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LEGISLATION ALERT: A SIMPLIFIED GUIDE TO WHAT THE ANTI HOMOSEXUALITY ACT, 2023 ACTUALLY CRIMINALISES

10th June 2023

The Anti-Homosexuality Act, 2023 was published in the Uganda Gazette of 30th May 2023. By virtue of this, it is now in force and people can be arrested and charged under it. Although many of the terms used in the Act are undefined, wide sweeping and vague, HRAPF makes an attempt in this guide to explain what is criminalised basing on its interpretation of the text of the law. We shall not know for sure what all the provisions in the law mean until the courts of law have had an opportunity to interpret them and therefore we use ‘may’ or ‘could’ or ‘would’ where we are not sure of the extent of criminalisation. To be on the safe side, it is important to give the law a broad interpretation so that people are not caught off guard if the police, prosecutors, or the courts decide to give it a wide interpretation. The Guide is written in user friendly language to enable non lawyers to have a good understanding of what is being criminalised.

Provision of the law	Name of the offence	Description	Conduct that is criminalised	Punishment	Explanation
Section 2(1), 2(2), 2(5), 4, 5, 6 and 16	Homosexuality	Performing a sexual act on a person of the same sex or allowing a person of the	i) Stimulating or penetrating however slightly, the anus or mouth of another person of the same sex using one’s penis or vagina or	Life imprisonment – which means spending the rest of the person’s	Merely identifying as Lesbian, Gay, Bisexual, Intersex, Transgender or Queer without evidence of one doing the specific sexual act should not be a ground for arrest for

		same sex to perform a sex act on oneself	allowing this to be done to oneself. ii) Stimulating or penetrating however slightly, the anus, mouth, penis or vagina of another person of the same sex using a sex toy or any other object or allowing this to be done to oneself. iii) Stimulating or penetrating the anus, penis or vagina of another person of the same sex using any part of one's body – including fingers, mouth, toes, elbows etc or allowing this to be done to oneself. NB: It does not matter that the person with whom one is doing these acts has consented. It also does not matter that	natural life in prison without the possibility of being released. Children of any age can also be found guilty under this provision and can be imprisoned for up to 3 years. Convicted persons can also be ordered to pay compensation to the victim depending on the extent of harm, force used, and expenses incurred. The court can also order for a convict to be subjected to	homosexuality. However, police officers or private citizens can arrest a person on 'reasonable suspicion' that they have committed an offence. What this implies is that the police can arrest someone for 'looking gay' or holding hands while walking or even spending a night with a person of the same-sex. They have been known to carry out such arrests in Uganda although no one ever gets convicted. One can also still be charged for carnal knowledge against the order of nature under section 145 of the penal code which is less specific but also attracts life imprisonment. One can also be charged with being a common nuisance and related vagrancy laws under the Penal Code. Certainly, being caught in the act of having any type of sex with a person of the same sex, or being recorded and there is sufficient proof of identity, is sufficient to get
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			the acts take place in private or in public.	'rehabilitation' by prisons or probation and social welfare officials	one arrested and prosecuted. This provision criminalises any sexual contact between persons of the same sex provided it involves contact with the anus, mouth, penis or vagina. Both persons involved in the act are supposed to be arrested and prosecuted. However, there is a possibility of one of them benefitting from the status of 'victimhood.' Victims are defined to mean children, persons suffering from any disability or persons forced or tricked into the act. What this implies is that where one of people involved turns and claims to be a victim, the police will most likely take their side as they would want to get evidence of the sexual acts. For this reason, there may be many convictions under this law because of the benefits that may be given to the person who claims victimhood in a consensual same-sex relationship.
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Section 2(3), 2(4), 5 and 6	Attempted homosexuality	Attempting/taking steps to perform sexual acts on a person of the same sex or to allow someone of the same sex do sexual acts on oneself.	To attempt is for one to have intentions of doing a sexual act and one takes steps to put that intention into action for instance if one takes off their clothes in front of a person of the same-sex while asking them to accept to have sex with them or holding sex toys and asking that the other person uses them on the person asking.	Up to ten years in prison Children of any age can also be found guilty under this provision and can be imprisoned for up to 3 years.	Attempts do not involve the actual acts. Therefore one does not need to touch or penetrate the anus, vagina or mouth of the other person, but rather to take actions that show that the intention is to stimulate or penetrate those organs. People have been charged before for sending love messages or nude photos of themselves to a person of the same-sex through the internet. Accidental touches without intention may not be criminalised but since intention is a matter of the state of the mind, it is possible that someone can accuse another of touching them while in a queue and that they determine one's intention from how they looked at them or smiled at them. So essentially, this provision criminalises all sorts of touches and being in private or public spaces with persons of the same-sex and conducting oneself in a way that others may think one has the intention to perform a sexual act or

					want one performed on them by another person of the same-sex.
Section 3(3), 3(4), 3(5), 4, 5 and 6	Attempted aggravated homosexuality	Attempting/ taking steps to commit acts of aggravated homosexuality	Similar to attempted homosexuality: if one has intentions to commit actions described as aggravated homosexuality and they take steps to put that intention into action.	Fourteen years' imprisonment Children of any age can also be found guilty under this provision and can be imprisoned for up to 3 years.	Although the law says persons will not be guilty of this just because they identify as LGBTIQ, people ought to be careful not to be arrested for things like sending sexual messages to children, elderly persons, or giving intoxicating drugs or alcohol to others that may impair their judgment and taking steps to engage in sex with such persons may be interpreted as attempted aggravated homosexuality.
Section 7	Breach of confidentiality	Failing to protect the confidentiality of a victim of homosexuality .	Reporting the identity or details of a victim of homosexuality in any media without the victim's authority or permission of the court.	A fine of five million Uganda shillings (UGX 5,000,000)	The law defines a victim as a child, a person suffering from a mental illness, or any other person upon whom the offence of homosexuality is committed by means of force, or while they are unconscious.
Section 8	Child grooming	Involving children in acts of homosexuality	i) Recruiting, transporting, harbouring or receiving a child (trafficking in children) for purposes of	For recruiting/ trafficking children for purposes of homosexuality , the punishment is	Alleged recruitment of children into homosexuality was a major driving factor in the passing of the Act. In the way it is framed, it could essentially mean any engagement with children by persons of the same-sex as the child.

			engaging them in same-sex conduct ii) Displaying, distributing or supplying materials that show persons engaged in same-sex conduct to a child or in any prohibited act iii) Showing materials and literature to a child that depicts same sex activity or any other prohibited conduct iv) Performing a sexual act with a person of the same sex in the presence of a child Consent of the parents, guardians or the child themselves to the acts above is immaterial.	life imprisonment For any of the other acts, the penalty is imprisonment not exceeding 20 years	Residing with children – possibly including one’s own children, sleeping with them in the same room, watching movies that may have same-sex content with them or them gaining access to pornographic materials in one’s possession may attract prosecution for child grooming. Ideally, persons should not bring up, receive, move with or play with children of the same sex as them at all as this can easily be mistaken for child grooming, especially where there is no blood relationship with the child. This is especially true for persons whose sexuality is already under suspicion/ question, and for same-sex couples. Adoption/guardianship are also clearly out of the question for children of the same sex as the intending adoptive parent/guardian, and especially for known LGBTIQ persons.
Section 9	Premises	Allowing premises to be	Knowingly allowing any premises to be used for	Seven years	The requirement for ‘knowing’ may do little to dissuade the police from

		used for purposes of homosexuality	purposes of homosexuality or to commit any offence under the Act. The breadth of this provision implies that one is liable if their premises are used by persons of the same sex to have sexual relations, to do child grooming, to promote homosexuality, etc. Therefore, renting a hotel room to persons of the same-sex, providing a venue for a party for LGBTIQ persons, or for a meeting or having them as tenants, or renting an office to an LGBTIQ organization or renting to a same-sex couple who are looking after a child, etc. may all give rise to liability.	imprisonment	arresting people as this is a mental state that can only be inferred from surrounding circumstances.
Section 10	Same sex marriages	Involvement in same-sex marriages	i) Attempting to contract a marriage with a person of the same-sex. ii) Presiding over, conducting, witnessing, or directing such a	10 years' imprisonment.	This provision targets any involvement in a wedding ceremony involving persons of the same sex – whether formal or informal. Attending, providing services, witnessing etc at such ceremonies is

			ceremony. iii) Knowingly attending or participating in organising such a ceremony.		an offence. The requirement of 'knowing' may be inferred from someone's involvement in the ceremony. This may also imply that Ugandan citizens who conduct formal wedding ceremonies outside Uganda may also be liable. Non Ugandans who may celebrate their marriages within Uganda can also be held liable.
Section 11 and section 14	Promotion of homosexuality	Doing acts that promote or normalise homosexuality	i) Encouraging or persuading another person to perform a sexual act with a person of the same sex or acts that are an offence under the Act, e.g. renting houses to LGBTIQ persons, or encouraging them to marry a person of the same sex or to do child grooming or to promote homosexuality.	Twenty years' imprisonment for individuals For Organisations / corporate entities, a fine of one billion shillings (UGX 1,000,000,000), suspension of licence for ten years or cancellation of	This provision is so broad and essentially criminalises any discussion of sexual orientation and gender identity as normal aspects of sexual behaviour, as well as actions that may recognise sexual orientations/ gender identities that are not cisgender or heterosexual. The Act defines male and female persons to be those born with a penis and vagina respectively, and any attempts to define these otherwise would be promoting or normalising homosexuality. It criminalises encouraging persons to engage in same-sex sexual acts,

			ii) Knowingly advertising, publishing, printing, broadcasting, or causing the publication or distribution of materials that promote or encourage homosexuality or committing any offence under the law. iii) Providing financial support in cash or kind for activities that encourage homosexuality or the observance or normalisation of prohibited conduct under the Act. iv) Knowingly providing premises for activities that encourage homosexuality or any offence under	licence	and indirectly encouraging such acts through materials that promote or normalise same sex sexual conduct. Teaching about sexual orientation or discussing it in schools, no matter what the level of education, may also be promotion or normalisation Research that explores sexual orientation/ gender identity may also be regarded as 'normalisation.' Publishing of books or articles or contributions to newspaper articles recognising sexual orientation and gender identity may also be promotion Organising workshops on sexual orientation, gender identity may also be regarded as normalisation. Training LGBTIQ persons in life skills, including safe sex, is also regarded as normalisation – as was already decided by the High Court in the case of <i>Kasha Jacqueline v Attorney General</i> (2014). Providing financial support to
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			the Act. v) Operating an organisation which promotes or encourages homosexuality or the observance or normalisation of prohibited conduct under the Act.		LGBTIQ persons for any reason, including transport refund for them attending meetings, can also be regarded as promotion Being the Executive Director or board member or senior manager of an organisation that expressly refers to itself as an LGBTIQ organisation or that does LGBTIQ related work may also make one liable for promotion of homosexuality. Providing office space to LGBTIQ persons or renting houses to LGBTIQ persons may also be regarded as promotion. Writing messages on social media in favour of LGBTIQ rights may also be promotion. A person who gets to know about a person being engaged in homosexuality or any other offence under the Act or reasonably suspects them has to report such persons to the police. Ideally, failure to report carries no punishment, but it would also be prima facie evidence that the
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					person is normalising homosexuality through covering up those acts. Reporting would be an effective defence that one is not promoting homosexuality. Essentially, this provision if give a broad interpretation criminalises allyship to the LGBTIQ community as well as service provision, including legal service provision, health service provision, psychosocial support, research and safety and wellness support.
Section 13	Disclosure of sexual offences record	Once convicted, one has to always disclose to potential employers that they were convicted of homosexuality or offences under the Act	A person convicted under any provision of the Act, has to disclose this when seeking employment in child care institutions or institutions where the person will be in charge of children or vulnerable persons who include persons in need of special care including those with disabilities, internally displaced persons, asylum seekers, victims of gender based violence, and	Failure to disclose is punishable by up to two years imprisonment and the employment of such a person shall be terminated.	This essentially rules convicts out of employment as the range of sectors in which they cannot work is so wide.

			illiterate or elderly persons.		
Section 14	Duty to report acts of homosexuality	Reporting anyone suspected of being involved in homosexuality or any of the other acts defined as offences under the Act	Knowing or reasonably suspecting that someone is engaging in homosexuality imposes a duty to report that person to the police.	Those who do not report those engaged in sexual acts with children or vulnerable persons are liable to a fine of one hundred million (UGX 100,000,000) or imprisonment of up to five years	This provision imposes a broad range of reporting obligations upon any person - including professionals - who know or reasonably suspect one to be engaged in homosexuality or other criminalized acts under the Act. Persons who are required by their professional oaths to ensure client confidentiality will not face any repercussions for violating such confidentiality in fulfilment of this duty to report. Those who report will also be protected as whistleblowers, with all the attendant benefits. The range of those who face punishment in case they do not report is also wide - they include those who do not report such actions not only with children but also with the elderly, persons with disabilities, internally displaced persons, asylum seekers, victims of gender based violence, stateless persons, persons suffering from any sickness, and all persons

					requiring protection because of their age, sex etc. This is very broad, and would essentially cover almost every one. As such, essentially anyone who knows a person who is LGBTIQ or suspects them is required to report, or potentially face criminal sanctions. Doctors, nurses, researchers, lawyers who are not advocates, paralegals, paramedics, religious leaders, employers, parents are all required to report and in most respects with criminal sanctions for not reporting. Also not reporting can easily be regarded as prima facie evidence for promotion/normalisation of homosexuality.
Section 15	False sexual allegations	Making make false allegations against another person	Intentionally making false or misleading allegations that a person has committed an offence under the Act	Up to one year's imprisonment	An allegation is false or misleading if at any stage if the investigation it is proved that the act did not take place or the report was made out of malice.