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Contested Intimacies

Sexuality, Gender and the Law in Africa

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CHAPTER 2

Protecting the 'Traditional Heterosexual Family'?

The State and Anti-homosexuality Legislation in Uganda

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Introduction

This chapter explores the ways that Uganda's anti-homosexuality legislation marshals a stereotypical vision of 'homosexuals'[1] as foreign threats to the family and state, and does so by mobilising arguments that such legislation seeks to protect 'traditional' family structures, structures which are actually under threat from factors unrelated to (homo)sexuality. The real purpose of the legislation, I argue, is to reflect an image of patriotic duty that the Museveni government wishes to communicate to the general public in Uganda, which ennobles the government by portraying them as actively intervening against this perceived threat. To make this argument, I look at the ways in which sex and sexuality, 'homosexuality' and the 'traditional' heteronormative family are constituted as public issues and therefore worthy of legislative intervention. Linked to this, I examine how the mythical traditional family is constructed as under threat by homosexuality, and therefore the family is in need of government protection. I offer counter-examples to show that the myths about the traditional family and 'who homosexuals are' are false, and explore the debates around the enactment of the legislation,[2] along with the potential for its misuse and legal challenge. I argue that these constructions are fantasies cooked up by the government and the media that serve political purposes for the

[1] Throughout this article, I use 'homosexuals' and 'homosexuality' to refer to members of LGBTI communities, as they appear in legal, governmental and popular discourses; such terminology might not be accepted by those communities. However, these communities are not the focus of my arguments; instead, I attend to how law and the state, in particular, imagine them, and thus I use the language found in those institutions during this debate in Uganda.

[2] I do legal analysis only as far as it is relevant to the thread of my argument. I do not therefore offer a complete analysis of the jurisprudence on anti-sodomy laws, which were introduced in Uganda using a legislative process in which Ugandans, like many other colonised subjects, were not entitled to participate. For more on colonialism and the anti-sodomy laws see Ryan Goodman, 'Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics,' *California Law Review* 89.3 (2001): 643–739.

ruling party and Museveni's government, specifically to shore up a national sentiment that buttresses their power. As I will show by focusing on legislation and political discourse, this effort to criminalise 'homosexuality' is as much "about defining proper and improper forms of national belonging" as it is "about defining proper and improper forms of intimacy".[3]

Setting the Scene: the Ugandan debates

As a lived institution, the family in Uganda faces serious difficulties: the impact of HIV/AIDS, poverty[4], dislocation, illiteracy, malnutrition and (until recently) civil war, have all taken a toll. The country's laws on sex and sexuality generate an image of a traditional family structure that does not align with these lived experiences. *Bill No.18 The Anti-Homosexuality Bill* (the Bill hereafter), and *Anti Homosexuality Act* 2014 (the *Anti Homosexuality Act* hereafter), are ideological responses to the historical stresses facing the family, generated in particular by the government's inability to resolve such stresses.[5]

In popular media, critics, such as the Ugandan blogger Ida Horner and the politician Augustine Ruzindana, have made a similar argument that the anti-homosexuality legislation operates as a distraction from the many issues that the government struggles to fix. As is well documented, for at least the last seven years, members of parliament have made various efforts to pass such a law. On 14 October 2009, for instance, David Bahati, a Member of Parliament from the ruling party, presented a private members bill that criminalised homosexuality to an excited parliament. The Executive later took it over and shelved it temporarily, yielding in part to international pressure from donor communities and human rights defenders who were against passing such a law. However, parliament revived the Bill in 2012 and 'urgently' passed it late in 2013. In the wake of the new legislation, on 24 December 2013, the blogger Ida Horner addressed the effect of the anti-homosexual legislation, posing a probing question: 'Uganda's Anti-homosexuality bill: What do we know?' She then posted a twitter conversation in which she reflected on the wider implications of the Bill with two lawyers: Peter Magelah and David Fred Mpanga[6] who observed and agreed that the new law was "an expensive distraction from the

[3] Macharia Keguro, 'Queer Kenya in Law and Policy,' in *Queer African Reader*, eds. Sokari Ekine and Hakima Abbas (Oxford: Fahamu Books and Pambazuka Press, 2013), 275.

[4] Especially on poverty, Nancy Xie has found a correlation between the current anti-homosexuality sentiments in Uganda and the effects of poverty in the country. She argues that the 'country's widespread poverty severely limits the information and knowledge that its citizens can obtain, contributing to fundamental misunderstandings about homosexuality'. See Nancy Xie, 'Legislating Hatred: Anti-Gay Sentiment in Uganda,' *Harvard International Review* 32.1 (2010): 6.

[5] For a similar argument, see Tamale, 'Exploring the Contours of African Sexualities: Religion, Law and Power', *African Human Rights Law Journal* 14 (2014): 158.

[6] Their conversation is available at: Ida Horner to Ida Horner's Blog, 24 December, 2013, accessed on 24 February 2015 at http://idahorner.com/twitter/ugandas-anti-homosexuality-bill-what-do-we-know.

problems and challenges that" face Ugandans; Parliament legislated on "*something that is a none* [sic] *issue*".[7]

Augustine Ruzindana was a member of the NRM, which under President Yoweri Museveni has held power in Uganda since 1986[8], but he quit the party and joined others to form the Forum for Democratic Change, and has since become a critic of the NRM and its government. The *Daily Monitor* contained an article in which Ruzindana[9] critiqued the various social, economic and governance challenges facing the country, which form the backdrop against which the Bill was tabled before parliament. In this article, Ruzindana concludes that the proposed anti-homosexuality legislation served two (related) purposes. First, it served to distract the public from government's failures. Second, the law was not intended for Ugandans; it was "to impress an external constituency critical for regime survival".[10] The external constituency to which Ruzindana refers is the American evangelical movement that continues to provide moral and material support for anti-homosexuality campaigns in Uganda and in the region—and many other scholars and commentators have stressed this point.[11]

At what point then did anti-homosexuality morph from a non-issue to become an issue important enough to inform public policy and legislation? Why and how did it become politically convenient for the Museveni administration to support legislation that isolated the country from its donors and potentially threatened its economy? How did the traditional heterosexual family and the threatening 'homosexuals' emerge as targets of legislation?

THE UGANDAN FAMILY AND ITS CHALLENGES: WHERE IS THE 'EVIL'?

The myth of the hetero-normative, patriarchal male-headed household is one that is important to the above-mentioned Christian evangelical pressure groups and also has had resonance with traditional structures in Ugandan society. It is held up as the epitome of morality, and therefore it is a structure that is worthy of protection.

[7] Horner, 'Uganda's Anti-homosexuality Bill', accessed on 24 February 2015 at http://idahorner.com/twitter/ugandas-anti-homosexuality-bill-what-do-we-know.

[8] In 2005, there was a referendum that returned Uganda to multi-party rule, which had been outlawed in 1986. Accordingly, the NRM ceased to exist and the National Resistance Movement Organisation (NRMO) was formed under which Museveni won the 2006 polls. However, the change was not fundamental as both organisations are still referred to as 'the Movement' and have shared colour symbols.

[9] See Augustine Ruzindana, 'Why Govt Is Concerned with Gays and Not Corruption,' *Daily Monitor*, 2 December 2009.

[10] Ibid.

[11] For example Nancy Xie stresses that although local forces shaped the popular resentment towards homosexuals in Uganda and led the country to 'legislat[e] hatred' against homosexuality, foreign forces played a significant role in shaping such resentment in Uganda and in other countries in the region. She argues that '[d]espite what appears to be homegrown sentiment, foreign influences still pervade much of the anti-gay furor in the region'. See Xie, 'Legislating Hate', 6.

However, there are a number of examples available in media and government reports that indicate that 'traditional' family structures have transformed in Uganda, as part of the consequences attendant upon the transition of the economy from a pre-colonial agrarian state to more modern conditions. This transition of the economy has placed pressure on families in different ways, as has the untrue assumption that 'traditional' families protect children from harm by sexual (read homosexual) predators. The examples provided below show that the threat to 'traditional' families are due to a complex mix of economic and social factors that have little to do with the fiction mobilised by government to justify anti-homosexuality legislation.

On 28 June 2014, the *Daily Monitor*, one of the leading independent newspapers in the country, published a survey concluding that "70 per cent of married Christians cheat on their spouses"[12], and suggested that this contributes to HIV/AIDS transmission, domestic violence, and general instability in Uganda's heterosexual families.[13] This contradicts the ideal of traditional family that is promoted in other media and legislation around homosexuality.

Other changes in traditional family structures emerge from the *2002 National Population and Housing Census*. For example, traditional family structures would assert that households (and families) need to be headed by men, but the report shows that by 2002 women headed at least 23.1% of the households.[14] According to the *State of Uganda Population Report 2013*, by 2013 women headed 30% of families in Uganda, a seven per cent increase in women-headed households over a ten-year period. Thus, by 2014, official records indicated that households in Uganda are not strictly headed by a central, male, patriarchal figure and that a significant proportion of families no longer conform to notions of the 'traditional' family structure.

Changes in the economic structure of Ugandan have also affected families. The *State of Uganda Population Report 2014* notes that the country experienced substantive economic progress.[15] However, this was enjoyed by a small percentage of the population. The report states that "[d]espite the economic growth in the past decade, many Ugandans live in poverty and confront social-economic inequities".[16] In such conditions, many families live with financial stress — indeed, 19.7% of the population lives under conditions of "extreme poverty and hunger".[17]

[12] Emanuel Ainebyona, '70 Per Cent Married Christians Cheat on Their Spouses — Survey,' *Daily Monitor*, 28 June 2014.

[13] Ainebyona, '70 Per Cent Married Christians Cheat on Their Spouses — Survey,' *Daily Monitor*, 28 June 2014.

[14] Uganda Bureau of Statistics, *2002 National Population and Housing Census*, (Kampala: Government of Uganda, 2002).

[15] See Population Secretariat, *State of Uganda Population Report 2014*, (Kampala: Ministry of Finance Planning and Economic Development, 2014), ii.

[16] Ibid., 2.

[17] Population Secretariat, *State of Uganda*, 61.

Furthermore, children appear to face high levels of documented (hetero)sexual assaults. For instance, Justice Lameck Mukasa heard the criminal case of *Uganda v Asiimwe Edison*[18] concerning a 23-year-old male friend of the family who had sexually assaulted a nine-year-old girl; in that case, Justice Mukasa argued that "defilement cases were on the increase". In the case of *Uganda v Twinamasiko Ben*[19], the 26-year-old defendant had had sexual intercourse with a girl aged 6 years. When sentencing him, Justice J. W. Kwesiga relied on the reasoning that "[d]efilement is alarmingly high in this region [where the offence was committed] and the Country as a whole". In the case of *Uganda v Apunyo Hudson*[20], the accused impregnated a minor. Many educational institutions in Uganda do not accommodate pregnant learners; they are considered to be "bad apples' that will spoil the rest"[21] of the learners. As such, the minor was expelled from school. She then carried out an abortion that was illegal and unsafe, and as a result, she suffered severe complications including a mental breakdown.[22] Worse still, in the case of *Livingstone Sewanyana v Uganda*,[23] the accused had an incestuous relationship with his underage daughter and threatened to kill her if she reported, while in the case of *Uganda v Arukor Sipiriano*[24] a grandfather sexually abused his two-and-a-half-year-old granddaughter. Such individual cases are indicative of the trend that Justices Mukasa and Kwesiga identify in their rulings and suggest the ways that the institution of the family as traditionally conceived does not necessarily protect children.

It could be argued that these cases are not new; they simply point to improved reporting of crimes, the empowerment of victims, and better law enforcement under a supportive constitutional framework. But if Article 31 of the Constitution[25] had

[18] Criminal Session No. 37 (2003) http://www.ulii.org/ug/judgment/high-court/2004/3, accessed 28 February 2015.

[19] HCT-11-CR-CSC-134 (2011) http://www.ulii.org/ug/judgment/high-court/2012/247, accessed 28 February 2015.

[20] Criminal Session Case No.7 (2004) http://www.ulii.org/ug/judgment/high-court/2004/52, accessed 28 February 2015.

[21] The Minister for Education and Sports Jesica Alupo has struggled to fight this practice since it is not part of government policy. Her effort has not yielded results. See Esther Oluka, 'Dilemma of pregnant girls at Uganda Christian University,' *Daily Monitor* November 10, 2013, accessed on February 13, 2015 at http://www.monitor.co.ug/Magazines/Life/Dilemma-of-pregnant-girls-at-Uganda-Christian-University/-/689856/2066516/-/13ifi65/-/index.html.

[22] This case is not uncommon. Abortion is illegal in Uganda. Consequently, many unwanted pregnancies are terminated through illegal, unsafe procedures leading to serious complications, infertility and death. See Population Secretariat, *The State of Uganda Population Report 2013*, (Kampala: Ministry of Finance Planning and Economic Development, 2013), 46–47.

[23] Criminal Appeal No. 19 (2006) http://www.ulii.org/ug/judgment/supreme-court/2010/16, accessed on 20 February 2015.

[24] Criminal Session Case No. 8 (2011) http://www.ulii.org/ug/judgment/high-court/2013/85-1, accessed on 20 February 2015.

[25] The Constitution of the Republic of Uganda (as Amended), Article 31, accessed 25 February 2015 at http://www.opm.go.ug/assets/media/resources/6/Constitution.pdf.

assumed the presence of a traditional, stable, (extended) family structure in which heterosexual parents (and relatives) protected minors from abuse, and the *Children Act* had widened this frame to place children in the care of communities in case parental care was missing, then the above cases and the opinions of the judges show that by 2014, the care provided was either insufficient or unreliable. As Alan Tacca argues when reflecting on the common charge that homosexuals are male paedophiles, the victims of such assaults are more likely to be girls and the perpetrators are more likely to be men, which indicates that the link between paedophilia and homosexuality is spurious[26]

Why then are traditional hetero-normative families represented as 'under threat' by homosexuality, when the real threats emerge from complex social and economic factors? And why is it important to legislate against anti-homosexuality in circumstances where the perpetrators of paedophilia are mostly, if not exclusively, heterosexuals men?

Anti-homosexuality legislation in Uganda: myths and realities

When parliament considered the Anti-Homosexuality Bill during its sitting on 20 December 2013, Benson Obua-Ogwal, a Member of Parliament for the Uganda Peoples Congress elaborated on the objective of the law, stating that it was:

> ... to provide for marriage in Uganda as contracted between **only** man and woman, and that is the way the Creator really intended it to be. This is one of the reasons why this Bill must be considered — there is an attempt to redefine marriage. The family is also under attack and it is our role, as Members of Parliament, to protect what we know as the family. There have also been a lot of arguments that same-sex attraction is something which is innate or inbuilt, which we want to really disagree with. We know that homosexuality is a learned behaviour and therefore can be unlearnt. Madam Speaker, since 2009 when we proposed this Bill, a lot of our young children have been abused in a homosexual [and not heterosexual] form. Our newspapers have been awash with a lot of stories about those youth. Some of them are in court but some of them go unnoticed; there are so many of our young people who are suffering silently. We believe that if we pass this Bill today, it will help us to save many young people who are suffering quietly.[27]

Clearly, the objective of the law missed the well-catalogued threats to children found by the courts of law. Rather, it attempts to shore up the traditional structure

[26] Alan Tacca makes this point in his 'Of Paedophiles, the Catholic Church and Uganda's Anti-Homosexuality Law,' *Daily Monitor*, 2 March 2014.

[27] My emphasis; see *Hansard*, Friday, 20 December 2013, accessed 6 January 2015 at http://www.parliament.go.ug/new/index.php/documents-and-reports/daily-hansard.

of the family with a heterosexual couple at its centre, a structure that current census reports indicate is more a fantasy that an actuality. After all, those reports show that the family is no longer the idealised unit as Obua-Ogwal portrays it, even as he paradoxically argues that this idealised unit is under attack.

Obua-Ogwal's statement confirms that the proposed law reaffirmed Article 31 of the Constitution, making it absolutely clear that same-sex marriage is an impossible form of relationship. It expanded the scope of the colonial sodomy laws in sections 145[28] and 146[29] of the *Penal Code*. The proposed expansion of legislation is justified in terms of an urgent need to buttress the heterosexual family structure, which Obua-Ogwal claims is under attack from the ungodly 'vice' of homosexuality and the serious "health effects that come with it", even though such a figure of attack is fictitious.[30] Intentionally or not, he voices popular conservative views in the country, most notably the contention that homosexuals have abused many children. He goes on to cite the plight of these voiceless children as the basis for the passage of the new law, now framing it as a "Christmas present" for all Ugandans.

In proposing and debating this legislation, parliament has made sexuality a public matter, one based on shifting moral considerations, and as a public matter, it then requires government intervention.[31] President Yoweri Museveni further justified this intervention in the form of anti-homosexuality legislation. At the time he tried to moderate the perception held by other countries, especially in the West, that this law was draconian by noting that in contrast to the 2009 proposed legislation, which made aggravated homosexuality punishable by death, this bill was

[28] Section 145 provides that "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 life". Sodomy thus appears exactly as Michel Foucault characterises it in Western law codes; it is an 'utterly confused category' since the expansion of Uganda's colonial legislation defines sodomy as the practice of bestiality, the practice of same-sex acts between men, as well as the much vaguer assertion that sodomy is when a person has carnal knowledge of another person 'against the order of nature', a euphemism that could capture a variety of sex acts performed by people with different embodiments and sexual identities. It is not just restricted to the enactment of same-sex desire. See Foucault, *The History of Sexuality*, Volume 1, Robert Hurley, trans. (New York: Pantheon Books, 1978): 101.

[29] Section 146 prescribes that "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 years".

[30] On moral panics and their role in creating social change, especially legal transformations, that then continue to impact communities and individuals well after the end of the moral panic, see Rubin, 'Thinking Sex: Notes for a radical theory of the politics of sexuality' in *Deviations: A Gayle Rubin Reader* (Durham: Duke University Press, 2012), 168.

[31] In fact, there were threats that Members of Parliament who did not support anti-homosexuality legislation would lose their seats.

not intended to kill[32] or 'marginalise' homosexuals; instead, the law was to shield children from danger and thus guard the family.[33] In particular, he repeated Obua-Ogwal's view that it was needed to protect children against sexual exploitation — a principle expanded upon in the *Anti Homosexuality Act* 2014 since it protects not only children but also other vulnerable groups.[34]

Museveni also stated that the law was based on the concern that 'homosexuals'[35] have come out of the closet and publicly campaign for their sexuality as a right, thereby making sex and sexuality a public issue when traditionally sex and sexuality in Africa are often deemed private. He notes that even in heterosexual relationships the pleasure derived from sex and love when publicly expressed is often understood as a danger.[36] Museveni, for instance, claimed that he could lose power if he were seen kissing his wife in public.[37] In this way, he frames the law not as an attack on homosexuality per se but a response to the intrusion of sex and sexuality (supposedly pushed by homosexuals) into the public realm.

Interestingly, it could be argued that actual LGBTI people, whether in or out of the closet, were not the target of the recent anti-homosexuality legislation; rather the legislation and political debate constructs and circulates a fantasy of who 'homosexuals' are. In fact, in a meeting with a delegation from the Robert F. Kennedy Center for Justice and Human Rights[38], President Museveni promised to investigate any violence against sexual minorities. However, during the signing of the Bill into law, the President relied on a report prepared by a group of carefully selected scientists that constructs homosexuals as, in his words, "mercenaries",

[32] It was section 3(2) of *The Anti Homosexual Bill 2009* that made aggravated homosexuality punishable by death. Precisely for this reason, the Bill was called the 'kill the gay bill' in the global media, especially in the US; this version of the Bill was accessed on 25 February 2015 at http://www.publiceye.org/publications/globalizing-the-culture-wars/pdf/uganda-bill-september-09.pdf. This position was replaced by life imprisonment by the Legal and Parliamentary Affairs Committee of Parliament, and the official position that homosexuals should not be killed is held by most of the pro and anti-homosexuality activists.

[33] This point was emphasised in John Njoroge, "No Killing, Marginalisation of Sexual Minorities in Uganda; Museveni," *Daily Monitor*, 19 March 2013.

[34] To serve this purpose, section 3 of the Anti Homosexuality Act 2014 creates a specific offence of "aggravated homosexuality" where the victim is: (i) below eighteen years, (ii) in the care of the defendant parent or guardian, (iii) under the authority of the defendant, (iv) a person with disability, (v) stupefied or overpowered by a drug administered by the defendant;a copy of this act was accessed on 25 February 2015 at http://www.refworld.org/pdfid/530c4bc64.pdf.

[35] Section 1 of the Anti Homosexual Act 2014 defines a homosexual "a person who engages or attempts to engage in same gender sexual activity".

[36] Deborah Posel has an interesting essay on this dynamic and how it manifested itself in post-1994 South Africa as sex and sexuality gained public attention. It was understood as both a source of pleasure and a menace. See Posel, 'Getting the Nation Talking About Sex': Reflections on the Discursive Constitution of Sexuality in South Africa since 1994,' *Agenda: Empowering Women for Gender Equity* 62 (2004): 53–63.

[37] See Njoroge, 'No Killing'.

[38] Ibid.

"homosexual prostitutes" and then lumped together, "the homosexual mercenary prostitutes".[39] Museveni's language imagines 'homosexuals' as potentially foreign figures that pose a threat to the state since, as mercenaries, they might be acting on behalf of other governments or organisations; in addition, his language does not distinguish between homosexuality and sex work, and uses public anxiety and fears over sex work and workers to tar homosexuality. His words thus link homosexuality to a political agenda that the government must fight, although this fight appears against an amorphous, dangerous group that threatens the nation. This is the mythical fantasy of homosexuality that the government, in part, created, and these are the homosexuals that the state targeted through legislation and public policy. Some critics fear that such legislation could be used to stifle political dissent[40] and interrupt activities of NGOs deemed hostile to the state.[41]

Ashley Currier has explored the ways that sometimes anti-homosexuality legislation can serve a political role in the postcolonial nation-state. To demonstrate, she analysed the ways in which Namibia's ruling South West Africa People's Organisation employed anti-homosexuality legislation to stifle political opposition, at the same time that this political party constructed a 'new' narrative in which sexual minorities were erased from the nation. Currier's argument helps us to understand the historical moment in which homosexuals as a group can be re-invented and placed at the centre of public scrutiny and political discourse by defining this group negatively as a libidinous, paedophiliac and dangerous collective.[42] Both political rhetoric and the law enable this homophobic construction in an effort to dignify the state by implying that it will save the public from such threats.

But such a project is often fraught with incoherence and inconsistencies. For instance, the NRM has placed the modernisation of Uganda's families at the heart

[39] On President Museveni's language, see Vision Reporter, 'The President Signs Anti-Gay Bill into Law,' *New Vision*, 24 February 2014.

[40] For instance, former Premier and Secretary General of the ruling NRM, Amama Mbabazi, was a personal friend of the President until recently when the two fell out following a rumour that the former had an ambition to stand for the presidency in the 2016 elections. There are fears that one day he will be arrested and prosecuted on trumped up charges, like others who have fallen out of favour with the President. One of the charges he could be arrested for is homosexuality. Andrew Mwenda expressed this view on NTV Television, but it is also part of the discussion on the NTV Facebook page where an individual stated thus: "[A]mama mbabazi is gay ... let him be arrested". See the NTV Facbook page, comment made on 22 February, 2014, accessed ib 24 February 2015 at https://www.facebook.com/NTVUganda/posts/635500176498440.

[41] The Walter Reed Project was closed down under these circumstances. Although it, in collaboration with Makerere University, receives funding from the USA to cater to its activities on reproductive health, it was accused of being hostile to the state. Specifically, its closure was based on the accusation that it was recruiting Ugandans to become homosexuals. See Stephen Kafeero and Agatha Ayebazibwe, 'Makerere Project Recruited Gays — Police,' *Daily Monitor*, 9 April 2014, and Umar Kashaka, 'NGOs Lack Integrity, Say Mps,' *New Vision*, 24 April 2014.

[42] Ashley Currier, 'Political Homophobia in Postcolonial Namibia,' *Gender & Society* 24.1(2010): 122–25.

of its political agenda, even as it relies on traditional notions of the family to valorise its policies. During his swearing-in ceremony on 12 May 2011, President Museveni celebrated his party's achievements in the past twenty-five years and his upcoming goals to be completed by 2016. He argued that his government had succeeded in avoiding the stagnation of Ugandan society and his rule stands for the rapid transformation of the country into a modern society.[43] Now, to assert that families in Uganda are traditional (and not modern or diverse) would fundamentally undermine the very rapid progress to modernity celebrated by the party, yet it was by constructing and celebrating such a myth that the traditional family gained a new political vigour. Parliament ascribed a universal, traditional, heterosexual identity to all Ugandans when it created a law that punished 'deviants' and that perception of the public includes the myth of the monogamous, opposite-sex couple as the heart of the family.

After the anti-homosexuality legislation was overturned in August 2014, prominent lawyers hailed the ruling of the Constitutional Court of Uganda as a significant instance when the rule of law is upheld. They argued that even if the law had not been annulled, it still would have been hard to enforce, which likely would be true for at least two reasons. Firstly, section 30 of the Ugandan *Marriage Act* for example, allows for cross-border marriages between Ugandans, British, Scottish and Irish nationals. Through the *Marriage (Same-Sex Couples) Act, 2013*, the marriage law in England and Ireland was changed to accommodate same-sex couples. The same happened in Scotland through the *British Marriage & Civil Partnership (Scotland) Act, 2014*. Could section 12 of Uganda's *Anti-Homosexuality Act*, which prohibits same-sex marriages, be used to forbid a marriage between a British and a Ugandan resident in either Uganda or the UK? Could the couple be successfully prosecuted under this law? That the law raises such questions indicates one way that it was simply not going to survive scrutiny in future court cases and points to the fact that the law was more valuable to the Museveni government as a political tool.

Secondly, Uganda both supports and has ratified several pieces of international protocol and legislation that make the *Anti-Homosexuality Act* legally troubling. The government, for instance, ratified the *International Covenant on Civil and Political Rights* (1966) on 21 June 1995 and its *Optional Protocol* in February 1996. In the case of *Toonen v Australia*, the Committee on Civil and Political Rights (the CCPR) — the UN Human Rights body that monitors compliance with the ICCPR — ruled that the criminalisation of homosexuality infringes on the right to privacy. Uganda is bound by this decision because of its earlier ratification of the *International Covenant on Civil and Political Rights*; as a principle of international

[43] See President Museveni's speech, 'Speech by H.E. Yoweri Kaguta Museveni President-Elect of the Republic of Uganda at the Swearing-in Ceremony at Kololo, Kampala,' (Kampala: President's Office, 2011).

law, it should not legislate against it. The rulings of the CCPR offer another loophole through which anti-homosexuality laws could be legally challenged and likely overturned.

That said, there is the problem of public opinion/public interest, which can sometimes be deployed to defeat the enjoyment of fundamental human rights in Uganda. The Supreme Court of Uganda sacrificed the rights to life and to freedom from torture, among others, in its decision in the *Suzan Kigula & 461 Others v AG*[44] petition, when it declined to outlaw the death penalty. Two of the reasons given for this decision were: that the death penalty was constitutional as long as it is confirmed by the highest Court and that the death sentence was popular among Ugandans. The jurisprudence in Uganda has thus refused to follow the South African case of *State v Makwanyane & M. M. Mchunu*[45], a powerful decision in which the Constitutional Court of South Africa rejected public opinion in support of the death penalty and nullified section 277(1)(a) of South Africa's *Criminal Procedure Act 51* (1977), thus outlawing capital punishment. Since public opinion in Uganda is generally homophobic, decisions of the Court that depend on it can be very injurious to the civil, political, economic, social and cultural rights of sexual minorities.

In another instance, public opinion was an issue in a case arising out of the events that took place on 14 February 2012 when a group of human rights defenders and gay rights activists convened at Entebbe for a workshop. Simon Lokodo, the Minister for Ethics and Integrity, had this workshop closed. These human rights activists filed an application, *Nabagesera & Others v AG & Lokodo*[46], in the High Court of Uganda, arguing that their right to freedom of assembly protected under municipal, regional and international law had been violated, and they were entitled to remedies. Dismissing their application, Justice Stephen Musota agreed with the defendants that the "Minister acted in public interest of Uganda to protect public moral standards which fall under his docket."[47] The principle, which was laid down in the earlier case of *Muwanga Kivumbi v AG*,[48] was not followed. In that case, the Constitutional Court of Uganda had insisted that public interest cannot be protected beyond "what is acceptable and demonstrably justifiable in a free and democratic society". Clearly, Justice Stephen Musota's decision suggests that a workshop

[44] Criminal Appeal No.3 (2006) http://www.ulii.org/ug/judgment/supreme-court/2009/6, accessed on 25 February 2015.

[45] Case No. CCT/3 (1994) http://www.saflii.org/za/cases/ZACC/1995/3.html, accessed on 25 February 2015.

[46] Miscellaneous Cause No.033 (2012), http://www.ulii.org/ug/judgment/high-court/2014/85, accessed on 24 February 2015.

[47] Miscellaneous Cause No.033 (2012), http://www.ulii.org/ug/judgment/high-court/2014/85, accessed on 24 February 2015.

[48] Constitutional Petition No.9 (2005), http://www.ulii.org/ug/judgment/constitutional-court/2008/4, accessed on 24 February 2015.

on the rights of sexual minorities *cannot* be acceptable and justified in a free and democratic Uganda. There is a pending appeal against his decision so this case is ongoing, although it illustrates the ways that public interest can serve as a means to support anti-homosexuality legislation.

Although valid, these criticisms miss the fact that the quintessential traditional heterosexual family and the threat to it imposed by the purported menace of 'homosexual mercenary' (to use one of the formulations of the president) are political myths. The law served its purpose as soon as the President signed it; that is, it enabled his government to appear as though it protects the public by combating the moral and social threat that homosexuality supposedly poses to the state, a protection of the public that increased the government's symbolic power amongst many of the general populace. This explains why Museveni had to sign it in front of local and international media before attending an inter-religious rally at the Kololo Air Strip to celebrate the defeat of the West, a rally at which he appears more heroic than he actually is.

Conclusion

There is a general pushback against human rights in Uganda. Legislation has been used to serve this purpose, and the Ugandan Anti-Homosexuality law plays a role in undermining human rights. But such legislation has been popular with Ugandans because it has been wrapped in attractive political myths about homosexuality, all of which portray homosexuality as a threat to the vulnerable, normative, heterosexual, traditional family that the state supposedly fosters and protects.

Many Ugandans, including the LGBTI people, love their traditions and families. The government plays on this sentiment, promising to shield the so-called 'traditional' family from Western cultural imperialism, disease and immorality, protecting it, at a time when any family is vulnerable to a complex array of social, economic and cultural factors. While some foreign constituencies had an interest in this legislation, particularly American evangelicals and their religious missions, the country's anti-homosexuality law and policy also had a very strong local logic. I contend that the NRM successfully, and deliberately, deployed two pointed myths: the myth of a traditional heterosexual family and the damaging myth that 'homosexuals' pose a threat to that family. I argue that by dealing with homosexuality and not the well-documented internal threats to the health of the families, such as patriarchal violence, Parliament used slanderous images of 'homosexuals' as political tools to shore up its own power.

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