

The ‘Haunting Shadow’ of the 2014 Anti-Homosexuality Law of Uganda

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Abstract

Although attempts to [re]criminalize homosexuality in Uganda in 2014 failed, the effects and influence of this attempt linger on. The Constitutional Court ruling against the 2014 anti-homosexual law (2014 AHL), made on technical grounds other than on its substance, not only paints a misleading perception on the defeat of anti-homosexuality activism but also keeps the possibility of [re]criminalization of homosexuality alive in the country. Factors that influenced the 2014 AHL remain contextually unchallenged and continue to shape public rhetoric on homosexuality, including how the general public speaks of homosexuality and relates to LGBTIQ⁺ communities. Violence, discrimination, evictions, and arbitrary arrests of LGBTIQ⁺ people are not experiences of the past, but continue to prevail in the present. As a counter response, LGBTIQ⁺ communities have resorted to creating safe[r] spaces, which seem to attract more hostile surveillance. Through a critical paradigm, this paper argues that the 2014 AHL was annulled only on paper but not in the perception of the public. As a consequence, surveillance over homosexuality and LGBTIQ⁺ communities continues in an attempt to silence gender and sexual minorities in the country.

Keywords: 2014 Anti-homosexuality law, homosexuality, LGBTIQ⁺, surveillance, safe[r] spaces, Uganda.

¹ In this paper LGBTIQ⁺ is used in reference to the communities of people or individuals identifying themselves as lesbians, gays, bisexual, transgender, intersexual, queer, asexual, and other unmentioned identities who do not consider themselves heterosexuals.

Introduction

The 2014 Anti-Homosexuality Law (AHL) in Uganda has triggered new evolutions of homosexuality surveillance in the country, even though the law failed to pass. The Constitutional Court ruling against the 2014 anti-homosexual law (2014 AHL) on technical grounds rather than on its substance not only paints a misleading perception on the defeat of anti-homosexuality activism, but also keeps the possibility of greater homosexuality [re]criminalization alive in the country. In fact, homosexuality is still a crime in Uganda. It is criminalized in Section 145 (a) of the Penal Code Act, Cap 120, which provides that '[a]ny person who has carnal knowledge of any persons against the order of nature commits a crime and is liable to imprisonment for life'. Homosexuality is further pushed to the periphery by section 31(3) of the Constitution of Uganda (1995), which establishes that 'marriage shall be entered into with the free consent of the man and woman intending to marry'. The mostly heterosexual public domain considers section 31(3) as consistent with the 'order of nature' provision in the same law. The expression 'order of nature' is ambiguous, but is taken for granted while being used to redefine the notion of sexuality to the exclusion of homosexuality. Although this situation has existed for decades, as Uganda's anti-homosexuality laws were inherited from the colonial penal code, recent attempts to [re]criminalize homosexuality with harsher punishments brought to the fore new developments. Among these is the heightened polarization of discourses around homosexuality as a component of human sexual identity.

As a controversial discourse in Uganda, homosexuality generates assertive advocates as well as opponents. Human rights advocates, along with sexual and gender minorities' advocate groups, have on various occasions protested against anti-homosexual activism organized by state agents, religious leaders, and conservative politicians. LGBTIQ+ supporters have protested the arrest of LGBTIQ+ persons, the disruption of LGBTIQ+ gatherings, the failure to decriminalize homosexuality, state restrictions on the activities of LGBTIQ+ advocacy, ill-treatment, including humiliation, and physical and sexual assault, including forced anal sex. Although attempts to [re]criminalize homosexuality in the country failed, factors that led to proposing the law remain unrestrained. Such factors can be observed in the ongoing evictions and arbitrary arrests of LGBTIQ+ people, as well as other types of violence and discrimination against them. Reports by sexual and gender minorities in

Uganda continue to highlight their public harassment and victimization, especially those who attempt to disclose their homosexual identity publicly.

The creation of safe[r] spaces by sexual and gender minorities both responds to and exposes the increasing surveillance over homosexuality and homosexuals within the public space. This and other activism in support of LGBTIQA+ persons, in turn, results in still more surveillance. Instead of silencing the voices that seek the [re]criminalization of homosexuality, the conflict between opposing camps on the issue ensures that calls to recriminalize homosexuality remain in the public space. It is the argument of this chapter that a plethora of factors that influenced parliamentary and public deliberations over homosexuality in 2014 remain in place or have been enhanced, with the ability to trigger further attempts to recriminalize homosexuality. Through a critical paradigm, the chapter examines various trends regarding the surveillance of homosexuality that are operative in Uganda and argues that the 2014 AHL was annulled only on paper, but not in the perception of the public. Ongoing surveillance over homosexuality and LGBTIQA+ communities represents an attempt to silence gender and sexual minorities.

The paper uses the term ‘surveillance’ with certain limitations. The current debates on homosexuality, whether they concern scholarship, non-governmental organizations, court deliberations, media, street talk, or in instances where cultural traditions and religious beliefs are invoked to discourage homosexuality constitute what this paper describes as a homosexuality surveillance system. In the first part, the paper acknowledges the controversial nature of the homosexuality discourse in contexts and time, and with regard to human rights as well as freedoms of sexual and gender minorities. In the second part, the paper draws attention to the Ugandan context focusing on the 2014 AHL. This section discusses how the 2014 AHL continues to be a tool of surveillance, irrespective of its annulment. In the third part, the paper contends that public surveillance on homosexuality and LGBTIQA+ communities is also influenced by politics of dominance and resistance. In its fourth part, the paper argues that even though LGBTIQA+ communities seem to resort to creating safe[r] spaces, the notion of safe[r] spaces is itself suspicious.

Positioning the Concept of Homosexuality

While in this paper we opted for the concept of ‘homosexuality’, we take note that homosexuality in many African societies is a contested concept not only

in terms of usage or association, but also its meaning and original. Thabo Msibi (2011:56), for instance, argues that the term ‘evolve[s] out of a specific cultural history, and [it] cannot be assumed to mean the same thing to everyone in the same way’. For some individuals the concept is associated with taboo, violence and contamination, while for others it simply refers to a particular sexual orientation. Even within a single community of people, the concept has different interpretations. For instance, Tabona Shoko’s (2010:635-636) study among the Shona people of Zimbabwe reveals divergent definitions of homosexuality and its relationship to same-sex practices. He indicates that among the Shona, some people believe ‘that homosexuality is a foreign phenomenon ... caused by the influence of westernization, others maintain that homosexuality existed in Shona culture even before the coming of the White people’. Therefore, as Msibi (2011:56) holds, the use of concepts such as homosexuality needs a sense of clarity, taking into consideration its various associated meanings and contextual relevance. In this paper, the concept ‘homosexuality’ is used in reference to discussions on same-sex relationships in Uganda. The concept is also a prevailing keyword that featured in Uganda’s parliamentary debates of 2009, in the Anti-homosexuality Bill (AHB) as well as in the final 2014 AHL.

Whilst the paper focuses on the Ugandan context, it takes cognizance of the fact that homosexuality is a contentious discourse attracting both tolerant and intolerant voices across the globe. In these debates, homosexuality as a subject of interest has not escaped being framed in an effort to express particular points of view, including in international reports, documentaries, scholarship, media outlets both local and international, and religious teachings.

In Africa, as in other continents, the subject of homosexuality is controversial, prompting conflicting perspectives that cut across social, moral, political, religious and cultural issues. These play a key role in the framing of homosexuality. In Zimbabwe, for instance, Shoko (2010:634) claims that ‘politicians call them [homosexuals] the festering finger endangering the body of the nation while churchmen say God wants them dead’. Shoko (2010:635) further states that in Zimbabwe, homosexuality is generally seen as ‘a result of moral decadence that has gripped society and [originates from] promiscuous sexual behaviour’. The question of human rights has also been used to frame homosexuality as either acceptable or denounced in African societies. While to some the acceptance of homosexuality would be regarded a human right, to others its rejection would be equally a human right. Stella Nyanzi and Andrew

Karamagi (2015:35) point out that in Uganda, homosexuality has become a political weapon used by politicians to campaign against their political opponents or to woo votes.

Theological perspectives on homosexuality also diverge. For instance, although the bible is used as a tool to interpret Christian basic teachings on homosexuality (depending on who does the interpretation and the informing worldview), interpreters often come to different conclusions. While in some instances the Christian bible is used to condemn homosexuality, in others it is used to challenge the same condemnation (Punt 2006; Gunda 2010; Chitando & Van Klinken 2016). This brief overview helps to shed light on how the subject of homosexuality is contested across African societies. As such, it can be understood and acted upon differently from one society to another, depending on how it is framed by dominant discourses and actors.

Surveillance of Homosexuality under the Law

Very recently, the African continent and the world at large have come to terms with two paradoxical High Court rulings over homosexuality in two African countries, Kenya and Botswana. The High Court in both these countries had been tasked to deliberate on the decriminalization of homosexuality. Although in both courts, the colonial-era anti-homosexuality laws were the main subjects of contention, with a similar approach to the practice of homosexuality, these courts reached different conclusions. The High Court in Kenya ruled in favour of colonial era anti-homosexuality laws. The court rejected the petitioners' submission that LGBTIQ+ rights were a violation by the country's laws on homosexuality. It thus stated that the provisions in the law pertaining homosexuality were not discriminatory, and that the 'constitutional rights to privacy and dignity are not absolute' (Human Rights Watch 2019a). Botswana's High Court, on the other hand, ruled against these laws. The court in Botswana argued that 'the laws were discriminatory toward gay people and violated Botswana's Constitution, and that overturning them was a matter of protecting human rights' (Human Rights Watch 2019b). Following this judgment in Botswana and those made in other countries like Mozambique, Angola and Lesotho, homosexuality, especially gay sex, is no longer as widely criminalized as it used to be in past decades. Recent statistics indicate that the number of countries that still criminalize homosexuality has dropped to 72 globally (Stewart 2020). However, this does not mean that in all the 123 UN member

state countries same-sex relations are free from discrimination. In fact, studies continue to show high cases of social intolerance to homosexuality. Where intolerance and discrimination still surround the notion of homo-sexuality and LGBTIQ+ communities, homosexuality is still scrutinized, marginalized and isolated in public debates and demonized as a centre of confrontation.

Andrew Scheibe *et al.* (2017) for instance, hold that while in South Africa the Constitution provides legal recognition to homosexuality, anti-homosexual activism still persists within communities. According to Scheibe *et al.* (2017:220), many people who do not conform to heterosexual norms experience stigma, discrimination and exclusion. In other cases, discrimination against homosexuality is partly motivated by some perceptions that it is contagious and related to evil spirits. Cases of intolerance of homosexuality still persist in many African countries as noted by the African Commission on Human and Peoples' Rights (ACHPR 2014 Resolution 275). As equally noted by Kapyia Kaoma (2016:16), cases of violence including 'corrective' rape, physical assaults, torture, murder, arbitrary arrests, detentions, extra-judicial killings and executions, forced disappearances, extortion and blackmail are still widely experienced by sexual minorities in Africa.

During the decade that preceded the 2014 criminalization of homosexuality in Uganda, other countries such as South Sudan, Burundi, Liberia and Nigeria were also considering enacting anti-homosexuality laws (Amnesty International 2013:1). Aegus Carrol and Lucas Mendos (2017:88) observe that on 25 August 2014, Gambia's Parliament approved the Criminal Code (Amendment) Act, which punishes aggravated homosexuality with imprisonment for life. Elsewhere in Mauritania, Sudan, the northern region of Nigeria and the southern parts of Somalia, *Sharia* laws are often employed in administering punishment on those convicted of homosexuality offenses. The above observations simply bring to the fore that homosexual practices and the whole notion of homosexuality remain under scrutiny, irrespective of whether the practice of homosexuality is legal or illegal. Moreover, public perception on the subject can easily change from one society to the other. In fact, inasmuch as some African countries are gradually becoming tolerant of homosexuality, others are nevertheless increasingly intolerant.

Like in many other former British colonies, the history of the criminalization of homosexuality in Uganda is traceable back to the arrival of the British colonialists, and most specifically when Uganda adopted the 1950 Panel Code that criminalized 'acts against the order of nature' (Jjuuko

2013:390). It is not surprising that in his address during the signing of the 2014 AHA into law, the President of Uganda, Yoweri Museveni, maintained that homosexuality had already been outlawed in the republic by British colonial law. According to this position, the 2014 AHL was essentially a [re]criminalization of homosexuality. It was a [re]criminalization because the 1950 Penal Code Act Cap 106, under which the practice of homosexuality is outlawed, has been in place even prior to the country's independence in 1962. This law, which codifies criminal offenses and procedures in Uganda, commenced on 15 June 1950. The history of Penal Codes in Africa indicates that Uganda was not the only country introduced to Penal Codes, but also most of the former British colonies such as Zambia, Zimbabwe, Malawi and Kenya. Simon Coldharm (2000:220) notes that 'while Penal Codes embodied Western concepts of criminality, criminal procedure acts introduced rules relating to arrest, detention and trial ...'. From a legal perspective, the 2014 AHL intended to discourage homosexual behaviour by criminalizing any act deemed inconsistent with heterosexuality. Homosexuality was described in the 2014 AHL as sexual acts or relations performed between persons of the same sex. The major objective of the 2014 AHL was to 'prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters' (Preliminary section Part 1 of the 2014 AHL). The illustration below shows a summary of Uganda's 2014 AHL as adopted from Uganda's 2014 anti-homosexuality Act.

Offense	Section	Penalty upon Conviction
The offense of homosexuality	2	Imprisonment for life
Aggravated homosexuality	3	Imprisonment for life and HIV status medical Examination
Attempting to commit the offense of homosexuality (Felony)	4 (1)	Imprisonment for 7 years
Attempting to commit the offense of aggravated homosexuality	4(2)	Imprisonment for life

Contravention of confidentiality	6	Fine not more than 5 000 000 Uganda Shillings (Approximate to 1373 65 US\$).
Aiding and abetting homosexuality	7	Imprisonment for life
Conspiracy to engage in homosexuality	8	Imprisonment for 7 years
Procuring homosexuality	9	Imprisonment for 7 years
Detention with intent to commit homosexuality	10	Imprisonment for 7 years
Looking after, a space or house (brothels) for purposes of homosexuality	11 (1)	Imprisonment for 7 years
Being the owner, assist, act, control the space or house (brothels) where the offense of homosexuality is committed	11(2)	Imprisonment for 5 years
Contracting marriage with another person of the same sex	12 (1)	Imprisonment for life
Conducting marriage of same sex persons (individual)	12 (2)	7 years' maximum imprisonment
Conducting marriage of same sex persons (institution)	12 (2)	Cancellation of license.
Promotion of homosexuality (offender is a person)	13 (1)	Fine of 100 000 000 Uganda shillings (Approximate to 27 473,00 US\$) or imprisonment between 5 to 7 years or both

Promotion of homosexuality (offender is a corporate body)	13 (2)	Cancellation of certificate of registration, 7 years; imprisonment for the director, promoter, director
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A major difference with the 2014 AHL is that it employs the term ‘homosexuality’ and not that of ‘unnatural acts’, as was the case with the 1950 Penal code. This unambiguously shows its object of attack. In addition, the law is more descriptive and comprehensive in terms of offenses and penalties, which can result in more familiarity from the public than the previous code. Thus, although the 2014 AHL was repealed, its substance remains intact and remains potentially forceful within the public sphere. This comes as a consequence of its previous long-term campaign in the public domain, and due to the implications of its expectations as well as what transpired at the annulment judgment. Even though human rights advocates as well as sexual and gender minorities’ groups had challenged the law in its entirety, the judges did not invalidate the law on its substance, but instead did so on technical grounds. They sighted an insufficient quorum of the legislators who were present when the law was passed as the basis for the judgment. In its judgment, the Constitutional Court concluded,

We have therefore no hesitation in holding that there was no quorum in Parliament when the Act was passed, that the Speaker acted illegally in neglecting to address the issue of lack of quorum. We come to the conclusion That the act of the 9th Parliament in enacting the Anti-Homosexuality Act 2014 on 20 December 2013 without quorum in the House is inconsistent with and in contravention of Articles 2(1) and (2) and 88 of the Constitution of the Republic of Uganda 1995 and Rule 23 of the Parliamentary Rules of Procedure and thus null and void (*Oloka-Onyango and 9 Others v. Attorney General* [2014] UGCC 14, Constitutional Petition No. 8 of 2014 Uganda, Constitutional Court).

The ruling, according to Frank Mugisha, who was at the time the director of Sexual Minorities in Uganda, had both a positive and a negative impact on sexual minorities in the country. Mugisha, according to David Smith (2014), notes,

We welcome this ruling and [LGBTIQA+ communities] can celebrate a small victory against oppression. However, we are disappointed that the case was not heard on its true merits ... Until the Act has been dismissed on the substance of our arguments, we cannot rest easy[ly].

Given the Constitutional Court's silence on the substance of the 2014 AHL during its ruling, the question remains whether the contents of the law and its linguistic articulations remained valid. to an unsuspecting populace, impressions can possess the power to order how reality is perceived and acted upon. It is not surprising that even though the Ugandan Constitutional Court had nullified the 2014 AHL, there seemed no public intention to stop, or even to put on hold human rights violations against LGBTIQA+ persons. Events targeting the repression of homosexuality practices, homosexual activism and other violations of human rights based on sexual and gender minorities' identities continue to occur in the country. For instance, according to the 2016 SMUG report, 264 cases of human rights violations against sexual and gender minorities were recorded between August 2014 and December 2015. Most recently, a 2019 Human Rights Watch report notes that on 17 May, police and the Minister of Ethics and Integrity, Simon Lokodo, shut down a celebration of the international day against homophobia, biphobia and transphobia organized by the NGO Sexual Minorities Uganda. In May 2019, Lokodo vowed to block the Health Ministry's first Annual Conference on key and priority populations, arguing it would promote 'homosexuality and other dirty things' (Human Rights Watch 2019c). Public surveillance of homosexuality and homosexuals is also rooted in the politics of dominance and resistance between global interventions and local Ugandan resistance, which continues to resurface whenever the debates on homosexuality arise in Uganda. This is further discussed and analysed below.

Politics of Dominance and Resistance

Dominant public views on homosexuality and how the public generally relate with LGBTIQA+ communities cannot be understood without acknowledging the framework under which homosexuality is analysed. From a mainstream Ugandan perspective, homosexuality seems to be analysed under the umbrella of domination (of foreign influence) and resistance (by Uganda); i.e., practising and tolerating homosexuality is a public abomination, must be

resisted, and its influx in the country is due to foreign influence. This backdrop is supported by a general perception of homosexuality as analysed in Uganda over recent years. Merran Hulse's (2018:24) study indicates that majority of Ugandans have considerable reservations about acceptance of homosexuals and would easily support homosexuality criminalization. While in recent years the growth of homosexuality activism in Uganda has attracted many international voices, the 2014 AHL in particular increased attention to LGBTIQ+ activism. These international voices expressed humanitarian concerns for the violation of sexual minorities' rights, which they challenged as draconic measures to criminalize homosexuality, and as a response, warranted measures to redeem the suppressed voices of sexual minorities.

The international community's response was spearheaded notably by international human rights organizations and sexual minority bodies. International human rights groups took to the frontline in the struggle to help their local counterparts in Uganda, who seemed to them as losing the battle to the Ugandan government in the fight for sexual minority rights. However, more remarkable also was the intervention of foreign governments from which the Ugandan government drew aid (Wahab 2016). Such governments included the United States of America, Sweden, Norway, Denmark and the Netherlands, all of which became very vocal in criticizing the government over the law while supporting anti-homosexuality law activism. These countries threatened to cut aid to the Ugandan government, a threat that was widely reported in both international and local media channels (Aljazeera America 2014).

Irrespective of the threats to cut foreign aid by the donor countries, the move created a precedent that homosexuality is not only a human rights issue but also a political one. As Laura Edmondson (2019) notes, politically motivated reactions by Ugandan authorities to the international community have not been withdrawn, even though years have passed since the 2014 AHL was nullified. Edmondson (2019:10) rightly observes that,

Ugandan conservative politicians and clergy have successfully positioned LGBTIQ+ practices and identities as a kind of Trojan horse of Western imperialism that threatens to eradicate Africa cultural practices and beliefs regarding kinship, sexual reproduction and modes of community formation.

This is not surprising, because homosexuality has always been ana-

lysed along these lines. Views that seek to challenge such position of thought are quickly dismissed as foreign interference. Besides, homosexuality and the response towards it seem to be understood simply as a contextual issue, subject to the dominant heterosexual rule. This is evidenced in statements by the political elite that show contempt for what was felt to be Western imperialism. Notable is a response of the Ugandan Head of state in protest against what he seems to call western interference:

Western societies do not appreciate our culture; we have been disappointed for a long time by the conduct of the West. But we just keep quiet ... If the West doesn't want to work with us because of homosexuals, then we have enough space here to live by ourselves, and do business with other people' (Presidential Statements 2014).

In a similar way, the Speaker of parliament (by the time the 2014 AHL was constituted), Rebecca Kadaga, while attending the 127th Inter-Parliamentary Union (IPU) Assembly in Quebec Canada in 2012, attempted to remind the Canadian foreign minister and the international community why Uganda's position on homosexuality demonstrated its sovereignty against perceived colonialism. She asserted that,

When we came for this Assembly, to which we were invited, we expected respect for our sovereignty, our values and our country ... I, therefore, on behalf of the Ugandan delegation, and, indeed, the people of Uganda, protest in the strongest terms the arrogance exhibited by the Foreign Minister of Canada, who spent most of his time attacking Uganda and promoting homosexuality If homosexuality is a value for the people of Canada they should not seek to force Uganda to embrace it. We are not a colony or a protectorate of Canada (Kadaga, as quoted by Mugerwa 2012).

From a socio-cultural perspective, homosexuality is viewed as a danger to the young generation whose ability to form heterosexual families and bear children is viewed as a guarantee of the survival of future generations. The danger mostly lies in the belief that the growth of homosexual communities and pro-homosexuality public advocacy in the country implies an eminent extinction of the society, since homosexuality is believed not to support

childbearing. Some even believe that homosexuals support the growth of a homosexual society by recruiting new members. Thus, there is a feeling of a sociocultural competition for survival. During the debates that preceded the 2014 AHL, the process of recruitment was believed to target young people in schools. Views that advanced recruitment also suggested the aspect of economic influence employed by the recruiting agents over their targeted group. It is claimed that recruiters use money as a tool of power to lure members of heterosexual communities. Money is believed to play a big role such as silencing homosexuality opponents, promoting and financing pro-homosexual gatherings, which in many anti-homosexual camps has been regarded as homosexuality promotion. Given these beliefs, calls for criminalizing homosexuality have been reinforced after the 2014 AHL was nullified. In a State House press release, President Museveni emphasized this issue,

In my role as a strategist and a responsible leader for our country, there is no debate regarding the promotion of homosexuality. That one I totally agree with everybody that anybody who is promoting homosexuality we must stop him ... this must be stopped by law and harshly. Secondly, I do not accept those who become homosexuals for mercenary reasons. Thirdly, I cannot accept exhibitionism of homosexual behaviour that must be stopped and stopped harshly ... (*State House - Uganda Press Release* 2014).

Minister Lokodo describes homosexuality as a human disorder, a sickness and a dangerous addiction. According to Rose Buchanan (2014), Lokodo holds, 'It [homosexuality] is like drug addiction ... So, we are saying anybody found committing this incredible and abominable act should be checked and isolated from society ... If you are found practising it, we shall take you to a cell'. Both the President and his Minister of Ethics and Integrity are speaking as political leaders attempting to provide a government position with regard to homosexuality. These voices of political leaders play in harmony with the religious-based views that have been prevalent in recent years.

Moreover, when it comes to the debates on homosexuality, religion in Uganda plays a critical role. Here the Christian religion can be pointed out, given its predominant anti-homosexuality approach, and the fact that it is the major religious tradition to which the majority of the population subscribes. Data from the 2014 Ugandan census put Christianity in a position of

dominance with 84% of the total population (National Population and Housing Census 2014 main report 2014). Not only is the dominance of Christianity a key factor in influencing public view on homosexuality, but also its leadership, which has been mostly anti-homosexual, focusing on what is commonly described as a restoration of biblical values of human sexuality.² In 2014, when Uganda drew a global outcry for its AHL, the Anglican Church in Uganda, through its leadership, threatened to break away if the Church of England puts Uganda under pressure over its support for homosexuality criminalization. The then Anglican Archbishop of Uganda, Stanley Ntagali, both argued and warned,

The issue here is respect for our views on homosexuality, same sex marriage as a country and church. If they are not willing to listen to us, we shall consider being on our own ... Homosexual practice is incompatible with scripture, and no one in the leadership of the church can say, legitimise same sex unions or homosexuality ... governing bodies of the Church of England should not take the path advocated by the West ... If they do we shall have no choice but to be on our own (*The Telegraph* 2014).

Archbishop Ntagali's predecessor, Archbishop Luke Orombi, had also previously distanced the Anglican Communion in Uganda from the acceptance of homosexuality. The prelate, as affirmed by Peter Nyanzi (2012), vigorously described the embracing of homosexuality as a turn to 'darkness', with the calls for rights of homosexual persons simply leading the church to a crisis. Orombi would later write to the Archbishop of Canterbury that, 'Many of us are in a state of resignation as we see how the Communion is moving away further and further into darkness' (Nyanzi 2012). His intent to convince the Ugandan Christian community to distance itself from pro-homosexuality activism is reported in the *Sunday Vision* of 4 June 2006,

² This limitation does not take blind awareness to the fact that other religious organizations such as the Moslem community is part of the religious block in Uganda that has strong views over homosexuality in the country. However, a restriction is done here based on the critical role that Christianity has played in shaping debates on homosexuality in recent years and most vividly the 2014 criminalization of homosexuality in Uganda.

We strongly and unequivocally deplore all activities linked to the encouragement or promotion of the practice of homosexuality and lesbianism condemned in the Bible and which constitutes a perversion of human sexuality. We call upon the clergy, parents and people of goodwill to design programmes aimed at teaching people the dangers associated with homosexuality and lesbianism (Mubiru 2012:202).

The evangelical and Pentecostal communion in Uganda has also in the past shown little sympathy towards homosexuality. Through some of its vocal leaders such as Martin Ssempe and Steven Langa, anti-homosexuality activism within the evangelical and Pentecostal spaces has been revived in recent years. The anti-homosexual Pentecostal revivalism describes homosexuality as ‘a stray’ from the biblical truth. As a self-made campaigner of Ugandan morals, the outspoken Ssempe described homosexuality as a dirty practice that involves the eating of human waste by those practising it (Van Klinken & Zebracki 2016). He therefore advocates conversion and a return to the authority of biblical teachings if homosexuality is to be defeated. Whether or not sexual minorities and human rights advocates continue to challenge the preceding views, their implication in influencing public perception over homosexuality cannot be underestimated. The implication and authority of the anti-homosexuality views are also effected by the nature of their source, in this case, the religious leaders. As religious leaders, their positionality offers authority to their voice and thus capable of soliciting the society’s approval and continuous surveillance on homosexuality.

Religious spaces have not waived their anti-homosexuality rhetoric and sometimes secure support from cultural leaders and politicians, who have developed a relationship of convenience. While religious leaders present themselves as the moral guardians of society, politicians present themselves as political defenders of societal values. Political actors seek grounds from religious and cultural gate-keepers upon which to debate and deliberate on the subject of homosexuality, while the religious and cultural actors attempt to be credible informants on political decisions over homosexuality. As religious leaders seek to perform their task through religious crusades, religious vigils and at Sunday pulpits, politicians pursue a similar cause in public rallies, media channels and through enacting anti-homosexuality laws. These activities and discourses continue, despite volumes of scholarly works and human rights activism which, especially in recent decades, have insistently called upon

religious leaders and anti-homosexuality cultural gatekeepers to reconsider their anti-homosexuality positions for the sake of inclusivity, justice and love of neighbour.

Reclaiming Legitimacy, Struggle for Public Space

Many in the mainstream international media assert that Uganda ‘could be more dangerous than ever for the gay community, despite the annulment of the 2014 AHL’ (Stack 2018). Such claims are based on statistics showing that Uganda has produced an increased number of LGBTIQA+ refugees in recent years and that between 2014 and 2016 more than 1 800 LGBTIQA+ individuals were assisted by the US-based Quakers Association to escape Uganda (Banning-Lover 2017). Uganda is accordingly listed among the most infamous countries to accommodate LGBTIQA+ communities along with others such as Egypt, Nigeria, Mauritania, Sudan, Russia, Honduras, Iran, and Iraq. Another factor that may be responsible for securing Uganda’s position in the above category is the ongoing fear that the government plans to reintroduce the 2014 AHL before parliament in further contemplation of homosexuality [re]criminalization. It is important to note that despite this environment, LGBTIQA+ communities continue to live along with the majority members of the community who are heterosexuals. The space for recognition and right to acknowledgement nevertheless continues to be demanded by the LGBTIQA+ communities, irrespective of state authorities and warnings of open anti-homosexual activists. In the light of this, safe[r] spaces have been formed by LGBTIQA+ communities in the country, especially since 2015.

For example, the Rainbow Riots (a politically and religiously independent non-profit organization advocating for human rights of the LGBTIQA+ people) championed a project to found an LGBTIQA+ Community Centre to act as their safe[r] space. Among the motivations is the argument that,

Queer people live in fear of being arrested or getting beaten up or killed. There is no safe space. The Centre will be safe space to welcome queer people, encourage and support them ... We will provide opportunities to learn, relax, socialize and will also advance on health and safety which is much needed, it will, in essence be a support system (Wallenberg 2018).

However, despite an attempt to establish what could be described as safe[r] space, its very existence presupposes an existing pressure of surveillance from which LGBTIQA+ persons need to escape. One then might ask, ‘how safe is the safe[r] space by virtue of its identity, existence, and naming?’ Can we therefore contemplate that the LGBTIQA+ persons are safe in the so-called safe[r] spaces? What do such spaces imply for the progress made in securing public recognition and acceptance of LGBTIQA+ persons following the annulled 2014 AHL? I assert that even though established, the so-called safe[r] spaces are not essentially a manifestation of progress insofar as LGBTIQA+ rights and acceptance are concerned. In fact, the confrontations and pressures that circumnavigate these spaces are well exposed by the opposition to them. For instance, on learning of the *Rainbow Riots*’ intention to establish a safe space for the LGBTIQA+ communities, the Minister for Ethics and Integrity spoke against such developments,

They will have to take it somewhere else. They cannot open a centre of LGBT[IQA+] activity here. Homosexuality is not allowed and completely unacceptable in Uganda ... We do not, and cannot allow it. LGBT[IQA+] activities are already banned and criminalized in this country. So, popularizing it is only committing a crime (DeBarros 2018).

But how can we understand the implications of LGBTIQA+ safe spaces better? One of the implications is that the dominant attempt to deny public legitimacy to homosexuality has not succeeded in wiping off sexual minorities’ identities. On the other hand, this dominant attempt confirms ongoing speculations that sexual and gender minorities are isolated, causing many of their local advocates to resort to new ways of acquiring public legitimacy. The new ways are aimed at speaking back to the dominant anti-homosexuality public sphere. Apart from the establishment of the LGBTIQA+ community centre, members of the LGBTIQA+ communities have also utilized social media platforms such as Facebook, Twitter, and WhatsApp as alternative safe spaces. But their existence also confirms that homosexuality and LGBTIQA+ communities continue to be under siege by the continued fear of the Other. The creation of safe[r] environments establishes a sense of independence, the kind which is open to self-expression with no fear of victimization and intimidation by the authorities, and demonstrates a deliberate

defiance of sexual minorities from the prevailing dominant control aimed at sexual and gender minorities. But it is equally important to note that the creation of safe[r] spaces follows perceptions and fears that anti-homosexuality activists (who happen to be more acceptable in the public domain), pose a risk to LGBTIQ+ persons' wellbeing.

Conversely, the anti-homosexuality activists imagine that any progress towards an unconditional public recognition of the rights of sexual and gender minorities is a danger to the same public from which this recognition is sought. It is from this understanding that the sexual minorities' activists police their constructed safe spaces, both virtual and physical. In the virtual spaces such as Facebook accounts, administrators are very strict at inviting and letting in new members. Austin Bryan (2015:96) points out that account administrators and members of these virtual spaces take on the task to 'regulate groups and ensure that homophobic users are not permitted into the safe space'. Even though these precautionary measures exist to discourage prospective intruders, they do not eliminate the concern that intruders can still find their way into these safe spaces. To counteract and limit such possibilities, 'members create multiple accounts, change and exchange photos of themselves frequently and make sure they use stock photos as profiles' (Bryan 2018:96).

The Surveillance Tool of Fear and Threat

The possibility of blackmail also creates fear for sexual and gender minorities as they attempt to reclaim legitimacy and public space. According to Bryan (2018)'s findings, LGBTIQ+ persons have been threatened with being reported to the authorities unless the targeted individual pays money. Further,

most *Kuchus* who work outside of activism live in the closet at their workplace, and risk being ousted by co-workers or blackmailed by individuals who use their identities as leverage to extort money. Blackmailing also occurs from peers within the LGBTIQ+ communities who do not have access to income and resort to blackmailing other LGBTIQ+ persons especially those known to be with photographs or videos (Bryan 2018:98).

Blackmailing is therefore a tool of surveillance from within and without LGBTIQ+ communities that keeps them in fear, which also shapes

the constructions and defence systems of safe[r] spaces. Given the experiences of blackmailing and possible victimization of sexual and gender minorities, the identity of these spaces is also altered. It becomes a point of argument as to whether and to what extent such spaces would continue to be classified as safe[r] zones or spaces under which sexual and gender minorities would claim freedom from intimidation.

McKay, Misra and Lindquist (2017:7) contend that the fear, especially of being victimized, is well known for shaping LGBTIQ+ individuals' life choices and chances. The scholars further argue, '[a]lthough evidence suggests that direct victimization experiences are not uncommon for LGBTIQ+ individuals, fears of victimization may be even more pervasive – and thus, even broader in their impact' (2017:48). Blackmailers are therefore most aware that their victims are fearful of being arrested; that they are fearful of being exposed to further abuse and mob justice, should their identity be known. Blackmailers seem to be convinced that sexual and gender minorities will easily give in to their demands since they would never willingly let themselves be exposed to the authorities, should they be offered an alternative. In addition to blackmail, studies have shown that LGBTIQ+ communities are often concerned about 'secondary victimization from police bias and violence, public ousting, and skepticism about whether perpetrators would be punished' (McKay *et al.* 2017:41).

Such fear is not merely abstract. According to Amnesty International (2014), the aftermath of the 2014 AHL was characterised by hostility and discrimination against LGBTIQ+ persons; including an increase in arbitrary arrests, police abuse, extortion, loss of employment, evictions, homelessness and flight from the country. Moreover, because sexual minorities, especially men who have sex with other men (MSM), fear public disclosure, their access to health services without being exposed to prejudice and judgment is compromised. Rachel King *et al.* (2019) hold that many MSM prefer concealing their sexual identity. A recent study done by Joseph Matovu *et al.* (2019) on health providers' experiences, perceptions, and readiness to provide HIV services to MSM and female sex workers (FSW) in Uganda, reveals that some health workers are still uncomfortable with providing health services, especially to MSM. This is further shown in the responses given by some health practitioners when probed to share their willingness and openness in administering health services to homosexual persons without prejudice. One respondent in this study asserted,

Honestly, I am a conservative person. I wouldn't encourage men to have sex with men, so if I had a chance, I would just encourage them to leave the act. I do not think I need to design strategies for them to continue with their act, but if they are encouraged to seek HIV, Syphilis, Hepatitis testing and seeking help from psychologists or counselors, there will be good strategies for them (Matovu *et al.* 2019:5).

In the same study, another respondent similarly reiterates:

I would be quite uncomfortable. I don't see why a man should go with a man when there are women. Women are there and besides; this is a culture imported into our country ... it would be a bit uncomfortable for me to tell a man not to sleep with fellow men when he is already used to it. I see these things on TV [Television] the homosexuals in Kampala, but not this end in the village (Matovu *et al.* 2019:5).

Although the above voices may not necessarily represent a general position of health practitioners in Uganda, they nevertheless confirm certain fears and experiences of homosexual persons with regard to accessing health services. King *et al.*'s (2019:736) study reports of a related experience of an HIV positive homosexual who asserts that,

some trans fear to go and get treatment. The health workers ask a lot of questions concerning their gender identity. If I go to the hospital dressed like a woman no health worker will handle me. Someone can move to almost three rooms being tossed about because they can't tell whether she is a man or woman. They do not understand you.

Another respondent in King *et al.* (2019:736) further claims that 'some health providers cannot give you the same care as the others he takes to be normal'. It is also important to note that fear is not only experienced in general public spaces, but also within neighbourhoods and within family circles. This has led some members in the sexual minorities group to lead a double life for fear of hostility from close family members and neighbours the moment they openly disclose their sexual identity. A 22-year-old HIV-negative, college student told King *et al.* (2019:732),

At times I am like (speaking while lowering the tone) I cannot open to my family now. I live as two persons: the one of Henry, and the one of Sophia. I have to behave the way parents want me to behave. I try so much but the other side gives me a lot of difficult and my family really constrains me.'

Similarly, an 18-year-old, HIV-negative, secondary school pupil told King *et al.* (2019:733):

There is no way you can tell someone about your gender identity. Even when someone comes to know about it they cannot accept you as you are. They try to avoid you and even tell others not to interact with you.

The above experiences shed light on why some sexual minorities prefer to keep their sexual identities underground. However, a continuous resort to keeping sexual identities underground, proves that fear on the other hand legitimizes threat. It gives life to the threat of surveillance without which it would not exist. It further gives life to an historical motif in human society that has over the decades and centuries divided human societies into uncompromising dichotomies: 'Us' vs. 'Them,' 'Us' against 'Them,' or 'Them' against 'Us'.

Conclusion

The 2014 AHL, even in its state of annulment, remains an active tool of surveillance, victimization, discrimination and classification between those it favours and those it punishes. At the moment, the 2014 AHL may not be supported by law to enact specific powers over LGBTIQ+ communities, but its agenda is still very much alive in the public domain, maintained by anti-homosexuality sentiments in the guise of culture, religion and political sovereignty. This is why LGBTIQ+ communities construct safe[r] spaces. The question as to whether the annulment of the 2014 AHL ought to be celebrated as a milestone towards inclusiveness remains contentious. I have argued in this paper that the 2014 AHL and its subsequent annulment remains a source of conflict, uncertainty and fear. It also remains a tool of division in which the 'Us vs. Them' dichotomy endures to characterize the daily relationship be-

tween those subscribing to the dominant heterosexual community and those identifying themselves as part of LGBTIQ+ communities.

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