



LGBT Uganda Today: Continuing Danger Despite Nullification of Anti-Homosexuality Act

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Day-to-day life for lesbian, gay bisexual and transgender (LGBT) people in Uganda is challenging as they face condemnation and adversity from the public, religious leaders and the government. Despite the many challenges that confront them, Ugandan LGBT advocates are working to advance the rights of their community with courage, resilience and skillful strategizing in the face of seemingly overwhelming odds.

Openly LGBT Ugandans confront stigma, discrimination, legal restrictions, harassment, intimidation, violence and death threats. They are often denied access to healthcare and HIV services. Prominent political leaders and influential Christian and Muslim religious leaders publicly denounce LGBT people. LGBT people also encounter restrictions on their freedom of speech, movement and actions. Ugandan families have been known to discriminate against and disown LGBT family members whose sexual orientation or gender identities (SOGI) are exposed. A Pew Research Center survey in June 2013 reported that 96 percent of Ugandans disapprove of homosexuality.

Legal Persecution

The repression of LGBT Ugandans has steadily intensified since the Anti-Homosexuality Act (AHA) bill was introduced in Parliament in October 2009. It peaked in February 2014 when President Yoweri Museveni signed the AHA into law, defying heavy international pressure not to do so. The law was infamously dubbed the “Kill the Gays” bill and gained global notoriety as its original version called for the death penalty for homosexuality.

The AHA went well above and beyond the previous criminalization of homosexuality. Consensual adult same-sex relations were already criminalized for male and female same-sex couples by Section 145 of the Penal Code Act of 1950, which was instituted during British colonial rule. The AHA criminalized and provided additional sentences of up to life in prison for consensual adult same-sex relationships, for “promoting” homosexuality and for “aiding and

abetting” homosexual acts. The sponsor of the AHA was David Bahati, an ambitious and populist young Member of Parliament who was eventually rewarded with an appointment to President Museveni’s cabinet in March 2015.

One activist asserted that the law was introduced by the ruling National Resistance Movement party to distract Ugandans from a poorly performing economy. LGBT people were used as a convenient scapegoat to channel Ugandans’ widespread frustration and anger about bad governance, corruption and the lack of economic opportunities. Another activist noted that Museveni signed the AHA to gain political capital, and this strategy worked as his popularity surged. Yet others attributed the damaging law’s genesis to the actions of American religious extremists.

Prominent African leaders, such as Nobel Peace Prize laureate Desmond Tutu of South Africa and an Ethiopian government minister, condemned the promulgation of the AHA. The World Bank suspended a planned \$90 million loan to strengthen the Ugandan healthcare system. The United States, Denmark, the Netherlands, Norway and Sweden suspended aid programs, including a \$4 million cooperative agreement between the U.S. Centers for Disease Control and the Ugandan Ministry of Health. Richard Lusimbo, a research and documentation manager at Sexual Minorities Uganda (SMUG), praised African and Western leaders who spoke out against the law and credited that criticism with the increased global attention to the plight of LGBT Ugandans.

Nullification of the Anti-Homosexuality Act and the NGO Bill

A diverse coalition of individuals and non-governmental organizations (NGOs) challenged the constitutionality of the Act for violating the human rights of LGBT people. However, the Constitutional Court of Uganda ended up ruling on a technicality instead of the substance of the petition and on Aug. 1, 2014, invalidated the AHA on procedural grounds, noting that the National Assembly had passed the law without a necessary quorum. This ruling “left a window for Parliament or government to table an Anti-Homosexuality Bill in (the) future,” Lusimbo noted. Other observers attributed the swift nullification of the AHA to international pressure as most cases generally languish in the Court for many years before being resolved.

Activists agree that the upsurge of violence after the promulgation of the AHA, especially violations by the state, has abated in 2015 following its nullification. Clare Byarugaba, a prominent LGBT activist and convener of PFLAG Uganda, attributed this to the toning down of inflammatory rhetoric by religious and political leaders, in contrast to when the bill was introduced in 2014, when leaders, including President Museveni “had basically endorsed homophobia.” Despite the reported drop in state-sanctioned and mob violence, families continue to disown LGBT members and landlords continue to evict LGBT tenants. Institutional discrimination and exclusion of LGBT people also continues.

Drafts of new bills to replace the defunct AHA have been leaked but none have been tabled in Parliament. President Museveni asked members of his party not to re-enact the Act saying it was not a priority. While populist parliamentarians from the ruling party may seek to re-introduce the law, this is unlikely to succeed without the blessing of the president, said Prof. Joe Oloka-Onyango, a scholar at Makerere University School of Law. Even though the first bill was struck down on a technicality, there remain doubts about whether an explicitly anti-LGBT bill would pass constitutional muster as the constitution explicitly protects human rights for all. The AHA had been challenged in 2014 for violating the constitution on several grounds, including the rights to equality, privacy, freedom of expression, thought, assembly, association and civic participation. Any future anti-

homosexuality bill is liable to face similar legal challenges.

Advocates remain concerned that there is strong pressure to introduce anti-LGBT legislation from influential religious leaders, and politicians are susceptible to these pressures. The popularity of anti-LGBT laws has not diminished and homophobia is rampant. Attempts to reintroduce an anti-LGBT bill, whether in an explicit form or in a thinly disguised manner, may continue. Such efforts may come about notwithstanding an unambiguous declaration from the Ugandan National Academy of Sciences that homosexuality is a “natural phenomena.”

Even though a specific anti-LGBT bill has not been reintroduced, in May 2015 a so-called NGO bill which threatened to bring back many repressive elements of the erstwhile AHA was tabled in Parliament. The proposed law would have allowed the government’s NGO Board to ban NGOs for any reason, including if it is in the “public interest” to do so, or if the organization is not registered. Many LGBT organizations in Uganda are not formally registered due to safety concerns that they could be harassed, or worse, should they register and become known publicly.

However, in August 2015, the Committee on Defense and Internal Affairs of the Parliament suggested progressive amendments to the bill including giving NGOs representation in the all-powerful NGO Board, removing disciplinary powers to be wielded by the Board, removing funding restrictions for NGOs, and most importantly removing the provision allowing the Board to refuse registration for NGOs in the “public interest” or “for any other reason.” The interior minister said the government would challenge these amendments. Following a debate on the bill in September 2015, Parliament ended up not voting on it.

The NGO bill was introduced at the beginning of the campaign season for general elections, scheduled for early 2016. The ruling party may have hoped to generate support by taking an uncompromising stance against LGBT organizations and on broader civil society, which are perceived to be close to the opposition. The proposed NGO bill may also have been an effort to achieve the anti-LGBT goals of the thwarted AHA by stealth. Adrian Jjuuko, executive

director of Human Rights Awareness and Promotion Forum (HRAPF), an organization in Kampala which undertakes strategic litigation and runs a legal aid clinic for LGBT people, points out that “it is clear from the provisions on (so-called) public interest and dignity that organizations working on LGBTI issues would be targeted.”



Uganda Pride 2015: Provided by Nikilas Mawanda

Violence and Threats

The introduction of the Anti-Homosexuality Act fueled widespread violations and abuses of the human rights of LGBT Ugandans. It inflamed a climate of homophobia as LGBT people, rather than the government, were blamed for the resulting global outrage and cutbacks in foreign aid. A July 2015 report by the Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation (Consortium) reported 89 verified cases of violence against LGBT people in Uganda in 2014, of which 47 cases were perpetrated by the state. Much of the violence was attributed to the passage of the AHA as its sweeping provisions gave those who sought to persecute and abuse LGBT people a sense of impunity.

Attacks included cases of mob and vigilante justice. Jjuuko noted that anti-LGBT mob violence was rare in the past but became commonplace after the AHA came into force. For instance, in January 2015, nine men who visited a health center to get screened for sexually transmitted infections were pursued by a mob. Police detained the nine men supposedly for protection then forcibly subjected them to “anal exams.” Other violations have included compulsory HIV tests with results released publicly without consent, parading “suspects” before the media, arbitrary arrests and detention without trial.

Following the introduction of the AHA, many families disowned LGBT members and reportedly even forced

their relatives to turn themselves in to the police. The AHA had a chilling effect on LGBT organizing in Uganda. Byarugaba reported police raids, revoked licenses, denial of registration applications and organizations being forcibly shut down. Others reported arbitrary arrests by police, evictions by landlords and denial of healthcare.

Hundreds of people fled the country to avoid persecution under the AHA. Those fleeing to neighboring Kenya often fared no better. Thirty-two Ugandan gay men were arrested in February 2015 in Nairobi when they gathered to bid farewell to a friend being resettled abroad. Ugandan LGBT refugees have protested outside the offices of the United Nations High Commissioner on Refugees in Nairobi, seeking protection from homophobic attacks. At least 12 LGBT Ugandans sought asylum in the United States in 2014.

However, a few actions of the state stood out for defying the generally negative trends of harassment, persecution and violence. The Consortium report noted that in four instances in 2014, police leaders intervened to stop violations of LGBT rights involving their own forces.

Religious Extremism and the Export of Hate

The passage of AHA can partially be attributed to the actions of American Christian fundamentalists such as Scott Lively. These religious extremists have fanned the flames of a virulently homophobic charismatic evangelism in Uganda. A leading activist noted that this fundamentalist hate-mongering takes advantage of the deep religiosity and widespread lack of awareness on issues of sexual and gender diversity. Many of these preachers have whipped up fear by claiming same-sex marriage might be forced upon Uganda by Western powers and that LGBT people, especially “predatory” gay men, will “recruit children into homosexuality.” Nikilas Mawanda, a transgender activist and board secretary of SMUG, pointed out that “activists have not advocated for same-sex marriage, but have simply called for basic human rights protections for LGBTIQ people.”

American Christian fundamentalists active in Uganda often hide their involvement by working through local front groups and individuals such as the Family Life Network and Martin Ssemua, a pastor. Many

activists have identified Lively as having the most malignant influence. According to the Human Rights Campaign's *The Export of Hate* report from September 2014, "(Lively) first traveled to Uganda in 2002 to warn about the LGBT menace to that country. ...Many Ugandans believe he was one of the instigators of the harsh anti-homosexuality bill that was enacted in 2014, which punishes same-sex intimacy with penalties that can include life in prison."

In July 2012, SMUG teamed up with the U.S.-based Center for Constitutional Rights (CCR), and filed a U.S. federal lawsuit in Massachusetts against Lively for his role in the persecution of LGBT Ugandans and attempts to strip away their fundamental rights. The lawsuit alleges that Lively "conspired with Mr. Ssempe and others to intentionally and severely deprive persons of fundamental rights on the basis of their sexual orientation or gender identity." SMUG filed a motion in April 2015 to subpoena Ssempe (who has U.S. citizenship) for the summary judgment briefing for the case in fall 2015. Another defendant named as a co-conspirator in the case is MP David Bahati who introduced the AHA bill. The *SMUG v. Lively* case serves as a warning to Americans that their actions can entail legal consequences if they seek to undermine the human rights of others.

Healthcare and HIV

The Consortium report notes that "homophobic, sexist and transphobic practices and attitudes on the part of healthcare providers deter LGBT persons...from seeking services out of concerns around breaches of confidentiality, stigma, and potentially violent reprisals."

Following the passage of the AHA, police in Kampala raided and shut down a HIV facility jointly operated by Ugandans and the U.S. Army. The facility was eventually allowed to reopen but was forbidden from serving LGBT people and had to halt its research on reducing HIV transmission among men who have sex with men (MSM). A SMUG report issued in May 2014 noted that under section 4 of the AHA, landlords renting to HIV clinics could be criminally prosecuted for supporting or encouraging homosexuality. Chris Beyrer, a renowned HIV expert at the Johns Hopkins University, warned that anti-LGBT statutes, including Uganda's AHA, "can definitely lead to a worsening of

the HIV epidemic" as gay and bisexual men who have sex with men are denied access to HIV services.

In July 2014, Uganda criminalized transmission of HIV, placing vulnerable populations such as gay men, transgender women and MSM at further risk. These populations already find it difficult to access healthcare services due to a double stigma towards both homosexuality and HIV. The new law allows medical providers to disclose patients' HIV status to others, and criminalizes transmission and attempted transmission. These provisions discourage LGBT people and others from getting tested and treated. Public health experts have warned that Uganda is doing the opposite of what is needed to combat its HIV epidemic.

LGBT Ugandans have also been subjected to fraudulent and deadly practices disguised as medical interventions. Several forced cases of so-called "conversion therapy," a practice which the U.N. has deemed sometimes being tantamount to torture, have been reported. The case of 23-year-old Judith Twikirize, reported in *The Guardian*, a British newspaper, illustrates the lengths to which family members pressure LGBT people into "becoming straight." As a child and self-described "tomboy," Judith was cut with razors and exorcised to remove her lesbianism. She eventually fled to the U.K. and gained asylum when her girlfriend in Uganda was killed.

Media

Media treatment of LGBT people in Uganda is frequently malicious and deadly. The Consortium report notes that "Uganda's media contributes to the high homophobia and transphobia in society through exposing sexual minorities...(and) perpetuating repellent stereotypes which are typically sensational."

The day after President Yoweri Museveni signed the AHA into law, *The Red Pepper* newspaper published a list of "top 200 homosexuals." This list resembled a similar one published in 2010 by the *Rolling Stone*, a now-defunct Ugandan tabloid, which called for the hangings of outed LGBT persons. The prominent activist David Kato, whose name was on the list, was murdered shortly afterwards in suspicious circumstances. A male sex worker was accused of the

murder and jailed for 30 years in 2011, but observers continue to suspect foul play and a cover-up. Mawanda was one of the people exposed in *The Red Pepper* list in February 2014. Fearing imminent arrest and for his life, he fled the country and sought asylum in the United States.

Organizing and Activism

As oppressive homophobia in Uganda was being stirred up by the introduction of the AHA bill in 2009 and its steady progress through Parliament over the following years, courageous activists defied the prevailing hatred to organize and advocate for their rights.

A blanket prohibition on LGBT organizing or gatherings was imposed when the AHA was in force. Following its nullification, LGBT activism slowly resumed. Hundreds of people attended low-key gatherings for Pride in August 2014 and August 2015 and the International Day Against Homophobia and Transphobia (IDAHOT) in May 2015. Police raids of LGBT venues have slowed down since the nullification of AHA. Ugandan LGBT activists continue to push for awareness and respect of their human rights despite seemingly insurmountable political and social hurdles.



Uganda Pride 2015: Provided by Nikilas Mawanda

In 2014, *Bombastic* magazine, featuring stories, testimonies and opinions from LGBT Ugandans, was launched to provide an alternative narrative to the overwhelmingly hateful rhetoric in mainstream media and to advocate for an end to violence against LGBT people. Writing in the magazine's inaugural edition, long-time activist Kasha Jacqueline Nabagesera, executive director of Freedom and Roam Uganda (FARUG), recounted how she came up with

the idea of Uganda's first Pride event when visiting Amsterdam for a conference in 2011. She was overwhelmed by admiration that LGBT people were able to live freely in some places and angered that her fellow Ugandans in contrast faced death and derision on a daily basis. Also writing in the same issue of *Bombastic*, transgender activist Pepe Julian Onziema recounts how the following year, Nabagesera used Facebook to successfully organize the first Pride event on a beach despite serious concerns about safety.

African and international legal instruments, many of which have been signed or ratified by Uganda, protect the rights of LGBT activists to organize and gather without restrictions. In May 2014, the African Commission on Human and Peoples' Rights (African Commission) adopted the landmark Resolution 275 on "Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender identity" expressing concern that activists working for the rights of LGBT people were being subjected to violence and harassment by state and non-state actors. Resolution 275 was the first instance in which an African inter-governmental body expressed support for LGBT human rights. It called on governments to enact and enforce laws prohibiting and punishing violence on the basis of actual or perceived SOGI.

Going forward, despite seemingly insurmountable odds, Ugandan activists continue to work day in and day out toward their goal of making equality a reality for all LGBT Ugandans. Many international friends of Uganda will be standing by these brave activists as they seek equity, dignity and justice.

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~ This Global Spotlight series is a collection of research-based articles that examine the situation facing lesbian, gay, bisexual and transgender people in a variety of countries where high profile developments that affect LGBT people are occurring or imminent in the near future ~