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## Uganda's Anti Homosexuality Bill

by Matt Hasvold\*

The status of LGBT men and women has long been a controversial topic in Uganda and most of Africa. In 2009, Uganda's LGBT policy was thrust into the limelight with the introduction of new anti-gay legislation. In response, there was a great deal of internal criticism and an outcry from human rights organizations. Despite this, however, Uganda's parliament recently passed a revised version of the Anti Homosexuality Bill on December 20, 2013. Now, all that keeps the law from taking effect is the assent of President Yoweri Museveni.

This essay looks at the roots of anti-gay policy in Uganda and discusses some of the provisions of the proposed legislation.

### ROOTS OF ANTI-GAY POLICY IN UGANDA

The roots of anti-gay policy in Uganda are traceable in part to British Colonialism.<sup>1</sup> In 1860, the British introduced Section 377 into the Indian Penal Code, which read:

Unnatural offences – Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment ... for a term which may extend to 10 years, and shall be liable to fine.<sup>2</sup>

The language of Section 377 was highly influential and spread to other British colonies.<sup>3</sup> Eventually, Section 377 became the basis for Uganda's first anti-gay statute.<sup>4</sup> Later, in 1967, England ended the criminalization of "homosexual

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<sup>1</sup> HUMAN RIGHTS WATCH, THIS ALIEN LEGACY: THE ORIGINS OF "SODOMY" LAWS IN BRITISH COLONIALISM 3 (Dec. 2008), available at [http://www.hrw.org/sites/default/files/reports/lgbt1208\\_web.pdf](http://www.hrw.org/sites/default/files/reports/lgbt1208_web.pdf).

<sup>2</sup> *Id.* at 18.

<sup>3</sup> *Id.* at 5-6.

<sup>4</sup> *See id.* at 24.

conduct.”<sup>5</sup> However, many previously colonized territories, including Uganda, did not follow suit.<sup>6</sup> Currently, Section 145 of the Ugandan Penal Code punishes sexual intercourse with “any person against the order of nature.”<sup>7</sup> In 1990, the Ugandan government even took measures to strengthen the law by raising the maximum penalty to life in prison.<sup>8</sup>

### THE ANTI HOMOSEXUALITY BILL

The current controversy centers on a new piece of legislation. The “Anti Homosexuality Bill,” which was first introduced in 2009,<sup>9</sup> establishes a number of new criminal offences.<sup>10</sup> If committed by a Ugandan citizen or permanent resident, these crimes result in a range of harsh punishments.<sup>11</sup>

Under Section 2 of the Bill, “[t]he offence of homosexuality” is defined as sexual intercourse between people of the same sex.<sup>12</sup> The offence also includes touching “with the intention of committing the act of homosexuality.”<sup>13</sup> Anyone convicted of this offence will be sentenced to life in prison.<sup>14</sup>

Under the proposed legislation, “aggravated homosexuality” is an elevated version of the offence of homosexuality. It applies when the “person against whom the offence is committed” is under the age of eighteen, a child of the offender, disabled, or someone under the authority of the offender.<sup>15</sup> Aggravated homosexuality also occurs whenever the offender is HIV positive or has been convicted of homosexuality or related offences before—so-called serial offenders.<sup>16</sup> The original bill imposed the death penalty for anyone convicted of aggravated

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<sup>5</sup> See Miriam Berger, *British Colonial Era Anti-Sodomy Laws Still Reign Around The World*, BUZZFEED (Dec. 11, 2013, 5:56 PM), <http://www.buzzfeed.com/miriamberger/british-colonial-era-anti-sodomy-laws-still-reign-around-the>.

<sup>6</sup> See HUMAN RIGHTS WATCH, *supra* note 1, at 6.

<sup>7</sup> See *Penal Code Act 1950*, UGANDAN LEGAL INFORMATION INSTITUTE, <http://www.ulii.org/ug/legislation/consolidated-act/120> (last visited Jan. 16, 2014).

<sup>8</sup> See HUMAN RIGHTS WATCH, *supra* note 1, at 6.

<sup>9</sup> See Press Release, Amnesty International, Uganda: ‘Anti-Homosexuality’ Bill Threatens Liberties and Human Rights Defenders (Oct. 15, 2009), *available at* <http://www.amnesty.org/en/for-media/press-releases/uganda-%E2%80%98anti-homosexuality%E2%80%99-bill-threatens-liberties-and-human-rights-de>.

<sup>10</sup> In order to maintain consistency between the quoted material and the author’s analysis, this article adopts the British spelling of the word “offense.”

<sup>11</sup> The legislation applies even if a citizen or permanent resident violates the law outside Uganda. The Anti Homosexuality Bill § 16, 2009, Bill 18 (Uganda), *available at* <http://nationalpress.typepad.com/files/bill-no-18-anti-homosexuality-bill-2009.pdf>.

<sup>12</sup> *Id.* § 2(1).

<sup>13</sup> *Id.* § 2(1)(c).

<sup>14</sup> *Id.* § 2(2).

<sup>15</sup> *Id.* § 3(1).

<sup>16</sup> *Id.* § 3(1)(b), (f). Serial offender is a defined term. See *id.* § 1.

homosexuality.<sup>17</sup> However, it appears that this was removed from the final version.<sup>18</sup>

Attempted homosexuality and attempted aggravated homosexuality are criminalized, carrying prison sentences of seven years and life, respectively.<sup>19</sup> Other crimes, punishable by a seven-year prison sentence, include aiding and abetting homosexuality, conspiracy to commit homosexuality, detention with intent to commit homosexuality, and operating a brothel for purposes of homosexuality.<sup>20</sup> Importantly, anyone who “purports to contract” a same-sex marriage faces life in prison upon conviction.<sup>21</sup>

The Bill also has an impact on Ugandans’ speech rights by proscribing the “promotion of homosexuality.” Section 13 criminalizes funding or sponsoring the promotion of homosexuality<sup>22</sup> and targets anyone who promotes homosexuality over the internet or in film.<sup>23</sup> A conviction yields a fine, a prison sentence of five to seven years, or both.<sup>24</sup> Any organization found guilty of promoting homosexuality will have its certificate of registration cancelled, and its director or proprietor sentenced to seven years in prison.<sup>25</sup>

Lastly, the Bill imposes a duty to disclose on any “person in authority.”<sup>26</sup> A person in authority who knows of any offence under the Bill is required to report the offence within twenty-four hours. A failure to report is punishable by up to three years in prison.<sup>27</sup> The Bill defines authority broadly as “having power and control over other people because of your knowledge and official position; and shall include a person who exercises religious, political, economic or social authority.”<sup>28</sup> David Bahati, the Bill’s sponsor, has suggested this language includes parents, meaning the failure to report one’s own child could be an offence.<sup>29</sup>

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<sup>17</sup> *Id.* § 3(2).

<sup>18</sup> *Uganda Passes Tough New Anti-homosexuality Bill*, FRANCE 24 (Dec. 21, 2013), <http://www.france24.com/en/20131221-uganda-new-anti-homosexuality-bill-life-prison/> (“The lawmaker behind the bill, David Bahati, said a death penalty clause was dropped from the final version of the bill.”). However, the text of the final version has not been published. *Id.*

<sup>19</sup> The Anti Homosexuality Bill § 4(1), (2), 2009, Bill 18 (Uganda).

<sup>20</sup> *Id.* § 7, 8, 10, 11.

<sup>21</sup> *Id.* § 12.

<sup>22</sup> *Id.* § 13(1)(a), (c).

<sup>23</sup> *Id.* § 13(1)(d).

<sup>24</sup> *Id.* § 13(1).

<sup>25</sup> *Id.* § 13(2).

<sup>26</sup> *Id.* § 14.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* § 1.

<sup>29</sup> *BBC Three: The World’s Worst Place to Be Gay?* (BBC Television broadcast May 13, 2011) (quoting David Bahati as saying, “Once we have the legal framework passed, the bill passed, we

## THE INTERNATIONAL REACTION

Upon introduction, the Anti Homosexuality Bill sparked immediate outrage from individuals, international human rights groups, and western governments. Richard Branson, founder of Virgin Group, publicly criticized the Bill and called for other businesses to join him in boycotting Uganda.<sup>30</sup> The U.S. State Department expressed deep concern, and President Barack Obama called the Bill "odious."<sup>31</sup>

It has been suggested that American evangelical groups may have played a role in the Bill's passage. In March 2009, one month before the Bill was introduced, three American evangelical activists spoke at a conference on "the gay agenda" in Uganda's capitol city of Kampala.<sup>32</sup> Also, David Bahati is a member of the U.S.-based organization, "the Family," that promotes conservative, Christian values.<sup>33</sup> However, in reaction to the harshness of the Bill, many evangelicals—including those who spoke at the conference in Kampala—have denounced the legislation.<sup>34</sup>

## CONCLUSION

While Uganda's anti-gay policy was originally of foreign origin, the country's current law and pending legislation indicate that there is a strong domestic drive—at least among members of the Ugandan parliament—to marginalize members of the LGBT community. Despite the strong reaction from the international community, the Ugandan legislature recently passed the Anti Homosexuality Bill, which will impose severe penalties on those who commit "offence[s] of homosexuality."

Now, all that keeps the law from taking effect is the President's signature.

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would expect the parent to report the child to police and then the law enforcement agency should take care of that.").

<sup>30</sup> See Elise Labott & Neda Farshbaf, *U.S., Richard Branson Slam Uganda's Anti-gay Bill*, CNN (Dec. 24, 2013), <http://www.cnn.com/2013/12/24/world/africa/uganda-anti-gay-bill/>.

<sup>31</sup> See *US Voices Concern Over Uganda Anti-gay Bill*, ALJAZEERA (Dec. 25, 2013), <http://www.aljazeera.com/news/africa/2013/12/us-voices-concern-over-uganda-anti-gay-bill-20131224235136296647.html>.

<sup>32</sup> See Jeffrey Gettleman, *Americans' Role Seen in Uganda Anti-Gay Push*, New York Times, Jan. 3, 2010, at A1. At the conference, speakers discussed gay reparative therapy, "how gay men often sodomize young boys," and described the LGBT movement as "'an evil institution' whose goal is 'to defeat the marriage-based society and replace it with a culture of sexual promiscuity.'" See *id.*

<sup>33</sup> *The Secret Political Reach Of 'The Family'*, NPR (Nov. 24, 2009), <http://www.npr.org/templates/transcript/transcript.php?storyId=120746516> ("The legislator that introduced the bill, a guy named David Bahati, is a member of The Family. He appears to be a core member of The Family."). See also Laurie Goodstein, *National Prayer Breakfast Draws Controversy*, N.Y. TIMES, Feb. 3, 2010, at A13.

<sup>34</sup> See Gettleman, *supra* note 32.

However, considering that President Museveni has previously said that “[homosexuality] is a danger . . . to the whole of Africa,”<sup>35</sup> it appears likely that he will sign the Bill. If he does, it will mark another significant step backward for a nation struggling to define itself in the twenty-first century.

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<sup>35</sup> See HUMAN RIGHTS WATCH, *supra* note 1, at 4.