The University of the Witwatersrand

Policing Gender Dissidence: a study on the increase of institutionalized gender repression- The 2014 Anti-homosexuality bills of Uganda and Nigeria

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Declaration

I declare that except for reference to other people's works, which have been duly acknowledged, this report is my own unaided work. It is submitted for the degree of Master of Arts (International Relations) in the University of the Witwatersrand, Johannesburg. It has not been submitted before any other degree or examination in any other university, nor has it been published by any other person or organisation.

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1. INTROCUTION

The decade 2005 to 2015 ushered in a period of great political salience of issues of gender minorities, LGBTI communities and the legislation of sexuality. Voices demanding equal rights and recognition for LGBTI communities were steadily becoming louder but at the same time as voices calling for the further curtailing of homosexuality were also getting much louder many countries have moved towards rights incremental approaches to marginalised groups of people. Moreover, many countries have moved away from legal discriminatory policies that restrict and supress the rights to privacy and dignity and discriminate on the basis of sexual orientation.

In the first two months of 2014, LGBTI rights were dealt heavy blows in two African countries. On 7 January, Nigerian President Goodluck Jonathan signed into law a bill that criminalises same-sex unions, with prison sentences of up to fourteen years. This same law sentences any person or organisation that funds in any way the registration and operation of gay organisations, clubs, or societies to a prison sentence of ten years. A month later, the president of Uganda, Yoweri Museveni, officially assented to a more draconian bill which imposes penalties as high as life imprisonment for people engaging in consensual same-sex sexual activity.

Nigeria and Uganda are arguably part of a greater trend in Sub-Saharan Africa of states to exercise control and rights extractions with regards to LGBTI communities with the apparent aim of maintaining African culture, traditions and family life. Ironically, these anti-homosexuality laws or 'anti-sodomy laws'- that date back to the colonial era penal codes, have long been abandoned by those countries that created them.

I argue that political saliency is intrinsically linked to national political interest and this is possibly the most central element of the question; what are the factors leading to the recent increase in repressive policy making for gender minorities in Africa?

There exists a gender hierarchy in social structure. This hierarchy reflects the ascriptions and roles that come with different *prescribed* gender identities. It is essential within feminist scholarship and policy making in general that the designated group ‘gender’ is not taken to be the exclusive referent for women. The work of African feminist theory in international relations and policy dissemination needs to move beyond juxtaposing the two; here gender is understood as an all-encompassing term for all gendered identities including non-conforming gender groups or what has been called disparate gender identities which include the LGBTI community.

Therefore the study has an inevitable rhetorical aim of secularising gender minority rights under the larger banner of gender emancipation as a contribution to African feminist literature. The thinking informing this argument is that the project of gender emancipation should not be disintegrated phase by phase because the sources of the constructions of repression and rights repossessions are the same. In other words, the systematisation that confiscates the rights of women is the same that results in the passing of laws that confiscate the rights of gender minorities.

It is vital to disclaim that legislation is only one step towards the emancipation of repressed gender groups and social justice in any society. All the same, however sectional the rule of law is as a tool for social justice, it is a necessary- and some would argue a foundational condition towards change.

The following paper will analyse the factors leading to an increase in the repressive forms of legislature for gender minorities in African nations with the case studies of Nigeria's 2014 *Same-Sex Marriage Prohibition Act* and *Uganda's 2014 Anti-Homosexuality Act*.

2. RESEARCH QUESTION AND HYPOTHESIS

2.1 Research Question

What are the factors leading to the recent increase in repressive policy making for gender minorities in Africa? The case studies to be used are the 2014 anti-homosexuality laws in Uganda and Nigeria. The research project aims to address the question of how these laws came about and what influences were involved in their emergence.

The starting point of the enquiry is that there has been an increase in the passing of repressive gender laws on the continent in recent years. The study looks at the two Anti-homosexuality laws of 2014[1] that have been passed in Uganda and Nigeria. The aim of the research is to identify and critically analyse the factors leading to this increase dating back particularly to the past nine years, 2006 to 2014 which have piloted an overabundance of similarly repressive laws in other parts of the continent and in other realms of gender politics. These bills, with varying profiles, occur in diverse contexts but both have similar consequences in each instance; the gender hierarchy is further reified and freedoms extracted by those at the top of the hierarchy from those at the bottom.

There has been a plethora of research explaining the factors leading to homophobic legislature in African countries as well as other places in the world like Russia, India, the Arab world, and specific American states. There is also a significant body of research dedicated to scholarship on Uganda and Nigeria the perverse nature of what has come to be known as the "Anti-gays" law. In a move to avoid the dangers associated with ideological debates that shade African politics as primitive, backward and morally inept, the less confronted question of *how* the recent legal crackdown on homosexuality is unfolding at a particular period is what the research is concerned with. In other words, the project intends to identify the issues impacting the level of salience that anti homosexuality bills have increasingly been receiving in African states.

The variables for the purpose of analysis that have been selected from a preliminary scoping of current literature on the increase if homophobic legislature in African countries, are political transitions in leadership and government system; the regional cascading of anti-gay legislature geo-politically as well as the conflation of gender conservative laws in general as well; and the influence of religious diplomacy and growth in visibility of the LGBTI[2] rights movement in Africa.

Contemporary scholarship on Africa often falls into the trap of particularising Africa and African "pathology"; Africa does not have a monopoly over institutionalised and socialized homophobia. However, the Nigerian and Ugandan laws of 2014 have depicted a break from the secularization of statecraft in the two countries furthermore the heavy sentences on the crimes regarding homosexuality have been recently implemented into legislature, worsening the existing colonial laws on homosexual conduct. These bills provide *one* depiction of the larger trend in regression of gender legislature on the African continent. It is thus the aim of the study to understand the factors leading to the increase on the

[1] At the time of the undertaking of the research, only Uganda and Nigeria had implemented harsher laws on homosexuality by 2014.

[2] A recognisable acronym to collectively refer to a group of identities that includes lesbian, gay, bisexual, transgender and intersex persons

African continent of gender repressive law making in the recent years, this is what makes the cases interesting and temporally relevant.

2.2 Claims and Hypothesis

The main claim the study wishes to put forward as a hypothesis is that regressive laws are often defensive and reactive. They are *one* mechanism that is used by governments to "restore" the authenticity in African socio-political ideology and are a rejection of further "Westernization".

The claims being made by this dissertation are the following:

Firstly the study stems from the logic that the rule of law is one necessary condition for driving change. This is in fact the first step that needs to lead to social justice because without this foundation providing *de jure* backdrop for social justice the chances of achieving the desired outcome, which in this case is gender equality, are slim if not completely unattainable.

The second claim is that African countries have gone through so much forced modification and assimilation in the past-much of which did not originate in Africa-that there is a dire need to retain elements believed to be of African origin where possible. The continent has seen a host of ideological sacrifices that were made in the name of development. As such, the preferencing of nation-building projects has run parallel with development projects and has come to be an important factor in policy creation.

Thirdly, the result of this is a retreat to the status-quo and balanced equilibrium in social relations. Inevitably institutions of socialisation that are under threat of being eroded by external forceful influences are rebuilt under the nation-building project. Typically, these institutions comprise of the family, the church, schools and the media. Gender roles within these institutions are inflexible and clearly defined. Those at the bottom of the gender hierarchy are made even more powerless and this powerlessness is ratified through the rule of law.

Lastly, the nexus of political strategic interests and political subject salience is unavoidable for analysis in the deconstruction of legislative decisions. The issue of homosexuality began increasing in legal and social rhetoric only recently and 2014 was the year that (so far) has witnessed the most legal reversion and attention of the issue in Africa. The fact that both the laws received immense domestic public support certainly has an effect on the current administration and are thus in the political interests of very specific stakeholders; the government and it's official supporters.

3. LITERATURE REVIEW

> Feminism is one of the avant-gardes of IR, a bold chaser after innovative vision in a field that has little taste for visions avant-garde. It stands in many locations, draws many connections, looks for neglected spaces of the international and the many relations that have been overlooked in this core area of men's studies, this area devoted to great states, military strategies and hardware, statesmen, presidents, tyrants, soldiers, interstate diplomacy-war, war, and a little peace. (Christine Sylvester, 1997)

3.1Feminism in International Relations

Gender in the study of International relations (IR) emerged largely in the eighties and began gaining momentum with the end of the Cold War as part of the critical project (Tickner, 2001: 36). This ushered in the possibility of a deconstructivist perspective aiming to debunk and re-evaluate existing traditions in International Relations and other schools of thought. Currently the study of gender in International relations remains a peripheral niche project.

It is the aim of feminist theory in IR to analyse and depict how conventional understandings of IR are gendered and how this affects both men and women. Also to try to put forward different ways of looking at how to deal with the current issues in international affairs that are preventing development and social justice. In this sense the works of IR feminist theorists such as Anne Tickner (2001); Cynthia Enloe (1990); Judith Butler (1999) played a large role in establishing the field of study building on the existing traditional rudiments that make up IR and interpreting or re-ordering them through a feminist lens. One of the most influential text in was Cynthia Enloe's *Bananas, Beaches and Bases (1990)* wherein she explains the unofficial spaces filled by women in international economic trade, diplomatic affairs and conflict.

Broadly feminism in IR has expanded on the work of feminist political and economic theory with view to scrutinize the gendered and patriarchal approach towards social and political institutions; most specifically the state and its key military and governmental apparatuses. Furthermore feminism in IR examined the discursive production and reproduction through time and space of state institutions.

Based on this broad description Youngs (2004: 76) states three major categories of analysis explored by feminism in IR: (a) the state and markets which are theoretically and practically gendered by male-centric structures and assumptions. (b) The normative conceptualizations of political and economic life are also male-dominated and defined, ignoring the many strands of women's contributions and realities. (c) The lack of critical analysis and deconstruction of the term 'gender' which obscures interrelated social constructions of male and female identities and roles.

Christine Sylvester (1989) offers more meticulous categories of the differences within feminist thought in IR. The first is *feminist empiricism* which contends that states and the interstate system have been fundamentally gendered structures of domination and interaction. This strand challenges the tendency towards focusing on states and worldwide capitalist institutions as points of analysis and rather choosing to examine the social attitudes and structures which impart the gendered nature of IR.

The second is the *feminist standpoint theories,* which argue that there's a unique and inimitable element to women's experiences of socialisation that provide valid and necessary insights into world politics. Through the experience of being systematically excluded from public life, women are able- because of marginality and their peripheral, second class citizen experience, to offer and contribute significantly to the traditional views that already exist. This would be the peaceful co-existence of the two sexes through a dialectical, power-sharing process. There is an understandably abundant amount of theory as well as widespread support for standpoint feminist theories; even non-feminist theorists see the value of standpoint feminism. This approach comes across as a pursuasive appeal to the sensibilities of all citizens- mainly those in power ownership; a summons of the memories of oppression and morality and a postulated image of all two genders existing in harmony, drawing from the different expertise of each (Keohane 1989: 246)

Third is *feminist post-modernism*. This viewpoint discards essentialism within feminism; what Harding and Sylvester referred to as a "falsely universalising perspective". This is in contention with standpoint positions because of the commitment to collective applications that are often based on stereotypes. A contemporary example of the dangers of essentialism is the motivation employed for women's representation in political leadership; that women are inherently peaceful and men inherently aggressive, therefore increasing women in political leadership will lead to a more peaceful world. Francis Fukuyama (1999) and Ann Tickner (1999) deliver interesting, conflicting points of view on the invocation of gender stereotypes to explain the status or ideal of world politics. Fukuyama, in his *Woman and the Evolution of World Politics* gives an essentialist account using evolutionary psychology to explain how world politics will always work. Anne Tickner in her rebuttal *Why Women Can't Run the World: International Relations According to Francis Fukuyama* makes a comment on correcting Fukuyama's definition of the feminist project in International Relations then arguing that neither biology nor evolution unaided can explain gender dynamics effectively. She also emphasises the need to move beyond stereotypical, one dimensional accounts of gender in order to get a more sophisticated and accurate account of gender dynamics.

These delineations are seminal in understanding the different branches of feminist literature that are useful for this study. The importance of the choice of these particular strands for the study is that liberal feminist thought, activism and development has taken preference over its radical counterpart in state-building and policy in an international arena that only recently has to grapple with the official inclusion of gender perceptive policy creation.

> We present ourselves as earnestly authentic in an insufficiently authentic field, as avant-gardes tend to do. We have a love-hate thing with being on the outside—as undiscovered avant-gardes tend to do. We reason, we rail, we outline, we inline, we give forty-two and a half good reasons why feminism should be taken into consideration when investigating all issues of the international. Meanwhile the tragedy of IR limps on, keeps us trying to please, keeps us from irony (Sylvester, 1997).

The theoretic foot-work needed to base the study begins from a larger discourse of feminism in IR; followed by the post-colonial feminist school of thought; African feminisms in relation to human rights then IR theory, human rights and LGBTI literature follow. The theoretic influences of the paper are feminist literature through a human rights and gender emancipation lens and as a response to a

universalized modernisation and what some have called "westernized" form of theory creation and its implications on African state formation and ratification.

The next section will highlight the epistemological chasm that exists between liberal feminist theory and its dominance in the study of IR, and radical feminist thought that exists in the margins of IR-rarely engaged with in mainstream scholarship. What is important to ascertain in this section is the contributions of both ranges of scholarship within the feminist critical project in IR. It will further demonstrate how the use of radical feminist theory in interpretations of world politics and statecraft are applicable, useful and I will argue *essential* in deconstructing an area that is based on uncontested, static pillars that are definitive in state building. In the critical, revisionist project therefore, adequate analysis cannot happen when the demarcated areas of 'critique' are adhered to. In other words, the irony of the dominant feminist interpretations of IR is the double edged sword effect that is the effort to critique an inert body of knowledge using the same tools that exclude it.

3.2 Radical Contributions

Although feminist IR theory is largely marginalised, niche and 'avant-garde', it still has a home in contemporary cooperative global politics. This is the global politics that understands the need to address oppressive practices, to ensure that there is no repetitions of mass-scale tyranny, to produce development programs, global institutions that seek to empower women through quotas in the public and private sector, decrease in the education gender gap between boys and girls, including women in the military, peace-building processes, foreign policy and transitional state-building for example. Liberal feminists have thus set the wheels of 'change' in motion.

What has less of a place in the discipline of IR is a radical form of feminist theory applied to the study of IR. Describing this application will require treading slightly backwards on the path that has just been taken and considering epistemological definitions, once more. In this, I will discuss gender (There are different definitions depending on the strand generally liberal or radical); space (Post-colonial feminisms, African feminisms, European feminisms); time (Different waves of feminism) and the intersectionality that comes with these.

A fundamental difference or break in thought between radical and liberal strands within feminism is definitions of gender as a designated category. A limitation that exists within much liberal scholarship is the use of binaries as an adhesive agent in theory production. This has the double effect of speaking a common language, using the same tools and sticking to the demarcated areas designated by the male policy creators. And it also has the effect of creating surface level change without addressing underlying ideologies, prejudices and oppressive practices. Lorber (1996:144) explains the idea of binaries which function to conventionalise bodies, sexuality and social location using the categories –

> "sex" polarized as "females" and "males," "sexuality" polarized as "homosexuals" and "heterosexuals," and "gender" polarized as "women" and "men". In writing on feminist research methods, she depicts how these binaries exclude many groups of people who do not fit into the conventional boxes, for example, intersex people, bisexuals and transsexuals.

One of feminisms impediments is the widespread inclination to self-define through difference. In other words, essentially defining a body of knowledge, a strand of an area of study, through a description of how it differs vastly from what already exists. It is equally important to extract commonalities, conflations and overlaps in feminist thought, not for the purpose of legitimation but for the purpose of understanding the intersectionality in socio-political existence, producing a nuanced body of knowledge that reflects its deviation as well as contribution to a continuum of existent theory.

Oloka-Onyango and Tamale (1995: 697) highlight this propensity accurately when arguing that there *are* differences in Western experiences of gender oppression and non-Western, post-colonial experiences as well as those in a specifically African context, for example that can be explained along the lines of race, class, age and sexuality.

> It thus makes pragmatic political sense to retain the category of women despite the multiplicities that exist within this category. Without losing focus on the differences, we maintain that a united front is essential for any social movement. This conviction is based on our belief that universality exists in many women's concerns, regardless of physical location. However, these concerns are always determined and tempered by socioeconomic and political specificity. For feminism to achieve any meaningful success, a universal basis must be the foundation. The question then becomes: what is the scope of that "universality"? (Oloka-Onyango and Tamale, 1995: 698).

Post-colonial Feminism and African Feminism(s)

The foundation of post-colonial feminism is based on the movement for self-expression of the 'Third World Woman" as explained by Chandra Talpade Mohanty in her prolific account of non-Western forms of feminisms *Under Western Eyes (1988)*.

> And it is in the production of this "Third World Difference" that Western feminisms appropriate and "colonize" the fundamental complexities and conflicts which characterize the lives of women of different classes, religions, cultures, races and castes in these countries. It is in this process of homogenization and systematization of the oppression of women in the third world that power is exercised in much of recent Western feminist discourse, and this power needs to be defined and named. (Mohanty, 1988: 335)

Some literature on post-colonial feminism is for the aim of writing and re-ordering the experiences of non-Western feminists by non-Western feminists. This looks at the rejection of Western feminists' points of view and drawing up a set of feminist tenets that are reflective of women's experiences in the post-colony. This reflection embodies the cross-cutting identity factors of race, ethnicity, under-development and social class that are experienced differently from a European or American woman. The universalising of women's experiences by Western Feminist writers is the main point of critical analysis from post-colonial feminists of what was then mainstream feminist literature (see Kumari, 1986; Amadiume, 1990; Bulbeck, 1998). This is the discursive break from Western forms of feminisms that are interpreted as devoid of agency and self-reflection from women in the post-colonial settings. Some writing on post-colonial experiences highlights the parallels between the colonization and evangelism of the 17th and 18th century. This strand of writers problematize Western feminism's efforts to enlighten, teach, determine goals and galvanize the direction of struggles for emancipation for these women (see Mohanty, 1988; Okome, 1999).

There is a logical overlap in the origin of literature between scholars writing on post-colonial feminist experiences and those writing on African feminisms. In the seventies and eighties one finds African feminist literature embodying very similar principles to post-colonial writings. The intellectual break in literature becomes evident with the de-colonization processes and independence, liberation struggles, nationalism and conflict and war.

In theory it is more accurate to speak of African feminisms than of one homogenous feminism that encompasses all feminisms that write on the African experience. It is important to recognise the differences as it is to find commonality. Literature often juxtaposes African feminisms and Black feminisms. (This is especially evident in bibliographies of both African- and Black feminist writing.) However, African feminist thought has an added commitment to analyses in African contexts.

What perhaps counts as a fundamental point of variance for feminists writing in an African context is the difference between *feminine* politics and *feminist* politics. There is a strand of African feminism that does not aim for radical restructuring of the social order and there is another strand that embodies a more radical, left type of politics that calls for complete restructuring of the socio-political as well as economic framework. Mekgwe (2008:14) explains the difference as follows; African intellectual feminism is viewed as being somewhat elitist and pro-Western. African intellectual feminists have been accused of a paternalistic attitude towards African women, reminiscent of Western feminism. Popular feminism, on the other hand, is rooted in the lived experiences and cultural beliefs of African women; however there are instances where it fails to mobilise against cultural practices that can be oppressive.

Afro-Feminism on Gender Emancipation

> The imperial nature of theory formation must be interrogated to allow for a democratic process that will create room for the intervention, legitimation, and validation of theories formulated "elsewhere." In other words, theory making should not permanently be a unidirectional enterprise—always emanating from a specific location and applicable to every location—in effect allowing a localized construct to impose a universal validity and application. (Nnaemeka, 2004: 362)

In her account on African feminisms Susan Arndt (2002: 234) establishes and expands on the three useful categories of African Feminist literature differentiating between reformist, transformative and radical African feminist literatures. *Reformist feminist texts* criticize individual traditional and modern conventions that discriminate against women. They present alternatives that improve women's ways of life, maintaining that improvement even within existent structures is possible. An example of reformist feminine texts is Ifi Amdiume's (1990) earlier works explaining the exportation of patriarchy into traditional Nigerian society; Olufunke Okome (1999) in her account of the evangelical nature of Western feminism when it comes to female genital mutilation.

Transformative feminist texts offer a fundamental critique of patriarchy. Men's power bearing is presented more sharply and as being typical for them as a group. Women's co-option in the reproduction of gender discrimination is also scrutinized. Both men's and women's reproduction of discriminatory structures is seen as resolvable. These types of texts would include Fatima Mernissi (1987) on Islam and the exclusion of women based on interpretations of Q'uranic texts; Oboima Nnaemeka (2004) in her account of a theory of "nego-feminism" where she asserts the importance of feminist writing in an African context learning to balance between writing in an African context as

something essentially different to Western notions of feminism and also the ability to draw out factors in Western feminism that can work for African feminist writers.

Radical texts "argue that men as a social group inevitably and in principle discriminate against, oppress and mistreat women. A disturbing lack of alternatives and perspectives distinguishes these texts" (2002: 85) from reformist and transformative ones. Patricia McFaden's (2003) writing on *Sexual Pleasure as Feminists* Choice would fit into this category. The piece got her deported out of Zimbabwe for being accused of disseminating lesbian literature. In it she writes about women being able to choose their sexual partners and she expands on the policing of sexuality by the state.

What perhaps stands out about African feminist literature especially in regard of the study is the juxtaposing of the term "gender emancipation" with "women's emancipation", which is a misconception this study aims to avoid. Power relations are imbedded with hierarchical and stratified systems; this is true of state-craft globally. Gender is no different, inequality; oppression and domination do not exist in a vacuum they exist because of socialised and institutionalised gender stratification where the echelons are clearly defined and static. There are men at the top, followed by women then non-conforming gender identities at the bottom. To destroy institutional oppression for those that are not part of the gender elite or much less part of popular politics; that is to propose a step by step emancipation process which is a notion implicitly stitched into Afro-feminist scholarship- further prolongs the efforts towards emancipation. It may be saying 'that is a different battle to be fought in a different space at a different time' but the reality is that oppressive policy by a state on its citizens stems from the same logic every time. It is the systematic extraction of freedoms by the powerful on the powerless, always.

On the issues of culture and tradition, these have always been fluid. Culture is a reflection of society; society, however, does not remain the same, over time and space culture has been defined and enacted in different ways. What need to be scrutinized are the curators and owners of the direction that these definitions will go-those that decide what culture is when and how. It is not unfathomable to assert that these are the same power bearers at the top of the hierarchy. In the same way that Afro-feminism(s) have the need to affirm and redraw theory for themselves and break away from what has been handed down as an "evangelical" truth coming from the West; theory building, especially pertaining to policy creation in African states needs to examine existent prejudices within African contexts and expand the meanings and conceptions of gender emancipation.

All the same, the theoretic aim of the study is not to impose, eliminate or ameliorate the work that African feminist literature has done. Rather the aim is to first understand the increase of anti-homosexual laws in the selected time frame and to add to existing African feminist literature by including gender issues that are often left out of mainstream gender discussions and policy like LGBTI rights. The radical feminist views do precisely what the liberal views do not-in an African context they recognise structural constraints on the freedom of action that comes with ignoring oppressive power systems that do not benefit what can be called the gender elite. Perhaps then it is more successful in articulating theories that are more cognizant of the realities of women and gender minorities' lives.

3.3 Human Rights and Feminist Theory

Afro-Feminism on Human Rights

The literature on human rights by African feminist scholars is often divided according to a particular human rights issue. For example, one would find literature on issues such as homosexuality (see Tamale, 2009; Mutua, 2009; O'Flaherty, & Fisher, 2008); female genital mutilation (see Toubia, 1995; Ibhawoh, 2000; Okome, 1999) and a large number of accounts of nationalist women's rights movements. For the purposes of the discursive literary foundation of the study an introduction to the concept of universality and cultural relativism and discussions of a normative *African* human rights discourse will be presented.

The rejection of a universal human rights discourse that is applicable globally mainly started gaining momentum during the nineties post-dating the Cold War and largely stems from the idea of cultural relativism. The debates were reformulating the idea of human rights as applicable to the South and Africa in particular with a twist of culture, tradition and at times religion. For international women's human rights this movement had immediate and often insidious implications.

Kwasi Wiredo in Chukwudi Eze (2005: 195) warns against accounts of cultural relativism that are based on a *rejection* of 'modernisation' in Africa. He points out that culture has not remained the same in any place in the world; Western folk thought had to progress and so does African folk thought. The methods of progress do not have to be uniform, however, progress is necessary.

> It becomes possible to see the movement towards modernisation in Africa not as essentially a process in which Africans are unthinkingly jettisoning their own heritage of thought in the pursuit of Western ways of life, but rather as one in which Africans in common with other peoples seek to attain a specifically *human* destiny […] (Tamale and Oloka-Onyango, 1995: 700)

Sylvia Tamale and J. Oloka-Onyango in their 1995 entry in the *Human Rights Quarterly* journal effectively explain the two pronged effect of initial interpretations of a cultural human rights perspective. Firstly there is the assertion that universal human rights norms are unsuited to non-western societies. This argument rejects a universal human rights discourse on the basis of its imperial nature and disregard for traditional-religious practices that are specific to non-Western societies. The second effect is one that pre-dates the Cold War period which implicitly claims that human's rights violations are endemic of non-Western societies and that some cultures are innately more prone to violations than others (Oloka-Onyango and Tamale, 1995: 706). The authors point out that relativist thought of this nature is firstly for the purpose of justifying non-confrontation and prevention of international intervention on domestic human rights practices. Secondly the authors argue that it urges an interventionist attack on non-Western societies, for example the exportation of Islam and terrorism as a replacement of Regan's "Evil Empire". An interesting parallel for illustration is drawn between Newton Leroy Gingrich (Speaker of the US House of Representatives) and former British Prime Minister, Lady Margaret Thatcher, in the north; Lee Kuan Yew, doyen of Singapore politics, and Zaire's Mobutu Sese Sekou from the south, all of whom are characterised according to their relativism when it comes to an international human rights discourse (Oloka-Onyango and Tamale, 1995: 708) and:

> All pick and choose their arguments from strikingly similar models of social, economic, and political ordering and pursue them from a panoply of rhetorical and essentialist perspectives. Armed in this

> fashion, they stampede toward a specific brand of exclusionary, sexist, classist and parochial politics-the essential point of which is its unilinear, discriminatory, and unaccomodative nature. All have a decidedly Westphalian notion of the state and sovereignty, whether it is Gingrich on the United Nations, Thatcher on Europe, Kuan Yew on development and democracy, or Mobutu on aid-conditionality.

What become clearer in an analysis of the concepts of *universality* and *relativism* is that often arguments for a culturally particular human rights discourse either perpetuates or glosses over oppressive practices that a human rights discourse definitively aims to eradicate. Furthermore the objective is used to systematically maintain systems of power and domination. In social structure this hinders the emancipation of those at the bottom of the hierarchy (also see Rao 1995; Nagengast, 1997). In Nigeria and Uganda, relativist arguments function to depoliticise the debate around repressive laws that oppress and endanger marginal groups of people. Relativism would draw upon the sovereignty of all states and autonomy to regulate their constituencies in a manner that best suits and mirrors their societies. This approach is overly simplistic because it ignores the undermining of human rights that *should* be applicable to all humans and the dangers involved in legally excluding, therefore dehumanising a group of people.

Governmentality, Human Rights and LGBTI Politics

Queer theorisation[3] can be traced back to the early 1990s, when sexuality started gaining precedence in international human rights discourse. In 1994 following a statute enacted in Tasmania, Australia criminalising homosexual acts between two consenting males, the United Nations Human Rights Commission (UNHRC) made its first decision on sexual orientation stating that Tasmania was in violation of the International Covenant on Civil and Political Rights (UNHCR: *Toonen v. Australia*, 1994). In 1995, two seminal books on sexuality were published; *Sexual Orientation: A Human Right* by Eric Heinze and *Sexual Orientation and Human Rights* by Robert Wintemute. (Gross, 2013: 99). In the same year Amnesty International became the first major international human rights NGO to publish a report on sexual orientation, aptly titled *Breaking the Silence: Human Rights Violations Based on Sexual Orientation* (1994), Amnesty International followed with a campaign in 1998 called 'Gay rights are human rights', echoing the women's rights movement slogan 'Women's rights are human rights'. The movement towards the realisation of LGBTI rights thus connects the discourses of sexuality and human rights.

IR theory to date has not seriously considered LGBTI politics and human rights a topic worthy of interest or scrutiny: leading theorists that have largely come from the liberal school of thought still adhere to gender binaries and sectional gender activism. By sectional gender activism reference is being made to the tendency to categorise LGBTI literature and advocacy under either sexuality politics, selective human rights politics or as a non-entity. IR feminist theory has therefore either normatively or empirically left out LGBTI politics. Hence the question of LGBTI rights under a human rights lens in feminist IR simply has not been engaged in any systematic fashion by mainstream IR theory. Despite these limitations, IR theory nonetheless can be shown to generate at least three points of concern; defining the domain of 'the political' in relation to the role that the

[3] For an introduction to queer theory, see Annamarie Jagose, *Queer Theory: An Introduction* (1996); For an introduction to queer legal theory, see Carl Stychin, *Law's Desire: Sexuality and the Limits of Justice* 140-56 (1995)

invocation of human rights plays in LGBTI politics; secondly looking at *who* can be a subject of such rights; and lastly an analysis of the state-centricity of international human rights discourse.

The need for theorizing 'the political' becomes clear when one attempts to conceptualise LGBTI's interaction and experience of human rights as well as human rights' experience of the state and state power. This requires a slight deviation from traditional IR theories. Foucault's theorisation of 'Governmentality' offers an excellent tool to begin defining the political in relation to LGBTI rights and the relationship between state and non-state actors. Foucault identifies in the rise of a centralizing European state, from the sixteenth through eighteenth centuries, the emergence of a new "art of government" which goes beyond the exercise of sovereign authority and power by the prince, but the "introduction of economy into political practice". For Foucault, this account of 'governmentality' is driven by the ensemble that is institutions, procedures, analyses and reflections which are also the strategies through which the state is able to exercise a precise form of power "which has its target population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security" (Eenam and Hagland, 1997: 368). Politics therefore is not simply government or state apparatus; it is also the interactions and network of relationships between state and society which, in modern states as led to the creation of an administrative state, which exercises control and power over its population.

The backdrop against which these networks and interactions are taking place can thus be understood as 'discursive formations' which structure relationships of dominance and subjection (Eenam and Hagland, 1997: 368). Therefore, using the Foucauldian perspective LGBTI politics are characterised by the prevailing discourses around the community. Unlike first generation rights that are afforded on the basis of being pre-discursive, for example, the right to life, one might use the concept of governmentality to chart the construction of socio-political sexuality and gender identity rights, third generation rights, which are also collective rights. On the issue of subjects; different factions of the LGBTI, i.e. the transgendered man or the lesbian woman do not exist outside of a set of discourses and narratives or in an advocacy vacuum, such as that ensured by the anti-homosexuality acts of Nigeria and Uganda[4], but are constructed *for* a group of people and dubbed on them[5]. The construction of these discourses often involves the pathologising of LGBTI communities. Domination and subjection are complimentary and when subjects internalise imposed discourses this leads to notions of inferiority.

Out of this form of subjection and domination within the context of governmentality in which power is exercised through the control of sexuality, may emerge a corollary movement for reconstruction and re-writing of discourses in a positive light *by* the subject where the subject attempts to claim rights from states and other non-state actors (Eenam and Hagland, 1997: 369). This is where the final consideration emerges regarding the state-centric approach of international human rights claims through advocacy and literature. What is significant for this analysis is the system of interaction and relationship between state and non-state actors. Some theorists would argue that the state dictates

[4] This is by virtue of the specific statutes that forbid any form of advocacy or activism specifically in the laws in Nigeria and Uganda

[5] Consider government propagandist strategies that Uganda undertook to educate people about the dangers of homosexuality and recruitment of children into the practice. Also refer to section 6.2

and has final control over the nature of human rights discourses in a society, while others would argue that the human rights discourse in a country is reflective of the society.

Kollman and Waites (2009: 2) draw attention to the emergence of human rights discourses as a central vehicle and framing device for LGBTI political claims, particularly in international contexts. LGBTI movements originating in the West have increasingly defined themselves as global, seeking to organize across borders and lobby intergovernmental organizations (Adam et al, 1999; Altman 2001; Binnie 2004). The debate on international human rights groups' strategic approaches for activism is between development work that engages societies directly and legislative advocacy work aimed at changing laws. This is interesting for this analysis because one of the claims this paper makes is that in the cases of African states that have included a ban on advocacy of LGBTI rights; human rights organisations *cannot* reach the communities. The laws are created so that once the practice of homosexuality is forbidden; the statues regulating that may not be challenged without committing a criminal offence.

Literature that contends for the need for community engagement of international human rights perspectives argues that human rights-oriented organisations often reflect a profound state-centric bias in their thinking and their activities. The proponents of this point of view, such as Eenam and Hagland (1997); James Kirchick (2007); , would argue that while the states are often the most flagrant violators of human rights; it is ultimately within the societies within which they are based that values inimical to human rights arise. Eenam and Hagland (1997: 362) explain in view of this standpoint that if:

> "state" and "society" do not exist independently of each other, but are rather […] interactive, then it is not only true that social attitudes, such as homophobia, can prompt homophobic state policy, but conversely, that LGBT-supportive state policy cannot *im*pose rights on a society. In other words, an effective guarantee of human rights cannot be made without the broad support of non-state actors (including other citizens) in the society in which those rights are to be exercised.

Black American feminist Audre Lorde famously declared in reference to the US civil rights movement that 'the master's tools will never dismantle the master's house'. In the context of international law, Marxist China Mieville would agree. He argues that the danger of looking to international law for progressive change 'risks legitimising … the very structure of international law that critical theory has so devastatingly undermined' (Otto, 2010:98).

A necessary distinction to make is that of international human rights efforts towards changing international law and towards changing domestic law. The value of the above positions and critiques of human rights movements and international NGOs is more compatible with the efforts concerned with international law that are aimed at global governance institutions such as the UN and the different UN factions that cover human rights practices like UNHCR. The value is that while there have been successes in securing the rights of gender minorities through international treaties and agreements such as the aforementioned successes of the early 1990s, more recently the 2006 *Yogyakarta Principles*[6] and even regional treaties like the *African Charter on Human and People's*

[6] The *Yogyakarta Principles* were drafted by a group of human rights experts and are intended to specifically address the application of international human rights law to sexual orientation and gender identity (Mittelstaetd, 2009: 359)

Rights, the obvious limitation to this form of advocacy is that even when countries ratify the treaties; the global governance institutions concerned lack in the mechanisms for implementation of such instruments within the state.

The efforts of international human rights organisations to change domestic law in states that are grossly violating people's human rights inside the country is less compatible with the critiques against an advocacy approach aimed at changing states' legislative measures. In this particular project considering Nigeria and Uganda, one of the unique features of the 2014 legislation is the obliteration of the potential for *any* advocacy inside or outside the country where it concerns the laws of the country. Therefore, the viewpoints that move for community engagement and grassroots activism by international human rights organisations would not apply in such cases at a stage where it would be criminal activity for international organisations to engage the community. However, there is still value in a method that considers society level values and how to approach changing the minds of the communities that the laws will be enacted upon[7].

Previous sections have covered the issue of universality and cultural relativism. In African states, the issue is further complicated particularly by the application of cultural relativism. Looking at who may be subject to human rights, not only are LGBTI factions excluded on the basis of deviant sexuality the deviance is then defined on the basis of cultural relativism. LGBTI communities fall short of falling under the protections of international human rights, through state power enforcement. This form of power also supresses the potential for self-reflection and reconstructions of a group's discursive formations. Because of the extensiveness of the legislation in Uganda and Nigeria, the work of international human rights movements has to begin with efforts towards decriminalisation.

4. LGBTI COMMUNITIES IN SUB-SAHARAN AFRICA

> "By maintaining a tight grip on certain activities, and silencing the voices of those individuals and groups that engage in them, the patriarchal state makes it extremely difficult for these individuals to organise and fight for their human rights" (Tamale 2007:18)

Sexuality and sexual activity, regardless of society, are intrinsically linked with the exercise of power (Foucault, 1980). For many societies around the world sexuality continues to be highly controlled and managed. In African states, this form of exercise of power is growing in strength, frequency and intensity and manifesting itself through morality politics. This is evidenced in the way same-sex relations continue to be silenced, marginalised and legally forbidden. While many countries have begun to address draconian, discriminatory laws against same-sex relations, a large concentration of African countries are cracking down on a small group of people based on their sexual orientation. Horn (2006: 8) contends that sexual rights are not "new" sets of rights; they are simply an application of existing internationally recognised human rights within the domain of the sexual body. The policing and management of people's sexual rights in the case of the recent increase in state sanctioned homophobia has a direct impact on the lived experiences and citizenship[8] of gender minorities in these countries. In order to understand the emergence of the increase in laws that are repressive for gender minorities is contextualising the LGBTI community and analysing the backdrop against which affected lives are shaped by the rights extractions.

This section intends to highlight the importance of situated knowledges or locating the emergence of specific discourses and representations (including the literature[9], advocacy programmes and legislative trends) within their historical and political contexts of production. This section will contextualise the study and give background to LGBTI communities in Sub-Saharan Africa; the intersectionality within the community; the different ways in which members of the community experience the law and the perverse nature of the marginalisation of LGBTI persons in an African context.

4.1 A Decade of Discrimination

Homosexual acts are illegal in 36 countries on the continent and in recent years many African leaders have been intensifying in anti-gay rhetoric. At the beginning of this study in early 2014 there had been two laws passed in Nigeria and Uganda. By the end of the study one more country (Gambia) had enforced stronger criminalisation laws on homosexuality and two more (Chad and Tanzania) have bills in the parliamentary processing stage. These developments all occurred in 2014 (Also see Stoddart, 9 January 2015; Amnesty International, 20 January 2015).

There is evidence of a trend and serious growth in homophobic laws in African countries in the past ten years. There are factors that make the continent unique in comparison to the both developing and under-developed states, and homophonic and non-homophobic states. Firstly, the recent laws in Sub-Saharan Africa, particularly in Nigeria and Uganda are the harshest, notwithstanding Islamic states. Secondly the growth in using legislature to fortify homophobia became a trend in a short period of time; the past decade has ushered in the highest number of revisions for existing laws against same-

[8] Consider citizenship as more than a normative rights framework, but an application and realisation of rights as the outcome of people's struggles for recognition, respect and the equitable distribution of resources.
[9] Refer to Chapter 4

sex relations and introductions to new sentences. Lastly, these countries also present the common thread of British colonial history and the resultant irony of the narrative sustaining the need for anti-homosexuality laws-'African culture'. Worthy to note is that the trend *has* been of rights extractions; however there are some African countries that have moved in the opposite direction to abolish discriminatory laws against gender minorities, South Africa and Cape Verde for example. There are also countries that have remained consistent in legislature in that homosexuality was not illegal during the colonial period and has not been legislatively revised so far such as the Democratic Republic of Congo and Mali. Below is a list of developments from 2005 to 2015 of countries that have perpetuated the trend and those that have broken the trend.

South Africa

South Africa has seen a number of positive legal developments over the past decade, including allowing joint adoption by same-sex couples in 2002, introducing a law on legal gender recognition in 2004, and equal marriage for same-sex couples in 2006 (Amnesty International, 2009). Section 9 (3) of the South African Constitution prohibits unfair discrimination on the grounds of sex, gender and sexual orientation. South African case law[10] further includes the term "sexual orientation" to specifically include transgendered persons as well (De Vos, 2010).

Cape Verde

Cape Verde decriminalized homosexuality in 2004, and since 2009, Mauritius, Sao Tome and Principe, and the Seychelles have also committed to decriminalizing homosexuality (Amnesty International, 2009). In 2008 articles 45(2) and 406(3) of the Labour Code prohibited discrimination in employment based on sexual orientation (ILGA, 2014:22). Same-sex marriages are however not recognised. According to the Cape Verdean Civil Code, marriage is defined as the voluntary union between two persons of different sexes that intend to constitute a family by means of a full common life (Global Research Directorate, 2014:3).

The Democratic Republic of Congo

In 2005 the Democratic Republic of the Congo constitutionally prohibited same-sex marriage. While Homosexual acts are not explicitly illegal, article 172 of the Penal Code, prohibits "violations of morality" under penalty of up to five years' imprisonment, which could be used against LGBTI individuals. December 2013 DRC's National Assembly proposed a draft bill criminalising same-sex activity in the country (Global Research Directorate, 2014: 4).

Zimbabwe

Zimbabwe's criminal law amendments passed in 2006 (Criminal Law [Codification and Reform] Act) criminalize any actions perceived as homosexual. Section 73 (1) states that "anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act" commits the crime of sodomy, on conviction,

[10] In the case of *National Coalition for Gay and Lesbian Equality v Minister of Justice* the Constitutional Court stated that the concept of "sexual orientation" as used in section 9(3) of the 1996 Constitution "must be given a generous interpretation" and therefore applies equally to the orientation of persons who are "transsexual".

punishable with up to one year of imprisonment and/or a fine. In Zimbabwe only male-male sexual relations are prohibited, there is no mention of female same-sex relations (ILGA, 2014: 52).

Burundi

A 2009 revision of the Penal Code made homosexual relations punishable by three months to two years of imprisonment and/or a fine of BIF50,000–100,000 (about R360–R730) (Global Legal Research Directorate, 2014: 3). In 2009, and for the first time in Burundi's history, same-sex sexual activity was criminalised. The lower house of Burundi's Parliament first passed a law criminalising homosexual acts in November 2008, but it was rejected in the Senate. The legislation was then passed back to the Assembly, which was able to overrule the Senate and restore the amendment. President Pierre Nkurunziza subsequently signed the article into legislation on 22 April 2009. Article 567 of the 2009 Burundian Penal Code punishes same-sex relations with 3 months to 2 years imprisonment and a fine (Global Research Drectorate, 2014: 3).

São Tomé and Príncipe

The new Penal Code enacted in 2012 does not criminalize homosexuality. During the 2011 Universal Periodic Review[11], representatives of São Tomé and Principe vowed that the government planned to decriminalize homosexuality by the summer of 2011 (Wockner, 2011). 76 Crimes reports that homosexuality was decriminalised on the small island in 2012 although it was not widely reported on (Stewart, 2014). However Refugee Legal Aid (2013) reports that as of May 2012, no evidence can be found to suggest any amendments have been implemented that do, in fact, decriminalise homosexuality.

Mozambique

According to the Mozambican government, on December 18, 2013, the Parliament approved by consensus, a general draft revision of the Penal Code. It was not possible to determine, however, whether the mentioned provisions were altered. Same-sex marriage is not recognized in Mozambique. Pursuant to the Mozambican Family Law, "marriage" is defined as the voluntary and singular union between a man and a woman (Global Research Directorate, 2014: 10)

At Mozambique's UPR hearing at the UN Human Rights Council in March 2011, Justice Minister Maria Benvinda Levi, clarified the meaning of certain provisions in the Penal Code. Article 71 of the 2006 Penal Code contains security measures that can be applied to "those who surrender to the usual practice of unnatural vices" but the Minister was clear that this provision did not mean that homosexuality was criminal. She went on to state that that homosexuality is not illegal in Mozambique (Cowell, 2013).

Ethiopia

Homosexuality is illegal. The country's law states that "whoever performs with another person of the same sex a homosexual act, or any other indecent act, is punishable with simple imprisonment"-up to fifteen years' imprisonment (Global Research Directorate, 2014:5). In February 2014 a bill was

[11] UPR is a United Nations (UN) process that occurs every four years that involves a periodic review of the human rights records of all 193 UN Member States.

endorsed by Ethiopia's Council of Ministers making homosexual acts "unpardonable". A presidential pardon is granted to thousands of prisoners every year on the Ethiopian New Year. However, if the new law is approved, the president will no longer have the power to carry out these pardons for those convicted for homosexuality (ILGA Report, 2014: 79).

Nigeria

The Nigerian revision of existing Penal Codes through the Same-Sex Marriage (Prohibition) Act 2014 prohibits same-sex marriage and civil unions alike. The violation of this ban is punishable on conviction by a fourteen years' imprisonment. Additionally anyone who "administers, witnesses, abets or aides the solemnization of same sex marriage or civil union" commits a crime punishable on conviction by a ten-year prison term. In some northern Nigerian states, same-sex conduct if convicted is punishable by death. (ILGA, 2014: 18). The country also prohibits any form of gay rights advocacy. The Same Sex Marriage (Prohibition) Act states that the "registration of gay clubs, societies and organizations, their sustenance, processions and meetings is prohibited." and is punishable by a ten-year prison term. Furthermore, Nigeria prohibits a "public show of same sex amorous relationship directly or indirectly," the violation of which, on conviction, is punishable by ten years of imprisonment (Global Research Directorate, 2014: 12).

Uganda

A law adopted by the country's Parliament on December 20, 2013, and signed by President Yoweri Museveni on February 24, 2014, criminalizes homosexuality and imposes harsh penalties for violations of its provisions. Included in the prohibitions are the offence of homosexuality (punishable by fourteen years to life imprisonment); aggravated homosexuality (liable, on conviction, to life imprisonment); same sex marriage between a couple as well as all witnesses present or in full knowledge of the attempted union (punishable by seven years to life imprisonment); promotion of homosexuality (a fine or imprisonment of a minimum of five years and a maximum of seven years). The law also provides penalties for anyone who attempts to commit the offence of homosexuality, who "aids, abets, counsels, conspires, procures or detent another to engage in acts of homosexuality". Moreover, it provides measures of protection, rehabilitation and payment of compensation to and confidentially of 'victims' of homosexuality (ILGA, 2014: 18).

Gambia

Gambia also passed a similar law in October 2014. The Gambian *Criminal Code (Amendment) Act 2014* introduced the new crime of 'aggravated homosexuality' for 'serial offenders' and gay or lesbian people who live with HIV – which comes with the punishment of a lifetime in prison. Homosexuality was already illegal in Gambia and punishable for up to fourteen years' imprisonment. The Bill was passed by Gambia's parliament, the National Assembly, on 25 August. Gambia's president, Yahya Jammeh, made the Bill law on 9 October (The Guardian, 21 November 2014).

Chad

Amnesty International (23 September 2014) reported in a press release, that Chad has introduced an anti-homosexuality draft bill. The amendments to the penal code proposed by the government would

criminalize same-sex conduct in Chad, threatening jail sentences of between 15 and 20 years, and a fine ranging from amounts of approximately R1000 to R10 000. If the proposed legislation is enacted, Chadian people "who are perceived to be gay or don't conform to traditional gender stereotypes will not be able to live their lives with equality and dignity," according to Amnesty, ministers were also quoted saying the law would protect Chadian's family values and society.

4.2 "Homo(sex)uality is un-African"

The abhorrence against homosexuality is fuelled and motivated primarily through the reproduced discourses of religion and culture. Political leaders have also stimulated the hatred and misinformation by using these narratives to single out ways in which homosexuality is an abominable anti-tradition, anti-Africa, anti-family threat that should be rejected. For example, Jjuuko (2009) carried out a study at Makerere University where it was found that most of those supporting criminalisation could not correctly define homosexuality, and that the reasons given for opposition to it were based on religion and culture.

A common modern argument against same-sex relationships and in support of criminalising the practice has been that homosexuality is un-African and is a foreign concept imported into Africa by the west. However historical and anthropological accounts have shown that a number of variations of same sex relationships have existed in African society that predate colonialism.

Studies based on anecdotal accounts of African societies suggest that traditional community groups were largely patriarchal and based on gerontocracy, organized on principles of seniority that existed before colonialism (Msibi, 2011: 64). This is not to say that same-sex desire and practice did not exist in African societies. The accounts provide evidence of existing same-sex relationships, accommodation of alternative sexualities in pre-colonial Africa and diverse definitions and understanding of gender in traditional societies.

One example that is often cited is the Bugandan king, *Kabaka* Mwanga II whose homosexual activities were an "open secret". Ugandan King Mwanga was widely reported to have engaged in sexual relations with his male subjects who once introduced to Christianity stopped consenting to the practice. The 'Ugandan Martyrs' were then killed by Kabaka Mwanga primarily because, having been converted to Christianity, they found the king's homosexual tendencies towards them to be suddenly unacceptable under the new religion (see Faupel, 1962; Southwold, 1983; Tamale, 2003). Today Ugandans celebrate Ugandan Martyrs Day annually on June 3rd in remembrance of the men that chose death over denouncing their faith.

Murray and Roscoe (1998: 45) document the experiences of a Dutch military envoy in the late 1640s, of a warrior woman, Nzinga in the Ndongo kingdom of the Mbundu in present day Angola ruled as 'king' rather than 'queen' and dressed as a man. She was reported to always travel with an assembly of young men who dressed as women and who were her 'wives'. In the same piece Murray and Roscoe (1998: 50) explain that amongst Bantu speaking Pouhain farmers in present day Cameroon and Gabon, homosexual intercourse had a traditional name and was considered a medicine for wealth which was transmittable through male-male sexual intercourse.

Driberg's (1923) findings on the Langi of northern Uganda, state that the Mudoko Dako "males" were treated as women and could marry men. Mushanga (1973) offers an account on the Ugandan

Nilotico Lango, men who assumed "alternative gender status" were known as *mukodo dako*. They were treated as women and were allowed to marry other men, similarly in Uganda, same-sex relations were reported amongst other Ugandan groups including the Bahima, the Banyoro and the aforementioned Baganda.

Tamale (2009: 3) adds that apart from erotic same-sex activities, in pre-colonial Africa, several other activities involved in same-sex (or what the colonial powers branded "unnatural") sexuality. For example, the Ndebele and Shona in Zimbabwe, the Azande in Sudan and Congo, the Nupe in Nigeria and the Tutsi in Rwanda and Burundi all engaged in same-sex acts for spiritual rearmament. Christian anthropologists later gave accounts of spirit possessions of male spirits over female bodies in reformist writings (also see Murray and Roscoe, 1998: 87).

In Nigeria, the women from Igbo and Yorùbá land lived without the prescriptions of western gender norms. Women were said to be highly organized, autonomous, and very powerful in these societies: the degree of autonomy and power that women enjoyed is evident in "goddess worship, matrilineality, dual sex systems, gender flexibility in social roles and neuter linguistic elements or systems" (Rubenstein 2004: 351). There are also reported accounts of same-sex female marriages, although it is debatable whether these included sexual activity or not (also see Amadiume, 1990)

However within accounts of pre-colonial homosexual activity in African countries the context and experiences of such relationships did not necessarily mirror homosexual relations as understood in the west or in current definitions of same-sex relationships, identity or desire. The contribution that accounts of the pre-colonial existence of such relations offer is a dispelling of the overused myth that homosexuality was brought to Africa by colonial powers. If anything the evidence proves that colonial powers imported a measure of strict control of 'deviant' sexuality (among other tools of power and regulation) that was also informed by the movement for Christianisation of native peoples. This is intrinsically linked with the emergence of morality politics, state control and power imposition.

4.3 Discursive Formations on LGBTI in Africa

Many African heads of state have discriminated and directly targeted LGBTI communities in Africa; publicly castigating LGBTI people and the west for promoting homosexuality on the continent. President Mugabe of Zimbabwe once described gays and lesbians to be "worse than pigs and dogs" he also threatened to behead them. Specifically he said;

> If you take men and lock them in a house for five years and tell them to come up with two children and they fail to do that, then we will chop off their heads. This thing [homosexuality] seeks to destroy our lineage by saying John and John should wed, Maria and Maria should wed... Obama says if you want aid, you should accept the homosexuality practice... We will never do that (Nositter, 2013).

Gambia's President Yahya Jammeh was also quoted to have asked gay people to leave his country before he cuts off their heads because he believed they were a threat to human existence. He described gay people as vermin and threatened that they will be tackled in the same way the mosquitoes causing malaria were tackled. According to him LGBT stands for Leprosy, Gonorrhoea, Bacteria and Tuberculosis, all of which he said are detrimental to human existence (Scheinert, 2014).

The public opinion of citizens in both Nigeria and Uganda is just as hostile towards LGBTI people. A Pew (2013) research report on The Global Divide on Homosexuality report that 98 per cent of Nigerians do not believe homosexuality should be accepted in society and in Uganda the figure stood at 96 per cent.

LGBTI people have faced a notable increase in arbitrary arrests, police abuse and extortion, loss of employment, evictions and homelessness, and scores have fled their countries; hate crimes have been legitimated with the passing of these laws. Health providers have cut back on essential services for LGBTI people, who also fear harassment or arrest if they seek health care.

ILGA[12] (2014, 80) reports that the effects of these laws include but are not limited to an increase in:

- Instances of human rights abuses for gay and lesbian people;
- Access to health becomes incredibly difficult as a result of these laws because individuals are not able to openly speak about their sexual partners;
- People get evicted from their dwelling places due to the fact that they are gay or lesbian;
- Gay and lesbian individuals become targets of attacks in the streets and in social spaces;
- The society effectively considers the individuals criminal due to their sexual orientation or gender identity.

In Nigeria and Uganda, homosexual people are being beaten by mobs and abused. ILGA (2014: 65) reports that In February 2014 in Abuja, the Nigerian capital, a mob attacked and brutally beat and kicked a dozen gay men, nearly killing one man. They dragged four of the injured victims to the police station to be arrested for homosexuality where they experienced secondary violence. Activists in Nigeria (Human Rights Watch, 20 May 2014) say Nigerian police have arrested gay men and tortured them into revealing the names of others.

In Uganda, as soon as the law was passed, one tabloid ran the cover story "Exposed! Uganda's 200 Top Homos Named," including photos; among those named were a hip-hop star and a Catholic priest. Many gay Nigerians and Ugandans are now trying to find asylum abroad.

Sexual Minorities Uganda (SMUG), a Kampala-based organization, stated March 2014 report, state that “the full force of the State, particularly the legislative and executive branches of government, is being used to hunt down, expose, demean and suppress Uganda’s LGBTI people.” (SMUG, 2014)

There is much diversity in the types of laws, the accessibility and interpretation of certain laws in some countries, there is even greater disparity when looking at the colonial histories of the countries. For instance, four out of eight countries that are moving for further criminalisation of homosexuality were under British colonial rule, two Belgian and one French (Ethiopia was never colonised). Of the four countries that have moved towards rights incremental legislation for gender minorities, one was under British colonial rule, and the remaining three were under Portuguese colonial rule. The danger of using colonial rule status of countries for analysis is that it extracts the agency from current political leadership. The value that can possibly be derived from looking at the trend is the element of timing. 2014 saw three laws passed and two more officially introduced in Chad and Ethiopia. There is a clear trend and element of mimesis in the actions of African state leaders.

[12] International lesbian, gay, bisexual, transgender and intersex association

Another common feature is he lines of motivation that are offered for the discriminatory laws by government officials. Using culture and tradition politicians support he need for anti-homosexuality laws. The 'homosexuality is un-African' myth is an unchanging old practice of selectively invoking African culture by those in power.

5. RESEARCH METHODOLOGY[13]

5.1 Research Design

As aforementioned the study is qualitative and inductive. Van Evera (1997: 21-22) defines inductive research as theory creation that looks at the interaction between phenomena; this is followed by enquiring on the possible causality in the interactions or relationships. This is followed by the action to locate the findings in a larger theoretic perspective. Inductive research design is also referred to as "backward-looking" or the "bottom-up" approach. This means that the study begins enquiry from the outcome.

In the research design the *variables* can be defined as concepts or aspects of a theory that can possess a number of different values. The *independent variable* in this sense is the unchangeable variable "framing the causal mechanism" (van Evera, 1997: 10); A variable that is used to determine whether it has causal relations with the dependent variable. The *dependent variable* can be defined as the variable that is "framing the caused phenomenon" (van Evera, 1997: 11). In other words, this is the changeable variable and the consequent result being measured.

The independent variable in this study acts as the "cause" which possibly precedes, influences and predicts movement or variation in the dependent variable. In this study the independent variables are the factors possibly impacting the increase of repressive law making targeted at gender minorities. Our aim is to determine the existence of correlation as well as the level of impact if correlation is determined between the independent variables; which were selected through a screening of the existent literature on anti-homosexuality laws in Africa, and the passing of the bills. Below the independent variables are listed:

a) The national impacts- *political transitions in leadership and/or system*. This section will try to identify whether there was a change in political leadership or system from the introduction of the bills to their eventual passing in 2014.

b) The regional impacts- *a rise in gender conservative laws and anti-gay sentiment on the continent.* This section will determine the effects of the rhetoric surrounding gender minorities on the continent and establish whether there is a noticeable change in the general direction of gender rights extracting laws regionally.

c) The international impacts-*religious and civil society influences*. This section will seek to study the possible correlation between the rise of LGBTI rights advocacy visibility outside the continent, on the one hand and conservative religious diplomacy on the other hand; and the passing of the laws.

Dependent variables act as the effect in that they change as a result of being influenced by an independent variable. In this study the dependent variable would then be the outcome, which is the passing of the Anti-Homosexuality laws in Uganda and Nigeria.

[13] Please refer to Addendum 1 for a Methods Map

5.2 Operationalization and Definitions

The LGBTI Community is made up of lesbian, gay, bisexual, transsexual and intersex persons. The group is in no way socially homogenous. Different members of the LGBTI community often have different concerns, ways of life, and self-identities. There are also many categories of difference within the groupings (Alexander and Wallace, 2009). However, in the case of the laws against homosexuality, the group is for all intents and purposes, treated as legally homogenous and thus in many ways would suffer similar discrimination. What this means is that both Nigerian and Ugandan laws treat alternative sexualities the same. For example, under conditions where anything other than the heterosexual relationship (male and female) is prohibited; an effeminate homosexual man (who identifies as a man but is attracted to the same sex) who may display characteristics or mannerisms that are traditionally associated with women would be discriminated against to the extent that his characteristics or mannerisms deviate from the heterosexual norm and gender roles. Similarly despite a completely different lived experience, a transgendered person (born male, who identifies as female and is sexually attracted to men, or women) would be discriminated against for again deviating from the heterosexual norm. Despite there arguably being disparate lived experiences of the two individuals, the absolute approach of discrimination on the grounds of gender norms and roles deviation will affect them –neither of them will escape the blanket anti-homosexuality laws.

The term 'Lesbian' refers to women who are primarily attracted to other women. 'Gay' is used to refer to a person who is attracted primarily to members of the same sex, within the acronym, refers to men (although it can be used for any sex, e.g. gay man, gay woman, gay person). 'Bisexual' is a term for persons who are attracted to both people of their own gender and another gender. The term 'Transgender' has more definitions; it is frequently used as an umbrella term to refer to all people who do not identify with their assigned gender at birth or the binary gender system. This includes transsexuals, cross-dressers, gender-queer, drag kings, drag queens, two-spirit people, and others. Some transgender people feel they exist not within one of the two standard gender categories, but rather somewhere between, beyond, or outside of those two genders. 'Intersex' people's bioloical sexual anatomy or chromosomes do not fit with the traditional markers of "female" and "male." For example: people born with ambiguous or 'in-between' genitalia XXY (International Spectrum, n.d). The lived experiences of the LGBTI group is incredibly diverse and in terms of the anti-homosexuality laws anyone who actively steps outside of the gender binary that is heterosexual man and woman, in any capacity is vulnerable as an offender.

The phrase "growth of gender repressive laws" throughout the study explains a growing trend in African countries to go in a regressive direction with regards to gender law making. The study aims to avoid an essentialist view of African governance, however, it cannot go unscrutinised that there is something particularly different about the institutionalisation of the repossession of freedoms for women and gender minorities; in other words, the use of the rule of law to institutionalise gender stratification. Furthermore an understanding of how this mechanism is reactive to pressures that are deemed external makes an interesting case for analysis.

Although most African countries have achieved "first" generation political and civil rights for women there is largely a human rights vacuum where second and third generations[14] of rights are concerned for all gender groups. This includes the rights of gender minorities in the LGBTI community as well. For example, parliament quota systems have been implemented in many African countries; the UNDP Millennium Goals that promote gender equity in education and the economy has been endorsed and practiced by a number of African countries, this does not translate to inclusion, social justice and gender equality within these countries.

Therefore; the phrases "increase" and "growth" imply a temporal quality and refers to the increase in the use of the rule of law to repress women and gender minorities. In 2014 alone for example, five countries out of the eight that have had developments in the last decade, had passed or planned drafted plans to further criminalise homosexuality. Nigeria, Uganda and Gambia passed anti-homosexuality laws and Chad and Ethiopia introduced draft bills that further discriminate against gender minorities in their respective manners.

The factors identified above, which are also the independent variables served as parts of hypotheses that are tested. In addition to these, the method of process tracing (explained further in proving causality) was used with regards to the laws themselves and the process they underwent from proposal in 2006 (Nigeria) and 2009 (Uganda) to passing in 2014. This latter method is in order to get a nuanced understanding in testing the selected variables regarding the legislation of homosexuality in these countries.

It is essential within feminist scholarship and policy making in general that the designated group 'gender' is not taken to be the exclusive referent for women. The work of feminist theory in IR as well as in other fields needs to move beyond juxtaposing the two; here gender is understood as an all-encompassing term for all gendered identities including non-conforming gender groups or what has been called gender minorities which include the LGBTI (Lesbian, Gay, Bisexual, Transgender; and Intersexed) community. Throughout the paper, the term 'gender minorities' will be used interchangeably with all groups within the LGBTI community.

5.3 Proving Causality

George and Bennett (2005: 73) explain that confirmation of a causal theory occurs when the predicted pattern of co-variation between the independent and dependent variables is present in the case and evidence within the case confirms that the causal links, paths or mechanisms specified or implied by the theory are present as well. An independent variable is causally relevant when it causes a positive outcome.

To depict causal links between the variables the study mainly makes use of the co-variance approach. In the study the causal variables are the independent variables. Brockington (2006) explains co-variance as a condition where two processes vary together which can also be understood as an association or correlation between the two variables. The way that this correlation is determined will depend on the measures or indicators specified by the researcher. So for example, in this study where there is an

[14]Second generation rights can be understood as "group rights" or "collective rights"; for example the rights to education, to health and social security.
Third generation rights may be invoked of the state and demanded of it; for example self-determination, as well as a host of normative expressions whose status as human rights is controversial at present.; for example the right to development, the right to peace, and a right to a healthy environment.

objective to determine co-variance between the two factors; political transitions and the passing of an anti-homosexuality act the indicators for the independent variables would be a test of post-conflict reconstruction and/or a change in political systems in the particular site. As such, indicators have been defined for each of the variables.

No methods of comparison have directly been applied between the case studies. This is because the variables have all been identified from the literature and the claim is that they are all causally relevant. However, there could be space in the findings for a ranking of intensity of influence. Additionally process tracing of the bills was used to determine causality where co-variance is unable to.

Process tracing is a method of case study research design that can identify different causal paths to an outcome, point out variables that otherwise might be left out, check for falsity, and allow causal inferences on the basis of a few cases (George and Bennett; 1997). This method will be used in looking at the process of the laws from introduction to passing. Descriptions of the different key actors at different stages and the different stages that the bills went through will be determined through process tracing. The usage of process tracing particularly in application to the course of the laws is that it informs the findings on the temporal element of the research question-the why *now* element?

The study will also make use of congruence[15] to rank the causal applicability of each independent variable. In other words, although comparison will not be used for the case studies there is space in the methods to measure the causal intensity of each independent variable. For example looking at the international impacts and their indicators (growth of Christian Right Wing evangelism in Africa and international human rights advocacy) set against the national impacts and their indicators (change in political systems in Uganda and Nigeria); the method of congruence allows for a comparative measure of causal intensity between the two variables. In this case for example, the methods allow for there to be determinacy in which variable is more impactful and had a more significant influence on the passing of the laws in each respective case.

5.4 Case Study Selection

Inductive research is by definition case orientated. According to Fox (2008: 429) case studies are used to stimulate case building and to assess the plausibility of the theories developed. The cases should be picked in such a way that falsifiability is possible. This means that the theory should be applicable to more cases than those picked. In other words, a study is stronger if the researcher can show that where the outcome is negative, there is a missing independent variable (also see George and Bennett, 2005). The case studies for research also serve as the unit of analysis.

In this study the case selection was framed by the outcome which is also the dependent variable, then variance on the independent variables was used to achieve falsifiability. In this case selection the cases have different profiles in that they are different where the independent variables are concerned. For example the national, regional and international impacts regarding the laws are dissimilar in each

[15] George and Bennett (2005: 235) define congruence as a way to deal with the possibility of an over-estimated causal link between the independent variable and the outcome. In this study for example, if a case occurs in a country where there was no political transition between the years 2006 and2014 congruence allows for an explanation through consistence between the variables through explaining the speed, depth, or temporal state of causality.

country. As a result the impact that the political transitions in Nigeria had on the law will not be the same as the transitions in Uganda.

The selected time frame of the study was informed by a review of i) other laws that have been passed in other parts of the continent that are regressive for gender emancipation. For example; the 2014 Kenyan Polygamy Bill (which allows men to take on a limitless number of wives without signatory participation from the first wife), the 2014 Ugandan Anti-Pornography bill (which limits women's dress code and behaviour in public spheres-also known as the anti-mini skirt law) a similar bill was passed in Swaziland in 2009, and the 2009 South African Traditional Courts Bill (which indirectly makes women and children second-class justice citizens through reviving the tribal courts system in chiefdoms). The implication of the escalation of what can be described as gender repressive laws around the continent is that there seems to a process of reinforcement of the gender hierarchy; a redrawing of an equilibrium that disadvantages- in different degrees, those at the bottom of the hierarchy.

The two cases in Nigeria and Uganda were chosen because the Acts were signed weeks between one another, they both occurred in 2014 and both provide Subsaharn Africa with some of the most severe offences and penalties. At the time of beginning the study only the two laws in Uganda and Nigeria had been implemented, Gambia also passed a similar law in October 2014. 2014 thus has been the peak of anti-homosexuality laws severity in Africa with the most renewed laws in Africa since the debate began. Another factor that made Uganda and Nigeria interesting is that both countries are former British colonies that have in fact inherited these laws through colonial Penal Codes and have decided to rewrite them and strengthen sentences and enforcement of the laws. The difference between the two sets of laws; Penal Codes and current laws is that in the Penal Codes the sexual act was always criminalised, while the Anti-Homosexuality Act in Uganda and the Same-Sex Marriage (Prohibition) Act in Nigeria go further and criminalise the individual, the knowledge of possible offenders, advocacy for LGBTI communities. Uganda goes as far as to criminalise anyone who "aids and abets" offenders.

Nigeria

Nigeria has criminalised homosexuality since it was under British colonial rule. Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria 1990 sections 214, 215, 217 make it a felony punishable by fourteen years' imprisonment for any person who has "carnal knowledge of any person against the order of nature" or any animal, or allows another person to have carnal knowledge of him or her." 217 specifically states, "any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years." (White, 2012:7).

In November 2011, the Senate of Nigeria passed the Same Sex Marriage (Prohibition) Bill. The House of Representatives of Nigeria, in May 2013, also passed the Bill which was sent to the president for his assent. President Goodluck Jonathan signed the bill into law in January 2014. Which states that "Couples who marry could face up to 14 years each in prison; witnesses or anyone who helps couples marry could be sentenced to 10 years behind bars". Twelve states in North Nigeria adopted the Islamic Shari'ah laws criminalizing same-sex activities with the maximum penalty between men being the death penalty and for women: whipping and/or imprisonment (Obidimma and Obidimma, 2013: 45).

Uganda

Like Nigeria, Uganda's Penal Code Act of 1950 (Chapter 120)145, 146, and 148 which dates back to British colonial era is similar to Nigeria's laws criminalizing homosexual acts. Sections 145-146 makes it a felony punishable by seven years to anyone who "has carnal knowledge of any person against the order of nature, has carnal knowledge of any animal, or if a person allows a male to have carnal knowledge of him or her against the order of nature, commits an offence and is liable for imprisonment for life." (White, 2012: 7).

In 2009, the Ugandan Senate introduced the Anti-Homosexuality Bill, which would have the effect of intensifying the laws against homosexuals in the country. When it was introduced the law was initially called the "Kill the Gays bill" in media because of the original death penalty clauses that it carried. In 2013 parliament dropped the death penalty clauses for life imprisonment instead. In February 2014 the bill was passed into law. This bill criminalizes homosexual conduct in Uganda and for Ugandans outside of Uganda as well. The bill also includes penalties for individuals, companies, media organizations and NGO's that support, promote, excuse or don't report acts of homosexuality (Karimi and Thompson, 2014).

In both Nigeria and Uganda homosexual conduct and same –sex marriage are seemingly linked. Homosexual conduct is illegal, therefore homosexuals cannot get married, in other words legally, they are treated the same. Only Nigeria's legislation has explicitly mentioned the prohibition of same-sex marriage, however this was an addition to the existing laws prohibiting the conduct.

5.5 Sources for Research

The data used in the study was retrieved from Hansard Parliamentary Records, press statements, speeches, petitions, letter between different actors, the actual bills and acts on text that were passed as well as the steps taken at each state level to pass the bill through media reports, articles, blogs, government social media pages.

Secondly a vast amount of literature on all the selected indicators was used for the study. This requires a country-by-country profile of the legislative procedures undertaken for the bills. The different government websites are also essential to get policy discourse on the selected issues. Speeches and media portals of the countries concerned during the processing of the bill will also be studied.

6. CASE STUDY PRESENTATION:

TRACING THE PASSAGE OF LEGISLATION ON HOMOSEXUALITY IN NIGERIA AND UGANDA 2006- 2014

6.1 Nigeria

The Nigerian Same-Sex Prohibition Act

Although the prohibition of homosexuality in Nigeria also dates back to British colonial rule, in 1990 amendments were made to Criminal Code Act, Chapter 77 in the Laws of the Federation of Nigeria 1990 sections 214, 215 and 217. These amendments made it a felony punishable by fourteen years' imprisonment for any person who has "carnal knowledge of any person against the order of nature or any animal, or allows another person to have carnal knowledge of him or her." Section 217 specifically states that, "any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years." (White, 2012:7)

In November 2011, the Senate of Nigeria passed the Same Sex Marriage (Prohibition) Bill. The House of Representatives of Nigeria, in May 2013, also passed the bill which was sent to the president for his approbation. President Goodluck Jonathan signed the bill into law in January 2014, which states that "same sex couples who marry could face up to fourteen years each in prison. Witnesses or anyone who help couples marry could be sentenced to ten years behind bars." In 1999 when Shari'ah Law was adopted by twelve Northern states. Shari'ah Law applies to all Muslims and those who voluntarily consent to the jurisdiction of the Shari'ah courts. Chapter 3, Part 3, Sections 128-129 of the Kano State Shari'ah Penal Code Law of 2000 the offence of 'sodomy" is punishable "with caning of one hundred lashes if unmarried" and one year imprisonment and "if married or has been previously married, with stoning to death" (Obidimma and Obidimma, 2013: 44).

Colonial Laws on Homosexuality

The legal intolerance of LGBTI persons in Nigeria has existed long before independence in October 1960. As a legacy of the colonial period there were two Penal provisions that covered homosexual conduct; the Penal Code which was applicable in northern Nigeria and the Criminal Code, applicable southern Nigeria (Obidimma and Obidimma, 2013: 43). The Criminal Code's provisions define homosexual conduct as "unnatural offences" and prescribe fourteen years' imprisonment for 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" (Section 214 (a), (c).

The 2006 Same Sex Marriage (Prohibition) Bill

On 18 January 2006 the Same-Sex Marriage (Prohibition) Bill was proposed by Justice Minister Bayo Ojo and read to the National Assembly. This first reading of the Bill was unsuccessful. It received much opposition from civil society organisations and was subsequently stalled in the legislature because of the upcoming April 2007 elections (Human Rights Watch, 2007). Under the leadership of former President

Olesegun Obasanjo in January 2007, the Bill was approved by the Federal Executive Council and the bill was reintroduced to the National Assembly for a second reading (Obidimma and Obidimma, 2013: 42).

The bill was originally presented as "A Bill for an Act to Make Provisions for the Prohibition of Sexual Relationships Between Persons of the Same Sex, Celebration of Marriage by Them, and for Other Matters Connected Therewith,". The bill would impose a five- year prison sentence on people who "[go] through the ceremony of marriage with a person of the same sex", those conducting same sex marriage ceremonies as well as those advocating for LGBTI rights or lifestyles (Mittlestaedt, 2009: 371).

The proposed bill was met with opposition from civil rights organisations due to its violation of fundamental liberties enshrined in the Constitution of the Federal Republic of Nigeria (1999, as amended). For example section 39(1) states that "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference." Additionally, sections 38(1), 37, 40 and 42(1) provide all persons with the right to freedom of thought, conscience and religion as well as the right to decide freely on his/her private life. The Bill also violated international agreements that Nigeria had ratified, for example the African Charter on Human and People's Rights which Nigeria ratified in 1983 and the UN Declaration on Human Rights Defenders (Mittlestaedt, 2009: 373). The Bill can also be seen as a last-resort effort for Obasanjo to retain his Presidency after failing to pass the Bill to amend the Constitution's limit on the number of presidential terms. The 2006 Same-Sex (Prohibition) Bill thus failed to be passed before the general elections of 2007.

The Same Gender (Prohibition) Bill 2008

In January 2009 the "Same Gender Marriage (Prohibition) Bill 2008" was presented to the National Assembly by the Senate as a sequel to the 2006 draft bill. Amnesty International (2009) provides the following information on the contents of the 2008 bill:

The bill defines "Same Gender Marriage" as "the coming together of persons of the same sex with the purpose of living [sic] together as husband and wife or for other purposes of same sexual relationship." Under the bill, any person who "entered into a same gender marriage contract" would be subject to up to three years' imprisonment. The clause extends the definition of "Same Gender Marriage" to "other purposes of same sexual relationships" and could lead to arbitrary arrests on the basis of allegations about sexual orientation, rumours of sexual behaviour or objection to gender presentation.

Article 4 (2) (a) of the draft bill provides for the sentencing of any person who "witnesses, abets [sic] and aids the solemnization of a same gender marriage" with five years' imprisonment and/or a possible fine of N2000. Any priest, cleric or other religious actor found to have aided or abetted such a union would be subject under this new law to a prison term.

Article 4(2) of the draft bill states that "Any persons or group of persons who witness such a marriage could be sentenced to a fine of N50000".

In early March the bill was referred to the Nigerian Joint Committee on Human Rights, Justice and Women's Affairs, awaiting a public hearing to be held on 11 March 2009. However, no progress was made toward enacting the Bill prior to the then current administration's end in May 2011 (Kaleidoscope Trust Briefing, 2014).

Reactions

On 11 March 2009 a public hearing on the bill was held in Abuja on the *Same Gender Marriage (Prohibition) Bill 2008*. In reaction to the bill, the International Centre for Reproductive Health and Sexual Rights formed a consortium of human rights organisations. The consortium responded and attended the public hearings, which were held at the National Assembly on February 14, 2007 and March 11, 2009. During the hearings the consortium expressed the various human rights implications of the bill and its threat to the socio-economic development of Nigeria as well as the severing of international ties that the country has (Changing Attitudes Nigeria, 2011).

Global Rights and Human Rights Watch (Human Rights Watch, 2009) released statements after the March 11 public hearing that highlighted the redundancy of the bill; stating that same-sex relations were illegal through Nigerian Penal Codes to begin with, thus legally prohibiting marriage between persons of the same sex is a effort to increase stigmatization of homosexuality and provide official grounds for exclusion, harassment, arrests and prosecutions of those suspected to be homosexual.

A March 2009 article in *Leadership* (Esebonu, 2009) reports that the Human Rights Writers Association (HURIWA) of Nigeria made a "passionate appeal to members of the Federal House of Representatives to quickly pass the bill that will spell out punitive measures against same sex marriage." Emmanuel Onwubiko of HURIWA was quoted saying:

> These are un-African deviant practices and ought to be criminalised; as people who represent the interest of our African people, we are urging that whatever legislative measures that is considered necessary against this fight should be enacted to prohibit these atrocious practices of same sex

An article dated 15 March 2009 in *Daily Trust* reports that Ustaz Hudu Muhammad, chief Iman of Damaturu Central Mosque "called on Muslim and Christian clerics, as well as "people of goodwill," to speak against homosexuality. He further called on the National Assembly to enact punitive laws against such acts. In a 25 March 2009 editorial, the Abuja-based *Daily Trust* gave strong support to the bill and denounced the gay rights activists, calling on elected officials to ban "all forms of gay activism" as well and stating: "let [sic] their march on the National Assembly be the last gay assembly to be witnessed in Nigeria." (Idris, 2009).

In November 2011, sixteen international human rights groups including Human Rights Watch, Amnesty International and International Gay and Lesbian Human Rights Commission (IGLHRC) signed a letter to the Nigerian government condemning the bill, calling it a violation of the freedoms of expression, association and assembly guaranteed by international law as well as by the African Charter on Human and Peoples' Rights and a barrier to the struggle against the spread of HIV/AIDS (Human Rights Watch, 2011). The groups also included in the same statement the serious implications the bill would have public health and specifically HIV/AIDS prevention and treatment.

In attempt to discourage the Nigerian government from passing the bill US President Barack Obama issued a statement in September 2011 threatening to cut off aid to Nigeria should the bill pass through the House of Representatives and be signed by the President. Addressing Nigerian media regarding Obama's statement Member of Parliament Zakari Mohammed said

> We have a culture, we have religious beliefs and we have a tradition. We are black people. We are not white, and so the U.S cannot impose its culture on us. Same sex marriage is alien to our culture and we can never give it a chance. So if [Western nations] withhold their aid to us, to hell with them. (Nsehe, 2011)

The 2013 Same-Sex Marriage (Prohibition) Bill

Changing Attitudes Nigeria (2011) explained in an article dated 28 September 2011, the steps the bill had taken by then:

> The Nigerian [sic] government has been seeking to further criminalise same-sex relations in Nigeria through the prohibition of same-sex marriage since 2006 when the first bill was sent to the parliament by the presidency during the regime of Chief Olusegun Obasanjo. This bill died a natural death in April 2007, when a new administration was elected into power; with the now since deceased Umar Yar'dua as President.
>
> Later in 2007 Nigeria's lower chamber, the House of Representatives, received a similar bill, which had been re-titled: "A bill for an act to prohibit marriage between persons of same gender, solemnisation of same and for other matters related therewith". The difference here was that the term sex in the initial bill had been replaced with the word gender.
>
> For the second time, the bill died a natural death in April, 2011, when the Goodluck Jonathan administration was elected to power. This same bill has now surfaced again and it is now being titled: "A bill for an act for the [sic] prohibition of [sic] marriage between persons of same sex, solemnisation of same and for other matters related therewith." The term gender in the previous bill has been replaced with the word sex.

On 29 November 2011, the Senate of Nigeria passed the Same Sex Marriage (Prohibition) Bill. The bill was then passed on 2 July 2013 by the House of Representatives of Nigeria. In the second half of 2013 the bill was referred to a Conference Committee in the Senate to synchronize minor differences in language between the Senate bill and the House of Representatives bill. The Committee returned with the consolidated bill in December 2013. The Bill was subsequently signed by President Goodluck Jonathan on 7 January 2014 (Kaleidoscope Trust Briefing, 2014).

The current legislation contains all the restrictions outlined in the earlier bill; the only difference is in the severity of punishments for offenders. Sections 1, 2 and 3 of the Act largely restate the extant legal position in Nigeria, reiterating that same-sex marriage is not legal. However, section 5 of the Act establishes new criminal sanctions of up to fourteen years' imprisonment for those who seek to enter into a same-sex marriage or civil union. The section also imposes criminal penalties of up to ten years' imprisonment on those who witness a same-sex marriage or civil union. The broad definition of "civil union" means that any arrangement by which same-sex couples live together is prohibited (Obidimma and Obidimma, 2013: 45)

Section 4(1) of the Act prohibits the registration of "gay clubs, societies and organisations, their sustenance, processions and meetings" with similar punishments of imprisonment for any individual who tries to register or participate in such a club, society or organisation. Section 4(2) of the Act criminalises "public shows of amorous same-sex relationships directly or indirectly" with up to ten years' imprisonment. The Act also makes a person or group of persons that "witness, abet and aids the solemnization of a same sex marriage or civil union, or supports the registrations, operation and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria" liable for ten years' imprisonment (Obidimma and Obidimma, 2013: 45).

6.2 Uganda

Uganda's Penal Code Act of 1950 (Chapter 120)145, 146, and 148 which dates back to British colonial era is similar to Nigeria's laws criminalizing homosexual acts. Sections 145-146 makes it a felony punishable by seven years to anyone who "has carnal knowledge of any person against the order of nature, has carnal knowledge of any animal, or if a person allows a male to have carnal knowledge of him or her against the order of nature, commits an offence and is liable for imprisonment for life." (White, 2012: 7).

In 2009, the Ugandan Senate introduced the Anti-Homosexuality Bill, which would have the effect of intensifying the laws against homosexuals in the country. When it was introduced the law was initially called the "Kill the Gays bill" in media because of the original death penalty clauses that it carried for being a "homosexual". In 2013 parliament dropped the death penalty clauses for life imprisonment instead. In February 2014 the bill was passed into law. This Act criminalizes homosexual conduct in Uganda and for Ugandans outside of Uganda as well. The Act also includes penalties for individuals, companies, media organizations and NGO's that support, promote, excuse or don't report acts of homosexuality (Karimi and Thompson, 2014).

In August 2014, the Anti-Homosexuality Act 2014 was annulled by the Ugandan Constitutional Court on a procedural ground-the law was passed unconstitutionally and is deemed "null and void," on grounds that the process had contravened the constitution, as it has been passed in parliament in December without the necessary quorum of lawmakers.

Anti-Homosexuality Laws Revisited

Uganda's re-criminalization of homosexuality stems legislatively as a legacy from the British colonial Penal Codes that criminalize 'sex against the order of nature' (Nyanzi, 2014: 14). From the year 2000 Ugandan LGBTI persons started experiencing increasing pressure on their legal protection. Before 2000 male homosexual behaviour was illegal but would result, at most, in a short jail sentence or fines; female homosexual activity on the other hand was not legally prohibited although it was met with serious social discrimination. Revisions were implemented in 2000 that made all homosexual activity illegal and punishable by life imprisonment, making Uganda one of the most hostile places in the world to live as an LGBTI person (Kretz, 2013: 219).

Before the 2009 bill was introduced it was preceded by an increased interest among MPs in a wide range of issues relating to homosexuality. Evangelical pastors led by Martin Ssempa of Makerere Community Church, Stephen Langa of Family Life Network and supported by American evangelical groups led by Scott Lively who is the President of Abiding Truth Ministries launched a campaign to fight what they described as the Western and un-African intrusion of homosexuality (Jjuuko and Tumwesige, 2013: 7). These actors justified their actions as being in the interest of the protection of children and the African family unit. In 2005 an amendment was included in the Constitution of Uganda 1995 which prohibited same sex marriages (Sadgrove *et al.* 2012). Various anti-gay marches were organised in Kampala drawing crowds onto the streets to denounce homosexuals as perverted individuals who were paid by Americans and Europeans to recruit school children into the practice of homosexuality. After an anti-gay conference which was facilitated by Scott Lively and two other

Americans, the then Minister of Ethics and Integrity, Hon. Nsaba Buturo announced that a new 'tough law on gays' was to be looked at (Jjuuko and Tumwesige, 2013:8)

In March 2009, all MPs were invited to attend a seminar called 'Exposing the truth about homosexuality and the homosexual agenda' in the Parliament Conference Hall, which was advertised as addressing the 'dangers of homosexuality'. Hosting and speaking at this seminar was Scott Lively, International Healing Foundation's Caleb Brundidge, Stephen Langa of Uganda's Family Life Network and Exodus International's board member Don Schmierer (Burroway, 2009).

At this seminar MPs also debated diverse issues such as "gay activists addressing a press conference" and the inadequate law enforcement response to this (Hansard, Hon. Sebaggala MP)[16]; marriage between persons of the same sex as a 'threat to human civilisation' (Hansard, Dr Buturo MP); the external funding of political parties by 'undesirable forces' such as 'perversion groups' like 'the scourge of homosexuals' (Hansard, Mr Katende MP); and same-sex sexual harassment in policing (Hansard, Mr Kasaija MP).

In September 2009 Hon. David Bahati, Member of Parliament for Ndorwa East Constituency, Kabale District, introduced a private member bill that would intensify the repression of LGBTI people and those in support of LGBTI rights (Kretz, 2013: 219) which was presented to the Committee on Legal and Parliamentary Affairs (CLPA). Bahati at the time was a backbencher, first term Member of Parliament who had deep ties to American religious conservatives. There were several new provisions made by the 2009 draft bill; first it strengthened the criminalisation of homosexual activity directly; second, the law implemented a death penalty for "aggravated homosexuality", acts falling into this category included a second violation of the prohibition on same-sex activity and any sexual activity with a minor, disabled person or a person who was HIV positive; third, the Bill proposed criminalising the actions of anyone who "aids, abets, counsels, or procures another to engage of acts of homosexuality", the latter is punishable by up to seven years in prison (Anti-Homosexuality Bill, Part II(3)(1) (a)—(g), *supra* note 1, 2009). This in essence includes any heterosexual person who engages in the "promotion of homosexuality", "fund[ing] or sponsor[ing] homosexuality or other related activity" or "us[ing] electronic devices….for the purposes of homosexuality or promoting homosexuality" (Anti-Homosexuality Bill, *supra* note 1, 2009). The Preamble of the bill reads:

> *The object of this Bill is to establish comprehensive consolidated legislation to protect the traditional family by prohibiting (i) any form of sexual relations between persons of the same sex; and (ii) the promotion or recognition of such sexual relations in public institutions and other places through or with the support of any Government entity in Uganda or any non-governmental organization inside or outside the country. This Bill aims at strengthening the nation's capacity to deal with emerging internal and external threats to the traditional heterosexual family. This legislation further recognizes the fact that same sex attraction is not an innate and immutable characteristic. The Bill further aims at providing a comprehensive and enhanced legislation to protect the cherished culture of the people of Uganda. Legal, religious, and traditional family values of the people of Uganda against the attempts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda. There is also need to protect the children and youths of Uganda who are made vulnerable to sexual abuse and deviation as a result of cultural changes, uncensored information technologies, parentless child developmental*

[16] Uganda Hansard parliamentary records found in (Johnson, 2014)

settings and increasing attempts by homosexuals to raise children in homosexual relationships through adoption, foster care, or otherwise (*Anti-Homosexuality Bill, supra note 1.1, 2009)*

Reactions

The bill received immense support within Uganda and in Parliament, although external observers showed contempt. With the bill indefinitely put on pause, global icons and leaders such as the Arch Bishop Desmond Tutu, Nelson Mandela, Ban Ki-Moon, David Cameron and Barak Obama publicly condemned the bill on the grounds of human rights concerns and its direct prejudicial and oppressive nature (Rice, 2009). The publicity and media reactions the bill incited, led to public outcry, leading to large community campaigns against LGBTI people in Uganda. In October 2010, the Ugandan weekly tabloid newspaper Rolling Stone ran a front page story publishing pictures and names of Uganda's "100 known homosexuals" (Kretz, 2013: 220). Large scale violence and threats followed. One of Uganda's most outspoken LGBTI activists, David Kato was found hacked to death in his home just months after the paper was published. This resulted in some LGBTI fleeing the country for asylum purposes (Levantis, 2012; Day, 2011). The bill, mainly due to the death penalty clause-did not pass.

Parts of Ugandan civil society reacted to the bill by forming a coalition of civil society organisations to oppose the bill. This was the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL), an umbrella of over 45 sexual minority and mainstream human rights organisations coming together to oppose the affront to human rights and criminal justice posed by the bill (Jjuuko and Tumwesige, 2013: 4). The opposition the bill faced, forced President Yoweri Museveni to appeal to members of Parliament to put the bill on hold as it was a foreign policy issue (Olupot and Musoke, 2010). There were statements by the Minister of Investment stating that the bill would be harmful for investment and a Cabinet Sub-Committee submitting a paper stating that the bill was not necessary as it simply replicated existing laws (BBC, 2010; The Daily Monitor, 2010).

In October 2009 Sylvia Tamale, Professor of Law and Trustee of the Equal Rights Trust at Makerere University in Uganda delivered a speech at Makerere University, Kampala that highlighted the human rights implications of passing the 2009 bill in a manner that would appeal to rational objectivity. She pointed out that the Anti-Homosexuality bill contained a total of eighteen clauses that were duplicated from the pre-colonial Penal Codes; that means 67 per cent of the clauses were not new at all (Tamale, 2009).

The first serious implication is emphasised in clause 13 which attempts to outlaw the 'Promotion of Homosexuality'. This clause introduces extensive censorship and subverts fundamental freedoms such as the rights to free speech, expression, association and assembly. Secondly, the criminalization of 'funding and sponsoring of homosexuality and related activities' jettisons Uganda's public health policies and efforts. An example is used of the work Uganda has been doing on the Most At Risk Populations' Initiative (MARPI) introduced by the Ministry of Health in 2008, which targets specific populations in a comprehensive manner to curb the HIV/AIDS scourge. If this bill becomes law, health practitioners as well as those that have put money into this exemplary initiative will automatically be liable to imprisonment for seven years. Finally Tamale looks at clause 18 which would require Uganda to extract itself out of any international treaty that the country has previously ratified that goes against the values entrenched in the bill (Tamale, 2009: 50-51; also see Kretz, 2012:

2011-215). Some of these agreements include following international human rights treaties: Universal Declaration on Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR) and protocols; International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); African Charter on Human and People's Rights; Convention on the Rights of the Child (CRC); and, Maputo Protocol (Kaleidoscope Trust Briefing, 2014).

Revised Bill and Parliamentary Processes

In late 2011, the bill re-emerged, this time under the leadership of speaker Rebecca Kadaga, it remained similar to the 2009 bill, with the exception of the then removed death penalty as a possible sentence for those convicted of aggravated homosexuality, which was replaced with life imprisonment instead (BBC, 2012; All Africa, 2012). The revised bill contained the exact same provisions as the 2009 bill.

Kadaga made reference to public outcry from failure to pass the 2009 bill as motivation to hasten the parliamentary process for the bill. She was quoted promising the Anti-Homosexuality bill as a "Christmas gift" to Ugandans (Biryabarema, 2012). There was indeed pressure from Ugandan anti-gay activists, who took to the streets in thousands to pressurise the government to pass the bill. Many Ugandan citizens were in support of the bill citing the widespread belief that homosexuality was being imported into Uganda and young children were being recruited into the practice. For example, the Pew Research Centre's 2013 Global Attitudes Project found that 96% of the surveyed Ugandans agree with the statement 'Homosexuality should be rejected'. Moreover, parts of the Ugandan media actively participate in campaigns against lesbian, gay, bisexual and transgendered people (Human Rights Watch 2006, 2009).

In August 2011, the cabinet discussed the bill, deciding unanimously that current laws making homosexuality illegal were sufficient. The bill thus failed to be passed by Christmas, it was however "fast tracked" for the parliamentary sessions in the following year.

In February 2012 the bill received a First Reading and was resubmitted for consideration in the CLPA. A final report was produced by the CLPA in November 2012. This majority report was accompanied by a separate minority report (Johnson, 2014: 9). The majority report moved for the bill to be passed. There were amendments recommended by the report that would have to be considered for application. First was the removal of the death penalty for 'aggravated homosexuality'; the elimination of the 'attempts to commit homosexuality' offence clause; the 'failure to disclose the offence' clause; the removal of the clause providing extra territorial jurisdiction for the legislation to cover Ugandans globally, even those with permanent residence in different countries and the deletion of the clause that invalidated inconsistent international treaties, protocols, declarations and conventions, which also contained a sub-clause stating that certain definitions (such as 'sexual orientation') 'shall not be used in any way to legitimize homosexuality, gender identity disorders and related practices in Uganda'. All the proposed amendments were accepted by MP's with the exception of the proposal on the 'attempt to commit homosexuality' when the bill of 2009 was considered at Committee stage (Johnson, 2014: 10).

The minority report that was also submitted moved that the 2009 Anti-Homosexuality Bill to 'be rejected by this House and no further consideration of the same be done' (Johnson, 2014:10). The minority report had six recommendations. The first was an appeal to Article 27 of the Ugandan Constitution which protects the right to privacy of person, home and other property to motivate an appeal for privacy of individuals. The second was the indication that the state should not involve itself in the sexual affairs of two consenting adults, in the same manner that the sexual affairs of a heterosexual married couple are not legally monitored. The third was the affirmation that children *do* need to be protected from homosexual recruitment, however there were no specific provisions for this in the 2009 bill. Fourth was that the legislation would breach international agreements and treaties that Uganda has ratified. Fifth was that the legislation was 'discriminatory' and that 'rather than persecute the homosexuals in our society, the State should be trying to find ways to help them reform'. The last recommendation was that the new 2009 bill did 'not add any significant value' to the requirements stated in the Penal Codes (Johnson, 2014:11).

The minority report was subsequently speedily discarded. The signatories of the minority report were absent during the Second Reading of the CPLA reports and were thus excluded from the process and any potential for debate obliterated. This potentially contravened the Ugandan Parliament's Rules of Procedure (Johnson, 2014: 11). The signatories of the minority report were left out of Parliament proceedings on that particular day because the bill was left out of the Order Paper for debate. David Bahati admitted to purposely leaving the dissenters out of the proceedings, he was quoted stating:

> We knew that if it were to be included on the order paper, they [the dissenters] would scheme against it, it was in our plan that members request for it and the speaker uses her prerogative to have it included on the order paper (Kaaya and Kakaire, 2013)

On 1 May 2014 a leading anti-gay campaign coalition group called Coalition for Advancement of Moral Values (CAMOVA) delivered to parliament a letter appealing for passing of the Anti Homosexuality bill. The letter referred to 'The Horrors of homosexuality' and gave a 'detailed' explanation of what, according to CAMOVA, were the real dangers concerned with homosexuality that Parliament needed to be aware of in debating this bill. The details offered in this letter included anal sex and the dangers involved in that and other 'deviant' sexual practices that homosexuals part take in. Graphic images[17] of the said physical and medical dangers surrounding homosexual sexual practices were presented (CSCHRCL, 2014). The letter closed in saying:

> Our leaders have a clear choice. It is choosing [sic] between defending and promoting Uganda's interests and those of promoters of a practice whose dangers to nations are well known. It is also to choose between God and man. Should promises of money cause us to offend God and sell the future of Uganda? GOD BLESS YOU, GOD BLESS UGANDA!

[17] Images were included of a young man suffering from serious rectal injuries and another whose genitals were deformed through surgery.
The letter also highlights what CAMOVA considers homosexual sex practices, these include "fisting", "golden showers", "orgies", "rimming", "sexualisation of human excreta" please download letter on: http://www.ugandans4rights.org/attachments/article/416/CAMOVA_protect_the_children.pdf

There were discussions and debates that took place in Parliament regarding whether Parliament had reached quorum or not concerning the bill with a significant group of the Committee absent. During the Committee stage, the Prime Minister stated twice that the House did not reach quorum as the Rules of Procedure required (Johnson, 2014:13). According to the Ugandan Constitution (Article 88(1) The Constitution of the Republic of Uganda, 1995), a quorum is reached when one third of Parliament is entitled to vote. The Chairperson and Speaker Kadaga, failed on both occasions to recognise the absence of quorum as pointed out by the Prime Minister (Johnson, 2014:15). The 2009 Anti-Homosexuality Bill was thus passed by the Ugandan Parliament on 20 December 2013, although it still needed the signatory power of the President of Uganda before the bill became law.

The 2014 Anti-Homosexuality Act

President Museveni, after weeks of deliberation signed the bill into law on 24 February 2014. According to government spokesperson Ofwono Opondo, this followed weeks of negotiation and consideration. President Museveni's decision was based on a report by medical experts presented at an NRM party retreat in Kyankwazi, saying that "homosexuality is not genetic but a social behaviour". Museveni had previously stated that he would only sign the bill into law, if scientists could prove that homosexuality was learned and social behaviour, not genetic. According to a press release by the Presidential Press Unit (2014), Museveni sought advice from local scientists as well as American medical scientists. The following seven findings were presented in the reports by the Ministry of Health (Ministry of Health Scientific Statement on Homosexuality, 2014: 8 also see NRM Caucus Report):

a) There is no definitive gene responsible for homosexuality
b) Homosexuality is not a disease
c) Homosexuality is not an abnormality
d) In every society, there are a small number of people with homosexual tendencies
e) Homosexuality can be influenced by environmental factors (e.g. culture, religion, information, peer pressure
f) The practice needs regulation like any other human behaviour, especially to protect the vulnerable
g) There is need for studies to address sexualities in the African context.

Three weeks later on March 11th 2014 a petition against Uganda's Anti Homosexuality Act (2014) was filed at Uganda's Constitutional Court under the organisation of the Legal Committee of the CSCHRCL. The Petition represented a concerted effort by ten petitioners including civil society, parliamentarians and academics: Prof. Joe Oloka-Onyango, MP Fox Odoi-Oywelowo, veteran journalist Andrew Mwenda, Prof. Morris Ogenga Latigo, Dr. Paul Nsubuga Ssemugooma, Jacqueline Kasha Nabagesera, Julian Pepe Onziema, and Frank Mugisha, the indigenous civil society organizations; Human Rights Awareness and Promotion Forum (HRAPF) and the Centre for Health, Human Rights and Development (CEHURD). The aim was to challenge the constitutionality of the "Draconian" Anti-Homosexuality Act, which further undermines the already precarious rights of sexual and gender minorities, and also jeopardizes the work of all those who believe in human rights for all (CSCHRCL, 2014). On 1 August 2014, the Ugandan Constitutional Court announced the annulment of the law due to lack of required quorum at the passing of the bill, this was celebrated by civil organisation groups as a success of the justice system. MP Bahati has already publicly denounced the court ruling saying:

> The court case ruling is no victory at all, the morals of the people of Uganda will prevail […] The Attorney General who is very competent will petition the constitutional court over the constitutional court ruling. Our competent legal team will continue to petition the Supreme Court and I believe we will win." (Bwire, 2014).

Worthy to note, the case of *Prof. J Oloka--Onyango & 9 Others v. Attorney General (Petition No.8 of 2014)* contained claims of the breach of Parliamentary Rules of Procedure through the absence of quorum at the passing of the bill as well as the violations of the bill of the constitutional guarantees of freedom from discrimination and from cruel, inhuman and degrading punishment, rights to privacy among others. At the time this paper was being written, only the ground of quorum was ruled on (CSCHRCL Press Statement, 2014).

Uganda presented a wider covered case in media and literature than Nigeria; this can partly be attributed to the initial death sentence clause that came with the 2009 draft. Both countries were under British colonial rule and have largely kept the structure and language of the Penal Codes. In both cases the narratives of African culture, traditions, religion and he importance of family are drawn upon by political leaders. The ignorance of the direct contravention between these laws and citizens' constitutional rights is present in both cases. There is also a stark redundancy in the laws in that in both countries, homosexuality was illegal prior to introduction of the bills. Essentially the introduction of this form of legislation functions to publicly exclude and sanction an already marginalised group of people by revising existing oppressive legislature and making it more harsh in substance and in form.
The public element is significant because both societies in Nigeria and Uganda are hostile towards LGBTI people. What perhaps stands out about Uganda thus far is the extremity of miseducation and propaganda the government is presenting to the people.

7. THE NATIONAL, THE REGIONAL AND THE INTERNATIONAL: ASSESSING THE LEVEL OF CAUSALITY TOWARDS THE PASSING OF RESTRICTIVE LGBTI LAWS

71. National Impacts: Political Transitions and Leadership

The aim of this section is to identify whether there is a causal link between the anti-homosexuality judicial rhetoric in Nigeria and Uganda and political conflict or transition of the political system. Analysis can be drawn from examining the prominence an issue receives on the national political agenda. Intensifying LGBTI legal discrimination only started becoming prominent in these two African states from 2000 onwards. This section outlines the transitional history of leadership and political systems since the independence of Nigeria and Uganda. In doing so, the aim is to assess whether there is a correlation between the salience on tightening legislation on homosexuality and domestic political transitions.

Nigeria

Nigeria was a British colony from 1900 to 1960. A series of constitutions after World War II granted Nigeria greater autonomy. Independence came in 1960. Today, Nigeria is officially a Federal Republic comprising 36 states and its Federal Capital Territory is Abuja (Mundi Index, 2014).

Nigeria's government was made up of an alliance between the more conservative parties: the Nigerian People's Congress (NPC) which was a party dominated by Northerners and those of the Islamic faith and led by Abubakar Tafawa Balewa; the National Council of Nigeria and the Cameroons (NCNC) which was dominated by the Igbo and Christian and led by Nnamdi Azikiwe (Mundi Index, 2014). The 1960 Constitution established in Nigeria a parliamentary government with a central government and three regional governments. The opposition comprised of the comparatively liberal Action Group (AG), which was largely dominated by the Yoruba and led by Obafemi Awolowo. The cultural and political differences between Nigeria's dominant ethnic groups - the Hausa (*Northerners*), Igbo (*Easterners*) and Yoruba (*Westerners*) - were well pronounced and manifested politically through the differences in governance and leadership, religion, economic muscle and culture (Nwauche, 2008: 1).

In1963, Nigeria became a republic. Azikiwe became President of the country although Balewa, as Prime Minister was still more powerful. Nigeria's first military coup took place in 1966. 1967 marked the beginning of a civil war in Nigeria[18] and the country was sustained under military rule until 1979. Following the first military coup and under threat of the country being broken up, the four regions were further broken into a twelve state structure in 1967. Leading up to the coup a group of army officers attempted to overthrow the federal government, and Prime Minister Balewa and two of the regional premiers were murdered. A military administration was set up under Major General Johnson Aguiyi-Ironsi (Nwauche, 2008: 3). In July 1966 northern officers staged a counter-coup, during which Aguiyi-Ironsi was assassinated, and was replaced by Lieutenant Colonel Yakubu Gowon. Gowon was in office at a time when Nigeria was experiencing the oil boom of the 1970s.

[18] The Nigerian Civil War is also known as the Biafran War was the result of economic, ethnic, cultural and religious tensions that broke out between the different ethnicities: Hauseas in the north and the Igbo of the south-east of Nigeria.

His administration was riddled with accounts of corruption and mismanagement of the economy (Ogbeidi, 2012: 7).

Gwon was later overthrown in 1975 and fled the country. Brigadier General Murtala Ramat Mohammed became the new head of state. He introduced progressive reforms in his brief time in office. He began the process of moving the federal capital to Abuja and initiated the process for Nigerian return to civilian rule. In 1976 he was assassinated and replaced with his top advisor and Chief of Staff Lieutenant General Olusegun Obasanjo (Paden, 2005: 39).

In 1979 the Nigerian Second Republic was ushered in. In a bid to ensure popular participation in the making of the 1979 Constitution, the military government introduced an elaborate process of consultation and representation for its drafting. This was in the form of a Constitution Drafting Committee (CDC) which consisted of stakeholders from each of the states of the federation, a number of technocrats recommended by the military government, and representatives of civil society (Paden, 2005: 42). Obasanjo ensured a government transfer back to civilian rule in October 1979 and the CDC submitted a draft constitution. The 1979 Constitution departed from a parliamentary system of government to a presidential system of government. Additionally the constitution also featured a bicameral national assembly; a chapter of non-justiciable fundamental objectives and directive principles of state policy; a bill of rights; a federal system of government; a local government system; and independent national institutions (Faola, 2014).

The 1979 presidential elections were won by the right-wing National Party of Nigeria (NPN), led by Shehu Shagari. Shagari's term witnessed a resurgence of corruption which sent the Nigerian economy plummeting even further with an alleged $16 billion lost to government corruption between 1979 and 1983 (Ogbeidi, 2012: 8). All the same, amid allegations of election rigging, President Shagari was re-elected in the 1983 elections. He was subsequently unable to manage the political crisis or economic decline that followed and the military once again seized the chance to launch a coup; which brought Major General Muhammad Buhari into power (Falola, 2014).

The regime declared a "War against Indiscipline", which saw a number of politicians imprisoned, Buhari's term was characterised by a human rights vacuum with the aim of eliminating public dissidence and chaos through coups and public protests that were aimed at overthrowing the government. The government's popularity soon began to diminish. General Ibrahim Babangida assumed power following a bloodless coup in 1985 (Falola, 2014). Babangida's regime returned to gross corruption with detained ministers and politicians arrested under the Buhari regime making it back into office. After losing much popularity, he was replaced in the 1993 general elections by Chief Abiola. These elections were annulled and a civilian-military interim government implemented. This was toppled by General Sani Abacha who served as the defence minister under Babangida (Falola, 2014).

Abacha's seizure of power reversed the economic and political gains made by Nigeria from the mid-1960s. The regime ignored due process of law, accountability, press freedom, human rights, individual liberty, and social justice and used violence to suppress opposition and critics. Nigeria's international image was tarnished further as it suffered isolation and condemnation. In 1994 Abiola declared himself president, was arrested and died of a heart attack in 1998 (Ogbeidi, 2012: 9). His replacement was General Abdulsalami Abubakar who handed the government over to a

democratically elected civilian government in 1999. He freed political prisoners, ended violence and the harassment of political oppositions, new parties were registered-Nigeria was on a slow improvement trajectory (Falola, 2014). One of the new parties to emerge was the People's Democratic Party (PDP), led by Obasanjo who eventually won the 1999 elections.

> The Fourth Republic commenced with the election of General Olusegun Obasanjo as the President of Nigeria in 1999. Indeed, the sixteen unbroken years of the military era from the fall of the Second Republic in 1983 and the restoration of democracy in 1999 represents an era in the history of the country when corruption was practically institutionalized as the foundation and essence of governance. (Ogbeidi, 2012: 10).

Conditions in Nigeria were significantly improved during Obasanjo's term and he was re-elected in 2003. These improvements were however short lived; there was brewing ethnic and religious conflict in parts of the country. Hostility between Christians and Muslims grew when some northern and central states decided to adopt Islamic Sharīʿah law[19]; protests were held against the government's oil policies and high fuel prices; residents of Niger delta also protested against the operations of petroleum companies in their area and there was an ongoing border dispute with Cameroon regarding an oil-rich area-Bakassi Peninsula, to which both countries have strong cultural ties (Paden, 2005: 23). After Obasanjo failed to amend the constitution to allow him to run for a third term, Umaru Yar'Adua was selected to stand as the PDP's candidate and became president in 2007. After years of battling with his health, Yar'Adua died and was succeeded by his Vice-President Goodluck Jonathan in 2010. Jonathan's immediate concerns included curbing corruption, dealing with the country's energy problems, continuing with ongoing peace negotiations regarding the Niger delta and building on national unity between religious factions. Nigeria held general elections in 2011, which Jonathan won, resuming his administration on 18 April 2011. He persists as the current president of Nigeria (Falola, 2014).

See the below timeline[20] of the beginnings of the Fourth Republic of Nigeria. The timeline includes important dates drawn from the previous chapter on 'Tracing the Passage of Legislation on Homosexuality.

DATE	**NATIONAL EVENTS**
5 May 1999	Fourth Republic Constitution disseminated
29 May 1999	Obasanjo sworn in as President
2000	Shari'ah Law introduced in Zamfara State and eleven other northern states
February and May 2000	Kaduna riots break out between Muslims and Christians over Shari'ah concerns
October 2001	U.S attacks on Taliban in Afghanistan cause riots and demonstrations in Kano state (north of Nigeria)
2002	"Miss World" riots between Muslims and Christians in Kaduna state break out.
April 2003	Third democratic elections in Nigerian history for president and governors
29 May 2003	Obasanjo sworn in as President for second term

[19] To view an image depicting the north/south religious divide, please refer to Addendum 2. Retrieved from http://socialandpolitical2016.blogspot.com/

[20] Dates and events were retrieved from Falola, T., & Genova, A. (2009). Historical dictionary of Nigeria (Vol. 111). Scarecrow Press. AND Paden, J. N. (2006). Muslim civic cultures and conflict resolution: the challenge of democratic federalism in Nigeria. Brookings Institution Press.

2003	Election tribunals hear petitions
2004	Intensified ethno-religious violence breaks out in Plateau State which spilled over to Kano state. Obasanjo declares a federal state of emergency in Plateau
2004	Petitions opposing presidential elections go through final hearings in Abuja State appeals court
2005	Preparations for 2007 presidential and state elections take place
16 May 2006	National Assembly of Nigeria votes against Obasanjo's proposal to amend presidential term limits in the constitution.
June-August 2006	Obasanjo meets with Cameroonian President for peace negotiations over Bakassi peninsula. Nigerian troops begin to pull out of Bakassi.
21 April 2006	Yar'Adua is elected President of Nigeria
August 2008	Bakassi peninsula finally handed over to Cameroon
July 2009	Boko Haram a radical Islamist organisation, launches a campaign of terror in north-eastern Nigeria. They demand Shari'ah Law imposed on the entire country. Nigerian security forces attack the Boko Harum HQ and kill its leader
5 May 2010	Yar'Adua dies and succeeded by Goodluck Jonathan
October – December 2010	Boko Haram bomb attacks increase, so does civil ethno-religious violence in Plateau State, Kano and Abuja.
March 2011	Jonathan wins his first Presidential elections
December 2011	Jonathan declares a state of emergency following Boko Haram Christmas day attacks

An analysis of the Nigerian political transitions and leadership provides political context to the country. The end of military rule and re-emergence of democratic rule led by of PDP in 1999 under leadership of Obasanjo introduced a new era in Nigerian politics. Most significantly there was an executive split in government between Islamic and Christian-northern and southern states. 1999-2000 saw the official adoption of Shari'ah Laws in Muslim states Nigeria also departed from military rule to a federal democratic system. Looking at the transitions one factor that seems to characterize both Obasanjo and Jonathan's terms is the lack of socio-political cohesion in Nigeria brought about by newly implemented statutes that further solidified the ethno-religious divisions. Obasanjo's administration faced serious difficulties with civil conflict along religious lines as well as the Bakassi region conflict over oil reserves. Jonathan's term continues to experience serious challenges with radical Islamist group killings and reprisal civil conflict.

What is significant to extract is the challenge Obasanjo was facing in finding a unifying agent to build a nation-state. Jonathan prematurely came into power with the death of his predecessor. His administration largely carried the burdens of the previous ones and was met with escalating internal conflict. At the time of the introduction of the Same-Sex Marriage (Prohibition) Draft Bill in 2006 the country was faced with internal as well as border conflict. There was also Presidential and state elections in 2007. A number of observations can be drawn from these terms. Firstly the years that the Same-Sex (Prohibition) Draft Bill (2007, 2011) was being re-introduced for discussions in parliament, coincide with the presidential election dates in Nigeria. Secondly, Nigeria is increasing in social disintegration due to the ethno-religious conflict coupled with the constant occurrence of terror attacks. There is a clear need in Nigeria, at the time of the introduction of the bill as well as during its

passing in 2014, for distraction from numerous crises faced by the state firstly, and secondly for something that both Muslim and Christian factions of the National Assembly and the general public can rally around.

Uganda

Uganda gained independence from Britain in 1962 under Prime Minister Milton Obote. The first post-independence elections were held in 1962 and won by an alliance between the Uganda People's Congress (UPC) under Obote who became Prime Minister and Kabaka Yekka (KY) under the King Buganda Kabaka, Edward Muteesa II who became the President. William Wilberforce Nadiope, the Kyabazinga (paramount chief) of Busoga, was appointed Vice-President. The latter two positions were more ceremonial, which was represented by parliament seat distribution (2010, Website of the Parliament of Uganda).

By 1966, relations had broken down between the Obote-led government and King Muteesa. The Constitution was then redrawn through the efforts of the UPC dominated Parliament; both the President and Vice-President positions were removed and by 1967, Uganda was declared a republic and all traditional kingdoms abolished. Without elections, Obote was declared the executive President of the Republic of Uganda (Mutibwa, 1992: 25).

The Obote government was toppled in 1971 through a coup led by Major-General Idi Amin. Uganda subsequently experienced atrocious conditions of state-sponsored human rights abuses and a demolishment of the economy. Amin ruled Uganda, through military dictatorship where an estimated 300 000 Ugandan lives were lost. He was overthrown in 1979 during the Uganda-Tanzania war. Guerrilla leader Yoweri Museveni with the National Resistance Movement (NRM) then took power in 1986 and was credited with substantially improving the country's human rights record. He also achieved some stability and a fragile unity. Museveni's first decade in power was a period of regeneration for Uganda's economy, which had been shattered by years of political upheaval. At its height, the country achieved economic growth rates of close to 10 percent per year. Museveni adopted a policy of liberalisation, privatising government parastatals and embracing the International Monetary Fund's structural adjustment programmes. Politically, Museveni introduced a system of elected de-centralised government known as resistance councils, later changed to local councils; to manage affairs from villages to districts. This introduced the concept of democracy to Ugandans at the grassroots level (2010, World Vision Australia).

He maintained, however, the so-called "Movement" system which was essentially a one-party state. Political parties were not expressly forbidden, but they were not permitted to field candidates officially for elections. Museveni blamed political parties for dividing Uganda along religious and ethnic lines, leading to the civil strife the country suffered following independence (2010, World Vision Australia).

From the mid-1980s, the rebel group Lord's Resistance Army (LRA) began an armed struggle against Museveni. Using the abduction of children as a weapon of war, the LRA conducted a terror campaign across northern Uganda until 2006. This conflict claimed thousands of lives and displaced approximately 1.6 million people over two decades. Attempts to secure a permanent peace agreement between Ugandan forces and the LRA failed in 2008. Since then the LRA focus has

shifted outside of Uganda to neighbouring countries including the Democratic Republic of Congo and Sudan (2010, World Vision Australia).

Political party activity was largely banned under Museveni for the twenty years that the LRA forces were in Uganda. A new Constitution was however adopted in 1995 and there was a vast improvement in the creation of an environment conducive to public dialogue. Museveni won contentious elections in 1996 and 2001. Despite allegations of voting malpractices in 2001; this would have been Museveni's final term in office according to the Constitution. Instead of preparing for retirement, however, Museveni allowed Parliament, dominated by his NRM, to change the Constitution to remove the two-term limit on the presidency and is now in his fourth term in office (BBC Media Action, 2012:4). I explaining NRM values, Museveni (9 October 2012, Jubilee Speech), in a speech at the Golden Jubilee Celebration of Uganda's independence said:

> On the issue of ideological disorientation, the NRM, our Liberation Movement, holds in contempt and denounces sectarianism of religion or tribe and fights gender chauvinism. We believe firmly in the four principles: nationalism and anti-sectarianism; pan-Africanism; socio-economic transformation; and democracy. It is this posture that has enabled Uganda to move forward.

In 1998 Museveni in collaboration with Rwandan President Paul Kegame invaded the Congo on the side of the rebels to overthrow President Kabila. In making this decision, the Ugandan Parliament and civilian advisers were not consulted by Museveni, which was in direct contravention of the 1995 Constitution (Clark, 2001:45). From 1998 to 2003, Uganda was involved in a number of activities in the Democratic Republic of Congo (DRC) that ranged from border protection to mineral plundering and militia led attempts at other throwing Kabila. In 2005 an International Criminal Court ruling declared that Uganda must compensate the DRC for rights abuses and the looting of resources in the five years leading to 2003 (The ICC, 19 December 2005).
Below is a timeline[21] detailing key events from 2006 after the multi-party elections took place that secured another term for Museveni.

DATE	**NATIONAL EVENT**
February 2006	Museveni wins multi-party elections in Uganda, beginning his third term in office.
August 2007	Uganda and DRC attempt to diffuse border disputes.
September 2007	Severe floods cause widespread displacement, poverty levels increase and major devastation of Ugandan public. Museveni declares a state of emergency.
January –March 2009	LRA appeals for ceasefire as attacks from regional countries continue. Ugandan army withdraws from DRC.
April 2009	Strong ties are established between Museveni and American fundamentalist Christian group "The Family".

[21] Dates and events were retrieved from Human Rights Watch (2013) *World Report,* Uganda retrieved from http://www.hrw.org/world-report/2013/country-chapters/uganda AND BBC News: Africa (2015) *Uganda Profile*, retrieved from http://www.bbc.com/news/world-africa-14112446

July 2010	Two bomb attacks are set off in Kampala by Al-Shabab, a Somali Islamist organisation. This was in retaliation of civilian killings that occurred during peacekeeping missions that Ugandan troops were involved in in Somalia.
August 2010	General elections are suspended due to voting irregularities and violence.
February 2011	Museveni win's his fourth presidential election.
April 2011	Opposition leader Kizza Besigye stages a "Walk to Work" protest against the high cost of living due to increased inflation rates caused by food and fuel prices. Museveni had Besigye arrested, more riots followed in Kampala and the government crackdown on riots and protests continued.
July-November 2012	UN accuses Uganda of collaborating with M23 rebel group in the DRC. Uganda denies and announces intention to withdraw from UN backed international peacekeeping missions as a result of the accusations.
February 2013	Eleven countries including Uganda sign a UN-mediated agreement not to interfere in the DRC.
May 2013	Government suspends and seizes two local newspapers: *The Daily Monitor* and *Red Pepper* for publishing government's alleged plans to assassinate two government and military officials who were in opposition to Museveni's apparent plans to groom his son for Presidency.

Uganda has been under the unrelenting leadership of President Museveni since1986. A number of actions call Museveni's administration call into question the government's regard for human rights, international law and the Ugandan Constitution. Considering Museveni's illegal involvement in the DRC, his rearrangement of Constitutional limits on Presidential terms, the recent crackdown on the freedoms of expression, assembly and association, questions can be asked about the substance of the rule of law in Uganda.

The Anti-Homosexuality Act of 2014 was passed in a similar manner in Uganda, without undergoing the correct procedures as stipulated in the Ugandan Constitution. There is a general pattern therefore in this particular administration of serious disregard for official legislative boundaries. In similarity to Nigeria; the country was facing conflict, violence and an unstable political climate which peaked particularly around election periods. Ugandan has experienced rising inflation rates coupled with an increase in poverty. It needed to provide relief and reconstruction for many communities devastated by widespread flooding . Islamist attacks have threatened internal security. International disputes regarding the DRC together with peaking demonstrations, riots and protests in Kampala province, have compounded the burdens of Museveni's government.

An important observation to make is the fact that in 2000 when the Ugandan Parliament began to review laws on homosexuality making *all* homosexual activity illegal and punishable by life imprisonment coincided with Museveni's preparations to contest the 2001 elections. He further needed to garner support to change the constitutional limits prohibiting a President from serving more than two terms which he was successful in achieving. It can be argued that initial revision of the laws on homosexuality occurred at this critical juncture, when Museveni needed to substantially increase his support base, in Parliament as well as from the general public in order to realise his

objectives. In light of this agenda, a mass populist crackdown on homosexuality was an extremely useful tool through which to rally for a larger political agenda.

Analysis can be drawn from examining the prominence an issue receives on the national political agenda. Therefore the explanatory ability of this variable in answering the question of political salience of an issue in the national agenda can begin from a statement on power retention and enforcement. Political pressure in Uganda came in the form of the need for Museveni to firstly retain power through extending the constitutional limit on the presidential terms in office and secondly to win the 2010/2011 elections at a moment when opposition parties were gaining momentum. Similarly in Nigeria, political pressure came in the form of upcoming elections in 2007 and then in 2011. However, unlike Museveni, Jonathan was also faced with an incredibly threatening and increasing issue of ethno-religious violence in parts of the country. There is also a great deal of socio-cultural diversity between the two parts of the country in the north and the south of Nigeria.

There is also some explanatory value, less in comparison to electoral period pressure and nationalism, in the fact that in both cases, during the respective introductory months of the bills in 2006 (Nigeria) and 2009 (Uganda), there was violence stirring up or calming down. The dates of the introductions correlate with conflict within the countries; Nigeria was in the process of negotiations over the Bakassi region, there was also the ubiquitous ethno-religious conflict. In Uganda, the LRA armed struggle against Museveni was subsiding with the rebel group appealing for a ceasefire.

Overall, the factors that can be drawn from this variable to answer the research question in order of weight of applicability are electoral period pressure, conflicting internal national identities and transitions from or into violent periods.

7.2 Regional Impacts: Anti-Homosexuality and Gender Conservative Legislature in Africa

The past ten years have seen an increase in the prominence of the issue of homosexuality and rights for persons in the LGBTI community in Africa and internationally. This attention has led to the reactive suppression of sexual minority groups' basic human rights and freedoms. The prominence that the issue has received is often laced with mass hysteria appealing theories, methods of 'othering', misinformed media sanctioned information and religious villainisation.

The existent literature on this matter deals with gender repressive laws in Africa sectionally and individually. Furthermore the definition 'gender' as the exclusive referent to women is limiting and has a direct impact on legislature and its application, development projects and advocacy programs. One might ask whether there is a necessary link between patriarchal societies and institutionalized homophobia. Patriarchy stipulates very rigid sexual and gender roles in society; it thrives on the sustenance and reiteration of these roles through social institutions. As such, deviant sexual and gender identities that do not conform to the ascribed roles are a direct resistant force to the equilibrium, which is the norm. There is therefore a clear link between societies that oppress women and societies that are institutionally homophobic.

The following section will map out the current legal status of LGBTI persons on the African continent. The objective is to identify the effects of a regional positioning and condition of LGBTI rights using a contextual, geo-political approach. The first part of the regional analysis will look at the status of LGBTI rights in Africa; the second part will answer the question of whether there is a wave and mimetic element in the direction that LGBTI rights repossessions are happening geographically/regionally and whether the same can be said for gender hierarchy enforcing rights repossessions in general as well.

LGBTI Rights in Africa[22]

The status of the rights of LGBTI persons in Africa is extremely diverse. If African countries had to fall on a spectrum with regards to ensuring the human rights of LGBTI individuals; South Africa would fall at the end with not only the decriminalisation of homosexuality in the post-Apartheid constitution but the 2006 legalisation of same-sex marriages. On the opposite end would be Sudan, Mauritania and parts of Northern Nigeria where the offence of homosexuality is punishable by death. The penalties are as vast ranging from fines to the death sentence; some countries ban homosexual activity among men and not women (Kretz, 2013: 209, also see ILGA Report, 2014). All in all, homosexuality is illegal in thirty-six African countries[23]; sixteen African countries do not explicitly prohibit homosexuality [24](Paoli Itaborhay and Zhu, 2013: 22).

The legislation on LGBTI rights can be categorised according to the different stages that the laws embody. Kretz (2013: 211-216) presents seven useful, encompassing stages of the legislation and rights of LGBTI persons. The struggle for recognition of LGBTI rights however is never linear but rather appears in ebbs and flows of rights endowments (mostly indirectly), repossessions and legal neutrality. Nevertheless Kretz' stages offer a functional overview of the different spaces LGBTI rights can occupy in a country.

Stage *1-Total Marginalisation*: This is the earliest stage or lowest level of integration and goes beyond criminalisation and includes the ban on the advocacy of LGBTI rights. At this stage, there is criminalisation as well as repression of civil organisation forcing the movement completely underground and stifling the potential for dialogue. Until the passing of the Ugandan Anti Homosexuality Act, no African state contained *de jure* criminalisation on the advocacy on LGBTI rights.

Stage 2- *Criminalisation of Status and Behaviour:* This is the second most restrictive stage of LGBTI rights' status in a country. This is where the act of homosexuality or identification as a homosexual is illegalised. The majority of African countries fall under this category. This stage offers *de facto* criminalisation because there are codified laws against homosexuality, this also stifles the efforts of LGBTI rights activism. For example, the marginalisation is solidified through

[22] Please refer to Addendum 3 which is a map depicting the diversity of laws on LGBTI communities

[23] The 36 African states where homosexuality is illegal: Algeria, Angola, Botswana, Burundi, Cameroon, Comoros, Egypt, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Libya, Malawi(enforcement of law suspended indefinitely), Mauritania, Mauritius, Morocco, Mozambique, Namibia, Nigeria, Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe

[24] The 16 countries that do not explicitly prohibit homosexuality; Burkina Faso, Benin (as of May 2014) Cape Verde, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Rwanda, Madagascar, the Central African Republic, Chad, Democratic Republic of the Congo, Equatorial Guinea, Gabon, Mozambique, and South Africa.

national leader's speeches and press releases. An outspoken anti-gay rights proponent, President Robert Mugabe has denounced the humanity of LGBTI persons entirely being quoted saying "[gay people are] worse than dogs and pigs [and] worse than organized drug addicts, or even those given to bestiality" (Skoch, 2012). Another example is Gambian President Yaya Jammeh who told the 2013 United Nations General Assembly "Homosexuals are not welcome in the Gambia […] if we catch you, you will regret why you were born [sic] […] Allowing homosexuality means allowing satanic rights. We will not allow gays here" Nichols, 2013).

Stage 3-Decriminialisation: For many civil rights groups and LGBTI activists in Africa decriminalisation is the main objective of current campaigns for LGBTI rights. International organisations through mainstreaming and human rights campaigns are working together with domestic and regional rights groups to attempt to influence policy makers. The United Nations (UN) as well as the International Lesbian, Gay, Trans and Intersex Association (ILGA) describe this stage as the first step to legitimating the social and legal inclusion of LGBTI persons. Ban Ki-Moon, the UN Secretary General launched worldwide appeals for the decriminalisation of homosexuality, focusing in particular on encouraging African states to revise the legislative prohibitions on homosexuality that exist on the Penal Codes (BBC News, Jan. 29, 2012). Since 2012, the Seychelles and Benin have agreed to take up legislation that would decriminalise homosexuality. Other forms of international pressure have come from individual political leaders, religious leaders as well as individual countries. The latter often comes in threats to cut aid. Days after the 2014 Ugandan Anti Homosexuality Act was passed at least three European governments and the World Bank withdrew aid and aid plans from Uganda. Uganda depends on donor aid for about 20 per cent of its budget. The Dutch government announced that it would suspend aid to the Ugandan government but will continue supporting nongovernmental groups, joining the governments of Norway and Denmark in taking such action (Al Jazeera, America, February 27, 2014). LGBTI activists in the affected countries have conversely warned against cutting aid to their governments. Kenyan gay rights activist David Kuria (2014) succinctly explains this fear, and as yet another point for popular galvanization against LGBT persons: "Can you imagine the glee in a corrupt regime having to scapegoat their misappropriation of resources on aid cuts because they have not accepted 'men-to-marry-other-men?'".

Stage 4- Codification of Anti-Discrimination Laws: This takes the form of protective rights for LGBTI persons encompassed in the term 'sexual orientation'. For most of the globe, the first step towards human rights realisations, after decriminalisation was the protection of citizens and non-discrimination rights to protect the sexual orientation of citizens. Only six African countries currently guarantee the protection against discrimination based on sexual orientation and gender expression of citizens; South Africa, Mauritius, Seychelles, Botswana, Mozambique (Paoli Itaborahay, May 2012) and Benin. Some countries, like Botswana have rights that protect against discrimination based on sexual orientation in the Employment Acts but still have not legally decriminalised homosexuality.

Stage 5-Establishment of Positive Rights: This is the move from exclusively preventative rights against discrimination to positive rights endowments. These rights include mostly the equality between same sex persons and couples and heterosexual persons and couples some examples are inheritance rights, power-of-attorney and tax benefits. The only country on the continent to confer

positive rights upon LGBTI citizens is South Africa. The importance of the granting of positive rights is that it is the first step towards socio-cultural integration of LGBTI persons.

Stage 6-Full Legal Equality: At this stage, legal distinctions between LGBTI and non-LGBTI citizens are eliminated. The South African Constitution is closest to this stage, although it is not fully there. Some examples towards reaching this stage are adoption rights, full marriage rights and some rights for transgender persons. Section 9(3) of the constitution does not fully protect gender identity as sexual orientation (South African Constitution, 1996)

Stage 7-Cultural Integration: No African state has reached this stage and it can be argued that even the most LGBTI-friendly countries globally, struggle to reach this stage. This is where any kind of discrimination against LGBTI persons is both illegal and socially unacceptable.

Most African countries fall within the first two stages where LGBTI persons risk fines, jail time, and violence and in some cases death because of their identity. African nations furthermore, until recently, remained static in the stages listed above. 2012 to 2014 has seen a significant move towards moving between stages with countries like Uganda, Nigeria and Gambia moving upwards and countries like Seychelles and Benin attempting to move downwards. Some African Countries did not carry Penal Codes prohibiting homosexuality to begin with, for example the Madagascar, Mali, Cape Verde. [25]

Gender Conservative Legislature in Africa

> One of the most efficient ways that patriarchy uses sexuality as a tool to create and sustain gender hierarchy in African societies, is by enshrouding it in secrecy and taboos.
> Another option is to use the law to prohibit all "sex outlaws" in the social ghettoes of society. Prominent among the sex outlaws that have historically resisted and subverted dominant cultures are homosexuals, bisexuals and transgendered individuals. Punitive laws against prostitution, abortion, adultery, erotica and prostitutes serve a similar purpose (Tamale, 2003)

Revision of Colonial Penal Codes on Homosexuality

Four African states have revised and intensified existing laws on homosexuality; Nigeria, Uganda, Burundi and most recently Gambia. Also necessary to note is that Uganda's legislation came six weeks after Nigerian President Goodluck Jonathan signed into law a ban on homosexuality

In April 2009, Burundi's lower house of government passed a law outlawing homosexual activity, with prison sentences for the convicted ranging from two months to three years. President Pierre Nkurunziza led the criminalization effort and worked with the country's National Assembly to sign the act into law, even after its senate overwhelmingly rejected the proposal (Guardian, 2014)

Gambian President Yahya Jammeh has signed into law a bill which mandates life sentences for "aggravated homosexuality" and targets "serial offenders" and people with HIV or AIDS, the Associated Press reports. The law was apparently signed October 9, but "no government officials have yet publicly notified the country of the new law." The Gambian law seeks to punish those who engage in consensual relationships with a person of the same sex, putting sex acts on a

[25] Please refer to Addendum 3

par with paedophilia, incestuous sexual abuse, and the deliberate passing of HIV to an unknowing partner (Human Rights First, 2014)

In Tanzania, a Member of Parliament from the main opposition party has submitted a proposal for enactment of a law called *The Bill to Prohibit and Control any Form of Sexual Relations between Persons of the Same Sex, 2014*. He claims that the existing laws are not strong enough and wants the country to mirror Uganda's Anti-homosexuality Law (ILGA Report, 2014: 79).

In Ethiopia, same sex conduct is illegal and punishable with up to 15 years' imprisonment; a Bill was endorsed by Ethiopia's Council of Ministers making homosexual acts "unpardonable". A presidential pardon is granted to thousands of prisoners every year on the Ethiopian New Year. However, if the new law is approved, the president will no longer have the power to carry out these pardons for those convicted for homosexuality (ILGA Report, 2014: 79).

The Democratic Republic of Congo's legislation does not prohibit homosexuality although LGBTI people still face social discrimination. A Member of Parliament introduced a draft Bill to National Assembly that would explicitly criminalise homosexuality. The proposed penalty for engaging in homosexual acts is three to five years in prison and a fine of 1 million Congolese francs (about R10 000), while a transgender person would face the same fine and a jail sentence of three to twelve years (ILGA Report, 2014: 79).

The Marriage Act 2014

In March 2014, Kenya's Parliament passed a bill allowing men to marry multiple wives. Polygamy is common among traditional communities in Kenya, as well as among the country's Muslim community. In Parliament, the proposed 2014 polygamy bill had initially given a wife the right to veto the husband's choice, but male members of parliament overcame party divisions to push through a text that dropped this clause. The passing of the bill caused angry female members of parliament to storm out of the late night vote on the polygamy legislation in protest.

The Bill was made legislation on the 1st May 2014. The Kenyan President described the act as one which "consolidates various laws relating to marriage – provides procedures for separation and divorce. It also regulates the custody and maintenance of children in the event of separation and divorce". The act also defines marriage as "the voluntary union of a man and a woman whether in a monogamous or polygamous union registered under the Act" (Jurist, 2014).

The Anti-Pornography Act 2014

The 2014 Ugandan Anti-Pornography Act; which limits women's dress code and behaviour in public spheres-also known as the anti-mini skirt law. The Anti-Pornography Act, seeks to create the offence of pornography which is blamed for sexual crimes against women and children including rape, child molestation and incest (The Anti-Pornography Act, 2014)

In the Act, pornography has been defined as any representation, through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in

real or stimulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement (The Anti-Pornography Act, 2014).

Anti-Rape Law in Swaziland, 2012

In 2012 Swaziland resurrected an archaic colonial criminal act from 1889 to stop women from wearing clothes that expose their bodies. Miniskirts, low-rise jeans, and midriff-baring tops have been banned because these revealing clothing items allegedly promote rape. Swazi police were responding to a march in the second city of Manzini by young women, some wearing miniskirts, who were seeking equal rights and safety. In Swaziland women are legal minors. Offenders could face up to six months in prison (Webb, 24 December 2012)

Traditional Courts Bill 2012

Six years ago, the South African Department of Justice and Constitutional Development introduced a new bill to Parliament. Called the Traditional Courts Bill, it was intended to replace sections 12 and 20 of the Black Administration Act of 1927, which gave traditional leaders such as chiefs and headmen the power to exercise certain judicial duties within the administrative regions they governed. Its provisions still give that power in the new democratic dispensation.

However, the bill was met with opposition at every turn from critics and community members. It was described by critics as creating a different set of legal rules for people living on traditional lands, separate to people living in urban areas. It envisaged a fairly broad set of powers for traditional leaders. It sought to centralise judicial power to an extent not envisaged by customary law. It effectively turned those living under traditional authority into serfs, at the mercy of the leader.

The bill failed to protect women by guaranteeing them participation. It did not provide for legal representation for people appearing before the traditional court. By not giving people the right to opt out of the traditional court system, it curtailed their freedom of cultural expression and freedom of association.

These bills, all have very different profiles and occur in varied contexts, however the consequence is the same in each instance; the gender hierarchy is further reified and freedoms extracted by those at the top of the hierarchy from those at the bottom. The disentangling of gender issues and as aforementioned,d the definition of gender as referring exclusively women has an effect on legislative processes, development projects and advocacy. There is a necessary link between patriarchal societies and institutionalized homophobia. Patriarchy stipulates very rigid sexual and gender roles in society; it thrives on the sustenance and reiteration of these roles through social institutions. As such, deviant sexual and gender identities that do not conform to the ascribed roles are a direct resistant force to the equilibrium, which is the norm.

The spill-over effect of negative rhetoric around LGBTI issues and repressive laws being passed around the continent, has an effect on similar laws coming up in different countries in the same category of rights for LGBTI persons *or* in different categories of gender rights but with similar effects which are rights extractive practices by governments. Therefore the explanatory power of

this variable in analysing the increase of legislature that is repressing gender minorities, lies in the spill over effect that can be noticed by looking at the peak in introductions to revisit existing penal codes, bills that are introduced in parliaments and actual bills that get passed into law in the recent years. In 2014, three pieces of legislation were passed (Nigeria, Uganda, and Gambia) and two more were introduced as drafts (Chad and Ethiopia). The introductions also followed one another quite closely and overlapped in terms of the announcements for the need for stricter laws and implementation in that Gambia's bill for example, was announced in commentary of the Ugandan bill. Many leaders that are aiming to go in a similar direction with their laws herald and cite both Nigeria and Uganda for taking a firm stand on the issue.

The explanatory ability of the second indicator in this variable; the gender conservative nature of many African states is seminal in explaining how homosexuality in particular, became the witch hunt of the decade. There are many morality politics issues to tackle that would flex the patriarchal state's muscle satisfactorily, none as unifying however, as the criminalisation of homosexuality. The second indicator thus offers an analysis of how, out of all the issues that could have been picked, homosexuality became the issue of choice. The reality is that there *are* other oppressive legislations being added to countries' laws that are inimical to gender emancipation and equality, however none had the immense support of the voting public and government as homosexuality, the marginalisation and prevailing discursive formations of the LGBTI community only added its advantages as a choice.

7.3 International Impacts: International Religious Activism and International Human Rights Activism

The third aspect of enquiry is examining the international level influences on the 2014 laws. The increase in visibility of LGBTI activism on the global map; widely reported on by the media; through protests; broadcast on television shows and the news, discussed at international human rights conferences -has triggered a reactive counter-movement in the form of legislature and most notably U.S Christian right wing evangelical churches and networks. This international level clash has an inevitable influence on the amplified attention that homosexuality and the legislation thereof has been receiving recently.
A closer look at international activism's role in the rise of such legislation depicts a multifaceted blend of factors that are at play. The most influential elements of power however emanate from international human rights and LGBTI activism on the one hand and international religious activism on the other hand. The two are arguably mutually inclusive. In the case of Uganda and Nigeria, these almost always exist concurrently.

In asking questions about the peculiarity of the growth of anti-gay laws in Africa, it is easy to fall into precarious ideological paths that replicate colonial discourses on African moral 'ineptitude' and 'primitiveness'. The corollary of this approach is an attempt to depoliticise the debate by drawing on the sovereignty of all states and the autonomy of all states to govern themselves as they see fit. This section will detail the background influence from an international level from both sides of the debate; those advocating for decriminalisation of laws on homosexuality and those advocating for further stringency in laws on homosexuality in African states, particularly

conservative Christian religious factions, in Uganda and Nigeria. In this section the intention is to answer *how* these laws have come into practice and what deeper power interests are at stake; to look at each factor identified as having in some way influenced the passing of the laws with the aim of determining the weight of the influence from an international level.

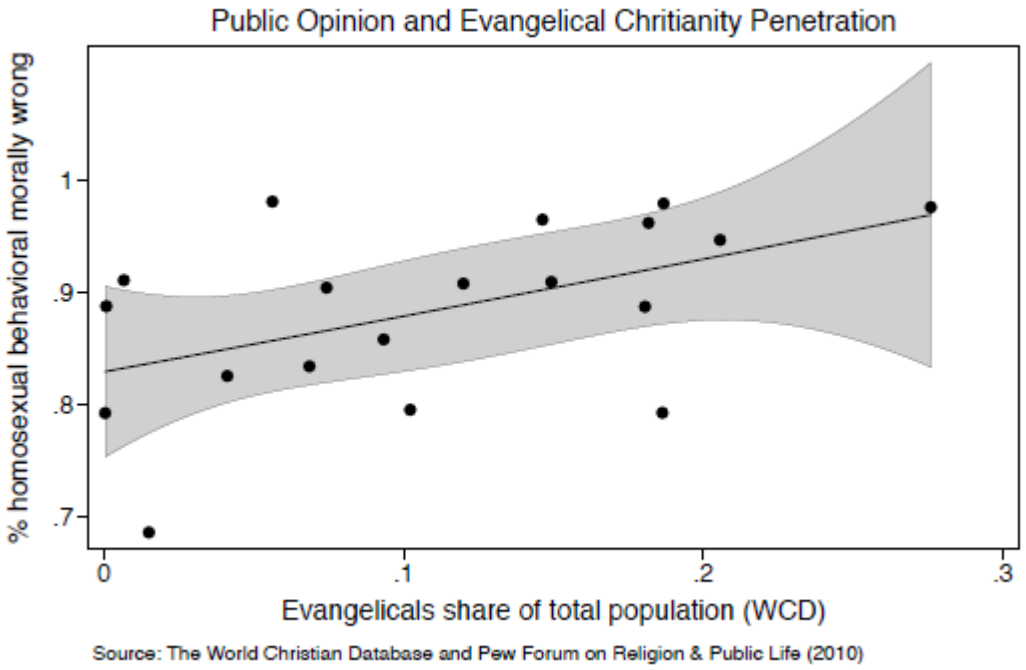
Religious Activism

On a continent where sexual rights are largely deemed or located in the personal domain and traditionally kept out of legislation, Christian right wing organizations are lobbying for anti-reproduction rights (abortion and contraception) and anti-homosexuality rights. For the purpose of this project it is necessary to determine what the effects are, of these lobbies and templates for legislation for African countries and to what extent has the U.S Christian international advocacy influenced the recent and increase in anti-gay legislation?

The U.S Christian renewal movements can be described as a predominantly white conservative movement and network from mainline U.S Protestant churches that promote a Christian worldview in politics and believe in the superiority of the nuclear family as the fundamental unit of society. For the Christian Right, any sex outside the institution of heterosexual marriage is considered dangerous for children, families, economies, and nations (Grossman, 2013: 9). In order to understand the anti-gay and anti-feminist legislation that is developing across the continent we must understand the ways in which the U.S Christian Right and its conservative supporters are shaping and nurturing the anti-gay laws that countries like Uganda and Nigeria have created. Acording to Grossman (2013: 10):

> Renewalist Christianity and the related Pentecostal, evangelical and `charismatic' movements is one of the largest and fastest-growing movements in global Christianity, with its major strands accounting for at least a quarter of all Christians worldwide (World Christian Database). In Africa, as recently as 1970, Pentecostals and charismatics combined represented less than 5% of the continent's population. According to recent figures from the World Christian Database, by 2005 shoe [sic] that Pentecostals alone represented 12%, or about 107 million, of Africa's population of nearly 890 million people. Charismatic members of non-Pentecostal denominations number an additional 40 million, or approximately 5% of the population (Pew, 2006).

Reverend Kapya Kaoma in his seminal work *Globalizing the Culture Wars* notes that Pentecostal churches and organizations influence every sphere of public life in both countries; from villagers and government members being "born again" to asking "international religious organizations to carry out development work alongside evangelism". See the below graph showing the relationship between the penetration of Evangelical Christianity and public opinion with respect to whether homosexuality is morally wrong.



Kaoma argues that, the momentum for the upsurge of homophobia in Africa is produced externally, driven by the neoconservative evangelical agenda of the religious movements in Western countries, particularly the U.S (Kaoma, 2009: 8).

The growth of Evangelical Pentecostalism in African countries in the recent past years has been a key driver of public anti-gay sentiments in Nigeria[26] and Uganda[27]. The focal drivers of the anti-gay laws have been Church groups that fall under the category of evangelical Pentecostal churches, Kaoma (2009) looks at the most active categories of denominations in Uganda and Nigeria: The Episcopal Church (TEC), United Methodist Church USA (UMC), and the Presbyterian Church USA (PCUSA)—and their Christian conservative branches. These denominations are key in the homosexuality debate in Africa because of their long history of evangelism in the United States; their deep involvement in African mission work and their tremendous political influence in U.S[28]

In Uganda the introduction of the 2009 Anti-Homosexuality Bill to Parliament, took place against the backdrop of a conference to expose the 'dark and hidden' agenda of homosexuality organized by a fundamentalist religious NGO called the Family Life Network and funded by right-wing American evangelicals (Tamale, 2013: 33; Barroway, 2009). The initial legal proposal was formulated some months after the conference[29] aimed at protecting African family values hosted by Caleb Brundidge, Don Schmierer and Scott Lively; who were joined by a large number of anti-gay

[26] Christians in Nigeria form a slight majority of the nation, comprising 50.8% of the population, while Muslims make up 47.9% (Pew, 2013)

[27] 85.4% of Ugandan population is Christian, while 12.1% of the population adheres to Islam (Pew, 2013)

[28] For example in 2003, conservative Christians successfully shifted the foreign aid policy of the United States so that it promotes abstinence-only education abroad through HIV/AIDS relief grants channeled to the Christian Right base of the George W. Bush Administration. (PRA, n.d)

[29] Refer to section 6.2

groups from Uganda and abroad (Anderson, 2011: 1594 and Burroway, 2009). The same group of people organised a petition with over fifty thousand signatures from parents calling upon the government to "save our children from being recruited into homosexuality." (Tamale, 2013: 33).

Fellowship Family Foundation (also known as 'The Family') is an American Christian community that focuses on influencing US political, social and economic elites as well as leading figures in other countries in promotion of 'morality politics'. (Anderson, 2011: 1595). For example American congressman, Joe Pitts was instrumental in reversing Uganda's HIV prevention policy towards an abstinence-only dominated approach that excluded the promotion of condom-use or any form of family planning (Sharlett, 2008: 328). Openly connected to this group are both David Bahati and President Museveni who have attended the group's events in Uganda and the US (Gettleman, 2010; Tamale, 2013: 34; Burroway, 2009, Anderson, 2011: 1595). The organisation also hosts the long-established National Prayer Breakfasts in Washington (Anderson, 2011:1595).

Another prominent player among the US conservative organizations supporting anti-gay sentiments in Nigeria and Uganda is the Institute on Religion and Democracy
(IRD), a Christian conservative think tank. Ironically, this group was instrumental in opposing the twentieth-century African liberation struggles, and these organizations now work hand in glove with African religious and political leaders to oppose progress in the rights of LGBTI people (Kaoma, 2009: 5). In further defining evangelism in Uganda and Nigeria Kaoma states that

> In Africa, however, the Christian Right means something different. It operates under the banner of "evangelicalism," which Africans understand to mean biblical and doctrinal orthodoxy, but without the "antiwelfarist" connotations it has in the United States. U.S. Christian conservatives working in Africa are generally known as American Evangelicals, and many Africans do not distinguish, for example, between the Christian Right, evangelicals, the neoconservative IRD, U.S. mainline renewal movements, Holocaust revisionist Scott Lively, and right-wing megachurch leader Rick Warren. All these groups are considered representative of U.S. Evangelicals.

Another illuminating example of a U.S Christian Right organisation that is influencing sexual politics on the continent is Family Watch International's involvement in Nigeria. Founder Sharon Slater, delivered a keynote speech at the 2011 Nigerian Bar Association, warning the delegates about the dangers of "sexual rights" being promoted by western progressives. Slater told the delegates:

> It doesn't matter if they are heterosexual, homosexual, premarital or extramarital—the evidence shows that as sexual relations stray from marriage the family unit disintegrates, children are hurt, economies decline, and nations are weakened. (Throckmorton, 17 April 2012)

The international Christian community was at odds with each other regarding the Ugandan Bill. U.S President Barak Obama addressing a National Prayer Breakfast stated that while there may be disagreement within the US regarding gay-marriage; it was unacceptable and odious to target homosexual people for the sake of their sexuality anywhere in the world (BBC News, 4 February 2010). In the US House of Representatives, 62 Democrats signed a resolution condemning the proposed legislation on the grounds of it impeding the HIV/AIDS health battle and being in contravention of human rights commitments. However, lobbying groups such as the conservative

Family Research Council rebuked the resolution claiming that it was in direct promotion of homosexuality.

In 2011, on the heels of the Nigerian Senate passing the 2006 Same-Sex Marriage (Prohibition) Bill, President Barack Obama announced that the U.S would officially promote LGBTI rights abroad as part of its development framework. In response, the Catholic Family and Human Rights Institute, which is heavily involved in Nigeria, denounced the administration's directive for putting "U.S. foreign policy on a collision course with religious freedom." (Throckmorton, 17 April 2012). In a letter to the Primates of the Anglican Communion and the Presidents of Nigeria and Uganda, the Anglican Archbishops of Canterbury and York urged leaders to adopt policies of acceptance and care for all people.

> We wish to make it quite clear that in our discussion and assessment of moral appropriateness of specific human behaviours, we continue unreservedly to be committed to the pastoral support and care of homosexual people. The victimization or diminishment of human beings whose affections happen to be ordered towards people of the same sex is anathema to us. We assure homosexual people that they are children of God, loved and valued by Him and deserving the best we can give - pastoral care and friendship. We hope that the pastoral care and friendship that the Communiqué described is accepted and acted upon in the name of the Lord Jesus. We call upon the leaders of churches in such places to demonstrate the love of Christ and the affirmation of which the Dromantine communiqué speaks (Welby, 2014)

Ugandan and other African churches were as divided in their reactions and consequent decisions as well, with many supporting the principles of the bill, but rejecting its harshness; in particular the death penalty proposal. U.S pastor Rick Warrern for example blatantly described the bill as un-Christian (Chua-Eoan, 10 December 2009). Arch Bishop Desmond Tutu equated anti-gay laws and their application by African leaders to the horrors of Nazi Germany and Apartheid South Africa stating that

> We must be entirely clear about this: the history of people is littered with attempts to legislate against love or marriage across class, caste, and race. But there is no scientific basis or genetic rationale for love. There is only the grace of God. There is no scientific justification for prejudice and discrimination, ever. And nor is there any moral justification. Nazi Germany and apartheid South Africa, among others, attest to these facts. (Kennedy, 23 February 2014).

Much of the debate surrounding the intensity of these laws revolved around the international involvement and stakeholder interests in the bills. Those who supported them claimed it was necessary because international homosexual advocates were recruiting as well as funding behaviour that is un-African, un-Christian and anti-family. Those against the bill drew on arguments portraying the issue as a U.S-style culture war where African leaders were being used as well-oiled proxies for U.S conservative Christian actors to enact laws in Africa that they were unable to lobby for back home.

The neo-colonial extrapolations that characterise both arguments ignore the agency that African leaders possess, and too often act upon for a multitude of purposes. There are limitations to applying this approach too simplistically to African countries and in particular Uganda and Nigeria. Homophobic rhetoric and public opinion, when supported by legislature serves to strengthen the

standing of its proponents in mainstream thought and maintains socio-political relevance of an administration whether it is in the West or in African states. This also feeds into the political interests of the governments, rouses voting publics' support and contributes to the portrayal of a government committed to sovereignty, agency and African values.

International Human Rights Activism

> The international human rights community generally sees changing laws as the necessary first step toward changing attitudes. Where treatment of, and attitudes toward, sexual minorities violate international human rights obligations, international human rights organizations have moved aggressively to advocate for change in domestic laws, with an eye to ultimately transforming attitudes and beliefs toward the LGBT community (Mittlestaedt, 2008: 355).

It is important to identify the specificity of the model of advocacy that is adopted by international human rights organisations working in the field of LGBTI rights. The distinction between development/community level work and advocacy directed towards legislative change from the government- incremental strategic litigation- will have an impact on the scope for success; boundaries of influence and the buy-in from host states. There are strong arguments for the method of advocating for change in laws before change in attitudes of society. The public fear and misconceptions fuelled by political leaders about homosexuality serve a specific socio-political purpose, offering them a tool for achieving short-term goals and preserving political power.

The appeal of incremental strategic legislation advocacy approach follows as a logical congruent on the one hand. In other words, these governments are using very specific laws to revoke people's human rights; this functions to silence not only the LGBTI community, but also to repress all activism, engagement and opposition therefore closing down political space for discussion and debate while violating the fundamental rights of *all* citizens. There is therefore a need for advocacy methods with the same specificity, aimed at reclaiming the rights that are being extracted, through a model that is intended for law advocacy.

In the recent years international human rights organizations like Amnesty International, Global Rights, Human Rights First, Human Rights Watch and the International Gay and Lesbian Human Rights Commission (IGLHRC)[30] have worked closely with human rights and development practitioners and governments to a lesser extent to overturn anti-gay laws not only in Africa and promote the perseveration of human rights in societies and legislation. Looking at the role that international advocacy played in the wake of the discussions around these laws the first factor to highlight is that the general visibility on LGBTI issues and lifestyle increased not only in international media but also on the continent. Between 1996[31] and 2006[32] for example, South Africa was heralded as one of the most progressive constitutions and legislature with regards to LGBTI rights and equality globally. During those years African political commentary on the issue grew exponentially (See Tamale, 2013; Msibi, 2011).

[30] Please refer to part 4 detailing the reactions of human rights organisations abroad.
[31] In 1996 South Africa became the first jurisdiction in the world to provide constitutional protection to LGBTI people by disallowing discrimination on race, gender, sexual orientation and other grounds (Stewart, 2015)
[32] In 2006 South Africa became the fifth country, the first (and only, as of January 2015) in Africa, the first in the southern hemisphere, and the second outside Europe to legalise same-sex marriage (Stewart, 2015)

In November 2007 the U.S State Department launched the LGBT Foreign Policy Project whose objectives were stated as follows:

> The premise of this discussion series is that the LGBT community in the United States must do more to shape U.S. diplomatic positions on LGBT issues at the international level. And with a push from domestic LGBT organizations and activists, U.S. foreign policy leaders themselves can do far more to assist LGBT communities in other countries by extending the recognition, respect and resources those communities need to defend their basic human rights. (Council for Global Equality, 2007: 2)

There has also been regional civil society and human rights activism in response to these laws. Activists are providing direct assistance to LGBTI people, bringing cases of rights violations to court, encouraging growing public acceptance within their countries and demanding political change. This includes leaders of civil society as well as elected and appointed leaders. For example following the creation and strengthening of homophobic laws in several African states, the human rights body for the African Union, the African Commission on Human and Peoples Rights, issued a bold resolution calling for the protection of the human rights of LGBTI persons. At the 55th session of the commission that took place from April May, 2014, members called for an end to acts of violence and abuse. The African Union's Resolution 275: On *Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity*, is the important first step towards the realization of continent-wide protection of the human rights of LGBT people (AWID, 2014). The resolution:

> Strongly urges States to end all acts of violence and abuse, whether committed by
> State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims. (AWID, 2014)

As Mittlestaedt (2008: 357) notes, the international community's increased focus on LGBTI issues in Africa has not been received wholly positively by many governments that are fervently opposed to de-criminalisation. The spill over effect that the laws have had on the continent in countries like Gambia and Tanzania[33] indicate the refutation that governments in Africa have against the presence and lobbying of international human rights organisations. The heavy involvement, funding and branching off of smaller LGBTI groups in Africa from larger international human rights groups is being used by governments to comply with the their conspiracies about external funding, recruitment into homosexuality and accusations of neo-colonialism.

Additionally the international backlash that both Uganda and Nigeria faced from aid and funding countries through threats to cut aid also did not benefit the LGBTI community. In October 2011 for example, during the Commonwealth Meeting of Heads of State, David Cameron, the UK Prime Minister, threatened to reduce development aid to countries that criminalise homosexuality. Shortly after the statement was made, the United States also announced that they would use all available mechanisms, including measures related to development cooperation, to promote LGBTI rights. In

[33] Please refer to section 8.2

February 2014, the World Bank postponed a US$90 million loan due to the signing of the Anti-Homosexuality Act. Norway said it would be withholding $8m in development aid to Uganda, and Denmark will divert $9m away from the Ugandan government (Kaleidoscope Trust, 2014)

Donor sanctions are definitively coercive and reinforce the uneven power dynamics between donor countries and recipients. They are often based on assumptions about African sexualities and the needs of African LGBTI people. Edwin Sesange, director of the African LGBTI Out and Proud Diamond Group, said in a Gay Star News comment piece (Morgan, 26 February 2014)

> Aid in various forms helps all ordinary Ugandans, including LGBTI people who we are campaigning for […] Politicians and the anti-gay vigilantes are using this threat from developed countries as a way of convincing people the west is using foreign aid and its influence to spread homosexuality to Uganda.

The intention of reviewing the influence from both sides of the international debate informing the 2014 anti-gay legislature in Nigeria and Uganda is to address questions of how these laws came to be and what influences were pivotal in gearing them towards being implemented. What emerges is firstly a conflation of interest bearers agendas pulling in multiple directions; secondly there is evidence of a polemic but discursive exchange happening at international advocacy level that appears to inform regional and national level engagements when it involves a dialectic approach between domestic and international advocacy efforts. Most importantly there seems to be a pendulum of actions and reactions directed specifically at changing legislation in these countries from international Christian Right Wing factions as well as international human rights and LGBTI activists.

The effect of this on the passing of these laws is that African state leaders are in a position to assess their relative strengths and weaknesses, their positioning internally and externally and choose an issue and a side to the debate that is the most expedient and lucrative to their own interests. In this case, the issue was homosexuality; the advocacy of which increased exponentially in African states. Both proponents and opponents grew in visibility at the time the bills were being introduced and grew even more during the discussions of the bills and the eventual passing of the laws. The leaders of Uganda and Nigeria in this case opted for narratives that seemed to preference nationalism, African traditions and religion which really translate to politically strategic interests.

8. RESEARCH ANALYSIS

> There is no culture without a tomb and no tomb without a culture; in the end the tomb is the first and only cultural symbol. The above-ground tomb does not have to be invented. It is the pile of stones in which the victim of the unanimous stoning is buried. It is the first pyramid.-Rene Girard-*Things Hidden Since the Foundation of the World* (English Translation, 1987)

In René Girard's theory of 'violence and the sacred' the political philosopher explains the violence involved in the founding of a culture or a community as based on the scapegoating of a sacrificial member. This member is arbitrarily[34] selected by placing the blame for all of the community's distress on one individual or group of individuals, the community's violence becomes polarized toward the ones being blamed. In Girard's theory, the primitive man stumbled upon the solution to this threat: the scapegoat and by expelling or killing the scapegoat, order is restored and the community becomes peaceful again. The single act of sanctioned violence becomes curative and order is restored. According to Girard, this is the basis of culture; violence and making the scapegoat sacred. Through sacrifice, the scapegoat is both villainized and made sacred by virtue of restoring the cultural order after death. Girard proposes that world mythologies and religions hide the scapegoat mechanism within the sacred rituals of sacrifice; the crucifixion of Christ; the medieval witch hunts; the Jewish Holocaust. These rituals are a re-enactment of the very first killing of the sacrificial victim through which the first community established order (Girard, 1987:1-9).

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The following section will evaluate the research findings and categorise them according to the selected variable categories of influences from the national level, regional level and international level. Within these categories, specific themes that surfaced will be discussed. A description of their compatibility with the arguments will follow as well as a description of how the variables comparatively fared in contributing to the 2014 pieces of legislation. Finally brief recommendations will be offered.

8.1 National Level-Nationalism and Collective Identity

> Not only is there no all-encompassing concept for identity in much of Africa, but there is no substantive apparatus for the production of the kind of singularity that the term seemed to require. The petty bureaucratic insistence on tribal and racial markers, our new flags and anthems, and even the grand national stadiums and ballistics could not and still cannot be compared to the imperial administrative and ideological apparatus that lay behind the production of English culture, and its more encompassing political front, British identity (Mama, 2001:64).

The concept of collective identity is one that many African states from independence have clung onto. Using Fanon's perceptions of the colonial subject; of all the secondary entities that colonisation left, the worst is the notion of European superiority. That Africans were, prior to European settlement, barbaric, primitive and imprudent. For Fanon European civilization which encompasses Western values, social systems, political systems and economics all shaped the very identity of the colonial subject. The African intellectual-the liberation movement governments and civil activists who came into power after independence were faced with the need to break away from colonial rule while being the vanguards of African society and nation-state; de-colonising not only politics but education, society and culture as a whole (Jinadu, 1986: 155). The irony is that there are in fact many discursive contractions and state

[34] Arbitrary with regards to their link to the accusations.

structures that African state leaders inherited from colonial powers. One of which is the concept of governmentality; driven by the collective of institutions, procedures, analyses and reflections which are also the strategies through which the state is able to exercise a precise form of targeted power and have the population, as its principal form of knowledge political economy, and as its essential technical means apparatuses of security through mass support.

In Nigeria and Uganda, both presidents that were in office during the introduction of the bills; Obasanjo (2006) and Museveni (2009); were both active in drafting the post-independence states. Obasanjo ensured a government transfer back to civilian rule twice after military rule in 1979 when he ushered in the Nigerian Second Republic and in 1999 when he led the Nigerian Fourth Republic. Obasanjo was not only faced with post-military state reconstruction and transition to civilian led government; Nigeria's position is also unique because the North/South divide predates independence and is organised along ethnic and religious lines. It is also the derivation of internal conflict in Nigeria which has always been the case. On these grounds, there has always been a lack in Nigeria, of common grounds especially legislatively. Firstly the homosexuality debate has brought otherwise polarized sides to agreement in Nigeria. Secondly, it contributes to social cohesion in a society void of much social cohesion in.

When Jonathan came into power his administration inherited religious conflict that escalated to terror attacks, he needed to continue with peace talks regarding the Bakassi region and there were Presidential and state elections coming up. Then he was selected as a southern Christian to balance the ticket for a northern Muslim presidential candidate, who died in office. So having never won an election to major public office on his own, Jonathan had the challenge of not only continuing his predecessor's goals; his administration also faced massive corruption scandals, the economy continues to suffer from falling oil prices and the state faces surging violence from Boko Haram insurgency in the north, which has been on the increase since he took office.

Another factor that makes the Nigerian case unique is the backdrop of military threat that has previously led to successful take overs in the recent past. The significance of these events is that for a state facing external as well as internal contention, having a tool to reinstate the public's confidence in the administration contributes to its perceived strength and ability to unite and lead the nation. When the House of Representatives passed the bill in December 2013, for Jonathan, not signing the bill risked alienating his own government and signalling to the general public that he does not support one of the few issues that bring the majority of Nigerians together. Alternatively, signing the legislation could have cost the country substantial sums of international aid and investment. All the same, with the 2015 national elections coming up his decision on signing the bill may significantly influence the Nigerian political debate in the run up to the elections.

Uganda presents a slightly different case in terms of the administrations and political transitions. President Museveni has been in office since the end of the Idi Amin dictatorship. He came into power as a rebel leader influential in the military toppling of the Amin dictatorship and his predecessor Obote's administration. He has since vigorously held on to power and changed the law to allow him to remain in power. Museveni has also been deeply involved in the processing of the bill, communicating the need for it to be passed, his hesitations and how he arrived at his eventual decision to sign the bill into law. Of his list of reasons for the need to have the law, some that stand out are that the issue of homosexuality presents a Western attempt at social imperialism, to impose social values that are un-African.

Though peace and a new inclusive form of politics were promised when Museveni seized power, his terms have been plagued by a series of civil wars. Political, military, and economic power have remained ethnically biased in favour of groups from western and central Uganda, and this in turn has been a major cause of recurrent civil wars. Increased territorial power sharing since the late 1990s helps explain the recent decline in violent conflict. Museveni continues to face growing populist criticism for seeking to remain in power for life. In Uganda, the new law will no doubt increase his popularity. The Ugandan government has however come into some difficulty with the Act being annulled by the Constitutional Court, the effect this has on this administration is that it makes the disregard for the rule of law clearer to critics. But the ruling also offers Museveni a political out, serving to diffuse international pressure while allowing him to maintain his widely popular anti-gay stance. The President is also considering running for re-election in 2016.

The popular vitriol against perceived (or legitimate) external intrusion that can be summoned by governments that have come into power by struggling to overthrow oppressive regimes is an extremely powerful tool. The collective memory of the effects of African concessions to western nations in exchange for promises of development, aid, artilleries, loans and even democracy; has become many African government's basis for normative projects of nation building and power retention. The result of this is an appeal by the government for a retreat to the status-quo and balanced equilibrium in social relations. Inevitably institutions of socialisation that are under threat of being eroded by external forceful influences are rebuilt in the name of unity. In the case of Uganda and Nigeria, the 'sexual deviant', as an unwelcome Western import bears the brunt of uniting otherwise diverse opinions and strengthening domestic support for governments, therefore contributing to the revival of discussions on Africana and national identity. This presents a form of sacred cultural violence.

8.2 Regional Level Impacts

The question on the influence of legal bans on homosexuality on the continent is linked to the discussion on the overall growth of negative discourses around LGBTI communities as well as the discussion on political saliency. Access to legislation can be a challenge when it comes to LGBTI issues. This can be due to rapidly changing legal provisions, contradicting sources, and the inaccessibility of certain legal provisions in the public domain. On the regional cascading effect of these laws, two indicators were looked at: the growth of anti-homosexual rhetoric expressed by government leaders and the status of LGBTI rights on the continent and the increase of repressive gender law making in the broad realm of gender policy making.

Uganda's legislation came six weeks after Nigerian President Goodluck Jonathan signed into law a ban on homosexuality. The Gambian President, followed suit, passing The Criminal Code (Amendment) Act of 2014 eight months later. Most African countries have some legal prohibition against homosexuality; where LGBTI communities risk fines, jail time, and violence and in some cases death because of their identity. Inference can be drawn from the diversity of countries that are leaning towards (through discussions) a rights incremental approach (like Seychelles and Benin); countries that are tightening existing laws-rights extractive approach; and countries that have no specific laws against homosexuality. There is a definite increase in; firstly the attention the issue is receiving politically; and secondly the number of countries tightening existing laws on homosexuality (2014 saw an increase of three). This is bound to have a domino effect, especially when leaders recognise the powerful unifying effect of a collective adversary on national credence.

The second part of the regional discussion looked at whether there were conclusions to be drawn from the possible cascading in gender conservative laws on the continent. The examined bills, all have very different profiles and occur in varied contexts, however the consequence is the same in each instance; the gender hierarchy is further reified and freedoms extracted by those at the top of the hierarchy from those at the bottom. Considering the suggestion that there is a common thread within these laws[35] means placing the struggle for LGBTI rights in the mainstream gender category; it means recognising that this form of repression affects more than just those in the LGBTI community but it also functions to maintain the existent male-centric, chauvinist, gender elitist discourse.

The explanatory ability of the second indicator in this variable; the gender conservative nature of many African states is seminal in explaining how homosexuality in particular, presented a good choice considering other types of gender repressive laws that the region is experiencing. There are many morality politics issues to tackle that could similarly reify the gender hierarchy; none of them offer the widespread public support that comes with homophobic laws. The reality is that there are other oppressive legislations being added to countries' laws that are inimical to gender emancipation and equality, however none have received the immense support of the voting public and government as homosexuality has. The marginalisation and prevailing discursive formations of the LGBTI community only added to its advantages as a choice.

8.3 International Level Impacts

> The global reaction to the Anti-Homosexuality Bill, for example, demonstrated both a selective amnesia about the origins and operation of homophobic legal codes and persecutions on the one hand, and imperialist impositions of moral sexual values on the other. Those who commented on Uganda's homophobic bill from the outside often expressed criticism that smacked of arrogance, a stunning lack of historical knowledge about homophobia, and a patronizing and domineering agenda that might impress even NATO. And those who supported the bill within Uganda and other African states perpetrated a deeply troubling rewriting of African sexual cultures based on skewed historical untruths (Tamale, 2013:35)

Homophobic rhetoric and public opinion, when supported by legislature serves to strengthen the standing of its proponents in mainstream thought and maintains socio-political relevance of an administration whether it is in the West or in African states. Additionally, the invocation of mass hysteria and fear by misinformation by the government, summoning of collective identities and commitment to rebuking Western imposition puts governments in better stead with the voting public.

An analysis of the international level influences reflects a myriad of issues, standpoints and actors that the governments of Uganda and Nigeria have carefully selected and collaborated with. There is evidence of the availability of both sides of the debate for and against LGBTI rights in both countries. These laws occur at a time when international movements for and against further bans on homosexuality are active and available to the public and to the governments. The clause that forbids advocacy or forms of assembly that are in support of homosexuality in Nigeria and Uganda functions especially to silence international human rights organisations that could otherwise, in collaboration with local rights groups, provide education and information dispelling widely accepted fallacies.

[35] Consider the other gender repressive laws that were passed in the last decade: *The Marriage Act 2014 (Kenya); The Anti-Pornography Act 2014 (*Uganda*); Anti-Rape Law 2012 (*Swaziland*) 2012; Traditional Courts Bill 2012 (*South Africa*)*

The evidenced high level involvement of U.S Christian evangelical groups in Africa[36], whose mandate is to promote and spread morality politics through conservative policies that are gender repressive, anti-reproductive rights and anti-HIV/AIDS health systems-is pervasive in Uganda and Nigeria. However, the involvement and lobbying of Christian right wing advocates is no different categorically, than the international human rights actors'. The difference in the acceptance by governments of one over the other is a matter of political gain. The choice for alliance with religious advocates for morality politics has much to do with the quantitative strength of religious constituencies in Uganda and Nigeria. In Nigeria, the issue additionally presented a previously non-existent common ground between Muslims and Christians.

The actions that took place at an international level from the time the laws were introduced as bills were twofold; firstly the negative reactions from the international community of states through the threats to cut aid and appeals from governance institutions had the adverse effect of reaffirming the governments' accusations of social imperialist powers that are importing homosexuality, recruiting young children and funding homosexuality in Africa. These reactions strengthened the governments' decision to resist international pressure, therefore providing assurance of their commitment to protecting African cultural values. For example, consider statements by Museveni where he exclaimed "We will not shy away from this, we want to rid this country of homosexuality and if that means these people Obama, Hague, you name them want to stop their aid then let them," (The Telegraph, 27 February 2014). Secondly aid cuts also have damaging effects on weak economies that depend on aid for development, this affects the entire country, and more significantly aid cuts *are* a form of social imperialism that is laced with power dynamics that recreate and evoke colonial memories and widen the global inequality gap. Not to mention, the arrogance in what Tamale called "selective amnesia" regarding the origins of legislative homophobia.

The laws have been created within a unique and tumultuous political and religious context with underlying with power struggles and cross-border relations, specifically between Africa and the United States. What emerges from an analysis of international influences from both sides of the debate is firstly an overlap of actors' agendas pulling in multiple directions; secondly there is evidence of a polemic but discursive exchange happening at international advocacy level that appears to inform regional and national level engagements when it involves a dialectic approach between domestic and international advocacy efforts. Most importantly there seems to be a pendulum of actions and reactions directed specifically at changing legislation in these countries from international Christian Right Wing factions as well as international human rights and LGBTI activists.

Worthy to consider is the question whether these laws would have come about in the absence of external, international influences, in the absence of U.S evangelical activism for example. I would argue that they would. Cultural conservativeness in these cases, in a great sense is reactive. Even with the removal of this variable, the facts remain of political strategic interest, of gender hierarchism and a need to build a national identity. Therefore, while the explanatory power of the international level variable is useful in understanding an element of the speed, timing and coverage of the criminalisation of homosexuality; it is limited in explaining the need for such laws.

[36] Consider discussion in section 7.3 International Impacts- Religious Activism

8.4 Political Salience and Political Strategy

I argue that the national level influences are the first and foremost basis for these laws. There has been a noticeable influence from regional and international influences although to a lesser extent. This can be evidenced in revisiting the inevitable link between political saliency and political interest. What governments are presented with both at regional level (through a diversity of repressive laws, an overabundance of the different measures of tightening already existent bans on homosexuality); and international level (through a myriad of actors; allies and opponents) is a vast variety of positions and decisions. The choice for a revision of laws further repressing the LGBTI community is strategic and largely informed by national level interests of a particular administration.

There are several reasons why laws against homosexuality have taken up increased importance on the political agenda globally, in Africa particularly in Uganda and Nigeria. The first is what Grossman (2013:14) calls the "equilibrium pressure to match between demand and supply". The demand in this case would be the need for government to show commit to nationalism and religious beliefs of the public. The supply would be the selection of a unifying issue, and in this case-homosexuality. The second component that makes homosexuality worthwhile as a legislative issue for governments is that it enjoys broad support within Nigeria and Uganda[37]; it is an issue, unlike others that fall under the category morality politics that is not polarized. Thirdly, morality politics offer an easy way to build a political reputation or stereotype one's opponents because it is communicated in a zero-sum manner.

There is no doubt that some leaders certainly believe in the propaganda that homosexuality is a threat to the family, African traditions, causes paedophilia and endangers children. However, the will for further enquiry and education about a marginalised group of people weighs less than the will to remain in power through an appeal to the commitment to national identity, rejection of western values and the emergent cultural violence against gender minorities.

Overall, through a textured analysis of the factors influencing the increase of the political salience of legislation for gender minorities four factors become prevalent:

i) Political leaders are under multi-directional pressure from citizens, opposition party leaders and other political leaders. Both Uganda and Nigeria from independence until now have experienced military take-overs. In Nigeria, the history of the country depicts a high attrition rate of administrations. Under Jonathan, ethno-religious violence reached its highest peak. In Uganda, Museveni contends to hold on to power having been in office since 1986; his term has been on a steady decline. Both governments, from introduction to confirmation of the anti-gay laws, were experiencing (and continue to experience) high levels of political volatility.

ii) There is also an element of cascading of anti-gay laws and gender conservative law making on the continent. Since Uganda and Nigeria announced its process of intensifying the laws criminalising homosexuality, other countries (Gambia, Ethiopia and Chad) have started to buckle down on the issue and announce plans of modifying existing laws to be stricter on enforcement.

iii) Religion in these cases provides a socio-political adhesive and effective nationalism tool. Both Uganda and Nigeria have deep connections with Christian Evangelical right-wing groups and in the

[37] Consider graph on African public forum attitudes on homosexuality in section 7.3

case of Nigeria, a large Muslim population- that had a direct impact on the prominence and misinformation around the anti-homosexuality laws.

iv) It becomes progressively more important to appeal to mass nation-building narratives, morality politics in this particular period as well as retention of 'African' culture and tradition, which have been proving effective in congregating around issues of commonality. Leaders that are able to effectively retain traditional African values, thus rejecting western values (that are understood to be to the peril of African populations); are considered strong, bold, and anti-imperialist.

8.5 Recommendations

Power relations are imbedded with hierarchical and stratified systems; this is true of state-craft globally. Gender is no different, inequality; oppression and domination do not exist in a vacuum they exist because of socialised and institutionalised gender stratification where the echelons are clearly defined and static. To propose a step by step emancipation process further prolongs the efforts towards emancipation. In other words, when NGOs large and small that deal with gender emancipation issues claim 'we are not a gay rights organisation' as if oppression against gender minorities exists in a vacuum and fall into a different category-it takes the whole gender emancipation movement, steps back.

The need for the realisation of common struggle is necessary in activism as well as development work. This is not with the aim of seeking legitimation but with the understanding that these forms of repression affect the whole population, but more so those at the bottom of the hierarchy. This is not a 'gay' problem; it is a problem that all feminists, human rights activists and gender development workers should be concerned with.

There is also a need for stronger transnational networks of gender activism. In a strictly literal and sense, the term transnational feminism points to the multiplicity of the world's feminisms and to the increasing tendency of national feminisms to politicize women's issues beyond the borders of the nation state, for instance The Civil Society Coalition for Human Rights and Constitutional Law in Uganda called for a number of responses before and after the law was signed by the president. Among the responses they called for was a recall of United States, European and other ambassadors from the country. This meant travel bans for politicians, religious leaders and other public figures who support the law. They asked the international community to engage the African Union and the leadership of other African nations such as Rwanda and South Africa to speak out against the law and the discrimination of sexual and gender minorities (Ugandans4Rights, 2014). Additionally, activism specifically by the LGBTI groups is very important as without these groups especially in the U.S very little progress in rights achievements would have been made.

Incremental strategic legislative advocacy, has been seen as a way in which oppressive laws have can be quelled. The appeal of this approach is that it deals with governments on the same level of the law. Supporting a legislative advocacy approach by building the capacity of the activists on the ground in African countires on the same and assisting in establishing the grounds in which this can be done is one other response to the increased intolerance by the states towards the LGBTI community. An example of this is the Ugandan annulment of the Anti-Homosexuality Act 2014 by the Ugandan Constitutional Court. The case of *Prof. J Oloka--Onyango & 9 Others v. Attorney*

General (Petition No.8 of 2014) contained claims of the breach of parliamentary Rules of Procedure through the absence of quorum at the passing of the bill as well as the violations of the bill of the constitutional guarantees of freedom from discrimination and from cruel, inhuman and degrading punishment, rights to privacy among others. At the time the paper was written, only the ground of quorum was ruled on (CSCHRCL Press Statement, 2014).

Lastly, large multinational corporations form a significant part of Africa's economy and investment pool. These corporations usually have non-discrimination clauses in their policies and in most cases these clauses include non-discrimination on grounds of sexual orientation, gender identity and expression. Activists at the domestic level and the international community can push these multi-national corporations and foreign embassies to speak out publicly about the negative effects of these laws.

9. CONCLUSION

The nexus of political strategic interests and political subject salience is unavoidable for analysis in the deconstruction of legislative decisions. The issue of homosexuality began increasing in legal and political rhetoric from 2000s onwards and 2014 was the year that (so far) has witnessed the most legal reversion and attention of the issue in Africa. The fact that both the laws received immense domestic public support certainly has an effect on the current administration and are thus in the political interests of very specific stakeholders; the government and its official supporters.

Firstly, looking at the origins of this kind of legislature; British colonial rule-the only explanatory value is in the attempt to restructure discursive formations around the narratives and identities of sexual minorities and definitions of gender roles that colonialism regulated in Africa. The exercise of strict state control on sexuality was introduced by European colonial powers. This is clear when one compares sexuality narratives in pre-colonial Africa, colonial Africa and post-colonial Africa. The commonality of the tools of governmentality and subjectivity -power and control of sexual politics, is introduced during the colonial period and sustained after it. This is the significance that lies in the origins of anti-homosexuality laws.

From the issue of Western importation of homosexuality the issue of Western importation of homophobia can be extracted. Both cases have been funded and virulently supported by U.S Christian Right Wing advocates and in both cases the governments detest external international imposition through what has been dubbed a fight against neo-colonialism, claiming that homosexuality is being imported into African countries. This latter irony is not to be misjudged and should also not be interpreted as African leaders simply being used as pawns in Western culture wars. There is agency, autonomy and sovereignty in African states and their leadership. This means that state leaders are strategically selecting from a basket of issues, those that will gain prominence from those that will not.

Secondly the language of nationalism is a common thread in both cases and all homophobic rhetoric regionally to explain the need for regulation of homosexual conduct and activism. Markers such as traditions, religion, and family and to a large extent national identity have become seminal in motivating this form of legislation. Therefore what emerges is a constant ebb and flow of the attempt to retain these national identifiers as reactive measures to external imposition, project them onto the general public as such and produce widely accepted laws against a small, defenceless minority. This dialectic process between these governments and what they consider to be external imposition also functions to buttress an administration's commitment to representing and protecting the national public. The reason the external imposition of Western religious factions is more palatable is because morality politics is concomitant with the prevailing nation-building rhetoric in these countries and also because of the stronghold of Christian evangelism and its rapid growth in Africa.

The resultant cultural violence that stems from this form of sanctioned exclusion of people relates to many historical collective acts of violence. A feminist analysis of policy making around gender minorities in states, links the violent and destructive manifestations of modern statecraft with the persistence of patriarchy, in all its perversity. It approaches authoritarianism in a manner that draws on the insights of gender activists, human rights advocates and LGBTI factions, building on work that begins to explore the complex resonances and dissonances that occur between subjectivities and politics,

between the individual and the collective. It offers a powerful rethinking of national identity, and opens up possibilities for imagining radically different communities.

REFERENCE LIST

Amadiume, I. (1990) *Male Daughters, Female Husbands: Gender and Sex in an African Society*, St. Martin's Press.

Amnesty International (20 January 2015), "Gambia" retrieved from http://www.amnesty.org/en/region/gambia

Anti-Pornography Act, 2014

Aolain, F. and Hamilton, M. (2009) "Gender and the Rule of Law in Transitional Societies" for University of Ulster: Transitional Justice Institute, Research Paper No. 09-02

Arndt, S. *The Dynamics of African Feminism: Defining and Classifying African Feminist Literatures. In* Africa World P, 2002. 234 pp

AWID (Association for Women's Rights and Development), (2014) "Civil Society Organisations Commend the African Commission's Resolution Condemning Violence Based On Sexual Orientation And Gender Identity"

BBC News, 4 February 2010 'Obama condemns anti-gay bill as odious', retrieved from http://news.bbc.co.uk/1/hi/world/africa/8498836.stm

Bevacqua, M. (2000). *Rape on the Public Agenda: Feminism and the Politics of Sexual Assault*. UPNE.

Brockington, D. (2006). COVARIANCE. In V. Jupp (Ed.), *the SAGE Dictionary of Social Research Methods*. (pp. 47-48). London, England: SAGE Publications, Ltd

Bulbeck, C. (1998). *Re-Orienting Western Feminisms: Women's Diversity in a Postcolonial World*, New York: Cambridge University Press.

Burroway, J. (2009) Slouching Toward Kampala: Uganda's Deadly Embrace of Hate in The Box Bulletin. http://www.boxturtlebulletin.com/slouching-toward-kampala

Butler, Judith (1999). Gender Trouble: Feminism and the Subversion of Identity. New York and London: Routledge

Charlesworth, H. (1994) "What are 'Women's International Human Rights'?" in Cook, R.J. (Ed), *Human Rights of Women*, University of Pennsylvania Press, Philadelphia

Chikwudi Eze, E. (2005) African Philosophy: an Anthology, Blackwell Pubkishers

Chua-Eoan, H. *Rick Warren denounces Uganda's anti-gay law*, 10 December 2009, retrieved from http://www.time.com/time/world/article/0,8599,1946921,00.html,

Cornwall, A. (2009) "Sexuality and the Development Industry" in *Society for International Development* 1011-6370/09

Enloe, C. (1990) Bananas, Beaches and Bases, University of California Press

Enloe, C. (2004), III "'Gender' is not enough: the need for a feminist consciousness". *International Affairs*, 80: 95–97.

Fox, N. (2008) "INDUCTION" in the *SAGE Encyclopaedia of Qualitative Research*, SAGE Publications

Fukuyama, F. "Women and the Evolution of World Politics" in Foreign Affairs, Vol. 77, No. 5 (Sep-Oct., 1999), pp.24-40. Council on Foreign Relations

George A. L. and Bennett, A. (1997) "Process Tracing in Case Study Research" in MacArthur Foundation Workshop on *Case Study Methods* retrieved from http://users.polisci.wisc.edu/kritzer/teaching/ps816/ProcessTracing.htm

George, A. L. and Bennett, A. (2005*) Case Studies and Theory Development in the Social Sciences* Cambridge, MA: MIT Press

Gettleman, J. (2010) "Americans' Role Seen in Uganda Anti-Gay Push", in *New York Times*, retrieved from http://www.nytimes.com/2010/01/04/world/africa/04uganda.html?_r=0

Girard, R. (1987) *Things Hidden since the Foundation of the World*, Stanford: Stanford University Press

Grossman, G. (2013) *Renewalist Christianity, Political Competition and the Political Saliency of Lgbts in Sub-Saharan Africa. Political Competition and the Political Saliency of Lgbts in Sub-Saharan Africa* (April 12, 2013).

Hendricks, C. (2011) *Gender and Security in Africa*, Nordiska Afrikainstitutet, Upsala

Hoffman, J. (2001) *Blind Alley: Defining Feminism*, Blackwell Publishers, *POLITICS: VOL 21(3), 193–199*

Human Rights Watch, (20 May 2014) "Anti-Homosexuality Act's Heavy Toll" retrieved from http://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-act-s-heavy-toll

Ibhawoh, B. (2000). Between culture and constitution: Evaluating the cultural legitimacy of human rights in the African State. Human Rights Quarterly, 22(3), 838-860.

International Spectrum, (n.d) "LGBT Terms and Definitions" by University of Michigan, retrieved from http://internationalspectrum.umich.edu/life/definitions

Jones, B. (2005) 'The Church in the Village, the Village in the Church: Pentecostalism in Teso, Uganda' in *Cahiers d'Etudes Africaines* 45(178):497–517

Jupille, j., Caporaso, J.A. and Checkel. J.T. (2003). "Integrating Institutions: Rationalism, Constructivism, and the Study of the European Union." *Comparative Political Studies 36*

Jurist (2014) "Kenya president signs polygamy bill into law" retrieved from http://jurist.org/paperchase/2014/04/kenya-president-signs-polygamy-bill-into-law.php

Kaoma, K. (2009). *Globalizing the Culture Wars: US Conservatives, African Churches, & Homophobia* in Political Research Associates.

Karimi, L. And Thompson, T. (2014) http://edition.cnn.com/2014/02/24/world/africa/uganda-anti-gay-bill/

Kennedy, M. 'Desmond Tutu condemns Uganda's proposed new anti-gay law', in The Guardian (23 February 2014) retrieved from http://www.theguardian.com/world/2014/feb/23/desmond-tutu-condemns-uganda-proposed-anti-gay-law

Krolokke, C., & Sorensen, A. S. (2006). *Gender communication theories and analyses: From silence to performance* (No. 50), Sage

Kumari, J. (1986). *Feminism and nationalism in the Third World* (Rev. Ed.). New Delhi: Kali for Women.

Lenhert, M. (2007) "Typologies in Social Inquiry" in Gschwend & Schimmelfennig (Eds) Research *design in political science: how to practice what they preach* (Basingstoke and New York: Palgrave Macmillan, 2007), 62-82

McFadden, P, "Sexual Pleasure as Feminist Choice", Feminist Africa Changing Culture Issue 2, 2003

Mearsheimer, J. and Walt, S. (2013) "Leaving theory behind: Why simplistic hypothesis testing is bad for International Relations" *European Journal of International Relations* 19(3) 427–457

Mekgwe, P. (2008). Theorizing African Feminism (s). *African feminisms*, 11.

Mgadmi, M. (2009) 'Black Women's Identity: Stereotypes, Respectability and Passionlessness (1890-1930)', La Revue LISA/ LISA e-journal, Vol. VII n°1 / 2009 : <http://www.unicaen.fr/mrsh/anglais/lisa>. ISSN 1762-6153

Mohanty, C. T. (1988). Under Western eyes: Feminist scholarship and colonial discourses. *Feminist review*, 61-88.

Morgan, J. "Gay Uganda's plea: 'Don't cut aid, you'll make it worse'" in *Gay Star News* (26 February 2014) retrieved from http://www.gaystarnews.com/article/gay-ugandas-plea-dont-cut-aid-youll-make-it-worse260214

Msibi, T. (2011) "The lies we have been told: On (homo) sexuality in Africa", in *Africa Today*, 58(1), 54-77.

Museveni, H.E. *Jubilee Speech*, 09 October 2012, retrieved from http://www.newvision.co.ug/mobile/Detail.aspx?NewsID=636251&CatID=4

Mutua, M. (Ed.). (2009). Human Rights NGOs in East Africa: Political and Normative Tensions. University of Pennsylvania Press.

Nagengast, C. (1997). Women, minorities, and indigenous peoples: Universalism and cultural relativity. Journal of Anthropological Research, 53, 349-370.

Nnaemeka, O. (2004). Nego-feminism: Theorizing, practicing, and pruning Africa's way. Signs, 29(2), 357-385.

Nossiter, A. (2014). Nigeria Tries to 'Sanitize' Itself of Gays. Retrieved on 2014-05-13 from http://www.nytimes.com/2014/02/09/world/africa/nigeria-uses-law-and-whipto-sanitize-gays.html?_r=0

O'Flaherty, M., & Fisher, J. (2008). Sexual orientation, gender identity and international human rights law: Contextualising the Yogyakarta Principles. Human Rights Law Review, 8(2), 207-248.

Obidimma, A. and Obidimma, E. "The Travails of Same-Sex Marriage Relation under Nigerian Law" in Journal of Law, Policy and Globalizatio, Vol.17, 2013

Oloka-Onyango, J., & Tamale, S. (1995). " The Personal is Political," or Why Women's Rights are Indeed Human Rights: An African Perspective on International Feminism. Human Rights Quarterly, 17(4), 691-731.

Tamale, S. (14 October 2009) Speech at Makerere University, *A Human Rights Impact Assessment of the Ugandan Anti-homosexuality Bill 2009*

Pew Research Center, (2013) The Global Divide on Homosexuality, retrieved from http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/

Political Research Associates (PRA) (n.d), *A Growing Threat to Basic Human Rights*, retrieved from http://www.publiceye.org/christian_right/exporting.html

Rao, A. in Peters, J. and Wolper, A. (1995) Women's Rights, Human Rights: International Feminist Perspectives, New York: Routledge

Reiley, N. (2007) 'Cosmopolitan Feminism and Human Rights' in Hypatia: *A Journal of Feminist Philosophy* 22 (4): 180–198

Sadgrove, J., Vanderbeck, R. M., Anderson, J., Valentine, G. and Ward, K. (2012) "Morality plays and money matters: towards a situated understanding of the politics of homosexuality in Uganda" in *The Journal of Modern African Studies* / Volume 50 / Issue 01 / pp 103 – 129

Scheinert, J. (2014). This Is How America Should Respond When the President of Gambia Calls Gay People Ungodly Vermin. Retrieved from http://www.slate.com/blogs/outward/2014/02/24/gambian_president_calls_gays_ungodly_vermin_how_america_should_respond.html

Sharlet, J. (2008). *The Family: Power, Politics and Fundamentalism's Shadow Elite*. Univ. of Queensland Press.

Stewart, C. (2015) *76 Crimes* retrieved from http://76crimes.com/

Stoddart, H. (9 January 2015) "Why gay rights is a development issue in Africa, and aid agencies should speak up", *Oxfam*, retrieved from http://oxfamblogs.org/fp2p/why-gay-rights-is-a-development-issue-in-africa-and-aid-agencies-should-speak-up/

Sylvester, C. (1989) 'Looking at the Field through Feminist Lenses' in Sylvester C. and Pirages, D. *Transformations* in *the Global Political Economy* (London: Macmillan, forthcoming)

Sylvester, C. (1997) "Feminism and International Relations: or Encounters with Wolves in the Woods", in *Statsvetenskaplig Tidskrift*, 100(1)

Tamale, S. (2013). Confronting the Politics of Nonconforming Sexualities in Africa. African Studies Review, 56(02), 31-45.

The Week, (2014) "Everything you need to know about Africa's anti-gay crackdown" http://theweek.com/article/index/258826/everything-you-need-to-know-about-africas-anti-gay-crackdown#axzz34RAY5div

Throckmorton, W. 'American Anti-Gay Campaign in Africa Opposes' Fictitious Sexual Rights' in *Religion Dispatches*, 17 April 2012 retrieved from http://religiondispatches.org/american-anti-gay-campaign-in-africa-opposes-fictitious-sexual-rights/

Tickner, J. A. (1999) "Why Women can't Run the World: International Politics According to Francis Fukuyama" in *International Studies Association*, Blackwell Publishers

Tickner, J. A., (2001) *Gendering World Politics*, Colombia Press

Tolley J. H. (1989). Popular sovereignty and international law: ICJ strategies for human rights standard setting. Human Rights Quarterly, 11, 561-585

Tong, R. (1997). *Feminist Thought: A Comprehensive Introduction.* London: Routledge.

Toubia, N. (1995). Female genital mutilation: a call for global action**.**

Van Evera, S. (1997) *Guide for Students of Political Science*, Ithaca: Cornell University Press

Webb, J. (24 December 2012)

Welby,J. (2014) *Archbishops recall commitment to pastoral care and friendship for all, regardless of sexual orientation*, retrieved from http://www.archbishopofcanterbury.org/articles.php/5237/archbishops-recall-commitment-to-pastoral-care-and-friendship-for-all-regardless-of-sexual-orientati

Willis, E. (1984). Radical feminism and feminist radicalism. *Social Text*, 91-118.

Youngs, G. (2004). Feminist International Relations: a contradiction in terms? Or: why women and gender are essential to understanding the world 'we'live in*. *International Affairs*, *80*(1), 75-87.

Amnesty International (2009) Nigeria: 'Same Gender Marriage (Prohibition) Bill 2008' violates Constitution- A memorandum to be included in the House of Representatives public hearing on 11 March 2009 available at http://www.amnesty.org/en/library/asset/AFR44/007/2009/en/1c317e71-56e6-4399-9936-0f668fa73057/afr440072009en.pdf

Changing Attitudes Nigeria (2011*) New Bill prohibiting same-sex marriage placed before Nigerian Parliament* available at http://changingattitude.org.uk/archives/4443#

The Constitution of the Federal Republic of Nigeria (1999, as amended) available at www.nigeriarights.gov.ng/files/download/43

Esebonu, C. (2009) *Nigeria: Huriwa Advocates Speedy Passage of Same-Sex Bill* in All Africa, retrieved from http://allafrica.com/stories/200903180824.html

Idris, H. (2009) *Nigeria: Cleric Chides House Committee for Listening to Homosexuals* in All Africa, retrieved from http://allafrica.com/stories/200903160271.html

Human Rights Watch (2007) *Nigeria: Anti-Gay Bill Threatens Democratic Reforms* available at http://www.hrw.org/news/2007/02/27/nigeria-anti-gay-bill-threatens-democratic-reforms

Human Rights Watch (2009) *Global Rights and Human Rights Watch Statement to the Nigerian National Assembly on the Same Gender Marriage (Prohibition) Bill*, retrieved from http://www.hrw.org/news/2009/03/11/human-rights-organizations-respond-nigeria-same-gender-bill-national-assembly-hearin

Human Rights Watch (2011) *Joint Memorandum to the Government of Nigeria: 'Same Gender Marriage (Prohibition) Bill, 2011' violates Constitution* available at http://www.hrw.org/news/2011/11/01/joint-memorandum-government-nigeria-same-gender-marriage-prohibition-bill-2011-viola

Kaleidoscope Trust Briefing (2014) Nigeria: Same-Sex Marriage (Prohibition) Bill 2013 available at http://kaleidoscopetrust.com/usr/library/documents/main/2014-02-nigeria.pdf

Nsehe, M. (2011) "Obama Fights Nigerian Anti-Gay Bill, Threatens To Cut Off Aid", *Forbes*, retrieved from http://www.forbes.com/sites/mfonobongnsehe/2011/12/09/obama-fights-nigerian-anti-gay-bill-threatens-to-cut-off-aid/

Obidimma, A. and Obidimma, E. "The Travails of Same-Sex Marriage Relation under Nigerian Law" in Journal of Law, Policy and Globalizatio, Vol.17, 2013

White, C. M. (2012) "Human Rights and the Impact of Criminalization: Legalizing Homophobia in Jamaica, Nigeria, and Uganda" for the *International Criminal Law AWR Paper*

All Africa, Uganda Kill the Gays Bill: Ugandan Activists Confirm Death Penalty Not Removed, *ALL AFRICA NEWS* (Nov. 28, 2012), http://allafrica.com/stories/201211290868.html

Atuhaire, (2014) 'NRM Postpones Annual Retreat to Discuss Anti Gay Bill', In Uganda Radio Network https://ugandaradionetwork.com/a/story.php?s=59811

Biryabarema, E. Uganda Says Wants to Pass Anti-Gay Law as "Christmas Gift", REUTERS (Nov. 13,2012, 12:22 PM), http://www.reuters.com/article/2012/11/13/us-uganda-homosexualityidUSBRE8AC0V720121113

Burroway, J. Slouching Toward Kampala: Uganda's Deadly Embrace of Hate in The Box Bulletin. http://www.boxturtlebulletin.com/slouching-toward-kampala

Bwire, J. (1 August 2014) "Government to Petition Court Over Anti-Gay Law Ruling" Sunday monitor. Retrieved 30 November 2014. http://www.monitor.co.ug/News/National/Government-to-petition-court-over-anti-gay-law-ruling/-/688334/2405248/-/3linyez/-/index.html

CSCHRCL Press Statement, (2014) 'Civil Society Press Stateent on Annulment of Anti Homosexuality Act on African Women's Development Fund: http://www.awdf.org/civil-society-coalition-statement-on-annulment-of-ugandan-anti-homosexuality-act/

CSCHRCL, 2014 onUgandans4Rights http://www.ugandans4rights.org/index.php/press-releases/429-legality-of-anti-homosexuality-act-challenged-in-constitutional-court-by-an-unprecedented-coalition-of-petitioners-injunction-against-enforcement-sought.html

Bwire, J. (1 August 2014). "Government to petition court over anti-gay law ruling". Saturday Monitor. Retrieved1 August 2014.

The Anti-Homosexuality Bill, Bill No. 18 of 2009, Bills Supplement to the Uganda Gazette No. 47 Volume CII, 25th September 2009.

BBC News (23 November 2009) 'Uganda Anti-Homosexuality Bill: MPs drop death penalty', 23 November 2013,http://www.bbc.co.uk/news/world-africa-20463887.

Day, E. (2011), 'Why was I born gay in Africa?' in *The Guardian*, retrieved from http://www.theguardian.com/world/2011/mar/27/uganda-gay-lesbian-immigration-asylum

Hansard, Hon. Buturo MP, 15 April 2009, 3.30 p.m.

Hansard, Hon. Katende MP, 16 April 2009, 5.58 p.m.

Hansard, Hon. Kasaija MP, 21 April 2009, 5.50 p.m.

Hansard, Hon. Kamya MP, 1 April 2009, 3.29 p.m.

Hansard, Hon. Ssekandi MP (Speaker), 4 March 2009, 5.55 p.m

Hansard, Hon. Sebaggala MP, 1 April 2009, 3.08 p.m.

Jjuuko, A., & Tumwesige, F. (2013). The Implications of the Anti-Homosexuality Bill 2009 on Uganda's Legal System.

Johnson, P. (2014)

Kaaya, S. K. and Kakaire, S. (2013) 'Anti-Gay Bill: How MPs Outfoxed NRM, Donors', The Observer, 22 December 2013, http://www.observer.ug/index.php?option=com_content &view=article&id=29272:anti-gay-bill-how-mps-outfoxed-nrm-donors

Demetri Levantis, Gay Ugandan Flees to New Zealand Over Death Threats, *GAY STAR NEWS* (July 2, 2012), http://www.gaystarnews.com/article/gay-ugandanflees-new-zealand-over-death-threats020712

Ministry of Health Scientific Statement on Homosexuality, 2014 on Ugandans4Rights

NRM Caucus Report 2014, on Ugandans4Rights retrieved from http://www.ugandans4rights.org/index.php/the-news/427-the-president-signs-the-anti-homosexuality-bill-into-law-after-scientific-reports-apparently-prooved-to-him-that-homosexuals-are-made-not-born.html

Nyanzi, S. (2014) "The Paradoxical Geopolitics of Recriminalizing Homosexuality in Presidential Press Unit, 'President to sign anti-gay bill after experts prove there is no connection between biology and being gay' sourced from Ugandans4Rights, http://www.ugandans4rights.org/attachments/article/427/Presidential_Press_Unit_Press_Realease.pdf

Sadgrove, J, Vanderbeck, R. M, Andersson, J. Valentine, G. and Ward, K. (2012) 'Morality Plays and Money Matters: Towards A Situated Understanding of the Politics of Homosexuality in Uganda', *The Journal of Modern African Studies*, 50, 103–129.

Olupot, M. and Musoke, C. (2010) 'Museveni Warns NRM on Homo Bill', The New Vision, 12 January 2010

Pew Research Center (2013) "Global Divide on Homosexuality" http://www.pewglobal.org/files/2013/06/Pew-Global-Attitudes-Homosexuality-Report-FINAL-JUNE-4-2013.pdf

Rice, X. "Uganda Considers Death Sentence for Gay Sex Before Parliament", GUARDIAN (Nov. 29, 2009) retrieved formhttp://www.guardian.co.uk/world/2009/nov/29/uganda-death-sentence-gay-sex

Tamale, S. (2009) "A Human Rights Impact Assessment of the Ugandan Anti-homosexuality Bill 2009", The Equal Rights Review, Vol. Four (2009)

The Constitution of the Republic of Uganda, 1995

UGOM (Uganda Gay on Move), (2014) http://ugandagayonmove.nl/ ; https://www.facebook.com/UgandaGayOnMove/posts/694378740606892

Jjuuko, A. (2008) *Aren't These Emperors Naked? Revealing the Nexus Between Culture, and Human Rights over the Issue of Homosexuality in Uganda*, LLB dissertation, Makerere University, Uganda

Mundi Index (2011), Uganda Demographics Profile 2014, retrieved from http://www.indexmundi.com/uganda/demographics_profile.html

Faupel, J. (1962) *African Holocaust: The Story of the Uganda Martyrs.* New York: P.J.

Kennedy.

Southwold, M. (1973) "The Baganda of Central Uganda" in Molnos, A. ed. *Cultural Source Materials for Population Planning in East Africa: Beliefs and Practices*. Nairobi: East African Publishing House.

Murray, S. O., & Roscoe, W. (1998). Boy-wives and female-husbands: Studies in African homosexualities.

Driberg, J. 1923. *The Lango*. London: Thorner Coryndon.

Mushanga, M. (1973), 'The Nkole of Southwestern Uganda' in Molnos, A. (ed.), *Cultural Sources Materials for Population Planning in East Africa: Briefs and Practices*

Tamale, S. (2003) "Out of the Closet: Unveiling Sexuality Discourses in Uganda" in *Feminist Africa*, Issue 2 (Changing Cultures) Cape Town: African Gender Institute

Alexander, J., & Wallace, D. (2009). The queer turn in composition studies: Reviewing and assessing an emerging scholarship. College Composition and Communication, 61(1), 300-320.

Rubenstein, M. (2004) An Anglican Crisis of Comparison: Intersections of Race, Gender, and Religious Authority, with Particular Reference to the Church of Nigeria. *Journal of the American Academy of Religion* 72(2):341–365

Ungar, M. (2000). State violence and lesbian, gay, bisexual and transgender (lgbt) rights. New Political Science, 22(1), 61-75.

Foucault, M. "Governmentality." in Burchill, et al. 87-104. "Gays Tortured in Albania." *Outlines* (November 1994): 8

Otto, D. (2010). Power and danger: Feminist engagement with international law through the UN Security Council. *Australian Feminist Law Journal*, *32*(1), 97-121.

Janet, H. *Split Decisions: How and Why to Take a Break from Feminism* Princeton University Press New Jersey 2006 p 29–
32.

Adam, B. D., Duyvendak, J. W. and Krouwel, A. (1999). *The global emergence of gay and lesbian politics: national imprints of a worldwide movement*, Edited by: Adam, B. D., Duyvendak, J. W. and Krouwel, A. Philadelphia: Temple University Press.

Altman, D. (2001) *Global Sex*, Chicago: Chicago University Press.

Binnie, J. (2004) *The Globalization of Sexuality*, London: Sage

Kollman, K., & Waites, M. (2009). The global politics of lesbian, gay, bisexual and transgender human rights: An introduction. Contemporary Politics, 15(1), 1-17.
Heinze, E. (1995) Sexual Orientation – A Human Right: An Essay on International Human Rights Law

Wintemute, R. (1995) Sexual Orientation and Human Rights: The United States Constitution, the European Convention, and the Canadian Charter (1995).

U.N. H.R.C., Views of the Human Rights Committee in Toonen v. Australia, Communication No. 488/1992, U.N. Doc. CCPR/ C/50/D/488/1992 (1994) (hereinafter "Toonen v. Australia")

Amnesty International, Breaking the Silence: Human Rights Violations Based on Sexual Orientation (1994)

Gross, A. (2013). Post/colonial queer globalisation and international human rights: images of LGBT rights in *Jindal Global Law Review*, 4(2).

Uganda, *The Anti-Pornography Act*, 2014 available at http://www.ug-cert.ug/files/downloads/The-Anti-pornography-act-2014

ADDENDUM 1

Research Question:

What are the factors leading to an increase in repressive policy making for gender minorities in Africa between the years 2006 and 2014?

Conditions for Case Selection:

1. Anti-Homosexuality Act 2014
2. Same-Sex (Prohibition) Act 2014

Criteria for case selection:

Case selection was framed by the outcome and dependent variable, then variance on the independent variable was used to achieve falsifiability. In this case selection the cases have varied profiles but the same outcome.

Independent Variables (IV):

1. National Impacts
2. Regional Impacts
3. International Impacts

Dependent Variables:

Passing of the gender repressive, anti-homosexuality laws.

Method of Inquiry:

Inductive: theory creation that looks at the interaction between phenomena with the aim of coming up with a generalizable theory.

Causal Mechanisms:

Co-variance will be used as a method of causality. This is a condition where two processes vary together which can also be understood as an association or correlation between the two variables. The way that this correlation is determined will depend on the measures or indicators specified through operationalization.

Operationalization of IV:

1. Change in political systems or leadership in: a) Uganda; b) Nigeria
2. Impact of: a) Regional rhetoric around gender minorities; b) Presence of other gender repressive laws passed in other parts of the continent
3. Impact of: a) Christian Right Wing evangelism; b) International human rights advocacy

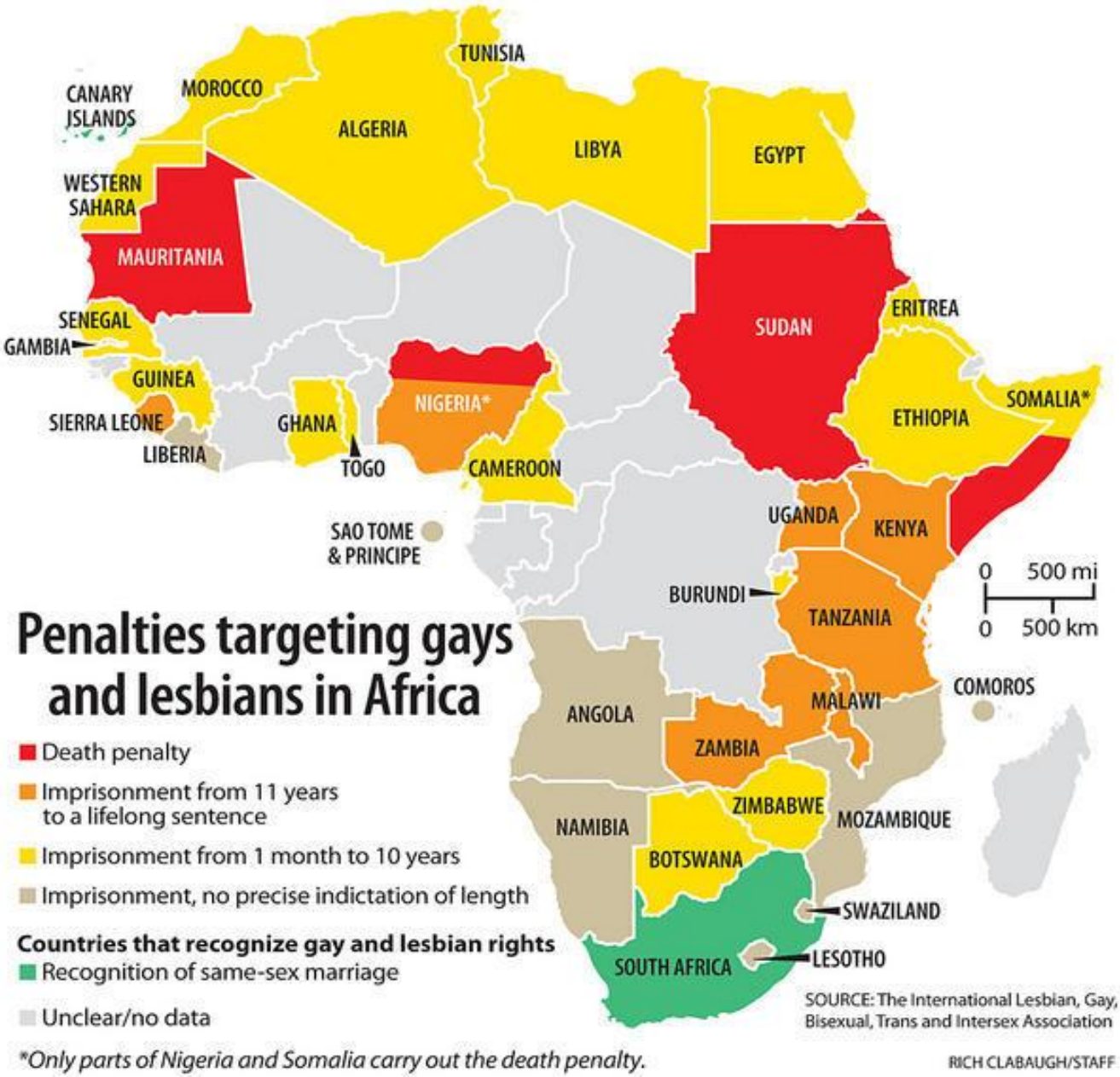
Knowledge Gain:

The gaps within feminist literature that the study aims to fill are answering the question of political salience of the increase in criminalisation of homosexuality.

ADDENDUM 2

A map showing the religious divide between the north and south regions of Nigeria, with the Muslim north in blue and the Christian south in green.

ADDENDUM 3


TUNISIA
CANARY ISLANDS
MOROCCO
ALGERIA
LIBYA
EGYPT
WESTERN SAHARA
MAURITANIA
SENEGAL
GAMBIA
SUDAN
ERITREA
GUINEA
NIGERIA*
ETHIOPIA
SOMALIA*
SIERRA LEONE
GHANA
LIBERIA
TOGO
CAMEROON
SAO TOME & PRINCIPE
UGANDA
KENYA
BURUNDI
TANZANIA
0 500 mi
0 500 km
COMOROS
ANGOLA
MALAWI
ZAMBIA
ZIMBABWE
MOZAMBIQUE
NAMIBIA
BOTSWANA
SWAZILAND
SOUTH AFRICA
LESOTHO
Penalties targeting gays and lesbians in Africa
Death penalty
Imprisonment from 11 years to a lifelong sentence
Imprisonment from 1 month to 10 years
Imprisonment, no precise indictation of length
Countries that recognize gay and lesbian rights
Recognition of same-sex marriage
Unclear/no data
SOURCE: The International Lesbian, Gay, Bisexual, Trans and Intersex Association
*Only parts of Nigeria and Somalia carry out the death penalty.
RICH CLABAUGH/STAFF