

Human Rights for Gay people in Uganda in the light of the Anti-Homosexuality Bill

## Introduction

Human rights are universally recognized moral guarantees that should be protected by everyone. The essay considers whether human rights are a western idea or are capable of transcending culture through a case study of the of human rights of gay people in Uganda in the light of the anti-homosexuality bill. It sets out the situation in Uganda in great detail, specifically the current law on homosexuality in Uganda, the proposed anti homosexuality bill. The essay considers relevant philosophic arguments for and against human rights including the African understanding of humanism and concludes with a question, who is responsible for ensuring human rights for all.

### **What are human rights?**

Human rights are defined as moral guarantees for everyone by virtue of the fact that they are human and as such are said to be universal.

*Human rights identify fundamental requirements that enable an individual to live a minimally good life and these include the rights to health care and rights not to be tortured (Fagan 2005).*

Human rights were conceived in western civilization and can be categorized in three concepts: ancient, modern and contemporary. Whilst ancient rights emphasise the right of an individual to be treated with dignity modern and contemporary rights recognize the rights to speech and freedom. Similarly ancient and modern rights are distinguished by their communal or dependency nature (Butler :p4, p7 and p25:2008).

But how does this translate in practice and whose is responsible for ensuring human rights for everyone?

## **The Anti Homosexuality Bill- Uganda 2009**

### **Background**

The Anti-homosexuality Bill 2009 is a private members bill brought by MP David Bahati. Bahati is part of the ruling party the National Resistance Movement that came to power in 1986. Bahati has argued that homosexuality is alien to Uganda's cultural and religious beliefs and is a threat to the traditional family. In addition that whilst homosexuality is a human right in the Western World it is not so in Uganda and any one engaging in it is committing a crime. Moreover that the current laws are insufficient because whilst they deal with Unnatural acts offences there is neither provision for aggravated homosexuality nor provision for penalizing the promotion or dissemination of literature and materials promoting homosexuality.

### Current Legislation on homosexuality in Uganda

The law governing homosexuality in Uganda is contained within Uganda's penal Code Act 1950 (ch120 as amended) and is a remnant of the British Colonial administration of the 19<sup>th</sup> Century. The relevant sections are, Section 145 addresses Unnatural Offences, Section 146, addresses the attempt to commit Unnatural Offences whilst Section 147 addresses indecent practices whether committed in public or the privacy of one's home including the procurement of such services. The punishment of such acts is a seven-year prison term.

This law as it stands makes consensual sex amongst same sex couples illegal because it singles out individuals on grounds of same sex conduct for discrimination contrary to International law. Under the Vienna declaration of 1993 human rights and freedoms are guaranteed for all human beings but often as in the case of Uganda national governments disregard the provisions of international instruments in the name of morality. It is however interesting to note that the national court in Uganda recognizes the universality of human rights and seeks to enforce them (ICJ 2010).

An example of this is the ruling by Judge Arach in the case of Victor Mukasa and Yvonne Oyoo Vs The Attorney General 2008. The Police and local authorities entered the homes of Mukasa and Arach without warrants, as well as searching their homes illegally they arrested them and their respective guests and once in custody they were tortured and sexually violated. Judge Arach ruled that the actions of the authorities amounted to an invasion of the parties' privacy, a violation of their basic rights and equal protection under the Uganda's Constitution as well as under Articles 1 and 5 of the Universal Declaration of Human Rights (ICJ 2010).

Notwithstanding this ruling Uganda's MP Bahati has sought to introduce tougher laws on homosexuality since 2009

### **What's in the anti homosexuality bill?**

The bill calls for a ban on same sex relationships, the promotion or recognition of such relationships especially within public institutions and government agencies. Life in prison is proposed for anyone found guilty of homosexuality offenses whilst the death penalty for anyone found guilty of aggravated homosexual acts. The citizens of Uganda would be required to report any incidents homosexual behavior within 48 hours of being aware or face punishment and proposes as prohibition of the ratification of International treaties that are contrary to the proposed Act.

The bill has five parts and 19 clauses, which are grouped as follows

Part 1- Interpretation of words and phrases used in the bill

Part 2- Prohibition of homosexuality

The key points in this section are the offense of homosexuality and aggravated homosexuality, which cover homosexuality acts on persons under 18 years of age and repeated offenders. The bill proposes life in prison for homosexuals and repeated offenders and a death sentence for those charged with aggravated homosexuality.

Part 3- Related offenses and penalties

The key points in this section are aiding and abating homosexuality and failure to disclose homosexuality. The bill imposes a duty on Ugandan citizens to report acts of homosexuality to authorities or face prosecution and prohibits the promotion of homosexuality

Part 4- Jurisdiction

The key point in this section is the fact that the Act will be applicable to Residents of Uganda and Ugandans that engage in homosexuality acts whilst outside of Uganda. In particular it proposes to extradite such offenders back to Uganda in order that they be tried under Ugandan law

Part 5- Miscellaneous provisions

This section deals with the position on International treaties and protocols that are seen to be protecting the rights of homosexuals; in particular it proposes the nullification of such treaties and protocols.

If passed into law this bill as currently presented breaches all five categories of substantive human rights codified within the body of human rights: rights to life, rights to freedom, rights to political participation, rights to protection of the rule of law as well as the rights to fundamental social economic and cultural goods (ICJ 2010).

**Human Rights, Moral Relativism and the Anti Homosexuality Bill in Uganda**

**Bahati the MP** whose private bill the anti homosexuality bill is, he has argued that homosexuality is deviant, abominable in Ugandan and or Africa culture and peculiar to western culture. In addition that homosexuality has nothing to do with human rights but instead a desire on the part of the a few individuals to corrupt the moral compass of the youth by enticing them with money. He has in particular defended the death penalty for what he calls aggravated homosexuality stating that there is a current law against child molestation and he is simply extending those provisions into the anti homosexuality bill. Bahati is however mistaken in his assertion, the rights of individuals to form relationships and privacy are a basic human right protected by international law and recognized under the Vienna Declaration on human rights of 1993 (ICJ briefing paper 2010)

Other politicians such as the Minister for ethics Simon Lokodo have advanced similar arguments and to demonstrate his argument he reportedly stormed a Gay workshop with armed Police and forced the participants to close the workshop down contrary to Article 20.1 of the Universal Declaration of Human Rights which provides the rights to peaceful assembly and association as well as well as rights to freedom. On a broader level this type of behavior denies this group of people access to information that is vital for their sexual health.

Given the point of view of the Ugandan politicians and the stances taken by some in Uganda we need to ask the question whether Human rights a western idea or a human idea that can be made sense of by other cultures. For an answer we turn to Fagan's 2005 essay on human rights specifically his examination of Moral Relativism as a philosophical critique of human rights. According to Relativists human rights are not universal but instead are socially accepted principles that are peculiar to those societies where they originated. Fagan argues that the Moral Relativist critique of human rights focuses on the individualistic nature of human rights and argues that human rights are biased towards individualistic societies and cultures at the expense of communal societies such as those of Asia and Africa. Whilst Fagan recognizes the implications of imposing the western version of human rights and the potential risk of cultural and moral imperialism, which he says, arises by replacing one civilization by another he also reminds us that

*"Relativists arguments are usually presented by the ruling elite whose systematic oppression of their peoples has attracted the attention of advocates of human rights" (Fagan 2005)*

Are these political elites in Uganda therefore using the doctrine of Relativism to cover up something much bigger within the Ugandan society? This view is certainly held by some Ugandans as well as some in the international society, there is a feeling that this is detraction from much bigger societal issues and certainly explains some citizens are puzzled to as to why the issue of homosexuals in Uganda has occupied Ugandan politics in such a way when homosexuals have always been part of Ugandan society, moreover Uganda is grappling with issues such disease and poverty which require urgent government attention. As one Ugandan journalist told me *" we have always known about the existence of homosexuals in our society so why legislate for something that is a none issue"*

According to Fagan (2005) the fact that there is growth in the number of grass root human rights activists and organizations in countries such as Uganda where human rights are supposedly incompatible with human rights tell us that human rights are universal and that there is a possibility that these "home grown" relativists are simply using the doctrine of Relativism to cover up oppressive regimes. He concludes that

*"Whilst human rights remain philosophically founded with an individualist moral doctrine, there can be no doubt that attempts are being made to adequately apply rights to more communally oriented societies"*

In summary therefore Bahati's argument that homosexuality is not a human right because it is incompatible with the communal nature of Ugandan culture is contrary to the rights of individuals to form relationships as well as freedoms recognized under the Vienna Convention of 1993. In view of Bahati's argument we will now look at the African philosophy of Ubuntu that gives Africans an understanding of what it is to be human.

### **African Humanism (Ubuntu) and the Anti Homosexuality Bill in Uganda**

Ubuntu is a Zulu word that explains African humanism and is found in Bantu (people) speaking Africans. In western Uganda it is *Obuntu* whilst in central Uganda it is *Obuntu-bulamu*. According to this philosophy a person is person through others and as such the expression "*I am because we are and because we are therefore I am*" (Eze 2010) In other words the human person needs others as point of reference and reaffirm his existence.

Ubuntu prescribes and articulates a way of being that is about caring and respect for the person as well as your elders, human dignity, compassion, non-discriminatory, reaching out to others at times of sorrow and happiness, respect for your elders, being charitable towards those that have less than you do and "*If you lack Ubuntu then you have no humanity* (Eze 2010)

Ubuntu subordinates the individual to the community as the rights of the community come before those of an individual. According to Ubuntu whatever happens to the individual happens to the community and vice versa and this is demonstrated at times of celebration (birth of a child or a wedding) and at times of sorrow (death) the community handles such matters as one. Ubuntu calls for consensus among peoples and individuals have a right to speak and be heard (Louw 1998). This being the case how then do we reconcile Ubuntu with the anti- homosexuality bill in Uganda? The killing of people because of their sexual preference or because they are "different" is contrary to the Ubuntu philosophy and as such invalidates Bahati's argument in relation to human rights of homosexual people in Uganda.

The philosophy of Ubuntu holds important values of understanding what it means to be human as well as compassion for the other however by virtue of its communalist nature and the desire to reach consensus it means that it can be coercive. This happens when an individual is expected to conform to community norms in spite of what he wants. An individual must not elevate his needs over and above those of the community and he does he risks sanctions and punishment from the community (Louw:1998)

Ubuntu can therefore be used to oppress the individual as his rights come after those of the group/community. Eze (2010) has argued that Ubuntu is exploited

by political elites to oppress citizens and cites the instance of the Rwanda genocide and Mugabe's land reforms. Eze asks whether Ubuntu is peculiar to Africa or whether it can be claimed by other cultures too.

In reference to human rights aspects of Ubuntu can be observed in the ancient concept of human rights "*right to dignity and fellowship as a rational being along with all such beings*" (Bulter p4: 2008) can be closely associated with Ubuntu ideology of a human person needing others as a point of reference as well as respecting the dignity of the other. Ubuntu seems to confirm the Moral Relativism critique of human rights in as far as human rights being held individually and have no place in communal societies.

With respect to the anti homosexuality bill in Uganda it would appear that the legislators or political elites have departed from the virtues of Ubuntu, respect for the individual and human dignity in proposing this bill. The Bill prescribes the type of punishments that will be meted out to citizens that not report acts of homosexuality as well as those who are gay, the reason that the politicians have advanced is that this is contrary to Ugandan culture and what they really mean here is homosexuality does not conform to the communal values of Ugandan society. Because Ubuntu is about the human person and how they relate to others it is useful at this point to turn to the reactions of the Ugandan people to the anti Homosexuality bill.

The people of Uganda appear to be divided on this matter and you will get a different answer depending on whom you are talking to. Uganda is a very conservative and religious country and the degree of religious and cultural convictions appear to influence individual reactions on the matter of homosexuality. The general consensus appears to be that Uganda has always had homosexual people and society knew who they were and they were never vilified. This is the aspect of Ubuntu that Eze says should be promoted because it acknowledges the individual person and the rights of that individual within a community.

The bill appears to have divided people in Uganda along class lines too, in other words one's class appears to impact their reaction to the bill. The well travelled, well educated and young middle class people appear to take a liberal stance whilst the working class and rural folk have taken a conservative stance and some have gone as far as calling for the death penalty for convicted homosexuals

The Liberal's stance appears to be that an individual should not be vilified for their natural instincts in this instance homosexual instinct. This is in line with Thomas Hobbes idea of Natural Rights which deals with the *right of an individual to do that which comes naturally* (Bulter p25:2008) They have argued that the campaign against homosexuals is a government ploy to avoid addressing real issues that are polarizing society. More importantly they are concerned about the impact that passing a bill would have on Uganda internationally.

This group of people has great concerns about the rights of an individual and the power of the state. Their stance is contrary to the communalist nature of Ubuntu, “the individual must not put his needs before those of a community” but recognizes the rights and freedoms of a human person in line with universal human rights. There is therefore confusion as to why the spotlight has been cast onto them especially when the country has much bigger problems that affect the ordinary man on the street. The casting of the spotlight onto homosexuals has implications for their safety in a society that is broadly regarded as conservative. Indeed some in society have already voiced that fact the public display of affection amongst homosexuals offends them

The Conservative stance appears to be that homosexuality is an unnatural act that has no place in Ugandan society and should be punished either by imprisonment or death. This group has lobbied their MPs heavily and urged them to support the bill currently going through parliament and have held street rallies against homosexual people. This group has accepted wholesale the evangelical and politicians explanation that it is necessary to pass the anti homosexuality bill into Ugandan law because homosexuality will impact Uganda and lead to the degeneration of morals within Ugandan Society. This group’s stance gives us an insight in the dark side of Ubuntu and according to Louw (1998)

*Because of extreme emphasis on community, Ubuntu democracy can be abused to legitimize what Sono (1994 xii, xv) calls the “constrictive nature or tyrannical customs of a derailed African culture, especially communalism which frowns upon elevating one beyond the community*

In summary therefore whilst Ubuntu philosophy provides a way of being that has due regard for human dignity but because one can only be human in reference to others it is very subjective in nature as it subordinates individual freedoms to those of the community taking away the very essence of being a human person. It is a contradiction in terms since it can be used by the community to oppress individuals in that community whilst recognizing the need for cohesiveness in a community.

Because human rights are universally recognized we will now consider the reaction of the international community to the anti-homosexuality bill and the sanctions that are available should Uganda pass the bill into its law?

#### The anti-homosexuality bill and the International community

The international community has been outraged by Uganda’s anti homosexuality bill and so far the United Kingdom (UK) and United States of America (USA) has responded by threatening to withdraw Development Aid should the bill be passed into Uganda’s law. This is what is called Political Conditionality; donors give Aid, on grounds that a country improves its governance, human rights record and the rule of law. The country in question would ordinarily have their



record checked by an independent inspector who would submit a detailed report on the country's performance to an international institution such as the United Nation's Commission for Human Rights (Holland: 2002 pp119-124).

Uganda is a signatory to the International Covenant on Economic, Social and Cultural Rights and in the last inspection report the independent expert Bernard Mudho noted that there was not sufficient provision for human rights activists and civil society to participate in budget formulation. Furthermore there should be explicit linkages between development goals and human rights as well as the rule of law, the Constitution and the international treaties on human rights Uganda has ratified (UN Commission on Human Rights 2004)

It is unclear how the international community and or donor agencies balance their foreign policy interests against good governance, the rule of law and human rights in another country or indeed why they choose to intervene in some countries and not others as we have recently witnessed in the case of Libya vs. Syria and indeed apart from calling on Uganda to improve its human rights it is unclear what if any action has been taken by the international community.

Amnesty International (AI) a respected Human Rights organization has condemned the anti-homosexuality bill calling it inherently discriminatory and a threat to broader human rights which include: rights to freedom from discrimination, freedom of expression, life, privacy healthy liberty and security of a person, right to a fair trial, freedom of conscience, freedom of peaceful assembly, freedom and Association and rights of a child. AI argues that as well being guaranteed under Uganda's constitution, Uganda is a signatory to several international human rights instruments and treaties such as the African Charter of Human rights, International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights that guarantee Ugandan citizens these rights. AI has called on the Ugandan government to reject the bill in the wider interest of universally recognized human rights (Amnesty International 2010)

## **Conclusion**

We do not know yet if the anti homosexuality bill in Uganda will pass into law as it is still being debated in the Ugandan Parliament but for now we can agree that the bill as presented breaches the human rights of homosexual individuals in Uganda.

This raises the question whose responsibility is it to ensure human rights for all. If we agree that Human rights are universal moral guarantees that must be upheld by everyone, questions arise to what an individual can do if the state impinges his or her human rights. We have seen that legislators can impinge individuals rights to privacy, rights to life, rights to freedom, rights to political participation, rights to protection of the rule of law as well as the rights to fundamental social economic and cultural goods by introducing laws that are contrary to internationally recognized individual rights however that national courts are stepping in to protect citizens against the state. There is an increased number of citizens groups that stand up for human rights at grass root levels which invalidates the Moral Relativists critique of human rights in as far as communal societies of Africa and Asia are concerned.

If the legislators in Uganda tell us that homosexuality is not about human rights and is a western invention does the African philosophy of `Ubuntu help us understand human rights from the African point of view. We have seen that Ubuntu as a philosophy is limited in this regard because whilst it recognizes the rights and the dignity of a human person it subordinates the rights of an individual to those of a community.

There are questions about the international community and their role in enforcing human rights in other countries and whether the interests of the international community get in the way of protecting human rights of citizens of other countries.

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