

UGANDA'S ANTI HOMOSEXUALITY ACT 2014

- A Perspective on the Developmental Consequences

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Tristan Regan: *Uganda's Anti Homosexuality Act 2014*

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ABSTRACT

In 2009 a bill was introduced to the Ugandan Parliament to outlaw homosexuality. Three years after the initial introduction of the Anti Homosexual Bill 2009, the Ugandan Parliament passed the Anti Homosexual Act 2014, which still contained a majority of the Anti Homosexuality Bill legislation with some amendments. The most significant amendment was the removal of the death penalty in favour of life imprisonment. Roughly two months later, The Anti Homosexuality Act was signed by President Yoweri Museveni and on the 10th of March 2014 the law took effect, significantly extending the legal framework in terms of penalizing homosexuals. The law now entails the prohibition of 'promotion' of homosexuality, includes the criminalization of landlords not reporting homosexual tenants and an offence labelled as "aggravated homosexuality", penalized with life imprisonment.

The objective of this thesis has been to analyse the developmental consequences of the Anti Homosexuality Act 2014 and particularly the concerns for the LGBT population of Uganda. This has been done by applying the Capabilities Approach, and establishing the argument that human rights are essential in producing a framework for providing the essential capabilities and freedoms. In conclusion, it is the findings of this thesis that the legislation is endangering the life and health of LGBT persons. The Act endangers and excludes the LGBT community from important forms of political, social and familial affiliation and eradicating the emotional equanimity as a result of fear of persecution. The act has not only served to endanger the LGBT community through deprivation of goods and capabilities, but has also stripped them of any supportive acquaintances, as a consequence of specific provisions endangering their network. The developmental consequences of the Anti Homosexuality Act 2014 are catastrophic, saturating major parts of the Ugandan society, structurally challenging future progress and reverting development, particularly evident in the discontinuation of numerous health services and the redirection of foreign aid and donations.

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ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
GDP	Gross Domestic Product
GNP	Gross National Product
HD	Human Development
HDI	Human Development Index
HDR	Human Development Report
HIV	Human Immunodeficiency Virus
HRBA	Human Rights Based Approach
IMF	International Monetary Fund
LGBT	Lesbians, Gays, Bisexuals, Transgender
MDGs	Millennium Development Goals
MNCs	Multinational Corporations
MP	Member of Parliament
NGO	Non Governmental Organisation
NRM	The National Resistance Movement
SAPs	Structural Adjustment Programs
TNCs	Transnational Corporations
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
WB	World Bank
WTO	World Trade Organization

INTRODUCTION

Throughout the African continent the remnants of colonial law still play a pivotal role in defining the rights of homosexuals. The denigration of rights of homosexuals is institutionalized and in a vast majority of the African countries also extremely popular (Jonas, 2012, 222) consequently sexual minorities lack basic rights (Jonas, 2012, 222). In 37 out of 54 of African countries, at the time of writing (Jonas, 2012, 222), homosexuality is criminalized and penalized, with most of the current legislation, criminalising homosexuality, dating back to colonial rule (Jonas, 2012, 222). An entire group of people are subject to victimization, confronted with extreme prejudice, and exposed to torture, assaults, prosecutions and executions. Even in African countries where homosexuals supposedly enjoy equal rights, such as South Africa, practices such as "corrective rape" are common (Jonas, 2012, 222). The UN's Special Representative of the Secretary General on human rights defenders has articulated trepidation in connection with how the human rights violations are dealt with by the relevant authorities, remarking that this was done with an "almost complete lack of respect" (O'Flaherty and Fisher, 2008, 128). Furthermore the High Commissioner also remarked that "violence against LGBT persons is frequently unreported, undocumented and goes ultimately unpunished" (O'Flaherty and Fisher, 2008, 128).

In Uganda the topic of homosexuality has become an increasingly debated issue during the past decade. In the capital of Kampala, numerous demonstrations have taken place, supporting the "African family" (Boyd, 2013, 697-698), arguing that homosexuality is a threat to the African way of life and family. It has become a general view that homosexuality is a threat to common Ugandan life and represents western decadence and moral decline (Boyd, 2013, 697-698). As a response to the increasing political pressure, populism and lobbying of the anti-homosexual movement in Uganda, a bill to outlaw homosexuality was introduced in 2009, which was argued to serve as a protection from the homosexual threat. The reasoning was that there was a need for a stronger framework to defend the traditional African family and that the present law was ineffective in this regard (Jjuuko, 2013, 383). The international response to the Ugandan Anti Homosexuality legislation has placed the issue of homosexuality at the top of the human rights agenda. The fact that Uganda is often used as an example of progress and development in Africa, has added to the debate on homosexuality, development, human rights and questions of universality (Sadgrove et al., 2012, 105). While the bill has been ar-

gued to violate human rights and promote homophobia, especially in the west and within the international community, there has been outspoken support of the bill and condemnation of what is perceived as attempts of neo-colonialism throughout Africa (Sadgrove et al., 2012, 105). The Anti Homosexuality Act has become an argument for the advancement of Ugandan national self-identity, while simultaneously being a point of criticism in the human rights discourse and developmental conceptualisation of Uganda (Sadgrove et al., 2012, 105). Perceived, not as universal, but as part of a liberal western agenda, the rights of homosexuals is an extremely controversial topic in Uganda (Sadgrove et al., 2012, 105). This thesis attempts to analyse and uncover the developmental consequences and impacts on the Ugandan society of the Anti Homosexuality Act. This is attempted through an overview of the historical development of Uganda, the dominant human rights perspective of development that currently plays a central role in the context of Ugandan development, what the Anti Homosexuality Act entails and the impact of this. Following this an alternative approach to development is outlined and consequently discussed, challenging and presenting a significantly different framework than the human rights approach.

1.1 LIMITATIONS

There have been a variety of understandings of what development exactly entails. This thesis understands the concept of development as outlined by the Indian economist Amartya Sen. Sen's conception of development is understood as an expansion of capabilities (Fukuda-Parr, 2003, 303). Uganda was chosen as a case study due to the extremity of the legislation, the focus on the legislation in the international community, the country's reliance on foreign donation and the progress of Ugandan development (see The Political Landscape and Background of the Ugandan Anti Homosexuality Bill and Understanding Development in a Ugandan Context). Therefore comparative analyses of countries and regions are omitted. Furthermore the emphasis in this thesis is on the impact of the legislation, rather than on the motivational factors for establishing the law, excluding a retrospective deterministic focus. As a consequence some cultural aspects may factor less, than had the focus been reverse.

The choice of theory is based upon the notion that the Anti Homosexuality Act is concerned with limiting the capabilities of people, specifically LGBT persons. The legislation in question is considered to revolve around the freedoms/restrictions of a specific group, in contrast to the Capabilities Approach which is extremely concerned with safeguarding what it perceives as essential freedoms, and is therefore considered an appropriate approach in dealing with the topic at

hand. The Capabilities Approach used in this paper relies primarily on the conceptualisation of American philosopher Martha Nussbaum. Amartya Sen's conceptions are used where these are deemed relevant and do not contradict Nussbaum's. The disagreements in their approaches to the Capabilities Approach will not be dealt with, as it is not considered pertinent to the topic of this thesis. The description of the Capabilities Approach and the subsequent analysis based upon it are not meant to serve as full and comprehensive accounts of the theory, but rather as guides and references in examining the topic of development in Uganda. It is through the provision of the central points of the theory that the analysis is consequently anchored.

The concepts of universalism/relativism, in the context of the human rights, are briefly touched upon. However, as Uganda has already ratified the human rights ([Human Rights Watch, 2014c](#)), the focus of this thesis is upon the limitations of rights, considered through the Capabilities Approach. As such the universal/relativist debate is beyond the scope of this paper. The human rights are not described in detail, but the legislation specific to the case is highlighted and discussed. Following the fact that the focus revolves around human development or human rights, very little attention is on economic factors, unless considered relevant in relation to human development. As the foundation for the Capabilities Approach is also to effectively answer and counter many earlier utilitarian approaches, it has been deemed unnecessary to actively elaborate on these approaches.

Ugandan legislation, and in this context the Anti Homosexuality Act, does not distinguish between lesbians, gays, bisexuals and transgender, but uses "homosexuals" as an umbrella term. However, it is evident that the actions and consequences of the legislation affect not only homosexuals but also bisexuals and transsexuals and it is therefore understood that they too, are covered by the Act. Despite the legislation having an effect on the entire Ugandan development, the primary focus of this thesis will be on the direct impact of the Anti Homosexuality Act on the LGBT community, as they are primarily affected. Despite the fact that reproductive capabilities are often an essential element in gender and sexual rights discussion, they are considered extraneous due to the nature of the legislation and will therefore not be discussed. Notwithstanding the fact that there are significant differences between the Anti Homosexuality Bill 2009 and the Anti Homosexuality Act, this thesis uses the terms: act, bill and legislation interchangeably in referring to the latter of the two from chapter The Anti Homosexuality Act 2014 and forth.

The focus of the thesis is thus on what the consequences are and how these affect the development of Uganda, rather than on contemplating the philosophical foundations leading up to the enactment.

1.2 METHOD

This paper primarily uses qualitative data, with quantitative data to support it wherever possible. Due to the fact that the Anti Homosexuality Act was passed only 3 months prior to the writing of this paper, little quantitative data is available. As a consequence of the recentness of the passing, the reliability of statistical data would furthermore be questionable, as the full effect of the legislation is likely yet to be seen. The paper attempts to examine the bill, clause by clause, specifically focusing on the clauses that have particular significance in relation to the capabilities of people, in order to scrutinize the determinants of development. A comprehensive amount of literature was reviewed to assess the result of the legislation and the societal impact.

The thesis makes use of a wide range of sources, including media reports on the subject of LGBT, formal statements from relevant actors (e.g. the Ugandan Parliament), academic and journal articles, reports from organisations (non-governmental and governmental), official documents and press releases. The primary methodological approach used in this paper is deduction. Deduction is used, as it is impossible to test our theories in practice, however, it allows us to move from theory, to observations, to deduction and finally postulation.

1.3 STRUCTURE

This thesis is divided into seven chapters, with each chapter encompassing subchapters and subdivisions. The first chapter serves as an introductory chapter, presenting the subject and setting forth the research question. The following chapter contextualises the topic, elaborating on the political and religious backdrop, from the introduction of the Anti Homosexuality Bill in 2009, to the passing of the Anti Homosexuality Act in 2014. The third chapter deals with the various components of the Anti Homosexuality Act, including offences, existing and overlapping legislation. The fourth chapter deals with impacts associated and linked to the legislation, including the violence and financial impacts. Particularly focusing on Uganda's development. Chapter five contextualises development through the examination of relevant literature.

Following the comprehensiveness of development as a concept, a brief historical perspective of development as a field is provided, with a focus on the Ugandan context. This also serves to give an insight into the institutional framework and setting of the Ugandan government. Key points in the current human rights development paradigm are outlined, as this is considered the dominant contemporary ap-

proach in development work (see Understanding Development in a Ugandan Context). The sixth chapter and seventh chapter both explore the impact of the Anti Homosexuality Act, seen through the lens of the Capabilities Approach. This is attempted through a chronological evaluation of the impacts of the act and how these are perceived to affect capabilities on Nussbaum's list. Finally chapter eight summarizes the results found in the previous chapter and concludes upon these.

1.4 RESEARCH QUESTION

The establishment of limiting and discriminatory legislation, resulting in unequal treatment and lack of possibilities for people can be argued to mark a regress in the development of Uganda. This thesis will endeavour to examine the Anti Homosexuality Act enacted in 2014 and consider the developmental consequences of this legislation. The research question attempted answered is:

What are the developmental consequences of the enactment of the Anti Homosexuality Act 2014 in Uganda?

Considering the Anti Homosexuality Act 2014 and its consequences, this thesis will explore the extent of persecution of LGBT people, the challenges and deficiencies of sexual rights and equality in Uganda.

THE POLITICAL LANDSCAPE AND BACKGROUND OF THE UGANDAN ANTI HOMOSEXUALITY BILL

Prior to the British colonisation of Uganda, homosexual relations are not believed to have been criminalised (Jjuuko, 2013, 384). According to historical research these practises were not suppressed, however they were not condoned either. In contrast sexual transgression was punished, according to the laws of pre-colonial Uganda (Jjuuko, 2013, 384). Despite often purported claims that homosexuality is a western value, the colonists did not import homosexuality, but rather they brought intolerance of it (Jjuuko, 2013, 384). In addition the focus on the prevention was increased drastically and regulation to prevent and suppress it were introduced (Jjuuko, 2013, 385).

In June 1950, only 12 years before the Ugandan independence, the 1950 Penal Code was introduced by the British. This legislation was based on similar legislation in other British colonies and borrowed from the Indian Penal Code of 1860 and the Australian Penal Code. The primary function of the code was to prohibit homosexuality, prohibiting 'unnatural offences' (Jjuuko, 2013, 386). Following its independence the Ugandan government renamed the Penal Code Act 1950 to the 'Penal Code Act Cap 106'. Despite being amended numerous times, the act has remained largely the same (Jjuuko, 2013, 386). In 2005 an omnibus amendment of the Ugandan Constitution, primarily presented to be the removal of presidential term limits, imposed a provision stating that "*Marriage between persons of the same sex is prohibited*" (Jjuuko, 2013, quoted from page 388). The first official steps towards focused legislation prohibiting homosexuality in Uganda were taken on October the 14th in 2009, when member of the Ugandan Parliament, David Bahati, introduced and propositioned the legislative proposal "the Anti Homosexuality Bill" (Oliver, 2013, 86). The proposed bill expanded upon the legislation in place, as homosexuality was already considered as a criminal offense. Bahati's proposed bill sought to elaborate further upon the existing framework in order to "*strengthen the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family*" (Oliver, 2013, Bill No.18, 2009, quoted from page 86).

Several of the passages included in Bahati's bill lifted sections of colonial legislations verbatim (Sadgrove et al., 2012, 104). The bill introduced an emphasis on the prevention of sexual rights activist work in Uganda, to ensure the stoppage of supposed imposition of "*sexual promiscuity on the people of Uganda*" (Oliver, 2013, Bill No.18, 2009, quoted from page 86). Additional criminal acts inserted in the bill

were the inclusion of any "attempted" homosexual acts and homosexual "promotion" (Oliver, 2013, 86). Promotion of homosexuality was considered to be any act of distributing information on homosexuality and homosexual relationships (Sadgrove et al., 2012, 104). Failure to disclose and forward information of acts of homosexual character to the appropriate authorities in the time span of 24 hours was also defined as a criminal act in the bill (Oliver, 2013, 86). This would include the criminalization of landlords not reporting homosexual tenants and parents not reporting if their child is homosexual (Sadgrove et al., 2012, 104). Furthermore, an offence labelled as "aggravated homosexuality" would be penalized with the death penalty (Oliver, 2013, 86). The bill also overruled any ratified international treaties or other form of protection which could be considered in opposition to the bill. Lastly the bill not only covered Ugandan territory, but also related to any Ugandan citizens in the world, arguing that they should be penalized upon their return to Ugandan domain (Oliver, 2013, Bill No.18, 2009, quoted from page 86).

The international political community's response to the proposition of the bill was divided. The majority of western leaders condemned the bill, while some African nations came out in support, conceivably as they were deliberating introducing comparable legislation. Several international donors of foreign aid to Uganda threatened to cut funding if the bill was passed, including US and Britain (Oliver, 2013, 87). The bill sparked considerable controversy in human rights groups around the world. Activists in a wide range of civil society groups condemned the bill, ranging from human rights, feminists, organizations fighting AIDS and HIV, to gay rights and sexual minorities groups (Oliver, 2013, 87). Several initiatives were spawned immediately after as a consequence of the bills introduction (Oliver, 2013, 87). In the wake of the bills proposition, new ties between international governmental actors and human rights activists have emerged. Uganda has recently experienced a rise in human rights NGO's from the Western World and along with these support from Western leaders in opposition of the bill. The emphasis has been on the oppression of human rights and the negative effects on public health that are anticipated as a consequence of the bill (Oliver, 2013, 88). These newly formed relations have enabled a wide range of actors and groups to articulate and bring attention to not only the rights of LGBT, but also opening the floor to debate rights and oppression in a broader Ugandan context (Oliver, 2013, 88).

In response to the massive opposition to the bill, the then Ugandan Minister of State for Ethics and Integrity, James Nsaba Butoro, stated that *"the government was determined to pass the legislation, even if it meant withdrawing from international treaties and conventions or losing donor funding"* (Sadgrove et al., 2012, quoted from page 104). Further-

more, the international pressure and reluctance to give in to it, was evident in his statement that *"I have been pressured by some donors to allow homosexuality, but I have told them they can keep their money and the homosexuality because it is not about charity at the expense of our moral destruction"* (Sadgrove et al., 2012, quoted from page 105). As a side note, a checklist was introduced in the Ugandan Parliament Committee on September 10th 2013, following the failure of several enactments, as they were consequently found to be clear violations of Human Rights. The Check List was introduced to ensure that the legislation passed would observe human rights (Parliament of the Republic of Uganda, 2013b).

Another law, similar in topic and relevant in elucidating the area of discussion, is the Anti Pornography Act, which is currently being reviewed by the Ugandan cabinet. Among the aims of the law, it seeks to ban clothing that is sexually explicit. As explained by current Ethics Minister, Simon Lokodo, who is backing the bill: *"If your miniskirt falls within the ambit of this definition, then I am afraid you will be caught up by the law"* (Okeowo, 2014). The law defines pornography to be an *"indecent show ... of sexual parts of a person for primary sexual excitement"* (Daily Post quoted in (The Huffington Posts, 2014) and the reasoning for the introduction of the law was to prohibit *"erotic behaviour intended to cause sexual excitement and any indecent act or behaviour tending to corrupt morals."* (Biryabarema, 2013).

Also related to the Anti Homosexuality Act is the public order management law that was passed in August 2013, which prohibits any public demonstration that is not warned to the police in advance. Furthermore, the police are now granted the authority to break up demonstrations and rallies if they believe they have *"reasonable grounds"* (Biryabarema, 2013).

According to Sylvia Tamale, dean of the Faculty of Law at Makerere University in Kampala, who has written extensively on the Ugandan sexuality and gender challenges, the political concentration on sexuality and gender is a clear attempt to shift focus from repression, unemployment and inflation. She believes that *"the mainstream aversion to same-sex relations consequently reflects a greater fear ... Homosexuality presents a challenge to the deep-seated masculine power within African sexual relations."* (Okeowo, 2014).

At the announcement that President Museveni intended to sign the Anti Homosexuality Act, this prompted a fast response from President Obama, who stated that the enactment of the bill would signify a *"step backward"* (Jorgic and Croome, 2014). for Ugandan progress and that it would complicate bilateral diplomatic efforts (Aljazeera, 2014b). Despite the American President's statement Museveni signed the bill a week later (Jorgic and Croome, 2014).

Although Museveni has stated that he does not intend to run again and extend his 28-year leadership, for the presidential office in the

2016 election, there has been speculation that the popularity of the signing of the bill, which has produced significant support for him, might elicit a run for another term in office (Jorgic and Croome, 2014).

2.1 THE RELIGIOUS INFLUENCE

The Christian influence in Ugandan politics is undeniable, with outspoken biblical referencing and politicians publicly associating with ecclesiastics. The Christian movements in Uganda have strong ties to and have been a focus for American evangelical Christians for a long time. Under the Bush administration millions were funded to programs promoting abstinence and applauding what was referred to as traditional Ugandan family values (Gettleman, 2010). Numerous Ugandan churches have hosted American pastors, influential evangelical right wing leaders and anti-gay campaigners, underlining the influence of the American religious right wing (Jorgic and Croome, 2014).

A month prior to Bahati's introduction of the Anti Homosexuality bill, a conference was held in Kampala, hosting three American evangelical Christians under the heading "the gay agenda - that whole hidden and dark agenda", deliberating on the outcome of homosexuality on traditional Christian African family values (Gettleman, 2010). Speaking to thousands of participants at the event, American missionaries Scott Lively, Caleb Lee Brundidge and Don Schmierer, spoke about how to convert homosexuals into heterosexuals, the regular sodomy of teenage boys by homosexual men, the immorality and wickedness of the homosexual movement, and how it is intent on displacing the current heterosexual marriage-based society and substituting it with a sexually promiscuous society (Gettleman, 2010).

The local organizers of the event subsequently participated in drafting the bill and Scott Lively also met with Ugandan lawmakers to deliberate on details of the bill, which Bahati later introduced to the parliament (Gettleman, 2010). After the introduction of the bill all three American evangelicals have distanced themselves from the proposed legislation, all expressing that they had no intent of participating in spawning what eventually led to a legislative proposal encompassing capital punishment for homosexuals. Particularly, Scott Lively expressed disappointment of the severity and harshness of the penalizations included in the bill (Gettleman, 2010).

The American Christian lobby also participated in the drafting of the second version of the anti-homosexuality bill, helping ensure the pass-ability of the second draft, through the elimination of the death penalty appearing in earlier versions (Okeowo, 2014). A key figure and outspoken proponent of the Anti Homosexuality Act is the Ugandan pastor Martin Ssempe. Ssempe has strong ties to the American

evangelical church. He has been a featured speaker and held sermons in famous American pastor Rick Warren's church (Bass, 2009). Ssempe is in charge of an AIDS eradication program, partly funded by the U.S. and has been known to burn condoms to illustrate his point, that abstinence and marriage are the solution to the AIDS epidemic. Following the controversy of the bill, Warren cut his ties to Ssempe (Alsop, 2009). Rick Warren is also known to be influential in the political ranks of the Ugandan elite, often associating with and befriending members of the parliament and the first lady Janet Museveni (Alsop, 2009). Warren visited Uganda in 2008 and while there he spoke on homosexuality and equated it to paedophilia (Gettleman, 2010).

The anti-homosexual sentiments are not restricted to the parliament and are unambiguous within the religious discourse. A multitude of influential Ugandan pastors have openly criticized homosexuals and condemned homosexual acts (Jorgic and Croome, 2014). In contrast only a few have publicly opposed the bill. Only two MP's from the Ugandan parliament, which holds 260 seats, have openly criticized the bill (Jorgic and Croome, 2014). Both parliament members, Sam Otada and Fox Odoi, are independent and disputed the bill. They argued that it was discriminating and underlined that existing legislation already outlawed homosexuality, adding that government should not intervene in the privacy of peoples bedrooms (Parliament of the Republic of Uganda, 2013a). Amama Mbabazi, The Ugandan Prime Minister and Leader of Government Business, endeavoured to postpone the bill under the contention that details surrounding the bill were still being negotiated in the government (Parliament of the Republic of Uganda, 2013a). Additionally only a single clergyman, Christopher Senyonjo, has publicly dissociated himself with the Ugandan church's support of the bill. Consequently he has been stripped of his previous title as Bishop in the Church of Uganda (Jorgic and Croome, 2014). American homosexual organizations are attempting to counter the American evangelical influence and are funding Ugandan gay rights activists and groups. The New York based gay rights group, Astraea Lesbian Foundation for Justice, has raised and directed roughly US\$75,000 to activism in the area (Gettleman, 2010).

In summery, the setting for the Anti Homosexuality Act is evidently both historically and politically rooted. Despite often argued to be a sign of western influence on African society, the institutionalisation of homophobia dates back to British colonial law. The introduction of the Bahati bill has divided the international political community, largely with the West on the one side and Africa on the other. Uganda has been unreceptive to international pressure, stating that the country would not be subject to intimidation and would

rather face decline in foreign donations. However Uganda remains a stronghold for American evangelicals and the influence of the American religious right wing policies and lobbying is clear. As such the Anti Homosexuality Act should be seen in the light of the preceding American campaigns to promote abstinence and applauding the traditional Ugandan family values. In addition should be noted that several other bills of similar oppressive nature have also been passed recently.

Three years after the initial introduction of the Anti Homosexuality Bill, the Ugandan Parliament passed the Anti Homosexual Act on December 20th 2013, which contained a majority of the Anti Homosexuality Bill legislation with some amendments. The most significant amendment was the removal of the death penalty in favour of life imprisonment. According to Ugandan law it is required that the president sign any bill, which is passed by the Ugandan Parliament, before it takes effect (Biryabarema, 2013).

According to the Ugandan Parliament the aim of the bill was to:

"protect the traditional family by prohibiting any form of sexual relations between persons of the same sex; and the promotion or recognition of such sexual relations in public institutions and other places through or with the support of any government entity in Uganda or any other nongovernmental organization inside or outside the country" (Parliament of the Republic of Uganda, 2013a).

The Committee on Legal and Parliamentary Affairs added that, *"The Bill aims at strengthening the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family."* (Parliament of the Republic of Uganda, 2013a). In addition the bill was argued to be essential in the protection of Ugandan children, defenceless against sexual abuse (Parliament of the Republic of Uganda, 2013a). Roughly two months later, The Anti Homosexuality Act was signed by President Yoweri Museveni on February 24 2014, significantly extending the legal framework in terms of penalizing homosexuals. The law now entails the prohibition of adult consensual same-sex, arguably overruling numerous constitutional rights, as well as rights stipulated in ratified international treaties (Human Rights Watch, 2014c). On the 10th of March the same year the law took effect (Human Rights Watch, 2014a).

The key changes and amendments included in the Anti Homosexuality Act are the penalization of "touching with the intent to commit homosexuality", having "a house, room, set of rooms or place of any kind for purposes of homosexuality" and any form of "promotion of homosexuality." (Human Rights Watch, 2014b). The bill also extended the criminalization to include lesbians for the first time (Cohn, 2014). Numerous NGOs and human rights groups have expressed serious concerns following the enactment of the bill, citing the consequences and implications of the penalization "promotion of homosexuality" to be extensive and likely to prevent many organizations, groups and activists from continuing their work (Hu-

man Rights Watch, 2014c). Despite the sweeping and extensive legislation, and offences such as "aiding and abetting" homosexuals, Ugandan health minister, Ruhakana Rugunda, publicly stated that medical workers would not discriminate against homosexuals when caring for them. According to Rugunda, the clause containing medical workers was removed before the enactment of the bill in February (Buffalo News - Associated Press, 2014).

On the 27th of February the popular Ugandan tabloid newspaper, Red Pepper, comprised and published a list of 200 Ugandans under the headline EXPOSED, which it accused of being gay (Buffalo News - Associated Press, 2014). A similar occurrence had happened in 2010 when the local Kampalan tabloid paper "Rolling Stone" listed 100 Ugandan supposed homosexuals. Following the publishing, several people listed in the Rolling Stone article received threats, among them prominent Ugandan gay-activist David Kato, who was murdered three months later Okeowo (2012). Despite the controversy and critique that the bill has been subject to in the international community, the law remains popular within Uganda (Buffalo News - Associated Press, 2014). An example of international opposition to the Ugandan legislation, the Secretary-General of the United Nations, Ban Ki-moon, warned the Ugandan government that the passing of the law might incite prejudice, precipitating and advancing persecution of homosexuals in the country. Additionally Ban Ki-moon encouraged reconsideration or repeal of the legislation (Buffalo News - Associated Press, 2014). Nationally Ugandan activists and lawyers have taken legal action, contesting the legality of the law due to the impossibility of implementation as they consider it to be in direct conflict with the Ugandan constitution, particularly citing the constitutional barring of discrimination (Buffalo News - Associated Press, 2014). On March 11, 2014 a diverse group including a law professor, members and former members of the Ugandan parliament, a journalist, a medical doctor, LGBT activists and two NGOs, filed a constitutional challenge to the Anti Homosexuality act. The challenge contests the newly implemented law (Human Rights Watch, 2014b). According to the challenge the law directly violates constitutional rights of Ugandans, as it discriminates their rights to privacy, thought, assembly, association, civic participation and freedom of expression. Additionally the law also allegedly defies Uganda's international legal obligations, as Uganda has ratified the international human rights treaties (Human Rights Watch, 2014b). The group argues that the Anti Homosexuality Act advances homophobia, encourages stigmatization and undermines existing legislation (Human Rights Watch, 2014b). In addition to the petition, the group also filed a motion for an injunction in order to avert the Anti Homosexuality Act's enforcement, once the constitutional challenge is finalised. At the East African Court another group

of human rights activists have also filed a case, disputing the Act, as they contend that it violates the East African Community Treaty ([Human Rights Watch, 2014a](#)).

The Ugandan anti-homosexual law was passed only a week after similar legislation was enacted in Nigeria ([Okeowo, 2014](#)). At the time of writing both Senegal and neighbouring Kenya are attempting to introduce bills of similar anti-homosexual nature, either elaborating on existing legislation or introducing new proposals ([Okeowo, 2014](#)). Sudan has also proposed a bill, in which the penalty for being gay is a death sentence. Reportedly Burundi and Rwanda are introducing similar bills as well ([Bass, 2009](#)). The only Sub-Saharan country with laws that protect the rights of homosexuals is South Africa. However, South Africa also has a significant amount of homophobia with corrective rape for lesbians being a regular occurrence ([Bass, 2009](#)).

The signing of the publicly popular Ugandan anti-homosexual bill should be considered in a context of the waning support of the Ugandan president, Yoweri Museveni. At the introduction of the bill, Museveni dismissed the proposal, arguing that homosexuality was a genetic distortion and that the proposals of the bill were too harsh ([Muhumuza, 2014](#)). Museveni denied to sign the proposed bill, referring to the legislation as "fascist" ([Human Rights Watch, 2014a](#)). Later the presidential administration announced that it had been decided that a team of scientists would examine homosexuality and based on scientific evidence the president would determine whether to sign the bill or not ([Human Rights Watch, 2014a](#)). The report was compiled and composed by more than a dozen scientists working for the Ugandan Health Ministry ([Buffalo News - Associated Press, 2014](#)). According to the Ugandan government's spokesperson, Ofwono Opono, president Museveni's decision to sign the bill was founded in the scientific report, which had the conclusion that "*homosexuality is not genetic but a social behaviour,*" ([Muhumuza, 2014](#)). This consequently prompted Museveni's return to the issue, stating that gays were "disgusting" and that he had been informed that homosexuality was "learned" behaviour ([Okeowo \(2014\), Muhumuza \(2014\), Buffalo News - Associated Press \(2014\) and Human Rights Watch \(2014a\)](#)). Museveni maintains that homosexuality is a western value and that the signing and enactment of the bill is to be conceived as a protection of the African values ([Okeowo, 2014](#)).

3.1 OFFENCES

The bill defines the offence of homosexuality to be any form of same sex penetration and any form of touching with "the intention of committing the act of homosexuality" (Appendix A). Any person found guilty of committing the listed offences can be convicted to life impris-

onment (Appendix A). Attempting to "commit homosexuality" is a liable offence and if found guilty, the perpetrator may be imprisoned up to seven years (Appendix A).

The offence of "aggravated homosexuality" is determined to include any person who perpetrates a sexual act with a minor (i.e. below the age of 18 years old), if the offender is a person of authority, a parent/guardian or if the offender has HIV (Appendix A). In addition it is also considered aggravated homosexuality if the sexual encounter is with a disabled person, if the victim is drugged or if the perpetrator has repeatedly offended (Appendix A). If a person is found guilty of the offence of aggravated homosexuality the perpetrator is also penalised with life imprisonment (Appendix A). Attempting to commit aggravated homosexuality will result, if convicted, to life imprisonment as well (Appendix A).

Throughout the Anti Homosexuality Act there is a division between a perpetrator and a victim in each sexual act (Appendix A). Under §5 of the bill the actions taken to safeguard the victims of homosexuality are listed (Appendix A). This explicates that victims of homosexuality will not be penalized as a consequence of involvement in homosexual acts, that victims will be able to present their views during criminal proceedings and that they may receive punitive damages, determined by the court, for the harm caused by the defendant (Appendix A). Additionally the act ensures privacy rights of the victims, particularly that any publication of victim's personal information is considered a criminal offence (Appendix A).

The act strictly prohibits any aiding, abetting or counselling of homosexual offenders. Doing so can result in seven years of imprisonment (Appendix A). Furthermore "procuring another" (Appendix A), threatening others to engage in sexual relations, detaining with the intent to commit homosexual acts or under false pretence "conspiring with another person of the same sex" (Appendix A), are offences that holds the offender liable to imprisonment for seven years (Appendix A). It is however noted, that under the circumstances that only one person accuses someone of threatening them to engage in a sexual act, the accusation must be corroborated by material evidence (Appendix A). Having a room or a house, which is intentionally to be used for homosexuality is punished with seven years in prison (Appendix A). Owning or acting as a manager of premises where homosexual acts knowingly are "committed", is a liable offence and the offender faces imprisonment of up to five years (Appendix A). If a person is found guilty of trying to get married to a person of the same sex, the offender is liable to life imprisonment. Accordingly the person who marries two people of the same sex may face up to seven years in prison or lose their license (Appendix A). In the Anti Homosexuality Act the promotion of homosexuality is described in §13 and prohibits persons from "production, procuring, marketing, broadcasting,

disseminating, publishing of pornographic materials for purposes of promoting homosexuality” (Appendix A), funding homosexuality or offering premises to homosexual activities, in addition to prohibiting the use of electronic devices and mediums for the purpose of promoting homosexuality (Appendix A). If convicted of these offences, offenders are liable to either a fine of 5000 currency points, imprisonment of minimum five and maximum seven years or both (Appendix A). If the offence is committed by an NGO or an organisation, the conviction will result in the cancellation of registration and the imprisonment of the head of the organisation for seven years (Appendix A). Finally the Act states that any Ugandan citizen, who is found guilty of any of the offences within the Act are liable to be extradited to Uganda in accordance with the existing legislation (Appendix A).

3.2 EXISTING LEGISLATION

Parts of the Anti Homosexuality legislation are already prohibited under existing Ugandan legislation. Particularly sections referring to “aggravated homosexuality” are, partially covered under existing legal frameworks.

“(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;

c) offender is 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;

(...)

g) offender applies, administers or causes to be used by any man or woman any drug, matter or thing with intent to stupefy or overpower him or her so as to enable any person to have unlawful carnal connection with any person of the same sex.”

(Appendix A)

Sections a, b, c and d are all prohibited under the Penal Code of Uganda §128, in particular it states, in section (2), the prohibition of sex with a minor:

1. *(1) Any person who unlawfully and indecently assaults any woman or girl commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment.*
2. *(2) It shall be no defence to a charge for an indecent assault on a girl under the age of eighteen years to prove that she consented to the act*

of indecency.

(Refugee Law Project and the International Human Rights Law Clinic, University of California and Berkeley School of Law, 2013, 53)

The offences outlined in section g) of the Anti Homosexuality Act above is, to some extent, outlawed in existing Ugandan legislation. The Penal Code of Uganda §123 penalizes rape (Refugee Law Project and the International Human Rights Law Clinic, University of California and Berkeley School of Law, 2013, 53), defined as:

"unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape." (Refugee Law Project and the International Human Rights Law Clinic, University of California and Berkeley School of Law, 2013, 53)

In summary, the Anti Homosexuality Act, which took effect on the 10th of March 2014, is almost identical to the Anti Homosexuality Bill 2009 legislation with some key amendments. The most significant amendment has been the removal of the death penalty in favour of life imprisonment. The main argument for implementing the Anti Homosexuality Act remains that it serves as a protection of the traditional Ugandan family values. Reiterating existing legislation with a slight twist, the Anti Homosexuality Act's prohibition of adult consensual same-sex arguably overrules numerous constitutional rights, as well as rights stipulated in ratified international treaties. NGOs and human rights groups are concerned with the development and the probable impacts of the act. Consequently challenges to the legality of the legislation have commenced. Numerous countries in the region have passed similar legislation or begun working towards it.

THE IMPACT OF THE BILL

4.1 IMPACT IN THE FORM OF UPROOTING

As a consequence of the bill, particularly the “aiding and abetting” and “having a room or house in which homosexual activities take place” provisions, numerous LGTB people have been evicted. Many interpret these provisions as if it is illegal to rent to LGTB people and therefore justify evicting them on the basis of this ([Human Rights Watch, 2014a](#)). Several of those who have been arrested as a direct consequence of the bill, have reported that they were subsequently evicted, based upon the arrest and their sexual orientation. If police either questioned neighbours or came to their premises to arrest them, the landlords often interpreted this to mean that they must be evicted, or used this as an excuse to evict them. Similarly, those who were exposed in the Ugandan media have experienced the same repercussions with landlords evicting them. All evictions have been on suspicions, as there are yet to be judicial prosecutions of LGBT persons based on the Anti Homosexuality Act ([Human Rights Watch, 2014a](#)).

The uprooting have not only been evictions, others have felt a need to flee their homes, as they believed they would face assaults if they remained there. Those primarily at risk are those who have been named in various media-outlets ([Human Rights Watch, 2014a](#)). Numerous LGBT people have felt the need to escape the country entirely; estimates have put the number of refugees as a result of the Anti Homosexuality Act to be no less than 100 people only a few months after the bills enactment ([Human Rights Watch, 2014a](#)). There have also been several reports of people, who have been fired from their jobs, following the enactment of the bill. The reasons given have been based on gender identity or perceived sexual orientation. LGBT business owners have also reported that they have experienced less business. Several have also lost business partners who feared the association with a purported LGBT ([Human Rights Watch, 2014a](#)).

4.2 IMPACT ON THE HEALTH SECTOR

Several projects in Kampala, which provided condoms and HIV testing, closed following the enactment of the law. The need for greater caution is evident, as the projects, despite having resumed some of their services, no longer accept drop-ins ([Human Rights Watch, 2014a](#)). As a consequence of the law, the biggest organisation in Uganda dealing with HIV/AIDS, TASO, also felt forced to shelve a program re-

ferred to as "Moonlight Clinics". The Moonlight Clinics offered HIV testing and educational services to LGBT persons ([Human Rights Watch, 2014a](#)). Human Rights Watch have argued that the law discriminates health-services, despite the guarantees of non-discrimination made by the Ugandan Health Minister. According to the Human Rights Watch the benefits of medical examinations are dwarfed by the enormous risks associated with it. As a consequence a vast majority LGBT people decide against seeking medical attention ([Human Rights Watch, 2014a](#)). The spheres of communication and information on health have also been profoundly affected. The governmental program Most-At-Risk Population Initiative (MARPI), that had the aim of addressing HIV rates in the Ugandan population, especially incorporating LGBT people, has had significant problems continuing the program following the bill, as the populous is fearful of the consequences of participating in the program. Many believe they will either be prosecuted due to being LGBT, while others fear being mistaken for LGBT people ([Human Rights Watch, 2014a](#)). The uncertainty saturates the entire health sector, as also doctors are insecure and hesitant, due to the fact that they do not know what the consequences will be for them. They are fearful of whether their actions may be perceived as promotion or recruitment of homosexuality, which as previously stated constitutes criminal offences ([Human Rights Watch, 2014a](#)). It is also reported that assisting personal are reluctant to work at the clinics, as they also fear the repercussions ([Human Rights Watch, 2014a](#)). Following the raid at the Walter Reed Project (See section Arrests), larger NGOs have expressed an increased fear that clinics and personal are under surveillance, preventing patients to seek out the services. The clinics are overstocked with condoms and lubricant, due to the lack of patients. Simultaneously smaller NGOs fear prosecution and now feel incapable of providing their previous services of mobile counselling and testing ([Human Rights Watch, 2014a](#)).

An analysis conducted by an inter-disciplinary team prior to the enactment of the Anti Homosexuality Act, attempted to investigate and assess the potential impacts of the bill, focusing specifically on the health aspects of the bill ([Semugoma et al., 2012, 173](#)). The analysis highlighted a range of important factors, including the disproportion of those infected with HIV primarily being men who have sexual relations with men (MSM). According to the analysis the criminalization of homosexuality, even prior to the Anti Homosexuality Act, was perceived to be a major principle obstacle to comprehensive HIV prevention ([Semugoma et al., 2012, 174](#)). The analysis found that an implementation of the Anti Homosexuality Act would participate in further distancing those in most need of medical attention, especially in the HIV prevention. Pointing to the clause that stipulates that homosexuality must be reported, the analysis argued that

this would impair health care services and violate the Hippocratic Oath and other medical ethics, potentially resulting in an increase in HIV (Semugoma et al., 2012, 174). The provisions against “aiding and abetting”, was argued to be detrimental to structures and communities particularly dealing with HIV among MSM. Understood as a limitation of developing social capital for MSM, the provision was concluded to inhibit prevention interventions (Semugoma et al., 2012, 174). In addition the “conspiracy to commit homosexuality” was understood to be harmful for health providers (Semugoma et al., 2012, 175).

The team also pointed to the clause stating that aggravated homosexuality could be a homosexual act in which the offender was a person living with HIV, and noted that it included no mitigating factors such as whether the offender was wearing a condom, disclosure of HIV status or if they were undergoing anti retroviral therapy. This led the team to the conclusion that it may impede disclosure of illness and lead to less testing out of fear of prosecution. In addition the dangers of blackmail of previous partners with HIV were noted as a possible bi-product of this clause (Semugoma et al., 2012, 175).

4.3 ARRESTS

On the 4th of April, a health project called Makerere University’s Walter Reed Project, which is a collaborative project between U.S. Military HIV Research Program and the Makerere University, had a staff member arrested on the suspicion of promoting homosexuality (Biryabarema, 2014a). The project conducts research in areas of Marburg, Ebola and HIV and has been running since 2002 and is funded by the U.S. Department of Defense under the President’s Emergency Plan for AIDS Relief (PEPFAR) (Biryabarema, 2014a). The staff member was taken into custody by Kampala police, who stated they arrested him due to having learnt that he “[...] has been conducting promotion and training activities related to homosexuality.” Biryabarema (2014a).

Since the parliamentary passed the bill in December 2013, no less than 17 people have been arrested on account of accusations of homosexuality. Despite the fact that all have been released without charges, several people have reported that the arresting officers demanded bribes, or that they were only released through the legal assistance of their lawyers. There have also been reports of sexual assault in custody on LGBT people and a HIV-positive transgender woman reported that she had been refused her antiretroviral treatment (Human Rights Watch, 2014a).

On the 10th of March 2014, the day the law came into effect, the law gazette published the Anti Homosexuality Act and police subsequently carried out a string of arrests (Human Rights Watch, 2014a).

In addition sexual assaults on LGBT people have also been met with mockery from police personal, resulting in lack of proper investigations and preventing others from reporting assaults. Furthermore LGBT people fear reporting assaults or discriminations, as they believe they will be arrested ([Human Rights Watch, 2014a](#)).

In late December 2013 at least one activist providing HIV services to male homosexuals was arrested in a manoeuvre instigated by Ugandan police. Feigning to be an ill patient, the police requested medical attention and when the activist met with them to help them, he was arrested on the charge of promoting homosexuality. The police searched his house, while he was imprisoned, and he was subsequently evicted ([Human Rights Watch, 2014a](#)).

4.4 VIOLENCE

Since the Ugandan president signed the bill on the 24th of February, violent assaults on LGBT have escalated significantly. Despite the fact that historically speaking the environment in Uganda for homosexuals has been extremely inhospitable, the consequences and the impact of the Anti Homosexuality Act have been distinguishable. According to the NGO Human Rights Watch, at least one transgender person has been murdered in a hate crime following the enactment of the law. Acquaintances of the victim have afterwards expressed that they were apprehensive of reporting the killing, believing they were in danger of being arrested also being transgender ([Human Rights Watch, 2014a](#)). Other examples include perpetrators luring susceptible young men into traps, beating and torturing them. Some perpetrators also allege to be police, so as to ensure that the victims do not report the assaults ([Human Rights Watch, 2014a](#)). The fear of persecution prohibits many from reporting assaults and the actual numbers of assaults are therefore hard to come by and can be expected to be significantly higher than reported.

4.5 LOSS OF EMPLOYMENT

Several LGBT people have reported that they were fired as a consequence of the bill ([Human Rights Watch, 2014a](#)). Following the law coming into effect on March 10, firing employees due to their sexual orientation has become a valid justification. The justification is often accompanied by police threats. Some employers have been reported to feel necessitated to follow outside coercion, out of fear of losing their business. Even those working in the informal sector are affected, as the naming in the media will turn many shoppers on them ([Human Rights Watch, 2014a](#)).

4.6 FOREIGN AID CUTS

Historically, the Ugandan economy has been deeply reliant on aid and loans from western countries and aid organisation such as the IMF and the World Bank, with several key budget categories directly dependent on aid. However, in 2013 a significant amount of aid was cut, following corruption charges (Biryabarema, 2014b). Since the introduction of the bill several countries have criticized the bill, and as early as 2012 Germany cut aid to Uganda pointing to the draft bill as one of the primary causes (Biryabarema, 2014b). Following the passing of the law several other donors also cut their direct aid. Among these were Sweden, Norway, Denmark and the Netherlands, whose aid/loans accounted for approximately US\$118 million (Jorgic and Croome, 2014). Subsequently the Ugandan Schilling has fallen considerably in value, due to market fears that the effect of the vitally needed aid and loans may be very critical for the Ugandan market and currency (Jorgic and Croome, 2014).

In a public speech on the 31st March 2014, president Museveni stated that Uganda was not dependent on the aid, which had been diverted or suspended as a consequence of the Anti Homosexuality Act (Biryabarema, 2014b). During the speech he declared that "[...]we don't need aid in the first place," and that "A country like Uganda is one of the richest on earth." (Biryabarema, 2014b). Following in the slipstream of Denmark, Norway, Sweden and the Netherlands, the World Bank announced on the 28th of February that a loan which was being processed, would be would be suspended as a consequence of the law. The loan was a US\$90 million loan meant to improve the Ugandan health care system (Aljazeera, 2014b).

According to the World Bank spokesperson, David Theis, development programs in Uganda are extremely dependent on donor aid. "We have postponed the project for further review to ensure that the development objectives would not be adversely affected by the enactment of this new law," (Aljazeera, 2014b). The US were also harsh critics following Museveni's signing of the bill and John Kerry described the law as "flat-out morally wrong" and "atrocious" (Jorgic and Croome (2014) and Aljazeera (2014b)), drawing parallels to Nazi German anti-semantic laws and South African apartheid legislation. The US consequently announced that it would review the bilateral financial ties (Jorgic and Croome, 2014). On March 13th the United States government administration announced that following their review, a portion of their financial aid to Uganda would be withheld as a direct response to the passing of the Anti Homosexuality Act. The aid cut suspended funding to Uganda's ministry of health, which has been working in cooperation with the U.S. Centre for Disease Control's (CDC). The amount withheld is not official, however in 2013 US\$3.9 million were used in a cooperative program between the CDC and the Ugandan

health ministry program (Croome, 2014).

Subsequently the Ugandan health ministry stated that funds related to antiretroviral drug and HIV testing kits had been suspended. Rukia Nakamatta, the Ugandan health ministry's spokeswoman, stated that the cut in funding would effectively affect 50 employees working within the program. It is estimated that roughly half a million HIV and AIDS infected Ugandans are helped through the financial aid of US-programs (Croome, 2014). Additionally US\$6.4 million will be withheld by the U.S. from a health project previously funded, called the Inter-Religious Council of Uganda (ICRU). ICRU functions as an assembly of several religious organizations and has expressed support for the Anti Homosexuality Act. However, in order to ensure that the roughly 50,000 Ugandans that are being medically treated for AIDS by ICRU may continue their treatment, US\$2.3 million will continue to be funded (Irin News, 2014).

The U.S. Department of Defence has chosen to relocate both East Africa Military Intelligence Non-Commissioned Officers training course and their Africa Air Chiefs Symposium out of Uganda. Approximately US\$3 million earmarked to aid Ugandan biodiversity and tourism has also been suspended (Irin News, 2014). Similarly to the European donors who have redirected their aid to avoid governmental control, it is the intention of the US to redirect aid to civil society and NGO's. This is perceived as preferable to discontinuation (Aljazeera, 2014a). The U.S. emphasises that an aid amount of US\$700 million annually will remain to ensure that agricultural and health programs will continue to operate and that projects in democracy and governance will also continue to advance. However, the administration underlines that efforts are being made to ensure that funding is not directed to the Ugandan government (Irin News, 2014). Although the aid cuts may have a minor impact on the country's budget in its entirety (Cohn 2014, Reuters), the Ugandan minister of state for health Elioda Tumwesigye has expressed that the cuts severely affect the health sector's ability to deal with the HIV/AIDS issues, Uganda is facing (Irin News, 2014).

"Their action in Uganda, Nigeria or any African country to appease LGBTI [the lesbian, gay, bisexual, transgender and inter-sex communities] is not good in the fight against HIV. If they continue with aid cuts, they will be conserving diseases HIV, TB [tuberculosis], malaria and others. This is very dangerous even to the minority community," (Irin News, 2014).

Activists in opposition of the Anti Homosexuality Act in Uganda consider the cut in aid to be damaging to the cause. Programme Director of Sexual Minorities Uganda (SMUG), Julian Pepe Onziema, expressed her concern that the cuts "[...] also further enhances LGBTI per-

sons' vulnerability to both non-state and state-sanctioned homophobia.(...) The gays and lesbians who the donors want to protect will be greatly affected because they also benefit from health services." (Irin News, 2014).

On the 13th of March 2014 the European Parliament supported sanctions against both Nigeria and Uganda. A majority of parliament members approved a nonbinding resolution, stating that both countries violated human rights, democratic principles and the rule of law, according to the Cotonou accord (Aljazeera, 2014a). The primary sanctions approved in the resolution were the ban of travel and visas for those responsible for drafting and enacting the discriminatory laws (Aljazeera, 2014a). Furthermore the EU's development strategies for Uganda and Nigeria were to be revised, with the intention of redirecting aid to civil society and NGO's, which was perceived preferable to discontinuation (Aljazeera, 2014a). The Ugandan government equates western criticism and aid cuts to blackmail. President Museveni publicly stated that he considered the western approach to be an "attempt at social imperialism, to impose social values," (Jorgic and Croome, 2014). Uganda is expected to request loans or investments from China, Russia or India, countries which often have a different, less restrictive approach to loans and investments (Jorgic and Croome, 2014).

4.7 FINANCIAL AND COMMERCIAL CONSEQUENCES OF THE ANTI HOMOSEXUALITY ACT

There are a few examples of companies, which have objected to the Ugandan sexual discrimination, through various forms of action. The France Telecom branch in Uganda, Orange Uganda, discontinued advertising in the Red Pepper following their article, which supposedly exposed 200 Ugandan homosexuals. Due to the popularity of the law, it is improbable that many businesses will follow their example (Cohn, 2014). Commercial investments and transnational business in Uganda thus remain unaffected, following the enactment of the bill. Despite statements by business tycoons, such as Richard Branson from the Virgin Group, stating they would not invest in Uganda as a result of the bill, the effect has yet to be seen in the commercial markets of Uganda (Cohn, 2014). The lacking result is presumed to be a combination of the slow and very gradual response by major donors such as the US, the limited effect of the redirection of merely \$118 million aid in the country budget and the recent discovery of oil in Uganda (Cohn, 2014). The benefits of investing in Uganda therefore outweigh the negative consequences for investors, as the country is still set on a seven percent growth path and the population is a young rising middle class with growing demand (Cohn, 2014). Despite the small market and the relatively small amount of domestic bonds (10 %) owned by foreigners, the recent oil-discovery contributed to a 40 % increase in foreign investments in east Africa in 2012, which the Anti

Homosexuality Act shows no sign of halting (Cohn, 2014). The oil reserves of Uganda are estimated to be roughly 3.5 billion barrels. In January 2014, following years of talks, three foreign oil firms, British Tullow, French Total and Chinese CNOOC signed a deal on pipeline and refinery to develop Uganda's crude oil (Ojambo, 2014).

The UN's Principles for Responsible Investment (PRI) promotes an environmental, social and governance considerate approach when investing. The PRI has 1,250 investing signatories worldwide (worth roughly \$34 trillion), and there have been no noticeable consequences in terms of investment repercussion following Uganda's Anti Homosexuality Act (Cohn, 2014). The incoherent and ambiguous ethical guiding principles for socially responsible investment and sexual discrimination, has served as an excuse to continue investments (Cohn, 2014). The UN's PRI does not explicitly reference sexual discrimination, the closest being the 111th convention against employment discrimination. Additionally it is not required of the individual signatories to evaluate individual cases (Cohn, 2014). Despite Uganda's historical dependence on aid to support its economy, the past years have shown a decrease in aid from 40 percent, ten years ago, to 20 percent, making aid less of a relevant factor in the Ugandan budget. The fall in aid is partly due to the corruption problems in 2012 and partly due to the country's expanding economy, the rise in domestic financing and the rise in tax revenues (Cohn, 2014).

Despite the public political opposition to the homosexual discrimination, western cooperation with Uganda seems unlikely to cease, due to the Ugandan willingness to support and fight the Somalian Islamist militant group Al Shabaab, relieving pressure and saving western nations from sending their own troops (Cohn, 2014). Additionally the U.S. deployed military aid to Uganda in February to assist in the hunt for warlord Joseph Kony (Cohn, 2014). It should be noted that investors may take several months before embarking on new investments and the fallout of the Anti Homosexual law remains to be seen, furthermore additional governments may decide to join in the restriction of aid to Uganda (Cohn, 2014).

In summery, the impacts of the Anti Homosexuality Act have been far-reaching and extensive. A significant impact of the Anti Homosexuality Act has been the displacing of LGTB people throughout Uganda. Within the health sector many health providers have shut down numerous fundamental services for LGBT people and the consequential restrictions prevent life saving medical care, especially within HIV-treatment. LGBT people now fear criminal charges or harassment if they seek medical attention and for the same reason many assaults remain unreported. There have in contrast been numerous arrests as a result of the newly implemented law. However, no LGBT persons have been prosecuted on the basis of the legislation yet. In

regards to the financial impact of the Anti Homosexuality Act companies continue to invest in Uganda, as the investments do not put companies' reputation at risk. While the Anti Homosexuality Act has received massive criticism and condemnation, only a handful of nations have halted their aid to Uganda and the impact in the business world is nearly non-existent, so Uganda remains a favourable investment market.

UNDERSTANDING DEVELOPMENT IN A UGANDAN CONTEXT

The development consequences of the Anti Homosexuality Act depend on the understood notion of development. Since its formation, the understanding of development as a subject has been heatedly debated. A multitude of conceptions have arisen and exist, attempting to explain exactly what development entails (Sumner and Tribe, 2008, 10). Historically the foundations of the approaches to development have varied significantly. At its beginning in the 1950's the primary concern was one of economic output (Varun and Gloppen, 2012, 486). Based on structural transformation, development was viewed as a method of liberation (Sumner and Tribe, 2008, 10). Often contested and remaining an area of controversy, at the centre of development debates are value assumptions and universality. During the main part of the post-World War II period, the understanding of development had a long-term focus, centred on socio-economic structural transformation (Sumner and Tribe, 2008, 25). The tendency in African development was that the countries and cultures were generally perceived to be antithetical to socio economic development. Leading development theorists, such as American economist, political theorist and presidential advisor Walt Rostow, argued that it was essential that the countries underwent a modernisation through which the traditional institutions, values and beliefs were abandoned in favour of Euro-centric values (Njoh, 2006, 5).

At the outset of developmental efforts, Uganda was a British Protectorate and its institutional framework is therefore developed on notions of facilitating foreign trade, resource exploitation, and investments (Mbabazi and Taylor, 2005, 58). As with many emerging African countries, backdoor trades, coercion, deception and violent pursuance were the foundations of Uganda's political culture and institutional framework (Mbabazi and Taylor, 2005, 58). Agreements countering Ugandan development and circumnavigation of authority from traditional rulers resulted in retrogressive land consolidations and instead guaranteed the institutionalisation of colonial economic interests (Mbabazi and Taylor, 2005, 58). Following the Ugandan independence in 1962, new development policies aiming to aid Ugandan progress emerged from the west. Unfortunately these were often not supported by institutional efforts and subsequently failed. Despite endeavours to constrain corruption, an inordinate amount of corruption also drained the resources and monetary support from foreign powers and organisations (Mbabazi and Taylor, 2005, 59-60). In 1972 Idi

Amin declared to combat 'saboteurs' in an 'economic war' (Mbabazi and Taylor, 2005, 60), making it evident that the institutional fallacies and development efforts were greatly ineffective (Mbabazi and Taylor, 2005, 60). It was also during this period that the general conception of development, and consequently the associated policies and approaches, shifted from concentrating on economic output to focusing on poverty reduction (Varun and Gloppen, 2012, 486). Unfortunately Amin's declarations of championing development remained rhetorical and during his time in power, he and his accomplices withdrew great amounts of foreign currency from the Bank of Uganda. Rather than reducing poverty, Amin and his accomplices caused a high net capital outflow between 1971 and 1977, exhausting Uganda's foreign reserves by 51.2 million (Mbabazi and Taylor, 2005, 60-61). The aftermath of Amin's reign were a bankrupt treasury and a debt of US \$700 million; necessitating two structural adjustment programmes, the first from 1981 to 1985 under the presidency of Milton Obote, with the second starting in 1987 under current president Yoweri Museveni (Mbabazi and Taylor, 2005, 61).

Despite its turbulent past, Uganda has taken impressive developmental steps forward and is sporadically purported to be an emerging economy. Often used as an example of 'stable' African progress and rebuilding, the Ugandan successes highlighted are the relatively well functioning tax system, the establishment of the Ministry of Ethics and Integrity and the campaigning of women's empowerment (Mbabazi and Taylor, 2005, 8). The liberalisation of the Ugandan economy has been attributed to the current president (Mbabazi and Taylor, 2005, 8). In comparison to preceding governments, Museveni's government has had a fairly high degree of freedom of expression and a relatively comprehensive and functioning rule of law (Mbabazi and Taylor, 2005, 10). From the 1970's until the beginning of the 1990's the conceptualisation of development primarily revolved around poverty. Around the beginning of the 1990's a shift in paradigm occurred, changing the conversation towards an approach progressively centred on ideas associated with human rights and development (Varun and Gloppen, 2012, 486). This approach is believed to cover several aspects of previous development approaches, as it is understood as a moral imperative within the human rights to eradicate poverty. Additionally the approach enables the underprivileged to articulate the problems of poverty and discursively construct an instrumental method for placing the problems on the international agenda (Varun and Gloppen, 2012, 486). This change in developmental focus was also reflected in Ugandan policies, Museveni and the NRM government shifted (some of) its focus to include policies increasingly centred on the Ugandan population, rather than merely economic features. Arguably this may also in part have been an effect of demands

set forth by international aid institutions before granting Uganda loans (Varun and Gloppen, 2012, 486).

Since the beginning of the 1990's, the Ugandan government has increased considerably of its focus on investments in basic education through what is known as Universal Primary Education. Several other important improvements have been made within the health care sector. These advances have had a considerable effect on the gender issues faced in Uganda and have contributed to the empowerment of women (Mbabazi and Taylor, 2005, 11). Additionally the NRM government have made several strides towards decentralising governmental decision-making to local communities, decreasing the gap and providing the average citizens of Uganda with an increased agency and subsequently nourishing grassroots development (Mbabazi and Taylor, 2005, 11). The increased decentralisation of local governance and urbanisation is essential in human development as this serves as an indication of increased involvement of non-state actors in regards to delivery (Mbabazi and Taylor, 2005, 39). Numerous counties and municipalities are subcontracting local companies to provide a variety of services. Examples of local NGOs offering hospices for AIDS victims and companies facilitating education have become widespread (Mbabazi and Taylor, 2005, 40). The HIV/AIDS epidemic in Uganda has contributed to some very innovative civil-society, state and corporate partnerships. NGOs now often play a role in the establishment of hospices and orphanages and play a pivotal role in the prevention of HIV, through extensive campaigning (Mbabazi and Taylor, 2005, 40). The role and use of foreign donors in the development and economy of Uganda has created a strong foundation for NGOs and civil society (Mbabazi and Taylor, 2005, 38). However, this has also resulted in the division of many NGOs into two categories: delivery and advocacy (Mbabazi and Taylor, 2005, 38). This division may nonetheless be precarious as both are essential in a well functioning civil society and in ensuring accountable, transparent and efficacious governance (Mbabazi and Taylor, 2005, 38). In addition it is necessary to be careful not to over-privilege civil society, as this can be damaging to multi-party politics, as the reinforcement of NGOs by donors may in actual fact undermine democratic elections (Mbabazi and Taylor, 2005, 39). NGOs can be understood to offer either delivery, as mentioned above, or policy advocacy. Both are recognized to affect and pressure state policies (Mbabazi and Taylor, 2005, 40).

The recent developments in Uganda have, however, not been equally spread, with a vast majority of the development programs being focused on the southern part of Uganda. The north still faces greater challenges in reducing poverty than the south, which is evident in the political support and the wider backing of anti-governmental guerrilla movements in the north (Mbabazi and Taylor, 2005, 38). The liberal structures in Africa, often referred to as 'African Capitalism',

have developed significantly different in the Ugandan context. The primary Ugandan exports are horticultural, agricultural, coffee and tea. To the surrounding region major exports include electricity, coca cola, milk and soap-products. The location of Uganda has caused the country to function as an entry port for both central African formal and informal resources, such as diamonds, gold and guns. As such, the development of the Ugandan economy has undoubtedly benefitted from the Congolese conflict (Mbabazi and Taylor, 2005, 41). Despite the progress of the Ugandan economy, the tendency in key development organizations has, as previously mentioned, been an increasing focus on non-monetary development indicators since the beginning of the 1990's. Consequently the scope and view of development has changed significantly. Utilizing vastly shorter time horizons and changing from the traditionally inequality measures, such as GDP per capita, to human oriented measuring, the policy goals and the landscape of development has changed significantly (Sumner and Tribe, 2008, 25).

As outlined there have been a variety of understandings of what development exactly entails. This thesis understands the concept of development as outlined by Amartya Sen. Sen's conception of development is understood as an expansion of capabilities (Fukuda-Parr, 2003, 303). Sen's point of departure is that development must be perceived as a vehicle for the improvement of human lives. According to Sen this is done primarily through the expansion of what a person is capable of doing and being, entailing a wide variety of capabilities. Correspondingly development is considered as the elimination of obstacles preventing people from being and doing, including obstacles such as illiteracy, disease, resources deprivation, obstacles preventing social- and political freedom (Fukuda-Parr, 2003, 303). At the core of Sen's conceptualisation is that the Capabilities Approach entails two distinct theses regarding people and development. These are referred to as the "evaluative aspect" and the "agency aspect" (Fukuda-Parr, 2003, 303).

The evaluative aspect focuses on the evaluation of human life improvements through key indicators, with this being the objective of development. Due to the choice of indicators and objective, this aspect clearly contradicts earlier development paradigms, that emphasised economic performance (Fukuda-Parr, 2003, 303). The agency aspect concentrates on the abilities of people to achieve these improvements, especially through political and policy changes (Fukuda-Parr, 2003, 303). This thesis attempts to discuss both aspects of the capabilities approach. The framework of the capabilities approach will be presented in detail in the next chapter. The change and use of new development indicators reflect some of the major changes in development studies. Economic indicators, such as GDP per capita, were widely used

earlier, but decreased as the focus in development shifted towards a more human oriented wellbeing social emphasis. As this thesis also examines, the most recent debate in developmental studies revolves around the difference between an objective universal view and a subjective context-specific view (Sumner and Tribe, 2008, 26).

In the past 15 years the Ugandan recovery has served as an example of development for the region. However, the continued sustainability relies on the establishment of reliable political institutions that are capable of spreading the development, ensuring that it is not concentrated only in certain locations or for a certain societal elite. It is typically concentrations of unequal development that eventually lead to tensions and violence (Mbabazi and Taylor, 2005, 42). Ensuring rights, accountability and transparency are essential components, which can be ensured through the interaction between state, NGOs and civil society (Mbabazi and Taylor, 2005, 42). In the Stamford Statement made in May 2003, the UN countries involved in development work, adopted the position that the rights based approach must be a central component in their development work (O'Flaherty and Fisher, 2008, 126).

"The Stamford Statement asserts that all programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights (UDHR) and other international human rights instruments and that development co-operation contributes to the development of the capacity of 'duty-bearers'". (O'Flaherty and Fisher, 2008, 126)

5.1 HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT

The most dominant contemporary approach to development, especially in the Ugandan context, has its point of departure in the human rights (Varun and Gloppen, 2012, 486). It is the notion that the moral imperative of human rights not only covers earlier developmental approaches, such as poverty, but also a wide range of social issues and serves as an incitement to wealthy citizens and the Ugandan government to act and participate, often economically, in the development of areas where the human rights are being violated (Varun and Gloppen, 2012, 486). The human rights based approach (HRBA) to development is, by proponents of this approach, considered to have an integral moral component directed at duty-bearers and those in positions of power, to pressure or incite involvement and contribution, while simultaneously functioning as an amplifier for the underprivileged to shed a light on a variety of social injustices (Varun and Gloppen, 2012, 486).

The main tenets of HRBA allow for the evaluation of established institutions, as the principles are to be assimilated into all aspects of governing structures and institutions. The Ugandan institutional framework would thus only have to improve the divisions of its institutional framework, which were in opposition to the human rights. However, as sexual rights are arguably not explicitly protected in the international human rights charter (see following chapter on Sexual Orientation and Gender Identity in the Human Rights), the discrimination against LGBT people remains an issue of debate (Varun and Gloppen, 2012, 486).

The HRBA is not to be understood as a substitute for other methods of social organisation, despite often being associated with specific forms of state-society relations and transformations, in particular democratization. The Ugandan framework of state, business, NGOs and civil society partnerships (See chapter Understanding Development in a Ugandan Context), can be perceived both as the result of effective development strategies and as an opportunity for the HRBAs, as they are perceived more as a contributory apparatus in governmental, organisational or civil society frameworks (Varun and Gloppen, 2012, 487). Historically the intent was implementation of the human rights through judicial means governed by treaty bodies within the UN. Formal complaints were to be dealt with in an international law framework (Varun and Gloppen, 2012, 488). Currently HRBAs often adopt a strategy, in which the main instrument in fighting human rights violations is pressure upon state and duty-bearers not fulfilling their duties. This is also evident in the response to the Anti Homosexuality Act. The UN Secretary General, Ban Ki-moon's condemnation of the Act, the economic sanctions by numerous countries, the outspoken disapproval of the bill and the public announcements of reconsiderations regarding bilateral ties are all points of pressure upon Uganda as a consequence of the Anti Homosexuality Act (See chapters Anti Homosexuality Act 2014 and Impact of the bill). The ratification and accountability of human rights treaties in states is a vital component in the present use of HRBAs, as this is a prerequisite for continuous development assistance (Varun and Gloppen, 2012, 488). Some development programs, such as the World Bank or the IMF, occasionally adopt a juridical rights based approach and may block development on the basis of violations of human rights (Varun and Gloppen, 2012, 489). This was also the justification for the World Bank's refusal of the development loan of US\$90 million to Uganda (see chapter Impact of bill). It should, however, be noted that neither programs are obligated by international human rights treaties to withdraw or withhold development support due to human rights violations (Varun and Gloppen, 2012, 489). Some theorists argue (Pogge in (Varun and Gloppen, 2012, 489)), that through the use of human rights, it is possible to reform the way international aid is structured, the international trade, car-

bon emissions, tax policies and intellectual property regimes (Varun and Gloppen, 2012, 489). Theoretically, human rights should serve as an extremely effective tool for political motivation (Varun and Gloppen, 2012, 489). However, the human rights rulings directly related to development have been few, with full compliance less frequent than part- or non-compliance. This is believed to be due to the fact that there is no overarching authority in the international relations sphere. The tools for achieving compliance are thus primarily international and domestic pressure upon governments. The domestic use of pressure may be applied by and through NGOs and civil-society, which is largely what has happened in Uganda, through the redirection of foreign aid into NGOs furthering the human rights by various European donors (See Chapter Impact of Bill and (Varun and Gloppen, 2012, 489)).

Critics of the HRBA point to the dangers of "over-legalization" as a consequence of human rights (Helfer (Varun and Gloppen, 2012, 491). Over-legalization refers to the risk that some governments simply use the treaty ratifications as a bureaucratic tool through which states can then relieve pressure without actually pursuing real policy changes. The same critics might argue that this is the case in Uganda (Varun and Gloppen, 2012, 491). The HRBAs do not operate within a clear set of boundaries and should be considered as a tool, which is to be evaluated for its developmental merits within functioning institutions. The practical implementation of HRBAs, in terms of institutional and procedural application, is very broad and encompasses a multitude of modalities and institutional mechanisms (Varun and Gloppen, 2012, 487). It is also the extremely broad interpretive framework of the human rights that allows very different countries to interpret them differently. The questions of transmissibility, universalism/relativism and whether the human rights are transferable into all social, political and economic environments has been an on-going debate, since their introduction (Sadgrove et al., 2012, 107). Early discussions had those proposing the human rights perceive them as universal, while those in opposition often considered the rights as an extended version of Rostow's modernization of non-western cultures into Eurocentric standards, while also raising concerns of the conceivably hegemonic character of the human rights (Sadgrove et al., 2012, 107). Through time the discussion has shifted and the emphasis is now on the adaptation of the rights in regards to local traditions and understandings. Particularly the dispute on the rights of LGBT people and sexuality remains relevant, as this continues to be a point of discussion in many African countries (Sadgrove et al., 2012, 107).

5.2 SEXUAL ORIENTATION AND GENDER IDENTITY IN HUMAN RIGHTS

The UN's attempts to include sexual rights within the human rights charter, has been opposed by numerous governments, notably many African and Middle Eastern countries have opposed (Sadgrove et al., 2012, 108). Numerous states do not recognize human rights violations if based upon sexual orientation or gender identity. Many countries find the sexual rights to fall beyond the authority of human rights and rather consider it a decision for within the sovereignty of the individual state (O'Flaherty and Fisher, 2008, 128). In 2003 Brazil introduced a resolution to the UN Commission on Human Rights. The resolution condemned human rights violations founded in sexual orientation. Several states combatted the resolution and moved a "no action" motion in an aim to avert the Human Rights Commission from deliberating the resolution (O'Flaherty and Fisher, 2008, 129). In 2005 New Zealand delivered a joint statement from 32 states, on the topic of sexuality within the context of human rights. The statement underlined the need for action from the Human Rights Commission, arguing that evidence of human rights violations based upon sexual orientation could no longer be ignored. In December 2006, during a Human Rights Council session, a very similar statement was delivered by Norway on behalf of 54 states (O'Flaherty and Fisher, 2008, 130). Subsequently on the 26th of March 2007, at the United Nations Human Rights Council in Geneva, the Yogyakarta Principles were presented and placed upon the international agenda, encouraging instantaneous debate on the issues of the principles of the Human Rights Council (O'Flaherty and Fisher, 2008, 137). In December 2008, an Argentinian representative presented a declaration on Sexual Orientation and Gender Identity, stating that rights were to be applied equally to all humans, with no concern for sexual orientation or gender identity. Later the same day a Syrian representative made a statement on behalf of several countries, stating that the protection against discrimination on the basis of sexual orientation and gender identity was, according to the Syrian representative, within the sovereign jurisdiction of signatory states (Yecies, 2011, 792). This illustrates the different ways of interpreting the Human Rights Declaration and the on-going dispute of whether to incorporate rights of sexual orientation and gender identity in them.

The articles, primarily debated and discussed concerning whether they contain the provision for the protection from sexual discrimination, are article 2 and article 29 (Yecies, 2011, 793). Article 2 states in part:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, 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." (Yecies, 2011, The Universal Declaration of Human Rights quoted on page 793).

However, it is generally understood that the stipulations of article 2 must be understood in relation to and in the context of article 29, which in part reads:

"(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." (Yecies, 2011, The Universal Declaration of Human Rights quoted on page 793).

There are various interpretations of both articles, and often those in favour of protection against discrimination of sexual orientation and gender identity, argue that these are included in article 2, in the stipulation "or others". In contrast, those opposing this interpretation argue that article 29 indicates that Human Rights are not unboundedly protective and that questions of sexuality can be understood as questions of morality (Yecies, 2011, 793).

In summery, the Ugandan development has had a turbulent past. As the historical progress of the conceptualisation of development has advanced, so has the Ugandan development. Despite regressive regimes Uganda has made impressive developmental progress and is often presented as a model for development, particularly noting its improving economy, health care and education. Uganda's special NGO-governmental construction was enabled through the role of foreign donations, consequently providing a civil society that maintains essential health service of the community. In spite of the Ugandan progress, the development has been uneven, favouring the south. The current development paradigm of HRBA has its point of departure in human rights, yet allows for considerable interpretation. There have been several attempts by the UN's to incorporate sexual rights into human rights; primarily African and Middle Eastern countries have opposed all attempts. The different interpretations in regards to the rights of LGBT people are related to only two articles in the Human Rights charter. In the context of this thesis, it may be argued that human rights and the human rights-based approach to development have numerous shortcomings, which are extremely relevant when discussing the subject of sexual freedom in a developmental context. The

next chapter will elaborate on this argument through the consideration of the subject using the capabilities approach.

THE CAPABILITIES APPROACH

Throughout the debate on the enactment of the Anti Homosexuality Act, the deliberations and arguments have revolved around ensuring basic social and political rights. The Ugandan constitution is, as constitutions generally are, articulated with rhetoric concerning the protection of rights (Nussbaum, 1997, 273). Particularly the West has approached the Anti Homosexuality Act in this manner, underlining the fact that their development policies are closely connected to a human rights based approach (See chapter human rights based approach).

6.1 UNDERSTANDING RIGHTS

If taking a point of departure in the Capabilities Approach, it may be argued that the discourse used in the deliberation of the Anti Homosexuality Act, despite being concerned with the rights of individuals, has been vague and ambiguous lacking conceptual clarity in terms of what the rights discussed entail (Nussbaum, 1997, 273). There are numerous approaches and conceptions when considering human rights. Often regarded as a privilege of all humans, the prevailing tradition, at its philosophical core, considers rationality and language as the basis for rights entailment (Nussbaum, 1997, 273). This consideration thereby also excludes any non-humans and brings into question whether mentally impaired humans are considered within this framework (Nussbaum, 1997, 273). Alternative approaches have suggested that sentience may be a more suited foundation, thereby including also animals. Others argue that rights are associated with states, thus excluding rights in cases where states are not present to be the duty-bearers (Nussbaum, 1997, 273-274). These are all relevant considerations, as the Prime Minister of Uganda equated homosexuals to the mentally handicapped (Pink News, 2014) and as they pose questions to the duty-bearing ability of the Ugandan state in securing rights (See chapter on Offences).

In contrast to those who subscribe to the view that rationality and language are the premises, the human rights entitlement is perpetual regardless of existence or recognition of the state they inhabit (Nussbaum, 1997, 274). The vagueness of rights also brings several other topics into question. There is an ambiguity in the rights definition, which is central to the issue of sexuality, raising the question of whether rights apply only to individuals or whether groups might also be covered by the definition (Nussbaum, 1997, 274). Equally im-

portant is the question of whether human rights are to be considered side-constraints in the pursuit of certain objectives or if rights are to be perceived and understood as objectives in themselves (Nussbaum, 1997, 274). The current approach to rights also leaves questions of delivering open. As people are entitled to a variety of rights, the question remains, who is expected to deliver these rights. This is especially unclear and questionable in an international context (Nussbaum, 1997, 274). Ugandans LGBT persons, who are living in foreign countries, are to be extradited and face trial in Uganda as they have committed an offence (See chapter on Offences). If the human rights are both interpretable and international, issues of extradition and legality of rights plays an increasingly important role.

Accordingly there is an ambiguity of what the aim of entitlement to rights is. Is the function merely to ensure a certain treatment of individuals? Is it through ensuring the right to achieving wellbeing? Or should it be understood as providing the means through which it is possible for the individual to pursue their goals? The language of rights currently obscures and leaves questions of the aim, not articulating whether equality is "equality of well-being, or equality of resources, or equality of opportunity, or equality of capabilities" (Nussbaum, 1997, 274). Martha Nussbaum and Amartya Sen have developed an approach, dealing with and attempting to answer some of the question that the human rights-based approach leaves open. This is known as the 'Capabilities Approach' and since 1993 it has been used by the United Nations Development Programme ("UNDP") in their Human Development Reports to assess quality of life, through an understanding of capabilities. Capabilities are understood as the ability to be and do things that the individual finds valuable (Nussbaum, 1997, 275). Developed as an approach to be combined with attention to rights, the approach has its roots in Aristotelian philosophy, adopting the conception of human capability (in Greek *dunamis*) and functioning (in Greek *energeia*). The approach was constructed as a counter to approaches emphasizing GNP per capita, distribution of basic resources and utility interpreted welfare programs (Nussbaum, 1997, 276). Despite having its roots in Aristotelian philosophy, the approach differs significantly as Aristotle's conceptualization lacked many of the basic rights, which serve as a foundation for the Capabilities Approach (Nussbaum, 1997, 276). The importance of rights and the association with these are evident in the account of which capabilities constitute the most important ones. This is also where Nussbaum and Sen's approaches differ. Sen believes that the capabilities should always be flexible and contemplation on which are relevant varies from situation to situation, where Nussbaum adopts a more pragmatic approach producing an explicit list of central capabilities, which she considers most important (Nussbaum, 1997, 277). This is also useful in the examination of particular capabilities that

have been obstructed by the enactment of the Anti Homosexuality Act. Accordingly Nussbaum's list is continually re-considered to ensure the relevance and allowing for reflection on criticism and new information. She also attributes the necessity of formulating a list to the goal of achieving higher clarity, less ambiguity and vagueness, ensuring that the approach may be used in the public policy work (Nussbaum, 1997, 277). *"At this point, the aim is to come up with the type of specification of a basic capability that could figure in a constitution, or perform, apart from that, the role of a constitutional guarantee."* (Nussbaum, 1997, quoted from page 277).

The theories and the literature, which examine inequality, have principally been concerned with the study of the statistics of income. However, the use and the measurement of the tool are scrutinised by Sen (Sen, 2006, 32). Sen argues that in order to understand the underlying developmental goals, particularly quality of life, it is essential that we consider the equity and social justice. When considering inequality, then the quality of life and the freedom to lead it however people want, should also be taken into account. In order to understand the developmental consequences of the Anti Homosexuality bill, it is therefore essential to recognize which capabilities to function are available or excluded for LGBT people of Uganda (Sen, 2006, 34).

Development should be viewed as the conditions for improvement of human lives and the ability to freely pursue what is considered to be conducive to personal value (Sen, 2006, 35). This in turn is a justification for adopting a view that emphasises functionings and capabilities. Beyond the commonsensical capabilities of health, low mortality rate and education etc., there are social aspects such as partaking in community affairs and not being shamed in public. Obviously a high-level income will be able to contribute to several aspects in terms of equality; there are however, a variety of facets beyond income level, which the Anti Homosexuality Act is an example of, constituting both a social and political issue (Sen, 2006, 35).

In her description of capabilities Nussbaum progressively adopts the language of liberty, freedom and rights. Approaching various aspects of the capabilities in a legislative manner, such as "legal guarantees of freedom of expression ...and of freedom of religious exercise", "guarantees of non-interference with certain choices that are especially personal and definitive of selfhood," and of "the freedoms of assembly and political speech", she adopts a discourse reminiscent of a rights-based approach (Nussbaum, 1997, quoted from page 277). According to Nussbaum this is done to emphasize the areas in which the approaches share commonalities (Nussbaum, 1997, 278). The Capabilities Approach is often associated with debating inequality and used to contend entitlements related to social and material

inequality. However, according to Nussbaum, the capabilities merely designate the significant equalities; in essence the equality of distribution is beyond the scope of the approach (Nussbaum, 1997, 280). In international development the enumeration of GNP per capita has historically been widely used as a measure of quality of life and for cross-national comparisons. This approach, however, does not indicate the distribution of wealth within the nation and provides no details of human life, nor its quality, as the delineating components are not necessarily connected with the GNP (Nussbaum, 1997, 280). As such, the enumeration of GNP per capita would not indicate the deprivation of rights for LGBT people in Uganda. At best it may indicate a slight decline in donations and therefore figure in the overall national budget, indications that something has changed, but with little regard for details (See chapter on Impact of Bill). Other rights approaches, such as utilitarian ones, attempt to deal with resources and divide these in an effort to improve life quality (Nussbaum, 1997, 281). Unfortunately they approach this through the social total, disregarding the importance of the lives of individuals. This may consequently lead to an acceptance of an average level of life quality, but where a few may be extremely poor in either resource or liberties (Nussbaum, 1997, 281). One may argue that this is the case in Uganda, as despite the overall improvement of the country (See chapter Understanding Development in a Ugandan context) a distinct minority is currently disproportionately poor in terms of liberties (see chapter Impact of bill).

6.2 QUALITY OF LIFE

According to Sen and Nussbaum a distinct problem with utilitarianism is what is known as "adaptive preferences" (Nussbaum, 1997, 283). Adaptive preferences are understood as the fact that satisfaction with your own life quality may be adapted to your specific situation. People's satisfaction is therefore not to be considered as a dependable marker in determining life quality. Those with considerable wealth are likely to become accustomed to a luxurious lifestyle and thus be unable to evaluate their own actual needs. Correspondingly those deprived and less fortunate generally adapt the preference to what they consider a realistic level, maximizing their personal satisfaction when reduced standards are achieved (Nussbaum, 1997, 282). Adaptive preferences are increasingly recurrent in permanently victimized and discriminated groups, who are likely to have established an internalized understanding of lower value. This is ever more evident in groups that have also experienced seclusion and had little knowledge of their options compared to others in similar situations (Nussbaum, 1997, 283). Accordingly, giving the LGBT people of Uganda some basic rights may result in an increase in satisfaction, even if they were

still deprived of other essential rights (see chapters Offences and Impact of bill).

An essential component of Sen's contention is that as a measurement of quality of life, the space of resources is insufficient. It is considered insufficient due to differing needs of resources depending on the individual and the capabilities to transform these resources into functionings. Depending on age, gender, occupation, sex and physical state the needs will differ significantly (Nussbaum, 1997, 283 -284). The needs of pregnant women, physically impaired persons and a physically strong man will vary greatly. Other differences are social distinctions, which are closely correlated to traditional social hierarchies. It is necessary to ensure that the needed framework is in place so that people confronted with obstacles like traditional social hierarchies are capable of overcoming these (Nussbaum, 1997, 283 -284). According to Sen and Nussbaum, an approach that is utility or resource based, will certainly not serve as an appropriate tool as any analysis will only be superficial, unable to uncover the obstacles that are present even in situations where resources are evenly distributed. The operation of an approach emphasizing resources will repeatedly participate in the reinforcement of inequalities, as it lacks the basic observance of the underlying causes for the inequality (Nussbaum, 1997, 284). What distinguishes the capabilities approach from earlier development approaches is its focus on individual ability, rather than satisfaction or division of resources. At the core of the approach is the emphasis on human life and the functions that are important for the individual, arguing that these should be achievable. The approach differentiates itself through the empowerment of individual lives rather than entire nations. The focus is thus not feelings (such as satisfaction), nor on the available resources, but on what people are capable of doing and achieving and as such it is considered a very suitable approach in considering the very diverse group of LGBT people and establishing the restrictions they may face currently.

The capabilities approach does not compare the choices of people; it focuses on the one specific life and tries to determine whether the available resources are enabling the specific pursuit. The capabilities approach repudiates the claim that "*the most important functions are all commensurable in terms of a single metric and it treats the diverse functions as all important, and all irreducibly plural.*" (Nussbaum, 1997, 285).

6.3 NUSSBAUM'S LIST OF ESSENTIAL CAPABILITIES

Despite that both Sen and Nussbaum have argued the rationality and validity of the capabilities, only Nussbaum has produced an actual list (Nussbaum, 1997, 286). Sen has primarily argued in defence of the approach and has not articulated an official list. However, through his works it is possible to contest that he has implicitly given cen-

tral focus to certain aspects of human life, implying that these may be essential in the establishment of a list, especially through his extensive work and the measures adopted in the Human Development Reports (Nussbaum, 1997, 286). In contrast Martha Nussbaum has explicitly developed a working list (Nussbaum, 1997, 286). It is her intent that this list provides an essential basis for political planning, arguably adopting the most central capabilities. Beyond being merely instrumental, the capabilities are considered to be essential in the achievement of a full human life, the capabilities themselves having value (Nussbaum, 1997, 286). They are chosen following the notion that these capabilities are necessary in order to maintain the ability to reason and choose, thus making them necessities for any further life choices. The capabilities are chosen with a conviction that they function cross-culturally, transversely regardless of philosophical or religious traditions, presumably making it possible to adopt this list in the endeavour to examine the developmental effects of the Anti Homosexuality Act in Uganda.

Acknowledging that continuous efforts and discoveries are made, the list remains open-ended, allowing for revision. Also recognising that different societies may perceive the listed items differently, it is encouraged that more specific distinctions are made so it better corresponds with local conditions and values (Nussbaum, 1997, 286). Nussbaum's list is divided into 10 essential capabilities.

1. Life

Nussbaum finds the ability to live an average length life, without the danger of premature death or living in a severely degraded state, as the primary capability.

2. Bodily health

Closely correlated with the first capability, the issue of health is also ranked highly on Nussbaum's list. She defines this as the ability to live in good health, having sufficient shelter, sufficiently nourished and encompassing reproductive health.

3. Bodily integrity

The ability for individuals to travel to new places, being safe from violence, sexual and domestic assaults. Including the ability to have sexual satisfaction and being capable of choosing for themselves in reproductive concerns.

4. Senses, imagination, and thought

The ability to sense, imagine, think and reason. This includes being able to do so in, what Nussbaum defines as, "truly human" manner, encompassing 'informed' and 'cultivated' education, such as literacy, basic mathematics and scientific training, in addition to other similar behaviour. Incorporated into this capability is also the notion that any imaginative or thought

process connected to the experience or production of expressive products, whether these be religious, literary, musical or the like, must be the choice of the composer. It is the ability to exploit the mental capacities in any manner under the protection of freedom of expression, the freedom of political and artistic speech, and the freedom of religious exercise. In the words of Nussbaum: "*Being able to have pleasurable experiences and to avoid non-beneficial pain*" (Nussbaum, 1997, 287).

5. Emotions

The ability to care and be attached to individuals and belongings, to love, to grieve, to long, to feel grateful and angry. The ability to live a full emotional life. Safeguarding this capability, Nussbaum argues, is essential in guaranteeing freedom of human association, which is central in human development.

6. Practical reason

The ability to critically reflect, develop a comprehension of what is perceived as good. Encompassing the "protection for the liberty of conscience and religious observance" (Nussbaum, 1997, 287).

7. Affiliation

Nussbaum divides this capability into two subsections.

a. Friendship

According to Nussbaum, this is understood as the ability to engage in social interactions, forming connections, displaying concern, empathy and sympathy for others. To safeguard this capability is essential in the protection of institutions composing freedom of affiliation, assembly and political speech.

b. Respect

The ability to live without humiliation and providing the social premise for self-respect and dignified treatment. This capability ensures non-discrimination as a result of race, sex, ethnicity, religion, caste, nationality or sexuality (Nussbaum, 1997, 287).

8. Other species

The ability to live in relation to the natural world, animals and plants.

9. Play

The ability to play, to laugh and to have and appreciate recreation.

10. Control over one's environment

The final capability on Martha Nussbaum's list of capabilities is also divided into two subsets:

a. Political

The ability to engage and efficiently partake in political matters

that affect the individual's life. This also safeguards the protection of institutions encompassing freedom of affiliation and political speech.

b. Material

The ability to possess property, including movable goods. Nussbaum also included the having the right to employment under this capability subsection, in addition to freedom from unjustified searches and appropriations (Nussbaum, 1997, 288).

According to Nussbaum, this list contains elements that are essential and central, thus any practice of relegating one component in the favour of another is unacceptable and may denigrate the individual's life. Furthermore special attention and importance is placed upon 'Practical reason' and 'Affiliation', as these are perceived to permeate all capabilities (Nussbaum, 1997, 288).

"The individual importance of each component limits the trade-offs that it will be reasonable to make, and thus limits the applicability of quantitative cost-benefit analysis. At the same time, the items on the list are related to one another in many complex ways." (Nussbaum, 1997, 288).

Nussbaum emphatically states that the central aspect of the capabilities approach is not the functionings, but rather the capabilities. Adopting functionings as the aim of policymaking, numerous of the individuals preferences may be impeded, as it is the ability to develop a personal notion of good, which is at the core of the approach. It is the opportunity to choose, which must be preserved and the option to live the life of choice that is essential (Nussbaum, 1997, 288).

"A deeply religious person may prefer not to be well-nourished, but instead prefer to engage in strenuous fasting. Whether for religious or for other reasons, a person may prefer a celibate life to one containing sexual expression" (Nussbaum, 1997, 288).

Functionings are what allow people to live a full human life; however, it is the capabilities that allow the functionings - at least in the political sense. It is the freedom to determine what the individual wants and to live accordingly (Nussbaum, 1997, 289). It is essential to understand that capabilities are specific to countries (Sen, 2006, 37). As the rights and capabilities in Uganda have been improving during the past 15 years (see chapter Understanding Development in a Ugandan Context), the focus may slowly be shifting towards different capabilities and the legislation may be understood as a consequence of this. In order to examine this, Nussbaum uses an analytical approach in which she differentiates between three varieties of capabilities.

1. Basic Capabilities describe people's innate equipment that is a necessity in developing other more advanced capabilities. For example: Infants possess the capability of practical reason, but it

is through education and development that they become capable of utilizing this function.

2. Internal Capabilities is the understanding of the people themselves that they are in fact in an internal state that enables them to achieve and exercise the requisite functions. For example: most adults have the internal capability to utilize free thought and speech to their own understanding (Nussbaum, 1997, 289).
3. Combined Capabilities is defined by Nussbaum as the combination of the presence of internal capabilities and suitable external circumstances that functions are exercisable.

Presumably the LGBT people of Uganda have the internal capabilities for sexual expression and free speech; however they lack the combined capabilities for sexual expression, free speech and political participation in this conceptualisation (Nussbaum (1997) and chapter on Offences). Nussbaum argues that public policy should strive towards producing situations that support combined capabilities. According to her, this entails the promotion of the state of individuals through care and education, simultaneously with the progression of an external setting allowing for the application of the primary functions, such as practical reason (Nussbaum, 1997, 290). This underlines an essential component of the Capabilities Approach. As Nussbaum points out, it is vital that policymakers endeavour to establish a premise where the combined capabilities are secured and not merely slow down once the internal capabilities are guaranteed. However, Nussbaum also underlines that it is not the aim of the approach to force functions upon individuals, but rather provide the choice. As such the capabilities list provides merely opportunities for life functionings, if the individual opts not to utilize all the options it is their choice (Nussbaum, 1997, 290). Anticipating criticism Nussbaum makes a distinction between the capabilities, which can be safeguarded by a societal framework, such as political, and those that entail portions of luck, such as bodily health. She underlines that the capabilities list indicates at what the policy makers should strive towards, listing goals and what she argues should be perceived as standard (Nussbaum, 1997, 291).

6.4 RIGHTS AND CAPABILITIES

In responds to criticism and arguments favouring material well-being over securing rights, both Sen and Nussbaum have elaborated on the fact that rights are an integral part of the capabilities approach, underlining the interplay and connection between the two approaches (Nussbaum, 1997, 277). The understanding of capabilities in relation to human rights is somewhat complex. The human rights, as understood in accordance with the human rights charter, can be divided

into two partitions, which differ in their relation to capabilities (Nussbaum, 1997, 292). As human rights can be understood in a variety of manners, the conceptions used to debate the interchange and relationship between capabilities and human rights, is as follows:

"to involve an especially urgent and morally justified claim that a person has, simply by virtue of being a human adult, and independently of membership in a particular nation, or class, or sex, or ethnic or religious or sexual group"(Nussbaum, 1997, 292).

What Nussbaum calls combined capabilities is, according to her, closely related to a specific set of rights. These are namely the rights to participate in politics, freely choose and exercise religious beliefs, freedom of speech, the freedom to seek employment outside of the home and the freedom from unjustified appropriation and search of one's property (Nussbaum, 1997, 292- 293). Additionally the understanding that humans implicitly have a set of rights, simply by the virtue of being human, is the understanding that some capabilities must be secured, which corresponds with Nussbaum's set of basic capabilities (Nussbaum, 1997, 293). Utilising capabilities to understand rights participates in elucidating the level, at which the rights actively function. The notion that rights are secured merely on the basis that they are written into constitutions or charters, is clearly naive (Nussbaum, 1997, 293). Theoretically the Ugandan constitution prohibits discrimination and guarantees equal rights for all, yet in reality this is evidently not the practice. The LGBT people of Uganda do not enjoy equal rights and are therefore both *de facto* and *de jure* unequal. Despite the constitutional framework, the Anti Homosexuality Act has yet to be declared unconstitutional (See the Anti Homosexuality Act 2014). So claiming that LGBT people in Uganda enjoy equal rights would be incorrect, as they do not have the possibility to enjoy equal capabilities. Furthermore the prohibition of "promotion of homosexuality" effectively excludes openly gay individuals from actively participating in political matters, effectively limiting their political rights (See the Anti Homosexuality Act 2014). The threat of violence outside of their homes may also force them to be secluded to a certain extent, prohibiting numerous capabilities. Understanding rights in terms of capabilities effectively allow us to examine the rights in question in practice (Nussbaum, 1997, 294).

However, human rights are not singularly compatible with the capability approach. The rights dealing with aspects of economic advantage and property are, according to Nussbaum, significantly different in their analytical point of departure. Areas that Nussbaum emphasise to be problematic are particularly the rights to shelter and housing, as well as the rights to certain levels of income. These, she argues, are problematic due to their ambiguous nature. The acceptance of their ambiguity allows for a variety of analytical understandings of the human rights, enabling the use of either a resource-based,

utility or capabilities approach (Nussbaum, 1997, 294). The distinction between the right to have something and whether the inhabitant's country may provide this, is a philosophical one. Arguably most Ugandans are provided with a framework for them to have a decent living standard, but without the state providing the practical means. As such, the safeguarding of economic and property rights allows for an increasingly larger philosophical interpretation, than does political and religious liberties. In contrast, the capabilities that were suitable to clarify the political and religious rights now fall short and resources or utility may provide the appropriate framework (Nussbaum, 1997, 294). This, on the other hand, leads back to earlier highlighted problems; that resource or utilitarian approaches do not effectively safeguard different people the same capabilities to function. To achieve the same level of functioning, certain groups may require more resources and therefore a resource-based strategy might maintain inequality. The understanding of the problem through the philosophical conception of the capabilities approach enables the comprehension of the unequal use of resources to secure the rights of those who are disadvantaged (Nussbaum, 1997, 295).

"If we think of these economic rights asking the question - "What are people actually able to do and to be?" - then I think we have a better way of understanding what it is really to put people securely in possession of those rights, to make them able really to function in those ways, not just to have the right on paper". (Nussbaum, 1997, 295).

Despite the practicality of the capabilities, human rights remain important. Nussbaum believes there are four central features of human rights, which are relevant particularly in public discourse.

1. Rights serve as a reminder that there are morally justified and imperative claims to specific treatment, regardless of whether the state in question offers these. These basic claims are exceedingly close to Nussbaum's basic capabilities. The dominant traditions in justifying rights also normally have their point of departure in features similar to those of capabilities (Nussbaum, 1997, 295).
2. The discursive character of the list of human rights offers a significant impact and underlines the urgency of the functions, in contrast to a list merely suggesting what people should be able to be and do.
3. The capabilities approach, which was specifically designed with a focus on choice, rather than forcing functionings upon them, in combination with the human rights framework sets a standard for people's autonomous choices to benefit from opportunities, not merely functionings.

4. In an age where there is significant discussion on the appropriate approach, human rights preserve a very wide general understanding of basic commonalities (Nussbaum, 1997, 296).

It is the notion of Sen and Nussbaum that the understanding of rights through the use of the capabilities approach will lead to an understanding in which rights are considered as goals, encompassing the rejection that they are merely side-constraints ((Nussbaum, 1997, 296). Typically rights are, in international relations, perceived as a subset or side constraints, which are secondary in international policy debates. However, both Sen and Nussbaum argue that the goal should be human rights and that a government must respect the list of rights, or even better the capabilities, regardless of what they choose to pursue. Capabilities thus serve, not only as a goal, but also as a subset of goals, emphasising the necessity of promoting them in every context (Nussbaum, 1997, 300). It is acknowledged that it may not be possible to secure all capabilities to all people always. As such, certain liberties are prioritized, with political and religious liberties being at the very top. The capabilities are however intertwined and support one another and it is underlined that in neglecting some capabilities, all suffer (Nussbaum, 1997, 300).

In summary, according to the theoretical approach of Martha Nussbaum, the language of rights also entails moral significance and implicit moral imperatives. Despite the good intentions, human rights are articulated in an ambiguous manner, leaving certain aspects open to interpretation. The Capabilities Approach attempts to answer some of those questions. Quality of life is principally complicated to measure, with several pitfalls. Development approaches that are utility-based, measure development through an assigning of what it considers 'good' as a set value, subsequently overlooking immeasurable goods that factor in human lives. In contrast, the Capabilities Approach places a substantial amount of importance on features, which are unquantifiable, decreasing the nature of tradeoffs. Nussbaum has developed a list of essential Capabilities to measure and safeguard human development and as an indication at what the policy makers should strive towards. Despite the fact that the capabilities approach is developed to function within a framework of human rights, certain parts of human rights differ significantly in views on their analytical point of departure. Human rights dealing with aspects of economic advantage and property appear closer to a utilitarian approach. Nussbaum, however, underlines the importance and necessity of having human rights serving as a list of morally justified and imperative claims underlining the urgency of human functionings.

ANALYSIS

7.1 NUSSBAUM'S CAPABILITIES LIST IN A UGANDAN CONTEXT

In order to fully comprehend the developmental consequences of the enactment of the Anti Homosexuality Act in Uganda, it is appropriate to examine the impact of the legislation through the subsequent deprivation of capabilities of the LGBT people in Uganda. Using Nussbaum's list of 10 essential capabilities, this thesis will examine the impact on the listed capabilities. Nussbaum's capabilities of 'Other Species' and "Play" signify a less substantial role in the context of the rights of the Ugandan LGBT community and will not explicitly be dealt with.

Capability of Life

The first capability on Nussbaum's list is the capability, which she has termed 'life'. Understood as the ability to live an average length life, the Anti Homosexuality Act has numerous consequences endangering this capability. In its original form, the Anti Homosexuality Act proposed capital punishment for homosexuality, thereby aiming at depriving LGBT people of the possibility of a normal length life, based solely on their sexuality (see *The Political Landscape And Background Of The Ugandan Anti Homosexuality Bill*). Despite the fact that this part of the bill was not passed, the enactment of the bill has inadvertently ignited a series of assaults on LGBT people, with at least one fatal outcome (see *The Impact of The Bill*). Although these incidences are not formally condoned, the police's lack of attention and disinterest in assaults on LGBT people could be argued to appear as an acceptance of the assaults, an additional institutionalisation of homophobia and at the very least it does not serve as a deterrent. The restrictions that the legislation imposes on the health sector may prevent life-saving medical care, especially within HIV-treatment and prevention, which effectively impedes the length of lives.

Capability of Good Bodily Health

Closely linked to Nussbaum's first capability, the capability to have good bodily health is the second capability on the list (see Nussbaum's list of Essential Capabilities). Despite the guarantees of non-discrimination and equal treatment made by the Ugandan Health Minister, this has evidently not been the case (see *The Impact of The*

Bill). Although bodily health contains a portion of luck and good genetics, the LGBT people are in a disproportionately unfavourable position, as they are subjected to potential criminalisation, when seeking medical treatment. The closing of specific health care options, such as counselling and donations of preventive aid, may precipitate an overall increase in HIV and AIDS in Uganda, especially in the LGBT community. Furthermore the inability to seek medical attention may effectively end up costing many lives, as even many of the smallest medical problems have the potential to escalate if not treated, which the impact of the current legislation contributes to prevent (see Impact on the Health Sector). The lack of clarity regarding whether doctors and personal may be charged with promotion of homosexuality has a counterproductive effect: not only does it impact the lives of LGBT people, but will inadvertently also affect anyone that doctors suspect of being a LGBT. The legislation thus saturates the entire medical profession, effectively placing mistrust and suspicion in all areas of the field (see Impact on the Health Sector). Equally the fact that LGBT people attend specific clinics may prohibit heterosexuals from going to these clinics of fear of being mistaken and criminally charged (see Impact on the Health Sector).

Nussbaum also understands bodily health to encompass having sufficient shelter, a point upon which the legislation has also had a tremendous impact (see Capabilities Approach). The displacement of LGBT people throughout Uganda has been a significant consequence especially due to the provisions of 'the aiding and abetting' and 'having a room or house in which homosexual activities take place' as many have either interpreted this to mean that LGBT people were not entitled to rent or it has been used as an excuse to evict them based on their sexuality. Media exposés and arrests have in many cases subsequently meant that the victims were left homeless and deprived of the capability to have shelter (see Impact in the form of Uprooting). Furthermore the loss of LGBT people's livelihood is an impact that may effectively prevent them from obtaining the needed nourishment, which is also included as an essential component of the bodily health capability, consequently resulting in a deterioration of their bodily health (see Loss of Employment). The fact that the understanding of human rights allow for interpretation, particularly in regards to the ambiguous nature of rights to shelter and housing, will inadvertently allow for a significant decline in the capabilities of sufficient shelter of LGBT people in Uganda (see Capabilities Approach). As the possibility for shelter is arguably established in the current Ugandan framework, the state provides no practical means. They thus do not *de jure* violate the human right to shelter, while *de facto* numerous LGBT people are deprived of housing and of an essential capability on Nussbaum's list (see Capabilities Approach and Impact in the form of Uprooting).

Several NGOs have been forced to shut down their services, either out of fear of being accused of 'promotion of homosexuality' or as a result of lack of funding following the donor retraction (see The Impact of The Bill). The Ugandan societal construction of subcontracting local NGOs to establish and run health facilities is of vital importance, as the impact of the legislation then effectively means that the health facilities that many LGBT people depend on, are no longer provided at all and they have nowhere to turn (see Understanding development in a Ugandan context). Additionally the foreign aid cuts have and will continue to have a significant effect on the Ugandan health care. The rejection of the World Bank loan of US\$90 million loan meant to improve the Ugandan health care system will inadvertently have an adverse effect on development, despite the noble intentions (see Foreign Aid Cuts). Similarly the reduction of aid from the U.S. has not only resulted in the layoff of 50 employees, but also in the abandonment of treatment of tens of thousands of HIV infected Ugandans. The European donors that have chosen to redirect their aid to civil society and NGO's, in order to avoid governmental control, may reduce the impact (see Foreign Aid Cuts). However, a majority of health initiatives in Uganda are either run by, or to some extent partnered with the state (see Understanding development in a Ugandan Context), and as such any effort to divert funds entirely from the government influence will inadvertently have a harmful effect on Ugandan health. Additionally the aid cuts run the risk of harming LGBT people health, through reducing or shutting down their options, while simultaneously making them scapegoats (see Foreign Aid Cuts).

Capability of Bodily Integrity

Nussbaum's capability to have bodily integrity incorporates many of the capabilities that are restricted by the Anti Homosexuality Act. The ability for individuals to travel to new places is directly limited by the increased danger of being arrested on suspicion of homosexuality. The fact that an increasing number of people are being arrested on accusations of homosexuality will have an impact on the free movement of LGBT people (see chapter Arrests). They are less likely to travel to unknown areas, as there may be an increased risk of unprovoked arrests. The fear of arrest may thus serve as a deterrent from free movement. An important factor in this equation is the rising increase in reports of police brutality, sexual assaults and violence against LGBT upon arrest (see Arrests). The capability to be safe from violence has overall been decreasing for LGBT people since the passing of the legislation (see Violence). The amount of violent assaults on LGBT people has also escalated significantly. This obviously decreases the feeling of safety and furthering this insecurity are the notions that any reporting of violence to the police may put the victims in danger of

being arrested, simply for being LGBT. The consequence of this is that an entire minority are left in a position where they are deprived of security, a subset of society in which the rule of law effectively has been removed for them (see Impact of Bill). Also included in Nussbaum's notion of the capability to bodily integrity is the right to have sexual satisfaction. The Anti Homosexuality Act is considered a direct attempt to prevent the sexual satisfaction of homosexuals/LGBT people. Although the legislation does not explicitly deter satisfaction, the existence of the bill effectively aims at preventing the capability to sexual satisfaction for many LGBT people.

Capabilities of Sense, Imagination and Thought and Practical Reason

The capability of Sense, Imagination and Thought (no. 4 on Nussbaum's list) is analysed alongside the Capability of Practical Reason (no. 6 on Nussbaum's list), as these capabilities are perceived to overlap and comprise several of the same aspects.

The capability Nussbaum labels as sense, imagination and thought, as well as the capability of practical reason, are also extremely prohibited under the terms of the Act (see The Anti Homosexuality Act 2014). Despite the fact that there is a greater degree of freedom under Museveni, compared to previous governments, the enactment of bills such as the Anti Pornography Act and the Anti Homosexuality Act all attempt, in various degrees, to prohibit thought processes through legislation (see The Anti Homosexuality Act 2014). The Anti Pornography Act and the Anti Homosexuality Act both attempt to prevent actions associated with certain thoughts and can therefore be understood as attempts to suspend senses, imagination and thought. In this sense both laws are indubitably draconian, as they attempt to change behaviour through legislation. The Anti Pornography Act is physically attempting to stop sensory perception and reasoning, through provision. Museveni's justification (see The Anti Homosexuality Act 2014) for introducing the law: that it was scientifically proven that homosexuality was 'learned' behaviour, suggests that it was previously considered a collective medical problem (i.e. when it was a 'genetic disorder'), but in this newer perspective the responsibility is on the individual, consequently making them scapegoats. Furthermore the use of 'learned' gives the illusion that sexuality is an active conscious choice, thus the indicating that other sexualities have been deselected. It is easy to understand the evolutionary reasoning in arguing that as people are born, their ancestors must have procreated and therefore cannot have been homosexuals (or not given in to their homosexual tendencies), thus excluding homosexuality from being genetic. However, this fallacy neglects a multitude of factors such as bisexuality, transgender, cultural pressure and suppression of sexual urges

etc. Museveni's referral to homosexuality as 'learned' behaviour thus functions not only as a justification, but also undermines a variety of scientific approaches and attempts to define the way Ugandan's should understand sexuality (see The Anti Homosexuality Act 2014). The provisions of 'promotion' of homosexuality also prohibits any reconsideration or academic debate on the issue, thus limiting what Nussbaum refers to as 'informed' and 'cultivated' education and scientific training (see Capabilities Approach).

The freedom of speech, which secures the right to the religious condemnation of homosexuals is exactly what the religious amalgamation through the proposal of the Anti Homosexuality Bill has worked on and successfully participated in banning (see the Religious Influence and The Anti Homosexuality Act 2014). As such the capability to free religious thought seems to thrive in Uganda. However, this exact capability also appears to have played a significant counterproductive role for numerous other capabilities.

Capability of Emotions and Capability of Affiliation

As the capabilities of Emotions and Affiliation are intertwined in practical terms and largely cover the same area, they will be dealt with simultaneously.

The ability to care, engage in social interactions and be attached to individuals and belongings is severely restricted through the Ugandan legislation (see Capabilities Approach and the Impact of the Bill). The legislation limits the capabilities of the LGBT community to achieve emotional bonds, through a continuous portrayal of them as criminals and criminalising anybody associating with them. The impacts following the enactment (see The Impact of the Bill) illustrate that LGBT persons have experienced a growing societal distancing from them. The act functionally prohibits, what Nussbaum considered to be a full emotional life, through the restriction of human association, which is perceived as a central component in human development (see The Impact of the Bill). The lack of safeguarding these capabilities will inevitably have a societal effect beyond the LGBT community. The provisions of the Anti Homosexuality Act entailing 'promotion', 'aiding and abetting' and 'housing' serve as a source for suspicion, dissociation and estrangement. The law has, and will continue to have an effect on the interaction of Ugandans, limiting platonic same sex care and nurture out of fear of being mistaken for a LGBT person. Friendships of non-LGBT people will undoubtedly also change, as the Anti Homosexuality Act has introduced a suspicion into all levels of society.

The standard rationalisation for the enactment of the Anti Homosexual Act has been that LGBT people are understood to be a threat to a set of African family values (see The Religious Influence and The

Anti Homosexuality Act 2014); however, it may be argued that the enactment of this law will in fact constitute a threat of its own to the Ugandan Family structure. The provisions of 'aiding and abetting' include parents to inform on and betray their children, consequently laying the seed for suspicion within the family. Parents may then constantly scrutinize their offspring to ensure that they do not incriminate them and children may constantly be living in fear of being reported, regardless of sexuality. Additionally the Anti Homosexuality Act plays a significant role in defining what the society should perceive as good, thus countering the capability to critically reflect, and to develop a comprehension of what is perceived as good. Argued to fall under article 27, under the provisions of morality, the Anti Homosexuality Act may be argued to be a set of moral standards forcefully applied upon the Ugandan population, defining what is perceived as 'good'.

Capability of Control over One's Environment (Political and Material)

The final capabilities on Martha Nussbaum's list of capabilities are also considerably affected by the legislation. The capability of the LGBT community to engage and efficiently partake in political matters that affect their individual lives has been directly impaired (see The Impact of the Bill). The provisions against 'promoting' homosexuality are likely to be used against any LGBT actively participating in the political matter of Uganda. Human rights organisations and activist have also articulated the problems of this provision, stating that it inhibits their work, prohibiting freedom of affiliation and political speech. This provision can be understood as extremely extensive due to the vague phrasing, allowing the government to use it as an excuse to limit any opposing political views. Additionally, as an indirect consequence of the Act, the excluding and isolating social implications may effectively inhibit the ability of LGBT people to participate in local political affairs.

The ability to possess property has not been explicitly prohibited in bill. However, if the capability is understood to also include renting, the bill has had a direct and reported effect. The loss of renting abilities has displaced numerous LGBT people and may continue to leave LGBT people without homes. Correspondingly numerous people have been deprived of their jobs and the right to employment (see The Impact of the Bill).

7.2 ADDITIONAL PERSPECTIVE

There are several elements beyond those directly related to Nussbaum's list of capabilities that have affected the Ugandan develop-

ment, as understood through the Capabilities approach. These will be presented and discussed subsequently.

The introduction of a checklist (see The Political Landscape and Background of the Ugandan Anti Homosexuality Bill) to ensure that legislation passed in the Ugandan parliament observes human rights indicates that the Ugandan parliamentarians lack a working knowledge of these rights, which might be argued to be a necessity when working a legislative position in a developing country. Secondly, this implies that there is an aim to abide by human rights. As such we must also accept that human rights allow for a wide interpretation, as was illustrated through the Capabilities approach. The extremely vague language used throughout the legislation allows for a wide interpretation, which can be very detrimental to the LGBT community, as it provides the Ugandan rule to interpret it to their advantage. The definition of the offence of homosexuality to be any form of same sex penetration and any form of touching with "the intention of committing the act of homosexuality", is extremely wide and allows for numerous understandings. The "intention of committing the act of homosexuality" is obviously interpretable and furthermore it allows for the criminalisation of something, which has not been done. The 'intention' is something, which may happen in the future, the legislation is therefore based on suspicion and the conviction must be considered a 'pre-emptive' conviction.

Multiple offences, which are covered in the Anti Homosexuality Act, are offences that are already covered in other Ugandan legislation (see Existing Legislation) and thus the function within the bill seems to solely be an attempt to portray a particular picture of LGBT people. Among the offences that exist in other legislation are: Sexual acts with minors, if offenders are persons of authority, parents/-guardians or if the offenders have HIV. Equally the acts of threatening others to engage in sexual relations, detaining with the intent to commit sexual acts, or under false pretence luring people to have sex, are all covered through existing provisions in the Ugandan legal framework, specifically The Penal Code of Uganda §123 and The Penal Code of Uganda §128. Similarly the offence of attempting to marry a person of the same sex was already prohibited through the constitutional change in 2005 ((see The Political Landscape and Background of the Ugandan Anti Homosexuality Bill). Despite existing legislation prohibiting several of these offences, they are included in the new legislation, underlining the dichotomy that is inherent in the Anti Homosexuality Act. The picture painted is that homosexuality is exclusively forced or coerced, closely related to paedophilia excluding the notion of consensual same-sex.

There are two aspects of the new legislation that were not integrated in the previous legislation. In the new legislation, consensual sexual relations between people of the same sex are not accepted

as such, but are criminalised. This is an aspect, which has been discussed in depth throughout this thesis. While the existing legislation criminalised sexual violence against women and children, the legislation was, however, not gender equal and rape of men was in actuality not criminalised, nor recognized in legal respect ([Refugee Law Project and the International Human Rights Law Clinic, University of California and Berkeley School of Law, 2013](#)). So in attempting to prevent LGBT relations, the Anti Homosexuality Act has participated in recognizing and criminalising male sexual violence.

Despite the fact that statistics may illustrate the number of uses of the various opportunities, it is of great importance that the focus remains on the opportunities and the achievable capabilities, rather than the actual use. Nussbaum contends that the circumstances that affect people's choices are essential in the creation of the capabilities list. The choices of humans are closely connected to the material conditions and as such the list endeavours to establish societal conditions that support the opportunity to choose according to the personal conception of good (see Capabilities Approach). Accordingly the choice remains to be taken by the individual, as the respect for their freedom is the core aspect of the approach. As such the approach thereby considers humans as active participants shaping their own lives, rather than passive recipients. However, it is also essential that their choice remains open, allowing them to choose not to take the opportunity if they wish to. Therefore the focus must remain on the opportunities available and not merely on those who take them. Considering the context of the bill, the campaigning and funding which was done in Uganda under the Bush administration, promoting abstinence and 'traditional' Ugandan family values (see *The Religious Influence*), the bill and the justification for it give the impression of a continuation of these policies. The justification of the bill to ensure the stoppage of supposed imposition of "sexual promiscuity on the people of Uganda" is arguably a foreseeable product of the religious campaigning undertaken only a few years earlier and some blame may therefore be assigned to the earlier American campaigns. Regardless of the murky foundations of the legislation, it has now become a hot political issue and serves as a point of illustrating Ugandan independence from foreign influence (see *Foreign Aid Cuts, Understanding Development in a Ugandan Context and The Anti Homosexuality Act 2014*).

The determination to pass the legislation regardless of consequences indicates a wish to be liberated from what may be perceived as colonial influence. If we accept the rumours of Museveni wanting to extend his 28-year leadership as true (see *The Anti Homosexuality Act 2014*), the signing of the bill could also be seen as serving as a tool to shift focus from repression, unemployment and inflation, while also increasing his popularity significantly. This comes at a time where

Uganda has improved significantly, in terms of both development and economy, relying far less on foreign aid and has seen an increase in economic stability. Furthermore there has as of yet, been little impact in the commercial markets from the bill. Uganda may therefore now be viewed as having the ability to distance themselves from prior colonial powers and be able to establish an increased independence on pretence of protecting the country from moral destruction. However, the picture of western moral decadence neglects the fact that prior to the colonisation of Uganda, homosexual relations were most likely not criminalised. As mentioned in chapter on The Political Landscape and Background of the Ugandan Anti Homosexuality Bill, historical research indicates that these practises were not suppressed, nor were they condoned. A second misconception is the argument that it is somehow traditionally African to be homophobic, rather this is a value imposed through the western colonisation of Africa, which is evident in the colonial legislation, which the Anti Homosexuality Act is a radicalised remnant of.

CONCLUSION

The objective of this thesis has been to analyse the developmental consequences of the Anti Homosexuality bill and particularly the concerns for the LGBT population of Uganda. This has been done by applying the Capabilities Approach, and establishing the argument that human rights are essential in producing a framework for providing the essential capabilities and freedoms. Nussbaum's list of capabilities has served as a catalogue of essential freedoms on the basis of which it has been possible to analyse the restrictions of the legislation. A central element in the discussion has been the context-specific concerns of rights and capabilities and the limitation of choices of those who identify themselves as LGBT people.

The lack of accord regarding the rights of LGBT people in the international community presents a problem and underlines the necessity for a clarification in regards to this. Through the use of Nussbaum and Sen's Capabilities Approach, it has been illustrated that there are problems regarding the interpretation of human rights and that the philosophical point of departure seems to vary significantly within the Human Rights Charter, shifting from characteristics close to the Capabilities Approach towards more of a Utilitarian nature. This consequently allows for various interpretations of distribution and responsibility. The significance of the Anti Homosexuality Act is argued to not only affect those who belong within this group but also to have far wider consequences for the entire Ugandan population, the further development of the country but also regional implications. The LGBT community is not perceived as an isolated community but is understood to be integrated in the Ugandan society, and the reciprocity of the Anti Homosexuality Act is thus considered to have a resonating and widely virulent impact - an impact which is demonstrated specifically in the elimination of choices for the LGBT community. The Anti Homosexuality Act has also come to represent a multitude of interests for various groups. It represents the moral decline for the religious right, a political example of distancing from colonialism powers for the Government and a regression in human rights for the Western world.

The research question of this thesis was: *"What are the developmental consequences of the enactment of the Anti Homosexuality Act in Uganda?"* - with the underlying additional objective of exploring the extent of persecution of LGBT people, the challenges and deficiencies of sexual

rights and equality in Uganda, when taking into consideration the Anti Homosexuality Act and its consequences.

In conclusion, it is the findings of this thesis that the legislation is endangering the life and health of LGBT persons. Additionally they will lack bodily integrity as a consequence of increased violence and lack of police protection. The Act endangers and excludes the LGBT community from important forms of political, social and familial affiliation and eradicating the emotional equanimity as a result of fear of persecution. Problems of shelter and unemployment play a pivotal role and serve to illustrate the interconnection of the problems of the Anti Homosexuality Act and the lack of rectifying tools available. Despite guarantees of ensuring that no discrimination would occur within the health sector, there are numerous examples of problems affecting primarily LGBT persons.

The role of the Ugandan government can thus be perceived to be one-sided, oppressive and persecuting. The legislation should also be considered in a regional context, as it appears to encourage the implication of similar policies within the surrounding countries and governments. The act has not only served to endanger the LGBT community through deprivation of goods and capabilities, but has also stripped them of any supportive acquaintances, as a consequence of specific provisions endangering their network. The legislation is thus both politically and morally dehumanizing and evaluates LGBT people solely by their sexuality, marginalizing a culturally exposed and vilified group. The Ugandan developmental progress achieved in the past 15 years, disproves arguments of cultural relativism and underlines that capabilities, for practical reasons, control of environment and bodily health, are ideas that resonate within the Ugandan society, making it evident that the capabilities are a universal conception and increasingly essential in this context.

The tragedy of unequal capabilities is thus a problem of (in-)justice, illustrating the need for additional consideration in regards to human rights. The developmental consequences of the Anti Homosexuality Act are catastrophic, saturating major parts of the Ugandan society, structurally challenging future progress and reverting development, particularly evident in the discontinuation of numerous health services and the redirection of foreign aid and donations.

Part I

APPENDIX



APPENDIX

Following the "Anti Homosexuality Act 2014" is appended. Retrieved from: <http://parliamentwatchuganda.org/anti-homosexuality-bill/>

THE ANTI-HOMOSEXUALITY ACT, 2014.

ARRANGEMENT OF SECTIONS.

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Section

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Schedule

Currency point.

THE ANTI-HOMOSEXUALITY ACT, 2014.

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters.

DATE OF ASSENT:

Date of Commencement:

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. Interpretation.

In this Act, unless the context otherwise requires—

“authority” means having power and control over other people because of your knowledge and official position; and shall include a person who exercises religious, political, economic or social authority;

“child” means a person below the age of eighteen years;

“court” means a chief magistrates court;

“currency point” has the value assigned to it in the Schedule to this Act;

“disability” means a substantial limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

“felony” means an offence which is declared by law to be a felony or if not declared to be a misdemeanor is punishable without proof of previous conviction, with death or with imprisonment for three years or more;

“HIV” means the Human Immunodeficiency Virus;

“homosexual” means a person who engages or attempts to engage in same gender sexual activity;

“homosexuality” means same gender or same sex sexual acts;

“Minister” means the Minister responsible for ethics and integrity;

“misdemeanor” means any offence which is not a felony;

“serial offender” means a person who has previous convictions of the offence of homosexuality or related offences;

“sexual act” includes —

- (a) physical sexual activity that does not necessarily culminate in intercourse and may include the touching of another’s breast, vagina, penis or anus;
- (b) stimulation or penetration of a vagina or mouth or anus or any part of the body of any person, however slight by a sexual organ;
- (c) the unlawful use of any object or organ by a person on another person’s sexual organ or anus or mouth;

“sexual organ” means a vagina, penis or any artificial sexual contraption;

“touching” includes touching —

(a) with any part of the body;

(b) with anything else;

(c) through anything;

and in particular includes touching amounting to penetration of any sexual organ, anus or mouth.

“victim” includes a person who is involved in homosexual activities against his or her will.

PART II—HOMOSEXUALITY AND RELATED PRACTICES.

2. The offence of homosexuality.

(1) A person commits the offence of homosexuality if—

(a) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;

(b) he or she uses any object or sexual contraption to penetrate or stimulate sexual organ of a person of the same sex;

(c) he or she touches another person with the intention of committing the act of homosexuality.

(2) A person who commits an offence under this section shall be liable, on conviction, to imprisonment for life.

3. Aggravated homosexuality.

(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;

- (c) offender is 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 used by any man or woman any drug, matter or thing with intent to stupefy or overpower him or her so as to enable any person to have unlawful carnal connection with any person of the same sex.

(2) A person who commits the offence of aggravated homosexuality shall be liable, on conviction, to imprisonment for life.

(3) Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status.

4. Attempt to commit homosexuality.

(1) A person who attempts to commit the offence of homosexuality commits a felony and is liable, on conviction, to imprisonment for seven years.

(2) A person who attempts to commit the offence of aggravated homosexuality commits an offense and is liable, on conviction, to imprisonment for life.

5. Protection, assistance and payment of compensation to victims of homosexuality.

(1) A victim of homosexuality shall not be penalized for any crime committed as a direct result of his or her involvement in homosexuality.

(2) A victim of homosexuality shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stages of the criminal proceedings.

(3) Where a person is convicted of homosexuality or aggravated homosexuality under sections 2 and 3 of this Act, the court may, in addition to any sentence imposed on the offender, order that the victim of the offence be paid compensation by the offender for any physical, sexual or psychological harm caused to the victim by the offence.

(4) The amount of compensation shall be determined by the court and the court shall take into account the extent of harm suffered by the victim of the offence, the degree of force used by the offender and medical and other expenses incurred by the victim as a result of the offence.

6. Confidentiality.

(1) At any stage of the investigation or trial of an offence under this Act, law enforcement officer, prosecutor, judicial officer and medical practitioner, and any party to the case, shall recognize the right to privacy of the victim.

(2) For the purpose of subsection (1), in cases involving children and other cases where the court considers it appropriate, proceedings of the court shall be conducted in camera.

(3) Any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry, or any person utilizing trimedia facilities or information technology who publishes or causes the publicity of the names and personal circumstances or any other information tending to establish the victim's identity without authority of the victim or court, commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points.

PART III—RELATED OFFENCES AND PENALTIES.

7. Aiding and abetting homosexuality.

A person who aids, abets, counsels or procures another to engage in acts of homosexuality commits an offence and is liable, on conviction, to imprisonment for seven years.

8. Conspiracy to engage in homosexuality.

A person who conspires with another to induce another person of the same sex by any means of false pretence or other fraudulent means to permit any person of the same sex to have unlawful carnal knowledge of him or her commits an offence and is liable, on conviction, to imprisonment for seven years.

9. Procuring homosexuality by threats.

(1) A person who—

- (a) by threats or intimidation procures or attempts to procure any woman or man to have any unlawful carnal knowledge with any person of the same sex; or
- (b) by false pretences or false representations procures any woman or man to have any unlawful carnal connection with any person of the same sex;

commits an offence and is liable on conviction to imprisonment for seven years

(2) A person shall not be convicted of an offence under this section upon the evidence of one witness only, unless that witness is corroborated in some material particular by evidence implicating the accused.

10. Detention with intent to commit homosexuality.

A person who detains another person with the intention to commit acts of homosexuality with him or her or with any other person commits an offence and is liable, on conviction, to imprisonment for seven years.

11. Brothels.

(1) A person who keeps a house, room, set of rooms or place of any kind for purposes of homosexuality commits an offence and is liable, on conviction, to imprisonment for seven years.

(2) A person being the owner or occupier of premises or having or acting or assisting in the management or control of the premises, induces or knowingly suffers any man or woman to resort to or be upon such premises for the purpose of being unlawfully and carnally known by any man or woman of the same sex whether such carnal knowledge is intended to be with any particular man or woman generally, commits a felony and is liable, on conviction, to imprisonment for five years.

12. Same sex marriage.

(1) A person who purports to contract a marriage with another person of the same sex commits the offence of homosexuality and shall be liable, on conviction, to imprisonment for life.

(2) A person or institution commits an offence if that person or institution conducts a marriage ceremony between persons of the same sex and shall, on conviction, be liable to imprisonment for a maximum of seven years for individuals or cancellation of licence for an institution.

13. Promotion of homosexuality.

(1) A person who—

- (a) participates in production, procuring, marketing, broadcasting, disseminating, publishing of pornographic materials for purposes of promoting homosexuality;
- (b) funds or sponsors homosexuality or other related activities;
- (c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality;
- (d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality; or

- (e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices;

commits an offence and is liable, on conviction, to a fine of five thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and imprisonment.

(2) Where the offender is a corporate body or a business or an association or a non-governmental organization, on conviction its certificate of registration shall be cancelled and the director, proprietor or promoter shall be liable, on conviction, to imprisonment for seven years.

PART IV—MISCELLANEOUS.

14. Extradition.

A person charged with an offence under this Act shall be liable to extradition under the existing extradition laws.

15. Regulations.

The Minister may, by statutory instrument, make regulations generally for better carrying out the provisions of this Act.

Act

Anti-Homosexuality Act

2014

SCHEDULE

s.1.

CURRENCY POINT

One currency point is equivalent to twenty thousand shillings.

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