

Briefing on Uganda's New *Outlaw the Gays* Bill

The Prohibition of Promotion of Unnatural Sexual Practices Bill, 2014: Uganda's Latest Attempt at State-Sponsored Harassment, Criminalisation and Persecution of LGBT People

1. In summary, this Bill, if enacted, will, amongst other things:
 - criminalise someone for expressing their LGBT identity
 - criminalise those producing AIDS prevention information aimed at the LGBT community
 - criminalise LGBT people who meet or correspond over the internet or by text
 - criminalise matchmaking LGBT people with each other
 - criminalise those that fund and support Uganda's LGBT groups, individuals and organisations
 - criminalise anyone who allows LGBT people to live in or use their premises

Consent is not a defence. The chilling effect of this Bill on the LGBT community will decimate it. The USP Bill is so vague its effect will be to outlaw being gay.

2. The Prohibition of Promotion of Unnatural Sexual Practices Bill, 2014 (the USP Bill), represents the most recent attempt by Uganda's leaders and politicians to harass, stigmatise and further criminalise LGBT people Uganda.
3. As in 79 jurisdictions around the world, in Uganda it is already an imprisonable offence for two adults of the same sex to engage in consensual sexual activities in private. Uganda, like much of the Commonwealth, inherited its law from the British during the colonial era. This offence carries a sentence of lifetime imprisonment (section 145, Penal Code).
4. In recent years, Uganda's Parliament has drafted new legislation that builds upon the colonial era laws. This new legislation aims to persecute as well as harass, stigmatise and criminalise LGBT Ugandans by subjecting further aspects of their private lives to state intervention and criminal sanctions.
5. The USP Bill's predecessor, the Anti-Homosexuality Act, 2014 (AHA), received widespread international condemnation. The AHA was ratified by President Museveni in February 2014, but was declared void six months later by Uganda's Constitutional Court due to a 'technicality' concerning the manner in which it was passed by Parliament.

6. The emergence of the USP Bill in November 2014 is of no surprise. The USP Bill largely replicates the AHA. At the same time, the USP Bill can be viewed as much more dangerous, as it originates from within the President's own political party, it is better drafted and is more subtle in its legislating for the harassment, stigmatisation and further criminalisation of the LGBT community.

Criminalising the Space for LGBT Identity

7. The USP Bill allows state invasion into every aspect of LGBT people's lives and imposes a positive duty on the rest of society to facilitate that invasion, or else face criminal sanctions. The USP Bill seeks to exclude LGBT people from civil society at every level.
8. The aim of the USP Bill is to decimate the Ugandan LGBT community. Any link between being LGBT and sexual intimacy is criminalised. LGBT people cannot express their identity. The USP Bill demands their silence by coercion and by doing so renders them invisible. Affirming yourself as a gay, lesbian, bi-sexual or a transgender person becomes a crime. Like the AHA, the USP Bill criminalises the 'promotion' of homosexuality. This prohibition of promotion will expressly criminalise the non-sexual conduct of LGBT people and criminalise those who provide services to them. For example:
 - a. LGBT activism and advocacy will be outlawed due to the criminalisation of publishing, broadcasting and distribution of information 'intended to facilitate' homosexuality (clause 2(2)(a)).
 - b. LGBT people will be excluded from renting property and face the real risk of homelessness due to the criminalisation of landlords, family and friends who allow their premises to be used 'for the purpose of engaging in unnatural sexual practices' (clause 2(2)(c)).
 - c. LGBT people will be denied the crucial private sphere of the internet to express their LGBT identity due to the criminalisation of using the internet and mobile phones 'for the purpose of engaging in unnatural sexual practices' (clause 2(2)(d)).
 - d. LGBT people who express their identity openly risk exclusion from employment and other essential services due to the criminalisation of those who 'aid and abet' promotion (clause 2(3)). What amounts to 'aiding and abetting' is far from clear, creating risk for Ugandans and those who do business in Uganda of inadvertently committing a criminal offence under the USP Bill.
 - e. Supporters of LGBT groups will be criminalised for providing funding that is viewed as 'promoting' homosexuality (clause 3).
 - f. Engaging in these activities by LGBT people and non-LGBT people alike carries the risk of seven years' imprisonment, thus providing a strong incentive for Ugandan society to acquiesce in the state-

sponsored harassment and stigmatisation of LGBT people (clauses 2 and 3).

9. If enacted, the USP Bill will amount to persecution. The USP Bill represents a dangerous invasion into every aspect of LGBT people's private lives, eradicating the private space for the expression of LGBT identity, and will compel Ugandan society to be complicit in this invasion. This persecution is compounded by the pressure on Ugandan society to comply. Not only will those who accommodate LGBT people - landlords, employers, family, friends - risk imprisonment, but risk losing other rights too.
10. A particularly cruel feature of the USP Bill is that people convicted under these laws will be ineligible to apply for child adoption, custody, guardianship or fostering (clause 7). This will break up families. Children will be the losers. It will not just affect LGBT people, but anyone convicted of promoting and/or funding offences. All would be prevented from creating a family. It is not clear if this applies to existing families.
11. The USP Bill's lack of a section that expressly criminalises same-sex sexual activity does not render it less odious than the now defunct AHA. Such conduct is already criminal under Uganda's colonial era legislation and already carries a life sentence. The USP Bill builds upon that legislation by criminalising each aspect of LGBT identity, which is inseparable from sexual intimacy - desired or carried out.
12. Nor does the USP Bill's criminalisation of child sex offences (clause 2(2)(g)) and sex trafficking (clause 5) provide it with a veneer of legitimacy. Uganda is in dire need for effective measures to protect children from sexual violence and exploitation. There is extensive evidence that children can be brutalised in Uganda and child sexual abuse is widespread. Statutory measures to address this crisis would be welcomed, but not in a Bill that targets consensual sexual conduct between adults, and which conflates such conduct with paedophilia and sexual coercion.
13. The provisions of the USP Bill making it a criminal offence to fund or sponsor another person with the intent to promote LGBT activities is not limited to Ugandan citizens. If a foreign person or organisation supports a health care centre, an advocacy group, or educational programmes they can be prosecuted. Those abroad could be subject to Ugandan criminal proceedings and face potential extradition. This is a serious and systematic attempt to prevent financial support reaching Uganda's LGBT community.
14. Inevitably, should this Bill become law measures to protect public health will be destabilised. HIV/AIDS programmes will not be able to work with vulnerable groups, particularly men who have sex with men and those who identify as LGBT. Similarly, the relationship between the healthcare

professional and the LGBT patient will be undermined. If they discuss sexuality issues they both risk prosecution. This Bill violates the right to health.

New legislation, same condemnation

15. With the USP Bill, the Ugandan authorities are continuing to persecute their LGBT citizens. The USP Bill is yet another unrelenting attack. Combined with Uganda's pre-existing colonial era laws it enhances the state-sponsored harassment, stigmatisation and criminalisation of LGBT people. The USP Bill differs from the AHA only to the extent that the unsophisticated and blatantly homophobic language of the latter has been dropped, but nonetheless the aims of the USP Bill and the AHA are the same: the destruction of LGBT identity in Uganda. The international community must tackle and condemn the USP Bill with the same vigour as was directed at the AHA.
16. With the AHA came a dramatic increase in the persecution of the LGBT community. This increase in violence, homelessness, rejection by friends and family and the termination of employment has been documented by independent reports. If the USP Bill is passed, persecutory treatment will increase again from both state and non-state actors. In turn, inevitably, this will lead to more cases of asylum being claimed outside of Uganda.
17. Taken as a whole, the USP Bill will persecute LGBT Ugandans. It will violate freedom of expression rights, association and assembly rights, as well as private and family life rights. To target the LGBT community in this way is discriminatory, demeaning and degrading. All of these rights are guaranteed by Uganda's Constitution and Uganda's international human rights treaty obligation. The USP Bill not only violates Uganda's human rights obligations, it besmirches its reputation making Uganda a less attractive place to visit, invest in and support. Inevitably therefore the impact of the USP Bill, should it become law, will be felt beyond those it torments.

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