



When being different becomes a crime: Impacts of Anti-Homosexuality Acts (AHA)

1. General Background

The world has not been quiet on LGBTQI rights. A campaign to de-criminalise homosexuality had already been going on in the UN General Assembly when an informal group of [United Nations Member States](#) was established in 2008 to focus on LGBT rights inter-governmentally. This eventually resulted in a declaration. The 18-2008 December declaration condemned ‘violence, harassment, discrimination, exclusion, stigmatization, and prejudice based on sexual orientation and gender identity that undermine personal integrity and dignity’.

In December 2010, the then Secretary-General of the UN, Ban Ki-moon, delivered a speech in New York calling for worldwide decriminalisation of homosexuality and protection of LGBT individuals from violence and discrimination. The United Nations Human Rights Council, in a defining vote, adopted a resolution on June 30, 2016, on “Protection against violence and discrimination based on sexual orientation, and gender identity,” and mandated the appointment of an independent expert on the subject. All this reaffirmed the United Nation’s human rights declaration that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Despite these and many other efforts, in a report on state sponsored homophobia, 2020, the writers noted that ‘This year has been a heavy blow



for most members of our communities and has left many of us struggling to survive, and trying to make a living amidst hostile contexts that became even more expulsive, unequal and violent.’¹

Indeed, key facts show that there is a global homophobic pandemic²:

- 66 jurisdictions criminalise private, consensual, same-sex sexual activity. The majority of these jurisdictions explicitly criminalise sex between men via ‘sodomy’, ‘buggery’ and ‘unnatural offences’ laws. Almost half of them are Commonwealth jurisdictions.
- 41 countries criminalise private, consensual sexual activity between women using laws against ‘lesbianism’, ‘sexual relations with a person of the same sex’ and ‘gross indecency’. Even in jurisdictions that do not explicitly criminalise women, lesbians and bisexual women have been subjected to arrest or threat of arrest.
- 12 countries have jurisdictions in which the death penalty is imposed or at least a possibility for private, consensual same-sex sexual activity. At least 6 of these implement the death penalty – Iran, Northern Nigeria, Saudi Arabia, Somalia and Yemen – and the

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202022/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf

²

<https://www.humandignitytrust.org/lgbt-the-law/map-of-criminalisation/?embed=true>



death penalty is a legal possibility in Afghanistan, Brunei, Mauritania, Pakistan, Qatar, UAE and Uganda.

- 14 countries criminalise the gender identity and/or expression of transgender people, using so-called ‘cross-dressing’, ‘impersonation’ and ‘disguise’ laws. In many more countries transgender people are targeted by a range of laws that criminalise same-sex activity and vagrancy, hooliganism and public order offences.

Further, even in countries where there are no law criminalizing same sexual relationships and transgender identity it has been noted that; ‘public, personal, economic, spiritual, social and legal spaces, create, and maintain or overlook the hate crimes experienced by the LGBTQIA+ community’. This in spite of ‘calls to government and civil society to change their ways’³. Indeed, Asher Fergusson & Lyric Fergusson in recent publications⁴ on Best and worst countries for transgender rights in 2023 and 5 on “LGBTQ+ Travel Safety Index” confirm that the world , with a few exceptions, continue to be unsafe, with at least 73 countries classified as very unsafe with draconian laws and punishments against (LGBTQI) persons. Punishments include death, banishment, and life imprisonment, while in some countries, in addition, discussions on LGB rights and gender expression are criminalised. In the same research report on worst and safest countries, only 7 countries were classified as most safe. The global transgender rights index classified 78 countries as highly dangerous for transgender people with high transphobic attacks, while 11 countries were classified as most safe.

³ <https://saiia.org.za/youth-blogs/hate-crimes-against-members-of-the-lgbtqia-community-in-south-africa/>

⁴ 203 Best (& Worst) Countries for Trans Rights in 2023,

⁵ The 203 Worst (& Safest) Countries for LGBTQ+ Travel in 2023



2. Does it matter that we speak up?

The Global world that holds different cultures, hosts many faiths, and is a rainbow of skin colours yet it has, in unison, agreed to the normalization of taking away human rights from a community of people simply because they have a different way of being. Without the Anti homosexuality laws, life is already a challenge for the LGBTIQI community. Even in a country like South Africa where laws are supportive of same sex relationships, homophobic mindsets seem to determine action; this is exemplified by cases where individuals have lost lives from hate related violence. Further, in implementing the laws that are meant to protect LGBTI rights, homophobia seems to have prevailed. An example of this is that 'Only 28.6% of Home Affairs branches had marriage officers that were willing to marry same sex couples'⁶.

⁶ <https://saiia.org.za/youth-blogs/hate-crimes-against-members-of-the-lgbtqia-community-in-south-africa/>



In one of the research activities of INEVAWG, interaction with a member of the community highlighted the challenges of what being different means, in a homophobic society.

“Growing up, I was always isolated by siblings and in the neighbourhood where I lived with my family. “My siblings often said I was shaming them because I was a lesbian. They never liked to go to school with me in the family car or interact with me. I, therefore, asked my father to give me money and would use public transport to school.” This person (identity withheld for safety reasons) stated that this had emotional and mental ill-health impacts on them and was forced to run away from home at a young age. “For three years, life was a daily struggle as I moved from one slum to another, trying to find a safe community that offered a sense of belonging and safety. At school, I faced similar discrimination and was even expelled. In Kampala’s poor neighbourhoods where he ended up living, there was no job or the prospect of finding one. Instead, together with his newfound friends, they spent time indulging in drugs. The anxiety of living life on the edge resulted in him suffering a mental breakdown. “At that time, I didn’t even know that someone can be depressed, but I was depressed for a very long time and had no counsellor and no one to talk to.”

“I was tired of being with people who were homophobic. Each time I dressed like a boy, they would say, look at this spoilt girl. I always told my family,



‘You just don’t wake up one day and say you are going to be trans or lesbian. You are born that way. It’s in you.’”

This lived experience, documented by INEVAWG shows that criminalising same-sex relationships and homophobia is a threat to human rights, and freedom from violence against people of different sexual orientations and non-gender conforming identities as well as society in general.

Life in a homophobic environment is a delicate, cat and mouse balance; and more often than not with a nasty experience and long-term negative impacts. You survive by your sheer determination. This is one example of one person who has lived to tell her story; many others in Uganda, South Africa, Nigeria, to name a few countries have not lived to tell the tale. When a person’s being different becomes criminalized by law, it can no longer be a secret individual’s battle. When difference becomes criminal; networks like INEVAWG, which was set up by feminists from the South, with a specific mission of ‘repoliticizing violence’ and ‘transform[ing] structural oppressions,’ must speak out. ***‘INEVAWG’s approach is rooted in intersectional feminist analyses that recognizes and seeks to address violence against women and girls within the realities of patriarchy, neoliberalism, militarism, the surveillance state, corporate capture of public institutions, white supremacy, casteism, hetero-normativity, and the legacy of colonialism.’***⁷

⁷ [INEVAWG-Strategy \(FINAL\) 2.pdf](#)



The contextual analysis that INEVAWG undertook identified several trends that confirm decreasing political space for civil society and human rights activism overall, an attack on women's rights and women's bodies, and increasing racism and structural inequality. The proliferation of the anti-homosexual laws is a stark example of this and an oppression of the minority rooted in institutions and operational structures of governments.

Further, INEVAWG's position is that Control of sexuality is an important component of hegemonic masculinity, itself a male privilege and tool of oppression rooted in patriarchal structures.

In this paper we seek to show how anti homosexuality and legal criminalization of consensual same sex relations and non-gender conforming identities is an abuse of human rights. In particular it impedes persons of diverse sexual orientation to live a full life free from violence and discrimination. Further, and most importantly it is a violation because it validates heteronormativity, which by its nature is as a sexual tool of oppression within male dominated social system. This is because sexuality is an important component of hegemonic masculinity⁸ which is itself a process of perpetuating gender and sexual inequality. Hetero-normativity is an important tool of hegemonic masculinity because it upholds the ideals of male sexuality. Robert Wyrod notes that hegemonic masculinity ideals are described as encompassing 'ideas of male economic

⁸ Aids and Masculinity in the African City: Privilege, Inequality and Modern Manhood. University of California press 2016



provider; male authority over women in the home; and ideals of male sexuality which are equated with sexual virility, freedom and control' over women.

3. What is the nature of violations and abuse of human rights when difference becomes a crime?

In reality, Homophobia has been given a legal instrument to criminalise, punish and harm on the basis of difference. In this section, we will use the Uganda Anti Homosexuality Act of 2023, commonly referred to as the AHA, as an example that the AHA laws can be vague intentionally and therefore be used to impinge on the individual and social rights to protection of the 'right to private life'. The AHA, by nature will cause diverse forms of harm beyond individuals.

The Uganda Anti homosexuality Act of 2023 will be used mostly to illustrate most of the points raised. Not because it is the only one in existence but because of the nature and extent of harsh punishments and legalized qualateral damage of the law. Further, Uganda has been hailed by many countries in Africa as a great example and leading champion in protecting the African Culture; and several countries in both Eastern and Western Africa (for example Kenya and Ghana) have followed the Uganda example and tabled Anti-Homosexuality bills. Within Uganda itself, religious leaders who are themselves followers of religious practices that were introduced through missionaries and colonialists and



therefore foreign by nature, lobbied for harsh sentence, allegedly, to protect the Ugandan culture.

3.1 What is the Uganda Anti Homosexuality Act? And why we must all speak out?

The vagueness of the law is very clear in its summary statement:

*“The anti-Homosexuality Act, 2023 is an Act to prohibit any forms of sexual relations between persons of the same sex; to prohibit promotion or recognition of sexual relations between persons of the same sex; **and for related matters**”⁹.*

ILGA World, in their 2020 report,¹⁰ ‘refrains from using expressions such as “criminalisation of homosexuality” in countries “where it is illegal to be gay or lesbian”, and instead refer to it more technically as “criminalisation of same-sex relations”’. Based on this premise, in this article, the nature and content of Uganda law anti-homosexuality will not be technically distinguished from the ‘criminalisation of acts and behaviours (which is the object of the AHA criminal law) and from criminalization of identities or sexual orientations. The vagueness and draconian nature of the law gives leeway to criminalise acts and behaviors as well as identity in different ways despite the intent of the law. In Uganda, a highly homophobic society, law renders all LGBTQI persons, relatives,

⁹ The anti-Homosexuality Act 2023.

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202022/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf



associates and Non-governmental organisations lobbying for LGBTQI rights vulnerable to punishment.

In this final part of the paper, a few examples will be taken from the Uganda AHA to show the far-reaching nature of the anti-homosexuality Act and how it is an attack on individual and social human rights.

- i. The AHA of Uganda is an enabler of “de facto criminalisation” because it provides for persons and organisations to be prosecuted because of their actual or perceived support to any member of the LGBTQI community. For example, under Article 9 “a person who knowingly allows any premises to be used by any persons for purposes of homosexuality commits an offense and is liable to imprisonment of not more than 7 years”. There are several implications of this provisions but clearly, the right to privacy is no longer a human right. The AHA gives permission to landlords; for example, to question people’s private lives in order to ascertain their sexual intentions.
- ii. Furthermore, there is a contradiction in the law because under article II: *The Offenses of homosexuality*, it is clearly stated that “A person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offense of homosexuality under this Act”. The intent of the law is to criminalises same sex act but not identity. Yet the provision in the Act described above expects other individuals,



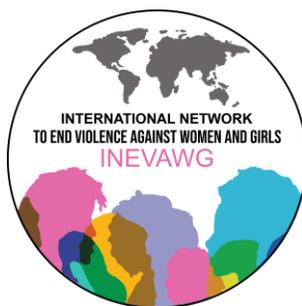
- such as landlords, to punish based on suspicion of an individual being homosexual.
- iii. The Act, despite its intent; is a law to criminalise homosexuality (both identity and act). Consequently, it has given homophobic and transphobic persons permission to punish, even outside the law. Since the enactment of the AHA, there has been an escalation of hate crimes targeted at individuals known for their LGBTQI advocacy work or identity. In a recent case, an individual member of the community (identity withheld) was attacked and had to be evacuated for medical attention to the knife wounds he suffered from attackers. Many members of the community have had to seek safety in community shelters because they have been evicted from their accommodation by landlords who are afraid of prosecution under the AHA.
 - iv. The AHA takes away individual informed choice as according to the law consent, even among adults, is no defense.
 - v. Under Part IV Miscellaneous; the Act seems to be intent on escalating homophobia and mistrust that is will definitely fuel violence against LGBTQI and total abuse of individual human rights.

Under Article 14: *Duty to report Acts of homosexuality; "A person who know or has reasonable suspicion that a person has committed or intends to commit the offense of homosexuality or any offense under this act, shall report to the police*



- for action.*” This provision has been seen as an enabler for settling scores and vendettas. It is, again, clearly a contraction of the intent of the law already referred to, where Article II *Homosexuality and related practices it is stated that.* “A person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offense of homosexuality under this Act”. Yet the law requires such a person to be reported on grounds of suspicion by any member of society.
- vi. Shrinking of Human rights advocacy space is real, under the AHA. Article II Promotion of Homosexuality, a person promotes sexuality where the person “Operates an organization which promotes homosexuality or observance or normalization of conduct prohibited under this Act”. The shrinking of space will definitely emerge from the vague nature of what ‘promotion’, ‘observance’ or ‘normalisation’ means or will look like. In addition, the law is draconian by nature and is meant to intimidate and silence human rights activists and advocates of LGBTQI rights. Organisations found guilty of breaking this vague law will be fined or have their license suspended or cancelled. Civil society human rights activists are likely to self- censor for self-preservation.

4. Conclusions: Is introduction of AHA in different countries the end of the road?



The Uganda AHA, like all other bills and those that will follow, has posed legal barriers to freedom of expression on sexual and gender diversity and normalized violence, based on diversity in gender orientations and identity. As it has been observed in the [*ILGA World State Sponsored Homophobia report global legislation overview update December 2020 \(1\).pdf](#) ; the limitations on freedom of expression in the AHA, like in many countries, take many forms: ‘from the laws explicitly naming issues of sexual and gender diversity to the norms containing vague language relating to public morality, and apparently unrelated laws which are used to restrict the free exchange of ideas on LGBT topics’. Indeed, as this report notes in the Uganda AHA, legislators have used “a plethora of legal proxies to target LGBT issues.... to target people of diverse gender identities and expressions” ¹¹ and the public at large.

The findings of the report, which has been quoted widely because of its thorough global research, show that ‘While seemingly paradoxical, in several countries with criminalising laws, activists have been able to successfully advocate for protective laws against discrimination on the basis of sexual orientation’. There countries that have reversed criminalization of same sex relations; and International law can still be utilized to mitigate criminalisation based on sexual orientation and identity.

¹¹ [*ILGA World State Sponsored Homophobia report global legislation overview update December 2020 \(1\).pdf](#) page 23



In South Africa there is strong and open advocacy for protection of LGBTQIA+ rights. *The Gay and Lesbian Alliance of South Africa (GLASA), CIVICUS and the Hate Crimes Working Group operate under a mandate of fighting for equal opportunities, justice and rights for all members of the LGBTQIA+ community, as well as educating members of society about issues surrounding queer bodies. Furthermore, they continue to call on the government to fast-track the implementation of the Prevention and Combating of Hate Crimes and Hate Speech Bill of 2018.*

Therein lies the radical hope that this is not the end of the road. And that when difference is used as a basis of criminalizing and violating individual and social rights, INVAWG cannot be bystanders.