



INTERPRETATION AND IMPLEMENTATION OF THE
ANTI-HOMOSEXUALITY ACT

*A Qualitative Assessment of the Director of
Public Prosecution's Circular No. 18/2023*

AUGUST 2024

TABLE OF CONTENTS

II

ABBREVIATIONS
AND ACRONYMS

III

FOREWORD AND
ACKNOWLEDGE-
MENTS

IV

EXECUTIVE
SUMMARY

01

INTRODUCTION

01

BACKGROUND

04

OBJECTIVES

04

METHODOLOGY

05

STUDY FINDINGS

5.1 A review of relevant legal and human rights standards affected by the Anti-Homosexuality Act 2023	5
5.1.1 The principle of legality	6
5.1.2 Right to human dignity	7
5.1.3 Right to equality and freedom from discrimination	8
5.1.4 The right to privacy	9
5.1.5 Right to health	9
5.1.6 The right to housing and property	10
5.1.7 Right to lawful profession, occupation, trade or business	11
5.1.8 The right to freedom of conscience, expression, movement, religion, assembly and association	11
5.1.9 The right to liberty and the right to fair hearing	12
5.2 Interpretation and application of the ODPP Circular on the Anti-Homosexuality Act 2023	12
5.2.1 The situation prior to the issuance of the ODPP Circular	12
5.2.2 Right to human dignity	14
5.2.3 The situation following the issuance of the ODPP Circular	14
5.2.4 Analysis of findings	17
5.3 Emerging challenges encountered in the interpretation and application of the ODPP Circular	20
5.3.1 Status of the Circular as regards AHA and related laws	20
5.3.2 Limitations in the scope of Circular's addressees	21
5.3.3 Delayed responses from DPP as to prosecutorial decisions	23
5.3.4 Corruption and abuse of power	24
5.3.5 Insufficient training and sensitization	24

25

CONCLUSIONS AND RECOMMENDATION

6.1 Conclusions	25
6.2 Recommendation	25

27

REFERENCES

30

APPENDICIES

Appendix I: ODPP Circular No.18/2023	30
Appendix II: List of Legislation	31
Appendix III: List of Cases	32

ABBREVIATIONS AND ACRONYMS

ACPHR	African Charter on Human and People’s Rights
AHA	The Anti-Homosexuality Act, Cap 117
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
CFE	Convening for Equality
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
CRC	Convention on the Rights of the Child (1989)
CSO	Civil Society Organization
ECHR	European Convention on Human Rights
HRAPF	Human Rights Awareness and Promotion Forum
HRC	Human Rights Committee
HURIPAC	Human Rights and Peace Center
ICCPR	International Covenant on Civil and Political Rights (1966)
ICESCR	International Covenant on Economic, Social and Cultural Rights (1966)
JLOS	Justice, Law and Order Sector
KPCs	Key Population Communities
LGBTQI+	Lesbian, Gay, Bi-Sexual, Transgender, Queer, Inter-Sex and Other persons
NGO	Non-Governmental Organization
ODPP	Office of the Director of Public Prosecutions
SOGI	Sexual Orientation and Gender Identity
SRHR	Sexual and reproductive health and rights
SRT	Strategic Response Team
STIs	Sexually transmitted infections
TB	Tuberculosis
UDHR	Universal Declaration of Human Rights (1948)
UGCC	Constitutional Court of Uganda
UHRC	Uganda Human Rights Commission
ULRC	Uganda Law Reform Commission
ULS	Uganda Law Society
UPF	Uganda Police Force
UPS	Uganda Prisons Service
URSB	Uganda Registration Services Bureau

FOREWORD AND ACKNOWLEDGEMENTS

The passage of the Anti-Homosexuality Act, Cap. 117 (AHA), legitimized systemic human rights violations of key population communities and their allies. This law prescribes the offence of homosexuality and contains harsh punishments for persons convicted of the offence, including the death penalty for the so-called ‘aggravated’ homosexuality. The provisions of AHA cannot be enforced without violating human rights, which are guaranteed by the Constitution of Uganda and international instruments. The enactment of AHA has encouraged homophobia and stigmatization and is, in effect, engaging in institutionalized promotion of a culture of hatred.

This study has analyzed the Office of the Director of Public Prosecutions’ (ODPP) Circular No. 18/2023, which was issued to provide guidance on the prosecutions under AHA. Though well intentioned, the Circular occasioned many controversies predominantly grounded in human rights violations and its very legality.

Through this study we shed light on the practical application, challenges of AHA’s implementation, and the implications for both the accused and the society at large. Our analysis is driven by the recognition that the administration of justice must not only ensure the application of the law but must do so in a manner consistent with the constitutional values and guaranteed rights.

The Women’s Probono Initiative (WPI) wishes to acknowledge the Joint United Nations Programme on HIV/AIDS (UNAIDS) for providing financial and technical support towards this study; Ms. Primah Kwagala for overseeing the study process; Ms. Shadia Namanda, Ms. Rahom Maria Bukirwa, Ms. Rose Wakikona, Ms. Tracy Nabbaale, Ms. Elizabeth Achola and Mr. Titus Asiimwe for coordinating the process; Dr Busingye Kabumba, the Consultant, for leading the research team and compiling this report; Ms. Proscovia Ayebare, the research assistant, for the support provided to the consultant; Dr. Daphine Agaba for peer reviewing the study, and Mr. Richard Hasunira for editing the final copy and overseeing the design.

In producing this study, WPI consulted a wide range of stakeholders, including the Directorate of the Police Health Services, Uganda AIDS Commission, Uganda Prisons, the Uganda Police Force, Ubuntu Law and Justice Centre, Rights 4 Her Uganda, Human Rights Awareness and Promotion Forum (HRAPF), African Network of Religious Leaders Living with and Personally Affected by HIV and AIDS (ANERELA+), and the interview correspondents, both named and anonymous. We are grateful for their collaboration, inputs into the technical discussions and contributions to the development of this report. Their insights provided a holistic understanding of how the Circular is being operationalized in various legal and human rights contexts. The perspectives shared in this document are crucial to understanding the complexities and potential impact of the Circular and AHA on key population communities.

We hope that this study serves as a resource for JLOS actors and the general public to strengthen their capacity to advance the rights of key population communities in Uganda.

Ms. Primah Kwagala
Executive Director
Women’s Probono Initiative



“The administration of justice must not only ensure the application of the law but must do so in a manner consistent with the constitutional values and guaranteed rights.”

EXECUTIVE SUMMARY

This study analyzes the interpretation and application of the Circular issued by the Office of the Director of Public Prosecutions (ODPP) on 25 August 2023 on the Anti-Homosexuality Act (AHA) 2023. The Circular aimed to ensure consistency in prosecutions and to mitigate potential abuses in the Act's enforcement. Although another Circular was later issued on 4 April 2024, following the decision of the Constitutional Court in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others*, this subsequent Circular did not materially alter the legal guidance issued in the first Circular – only allowing for Regional Officers to handle AHA-related cases rather than having them forwarded to the headquarters.

The ODPP's Circular No.18/2023 was intended to ensure that all charges preferred under AHA are first submitted to ODPP headquarters for guidance before any decision to charge is made.

The study sought to understand the effects of Circular No.18/2023 and AHA; how they are interpreted and applied; AHA's impact on the human rights of key population communities (KPCs); and the challenges faced in implementation and enforcement. The information from relevant legal instruments and opinions, and the literature was cross-referenced with qualitative data obtained from in-depth personal interviews with key informants, who included Senior State Attorneys (SSAs) within the ODPP, senior police officers, human rights defenders, and members of the Uganda Law Society (ULS) with experience in handling cases related to AHA.

The study findings reveal inconsistencies in the interpretation and application of AHA, which has led to an environment of uncertainty among lesbian, gay, bisexual, transgender, queer, inter-sex and other (LGBTQI+) persons, which has negatively impacted their access to essential health services, particularly HIV care. The enforcement of AHA has also strained the judicial system, contributing to case backlog and human rights violations.

The study findings reveal continued inconsistencies in the interpretation and application of AHA, which has led to an environment of fear and uncertainty among LGBTQI+ persons, negatively impacting their access to essential health services.

The main challenges in implementing AHA include inconsistencies in legal and judicial application, corruption, and lack of capacity and resources for law enforcement. The ODPP's Circular itself illustrates these frustrations.

The study concludes that the Circular has been unable to mitigate the challenges presented by AHA, and has in some instances exacerbated the law's adverse effects. Analogous offences in the Penal Code have been used to target LGBTQI+ without reference to ODPP; abuses and violations by JLOS actors and the public have continued amid case delays.

AHA criminalizes a broad array of conduct, with a wide catchment, such as amorphous case of 'promotion of homosexuality'. In addition, it appears that the challenges are not only due to a failure to understand the law, but in keeping with the letter and spirit of the law. The ODPP Circular was misconceived, and offences being committed only with proof of a 'sexual act' as defined under Section 1 of the Act were either widely misunderstood or deliberately ignored.

It appears, the abuses and attacks experienced before ODPP's Circular were not examples of a misapplication or misunderstanding of AHA, but rather a direct result of the enactment of a law steeped in prejudice, unreasonable fear and irrational animus. AHA is an irredeemable piece of legislation which was destined to have deleterious effects on the rights of sexual and gender minorities in Uganda, as the experience before and after the issuance of the ODPP Circular has demonstrated.

AHA is irredeemable; it should be repealed. It was destined to have deleterious effects on the rights of sexual and gender minorities in Uganda

1. INTRODUCTION

THIS report presents the findings of a qualitative study on the interpretation and implementation of the Office of the Director of Public Prosecutions (ODPP) Circular on the Anti-Homosexuality Act (AHA) 2023, which was issued on 25 August 2023.¹ The enactment of AHA has had substantial legal and social implications, particularly for the LGBTQI+ community in Uganda. The law criminalizes consensual same-sex acts and imposes severe penalties, including the death penalty, thereby exacerbating human rights and equity challenges.

The ODPP's Circular No.18/2023 was intended to ensure that all charges preferred under AHA are first submitted to ODPP headquarters with a written legal opinion for further guidance before any decision to charge is made. Despite this directive, unauthorized prosecutions have continued, indicating a knowledge gap among Justice, Law, and Order Sector (JLOS) actors.

This study explores how the ODPP's Circular has been interpreted and implemented in practice; assesses its impact on key population communities (KPCs) and JLOS actors; identifies challenges in its implementation; and proposes interventions to improve the implementation and outcomes of AHA.

The ODPP's Circular No.18/2023 was intended to ensure that all charges preferred under AHA are first submitted to ODPP headquarters with a written legal opinion for further guidance before any decision to charge is made.

2. BACKGROUND

UGANDA acceded to the United Nations Covenant on Civil and Political Rights, 1966 and the United Nations Covenant on Economic Social and Cultural Rights, 1966 on 21 January 1987; and ratified the African Charter on Human and People's Rights, 1981 on 10 May 1986. While these instruments pre-date the 1995 Constitution, the supreme law of the Republic of Uganda, the rights and obligations therein are part of the law and of the Constitution.² The rights and freedoms guaranteed under the international human rights instruments constitute obligations Uganda has agreed to as the human rights standards for its citizens. The instruments are also relevant to the interpretation or construction of provisions of Uganda's laws, including the Constitution.

Under international human rights law, Uganda is required to respect, protect, and fulfil fundamental rights and freedoms of the individual and groups. These state duties are reflected in Chapter Four of the Constitution of 1995. The obligation to respect requires the State to refrain from interfering with or restraining the enjoyment or exercise of human rights. This is the primary obligation of the State as regards human rights, and it is negative in character. By enacting AHA, the Parliament actively engaged in infringing rights that are constitutionally guaranteed. The lead-up to the passing of AHA and the Act in itself have also encouraged homophobia and stigmatization and in effect, an institutionalized promotion of a culture of intolerance.

The obligation to protect human rights requires the State to protect individuals and groups against human rights abuses.

¹ The ODPP issued another Circular, No.2/2024, on 4 April 2024, following the decision of the Constitutional Court in the case of *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others* (Consolidated Constitutional Petitions Nos. 14, 15, 16 and 85 of 2023) [2024] UGCC 10 (3 April 2024). The ODPP Circular No.2/2024 slightly modified the terms of the original Circular in so far as it allowed Regional Officers to handle cases related to the AHA, as opposed to having them forwarded to ODPP headquarters. In all other respects, the guidance and position in the original Circular was substantially maintained. This study mainly focused on the interpretation and application of the original Circular, although brief reference is made to the second Circular in sections 5.2.4 and 5.3.3 of this report.

² Objectives XIV and XXXVIII (i)(b) of the National Objectives and Directive Principles of State Policy and Articles 2(1) & (2), 8A, 45 and 287 of the Constitution of the Republic of Uganda, 1995.

the obligation to fulfil obliges the State to take affirmative steps to ensure the enjoyment of all human rights without any discrimination.

The obligation to protect requires the State to protect individuals and groups against human rights abuses. This is a secondary obligation and includes a duty upon the State to deter the infringement of human rights by third parties, including private persons. Homophobia, as institutionalized by AHA, leaving KPCs without the protection of the law and exposing them to attacks and violations. In addition, the provisions of the Act that criminalize consensual same-sex relations are in contravention of the obligations of the State under international human rights instruments ratified or acceded to by Uganda.

For its part, the obligation to fulfil obliges the State to take affirmative steps to ensure the enjoyment of all human rights without any discrimination. This is a positive obligation, which might involve expending resources to create the conditions necessary for the effective realization of human rights. However, AHA represents not only a violation of the obligations of Uganda to respect and protect the rights of LGBTQI+ Ugandans, but also signals a lack of commitment to undertake the positive steps required to fulfil these rights.

Uganda has a long history of legislation targeting the LGBTQI+ community

Unfortunately, it is noteworthy that Uganda has a long history of legislation targeting the LGBTQI+ community.³ The first AHA (of 2014) was annulled by Court due to procedural lapses (the absence of quorum in Parliament at the time of its passage), but it demonstrated the prevailing legislative attitudes towards homosexuality. The societal and cultural context in Uganda has traditionally been conservative, with strong opposition to the human rights of LGBTQI+, rooted in cultural, religious, and moral beliefs. The 2023 AHA is a continuation of these legislative efforts, expanding on previous laws to impose harsher penalties and broader definitions of homosexual acts. AHA includes provisions for life imprisonment for aggravated homosexuality; criminalizes the promotion of homosexuality; and suggests the institutionalization of conversion therapy programs.

This law proscribes the offence of homosexuality and contains harsh punishments for persons convicted of the offence, including the death penalty for the so-called 'aggravated' homosexuality

The passing of the 2023 AHA legitimized systematic human rights violations of KPCs and their allies.⁴ This law proscribes the offence of homosexuality and contains harsh punishments for persons convicted of the offence, including the death penalty for the so-called 'aggravated' homosexuality.⁵ The provisions of AHA cannot be enforced without infringing different human rights, which are protected by the Constitution of 1995 as well as international instruments. Implementation of the Act inevitably leads to violations of the right to equality and freedom from discrimination; the right to privacy; the right to dignity and freedom from cruel, inhuman and degrading treatment; the right to a fair hearing; the right to freedom of expression, conscience, religion and association; the right to liberty; and the right to property, among others.

3 K Kalemba 'Bequeathed Legacies: Colonialism and State Led Homophobia in Uganda' (2017) 15 *Surveillance & Society* 567. See also, generally, P Johnson 'Homosexuality and the African Charter on Human and Peoples' Rights: What Can Be Learned from the History of the European Convention on Human Rights?' *Journal of Law and Society* (2013) Vol.40, No.2, at pp.249-279; Kristen Cheney, *Locating Neocolonialism, 'Tradition,' and Human Rights in Uganda's 'Gay Death Penalty'*, *African Studies Review* 55, no. 2 (2012), 86; K Tschierse 'Why is homophobia so strong in Uganda?' (DW News 21 April 2023) <<https://www.dw.com/en/why-is-homophobia-so-strong-in-uganda/a-65393277>> Accessed on 10th July 2024; See, generally, J Svensson and C Strand 'The promise of double living. Understanding young people with same-sex desires in contemporary Kampala' (2024) 71 *Journal of Homosexuality* 8.; S Bosire 'Uganda's anti-homosexuality act is causing harm and limiting access to healthcare' (2023) 382 *BMJ* 2010; D Kalinaki 'Uganda has a sex crime problem, but gays are just easy scapegoats' *Daily Monitor*, March 02, 2023 <<https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/uganda-has-a-sex-crime-problem-but-gays-are-just-easy-scapegoats-4142708>> Accessed on 17th July, 2024.; D Kalinaki 'The anti-gay card is faded, dirty, and overlaid; time to focus on real issues' *Daily Monitor*, June 06, 2024 <<https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/the-anti-gay-card-is-faded-dirty-and-overlaid-time-to-focus-on-real-issues-4647958#story>> Accessed on 17th July 2024; M Hollander 'Gay rights in Uganda: seeking to overturn Uganda's anti-sodomy laws' (2009) 50 *Va. J. Int'l L.* 221; Human Rights Watch Report 'Uganda: Anti-homosexuality bill threatens liberties and human rights defenders' (2009) 10; Daily Monitor 'New report paints violence surge post anti-homosexuality law enactment' *Daily Monitor*, Friday, September 29, 2023 <<https://www.monitor.co.ug/uganda/news/national/new-report-paints-violence-surge-post-anti-homosexuality-law-enactment-4383832>> Accessed on July 15th, 2024; and M Wekesa 'A constitutional approach to the decriminalisation of homosexuality in Africa: A Comparison of Kenya, South Africa and Uganda, (PhD diss., University of Pretoria, 2016), 208 <https://icla.up.ac.za/images/about/staff/fombad/alumni/Wekesa_Constitutional_2016.pdf> Accessed 15th July, 2024.

4 Chapter 117 of the 7th Edition of the Revised Principal Laws of Uganda, 2024.

5 As above, Section 3.

Given that individuals belonging to the LGBTQI+ community often face arbitrary arrests and detention, mob lynching, and to humiliation by being stripped naked in public, AHA has in effect, legitimized existing human rights violations and abuses. Indeed, it has been reported that since the enactment of AHA, LGBTQI+ persons have experienced increased violence and threats, including loss of employment, evictions, arrests, detentions, beatings, forced anal examinations, forced conversion therapy, and “corrective” gang rape at the hands of both the authorities and private persons.⁶ For instance, over the course of one month, after the passing of the AHA by Parliament (from 21 March to 20 April 2023), the civil society organization (CSO) Human Rights Awareness Promotion Forum (HRAPF), recorded 59 cases involving abuses against LGBTQI+ and suspected LGBTQI+ persons. Of these cases, 40 cases (67.8%) involved violence and violations targeting the victims purely on the basis of their presumed sexuality, and affected a total of 85 persons. Eleven were cases of arrests of people based on their sexual orientation and gender identity, 14 were crimes against persons on the basis of their sexuality, and 15 were cases of evictions from rented property.⁷

The passing of the 2023 AHA legitimized systematic human rights violations of KPCs and their allies

This is likely explains why ODPP saw the need to provide guidance, which it did on 25 August 2023 by issuing a distinct Circular on the handling of cases where charges are preferred under AHA.⁸ In the Circular, the Director of Public Prosecutions (DPP) asserted that charges for homosexuality and aggravated homosexuality were being preferred by some prosecutors without internalizing some crucial aspects of the Act.⁹

The DPP also added that the Act only criminalized offences where the sexual act within the meaning of Section 1 has been performed.¹⁰ The DPP directed that all files which have charges preferred under AHA must be submitted to the ODPP headquarters with a written legal opinion for further guidance before a decision is made to charge a suspect. The DPP concluded by promising that the ODPP would organize sensitization for ‘all officers’ on the key aspects of AHA.¹¹

This study analyzes the interpretation of the ODPP Circular No.18/2023 issued on 25 August 2023 in relation to the AHA 2023; examines the implementation of AHA; explores the emerging challenges in its implementation; and considers relevant interventions.

While the Circular can be seen as an important attempt to ensure proper management of cases arising from AHA, its issuance likely inadvertently gave JLOS actors the confidence to prefer charges under AHA at the expense of the rights and freedoms of a certain part of the population. The Circular also apparently manifests the blatant injustice of the Act, as it was issued just three months after the Act’s official commencement.

It is thus important to critically examine the continuing interpretation and application of the ODPP’s Circular, to determine whether it is achieving its intended objectives. This is even more timely given that since its issuance, the Constitutional Court has pronounced itself on the constitutionality of the Act, although its decision appears to have raised more questions than it answers.^{12,13}

6 See Chapter Four ‘How the Anti-Homosexuality Act, 2023 affects you’ available at <https://chapterfouruganda.org/sites/default/files/downloads/Simplified-Guide-on-the-Anti-Homosexuality-Act-2023-by-C4U.pdf>(accessed on 10 July 2024).

7 Human Rights Awareness and Promotion Forum, ‘Arrests, Evictions and Violence: Report of Violations against LGBTQ Persons for the First Month Following the Passing of Uganda’s Anti- Homosexuality Bill, 2023’, (Kampala, Uganda, 2023) at 3.

8 Director of Public Prosecutions Jane Frances Abodo – Circular No. 18/2023 – Re: Management of Cases with Charges preferred under the Anti-Homosexuality Act 2023 (25.08.2023) (Attached as an Appendix to this Report).

9 As above.

10 As above. See also Section 1, AHA.

11 As above.

12 Upon the passing of the AHA, was immediately challenged in the Constitutional Court on virtually all its provisions – see *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others* (Consolidated Constitutional Petitions Nos. 14, 15, 16 and 85 of 2023) [2024] UGCC 10 (3 April 2024)

13 Kabumba B. ‘Uganda’s *Dred Scott v Sandford*: Unpacking the real constitutional damage wrought by the decision in *Fox Odoi and Others v Attorney General*’ (The Observer, May 15 2024) <<https://observer.ug/index.php/viewpoint/81323-uganda-s-dred-scott-v-sandford-unpacking-the-real-constitutional-damage-wrought-by-the-decision-in-fox-odoi-and-others-v-attorney-general>> Accessed on 10 July, 2024.

3. OBJECTIVES OF THE STUDY

This study analyzes the interpretation of the ODPP Circular No.18/2023 issued on 25 August 2023 in relation to the AHA 2023; examines the implementation of AHA; explores the emerging challenges in its implementation

This study analyzes the interpretation of the ODPP Circular No.18/2023 issued on 25 August 2023 in relation to the AHA 2023; examines the implementation of AHA; explores the emerging challenges in its implementation; and considers relevant interventions.

To this end, the main objectives of the study were as follows:

- 1) To conduct a detailed analysis of the legal and human rights standards implicated by the Anti-Homosexuality Act 2023;
- 2) To assess and establish how the ODPP's Circular on the Anti-Homosexuality Act 2023 is being interpreted and implemented, and to evaluate its impact on key population communities and JLOS actors in Uganda; and
- 3) To identify the challenges encountered by JLOS actors and KPCs in the interpretation and application of the ODPP Circular, and to propose appropriate interventions.

4. METHODOLOGY

The information from relevant legal instruments and opinions, and the literature was cross-referenced with qualitative data obtained from in-depth personal interviews with key informants

This study adopted a qualitative research approach to assess the interpretation and implementation of the ODPP's Circular No.18/2023 issued in relation to AHA 2023.

A comprehensive review of the legal frameworks and the literature relevant to the operationalization of AHA was conducted. This included AHA 2023, the ODPP's Circular of 25 August 2023, the national Constitution, international human rights conventions and treaties, regional human rights instruments, national court decisions, relevant legal opinions, case files, official government reports, policy briefs, and operational guidelines and reports from human rights organizations.

A comprehensive review of media reportage, published studies, and reports from CSOs, including KPC organizations about AHA and the Circular's impact on KPCs was done to provide a better understanding of the state of implementation of the AHA and, relatedly, the interpretation and application of the ODPP Circular.

The study sought to understand both the direct and indirect effects of the Circular and the AHA, capturing the nuances of how these policies are applied and experienced on the ground, its impact on the human rights, liberties and freedoms of KPCs, and the challenges faced in their interpretation, implementation and enforcement.

The document review sought to identify discrepancies between the legal framework and its practical implementation, highlighting gaps between policy intentions and actual outcomes. This study however, limited its focus on members of the LGBTIQI+ community in Uganda.

The information from relevant legal instruments and opinions, and the literature was cross-referenced with qualitative data obtained from in-depth personal interviews with key informants, who included Senior State Attorneys (SSAs) within the ODPP, senior police officers, human rights defenders, and members of the Uganda Law Society (ULS) with experience in handling cases related to AHA.

This research reviewed and analyzed AHA 2023, the ODPP’s Circular and primary data from interviews with key informants using the human rights framework, as they relate to the ODPP Circular in focus and AHA 2023. This research sought to establish the nature and depth of the actual, documented and perceived alignment and/or conflict between AHA and the fundamental human rights, liberties and freedoms as guaranteed by the Constitution of 1995 (Chapter 4) and the different international human treaties and conventions Uganda has ratified and acceded to. These include the right to equality, access to health care, privacy, non-discrimination, and freedom of expression.

This research reviewed and analyzed AHA 2023, the ODPP’s Circular and primary data from interviews with key informants using the human rights framework

By examining the Act and its implementation through the human rights lens, the study sought to establish the influence the ODPP’s Circular has had on the operationalization of AHA and the subsequent effects on the rights and freedoms of KPCs, that is, groups disproportionately affected by HIV and other health issues arising from the social and legal circumstances.

Furthermore, a human rights framework allowed for the identification of potential violations and provided a basis for advocating for legislative and policy changes that promote inclusivity and uphold the dignity of all Ugandans, regardless of sexual orientation or gender identity. This framework ensured the research not only investigated the effectiveness of the Circular but also critiqued the broader context of the legislation and its alignment with international human rights standards.

5. STUDY FINDINGS

This section presents the findings of the study. It is composed of three sections: i) a review of relevant legal and human rights standards impacted by the Anti-Homosexuality Act, 2023; ii) an analysis of the interpretation and application of the ODPP Circular; and iii) emerging challenges in the implementation of the ODPP Circular.

The process of sanctioning homosexuality and the eventual enactment of the Anti-Homosexuality Act (2023) has been rife with debate about moral and religious values on one hand, and human rights on the other

5.1 A review of relevant legal and human rights standards affected by the Anti-Homosexuality Act 2023

The Constitution (1995) is the supreme law of Uganda, and is binding on all authorities and persons in the country.¹⁴ Any law or custom which is inconsistent with the Constitution is null and void.¹⁵ The process of sanctioning homosexuality and the eventual enactment of the Anti-Homosexuality Act (2023) has been rife with debate about moral and religious values on one hand, and human rights on the other.

The constitutionality of AHA was challenged in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others*.¹⁶ In its April 2024 decision, the Constitutional Court held that the Act was not entirely unconstitutional and nullified only four provisions thereof. The provisions nullified were:

- i) Section 3(2)(c) on aggravated defilement where the victim contracts a terminal illness as result of the sexual act which by terminal illness includes HIV;¹⁷
- ii) Section 9 of the Act on holding premises facilitating the commission of homosexuality;
- iii) Section 11(2)(d) on the promotion of homosexuality through the intentional lease, sub-lease or use of a house, building or establishment for the purposes outlawed by the Act; and
- iv) Section 14 on the duty to report acts of homosexuality.¹⁸

¹⁴ Article 2 (1), Constitution of Uganda, 1995.

¹⁵ Article 2(2) of the Constitution of Uganda, 1995.

¹⁶ *Fox Odoi* (n 12 Above).

¹⁷ As above at 200.

¹⁸ As above at 190.

AHA operates alongside the Penal Code Act, which is the primary law providing for offences and punishments in Uganda

Nonetheless, significant questions persist regarding the constitutionality of AHA (2023), and the decision of the Constitutional Court has been appealed to the Supreme Court. In this context, this section of the study examines AHA (2023) in relation to relevant constitutional and human rights principles in Uganda, which are inevitably impacted by its enforcement and implementation.

It is important to note, in this regard, that AHA operates alongside the Penal Code Act¹⁹, which is the primary law providing for offences and punishments in Uganda. The Act provides for the criminalization of consensual adult same-sex relations under sections 145, 146 and 148.²⁰ Section 145 provides that any person who has carnal knowledge of any person against the order of nature or permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence punishable by imprisonment for life. Section 146 goes ahead to criminalize the attempt to commit unnatural offences, which is punishable by imprisonment for seven years.

For its part, Section 148 criminalizes ‘indecent practices’. According to this provision, any person who commits any act of ‘gross indecency’ with another person or 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 with another person commits an offence and is liable to imprisonment for seven years.

5.1.1 The principle of legality

The principle of legality is a fundamental element of domestic and international criminal law systems, requiring crimes and punishments to be established by law at the time of commission to provide protection and legal certainty to individuals. Under international law

The use of certain terms in AHA (2023), such as the offences under Sections 6, 7, 9, 11(1), 11(2) (a)-(e) and 14(1) and (2), renders some of the offences ambiguous, vague and overly broad, in violation of the principle of legality provided for under Article 28(12) of the Constitution. The principle of legality is a fundamental element of domestic and international criminal law systems, requiring crimes and punishments to be established by law at the time of commission to provide protection and legal certainty to individuals. Under international law, Uganda is bound to abide by Article 15 of the International Covenant on Civil and Political Rights (ICCPR) (1966) that guarantees the principle of legality.²¹

The principle has been interpreted internationally to mean that a criminal conviction should never be based upon a norm which an accused could not reasonably have been aware of at the time of the acts, and this norm must make it sufficiently clear what act or omission could engage their criminal responsibility.²²

Under domestic law, the principle of legality is provided for in Article 28(12) which states that: ‘except for contempt of court, no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed by law.’ This indeed was the subject of the petition against AHA (2023) in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others*.²³ However, the Constitutional Court took the view that the terms used in the Act were clear and capable of literal interpretation in the English language, this strict application of the principle of legality was inconsistent with both the history of the principle and the previous jurisprudence of the Court itself.²⁴

19 Chapter 128, Laws of Uganda.

20 S Nyanzi and A Karamagi ‘The social-political dynamics of the anti-homosexuality legislation in Uganda (2015) 29 Agenda 24.

21 UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

22 *Mitar Vasilijevic*, Case No. IT-98-32-T, Trial Judgement, 29 Nov. 2002. Par. 193.

23 *Fox Odoi* (n 12 Above).

24 See, for instance, the approach adopted by the Court in *Centre for Domestic Violence Prevention & Others v Attorney General*, Constitutional Petition No. 13 of 2014.

As the European Court of Human rights (ECHR) stressed in *S.W. v. United Kingdom* the principle of legality should be ‘construed and applied [...] in such a way as to provide effective safeguards against arbitrary prosecution, conviction and punishment.’²⁵ The failure to do this in the *Fox Odoi* case leaves AHA (2023) open, effectively making it a tool for legal and extra-legal abuse of the human rights of sexual and gender minorities in Uganda.

The broad offences under AHA, and particularly the vague proscription of ‘promotion’ of homosexuality, leaves wide room for a diverse array of conduct to be construed as falling within the scope of the Act. On the face of it, for instance, it is not clear whether a seminar on sexual and reproductive health and rights (SRHR), including modules on prevention of HIV within LGBTIQI+ communities, would not be deemed to be ‘promotion of homosexuality’ within the meaning of AHA. Such a position is patently inconsistent with the constitutional protection under Article 28 (12) and similar guarantees under international human rights law.

The broad offences under AHA, and particularly the vague proscription of ‘promotion’ of homosexuality, leaves wide room for a diverse array of conduct to be construed as falling within the scope of the Act

5.1.2 Right to human dignity

The right to dignity is enshrined in Article 5 of the African Charter on Human and Peoples’ Rights²⁶; Article 7 of ICCPR; and the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment²⁷. In Uganda’s legal system, the right is guaranteed under Article 24 and entrenched in Article 44 of the Constitution, and is non-derogable.

The right to human dignity is among the rights that are arguably infringed by the provisions of AHA (2023)

The right to human dignity is among the rights that are arguably infringed by the provisions of AHA (2023) through criminalization of consensual same-sex relations. The Constitutional Court in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others* concluded that AHA did not violate the right to dignity, based on a consideration of Ugandan cultural values. Aside from its negation of the reality of the plurality of cultures in Uganda²⁸, this finding also failed to consider the constitutional principle that the enjoyment of right to culture should not prejudice the rights of other persons²⁹.

It is inconceivable that there would be any way of enforcing the penal provisions in AHA without inevitably violating the human dignity of the affected persons. By its very nature, the law deals with private and intimate sexual conduct, and would automatically involve intrusive and dehumanizing modes of investigation, arrest and evidence-gathering, including such crude measures as anal examinations. Indeed, examples of the inherent indignity implicated by such legislation have already been provided by such litigation as that in *Yvonne Oyo and Juliet Mukasa v Attorney General*,³⁰ in which local councils and police officers, suspecting the applicants to be lesbians, attacked their home, rifled through their private belongings and correspondence and subjected one of them to a forced physical genital examination. The court found the conduct in question to have violated the freedom from cruel, inhumane and degrading treatment, protected under the Constitution and under international human rights law. It is unfortunate that AHA creates and entrenches a legislative environment whose effect can only be to enable and perpetuate such degrading treatment.

25 *S.W. v. United Kingdom*, 571 Eur. Ct. H.R. (335ser. B) par. 34-36, 41-42 (1995).

26 Organization of African Unity (OAU), African Charter on Human and Peoples’ Rights (“Banjul Charter”), CAB/LEG/67/3 rev 5, 21 I.L.M. 58 (1982), 27 June 1981.

27 UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984.

28 Managing Diversity- Uganda’s Experience, A Collection of Essays Produced by the Pluralism Knowledge Programme in Uganda, Cross Cultural Foundation of Uganda, ISBN:978-9970-9274-0-1. From <https://crossculturalfoundation.or.ug/docs/Managing-Diversity-Ugandas-Experience-@CCFU2014-1.pdf> (last accessed 11 August 2024).

29 Articles 2, 32, 33, 37 and 43 of the 1995 Constitution.

30 *Yvonne Oyo and Juliet Mukasa v. the Attorney General* Misc. Application No. 247 of 2006 [20081 UGCC.

5.1.3 Right to equality and freedom from discrimination

The rights to equality and freedom from discrimination are protected by ICESCR, ICCPR, and the national Constitution

The rights to equality and freedom from discrimination are protected by ICESCR (Article 2 (2)) and ICCPR (Article 2 (1)). They are also protected under Articles 20 and 21 of the Constitution of Uganda. While the Constitutional Court in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others* declined to find that the Act violated these rights and freedoms, this holding is not consistent with the Court's own previous jurisprudence.³¹ The decision is also inconsistent with the jurisprudence of several international courts and tribunals, including the Human Rights Committee in *Toonen v Australia*³² and the African Commission on Human and Peoples' Rights in *Zimbabwe NGO Human Rights Forum v. Zimbabwe*.³³

In the 2009 case of *Adrian Jjuuko v Attorney General*³⁴, the Constitutional Court of Uganda dealt with a challenge to Section 15 (6)(d) of the Equal Opportunities Commission Act of 2007, which prohibited the Commission from investigating or hearing: 'any matter involving behavior which is considered to be immoral and harmful, or unacceptable, by the majority of the cultural and social communities in Uganda.' The petitioner argued that this provision offended the constitutional guarantees of equality and non-discrimination.

AHA not only does what the impugned Section 15 (6) (d) of the Equal Opportunities Act did, it goes much further to criminalize the sexual expression of LGBTQI+ persons

In upholding the petition, the Constitutional Court observed that: '... Having cautiously examined the S.15(6)d of the EOC Act as against Articles 20, 21, 28 and 43 of the Constitution (1995), we find that the impugned section indeed contravenes Articles 20, 21, 28 and 43 of the Constitution of Uganda by: 1) creating a class of social misfits who are referred to as immoral, harmful and unacceptable; 2) legislating the discrimination of persons said to be immoral, harmful and unacceptable; and 3) den[ying] access of justice to that class/ section of people by prohibiting the Equal Opportunities Commission from investigating persons who it adjudges immoral, socially harmful and unacceptable ...'

Evidently, AHA not only does what the impugned Section 15 (6)(d) of the Equal Opportunities Act did, it goes much further to criminalize the sexual expression of LGBTQI+ persons in Uganda and broadly renders them a subordinate class of citizens – politically, socially, economically and legally. The observations of the Constitutional Court in *Adrian Jjuuko v Attorney General* would thus apply with equal force to AHA, and it is most anomalous that the Court in *Hon. Fox Odoi-Oywelowo* made no reference to this precedent of its own, which was binding on it. Indeed, on this ground, the decision in *Hon. Fox Odoi-Oywelowo* was arguably reached *per incuriam*³⁵. To this extent, the decision in *Fox Odoi v Attorney General* is legally questionable and patently illegitimate.

31 See *Adrian Jjuuko v Attorney General*, Constitutional Petition No.1 of 2009.

32 Communication No. 488/1992: *Toonen v. Australia*, U.N. GAOR, Hum. Rts. Comm., U.N. Doc. CCPR/C/50/D/488/1992 (1994), reprinted in 1 INT'L HUM. RTS. REP. 97 (1994). P 105.

33 Communication 245/2002, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, 21st Activity Report, EX.CL/322(x), Annexure III. In this decision, the Commission noted that: 'Together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the [African] Charter provides the foundation for the enjoyment of human rights ... The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation' - at paragraph 169.

34 *Adrian Jjuuko* (n 30 above).

35 *Per incuriam* is a Latin legal expression referring to a judgment made without due regard to relevant law

5.1.4 The right to privacy

The right to privacy is guaranteed under the ICCPR (Article 17 (1)) and the African Charter.³⁶ The right to privacy is also protected under Article 27 of the 1995 Constitution, which states that no person may be subjected to interference with the privacy of their home, correspondence, communication, or other property.

Although the Constitutional court in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others* found that the duty to report under section 14 of the Act constitutes undue interference with the privacy of individuals³⁷, it strangely failed to find criminalization to have the same effect. This finding is out of step with previous jurisprudence of Ugandan courts, including the decision in *Yvonne Oyo and Juliet Mukasa v Attorney General*.³⁸ It is also inconsistent with decisions of international courts and tribunals³⁹, and comparative case law⁴⁰.

As noted in Section 5.1.2 above, it is difficult to conceive of any way AHA can be enforced without severe intrusion into the most intimate and private lives of people, as the facts in the *Yvonne Oyo and Juliet Mukasa* case demonstrate. In a bid to ‘prove’ that the applicants were engaged in same-sex activity, a group of local council officials and vigilantes, with the aid of police officers, invaded the applicants’ home, ransacked their property (especially computers) and forced one of them to urinate in the presence of other persons to ostensibly determine their gender. The Court, in this instance, correctly found that there had been a violation of among others, Article 27 of the Constitution. The enactment and passage of AHA can only lead to more, not less, of conduct such as that condemned by the court in the *Yvonne Oyo and Juliet Mukasa* case.

it is difficult to conceive of any way AHA can be enforced without severe intrusion into the most intimate and private lives of people, as the facts in the *Yvonne Oyo and Juliet Mukasa* case demonstrate

5.1.5 Right to health

The right to health is guaranteed under ICESCR (Article 12); CEDAW (Article 12); the African Charter (Article 16), and the Maputo Protocol (Article 14 (1)(a)). In Uganda, the right is also guaranteed under Objectives XIV and XX of the National Objectives and Directive Principles of State Policy, read together with Article 8A of the Constitution.⁴¹

The criminalization of same-sex relations in Sections 2, 3 and 4 of AHA; the blanket criminalization of ‘promotion’ of homosexuality in Section 11; and the duty to report in Section 14 all have substantial adverse implications on the right to health of LGBTIQ+ persons, and specifically their right to access health care. The Constitutional Court in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others* failed to declare all the above-mentioned sections in violation of the right to health, only nullifying Section 3(2) (c), 11(2)(d) and 14 on this ground.⁴²

Nonetheless, the Sections left standing leave open avenues under which the rights to health of sexual and gender minorities will be compromised, with adverse effects not just for these KPCs but the general public health outcomes of the country as a whole.

The criminalization of same-sex relations; the blanket criminalization of ‘promotion’ of homosexuality; and the duty to report all have substantial adverse implications on the right to health of LGBTIQ+ persons

36 The Charter has no express provision for the right to privacy, but it can be inferred from the right to life & liberty. See jurisprudence in *Social & Economic Rights Action Centre & the Centre for Economic & Social Rights v Nigeria*, Communication 155/9627 October 2001.

37 *Fox Odoi* (n 12 Above) page 141.

38 *Yvonne Oyoo and Juliet Mukasa v. the Attorney General* Misc. Application No. 247 of 2006 [20081 UGCC.

39 See, for instance, the Human Rights Committee’s holding in *Toonen v. Australia* that: ‘adult consensual sexual activity in private is covered by the concept of privacy’ - UN Human Rights Committee; Communication No. 488/1992 pg.9.

40 See, for instance, the decisions of Court of Appeal of Botswana in *Attorney General v Letsweletse Motshidiemang and LEGABIBO (as amicus)* (Civil Appeal no CACGB 157-19, unreported). Pg.151 and the Court in South Africa in *National Coalition for Gay and Lesbian Equality & Another v Minister of Justice & 2 Others*, (CCT 11/98) [1998] ZACC 15; 1999 (1) SA 6.

41 See the decision of the Constitutional Court in *Centre for Health, Human Rights and Development (CEHURD) v Attorney General*.

42 *Fox Odoi* (n 12 Above) Pg 200-201.

As noted in Section 5.1.1 above, for instance, it is quite possible that the production and dissemination of health sensitization materials or conducting training sessions related to SRHR in general (including the prevention of HIV and other STIs) might be deemed to constitute ‘promotion of homosexuality’ – an offence which attracts up to 20 years imprisonment under Section 11 of AHA. This is certain to have a chilling effect on health workers and other individuals and organizations working in good faith to address Uganda’s pressing public health challenges, with the potential of rolling back decades of progress in the fight against HIV.

5.1.6 The right to housing and property

The Universal Declaration of Human Rights provides for the right to an adequate standard of living for everyone

Under international law, Article 25(1) of the Universal Declaration of Human Rights (UDHR) provides for the right to an adequate standard of living for everyone and this includes housing. This is reflected by ICESCR (Art. 11(1)). Although the African Charter is silent on the right to housing, the African Commission has interpreted other rights in the Charter to include the right to adequate housing as was held in *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria*.⁴³

The rights to property and housing are also a part of the 1995 Constitution. The right to property is protected under Article 26, while the right to housing is guaranteed under Objective XIV of NODPSP, read together with Article 8A. The Constitutional Court in *Hon. Fox Odoi-Oywelowo & 21 Others v Attorney General & 3 Others* struck down the entire Section 9 and Section 11(2)(d). However, the court rejected the contention that those provisions violate the right to property as espoused under Article 26.

Nonetheless, the retention of broader provisions of AHA (2023) has direct and indirect negative implications for the right to housing and property – including creating a climate for victimization and persecution of LGBTQI+ persons by state and non-state actors. For instance, a landlord might still be potentially liable for ‘promotion of homosexuality’ under the terms of Section 11 (2) (c), which defines ‘promotion’ to include the provision of financial support – including in kind – ‘to facilitate activities that encourage homosexuality or the observance or normalization of conduct prohibited under [the] Act’.

Hence, it is possible that letting premises to LGBTQI+ persons or organizations whose work is aimed at protecting the rights of KPCs might be construed as the provision of ‘in kind’ support under Section 11 (2)(c). This scare landlords from accepting or maintaining tenants who are, or who are perceived, to be homosexuals. This not only deprives such individuals of the right to housing, but also denies landlords of the right – protected under Article 26 of the Constitution – to enjoy the benefits (in terms of rental income) that would otherwise accrue from their properties.

43 Communication 155/96, 15th Annual Activity Report of the ACHPR (2002); 10 IHRR 282 (2003) at para 60

5.1.7 Right to lawful profession, occupation, trade or business

These rights are protected under UDHR (Art. 23(1)); ICESCR (Art. 6) and the African Charter (Art. 15). They have also been asserted by international tribunals: *Pavez Pavez v Chile*, the Inter-American Court of Human Rights referred to General Comment No.18 of the ICESCR Committee on the right to work (ICESCR, Art. 6). The court held that disqualification of the applicant from teaching the ‘Catholic religion’ because of her sexual orientation was a violation of her right to work as guaranteed by ICESCR.⁴⁴ These rights are also guaranteed by the Constitution of Uganda (Art. 40).

The court held that disqualification of the applicant from teaching the ‘Catholic religion’ because of her sexual orientation was a violation of her right to work

Although the Constitutional Court in the *Fox Odoi* case declined to find that any of the provisions of AHA constituted a violation of Article 40⁴⁵, an analysis of the Act makes it difficult to justify this finding. In a national climate already infused with fear and prejudice directed towards KPCs, the provision for specific bars for post-conviction employment under AHA (in Sections 12 and 13) may have the effect of triggering wider legal and extra-legal constraints on the ability of sexual and gender minorities to obtain formal jobs.

5.1.8 The right to freedom of conscience, expression, movement, religion, assembly and association

These rights are guaranteed under ICCPR (Articles 19, 21 and 22); and the African Charter (Articles 9(2), 10 and 11). They are also protected under Article 29 of Uganda’s Constitution.

The importance of these rights in a democratic society have been emphasized by Courts in Uganda on several occasions. One of the clearest articulations in this regard is the dictum of Mulenga JSC in *Charles Onyango Obbo and Another v Attorney General* in which he observed that:

[I]t is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information ... [A] person’s expression or statement is not precluded from constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Everyone is free to express his or her views. Indeed, the protection is most relevant and required where a person’s views are opposed or objected to by society or any part thereof, as ‘false’ or ‘wrong’.⁴⁶

The reasoning is similar to that of the UN Human Rights Committee in *Irina Fedotova v Russian Federation*, in which it upheld the petitioner’s display of posters affirming pride in her homosexuality as ‘giving expression to her sexual identity and seeking understanding for it’.⁴⁷

Unfortunately, Uganda’s Constitutional Court failed to find AHA to be inconsistent with the freedoms of expression, association and belief. Indeed, it suggested in its decision in the *Fox Odoi* case (page 164, paragraph 438), that AHA was, among other things, ‘intended to confine academic freedom to the academic setting so as to avert public disquiet and undue social upheaval’ [Emphasis added]. This language is manifestly out of step, not only with the Court’s own previous jurisprudence (in *Charles Onyango Obbo* and other cases), but also with the broad consensus of international courts and tribunals.

Uganda’s Constitutional Court failed to find AHA to be inconsistent with the freedoms of expression, association and belief

44 *Pavez Pavez v Chile* Inter American Court of Human Rights Judgment of February 4, 2022 Pg 37-38.

45 *Fox Odoi* (n 12 Above) 174.

46 *Charles Onyango-Obbo & Another v The Attorney General* Constitutional Appeal No. 2 of 2002; [2004] UGSC 1).

47 *Irina Fedotova v Russian Federation*, Communication No. 1932/2010 at pg. 16.

Freedom of expression does not only relate to opinions that are considered socially acceptable, but extends to, and especially covers views that might invite ‘public disquiet’ and ‘social upheaval’. By suggesting otherwise, the Constitutional Court in *Fox Odoi* essentially deprived Article 29 of its basic character, and rendered all individuals and organizations who might advocate for the rights of LGBTQI+ persons (including their SRHR) open to arrest and prosecution for ‘promoting’ homosexuality.

5.1.9 The right to liberty and the right to fair hearing

The right to liberty is provided for in Uganda under Article 23 of the Constitution, while the right to a fair trial is stipulated in Article 28

Internationally, the right to a fair hearing is guaranteed under ICCPR (Art.14 (1)) and the African Charter (Article 7); and the right to liberty is protected under Article 9 of ICCPR and Article 6 of the African Charter.⁴⁸

The right to liberty is provided for in Uganda under Article 23 of the Constitution, while the right to a fair trial is stipulated in Article 28. The Constitutional Court has previously noted, in *John Ken Lukyamuzi v Electoral Commission and Attorney General*⁴⁹, that ‘the right to a fair hearing’ guaranteed by Articles 28(1) and 44(c) of the Constitution is about due process, which must be observed by all courts of law or tribunals for justice not only to be done but also to be seen to be done.⁵⁰

These rights and freedoms are also significantly imperiled by the letter and spirit of AHA, which provides for a wide scope of unconstitutional deprivations of liberty arising from sexual and gender expression. It in effect, emboldens ‘mob justice’ and other abuses, such as extortion, blackmail, intimidation and manipulation.

5.2 Interpretation and application of the ODPP Circular on AHA 2023

5.2.1 The situation prior to the issuance of the ODPP Circular

The enactment of AHA has had a negative impact on the human rights of LGBTQI+ persons in Uganda.

The enactment of AHA has had a negative impact on the human rights of LGBTQI+ persons in Uganda. Before its formal enactment into law, the draft law created a fertile environment for harassment and intimidation of sexual and gender minorities. Between 21 March and 20 April 2023, when AHA was still a bill, 11 arrests of suspected LGBTQI+ persons were made. These arrests encompassed 20 persons. Of the 11 cases, seven did not advance to the prosecution level, while four were taken to the courts.⁵¹

In another pre-AHA incident, a transgender athlete was accosted by a mob, who forcibly removed her clothing and compelled her to parade through the streets naked while the crowd harassed, pelted her with objects, photographed and videotaped her, and even sexually assaulted her.⁵² She was detained by police for two days before being brought before a court, where her application for bail was denied on the basis that she lacked sureties, as her associates feared retribution for appearing to support her.⁵³

48 See, in this instance, *Media Rights Agenda v Nigeria*, Comm. Nos. 105/93, 128/94, 130/94 and 152/96 (1998). Par. 87.

49 *John Ken Lukyamuzi v Electoral commission and Attorney General*, Constitutional Appeal No. 02 Of 2007.

50 As above pg.18.

51 HRAPF: Arrests, evictions and violence: Report of violations against LGBTQ persons for the first month following the passing of Uganda’s Anti-Homosexuality Bill, 2023. Kampala, 21st April 2023 at 3. Available <https://hrapf.org/mdocs-posts/hrapfs-report-on-violations-against-lgbt-persons-for-the-first-month-following-the-passing-of-the-anti-homosexuality-bill-2023/>.

52 Above.

53 Above.

The hysteria occasioned by the legislative process and the eventual enactment of AHA continued through the months of April and May 2023, during which 15 arrests were made. These arrests involved 20 persons in total. Of the 15 cases, nine did not proceed to trial; six were taken courts.⁵⁴

These violations gained momentum after AHA came into force on 30 May 2023. The following month, two men who had previously shared a house were arrested. They were charged with the offence of homosexuality under Section 2 of AHA. The arrests followed a report made by their landlord to the police, alleging that the two were homosexuals.⁵⁵

In the month that followed, six arrests of 10 people perceived to be homosexuals were made.⁵⁶ However, none of these cases were prosecuted by the DPP under AHA.⁵⁷

Instead, alternative charges were preferred, including one charge of indecent practices under Section 148 of the Penal Code Act; one of cyber harassment under Section 24 of the Computer Misuse Act 2010; and one of domestic violence under the Domestic Violence Act. Most of these incidents occurred within the capital Kampala and the metropolitan district of Wakiso. One case was reported a piece, in Busia district in the East and in Dokolo district in the North.⁵⁸

Similarly, in August 2023, there were six instances of people arrested on suspicion of homosexuality. These arrests affected 11 people, six of whom were subjected to coerced anal examinations during their detention. Of these six instances, two cases proceeded to court (on charges of homosexuality and aggravated homosexuality), while four were resolved at the police level (including two cases, in which suspects were released without charge).⁵⁹ The arrests took place in the districts of Kampala and Wakiso in central Uganda; Soroti and Sironko district in the East; and Kyegegwa district in the West.⁶⁰

Besides the formal arrests and prosecution, the period after the enactment of AHA witnessed vigilante action and mob justice targeting sexual and gender minorities. In the Kyegegwa case, in July 2023, two individuals suspected to be homosexuals were physically assaulted by a group of agitated community members.⁶¹ They were taken into custody, and subsequently charged with offenses related to homosexuality. They were held in detention for five days before being released on police bond.⁶²

In the face of overwhelming evidence of the adverse impact of the AHA on the rights of sexual and gender minorities in Uganda, including through the misinterpretation and misapplication of the Act by JLOS actors, on 25 August 2023, the ODPP issued a Circular⁶³ to all prosecutors giving guidance on the management of cases under

In the face of overwhelming evidence of the adverse impact of the AHA on the rights of sexual and gender minorities in Uganda, on 25 August 2023, the ODPP issued a Circular to all prosecutors giving guidance on the management of cases under AHA (2023).

54 Increasing violence: Cases of violence and violations against real or suspected LGBTIQ persons for the period between the passing of the Anti-Homosexuality Bill, 2023 (21st March 2023) and its coming into force (30th May 2023). Kampala, 19th June 2023. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-and-violations-before-the-aha-2023-came-into-force/> at 6.

55 Above. HRAPF/PA/19/2023.

56 Two months after: Report on violence and violations on the basis of real or presumed sexual orientation and/or gender identity two months after the Anti-Homosexuality Act came into force. Kampala, 9th August 2023. At 15. <https://hrapf.org/mdocs-posts/hrapfs-report-on-enforcement-of-the-aha-for-july-2023/> at 15

57 Above.

58 Above.

59 Report on violence and violations based on real or presumed sexual orientation or gender identity during the third month of the enforcement of the Anti-Homosexuality Act, 2023. 13th September 2023 at 15. <https://hrapf.org/mdocs-posts/hrapfs-report-on-violations-through-the-enforcement-of-the-aha-in-august-2023/> .

60 Above.

61 HRAPF/PA/142/2023, 3rd August 2023.

62 Above.

63 Director of Public Prosecutions Jane Frances Abodo – Circular No. 18/2023 – Re: Management of Cases with Charges preferred under the Anti-Homosexuality Act 2023 (25.08.2023).

AHA (2023). In the Circular, the DPP acknowledged that their attention had been drawn to charges that were being preferred without internalization of the crucial aspects of the Act.

5.2.2 The interpretation and application of the ODPP Circular

The ODPP Circular emphasizes that AHA criminalizes only offences where a sexual act, as defined under Section 1 of the Act, has been performed

The ODPP Circular emphasizes that AHA criminalizes only offences where a sexual act, as defined under Section 1 of the Act, has been performed. The DPP, relying on section 2(5) and 3(5) of AHA, emphasizes in the Circular that a person who is alleged or suspected of being a homosexual who has not committed a sexual act with another person of the same sex does not commit the offence of homosexuality. This means that mere existence and identification as a member of the LGBTQI+ community is not a crime; it is the performance of the sexual act that is a crime.

The DPP further directs that all files with charges under AHA be first submitted to headquarters with a written legal opinion for further guidance before a charge can be made. Lastly, the DPP pledges that the ODPP will organize sensitization meetings for all officers on ‘key aspects’ of AHA.

5.2.3 The situation following the issuance of the ODPP Circular

The ODPP Circular does not appear to have had any marked impact on the practice of prosecutors and other JLOS actors following its issuance

The ODPP Circular does not appear to have had any marked impact on the practice of prosecutors and other JLOS actors following its issuance. In September 2023, three arrests based on actual or perceived sexual orientation or gender identity were recorded in Kampala. One incident resulted in a charge of homosexuality under Section 2 of AHA, while another related to promotion of homosexuality under Section 11 of the same law.⁶⁴ Five persons were affected by these cases.

In October 2023, six persons were arrested on charges related to their perceived sexual orientation or gender identity. The people were charged with offenses under AHA, although none was taken to court.⁶⁵ Of these, five cases involved charges of homosexuality, while one alleged attempted homosexuality. These cases were: four in Kampala, one in Wakiso, and one in Mukono.

In November 2023: 11 persons were arrested on charges related to their sexual orientation.⁶⁶ Four of these resulted in charges under AHA, with two proceeding to court and two individuals being released on police bond.⁶⁷ In the two cases that proceeded to court, one person was charged with aggravated homosexuality, while another was charged with homosexuality.⁶⁸ Three people were arrested on charges related to their sexuality, which were pursued under the Penal Code.⁶⁹ One person was charged with indecent practices, another was charged with procuring unnatural offenses, and one individual was arrested due to their sexuality, but no charges were brought against them.⁷⁰

64 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. 13th October 2023. At 16. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-september-2023/>.

65 Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of October 2023. 16th November 2023 at 17. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-october-2023/>.

66 Report on cases of violence and violations based on real or presumed sexual orientation and/or gender identity during the month of November 2023. Available at <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-november-2023/> at 14.

67 As above.

68 Above.

69 Above.

70 Above.

In November 2023, in Buikwe, one LGBT person was arrested for possession of sex lubricant. Later, the health worker who provided lubricant was arrested. The health worker was charged with procuring unnatural offences under the Penal Code Act and briefly detained before being released on bond.⁷¹ There seems to be a deliberate strategy by prosecutors and the police to evade the terms of the ODPP Circular by charging persons under the Penal Code Act and other laws, rather than the AHA.

There was an increase in arrests in March 2024, with at least nine cases involving arrests on sexuality-related charges

In December 2023, six persons arrested in different places, three of whom were charged under AHA and released on police bond. In the other three cases, two clients were released on bail by courts in Busia and Makindye, and one client was granted and police bond.⁷² In one case, a group of people were arrested at the Busia border crossing on 24 December 2023 after they were found in possession of condoms and sex lubricants. They underwent anal examinations and charged with homosexuality. On 28 December, they appeared before Court, where the charges were, out of the blue, changed to possession of narcotics, after spending four days in police detention.⁷³

In January 2024, at least four cases involving arrests on charges related to sexual orientation (homosexuality and attempted homosexuality) were registered. All the arrested were charged under AHA and released on police bond with their files still under investigation or awaiting guidance from the ODPP.⁷⁴ These arrests affected six individuals in total, with two cases in Wakiso district, one in Mukono district, and one in Kabarole district.⁷⁵

Further, in February 2024, at least three cases involving arrests on charges related to homosexuality were reported. All those arrested were charged under AHA and released on police bond, with their cases still under investigation, and some of the files awaiting forwarding to the DPP for further guidance.⁷⁶ The arrests affected three individuals in total, with two cases in Wakiso district, and one case in Kampala district.

There was an increase in arrests in March 2024, with at least nine cases involving arrests on sexuality-related charges. In seven cases, those arrested were charged under AHA. However, in two cases, individuals suspected of homosexuality were instead later charged with possession of opium and unnatural offences.⁷⁷ Out of the nine cases registered in March, seven individuals were released on police bond, one person was released after paying a bribe, and one case resulted in the individuals being arraigned before court and remanded. These arrests affected a total of 20 persons, with four cases in Kampala, three in Wakiso, and one each in Jinja and Nakasongola districts. In one of the cases, the charge was later changed from homosexuality to possession of narcotics without explanation.⁷⁸ In another case, involving men arrested in a bar near Owino market in Kampala, one of the men was found to have condoms and lubricants and the entire group was deemed by police to be homosexuals solely on this basis and booked for the offence of homosexuality at Old Kampala Police Station.⁷⁹

71 HRAPF/PA/267/2023. See above at 15.

72 Report on violence and violations based on real or presumed sexual orientation or gender identity in the seventh month of the coming into force of the Anti-Homosexuality Act, 2023 (December 2023). 10th January 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-december-2023/> at 17.

73 Above, 19-20, HRAPF/PA/327/23 24/12/23.

74 Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of January 2024. 14th February 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-january-2024/> at 16

75 Above.

76 Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of February 2024, 13th March 2024, at 19 <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-february-2024/> .

77 Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of March 2024, 12th April 2024, At 15. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-march-2024/> .

78 HRAPF/PA/500/24 - 13/03/24 Wakiso - Possession of Opium.

79 HRAPF/PA/503/24 - 22/03/24 Kampala – Homosexuality.

The harassment and intimidation of LGBTQI+ persons continued in April 2024, with at least eight cases recorded, involving 18 individuals arrested on charges related to their sexuality

The harassment and intimidation of LGBTQI+ persons continued in April 2024, with at least eight cases recorded, involving 18 individuals arrested on charges related to their sexuality. In four of these cases, the individuals arrested were charged under AHA (including for the offences of homosexuality and promotion of homosexuality), while in the other four cases, the suspects were charged with different offences, including ‘loitering with intent to commit a crime’, criminal trespass, and forgery, and in one case, no charges were filed.⁸⁰ All individuals were released on police bond, and none of the cases proceeded to trial as the files were not sanctioned by the DPP for prosecution. Three of these cases were registered in Wakiso, two in Kampala, and one each in Arua, Buikwe, and Mbarara districts.

Similarly, in May 2024, at least five cases involving 11 individuals were reported concerning arrests on charges related to homosexuality.⁸¹ In three of these cases, the arrested were charged under AHA, including on charges of homosexuality and attempted homosexuality. In the two other cases, individuals suspected of homosexuality were charged with different offenses: being a ‘common nuisance’ and ‘conspiracy to commit a felony’. All individuals arrested were released on police bond. The charge of ‘conspiracy to commit a felony’ was laid against five men, with the only evidence against them being their habitation in a common residence. Two of these cases were registered in Wakiso, with one case each in Kayunga, Luweero, and Moroto districts.⁸²

Finally, in June 2024, at least five persons were arrested on charges related to their sexuality. Three of these cases involved charges of homosexuality under AHA 2023, while another case involved attempted homosexuality under the same law. One individual faced charges of both impersonation (under the Penal Code Act) and homosexuality (under AHA 2023), and another was charged with having carnal knowledge against the order of nature under the Penal Code Act.⁸³ All individuals arrested were subsequently released on police bond. Three cases were registered in Wakiso, Mukono, and Kasese.

80 Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of April 2024. 8th May 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-violations-based-on-real-or-presumed-sogi-for-april-2024/> at 11.

81 Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of May 2024. 11th June 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-and-violations-based-on-real-or-presumed-sogi-for-may-2024/> at 14.

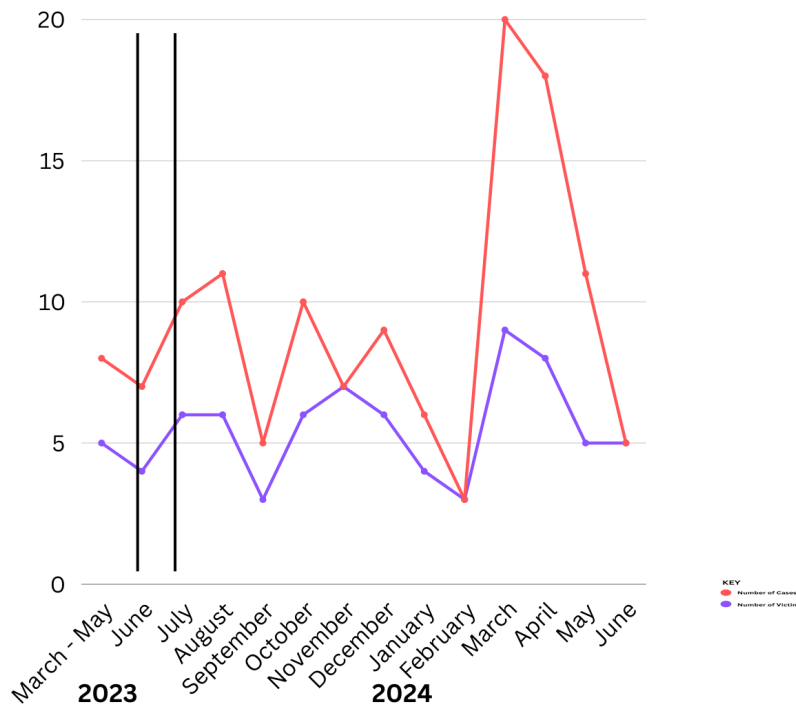
82 HRAPF/PA/584/24 - 20/05/24 Wakiso - Conspiracy to Commit a Felony.

83 Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of June 2024. 11th July 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-violations-based-on-real-or-presumed-sogi-for-june-2024/>

5.2.4 Analysis of findings

It is evident that the ODPP’s Circular has had little impact in terms of mitigating the harsh effects of AHA on the rights of LGBTQI+ persons in Uganda. Indeed, there is even a strong evidence showing that the situation has worsened following its issuance, as the graph below indicates:

It is evident that AHA has emboldened elements within the police, ODPP and other JLOS actors as well as non-State actors who harbor prejudice and animus against LGBTQI+



Cases of arrest registered by HRAPF from the enactment of AHA to June 2024. [Source: HRAPF]

A number of respondents interviewed in this study felt that the ODPP Circular was ineffectual in terms of displacing the clear terms of AHA. It appears that the police and other JLOS actors have little regard for the Circular, and have continued to violate the human rights of LGBTQI+ persons and the staff of organizations that work with them. According to one medical officer, for instance, health workers continue to face challenges in providing medical care to LGBTIQ+ persons, based on threats from security agencies:

We faced a challenge with one overzealous police officer who came asking for gay people’s information. We had challenges in Masaka and Fort Portal during the rapid response engagements. In Masaka, the RDC and the regional police commander told us that for police, as long as the law is still in the law books and has not been struck out, they were going to continue arresting gay people claiming that as long as the president’s signature is on the law, nobody can stop them from arresting homosexuals.⁸⁴

It is evident that AHA has emboldened elements within the police, ODPP and other JLOS actors as well as non-State actors who harbor prejudice and animus against LGBTQI+. The passing of this law appears to have legitimized and permitted homophobic persons to harass and intimidate LGBTQI+ persons through a range of legal and extra-legal means, including both weaponization of analogous offences in other laws and, in many instances, even mob justice.

84 Interview with Dr. Shaban Mugerwa, on 30th July 2024.

There is strong evidence that AHA and other laws are being used by persons to settle personal vendettas and for extortion and blackmail

As the data in the foregoing sections indicates, these individuals have been so determined that where it has been felt that the ODPP Circular may present prosecutorial difficulties, a strategy has been to proceed to charge persons with offences under other laws, such as the Penal Code Act, the Computer Misuse Act, among others. Strangely, even in most of these cases, the persons arrested and charged with such dubious offences as ‘common nuisance’, ‘loitering with intent to commit a felony’, ‘cyber harassment’, ‘possession of narcotics’ and others have allegedly been subjected to forced anal examinations. Persons have also been charged with offences analogous to those under AHA, but brought under the Penal Code, such as ‘gross indecency’ and others.

There is also strong evidence that AHA and other laws are being used by persons to settle personal vendettas and for extortion and blackmail. Many arrests followed personal disputes or accusations from family members, illustrating how AHA is being weaponized in personal conflicts or financial disputes. As a medical officer noted in an interview:

The other danger is from the law enforcers who have been reported to arbitrarily arrest and imprison homosexuals for financial gain. We have received reports that Uganda police is [one of] the most corrupt institutions. So, what happens is that police will impose frivolous charges that an individual is a homosexual so that they can extort them, riding on their fear of being detained or exposed as gay.⁸⁵

This is further corroborated by an Advocate of the High Court, a legal practitioner with Ubuntu Law and Justice Centre, who observed that:

There are people who took out their personal vendetta. Somebody would be having a score to settle with you, probably [dispute over] property. We recently had cases where people were claiming to have been robbed. And then somehow the case ends up to being one of homosexuality. So, a lot of people were picked up. And in most of those cases police would be looking to extort, they do not really want the case to progress but they want the person to stay in custody [and] after a while they will become frustrated, you know and as much as you come in to provide legal counsel, the person wants to get out as soon as possible.⁸⁶

The result is that the harshest and most negative impacts of AHA continue unabated, as the following testimonies from members of KPCs attest:

Sanie: The AHA has discriminated against LGBTQI from accessing essential medical services for example mental health services. I will not be open to my therapist on the nature of my sexuality and the relationships that I am in because I know it is illegal in Uganda.⁸⁷

K: We can no longer seek justice because institutions like the police concentrate on our sexuality rather than the injustices that we face. For example, if my partner beats me up and I need to go to the police to report the matter, I shall fear because I shall be flagged as a homosexual rather than receive help.⁸⁸

Hunhel: The AHA violated the freedom of expression of homosexuals. Before the enactment of AHA, we used to express ourselves freely on different social media platforms but we no longer do so because we are outlaws. We can no longer freely seek medical care. When I fell sick, I went to a hospital and I was instead asked about my sexuality and not what I was the sickness I was suffering from.⁸⁹

⁸⁵ Interview with Dr. Shaban Mugerwa, on 30th July 2024.

⁸⁶ Interview with Advocate Caroline Muchuma, on 30th July 2024.

⁸⁷ Focus Group Discussion with KPCs, 30th July 2024.

⁸⁸ Focus Group Discussion with KPCs, 30th July 2024.

⁸⁹ Focus Group Discussion with KPCs, 30th July 2024.

K: AHA has violated our right to have families; we have been tagged as paedophiles. Men have used our sexuality to secure custody of our children in courts of law. AHA has also violated our right to work. Our colleagues find it hard to participate in sports because they are considered too masculine to participate in women's sports. I have a friend who was dismissed from her workplace when the employer found out that she was homosexual.⁹⁰

Angel: My partner and I approached a fertility clinic because we wanted to have a child. But after AHA was passed, the fertility clinic refused to go through with the process because they feared that they would be shut down. Generally, there are difficulties for the LGBTQ community to access medical care. People are scared to go to hospitals to get lubricants, and condoms because they will be seen as homosexuals. This has increased the rates of HIV/AIDS in the LGBTQ community... AHA has led to the diversion of funding for crucial services in the LGBTQ community. All funding was diverted to legal redress because of the injustices AHA is causing. Issues such as economic empowerment are no longer catered for. AHA discriminates against persons with HIV who get a higher punishment than LGBTQ persons without HIV. Persons with HIV are not allowed to explore their sexuality.⁹¹

Evidently, the ODPP Circular has had little visible impact in terms of ameliorating the harsh effects of AHA.

It is also noteworthy that while the OPDD issued a second Circular on 4 April 2024 (following the 3 April 2024 decision of the Constitutional Court in the *Fox Odoi* case), in terms of which AHA-related cases could be handled by Regional Officers rather than being required to be forwarded to the headquarters, this second Circular left the terms of the original Circular otherwise substantially undisturbed. Indeed, there is little indication that this second Circular has been any more effective than the first in terms of ameliorating the deleterious effects of AHA. According to a report prepared under the aegis of an LGBTQI+ led movement – Convening For Equality (CFE) – and conducted by the Strategic Response Team (SRT) of that movement:

*Notably, the OPDD issued a second Circular on 4 April 2024 (following the 3 April 2024 decision of the Constitutional Court in the *Fox Odoi* case)*

It should also be noted that in the second circular, the DPP did not stop the enforcement of other provisions of AHA, nor had there been a capacity building of officers which the DPP promised in the first circular. This has resulted in continued enforcement of AHA even when the Court of Appeal decision has been appealed. As a result, 69 arrests involving 89 persons were conducted in this period. Majority of these persons were charged with homosexuality, followed by those charged with aggravated homosexuality.⁹²

⁹⁰ Focus Group Discussion with KPCs, 30th July 2024.

⁹¹ Focus Group Discussion with KPCs, 30th July 2024.

⁹² See Strategic Response Team, '*Eteeka lyayita: Vol 2 – A report on documented human rights violations and abuses of Lesbian, Gay, Bisexual, Transgender and Queer Persons (LGBTQ+) persons in Uganda, September 2023-May 2024*' at p.24, available at <https://ugandakpc.org/reports/eteeka-lyayita-vol-2/> <https://ugandakpc.org/reports/eteeka-lyayita-vol-2/> (last accessed 30 August 2024).

5.3 Emerging challenges encountered in the interpretation and application of the ODPP Circular

In this Section, some of the reasons for the limited impact of the ODPP Circular of 25 August 2023 are explored.

5.3.1 Status of the Circular as regards AHA and related laws

The major challenge with the ODPP Circular appears to be that, while it purports to guide prosecutors regarding certain positions in AHA

The major challenge with the ODPP Circular appears to be that, while it purports to guide prosecutors regarding certain positions in AHA, it leaves open a broad window for the continued application of the Act and related laws which continue to be resorted to by prosecutors and other law enforcement officials in the harassment of sexual and gender minorities.

Notably, although the Circular's clarification regarding the need for a sexual act to determine that the offence of homosexuality has been committed is important, it does not address the much wider offence of 'promotion of homosexuality' which remains a catch-all provision for the intimidation and persecution of not only LGBTIQ+ persons but also other persons (including health service providers) who engage with them. As one legal practitioner interviewed for this study noted:

... the Circular seems to imply that the basis of the entire AHA was to punish a sexual act. To my understanding, the basis of AHA was to go way beyond the provisions of the Penal Code and criminalize existence, not just that act. So, when I read this Circular, from my way of looking at things, it seems very disingenuous ... the fact that the law is couched in very broad terms to criminalize existence. Police will take you in and by the time the file is sanctioned and returned that do not proceed, there are real life consequences. Someone has been in police custody, even if it is not beyond the 48 hours, but their life is disrupted.⁹³

This view was echoed by another practising advocate, who noted the wide catchment of the 'promotion of homosexuality' offence and its negative impact on activities of health and legal service providers:

If I may speak broadly, as an organization, we have had quite a number of challenges. Some that are directly affecting our clients and others affecting us. The provisions of AHA are so broad and there is that offense of 'promotion of homosexuality'. In November 2023, we had a partner organization [whose staff] were arrested while in the community implementing HIV prevention activities. They put in custody for allegedly promoting homosexuality. It's a challenge because all organizations that are serving LGBTQI communities are broadly swept under this provision. The Act is very loosely worded that you cannot tell for sure what lies within the offense of promotion because when you look at it, even our work can be misinterpreted for promotion. As an office that receives LGBTQI persons for Legal Services, we had to also change our strategies from having an open-door policy where clients would walk into office, but we started meeting them at police and in safe spaces.⁹⁴

Similarly, the Circular does not take into account opportunities for continued arrests and prosecution of sexual and gender minorities using a wide range of problematic and constitutionally suspect laws and offences, such as the Computer Misuse Act, the Penal Code Act (offences such as 'common nuisance', 'loitering with intent to commit a felony', 'gross indecency', and others) and possession of narcotics. This matter was well articulated by a practicing advocate interviewed in this study, who observed:

93 Interview with Advocate Benon Makumbi, on 30th July 2024.

94 Interview with Advocate Caroline Muchuma, on 30th July 2024.

... The passage of this law created a toxic environment. Ordinarily, when Parliament passes an Act to deal with a specific issue — in this case same-sex relationships — the corresponding provisions in the Penal Code are struck out because you now have a more comprehensive law. But in this case, it seems they [were] worried that if this new law is successfully challenged in the Constitutional Court, there will be no fallback position.⁹⁵

Indeed, it appears that the Circular, even in its original form, could not have been expected to actually substantially mitigate the operation of AHA, but as has been argued, was rather devised as a means of responding to, and satisfying, the concerns of the international community regarding the application of the law. In an interview with a Chief State Attorney, they expressed the view that:

... There was an outcry from the international community on the violations of the rights of LGBTQ by the AHA. The Circular was therefore issued to give the international community a message that Uganda is not persecuting LGBTQI+ community.⁹⁶

5.3.2 Limitations in the scope of Circular's addressees

The ODPP Circular is also limited in terms of scope as it is only, and could only, be addressed to prosecutors, who fall within the supervisory jurisdiction of the DPP.

The ODPP Circular is limited in terms of scope as it is only, and could only, be addressed to prosecutors, who fall within the supervisory jurisdiction of the DPP

Interviews with a number of other JLOS actors also revealed a broad consensus as to the limited scope of the Circular. For instance, in a Focus Group Discussion (FGD) with officers from police health services (Police Health Centre IV), the officers did not know very much about the Circular, and noted that they were primarily health workers outside the scope of application of any such document.⁹⁷ The result is that a number of indignities which attend the operation of AHA, such as forced anal examinations, are reported to continue unabated. For instance, responses from police health services officers revealed that these tests are being carried out, despite the officers' prevarication regarding the consensual nature of such examinations. One officer observed:

If a person is brought to us by the Investigating Officer in Police to be examined, we shall follow instructions. If the file directs that we carry out anal tests, we shall do just that.⁹⁸

It is evident, from the above narration, that there is in fact little room, if at all, to withhold consent for anal examinations, given the officers' understanding that such tests are mandated under the law. The continued use of forced anal examinations was confirmed by another police officer, who wished to remain anonymous:

We conduct mandatory medical tests because it is a procedure required in gathering evidence.⁹⁹

The position as to the limited scope of the ODPP Circular was also confirmed in an interview with a Chief State Attorney, who noted:

The Circular is not binding on the other JLOS actors. The Circular only addresses the prosecutors. JLOS actors do not prosecute, they only investigate and apprehend suspects.¹⁰⁰

The Chief State Attorney also confirmed the continued practice of invasive and non-consensual practices, such as forced anal examinations, notwithstanding the issuance of the Circular – a matter linked to the limited scope of its addressees:

95 Interview with Advocate Benon Makumbi, on 30th July 2024.

96 Interview with Chief State Attorney, 1st August 2024.

97 Focus Group Discussion with Officers from Police Health Services (Health Centre IV), 2nd August 2024.

98 Focus Group Discussion with Officers from Police Health Services (Health Centre IV), 2nd August 2024.

99 Interview with Investigating Police Officer, 2nd August 2024.

100 Interview with Chief State Attorney, 1st August 2024.

There have been allegations that the suspects are forced to carry out medical examinations, but it is universal practice that medical examinations are conducted on suspects in criminal matters... Regarding what happens in police stations, it is not within the DPP's mandate to make directives on issues to do with police, the directives are only for prosecutors. Issues to do with health should be directed to police officers and medical practitioners.¹⁰¹

A practising advocate also noted the limited utility of the Circular, and the continued problematic actions by police and other actors notwithstanding its issuance:

Because of the confusion that arose, most police officers would still arrest as much as there was a Circular. The Circular only was directed towards only the ODPP staff and not police. So, police still continue to arrest people for homosexuality, for presenting as a homosexuality, crossdressing and then they would put it under AHA. So, we still have those cases coming in.¹⁰²

This was re-echoed by another advocate, who noted that most other JLOS actors could not be constrained by the terms of the Circular:

The Police and the ODPP are entirely different structures. They are all part of JLOS and judiciary but they are under different structures. Police is answerable to the Executive through the Ministry of Internal Affairs, but it is just that in the dispensation of their duties, they have to now work with State Attorneys under the ODPP's office. Now, police will tell you my role is to apprehend, conduct investigations under the supervision of the Resident State Attorney. So, it is until you get to that point that ODPP will now come in and do their work. So even with these Circulars addressed to state attorneys, you cannot use the Circulars to limit law enforcement.¹⁰³

the Circular leaves room open for the police and other law enforcement agencies to continue to arrest and detain persons under the provisions of AHA

As such, despite its operation and even enforcement, the Circular leaves room open for the police and other law enforcement agencies to continue to arrest and detain persons under the provisions of AHA, even if these individuals are eventually released on police bond; charged under different laws; or released without charge. As a result, violations of the rights to liberty, privacy and even the freedom from torture might occur.

Critically, the Circular has also been ineffectual in terms of stemming community-based animus and prejudice against LGBTIQ+ persons which has been exacerbated by AHA. In an FGD with KPCs, participants particularly stressed the lack of utility of the Circular in this regard:

The AHA has increased sexual violence against lesbians. There was a case in Munyonyo [Kampala] where a group of men gang-raped lesbians stating that they wanted to remove 'homosexuality' from them... The Circular is not what the community needs. What the community fears is not court; what the community fears is the violence in the communities, such as boda-boda riders. The problem is not in implementing the law. The problem is the law itself... The Circular creates a solution in courts of law but not in the community and police stations where the most human rights violations occur... The whole AHA and Circulars should be nullified.¹⁰⁴

It is noteworthy that the issue of what has been termed 'corrective rape' is steeped in gender identities and socio-cultural norms around sexual minorities as upsetting rigid patriarchal structures. It is a particularly vicious form of sexual and gender-based violence (SGBV), which seeks to assert the idea that an individual must conform to their sex and the expectations of that gender, especially that of being female. Such corrective rape is a clear violation of rights on the basis of sexual orientation and gender identity, targeting at forcing its victims to conform to their subordinated status of 'female'.

101 Interview with Chief State Attorney, 1st August 2024.

102 Interview with Advocate Caroline Muchuma, on 30th July 2024.

103 Interview with Advocate Benon Makumbi, on 30th July 2024.

104 Focus Group Discussion with KPCs, 30th July 2024.

Clearly, in the face of the overwhelmingly problematic and dangerous environment created by AHA, the ODPP Circular is a comparatively and relatively weak and ineffectual instrument, however well-intentioned.

5.3.3 Delayed responses from DPP as to prosecutorial decisions

There also seems to be an emerging challenge in terms of delayed responses from the ODPP in terms of decisions to prosecute or not under AHA.

The issue of what has been termed ‘corrective rape’ is steeped in gender identities and socio-cultural norms around sexual minorities as upsetting rigid patriarchal structures

Although in a number of instances prosecutors have complied with the directive to have files under AHA forwarded to headquarters for further management and guidance, it appears that responses from the centre are often delayed, with the perverse result that accused persons remain in limbo – with delayed justice and other inconveniences related to the uncertainty of a stayed criminal process. According to one practicing advocate, for instance:

We have had few cases proceeding to court. It is very unfortunate that for some cases that had already begun by the time the Circular came out, these ones became protracted. For instance, we have a client that was picked up in August of last year (2023) and then her case reached court quite fast by August 23rd. Her first appearance, but then before the trial could actually commence, the ODPP asked for the file, so it was taken to Kampala. So, all these times the case continued every time we go to court and the file is not there. We are still waiting to hear from the ODPP and the case just ended, just like that; it was dismissed in July 2024. No trial, just every single time the client has to go to court, the case was highly publicized by the media. So, that also had a toll on the client and it was a difficult period for her. There are very many other cases like that.¹⁰⁵

These concerns were also echoed by a Chief State Attorney interviewed in this study. They noted the negative impact on prosecutorial discretion, with a likelihood of undue delays:

The requirement under the Circular to submit cases to the DPP before any action is taken on them takes away the ability of the prosecutor to arrive at a decision. When a prosecutor is appointed, it is presumed that he or she can decide whether a file has enough evidence for it to be sanctioned. This discretion takes it away. There are systems in the ODPP where a person can raise a complaint when they are aggrieved by the decision of any state attorney. The same systems should be followed when it comes to cases brought under AHA.¹⁰⁶

The Circular thus creates another bureaucratic hurdle, which serves to compound the issue of case backlog and delayed access to justice, in this case, in relation to LGBTQ+ persons.

While, as noted in section 5.2.4 of this report, the OPDD issued a subsequent Circular on 4 April 2024 (following the Constitutional Court’s decision in the *Fox Odoi* case on 3 April 2024) allowing Regional Officers to handle cases under AHA, this modification still represents an additional bureaucratic layer placed upon the prosecutorial discretion of State Attorneys. Moreover, as noted in the same section, there appears to be no indication that the second Circular has produced any marked improvement in terms of discouraging arrests and charges under AHA.

105 Interview with Advocate Caroline Muchuma, on 30th July 2024.

106 Interview with Chief State Attorney, 1st August 2024.

5.3.4 Corruption and abuse of power

There is a systemic and long-standing challenge of corruption and abuse of power within the JLOS sector

Related to the three foregoing challenges is the systemic and long-standing challenge of corruption and abuse of power within the JLOS sector. The ODPP Circular has not been able to mitigate the full application of AHA and analogous offences and laws, which permit the arrest and intimidation of persons who are, or are suspected to be, LGBTIQ+ persons. In these circumstances, prosecutors, police and other law enforcement officials (as well as non-State actors, such as landlords and other private individuals) continue to exploit the law to solicit bribes, extort money, and settle personal vendettas. This has not only eroded public trust in the legal system but also victimized innocent people.

5.3.5 Insufficient training and sensitization

It also appears to be the case that while the ODPP Circular envisaged that there would be training for prosecutors on ‘key aspects’ of AHA, either this training has not been carried out or has been insufficient. In an interview with the Public Relations Officer (PRO) in ODPP, they asserted that there had been trainings conducted to build the capacity of prosecutors:

*Following the issuance of the Circular, the DPP also went ahead to have capacity building meetings on the application of the Anti-Homosexuality Act. The number of cases has reduced and cases sanctioned are based on strong evidence.*¹⁰⁷

At the same time, the ODPP PRO also acknowledged that there remained a need to conduct further sensitization trainings and other forms of capacity building on AHA and its implications:

*Challenges encountered in the implementation of AHA include inadequate training on the application of AHA, especially initially. To achieve more effective implementation of the ODPP Circular on AHA, there is need to do massive sensitization of the prosecutors on correct application of AHA.*¹⁰⁸

All indications suggest that, in fact, there remains a significant need for the trainings envisaged under the ODPP’s Circular. Indeed, a chief state attorney interviewed in this study reported that they had not received any training at all regarding prosecutions under AHA, noting:

*There has been no training on how to prosecute cases under AHA, yet they are very controversial.*¹⁰⁹

At the same time, as noted in Section 5.3.1 above, it is not clear that any training conducted would be able to ameliorate the inevitably harsh effects of AHA, which were predicted by several researchers and institutions prior to the enactment of the law, and which triggered the issuance of the ODPP’s Circular in the first place.

The Act is intrinsically draconian, leaving much room for abuse, misinterpretation and blanket application (including through the broad offence of ‘promotion of homosexuality’), and has created a climate of impunity, which has emboldened police, other JLOS actors, and even private vigilante groups to harass and intimidate persons who are or are perceived to be LGBTIQ+.

107 Interview of Public Relations Officer, Office of the Director of Public Prosecutions, 5th August 2024.

108 Interview of Public Relations Officer, Office of the Director of Public Prosecutions, 5th August 2024.

109 Interview with Chief State Attorney, 1st August 2024.

6. CONCLUSIONS AND RECOMMENDATION

6.1 Conclusions

This study has found that the ODPP’s Circular has had limited practical impact on the interpretation and application of the Anti-Homosexuality Act, 2023. Indeed, some prosecutors appear to have opted to circumvent the Circular by charging suspects under alternative provisions of the Penal Code Act, potentially sidestepping the specific procedures outlined for AHA cases. There continues to exist avenues for harassment and intimidation of KPCs under related laws, including the Penal Code Act, Cap 128 and the Computer Misuse Act. Therefore, while it can be seen that less cases under the AHA have been raised, the criminalization of members of the LGBTIQ+ community has nonetheless continued steadily under other laws.

There continues to exist avenues for harassment and intimidation of KPCs under related laws, including the Penal Code Act, Cap 128 and the Computer Misuse Act

Indeed, it seems that the ODPP Circular was itself misconceived, in so far as it considered that some of the harshest aspects of AHA could be ameliorated by simply an insistence on there being proof of the existence of a ‘sexual act’ as defined under Section 1 of the Act. The reality is that AHA criminalizes a broad array of conduct, with a wide catchment, especially in terms of such broad and vague offences as ‘promotion of homosexuality’.

In addition, it appears that the challenges experienced following the introduction, passage and eventual enactment of AHA were not only due to a failure to understand the law, but were in very many ways, keeping with the letter and spirit of the law. The attacks experienced before the issuance of the ODPP Circular were not examples of a misapplication or misunderstanding of AHA, but rather a direct and foreseeable result of the enactment of law steeped in prejudice, unreasonable fear and irrational animus.

The Act as a whole has engendered a climate of impunity, emboldening both State and non-State actors with a veritable weapon to harass, intimidate, blackmail, extort and generally dehumanize sexual and gender minorities

Further, there does not appear to have been significant sensitization of prosecutors and other JLOS actors as envisaged under the Circular, which has exacerbated the misinterpretation and misapplication of AHA to the detriment of KPCs.

AHA continues to be used in ways which reinforce existing biases, stereotypes, and discrimination against LGBTIQ+ communities, and has resulted in assault, evictions, mob justice and other forms of intimidation and harassment. Indeed, it has become a veritable vehicle for witch-hunts, extortion and blackmail targeted against sexual and gender minorities as well as persons perceived as such.

Clearly, AHA both in its letter and spirit, is irredeemable. The Act as a whole has engendered a climate of impunity, emboldening both State (police, prosecutors and other JLOS actors) and non-State actors (individuals and community members) with a veritable weapon to harass, intimidate, blackmail, extort and generally dehumanize sexual and gender minorities in Uganda. In this context, the ODPP Circular, however well-intentioned, was a futile attempt at mitigating the effects of an inherently draconian law, whose broad terms left a wide array of opportunities for the persecution of LGBTIQ+ persons (including but not limited to its provisions on the ‘promotion of homosexuality’).

6.2 Recommendation

Based on the above findings, it is evident that the inescapable and main recommendation of this study is the repeal of AHA in its entirety

Based on the above findings, it is evident that the inescapable and main recommendation of this study is the repeal of AHA in its entirety. Only in this way can the rights of LGBTIQ+ persons in Uganda be respected and fulfilled. This is especially because any legitimate protections under its terms, such as the protection of minors from sexual assault, are already provided under general laws of the land (including the Children Act, the Penal Code Act's provisions on defilement, and the Prevention of Trafficking in Persons Act). In addition, it is critical that analogous and similarly problematic provisions in other laws, such as the Computer Misuse Act, and certain provisions of the Penal Code Act (on indecency, common nuisance, loitering, and others) should similarly be repealed, if sexual and gender minorities in Uganda are to reasonably expect to live free from intimidation and harassment.

REFERENCES

Journal Articles

- Bosire, Stellah 'Uganda's anti-homosexuality act is causing harm and limiting access to healthcare' (2023) *BMJ* 382.
- Cheney, Kristen *Locating Neocolonialism, 'Tradition,' and Human Rights in Uganda's 'Gay Death Penalty'*, *African Studies Review* 55, no. 2 (2012), 86
- Hollander, Michael 'Gay rights in Uganda: seeking to overturn Uganda's anti-sodomy laws' (2009) 50 *Va. J. Int'l L.* 221.
- Jjuuko, Adrian and Mutesi, Fridah 'The multifaceted struggle against the Anti-Homosexuality Act in Uganda' (2018) *Downloaded from the Humanities Digital Library* 24.
- Johnson, Paul 'Homosexuality and the African Charter on Human and Peoples' Rights: What Can Be Learned from the History of the European Convention on Human Rights?' *Journal of Law and Society* (2013) Vol.40, No.2, at pp.249-279
- Kizito, Kalemba 'Bequeathed Legacies: Colonialism and State Led Homophobia in Uganda' (2017) 15 *Surveillance & Society* 567
- Muchuma, Wekesa 'A constitutional approach to the decriminalization of homosexuality in Africa: A Comparison of Kenya, South Africa and Uganda, (PhD diss., University of Pretoria, 2016) 208 <https://icla.up.ac.za/images/about/staff/fombad/alumni/Wekesa_Constitutional_2016.pdf> Accessed 15th July, 2024.
- Nyanzi, Stella and Karamagi, Andrew 'The social-political dynamics of the anti-homosexuality legislation in Uganda' (2015) 29 *Agenda* 24.
- Oppenheimer, Brooke "From arrest to release: The inside story of Uganda's penal system." (2005) 16 *Ind. Int'l & Comp. L. Rev.* 117.
- Svensson, Jakob and Strand, Cecilia 'The promise of double living. Understanding young people with same-sex desires in contemporary Kampala' (2024) 71 *Journal of Homosexuality* 2010.

Reports

- Chapter Four Uganda, "Where do we go for justice" Accessible at ; <https://chapterfouruganda.org/sites/default/files/downloads/Where-Do-We-Go-For-Justice-.pdf>
- Cross Cultural Foundation of Uganda, 'Managing Diversity-Uganda's Experience' A Collection of Essays Produced by the Pluralism Knowledge Programme in Uganda, Cross Cultural Foundation of Uganda, ISBN:978-9970-9274-0-1. From < <https://crossculturalfoundation.or.ug/docs/Managing-Diversity-Uganda-Experience-@CCFU2014-1.pdf>; >
- HRAPF 'Increasing violence and violations: The first 21 days of the Anti-Homosexuality Act, 2023. Kampala, 21st June 2023 <https://hrapf.org/mdocs-posts/hrapfs-report-of-violence-and-violations-during-the-first-21-days-of-the-aha-2023/>
- HRAPF 'Increasing violence: Cases of violence and violations against real or suspected LGBTIQ persons for the period between the passing of the Anti-Homosexuality Bill, 2023 (21st March 2023) and its coming into force (30th May 2023)' Kampala, 19th June 2023. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-and-violations-before-the-aha-2023-came-into-force/>
- HRAPF 'One month after: Increasing cases of violence and violations based on real or presumed sexual orientation and gender identity in the first month of the enforcement of the Anti-Homosexuality Act, 2023' Kampala, 14th July 2023.at 20. HRAPF/PA/38/2023. <https://hrapf.org/mdocs-posts/increasing-cases-of-violence-and-violations-based-on-real-or-presumed-sogi-in-the-first-month-of-the-enforcement-of-the-aha-2023/>

HRAPF ‘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. 13th October 2023.’ At 16. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-september-2023/>

HRAPF ‘Report on cases of violence and violations based on real or presumed sexual orientation and/or gender identity during the month of November 2023.’ Available at <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-november-2023/>

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity during the third month of the enforcement of the Anti-Homosexuality Act, 2023. 13th September 2023 at 15. <https://hrapf.org/mdocs-posts/hrapfs-report-on-violations-through-the-enforcement-of-the-aha-in-august-2023/>

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of October 2023. 16th November 2023 at 17.’ <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-october-2023/>

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity in the seventh month of the coming into force of the Anti-Homosexuality Act, 2023 (December 2023). 10th January 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-december-2023/> at 17.

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of January 2024. 14th February 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-january-2024/> at 16.

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of February 2024. 13th March 2024. at 19 <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-february-2024/> .

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of March 2024. 12th April 2024. At 15. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-for-march-2024/>

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of April 2024. 8th May 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-violations-based-on-real-or-presumed-sogi-for-april-2024/> at 11.

HRAPF ‘Report on violence and violations based on real or presumed sexual orientation or gender identity during the month of May 2024. 11th June 2024. <https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-and-violations-based-on-real-or-presumed-sogi-for-may-2024/> at 14.

HRAPF ‘Two months after: Report on violence and violations on the basis of real or presumed sexual orientation and/or gender identity two months after the Anti-Homosexuality Act came into force. Kampala, 9th August 2023.’ At 15. <https://hrapf.org/mdocs-posts/hrapfs-report-on-enforcement-of-the-aha-for-july-2023/> at 15.

HRAPF: Arrests, evictions and violence: Report of violations against LGBTQ persons for the first month following the passing of Uganda’s Anti-Homosexuality Bill, 2023. Kampala, 21st April 2023 at 3. Available <https://hrapf.org/mdocs-posts/hrapfs-report-on-violations-against-lgbt-persons-for-the-first-month-following-the-passing-of-the-anti-homosexuality-bill-2023/>. Accessed 16th July, 2024.

Human Rights Awareness and Promotion Forum, ‘Arrests, Evictions and Violence: Report of Violations against LGBTQ Persons for the First Month Following the Passing of Uganda’s Anti- Homosexuality Bill, 2023’, (Kampala, Uganda, 2023).

Human Rights Watch Report ‘Uganda: Anti-homosexuality bill threatens liberties and human rights defenders’ (2009)

National Library of Medicine ‘Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations – 2016 Update’ <<https://www.ncbi.nlm.nih.gov/books/NBK379697/#:~:text=Key%20populations%20are%20defined%20groups,increase%20their%20vulnerability%20to%20HIV.>>> Accessed 15th July 2024

Office of the Director of Public Prosecutions, 'Decision to charge guidelines' Accessible at < <C:\Downloads\THE-DECISION-TO-CHARGE-GUIDELINES.pdf> > Accessed 16th July 2024.

Parliament of Uganda, 'Report Of' The Sectoral Committee On Legal And Parliamentary Affairs on The Anti - Homosexuality Bill, 2023' Accessible at <<https://bills.parliament.ug/attachment> >

Strategic Response Team Uganda, '*Eteeka lyayita: Vol 2* – A report on documented human rights violations and abuses of Lesbian, Gay, Bisexual, Transgender and Queer Persons (LGBTQ+) persons in Uganda, September 2023-May 2024' available at <https://ugandakpc.org/reports/eteeka-lyayita-vol-2/> (last accessed 30 August 2024).

Newspaper Articles

Daily Monitor, 'New report paints violence surge post anti-homosexuality law enactment' *Daily Monitor*; Friday September 29, 2023 <https://www.monitor.co.ug/uganda/news/national/new-report-paints-violence-surge-post-anti-homosexuality-law-enactment-4383832>

International Commission of Jurists 'Uganda: The enactment of "the Anti-Homosexuality Act, 2023" will foster further stigma, discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons' *International Commission of Jurists*, May 2023. <https://www.icj.org/resource/uganda-the-enactment-of-the-anti-homosexuality-act-2023-will-foster-further-stigma-discrimination-and-violence-against-lesbian-gay-bisexual-transgender-and-intersex-persons/>

Kabumba, Busingye 'Uganda's *Dred Scott v Sandford*: Unpacking the real constitutional damage wrought by the decision in *Fox Odoi and Others v Attorney General*' (The Observer, May 15 202) <https://observer.ug/index.php/viewpoint/81323-uganda-s-dred-scott-v-sandford-unpacking-the-real-constitutional-damage-wrought-by-the-decision-in-fox-odoi-and-others-v-attorney-general>

Kalinaki, Daniel 'The anti-gay card is faded, dirty, and overplayed; time to focus on real issues' *Daily Monitor* June 06, 2024 <https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/the-anti-gay-card-is-faded-dirty-and-overplayed-time-to-focus-on-real-issues-4647958#story>

Kalinaki, Daniel 'Uganda has a sex crime problem, but gays are just easy scapegoats' *Daily Monitor* March 02, 2023 <https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/uganda-has-a-sex-crime-problem-but-gays-are-just-easy-scapegoats-4142708>

Parliament of Uganda 'President assents to Anti-Homosexuality Act' <https://www.parliament.go.ug/news/6737/president-assents-anti-homosexuality-act>

Tschierse, Kevin 'Why is homophobia so strong in Uganda?' (DW News 21 April 2023) <https://www.dw.com/en/why-is-homophobia-so-strong-in-uganda/a-65393277>

Websites

<https://achpr.au.int/index.php/en/node/879>

<https://justice.go.ug/>

<https://mglsd.go.ug/>

<https://www.dei.go.ug/>

<https://www.independent.co.ug/gender-ethics-ministers-submit-proposals-on-anti-homosexuality-bill/>

<https://www.ugandalaws.com/statutes/principle-legislation/penal-code-act.>

APPENDIX I: ODPP CIRCULAR NO.18/2023

Tel: Director +256-0414-332504.
General +256-414-332500
+256-414-332501
Toll Free: 0800112300



Office of The Director of Public Prosecutions,
Workers House, 12th& 11th Floor
Plot 1, Pilkington Road,
P.O. Box 1550,
Kampala (Uganda)
admin@dpp.go.ug
www.dpp.go.ug

Our Ref: ADM 12/01
Your Ref:

Date: 25th August, 2023

CIRCULAR NO.18/2023

All Prosecutors,
Office of the Director of Public Prosecutions.

RE: MANAGEMENT OF CASES WITH CHARGES PREFERRED UNDER THE ANTI-HOMOSEXUALITY ACT 2023.

The Anti-Homosexuality Act (AHA) came into force on 30th May 2023. It has come to the attention of management that a number of charges of Homosexuality and Aggravated Homosexuality are now being preferred by some officers without internalizing some crucial aspects of the act.

It is important to note that the AHA only criminalises offences where a sexual act has been performed. The term "*sexual act*" is defined under Section 1 of the Act.

It is also important to note that Sections 2 (5) and 3 (5) of the AHA provide that "*for the avoidance of doubt, a person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offence of homosexuality under this section*".

Officers are therefore advised to peruse files with offences under the AHA cautiously while taking into account the abovementioned provisions.

You are hereby directed to ensure that all files with charges preferred under the AHA should first be submitted to Headquarters with a written legal opinion for further guidance before a decision to charge is made.

Management will soon organize sensitization meetings for all officers on the key aspects of the AHA.

Handwritten signature of Jane Frances Abodo in black ink.

Jane Frances ABODO
DIRECTOR OF PUBLIC PROSECUTIONS

APPENDIX II: LIST OF LEGISLATION

International Legal Instruments

- 1) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984)
- 2) Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
- 3) Convention on the Rights of the Child (CRC) (1989)
- 4) Declaration on Sexual Orientation and Gender Identity (2008)
- 5) European Convention on Human Rights (ECHR) (1950)
- 6) UN Human Rights Council Resolutions
- 7) Inter-American Convention Against All Forms of Discrimination and Intolerance (2013)
- 8) International Covenant on Civil and Political Rights (ICCPR) (1966)
- 9) International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- 10) Universal Declaration of Human Rights (UDHR) (1948)
- 11) Yogyakarta Principles (2007)
- 12) Yogyakarta Principles plus 10 (2017)

Regional Instruments

- 1) African Charter on Human and People's Rights (1981)
- 2) Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2005)
- 3) African Youth Charter (2006)

National Legislation

- 1) Constitution of Uganda, 1995 (as amended)
- 2) Anti-Homosexuality Act 2023, Chapter 117 of the 7th Edition of the Revised Principal Laws of Uganda
- 3) Penal Code Act Cap. 128
- 4) Magistrates Courts Act Cap. 19.
- 5) The Police Act Cap. 324.
- 6) Equal Opportunities Commission Act Cap. 7.
- 7) Judicature Act, Cap 14

APPENDIX III: LIST OF CASES

- 1) *Adrian Jjuuko v Attorney General*, Constitutional Petition No.1 of 2009
- 2) *Andrew Karamagi & Another v Attorney General* [2023] UGCC 2
- 3) *Attorney General v Letsweletse Motshidiemang and LEGABIBO* (as amicus) Civil Appeal No. CACGB 157-19
- 4) *Attorney General v Susan Kigula & Others*, Constitutional Appeal 3 of 2006
- 5) *Barihaihi Grace Peter and another v Attorney General*, Constitutional Petition No. 23 of 2011
- 6) *CEHURD and 2ors v Executive Director of Mulago Hospital and Attorney General*, Civil Suit No. 212 of 2013 [2017] UGHCCD 10
- 7) *Centre for Domestic Violence Prevention & Others v Attorney General*, Constitutional Petition No. 13 of 2014
- 8) *Charles Onyango-Obbo & Another v The Attorney General* Constitutional Appeal No. 2 of 2002; [2004] (UGSC 1)
- 9) *Dobbs v. Jackson Women’s Health Organization* No. 19-1392, 597 U.S. 215 (2022)
- 10) *Dred Scott v. Sandford* 60 U.S. 393 (1857)
- 11) *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others* (Consolidated Constitutional Petitions 14, 15, 16 and 85 of 2023) [2024] UGCC 10 (3 April 2024)
- 12) *Irina Fedotova v Russian Federation*, Communication No. 1932/2010
- 13) *John Ken Lukyamuzi v Electoral Commission and Attorney General*, Constitutional Appeal No. 02 Of 2007
- 14) *Kasha Jacqueline, Pepe Julian Onziema and David Kato v Rollingstone Ltd and Giles Muhame*, High Court Miscellaneous Application No. 163 of 2010
- 15) *Lawrence v Texas* 539 U.S. 558 (2003)
- 16) *Media Rights Agenda v Nigeria*, *Comm. Nos. 105/93, 128/94, 130/94 and 152/96* (1998)
- 17) *Mitar Vasilijevic*, Case No. IT-98-32-T, Trial Judgement, 29 Nov. 2002
- 18) *Naphatal Were and John Paul Basabose v Attorney General* Consolidated Constitutional Petition Nos 42 & 52 of 2012
- 19) *National Coalition for Gay and Lesbian Equality & Another v Minister of Justice & 2 Others*, (CCT 11/98) [1998] ZACC 15; 1999 (1) SA 6
- 20) *Navtej Singh Johar & Others v. Union of India & Another* (2018) INSC 790
- 21) *Oloka-Onyango & 9 Others v. Attorney General*, [2014] UGCC 14, Constitutional Petition No. 8 of 2014
- 22) *Pavez Pavez v Chile* Inter American Court of Human Rights Judgment of February 4, 2022
- 23) *S.W. v. United Kingdom*, 571 Eur. Ct. H.R. (335ser. B) (1995)
- 24) *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, Communication 155/9627 October 200
- 25) *Sundus Exchange and Money Transfer Ltd and 8 others v Attorney General*, Miscellaneous Cause No. 161 of 2019
- 26) *Susan Kigula & 416 Ors v Attorney General* (Constitutional Petition No. 6 of 2003) [2005] UGCC 8 (10 June 2005).
- 27) *The MEC for Education: KwaZulu-Natal v Pillay* [2008] 1 SA 474 (CC).
- 28) *Toonen v. Australia*, Communication No. 488/1992, U.N. GAOR, Hum. Rts. Comm., U.N. Doc. CCPR/C/50/D/488/1992 (1994), reprinted in 1 INT’L HUM. RTS. REP. 97 (1994)
- 29) *Uganda v Wadri & 3 Ors* (Criminal Revision No. 0002 of 2018) [2018] UGHCCRD 151 (20 August 2018)
- 30) *Yvonne Oyoo and Juliet Mukasa v Attorney General* Misc. Application No. 247 of 2006 [2008] UGCC
- 31) *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication 245/2002, 21st Activity Report, EX. CL/322(x), Annexure III



WOMEN'S PROBONO INITIATIVE (WPI)

Plot 7, Suuna Road, Ntinda Village 14, Kampala City

P.O. BOX 8052, Kampala, Uganda

Tel: +256 (0) 800-220645

Email: info@womenprobono.org

URL: www.womenprobono.org

Facebook: WPIuganda

Instagram: wpi.uganda

X: @womenprobono