

Crossing the Bright Red Line: The Abuse of Religion to Violate Sexual and Reproductive Health Rights in Uganda¹

Sylvia Tamale

ABSTRACT

The spectre of cultural and religious relativism has dogged African women's rights activists for decades, particularly in the area of sexual and reproductive human rights. In Uganda, such debates and tensions were manifest in the rapid successive passing of the Anti-Homosexuality Act, the Anti-Pornography Act and the HIV Prevention & Control Act. A policy adopted by religious-based private universities to suspend or expel female students who conceive out of wedlock added to the controversy. In all these cases a fusion of African culture/morality and a wide array of religious values have been invoked to justify the actions and to legitimise such overtly political agendas. Here, I argue that beyond the cultural relativist and religious moralist cloak, such laws and policies are linked to much deeper and more invasive structures of governance, social control, and sexual dominance and exploitation.

Introduction

Talking about sexual reproductive rights invariably means stepping over a bright red line of social taboos, moral restraints and cultural boundaries. That is why it took the international human rights community almost fifty years after passing the Universal Declaration of Human Rights (UDHR) to place these topics firmly on the global agenda during the 1994 Fourth International Conference on Population and Development (ICPD) in Cairo and again at the 1995 Fourth World Conference on Women in Beijing.² A paradigm shift took place and meant that sexuality and reproduction were discussed within a human rights framework for the first time at UN forums. But crossing the bright red line came with a price; it immediately triggered a backlash.

-
- 1 An earlier version of this paper was published as a chapter in Ellen Chesler and Terry McGovern eds., *Women and Girls Rising: Progress and Resistance Around the World*, (New York: Routledge, 2015).
 - 2 UN Committee on the Elimination of Discrimination Against Women (CEDAW), "*CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health)*", A/54/36/Rev. 1, chap. I, 1999, <<http://www.refworld.org/docid/453882a73.html>> [accessed DATE].

Sylvia Tamale is the first woman serve as dean of the School of Law and Jurisprudence at Makerere University in Uganda. <stamale@law.mak.ac.ug> .

In the last three decades or so, the women's movement in Uganda has made significant strides. Women have resiliently marched forward through civil strife, violence, structural adjustment programmes, famine, poverty, HIV/AIDS and religious fundamentalisms. Ugandan women have been pivotal to the subsistence and survival of entire communities, acting as shock absorbers, unpaid caregivers, innovators, organisers and change agents. Although there is still considerable distance to cover before we achieve full economic independence, political participation, dignity and social justice, there is a notable increase in the visibility and voice of women in all sectors of Ugandan society.

Today, however, we see a resurgence of forces determined to reverse these gains in the name of religion and culture. This backlash manifests as a call for moral regeneration and the protection of 'traditional cultural values'. The state provides a platform for Christian and Muslim fundamentalists to preach essentialist 'natural law' doctrines that promote male dominance, female subordination and heteronormativity. Sexual and reproductive rights are fundamental for women as they speak to broader issues of health, autonomy, self-determination, bodily integrity, pleasure, privacy and life itself. These are the avenues to autonomy and gender equality and therefore, they are highly contested. While Uganda's Constitution fully recognises women's rights, the justiciability of maternal health rights is still quite controversial. Through public interest litigation, the women's movement has held the government accountable for the dismal facts that maternal health-related conditions contribute 20 percent of the country's disease burden and 16 Ugandan women die every day from maternal health-related complications.³ The movement has also pushed the legal envelope on other sexual rights including criminal adultery,⁴ female genital mutilation⁵ and homosexuality.⁶

Sexuality is thus the vulnerable heel of Africa's Achilles — particularly susceptible to exploitation, control and regulation. The rolling back of sexual and reproductive rights in Uganda emerges against a backdrop of difficult times and declining socio-economic indicators. Unprecedented rates of unemployment, below-average wages, high taxes, an extremely high cost of living, and the poor state of health care translates into an agitated, distressed and angry population.

3 *Centre for Health Human Rights and Development (CEHURD) and 3 Others v. AG*, Const. Petition 16 of 2011 (Uganda: Court of Appeal/Constitutional Court, June 5, 2012); *CEHURD & 3 Others v. AG* (Const. App. 1 of 2013). Also see *Litigating Maternal Health Rights in Uganda: What Civil Society Groups Must Know* (Kampala: CEHURD, 2013).

4 *Law and Advocacy for Women in Uganda v. AG*, Const. Petitions No. 13/05 & 05/06 (Uganda: Court of Appeal/Constitutional Court, April 5, 2007).

5 *Law and Advocacy for Women in Uganda v. AG*, Const. Petition 8/07 (Uganda: Court of Appeal/Constitutional Court, July 28, 2010).

6 *Victor Mukasa & Another v. AG*, AHRLR 248 (High Court of Uganda at Kampala November 22, 2008).[2008].

History teaches us that in periods of turmoil, when governments are called to account; they routinely look for ‘red herrings’ to try to deflect the pressure. They make defenceless social groups the targets of state persecution, in this case women and sexual minorities.

Karl Marx’s classic dictum that ‘religion is the opiate of the masses’ holds more than a grain of truth in Africa.⁷ Marx was referring to the ‘false consciousness’ of the working classes in mid-nineteenth century Europe. He argued that poor people dissatisfied with exploitation and oppression found refuge in religion, which reconciled them to their condition.

Religion need not always align with vested interests and dominant groups. Indeed, liberation theology has been used to effect transformative change, for example, Buddhism counsels inner peace and enlightenment. In Africa, however, as elsewhere in the past, religion is increasingly becoming a haven for conservatives and reactionaries seeking to mask structural oppression by deflecting attention to other matters.

In Uganda, 42 percent of the population is Catholic, 37 percent is Anglican and 12 percent is Muslim, reflective of the country’s colonial history.⁸ Religious wars that pitted British-supported pro-imperialists against contenders from France and Germany determined whose sphere of influence Uganda fell under during the era of early colonialism. Political affiliations thereafter followed religious divisions and also explain some of the major cataclysmic events that marked the country’s history, even as religious faith provided effective solace for many Ugandans during the post-independence period of turmoil.⁹

Religious forces — teamed up with other actors in the Ugandan political economy — have played a significant role in the enactment of the laws under scrutiny: the anti-gay evangelical lobby on the Anti-Homosexuality Act (AHA), Christian moralists and neo-traditionalists and nationalists on the Anti-Pornography Act (APA), and moral majoritarians and sexual abstemists on the HIV and AIDS Prevention and Control Act (HAPCA). An analysis of this recent crackdown on sexuality in Uganda constitutes another example in a long global history of collusion between religious and political actors to find scapegoats in minority groups as a cover up for their broader governance problems.

7 Danoye Oguntola-Laguda, “Religion and Politics in a Pluralistic Society: The Nigerian Experience”, *Politics and Religion* 2, no. 2 (2008), 123-33.

8 Uganda Bureau of Statistics (UBOS), *2002 Uganda Population and Housing Census: Analytical Report* (Kampala: Uganda Bureau of Statistics, 2002).

9 Astrid Schau-Larsen, “In God We Trust: Christianity, Uganda and AIDS Epidemic”, master’s diss., Concordia University, 2011 ; Adrienne Silnicki, “Aid for AIDS: The Policies and Performance of PEPFAR in Uganda”, master’s thesis, St. Mary’s University, 2014..

Understanding the Place of Religion in Ugandan Politics

The alliance between messianic religions (particularly Christianity and Islam) and the state is crucial for maintaining the status quo. Although its constitution declares Uganda a secular state,¹⁰ in practice the opposite has been true. The country's motto: 'For God and my Country' and the first line of the national anthem: 'Oh Uganda, may God uphold thee', speak volumes on the centrality of religion in its culture and politics. Although Uganda is not officially governed by religious law, religious principles find expression in its laws and policies and are often used to justify and legitimise them. Religion is effectively incorporated into Uganda's legal and policy framework.¹¹ Nowhere is the effective incorporation of religion in Uganda's legal system more apparent than in the area of women's sexuality and reproductive control. By controlling these facets of women's lives, their domestication and subordination is guaranteed. Many scholars have demonstrated how the intersection between gender inequality and women's roles in the unpaid care economy are crucial in the sustenance of patriarchal-capitalist systems.¹² In all these cases a fusion of African culture/morality and a wide array of religious values have been invoked to justify the actions and legitimise such overtly political agendas.

While African cultural norms and traditional religions were generally not strong expressions of egalitarian gender ideologies,¹³ most of them celebrated and valorised the female body as a reproductive or sexual icon.¹⁴ With the introduction of the Abrahamic religions, the positive conceptualisations of African sexualities

10 Article 7 of the 1995 Constitution clearly states: 'Uganda shall not adopt a State religion'. Constitution of the Republic of Uganda. art. VII (1995).

11 Sylvia Tamale, "Exploring the Contours of African Sexualities: Religion, Law and Power", *African Human Rights Law Journal* 14, no. 1 (2014), 150-77.

12 See Nancy Folbre, "The Care Economy in Africa: Subsistence Production and Unpaid Care", *Journal of African Economies* 23, no. 1 (2014), 128-56; Mónica Domínguez Serrano, *Unpaid Care Work in Africa*, (Bilbao: Fundación BBVA, 2012) <http://w3.grupobbva.com/TLFU/dat/DT_06_2012_web.pdf> [accessed DATE]; Debbie Budlender, *A Critical Review of Selected Time Use Surveys. Programme on Gender and Development*, Paper No. 2. (Geneva: United Nations Research Institute for Social Development, 2007); Diane Elson, ed., *Male Bias in the Development Process*, 2nd. edition (Manchester: Manchester University Press, 1995).

13 See John Roscoe, *The Baganda: An Account of The Native Customs* (London: Macmillan, 1911); David Lee Schoenbrun, *The Historical Reconstruction of Great Lakes Bantu Cultural Vocabulary* (Cologne: Rudiger Koppe, 1997); Frederick Jjuuko and Edith Kibalama, *Culture and Women: The Position of Women in Buganda (Kampala: Fountain Publishers, 2011)*.

14 Nkiru Nzegwu, "'Osunality' (or African Eroticism)", in *African Sexualities: A Reader*, Sylvia Tamale ed., (Oxford: Pambazuka Press, 2011), 253-70; Izugbara Chimaraoke, "Sexuality and the Supernatural in Africa", in *African Sexualities: A Reader*, Sylvia Tamale ed., (Oxford: Pambazuka Press, 2011), 533-58; Bibi Bakare-Yusuf, "Nudity and Morality: Legislating Women's Bodies and Dress in Nigeria", in *African Sexualities: A Reader*, Sylvia Tamale ed., (Oxford: Pambazuka Press, 2011), 116-29.

(including the African female body) were largely negated and overtaken by the state-supported advocacy of the Messianic religions.¹⁵ Mutua explains how African traditions were delegitimised by a new socio-political and religious order:

Africa—from top to bottom—was remade in the image of Europe complete with Eurocentric modern states. Christianity played a crucial role in this process: weaning African from their roots and pacifying them for the new order. Utilizing superior resources, it occupied most political space and practically killed local religious traditions and then closed off society from other persuasions... Islam, which had invaded Africa at an earlier date, was equally insidious and destructive of local religions. Its forceful conversions and wars of conquest, together with its prohibition of its repudiation, were violative of the rights of Africans as well... Progress, culture and humanity were identified entirely in Islamic or Christian terms, never with reference to indigenous traditions.¹⁶

Through the processes of proselytisation and acculturation, many sexual practices that had been acceptable in pre-colonial, pre-Islamic and pre-Christian Uganda were transformed into ‘sinful’, ‘deviant’, ‘illegitimate’ and even ‘criminal’.

Unlike the Abrahamic religions where God is defined as male, in African Traditional Religions (ATR) neither the Supreme Being nor the divinities are necessarily male. The status of women in the Abrahamic religion is also mirrored in the positions they hold in their ministrations. Leadership and ministration in both the Catholic and Muslim religions remains the preserve of men to this date. And although Anglicans allowed women into priesthood more than twenty years ago, the question of whether they could be ordained as bishops was a subject of great controversy until very recently (July 2014), when the Church of England voted to allow it. Uganda’s Anglican Church, which takes its cue from its former colonial master, will most likely vote to endorse the decision of the Church of England.¹⁷

Fundamentalist Christianity and Islam in the US and the Middle East respectively have infiltrated Africa through a highly organised born-again evangelical movement as well as conservative branches of various Islamic sects.¹⁸ Many new mosques, madrasas, hospitals and clinics have been constructed in cities and rural areas across Africa with the purpose of amplifying the Islamic ideology.¹⁹ In Uganda and other East African countries, the Saudi-based NGOs,

15 Sylvia Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power”, in *African Sexualities: A Reader*, Sylvia Tamale ed., (Oxford: Pambazuka Press, 2011), 150-177; Ikechukwu Kanu, “African Traditional Religion in a Globalizing World”, *International Journal of Humanities Social Sciences and Education* 1, no. 8(2014), 4-12.

16 Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002), 109-10.

17 The Archbishop of the Church of Uganda, Most Rev. Stanley Ntagali released a statement soon after the Church of England’s decision, welcoming the latter’s vote.

18 Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power”, 155-59.

19 See Nehemia Levtzion and Randall L. Pouwels, eds., *The History of Islam in Africa* (Athens: Ohio University Press, 2000).

the International Islamic Relief Organisation (IIRO) and Al-Haramain Islamic Foundation are quite active in funding such projects.²⁰

Several scholars have examined the role of these fundamentalist religious teachings to the politics of gender and sexuality in Africa.²¹ There is an unprecedented flow of resources from outside, particularly the US, into Uganda to promote propaganda, laws and policies against sexual and reproductive rights.²² For instance, Uganda is bombarded with billboard and media messages that promote abstinence.²³ Some of the financial resources that flow in from foreign conservative and religious sources are often misappropriated by the Ugandan-based partners for personal enrichment. Other scholars have long erased the mythical line that attempts to separate religion from the secular in Africa.²⁴

There are several reasons to explain why the US evangelical movement has thrived in Uganda and elsewhere on the continent. First, as part of the proselytising and imperialist religions, Christianity thrives and survives on numbers. Given the dwindling following in the US, fishing for new converts elsewhere becomes a priority. Secondly, fundamentalist religion is quite appealing to a distressed population that feels alienated in almost all aspects of life, particularly in the political and economic contexts. Third, the political leadership in Uganda has viewed the transatlantic evangelical revival as an opportunity to spread 'the opiate' to the restless and disgruntled masses. A self-confessed born-again Christian, the first lady, Janet Museveni actively participates in the activities of the evangelical movement, including the Covenant Nations Church owned by her daughter, Pastor Patience Rwabogo-Museveni. Following this lead, every high state official in Uganda now professes to be 'born again'! Finally, the contrast

20 Jeff Haynes, *Religion, Politics, and International Relations: Selected Essays* (London: Routledge, 2011).

21 Kapyia Kaoma, *American Cultural Warriors in Africa: A Guide to the Exporters of Homophobia and Sexism* (Somerville, MA: Political Research Associates, 2014); Ayesha Imam, "The Muslim Religious Right ('Fundamentalists') and Sexuality", in *Women and Sexuality in Muslim Societies*, edited by Pinar Ilkkaracan (Istanbul: Women for Women's Human Rights (WWHR)/Kadmin İnsan Hakları Projesi, 2000), 15-30; Paul Gifford, *The New Crusaders: Christianity and the New Right in Southern Africa* (London: Pluto, 1981).

22 The Oscar-nominated movie, *God Loves Uganda* vividly demonstrates these links. Renee Fabian, "'God Loves Uganda' makes Academy Awards Short List", *GLAAD*, December 3, 2013, <<http://www.glaad.org/blog/god-loves-uganda-makes-academy-awards-short-list>> [accessed DATE].

23 Monica Twesime-Kirya, "'Until Marriage' or 'Until Graduation': Abstinence-Only Strategies and their Impact on University Students in Uganda and Kenya", *East African Journal of Peace and Human Rights* 15, no. 1 (2009), 4-52.

24 John D. Y. Peel, "The Pastor and the *Babalawo*: the Interaction of Religions in Nineteenth Century Yorubaland", *Africa* 60, no. 3 (1990), 338-69; John Comaroff and Jean Comaroff, *Of Revelation and Revolution: Christianity, Colonialism, and Consciousness in South Africa*, Vol. 1 (Chicago: University of Chicago Press, 1991); Norman Etherington, "Recent Trends in the Historiography of Christianity in Southern Africa", *Journal of Southern African Studies* 22, no. 2 (1996), 201-19.

between the worshipping style and the whole sub-texts of the evangelical churches and the traditional Anglican and Catholic churches are factors that account for the successful entrenchment of the former. The passionate, engaging and lively mannerisms of the evangelicals, combined with music and dance resonates much more with the African psyche than the boring, staid and formulaic style of the traditional churches.

Excavating the Religious Impulses Behind Recent Laws

Against the preceding backdrop, the following analysis takes the three pieces of legislation, discussing the gender implications that each bears. They all share a common broadly conservative approach to the place of women's bodily integrity and autonomy. Each of them objectifies women's bodies and introduces or reinforces state control over women's sexual rights and reproductive capacities. The consequences of such control are to undermine women's decision-making abilities about their bodies, sexuality, dress and freedom from violence and other chains imposed by patriarchal culture.

The Anti-Homosexuality Act (AHA)

Same-sex sexual relations have been outlawed in Uganda since 1956.²⁵ Therefore the Anti-Homosexuality law which was first tabled in Parliament in 2009 as a private member's bill and signed into law in February 2014 was essentially re-criminalising the offence of homosexuality by expanding its scope. Its stated objectives did not mince words:

... providing a comprehensive and advanced 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's 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...²⁶

State-orchestrated 'moral panics' have always served as an effective decoy to distract attention from the more significant socio-economic and political crises afflicting society. This was as true of the targeting of Jews and homosexuals by the German Nazis as it was true of the McCarthyist witch-hunt of homosexuals and communists in the US. Conflating homosexuality with pedophilia, promiscuity, immorality and bestiality is an effective way of whipping up moral panic and

25 See Section 145 of the Penal Code Act which criminalises sex 'against the order of nature' punishable with life imprisonment.

26 The AntiHomosexuality Bill, 2009, No. 18, Principle 1.1, Parliament of Uganda (2009).

galvanising support for regulatory legislation. Preachers continuously use the discourse of child-molestation, recruitment of children, satanic acts, sexual perversion and spiritual warfare to denounce homosexuality and lobby parliament for AHA. Hence, homosexuality is one of the hot-button policy issues in Uganda and the overwhelming majority of Ugandans support the AHA.²⁷ When the law was passed Archbishop of the Anglican Church of Uganda Stanley Ntagali called upon all Ugandans to commend and support parliamentarians.²⁸

In 2007 a number of religious groups together with the government Minister of Ethics and Integrity formed a coalition, ironically called the Interfaith Rainbow Coalition against Homosexuality. Backed by powerful US conservatives and religious leaders, this coalition has systematically and successfully influenced policy makers and the general public against Ugandan homosexuals²⁹ by organising national prayer days and nights, petition drives, fasting campaigns, protest rallies and street marches to denounce homosexuality. It is not a coincidence that the Anti-Homosexuality bill was tabled just weeks after a conference to expose the ‘dark and hidden’ agenda of homosexuality.³⁰ Equally forceful in backing the AHA were Muslim clerics who joined hands with their Christian brothers to denounce homosexuality and praise the architects and promoters of this law such as its author MP David Bahati and the House Speaker Rebecca Kadaga. For example, during the 2012 Eid ul-Fitr prayers, Sheik Twaha Bugembe implored parliament to speed up the passing of the bill.³¹ The Muslim Supreme Council of Uganda lauded President Museveni for signing the bill into law.³²

In August 2014, Uganda’s Constitutional Court overturned the AHA on the ground that Parliament passed it without the requisite quorum.³³ Still, it has not

27 Its popularity is based on opinion polls published in the local media and the turn up at the National Thanksgiving Prayer Rally held in Kololo Independence grounds in the wake of passing the AHA.

28 Paul Aruhö, “Homosexuality Threat to Mankind, Says Archbishop”, *Daily Monitor*, January 13, 2014, 13.

29 Kaoma, *American Cultural Warriors in Africa: A Guide to the Exporters of Homophobia and Sexism*.

30 The conference was organised by a fundamentalist religious NGO called the Family Life Network with keynote speeches delivered by several American evangelicals. See Kaoma, *American Cultural Warriors in Africa: A Guide to the Exporters of Homophobia and Sexism*; Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power.”

31 See Mahid Fahad Jjingo, “Muslim Cleric Petitions Parliament Over Anti-Homosexuality Bill”, Uganda Radio Network (URN), August 19, 2012 <<http://ugandaradionetwork.com/dedi3883.your-server.de/story/muslim-cleric-petitions-parliament-over-anti-homosexuality-bill/>> [accessed April 29, 2016].

32 See Alex Masereka, “Muslims Laud Museveni Decision to Sign Anti-Gay Bill”, *Red Pepper*, February 19, 2014 <<http://www.redpepper.co.ug/muslim-community-applaud-m7-decision-to-sign-anti-gay-bill/>> [accessed April 29, 2016].

33 See judgment in the case of *Oloka-Onyango and Ors v. Attorney General*, Const. Petition No. 8 of 2014 (Uganda: Constitutional Court, August 1, 2014). The speed with which the case was decided led pundits to speculate that government had responded to international pressure and sanctions in

been erased from the legal landscape. The state's Attorney General immediately filed a notice of appeal against the decision and members of Parliament have indicated that they will re-table the bill and pass it with the requisite quorum.³⁴ The caucus of the National Resistance Movement party also set up a committee to review the matter and report back within a short time.³⁵ Moreover, since the law was invalidated on a legal technicality, the Constitutional Court is yet to deliberate on whether its substantive provisions conflict with its international and regional human rights obligations.³⁶

The Anti-Pornography Act (APA)

The Anti-Pornography Act (APA) was first drafted in 2005 by then Minister of Ethics and Integrity, Nsaba Buturo. At one press conference, he told journalists that miniskirts are one of the vices facing Ugandan society because they distract drivers and 'can cause an accident because some of our people are weak mentally.'³⁷ In 2009, Buturo was replaced by former Catholic priest, Father Simon Lokodo. The draft bill underwent several revisions before it was finally passed and signed into law by President Museveni on February 6, 2014. The stated objectives of the APA are to define what constitutes the offence of pornography and to establish a Pornography Control Committee.³⁸ Supporters argued that pornography fuels sexual violence against women and girl children and offends public morality.³⁹ The legislation does indeed include several good provisions that protect children against predatory sexual behaviour such as child pornography.⁴⁰

However, the definition of pornography in the law is vague, and it fails to delineate the parameters of the offence. Section 2 defines 'Pornography' as:

...any representation through publication, exhibition, cinematography, indecent show,

repudiating this law.

34 Solomon Arinaitwe, "MPs Begin Drive to Return Law on Homosexuality", *Daily Monitor*, August 6, 2014, 5; Umaru Kashaka, "Legislators Want the Anti-Gay Bill Back", *New Vision*, August 5, 2014, 7; Solomon Arinaitwe, "More MPs Want Gay Law Back", *Daily Monitor*, August 7, 2014, 5.

35 In the midst of all this President Museveni cautioned the NRM Parliamentary Caucus to handle the overturned law with care: 'This law is now an issue of *Semusota guli mu ntamu* [a snake in a cooking pot]. If we try to kill the snake, we may break the pot, if we don't we won't'. Henry Sekanjako and Moses Walubiri, "Gay Bill: Museveni warns MPs", *New Vision*, August 12, 2014, 6.

36 Uganda has ratified all the major international and regional human rights treaties and even incorporated their basic principles into its constitution.

37 "Uganda Seeking Mini-Skirt Ban", *BBC*, September 17, 2008. <<http://news.bbc.co.uk/2/hi/7621823.stm>> [accessed Aug. 17, 2014].

38 The Anti-Pornography Act, 2014, Parliament of Uganda (2014).

39 See Official Hansard, December 19, 2013. DON'T SEE ONE ON THIS DATE [Yes, the online copy is missing but at least one can refer to the hard copy. ST]

40 The Anti-Pornography Act, 2014. Section 14, Parliament of Uganda (2014).

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 vagueness in this definition allows its scope to extend from something read or seen on screens and stages to something seen on the streets. Such ambiguity resulted in the APA being dubbed the ‘Mini-Skirt Law’ despite the fact that the term ‘mini skirt’ is never mentioned. That nick-name resulted from the popular interpretation of the law’s prohibition of *inter alia*, ‘any representation of the sexual parts of a person for primarily sexual excitement.’ Father Lokodo said as much:

Anything related to indecent dressing, exposing certain parts of the anatomy of a person, I call it pornographic and therefore condemn it... I don’t like this question of saying human rights, maturity, et cetera. This is not correct... because when you go indecently on the streets of Kampala you’ll become... a cinema... Say what you want to say, but we’re coming out with a law that people should go back to their decent way of covering their bodies.⁴¹

The bill version of the law had also explicitly banned the depiction of ‘sexual parts of a person such as breasts, thighs, buttocks or genitalia.’ One can easily see the danger of such a subjective standard in a context where women’s bodies have been eroticised and turned into an alluring provocative object. If society has reduced me to eroticised body parts, isn’t my very being immutably doomed by this law? A law that allows an intuitive standard of provocation imposed on one that is gazed upon and permitting the enforcing authority to enter her psyche, is extremely problematic. It violates the basic constitutional rights of women. In sum, the vague definition of pornography supplied by the APA lacks the certainty required of a criminal offence under the Constitution. What, for example, amounts to ‘indecent’? Failure to provide an explicit definition of the elusive term ‘pornography’ opens it up to the unsatisfactory ‘I know it when I see it’ standard.⁴²

As soon as the bill was signed into law, several vigilante groups largely made up of young men started publicly undressing women they saw as violators.⁴³ Police officers also started ordering women on the streets to return home and ‘dress decently’. There was even a case where a magistrate summarily sentenced two women in her courtroom to a three-hour confinement for wearing mini-skirts.⁴⁴

41 NTV Uganda. “Ethics Minister Proposes Law to Ban Mini-Skirts,” *YouTube* video, 4:08, April 5, 2013, <<https://www.youtube.com/watch?v=jCuxFJipQUk>>.

42 This famous declaration was made by the US Supreme Court Justice Potter Stewart in the case, *Jacobellis v. Ohio*. 387 U.S. 184 (1964), after admitting failure to define the term pornography.

43 Yazid Yoligigira, “Mob Undresses 10 People Over Indecent Exposure”, *Daily Monitor*, February 26, 2014, 26; Tina Musuya, “Activist Vows to Wrestle Anti-Porn Law”, *Daily Monitor*, February 28, 2014, 22.

44 Malik Fahad Jingo, “Women Get Three-hour Jail Term for Wearing Miniskirts”, *Daily Monitor*, March 7, 2014.

Ironically, the law that was passed to protect women from violence was in fact fuelling it. It emboldened Ugandans to abuse women's right to bodily integrity, privacy, equality and non-discrimination.

Infuriated women's rights groups protested at the National Theatre grounds holding placards with messages such as, 'Don't sexualize *my* body,' 'Give us maternal health care; don't undress us on the street!,' 'Keep your eyes off my thighs and fix the economy,' 'Thou shall not touch my mini-skirt' and 'My body, my closet, my money, my rules.' The police were quick to invoke another recently passed draconian law — the Public Order and Management Act — to suppress the protestors.⁴⁵

Police officials then issued a statement condemning those engaging in 'mob undressing'. The Minister of Information and National Guidance clarified that the law was being misinterpreted as it does not prohibit short skirts. She said the government was ready to make adjustments to the law in case genuine concerns were raised.⁴⁶ Even Father Lokodo retracted his words about the 'mini-skirt law'.⁴⁷ The Prime Minister and the Attorney General told parliament that they would recall the law and review it.⁴⁸ But so far, nothing has happened. Instead there has been a marked up surge in sexual harassment and a *de facto* dress code.⁴⁹ Although three ministers (Ministers of Ethics and Integrity, of Information, and of Gender, Labour and Social Development) went on record to deny that the law imposes a dress code for women, the gendered subtexts of the APA had been constructed as far back as 2005.

It is important to place the 'mob undressing' that followed the passing of the APA in the wider context of violence against women in Uganda. For the majority of Ugandan women, violence is not an isolated act but an unfortunate fact of life. The 2006 Uganda Demographic and Health Survey (UDHS) estimates that up to 60 percent of women in Uganda aged 15 and above had experienced gender-based violence.⁵⁰ An earlier nationwide study conducted by the Uganda Law Reform Commission yielded similar statistics.⁵¹

45 J. Oloka-Onyango, "Understanding the Genesis and Impact of Recent Legislation in Uganda", *Pambazuka News*, May 1, 2014. <<http://www.pambazuka.org/en/category/features/91567>> [accessed DATE].

46 Dan Wandera, "Anti-Pornography Law was Misunderstood, Says Minister", *Daily Monitor*, March 5, 2014, 13.

47 Stephen Otage, "Women Free to Wear Miniskirts—Lokodo", *Daily Monitor*, January 17, 2014, 3.

48 Joyce Namutebi and Umar Kashaka, "Cabinet to Review Anti-Pornography Law", *New Vision*, February 26, 2014, 5.

49 Oloka-Onyango, "Understanding the Genesis and Impact of Recent Legislation in Uganda."

50 UBOS, *2002 Uganda Population and Housing Census: Analytical Report*.

51 Also see Lillian Tibatemwa-Ekirikubinza, *Women's Violent Crime in Uganda: More Sinned Against Than Sinning* (Kampala: Fountain Publishers, 1998).

The objectifying language that defines ‘pornography’ in the APA, particularly the phrase, ‘representation of the sexual parts... for primarily sexual excitement’ echoes the linking of women’s bodies to sexuality by the two Ethics and Integrity ministers words mentioned above. The language in the law unfairly harms women, particularly young women and sex workers who already face harassment and discrimination.⁵² The direct violation of women’s right to bodily integrity, privacy, equality and non-discrimination is the consequence of the indirect suggestions and implicit marking of women’s bodies as sexual and erotic within the APA.

The HIV and AIDS Prevention and Control Act (HAPCA)

The HIV and AIDS Prevention and Control Act (HAPCA) was passed by parliament on May 13, 2014 and signed into law by President Museveni on July 31, 2014. In enacting HAPCA, the government ostensibly sought a legal framework for the prevention and control of HIV and AIDS. The HAPCA contains several punitive provisions that have been described as ‘regressive’ and ‘antiquated’.⁵³ Several executive entities including the Ministry of Health and the Uganda AIDS Commission issued public critiques.⁵⁴

The HAPCA imposes a maximum ten-year custodial sentence for ‘intentional transmission’ of HIV and five years for ‘attempted transmission’ of the virus. In addition, the law subjects pregnant women and their partners to mandatory HIV testing. It allows for the disclosure of a person’s HIV status by a court order without their consent in certain cases.⁵⁵

The National AIDS Commission has reported that the overwhelming majority of Ugandans are unaware of their HIV status⁵⁶ and has for decades been promoting

52 Sex worker organisations have joined other human rights defenders to petition against the APA in the Constitutional Court.

53 The United States President’s Emergency Plan for AIDs Relief (PEPFAR), “Statement from Ambassador Deborah Birx, M.D., U.S. Global AIDS Coordinator, on the Passage of the HIV Prevention and Control Act by the Ugandan Parliament”, *press release*, May 14, 2014 <<http://www.pepfar.gov/press/releases/2014/226095.htm>> [accessed Aug. 20, 2014]; “Will Criminalisation of HIV Transmission Help Prevention Efforts?” *New Vision*, July 7, 2014, 14.

54 International Community of Women Living with HIV & AIDS Eastern Africa, “Uganda’s President Yoweri Museveni Signs HIV Prevention and Control Bill into Law, Contradicting Evidence, Human Rights”, *press statement*, August 20, 2014 <<http://www.icwea.org/2014/08/ugandas-president-yoweri-kaguta-museveni-signs-hiv-prevention-and-control-bill-into-law-contradicting-evidence-human-rights-2/>> [accessed Aug. 21, 2014]; Mercy Nalugo, “Rights Bodies Protest HIV/AIDS Bill”, *Daily Monitor*, May 15, 2014, 3.

55 The HIV and AIDS Prevention and Control Act, 2014, Sections 41, 13, and 18, Parliament of Uganda (2014).

56 United Nations Uganda AIDS Commission, *HIV and AIDS Uganda Country Progress Report; 2013* (Kampala: Uganda AIDS Commission, 2014). <[http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_UG_Narrative_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_UG_Narrative_Report[1].pdf)>.

the strategy of voluntary counselling and testing (VCT) as the most effective way to reduce transmission and increase treatment. By reversing course and mandating testing, the Ugandan government is negating the recommendations of its own professional agencies and a fundamental right to privacy guaranteed in its constitution and in international treaties it has ratified.

However well-intentioned the law may be, available evidence demonstrates that laws criminalising HIV transmission, exposure or non-disclosure ultimately cause more harm than good.⁵⁷ Criticising the punitive provisions of the law, the Global Commission on HIV and the Law stated:

While the desired aim of such punitive laws is to protect people from HIV infection, they often have the opposite effect. Laws which criminalize HIV transmission and exposure widen the net of criminal liability and turn people living with HIV into potential criminals. They shift the responsibility for HIV prevention solely onto people living with HIV, in direct contrast to effective HIV prevention messages that call for everyone to practice safer sex. Most damagingly, the fear caused by the criminalization of HIV transmission and exposure isolates people living with HIV. Misdirected criminal laws discourage people from accessing HIV testing and other HIV prevention and care services. Ultimately these laws undermine investments and corrode hard-fought gains in HIV prevention, treatment and care.⁵⁸

UNAIDS has also noted that national responses to HIV continue to fail to deal with the main drivers of the epidemic, including gender inequality and criminalisation of populations at risk.⁵⁹

The fact that the prevalence rate of HIV is higher in women (8.3%) than the national average (7.3%) has been linked to women's *de jure* and *de facto* inequality.⁶⁰ Such issues go beyond the biomedical or epidemiological aspects of the disease and expose the socio-economic and cultural facets of the pandemic, which HAPCA seems to have ignored, such as the increasing feminisation of poverty.

The response to HIV/AIDS in Uganda cannot afford to neglect these structural issues. Women are usually the first to know their *serostatus* (through their connection to antenatal care) and are hence often presumed to be transmitters of the virus, not recipients.⁶¹ Criminalising HIV transmission thus makes women even more vulnerable and it also deters their seeking HIV testing and antenatal

57 Global Commission on HIV and the Law Report, *Risks, Rights and Health* (New York: UNDP, 2012) <<http://www.hivlawcommission.org/index.php/report>>.

58 Global Commission on HIV and the Law Report, *Risks, Rights and Health*, PAGE NUMBER NEEDED.

59 UNAIDS, *Recommendations Brief to Michel Sidibe, UNAIDS Executive Director* (Geneva: UNAIDS Reference Group on HIV and Human Rights, 2009).

60 Christine Obbo, "Gender, Age and Class: Discourses on HIV Transmission and Control in Uganda", in *Culture and Sexual Risk: Anthropological Perspectives on AIDS*, edited by Han ten Brummelhuis and Gilbert Lerdt (Luxemburg: Gordon and Breach, 1995) PAGE NUMBERS NEEDED.

61 Global Commission on HIV and the Law Report, *Risks, Rights and Health*, PAGE NUMBER NEEDED.

care. If an HIV-positive mother breastfeeds her baby, she may now be charged with intentional transmission. Routine mandatory testing of pregnant women and their partners is a breach of their right to privacy.

Sex workers — who are recognised among the most at risk population (MARP) group in Uganda — are also affected by the passage of HAPCA.⁶² By criminalising transmission, the law further opens the door to the violation of the rights of sex workers, the majority of whom are women.⁶³ First, the law acts as a disincentive for sex workers to test for HIV and avoid the criminal net of ‘intentional transmission’. Secondly, and most importantly, HAPCA effectively shifts the responsibility of engaging in safe sex exclusively to the sellers and lets purchasers off the hook. Street-based female and transgender sex workers are bound to suffer the most. The policies enacted in the HAPCA are in line with the abstinence-only stance that government adopted in recent years, moving away from the earlier, more effective HIV response strategy of ‘**A**bstention, **B**e faithful and **C**ondom-use’ ABC.⁶⁴

The links between these policies and the new-fangled religious morality is clear. Although Uganda pioneered the fundamentalist and now infamous ABC strategy in its early public health approach to HIV/AIDS, the US President George Bush’s President’s Emergency Plan for AIDS Relief (PEPFAR) funding in the mid-2000s was premised on religion-based policies of abstinence and faithfulness. The result was an upward spiral in HIV infection rates, which in turn, ironically encouraged the enactment of HAPCA.

Policy against unmarried pregnant students

Several universities, particularly faith-based ones, have adopted policies forcing pregnant students to leave school by either suspending or expelling them.⁶⁵ The same policy does not target the men who impregnate them. This obvious double standard reflects a patriarchal obsession with female sexual purity but leaves untamed the unbridled sexuality of men, again a view strongly rooted in religious dogma.

62 United Nations Uganda AIDS Commission, HIV and AIDs Uganda Country Progress Report; 2013, PAGE NUMBER NEEDED.

63 Anna Forbes, “Sex Work, Criminalization and HIV: Lessons from Advocacy History”, Bulletin of Experimental Treatment for AIDS (BETA) 22, no. 4 (2010), 20-29 <<http://www.sfaf.org/hiv-info/hot-topics/beta/2010-beta-sumfall-sexwork.pdf>>.

64 Jonathan Cohen and Tony Tate, “*The Less They Know the Better: Abstinence-Only, HIV/AIDS Programs in Uganda*”, in *Human Rights Watch* 17, no. 4 (March 2005), 1-79; Schau-Larsen, “In God We Trust: Christianity, Uganda and AIDS Epidemic”, PAGE NUMBER.

65 Such universities include Uganda Catholic University and the Islamic University in Uganda. Christine Wanjala, “Varsity Suspension Over Pregnancy: Punishing Sin or Girls?” *Daily Monitor*; May 7, 2014.

Faith-based universities say they cannot condone the sin of fornication in their community and argue that as private institutions they have a right to impose their moral values on their students. These restrictions on women's sexual behaviour and the high cost imposed on them for being sexually active in the name of religion plainly violate international human rights standards enumerated in several international treaties and in Uganda's constitution.⁶⁶ Uganda's 1995 constitution establishes equality between the sexes and outlaws any form of discrimination based on sex.

These religious universities also exhibit double standards and hypocrisy in penalising women for exercising their reproductive rights while, at the same time, offering a legal curriculum that includes Constitutional Law and International Human Rights Law, a course on women's rights including their right of access to family planning methods that give control over the number, spacing and timing of children.

Finally, the law defines a private university as one whose 'proprietor is a person, firm or organisation other than Government and basically maintained out of funds other than a public fund' and clearly states that any accredited private university is treated as a corporate body suffering the same fate as any other corporations. However, these religious universities are exempt from certain taxes like corporation tax. By offering them such exemptions which constitute subsidies, the government is footing the bill for discrimination and the violation of its own Constitution.

Conclusion

If we bend the arc of Ugandan history towards women's rights then we will have achieved a significant landmark in achieving freedom for all. Those promoting laws and policies in opposition valorise religious and cultural pluralism. But deference to the values of Ugandan society cannot be absolute. Indeed, Uganda's Constitution extends international human rights standards to minorities against the will of the majority culture.⁶⁷ In other words, the majority do not have a political right to legislate against what it deems immoral at the expense of the minority.

But we do not have to rely exclusively on international human rights standards in responding to the arguments of religious and cultural relativists. One of the unique features of the African regional human rights instrument —the African

66 Sylvia Tamale, "Women Have a Right to Reproduce", *Sunday Vision*, May 11, 2014.

67 See for example Articles 32, 33, 36 of the Constitution. Also see the case of, *Atala and Daughters v. Chile*, Ser L/Doc 22 Rev 1, Inter-American Court of Human Rights (IACHR) (July 23, 2008), where the (IACHR)refuted the common objections to sexual orientation as a ground for non-discrimination, cementing LGBT rights under the concept of *jus cogens* (Rudman 2014).

Charter on Human and Peoples Rights (Banjul Charter)—is its emphasis on group (people's) rights and the indivisibility of rights which discredits the hierarchical three-generation division of rights created under the international human rights framework.⁶⁸ This means that socio-economic rights and group rights are as unequivocally justifiable as civil and political rights.⁶⁹ In this case, claims of sexual and reproductive freedom of the social group of women would not only stand at par but are also interrelated with their civil rights to work, vote or freedom of speech.

Hence African cultural and religious relativists who revere 'group rights' above 'individual rights' must acknowledge the rights of women as a significant social group in society.⁷⁰ Just as they argue that there is no such thing as universal 'moral truths' and that the structure of human rights needs to recognise cultural differences when applying human rights norms, so too must the relativists realise their 'moral truths' are not universal to women in their diversity. Ironically, the contemporary religious morality being parroted by these relativists is steeped in Abrahamic religions which are alien to African culture and therefore can lay no legitimate claim to traditional values.

The sexual laws and policies discussed in this paper are embedded in and shaped by the 'moral panics' associated with a socio-political crisis brewing in Uganda. They are a consequence of exaggerations and misinformation on HIV/AIDS, same-sex desire and youth sexuality and are fueled by religious, cultural and political leaders for self-serving agendas. They signify an attempt to perpetuate patriarchal notions of female sexual purity and the confinement of sexuality within a hetero-normative marital and coital framework. However, being inherently discriminatory and exclusionary, they can never succeed. To borrow an old spiritual mantra: we shall overcome!

68 Traditionally, human rights are hierarchically divided into 'first generation' (civil and political rights), 'second generation' (economic and social rights) and 'third generation' (group rights).

69 Oji Umzurike, *The African Charter on Human and People's Rights* (The Hague: Martinus Nijhoff, 1997), 46; Frans Viljoen, *International Human Rights Law in Africa*, (Oxford: Oxford University Press, 2007), 237.

70 This argument is made with full knowledge of the differences among women and the intersectional discrimination that such heterogeneity engenders. Reference to the social group women is used here politically and strategically to spotlight the gender injustice suffered by all women.