

Brief supporting Evidence Report 44

**THE IMPLICATIONS OF THE ANTI-
HOMOSEXUALITY BILL 2009 ON UGANDA'S
LEGAL SYSTEM**

Sexuality, Poverty and Law

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November 2013

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The paper discusses the implications of Uganda's Anti-Homosexuality Bill, 2009 (the Bill or AHB) on the country's legal system. The AHB is perhaps one of the most controversial bills ever tabled in Uganda's parliament and is aimed at strengthening the current criminal provisions against homosexuality in Uganda. It seeks to do this by creating the offence of homosexuality which criminalises a wide range of same-sex sexual acts including 'touching with the intent'. The Bill also proposes the death penalty for 'aggravated homosexuality', which is aimed at repeat offenders among other groups. It also seeks to nullify international instruments that 'promote homosexuality', criminalise 'promotion of homosexuality' and provide for the extradition of any Uganda who commits the above offences outside the country. Other offences created by the AHB include: attempts to commit homosexuality or aggravated homosexuality; aiding and abetting of homosexuality; conspiracy to commit homosexuality; procuring homosexuality by threats; detention with intent to commit homosexuality; keeping of brothels; same-sex marriages; promotion of homosexuality; and failure to disclose the offence. The tabling of the Bill immediately divided the country and the international community into two camps: those for the Bill; and those against it. The Bill currently remains before the Legal and Parliamentary Affairs Committee of parliament awaiting the Second Reading.

The paper delves into a discussion of how the Bill has so far shaped the legal landscape so far and then discusses the legal implications of the Bill becoming law. The major criticisms of the Bill are based on the Constitution of Uganda, since most of its provisions pose a threat to the fundamental rights and freedoms that are duly recognised as belonging to all in the Constitution. The constitutional provisions that are cited are: the right to equality and non-discrimination (art. 21); freedom of privacy (art. 27); freedom of expression, assembly and association (art. 29); and the right to work (art. 40). It is only the constitutional court that can determine whether a law is unconstitutional, and thus, questions as to whether one can challenge provisions of a bill before parliament have been discussed – though indeed it seems to have been accepted that the Bill can only be challenged for being unconstitutional if it becomes law. Whatever the Constitutional Court decide will be key to the development of human rights law in Uganda.

The other implications are more practical, and they all rotate around the question of how the provisions of the then Act will be enforced. No one has been convicted or acquitted under the existing law and the reason is largely because it is not easy to obtain evidence when there are consensual sexual acts between adults. The new law is likely to fall in the same trap. How will the police obtain the required evidence to prove the cases beyond reasonable doubt without violating the rights to privacy and dignity of the suspected persons? The High Court already ruled in the case of *Victor Mukasa v Attorney General* that searching the house of a suspected lesbian with the intent of collecting evidence to prove that one is a lesbian was a violation of the right to privacy.

Perhaps unexpectedly on the part of its movers, the Bill has made the issues affecting LGBTI persons in Uganda more visible, and now people can openly discuss the issue of homosexuality. On the civil society front, the Bill led to the creation of perhaps the first coalition bringing together LGBTI organisations and mainstream organisations to work on a joint issue. The Coalition, which is named the Civil Society Coalition on Human Rights and Constitutional Law, has been engaged in relentless efforts against the AHB.

Another positive effect, the Bill has contributed to the development of legal activism in Uganda. The Coalition and its members have used publications, litigation, press statements and political and diplomatic engagements to denounce the AHB. In 2009 the Coalition's Legal Committee made a 20-page presentation to the Legal and Parliamentary Affairs of Parliament analysing the legal and human rights implications of the AHB. To date two cases on general human rights of LGBTI persons have also been filed in court as part of the incremental approach employed by the Coalition.

The paper recommends that the Bill be dropped altogether as suggested by the Minority Report of the Parliamentary Legal Committee. Further, the Parliament of Uganda and the Uganda Law Reform Commission are called upon to revise the country's criminal laws, especially chapter 14 of the Penal Code which is titled '*Offences against morality*', to decriminalise consensual same-sex relations among adults. Civil Society and the international community are also encouraged to continue engagement and advocacy against the AHB.

The paper concludes by noting that whatever the final fate of the AHB, its implications on Uganda's legal landscape will always remain visible. It presents unprecedented threats to fundamental rights of not just LGBTI persons but all persons. But it has also re-energised the use of the courts to protect marginalised groups and galvanised cooperation in the civil society, both local and international.