towards LGBT people, their stigmatization and exclusion from society and employment and limited their access to public services such as health care and education.

In recent years, as the issue of homosexuality has become more widely discussed in Ugandan society, there have been increased human rights abuses, increased stigma and discrimination towards LGBT people, leading to more homophobic assaults, harassment and blackmail. There have been widespread reports of physical attacks not only on those who are openly members of these groups but also on those presumed to be or associated with them. In January 2011, one of Uganda's most prominent LGBT rights activists, David Kato, was murdered after winning a court victory over a tabloid that published on their front page addresses and photos of alleged homosexuals and called for them to be killed.³

The extreme prejudice faced by homosexuals in Uganda has led to an environment where individuals face arrest, and organisations and cultural events face harassment by the Ugandan authorities. The

increasing crackdown on organisations has resulted in several armed raids on LGBT rights meetings, workshops and non-governmental organisations.

These raids appeared to be a precursor to the announcement by Uganda's Minister for Ethics and Integrity, Simon Lokodo, that the government would be banning 38 non-governmental organisations it accuses of promoting homosexuality and recruiting children.⁴ The Ugandan government claimed that it had intercepted minutes of recent meetings that discussed wide-ranging strategies on how to promote the rights of LGBT people in Uganda, prompting NGOs to accuse the government of spying.⁵

Consensual homosexual acts are already criminalised in Uganda, under the penal code of 1950 section 140. This penal code states, "that any person who has carnal knowledge of any person and permits a male person to have carnal knowledge commits an offence and the offence carries a maximum penalty of life imprisonment".

The Act also comes at a time when Uganda's environment for civil society as a whole, not only LGBT groups, is worsening. Human Rights Watch released a report in August 2012 about the increasingly repressive environment experienced by civil society at large.⁶

Each time the Bill has been reintroduced, it has provoked worldwide protests, and condemnation from political leaders, human rights organisations and the United Nations. President Obama called it "odious" and said it was "unconscionable to target gays and lesbians for who they are".⁷

HISTORY OF THE ACT

First introduced by MP David Bahati in 2009, the 'Anti-Homosexuality' Bill has been subject to several revisions, political back-peddalling and confusion as to whether a final version would include the death penalty, or indeed be vetoed by the country's President Yoweri Museveni.⁸

Some opponents in Parliament have voiced concern in the form of a Minority Report, which apparently made its way out of the Ugandan Legal Affairs and Parliamentary Committee, has called for the dropping of the bill.⁹

The bill was reintroduced to Parliament, on 21 November 2012. The Uganda Speaker of Parliament, Rebecca Kadaga, promised in late 2012 to expedite the debate on the 'Anti-Homosexuality' bill and stated that she hoped the bill would pass before the end of the year: "Ugandans want that law as a Christmas gift. They have asked for it and we'll give them that gift".¹⁰

While her attempts to push the Bill through in 2012 foundered, it was passed by the Ugandan parliament in a surprise move in late December 2013.¹¹ Both the President, and the Prime Minister criticised the Speaker for the manner in which the Bill was passed. It was not announced on the order paper and the parliament passed the Bill without the necessary quorum. However

the fact that the Anti-Homosexuality Bill is just one of many Bills to pass through the parliament without quorum, made a procedural challenge unsustainable.

At his party caucus the President stalled any decision on the Bill and demanded 'scientific evidence' to establish whether or not gay people are abnormal and appointed a team of scientists to study the causes of homosexuality behaviour. President Museveni signed the bill into law in the face of evidence in the report that suggested the homosexuality was not "abnormal" and was present in every culture.¹² There have been suggestions that the report was inaccurately summarised by the President's advisers.

The new law has caused international condemnation. Prior to its signing President Obama said the law "will be a step backward for all Ugandans" and that it would "complicate" the relationship between the two countries.¹³ British Foreign Secretary William Hague questioned the bill's constitutionality and compatibility with Ugandas international treaty obligations.¹⁴ In response to the new law Norway and Denmark announced their intention to redirect aid away from the government, toward civil society.¹⁵ The Netherlands announced that it would suspend £6 million of aid earmarked for the Uganda judicial system. Both Sweden and the US announced reviews of Ugandan aid.

CONTENT OF THE ACT

The Act contains the following provisions:

- It radically expands the range of same-sex acts punishable by life imprisonment, making conviction easier. This now includes any same-sex sexual acts, including touching with the "intention" to commit a homosexual act.
- Criminalises the "attempt" to commit homosexuality. This could be as simple as sending a text message or asking someone out.
- Define a new crime of 'aggravated homosexuality': those who are HIV positive; those who are a parent or authority figure; those who have sex with those under 18 years old; repeat offenders; those who have sex with disabled people (consensual or not) with life in prison.
- Provide compensation and guarantees anonymity to 'victims' of homosexuality, effectively an incentive to turn evidence or press charges.
- Provide that a 'victim' of homosexuality shall not be penalised for any crime committed as a direct result of his or her involvement in homosexuality.' This can result in mob justice and provides a license to commit serious crime with impunity in Uganda.
- Criminalises 'promoting' and 'aiding and abetting' homosexuality, effectively criminalising care and counselling and discouraging assembly and advocacy by LGBT or LGBT-sympathetic agencies, media organisations, NGOs and civil society groups. Any organisation trying to work with LGBT people, will risk losing its license. Individuals found guilty of 'promotion' face five to seven years in jail.
- Define places where homosexuality takes place as brothels, effectively defining landlords and families of LGBT people as brothel keepers punishable with up to seven years imprisonment.

THE ACT AND THE UGANDAN CONSTITUTION

The Act is in direct contravention of at least eight articles in the 1995 Constitution of Uganda that enshrines key human rights protections including the following:

- 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
- 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

THE ACT AND UGANDA'S INTERNATIONAL OBLIGATIONS

The 'Anti-Homosexuality Bill' would not only violate these multiple protections guaranteed by the Constitution of Uganda, but would also contravene the following international human rights treaties:

- Universal Declaration on Human Rights (UDHR);
- International Covenant on Civil and Political Rights (ICCPR) and protocols;
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);
- African Charter on Human and People's Rights;
- Convention on the Rights of the Child (CRC); and,
- Maputo Protocol.

The Kaleidoscope Trust notes that while all African countries have signed the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights, these international treaties have not generally translated into human rights protections for many vulnerable groups including LGBT people. The laws and continuing hostilities and attacks are a threat to the contents of these Charters. For example, the Act calls for Uganda to nullify and prohibit ratification of any international treaties, protocols, declarations and conventions which are believed to be 'contradictory to the spirit and provisions' of the Act.

'If you are going to be true to the Lord you worship, you are also going to be there for the people who are being oppressed for something they can do nothing about: their sexual orientation.'

Archbishop Desmond Tutu, on Uganda's Anti-Homosexuality Bill

CONCLUSION AND RECOMMENDATIONS

The Anti-Homosexuality Act is a clear violation of the human rights of Uganda's LGBT community, their friends, families and allies. It is in direct contravention with the Ugandan constitution and with Uganda's international treaty obligations. Clauses dealing with so-called "promotion" are a direct assault on the country's already diminishing public sphere and pose a threat to the independence and effectiveness of Ugandan civil society. Furthermore its wide-ranging criminalisation of those individuals and organisations that work with LGBT people will have serious ramifications for the fight against HIV/AIDS and greatly imperil the ability of LGBT people to access health services. The new law, alongside the irresponsible behaviour of the Ugandan press, has created an environment that encourages the stigmatisation of, and violence toward, LGBT people and their supporters.

The Kaleidoscope Trust highlights the need for firm action in response to the new law, and has asked the British government to consider the following actions:

- To condemn the Act, and to encourage the appropriate government departments and parties leaders to condemn the Act, in the strongest possible terms, both publicly and privately.
- To investigate ways to re-direct aid to key civil society actors.
- To temporarily recall the UK High Commissioner in order to consult strategically on the Act, in consultation with partners from the EU, US and other European countries.
- To investigate issuing travel advisories about travel to Uganda, warning of the risk the Act poses to British citizens on the basis of their real or perceived sexual orientation and gender identity.
- To consider whether the Bill's key supporters - particularly the Speaker Rebecca Kadaga and the Bill's sponsor David Bahati MP - should be permitted visas to travel to the UK.

The Kaleidoscope Trust calls on individuals and supporter to:

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- Support the Kaleidoscope Trust's work in Uganda by donating to us at www.kaleidoscopetrust.com/donate

ENDNOTES

1. Expanded Criminalisation of Homosexuality in Uganda: A flawed narrative, Sexual Minorities Uganda, 20 January 2014. <http://www.sexualminoritiesuganda.com/images/expanded%20criminalisation%20of%20homosexuality%20in%20uganda-%20january%202014.pdf>
2. Ibid.
3. <http://www.guardian.co.uk/world/2011/jan/27/ugandan-gay-rights-activist-murdered>
4. <http://www.guardian.co.uk/world/2012/jun/20/uganda-bans-organisations-promoting-homosexuality>
5. http://www.observer.ug/index.php?option=com_content&view=article&id=19508&catid=78&Itemid=116
6. <http://www.hrw.org/reports/2012/08/21/curtailing-criticism>
7. <http://news.bbc.co.uk/1/hi/world/africa/8498836.stm>
8. <http://76crimes.com/2012/06/18/uganda-president-ill-block-kill-the-gays-Bill/>
9. <http://www.ugandans4rights.org/index.php/the-news/413-parliament-of-uganda-minority-report-by-members-of-the-sectoral-committee-on-legal-and-parliamentary-affairs-on-the-anti-homosexuality-Bill-2009.html>
10. <http://www.bbc.co.uk/news/world-africa-20318436>
11. <http://www.bbc.co.uk/news/world-africa-25463942>
12. <http://mg.co.za/article/2014-02-22-uganda-mps-falsified-gay-report>
13. http://www.washingtonpost.com/world/africa/ugandan-leader-signs-harsh-anti-gay-bill-despite-warning-from-obama-administration/2014/02/24/88486066-9d63-11e3-878c-65222df220eb_story.html
14. <https://www.gov.uk/government/news/foreign-secretary-saddened-and-disappointed-by-ugandan-anti-homosexuality-law>
15. <http://www.pinknews.co.uk/2014/02/25/several-countries-cut-aid-uganda-anti-gay-law/>

This briefing has been prepared by the Kaleidoscope Trust.

The Kaleidoscope Trust is a UK based charity working to uphold the human rights of lesbian, gay, bisexual and trans people internationally. Our mission is to advance the human rights of LGBT people internationally by listening to, amplifying and communicating their voices to a wider audience, and by standing with them to persuade public and political opinion of the need for an end to all discrimination based on sexual orientation or gender identity.

For more information please visit:

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