

Uganda is proposing new legislation to further criminalise, stigmatise and harass LGBT people. The new legislation also compels non-LGBT individuals, businesses and society as a whole to be complicit, or else face criminal sanctions.

The Prohibition of Promotion of Unnatural Sexual Practices Bill (the “USP Bill”) makes it a crime to ‘promote’ sex between people of the same-sex, or sex with a transsexual person. Conduct that amounts to ‘promotion’ is very broad. The effect of the USP Bill is not only to criminalise the LGBT community for expressing its identity, but also to criminalise anyone whose actions are vaguely supportive of the LGBT community. The USP Bill criminalises individuals, businesses and NGOs who have even a tangential connection to the LGBT community, and who may not even be aware that their actions amount to ‘promotion’. Its aim is to eradicate the space for the expression of LGBT identity, whether in public or in private, and to compel the rest of society to assist with this aim.

The breadth of the USP Bill and the chilling effect that it will have on LGBT and non-LGBT alike can be illustrated by reference to a fictitious gay couple, Adam and Stephen. It is already illegal for Adam and Stephen to have sex – this was criminalised by Uganda’s colonial era Penal Code, which is still in force today. Although Adam and Stephen risk life imprisonment by having sex, at present they may express their sexual identity in other ways, e.g. online, when speaking with their friends, etc. This will change if the USP Bill is passed. If it is passed, not only will Adam and Stephen be criminals, but so too will layers of persons around them.

Below are some examples of the individuals, businesses and NGOs who could be liable to conviction under the USP Bill, and thus liable to seven years’ imprisonment:

1. Adam and Stephen live together in a rented house. The landlord/company that leases the house risks prosecution under the USP Bill (clause 2(20)(c), for ‘leasing’ premises to be used for gay sex).

Adam and Stephen face the real risk of being evicted from their home.

2. Fearful of their landlord reporting them to the police, Adam and Stephen rent a room in a hotel. The owner/manager of the hotel risks prosecution under the USP Bill (clause 2(20)(c), for ‘allowing’ premises to be used for gay sex);

Adam and Stephen see the hotel as a short-term solution. They try to find alternative accommodation.

3. Stephen places an advert on the staff noticeboard at the factory where he works requesting a single room for two men in a shared house. The factory manager/owner risks prosecution under the USP Bill (clause 2(2)(b) for distributing or causing an advertisement likely to 'facilitate' gay sex);

Life in Kampala is becoming very difficult for Adam and Stephen. They are wary of travelling alone for fear of being attacked.

4. Adam collects Stephen from the factory. They embrace and have the slightest sexual contact while standing in the grounds of the factory. The factory's manager/owner risks prosecution under the USP Bill (clause 2(20)(c) for 'allowing' premises to be used for gay sex – there appears to be a positive obligation on the premise owner to *prevent* the premises being used, even when the owner has no knowledge).

It has become unsafe for Adam and Stephen to return to their hotel. They have been shunned by their families, except for Adam's grandmother, who does not know that they are gay.

5. Adam and Stephen stay at the grandmother's home, where they are intimate. The grandmother risks prosecution under the USP Bill (clause 2(20)(c));

Stephen is sacked from his factory job. His boss saw the advertisement on the noticeboard and dismissed him immediately. Adam is still employed. He works for a British company with an office in Kampala, which is a little more sympathetic to his sexuality.

6. Adam tells his manager, Nigel, a British expat, about his predicament. Nigel informs Stephen about the company's global LGBT group and directs him to its website. This website makes various statements about valuing all employees regardless of their sexuality. Nigel and various persons within the company, both in Uganda and at the head office, risk prosecution under the USP Bill (clause 2(2)(d), for 'using information technology' for promoting gay sex).

The company's LGBT group sends Adam some pamphlets on various matters of interest to gay men, including on sexual health.

7. The international courier company that delivers the pamphlets to Adam risks prosecution (clause 2(2)(b), for its participation in disseminating materials that promote gay sex).

One of the pamphlets contains a message from the British company's Board of Directors stating their commitment to LGBT equality.

8. The Directors of the company risk prosecution for promoting gay sex and arrest if they were to visit Uganda (clause 2(2)(a) and (b)).

Another pamphlet discusses sexual health for gay men. Adam and Stephen decide that they need to discuss HIV with a doctor.

9. Their local doctor provides Adam and Stephen with condoms. The doctor risks prosecution under the USP Bill (clause 2(2)(b) for 'disseminating' materials used for the purpose of gay sex).

In the adjacent consultancy room, another doctor refuses to discuss sexual health with a 17-year-old gay man, Jimmy, due to his fear of being prosecuted under the USP Bill. Jimmy, oblivious to the risks that he is about to take, later contracts HIV.

Adam's and Stephen's predicament is becoming increasingly dire. They are homeless, their families have shunned them, and Adam has left his company for fear of getting his colleagues in trouble with the authorities due to his being gay.

10. Adam and Stephen approach a local NGO that assists vulnerable LGBT people. The NGO risks prosecution under the USP Bill (various clauses for 'promoting' gay sex, clause 2(2)(a), (b) and (d)).

Jimmy attends the local NGO's office with his friend, Doreen. Betty, an NGO volunteer, introduces Doreen to Samantha, who then start dating.

11. Betty risks prosecution under the USP Bill (clause 2(2)(e), for 'introducing or matchmaking' people for the purpose of gay sex).

The NGO's patrons sends Christmas cards to its supporters, including to Jackie, a post-operative transsexual, with the message 'so pleased the operation went well, now time to hit the town to find you a man!'

12. The patrons risk prosecution under the USP Bill (clause 2(1)(2)(a), for distributing documentation that is 'intended or likely' to 'facilitate' sex with a transsexual person).

Betty and all the staff at the NGO are harassed by the authorities. The NGO closes. The LGBT community now has no means to receive information, plan its advocacy strategy, obtain safe-sex advice, nor does it have a safe haven to visit.

An international foundation steps in to fund a clinic that gives safe-sex advice regardless of sexuality.

13. The foundation risks prosecution under the USP (clause 3, for 'funding or sponsoring' another person's promotion of gay sex).

Adam, Stephen, Doreen, Samantha, Jimmy and Jackie, plus countless other LGBT Ugandans, are left with no option but to flee Uganda to seek asylum in the UK and various other EU countries.

Nigel has returned to the UK and his company is now reluctant to send expatriate staff to Uganda. The Directors of Nigel's company had planned to attend a marketing meeting in Kampala, but they stay away for fear of arrest due to their global LGBT policy.

These are just a few potential examples of those who are criminalised by the USP Bill. The USP Bill also criminalises those who 'aid and abet' the promotion of gay sex (clause 2(3)). The breadth of 'aiding and abetting' is unclear. It could include anyone with a tangential connection to any of those individuals criminalised above.