

UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS  
**54<sup>th</sup> Pre-Sessional Working Group**  
1 to 5 December 2014

**THE INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE  
UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS  
ON THE PREPARATION OF A LIST OF ISSUES FOR THE EXAMINATION OF  
UGANDA'S INITIAL PERIODIC REPORTS UNDER THE  
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL  
RIGHTS**

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**The International Commission of Jurists' submission to the UN Committee on Economic, Social and Cultural Rights on the preparation of a List of Issues for the examination of the Initial Periodic Report of Uganda**

**Introduction**

1. During its 54<sup>th</sup> pre-sessional working group, from 1 to 5 December 2014, the Committee on Economic, Social and Cultural Rights ('the Committee') will prepare and adopt a List of Issues for its examination of Uganda's implementation of the International Covenant on Economic, Social and Cultural Rights ('the Covenant'), including in light of the State party's initial report under the Covenant. The International Commission of Jurists (ICJ) welcomes the opportunity to present this submission with a view to the Committee's preparation of the List of Issues.
2. In this submission, the ICJ wishes to draw the Committee's attention to the detrimental impact of the adoption and enforcement of the Anti-Homosexuality Act, 2014 - as well as of the effect of pre-existing and extant criminalization of consensual same-sex sexual conduct<sup>1</sup> - on the respect for and the protection and realization of certain Covenant rights. The organization considers that those laws violate the following Covenant rights of Uganda's population generally, and in particular of lesbian, gay, bisexual, transgender and intersex persons, living or working in Uganda:
  - a. The principle of non-discrimination (article 2(2));
  - b. The right to work (article 6) and to just and favourable conditions of work (article 7);
  - c. The right to an adequate standard of living, including adequate housing (article 11);
  - d. The right to the enjoyment of the highest attainable standard of physical and mental health (article 12);
  - e. The right to education (article 13).

**General concerns arising from the enactment of the Anti-Homosexuality Act, 2014 and the pre-existing and extant criminalization of consensual same-sex sexual conduct**

3. The Anti-Homosexuality Act was passed by the Parliament of Uganda on 20 December 2013 and signed into law by the President on 24 February 2014. On 1 August 2014, the Constitutional Court declared the Act invalid, as Parliament had adopted it without the required quorum.<sup>2</sup>
4. However, on 2 September 2014, Parliament allowed the start of a process aiming to reintroduce the law, as MPs David Bahati and Benson Obua Ogwal were granted leave of Parliament to allow them time to prepare a Bill. Media outlets reported that according to the Deputy Speaker of the House, a drive to register MPs in support of the reintroduction of the Bill had garnered the support of 254 Members out of 376 MPs entitled to vote.<sup>3</sup>
5. In light of this and other legislation that remains in force, the ICJ considers that it is relevant for this Committee in its preparation of a List of Issues on Uganda to consider asking questions not only about the human rights violations to which the

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<sup>1</sup> In Uganda, "carnal knowledge of any person against the order of nature" can lead, upon conviction, to a sentence ranging from ten years' to life imprisonment; Penal Act 1950 (Chapter 120) (as amended), Section 145(a).

<sup>2</sup> Constitutional Court (Uganda), *Oloka-Onyango & 9 Ors v Attorney General*, Constitutional Petition No. 8 of 2014 (1 August 2014).

<sup>3</sup> Among others, Daily Monitor, *MPs start process to re-table gay Bill* (3 September 2014). <http://goo.gl/QDuatR> (Last accessed 25 September 2014).

enforcement of the Anti-Homosexuality Act 2014 gave rise, and in particular how Uganda proposes to remedy them, but also because doing so may help ensure that other legislation that is inconsistent with the Covenant is repealed and to prevent the enactment of a further incarnation of similar legislation that is inconsistent with the Covenant in the future.

6. The Anti-Homosexuality Act<sup>4</sup> defined and penalized the offence of homosexuality as follows:

*"(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 another 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, upon conviction, to imprisonment for life."<sup>5</sup>*

7. The Anti-Homosexuality Act also criminalized, among other things:
- a) "aggravated homosexuality", by providing that living with HIV status was one of the aggravating circumstances in the perpetration of the "offence of homosexuality";<sup>6</sup>
  - b) "aiding and abetting homosexuality";<sup>7</sup>
  - c) "brothels";<sup>8</sup> and
  - d) the "promotion of homosexuality"<sup>9</sup> (these and other provisions are described further below and in the appendix).
8. The 2014 Act explicitly criminalized consensual same-sex conduct between women and men, and made it an offence for people to discuss and be open about their sexuality. It also criminalized same-sex marriages, which, upon conviction, carried a sentence of life imprisonment. Renting premises to those who may "practice homosexuality" was also made criminal. Moreover, it made it a criminal offence to make available information about sexual orientation, safe sex and gender identity.
9. As regards the criminalization of consensual same-sex sexual conduct in Uganda, besides the Anti-Homosexuality Act, "carnal knowledge of any person against the order of nature" is an offence under the Penal Code Act 1950, punishable with life imprisonment.<sup>10</sup> This provision remains in force.
10. The criminalization of private consensual sexual activities - whatever the sex, gender identity and sexual proclivities of those involved, and whatever the actual sexual practices - violates international human rights law. For example the Human Rights Committee has considered that it is undisputable that adult consensual sexual activity in private is covered by the concept of "privacy" and criminalizing private sexual acts between consenting adults constitutes an arbitrary interference with privacy and cannot be justified.<sup>11</sup> The Human Rights Committee has also

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<sup>4</sup> Appendix I features a copy of the Act.

<sup>5</sup> Anti-Homosexuality Act 2014, s. 3.

<sup>6</sup> Anti-Homosexuality Act 2014, s. 3(1)(b).

<sup>7</sup> Anti-Homosexuality Act 2014, s. 7.

<sup>8</sup> Anti-Homosexuality Act 2014, s. 11.

<sup>9</sup> Anti-Homosexuality Act 2014, s. 13.

<sup>10</sup> Penal Code Act 1950, s. 145.

<sup>11</sup> *Toonen v. Australia*, Human Rights Committee (HRCttee), Communication No. 488/1992, Views of 31 March 1994, UN Doc. CCPR/C/50/D/488/1992 (1994), paras. 6.8, 8.2; *X v. Serbia*, HRCttee, Communication No. 1355/2005, Views of 26 March 2007, UN Doc. CCPR/C/89/D/1355/2005 (2007), para. 3.2; see also *François Ayissi et al. v. Cameroon*,

observed in a number of Concluding Observations that the criminalization of private sexual activities between consenting adults of the same sex violates the right to privacy, **the prohibition of discrimination, and the right of equality before the law**, and has repeatedly called for the revocation of such provisions from penal codes.<sup>12</sup> Special procedures of the Human Rights Council have stated that criminalization of these activities is contrary to the right to health,<sup>13</sup> the right to a fair trial, and the principle of equality before the courts.<sup>14</sup>

11. The ICJ considers that the criminalization of consensual same-sex sexual activity in private is an affront to the universal and unalienable rights to human dignity, equality and non-discrimination. Further, the organization considers that laws or regulations that directly or indirectly criminalize consensual same-sex sexuality or conduct provide State actors with the means to perpetrate human rights violations, including through harassment, extortion and discriminatory “criminal” investigations, prosecutions, trials and imprisonment, as well as through discrimination in the provision of services. Equally, these laws enable non-State actors to persecute with impunity individuals based on their real or perceived sexual orientation and/or gender identity. Indeed, laws that criminalize same-sex consensual sexual activity contribute to an atmosphere of State-supported homophobia and transphobia, and serve as both the motivation and justification for harassment, extortion and physical abuse of people based on their real or attributed sexual orientation and/or gender identity by non-State actors. In the circumstances, not only is cruel, inhuman or degrading treatment at the hands of non-State actors on the basis of real or perceived sexual orientation and/or gender identity not prevented, but such treatment and other human rights abuses are fostered when the authorities enact laws criminalizing consensual same-sex sexuality or conduct.
12. Overall, the existence of such laws works to deprive individuals who are, or are perceived to be, lesbian, gay, bisexual, transgender or intersex, of adequate protection from violence and discrimination, including police protection and judicial redress. This makes the provision of effective protection by State authorities extremely unlikely if not altogether impossible, given that extending such protection would in turn be tantamount to aiding and abetting the perpetration of the very acts that such laws criminalize. Putting the same point another way: protection is neither effective nor available when laws criminalizing consensual same-sex sexual relations or acts exist, because the individuals who need protection would effectively be outing themselves to the authorities, and exposing themselves to the risk of prosecution, should they decide to seek protection from the police or redress from the courts.
13. The 2014 Act also undermined and criminalized the critical work of human rights defenders and civil society organizations that seek to combat discrimination - including in the context of, among other things, employment, health, housing and

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Working Group on Arbitrary Detention, Opinion No. 22/2006, UN Doc. A/HRC/4/40/Add.1, p. 91, para. 19-20.

<sup>12</sup> HRCttee, Concluding Observations: Maldives 2012, UN Doc. CCPR/C/MDV/CO/1, para. 8; HRCttee, Concluding Observations: Ethiopia 2011, UN Doc. CCPR/C/ETH/CO/1, para. 12; HRCttee, Concluding Observations: Iran 2011, UN Doc. CCPR/C/IRAN/CO/3, para. 10; HRCttee, Concluding Observations: Kenya 2012, UN Doc. CCPR/C/KEN/CO/3, para. 8; HRCttee, Concluding Observations: Togo 2011, UN Doc. CCPR/C/TGO/CO/4, para. 14; HRCttee, Concluding Observations: Cameroon 2010, UN Doc. CCPR/C/CMR/CO/4, para. 12; HRCttee, Concluding Observations: Romania 1999, UN Doc. CCPR/C/79/Add.111, para. 16; HRCttee, Concluding Observations: Chile 1999, UN Doc. CCPR/C/79/Add.104, para. 20.

<sup>13</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Interim report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, UN Doc. A/66/254, Summary & para. 17.

<sup>14</sup> Special Rapporteur on the independence of judges and lawyers, Interim report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/66/289, para. 74.

education - and persecution based on sexual orientation and/or gender identity. It also had serious public health implications, including, for example, as a result of the fact that it hindered the prevention and treatment of HIV/AIDS.

14. Speaking about the 2014 Act on the day it was signed into law, the UN High Commissioner for Human Rights said: "Disapproval of homosexuality by some can never justify violating the fundamental human rights of others" adding that the law "will institutionalise discrimination and is likely to encourage harassment and violence against individuals on the basis of their sexual orientation. It is formulated so broadly that it may lead to abuse of power and accusations against anyone, not just LGBT people."<sup>15</sup>

## **ARTICLE 2(2): the principle of non-discrimination**

15. The Anti-Homosexuality Act is characterized, in its subtitle, as "[a]n 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". It explicitly sets out to discriminate on the basis of sexual orientation and/or gender identity.
16. This Committee has clarified that "[i]n order for States parties to 'guarantee' that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively":

*"(a) Formal discrimination: Eliminating formal discrimination requires ensuring that a State's constitution, laws and policy documents do not discriminate on prohibited grounds...;*

*(b) Substantive discrimination: Merely addressing formal discrimination will not ensure substantive equality as envisaged and defined by article 2, paragraph 2. The effective enjoyment of Covenant rights is often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. State parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination."<sup>16</sup>*

17. This Committee has also repeatedly stated that "other status" as recognized in article 2(2) includes sexual orientation, and that "States parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights."<sup>17</sup>
18. The Anti-Homosexuality Act, because of its explicitly discriminatory purpose, constituted the legislative introduction of further formal unlawful discrimination on the basis of sexual orientation and/or gender identity in Uganda's legal order. It also constituted substantive discrimination, as it prevented the adoption of measures to prevent, diminish and eliminate the conditions and attitudes that cause substantive or *de facto* discrimination; in fact, it fanned the flames of pre-existing stigma and prejudice even higher and thus contributed to a rise in substantive discrimination, including in the enjoyment of certain Covenant rights

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<sup>15</sup> Statement by Navi Pillay, UN High Commissioner for Human Rights, "Anti-Homosexuality law in Uganda violates human rights and endangers LGBT people" (24 February 2014). <http://goo.gl/l0jBhk> (last accessed 6 October 2014).

<sup>16</sup> Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 20: Non-discrimination in social, economic and cultural rights, UN Doc. E/C.12/GC/20, para. 8.

<sup>17</sup> Among others, CESCR, General Comment No. 20: Non-discrimination in social, economic and cultural rights, UN Doc. E/C.12/GC/20, para. 32.

as elaborated below in this submission.

**19. For these reasons, the ICJ recommends that the following questions be included in the List of Issues for the examination of Uganda:**

- a. How will the State party remedy the violations of the principle of non-discrimination caused by the enactment and implementation of the Anti-Homosexuality Act while it was in force and by the extant criminalization of homosexuality?**
- b. Which steps will the State party take to eliminate formal and substantive discrimination on the basis of sexual orientation?**

**ARTICLE 6 and 7: the right to work, including access to employment, under just and favourable conditions of work, and equal treatment in the employment context**

20. The right to work, as elucidated by this Committee in its General Comment No. 18, "affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly".<sup>18</sup> It requires the existence of a number of essential elements, which comprise, among other things, the prohibition of "any discrimination in access to and maintenance of employment on the grounds of ...sexual orientation... which has the intention or effect of impairing or nullifying exercise of the right to work on a basis of equality".<sup>19</sup>

21. This Committee has defined the core obligations under article 6 of the Covenant as follows:

*"In the context of article 6, this 'core obligation' encompasses the obligation to ensure non-discrimination and equal protection of employment. Discrimination in the field of employment comprises a broad cluster of violations affecting all stages of life, from basic education to retirement, and can have a considerable impact on the work situation of individuals and groups. Accordingly, these core obligations include at least the following requirements:*

- (a) To ensure the right of access to employment, especially for disadvantaged and marginalized groups, permitting them to live a life of dignity;*
- (b) To avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups;*
- (c) To adopt and implement a national employment strategy and plan of action based on and addressing the concerns of all workers on the basis of a participatory and transparent process that includes employers' and workers' organizations. Such an employment strategy and plan of action should target disadvantaged and marginalized individuals and groups in particular and include indicators and benchmarks by which progress in relation to the right to work can be measured and periodically reviewed."<sup>20</sup>*

22. Furthermore, this Committee has stated that the "national employment strategy must take particular account of the need to eliminate discrimination in access to employment".<sup>21</sup> Victims of violations of the right to work must have access to effective judicial or other appropriate remedies at the national level, and State parties must respect the work of civil society groups who assist disadvantaged

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<sup>18</sup> CESCR, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, para. 4.

<sup>19</sup> CESCR, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, para. 12.

<sup>20</sup> CESCR, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, para. 31.

<sup>21</sup> CESCR, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, para. 44.

and marginalized individuals and groups in the realization of their right to work.<sup>22</sup>

23. The criminalization of consensual same-sex sexual conduct engenders stigma and gives rise to unlawful discrimination against people based on their real or imputed sexual orientation and/or gender identity, and/or against members of their families.<sup>23</sup> Further, it results in the cutting off of avenues to obtain redress for those whose access to or maintenance of employment was impeded on those grounds. Moreover, it impedes the elaboration of specific, targeted policies aimed at realizing the right to work for people at risk of unlawful discrimination and human rights abuses because of prejudice against their or their family members' real or imputed sexual orientation and/or gender identity. The criminalization of consensual same-sex sexual conduct thus violates the core obligations under article 6 of the Covenant.
24. Through sanctioning stigma and prejudice, and contributing to a climate wherein LGBTI persons are persecuted and discriminated against with impunity, the Anti-Homosexuality Act, Penal Code Act 1950 and the criminalization of same-sex sexual conduct, beyond their effects on the right to work as defined in article 6, likely also affect the enjoyment by LGBTI persons of just and favourable conditions of work, including fair and equal remuneration and opportunity for promotion, protection against harassment,<sup>24</sup> including sexual harassment, which includes harassment on the basis of sexual orientation and/or gender identity<sup>25</sup> and safe and healthy working conditions, protected by article 7 of the Covenant.
25. **For these reasons, the ICJ recommends that the following questions be included in the List of Issues for the examination of Uganda:**
- a. **Which measures will the State party take in order to realize access to employment, under safe, healthy, just and favourable conditions of work, and equal treatment in the employment context, taking particular account of the challenges faced by those perceived as engaging in consensual same-sex sexual conduct?**
  - b. **How will the State party provide remedies for persons who face discrimination in the enjoyment of the right to work, under safe, healthy, just and favourable conditions, on the basis of their real or perceived sexual orientation and/or gender identity?**

#### **ARTICLE 11: the right to adequate housing**

26. Under the misnomer "Brothels", the Anti-Homosexuality Act criminalizes the following:

*"(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, upon 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*

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<sup>22</sup> CESCR, General Comment No. 18: The right to work, UN Doc. E/C.12/GC/18, paras. 48-51.

<sup>23</sup> See Amnesty International & Human Rights Watch, *Uganda: Anti-Homosexuality Act's Heavy Toll* (May 2014). <http://goo.gl/2R04Jm> (last accessed 7 October 2014).

<sup>24</sup> See Guideline 22 on article 7 of the Guidelines on treaty-specific documents to be submitted by States parties under articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/C.12/2008/2 (2009).

<sup>25</sup> See CESCR, Concluding Observations: Jamaica, UN Doc. E/C.12/JAM/CO/3-4(2013) para. 9. See also *Toonen v. Australia*, HRCttee, Communication No. 488/1992, Views of 31 March 1994, UN Doc. CCPR/C/50/D/488/1992 (1994), paras. 7.8-7.11.

*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, upon conviction, to imprisonment for five years.*<sup>26</sup>

27. In its General Comment No. 4, this Committee has clarified that the “right to adequate housing applies to everyone” and that “[i]n particular, enjoyment of this right must, in accordance with article 2(2) of the Covenant, not be subject to any form of discrimination”. Further, the right to housing should not be interpreted narrowly, but “[r]ather it should be seen as the right to live somewhere in security, peace and dignity”.<sup>27</sup> The domestic legal system should provide for remedies for violations, which may include legal appeals aimed at preventing planned evictions, seeking compensation following an illegal conviction and redress for any form of discrimination in the allocation and availability of access to housing.<sup>28</sup> Further, this Committee identified legislation against forced evictions as “an essential basis upon which to build a system of effective protection”.<sup>29</sup> In order to assess “adequacy”, this Committee has identified, beyond legal security of tenure, also the following aspects as relevant: availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.<sup>30</sup>
28. Through criminalizing the knowingly letting of premises one owns, manages or occupies be used for the purpose of homosexuality, the Anti-Homosexuality Act effectively encouraged, if not required homeowners, to evict tenants who may engage in consensual same-sex sexual conduct, lest incurring of criminal sanctions. Further, it also encouraged, if not required, everyone else (or at least all those who occupied a property) to inform on people whom they would suspect of engaging on consensual same-sex conduct on certain premises.
29. Indeed, several domestic and international civil society organizations reported a wave of evictions upon the enactment of the law.<sup>31</sup>
30. Moreover, even without proactive enforcement, the mere existence of this provision creates a situation where one cannot “live somewhere in security, peace and dignity”. Dignity is undermined directly through the mere criminalization of sexual orientation, whereas security and peacefulness are impossible to achieve in a situation of permanent legal uncertainty with regard to one’s homeownership or tenancy, especially where such uncertainty is caused by the unlawful criminalization of a fundamental aspect of one’s identity. Under these circumstances, moreover, the other aspects of adequate housing, besides legal security of tenure, are also likely to be affected.
31. Further, the criminalization of homosexuality impedes access to justice for those seeking redress for unlawful discrimination and violations of their right to adequate housing motivated, in whole or in part, by prejudice against one’s real or imputed sexual orientation and/or gender identity. It further hampers the

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<sup>26</sup> Anti-Homosexuality Act 2014, S. 11.

<sup>27</sup> CESCR, General Comment No. 4: The right to adequate housing, contained in UN Doc. E/1992/23, paras. 6-7.

<sup>28</sup> CESCR, General Comment No. 4: The right to adequate housing, contained in UN Doc. E/1992/23, para. 17.

<sup>29</sup> CESCR, General Comment No. 7: The right to adequate housing: Forced evictions, contained in UN Doc. E/1998/22, annex IV, para. 9.

<sup>30</sup> CESCR, General Comment No. 4: The right to adequate housing, contained in UN Doc. E/1992/23, para. 8.

<sup>31</sup> See among others, Amnesty International & Human Rights Watch, *Uganda: Anti-Homosexuality Act’s Heavy Toll* (May 2014). <http://goo.gl/2R04Jm> (last accessed 7 October 2014); Sexual Minorities Uganda (SMUG), *From torment to tyranny: Enhanced persecution in Uganda following the passage of the Anti-Homosexuality Act 2014, 20 December 2013 – 1 May 2014* (May 2014). <http://goo.gl/KQ4gN1> (last accessed 7 October 2014).



operation of an effective legal framework to protect against forced eviction. The lack of access to legal remedies, besides being a violation of article 11 by itself, compounds the impact of the other violations.

32. It is also worth noting that the Anti-Homosexuality Act, besides being repugnant to human dignity because of its purpose and object, was ambiguously drafted and hence it gave rise to uncertainty as to which conduct, carried out by whom would fall foul the criminal provision regarding "brothels", for instance.<sup>32</sup> In light of its ambiguous drafting it appears that the "brothel" provision may have been used against people other than just those who kept a "brothel" (i.e., a place dedicated at least in part to the taking place of transactional sex) and, in addition to potentially being applied to the landlords of persons engaging in consensual same-sex conduct, it is not inconceivable that the first sub-section of the provision could have applied to any homeowner who engaged in such conduct on his or her own property.
33. **For these reasons, the ICJ recommends that the following questions be included in the List of Issues for the examination of Uganda:**
- a. **How will the State party remedy violations of the right to adequate housing, including forced evictions, which were committed as a consequence of the enactment of the Anti-Homosexuality Act?**
  - b. **How will Uganda improve access to justice for those seeking redress concerning violations of their right to adequate housing on the basis of their or their family members' sexual orientation and/or gender identity?**

#### **ARTICLE 12: the right to the highest attainable standard of health**

34. The Anti-Homosexuality Act criminalized "promotion of homosexuality". The provision reads:

*"(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.*"<sup>33</sup>

35. The Anti-Homosexuality Act also criminalized "aiding and abetting

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<sup>32</sup> Thus, the Act also offended the basic criminal law principles of legal certainty and specificity, as expressed in the maxims "*nullum crimen, nulla poena sine lege*" and "*in dubio pro reo*". See also ICCPR, art. 15.

<sup>33</sup> Anti-Homosexuality Act 2014, s. 13.

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.”<sup>34</sup>*

36. As this Committee has clarified in its General Comment No. 14, the right to health contains a number of interrelated and essential elements, which include among other things, non-discrimination (i.e., “health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds”) and “information accessibility” (i.e., “the right to seek, receive and impart information and ideas concerning health issues”).<sup>35</sup>

37. As pointed out by the Committee, “[b]y virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of ... sexual orientation ..., which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health”.<sup>36</sup>

38. The core obligations under article 12, as defined by this Committee, “include at least the following obligations”:

*“(a) To ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups;*

*(b) To ensure access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone;*

*(c) To ensure access to basic shelter, housing and sanitation, and an adequate supply of safe and potable water;*

*(d) To provide essential drugs, as from time to time defined under the WHO Action Programme on Essential Drugs;*

*(e) To ensure equitable distribution of all health facilities;*

*(f) To adopt and implement a national public health strategy and plan of action, on the basis of epidemiological evidence, addressing the health concerns of the whole population; the strategy and plan of action shall be devised, and periodically reviewed, on the basis of a participatory and transparent process; they shall include methods, such as right to health indicators and benchmarks, by which progress can be closely monitored; the process by which the strategy and plan of action are devised, as well as their content, shall give particular attention to all vulnerable or marginalized groups.”<sup>37</sup>*

39. Furthermore, “obligations of comparable priority” are:

*“(a) To ensure reproductive, maternal (pre-natal as well as post-natal) and child health care;*

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<sup>34</sup> Anti-Homosexuality Act 2014, s. 7.

<sup>35</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 12.

<sup>36</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 18.

<sup>37</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 43.

*(b) To provide immunization against the major infectious diseases occurring in the community;*

*(c) To take measures to prevent, treat and control epidemic and endemic diseases;*

*(d) To provide education and access to information concerning the main health problems in the community, including methods of preventing and controlling them;*

*(e) To provide appropriate training for health personnel, including education on health and human rights.*<sup>38</sup>

40. Guaranteeing that the right to health will be exercised without discrimination of any kind constitutes an immediate obligation for the State party.<sup>39</sup> Further, the Committee has identified "a strong presumption that retrogressive measures taken in relation to the right to health are not permissible".<sup>40</sup>

41. In its General Comment No. 14, this Committee identified a number of specific legal obligations stemming from the provision, including among other things: "refraining from denying or limiting equal access for all persons"; "abstaining from enforcing discriminatory practices as a State policy"; "refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information"; establishing a public health infrastructure that provides for sexual and reproductive health services; and "supporting people in making informed choices about their health".<sup>41</sup>

42. As the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has said, the "health-related impact of discrimination based on sexual conduct and orientation is far-reaching, and prevents affected individuals from gaining access to other economic, social and cultural rights. In turn, the infringement of other human rights impact on the realization of the right to health, such as by impeding access to employment or housing". The Special Rapporteur stated that "[t]hese infringements ultimately undermine the inherent dignity of persons upon which the international human rights framework is based".<sup>42</sup>

43. The Anti-Homosexuality Act violated the right to the highest attainable standard of health of persons who engage in consensual same-sex sexual conduct, as it impeded their access to health facilities, goods and services on a non-discriminatory basis. The criminalization of "aiding and abetting" of homosexuality jeopardized the relationship between doctor and patient, as giving scientific, relevant medical information could lead to charges under this section. In jurisdictions in which consensual same-sex sexual conduct is criminalized, such as Uganda, affected individuals are much more likely to be unable to gain access to effective health services, and preventive health measures that should be tailored

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<sup>38</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 44.

<sup>39</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 30.

<sup>40</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 32.

<sup>41</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, paras. 34-37.

<sup>42</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to the Human Rights Council, UN Doc. A/HRC/14/20, para. 6-7.

to these communities are suppressed.<sup>43</sup>

44. Furthermore, the criminalization of homosexuality prevents the elaboration and operation of a health strategy that addresses the specific needs of persons who engage in consensual same-sex sexual conduct. It also violates the right to housing (as addressed separately in this submission, above), which is of paramount importance to the realization of the right to health.
45. The Anti-Homosexuality Act violated the right to health not just of those who engage in consensual same-sex sexual conduct but also of the population in general, in restricting access to information about sexuality, as providing such services could be classified as "promoting homosexuality". The Act thus caused the withholding of health-related information, and as a result of this, the State party failed to comply with its duty to support people in making informed choices. In this regard, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has also stated that "[l]aws restricting information about sexual and reproductive health and which censor discussions of homosexuality in the classroom fuel stigma and discrimination".<sup>44</sup> (See also below, on the impact of the Act on the right to comprehensive sexual education.)
46. The criminalization of consensual same-sex sexual conduct and the Anti-Homosexuality Act also undermine Uganda's fight against HIV/AIDS. Men who have consensual sex with men (MSM) have been identified as one of the categories of the population that is "most at risk" of HIV.<sup>45</sup> However, as stated by the Uganda AIDS Commission, the criminalization of consensual same-sex sexual conduct in Uganda entails that there are "virtually no tailored services available for MSM" and that "the minimal services such as sensitization and awareness are mainly provided by CSOs [civil society organizations] and no direct service at all for MSM is provided by government facilities".<sup>46</sup> The fact that MSM are highly marginalized in Uganda precludes them from easy access to HIV/AIDS services, which leads to their elevated risk for HIV transmission and infection.<sup>47</sup> Although the AIDS Commission's assessment pertains to the period prior to the entry into force of the Anti-Homosexuality Act, the latter compounded these problems, as it built on and added to pre-existing discrimination, stigma and prejudice. In addition, the Act also criminalized the provision of information and outreach such as teaching and promoting safer consensual same sex among men. It is generally recognized that "stigma, discrimination and violations of other human rights are major barriers to effective national responses to HIV" and that "[t]he criminalization of people who are at a higher risk of infection, such as men who have sex with men ... drives them underground and away from HIV services", which "increases their vulnerability to HIV, as well as to stigma, discrimination, marginalization and violence".<sup>48</sup>

47. Furthermore, the Anti-Homosexuality Act specifically stigmatized those living with

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<sup>43</sup> Mahon, 'Sexual orientation, gender identity and the right to health' in Clapham & Robinson (eds.), *Swiss Human Rights Book*, vol. 3, *Realizing the right to health*, p. 238, cited at A/HRC/14/20, para. 18.

<sup>44</sup> Interim report of the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health to the General Assembly, UN Doc. A/66/254, para. 59.

<sup>45</sup> Uganda AIDS Commission, *Global AIDS response progress report: Country progress report Uganda* (April 2012), p. 9.

[http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce\\_UG\\_Narrative\\_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_UG_Narrative_Report[1].pdf) (last accessed 25 September 2014).

<sup>46</sup> Uganda AIDS Commission, *Global AIDS response progress report: Country progress report Uganda* (April 2012), p. 27.

<sup>47</sup> Uganda AIDS Commission, *Global AIDS response progress report: Country progress report Uganda* (April 2012), p. 45.

<sup>48</sup> UNAIDS, *Guidance Note: Key programmes to reduce stigma and discrimination and increase access to justice in national HIV responses* (2012), p. 5.

HIV, by characterizing HIV-positive status as an aggravating circumstance in the commission of the offence.<sup>49</sup> The Act also mandated forced HIV testing.<sup>50</sup>

48. In addition, when same-sex sexual conduct is criminalized as it was under the 2014 Act and remains under the Penal Code 1950, patients may feel inhibited to share their sexual history with their doctor, which may hinder the ability of patients to recount their medical history and the diagnosis, and thus in general can work to prevent access to appropriate and adequate treatment and care.
49. The Anti-Homosexuality Act and the continued criminalization of same-sex sexual conduct have negative consequences for mental health too, as criminalization perpetuates stigma, through the reinforcement of existing prejudices and stereotypes.<sup>51</sup> This can have a severe negative impact on the self-regard and mental well-being of persons who engage in consensual same-sex sexual conduct.<sup>52</sup>
50. **For these reasons, the ICJ recommends that the following questions be included in the List of Issues for the examination of Uganda:**
- a. **How will the State party remedy the violations that resulted from the enforcement of the Anti-Homosexuality Act's restrictions on the access to relevant information regarding health?**
  - b. **How will the State party ensure equal access to health services, in particular for those persons who engage in consensual same-sex sexual conduct?**
  - c. **Which tailored measures does the State party intend to take in order to ensure the right to the highest attainable standard of health for persons who engage in consensual same-sex sexual conduct? In particular, how will the State party improve their access to HIV/AIDS services?**
  - d. **How will the State party remedy the further stigmatization of persons living with HIV/AIDS engendered by the Anti-Homosexuality Act?**

#### **ARTICLE 12 and 13: the right to comprehensive sexual education**

51. This Committee has interpreted the right to health as an inclusive right "extending not only to timely and appropriate health care but also to underlying determinants of health", including "access to health-related education and information, including on sexual and reproductive health".<sup>53</sup>
52. This Committee has also stated that the right to health and the right to information require States to refrain from censoring, withholding or intentionally misrepresenting information relating to health, including sex education and sexual information.<sup>54</sup> Furthermore, as regards the implementation of article 12 and children and adolescents, "State parties should provide a safe and supportive

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<sup>49</sup> Anti-Homosexuality Act, s. 3(1)(b).

<sup>50</sup> Anti-Homosexuality Act, s. 3(3).

<sup>51</sup> See e.g., Constitutional Court of South Africa, *National Coalition for Gay and Lesbian Equality and Others v. Minister of Home Affairs and Others* (2 December 1999), para. 54.

<sup>52</sup> On the negative health impact of the phenomenon of "minority stress", see Ilan H. Meyer, *Declaration in the cases of Bayev v. Russia (No. 67667/09), Kiselev v. Russia (No. 44092/12), and Alekseyev v. Russia (No. 56717/12)*. <http://goo.gl/PnKhzp> (last accessed 25 September 2014).

<sup>53</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 11.

<sup>54</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 34.

environment for adolescents, that ensures the opportunity... to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make. The realization of the right to health of adolescents is dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services."<sup>55</sup>

53. The Committee on the Rights of the Child has further recommended that States include sexual education in the official programmes of primary and secondary education.<sup>56</sup> The Committee on the Elimination of Discrimination against Women has called upon States to provide sexual education in a compulsory and systematic manner in schools.<sup>57</sup>
54. Hence, as put by the Special Rapporteur on the right to education, "[t]he right to education includes the right to sexual education, which is both a human right in itself and an indispensable means of realizing other human rights, such as the right to health, the right to information and sexual and reproductive rights".<sup>58</sup> And further, "[i]n order to be comprehensive, sexual education must pay special attention to diversity, since everyone has the right to deal with his or her own sexuality without being discriminated against on grounds of sexual education or gender identity". The Special Rapporteur also "fully endorses the precepts of Principle 16" of the Yogyakarta Principles.<sup>59</sup>
55. Among other things, Principle 16 of the Yogyakarta Principles enjoins States to ensure that "education methods, curricula and resources serve to enhance understanding of and respect for, *inter alia*, diverse sexual orientations and gender identities, including the particular needs of students, their parents and family members related to these grounds"; and that "laws and policies provide adequate protection for students, staff and teachers of different sexual orientations and gender identities against all forms of social exclusion and violence within the school environment, including bullying and harassment".
56. The Anti-Homosexuality Act's prohibition of the "promotion of homosexuality" made teaching comprehensive sexual and reproductive education in schools impossible, let alone in a manner that serves to enhance understanding of and respect for diverse sexual orientations and gender identity, thus violating the right to education of children and adolescents specifically. In addition, this also impedes the realization of the aspect of the right to health for adolescents that relates to the provision of appropriate sexual health services, comprising counselling regarding health-behaviour choices. The same remains true today, as the continued criminalization of same-sex sexual conduct and the atmosphere of stigma and prejudice it sanctions are likely to have similar effects, also without the explicit criminalization of "promotion of homosexuality".
57. While not addressed here in depth, the Anti-Homosexuality Act likely also violated many other aspects of the right to education. This Committee has identified "by way of illustration", among many others, the introduction of discriminatory

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<sup>55</sup> CESCR, General Comment No. 14: The right to the highest attainable standard of health, UN Doc. E/C.12/2000/4, para. 23.

<sup>56</sup> Committee on the Rights of the Child, Concluding Observations on Antigua and Barbuda, UN Doc. CRC/C/15/Add.247, para. 54; Committee on the Rights of the Child, Concluding Observations on Trinidad and Tobago, UN Doc. CRC/C/TTO/CO/2, para. 54.

<sup>57</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations on the Republic of Moldova, UN Doc. CEDAW/C/MDA/CO/3, para. 31; Committee on the Elimination of Discrimination against Women, Concluding Observations on Turkmenistan, UN Doc. CEDAW/C/TKM/CO/2, para. 31.

<sup>58</sup> Report of the Special Rapporteur on the right to education to the General Assembly, UN Doc. A/65/162, para. 19.

<sup>59</sup> Report of the Special Rapporteur on the right to education to the General Assembly, UN Doc. A/65/162, para. 23.

legislation and the failure to take measures which address *de facto* educational discrimination as violations of article 13.<sup>60</sup>

**58. For these reasons, the ICJ recommends that the following questions be included in the List of Issues for the examination of Uganda:**

- a. How will the State party realize the right to information about sexual and reproductive health?**
- b. How will the State party realize children and adolescents' right to comprehensive sexual and reproductive education, which includes information about diverse sexual orientations and gender identity?**
- c. How will the State party remedy violations of these aspects of the right to health and to education engendered by the Anti-Homosexuality Act and the criminalization of same-sex sexual conduct?**

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<sup>60</sup> CESCR, General Comment No. 13: The right to education, UN Doc. E/C.12/1999/10, para. 59.

Appendix:

The Anti-Homosexuality Act, 2014



THE ANTI-HOMOSEXUALITY ACT, 2014.

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ARRANGEMENT OF SECTIONS.

PART I—PRELIMINARY.

*Section*

1. Interpretation.

PART II—PROHIBITION OF HOMOSEXUALITY.

2. The offence of homosexuality.
3. Aggravated homosexuality.
4. Attempt to commit homosexuality.
5. Protection, assistance and payment of compensation to victims of homosexuality.
6. Confidentiality.

PART III—RELATED OFFENCES AND PENALTIES.

7. Aiding and abetting homosexuality.
8. Conspiracy to engage in homosexuality.
9. Procuring homosexuality by threats, etc.
10. Detention with intent to commit homosexuality.
11. Brothels.
12. Same sex marriage.
13. Promotion of homosexuality.

PART IV—MISCELLANEOUS PROVISIONS.

14. Extradition.
15. Regulations.

**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.