

Anti-Homosexuality or Anti-Human Rights Bill?

Statement from the
Civil Society Coalition on Human Rights and Constitutional Law

Hon. Bahati's Anti-Homosexuality Bill which was tabled in Parliament on October 14, 2009, and is currently before the Legal and Parliamentary Affairs Committee of Parliament covers much more than the title alone proclaims. A much better title for this bill would have been the 'Anti Civil Society Bill, the 'Anti Public Health Bill,' or the 'Anti-Constitution Bill.' Perhaps more simply it should be called *the Anti Human Rights Bill*. As a matter of fact, this bill represents one of the most serious attacks to date on the 1995 Constitution and on the key human rights protections enshrined in the Constitution including:

- Article 20: Fundamental rights and freedoms are inherent and not granted by the State
- Article 21: Right to Equality and Freedom from discrimination
- Article 22: The Right to Life (the death penalty provisions)
- Article 27: The Right to Privacy
- Article 29: Right to freedom of conscience, expression, movement, religion, assembly and association (this includes freedom of speech, Academic freedom and media freedom)
- Article 30: Right to Education
- Article 32: Affirmative Action in favour of marginalised groups and
- Article 36 on the Rights of Minorities

Let us think for a moment of who—quite apart from the homosexuals it claims as its target—this bill puts at risk:

- any **parent** who does not denounce their lesbian daughter or gay son to the authorities: Failure to do so s/he will be fined Ush 5,000,000/= or put away for three years;
- any **teacher** who does not report a lesbian or gay pupil to the authorities within 24 hours: Failure to do so s/he will be fined Ush 5,000,000/= or put away for three years in prison;
- any **landlord** or **landlady** who happens to give housing to a suspected homosexual risks seven years of imprisonment;
- any **Local Council I – V** Chairperson or Executive member who does not denounce somebody accused of same-sex attraction or activity risks imprisonment or a heavy fine;
- any **medical doctor** who seeks to prevent the spread of HIV/AIDS through working with what are known as most at risk populations, risks her or his career;

- all **civil society leaders**, whether in a Community Based Organisation, NGO, or academic institution; if their organisations seek to have a comprehensive position on sexual and reproductive health, they risk seeing their organisations closed down;
- any **human rights activist** who seeks to promote an understanding of the indivisibility and inalienability of human rights would be judged to be promoting homosexuals and homosexuality, and be punished accordingly;
- any **religious leader** who seeks to provide guidance and counselling to people who are unsure of their sexuality, would be regarded as promoting homosexuality and punished accordingly;
- any **Member of Parliament or other public figure** who is sent a pornographic article, picture or video will become vulnerable to blackmail and witch-hunts;
- any **media house** that publishes ‘pornographic’ materials risks losing its certificate of registration and the editor will be liable to seven years in jail;
- any **internet café** operator who fails to prevent a customer from accessing a pornographic website, or a dating site, could be accused of ‘participating in the production, procuring, marketing, broadcasting, disseminating and publishing of pornographic materials for purposes of promoting homosexuality’; their business licence could be revoked and they themselves could land in prison.
- any **Person** alleged to be a homosexual is at risk of **LIFE IMPRISONMENT and, in some circumstances, the DEATH PENALTY**

In short, this bill targets everybody, and involves everybody: it cannot be implemented without making every citizen spy on his or her neighbours. The last time this was done was in the Amin era, where everyone very quickly became an ‘enemy of the state’. It amounts to a direct invasion of our homes, and will promote blackmail, false accusations and outright intimidation of certain members of the population. Do Ugandans really want to mimic the practices of the Khartoum regime? Have we already forgotten the sex police of Apartheid South Africa, who smashed their way into people’s bedrooms in an attempt to prevent inter-racial sex?

As Civil Society organisations we condemn all predatory sexual acts (hetero or homosexual) that violate the rights of vulnerable sections of our society such as minors and people with disabilities. However, the Bill lumps “aggravated homosexuality” together with sexual acts between consenting adults in order to whip up sentiments of fear and hatred aimed at isolating sexual minorities. By so doing, the state fails in its duty to protect *all* its citizens without discrimination.

The bill also asserts Extra Territorial jurisdiction. In other words, all of the offences covered by the bill can be applied to a Ugandan citizen or permanent resident who allegedly commits them outside the country. Thus homosexuality and/or its ‘promotion’ are added to the very short list

of offences which fall in the ‘political offences’ category. It joins treason, misprision of treason, and terrorism as offences subject to extra-territorial jurisdiction. Clearly, this is out of all proportion in relation to the gravity of the act.

On top of these day-to-day considerations about everybody’s safety and security, let us consider what this bill will do for civil society organisations in Uganda which seek to have a critical voice and to engage in issues of global concern. One of the objectives of the bill is to prohibit the licensing of organizations which allegedly ‘promote homosexuality.’ Thus, for example, any organisation which talked about anal sex as part of a campaign of HIV prevention can be affected. Had this bill been in place earlier this year, no Ugandan could have participated in the World AIDS meeting held in Mexico to discuss HIV prevention.

And what about our standing in the eyes of the world? The Bill calls for Uganda to nullify any international treaties, protocols, declarations and conventions which are believed to be ‘contradictory to the spirit and provisions’ of the bill. In reality, this would involve Uganda withdrawing from:

- The Universal Declaration of Human Rights;
- The International Covenant on Civil and Political Rights and its protocols;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Elimination of all Forms of Discrimination Against Women;
- The Convention on the Rights of the Child, and
- The African Charter on Human and Peoples’ Rights

We note that Uganda is current Chair of the UN Security Council which operates with the UN Charter and UDHR as guiding principles. It is also current Chair of the Commonwealth and a signatory to the African Union’s Constitutive Act which has as its premise the promotion and respect of human rights. In 2009 and 2010 it is hosting AU Summits. What will happen to Uganda’s hard-won role on the global stage if it nullifies its international and regional human rights commitments? Uganda cannot wish away core human rights principles of dignity, equality and non-discrimination, and *all Ugandans will pay a heavy price if this bill is enacted*. We will have bargained away our hard-earned rights and freedoms as well as our right to challenge the State and hold it accountable for the protection of these rights.

In sum, the Bahati Bill is profoundly unconstitutional. It is a major stumbling block to the development of a vibrant human rights movement in Uganda, and a serious threat to Uganda’s developing democratic status. If passed, this law would not only prove difficult to implement, it would also consume resources and attention which would be better directed at more pressing issues of human rights abuse, corruption, electoral reform, domestic relations and freedom of the press.

Regardless of our personal moral beliefs and values, we the undersigned organisations are standing up in defence of Democracy, our Constitution and its enshrined principles of human dignity, equality, freedom and justice for all.

Kampala, 23 October 2009

- African Women’s Development Fund (AWDF)
- Akina Mama wa Afrika (AMwA)
- Advocates for Public International Law in Uganda (APILU)
- Center for Land Economy and Rights of Women (CLEAR-Uganda)
- Centre for Women in Governance (CEWIGO)
- Development Network of Indigenous Voluntary Associations (DENIVA)
- East & Horn of Africa Human Rights Defenders Project
- Uganda Association of Women Lawyers (FIDA-U)
- Forum for Women in Democracy (FOWODE)
- Human Rights Awareness & Promotion Forum
- Human Rights & Peace Centre (HURIPEC), Faculty of Law, Makerere University
- Integrity Uganda
- International Refugee Rights Initiative
- Mentoring and Empowerment Programme for Young Women (MEMPROW)
- MIFUMI Project
- National Association of Women’s Organisations in Uganda (NAWOU)
- National Coalition of Women Living with HIV/AIDS (NACWOLA)
- Refugee Law Project (RLP), Faculty of Law, Makerere University
- National Guidance & Empowerment Network of People Living with HIV/AIDS (NGEN+)
- Spectrum Uganda
- Uganda Feminist Forum
- Women’s Organisation & Network for Human Rights Advocacy (WONETHA)

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