

## HERE IS WHY UGANDA'S ANTI HOMOSEXUALITY LAW IS WINK IN THE DARK by Kato Mukasa.

Nothing has given Uganda so much International publicity than the passing of the Anti Homosexuality Bill by our Parliament and then its televised signing by President Museveni. The immediate cutting of Aid from Uganda's strong allies; Norway, Netherlands, Denmark and the sharp criticism from President Obama, the World Bank and the United Kingdom should make people ask whether there is not something seriously wrong with this law. Yes, the law strongly undermines fundamental rights and freedoms of several people including homosexuals but it is not a solution to the problem to cut Aid to Uganda as people of all sexual orientations are directly affected.

The law defines homosexuality in a very ambiguous manner and in the same measure, the punishments given are equally ambiguous. Think about it; if you touch someone with *intent* to commit a homosexual act, then you have committed a homosexual act! Surely, this is a weird way of punishing one for being a homosexual. How then do you determine intent? Just consider, this law will punish you if someone brings a case against you saying that you, being a person of the same sex, had homosexual intent by reason of a mere touch on their body with anything.

I have seen and heard several politicians, religious and cultural leaders being jubilant about the signing of the law but in it lays a fat trap that will lead to the demise of many including the same politicians. By the time many Ugandans realize that the law is for them too, it will be already too late.

This one law promotes discrimination and persecution of homosexuals and those who treat them positively. Under the guise of stopping the promotion of homosexuality, the law makes even tweeting and posting on facebook about the subject illegal and imposes a fine of five thousand currency points or imprisonment of a minimum of 5 years and a maximum of 7 years or both '.

In effect people, who dare to speak out for sexual minorities, will find themselves a target of malicious prosecution, vigilante action or blackmail. Already some newspapers are publishing names of people they believe to be homosexuals or sympathizers. We should remember that the late David Kato was killed after the Rolling Stone published his name and names of people it termed homosexuals. Are such journalists using the law to cause more death and suffering of a people already victimized or are they simply helping in implementing the law?

Under "*promotion of homosexuality*" the Act criminalizes (among other things) anyone who: "funds or sponsors homosexuality or other related activities" (note that other related activities are left entirely undefined!) -- "offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality"-- "acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices". In effect this can be interpreted to mean that landlords must find out the sexual orientation of their tenants, and this equally goes for lawyers, medical personnel, teachers, parents and close relatives of homosexuals, social workers and men and women of the cloth who may offer counselling services to homosexuals! Where does the law place researchers on sexuality? Will it be that whoever undertakes research and writes a book about homosexuality is accused of promoting it?

A look at the findings presented by Uganda's team of scientists and the interpretation made by

the President reveals more gaps in what informed the signing of the Anti Homosexuality bill into law. Whereas the scientists wrote "*Sexuality is determined by biology (anatomy, physiology, biochemistry) and how one relates to others which is a function of psychology, sociology, and the culture in which one lives*". And they further wrote: "*Ultimately, these functions are determined by genes and their interactions with the environment.*" In contradiction, our President, using the same 'scientific document' said: "*Their (the team of scientists) unanimous conclusion was that homosexuality, contrary to my earlier thinking, was behavioural and not genetic.*"

Using the same 'scientific findings', the question is, is homosexuality a result of genetic formation or is it behavioural as our President concludes? Didn't our President make the wrong interpretation of the document or did the scientists deduce a wrong conclusion? I am afraid my President might have got the science wrong! How then will the public get to know about homosexuality especially now that the findings of the President's team of scientists revealed several gaps that can only be challenged through further research and publication?

Research made by well grounded scientists and done over several decades reveal rather consistently that homosexuality is genetic. Gay people are not generally pedophiles, homosexuality is not a disease or disorder and being gay is not exactly related to one's environment. It is not simply a phase that will eventually go away. Gay people do not choose to be so and are not recruited into it as it has been widely reported here. In fact, the American Psychiatric Association removed homosexuality from its list of official mental illness in 1973. The American Psychological Association followed suit in 1974 and so have most psychiatric and psychological associations around the world. Research also reveals that some gay men do not have anal sex at all; they only have emotional relationship with fellow men that do not include sex of any kind.

Mr. President, it is therefore not true when you say that no study has indicated that one can be a homosexual by nature. In fact several studies reveal so and can be provided to you once you order for such findings to be presented. A closer look at the report by the scientists also confirms that homosexuality is natural. Mr. President, there are also several cases of traits of homosexuality in a single family for generations. Then what can practically explain that if homosexuals were simply mercenaries as you put it? Don't you believe there is a missing link we should establish to put the facts right?

Whereas there are homosexuals who molest our children, there are equally heterosexuals who do the same. Bukedde TV's '*Agataliko Nfuffu*' news of 2 March (last Sunday) brought a story of an eight months baby who was sexually abused by a man of 30 years! This is a common occurrence in Uganda but is this therefore acceptable or should it be said all heterosexuals are therefore bad people? No. We should therefore note that one's sexual orientation or gender identity has nothing to do with the content of a person's character. Sexuality does not determine whether someone will be of a good or bad character. It is therefore unjust to have a law targeted solely on one's gender identity or sexuality. A crime should be treated as a crime regardless of one's sexuality.

I then come to the question of the necessity and legality of the Anti Homosexuality Law. The law was not necessary for a number of reasons. If it was a question of safe guarding our children as most people say, there are already enough laws that protect our children from pedophiles and such laws only need to be implemented.

The Penal Code Act of 1950 (Chapter 120) (as amended) 166, Section 145 highlights what it calls Unnatural offences thus "Any person who—(a) has carnal knowledge of any person

against the order of nature;(b) has carnal knowledge of an animal; or(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.” Furthermore, Section 146 of the same law states that:

*“Any person who attempts to commit any of the offences specified in section145 commits a felony and is liable to imprisonment for seven years.”*

In addition, Section 148 of the Penal Code clearly states thus:

*“Any person who, whether in public or in private, commits any act of gross indecency with another person who procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.”*

About family protection, our Constitution, article 31 (2a) states that marriage between persons of the same sex is prohibited. Clearly, existing laws are already too harsh against homosexuals and have been used to convict pedophiles whether homosexuals or heterosexuals. Uganda already has cases in which homosexuals who have abused children have been punished under the previous existing laws.

A critical reading of several laws applicable in Uganda shows that children are well protected against any form of sexual abuse. The Children’s Act, the Computer Misuse Act, the Convention on the Rights of the Child, the Penal Code Act, and of course the 1995 Constitution are all rich with laws meant to protect our children from abuse.

Finally, did the Parliament of the Republic of Uganda legally pass the Anti Homosexuality Bill? The answer is no, since there was no quorum. This was clearly pointed out first by our Prime Minister who opposed the whole move and then by our President as he appeared to waver between signing the bill and vetoing it. Mr. President, did the scientific findings finally make the process of passing the bill legal? Mr. President, the illegal process of passing of the bill made it null and void ab initio.

Having the Anti Homosexuality Law may be politically right for many politicians as a vote winning tool but such a harsh and discriminative law is legally, socially and economically incorrect. What assurance do homosexuals have that they can access legal representation, education, health care and psycho social support? Will the imprisoned homosexuals be put in special cells since they are being treated as social misfits, outcasts that do not deserve to mingle with the ‘normal’ prisoners? What is the relevancy and implication of Uganda’s acknowledgement of the universally accepted Conventions and Declarations which the law contravenes? Will Uganda therefore opt out of any International Treaty that we have previously ratified but that goes against the spirit of the law?

Finally, I do submit that stopping debate about the Anti Homosexuality Law will only promote further homophobia and ignorance about homosexuality. It is important that our government explains to the people the meaning of the laws they pass instead of identifying a single issue to define the entire law. More research on homosexuality is necessary and efforts should be made to meet, interview, study and or observe homosexuals so as to have meaningful conclusions about their sexuality rather than making conclusions that will further drive us into the dark.

I rest my case.

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