

Rainbow Herring: the Anti-Homosexuality Bill as a Case Study of
Human Rights Violations and Cover-Ups in Uganda

“Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people...both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction...”

~Preamble of the Universal Declaration of Human Rights

Table of Contents

Dedication and Acknowledgements.....	2
Abstract.....	5
Definition of Terms.....	7
Introduction.....	8
Background.....	9
Justification.....	12
Objectives.....	13
Methodology.....	13
Research Findings and Discussion.....	18
Conclusions.....	37
Recommendations.....	37
Appendix.....	39
Bibliography.....	43
List of Interviews.....	46

Abstract

This paper focuses on the Anti-Homosexuality Bill of 2009. At the start of this research project, the researcher's main objective was to learn about the overall climate towards LGBT (lesbian, gay, bisexual, and transgender) individuals in Uganda and the impact of the Anti-Homosexuality Bill on that community. However, it has since grown and shifted into an analysis of human rights violations. This paper argues that the Anti-Homosexuality Bill is unconstitutional and also violates international human rights doctrines that Uganda has ratified as a member of the United Nations and is required to follow at all levels of government. It will also argue that the Anti-Homosexuality Bill is being used as a red herring to allow Parliament to pass other unconstitutional laws, as well as a tool for President Yoweri Museveni to remain in good graces with the international community. The Anti-Homosexuality Bill will be shown to be merely an example of human rights violations the Ugandan government is allowing, violations which impact not just one vulnerable group but all Ugandan citizens.

The researcher relied on several methods for data collection. These methods included interviews, both formal and informal, and secondary sources from internet and library research. The researcher also attended the report launch of a study on attitudes towards homosexuality, which gave a comprehensive picture of the views of Ugandans as well as allowed the researcher to interact with people who held diverse views on the issue. Interviews allowed the researcher to understand the subject matter from the perspective of a diverse group of individuals. Through internet and library research, the researcher found a good number of articles on the subject and copies of the various bills, acts, and doctrines discussed in this paper. These methods triangulated to provide a more comprehensive picture using the data collected. Tools used included the basic questionnaire used in all of the interviews. The study followed strict ethical considerations, which included the consent form signed by all participants for formal interviews. All methods had successes and challenges, but major challenges with all methods included lack of time and the researcher's personal bias in favor of the LGBT community.

The study established that in 2009, the Anti-Homosexuality Bill gained international attention as the "Kill the Gays" Bill, which would allow for the death penalty in cases of repeat homosexual offenses, as well as jail time for attempted homosexual acts, the spread of homosexuality, or hiding information about a homosexual individual. Through the course of the

research, it was found that the Anti-Homosexuality Bill advertently violates more than half of the rights given to each Ugandan citizen by the 1995 Constitution; it also violates several international human rights doctrines, many of which Uganda has ratified or is required to follow as a member of the United Nations. While various efforts have been made both domestically and internationally to have the bill removed from Parliament or amended, neither action has been taken, and the bill is currently shelved. The researcher also learned that the Anti-Homosexuality Bill is not the only case of human rights violations that Parliament has overlooked. In the last year alone, at least two bills, the Public Order Management Act and the Petroleum (Exploration, Development and Production) Bill were passed which violated the rights of various groups of Ugandan citizens, particularly Part 4 Section 36 which protects the rights of minorities. This demonstrates a disturbing trend of rights violations by the government.

Definition of Terms

For the purposes of this paper, these terms have been defined and/or abbreviated as follows:

- a. **Anti-Homosexuality Bill:** A bill introduced to Parliament in 2009 which, most notably, calls for the death penalty for individuals who engage in multiple homosexual acts. Technically this is still a bill and will remain a bill until it is passed into law, at which time it will become an act, but for the purposes of this report it will be referred to as both.
- b. **Bisexual:** An individual who is sexually attracted to members of both sexes.
- c. **Gay:** An individual who is sexually attracted to members of the same sex.
- d. **Homosexual:** An individual who is sexually attracted to members of the same sex.
- e. **Homosexuality:** The quality or state of being homosexual.
- f. **Human Rights:** Rights regarded as belonging fundamentally to all persons.
- g. **Lesbian:** A woman who is sexually attracted to other women; a female homosexual.
- h. **LGBT (lesbian, gay, bisexual, and transgender):** An abbreviation for the community. This is not an all-inclusive abbreviation—intersex, queer, questioning, and other groups have been left out for the purposes of this research.
- i. **Minority:** A group having fewer than a controlling number of votes and less power and representation than other groups in a society.
- j. **Mzungu:** A Luganda term for a white and/or privileged person.
- k. **Petroleum (Exploration, Development and Production) Bill:** The bill, passed in 2013, which lays out the regulations for oil companies to get licenses and proper permissions as well as regulates drilling and production. This bill most controversially gives enormous power to a minister of Museveni's choosing.
- l. **Public Order Management Act:** The bill, passed in 2013, which most notably modifies the right to peaceful assembly.
- m. **Transgender:** An individual who identifies with or expresses a gender identity that differs from the one which corresponds to the person's sex at birth. In some cases, transgender individuals have surgery to physically change their sex.

Introduction

While homosexuality has always been viewed negatively by the majority of Ugandans, hatred of the group reached its climax when in 2009 the Anti-Homosexuality Bill, known to some as the “Kill the Gays” Bill, was introduced to Parliament. This bill increases punishments for homosexuality, attempted acts of homosexuality, and even knowledge of homosexual individuals. The strongest section provides the death penalty for repeat offenders. The study was conducted in various areas of Kampala, Uganda, the capitol and largest city in the country. Main areas of study were Parliament and the surrounding area; Kololo, an area that is NGO-heavy; Muyenga, the location of several other organizations; and Wandegaya, the location of the home school’s resource center as well as several churches and the researcher’s place of residence.

This study was conducted to determine the reasons for this bill’s introduction and its continued impact on the community. Many theories exist as to why exactly the bill was introduced to Parliament, focusing on different aspects of government and culture. One was to address anti-gay attitudes of the majority of Ugandans. Most Ugandans are against homosexuality and therefore are thought to support the bill. Another was as a red herring or distraction to allow for the passage of other bills that violate human rights. These bills include the Public Order Management Act and the Petroleum (Exploration, Development and Production) Bill. A third was as a ploy to keep current leaders in favor with their constituents who are against homosexuality. This backfired, however, when the international community, donors in particular, came out against the bill. All of these theories have strong points and in some cases even overlap; this paper will analyze them. The study evolved to understand the rights violations the bill potentially contains and the impact of those violations on the community. The study will also analyze the impact of discrimination and the Anti-Homosexuality Bill on Uganda’s development.

The methods used throughout the research process included interviewing, both formal and informal, group meetings and presentations, and internet and library research. Of these methods, formal interviews provided the backbone of the project. Answers given in interviews led the researcher to internet and print sources that confirmed information and/or led to new discoveries. Challenges included scheduling meetings, maximizing the short period of time available for data collection, and finding knowledgeable individuals who were willing to discuss

the topic. An additional challenge was that the researcher was biased in favor of the LGBT community, and therefore had to work to maintain neutrality in interviews in which opposing views were expressed. Finding a diverse group of participants was also difficult. However, the researcher was able to speak with several organizations, professors, experts, members of Parliament, and community leaders, who gave a diverse picture of the issue and provided varying opinions. The use of these methods taught the researcher a great deal about formally and informally interviewing individuals with diverse perspectives on the issue as well as developed and enhanced researching skills and increased the researcher's willingness to ask difficult questions in public settings.

Background

In a survey conducted in 2013 by Pew Research, it was found that 96% of Ugandans were against homosexuality and other non-traditional sexualities, making it one of the most anti-homosexual countries in the world. Findings from their 2007 report were similar, with an overall change of +1 in favor of homosexuality over five years (Pew Research, 2013). Several arguments are made for this viewpoint, the strongest being the religious argument; according to Leviticus and several sections of the New Testament, homosexuality is not allowed, and there are similar laws in the Qur'an.¹ Other arguments made include biological and cultural. While homosexuality has existed in Uganda in the past, as with Kabaka Mwanga,² many individuals are either unaware of this or deny it. Laws developed in both during British rule and since independence have reflected these views. Since 1950, Section 145 of Uganda's Penal Code has made acts of homosexuality, bestiality, and sodomy punishable by jail time. Section 146 makes attempting those acts punishable by seven years in prison (Government of Uganda, 1950). Furthermore, while Chapter 4 of the 1995 Constitution protects the rights of all humans, with Section 36

¹ "...For ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds.... And we rained down on them a shower (of brimstone)" (7:80-84), "Of all the creatures in the world, will ye approach males, "And leave those whom Allah has created for you to be your mates? Nay, ye are a people transgressing" (26:165-166), "If two men among you are guilty of lewdness, punish them both. If they repent and amend, Leave them alone. Indeed, Allah is ever accepting of repentance and merciful" (4:16). Interestingly, in Paradise the same rules do not apply, as effeminate boys are a part of the group of virgins.

² S. Tamale, 2003.

protecting minorities in particular, these rights have systematically been denied to LGBT individuals.

In the past, LGBT individuals have been persecuted by their communities, arrested without cause, assaulted, and even murdered. They are ostracized by their communities and emotionally abused to the point of self-harm or suicide. They are unaccepted and given no room to stand up for themselves or their rights. According to an article by Dr. Sylvia Tamale, a professor and researcher at Makerere University, homosexuality took center stage in early 2003 after “a recommendation emanating from a section of the women's movement that urged the proposed Equal Opportunities Commission (EOC) to address the rights of homosexuals as members of the category of marginalized social groups in Uganda” was released (S. Tamale, 2003). In the years that followed, a series of rallies and protests occurred throughout the country. Religious leaders, both from Uganda and abroad, preached hatred and sin, while politicians became more and more outspoken against the LGBT community. Gradually anti-gay attitudes became more and more prevalent.

In 2009, Hon. David Bahati, a member of the ruling party, introduced the non-partisan Anti-Homosexuality Bill to Parliament. The bill enhanced the punishments for homosexual acts, including the death penalty for “repeat offenders.” This bill has received mixed feedback both domestically and internationally, with the majority of Ugandans supporting the bill and much of the international community in strong opposition. Many international donors to Uganda threatened to cut funding if the bill was ever passed. There are also vocal domestic groups, such as Sexual Minorities Uganda and the Civil Societies Coalition, consistently advocating for LGBT rights and the removal of the Anti-Homosexuality Bill and sections of the Penal Code. Because of these pressures, the bill has been shelved for the time being, and the death penalty is being considered for removal. However, with no decisive resolution made, the bill could potentially be passed at any point. There is also a great deal of uncertainty about which portions of the bill remain on the table; many activists believe the death penalty has been left intact.

Traditionally human rights are broken down into three generations. The first generation focuses on civil and political rights; the second on economic, social, and political rights; and the third on collective rights. The Anti-Homosexuality Bill directly impacts the first and third generations, which provide “the right to freedom from torture, abuse and the right to protection

of the law” and “the right to social harmony,” respectively (Stockton College, n.d.). The bill also has the potential to impact the second generation of rights, as do current views towards homosexuality.³

In 2012, Parliament created the Committee for Human Rights, a group that was to look over all bills and acts introduced to Parliament. However, the Committee is currently “in the process of reviewing” the Anti-Homosexuality Bill and has not made any decisions about it at the time of this report. Other human rights groups have had little to no success in advocating for the bill to be changed or dropped. The Anti-Homosexuality Bill also goes against the 1995 Constitution, which provides protections against discrimination of any kind and for minorities among other groups in its human rights section. Moreover, as a member of the UN, Uganda is required to uphold the UN’s conventions on human rights, many of which Uganda has ratified, but the Anti-Homosexuality Bill violates many of them. The United Nations has released statements denouncing the bill and certain offices have worked to present human rights perspectives on the bill to Parliament.⁴

This bill is not the only recently introduced bill that contains human rights violations. In 2013, both the Public Order Management Act and the confidentiality clause of the Petroleum (Exploration, Development and Production) Bill contained violations of the Constitution and human rights doctrines, depriving citizens of the right to peaceful assembly and the right to information respectively.⁵ These bills received more domestic outcry but less international attention than the Anti-Homosexuality Bill. However, they make it clear that Parliament is ignoring the rights of Ugandan citizens. These laws were either passed by the Committee for Human Rights or were not reviewed because of timing. Combined with the Anti-Homosexuality Bill, these laws arguably demonstrate a trend of human rights violations by the Ugandan government that impacts every citizen, not just vulnerable groups.

Deprivation of human rights has a strong impact on development. A country cannot truly be considered developed if it continues to marginalize minorities and systematically deny them

³ These include the right to education, housing, health, and employment, all of which are currently impacted by social and cultural perceptions of homosexuality and would be further impacted by the passage of the Anti-Homosexuality Bill. The African Charter on Human and People’s Rights is the only doctrine that incorporates the third generation of human rights.

⁴ United Nations News Centre, 2010.

⁵ The right to assemble and the right to free speech are also protected under the first generation of human rights.

fundamental rights. This can impact psychological development, contributions to community efforts, and relationships and unity between gay and straight individuals. The marginalization of groups can also damage the economy. Overall this denial can damage productivity and impede development efforts and projects.

Justification

The Anti-Homosexuality Bill, with or without the death penalty clause, violates many international doctrines on human rights as well as the Ugandan Constitution and Ugandan human rights laws. While there is debate about whether certain rights apply to this community and whether granting these rights will impact cultural and religious rights of others, the rights of the majority cannot trample the rights of the minority. Therefore it is imperative that the current laws and the Anti-Homosexuality Bill be overturned. Other bills that include rights violations demonstrate that it is not just one group being harmed by human rights violations—every Ugandan citizen is currently being affected by laws that were passed with full knowledge that they were impeding on citizens' rights. It also shows the willingness of the government to ignore the rights of its constituents for its own benefit. Therefore this issue is at a critical point and needs to be addressed. The researcher hopes that through this paper human rights violations can be exposed and others encouraged to look into Parliament's proceedings. These bills need to be changed or overturned entirely, and if the public is unaware of the extent of the issues, little action can be taken. The researcher wants this paper to serve as a method of spreading awareness and encouraging others to take further action. Proper development cannot take place in a country where basic human rights are still being systematically denied to various populations. For a country to be truly developed all citizens need to have equal rights and should not have to worry about actions that could be taken against them, either by individuals or the government, for their private daily activities.

Objectives

The researcher intended to learn about the opinions of the majority of Ugandans on LGBT issues, as well as explore the Anti-Homosexuality Act's role in Parliament and its impact on fundamental human rights. This led the researcher to learn about rights violations in other bills and expand the topic slightly. Therefore the project focused on four main objectives:

1. What is the current status of the Anti-Homosexuality Bill? How is this impacting the LGBT community?
2. What efforts are being made, both domestically and internationally, to alter the current laws and the Anti-Homosexuality Bill?
3. What rights does the Anti-Homosexuality Bill violate?
4. How is the Anti-Homosexuality Bill being used as a red herring to allow for the passage of other bills that violate rights? Does this demonstrate a trend of rights violations by the current administration?

Questions asked in interviews stemmed from these topics, with follow-up questions derived from the answers to those questions. The study was exploratory. The researcher hopes that this paper will benefit the LGBT community by spreading awareness of the issue, with awareness leading to advocacy and action being taken in support of the community and others impacted by these violations.

Methodology

The researcher employed several different methods throughout the six weeks. These consisted of both formal and informal interviews, attendance of meetings and conferences, and internet and library research. Participants were selected because of their knowledge of the issue and/or their willingness to speak about the issue; the sampling was random. These methods used triangulation to create a comprehensive picture of the issue and the reactions of both the domestic and international communities. The use of multiple methods also allowed for facts to be checked and confirmed by multiple sources, allowing the researcher to be certain of their

accuracy. They also provided diverse perspectives and opinions on the issue from individuals in different positions and with different views and jobs.

Two major overall challenges involved in this research were finding individuals comfortable with discussing the issue and lack of time. The researcher was only able to conduct eight interviews during the six-week period. While these interviews were all detailed and gave the researcher a good deal of information, they were not as many as the researcher had hoped for or anticipated. Many individuals who said they were willing to meet ended up cancelling interviews for a variety of reasons, including arrest of colleagues. Some potential participants also expressed discomfort in discussing the issue with the researcher since the researcher was a foreigner. Therefore it may have been helpful to conduct the research in a group with others interested in the subject. Additionally, six weeks was not necessarily a long enough period to delve as deeply into the issue as the researcher would have liked, and therefore there may be some knowledge gaps in the final paper. A third major challenge was the researcher's personal bias in favor of the LGBT community. The researcher had to consciously remain neutral during interviews no matter what information was being shared, and had to work especially hard on phrasing in the paper to remain as unbiased as possible. Ensuring that both sides were accurately represented was also a challenge. The researcher worked hard to overcome these issues and did as well as possible. However, more of the individuals willing to participate in the study supported rights for homosexuals, which may have slightly skewed the results and findings discussed in this paper.

Ethics were a vital concern during the research process. Due to the highly controversial nature of the topic, it was important to ensure that all participants felt comfortable during the interviews and that they were safe sharing the information. For this reason a consent form was developed that each participant signed before being formally interviewed. This form, which can be found in Appendix 1, detailed confidentiality, privacy, and anonymity. Several participants felt more comfortable after signing the form, and one even remarked that she would not have allowed the interview to take place without it. All interviews were held in neutral locations in order to further protect privacy.

The majority of interviews conducted by the researcher were formal interviews. Each participant was asked to sign a consent form that briefly outlined the topic, discussed

confidentiality and anonymity, and provided details about requesting a copy of the report, etc. Formal interviews were conducted in locations chosen by the participants. Many of these were in the offices or at the organizations of the person being interviewed. Others selected neutral locations at or near their place of work, such as the guesthouse of Makerere University for professors. A basic questionnaire was developed for all formal interviews, but was specifically tailored for each individual based on their area of specialty. For example, members of Parliament were asked in more detail about the bill and Parliamentary proceedings, while professors and scholars were asked more about their personal research and the views of Ugandan citizens. The basic questionnaire included questions such as:

1. What is your background or your organization's background in this area?
2. What is the current situation for the LGBT community?
3. Do the current laws represent the views of the majority of Ugandans? How do they feel about the Anti-Homosexuality Act?
4. Do you believe that the Anti-Homosexuality Bill is being used as a cover-up to allow other unconstitutional bills to pass or keep Museveni in good graces with the international community?
5. What efforts are being made to change the current laws, both domestically and internationally? What organizations are involved in this process?

Follow-up questions were thought of on the spot in order to address issues brought up in participants' answers or to better understand points made in their responses. These ranged in topic from specifics of proceedings to details of research findings.

Formal interviews as a method had many positives. It allowed for dialogue between the researcher and the participant, which was a two-way street, and gave room for follow-up questions that had to be answered in person, while also allowing for both parties to clarify statements made. The face-to-face aspect of the interviews allowed the researcher to gauge the reactions of participants to questions and interpret any body movements and hand gestures in context. Having a consent form and a specific meeting time and place made the interviews more focused and official, and also ensured that participants completely understood the project. Participants tended to feel more comfortable asking specific questions about the research project

in formal interviews; this may have been in part to the section of the consent form that addressed their questions and concerns.

In terms of negative aspects of formal interviews, the biggest challenge was scheduling the interviews. Getting in touch with potential interviewees was impeded by the researcher's internet access and the frequency of the potential participant checking their email or answering their phone. However, the researcher did not encounter anyone who refused to speak about the issue, and most participants made themselves available to schedule appointments. Often the researcher would make an appointment in advance only to have the participant cancel or reschedule the meeting on the day of the interview. In some cases, the participants were late or unprepared at the time of the researcher's arrival, and the researcher often had to wait several hours for a participant to be ready.

Informal interviews were used to supplement information gathered in formal interviews, as well as better understand the diverse views of the population. These interviews were conducted during or even before the interview process and gave the researcher leads to follow in the course of data collection. While some of these were not used for the report, all discussion held about this topic contributed to the final project in some way. Informal interviews allowed the participants to feel very comfortable in discussing a variety of issues, no matter how sensitive or controversial. Since the interviews were less formal, they felt more relaxed and were not worried about how the information would be used. Informal interviews also allowed for much more flexible scheduling. Since this was a very busy period for many organizations especially, it was often difficult for them to set aside a long period of time for a formal discussion. Informal interviews could be conducted over the phone, in person, or through email, making timing much less of an issue. Email in particular allowed participants to respond to questions at their leisure without interrupting their work or daily schedule or impacting the researcher's ability to work at that time.

On the other hand, timing was a major challenge of informal interviews. Because the setting was informal, it often took a long time for participants to answer questions, especially through email, and in some cases they did not respond at all. Another particular challenge of informal interviews related to the ethics of using the information in this paper. In one case in particular, discussions were held before research even began, and thus it was not necessarily

appropriate to use the individual's opinions in the research. However, in these cases the information shared often served as a springboard for finding other sources to confirm facts or for looking into a previously unknown issue. All data gathered from informal interviews was double-checked and confirmed with other sources, whether formal interviews or print or web sources. This issue was also combatted by the researcher sending the consent form to each person informally interviewed during the project; while they did not have to sign it, they were still aware of the topic of the paper and the various confidentiality and privacy clauses that would still be respected.

Since a relatively small number of interviews were conducted, the research relied heavily on secondary sources such as bills and articles. During the six weeks, the researcher found and read approximately 70 different sources. Many of these did not end up being included in the final paper; however, the knowledge gained from reading them ultimately allowed the researcher to find additional sources or better understand concepts. Most print sources came from the Parliament library, which held copies of all of the bills and laws that are currently being implemented. The library also held copies of Parliamentary proceedings. All of these can be accessed by the general public upon request. Some sources were directed to the researcher by interviewees; several of the articles used were written by research participants. Additional articles and copies of bills were found online. This method was particularly useful because it did not rely on other individuals, so timeliness did not impact the researcher's ability to find information. This also gave the researcher more freedom, allowing the researcher to fit in online research around or between other appointments. However, in cases where a library assistant or participant needed to send the researcher information or an article, timing again became an issue.

Two events coincided with the research period very fortuitously. The first was a town hall meeting that was held at the US Embassy for citizens living abroad. Several embassy officials spoke about security, US aid to Uganda, and human rights. The speeches were followed by a question and answer session. The researcher had the opportunity to ask about the Embassy's work on LGBT rights as well as understand the aid relationship between the United States and Uganda. This shed a great deal of light on how knowledgeable about the issue officials at the Embassy were, as well as efforts being made by the United States to alter the current situation. However, since there was an open forum the officials were not necessarily prepped on the issue,

and therefore might have had a different answer had they been asked to participate in a formal interview. The researcher was also fortunate enough to attend the launch of a report on homosexuality. Research for this report was conducted over a two-year period with several experienced professors involved, making it much more detailed than anything the researcher could have conducted alone during the six-week period. Attending this conference and reading the results of the research made the researcher more confident in the decision to change the topic slightly. It also gave the researcher the opportunity to hear the general public's reactions to the research. Many people attended the launch and spoke freely of their opinions of the LGBT community. These confirmed the results of the report and other statements made to the researcher in the course of the interviews. The report was not necessarily as detailed as the researcher had expected, but this was understandable due to the controversial and sensitive nature of the topic.

The researcher learned many lessons in the application of these methods. The most important was patience with participants. The researcher was often frustrated by the lack of responses given by many potential participants. The many scheduling challenges with interviews also frustrated the researcher. However, responses given were very helpful and usually worth the wait or struggle to garner them. The researcher also learned to be flexible, both with scheduling and with information gathering. Often the research would turn in a different direction or answers contradicted with each other, so the researcher had to learn to adjust to unexpected circumstances. Learning to go into an interview or meeting without concrete expectations was another valuable lesson learned. This also allowed the researcher to adjust to any situation that was faced and prevented disappointment if things did not go the way one expected.

Research Findings and Discussion/Analysis

This section of the paper will detail the researcher's findings. It will provide supporting evidence of the researcher's thesis that the Anti-Homosexuality Bill is unconstitutional and also violates international human rights doctrines that Uganda, as a member of the United Nations, is required to follow, that the Anti-Homosexuality Bill is being used as a red herring to allow Parliament to pass other unconstitutional laws, as well as a tool for Museveni to remain in good graces with the

international community, and that it is merely an example of human rights violations the Ugandan government is allowing, violations which impact not just one vulnerable group but all Ugandan citizens. It will also paint a broader picture of the issue in the Ugandan context.

Overall Climate towards Homosexuality

A variety of arguments against homosexuality are made in Uganda, with religious arguments being some of the strongest. The majority of Ugandans are either Christians or Muslims, with only a small minority practicing traditional religions, so these arguments are very prevalent within most communities. Various sections of the Bible make anti-gay statements, the most famous of which being from Leviticus, “If a man lies with a man as one lies with a woman, both of them have done what is detestable. They must be put to death; their blood will be on their own heads” (The Holy Bible, 1973). The New Testament goes on to say that “the wicked will not inherit the kingdom of God...nor [will] homosexual offenders,” “Men committed indecent acts with other men, and received in themselves the due penalty for their perversion,” and “Sodom and Gomorrah and the surrounding towns gave themselves up to sexual immorality and perversion. They serve as an example of those who suffer the punishment of eternal fire” (The Holy Bible, 1973).⁶ The Qur’an takes a similar stance, stating that “ye practice your lusts on men in preference to women: ye are indeed a people transgressing beyond bounds.... And we rained down on them a shower (of brimstone)” as well as “Of all the creatures in the world, will ye approach males, And leave those whom Allah has created for you to be your mates? Nay, ye are a people transgressing.”⁷ These and other portions are often quoted by religious leaders in sermons and speeches. However, in John 8:7 Jesus says in defense of a prostitute, “If any one of you is without sin, let him be the first to throw a stone at her” (The Holy Bible, 1973). One of God’s commandments is to not murder, and many sections of the Bible go against judging others. Again, the Qur’an makes similar statements, saying that “If two men among you are guilty of lewdness, punish them both. If they repent and amend, Leave them alone. Indeed, Allah

⁶ From 1 Corinthians 6:9-10, Romans 1:28-27, and Jude 1:7, respectively.

⁷ From the Qur’an, 7:80-84 and 26:165-166 respectively. Interestingly, in Paradise the same rules do not apply, as effeminate boys are a part of the group of virgins.

is ever accepting of repentance and merciful.”⁸ Therefore both those in favor of and against homosexuality can supplement their views with religious teachings.

Other arguments against homosexuality include biology and culture, both of which ultimately tie back in with religion. The biological argument states that the human body was developed for heterosexual relationships. Every organ must serve the purpose it was created for: ears for hearing, nose for smelling, and the anus for pooping, not sexual intercourse (Member of Parliament 1). This argument connects back to religion, in which childbearing is extremely important and in some cases a commandment. In addition, many of those who do not support homosexuality claim that Ugandan culture is against being gay, and therefore protecting the rights of the LGBT community violates the majority’s right to protected culture and religion. “The rights of the minority [the LGBT community] cannot impede on the rights of the majority,” stated one member of Parliament. The rights to culture and religion are protected by all of the same laws that protect the rights of homosexuals. However, the rights of the majority cannot trample the fundamental rights of the minority, and do not give the majority the right to take the freedoms and lives of others.

One other argument commonly made is that homosexuality is a Western invention brought over to Uganda and other parts of Africa. Some say that “homosexuality is being introduced to Africa and ‘aggressively promoted’ through recruitment of the most vulnerable members of society such as the youth” because Westerners “have a hidden agenda against Africans” (Makerere University School of Liberal and Performing Arts, 2013). Many participants cited Western influence as a major contributor to homosexuality in Uganda; some went as far as to say that homosexuality came from the West and that it had never existed in Uganda before being brought over by *mzungus*. Others noted the strong support directed towards LGBT organizations and individuals that comes from the West. However, homosexuality has existed in Uganda in the past, as with Kabaka Mwanga, whose sexual identity [gay] was a

⁸ From the Qur’an, 4:16.

poorly-kept secret during and after his reign (S. Tamale, 2003).⁹ Therefore homosexuality is not merely an identity invented by Westerners to damage African society.

These arguments are expressed by many Ugandans when asked their opinions on homosexuality. One member of Parliament stated that 100% of his constituents were against homosexuality and wanted the bill passed quickly. Many believed that LGBT individuals were evil and terrorists, “like Al-Qaida,” and that allowing the practice of homosexuality would “deplete the world and destroy mankind” since people would stop reproducing. Others describe homosexuals as “money hungry creatures, criminals, agents of Western interests and imperialism...enemies of God, enemies of tradition and culture, evil and insane” (Makerere University School of Liberal and Performing Arts, 2013). Many also stated that they felt the debate was a waste of time, the debate over the Anti-Homosexuality Bill should take one day, and that Parliament should focus on issues that would benefit the entire country as opposed to impacting one small community (Member of Parliament 1). Based on these reports, it is no wonder that “Parliament is overwhelmingly in support of the bill” (Member of Parliament 1). There are, however, many Ugandans who speak out in support of the LGBT community. While there are far fewer people with this view, their voices are just as strong as their oppositions’, and they include a great deal of youth, which shows that attitudes in the future may soften or change altogether.

According to study conducted in 2013 by the Makerere University School of Liberal and Performing Arts, which focused on attitudes of the general population towards homosexuals as well as measured the average citizen’s knowledge of key human rights issues, the majority of Ugandans have “mindsets that bordered on extremes of negativity and passion for culture and religious values resulting in attitudes that could be described as hatred for gay persons.” This was particularly true for parents and participants over the age of 35; however, many individuals 35 and below viewed gays as human beings like anyone else and thus stated that they should have rights like anyone else (Makerere University School of Liberal and Performing Arts, 2013). In terms of rights for gays, “only 15 [people surveyed] out of a total of 219 samples obtained said they would have no problem with homosexuals enjoying the same rights,” and individuals

⁹ It is interesting to note that Kabaka Mwanga was one of the most hated leaders in Baganda history, and is almost exclusively depicted as exceptionally cruel and evil. Whether this is exclusively because of his sexual orientation is impossible to speculate; however, it certainly contributes to his overall image.

opposed to equal rights for homosexuals were mostly in the 35 and over category, while youth argued that “homosexuals and lesbians are human beings like anybody else; they should therefore, enjoy their full human rights and freedoms without discrimination”¹⁰ (Makerere University School of Liberal and Performing Arts, 2013). Based on these findings it seems that older Ugandans are more against homosexuality than youth. It is interesting to note that at the start of this research one of the professors did not support or agree with homosexuality, but after speaking with LGBT individuals and learning more about the issues he has become more accepting (Professor 3). All in all, these results confirm other studies that state that the majority of Ugandans, particularly older Ugandans, are against homosexuality.

Scott Lively and American Fundamentalists

Religious arguments have been taken to new levels by fundamentalist leaders. Many western figures have brought their views to developing countries, Uganda in particular. One man, Scott Lively, spent seven years preaching hatred of homosexuals in various areas of the country. He and other American fundamentalists take partial credit for the wave of homophobia and hatred that has spread since their arrival. However, as noted in Dr. Tamale’s article “Out of the Closet,” these feelings have been growing in the general population for much longer. They came to a head in 2003, with Lively entering the scene in 2002. One professor in an interview said that at least half of the population has had these views since before independence, but they are being stirred by the preaching of religious leaders and politicians, both from Uganda and abroad (Professor 2). Lively and other fundamentalists were major contributors to the waves of anti-gay sentiment that began in the early 2000s and led to the introduction of the Anti-Homosexuality Bill to Parliament. Nevertheless, they were not the only contributors, and while it is important to hold these parties responsible for their actions, it is also important to note that there are many Ugandan fundamentalists contributing their voices to this issue.

The United States and several Ugandan groups have recognized the impact Lively had on the community, and Sexual Minorities Uganda, in partnership with the Center for Constitutional Rights, has recently filed a lawsuit against him in the US. This suit, which is filed under the

¹⁰ However, they did state that this was conditional on homosexuals not interfering with anybody else’s rights and freedoms.

Alien Torts Act,¹¹ charges Lively with crimes against humanity for inciting violence against the LGBT community, saying that Lively and his allies “devised and carried out a program of persecution” and “strategies to dehumanize, demonize, silence, and further criminalize” LGBT Ugandans (Center for Constitutional Rights, 2013). They are seeking damages, a finding that Lively violated international law and an injunction against future efforts to persecute their organization and community” (J. Glasstetter, 2013). Lively’s recent motions to dismiss the case were denied by the judge, who said that “Lively carried out the alleged activities in both the U.S. and Uganda” and that the “widespread, systematic persecution of LGBTI people constitutes a crime against humanity that unquestionably violates international norms” (J. Glasstetter, 2013). The case will go through pre-trial procedures until 2015. This is a groundbreaking trial, as it is the first known case to try someone for crimes against humanity towards the LGBT community (Center for Constitutional Rights, 2013). Winning this case will be a strong victory for Sexual Minorities Uganda and all LGBT Ugandans.

Introduction and Contents of the Anti-Homosexuality Bill

Hon. David Bahati introduced the Anti-Homosexuality Bill to Parliament on April 29, 2009. He argued at the time of his motion that “The land of the law and the Penal Code do not address this issue adequately and that is why we are bringing this issue to this House” (Parliament of Uganda, 2009b). The Penal Code states in Section 145 that

Any person who—

has carnal knowledge of any person against the order of nature;

has carnal knowledge of an animal; or

permits a male person to have carnal knowledge of him or her against the order of nature,¹²

commits an offence and is liable to imprisonment for life (Government of Uganda, 1950).

Section 146 states that attempting any of the above acts earns the individual seven years in prison. Bahati wrote the new laws in order to strengthen the current punishments and add new ones for other crimes related to homosexuality. The bill states that the new legislation “comes to

¹¹ An act that allows foreign nationals to sue in US courts in cases of violations of international law.

¹² “Against the order of nature” has always been interpreted to include homosexual acts; however, this term has never been specifically defined.

complement and support the provisions of the Constitution of Uganda and the Penal Code by not only criminalizing same-sex marriages but also same-sex sexual acts and other related acts” (Parliament of Uganda, 2009). The Anti-Homosexuality Bill originally attracted a great deal of attention because of Section 3, which imposes the death penalty on individuals who engage in “aggravated homosexuality,” which includes those who commit multiple homosexual acts, individuals who are HIV-positive, are parents or authority figures, administer intoxicating substances, and those who assault minors or disabled persons.¹³ It also increased or introduced punishments for other same-sex related acts, such as promotion of homosexuality, attempted acts, and not disclosing information about acts of homosexuality or homosexual individuals. The base punishments became a fine of five currency points and/or up to seven years in prison, seven years to life in prison, and a fine of up to two hundred fifty currency points and up to three years in prison, respectively.¹⁴ Same-sex marriages are criminalized under Section 12, and the bill also covers jurisdiction and extradition, stating that “A person charged with an offence under this Act shall be liable to extradition under the existing extradition laws” (Parliament of Uganda, 2009a). This means that if a Ugandan citizen leaves the country and commits an act that violates the Anti-Homosexuality bill, or if an act is committed partially in Uganda, part elsewhere, the government can choose to extradite the offender and bring them to trial in Uganda.

The Anti-Homosexuality Bill’s Potential Impact on All Citizens

While the bill seems fairly straightforward, a closer inspection shows that the language could impact more than just the LGBT community. Because of the definitions used in the bill, specifically of “sexual act” and “touching,” heterosexual individuals could be convicted of violating the act even if they do not engage in homosexual actions. In Part 1 Section 1 of the bill, sexual acts are defined as

- (a) physical sexual activity that does not necessarily culminate in intercourse and may also include the touching of another’s breast, vagina, penis or anus;
- (b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ;

¹³ Section 3, subsections 1 and 2 of the Anti-Homosexuality Act.

¹⁴ In this act, a currency point is equal to twenty thousand Ugandan shillings, approx. \$8 US.

(c) the unlawful use of any object or organ by a person on another person's sexual organ or anus or mouth (Parliament of Uganda, 2009a).

Furthermore, "touching" includes "touching—(a) with any part of the body; (b) with anything else; (c) through anything" (Parliament of Uganda, 2009a). Based on these definitions, even brushing accidentally against a person's sexual organ or with a person's sexual organ with clothes on could be considered an offence. Section 2(c) also states that someone can commit the offence of homosexuality if "he or she touches another person with the intention of committing the act of homosexuality" (Parliament of Uganda, 2009a). Intent is virtually impossible to prove or disprove since it is intangible.

Such loose and widely applicable definitions could lead to a great deal of false accusation, something which has already been an issue under the Penal Code. In 2010, a group of six pastors and two lawyers were charged with conspiring to falsely accuse a rival pastor of homosexual acts. The group, which included noted anti-gay pastors Martin Ssempe and Solomon Male, through a series of blackmail attempts and the kidnapping of Kayanja's personal aide, attempted to fake evidence that Pastor Robert Kayanja was a homosexual, but were unsuccessful (J. Burroway, 2010). Under the Anti-Homosexuality Act, evidence is much more likely to be found—or created—against accused parties, and conviction rates could potentially be much higher than under the Penal Code, with much harsher penalties imposed. If the Anti-Homosexuality Bill were passed, "anyone can be falsely accused of being gay—one can easily imagine rival politicians, business owners and pastors falling prey to such accusations—and it will become virtually impossible for them to prove their innocence" (J. Burroway, 2012a). Had Pastor Kayanja been accused under this act, there is a significantly higher chance that he would have been convicted and imprisoned. Moreover, the government has a history of getting opposition party members arrested and thrown in jail for crimes they did not commit.¹⁵ The bill could become a useful tool for silencing opposition party members and anyone who vocally opposes the ruling party. With elections coming up in 2016, this could become an even more important issue.

¹⁵ One member of Parliament and an opposition party was arrested in 2005 for murder. He claimed that he was framed because of the election period they were about to enter, in which he was a strong candidate against the ruling party. He was later acquitted after being assisted by several human rights organizations, but not before spending a significant amount of time in prison (Member of Parliament 1).

In addition to the potential impact on accused parties, the punishments introduced for not coming forward with the identities of homosexuals could impact the entire community, in particular doctors and lawyers. Individuals of these professions must take oaths before they take office promising to keep information about their patients or clients confidential. However, under Section 14 of the Anti-Homosexuality Bill keeping silent about their clients' sexual identities could get them arrested.¹⁶ This puts professionals in the difficult position of deciding how to break the law, rather than the law providing for a positive and safe environment for both the professional and the client. Moreover, Section 18 states that "Any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in this Act, are null and void to the extent of their inconsistency" (Parliament of Uganda, 2009a). In this way the bill addresses the manner in which it violates international treaties Uganda is required to follow, demonstrating that Bahati was aware of the bill's violations before he introduced it. This is an attempt to remove the government's accountability to its citizens in terms of their rights. It also opens the door for future violations based on this, since "extent of their inconsistency" is a loose term that can be interpreted in many different ways. If this bill includes such language, it is entirely possible for future bills to introduce the same concept; passing the Anti-Homosexuality Bill with this clause intact would set a precedent that could allow for any other bill to violate rights while ignoring preexisting laws. However, this clause only impacts international treaties, which means that the Constitution is not void and therefore the Anti-Homosexuality Bill still violates Ugandan citizens' rights. The language that grants these rights in both national and international bodies of law and the manner in which the Anti-Homosexuality Bill violates these doctrines are detailed in the next section.

Constitutional Violations

Uganda gained its independence in 1962, and in 1995 a new constitution was drafted. The only mention of homosexuality came in 2005, at which time same-sex marriages were made illegal (Government of Uganda, 2005). Beyond that, it is a remarkably gender-equal constitution, providing protections for women and other vulnerable groups in its human rights section. In

¹⁶ Section 14 states that "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 the 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" (Parliament of Uganda, 2009).

particular, it notes in Chapter 4 Section 36 that “minorities have a right to participate in decision-making processes and their views and interests shall be taken into account in the making of national plans and programmes” (Government of Uganda, 1995). An issue that arises with this section is that “minority” is never defined. Still, homosexuals are a minority by any other definition of the term. It is therefore the responsibility of the government to protect the LGBT community and ensure that they are receiving just treatment by all laws.

The Anti-Homosexuality Bill clearly does not take any interests of LGBT individuals into account in its denial of their rights to life and liberty. However, the lack of definition could allow anti-gay enthusiasts to encourage the denial of these rights and protections to the gay community. On the other hand, the Constitution states in Chapter 4 Section 21(1) that “All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law” (Government of Uganda, 1995). Therefore whether LGBT individuals are defined as a minority or not they are protected from mistreatment based on their sexuality. Furthermore, when the Constitution was amended in 2005, a clause was included that “Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalized group to which clause (1)¹⁷ relates or which undermine their status, are prohibited by this Constitution” (Government of Uganda, 2005).¹⁸ This means that all arguments made to include culture as a reason to pass the Anti-Homosexuality Bill are null and void. Again, however, the lack of definition of the term “marginalized” could prove to be a challenge in ensuring equal rights for the LGBT community.

Violations of International Rights Doctrines

As a member of the United Nations, there are certain treaties that Uganda is required to ratify and follow at all levels of government. One of them is the Universal Declaration of Human Rights, which was established in 1948 after the Second World War. The Universal Declaration of Human Rights provides for, among others, the rights to freedom and equality, rights without

¹⁷ Clause 1 states: “Notwithstanding anything in this Constitution, the State shall take affirmative action in favor of groups marginalized on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.”

¹⁸ This amendment also made same-sex marriages illegal. During the introduction of the Anti-Homosexuality Bill into Parliament, one member wrongly stated that this amendment also made homosexuality illegal. However, only same-sex marriage was addressed.

discrimination based on any status, life and security of person, and marriage and family (United Nations, 1948). These are all rights that would be denied to LGBT individuals if the Anti-Homosexuality Bill were to be passed. While a potential counter-argument could cite Article 29 Section 2, which states that individuals' rights may be limited "by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society," Article 30 reminds readers that "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein" (United Nations, 1948). Therefore the Declaration makes many compelling arguments against the Anti-Homosexuality Act. These arguments were continued in the 1993 Vienna Declaration and Programme of Action. This doctrine cited the Universal Declaration of Human Rights repeatedly, and reaffirmed the international community's "commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights" (United Nations, 1993).¹⁹ Still, sexuality was not specifically mentioned as a characteristic that could potentially be discriminated against.

Parliamentary Proceedings and Actions

Even before the Anti-Homosexuality Bill was introduced to Parliament, discussions of homosexuality were heated and relatively negative. In the weeks before the bill was introduced, Hon. Bahati and several other members of Parliament addressed the issue of homosexuality and the weak laws preventing it and its spread, and their remarks were met with overwhelming support and calls for new legislation. These debates were augmented by a highly publicized sodomy case involving a young boy and several prominent newspaper articles surrounding the issue. Furthermore, members stated that a report from the Human Rights Commission approved by Parliament days before the bill's introduction stated that sexuality was not a human right and that the Constitution, as amended in 2005, made homosexuality illegal (Parliament of Uganda, 2009b).²⁰ All of these events led up to the introduction of the private member's bill on April 29,

¹⁹ The bill also violates other doctrines which, for the purposes of space, could not be elaborated on in this paper.

²⁰ The constitutional amendment only made same-sex marriages illegal, not homosexuality. The researcher was unable to locate the report specifically mentioned during proceedings, so the researcher cannot confirm the accuracy of that information.

2009. While the bill has not been passed, it has been brought up many times and read, and still appears on the list of Parliament's Business to Follow as recently as this year.

In 2012, the Committee on Human Rights was formed. The Committee is made up of members of Parliament from various political parties. Its purpose is to review all proposed bills to ensure that they do not violate the Constitution or the fundamental human rights of any group and it has the power to launch investigations and make recommendations about any bill it reviews. The Committee developed a checklist of rights that all bills must allow for; these rights are drawn straight from the Constitution. According to this checklist, the Anti-Homosexuality Bill violates at least eight of the twenty-three rights provided (Committee on Human Rights, 2013). The Anti-Homosexuality Bill was introduced several years before the founding of the Committee on Human Rights; however, it is only now being reviewed. One member of the committee said that "sexuality is not a human right," so chances are that if the Committee is ever called to make a decision on the bill, it will be passed (Member of Parliament 1). Furthermore, other questionable bills were introduced to Parliament after the founding of the Committee but were either not reviewed or were passed without changes. These bills, the Public Order Management Act and the Petroleum (Exploration, Development and Production) Bill, will be further discussed later in this paper. These decisions provide troubling insight into the effectiveness of the Committee and call into question whether they are fully functional and fulfilling their objectives at this time. While the Committee is very new, this should not prevent them from carrying out their defined duties.

Domestic Efforts

In Uganda, many influential political and religious leaders have made strong statements against homosexuality and come out in support of the bill. One professor stated that state and religious leaders are "whipping up" the issue, bringing it up at every opportunity in order to spread anti-gay sentiments (Professor 2). One of the most notable religious figures is Pastor Martin Ssempe of the Makerere Community Church. A respected community leader, Pastor Ssempe is one of the loudest anti-gay voices in Uganda. While he refused to be interviewed for this report, Pastor Ssempe has appeared on numerous shows and at public events to discuss religion and homosexuality, as well as the potential impact of the Anti-Homosexuality Bill on Uganda. In one public statement, Pastor Ssempe commented that he wanted "to warn any politician that if they

dare to come and support homosexuals, they are committing political suicide” (God Loves Uganda, 2013). Considering the opinions of the majority of potential constituents, this could be very true.

While the majority of politicians claim to support the bill, some are outspoken against it. The most notable example of this is the former Vice President, Dr. Gilbert Bukenya. Bukenya made statements on an American talk show in support of equal rights for the LGBT community, saying that

for all of those who are interested in human rights, the rights of my individual, the rights of my association, you must also remember: there must be rights for human dignity. And if LGBT, it’s my right. Like if I am heterosexual, it’s my right. If I am a catholic, it is my right. (God Loves Uganda, 2013)

This is a strong change of heart from his previous stance on homosexuality. It is important to note, however, that Bukenya is planning on running for president in the 2016 elections, so he could have changed his position in order to garner support from international donors.

In addition to individuals who make pro-gay statements, many organizations in Uganda are working towards a better system for the LGBT community. These include Sexual Minorities Uganda, Freedom and Roam Uganda, the Civil Societies Coalition, and many others. The Uganda Human Rights Campaign and several LGBT organizations partnered with the Office of the High Commissioner for Human Rights of the United Nations to analyze the Anti-Homosexuality Bill and present human rights recommendations to Parliament (OHCHR). One group also organized a meeting with members of parliament, LGBT individuals, police officers, and other interested parties to have an open dialogue about homosexuality, which allowed for the participants present to hear new perspectives and better understand the LGBT community (Professor 1). Many members of Parliament stated after the meeting that their views on the issue had changed based on the information they learned there (Professor 1). Many other organizations that do not work directly on LGBT issues will either work to include LGBT individuals in their events or focus on the issues as a subsection of other programs.

International Efforts

Uganda has been a member of the United Nations since 1962, and as a member has ratified a number of human rights doctrines.²¹ Most notably, Uganda has agreed to follow the Universal Declaration on Human Rights, a doctrine which the Anti-Homosexuality Bill violates in multiple ways, as stated in previous sections of this paper. Various branches of the United Nations have released statements regarding the bill as well as recommendations for its amendment, including the Office of the High Commissioner for Human Rights based in Uganda, which

provided human rights analysis on the draft bill citing international human rights standards and African human rights protection regime as well as proposed alternative legislative provisions for child protection to address the prevailing concern on the increasing danger of sexual abuse facing children. (OHCHR)

The OHCHR also supported several domestic human rights organizations in presenting their positions to Parliament. Several documents detailing rights violations have been presented by the OHCHR, offering suggestions on changing the bill in order to maintain the bill's objectives without targeting the LGBT community so severely.²²

Other members of the United Nations have taken their own stances in response to the Anti-Homosexuality Bill. One of the more vocal and influential members is the United States. The United States is both an advocate for global human rights and a strong financial supporter of Uganda's development. President Obama has condemned the Anti-Homosexuality Bill, stating that it is "unconscionable to target gays or lesbians for who they are" and that the legislation is "odious" (Cable News Network, 2010). Many US organizations have also condoned the bill.²³ At a town hall meeting held in November, a US Embassy official stated that human rights for all individuals were of vital concern. When asked about efforts being made by the United States to support the LGBT community, the official stated that they were having multiple dialogues with Ugandan officials and diplomats, as well as providing training programs for police officers; the

²¹ See Appendix 2.

²² For example, other existing laws were cited to demonstrate that many topics of concern were already accounted for by other bills, such as defilement by the Children Act, Penal Act, and Constitution (OHCHR).

²³ It is important to note here that the United States does not guarantee all rights for LGBT individuals. Fifteen or fewer states have legalized same-sex marriage, and the recent attempts to pass a bill that would outlaw discrimination based on sexuality received heavy criticism from many, and while it passed in the Senate the House of Representatives refused to vote on it. Many individuals interviewed for this paper noted this in defense of their personal views towards homosexuality.

only example cited was of the success of the most recent gay pride parade, during which there was no violence against the community by police officers.²⁴ It was also stated that this year the US gave Uganda \$750 million US for various development projects (US Embassy Official). This funding was given despite the recent violations to various groups' rights. Corruption in the current administration may also prevent much of this money from being seen or felt by the general public.²⁵

The United States is not the only country heavily investing in Uganda's future, but many have recently reduced their contributions, making the US's unchanging rates notable. However, pressure from international donors from a plethora of countries has had tremendous impact on Parliament's proceedings regarding the Anti-Homosexuality Act. Some say that "If it wasn't for donor pressure, it [the AHA] would have been passed already" (Member of Parliament 1). Therefore, no matter what the extent of efforts being made by the international community is, it is vital that they continue if this bill is to be stopped.

The Anti-Homosexuality Bill as a Red Herring and Other HR Violations

While the disregard for human rights the bill is bad enough, the Anti-Homosexuality Bill plays a bigger part in international and domestic affairs. The President can use the bill to manipulate both his constituents and international stakeholders while keeping himself in good graces with donors. A few years ago Museveni said "I will shoot them [homosexuals]. We shall kill them;" now he is against the passage of the bill (Member of Parliament 1). As Jim Burroway noted on his blog *the Box Turtle Bulletin*, "The Anti-Homosexuality Bill can be just the hammer he [Museveni] needs to get his foreign detractors to back off — and to train his restive subjects' minds on to something everyone can agree on" since the majority of Ugandans have similarly negative views of the issue (J. Burroway, 2012a). This sentiment was reiterated by a Member of Parliament who said that "President Museveni is using the bill to play with Western powers...he

²⁴ Whether the lack of violence at the parade is the sole result of these training programs is unclear and impossible to determine. In addition, the official could give no other specifics about any dialogues or programs or how they were impacting the community.

²⁵ There have been several scandals involving financial corruption with the current government. In 2012 several members of the European Union cut funding to Uganda after the discovery that at least 50 billion shillings of aid money had been misused. Statements made cited the Office of the Prime Minister's absence of financial controls and the government's inability to fight public corruption; altogether, Uganda lost 750 billion shillings, which was the total proposed budget for agriculture, water, and environment in 2012 (D. Jeanne and J. Njoroge, 2012).

says, ‘I’m the only one who can stop the bill, it’s important that you stand by me!’ ... Then he says if they bash him, he will go to China [for funding] and support the bill” (Member of Parliament 1). The MP went on to say that if the president ever decided to accept the bill, it would be passed in minutes. The Anti-Homosexuality Bill is also widely supported by constituents from across the country. A controversial bill, one whose amendments are not clearly defined, one that demands the spotlight in the manner the Anti-Homosexuality Bill does, has the power to instantly draw in the almost undivided attention of both Ugandans and the international community. This makes it an ideal cover for discussing other business that may be less than popular.

The Anti-Homosexuality Bill is considered by many to be a red herring to allow for other business to go through while remaining relatively unseen by the general public. It is for this reason that the Anti-Homosexuality Bill shows up on Parliament’s list of Business to Follow every time a controversial bill is ready to be either introduced or voted on. As one professor put it, “When you see it [the Anti-Homosexuality Act] being reintroduced you have to look and see what else is going on” (Professor 2). A prime example of this is the Public Order Management Act. This bill amends citizens’ right to peaceful assembly. It requires the organizer of any event to fill out paperwork and go through a long process in order to reserve a space and alert the police to the activity. While it has received much less international attention than the Anti-Homosexuality Act, many Ugandans see the Public Order Management Act as an attempt to impede opposition parties by inhibiting their ability to hold rallies, campaign, etc., especially during election periods. One member of an opposition party claimed that if he wished to hold a rally the ruling party did not want to happen, they would have the police contact the place he wished to hold it at and tell them to change their minds right before the event, forcing the group to either cancel the event or find a new location on incredibly short notice, which would be difficult. The Public Order Management Act was listed as Business to Follow very near the Anti-Homosexuality Act, and only the latter received the full attention and opposition of the international community. This allowed the Public Order Management Act to pass with much less fuss and debate internationally, while in Parliament the arguments were brutal, almost getting physical, with the Speaker being heckled (Member of Parliament 1). That MP went on to say that “if they [the international community] had made noise” the bill would never have passed.

Much like the Anti-Homosexuality Act, the Public Order Management Act violates both the constitution and international human rights doctrines. In the Constitution, Chapter 4 Section 29 provides for a variety of rights to expression, including “freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition” (Government of Uganda, 1995). Additionally, Article 20 Section 1 of the Universal Declaration of Human Rights provides the same rights, stating that “Everyone has the right to freedom of peaceful assembly and association” (United Nations, 1948). Modifying and denying citizens to this is another blatant violation of human rights, but it impacts more than just one vulnerable community—it affects every Ugandan citizen, especially those citizens that speak out against the ruling party. The bill addresses this violation in its language, stating that it will “regulate the exercise of the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition in accordance with Articles 29(1)d and 43 of the Constitution... ‘regulate’ means to ensure that conduct or behavior conforms to the requirements of the Constitution” (Parliament of Uganda, 2013a). This means that not only was the rights violation identified, the language was changed in order to attempt a plausible cover for said violation.

Yet another controversial bill is the Petroleum (Exploration, Development and Production) Bill. This bill was heavily debated in Parliament, in particular the controversial Clause 9, which “gives control over exploration and production licensing to the minister in charge of petroleum” (Oil in Uganda, 2012). This is particularly noteworthy because the minister is selected by Museveni, giving him a great deal of influence over the oil industry and placing him in a powerful position from which he can benefit greatly. The bill also limits the amount of information accessible to the general public while also requiring them to pay a fee for that information; an amount was not specified in the bill (Parliament of Uganda, 2013a). Executive will has been thought by many to have contributed to the passage of this bill, since the ruling party is the majority. Originally Clause 9 was amended to balance the power more during a session of Parliament with relatively low turnout, but the bill was re-introduced with the original clause intact and approved by a large majority vote (Oil in Uganda, 2012).²⁶ This bill passed with almost no comment from the international community.

²⁶ It is important to note that over 100 members of the ruling party were absent at the time of the vote, which has been interpreted as “a form of de facto abstention—a sign that many rank and file members of the ruling party are

These bills were both passed very recently, within eleven months of the writing of this paper. As stated earlier, the Committee for Human Rights was formed before the Public Order Management Act and the Petroleum (Exploration, Development and Production) Bill were introduced to Parliament, the Petroleum Bill was passed by the Committee and the Public Order Management Act was not reviewed. While the Committee is still relatively new, this should not prevent it from completing its assigned duties and does not bode well for its future capabilities. The Anti-Homosexuality Act is still being reviewed by the Committee at the time of the writing of this report; however, one member of the committee stated that he and other members believe that “homosexuality is not a human right.” Therefore it seems unlikely that the Act will be held up by the Committee or rejected.

Trend of Rights Violations

Altogether, these bills demonstrate a disturbing trend of human rights violations within both implemented and potential new bills and acts. While it is difficult to pass bills that violate rights without the general public noticing, the government could theoretically pass additional laws that are detrimental to Ugandan citizens. Rights violations can be discovered by private citizens reading through the bills as they are published in the *Uganda Gazette* or by international human rights organizations and nonprofits and are then denounced in articles and speeches. Bills can also be accessed at the Parliament library; however, authorization is technically needed to enter. The publication of all potential bills and acts is crucial for keeping the government accountable and citizens informed. If the government were to stop publishing the bills, or keep particular amendments out of the copies available to the public, it would be easy for acts to come into law that would negatively impact the lives of any group of Ugandan citizens.

These trends of rights violations have not gone unnoticed. Freedom House, an independent nonprofit organization that rates countries based on the rights and freedoms awarded to their citizens as well as corruption in the government and other political issues, has given Uganda a rating of “Partly Free” since Freedom House began to rate it in 1999. Since 2003,

uncomfortable with the bill and did not want to be seen approving it” (Oil in Uganda, 2012). Five members of the ruling party openly voted against the bill.

Uganda has received a score of 4.5 out of seven,²⁷ seven being least free, with a downward trend due to corruption, police violence, and human rights violations, notably in relation to LGBT issues (Freedom House, 2013). In the 2012 report,²⁸ both the Public Order Management Act and the Anti-Homosexuality Bill were cited as issues that negatively impacted Uganda's score. The freedoms of Ugandans are continually impacted by "increased restriction and harassment of the opposition and a systematic campaign to obstruct and shut down civic groups that engage the government on sensitive issues such as gay rights, corruption, term limits, and land rights" (Freedom House, 2013). These issues are all intertwined; the corruption of the government is at the center of all of them. It is the opinion of the researcher that the current administration takes the actions it feels are necessary to maintain its own power, ignoring what would be best for the majority of its constituents.

No matter what its true purpose is, though, it is important to remember that as long as the Anti-Homosexuality Bill exists, it is potentially harmful to the LGBT community. One woman opposed to the bill said, "We don't care [what else it's for]. We just want it gone" (Youth Organization Executive Director). While all of the violations discussed in this paper are serious concerns, the Anti-Homosexuality Bill is the most dangerous merely because of the lengthy jail time, large fines, and potential death penalty. This should be the first matter addressed as abuses are corrected over time.

Impact on Development

A country systematically denying fundamental human rights to any group cannot be considered fully developed. The marginalization of the LGBT community has the potential to impact the psychological development of homosexual individuals, impacting the amount they can contribute to their communities and harming their views of themselves or others. Mistreatment based on any characteristic, including gender, sexuality, or race, can cause people to feel a sense of lack of worth that affects what they believe they can do for their community and what they expect to be done for them by society (Applied Knowledge Services, n.d.). Individuals who are unhappy with their government and with their culture will be less productive and willing to benefit society and

²⁷ Uganda received a score of 4 for civil liberties and a score of 5 for political rights, which averages to a 4.5 total.

²⁸ Reports are written for the year before, so the most recently published one focused on issues from 2012. The report for 2013 will be published in early 2014.

engage in development projects. There is also evidence that economic growth is positively correlated with equality, with explanations including “with more equality there is more investment in education, health and nutrition...[and] that policies designed to tackle social exclusion can lead to more equitable forms of growth as excluded groups gradually gain greater access to education, employment and business opportunities” (Applied Knowledge Services, n.d.). Therefore discrimination against LGBT individuals has the potential to negatively impact the economy, and the passage of laws such as the Anti-Homosexuality Bill would cause even greater damage.

Additionally, the Anti-Homosexuality Bill is not the only issue faced by homosexuals in Uganda today. According to a recent study, the LGBT community is denied equal access to medical and legal services, as well as discriminated against in the workplace and excluded from election into public office (Makerere University, School of Liberal and Performing Arts, 2013). If homosexual individuals do not feel comfortable seeking medical help, they are more likely to become ill and spread those illnesses on to others. Sexually transmitted infections, HIV in particular, are very easy to pass on if left untreated. HIV is already a major health concern in Uganda, and ignoring a branch of the population impacted by it will only cause it to spread more. In terms of politics and governance, potentially great leaders could be denied a voice simply because of their sexual identity, hindering development and preventing new ideas from being introduced to benefit the community.

Conclusions

The majority of Ugandans are against homosexuality, but not as many support the bill and some would opt for lesser punishments for these acts. The Anti-Homosexuality Bill violates both the Constitution and various international human rights doctrines and should therefore be removed from Parliament. This bill would violate the rights of the entire LGBT community and could potentially impact other individuals who may be falsely accused under the bill or professionals who would have to choose between breaking their professional oaths and breaking the law. While actions are being taken by both domestic and international organizations, the Anti-Homosexuality Bill still remains a very real threat to Uganda’s LGBT community. Furthermore,

this bill in combination with the Public Order Management Act and the Petroleum (Exploration, Development and Production) Bill demonstrate a trend of human rights violations that has been unchanging under Museveni's reign. The willingness of the current government to manipulate politics allows for such laws to be passed and also prevents violations from being addressed. It is vital that serious actions are taken by Ugandans and by the international community in order to address these serious issues.

Recommendations

The researcher would like to make two series of recommendations, one for Uganda and one for the international community. For Uganda, the researcher strongly urges members of Parliament to vote against the bill because of its violations of the Constitution. Members of the general public should contact their district representative and express their disapproval of the bill with or without edits. Organizations that support the LGBT community and human rights should develop educational programs to teach individuals about what homosexuality really is and how human rights violations can impact their lives. These programs should focus on youth; if members of the new generation understand each other, then in the future there will be less discrimination and hatred overall. Youth may also be more open to ideas that contradict their beliefs and may be more willing to modify their views. These programs should be sure to provide special attention to transgender and intersex individuals, as it seems that even amongst knowledgeable Ugandans these groups are overgeneralized or less well known. It is also imperative that Ugandan citizens and human rights nonprofits and NGOs remain informed about all new bills coming up for discussion in Parliament. Researchers focusing on these issues should also consider focusing attention on transgender and other individuals who get less attention during these debates.

The international community must continue to speak out against the Anti-Homosexuality Bill and other bills that violate the rights of any group. The researcher would recommend that international donors reduce or altogether cut their funding of the government until the bill has been removed permanently and additional corruption has been dealt with. Threatening to do so is not enough. In the meantime, funding can be given directly to reliable organizations that create change on a grassroots level. This would make sure that the Ugandan people are seeing the

majority of the money that is being given and that it is benefiting them directly. They should also be a part of the education process. Additionally, other countries should be sure to pass laws protecting the rights of the LGBT community. This will allow them to be role models and demonstrate the positive impact of protecting rights. In particular, the United States should face the issue and pass the Employee Non-Discrimination Act, which was approved in the Senate but never voted on in the House of Representatives at the time of this report's writing. As a vocal detractor of the Anti-Homosexuality Act, the United States must take a stand at home to support their own citizens and provide hope and backing for the LGBT community abroad.

The United Nations should enforce punishments for all members that violate international doctrines, especially those that have been ratified by said members, and work with the Ugandan government to remove laws that encroach upon human rights. The United Nations High Commissioner for Human Rights should sit down with the Committee for Human Rights and develop a training program for them so that future bills that come in front of them are more carefully analyzed and all sections that potentially violate rights are removed. Furthermore, the United Nations should reword all international human rights doctrines to include language that specifically protects individuals regardless of sexuality. An international education campaign about homosexuality should be developed and implemented as soon as possible to prevent discriminatory practices and laws such as the Anti-Homosexuality Bill from being implemented anywhere in the future.

Appendix 1

Consent Form

I, _____, consent to be interviewed about this topic.

The project has been explained to me. I understand the controversial nature of the issue and will not discuss sensitive information outside of the interview. I understand that unless I note otherwise, my name will not be used in any part of this project, and neither will any of my personal information or a description of myself. I understand that the researcher will do everything in her power to ensure a safe environment for this interview, and I will also do everything possible to ensure the safety of the researcher, other participants, and myself. I understand that I can ask questions at any time and if I feel uncomfortable I can end the interview at any time. I am not being compensated for this interview. I consent to having the researcher take notes during this interview. If and when necessary, I understand that I may have a copy of the ISP report if I request it.

Signature: _____

Date: _____

Appendix 2

List of Treaties Signed and Ratified by Uganda²⁹

Universal Declaration of Human Rights, 1948

The Convention on the Elimination of all forms of Discrimination Against Women, 1979

The African Charter on Human and People's Rights, 1980

The Convention Against Torture, 1980

The Convention on the Rights of the Child, 1989

The African Charter on the Rights of the Child, 1990

The Protocol to the African Charter on the Rights of Women, 2005

The Convention on the Rights of Persons with Disabilities, 2006

²⁹ M. Kirya, 2007.

Appendix 3

Update on the Anti-Homosexuality Bill, November 2014

In December 2013, just a few weeks after the researcher completed this paper and returned to the United States, Uganda's Parliament passed the Anti-Homosexuality Bill with the death penalty removed. After much deliberation, President Museveni signed the bill into law in February 2014, after meeting with a group of Ugandan scientists who told him homosexuality is a learned trait rather than something one is born with (F. Karimi and N. Thompson, 2014). President Obama stated that actions would be taken if the bill was not overturned, but the United States did very little, cutting only a few small government programs; several other western countries withdrew foreign aid, including Norway and Denmark, and diverted it to human rights organizations and nonprofits (M. Plaut, 2014). The law was challenged in constitutional court by a group of activists, members of Parliament, and journalists, and after several months of proceedings the bill was overturned in August 2014. The court stated that the reasoning behind the annulment was that not enough members of Parliament were present at the December vote to pass the law (D. Smith, 2014). This means that the rights of the LGBT community in Uganda were not a factor in the decision not to pass the bill, and leaves them vulnerable to future laws and discrimination. The Anti-Homosexuality Bill can be brought back to Parliament at any time; with the 2016 elections getting closer, it is quite possible that another attempt will be made to pass the bill, this time with quorum. The danger to the LGBT community, and to all Ugandan citizens and residents, is still very real.

Bibliography

- Applied Knowledge Services (n.d.). Social Exclusion. *GSDRC: Governance, Social Development, Humanitarian, Conflict*. Retrieved from www.gsdr.org.
- J. Burroway, (2012a, December 6). Anti-Homosexuality Bill Distracts From Uganda's Real Problems, Including Birthday Parties. *Box Turtle Bulletin* [blog]. Retrieved from www.boxturtlebulletin.com.
- J. Burroway (2010, December 23). Ssempe, Other Ugandan Pastors Charged With Conspiracy. *Box Turtle Bulletin* [blog]. Retrieved from www.boxturtlebulletin.com.
- J. Burroway (2012b, November 13). Uganda's Anti-Homosexuality Bill: Anyone Can Be Gay under the Law. *Box Turtle Bulletin* [blog]. Retrieved from www.boxturtlebulletin.com.
- J. Burroway (2013, February 6). Uganda's Parliament Resumes with Anti-Homosexuality Bill Waiting in the Wings. *Box Turtle Bulletin* [blog]. Retrieved from www.boxturtlebulletin.com.
- J. Burroway (2012c, November 23). When a Ugandan Politician Claims the Death Penalty was Dropped but He Can't Show You the Draft Recommendations Because They're Secret, then the Death Penalty Has Not Been Dropped. *Box Turtle Bulletin* [blog]. Retrieved from www.boxturtlebulletin.com.
- Cable News Network (2010, February 4). "Obama Criticizes Ugandan Anti-Gay Bill at Prayer Breakfast." Retrieved from edition.cnn.com.
- Center for Constitutional Rights (2013, August). LGBTI Uganda Fights Back! Synopsis: Sexual Minorities Uganda vs. Scott Lively. Retrieved from www.ccrjustice.org.
- Committee on Human Rights (2013). *Checklist for Compliance with Human Rights in Policy, Bills, Budgets, Government Programmes and All Business Handled by Parliament*. Retrieved from parliament.go.ug.
- D. Jeanne and J. Njoroge (2012, December 4). "Donors cut all direct aid to government until 2013." *The Daily Monitor*. Retrieved from www.monitor.co.ug.

Freedom House (2013). *Uganda Freedom in the World 2013*. Retrieved from www.freedomhouse.org.

J. Glasstetter (2013, August 16). Judge Clears Path for Groundbreaking Lawsuit against Scott Lively. Southern Poverty Law Center. Retrieved from www.splcenter.org.

God Loves Uganda (2013, November 6). "Uganda's ex VP stands up for LGBT community." Retrieved from www.godlovesuganda.com.

Government of Uganda (1995). *Constitution of the Republic of Uganda*. Published by the Authority of the Government of Uganda. Print.

Government of Uganda (2005). *Constitution of the Republic of Uganda [Amended]*. Published by the Authority of the Government of Uganda. Retrieved from www.upm.go.ug.

Government of Uganda (1950). *Penal Code Act 1950*. Retrieved from www.ncpcr.gov.in.

The Holy Bible (1973). New International Version. International Bible Society. Printed in China.

F. Karimi and N. Thompson (2014, February 25). Uganda's President Museveni Signs Controversial Anti-Gay Bill Into Law. *CNN*. Retrieved from www.cnn.com.

M. Kirya (2007). "Decentralization and Human Rights in Uganda: Best Practices for Local Councils." *Human Rights and Peace Center*. Retrieved from www.huripec.mak.ac.ug.

Makerere University, School of Liberal and Performing Arts (2013). Homosexuality and Human Rights in Uganda: Summary Report. Kampala, Uganda: Nkabahona A., Okuni S.S., & Rukooko B.

Oil in Uganda (2012, December 10). Oil Bill: Executive Power Finally Prevails. Retrieved from www.oilinuganda.org.

Parliament of Uganda (2009a). *Bill No. 18: The Anti-Homosexuality Bill*. *Uganda Gazette* 47: CII. 25 September 2009.

Parliament of Uganda (2009b). *Hansards from April 2009*. Library of Parliament.

Parliament of Uganda (2013a). *The Petroleum (Exploration, Development and Production) Bill*. *Uganda Gazette* 16: CVI. 4 April 2013. Web.

Parliament of Uganda (2013b). *The Public Order Management Act*. Print.

Pew Research (2013, June 4). *Pew Research Global Attitudes Project: the Global Divide on Homosexuality*. Retrieved from www.pewglobal.org.

M. Plaut (2014, February 25). Uganda Donors Cut Aid After President Passes Anti-Gay Law. *The Guardian*. Retrieved from www.theguardian.com.

The Qur'an. Retrieved from www.quran.com.

D. Smith (2014, August 1). Uganda Anti-Gay Law Declared “Null and Void” by Constitutional Court. *The Guardian*. Retrieved from www.theguardian.com.

Stockton College (n.d.). “Three Generations of Human Rights.” Retrieved from www.stockton.edu.

Summary of Proceedings from *Human Rights Council Panel on Ending Violence and Discrimination Against Individuals Based on Their Sexual Orientation and Gender Identity*.

S. Tamale (2003, February). “Out of the Closet: Unveiling Sexual Discourses in Uganda.” Retrieved from agi.ac.za/sites/agi.ac.za/files/fa_2_standpoint_3.pdf.

Transparency International (2012). “Uganda: Data and Research.” Retrieved from www.transparency.org.

United Nations (1948). *Universal Declaration of Human Rights*. Retrieved from www.un-documents.net.

United Nations (1993). *Vienna Declaration and Programme of Action*. Retrieved from www.un-documents.net.

United Nations News Centre (2010, January 15). “Top UN rights official urges Uganda to do away with ‘anti-homosexuality bill.’” Retrieved from www.un.org.

List of Interviews

Member of Parliament 1 (opposition party), Parliament, 31 October 2013

Office of the High Commissioner for Human Rights [OHCHR], email, 1 December 2013

Professor 1, Makerere University, 25 October 2013

Professor 2, Makerere University, 5 November 2013

Professor 3, Makerere University, 13 November 2013

US Embassy Official, US Embassy, 5 November 2013 (informal)

Youth Organization Representative, organization's office, 7 November 2013

Youth Organization Executive Director, organization's office, 7 November 2013 (informal)