



STATUS OF LGBTI PEOPLE IN CAMEROON, GAMBIA, GHANA AND UGANDA

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Disclaimer

This present report is a public document written by the Country Information Service of the Finnish Immigration Service. The report is in line with the guidelines published by the European Asylum Support Office (EASO) on researching the situation of lesbian, gay, and bisexual persons (LGB) in countries of origin.

In this report, sexual and gender minorities are referred to by the internationally established abbreviation LGBTI (lesbian, gay, bisexual, transgender and intersex). In the event that a source text only refers to homosexuals or lesbians, and it is not clear from the text whether the information also applies to other sexual and gender minorities, the term used in the original source text will be used in this report to avoid misstatements. However, where these terms are used, the information may nevertheless apply to all sexual and gender minorities in practice.

The available country of origin information (COI) is general, yet the situation of LGBTI people can be heavily influenced by factors such as socioeconomic status, geography, social network, attitude of the family and (non)conformity to the prevailing standards.

The information presented in this report is based exclusively on publicly available sources, such as academic articles, studies developed by international organisations (governmental and non-governmental), local organisations, as well as online press articles. All the information has been carefully selected and cross-checked. However, the report does not make the claim of being exhaustive and it cannot be ruled out that part of the information presented is out-of-date, incomplete, or inaccurate. The fact that some occurrence, person, or organisation is not mentioned in the report does not imply that such occurrence never happened or that a person or organisation does not exist.

This report should thus not be treated as the exclusive and indisputable reference in relation to decisions on awarding or refusing the refugee status or other forms of international protection. The views and statements expressed in this report do not necessarily represent any consensus by the Finnish government or its agencies.

List of Abbreviations

| | |
|----------|--|
| ACHPR | African Commission on Human and Peoples' Rights |
| ACODEVO | Association for Impoverished and Vulnerable Communities of the Coastal Region [Cameroon] |
| ADEFHO | Association for the Defense of Homosexuals [Cameroon] |
| ADEPEV | Action for Development and Fulfilment of Vulnerable People [Cameroon] |
| AHA | Anti-Homosexuality Act 2014 [Uganda] |
| AIDS | Acquired Immune Deficiency Syndrome |
| AMShEr | African Men for Sexual Health & Rights |
| APA | Agence de Presse Africaine |
| APRC | Alliance for Patriotic Reorientation and Construction [Gambia] |
| AVAF | Association for the Promotion of Women [Cameroon] |
| BBC | British Broadcasting Corporation |
| CAHL | Coalition Against Homophobia in Ghana |
| CAMEF | Cameroon Empowerment Association for Outreach Programs |
| CAMFAIDS | The Cameroonian Foundation for AIDS |
| CAMNAFAW | Cameroon National Association for Family Welfare |
| CCG | Christian Council of Ghana |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women |
| CEPEHRG | Centre for Popular Education and Human Rights, Ghana |
| CNDHL | National Commission for Human Rights and Freedoms [Cameroon] |
| COI | Country of Origin Information |
| CRC | Constitution Review Commission [Ghana] |
| CSCHRCL | Civil Society Coalition on Human Rights and Constitutional Law [Uganda] |
| EASO | European Asylum Support Office |
| EU | European Union |
| FARUG | Freedom and Roam Uganda |
| FIDH | International Federation for Human Rights |
| GALAG | Gay and Lesbian Association Ghana |
| GRTS | Gambia Radio and Television Services |
| GSIC | Gambia Supreme Islamic Council |

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|---------|--|
| WSW | Women having sex with women |
| HIV | Human Immunodeficiency Virus |
| HORF | House of Rainbow Fellowship |
| HRAC | Human Rights Advocacy Center [Ghana] |
| HRAPF | Human Rights Awareness and Promotion Forum [Uganda] |
| HRC | Human Rights Council |
| ICCPR | International Covenant on Civil and Political Rights |
| IGLHRC | International Gay and Lesbian Human Rights Commission |
| ILGA | International Lesbian, Gay, Bisexual, Trans and Intersex Association |
| IPMC | International Pastors' and Ministers' Conference |
| IRCU | Inter-Religious Council of Uganda |
| IRIN | Integrated Regional Information Networks |
| Lcc | Ligue camerounaise des consommateurs |
| LGB(TI) | Lesbian, gay, bisexual, (transgender and intersex) |
| MLPF | Maritime Life Precious Foundation [Ghana] |
| MP | Member of Parliament |
| MSM | Men Who Have Sex with Men |
| NACCC | National Association of Charismatic and Christian Churches [Ghana] |
| NARTH | National Association for Research and Therapy of Homosexuality [United States] |
| NDC | National Democratic Congress [Ghana] |
| NGO | Non-governmental Organisation |
| NIA | National Intelligence Agency [Gambia] |
| NPP | New Patriotic Party [Ghana] |
| OHCHR | United Nations Human Rights Office of the High Commissioner |
| ORAM | Organization for Refuge, Asylum and Migration |
| PDP | People's Development Party [Uganda] |
| PNC | People's National Convention [Ghana] |
| PPP | People's Progressive Party [Gambia] |
| QAYN | Queer African Youth Network |
| REDHAC | Network of Human Rights Defenders in Central Africa |
| RHF | Rainbow Health Foundation [Uganda] |

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| RLP | Refugee Law Project [Uganda] |
| SFH | Swiss Refugee Council |
| SHARPER | Strengthening HIV/AIDS Response Partnership and Evidence-based Response [Ghana] |
| SIPD Uganda | Support Initiative for People With Congenital Disorders Uganda |
| SMUG | Sexual Minorities Uganda |
| SSSJE | Sister to Sister for Social Justice and Empowerment [Ghana] |
| STI | Sexually Transmitted Infection |
| UDHR | Universal Declaration of Human Rights |
| UEC | Uganda Episcopal Conference |
| UN | United Nations |
| UNAIDS | Joint United Nations Programme on HIV/AIDS |
| UNHCR | Office of the United Nations High Commissioner for Refugees |
| UPR | Universal Periodic Review |
| U.S. | United States |
| USAID | United States Agency for International Development |
| USDOS | U.S. Department of State |
| WHO | World Health Organization |
| WSW | Women Who Have Sex With Women |

1. Introduction

Vilification and social marginalisation of LGBTI people is commonplace across Africa, even in nations that do not criminalise homosexuality¹. However, criminalisation aggravates the situation not only due to possible arrests and criminal prosecution, but also because it reinforces the systemic disadvantage of LGBTI people and acts as an official incitement to or justification of violence against such persons². The criminal codes of all four countries included in this report (Cameroon, Gambia, Ghana and Uganda) contain sections that explicitly or implicitly criminalise homosexuality.

Many Africans believe that homosexuality is “un-African” and has been imported from the West³. In addition to criminalisation by the state, LGBTI people are therefore often ostracised by their own families and communities and are sometimes forced to leave their homes. However, even those who leave their countries often find themselves in situations that are just as bad as the ones they escaped⁴.

African politicians commonly use “us versus them” rhetoric to “other” LGBTI people and describe them as not fully human, let alone full citizens who are entitled to the same rights and privileges afforded to other Africans. This rhetoric has most famously been employed by Zimbabwean president Robert Mugabe⁵, but is also common in other African countries, including Cameroon, Gambia, Ghana and Uganda (see country information below).

Despite these similarities, important differences exist between countries regarding the application of the existing laws, societal attitudes, as well as the ways in which the issue of homosexuality has been politicised.

1.1. The colonial legacy of anti-sodomy laws

Contrary to popular belief, homosexuality in Africa pre-dates colonialism⁶. Whereas sexual relations between people of the same sex took diverse forms depending on local and historical context and were largely tolerated⁷, colonial law introduced the criminalisation of same-sex conduct in African countries⁸.

¹ Kretz 2013, pp. 216-217

² Amnesty International 2008

³ Semugoma et al. 2012

⁴ Kretz 2013, p. 218

⁵ Kretz 2013, pp. 212-213

⁶ Murray and Roscoe 1998

⁷ Epprecht 2009

⁸ Human Rights Watch 12/2008

The colonial administration followed the moralistic views of the Church, which perceived same-sex relationships as an expression of cultural primitivism⁹. Whereas France decriminalised homosexuality in 1791, it imposed anti-sodomy laws on Cameroon and some of its other colonies as a form of social control. France's colonial influence with regard to homosexuality, however, was considerably weaker than the influence exercised by Great Britain¹⁰. Also, the section of the Cameroonian Penal Code that explicitly outlaws homosexuality (by using the term "homosexuality" in contrast to the terms used in British colonial law) was adopted in 1972, after Cameroon had gained independence from France¹¹.

Meanwhile, Great Britain introduced a law criminalising "carnal knowledge against the order of nature" into the Indian Penal Code in 1860 and subsequently imposed it on almost the entirety of the British Empire. Similarly to France, the British colonial legislators used the law for the purpose of social control, believing that "native" cultures needed re-education in sexual mores and were generally in need of European morality¹². In the eyes of the colonisers, these efforts also served to protect themselves from being corrupted by supposedly perverse "native" customs¹³. The anti-sodomy laws were imposed in combination with other laws intended to "civilise" the colonised populations, such as vagrancy laws¹⁴.

Regarding the former British colonies included in this report, it should be noted that whereas Gambia's and Uganda's anti-homosexuality laws are directly derived from the Indian Penal Code imposed by Great Britain, Ghana's law is derived from a draft prepared for Jamaica by the British jurist R.S. Wright and defines "unnatural carnal knowledge" as a misdemeanor rather than a felony. Whereas Wright's draft code was never applied in Jamaica, it became the basis of Ghanaian law¹⁵. Consensual homosexual conduct was decriminalised in the United Kingdom only from 1967 onwards. The British colonies thus gained independence in the 1950s and 1960s with the anti-sodomy laws still in place. Only a few of these now independent states have repealed their colonial-era laws. These laws now stand in conflict with a growing body of international human rights law and several international precedents¹⁶.

Ironically, political leaders, judges, and other public figures of African countries, as well as other former colonies, have commonly defended their countries' anti-sodomy laws as symbols of nationhood and cultural authenticity, arguing that homosexuality had been imported from the West. Acknowledgement of the fact that it was not homosexuality but anti-homosexuality laws

⁹ Amnesty International 25.6.2013, p. 15

¹⁰ Human Rights Watch 12/2008, pp. 6-7

¹¹ Ngwa Nfobin 2014, pp. 89-90

¹² Human Rights Watch 12/2008, pp. 2-5

¹³ *Ibid.*, p. 16

¹⁴ *Ibid.*, pp. 26-31

¹⁵ *Ibid.*, p. 6

¹⁶ *Ibid.*, p. 7

that were introduced through colonialism is still rare among African leaders¹⁷. The public vilification of gays and lesbians and the accusation of “un-Africanness” was launched in the 1990s by Zimbabwe’s president Robert Mugabe who famously referred to homosexuals as “behav[ing] worse than dogs and pigs”¹⁸ and homosexuality as an “immoral” Western import¹⁹. Other African presidents followed and the perception of homosexuality as “un-African” became a commonly held belief among leaders as well as the general public²⁰. Whereas the colonisers believed that laws regulating sexuality were necessary because “native” populations were morally corrupt and could entice Westerners to such corruption, African leaders now in turn perceive the West as threatening to corrupt indigenous standards by exporting homosexuality to Africa²¹.

Christian churches also played a crucial role in the opposition to homosexuality in Africa. Religious leaders have adopted the view of homosexuality as “un-African” as well as “un-Biblical”, despite the fact that Christianity itself had been introduced to Africa by Western missionaries²².

The definition of “carnal knowledge against the order of nature” in the original British legal text remained ambiguous and gave future colonial and post-colonial jurists the possibility of interpreting what these provisions were supposed to punish in practice²³. In addition, these provisions equated consensual and non-consensual homosexual conduct, with both offences being criminalised under the anti-sodomy laws, while the definition of rape was restricted to a man’s rape of a woman. Similarly, there was no distinction made with regard to the age of the participants, meaning that an adult male who had sexual relations with a male child was criminalised under the anti-sodomy law rather than a separate law criminalising statutory rape (“defilement of a child” in the legal text). These provisions not only influenced the status of homosexuals before the law but also led to the linking of homosexuality to rape and pedophilia in the view of the general public²⁴.

Anal examinations to “prove” homosexual conduct also stem from colonialism²⁵. These examinations are still practiced today in a number of African countries (see country information below), despite the unscientific nature of the theories on which they are based as well as the fact that they invade bodily privacy and, when carried out without consent, violate international human rights provisions against torture²⁶. Such requirements to “prove” the offence of sodomy have

¹⁷ Ibid., p. 8

¹⁸ Van Breda 13.10.1995

¹⁹ BBC News 17.11.1999

²⁰ Human Rights Watch 12/2008, pp.9-10

²¹ Ibid., p. 44

²² Ibid., p. 10

²³ Ibid., p. 18

²⁴ Ibid., pp. 18-19

²⁵ Ibid., pp. 31-32

²⁶ Ibid., p. 33

added to governments' tendency to not merely criminalise certain sexual acts but also to establish control over the bodies of suspects as well as to create the criminal identity of the homosexual²⁷.

In addition to "carnal knowledge against the order of nature", the broad offence of "gross indecency", which virtually includes all kinds of non-penetrative sexual acts between two men, was created in British law in 1885 and subsequently imposed on the colonies²⁸. This broader understanding of "unnatural" sexual acts permits state and police harassment on a wider scale than it is the case for "unnatural carnal knowledge"²⁹. Some countries, including Gambia and Uganda, have amended the provision regarding "gross indecency" to also apply to sexual acts between two women³⁰.

In the Penal Code of the Australian colony of Queensland, which came into force in 1901, the category of the "passive" sexual partner, i.e. the one who "permits a male person to have carnal knowledge of him or her against the order of nature" was introduced. It also introduced an independent provision for "attempts to commit unnatural offences", which meant that any sexual act between same-sex partners that did not result in penetration could be viewed as an "attempt". This penal code was the second most influential in African colonies after the Indian Penal Code and was imposed by colonial officials indifferently to the will of Africans³¹. The current laws of both Gambia and Uganda, among other former British colonies, contain these two provisions.

Redefinitions of the colonial anti-sodomy laws in recent decades have generally tended to widen the scope of the law by including more acts that were to be punished, as well as to criminalise not merely sexual acts as such but a certain kind of person³². This has resulted in arrests and attacks of people suspected of being homosexual (including transgender people), independent of whether or not these people actually engaged in criminalised sexual acts (see country information below regarding the application of laws). Even without direct enforcement, anti-sodomy laws announce inequality, increase vulnerability and reinforce second-class status in all areas of life for gays and lesbians as well as other persons suspected to be homosexual³³.

The colonial-era sodomy laws have become broad instruments of social control, singling out people for legal retaliation as well as making them easy victims of other forms of violence and abuse. These laws encourage all of society to join in surveillance, and their impact thus extends far beyond arresting, charging and prosecuting people under the relevant sections of the

²⁷ Ibid., p. 32

²⁸ Ibid., p. 20

²⁹ Ibid., p. 49

³⁰ Ibid., pp. 49-50

³¹ Ibid., pp. 22-23

³² Ibid., p. 25

³³ Amnesty International 2008

countries' criminal codes³⁴. Meanwhile, political leaders have used statements against homosexuals to divert attention from social and economic problems faced by their respective countries. In some cases, they have also made homosexuals into scapegoats for several social ills and perceived moral decay³⁵.

1.2. The significance of current laws criminalising same-sex conduct

Despite the importance of the colonial legacy of anti-sodomy laws, an exclusive focus on this legacy overlooks the energy post-colonial governments have put into keeping these laws in force or adding to them³⁶. The vast majority of African nations have legislated against homosexuality in some way, with penalties ranging from fines, to corporal punishment, to prison terms of varying lengths, up to death penalties³⁷. Anti-homosexuality legislation in Africa is not merely a relic of colonial law-making but has taken on a populist character, with political leaders using the widespread public disapproval of homosexuality to pass stricter laws against homosexuality and thereby increasing their own popularity. Meanwhile, politicians who stand up for some form of legal protection of LGBTI people usually face a strong political penalty for their stances³⁸.

But even if new, tighter laws against homosexuality are not signed into law or are annulled, such as the Anti-Homosexuality Act 2014 in Uganda, politicians who push for these laws can nonetheless improve their own popularity. In addition, such laws can serve as a model for legislation in other countries³⁹. For example, parts of the Ugandan Anti-Homosexuality Act 2014 were copied word by word and adopted in Gambia⁴⁰. Introducing anti-homosexuality legislation can thus be a relatively easy way for politicians to increase their political standing and popularity while causing severe harm to an already marginalised group of people⁴¹.

Nonetheless, Western influence remains important today, as illustrated in the case of American evangelists who export their anti-gay messages to African countries, particularly Uganda, where they influence public opinion and legislation⁴². In addition, Western efforts to promote rights for LGBTI people in Africa are sometimes interpreted as a form of neo-colonialism and can lead to a worsening of the situation in the countries in question⁴³. Some forms of international pressure have been particularly problematic, such as the linking of development aid to LGBTI rights as advocated by British Prime Minister David Cameron and former American Secretary of State

³⁴ Human Rights Watch 12/2008, pp. 52-53

³⁵ Amnesty International 25.6.2013, p. 33

³⁶ The Economist 11.10.2014

³⁷ Kretz 2013, pp. 208-209

³⁸ Ibid., p. 243

³⁹ Ibid., pp. 218-219

⁴⁰ Human Rights Watch 9/2015, p. 53

⁴¹ Kretz 2013, p. 244

⁴² The Economist 11.10.2014

⁴³ Ibid.

Hillary Clinton. Even some LGBTI activists have spoken out against this kind of foreign-backed pushes for decriminalisation. They fear an additional backlash against LGBTI people because politicians as well as the general population might blame them for the cuts in aid⁴⁴. The West thus finds itself in a dilemma regarding the advance of LGBTI rights in Africa and other parts of the world⁴⁵.

In addition, Western media has sometimes been guilty of reinforcing a simplistic dichotomy of a homophobic Africa versus a tolerant West. Ironically, such a perspective is compatible with views of African “traditionalists” who create a similarly simplistic opposition between a traditional Africa and a depraved West. Both positions ignore the considerable variation and debates on homosexuality within Africa and fail to examine the different ways in which homosexuality has been politicised in African countries⁴⁶. The common image of one monolithically homophobic Africa, adopted by both African “traditionalists” and Western observers, is problematic not only because it ignores different points of view and policies within Africa, but also because it overlooks the reality of homophobic attitudes and practices in supposedly tolerant Western countries⁴⁷.

However, instead of merely emphasising that homophobia (rather than homosexuality) is “un-African”, it might be better to focus on the fact that the defence of human rights was and is an important part of anti-colonial, nationalist movements. It is unclear why alternative sexualities should be excluded from this anti-colonial human rights discourse⁴⁸. Western interventions against homophobia in Africa, whether from politicians or activists, that prescribe certain values can easily turn out to be counterproductive. Such interventions should thus always take into account the local context and work in close collaboration with grassroots activists in the countries in question, as these are usually the first to bear the brunt of a potential backlash⁴⁹.

1.3. Particularities of the situation of lesbians and bisexual women

Advocacy for LGBTI rights in Africa has often focused mostly on the concerns of gay men and other men who have sex with men (MSM), while issues particular to lesbian and bisexual women, as well as transgender and intersex people, have been marginalised. Women generally enjoy less autonomy and are subject to greater scrutiny from family, friends and neighbours, which makes it more difficult for lesbian and bisexual women to meet other women⁵⁰.

⁴⁴ Kretz 2013, pp. 213-214

⁴⁵ The Economist 11.10.2014

⁴⁶ Awondo et al. 2012, p. 149

⁴⁷ Ibid., p. 159

⁴⁸ Hoad 2007, p. 80

⁴⁹ Awondo et al. 2012, p. 161

⁵⁰ Amnesty International 25.6.2013, p. 48

As noted by Ugandan feminist scholar Sylvia Tamale, lesbian identity is implicitly erased in Uganda, as well as elsewhere. Within a heteronormative framework, women are still considered passive recipients in sexual encounters and sex that is not penetrative is not regarded as “real” sex. Female sexuality is commonly reduced to women’s reproductive capacities⁵¹. The idea of intimate same-sex relationships between two women, where a dominant male is absent and where women’s sexuality can be defined without reference to reproduction, thus represents a considerable threat to the patriarchal order⁵². As a result, lesbian women often face violence from family members in the private sphere as well as from community members and strangers in the public sphere. In some countries, lesbian women have frequently become victims of so-called “corrective rape”. Male perpetrators rape these women in order to supposedly “cure” them of their sexual orientation and thereby assert their own sense of superiority⁵³. However, the concept of “corrective rape” has been subject to debate, as it removes the violence inflicted on lesbians from the wider context of male violence against women. Women are subject to rape and other forms of male violence regardless of their sexual orientation and (non)conformity with gender norms⁵⁴, not only in Africa but globally⁵⁵.

The existence and legitimacy of bisexuality in women as well as in men is often implicitly erased and bisexual people are generally more invisible than gays and lesbians, in Africa and elsewhere⁵⁶. Bisexual individuals are often believed to be either hetero- or homosexual. If a bisexual person is in a relationship with a person of the opposite sex and/or has children, it is often assumed that the individual in question is heterosexual and thus not discriminated against nor subject to persecution⁵⁷.

In some cases, bisexuals also face discrimination from gays and lesbians. For instance in Uganda, some gays and lesbians (who often self-identify as “kuchu), do not consider bisexuality to be a “real” sexual orientation. “Kuchus” take pride in their own sexual orientation and resist the moral outrage directed at them from mainstream society, which has led some of them to perceive bisexuals as “sellouts”⁵⁸. Information on the status of bisexual people in the four countries included in this report is sparse. This lack of information, however, should not lead to the conclusion that such discrimination and persecution do not take place⁵⁹.

⁵¹ Tamale 2003

⁵² Ibid.

⁵³ Amnesty International 25.6.2013, p. 49

⁵⁴ Ibid., p. 50

⁵⁵ World Health Organization (WHO) 11/2014

⁵⁶ GLAAD n.d.

⁵⁷ Jansen & Spijkerboer 9/2011, pp. 20, 62

⁵⁸ Tamale 2003

⁵⁹ Jansen & Spijkerboer 9/2011, pp. 20, 62

1.4. Particularities of the situation of transgender and intersex people

The particular experience of transgender and intersex people has often be ignored or sidelined⁶⁰. Discrimination and violence against these people take different forms, with transgender people being especially targeted through violence and hate crimes. Perpetrators of such violence can often act with impunity. In addition, transgender individuals commonly experience discrimination with regard to health care due to laws and policies that prevent access to such treatment as well as prejudice and lack of knowledge among health professionals⁶¹. Similar to gays and lesbians, transgender people often experience significant discrimination in employment, education and housing. Some countries, including Gambia and Uganda, have also used legal provisions against same-sex behaviour, cross-dressing, loitering and public nuisance to target transgender people⁶².

Information on the situation of intersex people is sparse. According to SIPD Uganda, an organisation that specialises on issues of intersex individuals, “[m]any people with intersex conditions experience significant stigma and discrimination in Uganda such as humiliation, ostracism, exploratory rape, evictions from accommodation facilities due to superstitions, ritualistic murder of intersex infants, lack of access to healthcare, employment, and education to exclusion from community and family life as well as domestic violence for mothers of such children”⁶³. Intersex persons face unique circumstances and concerns, but these are often confused with issues concerning gender identity and sexual orientation⁶⁴. It is likely that intersex people in other countries face similar challenges as in Uganda, in addition to discrimination that is also faced by transgender and homosexual individuals.

1.5. Violations of international and regional human rights law

Laws criminalising homosexuality stand in conflict with a growing body of international human rights law⁶⁵. This section briefly outlines the ways in which anti-homosexuality laws violate some important international and regional human rights charters and resolutions.

Universal Declaration of Human Rights (UDHR)

The Universal Declaration of Human Rights (UDHR) stipulates that every individual is entitled to the rights and freedoms set forth in this declaration, including in respects of rights to life, security of person and privacy, the right to be free from torture, arbitrary arrest and detention, the right to be free from discrimination and the right to freedom of expression, association and peaceful

⁶⁰ Amnesty International 25.6.2013, p. 53

⁶¹ Ibid., pp. 53-54

⁶² Ibid., p. 54

⁶³ SIPD Uganda n.d.

⁶⁴ The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation [hereinafter The Consortium] 7/2015, p. 13

⁶⁵ Human Rights Watch 12/2008, p. 8

assembly⁶⁶. Article 2 states that everyone is entitled to these rights, “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”⁶⁷.

In June 2011, the Human Rights Council (HRC) in Geneva adopted resolution 17/19, the first United Nations resolution on human rights, sexual orientation and gender identity⁶⁸. Recalling the provisions included in the Universal Declaration of Human Rights, the resolution requested the UNHCR to commission a study documenting discriminatory laws and practices and acts of violence against individuals based on their sexual orientation or gender identity, in all regions of the world, and how international human rights law can be used to end such violence and related human rights violations⁶⁹. Cameroon, Ghana and Uganda were among the 19 countries who voted against this resolution⁷⁰. Central objections to the resolution were the concern that it attempted to impose values that were not universally shared, as well as the (erroneous) assertion that there was no basis in international law for human rights protection on grounds of sexual orientation and gender identity⁷¹. Gambia was not a member of the Human Rights Council in 2011 and therefore did not vote on this resolution.

International Covenant on Civil and Political Rights (ICCPR)

Legislation that criminalises homosexuality violates the International Covenant on Civil and Political Rights (ICCPR). The Covenant, which has been ratified by all countries included in this report, stipulates in Articles 2(1) and 26 that all State Parties shall respect and ensure non-discrimination and equality under the law. It prohibits “discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”⁷². Whereas the Covenant itself does not specifically mention sexual orientation or gender identity, a legal precedent was set by the landmark case of *Toonen v Australia*, in which the HRC recognised that the reference to “sex” was to be interpreted as to include sexual orientation⁷³.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

Legislation against homosexuality and the resulting discrimination and persecution of gays and lesbians by state and non-state actors violates several articles of the Convention on the

⁶⁶ UN General Assembly, Universal Declaration of Human Rights, 10.12.1948

⁶⁷ Ibid.

⁶⁸ United Nations Human Rights Office of the High Commissioner (OHCHR) 9/2012, p. 9

⁶⁹ UN Human Rights Council, Human rights, sexual orientation and gender identity, A/HRC/RES/17/19, 14.7.2011

⁷⁰ Ibid.

⁷¹ Amnesty International 25.6.2013, p. 68

⁷² UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), 16.12.1966

⁷³ *Toonen v Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994)

Elimination of All Forms of Discrimination Against Women (CEDAW)⁷⁴, which has been ratified by all countries included in this report.

For instance, Article 5(a) calls on State Parties to take appropriate measures to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”⁷⁵. The use of discriminatory language and derogatory stereotypes of LGBTI people throughout the media and society at large intensifies discrimination based on sexual orientation or gender identity. Such language reinforces the idea of proscribed gender-specific roles and behaviours, and encourages the criminalisation and abuse of LGBTI people. The absence of government measures to counteract these discriminatory prejudices violates countries’ obligations under the CEDAW⁷⁶.

Similarly to the Human Rights Committee in the case of *Toonen v Australia* (see above), the Committee on the Elimination of All Forms of Discrimination Against Women recommended that legislation criminalising lesbianism be abolished to ensure the human rights of all people without discrimination on the basis of sexual orientation⁷⁷.

African Charter on Human and Peoples’ Rights

The African Charter on Human and Peoples’ Rights (African Charter), which has been ratified by all countries included in this report, prohibits “discrimination of the individual on the basis of distinctions of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status” (Article 2)⁷⁸. It further entitles every individual to equal protection of the law (Article 3), and to respect of their life and the integrity of their person, and prohibits torture and other cruel, inhuman and degrading treatment or punishment (Articles 4 and 5)⁷⁹.

In May 2014, the African Commission on Human and Peoples’ Rights (ACHPR) adopted a resolution on “Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity”⁸⁰. In this resolution, the ACHPR recalled Articles 2, 3, 4 and 5 of the African Charter and condemned the increasing

⁷⁴ Freedom and Roam Uganda (FARUG) & International Gay and Lesbian Human Rights Commission (IGLHRC) [Hereinafter FARUG & IGLHRC] 9/2010

⁷⁵ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 18.12.1979

⁷⁶ FARUG & IGLHRC 9/2010, p. 14

⁷⁷ Committee on the Elimination of All Forms of Discrimination Against Women, Concluding Observations: Kyrgyzstan, UN Doc. A/54/38, 20.8.1999

⁷⁸ African Charter on Human and Peoples’ Rights [Hereinafter African Charter] 1981

⁷⁹ Ibid.

⁸⁰ African Commission on Human and Peoples’ Rights (ACHPR) 5/2014

incidence of violence and other human rights violations on the basis of imputed or real sexual orientation or gender identity, especially systemic attacks by state or non-state actors. It called on State Parties to ensure that human rights defenders of sexual minorities can work in an environment free of stigma, reprisals or criminal prosecution. It also urged states to end all acts of violence and abuse against persons on the basis of their imputed or real sexual orientation or gender identity, including the adoption and implementation of laws that prohibit and punish such violence by state and non-state actors alike. States were urged to ensure proper investigation and persecution of perpetrators of violence and to establish judicial procedures responsive to the needs of victims⁸¹.

In addition to the above mentioned instruments and regulations, other conventions are also relevant to the status of LGBTI people, such as the Convention relating to the Status of Refugees, the Convention against Torture, the International Covenant on Economic, Social and Cultural Rights, as well as the Convention on the Rights of the Child⁸².

⁸¹ Ibid.

⁸² United Nations Human Rights Office of the High Commissioner (OHCHR) 9/2012

2. Cameroon

2.1. The legal framework

Criminalisation of same-sex relations

Article 347 bis of the Cameroonian Penal Code, adopted in 1972, states that sexual relations with a person of the same sex are punished with a prison term of six months to five years and with a fine of 20'000 to 200'000 francs [approximately 30 to 300 €]⁸³.

According to the newest available information, Article 347 bis was still in force at the time of writing this report⁸⁴.

Laws regarding rape, sexual assault and offences against minors

Laws regarding rape, sexual assault and offences against minors are applied differently in cases where the victim is of the same sex as the perpetrator. Article 296 of the Penal Code criminalises rape but only applies to female victims⁸⁵. Perpetrators of rape thus receive differential treatment depending on the sex of their victim. Rape of a female victim is punished with a prison sentence of five to ten years, whereas rape of male victim is prosecuted under the homosexuality law (Article 347 bis) and thus carries a lighter penalty, six months to five years. In this way, consensual and non-consensual homosexual conduct are equated not only by law enforcement officials but also by the general public⁸⁶.

Whereas Article 346 of the Penal Code criminalises “indecent offence against a minor of less than 16 years” and is formulated in a gender-neutral manner, Article 347 punishes “indecent offence against a minor of 16 to 21 years” in certain cases. Namely, in cases of rape, sexual assault or homosexuality (Articles 295, 296 and 347 bis, respectively), the penalties provided under these articles are doubled if they are committed against a minor of 16 to 21 years. Thus consensual sexual intercourse between an adult and a minor of 16 to 21 years of the opposite sex is legal, whereas consensual sexual intercourse between an adult and a person of the same sex between 16 and 21 years is criminalised on two levels, with prison sentences from one up to ten years⁸⁷.

⁸³ FIDH 2/2015, p. 8 (English translation); the original French text can be found at <http://www.juriafrica.com/document/11417/art347-bis-code-penal.html> (accessed 6.10.2015)

⁸⁴ Erasing 76 Crimes 17.8.2015

⁸⁵ Cameroonian Penal Code, Article 296, <http://www.juriafrica.com/document/11365/art-296-code-penal.html> (accessed 6.10.2015)

⁸⁶ Human Rights Watch 21.3.2013, pp. 11-12

⁸⁷ Human Rights Watch 21.3.2013, p. 12; Cameroonian Penal Code, Article 346, <http://juriafrica.com/document/11415/art-346-nouveau-code-penal.html> (accessed 6.10.2015); Cameroonian Penal Code, Article 347, <http://juriafrica.com/document/11416/art-347-nouveau-code-penal.html> (accessed 6.10.2015)

Conflict of the law with the Constitution of Cameroon

Article 347 bis violates the Constitution of Cameroon. The Preamble to the Constitution confirms the State's attachment to the fundamental rights set out in the Universal Declaration of Human Rights, the United Nations Charter, the African Charter on Human and Peoples' Rights as well as the related international agreements that have been ratified by Cameroon. Thereby the Constitution guarantees "non-discrimination and equal rights for all citizens, freedom and security for all, a ban on arbitrary detention, torture, and inhumane and degrading treatment, the right to life, the right to justice and to freedom of association, assembly and expression"^{88,89}. Article 45 of the Constitution stipulates that international law takes precedence over national law in case of conflict^{90,91}.

In addition, Article 347 bis is not valid due to the manner of its adoption. It was adopted in 1972 by a presidential decree of then President Ahmadou Ahidjo, even though the Constitution of Cameroon gives the exclusive right to define crimes and offences to the Legislative Power^{92,93}. Article 347 bis thus violates the principle of separation of powers common to all democratic countries⁹⁴.

The Ministry of Justice began a process of revising the Penal Code in 2010. A first draft revision published in 2011 left Article 347 bis intact. The minister of justice was replaced shortly afterwards and according to justice officials the draft is being reworked under the new minister. However, no timeline has been given for the revision⁹⁵.

Universal Periodic Review (UPR) in 2013

During the second cycle of the Universal Periodic Review (UPR) in 2013, a process carried out under the auspices of the United Nations Human Rights Council (HRC), Cameroon rejected all recommendations on decriminalising same-sex sexual acts and stated that homosexuality should be considered an activity contrary to public decency ("bonnes mœurs") and thus should be punished. The country maintained that the criminalisation of homosexuality did not constitute a violation of human rights, arguing that homosexual practices were contrary to current legislation as well as to what Cameroonian society still considers to be proper moral conduct.

Recommendations to take measures to combat prejudice, stigmatisation, discrimination and violence against individuals on the basis of their sexual orientation were also rejected. The only

⁸⁸ FIDH 2/2015, p. 7

⁸⁹ Constitution of the Republic of Cameroon, 1972, Preamble, Paragraph 2

⁹⁰ FIDH 2/2015, p. 7

⁹¹ Constitution of the Republic of Cameroon, 1972, Article 45

⁹² FIDH 2/2015, p. 8

⁹³ Constitution of the Republic of Cameroon, 1972, Article 26

⁹⁴ FIDH 2/2015, p. 8

⁹⁵ *Ibid.*, p. 8

recommendation regarding homosexuality that was accepted was the investigation of police violence suffered by individuals due to their sexual orientation⁹⁶.

2.2. Application of the law

Despite the fact that Article 347 bis had been adopted already in 1972, it is not clear how extensively the article was enforced up until 2005, due to the lack of a monitoring group that consistently tracked arrests.

On 21st May 2005, police raided a nightclub in the Cameroonian capital Yaoundé and arrested 32 people on homosexuality charges. On Christmas 2005, Archbishop Emeritus of Yaoundé, Victor Tonyé Bakot, held a sermon in which he condemned homosexuality and called it a “perversion”. Shortly after, several newspapers started exposing public personalities as homosexual. Most famously, one of these newspapers published a list of “The Top 50 Presumed Homosexuals in Cameroon”, equating their failings, including corruption, with their presumed sexual orientation. More arrests of suspected homosexuals followed and a climate of extreme hostility toward LGBTI people and those perceived as such developed in the country⁹⁷. A report published by Human Rights Watch in 2013 stated that Cameroon prosecuted people on the basis of their supposed sexual orientation more aggressively than almost any country in the world. Convictions were often made on the basis of little to no evidence and accused individuals were frequently subject to torture and ill-treatment⁹⁸.

Despite reports of arrests having dropped significantly in 2014, authorities continued to arrest suspected LGBTI people. Reports about extortion of money from presumed LGBTI individuals by the police as well as civilians increased⁹⁹. According to a fact-finding mission led by the International Federation for Human Rights (FIDH), Cameroon continued to prosecute, sentence and incarcerate large numbers of persons based on Article 347 bis in 2014¹⁰⁰. The law explicitly only prohibits sexual acts between persons of the same sex and thus requires proof of such a sexual act. In practice, however, the law is applied more widely, including arresting and convicting persons on the mere basis of their real or alleged homosexuality, without any sexual act being reported. Homosexuality is deduced from characteristics such as appearance, hair style and even drinking habits¹⁰¹. Prosecutions are almost never based on actual evidence of homosexual conduct but rather on suspicion alone and are thus not in agreement with Cameroonian law¹⁰².

⁹⁶ UN Human Rights Council, A/HRC/24/15/Add.1, 2013, pp. 15-19, 22

⁹⁷ Human Rights Watch 4.10.2010, pp. 10-12

⁹⁸ Human Rights Watch 21.3.2013, p. 1

⁹⁹ U.S. Department of State [Hereinafter USDOS], Cameroon 2014 Human Rights Report, 25.6.2015, p. 33

¹⁰⁰ International Federation for Human Rights [Hereinafter FIDH] 2/2015, p. 8

¹⁰¹ Ibid., p. 8

¹⁰² Amnesty International 25.6.2013, pp. 24-25

Suspicious of homosexuality are often based on individuals' refusal to conform to gender norms rather than their actual sexual orientation¹⁰³.

Individuals arrested on the basis of Article 347 bis reported being beaten and subjected to anal examinations by medical doctors to "prove" their homosexual conduct. Forced anal examinations are a form of sexual assault and are prohibited under international law. Individuals are often held without charge for than 48 hours (the maximum time in custody allowed by law), and some have been imprisoned for up to three years without charge or trial¹⁰⁴.

In a report on the human rights situation in Cameroon in 2013, the National Commission for Human Rights and Freedoms (CNDHL), contradicted allegations made by Amnesty International and stated that "there is nothing in Cameroon as a consistent repression of LGBTI for their sexual orientation. There are no cases of individuals harassed in their homes for related reasons"¹⁰⁵. However, it should be noted that the CNDHL is a state institution and lacks independence from the Executive Power, despite having been created as an independent body. In addition, there was distrust between the CNDHL and national organisations defending the rights of LGBTI people¹⁰⁶.

Some of the individuals that were arrested during 2014 were sentenced to prison terms up to five years while others were arbitrarily detained and later released¹⁰⁷.

In July 2015, the blog "Erasing 76 Crimes" reported that the number of prosecutions and convictions for homosexuality had dropped significantly in 2014 and 2015. Whereas Article 347 bis has not been repealed, it is now less frequently used against individuals simply for being gay or lesbian. In Yaoundé, prosecutions for homosexuality dropped by 58% from 2012 to 2014, while the number of convictions fell from 16 to 4. Also in Douala, numbers have decreased¹⁰⁸. However, the decrease in prosecutions and convictions is attributed to the advocacy and intervention by LGBTI rights groups, LGBTI-friendly lawyers, as well as international institutions, rather than to substantial changes of the attitudes and behaviour of Cameroonian government officials¹⁰⁹.

Whereas the conditions have improved in Cameroon's major cities, in rural areas several suspected homosexuals remain in prison with no legal representation due to the lack of LGBTI organisations in these areas, as Patience Mbeh, LGBTI director at the Network of Human Rights Defenders in Central Africa (REDHAC) told "Erasing 76 Crimes"¹¹⁰.

¹⁰³ Ibid., pp.47-48

¹⁰⁴ Ibid., p. 23

¹⁰⁵ National Commission for Human Rights and Freedoms (CNDHL) 2014, pp. 95-96

¹⁰⁶ FIDH 2/2015, pp. 14-15

¹⁰⁷ Amnesty International 25.2.2015, p. 96

¹⁰⁸ Erasing 76 Crimes 28.7.2015

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

In November 2013, two women were arrested and jailed on homosexuality charges in Ebolowa in southern Cameroon. After several months without legal representation, their case was taken up by Michel Togu , one of the few lawyers in Cameroon that accepts LGBTI individuals and their defendants as clients. After nine months of awaiting trial, they were convicted under Article 347 bis on 14th August 2014 and both received a two-year prison sentence, which was converted into a three-year suspended sentence due to the advocacy of their attorney. The two women were released from prison on 22nd August 2014¹¹¹.

In general, there has been considerable debate as to whether Cameroon has become more tolerant toward homosexuality. While arrests have decreased, harassment of LGBTI people is still common. According to a report by Alternatives Cameroun, a Cameroonian human rights organisation that deals with LGBTI rights, there were still many cases of scams, blackmail, entrapment and physical violence in 2014. Victims did often not report these crimes to the police for fear of being arrested for homosexuality¹¹².

Security forces were sometimes complicit in these cases. On 24th June 2015, Jules Eloundou, president of the LGBTI rights group Humanity First Cameroon, became victim of an extortion attempt by a police sergeant and was briefly detained at Yaound -Nsimalen airport. The sergeant insulted and threatened Eloundou and his friends, labelling them “dirty fags” and stating that “I can kill you if I want to”. None of the three victims yielded to the police demands despite being subject to physical violence by the police sergeant. They were released after a few hours and filed a complaint¹¹³. Information on how the complaint was handled by the authorities was not available at the time of writing this report.

In February 2015, Jacques, the president of ACODEVO, an LGBT organisation based in the Cameroonian town of Kribi, was blackmailed by a community member and denounced as homosexual to the police. Jacques was detained and had to undergo intrusive anal examinations. The doctors subsequently “confirmed” Jacques’ homosexuality¹¹⁴. Further information about the case could not be found at the time of writing this report.

In March 2015, Barrister Walter Atoh and his family were forced to leave their home due to continuing death threats. The cause for the threats was Atoh’s legal representation of a man sentenced to nine years in prison for same-sex relations with a minor between 16 and 21 years of age. Atoh had appealed the conviction of the man on the basis of procedural irregularities during

¹¹¹ Erasing 76 Crimes 24.8.2014

¹¹² Alternatives Cameroun 2015, p. 5

¹¹³ Erasing 76 Crimes 25.6.2015

¹¹⁴ Erasing 76 Crimes 14.4.2015

the trial. Atoh is currently residing in London but vows to return to Cameroon to pursue the case¹¹⁵.

In general, some LGBTI people are more vulnerable than others to discrimination, harassment and violence by state authorities, due to their economic situation, class, caste, sex or race¹¹⁶. The ability to evade or pay off law enforcement officials varies greatly depending on the individual's economic status. Poorer LGBTI individuals are more vulnerable in case of arrest and are less likely to access health care¹¹⁷. Some individuals accused of homosexuality lack legal representation and process violations that occur in cases against them often do not come to light¹¹⁸.

2.3. Treatment by state actors

Position of political actors on LGBTI

After the publication of lists of supposed homosexual public figures by several Cameroonian newspapers in 2006, President Paul Biya criticised these publications, emphasising the importance of respecting people's privacy. At the same time, however, the Cameroonian authorities started to arrest and prosecute people suspected of homosexuality¹¹⁹. In December 2013, President Biya said that "attitudes can change in one direction or the other but for the time being [homosexual relations] are an offence". He encouraged "homosexuals and their defenders working for the decriminalisation of homosexual practices in Cameroon not to lose hope"¹²⁰. In April 2014, he made a commitment "to work to stop the arrests of people on the basis of their supposed sexual orientation", according to Cameroonian activists. He ordered the Cameroonian police to stop arresting people on the basis of their sexual orientation¹²¹. Despite this commitment by the president, the Cameroonian authorities continued to arrest suspected LGBTI individuals in 2014.

Political leaders commonly use public opposition to homosexuality to justify the government's enforcement of Article 347 bis. Minister of Communication, Issa Tchiroma, stated on several occasions that the values of Cameroonian people were rooted in their religious beliefs and that neither Christianity nor Islam condoned homosexuality. Thus the government's position was to enforce the law against homosexual acts¹²². Violations of the rights of LGBTI people are

¹¹⁵ Erasing 76 Crimes 9.10.2015

¹¹⁶ Amnesty International 25.6.2013, pp. 36-37

¹¹⁷ Ibid., pp. 62-63

¹¹⁸ Human Rights Watch 21.3.2013, p. 3

¹¹⁹ Awondo et al. 2012, p. 151

¹²⁰ FIDH 2/2015, p. 10

¹²¹ San Diego Gay & Lesbian News 4.6.2014

¹²² iCameroon 24.1.2014

considered moral and necessary by the government as well as the Cameroonian society¹²³. Issa Tchiroma also criticised the international media attention on the Lembembe case (see paragraph 2.4), arguing that journalists and civil rights groups had “launched attacks on our nation, dragging its image into the mud”¹²⁴. Furthermore, he denied the existence of discrimination and persecution of homosexuals in Cameroon¹²⁵. He repeated the same statements after the publication of a documentary on the treatment of homosexuals in Cameroon by France 24 in 2014¹²⁶.

Registration of organisations

Registration of organisations for the rights of LGBTI people is met with considerable obstacles. Even though the law does not prohibit the registration of such associations, in practice the conduct of state officials impedes registration to such a degree that there are still no organisations that are officially devoted to the defence of the rights of LGBTI people in Cameroon¹²⁷. Nonetheless, there are several organisations that do work on LGBTI issues but do so unofficially¹²⁸.

Freedom of expression, assembly and association

While there is no specific law that criminalises associations to protect the rights of LGBTI persons in Cameroon, in practice the freedom of association is far from implemented in the country¹²⁹. For instance, on 27th March 2012, a workshop held in Yaoundé on the rights of LGBTI people was disrupted by a self-confessed anti-LGBTI group called the Rally for Cameroonian Youth. Following the disruption, government officials prevented the continuation of the workshop and security forces arrested the organiser and detained him for several hours¹³⁰. In August 2013, the same association organised a rally in Yaoundé calling for stricter enforcement of anti-gay laws. More than 100 young people attended the rally and posted anti-gay signs on supposed gay-friendly bars as well as several school buildings. In pamphlets used at the rally, homosexuality was referred to as a “a crime against humanity and a serious violation of human rights”¹³¹.

Another example is the stifling of academic freedom with regard to issues concerning sexual orientation and gender identity issues, as reported by Dr. Basile Ndjio from the University of

¹²³ IGLHRC 6/2010, p. 2

¹²⁴ PinkNews 19.7.2013

¹²⁵ Africa Review 22.7.2013

¹²⁶ Cameroun Online 24.1.2014

¹²⁷ FIDH 2/2015, p. 11

¹²⁸ Ibid., pp. 19-22

¹²⁹ Ibid., pp. 7-8, 11

¹³⁰ Amnesty International 25.6.2013, p. 32

¹³¹ Huffington Post 21.8.2013

Douala. Research on homosexuality is very difficult to conduct in Cameroon and is considered a taboo subject by many scholars¹³².

2.4. Treatment by non-state actors

Public opinion on homosexuality

According to an article published by The Nation, public opinion polling in Cameroon is generally difficult to obtain¹³³. LGBTI activists have stated that the Cameroonian public generally supports the criminalisation of homosexuality¹³⁴. Cameroon was not included in the 2014 study published by the Pew Research Center that measured, among other issues, public attitudes toward homosexuality in 40 countries¹³⁵. A 2007 Gallup poll on perceived acceptance of homosexuals found that 84% of Cameroonians considered their country “not a good place” for homosexuals¹³⁶.

In 2015, an online gay community called “Planet Romeo” published the results of an online survey carried out in cooperation with the Johannes Gutenberg University of Mainz. The survey measured gay men’s perception of public opinion toward homosexuality, their experience of public behaviour toward gay men, and the life satisfaction of gay men. These three indicators were combined to create a Gay Happiness Index, ranking countries according to the level of happiness of gay men. Cameroon occupied position 120 out of the 127 countries included in the study¹³⁷.

The idea of homosexuality as a deviant behaviour imported from the West has become widespread, partly due to the fact that defenders of LGBTI rights have received financial support from abroad. Associations that defend the rights of LGBTI people have been accused of having purely financial motives, i.e. wanting access to fast and easy money¹³⁸. Homosexuals are believed to be agents of Western cultural imperialism. Homosexuality is then associated with other problems blamed on Western support of neo-colonial elites, such as impoverishment, underdevelopment and clientelism. Consequently, homosexuals have become scapegoats for a number of social evils and the fight against homosexuality is often interpreted as an act of patriotism¹³⁹.

¹³² Amnesty International 25.6.2013, pp. 38-39 (Dr. Basile Ndjio, University of Douala)

¹³³ The Nation 4.3.2014

¹³⁴ Ibid.

¹³⁵ Pew Research Center 15.4.2014

¹³⁶ Gallup 1.11.2007

¹³⁷ Planet Romeo 5/2015

¹³⁸ FIDH 2/2015, p. 19

¹³⁹ Gueboguo & Epprecht 2011, pp. 103-104

While the perception of homosexuality as a foreign import is common across African countries, the linking of homosexuality to witchcraft as well as secret associations such as Freemasons, and the image of the homosexual as a powerful phalocrate is more particular to Cameroon¹⁴⁰.

Accusations of homosexuality have also become a convenient way for the general population to voice its dissatisfaction with the regime. The political elite has had difficulties to defend itself against such accusations. The publication of newspaper articles listing supposed homosexual public figures (see below) led to determined attacks on homosexual practices by the authorities, partly in order to distance themselves from such suspicions¹⁴¹.

Harassment, discrimination and persecution of LGBTI people

Sometimes family members denounce LGBTI individuals to their larger family and community, as was the case for Aris, a young gay man from Makénééné, a village on the border between the Centre Region of Cameroon and the West Region. Aris was exposed as homosexual by his brother and his cousin in February 2015. His whole family began to shun him and he was expelled from the family home and found himself homeless and without food. This situation forced him to stop his studies at the University of Yaoundé. He is now trying to find work and rebuild his life¹⁴².

On 30th June 2015, burglars broke into the home of Maximilienne Ngo Mbe, executive director of the Network of Human Rights Defenders in Central Africa (REDHAC) in Douala, stealing documents and computers. REDHAC documents were clearly the target of the burglars as other parts of the house were hardly visited¹⁴³. REDHAC headquarters in Douala have also been the target of burglars on five different occasions, with the most recent having taken place in November 2015¹⁴⁴. Ngo Mbe has frequently received death threats and in April 2013, unidentified assailants attempted to abduct her son from school. In September 2012, men in Cameroonian security force uniforms kidnapped and raped her niece, an attack which Ngo Mbe believes to be a punishment for her human rights work¹⁴⁵.

In July 2015, Maxime, a 26-year old man living in the Mimboman neighbourhood of Yaoundé, was forced to leave his home because his landlord's brother suspected him of homosexuality. He was also evicted from his workplace due to the threats he received. With assistance from the Cameroonian Foundation for Aids (CAMFAIDS), he filed a complaint at the local police station. A hearing was held but the police investigator demanded that Maxime provide a certificate

¹⁴⁰ Awondo et al. 2012, p. 152

¹⁴¹ Awondo et al. 2012, p. 151

¹⁴² Erasing 76 Crimes 8.4.2015

¹⁴³ Erasing 76 Crimes 2.7.2015

¹⁴⁴ Erasing 76 Crimes 4.11.2015

¹⁴⁵ Human Rights Watch 1.7.2013

proving that he is not homosexual. Due to his financial situation, Maxime was not able to hire a lawyer to defend him and the investigation could not proceed. He is currently residing in a safe house run by an LGBTI organisation. His business is still defunct and he has no income¹⁴⁶.

In October 2015, the programme director of CAMFAIDS, Joshua Mbarga, was targeted in a murder attempt that grew out of a robbery in his home in Yaoundé. The alleged attacker, Mbara Salle, had broken into the house and when discovered by Mbarga, he tried to suffocate him with a pillow. Mbarga lost consciousness and was stripped of 47'000 francs [approximately 71 €], a laptop, his phone and other personal items. During the investigation of the case, the Salle accused Mbarga of having proposed to have sex with his, Salle's, brother. This claim changed the course of the investigation and the investigators started to question Mbarga about his homosexuality. When Salle was interviewed by television journalist he said that "I had come to kill him, this homosexual, because that is the fate that all homosexuals deserve". He was arrested on assault charges¹⁴⁷. Newer information on the case was not available at the time of writing this report.

In 2014, professional athlete Thierry Essamba, Cameroon's record holder in the 110-meter hurdles, was expelled from the national team due to his sexual orientation. Shortly after, his family evicted him from his home, leaving him with no means of support. He remained excluded from competition in 2015. Due to his problematic financial situation, he received aid from an international organisation for the protection of human rights¹⁴⁸.

A study published by the International Gay And Lesbian Human Rights Commission (IGLHRC) in 2011 found that the most common form of blackmail and extortion that homosexual people experience was the threat of being exposed to their families. Being ostracised by one's family is often very problematic in the Cameroonian context due to minimal social welfare and a strong reliance on extended families and kin networks¹⁴⁹.

The belief that simply being homosexual is a way to make money ("nkouandengué brings wealth") exists not only among heterosexuals but also within the Cameroonian homosexual scene itself. This belief makes supposed homosexuals common targets for blackmail and extortion¹⁵⁰. The study found that the most common threat in such cases was to expose the victims to their families followed by the threat of disclosure to the police. These threats were often accompanied by verbal aggression, the systematic confiscation of material goods of the victim or the demand to submit to non-consensual sex. In some cases, the victims were ordered to write down a version of the facts

¹⁴⁶ Erasing 76 Crimes 22.9.2015

¹⁴⁷ Erasing 76 Crimes 28.10.2015

¹⁴⁸ Erasing 76 Crimes 15.9.2015

¹⁴⁹ Gueboguo & Epprecht 2011, pp. 97-98

¹⁵⁰ Ibid., pp. 95-96

that (falsely) admits a situation which incriminates them. Such letters were then used to extract money from the victim on an ongoing basis¹⁵¹.

The role of the media

The media has played an important role regarding the spread of homophobia in Cameroon since 2006, when several newspapers started exposing public figures as homosexuals¹⁵². A common theme in media articles was that job applicants had been forced into homosexual acts. This implied that elite persons were taking advantage of the willingness of unemployed youth to do anything for a job, including subjecting themselves to homosexual “initiation”¹⁵³. In contrast, articles in other newspapers questioned the journalistic integrity of those who published material that violated the privacy of individuals and was based solely on rumours¹⁵⁴.

According to a fact-finding mission led by the FIDH in 2014, Cameroonian newspapers still regularly print articles that “assimilate homosexuality to witchcraft, disease, pedophilia and rape, even a sectarian aberration of freemasonry that comes from Western countries”. Thereby the media transmits feelings of hate and exclusion toward LGBTI people and the defenders of their rights. Journalists who publicly support the rights of LGBTI people are rare due to the difficulties they encounter, including the negative attitude toward homosexuality of their superiors as well as the threats they would receive. Only two journalists have spoken out explicitly in favour of LGBTI rights in public¹⁵⁵. One of them, Eric Ohena Lembembe, was found dead in his home in Yaoundé on 15th July 2013¹⁵⁶. Lembembe had been beaten to death. His neck and feet were broken and his face, hands and feet burned. The investigation of Lembembe’s murder was conducted in an irregular and superficial manner, the focus being mainly put on his and his colleagues’ sexual orientation¹⁵⁷.

Also the radio mostly follows the position of the government and the general population, otherwise it could be closed for “broadcasting information that is considered subversive”¹⁵⁸.

In 2015, the privately owned television station “Canal 2 International” was accused of “promoting homosexuality” due to a television series that included a scene of two women kissing. Viewers were said to be shocked by the airing of this scene. The “Ligue camerounaise des

¹⁵¹ Ibid., pp. 97-101

¹⁵² Human Rights Watch 4.11.2010, p. 11

¹⁵³ Awondo et al. 2012, p. 150

¹⁵⁴ Ibid., p. 152

¹⁵⁵ FIDH 2/2015, pp. 16-17

¹⁵⁶ Amnesty International 25.2.2015, p. 3

¹⁵⁷ FIDH 2/2015, pp. 24-28

¹⁵⁸ Ibid., p. 17

consommateures” (Lcc) addressed a letter to the owner of the station, asking him to suspend the series. The station had already been accused of “promoting” homosexuality in 2013¹⁵⁹.

The role of religious leaders

The Catholic Church has been another important actor with regard to the spread of homophobic attitudes in Cameroon. In 2005, Archbishop Emeritus of Yaoundé, Victor Tonyé Bakot, condemned homosexuality and called it a “perversion”¹⁶⁰. According to several sources contacted by Amnesty International, this sermon was one of the main causes for the rising levels of harassment, discrimination and violence against LGBTI people and their defenders since 2005¹⁶¹. In 2012, the same archbishop called same-sex marriage a serious crime against humanity and stated that “we need to stand up to combat it with all our energy”¹⁶².

Similarly, the new Archbishop of Douala, Samuel Kleda, has called for war against homosexuality and referred to it as an “abomination”¹⁶³. Despite pressures from international associations, the Church maintained that homosexuality was a “practice against nature” and should be condemned on a moral basis as well as on the basis of Cameroonian culture and law¹⁶⁴. In an interview in November 2014, the current Archbishop of Yaoundé, Jean Mbarga, voiced his opposition against homosexuality and stated that it was urgent to defend the heterosexual model of the family as an ideal¹⁶⁵. Cardinal Christian Tumi, Archbishop Emeritus of Douala, has frequently denounced homosexuality as a sin and a crime against humanity¹⁶⁶.

According to Alice Nkom, president of the Association for the defence of homosexuals (ADEFHO), the situation has improved since Pope Francis’ statements on homosexuality. For example Cardinal Christian Tumi, who used to condemn homosexuality frequently in the Cameroonian media, now remains silent on the topic. Pope Francis has been named an honorary member of ADEFHO¹⁶⁷.

2.5. Access to health care services

UNAIDS identifies gay men and other men who have sex with men (MSM) as a key population that should be specifically targeted in HIV prevention work¹⁶⁸. Anti-homosexuality legislation restricts the ability of LGBTI people to access health care and prevents governments from

¹⁵⁹ Camerpost 16.7.2015

¹⁶⁰ Human Rights Watch 4.11.2010, p. 11

¹⁶¹ Amnesty International 25.6.2013, pp. 44-45

¹⁶² Reuters 25.12.2012

¹⁶³ Camerpost 10.7.2015

¹⁶⁴ Ibid.

¹⁶⁵ Camerpost 25.11.2014

¹⁶⁶ The Cameroon Daily Journal 3.11.2014

¹⁶⁷ Association for the defense of homosexuals (ADEFHO) n.d.

¹⁶⁸ UNAIDS 2014

addressing problems that disproportionately affect members of the LGBTI community¹⁶⁹. According to the blog “Erasing 76 Crimes”, LGBTI people in Cameroon still receive almost no substantial prevention funds or funding for access to needed medical services. While the Cameroon National Association for Family Welfare (CAMNAFAW) receives a grant from the Global Fund which should cover HIV prevention work and access to medical care targeted at gay men and other MSM, in practice the organisation has so far failed to spend a large share of the funds allocated to that work¹⁷⁰.

Amnesty International reported in 2013 that LGBTI people in Cameroon are often reluctant to seek testing or treatment for HIV/AIDS due to fear of the doctors breaching confidentiality and denouncing them as homosexuals to their families and members of community¹⁷¹.

2.6. The situation of WSW, transgender and intersex people

While most of the individuals arrested for homosexuality in Cameroon are gay men, also lesbians have been arrested and subjected to abuse and brutality by the police as well as by members of the community¹⁷². In addition to their sexual orientation, lesbians are also discriminated on the basis of their sex. Women in general have less autonomy than men and are scrutinised by family, friends and neighbours. The lower likelihood of lesbians being arrested in public places in comparison to gay men is partly due to their less public lives. Within the family, women are particularly vulnerable to abuse if family members suspect them to engage in same-sex conduct. This includes physical violence as well as separating lesbian mothers from their children. These women often refrain from filing complaints for abuse because they risk being charged under the anti-homosexuality laws¹⁷³.

On 18th October 2014, three women in Yaoundé became victims of so-called “corrective rape” by four men who thought they were lesbians. One of the men threatened to report them to the police due to their supposed homosexuality. The women did not press charges against the men for fear that their families would consider them “spoiled” by the rapes¹⁷⁴.

Another case of “corrective rape” took place in November 2014 in Yaoundé. The victim reported the rape despite the attacker’s threat to report her homosexuality to the police. The alleged rapist was briefly detained but released after a few hours. No charges were filed against him¹⁷⁵.

¹⁶⁹ Amnesty International 25.6.2013, p. 58

¹⁷⁰ Erasing 76 Crimes 9.7.2014

¹⁷¹ Amnesty International 25.6.2013, p. 59

¹⁷² Ibid., p. 29

¹⁷³ Ibid., pp. 48-53

¹⁷⁴ Erasing 76 Crimes 11.2.2015

¹⁷⁵ Ibid.

According to the blog “Erasing 76 Crimes”, transgender people are becoming more visible in Cameroon, despite the legal repression of homosexuality. While there is no law in Cameroon that addresses issues of gender identity, transgender people are often automatically labelled as homosexuals and thus face similar repercussions¹⁷⁶.

Naomi and Delores, two transgender women from Yaoundé, have become well-known in the city during the past years. Both have repeatedly been victims of public attacks and assaults. In 2011, both of them were convicted for homosexuality and sentenced to the maximum penalty, five years in prison and 200'000 francs [approximately 300 €]. In Delores' case, the judge concluded that she was homosexual because she drinks Bailey's liqueur, which he described as a woman's drink¹⁷⁷. Both verdicts were annulled in January 2013¹⁷⁸.

On 1st October 2014, seven transgender people, including Naomi and Delores, were arrested on homosexuality-related charges after a raid on a home and detained at the Kondengui police station in Yaoundé. Neighbours had reported them to the police because they suspected them of homosexuality¹⁷⁹. They were detained for several days and then released, due to advocacy by their attorneys, Michel Togué and Alice Nkom, as well as president of Lawyers Without Borders, Saskia Ditisheim. Officials stated that they would remain under close observation and would be re-arrested and put on trial if they engaged in “any deviant behaviour”¹⁸⁰. In addition to arresting individuals on suspected homosexuality, the police committed two more procedural errors in this case, namely the home invasion, which is illegal according to the Constitution of Cameroon, and the detention of arrestees for more than 48 hours¹⁸¹.

On 19th January 2015, Delores was physically assaulted and robbed by a group of 15 people armed with stones and clubs. She suffered several injuries, including a swollen eye and a dislocated leg¹⁸².

Keysha, an intersex person from Yaoundé who presents in a feminine way, is also well known by the residents of the city. She would like to undergo sex assignment surgery abroad, as the medical technology in Cameroon does not allow such procedures¹⁸³. Neither does Cameroon authorise revised birth certificates for transgender or intersex people¹⁸⁴.

¹⁷⁶ Erasing 76 Crimes 17.12.2014

¹⁷⁷ Ibid.

¹⁷⁸ Erasing 76 Crimes 6.10.2014

¹⁷⁹ Ibid.

¹⁸⁰ International Business Times 10.10.2014

¹⁸¹ Erasing 76 Crimes 6.10.2014

¹⁸² Erasing 76 Crimes 20.1.2015

¹⁸³ Erasing 76 Crimes 17.12.2014

¹⁸⁴ Ibid.

2.7. Protection by the government and internal flight alternative

In cases where LGBTI people or their defenders have filed complaints with the authorities for harassment, discrimination, blackmail, threats to their lives, and violence, authorities have remained inactive and afforded no protection to the targeted individuals and associations¹⁸⁵. The investigation of the murder of Eric Ohena Lembembe has been viewed as symptomatic for the indifference of the Cameroonian judiciary in cases of violence against homosexuals. As of July 2015, two years after Lembembe's death, the judicial investigation case remained at a standstill, the perpetrators have still not been brought to justice¹⁸⁶. More recent information on this particular case could not be found at the time of writing this report.

When LGBTI people seek protection from abuse in their communities, police officers fail to protect these individuals. Police officers not only discriminate against LGBTI individuals but also engage in harassment and violence against them¹⁸⁷. The threat of arrest for homosexual conduct can deter LGBTI individuals from reporting crimes committed against them inside or outside of the home. Abuse of LGBTI people by police and prisoner officers is common and those committing the abuse have done so with impunity¹⁸⁸.

The Cameroonian authorities do not show any intent of fighting the persecution of LGBTI people and their defenders. In some cases, the police and judicial authorities themselves initiate or help with the persecution of people based on their real or perceived sexual orientation¹⁸⁹.

According to a report published by the Swiss Refugee Council (SFH) in 2012, there were no particular regions or social circles in Cameroon in which LGBTI people were less stigmatised and marginalised. Associations that defend the rights of LGBTI people were largely concentrated in larger cities, including Yaoundé and Douala, and thus most of the reported cases of arrests and convictions came from these areas. In other regions, LGBTI people often did not have access to legal representation or other activities to defend their rights¹⁹⁰. Similarly, researchers for a 2013 Human Rights Watch report had only been able to visit three out of the ten Cameroonian regions (Centre, Littoral and Southwest) and had received information about one arrest in the South Region. There was no information of prosecutions in the other six, primarily rural, regions¹⁹¹.

¹⁸⁵ FIDH 2/2015, pp. 19-22

¹⁸⁶ Amnesty International 14.7.2015

¹⁸⁷ Amnesty International 25.6.2013, p. 29

¹⁸⁸ Human Rights Watch 4.11.2010, p. 3

¹⁸⁹ FIDH 2/2015, p. 19

¹⁹⁰ Swiss Refugee Council 11/2012, p. 6

¹⁹¹ Human Rights Watch 21.3.2013, p. 5

2.8. Organisations working on LGBTI issues in Cameroon

The LGBTI community and human rights defenders only started to join together and create associations after prosecutions based on Article 347 bis started in 2005 and newspapers began to expose homosexuals in 2006¹⁹². The following list includes the most important associations working on LGBTI issues in Cameroon. As mentioned above, registration of organisations devoted to LGBTI issues is met with serious obstacles. These associations do thus not include mention of LGBTI people in their official descriptions and aims¹⁹³.

Alternatives Cameroun, founded in 2006 in Douala, is the oldest Cameroonian association for the defence of sexual minorities. It is officially registered as an “association for the defence of human rights”. The association opened a healthcare centre (“Access Centre”) in 2008. The association also organises public events in order to create a better atmosphere and de-demonise homosexuality¹⁹⁴.

The *Action for Development and Fulfilment of Vulnerable People* (ADEPEV) with its headquarters in Yaoundé was created in 2009, after the death of several people who were identified as homosexuals. The head of ADEPEV, Marc Lambert Lamba, monitors the situation of people imprisoned based on homosexuality charges. ADEPEV has created a telephone hotline to report swindlers and blackmailers that target LGBTI people¹⁹⁵.

Affirmative Action was founded in 2008 and has its headquarters in Yaoundé. It is mainly focused on decreasing HIV among vulnerable populations, including LGBTI people. It also supports LGBTI people who are ostracised by their families or just leaving prison¹⁹⁶.

The Cameroonian Foundation for AIDS (CAMFAIDS) was created in 2009 in Yaoundé but only became a legal association in 2012. One of its founding members was journalist Eric Ohena Lembembe who was murdered in 2013. CAMFAIDS works for the decriminalisation of homosexuality in Cameroon and aims at making society more tolerant of LGBTI people. It also provides legal, psychological and material assistance to LGBTI persons who are in unsafe situations, police custody and detention¹⁹⁷.

¹⁹² FIDH 2/2015, p. 19

¹⁹³ Ibid., p. 11

¹⁹⁴ Ibid., pp. 19-20

¹⁹⁵ Ibid., pp. 20-21

¹⁹⁶ Ibid., p. 21

¹⁹⁷ Ibid., p. 21

Humanity First was created in 2010 in Yaoundé with the aim of reducing the HIV pandemic among LGBTI in the country. Officially, the association is registered as fighting HIV/AIDS “within vulnerable populations”¹⁹⁸.

The *Cameroon Empowerment Association for Outreach Programs* (CAMEF) was founded in 2013 and works in Limbé and Buea. It focuses on the protection of LGBTI people in these two towns¹⁹⁹.

The *Association for Impoverished and Vulnerable Communities of the Coastal Region* (ACODEVO) was created in December 2011 in Kribi. It is an LGBTI community based association²⁰⁰.

The *Network of Human Rights Defenders in Central Africa* (REDHAC) also includes LGBTI issues among its activities. It was founded in 2007 in Kigali, Rwanda, with headquarters at first in Bukavu (Democratic Republic of the Congo) and then, as of July 2010, in Douala²⁰¹.

The *Association for the Defense of Homosexuals* (ADEFHO) was created in 2008 in Douala by lawyer Alice Nkom. It has still not been able to receive official registration, which limits its capacity to act²⁰².

The *Association for the Promotion of Women* (AVAF) was established in December 2014 by several lesbian activists. The activities of the association focus on the promotion, education and social needs of lesbians. It was created due to the focus on the needs of gay men by the other existing organisations for LGBTI rights in Cameroon. The association works exclusively on behalf of lesbians but is also open to transgender people²⁰³.

¹⁹⁸ Ibid., p. 21

¹⁹⁹ Ibid., pp. 21-22

²⁰⁰ Ibid., p. 22

²⁰¹ Ibid., p. 31

²⁰² Ibid., pp. 23-24

²⁰³ Association for the Promotion of Women (AVAF) 7.3.2015

3. Gambia

3.1. The legal framework

Criminalisation of “unnatural offences” and “indecent practices”

Gambia’s Criminal Code, which was adopted at the independence of the country from British colonial rule in 1965, contains a number of homophobic provisions. Section 144 criminalises “carnal knowledge of any person against the order of nature” with a prison sentence of up to 14 years. Section 145 outlaws the attempt to commit “carnal knowledge against nature” with a sentence of up to seven years in prison. Section 147 criminalises “gross indecency” or attempts to commit “gross indecency”, punishable by up to five years in prison. The exact meaning of “carnal knowledge against the order of nature” is not defined^{204,205}. In 2005, the Criminal Code was amended and now explicitly includes women who engage in “carnal knowledge against the order of nature” and commit “acts of gross indecency”²⁰⁶.

Section 144 (“Unnatural Offences”) of the Criminal Code (Amendment) Act, 2005 now reads:

(1) Any person who –

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits any person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for a term of 14 years²⁰⁷.

(2) In this section - "carnal knowledge of any person against the order of nature" includes-

- (a) carnal knowledge of the person through the anus or the mouth of the person;
- (b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and
- (c) committing any other homosexual act with the person²⁰⁸.

²⁰⁴ Human Rights Watch 9/2015, p. 51

²⁰⁵ Gambian Criminal Code, Act. 25 of 1933

²⁰⁶ Gambian Criminal Code (Amendment) Act, No. 3 of 2005

²⁰⁷ Ibid.

²⁰⁸ Ibid.

The wording of Section 145 (“Attempt to commit unnatural offences”) of the Criminal Code has remained the same:

Any person who attempts to commit any of the offences specified in the last preceding section [Section 144 “Unnatural Offences”] is guilty of a felony, and is liable to imprisonment for seven years²⁰⁹.

Section 147 (“Indecent Practices”) of the Criminal Code Amendment Act, 2005 now reads:

(1) Any male person who, whether in public or in private, commits any act of gross indecency with another male person, or procures another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years²¹⁰.

(2) Any female person who, whether in public or in private, commits any act of gross indecency with another female person, or procures another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years²¹¹.

(3) In this section -

“act of gross indecency” includes any homosexual act²¹².

Criminalisation of “aggravated homosexuality”

In August 2014, the National Assembly passed the Criminal Code (Amendment) Act, 2014. This amendment to the Criminal Code created the offence of “aggravated homosexuality” which carries a life sentence²¹³. President Yahya Jammeh signed the Bill into law on 9th October 2014²¹⁴, despite strong recommendations against it during the Universal Periodic Review (UPR) that took place at the same time²¹⁵.

²⁰⁹ Gambian Criminal Code, Act. 25 of 1933

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

²¹³ Amnesty International 25.2.2015, p. 158

²¹⁴ International Lesbian, Gay, Bisexual, Trans and Intersex Association [Hereinafter ILGA] 5/2015, p. 55

²¹⁵ Amnesty International 26.3.2015

Section 144A (“Aggravated Homosexuality”) of the Criminal Code (Amendment Act), 2014 reads:

- (1) A person commits the offence of aggravated homosexuality where the -
- (a) person against whom the offence is committed is below the age of eighteen years;
 - (b) offender is a person living with HIV Aids;
 - (c) offender a parent or guardian of the person against whom the offence is committed;
 - (d) offender is a person in authority over the person against whom the offence is committed;
 - (e) victim of the offence is a person with disability;
 - (f) offender is a serial offender; or
 - (g) offender applies, administers or causes to be administered by any man or woman, any drug, matter or substance with intent to stupefy or overpower him or her, so as to enable any person to have un-lawful carnal connection with any person of the same sex.
- (2) A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life.²¹⁶

The vague wording of the amendment makes it open to wide-ranging abuse by the authorities²¹⁷. The law could be used to arrest and detain anyone who is perceived to be gay or lesbian and contributes to the already severe hostility toward LGBTI people in the country²¹⁸. These clauses also criminalise and discriminate against LGBTI people living with HIV or with a disability²¹⁹. Furthermore, the law introduces a discriminatory double standard with regard to the age of consent. Whereas according to Section 127 of the Criminal Code, the legal age of heterosexual consent for a woman is 16 (the punishment for “carnal knowledge of a girl under 16” being a sentence of up to 14 years of imprisonment)²²⁰, and there is no age of consent for men, Section

²¹⁶ Gambian Criminal Code (Amendment) Act, No. 11 of 2014

²¹⁷ Amnesty International 25.2.2015, p. 158

²¹⁸ Human Rights Watch 21.11.2014

²¹⁹ Human Rights Watch 9/2015, p. 52

²²⁰ Gambian Criminal Code, Act. 25 of 1933

144A treats homosexual relations with a person under the age of 18 as “aggravated homosexuality”, punishable with a life sentence²²¹.

The wording of Section 144A was directly derived from the Ugandan Anti-Homosexuality Act 2014²²². But whereas the new law in Uganda was annulled due to a technicality in August 2014, the law in Gambia remained in force at the time of writing this report.

Discrimination of transgender persons

A 2013 amendment of Section 167 of the Gambian Criminal Code criminalises any male person who “dresses or is attired in the fashion of a woman” in a public place with imprisonment of up to five years and/or with a fine of 20’000 Dalasi²²³ [approximately 440 €]. The law thereby discriminates against transgender persons and exposes an already vulnerable group to further harassment and abuse²²⁴.

Conflict of the law with the Constitution of Gambia

Section 33 of the Gambian Constitution stipulates the equality of all persons before the law, with Section 33(4) prohibiting discrimination on the grounds of “race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status”. However, the grounds for discrimination listed in this section do not explicitly include sexual orientation or gender identity²²⁵.

Universal Periodic Review (UPR) in 2014

During the second cycle of the United Nations Universal Periodic Review (UPR) in 2014, Gambia rejected all recommendations concerning the decriminalisation of homosexuality and combatting violence based on sexual orientation and gender identity. In addition, the country stated that no person had been subjected to any form of violence based on sexual orientation and that homosexuals were prosecuted according to the laws of Gambia²²⁶.

3.2. Application of the law

Already before the 2014 amendments to the Criminal Code, LGBTI people in Gambia faced various forms of harassment and discrimination, including arbitrary arrests. Several individuals interviewed by Human Rights Watch reported having to bribe security officers in order to avoid

²²¹ Human Rights Watch 9/2015, p. 52

²²² Ibid., p. 53

²²³ The Point 17.4.2013

²²⁴ Human Rights Watch 9/2015, p. 56

²²⁵ Constitution of the Second Republic of the Gambia, 1997, Section 33

²²⁶ UN Human Rights Council, A/HRC/28/6/Add.1, 24.3.2015, p. 5

arrests or get out of detention²²⁷. In 2012, 18 men were arrested at a birthday party and held for six days by the police. They were eventually acquitted due to lack of evidence but they continued to be harassed by the security forces and their police records resulted in further discrimination, for instance when applying for jobs. The police took their fingerprints and registered them as homosexuals, so that any institution could access their police record²²⁸.

Promptly after the adoption of the 2014 amendments, police and intelligence agents rounded up dozens of people suspected of homosexuality²²⁹. Amnesty International reported that between 7th and 13th November 2014, four men, a 17-year-old boy, and three women were arrested under the suspicion of homosexuality on the Senegambia strip, a coastal area south of the Gambian capital Banjul. The detainees were subjected to torture and ill-treatment to force them to confess their “crimes” and reveal the names of other individuals suspected of homosexuality. The means used to obtain confessions included beatings, sensory deprivation and the threat of rape. They were told that a device would be inserted into their anus or vagina to “test” their sexual orientation²³⁰. Such treatment violates international law prohibiting torture and other ill-treatment²³¹.

The three women were released on 13th November 2014 but remained under investigation and their identity cards have been confiscated by the National Intelligence Agency (NIA). The women have been ordered not to leave the country²³². Three of the four men charged for “aggravated homosexuality” were acquitted in July 2015 due to lack of evidence. They had been held at a maximum-security prison in Banjul for nearly eight months. While the men’s acquittal and release was welcomed by international LGBTI advocacy groups, it was stressed that Gambia remained a tremendously dangerous place for LGBTI people²³³. The three men reported that they had been imprisoned under inhumane conditions, tortured during their detention and forced to identify other homosexuals in the community.²³⁴ The family of the 17-year-old boy, who had also been arrested in November 2014, paid off the NIA operatives with 50’000 Dalasi [approximately 1100 €] to secure his release²³⁵.

Human Rights Watch received information from a member of the LGBTI community in Gambia that another six women had been arrested on 18th and 19th November 2014²³⁶. According to the

²²⁷ Human Rights Watch 9/2015, pp. 54-55

²²⁸ Ibid., pp. 54-55

²²⁹ Ibid., p. 53

²³⁰ Amnesty International 18.11.2014

²³¹ Amnesty International 25.2.2015, p. 158

²³² Amnesty International 18.11.2014

²³³ Washington Blade 1.8.2015

²³⁴ Erasing 76 Crimes 14.8.2015

²³⁵ Ibid.

²³⁶ Human Rights Watch 21.11.2014

blog “Erasing 76 Crimes”, in total 15 people had been arrested since November 2014, all of which have now been released²³⁷.

3.3. Treatment by state actors

Position of political actors on LGBTI

Gambian President Yahya Jammeh has repeatedly issued statements condemning homosexuality and threatening gay and lesbian people. In 2008, he said that he would “cut off the head” of any gay person found in Gambia and promised to introduce stricter laws on homosexuality than the ones in Iran²³⁸. In September 2013, he addressed the UN General Assembly, saying that homosexuality was a threat to human existence, along with excessive greed and obsession with world domination²³⁹. In February 2014, he referred to homosexuals as “vermin”, stating that “we will fight these vermins called homosexuals or gays the same way we are fighting malaria-causing mosquitoes, if not more aggressively”. He added that “LGBT can only stand for Leprosy, Gonorrhoea, Bacteria and Tuberculosis; all of which are detrimental to human existence”²⁴⁰. In May 2014, he threatened LGBTI Gambians who seek asylum abroad due to persecution, saying that “if I catch them I will kill them”²⁴¹.

In January 2015, President Jammeh claimed that the United States and other countries that support LGBTI people were leading to the collapse of modern society. He argued that all previous empires had collapsed at the peak of their might and that consequently “this evil empire of homosexuals will also go down the dirty drain and garbage of hell”²⁴². In May 2015, he threatened gay people, asserting that “if you do it [in Gambia] I will slit your throat” and “if you are a man and want to marry another man in this country and we catch you, no one will ever set eyes on you again, and no white person can do anything about it”²⁴³.

In September 2014, international organisations urged President Jammeh not to sign into law the bill on “aggravated homosexuality”. In reaction to these calls, the national mobiliser of the ruling party APRC (Alliance for Patriotic Reorientation and Construction), Alhaji Yankuba Colley, stated that “homosexuals should be killed because they are the enemies of humanity” and that “homosexuality is a crime against humanity which Gambians will never accept”²⁴⁴.

²³⁷ Erasing 76 Crimes 1.8.2015

²³⁸ BBC News 23.5.2008

²³⁹ Reuters 27.9.2013

²⁴⁰ PinkNews 18.2.2014

²⁴¹ Agence de Presse Africaine (APA) 8.5.2014

²⁴² Gay Star News 13.1.2015

²⁴³ PinkNews 13.5.2015

²⁴⁴ The Standard 26.9.2014

In reaction to Yankuba Colley's statements, the leader of the opposition party PPP (People's Progressive Party), Omar Jallow, stated that despite personally opposing homosexuality, he did not support homosexuals being killed. He argued that "homosexuality is as old as human history itself" and that "no country in the world can eradicate that"²⁴⁵. In December 2014, Jallow urged President Jammeh to immediately repeal the new law that punishes "aggravated homosexuality" with a life sentence. He asserted that gay people should have their rights respected as human beings and that they should not be singled out and punished on moral or religious grounds. He added that the campaign against homosexuality was being used to divert attention from the serious failures and deficiencies of the Jammeh regime²⁴⁶.

Freedom of expression, assembly and association

Since 2013, the Gambian government has passed successive legislation restricting the right to freedom of expression and the media, particularly regarding critical stances toward the government and civil servants. These laws have restricted the activities of civil society organisations as well as the media²⁴⁷. Journalists described operating in a climate of fear and having to flee after having been threatened, arrested, detained, and sometimes tortured for publishing or even investigating stories that were critical of the government or exposed human rights abuses. Several journalists reported that they had been targeted for sharing information with international human rights or development organisations, and international or diaspora media outlets. Private media outlets risk being shut down by the government if they do not self-censor their reporting. There is no international media presence in Gambia, due to the high risk associated with reporting in the country²⁴⁸. According to the March 2015 report by the UN Special Rapporteur on torture, there was a state practice of threats (including death threats) to the physical integrity of journalists and human rights defenders that amounted to cruel, inhuman or degrading treatment or even torture²⁴⁹.

The repression of freedom of speech does not only affect journalists but anyone communicating across any media, including the internet, social media, telephone, or even in private conversations. "Spreading false news" about the government or public officials is a criminal offence that is punishable by a 15-year prison term and a fine of up to 3 million Dalasi [approximately 66'712 €]²⁵⁰.

²⁴⁵ The Standard 2.10.2014

²⁴⁶ The Standard 12.12.2014

²⁴⁷ Human Rights Watch 9/2015, p. 3

²⁴⁸ Ibid., pp. 59-62

²⁴⁹ UN Human Rights Council, A/HRC/28/68/Add.4, 2.3.2015, p. 16

²⁵⁰ Human Rights Watch 9/2015, p. 63

Information on the situation of journalists who specifically address LGBTI issues could not be found at the time of writing this report. Based on the Gambian government's stance on homosexuality and the generally repressive practice toward any voices that are critical of the government, it can be assumed that journalists and human rights defenders are strongly limited with regard to LGBTI rights.

3.4. Treatment by non-state actors

Public opinion on homosexuality

Public opinion polls measuring attitudes toward homosexuality in Gambia could not be found at the time of writing this report. According to Human Rights Watch, President Jammeh's homophobic diatribes polarise Gambian society and magnify the already existing homophobia in the country²⁵¹.

In December 2014, thousands of Gambians participated in a demonstration denouncing the EU for withdrawing foreign aid to the country due to its new anti-homosexuality law. A petition against homosexuality was read on behalf of the protesters, stating their support of the government's position of zero tolerance of the "unnatural and abominable malpractices of homosexuality"²⁵². However, the leader of the opposition party PPP, Omar Jallow, stated that the protest was a "gathering funded and supported by the government in order to promote the agenda of Yahya Jammeh and not the Gambian people"²⁵³.

Political leaders use society's general opposition to homosexuality in order to justify the country's repressive laws against homosexuality to the international community. Before President Jammeh signed the bill regarding "aggravated homosexuality" into law, the national mobiliser of the ruling APRC party, Alhaji Yankuba Colley, argued that most of the Gambian citizens were either Muslim or Christian and would not accept homosexuality and the issue should not be discussed²⁵⁴.

Harassment, discrimination and persecution of LGBTI people

Social discrimination of LGBTI people is high and there are no laws that protect homosexuals, who are at risk physical violence, incarceration or even death²⁵⁵. The hate propaganda against homosexuals by President Jammeh and the new law on "aggravated homosexuality" contribute to the hostile climate toward LGBTI people. According to the UN Special Rapporteur on

²⁵¹ Ibid., p. 50

²⁵² Gay Star News 12.12.2014

²⁵³ The Standard 12.12.2015

²⁵⁴ The Standard 26.9.2015

²⁵⁵ Swiss Refugee Council (SFH) 28.7.2015, p. 8

extrajudicial, summary or arbitrary executions, hate speech and discriminatory legislation put LGBTI persons at great risk of attack, humiliation and even murder²⁵⁶.

After the acquittal of 20 alleged gay and lesbian defendants in August 2012, these persons continued to suffer from the stigma of having been exposed as homosexual, as their photographs had been published along with their names. This led to retribution from the general public as well as from some of the defendants' families who felt that they had been dishonoured²⁵⁷. Eleven of the 20 defendants fled to neighbouring countries after their acquittal²⁵⁸.

Information regarding the societal treatment of the individuals who had been arrested in November 2014 could not be found at the time of writing this report.

The role of the media

As mentioned above, the Gambian media published the names and photographs of 20 alleged gay and lesbian defendants in 2012²⁵⁹. After being acquitted, they were subjected to further discrimination which led eleven of them to flee to neighbouring countries²⁶⁰. In December 2014, three men suspected of engaging in homosexual acts were paraded on the state-controlled television station GRTS (Gambia Radio and Television Services)²⁶¹. During the same month, GRTS headed out on a cross-country tour to broadcast anti-gay sentiments²⁶².

In July 2015, the online edition of *The Standard*, a privately-owned Gambian newspaper, published an article that compared the current situation regarding homosexuality with the story of Sodom and Gomorrah, stating that "the sin of Sodom and Gomorrah seems like a child's play [...] when compared with what is happening now in the guise of gay rights". The author referred to homosexuality as a "sexual perversion" and likened it to adultery and incest. The West was identified as responsible for the spread of homosexuality and its internationalisation and institutionalisation as a human right²⁶³. In contrast, the same newspaper also published a letter to the editor that criticised the idea that homosexuality is "un-African", arguing that homosexuality existed in Africa before colonisation and that it was the Christian Church that brought homophobia to Africa²⁶⁴. According to a Gambian journalist and blogger, *The Standard* had previously been revered for its independent reporting but has turned into an outlet for government propaganda²⁶⁵.

²⁵⁶ UN Human Rights Council, A/HRC/29/37/Add.2, 11.5.2015, p. 18

²⁵⁷ Erasing 76 Crimes 8.8.2012

²⁵⁸ IRIN News 8.10.2013

²⁵⁹ Erasing 76 Crimes 8.8.2012

²⁶⁰ IRIN News 8.10.2013

²⁶¹ Gay Gambia 25.12.2015

²⁶² Gay Gambia 12.12.2014

²⁶³ *The Standard* 15.7.2015

²⁶⁴ *The Standard* 10.9.2015

²⁶⁵ World Policy Blog 18.8.2015

The role of religious leaders

In addition to political leaders who use religion, in particular Islam, as a justification for repressive laws, religious leaders themselves have publicly condemned homosexuality.

In the wake of the arrest of 20 suspected homosexuals in 2012, Imam Momodou Lamin Turay, the president of the Gambia Supreme Islamic Council (GSIC), condemned homosexuality, saying that the Islamic law sanctions death on same-sex lovers. In a sermon that was broadcast by the state-owned television station GRTS, he warned that if Gambians failed to rid society of homosexuality, perhaps everyone would suffer the “wrath of God”²⁶⁶. He repeated similar statements after the adoption of the new law against “aggravated homosexuality”, saying that homosexuality attracted “disastrous consequences for a nation”. He also compared same-sex relations to incest, stating that both were “sins that Allah does not take lightly”²⁶⁷. The GSIC called on imams to publicly denounce homosexuality and declare support for the government’s stance²⁶⁸.

Similarly, Imam Sheikh Omar Kuta of Brusubi Phase 2, an area located 20 km southwest of Banjul, condemned homosexuality in December 2012, saying that “anything that does not match with the teachings of the Holy Qur’an and the Prophet will only take the society backward”. He called on all Muslims to be united and steadfast in the teachings and preachings of Islam and included homosexuality among the topics discussed at his 9th Islamic conference on the 23rd December 2012 at Brusubi Phase 2²⁶⁹.

In December 2014, Bakary Kujabi, the headmaster of a Muslim Basic Cycle School, authored an article published by The Standard, denouncing the international pressure on Gambia regarding legislation on homosexuality. He called homosexuality an “abominable crime” and argued that the Western concept of individual liberty in general was a “toxic and detrimental to the healthy spirit of our social liberty”. He stated that homosexuality was socially immoral and against the teachings of Islam. He further argued that homosexuality was foreign to African societies and had been imported by foreigners who influenced young Africans into such “indecent behaviour”²⁷⁰.

Imam Baba Leigh, a Muslim scholar and human rights activist, voiced support for homosexuals on a talk show broadcast by the Gambian Freedom Radio in December 2014²⁷¹. Imam Leigh had been imprisoned for almost six months after criticising executions carried out by the Gambian

²⁶⁶ Daily News 30.4.2012

²⁶⁷ The Point 15.12.2014

²⁶⁸ The Standard 8.12.2014

²⁶⁹ Daily Observer 14.12.2012

²⁷⁰ The Standard 17.12.2014

²⁷¹ Gambia One Radio 16.12.2014

government. After his release he fled to the U.S. and has not been able to return to Gambia for fear of arrest²⁷².

3.5. Access to health care services

Specific information regarding access to health care for LGBTI people in Gambia could not be found at the time of writing this report.

According to a general report published by the Global Commission on HIV and the Law, stigma and discrimination against men who have sex with men (MSM) erodes their access to HIV testing and treatment. Health care providers sometimes treat MSM with contempt and hostility or refuse to treat them. In countries that criminalise same-sex conduct, health care providers who want to offer services to MSM may worry that they will be charged for abetting a crime²⁷³. It is very likely that this sort of discrimination also applies to health care services that are not related to HIV/AIDS and targets not merely MSM but also to other sexual minorities. According to Amnesty International, anti-homosexuality legislation restricts the ability of LGBTI people to access health care and prevents governments from addressing problems that disproportionately affect members of the LGBTI community²⁷⁴. Despite the lack of information on this issue in Gambia, it is very likely that LGBTI people in the country are subject to these kinds of discrimination.

3.6. The situation of WSW, transgender and intersex people

Alleged lesbian women have been targeted by arbitrary arrests and detentions in a similar way as gay men. Information on the status of lesbian women in comparison to gay men specific to Gambia, for instance regarding “corrective rape” or forced marriages, could not be found at the time of writing this report. In general, lesbian and bisexual women are under greater scrutiny from their families and neighbours than it is the case for gay men and often also face violence in the private sphere at a higher degree²⁷⁵.

Since 2013 the Gambian law explicitly discriminates against transgender persons by criminalising cross-dressing men with imprisonment of up to five years. Not only does this make transgender people vulnerable to harassment and abuse by state security forces, but it also contributes to creating an environment where transgender people are subjected to violence and further discrimination on a wide scale²⁷⁶.

²⁷² International Business Times 5.11.2013

²⁷³ Global Commission on HIV and the Law 7/2012, pp. 46-47

²⁷⁴ Amnesty International 25.6.2013, p. 58

²⁷⁵ Ibid., pp. 48-49

²⁷⁶ Human Rights Watch 9/2015, p. 56

Specific information regarding the situation of intersex people in the Gambia could not be found at the time of writing this report. However, it is likely that they suffer similar kinds of discrimination as transgender people as well as additional challenges particular to their situation.

3.7. Protection by the government and internal flight alternative

The Gambian government has an obligation under international law to protect its people from abuses by its security forces and other actors. However, Gambian state security services have committed numerous serious human rights violations against the people of Gambia with complete impunity²⁷⁷. Victims of human rights abuses rarely seek redress in the courts due to widespread fear of retaliation by the security forces and because of the perceived lack of independence of the judiciary²⁷⁸.

Regarding LGBTI people in particular, the new Criminal Code amendments as well as President Jammeh's frequent anti-gay hate speech have encouraged the police and other security forces to search for LGBTI people and to arrest, detain, and prosecute them. They have also created an environment where LGBTI people may become subjected to violence and further discrimination on a wide scale²⁷⁹. Therefore, rather than protecting LGBTI people from discrimination and abuse, the Gambian government encourages further abuse of this already vulnerable population.

According to eleven LGBTI individuals interviewed by Human Rights Watch, the law enforcement has turned into a "witch hunt" since the 2014 amendments and there is now considerable panic in the LGBTI community²⁸⁰. Many LGBTI people have fled Gambia or are seeking safety in remote areas of the country since the wave of arrests in 2014²⁸¹. No information could be found regarding the relative safety of LGBTI people in these remote areas of Gambia. The United Kingdom Home Office states that internal relocation is unlikely to be available to LGBTI people given the high level of societal hostility²⁸². An estimated 40 individuals have fled to neighbouring Senegal, as reported by OutRight Action International (formerly known as the International Gay and Lesbian Human Rights Commission, IGLHRC) in January 2015²⁸³. However, Senegal also criminalises homosexuality and continues to arrest, prosecute and convict LGBTI people²⁸⁴.

²⁷⁷ Ibid., p. 75

²⁷⁸ Ibid., p. 71

²⁷⁹ Human Rights Watch 9/2015, p. 56

²⁸⁰ Ibid., p. 53

²⁸¹ Ibid., p. 53

²⁸² United Kingdom: Home Office [Hereinafter Home Office] 1/2014, p. 25

²⁸³ OutRight Action International [formerly known as the International Gay and Lesbian Human Rights Commission, IGLHRC] 15.1.2015

²⁸⁴ Human Rights Watch 28.8.2015

3.8. Organisations working on LGBTI issues in Gambia

According to the 2014 Human Rights Report by the U.S. Department of State, there are no LGBTI organisations in Gambia²⁸⁵. No information could be found on human rights organisations that include LGBTI issues in their activities. According to the IGLHRC, the very absence of public LGBTI organisations in many African countries (including Gambia) testifies to the denial of the right to freely assemble and associate. LGBTI people are prevented from forming organisations and holding meetings due to fear of arrest, job and housing insecurity, as well as physical harassment by the government and non-state actors²⁸⁶.

In general, according to the 2015 report by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the national institutions dealing with human rights in Gambia were ineffective²⁸⁷. Human Rights Watch reported that the activities of NGOs were strictly monitored and their programmes must align with national development plans. Consequently, most NGOs focus on uncontroversial topics such as education and health. Those that focus on more controversial issues are subject to harassment by the authorities²⁸⁸.

²⁸⁵ USDOS, The Gambia 2014 Human Rights Report, 25.6.2015, p. 27

²⁸⁶ IGLHRC 2007, pp. 54-55

²⁸⁷ UN Human Rights Council, A/HRC/29/37/Add.2, 11.5.2015, p. 18

²⁸⁸ Human Rights Watch 9/2015, pp. 67-68

4. Ghana

4.1. The legal framework

Criminalisation of “unnatural carnal knowledge” and “gross indecency”

The Ghanaian Criminal Code of 1960, Act 29, as amended in 2003, outlaws “unnatural carnal knowledge”. Chapter 6, Section 104 (“Unnatural Carnal Knowledge”) reads:

(1) Whoever has unnatural carnal knowledge—

(a) of any person of the age of sixteen years or over without his consent shall be guilty of degree felony and shall be liable on conviction to imprisonment for a term of not less than five and not more than twenty-five years; or

(b) of any person of sixteen years or over with his consent is guilty of a misdemeanour; or

(c) of any animal is guilty of a misdemeanour²⁸⁹.

(2) Unnatural carnal knowledge is sexual intercourse with a person in an unnatural manner or with animal²⁹⁰.

According to Section 296 (4) of the Criminal Procedural Code, a misdemeanour shall be liable to imprisonment for a term not exceeding three years²⁹¹.

“Sexual intercourse with a person in an unnatural manner” is not defined and according to the U.S. Department of State, there has been considerable public debate over whether this legislation could be used to prosecute consenting adults for same-sex activity²⁹². According to the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA), only same-sex activity between men is criminalised, while same-sex activity between women is legal²⁹³. Similarly, the Ghanaian Constitution Review Commission (CRC) interpreted the law as outlawing same-sex relations between men but not between women²⁹⁴.

²⁸⁹ Ghanaian Criminal Code (Amendment) Act, 2003

²⁹⁰ Ibid.

²⁹¹ Ghanaian Criminal Procedural Code, 1960

²⁹² USDOS 25.6.2015, p. 22

²⁹³ ILGA 5/2015, p. 55

²⁹⁴ Constitution Review Commission 20.12.2011, p. 654

The punishment of “unnatural carnal knowledge” of a person of 16 years or over with his consent (1 (a)) is the same as the punishment for rape (which only applies to female victims), according to Sections 97 and 98 of the Criminal Code²⁹⁵ and thus does not discriminate against homosexuals.

Ghanaian law also punishes “gross indecency” under Section 278 of the Criminal Code:

278. Whoever publicly and willfully commits any grossly indecent act is guilty of a misdemeanor²⁹⁶.

In 2010, Ernest Kofi Abochie, a law lecturer at the Kwame Nkrumah University of Science and Technology, stated that the Ghanaian Criminal Code did not clearly interpret what homosexuality means, as the expression is not mentioned. He said that it was thus almost impossible for the act of homosexuality to be considered criminal. He argued that there had been a legislative error with the concept of “unnatural carnal knowledge” due to the ambiguity of the expression²⁹⁷. In contrast, Gertrude Aikins, the director of public prosecutions, indicated in 2011 that persons caught engaging in homosexual activities could be liable to prosecution. She argued that “unnatural carnal knowledge” referred to sexual intercourse between men, whereas the law was silent on any form of punishment for lesbianism²⁹⁸.

The Constitution Review Commission (CRC), a presidential Commission of Inquiry, was set up in January 2010 to consult with the people of Ghana on the operation of the 1992 Constitution and on any changes that needed to be made to the Constitution²⁹⁹. In 2011, the CRC recommended that the legality or otherwise of homosexuality should be decided by the Supreme Court, rather than in an amendment to the Constitution. While the CRC had received submissions both in favour and against the recognition of rights for gay and lesbian people, the overwhelming majority of submissions was against the recognition of such rights. The CRC justified its decision to leave the matter to the Supreme Court by stating that giving recognition to same-sex relationships in Ghana at this stage would be condemned by a large section of the population of the country, mainly on religious and cultural grounds. On the other hand, introducing a provision to the Constitution that explicitly excludes same-sex marriages in Ghana would, according to the CRC, be seen as a reactionary move not worthy of progressive state by many people inside and outside of Ghana³⁰⁰. While the Ghanaian government took note of the CRC’s recommendation, the decision was strongly contested by some participants at a CRC forum who criticised the

²⁹⁵ Ghanaian Criminal Code (Amendment) Act, 2003

²⁹⁶ Ibid.

²⁹⁷ Ghana Web 14.5.2010

²⁹⁸ Ghana Web 7.6.2011

²⁹⁹ Constitution Review Commission (CRC) 20.12.2011, p. 2

³⁰⁰ Ibid., pp. 656-657

Commission's inability to act in accordance with the view of the majority of the Ghanaian people³⁰¹.

Conflict of the law with the Constitution of Ghana

The Ghanaian Constitution, Section 35 (5), prohibits "discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs"³⁰², but does not mention sexual orientation or gender identity.

In 2011, the Constitution Review Commission (CRC) argued that Ghana's laws on homosexuality did not conflict with the African Charter on Human and Peoples' Rights, referring to the preamble of said Charter, which states that human rights take "into consideration the virtues of their [the Africans'] historical tradition and the values of African civilization"^{303,304}. The Charter says further that the individual who seeks his or her human rights to be protected has the responsibility to "preserve and strengthen positive African cultural values in his relations with other members of the society"^{305,306}. The CRC stated that homosexuality could be an example of a situation where an individual's desire should not be recognised as long as that practice conflicts with the socio-cultural values of the society³⁰⁷.

Universal Periodic Review (UPR) in 2012

During the second cycle of the Universal Periodic Review (UPR) in 2012, Ghana did not support most of the recommendations made with regard to homosexuality, stating that they could not enjoy the support of Ghana until the referendum on the Constitution took place³⁰⁸. The (temporarily) rejected suggestions during the UPR included decriminalising same-sex relations between consenting adults, taking effective measures to combat violence, stigmatisation and discrimination toward persons on the basis of their sexual orientation or gender identity, as well as training the police, the justice system and social services officials to respect and protect all human rights of every Ghanaian, including LGBT people³⁰⁹. In addition, a recommendation was made to ensure that complete and impartial investigations are conducted into allegations of attacks and threats against persons based on their sexual orientation or gender identity and to

³⁰¹ Modern Ghana 16.7.2012

³⁰² Constitution of the Republic of Ghana 1992

³⁰³ Constitution Review Commission 20.12.2011, p. 656

³⁰⁴ African Charter 1981, Preamble

³⁰⁵ Constitution Review Commission 20.12.2011, p. 656

³⁰⁶ African Charter 1981, Article 29(7)

³⁰⁷ Constitution Review Commission 20.12.2011, p. 657

³⁰⁸ UN Human Rights Council, A/HRC/22/6, 13.12.2012, pp. 23-24

³⁰⁹ Ibid., p. 23

bring those responsible to justice in conformity with international standards. Ghana responded to this recommendation by stating that it considered it to be already implemented³¹⁰.

4.2. Application of the law

According to the U.S. Department of State, there were no reports that the legislation had been used to prosecute consenting adults for same-sex activity in 2014³¹¹.

In July 2015, Sulley Ali-Gabass, who had been charged with “defiling” a boy under 16 years of age on several occasions in 2013 and 2014, was found guilty and sentenced to 25 years in prison. However, he was convicted only under Section 101(2) (“Defilement of Child Under 16 Years of Age”) of the Ghanaian Criminal Code but was freed of the charge for “unnatural carnal knowledge” on the ground that for that charge to suffice, the victim must be at least 16 years old. The Presiding Judge stated that the sentence was meant to serve as a deterrent³¹². Mensah Dekportor, a columnist for Modern Ghana, criticised this sentence for supposedly giving a boost to homosexual rights by freeing Ali-Gabass of the charges for “unnatural carnal knowledge”, despite the fact that the wording of Section 104 of the Criminal Code only refers to cases where the victim is 16 years or older. He suggested that pressure groups fighting against the legalisation of homosexual rights in Ghana should mainly focus on the judiciary instead of the executive³¹³.

In September 2015, two men were arrested after having been caught during a homosexual act in Amasaman, in the Greater Accra Region. They were taken into custody by the police and the Amasaman District Police Crime Officer said that they would soon be put before court for “unnatural carnal knowledge”³¹⁴. More recent information on this case could not be found at the time of writing this report.

4.3. Treatment by state actors

Position of political actors on LGBTI

As homosexuality has become a widely discussed issue in Ghana in recent years, politicians are expected to take a stand on it. In 2011, IRIN News reported that the widespread condemnation of homosexuality by politicians might be partly understood as political point-scoring with regard to the upcoming general elections in 2016. In Ghana, like in many other countries, condemnations of homosexuality are often used as a distraction from economic and political concerns, uniting people against a common enemy. Also the notion of homosexuality as “un-African”, a common idea in many African countries, is widely held in Ghana. According to Rachel Spronk, an expert in

³¹⁰ Ibid., pp. 16-17

³¹¹ USDOS 25.6.2015, p. 22

³¹² Daily Graphic Online, ‘Ali-Gabass begins 25-year jail term’, 14.7.2015

³¹³ Modern Ghana 25.7.2015

³¹⁴ Ghanaian Times 16.9.2015

dealing with issues of sexual minorities in Ghana, using the term “un-African” automatically invokes ideas of identity and culture and thereby entices leaders to position themselves with regard to the issue³¹⁵.

The current president of Ghana, John Dramani Mahama, has been silent on the matter of same-sex marriage and homosexuality in general³¹⁶. Mahama has been in office since July 2012. In contrast, his predecessor, late President John Atta Mills, had been outspoken about homosexuality, stating that he would never legalise homosexuality and that other countries could not impose their values on Ghana. This statement was made in response to British Prime Minister Cameron’s promise to cut foreign aid to countries that do not respect gay rights³¹⁷.

In response to allegations that international gay activist Andrew Solomon had raised funds for President Mahama’s 2012 election campaign, Information Minister Mahama Ayariga explained the president’s position on homosexuality, saying that “[t]he President is to execute the laws of Ghana. And the laws of Ghana are very clear on homosexuality. The laws of Ghana appall and criminalise homosexuality, there is no dispute about that. Homosexual conduct, which is unnatural carnal knowledge of one person or another, is criminal and punishable by the laws of Ghana”³¹⁸. Shortly after, an article was published in the New York Times in which Solomon explained his relationship with President Mahama and voiced his hope that the president would take a leadership role on LGBTI rights in West Africa³¹⁹. According to former MP Kojo Adu Asare, Solomon’s statements caused more harm to the president and stated that “[i]t is not possible for President Mahama to even impose that kind of act on Ghanaians”³²⁰.

In October 2013, President Mahama visited the Kennesaw State University in Georgia, United States. When asked whether he supported gay rights and specifically gay marriage, he said that the issue was very difficult to comment upon in Ghana because discussing it often caused more problems. He mentioned the strong cultural hostility against homosexuality in his country and emphasised that people should not be beaten or killed because of their sexual orientation³²¹.

The president also faced criticism after nominating human rights lawyer Nana Oye Lithur to the post of Minister for Gender, Children and Social Protection in January 2013. Lithur was approved by the Appointments Committee, despite two pressure groups stating she should not be appointed because she would use her government position to “promote homosexuality”. Whereas she denied these allegations, stating that she had never argued that homosexuality should be

³¹⁵ IRIN News 1.8.2011

³¹⁶ Daily Guide 30.7.2015

³¹⁷ BBC News 2.11.2011

³¹⁸ Daily Graphic Online 2.2.2013

³¹⁹ The New York Times 9.2.2013

³²⁰ Ghana Web 11.2.2013

³²¹ Marietta Daily Journal 1.10.2013

legalised, she also said that “the rights of everybody, including homosexuals should be protected”³²². In January 2015, Nana Oye Lithur emphasised again in an interview that she did not “promote homosexuality” but also would not discriminate against anyone based on their sexual orientation, stating that disrespecting anyone was not part of her Ghanaian and African values. However, she also stated that Ghana’s anti-sodomy law should be maintained as that was the will of society³²³.

In July 2013, Dr. Sekou Nkrumah, politician and son of Ghana’s first president, Dr. Kwame Nkrumah, said that gays in Ghana should not be prosecuted. However, he also stated that the practice was “abnormal” and offensive to Ghanaian culture. Dr. Nkrumah further added that the Ghanaian laws should be clarified, as there was still disagreement regarding the definition of “unnatural carnal knowledge”³²⁴.

In March 2014, Mike Ocquaye, former deputy speaker of the Ghanaian parliament said that gay people were “sick” and in need of “medial or psychotic treatment” and that homosexuality had become a cult that some people, mostly Westerners, were promoting. This, he argued, posed a grave danger to Africa. He further likened homosexuality to prostitution and slavery, and added that African countries needed to tighten their laws on homosexuality and also punish foreigners who promote it³²⁵.

In July 2015, the Chief of Dodowa, Nene Teye Kwesi Okukurubuor Agyemang V (a traditional leader), stated that the issue of same-sex marriage should not even be a topic for Ghanaians to discuss, arguing that it was not part of Ghanaian tradition. He also stated that any traditional ruler who supported the legalisation of homosexuality or lesbianism was not qualified to be a leader. He subsequently called all traditional rulers, clergies and various institutional heads as well as President Mahama to take a stand on this contentious issue³²⁶.

Also in July 2015, Michael Omare Wadie, the Constituency Chairman of the Former New Patriotic Party (NPP) for Ayawaso West Wuogon in the Ghanaian capital Accra, claimed that Ghana’s anti-gay law could be repealed if gay activists offered each of the 275 Members of Parliament one million dollars as compensation and that Ghana would consequently be declared “a gay state”. He argued that the gay community was very influential and powerful and could easily raise that

³²² PinkNews 4.2.2013

³²³ Weekend Sun Online 9.1.2015

³²⁴ Vibe Ghana 31.7.2013

³²⁵ Ghana Web 21.3.2014

³²⁶ Joy Online 16.7.2015

money. He also backed the call by the Christian Council of Ghana (CCG) for President Mahama to publicly state Ghana's position on same-sex marriage³²⁷.

In September 2015, George Boateng, an aspiring presidential candidate for the National Democratic Congress (NDC), the party of incumbent President Mahama, said that during his regime, the punishment for persons found to have indulged in lesbianism, homosexuality and corruption would be death by firing squad. He added that "[i]t will be a public event to be witnessed by all to serve as a deterrent. There must be a house cleaning exercise to clear all such terrible acts from the society". However, some political watchers are generally not taking Boateng seriously with regard to his political ambition, several of them describing him as "one of the biggest jokes in recent times"³²⁸.

Freedom of expression, assembly and association

In September 2006, a gay and lesbian conference, which had reportedly been supposed to take place at the Accra International Conference Centre and at a venue in the city of Koforidua, was banned by Ghana's government. Information Minister Kwamena Bartels said as homosexuality was illegal in Ghana the gathering was not permitted. He warned that disciplinary action would be taken if anyone was found to have disregarded the law. Managers of the International Conference Centre denied that such a conference had been due to take place at their premises³²⁹. After the Ghanaian media had started reporting about the planned conference, newspapers, radio talk show hosts as well as religious leaders started a firestorm of protest. According to the Gay and Lesbian Association Ghana (GALAG), there had never been a plan for such a conference and the local media simply wanted to threaten or caution the LGBTI community. This led to feelings of unsafety among the LGBTI community and Prince Kwaku MacDonald, the executive director of GALAG, left Ghana due to receiving threats from residents as well as religious groups³³⁰.

OutRight Action International (formerly known as the International Gay and Lesbian Human Rights Commission, IGLHRC), condemned the ban, stating that it represented a major attack on freedom of expression, association, and assembly, rights that are guaranteed by the Ghanaian Constitution as well as international human rights treaties³³¹.

In June 2011, John Ndebugri, a Ghanaian lawyer and former MP for Zebila, stated on a radio talk show that homosexuals like any other person were entitled to their freedoms of association and no legislation should take that away from them. He referred to Article 21-C of the Ghanaian

³²⁷ Daily Graphic Online, 'Give MPs \$1 million each and they will vote for same sex marriage – Omari Wadie', 14.7.2015

³²⁸ Kasapa FM Online 2.9.2015

³²⁹ BBC News 1.9.2006

³³⁰ Gay City News, Vol. 5(38)

³³¹ OutRight Action International [formerly known as the International Gay and Lesbian Human Rights Commission, IGLHRC] 5.9.2006

Constitution, which guarantees freedom of association to all persons, and encouraged homosexuals to go to the Supreme Court to enforce their rights^{332,333}. In contrast, Second Deputy Speaker of Parliament, Mike Ocquaye, had called for a closure of all homosexual joints in the country. Similarly, Bernard Monah, the General Secretary of the People's National Convention (PNC), a minority party in the Ghanaian parliament, stated that homosexuality was a crime and should not be protected in Ghana³³⁴.

4.4. Treatment by non-state actors

Public opinion on homosexuality

The study called 'Global Views on Morality', published by the Pew Research Center in 2014, found that 98% of Ghanaians believed that homosexuality was morally unacceptable, this being the highest percentage of all 40 countries that were included in the study³³⁵.

In June 2010, over a thousand youth took part in a demonstration against homosexuality in the Sekondi Takoradi Metropolis. The demonstration was organised by the Muslim community in Takoradi with support from other religious groups and concerned citizens. It followed reports of alleged gay marriages and parties in several suburbs of the city. According to the leader of the protesters, Saeed Hamid, the demonstration was meant to draw the government's attention to the conduct of the gays and lesbians in the country. Hamid claimed that a lot of expatriates in Tarkwa and Takoradi working in the mining and oil industry were "luring" young men into homosexuality by influencing them with money³³⁶.

Same-sex marriage became a major issue of debate in the aftermath of the U.S. Supreme Court ruling in June 2015 that legalised same-sex marriage in the United States. The Queen Mother of Akwamufie, Nana Abrewa Kwabia IV (a traditional leader), called for the legalisation of same-sex marriage in Ghana, stating that it would help reduce the high birth rate in the country. The Ghanaian public condemned her statements and some even questioned her mental state. However, there is now a sizeable number of Ghanaians that do not regard homosexuality as negative and see it as a matter of human rights³³⁷.

Harassment, discrimination and persecution of LGBTI people

In 2013, more than 50 students were reported to having been dismissed from two high schools in Ghana. Wesley Girls Senior High School in Kumasi allegedly dismissed 34 girls for engaging in

³³² Ghana Web 11.6.2011

³³³ Constitution of the Republic of Ghana 1992

³³⁴ Ghana Web 11.6.2011

³³⁵ Pew Research Center 15.4.2014

³³⁶ Ghana Web 4.6.2010

³³⁷ Daily Guide 30.7.2015

lesbianism, while Opoku Ware Secondary High School, also in Kumasi, reportedly dismissed 19 male students for “practicing homosexuality”. Reports on the incidents included the common belief that African homosexuals try to “recruit” heterosexuals into their ranks³³⁸. The director of the Center for Popular Education and Human Rights, Ghana (CEPEHRG), Mac-Darling Cobbinah, condemned the actions of the school authorities, saying that expelling students from school had disastrous effects on their future. According to him, any youth whose education is incomplete could end up on the streets and eventually be pushed into a life of crime³³⁹. During the same year, Ghana’s Education Ministry reportedly vowed to punish severely any student caught engaging in “homosexual or lesbianism activities”³⁴⁰.

According to the U.S. Department of State, there were no reports of police or government violence against LGBTI people in 2014. However, stigma, intimidation as well as the attitude of the police toward LGBTI persons were likely factors in preventing victims from reporting incidents of abuse³⁴¹. LGBTI people continued to face widespread discrimination in employment and education, as well as police harassment and extortion attempts in 2014³⁴². A shadow report on human rights violations of LGBTI people in Ghana submitted in August 2015 stated that disdain and resentment against the LGBTI community had grown in recent years and often led to violence. Also the supporters of LGBTI people were targets of homophobia³⁴³. Homophobic statements and public support of the criminalisation of same-sex sexual conduct by public officials and religious leaders (see below) served to perpetuate societal prejudices against LGBTI individuals and encouraged more hate speech, hate crimes, and discrimination by both state and non-state actors³⁴⁴. According to Prince Kweku MacDonald, executive director of the Gay and Lesbian Association of Ghana (GALAG), the involvement of religious leaders in promoting hate and homophobia within the society as well as in the media had incited people to attack known LGBTI people in their homes and meeting places³⁴⁵.

In January 2014, a group of Muslim youth allegedly lynched a gay man named Yaw Nkrumah in the suburb of Nima in Accra and subsequently mounted a search for his supposed partner, Salisu Mohammed³⁴⁶. Salisu was a known homosexual in the area and had been advised by Islamic clerics as well as his family to change his sexual orientation. Two men, whose identities could not be established, confronted Nkrumah about his supposed relationship with Salisu and went to mobilise around 30 men who then stormed Nkrumah’s house, where they stripped him naked and

³³⁸ Erasing 76 Crimes 17.4.2013

³³⁹ Gay Star News 19.4.2013

³⁴⁰ PinkNews 31.10.2013

³⁴¹ USDOS 25.6.2015, p. 22

³⁴² Ibid., p. 22

³⁴³ Solace Brothers Foundation et al. 8/2015, p. 6

³⁴⁴ Ibid., p. 6

³⁴⁵ MacDonald, AMSHeR, 14.3.2014

³⁴⁶ Ghana Web, 24.4.2014

lynched him. The group proceeded to Salisu's house but the latter had been alerted by a family friend about the intended attack. Salisu left the area and went into hiding³⁴⁷.

In August 2014, a 21-year-old man was arrested in Walewale, a small town in the Northern Region of Ghana, on suspicion of being homosexual and "recruiting" other youth into homosexuality. The police stated that the arrest was for the suspect's own safety, as residents had threatened to kill him and his entire family³⁴⁸. The police investigated the matter and considered putting the 21-year old before court. Residents vowed to kill him if he was released by the police, insisting that gay practice was alien to the customs and traditions of the people in the community. Sheik Mahamadu Alhassan, a known Muslim cleric in the area, said that he would personally lead a crusade against the suspect should he dare to visit the community upon his release³⁴⁹. More recent information on this case could not be found at the time of writing this report.

In December 2014, the people of Libya Quarters at Madina Zongo in Accra embarked on a manhunt for Maiga Larry, a young man believed to be homosexual. Malam Shaibu, an Islamic cleric at Madina Zongo said: "We shall burn Maiga to death. We are Muslims and Islam abhors homosexuality." The man leading the manhunt was quoted in the Daily Guide saying that "This [homosexuality] was what made Almighty Allah angry, and He destroyed Sodom and Gomorrah. We will not allow one person to destroy our community. We shall burn or bury him alive to serve as a deterrent to others who may entertain any thoughts of engaging in homosexuality". Chief Inspector Isaac Dogbe stated that despite homosexuality being illegal under Ghanaian law, the police did not encourage people to take the law into their own hands by engaging in mob justice³⁵⁰.

In February 2015, the Human Rights Advocacy Center (HRAC) expressed worry over the rise of mob justice and physical assault against suspected homosexuals in Ghana. According to the executive director of the HRAC, Robert Akoto Amofo, five mob justice cases had taken place in January and February 2015. He suggested that the reason for the increasing numbers of such cases was the lack of trust that Ghanaians had in the justice system and their growing tendency to take the law into their own hands³⁵¹. One such case took place in February 2015, when Albert Appiah, also known as Kinto Rothmans, a well-known event promoter in Accra, was brutally beaten by a mob for being gay. A video that had been taken of the attack went viral along with a photo of Appiah dripping in blood³⁵². The incidence led a number of Ghanaian celebrities to

³⁴⁷ News Ghana 26.5.2014

³⁴⁸ Accra Report 25.8.2014

³⁴⁹ Peace FM Online 25.8.2014

³⁵⁰ Daily Guide 18.12.2014

³⁵¹ Ghanaian Times 20.2.2015

³⁵² Gay Star News 11.2.2015

publicly voice their outrage with the country's anti-gay laws. According to Mac-Darling Cobbinah, a leading Ghanaian LGBTI advocate, the attack was widely condemned throughout Ghanaian society³⁵³. Appiah filed a report of assault against one of the attackers, Barry Abu, who was subsequently charged with assault. According to the Nima Divisional Police Commander, preliminary investigations suggested that the gay allegations had been fabricated and used as a pretext for the attack in order to extract money from the victim³⁵⁴.

Only a few days before, also in February 2015, two students of St Paul's Boys High School in Denu, a small town in south-eastern Ghana, became victims of an attack by fellow students who caught them having sex. When teachers tried to protect the two gay boys, the other students started rioting. The police intervened and fired warning shots to disperse the mob, one of which hit a rioting student in the head and killed him. The two gay students were taken into custody by the police to assist with the investigations into the attacks as well as the killing of one student³⁵⁵. They were later released by the police and were not prosecuted for homosexuality³⁵⁶.

In March 2015, posters of suspected lesbians were printed and circulated in town of Teshie, a coastal town in the Greater Accra Region. A day before, homophobic residents had violently disrupted an alleged traditional ritual, as it was being performed by suspected lesbian twins for their sick mother. The twins and their friends, all of whom the residents suspected to be lesbians, were stoned and pelted with human feces by an angry mob. The residents vowed to hunt down all lesbians in the area. According to the suspected lesbians, they had already been informed of a planned attack days before the alleged ritual ceremony and had subsequently reported that information to the police. The attack took place nonetheless³⁵⁷.

In August 2015, a gay man was assaulted by a group of youth in Nima, a suburb of Accra. They forced him to strip to his underwear and subjected him to incessant whipping³⁵⁸. The leader of the youth group, Sulley Fuiseni, was also accused of pouring hot water on another victim in Nima in September 2015. Shortly after, he was arrested and taken into custody by the Accra Regional Police Command³⁵⁹. More information regarding this case and a possible conviction of the alleged attacker could not be found at the time of writing this report.

Gay men and lesbians in Ghana are also vulnerable to blackmail and extortion. The threat of disclosure of their sexual orientation is used to obtain money and other goods. This includes threats of disclosure to the police but also to employers, families, friends, spouses, communities

³⁵³ GLAAD 24.2.2015

³⁵⁴ Daily Graphic Online 12.2.2015

³⁵⁵ Gay Star News 9.2.2015

³⁵⁶ Daily Guide 10.2.2015

³⁵⁷ Ghana Web 7.3.2015

³⁵⁸ Daily Guide 17.8.2015

³⁵⁹ Daily Guide 18.9.2015

or the press. As gay and bisexual men are considered criminals in Ghana, the threat of disclosure can easily cause panic³⁶⁰. The criminalisation of “unnatural carnal knowledge” facilitates blackmail and extortion of gay and bisexual men as it places the victims beyond the protection of the law. Blackmailers often threaten to call the police and to report their victims for being homosexual. Victims know that they are likely to be treated badly regardless of whether the allegations of homosexual conduct can be proven. In many areas, police are widely believed to cooperate with the blackmailers for a small fee. In addition to threats of disclosure, extortionists also used threats of assault, rape, attacks on friends and family, damage to property, or murder³⁶¹. Even though the Ghanaian law is silent on same-sex relations between females, many lesbians and other women who have sex with women (WSW) believe them to be illegal. This and the fact that state-condoned homophobia also extends to WSW makes them vulnerable to blackmail and extortion³⁶².

Due to the threat of prosecution and the stigmatised nature of homosexuality in the community, many victims of blackmail and extortion attempt to meet the blackmailers’ demands rather than reporting them to the police. However, such compliance does not usually stop the blackmail, but rather the blackmailers often continue to demand money and other goods from their victims³⁶³. In addition to the illegality of same-sex activity between men as well as the negative societal attitudes toward homosexuality, the widespread belief that gay and bisexual men are wealthy also makes them particularly vulnerable to blackmail and extortion. Many blackmailers target gay and bisexual men because they believe that they can do so with moral impunity, whereas targeting other people might be more difficult to justify³⁶⁴.

According to an article in the Washington Blade in August 2015, blackmail of LGBTI people is on the rise due to an increase in the use of gay dating websites. Some people pretend to be LGBTI online, set up a victim and then blackmail them for money³⁶⁵. Prince Kweku MacDonald, the executive director of the Gay and Lesbian Association of Ghana (GALAG), stated in an article published in March 2014 by African Men for Sexual Health & Rights (AMSHeR) that some anti-gay hate groups had created profiles on dating sites to lure gay people into their homes to be robbed and sometimes violently beaten or subjected to other abuses. Five people had reported such abuses to the Centre for Popular Education and Human Rights, Ghana (CEPEHRG) office in 2013³⁶⁶. MacDonald also stated that there were few spaces for LGBTI persons in Ghana to socialise and gather and these places had faced some form of discrimination from landlords and

³⁶⁰ Cobbinah 2011, p. 60

³⁶¹ Ibid., pp. 62-63

³⁶² Queer African Youth Network [Hereinafter QAYN] 2012, p. 16

³⁶³ Cobbinah 2011, pp. 68-70

³⁶⁴ Ibid., pp. 70-71

³⁶⁵ Washington Blade 31.8.2015

³⁶⁶ MacDonald, AMSHeR, 14.3.2014

their agents once they had realised the clients were LGBTI people. There had been several blackmail cases and many unlawful evictions, but LGBTI people were not ready to report these because of fear of exposure³⁶⁷.

The role of the media

Media reports on a supposedly planned gay and lesbian conference in Accra and Koforidua in September 2006 sparked a nation-wide debate on homosexuality. Before these publications, homosexuality had not been an important issue within public discourse. Once the (false) news regarding the conference had reached the Ghanaians, responses started coming from different segments of society, including the government, the National Association of Charismatic and Christian Churches (NACCC), the Christian Council of Ghana (CCG), and the National Chief Imam in Ghana, Sheikh Osman Nuhu Sharubutu³⁶⁸. Newspapers and radio shows became obsessed with the topic of homosexuality and the sentiment was strongly negative and in some cases violent. A number of LGBTI leaders received death threats³⁶⁹. The media focused particularly on the international nature of the conference, which according to the government “would have brought gays and lesbians from all over the world to Ghana”. According to OutRight Action International (formerly known as the International Gay and Lesbian Human Rights Commission, IGLHRC), this focus might have served to play into nationalist sentiments and reinforce notions of the “un-Africanness” of homosexuality³⁷⁰.

In May 2008, the state-owned Ghanaian newspaper Daily Graphic reported that 8000 homosexuals had registered with health NGOs in the country’s Western Region. This report was followed by politicians and religious leaders publicly condemning homosexuality, with the Minister of the Western Region, Paul Evans Aidoo describing homosexuality as “detestable and abominable” and calling for the arrest of all homosexuals. This led to a climate of fear that prevented men who have sex with men (MSM) from accessing vital health services, as local NGOs reported³⁷¹.

In 2012, the Ghanaian press published allegations that the newly elected vice president of Ghana, Paa Kwesi Amissah-Arthur, was gay. These allegations created a moral panic in the country. Amissah-Arthur himself denied the rumors³⁷². The national coordinator of the Ghana Gay and Lesbian Forum, Dr Henry Nii Ojengba Coleman, condemned the media attacks and urged

³⁶⁷ Ibid.

³⁶⁸ Mawuli Sallar 19.12.2011

³⁶⁹ OutRight Action International [formerly known as the International Gay and Lesbian Human Rights Commission, IGLHRC] 5.9.2006

³⁷⁰ Ibid.

³⁷¹ IRIN News 1.8.2011

³⁷² Gay Star News 12.8.2012

the vice president to speak up for homosexual Ghanaians³⁷³. In March 2015, Amisshah-Arthur's wife spoke out about her husband's supposed sexual orientation, denying the allegations of homosexuality³⁷⁴.

The U.S. Supreme Court ruling that legalised same-sex marriage in the United States in June 2015 provoked again a heated debate on homosexuality and gay rights in Ghana. The voices that appeared in the mainstream media mostly condemned and/or ridiculed the Supreme Court ruling³⁷⁵. During the same month, the Daily Guide reported that an anti-gay group whose members refer to themselves as the "Gay Killers" had attacked an underground group established by members of the LGBTI community in Accra, describing in detail one of these supposed attacks³⁷⁶. However, the Humanist Association of Ghana reported that according to background checks no such LGBTI group existed in Accra and harshly criticised the Daily Guide for gloating in the attack on suspected lesbians. The association further argued that the article had been created in order to encourage people into anti-gay sentiments and to stoke violence specifically targeting suspected homosexuals and that the Ghanaian media in general was significantly contributing to the homophobia prevalent in the country³⁷⁷.

In August 2015, the online edition of the Daily Guide published an editorial, which stated that while not condemning either side of the debate on gay rights, gays "should stop contemplating such impossibilities in our part of the world". The authors argued that due to opposition of clerics and traditional authorities as well as the general public, the subject of gay rights could not find space in Ghana. The reluctance of the Ghanaian government to address the issue was attributed to the fear of condemnation by development partners who consider the non-recognition of rights for homosexuals as human rights violations³⁷⁸.

The role of religious leaders

In July 2015, Rev. Dr Kwabena Opuni-Frimpong, the General Secretary of the Christian Council of Ghana (CCG), which is the umbrella organisation of many Christian denominations in Ghana, described same-sex marriage as "unbiblical, unchristian and un-African" and stated that "the practice should be resisted and condemned by all Christians and well-meaning Ghanaians". He also asked churches and the public not to attack homosexuals but to support and love them so that they could stop the practice of homosexuality³⁷⁹. The former General Secretary of the CCG,

³⁷³ Modern Ghana 12.10.2012

³⁷⁴ Daily Guide 9.3.2015

³⁷⁵ Humanist Association of Ghana 6.7.2015

³⁷⁶ Daily Guide 1.6.2015

³⁷⁷ Humanist Association of Ghana 6.7.2015

³⁷⁸ Daily Guide 3.8.2015

³⁷⁹ Ghana Web 13.7.2015

Rev. Fred Deegbe, cautioned against directing violence at gays, though he also promised that his organisation would campaign against any member of parliament who condoned homosexuality³⁸⁰.

Also in July 2015, Rev. Jeremiah Boakye Ansah and Rev. Justice Kodua, two renowned Ghanaian pastors, condemned same-sex marriage and the legalisation of homosexuality, stating that it would be a tragic error for any leader of the country to endorse the act of homosexuality. They further urged all Ghanaians to start the campaign against same-sex marriage immediately. Rev. Kodua also called on the media to make available their platforms to “create awareness against the demonic act of legalising gay marriage in the country now or in the future”³⁸¹.

In August 2015, Rev. George K.K. Abaidoo, who was the chairman of the Planning Committee of the International Pastors’ and Ministers’ Conference (IPMC) that took place in the Ghanaian capital Accra at that time, said that homosexuality was “unscriptural and an affront to the Ghanaian society and cultures” and that this “social ill should not be given legal assent”. He added that the Church would continue to pray for homosexuals and educate them on the “need to refrain from the practice”³⁸².

In October 2015, the Presiding Bishop of the Methodist Church Ghana, Most Reverend Titus K. Awotwi Pratt, stated during a sermon that the Methodist Church Ghana would never accept the practice of same-sex marriage in any of its churches in the country. He argued that homosexuality was “evil, ungodly and abomination that caused God to destroy Sodom and Gomorrah and accepting it is as asking God to unleash terror on us”³⁸³. Similarly, the previous Presiding Bishop, Most Reverend Professor Emmanuel K. Asante, had stressed in August 2015 that “no sane society or country will approve homosexuality” and referred to same-sex practices as “despicable acts” that not even animals engaged in³⁸⁴.

Also in October 2015, Archbishop Charles Palmer-Buckley of Archdiocese of Accra stated during a Vatican press conference that some countries needed “time to deal with” homosexuality and other issues “from our own cultural perspectives”³⁸⁵. He also repeatedly voiced his opposition to marriage equality, emphasising that the Church’s doctrine on matrimony was and remained a union between man and woman. He added that in Africa marriage had always been regarded as contributing to the well-being of society at large, not merely to the well-being of individuals. However, he also criticised the violation of human rights of homosexuals and stated that the issue of homosexuality had become prominent in the media due to homosexuals having been

³⁸⁰ Africa Review 14.3.2012

³⁸¹ Modern Ghana 5.7.2015

³⁸² Ghanaian Times 26.8.2015

³⁸³ Modern Ghana 22.10.2015

³⁸⁴ Daily Guide 18.8.2015

³⁸⁵ Washington Blade 9.10.2015

discriminated and dehumanised³⁸⁶. In July 2015, he had described homosexuality as “anti-human” and “anti-social”, saying that the practice of homosexuality was against the law of God and humanity. He said that the Church should have respect for homosexuals but not for the practice of homosexuality³⁸⁷.

President Mahama has been urged by a number of traditional and religious leaders to take a stand on homosexuality. Rev. Isaac Owusu Bempah, the leader of Glorious Word Ministry International, cautioned the president that by decriminalising homosexual activities, Ghana would take “the risk of incurring the wrath of God”³⁸⁸. Similarly, Rt. Rev. Prof. Emmanuel Martey, the moderator of the General Assembly of the Presbyterian Church of Ghana, called on President Mahama to declare his stand on the debate. He expressed disgust about homosexuality and argued that the president’s inability to condemn this “abominable act” was one of the reasons for Ghana’s struggling economy, stating that the president continued to do things that “aggravate the anger of God”³⁸⁹. In July 2013, Martey had claimed that gays formed part of “Satan’s deadly agenda” and were aiming to destroy the country by infiltrating its government³⁹⁰.

In contrast, Cardinal Peter Turkson of Ghana, who was a candidate for the succession of Pope Benedict XVI, said in March 2014 that “homosexuals are not criminals” and also denounced Uganda’s new anti-gay law that had introduced a life sentence for same-sex relations³⁹¹. However, Cardinal Turkson had suggested one year earlier that gay priests were in part to blame for the sexual abuse scandal that had shaken the Catholic Church and that such scandals were less likely to occur in Africa due to cultural opposition against homosexuality³⁹².

Also Muslim leaders in Ghana have spoken out against homosexuality. The National Chief Imam of Ghana, Sheikh Dr. Osmanu Nuhu Sharubutu, stated in July 2011 that “homosexuality and lesbianism are filthy practices which Allah frowns upon in the Holy Qur’an and so must not be encouraged”. He added that “the practice of lesbianism and homosexuality caused the destruction of Sodom and Gomorrah, so Ghana should not indulge in it to avoid the wrath of Allah” and called on the government to do everything possible to stop the practice³⁹³. In January 2014, Sheikh Sharubutu emphasised again his stance against homosexuality and called on

³⁸⁶ Aleteia 25.2.2015

³⁸⁷ Daily Guide 27.7.2015

³⁸⁸ Daily Guide 9.7.2015

³⁸⁹ Daily Guide 14.7.2015

³⁹⁰ Gay Star News 1.7.2013

³⁹¹ Huffington Post 4.3.2014

³⁹² Huffington Post 20.2.2013

³⁹³ Vibe Ghana 26.7.2011

Ghanaians to give full support to an initiative embarked upon by an organisation called the Coalition Against Homosexuality in Ghana³⁹⁴.

4.5. Access to health care services

Information on access to health care services for LGBTI people strongly focused on prevention and treatment of HIV/AIDS for men who have sex with men (MSM). According to a report published by UNAIDS in 2015, HIV prevalence among MSM remained high in Ghana and there appeared to be challenges regarding interventions with that group³⁹⁵. Stigma and discrimination of MSM in their homes, communities, mainstream media and certain health care centres were undermining the work of the national HIV response³⁹⁶. The Ghana AIDS Commission published a National Strategic Plan in 2011 in which MSM were identified as one of four most-at-risk populations, emphasising the importance of equal access to health care, attention to specific needs as well as the reduction of social stigma toward MSM³⁹⁷. In 2014, the Ghana AIDS Commission reported that this National Strategic Plan had led to rapid increase of HIV and AIDS services throughout the country, with a particular focus on MSM and other key populations³⁹⁸.

In 2011, the Coalition Against Homophobia in Ghana (CAHL), a group of organisations and individuals that aims to counter ongoing attacks against homosexuals in Ghana, called attention to a statement issued by the Ghana AIDS Commission earlier the same year, in which it was stated that the MSM situation in Ghana was “an issue that we cannot run away from”. This statement further said that “it is important that all hands are on deck to reduce the number of young people who are lured into MSM” and called on “all religious leaders, traditional authorities, educationist, parents and NGOs working with young people to get involved in educating males on the dangers of being involved in sex with other men”. According to CAHL, this statement by the Ghana AIDS Commission contributed to the prevalence of homophobic attacks against gay and lesbian people³⁹⁹.

In his plenary speech at the UN 2011 High-Level Meeting on AIDS, then Vice President John Dramani Mahama told delegates that it was essential to include MSM in Ghana’s strategy to fight HIV/AIDS. He acknowledged that cultural hostility to members of this group made them most unwilling to disclose their sexual orientation⁴⁰⁰.

³⁹⁴ Vibe Ghana 1.1.2014

³⁹⁵ UNAIDS 31.3.2015, pp. 51-52

³⁹⁶ Ibid., p. 60

³⁹⁷ Ghana AIDS Commission 8/2011

³⁹⁸ Ghana AIDS Commission 2014

³⁹⁹ Global Gayz 4.10.2011

⁴⁰⁰ Global Gayz 13.6.2011

According to the United States Agency for International Development (USAID), the main problems regarding HIV among MSM included substantial knowledge gaps in HIV prevention and treatment, stigma toward MSM resulting in ill-treatment, and fear of stigma which made them reluctant to seek out health care services. However, ongoing projects such as Strengthening HIV/AIDS Response Partnership and Evidence-based Response (SHARPER) have contributed to an improvement of the situation, with health care providers becoming more sensitive to MSM's health issues. SHARPER also improved the knowledge among MSM regarding where to obtain HIV and AIDS services^{401,402}. Nonetheless, there have been incidents of discrimination in clinics when LGBTI people sought medical services (not merely HIV/AIDS related), as reported in an article published by African Men for Sexual Health & Rights (AMSHer) in 2014⁴⁰³.

4.6. The situation of WSW, transgender and intersex people

According to an empirical study by the Queer African Youth Network (QAYN) in 2012, women who have sex with women (WSW) are strongly marginalised in Ghana. Despite the fact that the law is silent on sexual relations between women, WSW in Ghana often believe that their same-sex activities are illegal. WSW in Ghana have also been subject to violence in their families, mockery, stigmatisation and discrimination in the street, extortions and the constant state-condoned homophobia⁴⁰⁴. The participants of the study stated that while “corrective rape” of WSW was uncommon in Ghana, they were still subject to physical abuses, including by family members⁴⁰⁵.

As many WSW do not have families that support them, they often keep up the perception of heterosexuality by entering into relationships with men and having children. In some cases, WSW get married to men while in others they find themselves as single mothers with no or limited income. Several women reported that their sexual orientation was often connected with their socioeconomic status, due to employers being reluctant to employ women who have a more masculine presentation⁴⁰⁶.

In addition to the fear of being exposed and the lack of leadership, the women who participated in the QAYN study identified the fact that resources and attention on sexual minorities in the country are largely focused on men who have sex with men (MSM) as an important reason for the lack of an organised community of WSW⁴⁰⁷. They also condemned the sexism and discrimination they experience within MSM organisations, indicating that WSW were being used by these

⁴⁰¹ USAID 9/2013a

⁴⁰² USAID 9/2013b

⁴⁰³ MacDonald, AMSHer, 14.3.2014

⁴⁰⁴ QAYN 4/2012, p. 16

⁴⁰⁵ Ibid., p. 18

⁴⁰⁶ Ibid., pp. 17-18

⁴⁰⁷ Ibid, p. 17

organisations to access funding, while no actual programmes were developed to address their particular needs. There were no organisations that provided counselling or sexual health services for WSW specifically⁴⁰⁸.

In general, WSW emphasised their isolation and the way they suffer in silence and have to hide who they are. However, they also criticised the pressure from the international community to legalise homosexuality as this had created a strong backlash from the Ghanaian population and made their daily lives more difficult⁴⁰⁹. It should also be noted that the WSW who participated in the study were all living in the Accra region⁴¹⁰. Very little is known about the daily lives and particular struggles of WSW in more rural areas⁴¹¹.

There are some local organisations that focus specifically on WSW, such as Sister to Sister for Social Justice and Empowerment (SSSJE) based in Accra. However, the activities of the different local groups had not yet been coordinated according to information from 2012. SSSJE members indicated the need for a unified and organised group of WSW that would also be connected to the mainstream women's movement⁴¹².

According to an article published by the Washington Blade in August 2015, there is also an informal group of Christian lesbians from several churches in Ghana. Even though the group is based in Accra, it is growing to become Ghana-wide. Group members organise social events, but they have to be very discreet in order not to incur the wrath of the authorities. As they receive little support from their churches on the issues that their sexuality raises in society, the group has become their only means of support as they discuss and help each other on LGBT issues⁴¹³.

According to a shadow report on human rights violations against LGBT people in Ghana submitted in August 2015, transphobia would likely be as common as homophobia if it were not for the fact that the social climate is so bad that transgender individuals hide their gender identity⁴¹⁴. The National Strategic Plan published by the Ghana AIDS Commission in 2011 noted that very little information was available regarding transgender persons in Ghana⁴¹⁵. Similarly, a UK Home Office report in 2012 stated that no information could be found on transgender persons⁴¹⁶.

⁴⁰⁸ Ibid., p. 19

⁴⁰⁹ Ibid., p. 20

⁴¹⁰ Ibid., pp. 15-16

⁴¹¹ Ibid., p. 39

⁴¹² Ibid., pp. 15, 19

⁴¹³ Washington Blade 31.8.2015

⁴¹⁴ Solace Brothers Foundation et al. 8/2015, p. 6

⁴¹⁵ Ghana AIDS Commission, 8/2011, p. 12

⁴¹⁶ Home Office 11.5.2012, p. 55

Specific information regarding the situation of intersex people in Ghana could not be found at the time of writing this report. However, it is likely that they suffer similar kinds of discrimination as transgender people as well as discrimination that is more particular to their situation.

4.7. Protection by the government and internal flight alternative

According to the U.S. Department of State, there were reports in 2014 that the police had been reluctant to investigate claims of assault or violence against LGBTI people. Based on information received from the Human Rights Advocacy Center (HRAC), the USDOS reported that gay men in prison had often been subjected to sexual and other physical abuse. The government took no known action to investigate or punish those complicit in such abuses⁴¹⁷.

For 2012, the United Kingdom Home Office reported that in general the Ghanaian authorities had not provided gay men, lesbians or those perceived as such with effective protection⁴¹⁸. According to the Home Office, gay men and lesbians in Ghana were unlikely to find safety through internal relocation, as the homophobic attitudes were prevalent across the country⁴¹⁹.

4.8. Organisations working on LGBTI issues in Ghana

According to Prince Kweku MacDonald, the executive president of the Gay and Lesbian Association of Ghana (GALAG), some human rights organisations in Ghana say that LGBTI rights are not human rights. Others argue that their faith or religious beliefs do not permit them to work on the issue nor talk about it. Talking about homosexuality in Ghana seems to be tantamount to involvement in same-sex acts⁴²⁰.

The following list includes some of the most important associations working on LGBTI issues in Ghana. A Freedom House article reported in August 2011 that there were no registered LGBTI organisations in Ghana⁴²¹. It is unclear whether any of the organisations listed below have meanwhile been officially registered.

The *Centre for Popular Education and Human Rights, Ghana* (CEPEHRG), based in Accra, is the most prominent organisation acting on behalf of the Ghanaian gay community and advocating for human rights and legal reform⁴²². The CEPEHRG was formed on the premise of combating the impact of AIDS in Ghana and to help achieve universal access to HIV prevention, treatment and care services. In addition, it is committed to the promotion of equality and diversity in Ghana⁴²³.

⁴¹⁷ USDOS 25.6.2015, p. 22

⁴¹⁸ Home Office 1/2013, p. 14

⁴¹⁹ Ibid., p. 14

⁴²⁰ MacDonald, AMSHeR, 14.3.2014

⁴²¹ Freedom House 8.8.2011

⁴²² Australia: Refugee Review Tribunal 29.9.2010, p. 4

⁴²³ Centre for Popular Education and Human Rights, Ghana (CEPEHRG) n.d.

The executive director of the CEPEHRG is Mac-Darling Cobbinah, a Ghanaian LGBTI activist who started to advocate for the rights of sexual minorities in Ghana in 1998⁴²⁴.

The *Gay and Lesbian Association of Ghana* (GALAG) is based in Accra. After misinformation spread by the media regarding a supposed international gay conference in Accra in 2006, GALAG issued a statement which included the assertion that the organisation “GALAG does not promote homosexuality, but rather seeks the sexual well-being of same-gender-loving people, their families and friends, as well as the general population at large”⁴²⁵. The executive president of GALAG, Prince Kweku MacDonald, has repeatedly spoken out in international media⁴²⁶.

The *Coalition Against Homophobia in Ghana* (CAHG) is a group of organisations and individuals that aims to counter ongoing attacks against homosexuals in Ghana. The Coalition has among its objectives to create a friendly rapport between the media and the LGBTI community and also educate people to respect the rights of LGBTI people’s privacy and human dignity, which is a vital part of fundamental human rights⁴²⁷.

The *Human Rights Advocacy Center* (HRAC) is an independent human rights-based research and advocacy organisation created in 2008. The organisation is located in the Greater Accra region and works on research and advocacy, and offers free legal aid. HRAC indicates that it has been “actively involved” in protecting LGBT individuals⁴²⁸.

Sister to Sister for Social Justice and Empowerment (SSSJE) is a local organisation based in Accra which brings together WSW through a network of neighbourhood-based groups⁴²⁹. There are also other local groups for WSW across Accra but the activities of these groups are not coordinated and the members seldomly interact. SSSJE members have indicated the need for a unified and organised group of WSW that is also connected to the mainstream women’s movement⁴³⁰.

The *Maritime Life Precious Foundation* (MLPF) is based in Takoradi and is one of the leading organisations working with MSM in Ghana. It is the leading advocate of MSM rights in the Western and Central Regions of Ghana. The MLPF has developed drop-in-centres, a helpline as well as support groups and socialisation events to give MSM access to public health education⁴³¹.

⁴²⁴ IGLHRC 2011, p. 1

⁴²⁵ MacDonald 15.9.2006

⁴²⁶ LGBTnet n.d.

⁴²⁷ Coalition Against Homophobia in Ghana (CAHG) 3.8.2011

⁴²⁸ Immigration and Refugee Board of Canada (IRB) 16.8.2012

⁴²⁹ QAYN 4/2012, p. 15

⁴³⁰ Ibid., p. 19

⁴³¹ UNAIDS 31.3.2015, pp. 58-59

The *Solace Brothers Foundation* is a Ghanaian NGO that was founded in 2012 in Accra and works to advance human rights and sexual reproductive health rights for LGBT persons in Ghana⁴³².

The *House of Rainbow Fellowship* (HORF), a religious community that is open to all people including sexual minorities and marginalised people, has a local group in Accra. The House of Rainbow Fellowship was founded by Reverend Rowland Jide Macaulay, an openly gay Nigerian pastor⁴³³. According to the HORF website, the community engages in different projects, such as workshops and seminars, sexual health interventions, bible study groups and job training skills development⁴³⁴. However, it remains unclear whether these projects are also carried out in the Accra local group or merely in the HORF sections in Nigeria.

⁴³² Solace Brothers Foundation et al. 8/2015, p. 1

⁴³³ House of Rainbow Fellowship n.d.

⁴³⁴ Ibid.

5. Uganda

5.1. The legal framework

Criminalisation of “unnatural offences” and “indecent practices”

Uganda’s Penal Code was adopted in 1950 when the country was still under British colonial rule and was maintained when the country gained independence in 1962. The wording of Sections 145 (“Unnatural offences”) and 146 (“Attempt to commit unnatural offences”) is still the same as it was in the original Penal Code of 1950, but the punishment of “carnal knowledge against the order nature” was increased to life imprisonment with the inauguration of the Laws of Uganda Revised Edition 2000⁴³⁵. The exact meaning of “carnal knowledge against the order of nature” is not defined in the Penal Code.

145. Unnatural offences

Any person who —

- (a) has carnal knowledge of any person against the order of nature;
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature,

commits an offence and is liable to imprisonment for life⁴³⁶.

146. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years⁴³⁷.

Despite the ambiguity of the concept of “carnal knowledge against nature”, homosexuality is perceived to be criminalised under the Penal Code. There has been considerable debate between pro-gay rights groups, who argue that the law discriminates against homosexuals, and anti-gay rights groups, who regard the law as too weak to fight what they perceive as the “Western evil” of homosexuality⁴³⁸.

In addition, “indecent practices” are criminalised under the Ugandan Penal Code:

⁴³⁵ Jjuuko 2013, p. 387

⁴³⁶ Ugandan Penal Code Act, Chapter 120 of 1950, as amended in 2000

⁴³⁷ Ibid.

⁴³⁸ Jjuuko 2013, p. 381

148. Indecent practices

Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years⁴³⁹.

Before the Penal Code Amendment (Gender References) Act 2000 was enacted, only “gross indecency” between men was criminalised. In 2000, that Act was passed and changed references to “any male” to “any person” so that “grossly indecent acts” between women became criminalised as well and are now punishable by up to seven years of imprisonment⁴⁴⁰.

Prohibition of same-sex marriage

The Constitution of Uganda explicitly prohibits same-sex marriage, an amendment that was added in 2005 in response to increasing demands by gay-rights activists. This provision was part of an omnibus amendment bill and passed without much public or parliamentary debate, as people focused on other provisions to be introduced⁴⁴¹. Article 31 of the Constitution (“Rights of the Family”) was amended by inserting the clause “marriage between persons of the same sex is prohibited”^{442,443}.

Discrimination of transgender persons

Section 381 (“Personation in general”) of the Ugandan Penal Code states the following:

(1) Any person who, with intent to defraud any person, falsely represents himself or herself to be some other person, living or dead, commits a misdemeanour⁴⁴⁴.

(2) If the representation is that the offender is a person entitled by will or operation of law to any specific property, and he or she commits the offence to obtain that property or possession of it, he or she is liable to imprisonment for seven years⁴⁴⁵.

Human Rights Watch reported that this section had been frequently used to arrest transgender persons, despite the lack of evidence that they intended to “defraud”⁴⁴⁶.

⁴³⁹ Ugandan Penal Code Act, Chapter 120 of 1950, as amended in 2000

⁴⁴⁰ Kuchu Times n.d.

⁴⁴¹ Jjuuko 2013, p. 387

⁴⁴² Constitution of the Republic of Uganda, 1995, Article 31

⁴⁴³ Uganda: The Constitution (Amendment) Act, 2005, Article 31 (2) (a)

⁴⁴⁴ Ugandan Penal Code Act, Chapter 120 of 1950, as amended in 2000

⁴⁴⁵ Ibid.

⁴⁴⁶ Human Rights Watch 14.5.2014

The Anti-Homosexuality Act 2014

In 2009, the Anti-Homosexuality Bill was presented before Parliament by MP David Bahati. The Bill sought to introduce the offences of “homosexuality” and “aggravated homosexuality”, proposing the death penalty for the latter⁴⁴⁷. After the initiators of the Bill, among other changes, agreed to drop the death penalty clause and replaced it with life imprisonment, the new version of the Bill was passed by Parliament in December 2009. President Yoweri Museveni signed it into law in February 2014, thereby transforming it into the Anti-Homosexuality Act 2014 (AHA)⁴⁴⁸, despite national and international calls on the president to veto it⁴⁴⁹. In addition to the offences of “homosexuality” and “aggravated homosexuality” (Sections 2 and 3, respectively), the AHA also criminalised the “promotion of homosexuality” (Section 13) with a punishment of 100’000’000 Ugandan shillings [approximately 27’597 €] and/or imprisonment of a minimum of five and a maximum of seven years⁴⁵⁰.

However, in August 2014, the Constitutional Court of Uganda overturned the Anti-Homosexuality Act, declaring it null and void because the Parliament had passed it without the necessary quorum⁴⁵¹. The annulment of the law was interpreted by some as a big success for gay rights activists, despite the fact that the ruling was based on a technicality rather than on human rights concerns⁴⁵². In contrast, David Bahati, the MP who had drafted the original bill, said that the ruling was no victory for gay rights at all and that it had nothing to do with the fight against the “promotion of homosexuality” in Uganda. Uganda’s attorney-general filed a motion to appeal the ruling in the Supreme Court⁴⁵³ and several MPs vowed to retable the bill before Parliament⁴⁵⁴.

Despite the positive international reaction following the nullification of the Anti-Homosexuality Act 2014, it should be noted that Sections 145, 146 and 148 outlawing “carnal knowledge against the order of nature” as well as “gross indecency” (see above) are still part of the Penal Code. Arrests, prosecutions as well as discrimination of LGBTI people are likely to continue under the current law⁴⁵⁵. In addition, a new bill regarding homosexuality has been leaked. The Prohibition of Promotion of Unnatural Sexual Practices Bill 2014 aims to explicitly outlaw same-sex conduct by providing a clear definition of “unnatural sexual practices”, which include sexual acts between persons of the same sex as well as with or between transsexual persons⁴⁵⁶. The Bill also attempts

⁴⁴⁷ Jjuuko 2013, p. 381

⁴⁴⁸ The Guardian 24.2.2014

⁴⁴⁹ Amnesty International 10.2.2014

⁴⁵⁰ Uganda: The Anti-Homosexuality Act, 2014

⁴⁵¹ Constitutional Court of Uganda, Constitutional Petition No. 08 of 2014, pp. 26-27

⁴⁵² Amnesty International 10.8.2014

⁴⁵³ IRIN News 14.8.2014

⁴⁵⁴ Parliament of the Republic of Uganda n.d.

⁴⁵⁵ IRIN News 14.8.2014

⁴⁵⁶ Uganda: The Prohibition of Promotion of Unnatural Sexual Practices Bill, 2014, Section 1

to prohibit the “promotion of unnatural sexual practices” with a prison sentence of up to seven years, among other clauses⁴⁵⁷. All human rights groups that include LGBTI rights defence in their activities as well as newspapers that report about homosexuality could be accused of “promotion”⁴⁵⁸. However, according to information available at the time of writing this report, no one has come out to own the Bill and it thus remains a rumour at this moment. Nonetheless, the leak of the Bill increased the insecurities among LGBTI people and led to more people fleeing Uganda and seeking asylum abroad⁴⁵⁹.

While critics of the original Anti-Homosexuality Bill tended to emphasise the provision that imposed the death penalty for “aggravated homosexuality”, the consequences of criminalising the “promotion of homosexuality” with imprisonment might have been even more severe. Such legislation would have eliminated almost any chance of social progress by banning the advocacy and mechanisms by which such progress could be achieved and might even have made it impossible for sympathetic policy-makers to introduce legislation that seeks to decriminalise some forms of homosexual behaviour⁴⁶⁰. The risk of strict legislation against the “promotion of homosexuality” being introduced still remains in the form of the Prohibition of Promotion of Unnatural Sexual Practices Bill 2014⁴⁶¹, as well as the possibility of politicians introducing similar bills in the future.

Exemption from protection by the Equal Opportunities Commission

The Equal Opportunities Commission Act of 2007 gives effect to the constitutional mandate to “eliminate discrimination and inequalities of any individuals or group of people on the ground of sex, race, colour, ethnic origin, tribe, birth, creed, religion, health status, social or economic standing, political opinion or disability”⁴⁶². Not only is sexual orientation or gender identity not mentioned but Section 15 (6) (d) explicitly states that “[t]he Commission shall not investigate any matter involving behaviour which is considered to be immoral and socially harmful, or unacceptable, by the majority of the cultural and social communities in Uganda”⁴⁶³. This provision was inserted specifically in order to avoid claims of homosexuals who fight against discrimination by invoking their minority status^{464,465}. In 2009, this issue was brought to the Constitutional Court (*Jjuuko Adrian v Attorney General*) in order to challenge the constitutionality of Section 15(6)(d) of the Equal Opportunities Commission Act, as it prevents sexual and other minorities from

⁴⁵⁷ Ibid., Section 2

⁴⁵⁸ The Guardian 8.11.2014

⁴⁵⁹ The Consortium 7/2015, p. 40

⁴⁶⁰ Kretz 2013, pp. 230-231

⁴⁶¹ Uganda: The Prohibition of Promotion of Unnatural Sexual Practices Bill, 2014, Section 2

⁴⁶² Uganda: The Equal Opportunities Commission Act, 2007

⁴⁶³ Ibid., Section 15 (6) (d)

⁴⁶⁴ Jjuuko 2013, p. 388

⁴⁶⁵ Parliament of the Republic of Uganda: Parliamentary Hansard 12.12.2006, p. 20

accessing a commission which is supposed to promote equal opportunities for everyone⁴⁶⁶. As of June 2015, this case was still pending before the Constitutional Court⁴⁶⁷.

Conflict of the law with the Constitution of Uganda

The Constitution of Uganda stipulates in Article 20(1) that “[f]undamental rights and freedoms of the individual are inherent and not granted by the State”⁴⁶⁸. In addition, the Constitution guarantees the equality of all persons before the law and prohibits discrimination on the ground of “sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability”⁴⁶⁹. Discrimination on the basis of sexual orientation or gender identity is not explicitly mentioned in the Constitution and, as mentioned above, The Equal Opportunities Commission Act of 2007 prevents the Commission from investigating discrimination based on sexual orientation because homosexuality is considered to be immoral and socially harmful or unacceptable by the majority of the cultural and social communities in Uganda⁴⁷⁰.

While the landmark case of *Toonen v Australia* set an important international precedent by interpreting discrimination on the grounds of sex to also include sexual orientation, this ruling is not legally binding and only of persuasive value. To date, no Ugandan precedent on the issue exists⁴⁷¹.

Universal Periodic Review (UPR) in 2011

During the first cycle of the Universal Periodic Review (UPR) in 2011, Uganda rejected all recommendations regarding the decriminalisation of homosexuality, the rejection of the Anti-Homosexuality Bill 2009, the release of all persons detained at the time for homosexuality alone, as well as the commitment to protecting the rights of all person regardless of their sexual orientation or gender identity in anti-discrimination and equal opportunity legislation and bodies⁴⁷². The only recommendations regarding LGBT rights that were accepted by Uganda concerned the investigation and prosecution of attacks against LGBT people⁴⁷³.

5.2. Application of the law

While the Ugandan Penal Code only prohibits “unnatural” sexual acts and not homosexuality itself, law enforcement does not adhere to this judicially construed distinction. Individuals are arrested due to suspicion of homosexuality, which is often based on appearance that does not

⁴⁶⁶ Jjuuko 2013, p. 397

⁴⁶⁷ Human Rights Awareness and Promotion Forum - Uganda 5.6.2015

⁴⁶⁸ Constitution of the Republic of Uganda, 1995, Article 20(1)

⁴⁶⁹ Ibid., Article 21(1) and Article 21(2)

⁴⁷⁰ Uganda: The Equal Opportunities Commission Act, 2007, Section 15 (6) (d)

⁴⁷¹ Jjuuko 2013, p. 399

⁴⁷² UN Human Rights Council, A/HRC/19/16, 22.12.2011, pp. 24-25

⁴⁷³ Ibid., p. 19

conform to gender norms. Despite a large number of individuals having been arrested and charged for “carnal knowledge against the order of nature”, no person to date has been convicted under this law⁴⁷⁴.

The passing and entering into force of the Anti-Homosexuality Act in 2014 (AHA) resulted in increased numbers of arrests as well as suspensions and closures of organisations working on LGBTI issues. The AHA also legally backed the actions of state as well as non-state actors who were able to violate the rights of LGBTI people largely with impunity. Despite the increased number of arrests, nobody was charged under the new law while it was in force. The effects of the AHA can be interpreted as being more about legitimising the violence committed against LGBTI people as well as making arbitrary arrests and detentions themselves serve as a punishment, rather than actually prosecuting people under the law⁴⁷⁵.

The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation documented 89 violations of rights LGBT people in 2014, 47 of which had been committed by state actors⁴⁷⁶. This report imposed strict requirements for case inclusion, with all cases being well verified. Many documented cases of violations were thus excluded from the report due to insufficient evidence. Nonetheless, the number and the nature of the included cases proved that violations against sexual minority groups took place in Uganda in 2014⁴⁷⁷. The police emerged as the main violator of LGBT rights, despite a few incidents in which it offered protection to LGBT people⁴⁷⁸.

According to Ugandan law, arrests can only take place if people are caught in the act of having same-sex sexual intercourse or if there is strong inference that they are doing so. However, all arrests of LGBTI persons in 2014 occurred without any reasonable suspicion and can thus be classified as arbitrary arrests. Arrests were typically based on people “looking like homosexuals” or two men sleeping in the same house and thus assumed to be homosexual⁴⁷⁹. For example in January 2014, a gay man was arrested in the Ugandan capital Kampala after police had been tipped off by his landlord that he was gay. The man was taken to court in February 2014 and charged with having “carnal knowledge against the order of nature” under Section 145 of the Penal Code⁴⁸⁰.

In January 2014, a man was arrested on suspicion of being gay. After the arrest, he was subjected to a forced anal exam to “prove” his homosexuality as well as a compulsory HIV test,

⁴⁷⁴ Organization for Refuge, Asylum and Migration [Hereinafter ORAM] 10/2014, pp. 23-24

⁴⁷⁵ The Consortium 7/2015, pp. 38-39

⁴⁷⁶ Ibid., p. 21

⁴⁷⁷ Ibid., pp. 13-14

⁴⁷⁸ Ibid., pp. 21-22

⁴⁷⁹ Ibid., p. 25

⁴⁸⁰ Ibid., p. 26

procedures that violate national and international prohibitions on non-consensual medical experimentation. The suspect was detained for more than the maximum of 48 hours allowed under the Constitution of Uganda and he was also paraded before the media, violating the constitutional presumption of innocence as well as his right to privacy. Subsequently, the suspect appeared in an article published by the Red Pepper tabloid, under the headline “Horrible: City sodomite infects 17 boys with HIV”⁴⁸¹.

Also in January 2014, police arrested a transgender woman named Brenda, accusing her of “impersonating a woman” under Section 381 of the Penal Code, a section that is commonly used to arrest transgender persons. According to reports by the victim, police opened her pants in order to check her biological sex and beat her with batons as well as slapped and kicked her. She was taken to the Central Police Station and detained for four days. During her detention she was denied medication for HIV. The case was brought to court and Brenda had no legal representation during the court hearing, as police had given her lawyer inaccurate information regarding the court in which her case was to be heard. Brenda was charged with being “rogue and vagabond” under Section 168 of the Penal Code and transferred to prison, where she was subjected to further ill-treatment by wardens⁴⁸².

During the same month, Kim Mukisa, a gay man, and Jackson Mukasa, a transgender woman, were arrested and accused of homosexual activity. They were charged for “carnal knowledge against the order of nature” under Section 145 of the Penal Code⁴⁸³. After Mukisa and Mukasa had been detained for four months, the court case began in May 2014 and they were released on bail. During their detention they were subjected to forced anal examinations and HIV tests and were paraded as homosexuals before the media. The accused were defended by the Human Rights Awareness and Promotion Forum (HRAPF). Charges were dismissed by a judge in October of the same year but the lives of the accused had already been severely impacted by the criminal charges⁴⁸⁴.

In February 2014, Arthur M., a transgender activist and legal assistant was arrested at Kiira police station in Kyaliwajala when trying to find out why one of his friends, another transgender man who had been charged with theft, was being held. Arthur was accused of “impersonation” under Section 381 of the Penal Code. Police physically and sexually assaulted him and paraded him before the media. A lawyer was able to secure Arthur’s release without formal charges being filed. However, the arrest led to Arthur being evicted from his home, with his landlady reportedly stating

⁴⁸¹ Ibid., p. 24

⁴⁸² Human Rights Watch 14.5.2014

⁴⁸³ Erasing 76 Crimes 18.4.2014

⁴⁸⁴ Erasing 76 Crimes 22.10.2014

that “I can’t house people of that nature”⁴⁸⁵. Shawn M., another transgender legal assistant who had gone to assist the transgender man charged with theft, was also arrested and sexually assaulted by police. The police released him the same day in exchange for a bribe of 150’000 Ugandan shillings [approximately 41 €]⁴⁸⁶.

Also in February 2014, Marco E., a gay man from Western Uganda who had been exposed as homosexual in a local newspaper, was arrested when reporting a theft to the police. He was detained for two days and then released, with no explanation for his arrest⁴⁸⁷.

During the five months that the Anti-Homosexuality Act (AHA) was in force in 2014, arbitrary arrests of LGBTI people increased. Some LGBTI people were arrested when reporting a crime or visiting a friend in detention. Many were held without charge for longer than the 48-hour maximum stipulated by the Constitution. Those arrested reported being subject to ill-treatment, including physical and sexual assault, being stripped naked as well as subjected to forced anal examinations. Some transgender individuals were stripped naked and paraded by the police in front of the media⁴⁸⁸. Most of the victims of arrests were released without charge. In seven cases documented by Amnesty International and Human Rights Watch, police demanded bribes of between 30’000 and 1.5 million Ugandan shillings [approximately 8 to 414 €]. Other victims were released with the assistance of lawyers⁴⁸⁹. The increase in arrests did not only affect those who were detained but also the broader LGBTI population, as they lived in fear of arrest and avoided any dealings with the authorities⁴⁹⁰. Arrests continued also after the AHA had been ruled unconstitutional by the Constitutional Court⁴⁹¹.

In September 2015, Chris Mubiru, a high-profile Ugandan sportsman was found guilty of non-consensual sodomy but acquitted of charges for “carnal knowledge against the order of nature” (Section 145 of the Penal Code) in a separate, consensual same-sex encounter⁴⁹². Mubiru was subsequently sentenced to ten years in prison. This sentence was hailed by many LGBTI activists who viewed it as a positive step toward distinguishing clearly between consensual and non-consensual same-sex encounters, with only the latter being punished⁴⁹³. However, Uganda’s Human Rights Awareness and Promotion Forum (HRAPF) found that Mubiru had been acquitted of the charges under Section 145 because it had been concluded that the evidence from his consensual sex partner could not be trusted, rather than due to the fact that the sex had been

⁴⁸⁵ Human Rights Watch 14.5.2014

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

⁴⁸⁸ Amnesty International 25.2.2015, p. 380

⁴⁸⁹ Amnesty International 15.5.2014

⁴⁹⁰ Ibid.

⁴⁹¹ The Consortium 7/2015, p. 40

⁴⁹² Erasing 76 Crimes 8.9.2015

⁴⁹³ Erasing 76 Crimes 19.9.2015

consensual. According to the HRAPF, the case might nonetheless set a positive precedent as it considered the anal examinations that had been ordered as unreliable evidence upon which to base a conviction⁴⁹⁴.

In March 2014, the Refugee Law Project (RLP) was ordered by the government to cease operations on the basis of allegations that it was “promoting homosexuality” under the guise of human rights work. In addition, Ugandan police raided RLP offices in July of the same year. The RLP is a community outreach project of the Makerere University School of Law and was established to provide legal aid to asylum seekers and refugees in Uganda. In January 2015, the RLP was able to resume its work⁴⁹⁵.

In April 2014, police raided the Makerere University Walter Reed Project, a US-funded HIV research and treatment centre that provides health information and services to LGBTI people. The police claimed that the centre was “recruiting” people into homosexuality⁴⁹⁶.

Some community-based organisations that provided services to MSM ceased their operations or reduced their activities when the Anti-Homosexuality Act entered into force⁴⁹⁷.

5.3. Treatment by state actors

Position of political actors on LGBTI

Political leaders in Uganda have reinforced the commonly held assumption that homosexuality is “immoral and abnormal” and behaviour that was imported to Africa from the West⁴⁹⁸.

When President Yoweri Museveni signed the Anti-Homosexuality Bill into law in February 2014, he argued that the measure was needed because the West was “promoting” homosexuality in Africa. He rejected the widespread international criticism of the law as interference in Uganda’s internal affairs and accused the West of neo-colonialism. He also accused “arrogant and careless Western groups” of trying to “recruit” Ugandan children into homosexuality⁴⁹⁹. An article published by *The Economist* suggested that Museveni signed the bill into law partly due to political motivations in relation with a re-election bid in 2016, using the homophobic climate for his own purposes⁵⁰⁰. After the Anti-Homosexuality Act had been declared unconstitutional by the Constitutional Court, President Museveni mentioned the possibility of a trade boycott of Uganda by Western companies under the pressure of Western “homosexual lobbies” and cautioned of

⁴⁹⁴ Erasing 76 Crimes 25.9.2015

⁴⁹⁵ Erasing 76 Crimes 23.1.2015

⁴⁹⁶ Amnesty International 15.5.2014

⁴⁹⁷ Ibid.

⁴⁹⁸ *The Economist* 11.10.2014

⁴⁹⁹ *The Guardian* 25.2.2014

⁵⁰⁰ *The Economist* 11.10.2014

opening unnecessary wars with useful trade partners. He suggested that while homosexuals that “recruit under-age children into homosexuality” as well as those who “lure the youth [...] using money” should be severely punished, those who are homosexuals “out of choice and conviction” should not be punished and Uganda should not endanger its foreign trade over homosexuality issues⁵⁰¹. In September 2015, Museveni stated that the Anti-Homosexuality Act of 2014 had been unnecessary because Uganda’s law already criminalises same-sex relations⁵⁰².

David Bahati, the Ugandan MP who introduced the Anti-Homosexuality Bill to Parliament, justified the Bill by arguing that wealthy Western homosexuals were “recruiting” poor African children into gay lifestyles with promises of money and a better life⁵⁰³. Rebecca Kadaga, the speaker of the Ugandan parliament, pushed for passing the Bill, stating that it represented the will of the Ugandan people and that the Parliament thus had an obligation to pass it⁵⁰⁴. Both David Bahati’s and Rebecca Kadaga’s popularity and power increased significantly due to their leadership on the Anti-Homosexuality Bill. In addition, their work on the Bill linked them to an international network of anti-homosexuality activists which increased their international profiles and might provide future funding and organisational capabilities⁵⁰⁵.

Also other Members of Parliament have voiced their intolerance of homosexuality, in partly in order to secure popular votes⁵⁰⁶. In February 2010, MP Otto Odonga made homophobic statements at human rights conference in Kampala, titled “Human Rights and Sexual Orientation”. Voicing his support for the death penalty for “aggravated homosexuality”, a clause that was included in the first draft of the Anti-Homosexuality Bill 2009, Odonga reportedly affirmed that he would be prepared to kill his own son if he discovered that he was gay. He also stated that “human rights are not sacrosanct” and that “[w]e will not accept this kind of deviant behaviour in our society”⁵⁰⁷.

In November 2015, Abed Bwanika, presidential candidate and head of the People’s Development Party (PDP), said that, if elected president, he would set up a “moral re-correction centre” that would tackle “social evils such as corruption and homosexuality”. He added that “[w]e cannot accept to be pushed into homosexuality by the West. All homosexuals [in Uganda] will be rehabilitated because they have demons and we have specialists to chase out demons”⁵⁰⁸.

⁵⁰¹ Museveni 3.10.2014

⁵⁰² Washington Blade 14.9.2015

⁵⁰³ The Times Herald 12.11.2012

⁵⁰⁴ Ibid.

⁵⁰⁵ Kretz 2013, pp. 233-234

⁵⁰⁶ ORAM 10/2014, p. 38

⁵⁰⁷ Mamba Online 22.2.2010

⁵⁰⁸ Daily Monitor 5.11.2015

However, Bwanika had only won the support of less than one percent of Ugandan voters during his two previous presidential campaigns in 2006 and 2011⁵⁰⁹.

In contrast, former Prime Minister John Patrick Amama Mbazazi has been the first presidential candidate in Uganda to back gay rights, as reported by Gay Star News in November 2015⁵¹⁰. In January 2015, before the Anti-Homosexuality Act was signed into law, Amama Mbazazi stated that “[h]omosexuality is as old as human existence. It is mentioned in the bible and has been in our society for a long time”. However, he also said that it was an “abnormality” and that he was not a supporter of homosexuality⁵¹¹. In July 2015, he stated on the privately-owned television station NBS Tv that there should not be any discrimination against homosexuals and that homosexuality was not the biggest threat at the moment in the country. Amama Mbazazi faced harsh criticism from the Ugandan public for these statements, with some saying that he was not fit to be the leader of the Ugandan people if he did not view homosexuality as a threat to family values⁵¹².

Registration of organisations

Legal recognition for LGBTI organisations is generally met with considerable obstacles. Nonetheless, these organisations continue to operate and influence policy and the legal process⁵¹³.

In February 2015, the Uganda Registration Bureau officially rejected the reservation of name of an LGBT organisation whose objectives are to engage in advocacy on LGBT issues and offer other such services. It was argued that because homosexuality was criminalised under Section 145 of the Penal Code, engaging in any activities that support LGBT persons amounted to a crime. While this decision is not a written law, it is nonetheless an important precedent by an authoritative body and is thus binding unless it is challenged or overturned⁵¹⁴.

On 26th November 2015, the Ugandan Parliament unanimously passed a restrictive NGO bill that would further limit the work of such organisations in the country. One of the bill’s clauses states that NGOs must not engage in activities “contrary to the dignity of the people of Uganda”. The bill would give Ugandan authorities the power to inspect and shut down organisations. While the bill

⁵⁰⁹ Erasing 76 Crimes 5.11.2015

⁵¹⁰ Gay Star News 5.11.2015

⁵¹¹ UGO News 7.1.2014

⁵¹² UGO News 20.7.2015

⁵¹³ Jjuuko 2013, p. 393

⁵¹⁴ The Consortium 7/2015, pp. 41-42

targets all organisations that work on controversial issues, those working on LGBT issues are expected to be hit particularly hard if it is signed into law⁵¹⁵.

Freedom of expression, assembly and association

In February 2012, an LGBTI activist's workshop held in Entebbe, a major town in Central Uganda, was subject to forced closure by the Minister of Ethics and Integrity. The minister argued that the workshop was illegal and threatened to use force against the activists unless they left immediately. This incident took place a few days after the Anti-Homosexuality Bill had been re-tabled in the Ugandan Parliament⁵¹⁶. This case was brought to court (*Frank Mugisha & Others v AG & Fr. Simon Lokodo*), with the applicants claiming that their rights to freedom of expression, peaceful assembly and association had been violated. In June 2014, the High Court ruled that such unlawful infringement of the applicants' rights had not taken place and that they had participated in "promoting homosexual practices", which was an offence against morality under Section 145 of the Penal Code⁵¹⁷. This ruling was harshly criticised by Human Rights Watch, arguing that it sacrificed freedom of expression and assembly in the pursuit of a discriminatory political agenda and set a dangerous precedent. The work of activists and organisations thus remains at risk, despite the lack of a legal offence of "promotion of homosexuality" after the annulment of the Anti-Homosexuality Act 2014⁵¹⁸. The court's decision was appealed in the Court of Appeal⁵¹⁹ and, according to the information available at the time of writing this report, the case is still pending before the court.

The police raid in April 2014 on the Makerere University Walter Reed Project, an organisation that was engaged in research on HIV, represented a violation of the right to freedom of assembly and association. The organisation was accused of "promoting homosexuality" in Uganda due to its engagement with the LGBTI community⁵²⁰.

In general, the Ugandan government has increasingly suppressed freedom of expression, assembly and association, and threatened civil society groups and human rights defenders working on a range of controversial issues⁵²¹. The Public Order Management Act that was signed into law in 2013 has severely curtailed rights to freedom of assembly, with the police suppressing gatherings involving political opposition groups and cracking down on activists. According to

⁵¹⁵ Erasing 76 Crimes 27.11.2015

⁵¹⁶ Amnesty International 14.2.2012

⁵¹⁷ Amnesty International 25.2.2015, p. 380

⁵¹⁸ Human Rights Watch 11.7.2014

⁵¹⁹ The Consortium 7/2015, p. 41

⁵²⁰ Ibid., p. 30

⁵²¹ Human Rights Watch 14.5.2014

Amnesty International, the Public Order Management Act has had a devastating effect on the ability of civil society to organise⁵²².

5.4. Treatment by non-state actors

Public opinion on homosexuality

The study called ‘Global Views on Morality’, published by the Pew Research Center in 2014, found that 93% of Ugandans believed that homosexuality was morally unacceptable⁵²³.

References to religion and culture are commonly made by the general population and are used to promote a culture of hatred toward homosexuals. A study conducted by Adrian Jjuuko, the executive director of HRAPF, in 2008 revealed that most of the participants who supported criminalisation were not able to correctly define homosexuality⁵²⁴. In 2011, local media reported that a two-million signature petition supporting the Anti-Homosexuality Bill had been submitted to Parliament⁵²⁵.

The events surrounding the Anti-Homosexuality Act 2014, including its passing by the Parliament and signing into law by President Museveni, which were accompanied by great international attention, kept the debate on homosexuality in the public and fueled the general hostility against LGBTI people⁵²⁶. There has also been opposition from LGBTI people who believe that advocacy and activism for gay rights worsen the situation by provoking negative responses from society⁵²⁷. Also aid conditionality statements from Western countries have been criticised as they often lead to the LGBTI community being viewed as responsible for the cut in aid, leading to it being further ostracised⁵²⁸.

In the face of large-scale discrimination and the common use of stigmatising terms to describe homosexuals, Ugandan gays and lesbians created an alternative, positive identity for themselves which includes the newly created term “kuchu”. “Kuchus” take pride in their own sexual orientation and resist the moral outrage directed at them from mainstream society. In some cases, however, this has led to discrimination of bisexuals, with “kuchus” not considering bisexuality to be a “real” sexual orientation and perceiving bisexuals as “sellouts”⁵²⁹.

⁵²² Amnesty International 16.10.2014

⁵²³ Pew Research Center 15.4.2014

⁵²⁴ Jjuuko 2013, p. 383

⁵²⁵ Ibid., p. 393

⁵²⁶ The Consortium 7/2015, p. 14

⁵²⁷ Jjuuko 2013, p. 391

⁵²⁸ Ibid., p. 405

⁵²⁹ Tamale 2003

Harassment, discrimination and persecution of LGBTI people

The most prominent case of anti-gay violence in Uganda was the murder of David Kato, an advocacy officer for Sexual Minorities Uganda (SMUG), in January 2011. Kato was found with head wounds in his home in Bukusa, in the Mukono district (around 25 km east of Kampala) and died from his injuries on the way to the hospital⁵³⁰. David Kato had been listed among a group of 100 suspected homosexuals in the country by the Rolling Stone tabloid only a few months prior to his death. However, the tabloid's editor, Giles Muhame, stated that Kato had been a victim of his own "evil" actions, that he had "brought death upon himself" and that he had been "a shame to this country"⁵³¹. The police issued a statement that Kato's death was not related to his campaign for gay rights⁵³². Kato's murderer, Sidney Nsubuga Enoch, was sentenced to 30 years in prison in November 2011⁵³³.

During the five months that the Anti-Homosexuality Act (AHA) was in force in 2014, discrimination, harassment and violence against LGBTI people increased. Abuses of LGBTI people by non-state actors went largely unpunished. Some LGBTI people fled Uganda due to the increased threat⁵³⁴. LGBTI people faced a considerable increase in police abuse and extortion, loss of employment, evictions and homelessness. The eviction of LGBTI tenants by landlords was justified on the basis of one provision of the AHA that criminalised "a person who keeps a house, room, set of rooms, or place of any kind for purposes of homosexuality"⁵³⁵. The law led to a significant uprooting of LGBTI people, with over 100 of them fleeing the country and others becoming homeless and being forced to hide within Uganda⁵³⁶.

However, not all violations that took place in 2014 were solely caused by the AHA, as such violations had already taken place before that, albeit not at the same scale, and would likely have occurred in 2014 even without the AHA⁵³⁷. In addition, there was also a notable increase in violations immediately after the Act was annulled by the Constitutional Court. This has been interpreted as a form of retaliation on the side of the general population, due to frustration regarding what seemed to be a defeat in the fight against LGBTI persons and activists⁵³⁸.

In February 2014, a transgender sex worker called "Queen" was violently assaulted. When her friends found her in her apartment she was close to death, covered with cuts on the body and in

⁵³⁰ Daily Monitor 28.1.2011

⁵³¹ Ibid.

⁵³² Daily Monitor 10.11.2011

⁵³³ Ibid.

⁵³⁴ Amnesty International 25.2.2015, pp. 380-381

⁵³⁵ Amnesty International 15.5.2014

⁵³⁶ Human Rights Watch 14.5.2014

⁵³⁷ The Consortium 7/2015, pp. 15-16

⁵³⁸ Ibid., p. 39

the anus, presumably from a broken bottle. She was hospitalised but died a few days later. Her friends were afraid to report the crime to the police due to fear of being arrested for being gay⁵³⁹.

In March 2014, a lesbian in Kampala showed Human Rights Watch an eviction letter she had received from her landlord. She was given one month to vacate the property, with the landlord stating that he suspected her of being “indecent” and that he could not fight the government⁵⁴⁰. Other LGBTI people interviewed by Human Rights Watch and Amnesty International reported having been evicted after being arrested, exposed by the media, or merely because their landlords suspected them of being LGBTI⁵⁴¹. Local Council Authorities sometimes actively participated in these violations of the rights of LGBTI persons by banishing them from their villages because of their sexual orientation or gender identity. Landlords often conspired with Local Council Chairpersons to force LGBTI persons out of their houses and expel them from their villages⁵⁴². In 2014, 20 verified cases of forced evictions of LGBTI persons were recorded. However, the report suggested that these verified cases represented only a small share of the total cases of evictions of LGBTI people during that year. The affected people were forced out of their houses due to their real or perceived gender identity or sexual orientation. Landlords and neighbours demanded that they leave their premises or even move to another village. As a result, many LGBTI people were left homeless in addition to the threat of arrest by the police and abuse by members of society⁵⁴³.

Some LGBTI people were also expelled from their families' houses and excluded from the shared family income to which they were entitled. For example in March 2014, a transgender man was rejected by his family because they suspected him of being homosexual. His relatives vowed that they would rather kill him than have a homosexual in the family⁵⁴⁴. A bisexual man was rejected by his family when his wife discovered his sexual orientation. His relatives gave him the choice of reporting himself to the police or leaving the family. The man left his home and went to stay with a friend⁵⁴⁵.

Also in March 2014, two gay men and one transgender woman were lured into a house by men they had met on social media, who then physically assaulted them while subjecting them to homophobic insults. Two of the victims fled and filed complaints with the police. One of the

⁵³⁹ Human Rights Watch 14.5.2014

⁵⁴⁰ Ibid.

⁵⁴¹ Ibid.

⁵⁴² The Consortium 7/2015, pp. 31-32

⁵⁴³ Ibid., pp. 32-33

⁵⁴⁴ Ibid., p. 35-36

⁵⁴⁵ Ibid., p. 36

alleged perpetrators was arrested but the victims were afraid to pursue the complaints further due to homophobic comments made by the police and the fear of being arrested⁵⁴⁶.

During the same month, Agie B., a lesbian woman living in Kampala, lost her employment at a restaurant after her boss discovered her sexual orientation. The boss argued that Agie was putting his business at risk and that police might accuse him of “encouraging” Agie’s homosexuality⁵⁴⁷. Similarly, a gay man named Nim H. was fired from his job at a restaurant in a town outside Kampala in March 2014. His father had reported Nim’s sexual orientation to his employer, who then asked Nim to leave, arguing that the police could close the restaurant for employing a gay man⁵⁴⁸.

There were also incidents of mob violence against LGBTI people in 2014, mostly carried out by people unknown to the victims of the attacks. LGBTI people were beaten, insulted and abused by these mobs because they were suspected to be homosexuals. In some cases, the victims sustained deep injuries as a result of the violence⁵⁴⁹. Despite the legislative and media silence after the annulment of the Anti-Homosexuality Act, the lived realities of LGBTI people in Uganda remained the same and their rights continued to be violated on a daily basis. Evictions were ongoing and many LGBTI people were blackmailed and threatened with impunity⁵⁵⁰.

In January 2015, nine gay men were attacked by a mob after visiting an STI screening at a visiting clinic in a rural area in western Uganda that had been arranged by the Rainbow Health Foundation, an organisation that serves men who have sex with men (MSM). Police detained the men to protect them from the mob, which threatened to beat or kill them. Once the men were in custody, the police considered filing sodomy charges against them. The Local Council Chairmen stated that he wished that “at least two of them had been killed, so the others would learn a lesson”. The men were subjected to forced medical examinations, including anal examinations. They were released after having been detained for five days⁵⁵¹. Due to having been exposed as homosexual, they could not safely return to their homes and thus became homeless. Their plans to seek refuge in Kenya failed because the UNHCR temporarily halted registration of new Ugandan refugees⁵⁵². More recent information on this case could not be found at the time of writing this report.

In October 2015, there was again an increase in attacks on LGBTI people. Especially transgender activists were victims of such attacks. Diane Bakuraira, administrator of Sexual Minorities Uganda

⁵⁴⁶ Human Rights Watch 14.5.2014

⁵⁴⁷ Ibid.

⁵⁴⁸ Ibid.

⁵⁴⁹ The Consortium 7/2015, p. 34

⁵⁵⁰ Ibid., p. 40

⁵⁵¹ Erasing 76 Crimes 27.1.2015

⁵⁵² Erasing 76 Crimes 1.3.2015

(SMUG), was attacked at the gate of her home, with the attackers telling her to stop dressing like a man while repeatedly punching her in the face. On the same day, Jay Mulucha and Apako Williams, two known transgender activists, were violently attacked in a sports bar. The perpetrators were not arrested, but the two victims were treated like criminals and asked to appear at the local police station. Beyonce Karungi, executive director of Transgender Equality Uganda, and four of her transgender friends were attacked at their home, with attackers threatening to cut off their testicles. Three days later, Beyonce faced another group of men who assaulted and threatened to kill her⁵⁵³.

Some have argued that President Museveni's recent comments about not seeing the relevance of the Anti-Homosexuality Act might have triggered the violence, as these remarks could have been interpreted as the president supporting and accepting homosexuality⁵⁵⁴.

The role of the media

Uganda's media has contributed to the prevailing homophobia and transphobia in the country through exposing LGBTI people in newspapers, radio, television and online media. The media has perpetuated stereotypes about LGBTI people which are typically sensational and often devoid of any facts. The publication of names and photographs of presumed homosexuals has often been followed by harassment, violence and evictions of the affected persons⁵⁵⁵.

In October 2010, the weekly Rolling Stone tabloid (not related to the U.S. Magazine with the same name) carried on its front page the headline "100 pictures of Uganda's top homos leak", which included the words "Hang Them!". Bullet points under the headline read, "We shall recruit 100,000 innocent kids by 2012: homos" and "Parents now face heart-breaks as homos raid schools". The publication also contained the names of the alleged homosexuals as well as descriptions of where they lived⁵⁵⁶. At least four people included in the article reported being attacked in the aftermath of the publication, including one woman who was reportedly forced to leave her house after neighbours had pelted it with stones⁵⁵⁷. Gay rights activist David Kato had been featured on the list and was murdered only a few months after the publication of the article (see above). A later edition of the Rolling Stone tabloid, also published in October 2010, contained additional photos of about 20 alleged LGBTI people, along with their names and other personal details⁵⁵⁸.

⁵⁵³ Erasing 76 Crimes 23.10.2015

⁵⁵⁴ Kuchu Times 27.10.2015

⁵⁵⁵ The Consortium 7/2015, p. 37

⁵⁵⁶ Jjuuko 2013, pp. 394-395

⁵⁵⁷ Amnesty International Canada 4.1.2011

⁵⁵⁸ The Guardian 1.11.2010

Rolling Stone had been launched in August 2010 by graduates of Kampala's Makerere University and had a circulation of around 2000 copies at the time. Gay rights activists Kasha Jacqueline, David Kato and Onziema Patience filed a lawsuit against Rolling Stone and its editor Giles Muhame (*Kasha Jacqueline, David Kato and Onziema Patience v Rollingstone Publications Limited and Giles Muhame*). The court issued an injunction preventing Rolling Stone and Muhame from "any further publications of the identities of the persons and homes of the applicants and homosexuals generally" and awarded 1'500'000 Ugandan shillings [approximately 412 €] to each of the applicants. This court ruling was viewed as an important step toward decriminalisation of homosexuality, as it affirmed that homosexuals are entitled to the same rights and protection as everyone else⁵⁵⁹. Soon after the court ruling, Rolling Stone magazine suspended publication and closed down⁵⁶⁰. In addition to Rolling Stone, the Red Pepper tabloid has also frequently published photographs and names of presumed homosexuals⁵⁶¹.

For 2014, the Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation verified a total of 22 incidents where LGBT persons were exposed in the media. Many LGBT were beaten up, harassed or evicted after their photographs had been published⁵⁶². For example in February 2014, only a day after President Museveni had signed the Anti-Homosexuality Bill into law, the Red Pepper tabloid published a list of Uganda's "top 200 homosexuals" in a front-page story, including names and photos of the alleged homosexuals⁵⁶³.

In August 2015, the online edition of the Daily Monitor, Uganda's leading independent newspaper, published an article about the supposed problem of homosexuality in schools. The article fed into concerns about the "recruitment" of children into homosexuality and argued that the annulment of the Anti-Homosexuality Act had strengthened gays and gay rights activists. It also supported the government's involvement in investigations of homosexual activities in schools⁵⁶⁴.

Also in August 2014, the Red Pepper tabloid featured a title page with the headline "Homos Vow to Kill Kadaga" and a subhead stating "Gays: We're in Control of Parliament". Previous to this publication, Rebecca Kadaga, the speaker of the Ugandan parliament, had started preparing for a new vote on the Anti-Homosexuality Act, which had been annulled by the Constitutional Court at the beginning of the month. The headline regarding homosexuals planning to kill Kagada had no base in reality⁵⁶⁵.

⁵⁵⁹ Jjuuko 2013, pp. 394-395

⁵⁶⁰ The New Yorker 24.12.2014

⁵⁶¹ Erasing 76 Crimes 14.8.2014

⁵⁶² The Consortium 7/2015, p. 37

⁵⁶³ The Guardian 25.2.2014

⁵⁶⁴ Daily Monitor 18.8.2015

⁵⁶⁵ Erasing 76 Crimes 14.8.2014

The role of religious leaders

Religion plays a central role in Uganda's cultural life and religious figures have been at the forefront of campaigns against homosexuality⁵⁶⁶. Following the enactment of the Anti-Homosexuality Act 2014, the Inter-Religious Council of Uganda (IRCU), an umbrella organisation of the country's major denominations, organised the "National Thanksgiving Service Celebrating the Passing of the Anti-Homosexuality Bill". During this event, President Museveni was praised by Anglican, Catholic, Christian Orthodox as well as Muslim leaders⁵⁶⁷.

Religious opposition to LGBTI rights in Uganda has been championed especially by the Pentecostal movement supported by the American religious right. The visit of American anti-gay activist Scott Lively to Uganda in 2009 marked the height of anti-gay propaganda. The views espoused by Lively included the belief that homosexuality is a threat to the family and society at large, a cause of child abuse and AIDS, as well as the idea of Western homosexuals "recruiting" others into homosexuality⁵⁶⁸. Lively and his team even met with Ugandan MPs, including David Bahati, who a few months later tabled the Anti-Homosexuality Bill in Parliament⁵⁶⁹. While Scott Lively criticised the introduction of the death penalty for "aggravated homosexuality", he stated that he had urged MPs to model their bill after American laws on alcoholism and drug abuse in order avoid the "promotion of homosexuality" and resist the pressure of the "international gay lobby"⁵⁷⁰. Scott Lively is only one among a number of right-wing American Christians who has fueled anti-gay sentiments in Africa. U.S. evangelicals have exploited and encouraged the common African belief of homosexuality as a Western import and have accused progressive Christians of being imperialistic⁵⁷¹. In addition to right-wing evangelicals like Lively, who come from the West, also Ugandan evangelicals have considerable influence on the politics of the country. For instance, First Lady Janet Museveni is a born-again Christian and has actively used her position to promote a theocratic vision in Uganda⁵⁷².

In March 2012, Sexual Minorities Uganda (SMUG) filed a federal lawsuit against Scott Lively at the Springfield Division of the United States District Court for the District of Massachusetts (*Sexual Minorities Uganda v Lively*) for Lively's role in the persecution of LGBTI people in

⁵⁶⁶ ORAM 10/2014, p. 43

⁵⁶⁷ BuzzFeed News 31.3.2014

⁵⁶⁸ Kaoma 2010, p. 20

⁵⁶⁹ Jjuuko 2013, p. 392

⁵⁷⁰ Lively 10.6.2013

⁵⁷¹ Kaoma 2010, pp. 20-22

⁵⁷² Awondo et al. 2012, p. 153

Uganda⁵⁷³. *Sexual Minorities Uganda v Lively* has the potential of setting an important legal precedent⁵⁷⁴. The case was still pending before the court at the time of writing this report.

However, religious leaders had already condemned homosexuality prior to 2009. In August 2007, an anti-gay rally took place in Kampala to demand that the government uphold the laws on homosexuality as well as to protest against gay-rights activists. In this rally, Christian and Muslim leaders as well as government officials and cultural leaders joined hands to condemn homosexuality⁵⁷⁵. In 2009, Sheikh Sulaiman Kakeeto, the leader of the Muslim Tabliqs, argued that homosexuality affected all people, regardless of their religious affiliations and said that “[w]e want to work together and eliminate sodomy and other forms of sexual abuses in our society”⁵⁷⁶.

In September 2007, Pastor Martin Ssempe, a prominent Ugandan pastor with ties to Evangelical churches in the United States, wrote a letter to the Director of the LGBT Rights Programme at Human Rights Watch, stating that Uganda had the obligation to enact laws that are supported by the vast majority of the population and that reflect Uganda’s culture and values. He also claimed that sexual “reorientation” from homosexuality to heterosexuality was possible, based on his own experience as well as psychological research published by the National Association for Research and Therapy of Homosexuality (NARTH). Pastor Ssempe argued that homosexuality was unhealthy for individuals as well as society and should thus not be “promoted”⁵⁷⁷. The NARTH is an American association that views itself as a counterweight to the American Psychiatric Association and the American Psychological Association and, in contrast to the two latter organisations as well as every other American medical authority, still treats homosexuality as a mental disorder and advocates for “conversion therapy” for homosexuals⁵⁷⁸.

After the annulment of the Anti-Homosexuality Act in 2014, Pastor Ssempe stated that the decision was a “legal travesty” and an “insult to all family-culture-loving people in Uganda”. He also voiced suspicions that the annulment was due to a conspiracy of the government, as the president was about to travel to Washington D.C. for the US-Africa Summit⁵⁷⁹.

Ugandan Bishop Christopher Senyonjo was excommunicated from the Church of Uganda due to his opposition to the country’s culture of homophobia. Senyonjo has also repeatedly emphasised the role of American evangelicals who preach against homosexuality in Uganda⁵⁸⁰.

⁵⁷³ *Sexual Minorities Uganda v Lively*

⁵⁷⁴ Awondo et al. 2012, pp. 153-154

⁵⁷⁵ IRIN News 24.8.2007

⁵⁷⁶ AllAfrica 10.7.2009

⁵⁷⁷ Ssempe 4.9.2007

⁵⁷⁸ Southern Poverty Law Center 1.3.2012

⁵⁷⁹ Pink News 4.8.2014

⁵⁸⁰ Huffington Post 16.10.2013

Meanwhile, the Catholic Church's position on homosexuality has been more contested⁵⁸¹. In the lead-up to Pope Francis' visit to Uganda in November 2015, Archbishop John Baptist Odama, the Chairman of the Uganda Episcopal Conference (UEC), stated that the Pope did not condone homosexuality despite popular assumptions to the contrary. He added that homosexuality was abnormal and represented a threat to human existence, but also maintained that homosexuals should receive sympathy⁵⁸². Even though Ugandan activists had hoped that Pope Francis would take a stance on LGBT rights, the Pope made no mention of the persecution of homosexuals in Uganda in his sermon⁵⁸³.

5.5. Access to health care services

The Anti-Homosexuality Act 2014 (AHA) restricted the ability of LGBTI people to access health care, in particular HIV/AIDS and sexual health care. The Ministry of Health, however, issued a directive in June 2014 that reaffirmed the government's commitment to provide health services without discrimination, including on the grounds of sexual orientation⁵⁸⁴.

Due to the influence of the AHA, health care providers themselves were concerned of being accused of "recruitment" or "promotion of homosexuality" for providing services to LGBTI people, particularly after the raid on the Makerere University Walter Reed Project in April 2014⁵⁸⁵. In December 2013, Billy E., an activist who had helped providing HIV services to MSM was arrested in Kampala by a police officer who had pretended to be a sick client. Billy was detained for four days and became homeless as a result of his arrest, as police had searched his house and exposed him to his neighbours. Billy had already been disowned by his parents before his arrest⁵⁸⁶.

While Health Minister Dr. Ruhakana Rugunda pledged that health services would be provided to LGBTI people without discrimination despite the new law, Amnesty International as well as Human Rights Watch remained wary of such promises, as the Ugandan Ministry of Health does not have any control over police actions⁵⁸⁷. In fact, LGBTI people reported an increased risk of health care workers breaching patient confidentiality and threatening to report LGBTI patients to the police⁵⁸⁸. In one verified case, a transman who sought treatment for malaria was told by a

⁵⁸¹ ORAM 10/2014, p. 44

⁵⁸² Uganda Radio Network 10.11.2015

⁵⁸³ The Guardian 29.11.2015

⁵⁸⁴ Jjuuko 2013, p. 381

⁵⁸⁵ Human Rights Watch 14.5.2014

⁵⁸⁶ Ibid.

⁵⁸⁷ Amnesty International 15.5.2014

⁵⁸⁸ Ibid.

doctor that people like him were not accepted in the community. The doctor also threatened to involve the police in the issue. After being offered a bribe, the doctor left the transman alone⁵⁸⁹.

In October 2014, IRIN News reported that, according to experts, Uganda's HIV/AIDS control efforts had also been undermined by a lack of consensus and clarity over which people constitute Key Populations to be targeted in various prevention, care and treatment efforts⁵⁹⁰.

5.6. The situation of WSW, transgender and intersex people

Lesbians and bisexual women have faced the same persecution from both state and non-state actors as gay men⁵⁹¹. Same-sex sexual activity between women was explicitly criminalised for the first time under the Anti-Homosexuality Act 2014. However, lesbian women as well as other WSW face discrimination, arrest and incarceration under the broad interpretation of Section 145 ("Unnatural Offences") of the Ugandan Penal Code. Lesbians and gender non-conforming women are often suspected of committing sodomy by virtue of their non-conformity with social and cultural norms⁵⁹². Girls and women who are suspected to be lesbians or visibly violate gender stereotypes have routinely been expelled from schools, while others have been subjected to extensive discrimination and abuse, leading them to drop out of school⁵⁹³.

Lesbian women in Uganda face double discrimination for being women as well as homosexual. Women are expected to be submissive to men, to marry and have children. Lesbians are thus viewed as a threat to the prevailing gender order and many people believe that lesbians want to be men. These women are often subject to physical and verbal abuse and there have been reports of so-called "corrective rape", aimed at "curing" women from homosexuality⁵⁹⁴.

Also within the gay community, lesbians are sometimes marginalised and some gay men subscribe to patriarchal ideas of gender. For this reason, the lesbian movement also aims to collaborate with the wider feminist movement in order to overthrow the patriarchal system that stigmatises lesbians on the basis of their biological sex as well as their sexual orientation⁵⁹⁵.

Transgender Ugandans and others who defy gender norms are subjected to the same discrimination as gay men and lesbian women, regardless of their actual sexual orientation. Violating gender norms can create a presumption of homosexuality and lead to harassment and arrest⁵⁹⁶. A considerable number of LGBTI people arrested based on suspicion of homosexuality

⁵⁸⁹ The Consortium 7/2015, p. 37

⁵⁹⁰ IRIN News 16.10.2014

⁵⁹¹ FARUG & IGLHRC 9/2010, p. 4

⁵⁹² ORAM 10/2014, pp. 32-33

⁵⁹³ FARUG & IGLHRC 9/2010, pp. 20-21

⁵⁹⁴ Guin Guin Bali 4.9.2010

⁵⁹⁵ Ibid.

⁵⁹⁶ The Consortium 7/2015, p. 20

in 2014 were transgender individuals⁵⁹⁷. Similar to lesbians, transgender individuals have become victims of “corrective rape”, while others have been subjected to forced medical treatment and non-consensual therapy for the purpose of “fixing” their gender identity⁵⁹⁸. The transgender community in Uganda has also become more aware of its unique needs and has started to address them through specific groups⁵⁹⁹.

According to SIPD Uganda, an organisation that specialises on issues of intersex individuals, “[m]any people with intersex conditions experience significant stigma and discrimination in Uganda such as humiliation, ostracism, exploratory rape, evictions from accommodation facilities due to superstitions, ritualistic murder of intersex infants, lack of access to healthcare, employment, and education to exclusion from community and family life as well as domestic violence for mothers of such children”⁶⁰⁰. Intersex persons face unique circumstances and concerns, but these are often confused with issues concerning gender identity and sexual orientation⁶⁰¹.

5.7. Protection by the government and internal flight alternative

Particularly during the time when the Anti-Homosexuality Act was in force in 2014, LGBTI people reported greater fear of arrest and thus avoided to report violence and discrimination committed against them to the police. The threat of arrest led to LGBTI people being attacked with impunity⁶⁰².

In a few instances in 2014, the Ugandan police protected the rights of LGBTI people, although this was not the dominant trend. The Inspector General of Police, General Edward Kale Kayihura, stated that as long as there were laws criminalising same-sex relations, the police would be bound to enforce these laws and arrest suspects. However, he admitted that the police should not violate the rights of LGBTI persons while enforcing these laws. Subsequently, police leadership intervened in four cases involving attacks on LGBTI people by non-state actors as well as police violations of LGBTI rights. Despite these four incidents, however, in most cases the police force participated in the abuse of the human rights of LGBTI people and condoned such abuses by third parties⁶⁰³. LGBTI persons were denied access to justice and in some cases the police simply refused or failed to investigate reported cases involving violations of LGBTI rights. For example in November 2014, the police failed to investigate claims where unknown people assaulted a

⁵⁹⁷ Ibid., p. 25

⁵⁹⁸ ORAM 10/2014, p. 35

⁵⁹⁹ The Consortium 7/2015, p. 41

⁶⁰⁰ SIPD Uganda n.d.

⁶⁰¹ The Consortium 7/2015, p. 13

⁶⁰² Amnesty International 15.5.2014

⁶⁰³ The Consortium 7/2015, pp. 22-24

member of the LGBTI community and left him unconscious and bleeding⁶⁰⁴. In general, the Ugandan state did not fulfill its duties to protect LGBTI persons from violations of their rights in 2014⁶⁰⁵.

According to the United Kingdom Home Office in 2014, it was unlikely that LGBTI people would be able to relocate within Uganda to escape persecution due to homophobic attitudes being widely held across the country. While there was some evidence that indicated less pronounced homophobia in certain parts of Kampala, it is not known to what extent persons living in these areas are able to avoid arrest, harassment, discrimination and violence⁶⁰⁶. In general, when there is a threat from the state, internal relocation is not a relevant or reasonable option⁶⁰⁷.

More than 500 LGBTI Ugandans who fled the country have applied for asylum in Kenya. The processing time for asylum applications in Kenya is currently around two years. The situation for LGBTI asylum seekers in Kenya is precarious and they face constant attacks, kidnappings, extortion and police harassment. Those staying in refugee camps have been victims of discrimination and hostilities⁶⁰⁸.

5.8. Organisations working on LGBTI issues in Uganda

Before the Anti-Homosexuality Bill of 2009, the LGBTI movement in Uganda had been rather disorganised. The bill led to a reorganisation of the movement, which now focused on the struggle to prevent further criminalisation in the short-run in addition to the ultimate goal of decriminalising homosexuality⁶⁰⁹. The work of LGBTI activists in Uganda has become extremely visible, with three activists (Julius Kagwa, Jacqueline Kasha Nabagesera and Frank Mugisha) having won prestigious international human rights awards⁶¹⁰. There are several organisations in Uganda founded and run by LGBTI people that work on different aspects such as HIV/AIDS, policy advocacy, healthy living and creating safe spaces for LGBTI persons⁶¹¹.

These groups have achieved small but significant gains by using the relative autonomy of the Ugandan judiciary to set legal precedents that protect the rights of LGBTI people, such as *Kasha Jacqueline, David Kato and Onziema Patience v Rollingstone Publications Limited and Giles Muhame*⁶¹². There are, however, difficulties involved in getting legal recognition for LGBTI

⁶⁰⁴ Ibid., pp. 30-31

⁶⁰⁵ Ibid., p. 32

⁶⁰⁶ Home Office 8/2014, p. 6

⁶⁰⁷ Ibid., p. 6

⁶⁰⁸ BBC News 10.11.2015

⁶⁰⁹ Jjuuko 2013, p. 383

⁶¹⁰ Ibid., p. 391

⁶¹¹ Ibid., p. 391

⁶¹² Ibid., pp. 394-395

organisations in Uganda⁶¹³. Nonetheless, more organisations are being formed and activism is becoming more specialised, with specific groups starting to address their own specific issues⁶¹⁴. Some of the most important Ugandan organisations working on LGBTI rights are listed in the following:

The *Civil Society Coalition on Human Rights and Constitutional Law* (CSCHRCL), composed of over 40 LGBTI and mainstream organisations, was created in October 2009 to oppose the Anti-Homosexuality Bill as well as advocating for sexual rights in Uganda. The Coalition was the key Ugandan voice against the Anti-Homosexuality Bill and coordinated both national and international efforts against the Bill and also around a broader goal of respecting human rights⁶¹⁵.

Sexual Minorities Uganda (SMUG) is a coalition of organisations that work for the human rights of LGBTI people. It was founded in 2004 and has since become a powerful voice for sexual minorities in Uganda. It played an important role in opposing the Anti-Homosexuality Bill and has successfully used the legal system to fight harassment and violence from government and private actors. SMUG also does important work supporting individuals who suffer from abuse⁶¹⁶.

The *Human Rights Awareness and Promotion Forum* (HRAPF) was founded in 2008 and is incorporated under the laws of Uganda. HRAPF is a non-governmental organisation whose mission is to promote respect and observance of human rights of marginalised groups through legal and legislative advocacy, research and documentation, legal and human rights awareness, capacity building and partnerships⁶¹⁷.

Spectrum Uganda was founded in Kampala in 2004 and focuses on providing services, documentation and advocacy on HIV/AIDS among the MSM population in Uganda. It also lobbies for inclusion of MSM in the national health programmes and fights discrimination in the public sector⁶¹⁸.

The *Rainbow Health Foundation* (RHF) was founded in 2010 and advocates for access to health services for LGBTI people in western Uganda. The organisation carries out HIV awareness outreach programmes and provides HIV testing and counselling for LGBTI people⁶¹⁹.

Freedom and Roam Uganda (FARUG) is a Lesbian, Bisexual, Transgender and Intersex (LBTI) organisation which was established in 2003 by a group of lesbian women and is based in Kampala. FARUG is also a feminist organisation run on feminist principles, including the equality

⁶¹³ Ibid., p. 393

⁶¹⁴ The Consortium 7/2015, p. 41

⁶¹⁵ Jjuuko 2013, pp. 391-392

⁶¹⁶ Rafto Prize 2011

⁶¹⁷ Human Rights Awareness and Promotion Forum (HRAPF) n.d.

⁶¹⁸ Spectrum Uganda n.d.

⁶¹⁹ Erasing 76 Crimes 13.11.2015

of women as stipulated in human rights and international instruments as well as the Ugandan Constitution⁶²⁰.

Transgender Equality Uganda is a human rights organisation started and led by transgender women in Uganda. It strives to create space for transwomen to speak out as well as mainstream transgender rights in Uganda's gender emancipation and feminist movement⁶²¹.

The *Support Initiative for People With Congenital Disorders* (SIPD Uganda) is an organisation that focuses on the particular challenges faced by intersex people and their families. The organisation's aim is to create awareness on intersex issues and advocate for a more open, tolerant, and supportive society toward children and people with intersex conditions and to advocate for protection, welfare, and respect for the human rights of all such children and persons in Uganda⁶²².

⁶²⁰ Freedom and Roam Uganda (FARUG) n.d.

⁶²¹ Transgender Equality Uganda n.d.

⁶²² SIPD Uganda n.d.

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