

SIMPLIFIED GUIDE

How the Anti-Homosexuality Act, 2023 Affects You

About Us

Chapter Four Uganda is an independent not-for-profit organisation dedicated to the protection of civil liberties and promotion of human rights for all. We provide bold and innovative legal response through representation, litigation and providing counsel to civil society organisations, and the most vulnerable and discriminated sections of society.



For more information, please visit:

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On March 21, 2023, the Ugandan Parliament passed the 2023 Anti-Homosexuality Act (AHA). Like its 2014 predecessor, the Act criminalises same-sex sexual relations. Although the Act explicitly targets Lesbian, Gay, Transgender, Intersex and Queer (LGBTIQ+) people, the vagueness and overbroad reach of the Act's text ensures that the conduct of a wide range of actors, including those outside of the community, can be criminalised. Since its enactment, LGBTIQ+ persons have experienced increased violence and threats, including loss of employment, eviction, arrest, detention, beating, forced anal examinations, forced conversion therapy, and attempted gang rape, all at the hands of both the authorities and private persons.

Further, it has been predicted that Uganda could face an economic fallout as international corporate investments cease, international loans are halted, and the tourism industry suffers.¹

Uganda is not the only African country to penalise consensual same-sex activities. More than half of the 54 countries on the continent prohibit same-sex activity according to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).² Nor is it the only country to propose new harsh laws against the LGBTIQ+ community. There are other African countries which have recently decriminalised homosexuality, including most recently Mauritius.³

Purpose

This simplified guide explains the text and effects of the Anti-Homosexuality Act, 2023 for both a legal and non-legal audience.

Methodology

This guide is informed by a review of relevant law. It is not intended to serve as a complete statement of the law. We relied on case reports and incident reports, and conducted open source research to gather information on the nature of violations and possible legal and societal implementations of the Act. The Act is vague, making it difficult to analyse how people may be impacted by the law or how courts may interpret its language.

Scope

The guide is broken up into two main sections: one explaining the Act's offences and the other focusing on the Act's impacts on many of the stakeholders who could be affected by this change in the law. The guide describes how the law affects all Ugandans, including the LGBTIQ+ community, and highlights many of the possible legal and societal forms of discrimination that it imposes. The Act leads to discrimination in multiple areas, including in employment, housing, and access to health care. These more subtle forms of discrimination can be hard to measure and often depend on the availability of data. The hypothetical scenarios included in this guide are not intended to describe the specific circumstances of any particular person, but rather are general examples.

Key Findings

A review of the Anti-Homosexuality Act, 2023 reveals that it is both vaguely and over broadly written, resulting in a wide-ranging set of potential consequences. The Act harms the lives of not only LGBTIQ+ persons, but also all other Ugandan citizens outside of the LGBTIQ+ community. By creating new crimes like “promotion of homosexuality” and “premises” liability, the Act requires citizens to report suspected violations, under threat of criminal punishment if they fail to do so.

Further, by permitting, or even encouraging, private citizens to enforce the law, the Act has resulted in broader enforcement than its text appears to sanction. For instance, the offence of homosexuality often impacts more than just sexual acts. In practice, it is weaponised regardless of whether a sexual act has occurred.

Significance

The potential application of the AHA against a wide range of stakeholders has caused an increase in the number of documented abuses against those affiliated

with the LGBTIQ+ community. The Strategic Response Team (SRT) Uganda has documented more human rights violations in the community between January and August of 2023 than in all of 2021 combined.⁴ In 2023 alone, SRT Uganda found that there have been 180 cases of evictions, displacement, and banishment between January and August 2023.⁵ SRT has also found 176 cases during the same period violating the right to be free from torture, cruel, inhuman, and degrading treatment or punishment.⁶

For example, in one incident documented in Wakiso in September of 2023, a transgender woman returned to her neighbourhood after being chased out by a man who accused her of being a homosexual. She was then attacked again by four men who beat her up, took her phone and money, and warned her to stop being a homosexual.⁷ Thus, the Act appears to be leading to further violence and targeting of the community.

Next Steps

This simplified guide aims to help explain how, even for individuals who are not a part of the LGBTIQ+ community, the enactment of the AHA has dangerous consequences.

Glossary

AHA – Anti-Homosexuality Act, 2023

Bisexual – People who are emotionally, romantically, sexually and relationally attracted to a variety of sex and gender identities, though not necessarily at the same time and not necessarily to the same degree.*

Cisgender – Denoting or relating to a person whose gender identity corresponds with the sex registered for them at birth; not transgender.

Gay – People of male sex and/or gender who are emotionally, romantically, sexually, and relationally attracted to people of the male sex/gender.*

Intersex – A term to refer to people who naturally have biological traits, such as gonads, hormones, or genitalia, that do not match what is typically identified as female or male. There are many different intersex variations. Being intersex is not linked to sexual orientation or gender identity; intersex people can have different sexual orientations and gender identities and expressions.°

Lesbian – people of female sex and/or gender who are emotionally, romantically, sexually, and relationally attracted to people of female sex/gender.*

LGBTIQ+ – Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, and other sexual identities. This term is used to reference a broad spectrum of sexual identities.

Outing – Disclosing an LGBTIQ+ person's sexual orientation or gender identity without the person's consent.

Sexual orientation – A term to refer to the sexual, romantic, and emotional attraction that one has the capacity to feel for others. However, some people have different sexual and romantic orientations.°

Transgender – A person whose gender identity does not correspond with that assigned at birth.°

Trans-man – A transgender person assigned the female sex at birth but identifies as male.°

Trans-woman – A transgender person assigned the male sex at birth but identifies as female.°

Queer – people whose gender, gender expression and/or sexuality do not conform to dominant expectations and may fit into one or more definitions of the LGBTIQ+ spectrum.*

* - Adapted from Strategic Response Team Uganda, Lives At Risk Report (2023)

° - Adapted from Redress, "Unequal Justice" Report (2023)

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Offences Under the AHA, 2023

Summary of Offences

| Offence | Penalty |
|--|---|
| An act of homosexuality | Life imprisonment, without possibility of being released |
| Aggravated homosexuality | Death penalty |
| Encourage or persuade another person to perform an action that violates the Act | Up to 20 years imprisonment |
| Knowingly publish material that promotes homosexuality or encourages an action that violates the Act | Up to 20 years imprisonment |
| Provide financial support to facilitate homosexuality or normalise conduct prohibited by the Act | Up to 20 years imprisonment |
| Knowingly lease, sublease, or allow another to use one's premises for the purpose of undertaking activities that promote homosexuality or to encourage an action that violates the Act | Up to 20 years imprisonment |
| Operate an organisation which promotes or encourages homosexuality or normalises conduct prohibited under the Act | Up to 20 years imprisonment |
| Knowingly allow a premises to be used for purposes of homosexuality or to commit an offence under the Act | Up to 7 years imprisonment |
| Attempt to marry another same-sex person, preside over a same-sex wedding, or knowingly attend a same-sex wedding | Up to 10 years imprisonment |
| Child grooming | Life imprisonment or up to 20 years imprisonment, depending on the action |
| False sexual allegations | Up to 1 year imprisonment |

The Offence of

Homosexuality

Who Is Impacted?

The offence of homosexuality applies to any person who has consensual sexual relations with another person of the same sex. Two people are considered to be of the same sex if they were born with the same sexual organs. For example, the offence applies to a man who engages in sexual acts with another man. It also applies to a male who engages in sexual acts with a transgender woman.

What Is Criminalised?

The law is intended to criminalise all consensual sexual acts between persons of the same sex. Sexual acts include:

- **Any form of stimulation or penetration of a sexual organ by a body part or “sex contraption” is criminalised.** For example, a woman may not have sex with another woman using her mouth, hands, another body part, or a sex toy.
- **Any form of anal stimulation or penetration by any body part or “sex contraption” is criminalised.** “Sex contraptions” are objects used to stimulate a sexual organ or to simulate sexual intercourse, such as sex toys. For example, a man may not have anal sex with another man using his sexual organ, hands, mouth, another body part, or a sex toy.
- **Any form of stimulation or penetration of the mouth by a sexual organ or “sex contraption” is criminalised.** For example, a man may not perform oral sex on another man.

It is also criminalised for someone to **attempt** to have sexual relations with another person of the same sex. A person is deemed to have attempted to have sex with another person of the same sex if they intended to do so and took active steps to have sex with someone of the same sex. For example, a woman using a mobile dating application to message about and plan sexual encounters with another woman may be charged with attempted homosexuality.

The offence of homosexuality **does not formally prohibit a person from being Lesbian, Gay, Bisexual, Transgender, Intersex, and/or Queer.** The Act provides that a person who is alleged or suspected of being homosexual, but who has not committed a same-sex sexual act, has not committed the offence of homosexuality.

What Are the Penalties?

Offence of Homosexuality

Anyone who is convicted for having sexual relations with another person of the same sex faces **life imprisonment.**

Attempted Homosexuality

Anyone who is convicted of attempting to have sex with another person of the same sex faces **up to ten years** in prison.

The penalties for the offence of homosexuality apply to both partners engaging in sexual acts, as **consent to a same-sex sexual act does not constitute a defence.**

Aggravated

Homosexuality

Who Is Impacted?

The offence of aggravated homosexuality is a more serious version of the offence of homosexuality and applies when that offence is committed in combination with certain additional factors. These additional factors include: age, terminal illness, physical disability, mental illness, substance use, previous convictions, parent or guardian status, relative, position of authority, and the use of force.

What Is Criminalised?

The AHA imposes increased punishments on individuals who are convicted of the offence of homosexuality under certain specific circumstances, discussed below.

Just as with the offence of homosexuality, consent is not a defence to the charge of aggravated homosexuality.

Under the AHA 2023, a person can also be convicted for attempted aggravated homosexuality. An individual attempts to commit aggravated homosexuality when they intend and take active steps to commit the “offence of homosexuality” when any of the above-mentioned aggravating factors are present.



Aggravating factors that relate to the identity and actions of the person who is convicted of the offence of homosexuality include:

Terminal Illness. A person will be found guilty of aggravated homosexuality if their sexual partner contracts any incurable illness as a result of the sexual act. This provision may cover illnesses such as HIV/AIDS and Hepatitis B. It is important to note that some of these diseases are now widely considered ‘chronic’ diseases because of improvements in medicine.

Parent, Guardian, or Relative. A person will be found guilty of aggravated homosexuality if they are a parent, guardian, or relative of their sexual partner. As the AHA does not explicitly define “relative,” this provision may cover sexual activity between distant relatives or relatives who lack genetic ties, such as step-siblings, in-laws, or adopted siblings and cousins.

Use of Force, Intimidation, or Other Unlawful Means. A person will be found guilty of aggravated homosexuality if they use threats, force, fear of bodily harm, duress, undue influence, misrepresentations, or intimidation of any kind to commit the sexual act. The canon law of the land, the Constitution, provides that for any criminal offence to be legal it must be specifically provided for under an act of Parliament and the penalty prescribed. The aggravating factors of any law are specifically provided for by the very section of the law that provides for the offence, although it is imperative to note that under the Ugandan Criminal Law, there are sentencing guidelines which provide for aggravating factors of various offences and mitigating factors.⁸

Previous Convictions. A person will be found guilty of aggravated homosexuality if they have previous convictions for the “offence of homosexuality or related offences.” This includes convictions under the AHA, as well as any convictions for other sexual offences. This provision does not, however, apply to individuals with prior convictions for unrelated criminal activity.

Position of Authority. A person will be found guilty of aggravated homosexuality if they are in a position of authority in respect of their sexual partner. Although “position of authority” is not explicitly defined by the Act, it could likely cover teachers, workplace supervisors, religious leaders, healthcare providers, therapists, and other individuals who are deemed to be in a position of authority.

Aggravating factors that relate to the identity and actions of the **person against whom the offence is committed** include:

Age. A person will be found guilty of aggravated homosexuality if their sexual partner is under 18 years old or older than 74 years old. This provision appears to apply irrespective of the age of the person who is accused of committing the offence, meaning that two 17-year-olds or two 75-year olds who engage in consensual same-sex relations could both be found guilty of aggravated homosexuality.

Drugs and Alcohol. A person is guilty of aggravated homosexuality if their sexual partner was unconscious or in an altered state of consciousness at the time of the sexual act due to drugs, alcohol, medicine, or other substances that impair judgement. In addition to unlawful substances, this provision may also cover lawful substances, such as prescription or over-the-counter medicines, which affect one's consciousness.

Physical Disability or Mental Illness. A person will be found guilty of aggravated homosexuality if their sexual partner has a pre-existing substantial physical, mental, or sensory impairment. Additionally, a person will be found guilty of aggravated homosexuality if their sexual partner develops a significant physical, mental, or sensory impairment as a result of the sexual act. As written, this provision covers individuals who are blind, hearing impaired, or use a wheelchair, regardless of their mental capacity. It also covers individuals with anxiety, depression, or other psychological diagnoses, and does not seem to consider the severity of their symptoms. The law presupposes that a person with a physical or mental disability cannot give or offer consent, thereby categorising them as 'victims.'

What Are the Penalties?

Offence of Aggravated Homosexuality

A person above the age of eighteen who is convicted of aggravated homosexuality is subject to the **death penalty**.

With respect to the death penalty, Paragraph 17 of *the Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013* provides that the court may only pass a sentence of death in exceptional circumstances in the rarest of the rare cases, where the alternative of imprisonment for life or other custodial sentence is demonstrably inadequate. Paragraph 20 provides for aggravating factors for a death sentence.

Attempt

A person above the age of eighteen who is convicted of attempting to commit aggravated homosexuality is subject to imprisonment for up to **fourteen years**.

Child Offenders

A person below the age of eighteen who is convicted of aggravated homosexuality is liable to imprisonment for up to **three years**.

Promotion of Homosexuality

The offence of promotion of homosexuality covers a large range of conduct including acts by allies of the LGBTIQ+ community that can be seen as promoting or encouraging homosexuality or another offence under the Act. It also likely covers same-sex displays of affection (such as hand holding or kissing) that occur in public or in rented spaces.

Who Is Impacted?

Under the AHA 2023, any person may be convicted for promotion of homosexuality. This includes members of the LGBTIQ+ community, and individuals who support the LGBTIQ+ community. It also includes individuals who may not actively support the LGBTIQ+ community but, by way of their profession end up engaging with prohibited content, for example, journalists, filmmakers, and authors.

In addition to individuals, promotion also applies to organisations registered with the government – including corporations, NGOs, media outlets, financial institutions, registered associations, local businesses, and international organisations. Non-registered entities, such as student groups and informal community associations cannot be convicted under the AHA 2023 for promotion of homosexuality. However, if these groups are engaging in activities that are covered under this provision, the persons who participated in the activities can be found personally liable for promotion of homosexuality.

What Are the Penalties?

Any person above the age of eighteen who is convicted for promoting homosexuality can be imprisoned for up to **twenty years**, and person below the age of eighteen can be imprisoned for up to **three years**.

A legal entity (such as an organisation or NGO) that is convicted of promoting homosexuality may be subjected to **a fine of up to 1 billion Ugandan shillings**. Additionally, the court may also **cancel the legal entity's licence or suspend it for up to ten years**.

What Is Criminalised?

The AHA 2023 defines promotion of homosexuality broadly, making its application both wide-ranging and vague.

Under the AHA 2023, a person or legal entity can be convicted of promoting homosexuality if they engage in any of the following conduct.

Provide financial support, in kind or in cash, to activities that facilitate homosexuality or normalise conduct that is prohibited by the Act.

- This includes providing financial support or in-kind donations to any individuals or organisations that are explicitly involved in LGBTIQ+ advocacy. For example, a person who donates furniture to a LGBTIQ+ shelter or shops at a business that displays a pride flag or supports an LGBTIQ+ run business could be convicted for promoting homosexuality.
- This provision could also cover support to organisations or individuals that indirectly support the LGBTIQ+ community. For example, a health clinic or drop-in centre could be prosecuted if they carry condoms and lubricants, or if their outreach officers hand out free condoms in a park where LGBTIQ+ individuals meet members of the community or find sexual partners. Additionally, an investor in a media outlet which, among other things, publishes pro-LGBTIQ+ content, could be found guilty.

Knowingly publish, advertise, print, or distribute any material that promotes homosexuality or encourages an action that violates the Act.

- This includes the production or distribution of media that portrays physical acts between two same-sex individuals. For example, an author who includes a gay sex scene in their novel, or a movie theatre that shows a film with a scene where two women kiss could both be prosecuted for promotion.
- It also covers outlets which give a platform to those who encourage violation of the Act. For example, a newspaper that publishes an opinion piece asking landlords not to evict LGBTIQ+ tenants could be prosecuted for promotion.
- The provision is vague. Therefore, a broad reading of this provision could extend to any and all media that portrays the LGBTIQ+ community in a positive light or in an objective manner. For example, a corporation posting the pride flag or an individual posting on Facebook how they admire an openly gay singer for “not being afraid to authentically be himself” may count as promotion.

Encourage or persuade another person to perform an action that violates the Act.

- This includes encouraging someone to engage in same-sex sexual acts. For example, an individual could be found liable for suggesting to their friend that they experiment sexually with someone of the same-sex.
- This also includes encouraging someone to violate other provisions of the Act. For example, an individual could be found in violation of the Act for suggesting to their neighbour that they should not evict and/or report their tenants whom they suspect to be a sexually active gay couple.
- This may include same sex couples kissing, holding hands, or engaging in other displays of affection in the presence of a third party.

Knowingly lease, sublease, use or allow another person to use one's premises for the purpose of undertaking activities that promote homosexuality or encourage an action that violates the Act.

- This includes allowing a LGBTIQ+ individual or organisations to stay in one's home or rent one's property when the property owner knows that the individual or organisation will use the property for engaging in prohibited acts. For example, a friend who allows a same-sex couple to use their apartment to have sex or a landlord who rents their property to a LGBTIQ+ advocacy organisation could be found guilty for promotion of homosexuality.

Operate an organisation which promotes or encourages homosexuality or normalises conduct that is prohibited by the Act.

- This provision defines "organisation" as inclusive of registered NGOs as well as unregistered private voluntary groups. It does not appear to include for-profit entities. "Operate" is ambiguous, but in its broadest interpretation could apply to any employee or member of such a group.
- This includes operators of organisations that explicitly work on LGBTIQ+ rights/issues or are committed to LGBTIQ+ advocacy.
- It also includes NGOs that are engaged in other activities but express support for the LGBTIQ+ community or otherwise normalise same-sex relations. For example, the operators of an environmental NGO could be found liable for posting "Happy Pride! All ways of loving are equal!" on social media or for using a photo of a LGBTIQ+ couple in a fundraising pamphlet.

What Is NOT Criminalised?

- Discouraging unauthorised violence against the LGBTIQ+ community.
- Asking state and non-state actors to protect LGBTIQ+ individuals from unlawful violence.
- Criticising the AHA without advocating for commission of any of the offences in the Act.
- Employing and paying a salary to someone who identifies as LGBTIQ+ to do work which isn't otherwise criminalised under the Act.

Child Grooming

Who Is Impacted?

The offence of child grooming applies to any person who engages with a person under the age of eighteen. Consent of a child's parent or guardian is not a defence to this offence.

What Are the Penalties?

Anyone who recruits, transports, or shelters a child for the purposes of homosexuality faces **life imprisonment**.

Anyone who performs a same-sex sexual act in the presence of a child or anyone who shows, supplies, or distributes any material depicting prohibited conduct to a child is subject to imprisonment for up to **twenty years**.

Premises

Who Is Impacted?

This offence applies to any landlord, landowner, property manager, or person who rents, leases, conveys, or sells property to any other person.

What Are the Penalties?

Any person who knowingly allows their premises to be used by any person for the purposes of homosexuality is subject to imprisonment for up to **seven years**.

What Is Criminalised?

The offence of child grooming prohibits a person from recruiting, transporting, transferring, harbouring, or receiving a child for the purposes of engaging that child in homosexual acts or any other conduct prohibited by the Act. For example, an individual who adopts a child that has been evicted by their family for identifying as LGBTIQ+ may be charged for child grooming.

Additionally, the offence prohibits showing, supplying, or distributing any material, pictures, videos, or films that illustrate or depict a sexual act between persons of the same sex or any other conduct prohibited under the Act. For example, a parent who shows their child a video depicting two same-sex people engaging in a sexual act may be charged for child grooming.

Finally, the offence of child grooming prohibits one from performing or causing another person to perform a same-sex sexual act in the presence of a child.

What Is Criminalised?

This section prohibits a person from "knowingly" allowing their premises to be used for the "purposes of homosexuality" or to otherwise commit an offence under the Act. For example, a landlord that knows that his tenants, a same-sex couple, regularly have sexual relations in their apartment may be convicted under this offence.

In practice, this provision is being used to evict persons suspected or perceived (whether true or not) of being LGBTIQ+. Landlords, under the pretext of enforcement of the law, forcefully evict individuals despite the terms of the lease agreement.

Prohibition of Marriage

Between Persons of the Same Sex

Who Is Impacted?

The AHA's criminalisation of same-sex marriage impacts same-sex couples, their families, friends, and other guests, and wedding planners or administrators. This includes religious clergy and non-religious ordained officiants who conduct ceremonies.

What Are the Penalties?

Any person who is convicted under this section can be subject to imprisonment for up to **ten years**.

What Is Criminalised?

This offence prohibits marriage between two persons of the same sex. As defined by the Act, "marriage" means "the union, whether formal or informal, between persons of the same sex." One can be penalised under this provision for any of the following conduct:

- **Marriage to a person of the same sex.** This includes any effort to marry another person of the same sex. For example, this offence applies to a man who claims to marry another man. It also applies to a cisgender man who purports to marry a transgender woman, and a transgender woman who purports to marry a transgender woman, or a cisgender woman who purports to marry a cisgender woman.
- **Preside over, conduct, witness, or direct a ceremony between persons of the same sex.** This includes any attempt to officiate over a ceremony, or to otherwise be the person in charge of marrying two people of the same sex. For example, a religious leader such as a priest or a qadi could be charged for officiating a ceremony.
- **Knowingly attend or participate in a marriage between persons of the same sex.** This includes attendance to celebrate a friend or family member's same-sex wedding. This may also include third party actors at weddings, such as food catering services, venue directors, and event staff, if they know that the marriage is between two people of the same sex.

Additional Duties

False Sexual Allegations

Who Is **Impacted**?

This provision impacts anyone who reports another person for a violation of any offence under the Act.

What Is **Criminalised**?

This offence criminalises any person who knowingly makes “false or misleading allegations” to the effect of accusing another person of committing an offence under the Act.

What Are the **Penalties**?

A person who intentionally makes false or misleading accusations can be imprisoned for up to **one year**.

Disqualification from Employment upon Conviction

A person convicted of homosexuality or aggravated homosexuality **cannot work in an institution** which places them in a position of authority or care over a child or a vulnerable person. This restriction lasts until a probation, social and welfare officer determines that the person is “fully rehabilitated” or “no longer poses a danger” to a child or vulnerable person.

Duty to Report

Except for advocates (a lawyer with a valid practicing certificate), any person who “knows or has a reasonable suspicion” that a person has or intends to commit any offence under the Act, **must report it to the police**.

This duty applies to people for whom confidentiality privileges typically apply, such as doctors, researchers, religious leaders and counsellors. Such actors will not face liability for violating their duty of confidentiality and going against their professional and ethical principles.

A person who knows or has reason to know that a person will or has committed an offence under the Act against a child or vulnerable person, and yet does not report it to police, is liable to a **fine of 100 million Ugandan shillings** or imprisonment for up to **five years**.

Rehabilitation of Homosexuality

A court may order further rehabilitation, including **forced conversion**, for anyone convicted of the offence of homosexuality. These services may be provided by the prison service or by a local probation, social and welfare officer.

So-called “conversion therapy,” sometimes known as “reparative therapy,” is a range of dangerous and discredited practices that falsely claim to change a person’s sexual orientation or gender identity or expression. Such practices have been rejected by every mainstream medical and mental health organisation.

Confidentiality

The Act requires medical professionals and religious leaders to report violations. Any information that a person shares with their medical provider or pastor is not protected by confidentiality. For example, a person who has been reported by their doctor **cannot sue their doctor for violating doctor-patient confidentiality**. However, advocates are not required to report their clients for violating the Act.

Disclosure of Sexual Offences Record

A person who is convicted of an offence under the Act must inform the employer of their conviction when applying for work in an institution which places them in a position of authority or care over a child or a vulnerable person.

Protection, Assistance and Payment of Compensation to Victim of Homosexuality

In addition to imprisonment or the death penalty, a court may order a person convicted of homosexuality or aggravated homosexuality to pay **compensation** to their “victim.” The court may determine for itself what amount would be just, and take into account the physical, sexual or psychological harm suffered by the victim of the offence, the degree of force used and medical and other expenses incurred by the victim of the offence as a result of the offence.





2

**Key Stakeholders
at Risk**

PARENTS



Parents could be prosecuted for the child grooming, providing premises, and promotion of homosexuality offences. This makes it difficult for parents to support or protect their young and/or adult children who identify as, or are ‘outed’ as Lesbian, Gay, Bisexual, Transgender Intersex, or Queer.

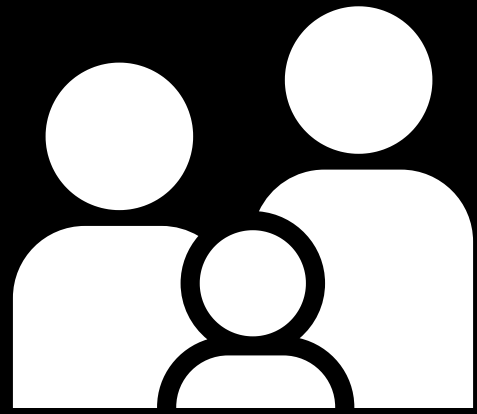
A parent who knowingly provides financial support to their LGBTIQ+ child may go to prison for up to twenty years. As written, the Act does not clearly define what it means to “knowingly provide” financial support, which

could potentially lead to its overbroad implementation.

A parent who shows their child any picture, video, or film that depicts a same-sex couple, transgender couple, or shows their child any safe sex education material during comprehensive sexuality education would be prosecuted for “child grooming” and could go to prison for up to twenty years.

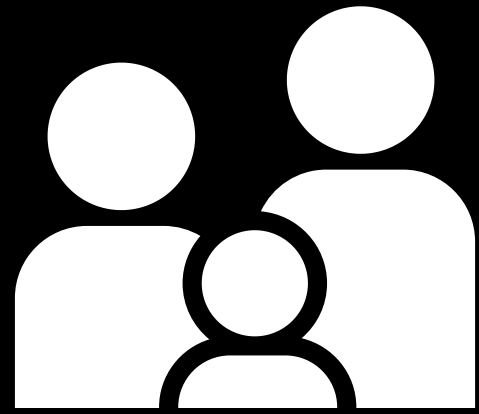
The following situations are all real possibilities under the AHA:

PARENTS



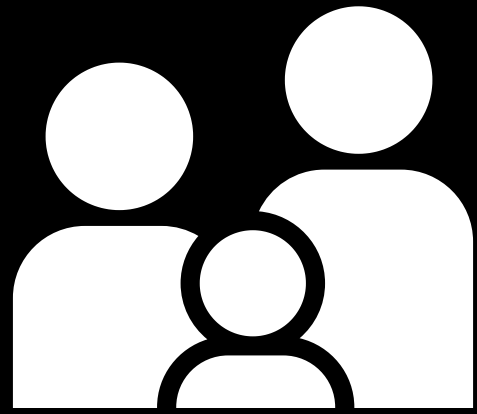
A sixteen-year-old boy who lives at home with his parents tells his mother that he is gay, expressing his frustration at the lack of knowledge about his sexuality that is different from his peers at school. During the school holiday, she finds an educational video on safe gay sex practices from a public expert. She and her son watch it together. The video includes illustrations of same-sex sexual acts. The young man's father reports the two of them to the authorities. The mother is tried, convicted of child grooming, and sentenced to twenty years in prison. The son could be ordered to go to a rehabilitation centre and be subjected to conversion therapy by a social and welfare officer or a probation prison officer who is privy to his mother's prison sentence.

PARENTS



The mother of a transgender man posts on Facebook or in her family WhatsApp group, expressing love and support for her son and his partner, and condemning the AHA. The post emphasises the importance of sexual freedom regardless of sexual orientation and gender identity and encourages her extended family to fight the law through civil disobedience by openly condemning the law and demanding that the Government focuses on real social and economic issues that concern all Ugandans' welfare. The authorities read the post, find the mother, and arrest her. She is tried, using her social media post as evidence, convicted of promotion of homosexuality, and sentenced to twenty years in prison. While serving her sentence, she loses her home to land grabbers and none of her family intervene due to trickle down effects of the conviction such as blackmail, extortion by law enforcers, and the shame and ostracisation she faces from her family and friends.

PARENTS



A gay man lives at home with his parents and siblings. The parents know that their son is gay and accept that their son is in a long-term relationship with another man, who frequently has dinner and stays overnight with the family. After hearing about the ‘duty to report’ clause in the Act that requires Ugandans to exercise vigilance in helping police to enforce the law, the neighbour who has always known about her the child’s sexuality and relationship reports him and his parents to the authorities. The parents are tried, convicted, and imprisoned for seven years for knowingly allowing their premises to be used by their son for sexual acts. The parents are also liable to a further 5 years in prison and a fine of 100 million Ugandan shillings for failing to report their son to law enforcers.

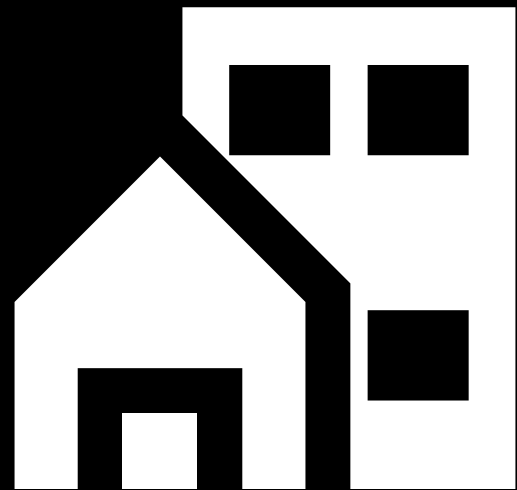
LANDLORDS



The AHA 2023 makes it a crime for a person to allow anyone to use their home or commercial property “for purposes of homosexuality or any other offence” under the Act. A landlord convicted of this offence may go to prison for up to seven years.

The following situations are all real possibilities under the AHA:

LANDLORDS



A **commercial landlord** rents out an office to an NGO that advocates for human rights. The NGO publishes a statement criticising the implementation of the Act and stating that being a member of the LGBTIQ+ community is normal. The commercial landlord knows that the NGO has published this statement. A competitor, eager to get ahead in the commercial real estate industry, reports the NGO and the landlord to the authorities. The officers of the NGO are convicted of the offence of promotion and imprisoned for twenty years. The commercial landlord is also tried, convicted of promoting homosexuality, and imprisoned for twenty years. The landlord's competitor purchases the office space at a very favourable rate. He then proceeds to do the same thing to another landlord who is renting out a space to another NGO.

LANDLORDS



A **landlord** owns an apartment, which he rents out to two women. He has reason to suspect that the women are in a sexual relationship. Another resident of the building, upset because of his differences with the landlord, reports the women and the landlord to the authorities. The women are convicted of the offence of homosexuality and imprisoned for life. The landlord is tried, convicted of allowing his premises to be used for purposes of homosexuality, and imprisoned for seven years.

LANDLORDS



A **commercial landlord** leases an office to a primary care doctor who treats individuals living with HIV/AIDS. The doctor is aware that many of his patients are homosexuals and knows that they have sex with other people of the same sex. After the doctor is convicted for failing to report his patient's homosexual acts, the authorities press charges against the commercial landlord. The commercial landlord is tried, convicted for allowing his premises to be used by the doctor to commit an offence under the Act, and imprisoned for seven years.



MEDICAL PROFESSIONALS

The AHA 2023 criminalises various forms of medical care and research. Raising awareness about sexually transmitted infections by distributing condoms or informational materials may constitute promotion of homosexuality and be punishable by up to twenty years in prison. The duty to report applies regardless of confidentiality privileges. Thus, a doctor cannot be sued by their patient for disclosing acts of homosexuality to the authorities.

The following situations are all real possibilities under the AHA:

MEDICAL PROFESSIONALS



A nurse treats a male patient presenting with symptoms consistent with HIV/AIDS. The patient tests positive, and the nurse provides him with condoms and a safe sex practises pamphlet as a way to protect him and his sexual partners. Some time later, the patient is convicted of homosexuality under the AHA. The authorities arrest the nurse because she encouraged the patient's homosexual acts by giving him the condoms and pamphlet. She is tried, convicted of promotion, and imprisoned. The judge gives her a lenient sentence of seven years imprisonment. However, after her release from prison, she cannot work as a nurse until a probation or social and welfare officer determines that she is fully rehabilitated. The officers refuse to make that determination, and the nurse can no longer practise medicine.

MEDICAL PROFESSIONALS



A doctor treats a healthy pregnant woman. During one of the routine check-ups, the woman reveals that she lives with her best friend and intends to raise the child with her. The doctor does not report this arrangement to the authorities. Some time later, the woman is arrested and sentenced to prison because she was having sex with her partner. The authorities also arrest the doctor for failing to report the homosexual acts that she knew about. She is tried, convicted, and imprisoned according to the sentencing guidelines. After her release, she cannot practise medicine until a probation or social and welfare officer determines that she is fully rehabilitated. The officers refuse to make that determination, and the doctor can no longer practise medicine.

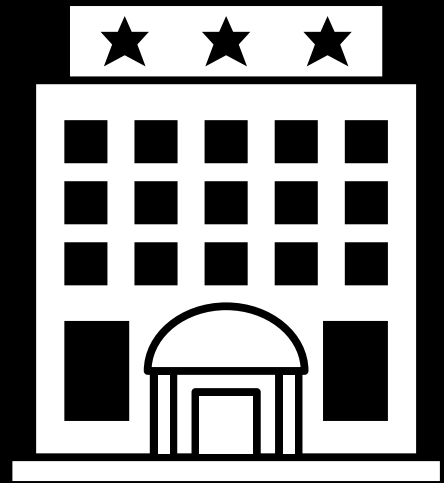


HOSPITALITY INDUSTRY

The AHA 2023 makes it a crime to use one's premises "for purposes of homosexuality or any other offence." The owner of a restaurant, hotel, motel, or guesthouse who knowingly allows homosexuals or transgender people to stay at their property may go to prison for up to seven years. As elsewhere, the Act does not define what "knowingly" means in this context.

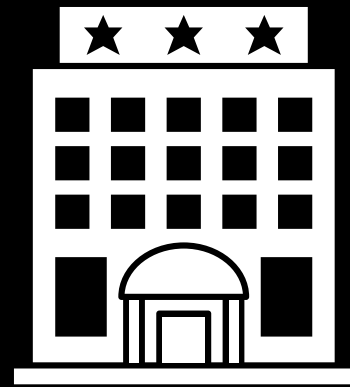
The following situations are all real possibilities under the AHA:

HOSPITALITY INDUSTRY



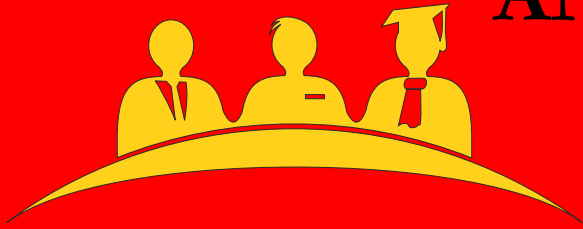
A husband and wife reside in and operate a lodge in Bwindi Impenetrable Forest. Their teenage son helps them with various tasks around the lodge. One night, a group of foreign tourists arrives to spend the night in the lodge as part of their gorilla trekking trip. The lodge owners do not know that among the tourists is a lesbian couple. The tourists all stay in rooms for two. One of the women in the lesbian couple posts an Instagram picture of herself and her girlfriend in bed and lists the lodge as the geotag for the post. A competitor who runs a separate lodge sees the post and reports the husband and wife to the authorities. A court finds that the two of them knowingly allowed the offence of homosexuality to occur on their premises. They are tried, convicted, and imprisoned for seven years. Their teenage son is not charged. However, as the lodge is quickly taken over by the competitor at a favourable rate, the son is evicted from his home.

HOSPITALITY INDUSTRY



A woman runs a motel in Katwe. Because the motel does not make enough money, she also works as a cook at the market. She has taken out a loan from a neighbour, who constantly pressures her to return the money. One day, the woman receives a female guest from Entebbe. She has to go to her other job, so she quickly checks in the guest. Eventually, the motel owner realises that the guest is a transgender woman. One night, she overhears the guest having sex with a man in the motel room. She needs the money, so she does not report the guest to anyone. However, the neighbour discovers this and reports the owner to the authorities. The motel owner is tried, convicted, and imprisoned for seven years.

ACADEMICS, JOURNALISTS, AND PUBLISHERS



Professors, writers, and publishers could face legal action for offences such as providing premises, promotion, and duty to report acts of homosexuality. This could make it challenging for these types of employees and employers to do research, write and share specific materials, or teach certain subjects. In practice, an academic sharing same-sex research via email, a journalist covering LGBTIQ+ events, or a publishing company releasing literature about homosexuality could all be charged under the Act as follows.

The leaders and staff of academic institutions, publishing agencies, and news reporting agencies that “knowingly allow” their premises to be used by any persons including their employers and, or students, for the purposes of homosexuality may be imprisoned for up to seven years.

The Act further prohibits academics, journalists, and publishers from “knowingly” advertising, publishing, broadcasting, printing or distributing by any means, materials that promote or encourage the LGBTIQ+ community. Those found violating this provision may be imprisoned for up to twenty years. As written, “knowingly” remains undefined throughout the Act, leaving room for misinterpretation, confusion and misuse of the law.

Finally, the Act imposes a duty on employers, employees, faculty, staff, and any person who “knows or has a reasonable suspicion” that someone has or may commit an offence under the Act to report that individual to the police, or risk being imprisoned for up to five years.

The following situations are all real possibilities under the AHA:

ACADEMICS, JOURNALISTS, AND PUBLISHERS



A professor speaks to a class and distributes copies of his research, which includes examination of historical documents indicating that homosexual activities have long been a part of the human experience. The students discuss the findings and share their written opinions on the research with one another. A student reports the professor and several students to the police. Police arrest and charge the professor and students with promotion of homosexuality. The professor is tried, convicted, and imprisoned for twenty years.

ACADEMICS, JOURNALISTS, AND PUBLISHERS



A publishing company is in the process of printing a novel by a renowned author. The novel contains a brief passage describing a transgender woman falling in love with and showing affection to her boyfriend. The CEO and most of the employees at the company are aware of the passage. An unhappy employee tells the CEO that the passage should be deleted, but does not get a positive reply. The employee reports the author and publishing company to the police. The police raid the company and arrest several employees for knowingly allowing a book “normalising” same-sex sexual acts to be published on the premises. They are convicted and sentenced to seven years in prison. The police also arrest and imprison the author and the CEO of the publishing company for promotion of homosexuality. They are convicted and sentenced to up to 20 years in prison. The publishing company is fined and their licence is suspended.

ACADEMICS, JOURNALISTS, AND PUBLISHERS



A **journalist** voices public support for LGBTIQ+ people by affirming their humanity and their right to their sexual and gender freedoms as adults. A local resident reads the story and promptly reports the journalist and news agency to the police. The news agency is raided, and the journalist is arrested, tried, convicted, and sentenced to twenty years in prison for knowingly promoting homosexuality.

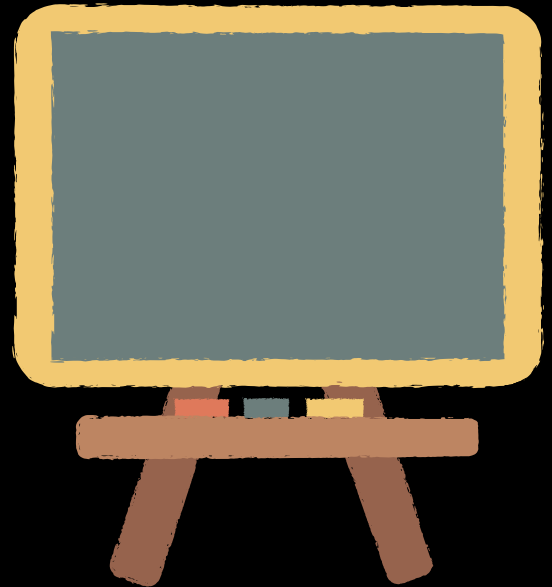
EDUCATORS



Teachers, administrators and trainers could be prosecuted for offences such as promotion of homosexuality, failing to report offences involving children and child grooming.

The following situations are all real possibilities under the AHA:

EDUCATORS



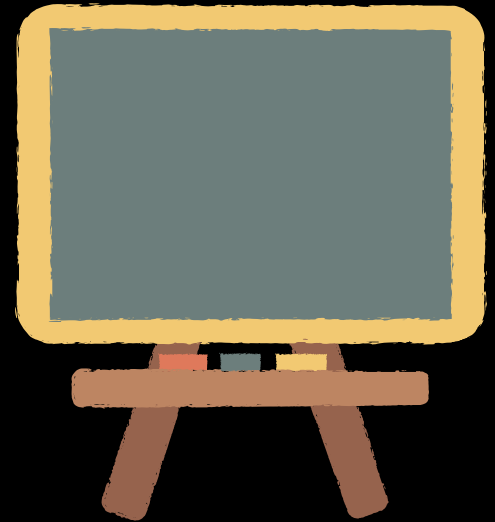
In a **secondary school** physical education class, a **teacher** uses a textbook which includes diagrams explaining how to avoid sexually transmitted infections, including among same-sex partners. The teacher is charged and convicted of child grooming and promoting homosexuality, and is imprisoned for twenty years.

EDUCATORS



A **football coach** of a skilled under-18 women's team shows her team a documentary of the Manchester United women's team in preparation for an important upcoming tournament. The documentary, although focused on women's football, briefly shows a scene of one of the team's star players and her wife sharing a kiss to celebrate her scoring a goal. The film also depicts scenes with players tying up rainbow laces, hanging up rainbow flags during pride and wearing rainbow armbands, while advocating for LGBTIQ+ rights in sport worldwide. An employee of the training facility reports the coach to the police. The coach is subsequently charged with child grooming and promotion of homosexuality, and sentenced to twenty years in prison.

EDUCATORS



A sixteen-year-old student approaches her favourite teacher after class one day and tells her, crying, that her parents have kicked her out of the house because she was having a sexual relationship with her new girlfriend who is also her classmate. The student says she is afraid for her safety if she attempts to return home, and says she has nowhere else to go. The teacher does not support homosexuality, but she doesn't want her student to be in danger, so she allows her to sleep in her living room for a few nights. The student's parents find out about this and inform the authorities. The teacher is charged with failing to report her student and sentenced to five years in prison.



FINANCIAL INSTITUTIONS

Under the promotion of homosexuality section, the AHA 2023 imposes liability on individuals and legal entities that provide financial support to “facilitate activities that encourage homosexuality or the observance or normalisation of conduct prohibited under the Act.” Additionally, financial institutions and their agents may also be affected by the duty to report and confidentiality sections, among others.

The following situations are all real possibilities under the AHA:

FINANCIAL INSTITUTIONS



An investment fund provides financial support and consulting services to a small business to expand its operations. Using the new funding, the business designs an advertising campaign that features a same-sex couple. Prior to launching the campaign, the business shares copies of the advertising materials with the investment fund but never hears back. The business is later tried and convicted for promoting homosexuality. Based on the investment fund's contributions, the investment fund is also tried and convicted for promoting homosexuality. The investment fund is fined 1 billion shillings and its operating licence is suspended for ten years.

FINANCIAL INSTITUTIONS



A young heterosexual woman residing in Kampala seeks to donate money to a well-known, LGBTIQ+ advocacy organisation and requests that her bank carry out a wire transfer. The banker processing the transaction recognises the name of the organisation receiving the funds but proceeds with the client's request. The woman is later charged and convicted of promoting homosexuality. The bank staff who handled the transfer, and the CEO is also prosecuted and convicted for providing financial support to facilitate activities which promote homosexuality. The bank is fined 1 billion shillings and its operating licence is cancelled.

FINANCIAL INSTITUTIONS



Two men who are joint signatories on a bank account enter a branch of their local bank and ask the teller to withdraw a significant portion of money from their account. The men explain to the teller that the cash is going to be used to cover various costs associated with their upcoming wedding out of the country. They further write this information on the withdrawal slip of the bank under the 'purpose of funds'. The teller hands the money to the couple and the couple leaves the bank. Another client who was at the bank at the same time as the couple informs the authorities of what occurred. The bank teller is tried, convicted, and imprisoned for ten years for participating in the preparation of a purported marriage between persons of the same sex. The bank is further fined 100 million shillings for failing to report the couple to the police for appropriate action.



RELIGIOUS LEADERS

Religious leaders could be prosecuted under various provisions of the AHA 2023, including child grooming, providing premises, facilitating marriage between persons of same sex, promotion of homosexuality, and failing to report acts of homosexuality. Notably, religious leaders can face liability under the law both for intentional acts, such as officiating a wedding between two same-sex individuals, and for inadvertent acts, such as failing to intervene based on a “reasonable suspicion” that a member of the church has committed the offence of homosexuality.

The following situations are all real possibilities under the AHA:

RELIGIOUS LEADERS



A **married man** confides in his pastor that he is experiencing homosexual attraction and asks for the pastor's help in controlling these feelings. The pastor agrees to counsel the man weekly. One week, the man mentions to the pastor that he "had a moment of weakness" but does not go into any further detail. The pastor does not report this to the police. The man is later convicted of homosexuality after being caught engaging in a consensual sexual act. While being interrogated, the man tells the police he had been trying to "get better" with help from the pastor. The pastor is tried, convicted and imprisoned for five years for failing his duty to report.

RELIGIOUS LEADERS



A nun hosts a youth movie night at her church for teenage girls from her congregation. At the event, two seventeen-year-old girls sneak into the bathroom and consensually touch each other in a sexual way. The mother of one of the girls discovers that this happened and reports the incident to the police. The other girl is convicted of aggravated homosexuality for engaging in a sexual act with a “child.” The police arrest the nun, arguing that she knew this may happen because the convicted girl “dresses like a tomboy so she should have known that she is homosexual.” The nun is tried, convicted, and imprisoned for seven years for providing the premises for the purposes of homosexuality.



NON-CITIZENS

Refugees, migrants, and expatriates residing in Uganda should be aware that they can be tried for any offence under the Act in the same way as Ugandans because that the AHA 2023 applies to “persons” rather than citizens. There are also specific situations which may put certain classes of noncitizens, such as refugees, at risk in unique ways. Noncitizens convicted under the Act will likely also face potential deportation and be unable to return to Uganda in the future.

The following situations are all real possibilities under the AHA:

NONCITIZENS



A South African woman is married to a Ugandan man with four children, who are Ugandan citizens. She shares a photo of her brother's wedding to a man in South Africa on her Instagram story, saying that she hopes more African countries will recognise the varied love of their citizens and legalise same-sex marriage like South Africa. She is convicted for promotion of homosexuality and deported after serving her prison sentence. She is unable to return to Uganda for the rest of her life to see her elderly in-laws, and must relocate her husband and children to South Africa or be separated from them.

NONCITIZENS



A lesbian couple from South Sudan is attempting to apply to the UNHCR refugee resettlement program to be resettled in Canada. In order to prove they qualify as refugees, they tell an International Rescue Committee (IRC) employee that members of their community in South Sudan are trying to kill them because of their relationship.

If the IRC employee does not report these women to the Ugandan authorities, the employee can be prosecuted for failure to report because knowing the women are a couple is likely enough to trigger mandatory reporting.

If the IRC employee reports these women, the women can be prosecuted for homosexuality and imprisoned for up to twenty years.

If the women do not share their story, they will not qualify as refugees and cannot be resettled in Canada.

Endnotes

¹ *Corporate Giants Say Anti-LGBT Law Would Hurt Uganda's Economy*, REUTERS (Mar. 29, 2023, 12:18 PM), <https://www.reuters.com/world/africa/corporate-giants-say-anti-lgbt-law-would-hurt-ugandas-economy-2023-03-29>.

² Aditi Bhandari, *Uganda's Anti-gay Bill Is the Latest and Worst to Target LGBTQ Africans*, REUTERS (Apr. 7, 2023, 2:30 PM), <https://www.reuters.com/graphics/UGANDA-LGBT/movakyrjva/>; Thomas Mackintosh & Mercy Juma, *World Bank Halts New Uganda Loans Over Anti-LGBTQ+ Law*, B.B.C. (Aug. 9, 2023, 7:15 AM), <https://www.bbc.com/news/world-africa-66453098>.

³ Press Release, Office of the United Nations High Commissioner for Human Rights, *Supreme Court Ruling Tells LGBTQ People in Mauritius That Their Dignity Is Valued: UN Expert* (Oct. 13, 2023), <https://www.ohchr.org/en/press-releases/2023/10/supreme-court-ruling-tells-lgbtq-people-mauritius-their-dignity-valued-un>.

⁴ STRATEGIC RESPONSE TEAM – SRT UGANDA, *LIVES AT RISK: A REPORT ON DOCUMENTED HUMAN RIGHTS VIOLATIONS AND ABUSES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, INTERSEX AND QUEER PLUS PERSONS (LGBTIQ+) IN UGANDA 21* (2023).

⁵ *Id.* at 9.

⁶ HUMAN RIGHTS AWARENESS AND PROMOTION FORUM, *REPORT ON CASES OF VIOLENCE AND VIOLATIONS BASED ON REAL OR PRESUMED SEXUAL ORIENTATION DURING THE FOURTH MONTH OF THE ANTI-HOMOSEXUALITY ACT BEING IN FORCE – SEPTEMBER 2023 7* (2023).

⁷ *Id.* at 9.

⁸ Constitution (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013 <https://old.ulii.org/ug/legislation/statutory-instrument/2013/article-133-1-b>.



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