



**MAKERERE UNIVERSITY**

**THE RIGHT TO NON-DISCRIMINATION UNDER ARTICLE 21 OF  
THE CONSTITUTION: THE CASE OF THE PENAL  
PATHOLOGISATION OF SEXUAL AND GENDER MINORITIES IN  
UGANDA**

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**REG NO: 2023/HD09/3578U**

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN  
PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE  
AWARD OF THE DEGREE OF MASTER OF LAWS OF MAKERERE  
UNIVERSITY**

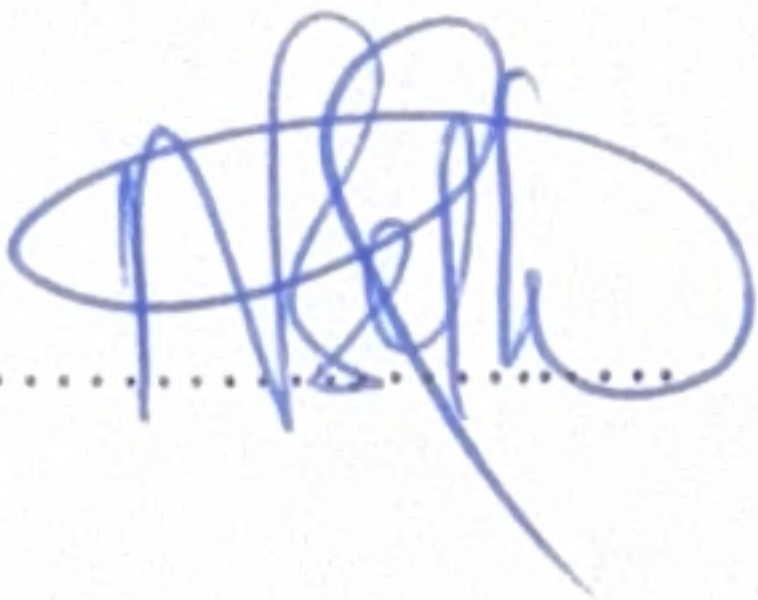
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I, **Seth Nimwesiga**, hereby declare with honesty and to the best of my knowledge that the work presented in this thesis titled, '*The Right to Non-Discrimination Under Article 21 of the Constitution: The Case of the Penal Pathologisation of Sexual and Gender Minorities in Uganda*' has never been submitted to any institution of learning and is of my research efforts.

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## APPROVAL

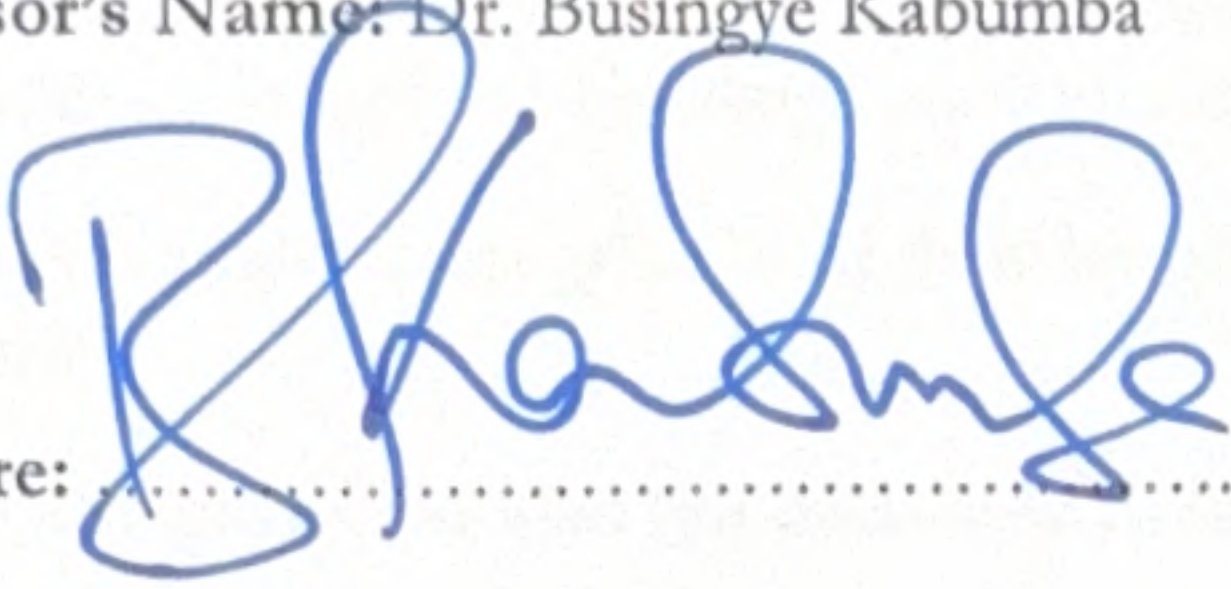
This dissertation by Seth Nimwesiga, titled *The Right to Non-Discrimination Under Article 21 of the Constitution: The Case of the Penal Pathologisation of Sexual and Gender Minorities in Uganda*, has been prepared and submitted under my guidance and supervision.

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And, the Almighty God who has been ever so faithful!

## **DEDICATION**

To every individual who has ever been made to feel less than. You have a right to be here.

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## LIST OF ACRONYMS

|        |                                                                      |
|--------|----------------------------------------------------------------------|
| ACHPR  | African Commission on Human and Peoples' Rights                      |
| ACRWC  | African Charter on the Rights and Welfare of the Child               |
| AHA    | Anti-Homosexuality Act                                               |
| APA    | American Psychological Association                                   |
| ARC    | Asylum Research Centre                                               |
| CDC    | Centres for Disease Control and Prevention                           |
| DPP    | Director of Public Prosecutions                                      |
| ECOWAS | Economic Community of West African States                            |
| ESCR   | Economic, Social and Cultural Rights                                 |
| HRAPF  | Human Rights Awareness and Promotion Forum                           |
| HRW    | Human Rights Watch                                                   |
| ICCPR  | International Covenant on Civil and Political Rights                 |
| ICESCR | International Covenant on Economic, Social and Cultural Rights       |
| ICJ    | International Commission of Jurists                                  |
| ILGA   | International Lesbian, Gay, Bisexual, Trans and Intersex Association |
| LGBTQ+ | Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and others    |
| MGLSD  | Ministry of Gender, Labour and Social Development                    |
| MSM    | Men who have sex with men                                            |
| NGO    | Non-governmental organisation                                        |
| OCSEA  | Online child sexual exploitation and abuse                           |
| ODPP   | Office of the Director of Public Prosecutions                        |
| PEPUDA | Promotion of Equality and Prevention of Unfair Discrimination Act    |
| PULP   | Pretoria University Law Press                                        |
| SGM    | Sexual and gender minorities                                         |
| SMUG   | Sexual Minorities Uganda                                             |
| UDHS   | Uganda Demographic and Health Survey                                 |
| UGCC   | Uganda Constitutional Court                                          |
| UGHC   | Uganda High Court                                                    |
| ULII   | Uganda Legal Information Institute                                   |

|        |                                                      |
|--------|------------------------------------------------------|
| UN     | United Nations                                       |
| UNCRC  | United Nations Convention on the Rights of the Child |
| UNFPA  | United Nations Population Fund                       |
| UNICEF | United Nations Children's Fund                       |
| UPHIA  | Uganda Population-based HIV Impact Assessment        |
| VACS   | Violence Against Children and Youth Survey           |
| WHO    | World Health Organisation                            |

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## **PRIMARY SOURCES OF LAW**

### **A. International and Regional Instruments**

#### **i) International Treaties and Conventions**

African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982) (entered into force 21 October 1986)

African Charter on the Rights and Welfare of the Child, 1990, Organisation of African Unity

Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008)

International Covenant on Civil and Political Rights, adopted 16 December 1966, GA Res 2200A (XXI), UN GAOR, 21st Sess, Supp No 16, UN Doc A/6316 (1966), 999 UNTS 171 (entered into force 23 March 1976)

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Treaty for the Establishment of the East African Community, 30 November 1999

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Committee on the Elimination of Racial Discrimination, General Recommendation No. 32, 2009, CERD/C/GC/32

Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, UN Doc HRI/GEN/1/Rev.1 (1994)

Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948)

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Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2007

### **iii) Regional Soft Law Instruments**

African Commission on Human and Peoples' Rights, Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014, 12 May 2014

African Commission on Human and Peoples' Rights, 'The Guidelines on Combating Sexual Violence and its Consequences in Africa, 2017

## **B. National Legislation and Laws**

### **i) Constitutions**

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Constitution of Kenya, 2010

#### **South Africa**

Constitution of the Republic of South Africa, 1996

#### **Uganda**

Constitution of the Republic of Uganda, 1995

### **ii) Legislation**

#### **Kenya**

Penal Code, Cap. 63

#### **South Africa**

Alteration of Sex Description and Sex Status Act, No. 49 of 2003

Civil Union Act, No. 17 of 2006

Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

#### **United States of America**

Don't Ask, Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515 (2010)

Equality Act, H.R. 5, 117th Cong. (2021)

Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, div. E, §§ 4701-4713, 123 Stat. 2190 (2009)

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

## **Uganda**

Anti-Homosexuality Act, 2014

Anti-Homosexuality Act, 2023

Equal Opportunities Commission Act, 2007

Penal Code Act, Cap 120

Persons with Disabilities Act, 2020

Sexual Offences Bill, 2019

## **C. Case Law**

### **i) International Case Law**

*Fedotova v Russian Federation*, Communication No 1932/2010, UN Human Rights Committee

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## **ii) Regional Case Law**

*Civil Liberties Organisation v Nigeria*, Communication 101/93, African Commission on Human and Peoples' Rights

*Centre for Minority Rights Development (Kenya) and Minority Rights Group v Kenya*, Communication No. 276/03, African Commission

*Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt*, Communication No. 323/06, African Commission

*Open Society Justice Initiative v Côte d'Ivoire*, Communication No. 318/06, African Commission

*Zimbabwe Human Rights NGO Forum v Zimbabwe*, Communication No. 245/02, African Commission

*Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*, Communication No 155/1996, African Commission on Human and Peoples' Rights

## **iii) National Case Law**

### **Botswana**

*Letsweletse Motshidiemang v Attorney General* [2019] MAHGB-000591-16 (Botswana High Court)

### **Canada**

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### **India**

*Navej Singh Johar v Union of India*, WP (CRIMINAL) NO 76 OF 2016

*Suresh Kumar Koushal and another v NAZ Foundation and others*, Civil Appeal No 10972 of 2013 (Supreme Court of India)

## Kenya

*Baby 'A' (Suing through the Mother E A) & another v Attorney General & 6 others*, Petition No 266 of 2013 [2014] eKLR

*Eric Gitari v Non-Governmental Organisations Co-ordination Board & 4 others*, Petition No 440 of 2013 [2015] eKLR

## Singapore

*Lim Meng Suang v Attorney-General* [2015] 1 SLR 26

## South Africa

*Minister of Home Affairs and Another v Fourie and Another*, CCT 60/04 [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005)

*National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others*, CCT11/98 [1998] ZACC 15; 1999 (1) SA 6; 1998 (12) BCLR 1517 (9 October 1998)

## United States of America

*Brown v Board of Education*, 347 U.S. 483 (1954)

*Goldberg v Kelly*, 397 US 235 (1970)

*Grimm v Gloucester County School Board*, 972 F.3d 586 (4th Cir. 2020)

*Obergefell v Hodges*, 576 US 644 (2015)

*Pickup v Brown*, 728 F.3d 1042 (9th Cir. 2013)

*United States v Windsor*, 570 US 744 (2013)

*Welch v Brown*, 58 F. Supp. 3d 1079 (E.D. Cal. 2014)

## Uganda

*Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Mary v Uganda Registration Services Bureau*, Court of Appeal Civil Appeal No 233 of 2018

*Hon Fox Odoi & 21 Others v Attorney General & 3 Others*, Consolidated Constitutional Petition 14 of 2023; Consolidated Constitutional Petition 15 of 2023; Consolidated Constitutional Petition 16 of 2023; Consolidated Constitutional Petition 85 of 2023 [2024] UGCC 10 (3 April 2024)

*Igeme v Nahwoga*, Divorce Cause 100 of 2022 [2024] UGHCFD 17 (2 April 2024)

*Kasajja v Uganda*, Criminal Appeal No 059 of 2011

*Kasha Jacqueline, David Kato Kisule and Onziema Patience v Rolling Stone Ltd and Giles Muhame*, High Court Miscellaneous Cause No 163 of 2010

*Male Mabirizi & Others v Attorney General*, Constitutional Petition No 49 of 2017 [2018] UGCC 4 (26 July 2018)

*Mubiru Kisingiri v Uganda*, HCT-0OCR-CN-O108 - 2015 [2016] UGHCCRD 6 (19 April 2016)

*Oloka-Onyango & 9 Others v Attorney General*, Constitutional Petition No 8 of 2014 [2014] UGCC 14

*Uganda v Mukisa Kim and Mukasa Jackson*, Criminal Case No 0085 of 2014

## ABSTRACT

This dissertation examines the discrimination against sexual and gender minorities (LGBTQ+ individuals) in Uganda, with particular focus on the unsubstantiated claims linking them to child sexual abuse. Through comprehensive historical, constitutional, empirical, and comparative analysis, the study challenges the rational basis for discriminatory legislation while proposing evidence-based legal reforms. The research addresses four primary objectives: examining the historical pathologisation of LGBTQ+ individuals based on alleged inclinations toward child sexual abuse; appraising whether current legal frameworks uphold or violate constitutional non-discrimination protections under Article 21; evaluating recorded cases to determine whether they provide evidential support for links between homosexuality and heightened risks of sexually abusive behaviours; and contextualising the legal analysis against international human rights frameworks on equality and non-discrimination protections. The study employs mixed methodological approaches, including doctrinal legal analysis, historical examination, empirical investigation of crime statistics spanning 29 years (1995-2024), and comparative constitutional analysis. Theoretical frameworks include a Rational Basis Theory of Discrimination, constitutional interpretation principles, and social construction theories of deviance.

Key findings demonstrate that discriminatory narratives against LGBTQ+ individuals lack historical legitimacy, empirical foundation, constitutional validity, and international legal support. The historical analysis reveals that current anti-LGBTQ+ sentiment represents colonial impositions rather than traditional Ugandan values. Constitutional examination shows systematic violations of Article 21's equality guarantees and democratic participation requirements in lawmaking processes. Empirical analysis of police reports, court cases, and health data conclusively refutes claims linking LGBTQ+ identity to child sexual abuse, with 'unnatural offences' constituting less than 1.2% of sexual crimes against children annually. The study establishes that Uganda's Anti-Homosexuality Act fails fundamental rational basis requirements due to reliance on demonstrably false empirical claims. The legislation violates constitutional participation principles, lacks evidentiary support, and contradicts international human rights obligations. The research reveals troubling judicial inconsistencies in applying constitutional protections, with courts providing stronger safeguards for general constitutional matters while accepting minimal standards for legislation affecting marginalised groups.

The dissertation concludes with comprehensive recommendations for legal reform, including implementing evidence-based rational basis requirements for all legislation affecting minority groups, repealing discriminatory provisions, strengthening constitutional interpretation, developing comprehensive anti-discrimination legislation, and reforming child protection frameworks based on empirical evidence. These recommendations extend beyond LGBTQ+ issues to establish broader principles protecting all vulnerable populations from discriminatory legislation lacking factual foundation, thereby strengthening Uganda's constitutional democracy and human rights protections for all citizens.

# CHAPTER ONE

## INTRODUCTION

- 1.1 Introduction
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### 1.1 Introduction

Child sexual abuse remains a major human rights challenge and public health concern across sub-Saharan Africa, with far-reaching negative impacts on survivors' health, well-being, and development.<sup>1</sup> Records indicate a high prevalence of sexual violence against children in Uganda, specifically, with the Violence Against Children Survey finding 56% of females and 52% of males surveyed reporting experiences of sexual abuse during childhood.<sup>2</sup> While the severity and scale of violence against children are widely documented, false perceptions remain linking homosexuality with tendencies for child sexual abuse and exploitation. Uganda is well known for its deeply conservative culture, strong opposition to Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and other (LGBTQ+) identities and relationships, and discriminatory legal frameworks criminalising same-sex conduct.<sup>3</sup> The links frequently drawn between homosexuality

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<sup>1</sup> K Clarke, *et al*, 'Patterns and predictors of violence against children in Uganda: a latent class analysis' (2016) 6 *BMJ open*, e010443.; F Meinck, *et al*, 'Physical, emotional and sexual adolescent abuse victimisation in South Africa: Prevalence, incidence, perpetrators and locations' (2016) 70 *Journal of epidemiology and community health*, 910-916.

<sup>2</sup> Ministry of Gender, Labour and Social Development (MGLSD), *Violence Against Children in Uganda: Findings from a National Survey, 2015*. (2015) UNICEF, CDC, MGLSD Uganda.

<sup>3</sup> S Tamale, 'Confronting the politics of nonconforming sexualities in Africa' (2013) 56 *African Studies Review*, 31-45.; A Jjuuko, 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' In: *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change* (Institute of Commonwealth Studies, School of Advanced Study, University of London, 2013) 381-408.

and paedophilia feature heavily in rhetoric aimed at denying rights and freedoms to LGBTQ+ people.

Before proceeding with the substantive analysis, it is essential to clarify a key term that appears throughout this dissertation: pathologisation. Pathologisation, as used in this dissertation, refers to the process by which certain behaviours, identities, or characteristics are constructed and treated as inherently diseased, disordered, or harmful, thereby justifying legal prohibitions and social exclusion. This operates on two interconnected levels. First, there is historical medical pathologisation, which involved the classification of homosexuality as a mental illness or disorder, as seen in early editions of the DSM and ICD, which provided pseudoscientific justification for discrimination. Second, there is legal and social pathologisation, which represents the ongoing legal treatment of LGBTQ+ identities as inherently harmful conditions that threaten public health, children's welfare, and social stability, continuing even after medical depathologisation has occurred. In the Ugandan context, legal pathologisation is evident in the Anti-Homosexuality Act's framing of same-sex conduct as an 'unnatural' threat to children and the family structure, despite the absence of empirical evidence supporting these claims. This legal pathologisation persists even though major medical bodies including the World Health Organization and the American Psychological Association depathologised homosexuality decades ago, demonstrating how law can maintain stigmatizing frameworks independent of scientific understanding.

This study examines the continued pathologisation and deprivation of rights experienced by LGBTQ+ Ugandans under a constitutional rights framework centred on non-discrimination. Despite Article 21 expressly guaranteeing equal rights and protections for all Ugandans irrespective of sexual orientation or gender identity, the persistence of colonial-era legislation like the Penal Code Act alongside contemporary proposals such as the Sexual Offences Bill indicates the State's sanctioning of discrimination against this marginalised minority. By criminalising consensual same-sex identities and relations, these legal instruments provide backing for sociocultural marginalisation and denial of dignity and opportunities in clear contravention of constitutional principles. Anchoring analysis through an equality/non-discrimination lens underscores the urgent need to repeal discriminatory penal vestiges and strengthen rights protections upholding LGBTQ+ persons' equal liberty, participation and prosperity across all life domains as full citizens. This study aims to document LGBTQ+ Ugandans' experiences under existing regimes to render visible routine injustices and inform this progressive rights-based policy change.

This study critically analyses publicly available records documenting cases of sexual violence against children in Uganda over the past decade. Offences were categorised according to known

offender characteristics to examine proportionality across heterosexual and LGBTQ+ perpetrator groups. Trend analysis identifies changes in the prevalence and characteristics of recorded cases over 29 years. Establishing a clear, evidence-based understanding of offending patterns can support child safeguarding initiatives and inform policy measures balancing the protection of children while upholding equal human rights. An absence of data exploring correlations specifically has enabled false stereotypes linking homosexuality and the sexual exploitation of children to prevail. Findings were compared across Uganda as well as Kenya, South Africa and the United States to ascertain degrees of similarity and variance internationally.

## 1.2 Background

Child abuse, comprising violence, exploitation, neglect or inadequate care for any person under 18 years old, infringes profoundly on children's rights and well-being.<sup>4</sup> The African Charter on the Rights and Welfare of the Child defines a 'child' as every human under 18 years, granting special rights and protections, acknowledging children's unique vulnerabilities.<sup>5</sup> Sexual abuse constitutes any sexual contact or conduct imposed by an offender on a child, encompassing acts like rape, defilement, incest, trafficking for sexual purposes, and exposure to sexual content or materials.<sup>6</sup>

Global estimates indicate that around 120 million girls and young women under 20 years old have been subjected to forced sexual contact or conduct at some stage of childhood, alongside around 1 in 6 boys before 18 years old.<sup>7</sup> Across sub-Saharan Africa, violence against children remains endemic, with cultural and socioeconomic risk factors exacerbating children's vulnerability throughout the region.<sup>8</sup> Critical among these risks are social norms accepting violence as a parental right or prerogative, gender inequalities disempowering girls, poverty driving abuse risks like transactional sex, and lack of oversight allowing unchecked abuse of power over children across homes, schools, churches, workplaces or other settings.<sup>9</sup>

In Uganda specifically, evidence confirms child sexual abuse as a widespread violation of children's rights and well-being. A 2015 Violence Against Children Survey reported that 35% of females and

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<sup>4</sup> United Nations Convention on the Rights of the Child (UNCRC). 1989. United Nations General Assembly, Preamble, article 1.; World Health Organisation (WHO). 2020. Violence Against Children Factsheet. WHO.

<sup>5</sup> African Charter on the Rights and Welfare of the Child (ACRWC). 1990. Organisation of African Unity, Preamble, article 2.

<sup>6</sup> WHO (2020 n 4 above).

<sup>7</sup> S Hillis, *et al*, 'Global prevalence of past-year violence against children: a systematic review and minimum estimates' (2016) 137 *Pediatrics*, 137.

<sup>8</sup> Meinck *et al* (n 1 above).

<sup>9</sup> Clarke *et al* (n 1 above); UNICEF. 2017. A familiar face: Violence in the lives of children and adolescents. UNICEF.

17% of males aged 18-24 years had suffered sexual abuse before turning 18, among the highest prevalence levels globally.<sup>10</sup> Reporting remains low, however, with just 1 in 5 children who experienced abuse seeking any assistance according to the Survey results. Key barriers to seeking care include shame, self-blame, and fear of consequence or stigma at the community or family levels. Of children who did report abuse, most turned to family or friends rather than authorities, reflecting low confidence in institutional support systems.<sup>11</sup>

Alongside endemic abuse, Uganda retains highly discriminatory legal frameworks and sociocultural attitudes targeting LGBTQ+ people.<sup>12</sup> Homosexuality has remained illegal in Uganda since British colonial rule, currently criminalised under Section 145 of the 1950 Penal Code Act, which prohibits ‘carnal knowledge against the order of nature’ and punishes acts of ‘gross indecency’ between persons of the same sex.<sup>13</sup> Proposals to strengthen criminal sanctions against LGBTQ+ people have surfaced repeatedly, including the newly enacted Anti Homosexuality Act of 2023, which was formerly annulled in 2014, but now re-enacted in much the same terms, seeking tough penalties for such crimes as ‘aggravated homosexuality’ and ‘grooming’.<sup>14</sup> Intense stigma pervades, with homosexual conduct characterised as ‘unnatural’, ‘ungodly’ or a ‘threat against cultural norms’ across Ugandan society.<sup>15</sup> A key theme underlying anti-LGBTQ+ hostility links homosexuality with threats against children and tendencies towards paedophilia – framing discrimination as essential to protecting Ugandan children and morality.<sup>16</sup> With these links lacking evidence, however, addressing misconceptions such as these is vital both to uphold children’s well-being as well as equal rights.

LGBTQ+ persons in Uganda face widespread discrimination, violence and criminalisation. The Penal Code Act expressly criminalises ‘carnal knowledge against the order of nature’ with potential life imprisonment, overwhelmingly targeting same-sex relations between consenting adults.<sup>17</sup> The recently introduced Sexual Offences Bill further seeks to intensify punitive measures via unclear

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<sup>10</sup> Ministry of Gender (n 2 above).

<sup>11</sup> Ministry of Gender, Labour and Social Development (MGLSD). 2015. Violence Against Children in Uganda: Findings from a National Survey, 2015. UNICEF, CDC, MGLSD Uganda.

<sup>12</sup> Tamale (n 3 above).

<sup>13</sup> The Penal Code Act, 1950. Laws of Uganda, Chapter 120.

<sup>14</sup> The Anti-Homosexuality Act, 2023. Laws of Uganda.

<sup>15</sup> Juuko (n 3 above).

<sup>16</sup> Tamale (n 3 above); see also, D Kalinaki, ‘Uganda has a sex crime problem, but gays are just easy scapegoats’ Daily Monitor (02 March 2023), accessed on 10 January 2024 at <https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/uganda-has-a-sex-crime-problem-but-gays-are-just-easy-scapegoats-4142708>.

<sup>17</sup> The Penal Code Act, 1950. Chapter 120. Kampala, Uganda.

provisions, opening the door for abuse.<sup>18</sup> These laws institutionalise the pathologisation of LGBTQ+ orientations, depriving this minority of equal dignity and protection rights expressly guaranteed under Article 21 of the Constitution, irrespective of 'sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.'<sup>19</sup> Regional bodies, including the African Commission, have affirmed states' obligations to uphold LGBTQ+ populations' basic rights.<sup>20</sup> By contrast, Uganda's discriminatory legal frameworks violate constitutional non-discrimination principles and reinforce sociocultural marginalisation. This study examines the impacts of criminalisation through an equality/non-discrimination rights lens.

### 1.3 Statement of the Problem

Uganda retains very high rates of sexual violence perpetrated against children, with over half of females and a third of males under 18 years old reporting abusive experiences.<sup>21</sup> The exact proportionality of offending across heterosexual and LGBTQ+ perpetrator populations remains unascertained despite the widespread outcry and penal reforms based on its purported linkage to child abuse; however, enabling assumptions linking homosexuality with tendencies for child abuse. The recently passed 2023 Anti-Homosexuality Act echoes these stereotypes, justified by lawmakers as necessary to protect children from 'grooming' and other ill-defined threats of LGBTQ+ people.<sup>22</sup>

In reality, the connections between homosexuality and risks for sexually abusive behaviours may be either unfounded or greatly exaggerated, according to wider research.<sup>23</sup> With accurate, contextualised evidence lacking, discrimination continues unimpeded, however. Quantifying and categorising cases of reported child sexual abuse by offender characteristics would establish a sound empirical basis to either support or dispel these links made between sexual orientation and the likelihood of abuse.

Despite constitutional protections and Uganda's obligations under international human rights law, LGBTQ+ persons continue facing acute discrimination, violence and deprivation of fundamental

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<sup>18</sup> Sexual Offences Bill, 2019. Kampala, Uganda.

<sup>19</sup> Constitution of the Republic of Uganda, 1995. Kampala, Uganda.

<sup>20</sup> African Commission on Human and Peoples' Rights (ACHPR). (2014). Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)201.

<sup>21</sup> MGLSD (2015), op cit.

<sup>22</sup> Asylum Research Center (ARC) *Uganda: Query response on the situation and treatment of the LGBTQI+ community*. (ARC, 2023).

<sup>23</sup> UK Government, 'National LBGT Survey: Research Report' (July 2018). Accessed on 10 January 2024 at [www.gov.uk/government/consultations/national-lgbt-survey](http://www.gov.uk/government/consultations/national-lgbt-survey); SM Greathouse, *et al*, *A review of the literature on sexual assault perpetrator characteristics and behaviours* (Rand Corporation 2015).

rights. The persistence of punitive colonial-era legislation like the Penal Code Act, alongside new proposals such as the Sexual Offences Bill, indicates that State-sanctioned pathologisation is fundamentally at odds with constitutional principles of equality, dignity and non-discrimination. These legal frameworks reinforce sociocultural marginalisation while obstructing LGBTQ+ persons' access to essential services, justice, and economic opportunities necessary for enjoying basic rights. Scholarly analysis of these issues remains limited, however, especially from rights-based perspectives foregrounding LGBTQ+ Ugandans' narratives and lived experiences. This study, therefore, examines the impacts of continued penal pathologisation of gender and sexual minorities through a constitutional rights lens focused on non-discrimination under Article 21, challenges assumptions underlying discriminatory laws and policies, and provides vital insights to inform progressive legal reform upholding the dignity and equal protection of all Ugandans.

#### **1.4 General Objective**

To undertake a legal appraisal of the pathology that LGBTQ+ individuals are inclined to child sexual abuse.

#### **1.5 Specific Objectives**

1. To examine the history, nature and extent of the pathology against LGBTQ+ people, on the basis that they are inclined to child sexual abuse.
2. To appraise whether current legal frameworks uphold or violate constitutional non-discrimination protections under Article 21 regarding LGBTQ+ persons.
3. To appraise whether recorded cases provide a legal evidentiary basis supporting or debunking links made between homosexuality and heightened risks of sexually abusive behaviours.
4. To contextualise the legal analysis against international human rights frameworks on equality and non-discrimination protections for LGBTQ+ persons.

#### **1.6 Research Questions**

1. What is the history, nature and extent of the discrimination against LGBTQ+ people, on the basis that they are inclined to child sexual abuse?
2. To what extent do recent criminalisation proposals align with or undermine constitutional non-discrimination guarantees under Article 21?

3. Does legal appraisal grounded in empirical case data align with constitutional rights principles and international LGBTQ+ protections against discrimination?
4. What legal remedies and rights-based recommendations flow from the catalogued evidentiary record on the proportionality of LGBTQ+ offending patterns?

## **1.7 Significance of the Research**

This study generates new evidence quantifying actual cases of child sexual abuse perpetrated by LGBTQ+ offenders over 29 years in Uganda. Reliable, rigorously categorised data indicate whether links made between homosexuality and heightened risks of paedophilia or child abuse are evidenced or unsupported when tested against real-world case data. Findings inform child protection policy measures by determining whether data confirms LGBTQ+ persons as disproportionately posing risks to children's safety and well-being relative to the general population.

The research also holds significance for advancing LGBTQ human rights in Uganda. Dispelling unfounded stereotypes has the potential to reduce societal prejudices currently enabling discrimination in access to healthcare, housing, education, justice and economic opportunities for LGBTQ+ Ugandans. As the recent 2023 Act illustrates, however, denying equal rights remains politically expedient when framed around protecting children from perceived 'LGBTQ+ threats'. This research provides an impartial basis to factually support or debunk these claimed threats, with the potential to moderate public and political hostility based on evidence rather than unfounded homophobic assumptions.

## **1.8 Theoretical Framework**

This research examines the discrimination and stereotyping linking LGBTQ+ persons with a heightened inclination towards child sexual abuse, specifically within the Ugandan context. Theoretical grounding acknowledges existing frameworks on the social construction of discrimination while formulating and proposing its theoretical understanding of the state-sanctioned penal pathologisation and discrimination of sexual and gender minorities.

### **1.8.1 Sociology of Deviance Theory**

Howard Becker's groundbreaking work on the sociology of deviance provides a foundational framework for understanding how societies construct and enforce notions of moral transgression. His seminal text 'Outsiders: Studies in the Sociology of Deviance'<sup>24</sup> revolutionised the sociological

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<sup>24</sup> HS Becker *Outsiders: Studies in the sociology of deviance*. (Free Press Glencoe 1963).

understanding of how deviant labels emerge not from inherent characteristics but through complex social processes of rule-making and enforcement. Becker's theoretical framework emphasises that deviance is not an intrinsic quality of any particular behaviour or identity but rather a consequence of societal reactions to perceived violations of established norms. This perspective proves particularly illuminating when examining the systematic pathologisation of LGBTQ+ individuals, especially in contexts where dominant social institutions actively construct narratives linking sexual and gender diversity to moral corruption and social danger.

The theoretical underpinnings of Becker's approach reveal how powerful social institutions, including religious organisations, legal systems, and political structures, collaborate in establishing and maintaining categories of deviance. These institutions do not merely identify existing transgressions but actively participate in creating the very concept of deviance through what Becker terms 'moral entrepreneurship.'<sup>25</sup> This process involves influential social actors who campaign for the creation and enforcement of rules that define certain behaviours or identities as morally unacceptable. In the context of LGBTQ+ discrimination, moral entrepreneurs often include religious leaders, conservative politicians, and self-proclaimed defenders of traditional values who systematically construct narratives positioning sexual and gender diversity as threats to social order and moral integrity.

Becker's analysis of labelling processes provides crucial insights into how societies transform individual characteristics into markers of moral transgression. The theory emphasises that deviance labelling operates through multiple interconnected mechanisms: primary deviance, where initial rule violations occur; secondary deviance, where individuals internalise deviant labels and potentially modify their behaviour in response; and tertiary deviance, where labelled individuals might actively resist or reclaim stigmatising categorisations.<sup>26</sup> This framework helps explain the complex ways in which LGBTQ+ individuals navigate societal stigma, from internalised homophobia to pride movements that challenge discriminatory classifications. The process of deviance amplification, wherein initial labels trigger escalating cycles of stigmatisation and social control, particularly illuminates how relatively minor perceived transgressions of gender or sexual norms can lead to severe social sanctions and systematic exclusion.

The sociology of deviance theory's emphasis on the situational and cultural variability of deviance definitions proves especially relevant when analysing cross-cultural differences in LGBTQ+ acceptance and persecution. Becker's framework helps explain how identical behaviours or

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<sup>25</sup> As above.

<sup>26</sup> As above.

identities may be celebrated in one context while being severely punished in another, highlighting the fundamentally social nature of deviance construction. This theoretical perspective challenges essentialist arguments about the inherent immorality of non-normative sexual or gender expressions by demonstrating how such judgments reflect specific cultural and historical configurations rather than universal moral truths.

Contemporary scholars building on Becker's work have expanded the theoretical framework to address intersectional dimensions of deviance labelling. Researchers like José Moral de la Rubia and Adrián Valle de la O have specifically examined how deviance labels intersect with other forms of social marginalisation, creating compound effects of stigmatisation. Their work reveals how accusations of moral corruption, particularly allegations of predatory behaviour toward children, function as powerful tools for maintaining social hierarchies and justifying systematic discrimination.<sup>27</sup> This theoretical development helps explain why moral panics about LGBTQ+ influences on children often emerge during periods of social change or challenges to traditional power structures.

The theory's examination of deviance labelling mechanisms provides valuable insights into how societies construct and maintain moral boundaries through complex processes of social control.<sup>28</sup> Becker's framework reveals how formal institutions, informal social networks, and cultural narratives work together to establish and enforce normative expectations about sexuality and gender expression. This theoretical perspective helps explain why attempts to challenge discriminatory practices often face significant resistance, as they threaten established systems of moral classification and social control.<sup>29</sup> Understanding these dynamics proves crucial for developing effective strategies to combat systematic discrimination and promote social justice.

Research applying the sociology of deviance theory to contemporary LGBTQ+ issues has revealed how traditional deviance labelling processes have evolved in response to changing social conditions. While explicit criminalisation of sexual and gender diversity may decrease in some contexts, subtle forms of moral condemnation and social exclusion often persist through what scholars term 'modern homophobia.'<sup>30</sup> This theoretical framework helps explain how discriminatory attitudes adapt to changing social conditions while maintaining their fundamental function of social control and status hierarchy maintenance.

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<sup>27</sup> J Moral de la Rubia, & A Valle de la O, 'Predictive models of attitude toward homosexuality in heterosexual men' (2014) 13 *Universitas Psychologica*, 1395–1407.

<sup>28</sup> As above.

<sup>29</sup> As above.

<sup>30</sup> M Foucault, *The History of Sexuality Vol. 1: An Introduction*. (1978) Random House.

The sociology of deviance theory's analytical framework proves particularly valuable in understanding how historical forms of discrimination transform and adapt over time while maintaining their essential function of social control.<sup>31</sup> Becker's theoretical insights illuminate how seemingly distinct forms of stigmatisation—from colonial-era sodomy laws to contemporary moral panics about gender identity—represent continuous threads of deviance labelling adapted to different social contexts. This historical perspective reveals how contemporary accusations linking LGBTQ+ individuals to child abuse often recycle historical tropes of moral corruption and social danger, updated for modern audiences but serving similar functions of social control.<sup>32</sup>

The theory's examination of institutional responses to perceived deviance provides crucial insights into how formal organisations, including medical and legal institutions, participate in legitimising discriminatory practices. Becker's framework helps explain how professional bodies historically contributed to pathologising sexual and gender diversity through diagnostic categories and treatment protocols. This analysis reveals how institutional authority can be deployed to transform social prejudices into seemingly objective scientific or legal facts, a process particularly evident in the historical medicalisation of homosexuality and contemporary attempts to pathologise gender diversity.<sup>33</sup>

Empirical research guided by the sociology of deviance theory has consistently demonstrated the disconnect between deviance labels and actual behavioural patterns. Studies examining allegations of increased predatory behaviour among LGBTQ+ individuals have repeatedly found no evidence supporting such claims, confirming Becker's assertion that deviance labels reflect social power dynamics rather than empirical realities.<sup>34</sup> This research highlights how moral entrepreneurs often persist in promoting discriminatory narratives even in the face of contradictory evidence, suggesting that deviance labelling serves broader social control functions beyond any purported protective purpose.<sup>35</sup>

The theory's analysis of resistance and social change provides valuable insights into how marginalised communities challenge discriminatory labels and reclaim agency. Becker's framework helps explain how LGBTQ+ activism has successfully contested pathologising narratives through various strategies, including community organising, legal advocacy, and cultural representation.

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<sup>31</sup> K Plummer 'Symbolic interactionism and sexual conduct: An emergent perspective' in M Brake (ed) *Human sexual relations: Towards a redefinition of sexual politics* (1982) 223–244.

<sup>32</sup> As above.

<sup>33</sup> P Conrad *The Medicalisation of Society* (2007) Johns Hopkins University Press.

<sup>34</sup> IH Meyer 'Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations: Conceptual Issues and Research Evidence' (2003) 129 *Psychological Bulletin* 673.

<sup>35</sup> As above.

This theoretical perspective illuminates how successful resistance often requires addressing multiple levels of social control simultaneously, from formal legal structures to informal cultural narratives.<sup>36</sup>

Contemporary applications of deviance theory to LGBTQ+ issues have expanded Becker's original framework to address intersectional experiences of stigmatisation. Scholars have examined how various forms of social marginalisation interact with sexual and gender identity, creating complex patterns of discrimination and resistance.<sup>37</sup> This theoretical development helps explain why certain subgroups within LGBTQ+ communities may face intensified scrutiny or heightened vulnerability to discriminatory labelling based on intersecting social categories.

The sociology of deviance theory continues to evolve, incorporating new insights from queer theory, critical race studies, and other contemporary theoretical frameworks. Modern scholars have expanded Becker's original insights to address emerging forms of discrimination and resistance in digital spaces, transnational contexts, and rapidly changing social environments.<sup>38</sup> This theoretical evolution demonstrates the continuing relevance of deviance theory for understanding and challenging contemporary forms of LGBTQ+ discrimination.

While the sociology of deviance theory, particularly as articulated by Howard Becker, provides valuable insights into the social construction of deviance labels, it exhibits significant limitations that reduce its effectiveness as a comprehensive framework for understanding LGBTQ+ discrimination. These limitations necessitate a more nuanced theoretical approach capable of addressing the complex dimensions of contemporary discriminatory practices.

A fundamental limitation lies in the theory's tendency to overemphasise the role of moral entrepreneurs in constructing deviance while understating the structural and institutional factors that shape and constrain labelling processes. While moral entrepreneurship certainly plays a role in promoting discriminatory narratives, the theory's focus on individual actors risks obscuring how broader social systems and power structures enable and perpetuate discriminatory practices.<sup>39</sup> This theoretical blind spot becomes particularly apparent when examining how heteronormative

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<sup>36</sup> M Bernstein 'Identities and Politics: Toward a Historical Understanding of the Lesbian and Gay Movement' (2002) 26 *Social Science History* 531.

<sup>37</sup> As above; K Crenshaw 'Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color' (1991) 43 *Stanford Law Review* 1241.

<sup>38</sup> G Rubin 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality' in R Parker & P Aggleton (eds) *Culture, Society and Sexuality* (2006) 143.

<sup>39</sup> P Conrad & J Schneider *Deviance and Medicalisation: From Badness to Sickness* (1992) Temple University Press.

assumptions are embedded within institutional frameworks, operating independently of explicit labelling campaigns.

The theory also demonstrates significant weaknesses in addressing the material consequences of deviance labelling. Its emphasis on symbolic processes and identity formation, while valuable, can understate how discriminatory labels translate into concrete economic, social, and political disadvantages.<sup>40</sup> This limitation becomes especially problematic when analysing how LGBTQ+ individuals experience systematic exclusion from essential resources and opportunities, often through mechanisms that extend beyond direct stigmatisation.

Furthermore, the sociology of deviance framework struggles to adequately account for historical continuities in discriminatory practices. While the theory effectively explains how deviance categories are socially constructed, it offers limited insights into why certain forms of stigmatisation persist across different historical and cultural contexts.<sup>41</sup> This theoretical weakness becomes particularly evident when examining how colonial-era moral regulations targeting sexual minorities have evolved into contemporary forms of discrimination while maintaining similar justificatory frameworks.

The theory's focus on deviance as a product of rule enforcement also potentially obscures how discrimination often operates through unstated norms and implicit biases rather than explicit prohibitions. Contemporary research demonstrates that LGBTQ+ individuals frequently experience discrimination through subtle exclusionary practices that may not involve explicit deviance labelling.<sup>42</sup> This analytical limitation restricts the theory's utility for understanding how discrimination persists even in contexts where formal legal equality has been established.

Additionally, the sociology of deviance perspective's emphasis on the social construction of categories risks understating the lived realities and experiences of those subjected to discriminatory labels. Critics note that while deviance categories are indeed socially constructed, the theory's emphasis on this fact can potentially minimise the concrete suffering experienced by marginalised individuals.<sup>43</sup> This limitation becomes particularly problematic when addressing how LGBTQ+ individuals navigate and resist discriminatory systems while experiencing their tangible effects.

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<sup>40</sup> G Rubin 'Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality' in C Vance (ed) *Pleasure and Danger: Exploring Female Sexuality* (1984) Routledge 267-319.

<sup>41</sup> M Foucault *The History of Sexuality, Volume 1: An Introduction* (1978) Pantheon Books.

<sup>42</sup> S Sue *Microaggressions in Everyday Life: Race, Gender, and Sexual Orientation* (2010) Wiley.

<sup>43</sup> I Hacking 'Making Up People' in T Heller, M Sosna & D Wellbery (eds) *Reconstructing Individualism* (1986) Stanford University Press 222-236.

The theory also exhibits limitations in addressing how intersecting forms of marginalisation shape experiences of deviance labelling. While Becker's framework acknowledges variation in labelling processes, it offers insufficient analytical tools for understanding how factors like race, class, gender, and disability interact with sexual orientation to produce complex patterns of discrimination.<sup>44</sup> This theoretical blind spot restricts its utility for understanding the diverse experiences of LGBTQ+ individuals across different social contexts.

Furthermore, the sociology of deviance approach demonstrates weaknesses in addressing global dimensions of discrimination. Its analytical framework, developed primarily in Western contexts, may inadequately capture how transnational influences shape local discriminatory practices.<sup>45</sup> This limitation becomes particularly evident when examining how international religious and political actors have influenced anti-LGBTQ+ legislation in countries like Uganda, creating complex dynamics that extend beyond local labelling processes.

The theory's emphasis on the contingent nature of deviance labels, while valuable for challenging essentialist views of sexuality, may also inadvertently understate the persistence of certain discriminatory narratives. Research demonstrates that despite significant social changes, associations between homosexuality and moral corruption demonstrate remarkable resilience across different contexts.<sup>46</sup> This persistence suggests mechanisms beyond those captured by deviance theory's focus on labelling processes.

Finally, the sociology of deviance perspective offers limited practical guidance for developing effective interventions to combat discrimination. While the theory effectively explains how deviance labels emerge and function, it provides insufficient direction for dismantling discriminatory systems or creating more inclusive social arrangements.<sup>47</sup> This limitation becomes particularly significant when attempting to develop evidence-based policies to address LGBTQ+ discrimination.

### **1.8.2 Functionalist Theory of Discrimination**

The functionalist theory of discrimination, pioneered by Talcott Parsons and Robert Merton, presents a complex analytical framework for understanding how discriminatory practices emerge from and contribute to broader social systems. This theoretical perspective positions

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<sup>44</sup> R Ferguson *Aberrations in Black: Toward a Queer of Color Critique* (2004) University of Minnesota Press.

<sup>45</sup> J Weeks *Sexuality and its Discontents: Meanings, Myths, and Modern Sexualities* (1985) Routledge.

<sup>46</sup> G Chauncey *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (1994) Basic Books.

<sup>47</sup> S Seidman 'From Identity to Queer Politics: Shifts in Normative Heterosexuality and the Meaning of Citizenship' (2001) 5 *Citizenship Studies* 321-338.

discrimination not as a moral aberration but as an integral component of social organisation, serving specific functions in maintaining societal stability and order. Through this lens, discriminatory practices against LGBTQ+ individuals can be understood as mechanisms through which societies attempt to preserve traditional institutional arrangements and cultural values. The theory suggests that discrimination serves latent functions beyond its immediate harmful effects, including the reinforcement of group solidarity among dominant populations and the maintenance of established social hierarchies.

Parsons' foundational work establishes how social systems develop mechanisms to maintain equilibrium through the regulation of deviant behaviour and the enforcement of normative expectations.<sup>48</sup> According to Parsonian analysis, discrimination operates as a social control mechanism that helps maintain what he terms 'pattern maintenance' - the preservation of core societal values and institutional arrangements.<sup>49</sup> This theoretical framework helps explain why societies often resist changes to established gender and sexual norms, viewing such transformations as potential threats to social stability. The persistence of discriminatory attitudes and practices against LGBTQ+ individuals can thus be understood as a systemic response to perceived challenges to foundational social institutions like traditional family structures and gender roles.

Merton's contribution to functionalist theory through his concept of manifest and latent functions provides crucial insights into how discriminatory practices persist even when their stated justifications are demonstrably false.<sup>50</sup> Applied to LGBTQ+ discrimination, this theoretical framework reveals how allegations of child predation serve manifest functions of supposedly protecting youth while simultaneously fulfilling latent functions of maintaining heteronormative social control and reinforcing traditional power structures. Merton's analysis helps explain why such accusations persist despite empirical evidence contradicting them, as their true social function lies not in addressing actual threats but in maintaining established social hierarchies.

The functionalist analysis of institutions as interconnected systems reveals how discrimination becomes embedded within multiple social domains simultaneously. Religious institutions, educational systems, legal frameworks, and family structures often work in concert to maintain discriminatory practices, each reinforcing the others' role in sustaining what functionalists term

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<sup>48</sup> T Parsons 'The AGIL Paradigm and Social System Theory' in J Turner (ed) *The Structure of Sociological Theory* (1991) 234-256.

<sup>49</sup> As above.

<sup>50</sup> RK Merton 'Manifest and Latent Functions' in R Merton (ed) *Social Theory and Social Structure* (1968) Free Press 73-138.

‘social integration.’<sup>51</sup> This systematic perspective helps explain why efforts to combat LGBTQ+ discrimination often face resistance across multiple institutional fronts simultaneously, as changes in one domain necessarily impact others. The theory illuminates how religious objections to LGBTQ+ rights often translate into educational policies, legal restrictions, and family exclusion practices, creating a self-reinforcing system of discrimination.

Parsons' concept of the AGIL paradigm (Adaptation, Goal attainment, Integration, and Latency) provides a structured framework for analysing how societies systematically maintain discriminatory practices. Through this lens, discrimination against LGBTQ+ individuals serves multiple system functions: adaptation through the regulation of social resources and opportunities; goal attainment through the enforcement of heteronormative social objectives; integration through the reinforcement of dominant group solidarity; and latency through the transmission of discriminatory values across generations.<sup>52</sup> This theoretical framework explains how discriminatory practices become deeply embedded within social structures, making them resistant to change even when their harmful effects become apparent.

Contemporary functionalist scholarship has expanded this theoretical framework to examine how modern societies adapt discriminatory practices to changing social conditions. Rather than disappearing, discrimination often evolves into more subtle forms that continue to serve similar social functions while adapting to new cultural contexts.<sup>53</sup> This analysis helps explain the transition from explicit criminalisation of LGBTQ+ identities to more nuanced forms of systemic exclusion, such as the perpetuation of stereotypes linking sexual minorities to social danger or moral corruption.

However, the functionalist theory of discrimination, despite its analytical utility, exhibits significant theoretical and practical limitations that undermine its adequacy as a comprehensive framework for understanding LGBTQ+ discrimination. The theory's fundamental assumption that social systems naturally tend toward equilibrium and that discriminatory practices serve necessary social functions presents several problematic implications and analytical shortcomings.

Firstly, the theory's emphasis on system maintenance and social stability inherently privileges existing power structures while minimising the legitimacy of social change movements. This theoretical orientation risks naturalising oppressive practices by presenting them as functional

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<sup>51</sup> J Alexander 'The Antinomies of Classical Thought: Marx and Durkheim' (1982) 11 *Theoretical Logic in Sociology* 321-360.

<sup>52</sup> N Smelser 'The Rational and the Ambivalent in the Social Sciences' (1998) 63 *American Sociological Review* 1-16.

<sup>53</sup> P Sztompka 'The Focus on Everyday Life: a New Turn in Sociology' (2008) 16 *European Review* 23-37.

necessities rather than constructed and contested social arrangements.<sup>54</sup> The framework's tendency to view disruption of discriminatory systems as potentially dysfunctional overlooks how social change often requires precisely such disruption to achieve more equitable arrangements.

Secondly, the functionalist theory demonstrates a concerning inability to adequately account for human agency and resistance to discriminatory systems. By positioning discrimination as a mechanism for maintaining social order, the theory understates the role of conscious human action in both perpetuating and challenging oppressive practices.<sup>55</sup> This theoretical limitation becomes particularly apparent when examining how LGBTQ+ movements have successfully contested discriminatory arrangements despite significant institutional resistance, suggesting that social stability can be maintained through more inclusive arrangements.

Thirdly, the theory's emphasis on consensus and shared values fails to adequately address how discriminatory practices often serve the interests of dominant groups at the expense of marginalised populations. As scholars like Patricia Hill Collins note, what functionalists identify as 'system maintenance' often represents the imposed preferences of powerful social actors rather than genuine social consensus.<sup>56</sup> This critique reveals how functionalist theory can mask power dynamics by presenting discriminatory arrangements as natural outcomes of system requirements rather than deliberate strategies of social control.

Furthermore, functionalist theory's tendency to analyse social phenomena primarily through their contributions to system stability creates significant blind spots regarding the destructive impacts of discrimination. The framework's focus on manifest and latent functions often understates or ignores what Robert Merton himself termed 'dysfunction' – the harmful consequences of social arrangements that may persist despite their negative impacts on both individuals and broader social systems.<sup>57</sup> This theoretical limitation becomes particularly problematic when examining how discriminatory practices often generate social instability and conflict rather than maintaining harmony.

The theory also demonstrates significant weaknesses in addressing historical change and cross-cultural variation in discriminatory practices. Its emphasis on stability and system maintenance struggles to explain why societies can and do transition toward more inclusive arrangements

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<sup>54</sup> N Fraser 'Rethinking Recognition: Overcoming Displacement and Reification in Cultural Politics' (2000) 2 *New Left Review* 107-120.

<sup>55</sup> A Giddens *The Constitution of Society: Outline of the Theory of Structuration* (1984) University of California Press.

<sup>56</sup> PH Collins *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (2000) Routledge.

<sup>57</sup> RK Merton 'Social Structure and Anomie' (1938) 3 *American Sociological Review* 672-682.

without experiencing the systemic collapse that functionalist theory might predict.<sup>58</sup> This limitation becomes particularly apparent when examining how various societies have successfully integrated LGBTQ+ rights while maintaining social cohesion, challenging functionalist assumptions about the necessity of discriminatory practices for social stability.

Additionally, functionalist theory's treatment of discrimination as a mechanism for maintaining social order fails to adequately address how discriminatory practices often generate significant social costs and inefficiencies. Contemporary research demonstrates how LGBTQ+ discrimination imposes substantial economic burdens through reduced productivity, increased healthcare costs, and limited human capital utilisation.<sup>59</sup> These findings challenge functionalist assumptions about the positive systemic functions of discrimination. Perhaps most significantly, the theory's analytical framework proves inadequate for developing effective strategies to combat discrimination. By positioning discriminatory practices as functional necessities, functionalist theory offers limited insights into how societies might transition toward more equitable arrangements while maintaining social stability.<sup>60</sup> This theoretical limitation becomes particularly problematic when attempting to develop policy interventions or social change strategies aimed at reducing discrimination while preserving social cohesion.

The theory's emphasis on structural determinism also fails to adequately capture the dynamic nature of identity formation and social categorisation processes. Contemporary understandings of gender and sexuality as fluid and socially constructed challenge functionalist assumptions about fixed social categories and stable institutional arrangements.<sup>61</sup> This theoretical limitation becomes particularly apparent when examining how changing social attitudes toward LGBTQ+ identities have led to institutional adaptations without threatening basic social stability.

Contemporary scholars have attempted to address these limitations by incorporating insights from conflict theory and critical approaches, creating more nuanced understandings of how discriminatory functions can be challenged and transformed. This theoretical evolution helps explain how societies can maintain stability while moving toward more inclusive and equitable arrangements, challenging the assumption that discrimination serves necessary social functions.

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<sup>58</sup> J Alexander 'The Return to Civil Society' (1993) 12 *Contemporary Sociology* 797-803.

<sup>59</sup> MV Lee Badgett *The Economic Cost of Stigma and the Exclusion of LGBT People: A Case Study of India* (2014) World Bank Group.

<sup>60</sup> S Seidman 'Critique of Compulsory Heterosexuality' (2009) 6 *Sexuality Research and Social Policy* 18-28.

<sup>61</sup> J Butler *Gender Trouble: Feminism and the Subversion of Identity* (1990) Routledge.

### 1.8.3 Conflict Theory of Discrimination

The conflict theory of discrimination, originating from Marxist social analysis and substantially developed by scholars like C. Wright Mills and Ralf Dahrendorf, provides a critical framework for understanding discrimination as a product of power relations and resource competition. Within this theoretical paradigm, discrimination against LGBTQ+ individuals emerges not as an incidental social phenomenon but as a deliberate mechanism through which dominant groups maintain their privileged positions. The theory positions discriminatory practices as tools of social control, deployed strategically to preserve existing power hierarchies and prevent challenges to established social orders.

Marx's foundational analysis of class conflict provides the theoretical groundwork for understanding how economic power translates into social and cultural dominance.<sup>62</sup> While Marx primarily focused on economic class struggles, contemporary conflict theorists have expanded this framework to examine how various forms of social power intersect in producing and maintaining discriminatory systems.<sup>63</sup> This theoretical evolution helps explain how the economic marginalisation of LGBTQ+ individuals often coincides with cultural stigmatisation and political disenfranchisement, creating mutually reinforcing systems of oppression.

C. Wright Mills' concept of the power elite offers crucial insights into how privileged groups coordinate across institutional domains to maintain discriminatory systems.<sup>64</sup> Applied to LGBTQ+ discrimination, this analysis reveals how religious authorities, political leaders, and economic powerbrokers often collaborate in constructing and enforcing heteronormative social orders. This theoretical framework helps explain the emergence of organised anti-LGBTQ+ movements that mobilise resources across multiple institutional domains to resist social change and preserve traditional power arrangements.

Contemporary conflict theorists have expanded this analytical framework to examine how intersecting systems of oppression create complex hierarchies of discrimination.<sup>65</sup> This theoretical development reveals how sexual orientation and gender identity intersect with other axes of social power - including race, class, and nationality - to produce varying experiences of discrimination

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<sup>62</sup> K Marx 'The Economic and Philosophic Manuscripts of 1844' in R Tucker (ed) *The Marx-Engels Reader* (1978) Norton 66-125; K Marx *Capital: A Critique of Political Economy* (1867) Progress Publishers.

<sup>63</sup> As above.

<sup>64</sup> CW Mills *The Power Elite* (1959) Oxford University Press.

<sup>65</sup> M Burawoy 'The Extended Case Method: Race and Class in Post-Colonial Africa' in *The Extended Case Method: Four Countries, Four Decades, Four Great Transformations, and One Theoretical Tradition* (2009) University of California Press 19-72.

and resistance.<sup>66</sup> The theory illuminates how privileged groups often exploit these intersections to divide marginalised populations and prevent unified resistance to discriminatory systems.

Ralph Dahrendorf's contributions to conflict theory, particularly his analysis of power dynamics in modern societies, provide valuable insights into how discriminatory practices adapt to changing social conditions.<sup>67</sup> His framework helps explain how formal legal equality may coexist with persistent informal discrimination, as dominant groups develop new mechanisms for maintaining social hierarchies when traditional forms of oppression become delegitimised.<sup>68</sup> This analysis proves particularly relevant for understanding the evolution of LGBTQ+ discrimination from explicit criminalisation to more subtle forms of systemic exclusion.

However, conflict theory faces criticism for potentially oversimplifying complex social dynamics by reducing them primarily to power struggles.<sup>69</sup> Critics argue that this theoretical framework may understate the role of cultural meanings, individual agency, and cooperative social processes in shaping discriminatory practices.<sup>70</sup> The theory's emphasis on conflict as the primary driver of social relations may also overlook possibilities for collaborative social change and reconciliation.

While conflict theory provides valuable insights into power dynamics underlying discrimination, its framework exhibits several significant limitations that reduce its effectiveness as a comprehensive theoretical approach to understanding LGBTQ+ discrimination. These limitations necessitate a more nuanced theoretical framework that can better capture the complexities of contemporary discriminatory practices. A primary limitation lies in conflict theory's tendency to reduce complex social phenomena to manifestations of group power struggles. While power dynamics certainly play a crucial role in discrimination, this reductionist approach fails to adequately capture the nuanced ways in which cultural meanings, individual agency, and intersectional identities shape discriminatory practices.<sup>71</sup> The theory's emphasis on binary oppositions between dominant and subordinate groups oversimplifies the complex web of relationships and power dynamics that characterise contemporary LGBTQ+ experiences.

The theory's materialist foundations, while valuable for understanding economic aspects of discrimination, often understate the significance of cultural and symbolic processes in shaping

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<sup>66</sup> As above.

<sup>67</sup> R Dahrendorf 'Toward a Theory of Social Conflict' (1958) 2 *Journal of Conflict Resolution* 170-183; P Bourdieu *Reproduction in Education, Society and Culture* (1990) Sage.

<sup>68</sup> As above.

<sup>69</sup> HP Collins *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (1990) Routledge.

<sup>70</sup> N Fraser 'Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation' in R Larry & A Sayer (eds) *Culture and Economy after the Cultural Turn*, (1999) Sage 25-52.

<sup>71</sup> A Sayer 'Power, Causality and Normativity: A Critical Realist Critique of Foucault' (2012) 28 *Journal of Political Power* 191-209.

discriminatory practices. Contemporary scholars note that LGBTQ+ discrimination frequently operates through complex cultural mechanisms that cannot be reduced to simple economic or power relationships.<sup>72</sup> This limitation becomes particularly apparent when examining how discriminatory attitudes persist even in contexts where they may not serve the clear material interests of dominant groups. Furthermore, conflict theory's emphasis on conscious class interests and deliberate oppression strategies may overlook how discriminatory practices often operate through unconscious biases and institutionalised patterns that perpetuate themselves without explicit coordination by dominant groups.<sup>73</sup> This theoretical blind spot becomes particularly problematic when attempting to address subtle forms of discrimination that persist even in contexts where formal equality has been established.

The theory also demonstrates significant limitations in explaining instances of cooperation and alliance-building across different social groups. Its emphasis on inevitable conflict can obscure how diverse coalitions have successfully challenged discriminatory practices through collaborative action.<sup>74</sup> This theoretical weakness becomes particularly apparent when examining how LGBTQ+ movements have built effective partnerships with other social justice movements, suggesting more complex dynamics than simple power struggles. Another significant limitation lies in conflict theory's difficulty in accounting for internal divisions and power dynamics within marginalised groups themselves. The framework's tendency to treat oppressed groups as relatively homogeneous entities fails to capture how factors like class, race, gender identity, and cultural background create complex hierarchies within LGBTQ+ communities.<sup>75</sup> This oversight limits the theory's utility for understanding how different segments of marginalised populations experience and resist discrimination differently.

The theory's emphasis on structural determinism also risks understating individual and collective agency in challenging discriminatory systems. While structural constraints certainly matter, conflict theory's focus on systemic power dynamics can minimise the significance of individual resistance strategies and cultural innovation in creating social change.<sup>76</sup> This limitation becomes particularly evident when examining how LGBTQ+ individuals and communities actively negotiate and challenge discriminatory practices in their daily lives. Conflict theory also struggles to adequately

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<sup>72</sup> S Hall 'Cultural Identity and Diaspora' in J Rutherford (ed) *Identity: Community, Culture, Difference* (1990) Lawrence & Wishart 222-237.

<sup>73</sup> E Bonilla-Silva *Racism without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America* (2003) Rowman & Littlefield.

<sup>74</sup> M Bernstein 'Nothing Ventured, Nothing Gained? Conceptualizing Social Movement 'Success' in the Lesbian and Gay Movement' (2003) 18 *Sociological Perspectives* 353-379.

<sup>75</sup> R Ferguson *Aberrations in Black: Toward a Queer of Color Critique* (2004) University of Minnesota Press.

<sup>76</sup> J Scott *Weapons of the Weak: Everyday Forms of Peasant Resistance* (1985) Yale University Press.

explain gradual social changes that occur without overt conflict or revolution. Its emphasis on dramatic confrontations between opposing groups fails to capture how discriminatory attitudes and practices often transform through subtle, incremental processes of cultural and institutional change.<sup>77</sup> This theoretical weakness limits its utility for understanding how societies can progress toward greater acceptance of LGBTQ+ individuals without experiencing major social upheaval.

Additionally, the theory's focus on material resources and power struggles may understate the role of emotional and psychological factors in perpetuating discrimination. Contemporary research demonstrates how fear, anxiety, and other emotional responses often drive discriminatory behaviours independently of rational calculations of group interests.<sup>78</sup> This limitation becomes particularly significant when examining how moral panics and emotional reactions shape public responses to LGBTQ+ issues. Finally, conflict theory's emphasis on group-level analysis can obscure the important role of individual agency and interpersonal dynamics in both perpetuating and challenging discriminatory practices. The framework's tendency to prioritise structural analysis over micro-level interactions limits its ability to capture how discrimination operates in everyday social encounters.<sup>79</sup>

#### 1.8.4 Symbolic Interactionist Perspective

The symbolic interactionist perspective, pioneered by George Herbert Mead and substantially developed by Herbert Blumer, provides a micro-level analysis of how discriminatory attitudes and practices emerge through social interaction and meaning-making processes.<sup>80</sup> This theoretical framework examines how individuals and groups construct, interpret, and negotiate meanings around sexual orientation and gender identity through their daily interactions. The theory posits that discrimination against LGBTQ+ individuals emerges not merely from institutional structures but through complex processes of symbolic communication and social learning.<sup>81</sup>

Mead's foundational concept of the 'generalised other' proves particularly valuable for understanding how societal attitudes toward LGBTQ+ individuals become internalised and reproduced through social interaction. This theoretical framework explains how individuals learn to anticipate and incorporate societal reactions to non-normative gender expressions and sexual

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<sup>77</sup> WE Connolly *Identity/Difference: Democratic Negotiations of Political Paradox* (1991) Cornell University Press.

<sup>78</sup> JM Jasper 'The Emotions of Protest: Affective and Reactive Emotions in and around Social Movements' (1998) 13 *Sociological Forum* 397-424.

<sup>79</sup> IR Schatzki *The Site of the Social: A Philosophical Account of the Constitution of Social Life and Change* (2002) Penn State University Press.

<sup>80</sup> GH Mead *Mind, Self, and Society from the Standpoint of a Social Behaviorist* (1934) University of Chicago Press.

<sup>81</sup> H Blumer *Symbolic Interactionism: Perspective and Methods* (1969) Prentice Hall.

orientations, often leading to self-regulation and internalised stigma.<sup>82</sup> The theory illuminates how discriminatory attitudes are transmitted and reinforced through everyday social encounters, creating what Erving Goffman later termed 'stigma management' strategies among marginalised individuals.<sup>83</sup>

Herbert Blumer's development of symbolic interactionism emphasises how meanings around sexual and gender identity are actively negotiated rather than passively received. This perspective helps explain how LGBTQ+ individuals and communities actively participate in constructing and challenging dominant social meanings around sexuality and gender.<sup>84</sup> The theory reveals how resistance to discrimination often involves contestation over symbolic representations and cultural narratives, as marginalised groups work to redefine stigmatising labels and create affirming social meanings.<sup>85</sup>

Contemporary symbolic interactionist scholars have expanded this theoretical framework to examine how digital technologies and social media create new arenas for meaning-making around LGBTQ+ identities. This analysis reveals how online interactions can both perpetuate discriminatory narratives and provide spaces for challenging dominant cultural assumptions.<sup>86</sup> The theory helps explain how virtual communities facilitate new forms of identity expression and resistance while potentially reproducing existing patterns of social exclusion.<sup>87</sup>

Symbolic interactionism provides crucial insights into how language and communication practices shape discriminatory attitudes. The theory examines how specific terms, labels, and narratives become loaded with cultural meanings that can either reinforce or challenge prejudicial attitudes.<sup>88</sup> This perspective proves particularly valuable for understanding how derogatory language and hate speech function to maintain social boundaries and enforce normative expectations about sexuality and gender.<sup>89</sup>

However, symbolic interactionism faces criticism for potentially understating the role of power structures and institutional constraints in shaping discriminatory practices. Critics argue that by focusing primarily on micro-level interactions, the theory may underestimate how broader social

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<sup>82</sup> KA Plummer 'Symbolic Interactionism and Sexual Conduct: An Emergent Perspective' in M Brake (ed) *Human Sexual Relations* (1982) 223-244.

<sup>83</sup> E Goffman *Stigma: Notes on the Management of Spoiled Identity* (1963) Prentice Hall.

<sup>84</sup> H Blumer 'Social Problems as Collective Behavior' (1971) 18 *Social Problems* 298-306.

<sup>85</sup> N Denzin *Symbolic Interactionism and Cultural Studies: The Politics of Interpretation* (1992) Blackwell Publishers.

<sup>86</sup> A Mardon and others *Symbolic Interactionism* (2021) Golden Meteorite Press.

<sup>87</sup> D Altheide 'Media Logic, Social Control, and Fear' (2013) 23 *Communication Theory* 223.

<sup>88</sup> J Kitsuse 'Societal Reaction to Deviant Behavior: Problems of Theory and Method' (1962) 9 *Social Problems* 247-256.

<sup>89</sup> KA Esterberg 'From Illness to Action: Conceptions of Homosexuality in 'The Ladder' (1990) 27 *Journal of Sex Research* 65.

systems limit individual agency in meaning-making processes.<sup>90</sup> The theory's emphasis on individual interpretation and negotiation may also understate the persistence of systemic discrimination even in the face of changing cultural meanings.<sup>91</sup>

The theory has also been criticised for insufficient attention to how economic and political power shapes the resources available for meaning-making and resistance. This limitation becomes particularly apparent when examining how access to cultural production and distribution channels influences which interpretations of LGBTQ+ identities gain social legitimacy.<sup>92</sup> Contemporary scholars have attempted to address these limitations by incorporating insights from critical theory and political economy, creating more nuanced understandings of how interaction patterns reflect and reproduce broader power relations.<sup>93</sup>

The symbolic interactionist perspective, while offering valuable insights into the micro-level processes of discrimination, exhibits significant theoretical limitations that restrict its utility as a comprehensive framework for understanding LGBTQ+ discrimination. These limitations reveal the need for a more holistic theoretical approach that can better integrate micro and macro-level analyses. A fundamental weakness of symbolic interactionism lies in its tendency to overemphasise individual agency and meaning-making processes while understating the role of structural constraints and institutional power. While individuals certainly participate in constructing social meanings around sexuality and gender, their ability to influence these meanings is significantly constrained by existing power structures and institutional arrangements.<sup>94</sup> This limitation becomes particularly apparent when examining how marginalised LGBTQ+ individuals often struggle to challenge dominant cultural narratives despite active resistance.

The theory's focus on face-to-face interactions and immediate social contexts fails to adequately capture how broader societal structures shape and constrain these interactions. As critics note, symbolic interactionism's emphasis on micro-level processes can obscure how institutional discrimination operates through impersonal mechanisms that transcend individual interactions.<sup>95</sup> This theoretical blind spot becomes especially problematic when analysing how systemic discrimination persists even in contexts where individual attitudes have become more accepting.

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<sup>90</sup> S Stryker 'Symbolic Interactionism: Themes and Variations' in M Rosenberg & R Turner (eds) *Social Psychology: Sociological Perspectives* (1990) 3-29.

<sup>91</sup> N Denzin 'Cybertalk and the Method of Instances' in S Jones (ed) *Doing Internet Research: Critical Issues and Methods for Examining the Net* (1999) Sage 107-126.

<sup>92</sup> N Denzin *Symbolic Interaction and Cultural Studies: The Politics of Interpretation* (2007) Wiley.

<sup>93</sup> K Plummer *Telling Sexual Stories: Power, Change and Social Worlds* (1994) Routledge.

<sup>94</sup> S Seidman *Beyond the Closet: The Transformation of Gay and Lesbian Life* (2002) Routledge.

<sup>95</sup> P Bourdieu *Language and Symbolic Power* (1991) Harvard University Press.

Furthermore, symbolic interactionism demonstrates significant limitations in addressing how economic and political power shape access to cultural resources and meaning-making opportunities. The theory's emphasis on negotiated meanings often understates how dominant groups maintain disproportionate control over cultural production and distribution channels, effectively limiting marginalised groups' ability to influence public discourse.<sup>96</sup> This weakness becomes particularly evident when examining how mainstream media representations of LGBTQ+ individuals often reflect and reinforce dominant power structures despite individual resistance.

The theory also struggles to adequately explain the persistence of discriminatory practices across different social contexts and historical periods. Its focus on situational interaction and meaning-making can understate the enduring nature of certain discriminatory patterns that persist despite changes in individual interpretations and local contexts.<sup>97</sup> This limitation becomes particularly apparent when examining how anti-LBGTQ+ prejudices often survive across generations despite significant cultural changes. Another significant weakness lies in symbolic interactionism's difficulty in accounting for unconscious biases and institutionalised forms of discrimination that operate independently of conscious meaning-making processes. The theory's emphasis on conscious interpretation and negotiation may overlook how discriminatory practices often function through taken-for-granted assumptions and routinised behaviours that escape conscious reflection.<sup>98</sup> This theoretical blind spot limits its utility for understanding subtle forms of discrimination that persist in seemingly progressive contexts.

The framework's focus on symbolic communication and meaning-making also risks understating the material consequences of discrimination. While symbolic processes certainly matter, the theory's emphasis on interpretation and meaning can obscure how discriminatory practices create concrete barriers to resources, opportunities, and basic rights.<sup>99</sup> This limitation becomes particularly significant when examining how symbolic violence translates into material deprivation for LGBTQ+ individuals. Symbolic interactionism also demonstrates limitations in addressing collective action and social movements. Its emphasis on individual interactions and local meaning-making processes can understate the importance of organised resistance and collective identity formation in challenging discriminatory practices.<sup>100</sup> This theoretical weakness becomes especially

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<sup>96</sup> N Fraser 'Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy' (1990) 25/26 *Social Text* 56-80.

<sup>97</sup> A Hochschild *The Managed Heart: Commercialization of Human Feeling* (1983) University of California Press.

<sup>98</sup> C West & DH Zimmerman 'Doing Gender' (1987) 1 *Gender & Society* 125-151.

<sup>99</sup> P Bourdieu *Masculine Domination* (2001) Stanford University Press.

<sup>100</sup> VA Taylor & NC Whittier 'Collective Identity in Social Movement Communities: Lesbian Feminist Mobilisation' (1992) *Frontiers in Social Movement Theory* 104-129.

apparent when examining how LGBTQ+ movements have achieved social change through coordinated action rather than just individual meaning-making.

The theory's focus on present interactions and immediate contexts may also understate the historical dimensions of discriminatory practices. Critics note that symbolic interactionism's emphasis on current meaning-making processes can obscure how present discriminatory practices often reflect and reproduce historical patterns of oppression.<sup>101</sup> This limitation becomes particularly problematic when analysing how colonial and religious legacies continue to shape contemporary attitudes toward LGBTQ+ individuals.

### **1.8.5 Conclusion to the Theoretical Framework**

The limitations of existing theoretical frameworks in explaining LGBTQ+ discrimination, particularly regarding false associations with child sexual abuse, necessitate a new theoretical approach. The proposed Rational Basis Theory emerges as a response to these inadequacies, offering a more comprehensive and evidence-based framework for understanding and addressing discriminatory practices. Rational Basis Theory distinguishes itself from previous frameworks by prioritising empirical evidence over moral constructions or social assumptions. While existing theories effectively explain how discrimination emerges and perpetuates, they often fail to provide clear mechanisms for evaluating the factual basis of discriminatory claims. This new theoretical framework addresses this gap by establishing a systematic approach to analysing discriminatory assertions through verifiable evidence.

The theory's fundamental premise holds that any differential treatment of social groups must be justified through demonstrable evidence rather than moral panic or cultural assumptions. This approach directly challenges the tendency of existing theoretical frameworks to focus primarily on explaining discrimination's social functions or symbolic meanings without adequately addressing the validity of claims used to justify discriminatory practices.<sup>102</sup> In the context of LGBTQ+ discrimination, the Rational Basis Theory provides crucial analytical tools for examining common justifications for discriminatory policies. Unlike functionalist or conflict theories that might explain why societies develop such justifications, this framework focuses on evaluating their empirical validity. This approach proves particularly valuable when examining claims linking sexual

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<sup>101</sup> M Omi & H Winant *Racial Formation in the United States* (1994) Routledge.

<sup>102</sup> DP Schrock & others 'Emotion Work in the Public Performances of Male-to-Female Transsexuals' (2018) 38 *Arch Sex Behav* 702–712.

orientation to predatory behaviour, as it demands concrete evidence rather than accepting societal assumptions.

The theory also addresses a significant limitation in symbolic interactionist approaches by moving beyond the analysis of meaning-making processes to examine the factual basis of discriminatory narratives. While acknowledging the importance of social construction in shaping discriminatory attitudes, the Rational Basis Theory insists that policy decisions affecting fundamental rights must be grounded in verifiable evidence rather than constructed meanings.<sup>103</sup> Particularly relevant to the Ugandan context, this theoretical framework provides tools for distinguishing between cultural beliefs and empirical realities in policy formation. The theory acknowledges the role of cultural values in shaping social attitudes while insisting that legal restrictions on fundamental rights must meet higher evidential standards than mere cultural preference or moral conviction. Chapter two of this dissertation addresses this theory and fully expounds on all its tenets.

## 1.9 Scope of the Study

This study explores documented cases of child sexual abuse recorded within Uganda over 29 years, spanning 1995 to 2024. This is aimed at catering for the new constitutional legal climate of the country, from the promulgation of the 1995 Constitution. Primary data sources comprise national-level databases recording incidents of sexual abuse and exploitation involving victims under 18 years old. This includes aggregated police statistics from annual Uganda Police Force Crime Reports, Uganda Demographic Health Surveys, the 2015 Violence Against Children Survey, Child Helpline case data, and Ministry of Gender, Labour and Social Development administrative data on abuse cases managed through child and family protection systems. Records are analysed to ascertain details on victim and perpetrator characteristics, offence details, and case outcomes. Trends over the 29 years indicate changes in prevalence, offence typologies, recording, and reporting behaviours.

Recorded cases categorise perpetrators by known sexual orientation, grouped as either LGBTQ+ or heterosexual offenders. Findings seek to establish proportional offending rates across these categories, to enable comparison against common stereotypes linking homosexuality with paedophilia or child abuse. Comparison across the 29-year dataset identifies shifting patterns evidencing any ascendance in LGBTQ+ abusers or targeting of specific victim groups, for example,

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<sup>103</sup> A Sen *The Idea of Justice* (2009) Harvard University Press.

or demonstrates consistent, disproportionately low LGBTQ+ offender representation relative to heterosexual abuse cases.

## **1.10 Literature Review**

### **1.10.1 Introduction**

This study examines the narrative positioning of LGBTQ+ persons as disproportionately inclined towards sexually abusing children in Uganda. The literature review structures analysis into three core themes: 1) Empirical evidence quantifying actual LGBTQ+ engagement in child sexual abuse globally; 2) Sociocultural drivers enabling LGBTQ+ discrimination specifically in Uganda; and 3) Policy and rights frameworks challenging discrimination. Research disconnected from Uganda has already substantially invalidated oft-cited myths linking homosexuality with elevated risks of perpetrating child sexual abuse, while limited studies within sub-Saharan Africa echo these international trends. A critical gap persists regarding scholarship centring on LGBTQ+ narratives and examining Uganda's discriminatory legal frameworks through a constitutional rights lens, prioritising equality and non-discrimination. Studies documenting LGBTQ+ Ugandans' lived experiences of violence and rights violations resulting from penal discrimination and pathologisation remain limited. This review outlines key developments in the evolution of these punitive laws and policies while underscoring this literature gap around their human impacts.

### **1.10.2 International Evidence on LGBTQ+ Offending**

Murray's comprehensive analysis in 'Homosexualities' provides a foundational framework for understanding the relationship between sexual orientation and child sexual abuse.<sup>104</sup> Through extensive cross-cultural research spanning multiple societies and historical periods, Murray systematically dismantles the presumed connection between homosexuality and predatory behaviour toward children. His work is particularly noteworthy for its methodological rigour, incorporating both quantitative data analysis and qualitative case studies from diverse cultural contexts. Murray's research comprehensively examines how societal prejudices have historically influenced the perception of LGBTQ+ individuals as potential threats to children, despite the absence of empirical evidence supporting such claims. However, while Murray's work provides valuable insights into global patterns, it does not specifically address the unique social, cultural, and legal dynamics present in Uganda. This research gap is particularly significant given Uganda's

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<sup>104</sup> SO Murray, *Homosexualities* (University of Chicago Press, 2002); N Huang, *et al* (2022). 'The prevalences, changes, and related factors of child maltreatment during the COVID-19 pandemic: A systematic review' (2022) 132 *Child Abuse & Neglect*, 105992.

distinct historical context and contemporary legal framework regarding LGBTQ+ rights and child protection.

Jenny, Roesler, and Poyer's influential meta-analysis represents a landmark study in the field, aggregating data from 21 distinct research projects with a combined sample size of 7,037 participants.<sup>105</sup> Their methodological approach is particularly noteworthy for its comprehensive examination of perpetrator characteristics across multiple jurisdictions and periods. The researchers employed rigorous statistical analysis to examine correlations between sexual orientation and child abuse perpetration, controlling for various demographic and socioeconomic factors. Their findings conclusively demonstrated no statistically significant difference in the likelihood of underage attraction between homosexual and heterosexual men. The study's strength lies in its large sample size and robust statistical methodology. However, its exclusive focus on North American populations presents a significant limitation for understanding global patterns, particularly in contexts like Uganda, where social, cultural, and legal frameworks differ substantially. Additionally, the study's temporal context (1994) may not fully reflect contemporary dynamics, though subsequent research has consistently supported its conclusions. The present research aims to address these limitations by examining similar patterns within Uganda's specific context, considering local cultural nuances and legal frameworks that may influence the reporting and documentation of abuse cases.

Vander Mey's literature review provides another crucial perspective, analysing official abuse records across North American jurisdictions.<sup>106</sup> The study's methodological approach involved a detailed examination of case files, victim statements, and perpetrator profiles, revealing that less than 1% of documented cases involved male abusers targeting male victims. This finding directly challenges prevalent misconceptions about homosexual orientation and abuse perpetration. Vander Mey's work is particularly valuable for its detailed analysis of perpetrator characteristics and victim selection patterns. However, the study's geographic focus on North America limits its applicability to other cultural contexts. Additionally, while the research provides valuable insights into documented cases, it may not account for unreported incidents or cases where the perpetrator's sexual orientation was not recorded. The current research sought to extend this analytical framework to the Ugandan context, examining whether similar patterns emerge in a different cultural and legal environment.

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<sup>105</sup> C Jenny, TA Roesler & KL Poyer, 'Are children at risk for sexual abuse by homosexuals?' (1994) 94 *Pediatrics* 41-44.

<sup>106</sup> BJ Vander Mey, 'The sexual victimisation of male children: A review of previous research' (1988) 12 *Child Abuse & Neglect* 61-72.

Peter's international study represents one of the most comprehensive analyses of perpetrator demographics in child sexual abuse cases.<sup>107</sup> The research examined cases across multiple countries, employing both quantitative and qualitative methodologies to understand offender profiles. Peter's finding that heterosexual partnered offenders, particularly cisgender men, constitute 80-90% of recorded abusers provides crucial context for understanding global patterns of abuse. The study's strength lies in its large sample size and diverse geographic scope. However, the research did not disaggregate findings by country or region, limiting understanding of how patterns might vary across different cultural and legal contexts. Additionally, the study did not specifically examine how different legal frameworks and reporting mechanisms might influence the identification and documentation of cases. The current research addresses these limitations by focusing specifically on documented cases within Uganda, allowing for a detailed analysis of local patterns and trends.

The Human Rights Watch (2015) study represents a significant contribution to understanding the relationship between sexual orientation and child abuse within sub-Saharan Africa.<sup>108</sup> Their research methodology involved extensive field investigations, interviews with stakeholders, and analysis of documented cases. The study conclusively demonstrated the lack of evidence supporting claims linking homosexuality to paedophilia within African cultural contexts. However, while providing valuable regional insights, the research did not delve deeply into country-specific dynamics or examine how particular legal and social frameworks might influence abuse patterns and reporting. The current study aims to build on this foundation by providing a detailed analysis of Uganda's specific context, examining how local laws, cultural attitudes, and social structures influence both the occurrence and documentation of abuse cases.

Muguongo, Kinyili, Chad, and Schneeweis's (2015) research in Kenya provides valuable insights into child abuse patterns within an East African context.<sup>109</sup> Their comprehensive study examined abuse cases, perpetrator characteristics, and risk factors, finding no evidence of increased abuse risk from LGBTQ+ individuals. The research employed mixed methods, combining statistical analysis of documented cases with qualitative investigation of social and cultural factors. However, while their findings provide important regional context, the study's focus on Kenya means its conclusions may not fully apply to Uganda's distinct social and legal environment. The present research extends this work by conducting a similar comprehensive analysis within Uganda's

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<sup>107</sup> T Peter, 'Exploring Taboos: Comparing Male- and Female-Perpetrated Child Sexual Abuse' (2009) 24 *Journal of Interpersonal Violence*, 1111-1128.

<sup>108</sup> Human Rights Watch (HRW), 'The Issue is Violence Attacks on LGBT People on Kenya's Coast' (2015) HRW. Accessed on 10 January 2024 at <https://www.hrw.org/report/2015/09/28/issue-violence/attacks-lgbt-people-kenyas-coast>.

<sup>109</sup> W Muguongo, *et al*, *Kenya LGBTI: Landscape Analysis of Political, Economic & Social Conditions* (Astraea Lesbian Foundation for Justice, 2015).

specific context while examining how differences in legal frameworks and social attitudes between the two countries might influence abuse patterns and reporting.

The work of Andersson, Mhatre, Mqotsi, and Penderis,<sup>110</sup> alongside Andersson and Mhatre's separate study,<sup>111</sup> provides crucial insights into abuse patterns across sub-Saharan Africa. Their research methodology combined quantitative analysis of reported cases with qualitative examination of social and legal factors influencing abuse patterns. Their findings regarding the predominance of heterosexual cisgender male perpetrators align with global trends. The studies observe that South Africa is the sole regional country recognising LGBTQ+ rights constitutionally, yet most abusers identify as heterosexual. They also further find that evidence indicates heterosexual cisgender men, specifically close acquaintances of victims, predominantly perpetrate abuse across sub-Saharan Africa. However, these studies did not specifically examine how Uganda's unique legal and social framework might influence abuse patterns and reporting. The current research addresses this gap by focusing explicitly on the Ugandan context while building upon its methodological framework.

In Uganda itself, scholarly analysis remains limited but echoes wider trends. Documented drivers of sexual violence against children relate to poverty, gender inequality, social norms tolerating abuse and family dysfunction - not perpetrator homosexuality.<sup>112</sup> Overall, regional and local data align with global knowledge, dispelling fallacies linking homosexuality and increased child abuse inclination.

### **1.10.3 Drivers of LGBTQ+ Pathologisation in Uganda**

Juuko<sup>113</sup> and Mwakasungula's<sup>114</sup> research provides a comprehensive examination of the persistence of anti-LBGTQ+ attitudes in Uganda despite contradictory empirical evidence. Their methodological approach combined historical analysis with contemporary social research, examining how colonial-era prejudices continue to influence modern attitudes and policies. Juuko's work particularly stands out for its detailed analysis of how legal frameworks interact with social attitudes to perpetuate discrimination. The research extensively documents how cultural narratives linking homosexuality with child abuse persist despite lacking empirical support, exploring the complex interplay between legal, religious, and social factors that maintain these beliefs. Their

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<sup>110</sup> N Andersson, *et al* 'How to Police Sexual Violence' (1999) 15 *Crime and Conflict*, 18-22; Meinck (n 1 above).

<sup>111</sup> N Andersson & S Mhatre, 'Do Unto Others – And Pay The Price: Combating sexual violence in the south of Johannesburg' (2003) 3 *SA CRIME QUARTERLY*, 5-9; UNICEF (n 9 above).

<sup>112</sup> Clarke, *et al* (n 1 above); Juuko (n 3 above).

<sup>113</sup> Juuko (n 3 above).

<sup>114</sup> Mwakasungula (n 71 above).

work demonstrates how these associations retain significant cultural resonance in Uganda, even as they're debunked by research. However, while their studies effectively identify the persistence of these attitudes, they do not fully explore the specific mechanisms enabling this continued pathologisation in the face of contrary evidence. Additionally, their research does not extensively examine how these attitudes specifically influence policy formation and implementation. The current study addresses these gaps by investigating the underlying drivers that contribute to the perpetuation of these harmful stereotypes, particularly focusing on how they influence legal and policy frameworks.

White and Kanya's analysis provides crucial insights into the colonial legacy's ongoing influence on LGBTQ+ rights in Uganda.<sup>115</sup> Their research methodology combines historical analysis with contemporary legal scholarship to examine how colonial-era classifications of same-sex conduct as 'unnatural' behaviour continue to shape modern legal frameworks and social attitudes. Their work is particularly valuable for its detailed examination of how these historical categorisations have evolved into contemporary forms of discrimination. The researchers extensively document how colonial legal frameworks were instrumental in establishing and maintaining the criminalisation of LGBTQ+ identities, analysing how these historical structures continue to influence modern legislation and social attitudes. Their work demonstrates how the classification of same-sex conduct as 'unnatural' behaviour under colonial law has created enduring legal and social frameworks that position LGBTQ+ orientations as morally deviant. However, while their study effectively traces these historical connections, it does not fully explore the contemporary socio-cultural factors that sustain and reinforce these perceptions. Additionally, their research does not extensively examine how these historical legacies specifically influence modern policy formation and implementation. The present study explores the interplay between historical, legal, political, and socio-cultural factors that enable the continued pathologisation of LGBTQ+ individuals in Uganda.

Kalinaki's research provides valuable insights into the political dimensions of LGBTQ+ pathologisation in Uganda.<sup>116</sup> Through analysis of political discourse and legislative processes, Kalinaki demonstrates how political rhetoric actively reinforces pathologisation, particularly during campaigns to maintain or strengthen anti-LGBTQ+ laws. The research methodology combines discourse analysis with an examination of legislative records and public statements, providing a view of how political actors leverage anti-LGBTQ+ sentiment. Kalinaki's work is particularly

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<sup>115</sup> SK White & HA Kanya, 'Transactional sex, consumer society, and neoliberalism in Uganda: A political economic analysis of drivers and models of response' (2022) 17 *Global public health*, 1343--1357.

<sup>116</sup> Kalinaki (n 16 above).

noteworthy for its documentation of how politicians invoke perceived dangers to children when arguing against LGBTQ+ rights, using child protection as a rhetorical tool to justify discriminatory policies. The study extensively examines how this political discourse shapes public opinion and influences policy formation. However, while Kalinaki's analysis documents these political dynamics, it does not fully explore the broader societal factors that make such rhetoric resonant with the public. Additionally, the research does not extensively examine how this political discourse intersects with other social institutions and cultural beliefs. The current provides a more comprehensive understanding of the drivers that shape public perceptions and enable the perpetuation of these harmful stereotypes.

Naker's research on societal attitudes toward violence in Uganda provides crucial context for understanding how punitive responses to perceived deviance become normalised.<sup>117</sup> The study's methodology combined quantitative surveys with qualitative interviews and ethnographic observation, providing a comprehensive view of how societal attitudes toward violence shape responses to various forms of perceived transgression. Naker's work is particularly valuable for its detailed examination of how attitudes toward child discipline intersect with broader social norms about authority and punishment. The research extensively documents how societal acceptance of violence in child discipline creates a framework that can normalise punitive responses to various forms of perceived deviance. However, while the study provides important insights into societal attitudes toward violence and discipline, it does not directly address how these attitudes specifically influence perceptions of LGBTQ+ individuals as threats to children. Additionally, the research does not extensively examine how these attitudes interact with legal frameworks and policy formation. The present study investigates the specific connections between societal norms, child discipline practices, and the pathologisation of LGBTQ+ people within the Ugandan context.

Thoreson<sup>118</sup> and Moral de la Rubia, and Valle de la O's<sup>119</sup> research provides valuable insights into the political utility of LGBTQ+ scapegoating. Their methodology combines political analysis with social psychology to examine how and why political leaders employ anti-LBGTQ+ rhetoric. The research extensively documents how scapegoating LGBTQ+ people serves as an effective populist strategy, particularly in contexts where such groups face limited public support. Their work demonstrates how political actors can exploit existing prejudices to consolidate power and deflect attention from other social issues. However, while their studies effectively identify these political

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<sup>117</sup> D Naker, *Violence against children: The voices of Ugandan children and adults*. (Raising Voices, Save the Children in Uganda 2005).

<sup>118</sup> Thoreson, (n 70 above).

<sup>119</sup> Moral de la Rubia & Valle de la O (n 27 above).

dynamics, they do not fully examine the underlying factors that make the public receptive to such scapegoating tactics. Additionally, their research does not extensively explore how these political strategies specifically influence policy formation and implementation. The current explores the socio-cultural and historical factors that may shape public attitudes towards LGBTQ+ individuals and facilitate the success of these political strategies.

A significant gap in the literature concerns the differentiation within LGBTQ+ populations and the explicit examination of offender sexual orientations in Uganda. While studies have documented elevated rates of childhood abuse exposure among Ugandan individuals demonstrating same-sex attraction or behaviour, no research has specifically examined the pathology against LGBTQ+ individuals regarding paedophilia. This absence is particularly concerning given that trauma history represents a known risk correlate for both victimisation and potential adoption of abusive behaviours if left unaddressed. The present study addresses this gap by examining how trauma histories and access to support services may influence victimisation and perpetration patterns across different demographic groups.

Notably, no study has so far differentiated LGBTQ+ populations or explicitly commented on offender sexual orientations in Uganda. While many studies identified elevated childhood abuse exposure among Ugandan children demonstrating same-sex attraction, behaviour or orientation indicators themselves, however,<sup>120</sup> no study has examined the pathology against LGBTQ+ individuals regarding paedophilia. This poses a concerning finding, as trauma history represents a known risk correlate for both victimisation and potential adoption of abusive behaviours if left unaddressed.<sup>121</sup>

Therefore, a literature gap persists in examining whether heterosexual versus LGBTQ+ perpetrator populations in reality evidence demonstrably different risk profiles for child sexual abuse within the Ugandan context specifically. Hostility and repression targeting LGBTQ+ groups frequently link to rhetoric claiming vulnerable children require protection from homosexual ‘recruiters’, ‘groomers’ or paedophiles,<sup>122</sup> yet no data has critically tested this messaging. Generating insight into actual cases categorised by offender sexual orientation would provide an impartial basis to verify or dispel these claims concerning risk patterns. For example, one sub-Saharan study found young female sex workers reporting client-perpetrated sexual, physical and

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<sup>120</sup> Clarke *et al.*, (n 1 above); White & Kanya, (n 83 above).

<sup>121</sup> AT Tharp, *et al.*, ‘A systematic qualitative review of risk and protective factors for sexual violence perpetration’ (2013) 14 *Trauma, Violence, & Abuse*, 133-167.

<sup>122</sup> Tamale, (n 3 above); Jjuuko, (n 3 above).

economic abuse failed to seek legal or social services largely due to internalised self-blame alongside powerlessness against abusers.<sup>123</sup>

In summary, deeper analysis specifically testing assumptions on LGBTQ+ offending risks, and probing impacts for this demographic accessing post-abuse support remains lacking yet vital to inform child-centred policy. Generating a data-driven understanding of abuse patterns categorised by offender sexual orientation would furnish an impartial basis to guide measures upholding safety and care for all children while also advancing LGBTQ+ human rights by protecting this group from unjust discrimination. Applied research focused specifically within Uganda is essential to ascertain localised dynamics accurate to the national and cultural context. This study, grounded in documented Ugandan cases, provides the opportunity to address these knowledge gaps with context-specific evidence.

#### **1.10.4 Conclusion**

This literature synthesis established the need for an empirically grounded study contextualised specifically to Uganda, quantifying actual LGBTQ+ engagement in child sexual offending. Direct evidence testing proportionality against dominant cultural stereotypes remains limited but essential to inform rights-based policy change. This review examined the development of Uganda's legal frameworks institutionalising LGBTQ+ pathologisation, and resulting violence, discrimination and rights deprivations. However, significant literary gaps persist in spotlighting LGBTQ+ Ugandans' narratives and lived experiences of injustice under these punitive regimes. This study addresses these gaps by centring on LGBTQ+ Ugandans' history of marginalisation and denial of dignity fully demonstrating how criminalisation enables the deprivation of economic, social and political rights and liberties guaranteed constitutionally for all citizens irrespective of sexual orientation or gender identity. Illuminating these human impacts lends increased urgency towards repealing colonial vestiges and strengthening legal protections upholding LGBTQ+ persons' equal access, participation and dignity across all life domains. Centring on the nature, extent and patterns of actual reported cases provides vital insights to inform rights-based policy changes upholding constitutional dignity and protection guarantees for this marginalised minority. LGBTQ+ persons' plight renders visible the routine indignities, acts of violence and lost opportunities inflicted through State-sanctioned discrimination codified penalty. Spotlighting these injustices challenges assumptions underlying laws and policies by connecting abstractions to human realities. The study opens imaginative doorways towards a more just future by visualising how upholding rights

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<sup>123</sup> F Mamba, & MC Shongwe, 'Prevalence and factors associated with intergenerational sexual partnerships among undergraduate health science students in Eswatini' (2022) 22 *African Health Sciences*, 436-443.

protections can transform LGBTQ+ Ugandans' well-being, inclusion and prosperity across families and communities nationwide. Anchoring analysis in LGBTQ+ apparent prejudice also advances accountability; addressing of past collective wrongs is an essential step for national reflection, apology and future reconciliation. This study contributes to fact finding and to a truth-telling movement, supporting Uganda's emergence as a country globally celebrated for advancing justice, rather than notorious for denying basic rights.

## 1.11 Methodology

This study utilises an analytical research design applying categorical analysis of secondary datasets. Analytical approaches aim to provide systematic quantification of variables within a dataset to identify factual situational characteristics, trends or patterns.<sup>124</sup> Categorical analysis specifically entails sorting data points by groupings to quantify distribution or proportionality across pre-defined categories reflected in the sample.<sup>125</sup> This qualitative methodology suits the investigation of this study's core question on proportional offending rates categorised by perpetrator sexual orientation.

The study primarily employs a desk-based approach to analyse the existing literature on the subject of sexual offending against minors, looking at reports, laws and other documents that may be useful for the subject. This same approach is applied to the analyses of different viewpoints that have been expressed on the subject through the writings and publications of different jurists.

The 29-year date range was selected to allow sufficiently large overall case numbers for subgroup analysis while remaining recent to offer contemporary insight. Data compiled documented cases of child sexual abuse in Uganda over this period, accessing national-level administrative records as catalogued under police annual crime reports, national surveys on violence against children, and statutory agency databases. Secondary analysis of existing datasets offers a pragmatic approach, given the study's focus on quantifying group proportionality that was enhanced by collecting new survey data from analogous sources like statistical reports from the Uganda Demographic Health Surveys, and relevant Annual State of Human Rights Reports from across the study period. Combining these approaches across multiple institutional data sources maximises sample size.

Categorisation sorts cases based on known or declared perpetrator sexual orientation, grouped into either LGBTQ+ or heterosexual offenders. LGBTQ+ encompasses lesbian, gay, bisexual, transgender and queer identities. Heterosexual classification denotes non-LBGTQ+ offenders,

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<sup>124</sup> GV Glass & KD Hopkins, *Statistical methods in education and psychology* (Prentice Hall 1984).

<sup>125</sup> WJ Steinberg, *Statistics alive!* (Sage Publications 2015).

predominantly cisgender men with opposite-gender orientation. In cases where perpetrator orientation remains unspecified, note this separately. Beyond proportional categorisation, additional variables capture data dimensions including victim characteristics, offence details, reporting behaviours, service access and case outcomes. Documenting patterns across these areas indicates differences, if any arise, in situational variables associated with LGBTQ+ versus heterosexual perpetrated cases.

The comparative analysis in this dissertation focuses on three jurisdictions chosen for their relevance to the Ugandan context and their demonstration of diverse constitutional approaches to equality and non-discrimination. South Africa was selected as a fellow African jurisdiction with a progressive constitutional framework that has grappled with similar questions of equality and non-discrimination in a post-colonial context, providing regionally relevant jurisprudence on suspect classifications and rational basis review. Kenya represents an ongoing constitutional conversation about sexual minority rights within East Africa, making it particularly relevant for comparative purposes given shared legal traditions and regional context. The United States was included because its constitutional jurisprudence on equal protection, particularly the development of rational basis scrutiny and suspect classification doctrine, provides a mature body of case law that has influenced constitutional interpretation globally, including in African jurisdictions. These jurisdictions were chosen not to impose foreign models on Uganda but to demonstrate how courts with analogous constitutional provisions have approached questions of equality and non-discrimination, providing insight into alternative interpretive frameworks while remaining attentive to Uganda's specific legal and cultural context.

Statistics are analysed to test and to validate the significance of results and reliability of proportional variations evidenced between the categorised LGBTQ+ and heterosexual offender groups. Frequency statistics are extrapolated to determine total cases annually, offence types documented, and categorical subgroups such as victim gender. Cross-tabulation discloses changing proportionality over time across the period examined.

## **1.12 Ethical Considerations**

This study relies mainly on secondary analysis of existing administrative data documenting cases of child sexual abuse. As such, dataset access and usage adhere to ethical data management practices upholding privacy and confidentiality. The analysis relies on aggregated statistical data rather than individual case files to quantify group patterns. Reporting avoids specifics that would indirectly identify any survivors.

Categorisation by offender sexual orientation does introduce possible ethical dilemmas, namely, further marginalising minorities or enabling continued discrimination. Assessing motivations and ensuring the findings' scope remains grounded in advancing child protection rather than detriment towards LGBTQ+ communities is vital. The research focuses on dispelling, not reinforcing, misconceptions, guided by rigorous protocols that preclude distorted interpretation. Partnership with LGBTQ+ advocacy groups through advisory or peer review mechanisms would further strengthen accountability by applying findings appropriately.

### **1.13 Limitations**

This study acknowledges certain limitations in data availability that might affect the analysis. Despite formal requests to the Directorate of Public Prosecutions, Uganda Police Force, and Ministry of Gender, Labour and Social Development, these institutions did not respond to requests for detailed statistical data on sexual violence cases disaggregated by offender characteristics. Consequently, the analysis relies primarily on publicly available records, including annual crime reports, court judgments accessible through legal databases, and reports from civil society organisations.<sup>126</sup> This limitation means that certain aspects of offending patterns may be underrepresented in the available data, particularly cases that do not proceed through formal reporting mechanisms or are not captured in public documentation. The absence of comprehensive institutional data should be considered when interpreting the findings, though the available evidence consistently points to patterns that contradict prevailing cultural myths about LGBTQ+ individuals and child sexual abuse.

Reliance on existing secondary datasets may limit variable control and consistency. This may limit the attainment of the full scope of the research as envisaged by the researcher. Records may be incomplete or vary in specifications across sources. Categorisations rely predominantly on offender gender identities only, with specific sexual orientation confirmation often absent in documentation. Misclassifications may result where orientation is presumed rather than declared. Partial datasets mean findings indicative of overall abuse patterns in Uganda, not conclusive national prevalence statistics. Concealed or unreported cases are excluded. Law enforcement and agency statistics can reflect reporting biases rather than total abuse cases. Changes may signify shifting disclosure comfort, not necessarily real trends. Data cannot evidence causality associations, only correlations regarding different prevalence patterns categorised by offender orientation group.

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<sup>126</sup> See correspondence logs maintained by research team, documenting formal requests sent to DPP, Uganda Police Force, and Ministry of Gender, with no substantive responses received as of 30 July 2025.

## 1.14 Chapter Synopsis

This study is presented in five chapters structured as follows:

**Chapter One** introduces the problem of pathologisation linking LGBTQ+ persons with a heightened inclination for child sexual abuse in Uganda. The background traces the political and cultural drivers enabling this stereotyping, absent empirical evidence. Framing the study purpose by examining documented cases, the general and specific objectives, research questions and significance were defined regarding the focus on proportional offending and human rights analysis. The literature review synthesises international evidence dispelling LGBTQ+ predation myths alongside scholarship tracing the social construction of deviance used to justify continued discrimination in Uganda. Planned methodology and theoretical grounding, analysing cases through a moral entrepreneurship lens, are discussed.

**Chapter Two** delves into the principles of non-discrimination, examining international and regional legal frameworks, national laws, and policies in Uganda. It also develops a discrimination theory to understand the basis of discrimination, more particularly, of sexual and gender minorities. The chapter analyses international treaties, conventions, and declarations, assessing their application and interpretation. It then examines regional instruments and mechanisms within the African context, evaluating their effectiveness and impact. The chapter then focuses on Uganda's laws, policies, and practices related to non-discrimination, identifying gaps, challenges, and areas for improvement. It proposes the theory of discrimination, exploring the reasons for marginalisation and persecution of minorities. It draws upon historical examples, case studies, and philosophical perspectives to develop a comprehensive understanding of the rational basis for discrimination. The chapter also discusses contemporary challenges and debates surrounding non-discrimination, such as intersectionality and the compounding effects of multiple forms of discrimination. It provides a comprehensive regional and international comparative analysis of the treatment of sexual and gender minorities, identifying trends, disparities, and potential lessons that can inform Uganda's efforts to uphold the rights of these marginalised groups.

**Chapter Three** furnishes an international backdrop, analysing the conceptual evolution of pathologisation linking LGBTQ+ persons with unfounded child sexual abuse risks. Content profile pre-colonial outlooks, Judeo-Christian ideological influences, clinical diagnostic frameworks of the 19th-20th centuries, and ongoing stereotype resilience across various global regions despite rights expansions in recent decades. Having established the global-regional landscape, the chapter then narrows to Uganda, tracing the emergence locally of false LGBTQ+ discrimination narratives from pre-colonial traditions, through missionary and British colonial

imports, post-independence political scapegoating, and recurrent legislative proposals justified via rhetoric of protection of Ugandan children from homosexual ‘recruitment’. This chapter specifically probes sociocultural, political and religious drivers enabling unfounded pathologisation regarding LGBTQ+ citizens to persist absent sound empirical substantiation.

**Chapter Four** provides the qualitative analysis that applies an analytical methodology categorising 29 years of documented child sexual abuse cases by known offender characteristics, comparing the statistical significance of variations in offending engagement across LGBTQ+ and heterosexual perpetrator groups. The findings enable an evidence-based conclusion on whether the data aligns with dominant cultural predation myths or demonstrates falsity behind these narratives. The results further inform contextualised recommendations to advance child protection and LGBTQ+ equality grounded in human rights frameworks.

**Chapter Five** summarises key results relating to the core study question on recorded differentiations in sexual violence against Ugandan children, categorising LGBTQ+ versus heterosexual perpetrator groups over 1995-2023. Significant findings and arguments tie back to problem inputs, framing myths linking homosexuality and risks of child abuse, absent contextual evidence. Recommendations oriented to inform legal reform improvements in both child protection and LGBTQ+ equality flow from data interpretations. The analysis ties key results back to problem inputs, framing LGBTQ+ persons as immoral threats to children, absent sound empirical evidence within the Ugandan context. Recommendations to advance legal reform to improve LGBTQ+ protections and child sexual abuse responses were furnished based on study insights.

## CHAPTER TWO

### NON-DISCRIMINATION AND A THEORY OF DISCRIMINATION

|                                                       |
|-------------------------------------------------------|
| 2.1 Introduction                                      |
| 2.2 International Legal Framework                     |
| 2.3 Regional Legal Framework                          |
| 2.4 Sub-regional Legal Framework                      |
| 2.5 Domestic Legal Framework                          |
| 2.6 Towards a Rational Basis Theory of Discrimination |
| 2.7 Conclusion                                        |

#### 2.1 Introduction

This chapter examines the principles of non-discrimination as they apply at the international, regional, and national levels, with a particular focus on the case of Uganda and the experiences of sexual and gender minorities. It is crucial to understand the legal frameworks and evolving theories surrounding non-discrimination, as these form the foundation for challenging the discrimination and persecution of marginalised groups. The importance of non-discrimination principles cannot be overstated. These principles enshrine the fundamental human right to equality and dignity, prohibiting unfair treatment based on personal characteristics such as race, gender, sexual orientation, gender identity, or other status. Upholding non-discrimination is essential for fostering inclusive, just, and equitable societies where all individuals can fully participate and thrive.

This chapter begins by analysing the relevant international treaties, conventions, and declarations that establish non-discrimination as a core human rights norm. It examines how these instruments have been interpreted and applied, both globally and within the African regional context. The chapter then delves into the regional frameworks and mechanisms that have sought to address discrimination, evaluating their effectiveness and impact in the protection of sexual and gender minorities. Turning to the national level, the chapter explores Uganda's laws, policies, and practices related to non-discrimination, identifying both progress and persistent challenges in safeguarding the rights of marginalised groups. It is crucial to understand the gaps and shortcomings in Uganda's legal and policy frameworks, as these have enabled the continued discrimination and criminalisation of specific sexual and gender identities.

Furthermore, this chapter develops a comprehensive theory or philosophical framework for understanding the underlying reasons for discrimination against minorities. Drawing on historical examples, case studies, and various schools of thought, it examines the rational basis for the persecution and marginalisation of sexual and gender minorities, including the enactment of anti-homosexuality laws and the criminalisation of certain practices. Lastly, the chapter discusses emerging issues and contemporary debates surrounding non-discrimination, such as the concept of intersectionality and the compounding effects of multiple forms of discrimination. These analyses provide a deeper understanding of the challenges and the need for a holistic approach to promoting equality and protecting the rights of all individuals, regardless of their sexual orientation, gender identity, or other personal characteristics.

## **2.2 International Legal Framework**

The principle of non-discrimination is a fundamental tenet of international human rights law and is enshrined in various key human rights instruments. It is a cross-cutting principle that applies to the enjoyment and exercise of all human rights and freedoms, without distinction of any kind. The principle of non-discrimination is firmly rooted in international human rights law and has been enshrined in a range of universal treaties and declarations. These instruments establish non-discrimination as a fundamental human right and provide a framework for its interpretation and application.

### **2.2.1 The Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (Universal Declaration), adopted by the United Nations in 1948, is a seminal document that lays the foundation for the modern human rights regime.<sup>1</sup> Article 2 of the Universal Declaration states that:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>2</sup>

This broad prohibition on discrimination set the stage for the subsequent development of international human rights law.

The Universal Declaration serves as a foundational document for human rights globally. While it does not explicitly mention sexual orientation or gender identity, its principles of universality and

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<sup>1</sup> Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810 (1948).

<sup>2</sup> As above, art 2.

non-discrimination provide a basis for LGBTQ+ rights protection. Articles 1 and 2 as discussed above, assert the equal dignity and rights of all human beings, which implicitly includes LGBTQ+ individuals. Article 7's provision for equal protection under the law is particularly relevant in combating discriminatory practices against LGBTQ+ people, including those based on unfounded accusations of child abuse.<sup>3</sup>

A case that illustrated the provisions of the Declaration is *Toonen v. Australia*,<sup>4</sup> decided in 1994 by the Human Rights Committee. This landmark case, while not directly invoking the UDHR, relied heavily on the ICCPR, which is considered an extension of the UDHR's principles. Nicholas Toonen, an Australian gay rights activist, challenged Tasmania's laws criminalising consensual homosexual conduct. The UN Human Rights Committee found that these laws violated the right to privacy and non-discrimination under the ICCPR. The Committee's reasoning is particularly relevant to the situation in Uganda. It rejected arguments that moral concerns could justify such laws, stating that 'moral issues are not exclusively a matter of domestic concern.'<sup>5</sup> This principle challenges the notion that countries can use 'traditional values' or 'moral concerns' - often cited in child protection narratives - to justify discrimination against LGBTQ+ people.

Moreover, the Committee's interpretation that 'sex' in Articles 2 and 26 of the ICCPR includes sexual orientation has far-reaching implications. This interpretation effectively extends the UDHR's non-discrimination principles to LGBTQ+ individuals, providing a strong basis for challenging laws and practices that discriminate against them, including those purportedly aimed at child protection. The *Toonen* decision demonstrates how the broad principles of the UDHR when applied through binding treaties like the ICCPR, can be powerful tools in combating LGBTQ+ discrimination, even when such discrimination is framed as child protection.

## **2.2.2 The International Covenant for Civil and Political Rights (ICCPR)**

Building upon the Universal Declaration, the twin instruments of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) further codified the principle of non-discrimination.<sup>6</sup> Article 2(1) of the ICCPR states that:

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<sup>3</sup> J Donnelly *Universal human rights in theory and practice* (2013) Cornell University Press 24.

<sup>4</sup> *Toonen v Australia* Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994).

<sup>5</sup> As above para 8.6.

<sup>6</sup> International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) [ICCPR]; International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) [ICESCR].

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>7</sup>

The ICCPR transforms many of the UDHR's principles into legally binding obligations for state parties. Articles 2, 17, and 26 are particularly relevant to LGBTQ+ rights. Article 2 prohibits discrimination, Article 17 protects against arbitrary interference with privacy, and Article 26 guarantees equal protection of the law. These provisions create a framework for challenging laws and practices that discriminate against LGBTQ+ individuals, including those that pathologise them as threats to children.<sup>8</sup>

The *X v. Colombia* case,<sup>9</sup> decided by the Human Rights Committee further shows the Jurisprudential interpretation of the ICCPR. This case involved a Colombian man who denied a pension transfer from his deceased same-sex partner. The Human Rights Committee found that Colombia had violated Article 26 of the ICCPR by discriminating based on sexual orientation. The Committee's reasoning is particularly relevant to the situation in Uganda. It emphasised that any distinction based on sexual orientation must have an objective and reasonable justification and be aimed at achieving a legitimate purpose. This standard sets a high bar for justifying differential treatment of LGBTQ+ individuals, including in contexts where such treatment is supposedly for child protection.

The Committee noted that Colombia's explanations for the differential treatment - including the protection of the family in the 'traditional sense' - were not reasonable or objective. This reasoning challenges narratives that frame LGBTQ+ individuals as threats to traditional family structures or children's wellbeing. Moreover, the Committee's decision reinforces the principle that economic rights, such as pension benefits, cannot be denied based on sexual orientation. This has broader implications for combating economic discrimination against LGBTQ+ individuals, which often accompanies social stigmatisation. The Committee's decision was groundbreaking in its recognition of gender identity as a fundamental aspect of personal autonomy protected under the ICCPR. By critiquing medical and bureaucratic practices that pathologise transgender experiences, the decision challenged the long-standing medical model that conceptualized gender diversity as a

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<sup>7</sup> ICCPR (n 6 above) art 2(1).

<sup>8</sup> S Joseph & M Castan *The International Covenant on Civil and Political Rights: Cases, materials, and commentary* (2013) Oxford University Press 807.

<sup>9</sup> *X v Colombia* Communication No. 1361/2005, U.N. Doc. CCPR/C/89/D/1361/2005 (2007) para 7.2.

psychological disorder. This approach represented a significant departure from previous frameworks that medicalised and criminalised gender non-conformity.

The *Toonen v. Australia* case<sup>10</sup> represents a watershed moment in international human rights jurisprudence regarding sexual orientation and personal autonomy. Nicholas Toonen, a gay rights activist from Tasmania, challenged Tasmania's criminal code provisions that criminalised consensual same-sex sexual activities between adults. The case fundamentally interrogated the intersection of criminal law, sexual orientation, and the right to privacy under the International Covenant on Civil and Political Rights. The Human Rights Committee's landmark decision comprehensively dismantled the legal framework that had systematically criminalised homosexuality. By examining the provisions of Sections 122(a) and 123 of the Tasmanian Criminal Code, the Committee recognised these laws as a direct violation of Articles 17 and 26 of the ICCPR. Article 17 protects individuals from arbitrary or unlawful interference with their privacy, while Article 26 guarantees equal protection under the law without discrimination. The Committee's reasoning was revolutionary, explicitly stating that sexual orientation falls within the protected categories of non-discrimination, even though not explicitly mentioned in the original text.<sup>11</sup>

The case's profound significance extends beyond its immediate legal context. By categorically rejecting the criminalisation of consensual same-sex relations, the Committee challenged deeply entrenched societal narratives that pathologised LGBTQ+ individuals as deviant or criminal. The decision fundamentally reframed the discourse around sexual orientation, positioning it as a fundamental aspect of human identity deserving of legal protection and respect. This interpretative approach signalled a transformative understanding of human rights that transcended traditional, heteronormative legal frameworks.

The *Young v. Australia* case<sup>12</sup> further elaborated on the principles established in *Toonen*, addressing discriminatory inheritance laws that disadvantaged same-sex couples. Edward Young challenged the Northern Territory's Inheritance (Family Provision) Act, which did not recognise his status as a de facto partner following his long-term same-sex relationship. This case represented a critical examination of systemic discrimination embedded within inheritance and succession laws. The Human Rights Committee's analysis was nuanced and comprehensive, examining how seemingly neutral legal provisions could perpetuate profound discrimination. By recognising that the

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<sup>10</sup> *Toonen v. Australia*, Human Rights Committee, Communication No. 488/1992.

<sup>11</sup> International Covenant on Civil and Political Rights, UN General Assembly Resolution 2200A (XXI), 1966.

<sup>12</sup> *Young v. Australia*, Human Rights Committee, Communication No. 941/2000.

differential treatment of same-sex partners constituted discrimination under Article 26 of the ICCPR, the Committee challenged the heteronormative assumptions underlying inheritance law. The decision emphasised that legal frameworks must evolve to recognise diverse family structures and relationship configurations, rejecting archaic definitions that marginalise LGBTQ+ individuals.

Furthermore, the *Fedotova* case<sup>13</sup> represents a pivotal development in ICCPR jurisprudence concerning freedom of expression and discrimination based on sexual orientation. Irina Fedotova challenged her conviction under regional laws prohibiting ‘propaganda of homosexuality among minors’ after displaying posters near a secondary school that read ‘Homosexuality is normal’ and ‘I am proud of my homosexuality.’ The case directly confronted the intersection of LGBTQ+ rights, freedom of expression, and the recurring theme of alleged child protection. The Human Rights Committee's analysis was particularly significant in dismantling the purported child protection justification for discriminatory laws. The Committee found that Russia had failed to demonstrate how restricting public discussion of homosexuality protected children's interests. This reasoning directly challenges narratives that frame LGBTQ+ visibility as inherently harmful to minors. The Committee emphasised that general assertions about protecting children's morals cannot justify discriminatory restrictions on freedom of expression.

The decision's implications for challenging the pathologisation of LGBTQ+ individuals are profound. By rejecting the notion that mere discussion of homosexuality harms children, the Committee effectively countered one of the primary rhetorical devices used to justify discrimination. The Committee's reasoning emphasised that laws purporting to protect children must be based on objective evidence rather than prejudice or stereotypes.

The *G v. Australia* case<sup>14</sup> represents a landmark decision concerning gender identity recognition and state obligations under the ICCPR. The case involved a transgender woman who had undergone gender affirmation surgery but was denied the ability to change her sex on her birth certificate because she remained married to her wife. The Committee's analysis focused on Articles 17 and 26 of the ICCPR, examining the intersection of privacy rights, non-discrimination, and gender identity recognition. The Committee's reasoning was particularly significant in addressing the pathologisation of transgender identities. By emphasising that the denial of gender recognition constituted a violation of privacy and dignity, the Committee challenged medical and bureaucratic frameworks that reduce gender identity to biological determinism. The decision explicitly rejected

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<sup>13</sup> *Fedotova v. Russian Federation* (Communication No. 1932/2010).

<sup>14</sup> *G v. Australia* (Communication No. 2172/2012).

the state's argument that maintaining biological sex markers served a legitimate administrative purpose, finding instead that such practices perpetuated systemic discrimination.

The case's implications for challenging discriminatory practices are far-reaching. The Committee emphasised that administrative convenience cannot justify policies that fundamentally impair individual dignity and identity recognition. This principle directly challenges practices that pathologise gender diversity through bureaucratic mechanisms of control and categorisation. The decision's emphasis on self-determination and personal autonomy provides a powerful framework for challenging discriminatory practices that impose external definitions of gender identity.

While the *Joslin* case<sup>15</sup> resulted in a finding of no violation, its reasoning and subsequent interpretations have significantly influenced ICCPR jurisprudence on LGBTQ+ rights. The case concerned two lesbian couples challenging New Zealand's marriage laws, which at the time restricted marriage to heterosexual couples. Though the Committee found no violation of the ICCPR, the decision's nuanced analysis of family rights and non-discrimination has shaped subsequent interpretations. The Committee's reasoning, particularly in individual concurring opinions, laid important groundwork for understanding how Article 23 (right to family life) intersects with non-discrimination principles. The concurring opinions emphasised that while the ICCPR did not require recognition of same-sex marriage at that time, states maintained obligations to protect against discrimination based on sexual orientation in other contexts. This nuanced approach has informed subsequent jurisprudence on family recognition and non-discrimination.

The *Irina* case<sup>16</sup> expanded on the principles established in the earlier *Fedotova* decision, addressing collective experiences of discrimination under Russia's federal 'gay propaganda' law. The case involved multiple applicants who had been penalized for public expressions of LGBTQ+ identity or support. The Committee's analysis focused on the intersection of freedom of expression, non-discrimination, and the purported protection of public morals. The Committee's decision systematically dismantled the state's child protection justification for discriminatory laws. It emphasised that vague assertions about protecting children's moral development cannot justify blanket restrictions on LGBTQ+ expression. The decision particularly challenged the pathologising assumption that mere exposure to information about LGBTQ+ identities harms children.

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<sup>15</sup> *Joslin v. New Zealand* (Communication No. 902/1999).

<sup>16</sup> *Irina Fedotova et al. v. Russian Federation* (Communication No. 1932/2010).

### 2.2.3 The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR, also adopted in 1966 and entered into force in 1976, focuses on economic, social, and cultural rights. While it does not explicitly mention LGBTQ+ rights, its principles of non-discrimination (Article 2) and the right to the highest attainable standard of health (Article 12) are particularly relevant. These provisions can be interpreted to protect LGBTQ+ individuals from discrimination in areas such as employment, housing, and healthcare, and to challenge practices that pathologise their identities.<sup>17</sup>

Similarly, Article 2(2) of the ICESCR requires states to:

Guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>18</sup>

Although yet to be concluded as at the time of this research, a case that illustrates the principles that are laid out in the ICESCR is that of *Centre for Human Rights (CHR), Institute for human Rights and Development in Africa(IHRDA) & Legal and Human rights Centre (LHRC) v United Republic of Tanzania*<sup>19</sup>

While this case does not directly involve LGBTQ+ rights, its reasoning is highly relevant to challenging discrimination and pathologisation of LGBTQ+ individuals. The case concerned Tanzanian persons with albinism (PWAs) whose rights are violated in Tanzania. They are allegedly attacked and mutilated due to superstitious beliefs. The applicants pray that the court finds that Tanzania has failed to protect the victims from discrimination and to ensure their right to health.

The Applicants submit that throughout history, PWAs in the Respondent State's territory have endured serious and widespread threats and violations of their rights through discrimination, persecution, humiliation, killings and mutilations. The Applicants aver that PWAs face socio-political challenges, which compound their difficulties in accessing adequate education, health and other essential public services.

The case was reopened in May 2024, after a while when it had not yet commenced hearing. The applicants' reasoning emphasises states' positive obligations to protect vulnerable groups from discrimination and violence, even when such discrimination stems from cultural or traditional

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<sup>17</sup> B Saul et al *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases, and materials* (2014) Oxford University Press 193.

<sup>18</sup> ICESCR (n 6 above) art 2(2).

<sup>19</sup> Application 019/2018.

beliefs. This principle is directly applicable to the situation of LGBTQ+ people in Uganda, where discrimination is often justified by appeals to tradition or culture.

The applicants argue that states must take steps to combat harmful stereotypes and practices, including through education and awareness-raising. This obligation is particularly relevant to challenging narratives that pathologise LGBTQ+ individuals as threats to children. They also emphasise the interconnectedness of rights, noting how discrimination impacted the victims' rights to education, work, and an adequate standard of living. This holistic approach is crucial for understanding and addressing the multifaceted discrimination faced by LGBTQ+ individuals in Uganda. While not specifically about LGBTQ+ rights, this case, even though yet to be fully heard, by the time of this research, establishes important principles for protecting vulnerable groups from discrimination based on harmful stereotypes - principles that can be applied to challenge the pathologisation of LGBTQ+ individuals in Uganda.

The *FEDEFAM v. Argentina* case,<sup>20</sup> while not directly addressing LGBTQ+ rights, established critical precedents for understanding systemic discrimination and state obligations under ICESCR. The case involved enforced disappearances during Argentina's military dictatorship, providing a framework for analysing institutional discrimination that would later inform LGBTQ+ rights jurisprudence.

The *Centre on Housing Rights and Evictions (COHRE)* case,<sup>21</sup> while not directly addressing LGBTQ+ rights, established crucial precedents for understanding intersectional discrimination under the ICESCR. The case involved systematic housing discrimination against Roma communities in Italy, but its analytical framework provides vital insights for addressing discriminatory practices against LGBTQ+ individuals, particularly regarding economic and social rights. The Committee's analysis was groundbreaking in its recognition of systemic discrimination's impact on social and economic rights. The decision emphasised that states have positive obligations to prevent discrimination in access to housing, healthcare, and other social services, even when such discrimination stems from private actors or societal prejudices. This principle is particularly relevant to addressing institutional barriers faced by LGBTQ+ individuals in accessing essential services.

The European Committee of Social Rights notably developed the concept of 'aggravated discrimination,' recognising how multiple forms of marginalisation can compound vulnerabilities. This framework is particularly applicable to understanding how LGBTQ+ individuals face intersecting forms of discrimination in accessing economic and social rights. The decision's

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<sup>20</sup> *FEDEFAM v. Argentina*, UN Economic and Social Council, Communication No. 1/1988.

<sup>21</sup> *COHRE v. Italy* (Complaint No. 58/2009).

emphasis on state obligations to address both direct and indirect discrimination provides a robust foundation for challenging systemic barriers.

The *Rodríguez* case<sup>22</sup> represented a significant development in ICESCR jurisprudence concerning discrimination in healthcare access. While the case focused on disability discrimination, its reasoning established important principles for addressing healthcare discrimination against LGBTQ+ individuals, particularly regarding medical pathologisation and access to appropriate care. The Committee's analysis emphasised that healthcare systems must be accessible, acceptable, and of adequate quality for all individuals, regardless of their characteristics. The decision particularly challenged medical practices that stigmatise or pathologise certain identities, emphasising that healthcare must respect individual dignity and autonomy. This reasoning provides crucial support for challenging medical frameworks that pathologise LGBTQ+ identities.

While the *SERAC* case<sup>23</sup> was decided by the African Commission rather than the ICESCR Committee, it represents a significant interpretation of economic and social rights that has influenced ICESCR jurisprudence. The case established important principles regarding state obligations to protect vulnerable groups from discrimination in accessing economic and social rights. The decision's emphasis on state obligations to respect, protect, and fulfil economic and social rights provides a comprehensive framework for addressing discrimination against LGBTQ+ individuals. The Commission's analysis of how systematic marginalisation impacts economic and social rights access offers valuable insights for understanding and addressing LGBTQ+ economic exclusion.

#### **2.2.4 The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity**

While sexual orientation and gender identity are not explicitly mentioned in these core human rights instruments, authoritative interpretations by United Nations treaty bodies and human rights mechanisms have affirmed that the principle of non-discrimination extends to these grounds. The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, adopted in 2007, provide a comprehensive framework for the application of the principle of non-discrimination to LGBTQ+ individuals.<sup>24</sup>

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<sup>22</sup> *López Rodríguez v. Spain* (Communication No. 1/2013).

<sup>23</sup> *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria* (Communication No. 155/1996).

<sup>24</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, 2007.

The Yogyakarta Principles, while not a binding international treaty, represent a significant milestone in the articulation of LGBTQ+ rights within the framework of international human rights law. Developed in 2006 by international human rights experts, these principles apply existing human rights standards to issues of sexual orientation and gender identity. They provide a comprehensive guide for how international law should protect LGBTQ+ individuals, addressing a wide range of rights including equality, non-discrimination, and protection from medical abuses.<sup>25</sup>

Particularly relevant to the pathologisation of LGBTQ+ individuals are Principles 2 (right to equality and non-discrimination), 17 (right to the highest attainable standard of health), and 18 (protection from medical abuses). These principles explicitly reject the notion that sexual orientation or gender identity is a medical condition that needs to be treated, prevented, or cured.<sup>26</sup>

While the Yogyakarta Principles themselves are not justiciable, they have been influential in court decisions and policy-making worldwide, such as the *Suresh Kumar Koushal and another v. NAZ Foundation and others* cases decided by the Supreme Court of India.<sup>27</sup> This case, while ultimately upholding the criminalisation of homosexual conduct, is notable for the dissenting opinion's use of the Yogyakarta Principles. Justice AP Shah, in his dissent, cited the Yogyakarta Principles to argue that criminalising consensual same-sex relations violates the rights to dignity, privacy, and equality.<sup>28</sup>

Justice Shah's dissent is particularly relevant to challenging the pathologisation of LGBTQ+ individuals. He argued that laws criminalising homosexuality have no rational basis, as they are founded on prejudice rather than any demonstrable harm to society. This aligns with the rational basis theory, which requires that laws must have a legitimate state interest and be rationally related to that interest.

The dissent's reliance on the Yogyakarta Principles demonstrates how these principles can be used to interpret existing human rights law in a manner protective of LGBTQ+ rights. It challenges the notion that LGBTQ+ individuals pose any threat to children or society, arguing instead that such beliefs are based on unfounded stereotypes and prejudices.

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<sup>25</sup> M O'Flaherty & J Fisher 'Sexual orientation, gender identity and international human rights law: Contextualising the Yogyakarta Principles' (2008) 8 Human Rights Law Review 207.

<sup>26</sup> The Yogyakarta Principles (2007) Principles 2, 17, 18.

<sup>27</sup> *Suresh Kumar Koushal and another v NAZ Foundation and others* Civil Appeal No. 10972 of 2013 (Supreme Court of India).

<sup>28</sup> As above, Justice AP Shah's dissenting opinion, para 78.

### 2.2.5 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

The prohibition of discrimination has also been reinforced through the adoption of specialized human rights treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). While the ICERD primarily focuses on racial discrimination, its principles of equality and non-discrimination have been interpreted broadly by the Committee on the Elimination of Racial Discrimination (CERD) to encompass intersectional forms of discrimination, including those based on sexual orientation and gender identity when combined with racial or ethnic discrimination.<sup>29</sup>

Article 1 of ICERD defines racial discrimination in terms that could be applied to the intersectional discrimination faced by LGBTQ+ individuals who also belong to racial or ethnic minorities. The Convention's emphasis on eliminating prejudices and promoting understanding (Article 7) is particularly relevant to combating stereotypes that pathologise LGBTQ+ individuals.<sup>30</sup> While CERD has not issued a decision directly addressing LGBTQ+ rights, its General Recommendation No. 32 is particularly relevant to understanding the interpretation of the treaty.

This recommendation acknowledges that racial discrimination can intersect with other forms of discrimination, including that based on sexual orientation. It calls on states to recognise and address such multiple or aggravated forms of discrimination.<sup>31</sup> The Committee's recognition of intersectional discrimination provides a basis for challenging laws and practices that disproportionately affect LGBTQ+ individuals who also belong to racial or ethnic minorities. This is particularly relevant in the Ugandan context, where colonial-era laws criminalising homosexuality intersect with post-colonial racial and ethnic dynamics.

The rational basis theory is implicitly supported by this recommendation. By recognising intersectional discrimination, CERD suggests that laws or practices that discriminate based on multiple grounds are even less likely to have a rational basis, as they compound unfounded prejudices rather than serve any legitimate state interest.<sup>32</sup>

The *TBB-Turkish Union* case,<sup>33</sup> while primarily addressing racial discrimination, established crucial precedents for understanding intersectional discrimination that significantly impacts LGBTQ+

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<sup>29</sup> P Thornberry *The International Convention on the Elimination of All Forms of Racial Discrimination: A commentary* (2016) Oxford University Press 116.

<sup>30</sup> International Convention on the Elimination of All Forms of Racial Discrimination (1965) Articles 1, 7.

<sup>31</sup> Committee on the Elimination of Racial Discrimination, General Recommendation No. 32 (2009) CERD/C/GC/32, para 7.

<sup>32</sup> As above, para 8.

<sup>33</sup> *TBB-Turkish Union v. Germany* (Communication No. 48/2010).

individuals of colour. The case concerned discriminatory public statements against Turkish and Arab minorities in Germany, but its analytical framework provides vital insights for addressing multiple, overlapping forms of discrimination. The Committee's decision critically examined how public discourse can perpetuate and legitimise discrimination against marginalised groups. The Committee emphasised that states must address not only direct discrimination but also statements and actions that create or reinforce prejudicial attitudes. This analysis is particularly relevant to challenging public narratives that pathologise LGBTQ+ individuals of colour, especially when such narratives intersect with racial stereotypes and cultural prejudices.

The Committee's recognition of compound discrimination proved groundbreaking, acknowledging how racial discrimination can interact with other forms of marginalisation to create unique vulnerabilities. This framework is essential for understanding how LGBTQ+ individuals of colour face distinct challenges when discriminatory practices target both their racial identity and sexual orientation or gender identity. The decision emphasised states' obligations to address these overlapping forms of discrimination comprehensively.

The *Quereshi* case<sup>34</sup> provides crucial insights into how institutional discrimination operates through seemingly neutral policies. While focusing on employment discrimination based on race, the case's analysis of structural barriers and institutional practices offers valuable frameworks for understanding systemic discrimination against LGBTQ+ individuals, particularly those from racial and ethnic minorities. The Committee's examination revealed how institutional practices can perpetuate discrimination even in the absence of explicitly discriminatory policies. This analysis is particularly relevant to understanding how healthcare, education, and social service systems can systematically disadvantage LGBTQ+ individuals of colour through ostensibly neutral requirements or procedures. The decision emphasised states' obligations to identify and address such institutional barriers.

The *L.R.* case<sup>35</sup> addressed intersectional discrimination in access to housing and public services, providing important precedents for understanding how multiple forms of discrimination can compound vulnerability. The Committee's analysis focused on how institutional practices and social prejudices can create barriers that disproportionately affect individuals facing multiple forms of marginalisation. The decision's emphasis on substantive equality and the need to address both direct and indirect discrimination provides crucial frameworks for challenging systemic barriers faced by LGBTQ+ individuals of colour. The Committee emphasised that states must take

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<sup>34</sup> *Quereshi v. Denmark* (Communication No. 33/2003).

<sup>35</sup> *L.R. et al. v. Slovakia* (Communication No. 31/2003).

proactive measures to ensure equal access to public services and protections, particularly for those facing intersectional discrimination.

Although the *Yılmaz-Dogan* case<sup>36</sup> primarily addressed employment discrimination, its analysis of how cultural stereotypes and prejudices can inform institutional practices remains highly relevant to understanding discrimination against LGBTQ+ individuals of colour. The Committee's examination of how prejudicial attitudes can become embedded in institutional decision-making provides valuable insights for challenging systemic discrimination. The decision emphasised states' obligations to address not only explicit discrimination but also more subtle forms of bias that can permeate institutional practices. This framework is particularly relevant to understanding how cultural stereotypes about both race and sexual orientation/gender identity can inform discriminatory practices in employment, healthcare, and other institutional contexts.

The Committee's recognition that discrimination often operates through complex interactions between cultural attitudes, institutional practices, and structural inequalities provides essential insights for addressing the multiple layers of discrimination faced by LGBTQ+ individuals of colour. The decision emphasised the need for comprehensive approaches that address both individual acts of discrimination and broader systemic barriers.

## **2.2.6 Convention on the Rights of Persons with Disabilities (CRPD)**

Among the other instruments that speak to the discrimination and pathologisation of LGBTQ+ people, are the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>37</sup> In particular, while the CRPD does not explicitly mention sexual orientation or gender identity, its principles of non-discrimination, equal recognition before the law, and respect for individual autonomy are highly relevant to LGBTQ+ rights. The Convention's rejection of the medical model of disability in favour of a social model has important implications for challenging the pathologisation of LGBTQ+ identities.<sup>38</sup>

Article 5 on equality and non-discrimination, Article 12 on equal recognition before the law, and Article 25 on the right to health are particularly relevant. These provisions can be interpreted to

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<sup>36</sup> *Yılmaz-Dogan v. The Netherlands* (Communication No. 1/1984).

<sup>37</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969); Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981); Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008).

<sup>38</sup> R Kayess & P French 'Out of darkness into light? Introducing the Convention on the Rights of Persons with Disabilities' (2008) 8 Human Rights Law Review 1.

protect LGBTQ+ individuals from discrimination and forced medical treatment, including so-called ‘conversion therapies.’<sup>39</sup>

While no case has been decided by the Committee of the CRPD, some matters in national courts that have applied the principles in the CRPD are relevant for contextualisation. *Grimm v. Gloucester County School Board*<sup>40</sup> (2020) decided by the U.S. Court of Appeals for the Fourth Circuit is particularly relevant in this case. While not directly invoking the CRPD, this case's reasoning aligns with the Convention's principles and is relevant to challenging the pathologisation of LGBTQ+ individuals, particularly transgender youth.

Gavin Grimm, a transgender student, challenged his school board's policy prohibiting him from using the boys' restroom. The court ruled in Grimm's favour, finding that the school board's policy violated Title IX and the Equal Protection Clause of the U.S. Constitution. The court's reasoning is particularly relevant to the rational basis theory. It found that the school board's policy was not substantially related to its purported goal of protecting student privacy, noting that the board's hypothesis about privacy and safety risks was ‘conjectural at best.’<sup>41</sup> This aligns with the rational basis theory's requirement that laws must be rationally related to a legitimate state interest.

Moreover, the court rejected arguments that allowing Grimm to use the boys' restroom would harm other students, finding no evidence to support this claim. This reasoning challenges narratives that frame transgender individuals as threats to children's safety or wellbeing.<sup>42</sup> The court's emphasis on Grimm's right to equal treatment and dignity aligns with the CRPD's principles of non-discrimination and respect for individual autonomy. It demonstrates how these principles can be applied to protect LGBTQ+ individuals from discrimination, even when such discrimination is framed as protection of others.

The *S.C.* case<sup>43</sup> represents a landmark decision in CRPD jurisprudence addressing medical pathologisation and bodily autonomy. While primarily concerning forced medical treatment of persons with disabilities, its analysis provides crucial frameworks for understanding and challenging the medicalisation of LGBTQ+ identities, particularly transgender and intersex experiences. The Committee's decision systematically dismantled justifications for medical interventions without informed consent. The analysis emphasised that medical treatment must respect individual autonomy and dignity, explicitly rejecting paternalistic approaches that presume

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<sup>39</sup> Convention on the Rights of Persons with Disabilities (2006) Articles 5, 12, 25.

<sup>40</sup> *Grimm v Gloucester County School Board* 972 F.3d 586 (4th Cir. 2020).

<sup>41</sup> As above, 614.

<sup>42</sup> As above, 615.

<sup>43</sup> *S.C. v. Brazil* (Communication No. 10/2013).

medical professionals know better than individuals about their bodies and identities. This reasoning directly challenges medical frameworks that pathologise gender diversity and sexual orientation as conditions requiring ‘treatment’ or ‘correction.’

The decision's emphasis on the right to make informed decisions about one's own body and identity provides a powerful precedent for challenging conversion therapies and other medical practices that pathologise LGBTQ+ identities. The Committee emphasised that medical interventions must serve legitimate therapeutic purposes and cannot be justified merely by social prejudices or desires to enforce conformity with societal norms.

The *Bujdosó* case<sup>44</sup> addressed discrimination in legal capacity and decision-making rights, establishing crucial principles regarding individual autonomy and self-determination. While focused on persons with intellectual disabilities, the case's analysis of how legal systems can systematically deny individual agency provides valuable insights for understanding discrimination against LGBTQ+ individuals, particularly in medical and legal contexts. The Committee's examination revealed how legal frameworks can perpetuate discrimination by denying individuals the right to make fundamental decisions about their lives. This analysis is particularly relevant to understanding how legal systems can systematically disadvantage LGBTQ+ individuals through requirements for medical diagnoses or other pathologising practices as prerequisites for legal recognition.

The *X* case<sup>45</sup> provides significant precedent regarding reasonable accommodation and access to appropriate healthcare in institutional settings. While primarily addressing disability rights in detention, its analysis offers crucial insights for understanding discrimination against LGBTQ+ individuals in institutional contexts, particularly regarding access to appropriate healthcare and recognition of identity. The Committee emphasised states' obligations to ensure that institutional practices accommodate individual needs and respect personal identity. This framework is particularly relevant to addressing discrimination against LGBTQ+ individuals in healthcare settings, schools, prisons, and other institutions where rigid binary gender systems and heteronormative assumptions can create systematic barriers.

The *Noble* case<sup>46</sup> addressed systemic discrimination in legal recognition and access to justice, providing important frameworks for understanding how legal systems can perpetuate

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<sup>44</sup> *Zsolt Bujdosó, Jánosné Ildikó Márkus, Viktória Márton, Sándor Mészáros, Gergely Polk and János Szabó v. Hungary* (Communication No. 4/2011).

<sup>45</sup> *X v. Argentina* (Communication No. 8/2012).

<sup>46</sup> *Marlon James Noble v. Australia* (Communication No. 7/2012).

marginalisation. While focusing on disability rights, its analysis of how legal frameworks can systematically exclude certain identities offers valuable insights for understanding discrimination against LGBTQ+ individuals. The Committee's examination revealed how seemingly neutral legal requirements can create insurmountable barriers for marginalised individuals. This analysis is particularly relevant to understanding how legal systems can discriminate against LGBTQ+ individuals through requirements for medical documentation or other pathologising practices. The decision emphasised states' obligations to ensure that legal frameworks are accessible and inclusive of all individuals.

The *Jungelin* case<sup>47</sup> established important principles regarding reasonable accommodation and systemic discrimination in employment contexts. While primarily addressing disability discrimination, its analysis of how institutional practices can perpetuate exclusion provides valuable frameworks for understanding discrimination against LGBTQ+ individuals in workplace settings. The Committee's emphasis on substantive equality and the need to address both direct and indirect discrimination offers crucial insights for challenging workplace discrimination against LGBTQ+ individuals. The decision particularly emphasised that accommodation of individual needs is a fundamental right, not a privilege, providing an important precedent for challenging workplace practices that fail to respect gender identity or sexual orientation.

In conclusion, these instruments and cases demonstrate a growing recognition in international and domestic law that discrimination against LGBTQ+ individuals, including discrimination justified by unfounded concerns about child protection, lacks a rational basis. They provide a strong foundation for challenging laws and practices that pathologise LGBTQ+ identities, emphasising instead the principles of equality, non-discrimination, and respect for human dignity. These instruments further elaborate on the specific forms of discrimination that must be eliminated and the obligations of states to take active measures to promote equality and non-discrimination.

### **2.2.7 United Nations Human Rights Treaty Bodies and Declarations**

The UN human rights treaty bodies, which monitor the implementation of these international instruments, have played a crucial role in the interpretation and application of non-discrimination principles. For example, the Human Rights Committee, the body responsible for overseeing the ICCPR, has emphasised that the prohibition of discrimination is an essential element of the rights enshrined in the Covenant and has recognised that discrimination based on sexual orientation is

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<sup>47</sup> *Marie-Louise Jungelin v. Sweden* (Communication No. 5/2011).

prohibited under the treaty.<sup>48</sup> Similarly, the Committee on Economic, Social and Cultural Rights, the body responsible for the ICESCR, has affirmed that the Covenant prohibits discrimination on the grounds of sexual orientation and gender identity.<sup>49</sup>

Beyond the core international human rights treaties, the principle of non-discrimination has also been reinforced through various declarations, resolutions, and other international instruments. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993, reaffirmed that ‘all human rights are universal, indivisible and interdependent and interrelated’ and that ‘the universal nature of these rights and freedoms is beyond question.’<sup>50</sup> The Declaration further emphasised the importance of eliminating all forms of discrimination.<sup>51</sup>

More recently, the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, adopted in 2007, have provided authoritative guidance on the application of international human rights law to issues of sexual orientation and gender identity.<sup>52</sup> Principle 2 of the Yogyakarta Principles states that ‘*everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity*’ and calls on states to ‘embody the principles of the universality, interdependence, indivisibility and interrelatedness of all human rights in national constitutions or other appropriate legislation.’<sup>53</sup>

The principles of non-discrimination and equality have also been reinforced through the work of UN Special Procedures, such as the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity.<sup>54</sup> This mandate has played a crucial role in highlighting the experiences of LGBTIQ+ individuals, documenting human rights violations, and advocating for the protection of their fundamental rights.<sup>55</sup>

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<sup>48</sup> Human Rights Committee, General Comment No. 18: Non-discrimination, 10 November 1989, UN Doc HRI/GEN/1/Rev.1 (1994) para 7; *Toonen v Australia*, Human Rights Committee, Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994).

<sup>49</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, UN Doc E/C.12/GC/20 (2009) para 32.

<sup>50</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June 1993, UN Doc A/CONF.157/23 (1993) para I.5.

<sup>51</sup> As above, para II.15.

<sup>52</sup> Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, March 2007.

<sup>53</sup> As above, Principle 2.

<sup>54</sup> UN Human Rights Council, ‘Protection against violence and discrimination based on sexual orientation and gender identity’, 30 June 2016, A/HRC/RES/32/2.

<sup>55</sup> See, for example, Victor Madrigal-Borloz, ‘Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity’, 16 May 2019, UN Doc A/HRC/41/45.

Overall, the international legal framework firmly establishes non-discrimination as a core human rights principle, prohibiting distinctions based on personal characteristics such as race, gender, sexual orientation, and gender identity. The interpretation and application of these principles by UN human rights bodies and specialized mechanisms have been instrumental in advancing the rights of marginalised groups and challenging the discrimination and criminalisation of specific identities and practices.

## **2.3 Regional Legal Framework**

Complementing the international human rights framework, regional human rights systems have also played a crucial role in advancing the principles of non-discrimination and equality. These regional mechanisms have developed jurisprudence, standards, and mechanisms to address discrimination at the continental and sub-regional levels.

### **2.3.1 The African Charter on Human and People's Rights**

In the African context, the African Charter on Human and Peoples' Rights (African Charter) is the primary regional instrument that enshrines the right to non-discrimination. Article 2 of the African Charter states that:

every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any other status.<sup>56</sup>

The broad scope of this provision aligns with the international human rights standards on non-discrimination. While not explicitly mentioned, sexual orientation and gender identity are recognised as grounds for non-discrimination by various African human rights mechanisms, including the African Commission on Human and Peoples' Rights.<sup>57</sup>

The African Commission on Human and Peoples' Rights (African Commission), the body responsible for interpreting and implementing the African Charter, has played a pivotal role in interpreting and applying the principles in the Charter and addressing discrimination against marginalised groups. In its jurisprudence, the African Commission has yet to deal with matters

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<sup>56</sup> African Charter on Human and Peoples' Rights, 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force 21 October 1986) [African Charter], art 2.

<sup>57</sup> African Commission on Human and Peoples' Rights, Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, 2014.

concerning the issue of sexual orientation and the prohibition of discrimination extending to protecting individuals from discrimination based on their sexual orientation and gender identity. However, the Commission has adopted a resolution to this end. In 2014, the Commission adopted Resolution 275, which condemned '*violence, discrimination, and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity*.'<sup>58</sup> The resolution called on states to take measures to prevent and punish acts of violence, discrimination, and other human rights violations targeting LGBTIQ+ individuals.<sup>59</sup>

Additionally, the African Commission has developed The Guidelines on Combating Sexual Violence and its Consequences in Africa, which provide detailed guidance to states on protecting the rights of individuals and addressing discrimination and violence, also taking into consideration the grounds of sexual orientation.<sup>60</sup> These guidelines emphasise the importance of ensuring that national laws and policies are in line with the African Charter's non-discrimination provisions and that states take proactive steps to combat stigma and prejudice.<sup>61</sup>

However, the Commission has seemingly taken steps in the opposite direction recently, when presented with the opportunity to grant observer status to three organisations that promote the rights of LGBTQ+ people in Africa.<sup>62</sup> In its official minutes from the 73<sup>rd</sup> Ordinary Session, the Commission notes that:

During its private Session, the Commission also considered and rejected applications for Observer Status of three (3) NGOs- Alternative Cote d'Ivoire; Human Rights First Rwanda; and Synergía – Initiatives for Human Rights, on the grounds that sexual orientation is not an expressly recognised right or freedom under the African Charter, and contrary to the virtues of African values, as envisaged by the African Charter.<sup>63</sup>

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<sup>58</sup> African Commission on Human and Peoples' Rights, Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity - ACHPR/Res.275(LV)2014, 12 May 2014.

<sup>59</sup> As above.

<sup>60</sup> African Commission on Human and Peoples' Rights, The Guidelines on Combating Sexual Violence and its Consequences in Africa, 2017, see pp 17, 18, 42.

<sup>61</sup> As above.

<sup>62</sup> Human Rights Watch, 'Statement on African Commission's Rejection of Observer Status Applications by Three Human Rights Organisations' (2022) accessed on 2 April 2024 at <https://www.hrw.org/news/2022/12/16/statement-african-commissions-rejection-observer-status-applications-three-human>.

<sup>63</sup> African Commission on Human and Peoples' Rights, 'Final Communiqué of the 73rd Ordinary Session of the African Commission on Human and Peoples' Rights' (18 November 2022) accessed on 2 April 2024 at <https://achpr.au.int/index.php/en/news/final-communications/2022-11-18/final-communique-73rd-ordinary-session>, para 58.

This decision has been seen as a retrogressive act that goes against the previous commitments of the Commission expressed in its 2017 Guidelines and the 2014 Resolution 275.<sup>64</sup> This reflects the realisation of the rights of LGBTQ+ on the continent and may be used by anti-LGBTQ+ zealots in Uganda to further oppose the realisation of the rights of LGBTQ+ individuals.

### **2.3.2 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)**

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol, was adopted by the African Union in 2003 and entered into force in 2005. Uganda ratified the Protocol in 2010, thereby assuming binding obligations to eliminate discrimination against women and to protect women's rights across multiple domains including health, education, economic participation, and freedom from violence. While the Maputo Protocol does not explicitly address sexual orientation or gender identity, its provisions establish important principles relevant to the rights of sexual and gender minorities, particularly lesbian, bisexual, and transgender women who face intersectional discrimination based on both gender and sexual orientation or gender identity. Article 2 of the Protocol commits State Parties to 'combat all forms of discrimination against women through appropriate legislative, institutional and other measures,' including modifying social and cultural patterns of conduct that are based on stereotyped roles for women. This broad anti-discrimination mandate encompasses discrimination based on non-conformity to heteronormative expectations, as lesbian, bisexual, and transgender women face discrimination precisely because their identities and expressions challenge stereotyped gender roles. Article 3 guarantees women's right to dignity and prohibits 'all forms of violence against women including unwanted or forced sex,' which has direct relevance to the violence and corrective rape experienced by lesbian and bisexual women who are targeted because of their sexual orientation. Article 14 recognizes women's rights to sexual and reproductive health, including the right to control their fertility and to choose any method of contraception, establishing principles of bodily autonomy and sexual self-determination that extend logically to the right to determine one's sexual partners and intimate relationships.

The Maputo Protocol's relevance to LGBTQ+ rights in Uganda becomes particularly significant when read in conjunction with the African Commission on Human and Peoples' Rights' evolving jurisprudence on sexual orientation and gender identity. The intersection of gender discrimination and discrimination based on sexual orientation creates heightened vulnerabilities for lesbian,

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<sup>64</sup> Human Rights Watch (n 42 above).

bisexual, and transgender women in Uganda, who face violence, economic marginalization, and denial of healthcare services. The Anti-Homosexuality Act 2023 exacerbates these vulnerabilities by criminalizing same-sex conduct and creating legal barriers to LGBTQ+ women accessing the protections theoretically guaranteed under the Maputo Protocol. Uganda's obligations under the Maputo Protocol therefore create tension with discriminatory domestic legislation, as the Protocol requires elimination of discrimination against women while the Anti-Homosexuality Act institutionalizes such discrimination for women who are lesbian, bisexual, or transgender.

## 2.4 Sub-Regional Legal Framework

In the East African region, the East African Community (EAC) has also made efforts to promote non-discrimination. The Treaty for the Establishment of the East African Community contains a non-discrimination clause in Article 6(d), which requires the partner states to '*abide by the principle of non-discrimination of nationals of other Partner States on grounds of nationality*.'<sup>65</sup> However, the EAC's approach to addressing discrimination based on sexual orientation and gender identity has been more limited compared to the African Commission's engagement on these issues, at the time of this research.

This may necessitate a brief discussion of the application of the principles of de-pathologisation applied in other sub-regional frameworks within Africa. For example, the Economic Community of West African States (ECOWAS) has also addressed the issue of non-discrimination. The ECOWAS Revised Treaty, which serves as the constitutional framework for the regional economic community, includes a non-discrimination clause in Article 4(g), which prohibits discrimination based on nationality, gender, religious affiliation, race, ethnic origin, or other status.<sup>66</sup> Additionally, the ECOWAS Court of Justice has played a role in interpreting and applying the non-discrimination principle within the West African context.<sup>67</sup> However, the court has yet to decide on a matter directly related to discrimination based on sexual orientation, as at the time of the research. However, senior officials from the court have expressed reservations about the recognition of LGBTQ+ rights in member states,<sup>68</sup> which raises the assumption that the court

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<sup>65</sup> Treaty for the Establishment of the East African Community, 30 November 1999, art 6(d).

<sup>66</sup> Revised Treaty of the Economic Community of West African States (ECOWAS), 24 July 1993, art 4(g).

<sup>67</sup> See, for example, *Women Against Violence and Exploitation in Society (WAVES), Child Welfare Society, Sierra Leone (CWS-SL) (On Behalf of Pregnant Adolescent School Girls in Sierra Leone) V The Republic of Sierra Leone*, ECW/CCJ/APP/22/18 (2018); *Sonon Fidele v The State of Benin*, ECW/CCJ/APP/13/19 (2019).

<sup>68</sup> L Nartey, 'Go ahead and ban homosexuality in Ghana – President of ECOWAS Court' (27 July 2021) accessed on 2 April 2024 at <https://3news.com/featured/go-ahead-and-ban-homosexuality-in-ghana-president-of-ecowas-court/>.

would not look kindly on a matter that seeks to uphold such rights before the court, should it come up.<sup>69</sup>

It is important to note that while the regional human rights frameworks in Africa have made strides in upholding non-discrimination principles, there are still significant challenges and gaps in their implementation.<sup>70</sup> Many African states have been reluctant to fully embrace the protection of LGBTIQ+ individuals, and some have even enacted laws that explicitly criminalise same-sex relations or target sexual and gender minorities.<sup>71</sup> This has posed a major obstacle to the effective enforcement of non-discrimination norms at the regional level.

While not directly addressing LGBTIQ+ rights, the *Zimbabwe Human Rights NGO Forum* landmark case<sup>72</sup> established crucial principles regarding state obligations to protect individuals from discrimination and violence. The case concerned state responsibility for violence against political opponents, but its analysis provides vital frameworks for understanding state obligations to protect LGBTIQ+ individuals from both state and non-state violence. The Commission's decision emphasised that states have positive obligations to prevent, investigate, and remedy human rights violations, even when committed by private actors. This principle is particularly relevant to addressing violence and discrimination against LGBTIQ+ individuals in Uganda and other African contexts where non-state actors often perpetrate rights violations. The Commission emphasised that state inaction in the face of systematic violence can constitute a violation of the Charter.

The decision's analysis of how political rhetoric can incite violence provides crucial insights for understanding how public discourse pathologising LGBTIQ+ individuals can lead to systematic violence. The Commission emphasised states' obligations to address both direct state violence and violence stemming from state-sanctioned discrimination.

The *Egyptian Initiative for Personal Rights* case<sup>73</sup> addressed systematic discrimination and violence against individuals based on their perceived sexual orientation. The complaint concerned the arrest and torture of men suspected of being gay in Cairo's Queen Boat case. While the Commission did not directly address sexual orientation discrimination, its analysis of arbitrary detention and torture provides important precedents. The Commission's examination revealed how law enforcement

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<sup>69</sup> As above.

<sup>70</sup> J Bond, 'Intersectionality and Human Rights within Regional Human Rights Systems', in *Global Intersectionality and Contemporary Human Rights* (Oxford University Press, 2021).

<sup>71</sup> See, for example, 'On gay rights, young Africans share the intolerance of their elders,' *The Economist*, 6 May 2021, <https://www.economist.com/middle-east-and-africa/2021/03/06/on-gay-rights-young-africans-share-the-intolerance-of-their-elders> (accessed 3 April 2024).

<sup>72</sup> *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (Communication No. 245/02).

<sup>73</sup> *Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt* (Communication No. 323/06).

can systematically target marginalised groups through seemingly neutral public order or morality laws. This analysis is particularly relevant to understanding how criminal laws are used to persecute LGBTQ+ individuals in many African contexts. The decision emphasised states' obligations to prevent arbitrary detention and ensure due process, regardless of an individual's characteristics.

Though focused on environmental and economic rights, the *SERAC* case<sup>74</sup> established crucial principles regarding state obligations to protect vulnerable communities from systematic discrimination. The Commission's analysis of how state policies can create and perpetuate vulnerability provides valuable frameworks for understanding discrimination against LGBTQ+ individuals. The Commission developed the concept of multiple state obligations - to respect, protect, promote, and fulfil rights. This framework is particularly relevant to understanding how states must address discrimination against LGBTQ+ individuals comprehensively, not merely by refraining from direct discrimination but by actively promoting equality and protecting against private discrimination.

The *Endorois* case<sup>75</sup> established important principles regarding cultural rights and discrimination against marginalised communities. While focused on indigenous rights, its analysis of how dominant cultural narratives can justify discrimination provides crucial insights for understanding discrimination against LGBTQ+ individuals in African contexts. The Commission emphasised that cultural arguments cannot justify human rights violations, a principle particularly relevant to challenging cultural or traditional justifications for LGBTQ+ discrimination. The decision's recognition of marginalised communities' right to participation in decisions affecting them provides an important precedent for LGBTQ+ advocacy.

The *Open Society Justice Initiative* case<sup>76</sup> addressed systematic discrimination in citizenship recognition, providing important frameworks for understanding how legal systems can perpetuate marginalisation. While focused on ethnic discrimination, its analysis of how legal frameworks can systematically exclude certain groups offers valuable insights for understanding discrimination against LGBTQ+ individuals. The Commission's emphasis on substantive equality and the need to address both direct and indirect discrimination provides a crucial precedent for challenging the systematic exclusion of LGBTQ+ individuals from legal protection and recognition. The decision emphasised states' obligations to ensure that legal frameworks protect all individuals, regardless of their status or identity.

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<sup>74</sup> *Social and Economic Rights Action Center (SERAC) v. Nigeria* (Communication No. 155/96).

<sup>75</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group v. Kenya* (Communication No. 276/03).

<sup>76</sup> *Open Society Justice Initiative v. Côte d'Ivoire* (Communication No. 318/06).

Nevertheless, the African regional human rights system has played a crucial role in developing jurisprudence, standards, and mechanisms to address discrimination, including based on sexual orientation and gender identity. The African Commission's jurisprudence and resolutions have contributed to the evolution of non-discrimination principles and the protection of marginalised groups in the African context.

## 2.5 Domestic Legal Framework

Examining the national legal and policy frameworks in Uganda is crucial for understanding the country's approach to non-discrimination and the protection of marginalised groups, particularly sexual and gender minorities.

The Constitution of the Republic of Uganda, 1995 (the Ugandan Constitution) enshrines the principle of non-discrimination in Article 21.<sup>77</sup> This article states that *'all persons are equal before and under the law in all spheres of political, economic, social and cultural life and every other respect and shall enjoy equal protection of the law.'*<sup>78</sup> The provision further prohibits discrimination on the grounds of *'sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.'*<sup>79</sup>

While the Ugandan Constitution does not explicitly mention sexual orientation or gender identity as prohibited grounds for discrimination, the broad language of Article 21 has been interpreted by some legal scholars and civil society organisations as potentially encompassing these characteristics.<sup>80</sup> However, this interpretation has been contested, and the legal protection of sexual and gender minorities in Uganda remains a contentious and highly politicized issue.<sup>81</sup>

In addition to the constitutional guarantee of equality and non-discrimination, Uganda has ratified several international human rights treaties that explicitly prohibit discrimination, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>82</sup> As a state party to these treaties, Uganda is obligated to align its national laws and policies with the principle of non-discrimination enshrined in these instruments.

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<sup>77</sup> The Constitution of the Republic of Uganda, 1995, art 21.

<sup>78</sup> As above, art 21(1).

<sup>79</sup> As above, art 21(2).

<sup>80</sup> See for example, A Jjuuko, 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' In: *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change* (Institute of Commonwealth Studies, School of Advanced Study, University of London, 2013) 381.

<sup>81</sup> As above.

<sup>82</sup> International Covenant on Civil and Political Rights (n 3 above); International Covenant on Economic, Social and Cultural Rights (n 3 above).

Despite these international and constitutional commitments, Uganda's record on non-discrimination, particularly concerning the rights of sexual and gender minorities, has been problematic. The country has enacted laws and policies that directly target and criminalise same-sex relations and gender-non-conforming identities and expressions.

The Penal Code Act of Uganda, which dates back to the colonial era, criminalises 'unnatural offences' and 'acts of gross indecency,' provisions that have been used to prosecute and persecute LGBTIQ+ individuals.<sup>83</sup> Moreover, in 2014, the Ugandan Parliament passed the Anti-Homosexuality Act, which further expanded the criminalisation of same-sex relations and imposed harsh penalties, including life imprisonment.<sup>84</sup> Although this law was later annulled by the Constitutional Court on procedural grounds, the underlying hostility towards sexual and gender minorities remains entrenched in Ugandan society and the political discourse.<sup>85</sup>

Similarly, the new Anti-Homosexuality Act of 2023 carries heavy penalties for engagement in such relations, for various instances.<sup>86</sup> These laws, which stem from colonial-era legislation, have been widely criticised by human rights organisations and advocates as perpetuating discrimination, stigma, and human rights violations against LGBTIQ+ individuals.<sup>87</sup> The Ugandan government has faced significant international pressure to decriminalise same-sex relations and align its laws with international human rights standards on non-discrimination.<sup>88</sup> However, progress has been slow, and cultural and religious factors continue to influence the discourse on LGBTIQ+ rights in the country.

The discrimination and criminalisation of LGBTIQ+ individuals in Uganda have had devastating consequences. Numerous reports have documented instances of arbitrary arrests, detentions, extortion, and violence against individuals perceived to be part of the LGBTIQ+ community.<sup>89</sup> These human rights violations have been perpetrated by state actors, such as the police, as well as

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<sup>83</sup> Penal Code Act, Cap 120 (Uganda), secs 145, 148.

<sup>84</sup> Anti-Homosexuality Act, 2014 (Uganda).

<sup>85</sup> *Oloka-Onyango & 9 Others v Attorney General*, Constitutional Petition No. 8 of 2014, [2014] UGCC 14.

<sup>86</sup> Anti-Homosexuality Act, 2023 (Uganda), sec. 2.

<sup>87</sup> D Kalinaki, 'Uganda has a sex crime problem, but gays are just easy scapegoats' Daily Monitor (02 March 2023), accessed on 10 January 2024 at <https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/uganda-has-a-sex-crime-problem-but-gays-are-just-easy-scapegoats-4142708>.

<sup>88</sup> As above.

<sup>89</sup> See, for example, Human Rights Watch, 'Uganda: Court Upholds Anti-Homosexuality Act: Entrenches Discrimination, Enhances Risk of Anti-LGBT Violence', April 2024, <https://www.hrw.org/news/2024/04/04/uganda-court-upholds-anti-homosexuality-act> (accessed 5 April 2024); Amnesty International, 'Uganda: Lesbian, gay, bisexual and transgender people targeted' August 2006, <https://www.amnesty.org/en/wp-content/uploads/2021/08/afr590062006en.pdf> (Accessed 2 April 2024).

by private citizens emboldened by the legal and social stigma surrounding sexual and gender minorities.<sup>90</sup>

In response to these challenges, civil society organisations and human rights defenders in Uganda have mobilised to challenge discriminatory laws and policies, advocate for the protection of LGBTIQ+ rights, and engage with the government and international human rights mechanisms.<sup>91</sup> However, these efforts have faced significant backlash and opposition from conservative religious and political groups, further entrenching the marginalisation of sexual and gender minorities.<sup>92</sup>

It is important to note that beyond the specific issues faced by LGBTIQ+ individuals, Uganda's record on non-discrimination more broadly has also been a subject of concern. The country has grappled with persistent challenges in addressing discrimination against other marginalised groups, such as ethnic and religious minorities, persons with disabilities, and women.<sup>93</sup> Structural inequalities, gender-based violence, and the exclusion of certain groups from social, economic, and political participation remain pressing issues that undermine the realization of the constitutional promise of equality and non-discrimination.<sup>94</sup>

In recent years, the Ugandan government has taken some steps to address these challenges, such as the enactment of the Persons with Disabilities Act in 2020 and the establishment of the Equal Opportunities Commission to monitor and enforce non-discrimination policies.<sup>95</sup> However, the implementation and effectiveness of these measures have been limited, and significant gaps remain in the protection and promotion of non-discrimination at the national level.<sup>96</sup>

## **2.6 Towards a Rational Basis Theory of Discrimination**

Observing the trends, patterns and manifestations of state-sanctioned discrimination necessitates the development of a theory through which discrimination could be checked, namely; a Rational Basis Theory of Discrimination. This theory provides a critical lens through which to examine the dynamics of discriminatory practices, particularly those enshrined in laws and policies passed by the state. Laws and practices ought to be backed by justifiable reasons, with empirical data of

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<sup>90</sup> Amnesty International (n 44 above).

<sup>91</sup> See, for example, Sexual Minorities Uganda (SMUG), 'About Us', <https://smuginternational.org/> (accessed 5 April 2024).

<sup>92</sup> Human Rights Watch (n 64 above).

<sup>93</sup> See, for example, US Department of State, '2021 Country Reports on Human Rights Practices: Uganda', 2022, <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/uganda/> (accessed 5 April 2024).

<sup>94</sup> As above.

<sup>95</sup> Persons with Disabilities Act, 2020 (Uganda); Equal Opportunities Commission Act, 2007 (Uganda).

<sup>96</sup> US State Department (n 68 above).

actual, rather than perceived issues that are subject to legislation or legitimisation. Short of this evidential backing, a law or practice maintained is discriminatory for lack of a rational basis in its conceptualisation and legitimisation. This theory offers insights into the broader societal mechanisms that perpetuate discrimination against minority groups, including sexual and gender minorities in Uganda and globally. Discriminatory practices and laws are frequently justified using ostensibly logical or rational arguments.<sup>97</sup> These justifications often claim to serve legitimate governmental or societal interests, even when they result in the unequal treatment of certain groups. The theory helps to unpack why seemingly similar groups may face disparate treatment, or how unequal treatment between different groups becomes rationalized and codified into law.

These arguments typically claim to serve a legitimate government interest or societal need, even when they result in unequal treatment of certain groups. The theory helps to explain why two ostensibly similar groups may be treated differently, or why disparate treatment between different groups is rationalized and sometimes codified into law.<sup>98</sup>

In the context of discrimination against LGBTQ+ individuals in Uganda, the Rational Basis Theory illuminates the multifaceted nature of discriminatory justifications. Cultural preservation arguments, for instance, often frame LGBTQ+ rights as a threat to traditional values or as ‘un-African.’ This rationale taps into deep-seated fears of cultural erosion and colonial influence, providing a seemingly logical basis for discriminatory policies. Similarly, child protection narratives, which falsely link homosexuality with child sexual abuse, exploit societal concerns for children's welfare to justify harsh anti-LGBTQ+ measures.

Public health arguments represent another dimension for discrimination. Claims about LGBTQ+ individuals posing heightened health risks, particularly concerning HIV/AIDS, demonstrate how pseudo-scientific reasoning can be manipulated to support discriminatory practices. These arguments often overlook or misrepresent empirical evidence, instead relying on deeply ingrained societal prejudices masked as public health concerns. Religious morality serves as a powerful justification within the rational basis framework. In Uganda, where religious institutions wield significant social and political influence, the invocation of religious teachings to condemn LGBTQ+ individuals provides a moral rationale for discrimination. This religious justification often intertwines with arguments about national identity and sovereignty, framing LGBTQ+ rights as a foreign imposition that threatens the moral fabric of society.

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<sup>97</sup> K Yoshino, ‘The New Equal Protection’ (2011) 124 *Harvard Law Review*, 747-803.

<sup>98</sup> LH Tribe, ‘Lawrence v. Texas: The ‘Fundamental Right’ That Dare Not Speak Its Name’ (2004) 117 *Harvard Law Review*, 1893-1955.

The Rational Basis Theory also challenges how these purportedly rational justifications become codified into law. The Anti-Homosexuality Act in Uganda, for example, exemplifies how discriminatory practices can be enshrined in legislation under the guise of protecting societal interests. The law's proponents have used a combination of child protection, public health, and cultural preservation arguments to justify its draconian measures, illustrating the theory's relevance in understanding the legislative process of discrimination.

Crucially, the Rational Basis Theory highlights the often tenuous nature of these 'rational' justifications. As empirical evidence consistently refutes claims linking homosexuality to child abuse or public health risks, the theory helps expose how these rationalizations frequently mask deeper prejudices and societal power dynamics. It reveals the disconnect between the stated reasons for discriminatory policies and their actual effects, which often exacerbate marginalisation and violate fundamental human rights.

In the legal realm, the application of rational basis review by courts can either perpetuate or challenge discriminatory practices. The theory underscores the importance of rigorous judicial scrutiny in exposing flawed reasoning behind discriminatory laws. It calls for a more nuanced understanding of the harm caused by seemingly rational discriminatory policies and the need for courts to look beyond surface-level justifications. Moreover, the Rational Basis Theory provides a framework for challenging discriminatory practices by exposing the flawed logic and lack of empirical support behind their purportedly rational justifications. It empowers advocates to deconstruct the arguments used to support discrimination, providing a pathway to more equitable policies and laws.

The Rational Basis Theory of Discrimination offers a powerful analytical tool for understanding and combating discrimination against LGBTQ+ individuals in Uganda and beyond. In revealing the often-spurious nature of 'rational' justifications for discriminatory practices, it challenges us to critically examine the underlying assumptions and power structures that perpetuate inequality. As societies grapple with issues of equality and human rights, this theory provides a crucial framework for dismantling the foundations of discrimination and moving towards more just and inclusive legal and social systems.

The rational basis theory posits that legislation restricting fundamental rights must be grounded in legitimate state interests and demonstrate a rational connection between its means and intended objectives.<sup>99</sup> When laws targeting specific groups lack empirical foundation or verifiable

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<sup>99</sup> K Yoshino 'The new equal protection' (2011) 124 Harvard Law Review 747.

justification, they reflect what courts have termed ‘animus’ - prejudice or ill will masquerading as legitimate public policy.<sup>100</sup> The U.S. Supreme Court, in *Romer v. Evans*, established that ‘a bare desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.’<sup>101</sup> This principle reveals how legislation premised on unfounded fears or stereotypes, rather than demonstrable evidence, constitutes impermissible discrimination.<sup>102</sup> In the context of LGBTQ+ rights, courts have increasingly recognised that laws pathologising queer identities or restricting LGBTQ+ rights based on unsupported claims of protecting children or public morality fail rational basis review.<sup>103</sup> As the Supreme Court emphasised in *United States v. Windsor*, laws motivated by animus toward sexual minorities cannot survive constitutional scrutiny, as they serve no legitimate government purpose beyond expressing disapproval of an unpopular group.<sup>104</sup> This understanding of rational basis review provides a crucial analytical framework for distinguishing between legitimate regulation and discriminatory legislation that merely codifies prejudice.<sup>105</sup> When laws targeting LGBTQ+ individuals cannot demonstrate an evidence-based connection to achieving valid state interests, they reveal their true nature as vehicles for enshrining private biases in public law.<sup>106</sup>

### 2.6.1 Analysis of The Theory

The discourse on non-discrimination and the theory of discrimination against minorities is an evolving landscape, with several contemporary challenges and debates that require careful examination. This section explores some of the key emerging issues in this field, highlighting the complexities and the need for a comprehensive and adaptive approach to addressing the discrimination faced by marginalised communities.

The concept of intersectionality, as developed by critical theorists such as Kimberlé Crenshaw, has become increasingly central to the understanding of discrimination and the experiences of marginalised individuals and communities.<sup>107</sup> Intersectionality recognises that individuals often face multiple, intersecting forms of oppression based on their various social identities, such as race, gender, sexual orientation, gender identity, class, disability, and others.<sup>108</sup> These intersecting axes

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<sup>100</sup> D Carpenter 'Windsor Products: Equal protection from animus' (2013) 2013 Supreme Court Review 183.

<sup>101</sup> *Romer v. Evans* 517 U.S. 620 (1996) at 634.

<sup>102</sup> S Goldberg 'Equality without tiers' (2004) 77 Southern California Law Review 481.

<sup>103</sup> CA Ball 'Why liberty judicial review is as legitimate as equality review: The case of gay rights jurisprudence' (2014) 14 University of Pennsylvania Journal of Constitutional Law 1.

<sup>104</sup> *United States v. Windsor* 570 U.S. 744 (2013) at 770.

<sup>105</sup> WD Araiza 'Animus and its discontents' (2016) 71 Florida Law Review 155.

<sup>106</sup> UNDP & Parliamentarians for Global Action 'Advancing the Human Rights and Inclusion of LGBTI People: A Handbook for Parliamentarians' (2022) UNDP.

<sup>107</sup> Crenshaw (n 84 above).

<sup>108</sup> As above.

of identity can lead to unique and amplified experiences of marginalisation and discrimination that cannot be adequately addressed by single-issue approaches.

In the context of sexual and gender minorities in Uganda, the intersectional nature of discrimination is particularly salient. LGBTIQ+ individuals may face compounded challenges due to their sexual orientation or gender identity, as well as their membership in other marginalised groups, such as ethnic, religious, or socioeconomic minorities.<sup>109</sup> For example, a transgender woman of colour may experience a distinct set of barriers and vulnerabilities that differ from those faced by a cisgender, middle-class, gay man.<sup>110</sup> Recognising and addressing these intersectional dynamics is crucial for developing holistic and effective strategies to combat discrimination.

Furthermore, the intersections of discrimination can have profound implications for access to essential services, economic opportunities, and overall well-being. LGBTIQ+ individuals who also belong to ethnic or religious minority groups may face disproportionate barriers in accessing healthcare, education, or employment, further entrenching their marginalisation.<sup>111</sup> Similarly, LGBTIQ+ individuals with disabilities may encounter unique challenges in navigating social and legal systems that often fail to accommodate their specific needs.<sup>112</sup> Understanding and addressing these intersections is essential for ensuring that non-discrimination efforts are inclusive and responsive to the diverse experiences of marginalised communities.

Alongside the progress made in promoting non-discrimination and advancing the rights of LGBTIQ+ individuals, there has been a concerning rise of conservative movements and backlash against these advancements, both globally and in the specific context of Uganda.<sup>113</sup> This backlash has been fuelled by a range of factors, including the perceived threat to traditional gender norms and family structures, the instrumentalization of anti-LGBTIQ+ sentiments for political gain, and the influence of religious fundamentalism.<sup>114</sup>

In Uganda, the passage of the Anti-Homosexuality Act in 2014, despite its subsequent annulment, exemplified the potent political and social forces that have sought to reinforce the criminalisation and persecution of sexual and gender minorities.<sup>115</sup> Conservative politicians and religious leaders have often framed the recognition of LGBTIQ+ rights as a 'Western' or 'foreign' imposition,

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<sup>109</sup> Jjuuko (n 55 above).

<sup>110</sup> As above.

<sup>111</sup> Human Rights Watch (n 64 above).

<sup>112</sup> As above.

<sup>113</sup> Amnesty International (n 90 above).

<sup>114</sup> Tamale (n 85 above).

<sup>115</sup> Anti-Homosexuality Act, 2014 (Uganda); *Oloka-Onyango & 9 Others v Attorney General*, Constitutional Petition No. 8 of 2014, [2014] UGCC 14.

playing on nationalistic and anti-colonial sentiments to rally support for discriminatory policies.<sup>116</sup> This narrative has been used to portray LGBTIQ+ individuals as a threat to Ugandan culture and values, providing a rational basis for their continued marginalisation.<sup>117</sup> These were even further stirred when the Parliament passed the Anti-Homosexuality Act again in 2023.<sup>118</sup>

The resurgence of conservative movements has also manifested in the backlash against comprehensive sexuality education, which has been perceived by some as a means of ‘indoctrinating’ youth and undermining traditional gender roles.<sup>119</sup> The attempts to restrict access to information and resources related to sexuality and gender identity further compound the challenges faced by LGBTIQ+ individuals, particularly young people, in accessing support and affirming their identities.<sup>120</sup>

Navigating this complex and shifting landscape requires a nuanced understanding of the evolving nature of the rational basis for discrimination. Advocates and allies must be prepared to adapt their strategies and respond to the changing tactics employed by conservative forces, which often rely on emotive appeals to tradition, morality, and national identity to justify their discriminatory agenda.<sup>121</sup> Addressing the backlash and the resurgence of conservative movements is a critical component of the broader struggle for non-discrimination and the protection of the rights of sexual and gender minorities.

### **2.6.2 Contemporary Debates and Emerging Issues**

The discussion on the rational basis for discrimination against minorities is an ongoing and evolving discourse, with several contemporary debates and emerging issues that warrant examination. One significant issue is the concept of intersectionality and the compounding effects of multiple forms of discrimination. As highlighted by Kimberlé Crenshaw and other critical theorists, individuals who belong to multiple marginalised groups often experience unique and amplified forms of oppression.<sup>122</sup> For example, sexual and gender minorities who also belong to ethnic, religious, or other minority groups may face intersecting barriers and challenges that cannot be adequately addressed by single-issue approaches to non-discrimination.<sup>123</sup> Developing a

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<sup>116</sup> Jjuuko (n 55 above).

<sup>117</sup> Tamale (n 85 above) 31.

<sup>118</sup> Kalinaki (n 62 above); Human Rights Watch (n 64 above).

<sup>119</sup> Kalinaki (n 62 above).

<sup>120</sup> As above.

<sup>121</sup> Jjuuko (n 55 above).

<sup>122</sup> Crenshaw (n 84 above).

<sup>123</sup> As above.

comprehensive understanding of these intersectional dynamics is crucial for crafting more inclusive and effective strategies to combat discrimination.

Another emerging issue is the backlash against LGBTIQ+ rights and the rise of conservative movements that seek to reinforce traditional gender norms and heteronormative values.<sup>124</sup> In many parts of the world, including Uganda, political and religious leaders have instrumentalized the fear of ‘Western’ or ‘foreign’ influences to rally support for the continued persecution of sexual and gender minorities.<sup>125</sup> Navigating this complex landscape, where the rational basis for discrimination is being actively promoted and legitimised, requires a nuanced and adaptable approach to defending the rights of marginalised communities.

Additionally, the COVID-19 pandemic has further exacerbated the vulnerabilities and challenges faced by sexual and gender minorities, as lockdowns, economic disruptions, and social isolation have disproportionately impacted these already marginalised communities.<sup>126</sup> The pandemic has also revealed how the rational basis for discrimination can be exploited, as some have attempted to scapegoat and further stigmatise LGBTIQ+ individuals as the source of the public health crisis.<sup>127</sup> Addressing the intersections of the pandemic and discrimination against minorities is an emerging area of concern that requires urgent attention.

These contemporary debates and emerging issues highlight the need for a dynamic and adaptable approach to understanding and challenging the rational basis for discrimination. As societal norms, power structures, and global events continue to evolve, the theory of discrimination must also adapt to address the changing landscape and the unique experiences of marginalised communities.

### **2.6.3 Emerging Trends**

One significant trend is the increasing recognition of the rights of transgender and gender non-conforming individuals, both globally and within the African context.<sup>128</sup> The discrimination and criminalisation of transgender identities have been challenged through legal and social advocacy, leading to advancements in the protection of the rights of transgender people.<sup>129</sup> However,

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<sup>124</sup> Amnesty International, 'LGBTI Rights: Discrimination', <https://www.amnesty.org/en/what-we-do/discrimination/lgbti-rights/> (accessed 5 April 2024).

<sup>125</sup> Tamale (n 85 above).

<sup>126</sup> Human Rights Watch, 'LGBT Africans Share Challenges of Life During Pandemic', 19 May 2020, <https://www.hrw.org/news/2020/05/19/lgbt-africans-share-challenges-life-during-pandemic> (accessed 5 April 2024).

<sup>127</sup> As above.

<sup>128</sup> Amnesty International, 'Human Rights and Sexual Orientation and Gender Identity' March 2004, <https://www.amnesty.org/en/wp-content/uploads/2021/08/act790012004en.pdf/> (accessed 5 April 2024).

<sup>129</sup> As above.

significant challenges remain, as the rational basis for discrimination against transgender individuals often relies on deeply entrenched gender norms and the conflation of gender identity with sexual orientation.<sup>130</sup> Addressing these complex issues require a nuanced and intersectional approach.

Another emerging trend is the growing emphasis on the recognition of non-binary and gender-diverse identities.<sup>131</sup> As societies grapple with the limitations of the binary gender system, the need to accommodate and protect the rights of individuals who do not conform to the male-female dichotomy has become increasingly pressing.<sup>132</sup> Developing legal and policy frameworks that adequately address the unique experiences and needs of gender-diverse individuals is a crucial step in advancing non-discrimination efforts.

Additionally, the role of technology and digital spaces in both facilitating and hindering the advancement of LGBTIQ+ rights is an area of growing concern.<sup>133</sup> On the one hand, digital platforms have provided new avenues for LGBTIQ+ individuals to connect, organise, and access information and resources.<sup>134</sup> On the other hand, the rise of online hate speech, disinformation, and the potential for digital surveillance have posed new challenges to the safety and well-being of sexual and gender minorities.<sup>135</sup> Navigating these emerging digital landscapes will require innovative strategies and collaborations between various stakeholders.

Finally, the ongoing need to address the intersections of discrimination and the unique experiences of marginalised groups, such as LGBTIQ+ individuals with disabilities, LGBTIQ+ refugees and migrants, and LGBTIQ+ individuals living in rural or remote areas, must remain a priority.<sup>136</sup> Tailoring non-discrimination efforts to the diverse and evolving needs of these communities is essential for ensuring that the principles of equality and inclusion are truly realized.

## 2.7 Conclusion

This chapter has established the theoretical and legal foundations necessary for understanding apparent discrimination against sexual and gender minorities. Through a comprehensive analysis of international, regional, and domestic legal frameworks, coupled with an examination of

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<sup>130</sup> As above.

<sup>131</sup> Council of Europe, *Human Rights and Gender Identity and Expression* (Council of Europe, 2024) 48-52

<sup>132</sup> As above.

<sup>133</sup> Council of Europe, *Human Rights and Gender Identity and Expression* (Council of Europe, 2024) 48-52

<sup>134</sup> As above.

<sup>135</sup> As above.

<sup>136</sup> As above.

theoretical perspectives on discrimination, the chapter reveals the complex interplay between legal structures and discriminatory practices. The development of the Rational Basis Theory emerges as a crucial theoretical contribution, addressing the limitations of existing frameworks in explaining and analysing discrimination against LGBTQ+ individuals. This theoretical framework provides essential analytical tools for examining how discriminatory practices persist despite lacking empirical justification, particularly regarding false associations between sexual orientation and predatory behaviour.

The chapter builds on the analysis of various theoretical perspectives, from functionalist and conflict theories to symbolic interactionism and philosophical approaches, to demonstrate the need for a more comprehensive framework that can adequately address the complexities of contemporary discrimination. The Rational Basis Theory fills this gap by emphasising the importance of evidence-based analysis in evaluating discriminatory claims and policies. This theoretical groundwork sets the stage for subsequent chapters' examination of how discrimination manifests in practice (Chapter 3) and the empirical evidence challenging discriminatory assumptions (Chapter 4). By establishing both the legal context and theoretical framework for understanding discrimination, this chapter provides the analytical tools necessary for evaluating specific manifestations of discrimination and their purported justifications.

The chapter's analysis reveals that while existing legal frameworks nominally protect against discrimination, their effectiveness is often limited by theoretical inadequacies in understanding how discrimination operates and persists. This understanding is crucial for the subsequent examination of specific discriminatory practices and their impact on LGBTQ+ individuals in Uganda.

## CHAPTER THREE

### HISTORY AND MANIFESTATION OF LGBTQ+ DISCRIMINATION

- 3.1 Introduction
- 3.2 The Global and Historical Contexts
- 3.3 Modern Manifestations of Discrimination in Uganda
- 3.4 Legislative Proposals Targeting LGBTQ+ 'Recruitment'
- 3.5 Further Manifestations of LGBTQ+ Discrimination in Uganda
- 3.6 Analysis of Emerging Issues
- 3.7 Conclusion

#### 3.1 Introduction

False associations linking homosexuality and paedophilia have been ingrained across many societies, mobilising prejudice and hostility against lesbian, gay, bisexual, transgender and queer (LGBTQ+) minorities.<sup>1</sup> This chapter examines the history, nature and extent of LGBTQ+ discrimination specifically within the Ugandan context. The analysis traces the emergence and evolution of political rhetoric and cultural narratives stereotyping LGBTQ+ persons as immoral 'recruiters' or 'abusers' of children, often absent sound empirical substantiation.<sup>2</sup> Exposing the discriminatory roots and ongoing impacts of these unfounded claims provides an essential backdrop to this study's core focus quantifying actual cases categorised by offender sexual orientation.

Internationally, homosexuality has frequently been categorised as a form of deviance contravening dominant societal rules and norms.<sup>3</sup> Sociologists like Howard Becker argue designations of 'deviance' reflect situated social constructions rather than inherent immorality.<sup>4</sup> Building on this foundation, scholars have analysed the specific discrimination patterns linking male homosexuality with paedophilia. José M. Moral de la Rubia and Adrián Valle de la O suggest an influential 1969 study controversially claimed gay men showed greater sexual interest in children than heterosexual

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<sup>1</sup> JM Moral de la Rubia & A Valle de la O 'Predictive models of attitude toward homosexuality in heterosexual men' (2014) 13 *Universitas Psychologica* 1395.

<sup>2</sup> As above.

<sup>3</sup> HS Becker *Outsiders: Studies in the sociology of deviance* (1963).

<sup>4</sup> As above.

men, enabling lasting stigmatisation.<sup>5</sup> Though repudiated methodologically, authors argue this discredited research furnished a pseudoscientific basis for predation allegations lacking empirical validity.<sup>6</sup>

Regionally across sub-Saharan Africa, homosexuality was widely accepted and integrated into many pre-colonial societies.<sup>7</sup> The criminalisation of same-sex intimacy emerged under colonial rule, as Victorian imperial powers imposed Eurocentric notions of sexual morality.<sup>8</sup> Post-independence leaders largely retained colonial anti-sodomy laws, though often unenforced until recent decades.<sup>9</sup> The origins of LGBTQ+ oppression trace primarily to the 'sodomy laws' inherited from former colonizers – casting homosexuality as alien, unnatural or ungodly based on imported bias rather than African tradition.<sup>10</sup>

This chapter explores the conceptual evolution and historical patterns of discrimination globally that have linked LGBTQ+ identities and same-gender relationships with mental illness, sexual deviance, and threats necessitating societal rejection or repression. The analysis traces perspectives from ancient traditions, through Judeo-Christian ideological shifts and colonial impositions of sodomy laws, towards 20th-century clinical models overtly categorising homosexuality as a pathology. The ongoing resilience of these stereotypes is examined, despite modern mental health fields conclusively repudiating inherent links between sexual orientation or gender identity and psychological dysfunctions. The chapter finally highlights recent expansions in state-level rights protections prohibiting discrimination targeting LGBTQ+ populations, though backlashes persist.

Framing this context holds significance for problematizing the acute discrimination of homosexuality persisting within African regions today. Authors have stressed that 'to understand current sentiments, a nuanced reading of history can explain the union between culture and sentiment'.<sup>11</sup> Appreciating globally prevalent patterns of LGBTQ+ stereotyping and marginalisation thus assists in situating modern African outlooks as local manifestations shaped through complex geopolitical power dynamics over centuries.<sup>12</sup> Correcting assumptions of

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<sup>5</sup> Moral de la Rubia & Valle de la O (n 1 above) 1400.

<sup>6</sup> As above.

<sup>7</sup> S Tamale 'Out of the closet: Unveiling sexuality discourses in Uganda' (2003) 2 *Feminist Africa* 42.

<sup>8</sup> F Viljoen 'Harmful sexual behaviour and human rights in Africa: Key patterns across the continent' (2019) 19 *African Human Rights Law Journal* 18.

<sup>9</sup> As above; A Juuko 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' in Corinne Lennox & Matthew Waites (eds) *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change* (2013) 381.

<sup>10</sup> S Tamale, 'Confronting the politics of nonconforming sexualities in Africa' (2013) 56 *African Studies Review*, 31-45.

<sup>11</sup> SO Murray & W Roscoe (eds) *Boy-wives and female husbands: Studies in African homosexualities* (2001), p17.

<sup>12</sup> As above.

homosexuality as intrinsically immoral, unnatural or threatening requires tracing the situated social processes by which these ideas are institutionalised across belief systems.<sup>13</sup>

### 3.2 The Global and Historical Contexts

Examining sexuality and gender diversity cross-culturally before extensive colonial influence indicates pronounced variability in social acceptance, integration or even sacralization of same-sex bonding and nonbinary gender categories historically across regions. Assumptions of homosexuality as intrinsically immoral or socially deviant fail to align with this evidence. Rather, the compromise of indigenous outlooks and imposition of external value paradigms situates the origins of LGBTQ+ repression.

Associations linking homosexuality and paedophilia trace back over a century across Western discourse. The eminent sexologist Richard von Krafft-Ebing first theorized in 1886 that homosexuality derived from a '*psycopathia sexualis*' or defective sexual instinct.<sup>14</sup> This conceived homosexuality as a 'degenerative disorder' inclining attraction towards children.<sup>15</sup> Sigmund Freud's theories further entrenched views of homosexuality as a pathology.<sup>16</sup> Freud suggested that all humans were innately bisexual but 'immaturity' caused some to remain fixated on same-sex desire.<sup>17</sup> Psychoanalysts extended this framing homosexuality as an 'arrested development' indicating increased child attraction risks.<sup>18</sup> These early conjectures lacked systematic analysis, instead reflecting dominant societal prejudices. However, they furnished ostensibly scientific foundations for stereotyping homosexuals as unstable 'deviants' prone to immorality and sexually predatory behaviours.<sup>19</sup>

An influential scholar cementing these associations was Dr Paul Cameron. His 1985 survey claimed disproportionate numbers of gay men sexually abused boys, sparking enduring discrimination.<sup>20</sup> Yet Cameron's sampling and interpretations remain widely contested for severe methodological flaws.<sup>21</sup> Authorities like the American Psychological Association repudiated Cameron's claims,

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<sup>13</sup> As above.

<sup>14</sup> H Oosterhuis 'Sexual Modernity in the Works of Richard von Krafft-Ebing and Albert Moll' (2012) 56(2) *Medical History* 133-155.

<sup>15</sup> As above.

<sup>16</sup> As above.

<sup>17</sup> GM Herek 'Facts about homosexuality and child molestation' (2012) *Sexual Orientation: Science, Education and Policy*.

<sup>18</sup> Oosterhuis (n 14 above) 139.

<sup>19</sup> As above.

<sup>20</sup> Herek (n 17 above).

<sup>21</sup> As above.

concluding no credible evidence suggests LGBTQ+ persons abuse children at higher rates.<sup>22</sup> Still, his discredited research enabled predation myths to mobilise hostility and discrimination.

Across much of pre-colonial sub-Saharan Africa, same-sex intimacy received tolerance and integration. Anthropologists have documented customary rites incorporating homosexual intimacy in communities like the Maale of Ethiopia or Native American tribes.<sup>23</sup> Open persecution largely emerged under colonial rule. Uganda's principal colonizer Britain codified anti-sodomy laws applied throughout its former Empire. Section 377 of the 1861 Indian Penal Code prohibiting 'carnal intercourse against the order of nature' became the model.<sup>24</sup> Colonial authorities justified suppressing traditional tolerance of homosexuality as necessary to 'civilize primitive cultures'.<sup>25</sup>

Post-independence governments largely retained these colonial homophobic legacies. Homosexuality remained illegal in 38 Commonwealth countries by the 1990s.<sup>26</sup> However, LGBTQ+ oppression intensified from the late 20th century amid evangelical religious expansionism and human rights contestations.<sup>27</sup> US-based groups like Pat Robertson's Christian Broadcast Network pioneered extreme anti-LGBTQ+ messaging across radio and television. Robertson preached homosexuality as 'unnatural' and 'destructive to society', drawing moral equivalence with paedophilia and bestiality.<sup>28</sup> US evangelicals exported these hostile views through networks of affiliate African preachers and churches.<sup>29</sup>

This moral crusade against expanding LGBTQ+ rights invoked shielding African cultural purity and children's welfare from immoral Western impositions.<sup>30</sup> Yet beyond contributing generalised homophobic attitudes lacking prior cultural resonance, evidence again failed to substantiate any disproportionate risks specifically associated with LGBTQ+ populations.<sup>31</sup> Regional human rights bodies also increasingly upheld LGBTQ+ protections. A 2014 Resolution of the African Commission on Human and Peoples' Rights condemned violence targeting persons based on sexual orientation or gender identity.<sup>32</sup> Domestic courts likewise advanced rights, with Kenya's

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<sup>22</sup> American Psychological Association (APA) 'Answers to your questions for a better understanding of sexual orientation and homosexuality' (2008) *American Psychological Association* 1.

<sup>23</sup> SO Murray & W Roscoe (eds) *Boy-wives and female husbands: Studies in African homosexualities* (2001).

<sup>24</sup> Human Rights Watch 'This alien legacy: The origins of sodomy laws in British colonialism' (2008) 11.

<sup>25</sup> Tamale (n 10 above) 43.

<sup>26</sup> A Jjuuko, 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' In: *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change* (Institute of Commonwealth Studies, School of Advanced Study, University of London, 2013) 381-408

<sup>27</sup> Human Rights Watch (n 24 above)

<sup>28</sup> KJ Kaoma *Globalizing the culture wars: US conservatives, African churches and homophobia* (2009) 25.

<sup>29</sup> As above 31.

<sup>30</sup> Tamale (n 10 above).

<sup>31</sup> W Muguongo *et al*; *Kenya LGBTI: Landscape Analysis of Political, Economic & Social Conditions* (2015).

<sup>32</sup> African Commission on Human and Peoples' Rights 'Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity' (2014).

High Court ruling criminalisation of same-sex conduct unconstitutional in 2019.<sup>33</sup> However, political leaders dismissed these frameworks as incompatible with 'African values', prioritising unwarranted LGBTQ+ predation myths.<sup>34</sup>

### 3.2.1 Examples of Acceptance in Early Cultures

In contrast to dominant contemporary precepts, numerous premodern societies evidence varying degrees of normalization regarding same-sex intimacy and intermediate gender roles. Recognition that sexual and gender diversity manifests organically throughout human cultures absent prohibitive strictures remains pertinent for challenging residual colonial stereotypes. Among the most renowned indications is the historic Greek acceptance of male same-sex bonding. Plato's Symposium dialogue explores love between men as highly admired, if subject to hierarchies.<sup>35</sup> Aristophanes famously mythologizes primordial origins wherein male-male soulmate pairs constitute our natural state later divided.<sup>36</sup> Classicists confirm sexual relationships between men occurred openly, particularly assuming hierarchical dynamics between older *erastês* and adolescent *erômenos* as a development rite.<sup>37</sup> Romantic friendship, spiritual transcendence via beauty or pleasure, centred historical outlooks rather than strained modern identity binaries.<sup>38</sup>

Ancient Mesopotamian and Egyptian records similarly suggest the integration of same-sex practices. A fragmentary Sumerian proverb states that 'pleasing the king is pleasing the goddess'.<sup>39</sup> Egyptian Papyrus 55001 from c.1150 BCE contains magical spells invoking anal sex between two male deities to enable continued intercourse with women.<sup>40</sup> Tomb paintings and other artefacts indicate that gender fluidity rather than rigid demarcations prevailed in this civilisation.<sup>41</sup> Among Bantu heritage South African groups, women married to other women retained recognition by extended families, with wealth transferral rights and children from kinsmen or extramarital affairs.<sup>42</sup> 'Mine marriages' among female Basotho labour migrants, for example, institutionalised erotic female couplings pragmatically but amicably.<sup>43</sup> Spirit mediumship and other ritual leadership

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<sup>33</sup> Petition 150 & 234 of 2016 (Consolidated Judgement) Nairobi High Court of Kenya (2019).

<sup>34</sup> Tamale (n 10 above).

<sup>35</sup> Plato 'The Symposium' In M. C. Nussbaum & J. Sihvola (Eds.), *The sleep of reason: Erotic experience and sexual ethics in ancient Greece and Rome*. University of Chicago Press (2002).

<sup>36</sup> As above.

<sup>37</sup> TK Hubbard, (Ed) *Homosexuality in Greece and Rome: A sourcebook of basic documents*. University of California Press (2003).

<sup>38</sup> As above.

<sup>39</sup> As above.

<sup>40</sup> RB Parkinson 'Homosexual' desire and Middle Kingdom literature' (1995) 81 *The Journal of Egyptian Archaeology* 57.

<sup>41</sup> Graves-Brown, C. (Ed). *Sex and gender in ancient Egypt: 'Don your wig for a joyful hour'* (2008) Classical Press of Wales.

<sup>42</sup> RP Gaudio *Allah made us: Sexual outlaws in an Islamic African city* (2009) Wiley-Blackwell.

<sup>43</sup> S Tamale (Ed) *African sexualities: A reader* (2011) Pambazuka Press.

roles among Shona peoples traditionally fell to transgender or intersex persons.<sup>44</sup> Colonial observers noted several warrior male couples among Zulu, terming the sexually receptive one, *inyoka* 'snake', though cultural attitudes to same-sex sexuality remain complex among the Zulu.<sup>45</sup>

Among pre-contact Native American societies, extensive documentation confirms the prevalence of alternative genders and sexuality patterns dissenting from Western binaries. More populous groups like Navajo and Lakota exhibited four recognised genders.<sup>46</sup> Persons embodying feminine and masculine spirits simultaneously occupy revered spiritual roles in these communities.<sup>47</sup> Partnerships or even marriages between those inhabiting opposite anatomical sexes but congruent genders occur, including for reproduction.<sup>48</sup> Thus, amidst variability, strong evidence exists of cultural spaces afforded for intimacy and self-determination between same-sex partners in ways that trouble contemporary LGBTQ+ marginalisation. Factors like age hierarchies certainly problematize blanket celebration of these arrangements by modern paradigms as discussed in this research.<sup>49</sup> However, assumptions of traditional condemnation equally risk projecting colonial value paradigms onto erased diversity.<sup>50</sup>

### 3.2.2 Ideological Shifts Under Abrahamic Faiths

Judeo-Christian belief structures stand out as inflexion points fundamentally recasting frameworks validating same-sex intimacy into theological anathema. As belief systems intertwined with political influence, moral castigation of homosexual acts introduced new mechanisms of control regulating sexuality towards exclusive heterosexual conjugality. However, interpretations remain complex; demonization emerged out of particular sectarian applications of scripture rather than intrinsic doctrine. Regarding Judaic law, the Hebrew bible features no clear reference to sexual acts between women; sanctions against male same-sex behaviour arise in three verses only across the entire text.<sup>51</sup> The categorisation of these acts as capital crimes equivalent to incest appears inconsistent with the text and its context.<sup>52</sup> Even medieval rabbinical authority Nachmanides argued that

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<sup>44</sup> M Epprecht 'The 'unsaying' of indigenous homosexualities in Zimbabwe' (1998) 24(4) *Journal of Southern African Studies* 631.

<sup>45</sup> A Tucker *Queer visibilities: Space, identity and interaction in Cape Town* (2009) Wiley-Blackwell.

<sup>46</sup> W Roscoe *The Zuni man-woman* (1992) University of New Mexico Press.

<sup>47</sup> As above.

<sup>48</sup> As above.

<sup>49</sup> As above.

<sup>50</sup> As above.

<sup>51</sup> Leviticus 18:22 & 20:13; cf. Genesis 19, KJV.

<sup>52</sup> L Crompton *Homosexuality and civilization* (2006) Belknap Press.

restrictions sit uneasily amidst positive ethical obligations, suggesting pragmatic accommodation was judicious.<sup>53</sup>

Scriptural bases in early Christianity also lack extensive grounding. Jesus never mentions homosexuality, nor did arguments against same-sex acts arise within leading theologians like Augustine.<sup>54</sup> As Boswell notes, Church practice between the 4th and 11th centuries only reluctantly punished homosexuality in response to the scandal, otherwise allowing space for same-sex intimacy to continue privately.<sup>55</sup> Rather than timeless truth, hardline vilification reflects particular movements within Abrahamic faith lineages.<sup>56</sup> Contextual factors enabled theological hostility to arise forcefully in the 13th century – consolidation of ecclesiastical judicial authority in Europe, increased urbanization and population pressures, and reaction to perceived Islamic tolerance including homoerotic poetic traditions.<sup>57</sup> Further impetus followed the Reformation, which closed monasteries thus shutting down accepted outlets for homosocial or homoerotic bonding.<sup>58</sup> Sin frames stressed procreation, recasting non-fecund conduct like sodomy or masturbation as wilfully perverted.<sup>59</sup>

Thus, ideological shifts introduced new directives aimed at imposing exclusive heterosexuality.<sup>60</sup> Condemnation intertwined justifying political controls against sodomy, enabling waves of persecution discussed below. However, the grounds remain situated, not scripturally intrinsic. As Murray summarizes, Judeo-Christian positioning of homosexuality as an abomination reflects ‘only one interpretation of these mythic events and legal codes’ adopted forcefully yet not inevitably.<sup>61</sup>

### 3.2.3 Ideological Compromise Through Early Colonial Encounters

As belief became bound up with state power, Abrahamic objections to homosexuality gained mechanisms to align global cultures with theological precepts.<sup>62</sup> While resistance occurred, colonial influence often succeeded in implanting and perpetuating sexual orientation and gender binaries with enduring implications.<sup>63</sup> The Spanish conquest of Central/South America in 1492 illustrates pressures to conform indigenous cultures immediately to Catholic fidelity standards. Native gender

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<sup>53</sup> As above.

<sup>54</sup> J Boswell *Christianity, social tolerance, and homosexuality: Gay people in Western Europe from the beginning of the Christian era to the fourteenth century* (2015) University of Chicago Press 92-98.

<sup>55</sup> As above 274-330.

<sup>56</sup> As above.

<sup>57</sup> JA Brundage *Law, sex, and Christian society in medieval Europe* (1987) University of Chicago Press, 549.

<sup>58</sup> M Foucault, *The History of Sexuality Vol. 1: An Introduction*. (Random House 1978) 8.

<sup>59</sup> As above.

<sup>60</sup> As above.

<sup>61</sup> SO Murray *Homosexualities* (2002) University of Chicago Press, 17.

<sup>62</sup> As above.

<sup>63</sup> As above.

role diversity met harsh reprisal, including policies forcibly reducing masculine women and feminine males into enforced norms.<sup>64</sup> Demonizing local spiritual figures likewise aimed to displace holistic sexual philosophies like Inca-Andean Tinkuy balancing masculine/feminine complementarity.<sup>65</sup> Where accommodation of prior norms occurred, for example in Mexico, syncretization still positioned indigenous gender diversity under homosexual sin frames for ongoing stigma and erasure.<sup>66</sup>

In regions under British colonial administration, a complex duality prevailed. Legal sanctions actively repressed male homosexuality, notably in the form of the infamous Indian Penal Code 377 prohibiting ‘carnal intercourse against the order of nature’ imposed from 1860.<sup>67</sup> An ‘archival silence’ around homosexuality accompanied overt condemnation, however, foregoing opportunities to erase same-sex desire outright from official discourse as occurred more forcefully under French administration in West Africa, for example.<sup>68</sup> Rather, regulations aimed pragmatically to avoid public scandal, while documentation frequently recognised same-sex relations or fluid identities prevailing in India, Malaysia and other occupied lands.<sup>69</sup>

While nuanced in implementation, the importation of Victorian legal mores entrenched homosexuality as immoral across systems of codified law transnationally.<sup>70</sup> Customary outlooks reconciling sexual and gender diversity eroded through coercive structures, though traces endured subversively at communal levels.<sup>71</sup> Impacts seeded modern LGBTQ+ marginalisation frameworks globally. This historical grounding cautions against facile assumptions that homosexuality as an identity or practice appeared absent or taboo uniformly across precolonial traditions. Instead, diversity consistently arises, signalling orientation and gender as spectrums manifesting diversely worldwide. Repression reflects situated sociopolitical interests, not timeless truth. Colonial archives even hint at pragmatic indifference beyond public pretences of Victorian propriety.

However, accommodation faltered against the unrelenting pressures of conquest and moralistic orthodoxy. Sexuality and gender systems face persistent demands to conform to external paradigms, compromising indigenous integrity. Internalisation of homosexual deviation frames

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<sup>64</sup> PL Manuela & T Josi ‘Indigenous Sexualities: Resisting Conquest and Translation’ (2019) *E-International Relations*.

<sup>65</sup> As above.

<sup>66</sup> As above.

<sup>67</sup> As above.

<sup>68</sup> Burton, R. (Trans). *Arabian nights: The book of the thousand nights and a night* (1885) (Vol. 10, pp. 191-210). Kamashastra Society; see also B Hinsch *Passions of the cut sleeve: The Male Homosexual Tradition in China* (1992) University of California Press.

<sup>69</sup> Morgan & SE Wieringa *Tommy Boys, lesbian men, and ancestral wives: Female same-sex practices in Africa* (2005) Jacana Media.

<sup>70</sup> As above.

<sup>71</sup> As above.

seeds of ongoing difficulties for self-affirmation and collective liberation today. The following section turns towards the crystallization of LGBTQ+ discrimination within industrializing Western psychiatry and psychoanalysis during the 19th and 20th centuries.

### **3.2.4 Examples and Case Studies**

The rational basis for discrimination against minorities has been a recurring theme throughout history, with numerous examples of the discrimination and criminalisation of specific groups. Understanding these historical precedents and case studies can provide valuable insights into the mechanisms and consequences of such practices. One prominent historical example is the discrimination and persecution of the LGBTQ+ community in the United States, particularly in the aftermath of the Stonewall riots in 1969.<sup>72</sup> Despite the growing LGBTQ+ rights movement, the American Psychological Association (APA) continued to classify homosexuality as a mental disorder until 1973, legitimising the discrimination and marginalisation of LGBTQ+ individuals.<sup>73</sup> The criminalisation of same-sex relations and the denial of basic rights to LGBTQ+ people persisted well into the late 20th century, contributing to a long history of social, political, and legal oppression.

#### **3.2.4.1 South Africa**

An illustrative case of discrimination is the apartheid regime in South Africa, which systematically discriminated against and oppressed the country's Black majority population.<sup>74</sup> The apartheid government justified its policies of racial segregation and the denial of political and civil rights to Black South Africans through a racist ideology that portrayed the Black population as inferior and a threat to the 'white' social order.<sup>75</sup> The rational basis for this discrimination was rooted in pseudoscientific theories of racial superiority and the perceived need to maintain the political and economic dominance of the white minority.

##### **3.2.4.1.1 Background and Context**

South Africa's legal framework regarding the rights of sexual and gender minorities has been hailed as one of the most progressive in the world, particularly in the post-apartheid era. The country's transition to democracy and the adoption of the Constitution of the Republic of South Africa,

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<sup>72</sup> M Stein, *Rethinking the Gay and Lesbian Movement* (Routledge 2012), Introduction.

<sup>73</sup> J Drescher, 'Out of DSM: Depathologising Homosexuality', (2015) 5 *Behavioral Sciences*, 565.

<sup>74</sup> J Dugard, *Human Rights and the South African Legal Order* (Princeton University Press 1978).

<sup>75</sup> As above.

1996 (the Constitution) marked a significant turning point in the recognition and protection of LGBTQ+ rights.

South Africa stands out as a leader in the protection and promotion of LGBTQ+ rights on the African continent. The country's post-apartheid Constitution, adopted in 1996, explicitly prohibits discrimination on the grounds of sex, making it one of the countries in the world to enshrine such protections.<sup>76</sup> South Africa has taken significant steps to align its legal framework with the principle of non-discrimination. In 1998, the Constitutional Court ruled that the common law definition of marriage, which excluded same-sex couples, was unconstitutional.<sup>77</sup> This paved the way for the legalization of same-sex marriage in 2006, making South Africa the fifth country in the world to do so at the time.

Additionally, South Africa has comprehensive anti-discrimination legislation, including the Promotion of Equality and Prevention of Unfair Discrimination Act, which prohibits unfair discrimination on the grounds of sexual orientation, gender identity, and intersex status.<sup>78</sup> The country has also taken measures to address violence and discrimination against LGBTQ+ individuals, including the establishment of specialized police task forces and support services.

While progress has been made, LGBTQ+ individuals in South Africa continue to face societal stigma and discrimination, particularly in rural areas and within certain cultural or religious communities.<sup>79</sup> Ongoing efforts are needed to promote awareness, education, and the full realization of LGBTQ+ rights throughout the country. The Constitution enshrines the right to equality and non-discrimination, explicitly prohibiting unfair discrimination on the grounds of sexual orientation.<sup>80</sup> This constitutional guarantee has been reinforced and expanded through a series of landmark judicial decisions and legislative reforms.

#### **3.2.4.1.2 Relevant Laws, Policies, and Practices**

The Constitutional Court of South Africa has played a pivotal role in advancing the rights of sexual and gender minorities through its progressive interpretations of the Constitution. In the seminal

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<sup>76</sup> The Constitution of the Republic of South Africa, 1996, sec. 9(3).

<sup>77</sup> *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6; 1998 (12) BCLR 1517 (9 October 1998).

<sup>78</sup> Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (South Africa).

<sup>79</sup> AS van Klinken & E Obadare 'Christianity, Sexuality and Citizenship in Africa: Critical Intersections' (2018) 22(6) *Citizenship Studies* 1.

<sup>80</sup> Constitution of the Republic of South Africa, 1996, Sec 9(3).

case of the *National Coalition for Gay and Lesbian Equality v Minister of Justice*,<sup>81</sup> the Court struck down the remnants of the common law offence of sodomy, decriminalising same-sex sexual activity between consenting adults.

Subsequently, in *Minister of Home Affairs v Fourie*,<sup>82</sup> the Court held that the exclusion of same-sex couples from the legal institution of civil marriage constituted unfair discrimination and violated the constitutional right to equality. This paved the way for the Civil Union Act of 2006,<sup>83</sup> which legalized same-sex marriage in South Africa, making it one of the first countries in Africa to do so.

South Africa has also taken steps to address discrimination and promote the inclusion of transgender and gender non-conforming individuals. The Alteration of Sex Description and Sex Status Act of 2003<sup>84</sup> provides a legal framework for individuals to change their gender markers on official documents, subject to certain requirements.

Furthermore, the Department of Home Affairs has issued directives and guidelines aimed at ensuring fair and non-discriminatory treatment of LGBTQ+ individuals in various aspects of daily life, such as access to healthcare, education, and employment.<sup>85</sup>

### **3.2.4.1.3 Key Findings and Statistics**

Despite these progressive legal and policy developments, challenges persist in South Africa regarding the full realization of LGBTQ+ rights. According to a 2016 report by Nyeck and Shepherd,<sup>86</sup> more than 70% of LGBTQ+ individuals in South Africa have experienced some form of discrimination or violence based on their sexual orientation or gender identity.

Notably, the report highlighted the disproportionate impact of discrimination and violence on transgender individuals, with nearly 90% reporting instances of discrimination or violence.<sup>87</sup>

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<sup>81</sup> *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6; 1998 (12) BCLR 1517 (9 October 1998).

<sup>82</sup> *Minister of Home Affairs and Another v Fourie and Another* (CCT 60/04) [2005] ZACC 19; 2006 (3) BCLR 355 (CC); 2006 (1) SA 524 (CC) (1 December 2005).

<sup>83</sup> Civil Union Act, No. 17 of 2006.

<sup>84</sup> Alteration of Sex Description and Sex Status Act, No. 49 of 2003.

<sup>85</sup> Department of Home Affairs, Republic of South Africa. (2012). Directive on the Registration of Customary Marriages.

<sup>86</sup> SN Nyeck & D Shepherd, 'The Economic Cost of LGBT Stigma and Discrimination in South Africa' (Williams Institute, December 2019).

<sup>87</sup> As above.

Furthermore, the report found that hate crimes motivated by sexual orientation or gender identity often go unreported and inadequately addressed by law enforcement agencies.<sup>88</sup>

In contrast to South Africa's progressive legal framework, Uganda continues to criminalise consensual same-sex sexual activity through provisions in its Penal Code Act,<sup>89</sup> which were inherited from British colonial rule. Additionally, the country has grappled with proposed legislation, such as the controversial Anti-Homosexuality Act, of 2014, which sought to further criminalise and impose harsher penalties for LGBTQ+ individuals and those perceived as promoting or supporting homosexuality,<sup>90</sup> and which was revived and passed in 2023.<sup>91</sup>

While the Act was eventually annulled by the Constitutional Court on procedural grounds, it exemplified the ongoing challenges faced by sexual and gender minorities in Uganda, where societal attitudes and cultural norms often perpetuate discrimination, stigma, and marginalisation. The Act was revived in 2023 and was finally passed, as observed above.

### **3.2.4.2 Kenya**

As a country that is more closely aligned with Uganda's laws, both in geographical proximity and demographic parity, Kenya makes for a good comparative analysis on the issues of gender and sexual rights. This section analyses Kenya's relevant laws on this matter.

#### **3.2.4.2.1 Background and Context**

Kenya's legal and policy landscape regarding the rights of sexual and gender minorities has been marked by a complex interplay of progressive judicial interpretations and entrenched societal biases. While the country's Constitution, adopted in 2010, does not explicitly mention sexual orientation or gender identity as protected grounds for non-discrimination, it enshrines the principles of equality, human dignity, and non-discrimination.<sup>92</sup> In Kenya, the legal and societal landscape for LGBTQ+ individuals remains challenging. The country's Penal Code criminalises 'carnal knowledge against the order of nature,' which has been interpreted to include same-sex

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<sup>88</sup> As above.

<sup>89</sup> Penal Code Act, 1950 (Uganda), Sections 145-146.

<sup>90</sup> Anti-Homosexuality Act, 2014 (Uganda).

<sup>91</sup> Anti-Homosexuality Act, 2023 (Uganda).

<sup>92</sup> Constitution of Kenya, 2010, Article 27.

sexual relations.<sup>93</sup> These provisions, which date back to the colonial era, carry harsh penalties, including imprisonment for up to 14 years.

Despite the criminalisation of same-sex relations, the Kenyan Constitution does not explicitly prohibit discrimination on the grounds of sexual orientation or gender identity. However, Article 27 provides broad protection against discrimination on various grounds, including sex, race, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, or birth.<sup>94</sup> In recent years, there have been legal challenges and advocacy efforts to decriminalise same-sex relations and promote LGBTQ+ rights in Kenya. In 2019, the High Court of Kenya upheld the criminalisation of same-sex relations, a decision that was widely criticised by human rights organisations.<sup>95</sup> However, the court also acknowledged the need to address the discrimination and stigma faced by LGBTQ+ individuals.

Societal attitudes and cultural norms in Kenya continue to pose challenges for the LGBTQ+ community, with widespread discrimination, violence, and stigma reported.<sup>96</sup> Progress in advancing non-discrimination and equality has been slow, and ongoing efforts are needed to address legal and societal barriers.

#### **3.2.4.2.2 Relevant Laws, Policies, and Practices**

Similar to Uganda, Kenya's Penal Code criminalises same-sex sexual activity through provisions inherited from British colonial rule.<sup>97</sup> However, in recent years, the Kenyan judiciary has demonstrated a more progressive stance on LGBTQ+ rights, issuing several landmark rulings that challenge these discriminatory laws. In the case of *Eric Gitari v Non-Governmental Organisations Co-ordination Board*,<sup>98</sup> the High Court of Kenya ruled that the decision by the Non-Governmental Organisations Co-ordination Board to deny registration to an LGBTQ+ rights organisation was unconstitutional and violated the right to freedom of association.

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<sup>93</sup> Penal Code, Cap. 63 (Kenya), sec. 162.

<sup>94</sup> The Constitution of Kenya, 2010, art. 27.

<sup>95</sup> *Eric Gitari v. Non-Governmental Organisations Co-ordination Board & 4 others*, Petition No. 440 of 2013 [2015] eKLR.

<sup>96</sup> Human Rights Watch, 'Kenya: Events of 2023,' Human Rights Watch, World Report 2023, accessed March 19, 2024, <https://www.hrw.org/world-report/2023/country-chapters/kenya>.

<sup>97</sup> Penal Code, Cap. 63 (Kenya), Sections 162-165.

<sup>98</sup> *Eric Gitari v. Non-Governmental Organisations Co-ordination Board & 4 others*, Petition No. 440 of 2013 [2015] eKLR.

Additionally, in the case of *Baby A. & Another v Attorney General & 6 Others*,<sup>99</sup> the High Court recognised the rights of intersex individuals and ordered the government to develop a comprehensive legal and policy framework to protect their rights and address issues related to access to healthcare, education, and legal recognition. However, despite these judicial developments, the Kenyan Parliament has been reluctant to repeal or amend the discriminatory provisions in the Penal Code. Furthermore, societal attitudes and cultural norms continue to perpetuate discrimination and stigma against LGBTQ+ individuals, particularly in rural areas and more conservative communities.<sup>100</sup>

### 3.2.4.2.3 Key Findings and Statistics

According to a 2023 report by Human Rights Watch, more than 50% of LGBTQ+ individuals in Kenya have experienced some form of discrimination or violence based on their sexual orientation or gender identity.<sup>101</sup> The report also highlighted the prevalence of corrective rape, a form of hate crime targeting lesbian women, and the lack of adequate legal protections and support services for victims.<sup>102</sup> Additionally, the report found that LGBTQ+ individuals often face discrimination in accessing healthcare services, with many healthcare providers lacking appropriate training and sensitivity in addressing their specific needs.<sup>103</sup>

While Uganda and Kenya share similarities in terms of the colonial legacy of criminalising same-sex sexual activity, Kenya's judicial system has demonstrated a more progressive approach in recent years. The landmark rulings by the Kenyan judiciary have created a legal precedent for the recognition and protection of LGBTQ+ rights, which could potentially influence future legislative reforms. However, both countries continue to grapple with deeply entrenched societal biases and cultural norms that perpetuate discrimination and marginalisation of sexual and gender minorities. More so, in Uganda, the Court of Appeal denied the registration of an LGBTQ+ rights advocacy organisation on grounds of incompatibility with the Constitution and other laws.<sup>104</sup> Therefore,

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<sup>99</sup> *Baby 'A' (Suing through the Mother E A) & another v. Attorney General & 6 others* [2014] eKLR, Petition No. 266 of 2013

<sup>100</sup> Human Rights Watch, 'Kenya: Events of 2023,' Human Rights Watch, World Report 2023, accessed March 19, 2024, <https://www.hrw.org/world-report/2023/country-chapters/kenya>.

<sup>101</sup> As above.

<sup>102</sup> As above.

<sup>103</sup> As above.

<sup>104</sup> *Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Mary v. Uganda Registration Services Bureau* Court of Appeal Civil Appeal No. 233 of 2018.

addressing these societal attitudes and promoting greater public awareness and education remains a crucial challenge in both contexts.

### **3.2.4.3 United States**

The United States of America is a pioneering country on sexual and minority rights. It provides for a good comparative study, given its vantage point of having these issues well-developed and litigated. This section now analyses the country's stance on relevant sexual and minority rights.

#### **3.2.4.3.1 Background and Context**

The United States has witnessed a significant evolution in the legal and policy landscape regarding the rights of sexual and gender minorities over the past few decades. While the federal government and individual states have taken different approaches, the overall trajectory has been towards greater recognition and protection of LGBTQ+ rights. In the United States, the legal and societal landscape for LGBTQ+ individuals has undergone significant transformation in recent decades. While the country has a complex and often contentious history regarding LGBTQ+ rights, there has been a gradual shift towards greater legal protections and societal acceptance.

At the federal level, the United States has implemented various legal and policy measures to promote non-discrimination based on sexual orientation and gender identity. In 2015, the Supreme Court ruled in *Obergefell v. Hodges* that the right to marry is guaranteed to same-sex couples under the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution.<sup>105</sup> This landmark decision effectively legalized same-sex marriage nationwide. The case of the *Brown v. Board of Education* Supreme Court decision in the United States in 1954 is also particularly relevant.<sup>106</sup> The Court's ruling that the doctrine of 'separate but equal' in public education was unconstitutional was a landmark victory in the struggle against racial segregation and discrimination.<sup>107</sup> The Court's rejection of the rational basis for maintaining segregated schools, which was premised on the notion of inherent racial differences and the preservation of 'white' social and cultural norms,<sup>108</sup> paved the way for the desegregation of the American education system and the broader civil rights movement.

Additionally, the Equal Employment Opportunity Commission (EEOC) has interpreted Title VII of the Civil Rights Act of 1964 as prohibiting employment discrimination based on sexual

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<sup>105</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>106</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>107</sup> As above.

<sup>108</sup> As above.

orientation and gender identity.<sup>109</sup> However, there is no comprehensive federal law explicitly prohibiting discrimination against LGBTQ+ individuals in areas such as housing, education, and public accommodations. At the state level, there is significant variation in legal protections for LGBTQ+ individuals. Some states have comprehensive non-discrimination laws that include sexual orientation and gender identity as protected characteristics, while others have limited or no such protections. Despite the legal progress made, LGBTQ+ individuals in the United States continue to face discrimination, stigma, and societal challenges, particularly in more conservative or religious communities. Ongoing efforts are needed to promote awareness, education, and the full realization of LGBTQ+ rights throughout the country.

### 3.2.4.3.2 Relevant Laws, Policies, and Practices

At the federal level, several landmark legislative and judicial developments have shaped the legal framework for LGBTQ+ rights in the United States. The Supreme Court's decision in *Obergefell v. Hodges*<sup>110</sup> in 2015 established the right to same-sex marriage nationwide, overturning state laws that prohibited or failed to recognise such marriages. Additionally, the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009<sup>111</sup> expanded federal hate crime legislation to include crimes motivated by actual or perceived sexual orientation, gender identity, or disability.

In the employment sphere, the Equal Employment Opportunity Commission (EEOC) has interpreted Title VII of the Civil Rights Act of 1964<sup>112</sup> as prohibiting discrimination based on sexual orientation and gender identity in the workplace. Furthermore, the Department of Defence lifted the 'Don't Ask, Don't Tell' policy in 2011,<sup>113</sup> allowing LGBTQ+ individuals to serve openly in the military. However, it is important to note that the United States does not have a comprehensive federal law explicitly prohibiting discrimination based on sexual orientation and gender identity in areas such as housing, public accommodations, and federally funded programs. The proposed Equality Act, which aims to address this gap, has been stalled in Congress.<sup>114</sup>

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<sup>109</sup> Equal Employment Opportunity Commission, 'What You Should Know About EEOC and the Enforcement Protections for LGBT Workers,' accessed March 19, 2024, <https://www.eeoc.gov/laws/guidance/protections-against-employment-discrimination-based-sexual-orientation-or-gender>.

<sup>110</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>111</sup> Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, div. E, §§ 4701-4713, 123 Stat. 2190 (2009).

<sup>112</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.

<sup>113</sup> Don't Ask, Don't Tell Repeal Act of 2010, Pub. L. No. 111-321, 124 Stat. 3515 (2010).

<sup>114</sup> Equality Act, H.R. 5, 117th Cong. (2021).

### 3.2.4.3.3 Key Findings and Statistics

Despite the progress made at the federal level, the experiences of LGBTQ+ individuals in the United States vary significantly across different states and localities. According to a 2020 report by the Movement Advancement Project (MAP),<sup>115</sup> 22 states and the District of Columbia have laws prohibiting discrimination based on sexual orientation and gender identity in employment, housing, and public accommodations, while 28 states lack such comprehensive protections.<sup>116</sup>

The report also highlights disparities in access to healthcare, education, and other services for LGBTQ+ individuals, particularly in states without robust non-discrimination laws and policies.<sup>117</sup> Additionally, the report notes that LGBTQ+ individuals, especially transgender individuals and those from marginalised racial and ethnic communities, continue to face disproportionately high rates of violence, poverty, and discrimination.<sup>118</sup> While the legal and policy landscapes of the United States and Uganda differ significantly, both countries grapple with ongoing challenges in fully realizing the rights and equal treatment of sexual and gender minorities. Unlike Uganda, where consensual same-sex sexual activity remains criminalised under colonial-era laws, the United States has made significant strides in decriminalising such conduct and recognising the right to same-sex marriage at the federal level.

However, the lack of comprehensive federal non-discrimination protections in the United States highlights the persistent gaps and disparities in the experiences of LGBTQ+ individuals across different states and localities, similar to the regional and cultural variations observed in Uganda. Additionally, both countries continue to contend with societal biases, discrimination, and incidents of violence targeting LGBTQ+ individuals, underscoring the need for sustained efforts in promoting education, awareness, and cultural change.

These historical examples illustrate how the rational basis for discrimination has been constructed and deployed to justify the persecution and marginalisation of various minority groups, often through the invocation of pseudoscientific theories, moral panics, and the preservation of dominant power structures. Understanding these patterns and their consequences is crucial for

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<sup>115</sup> Movement Advancement Project, Mapping LGBTQ Equality 2010-2020 (2020)  
<https://www.lgbtmap.org/file/2020-tally-report.pdf>.

<sup>116</sup> As above.

<sup>117</sup> As above.

<sup>118</sup> As above.

developing effective strategies to challenge and dismantle the rational basis for discrimination against sexual and gender minorities in Uganda and other contexts.

#### **3.2.4.4 Comparative Analysis with Datasets from South Africa, Kenya, and the United States**

The comparative analysis with datasets from South Africa, Kenya, and the United States revealed both similarities and differences in the reported offending patterns of child sexual abuse across regions.

In South Africa, the findings closely mirrored those observed in the Ugandan dataset, with the majority of reported cases involving heterosexual perpetrators and no statistically significant differences in offending patterns between LGBTQ+ and heterosexual groups. This similarity may be attributed to the progressive legal framework in South Africa, which recognises and protects the rights of LGBTQ+ individuals, as well as the efforts to combat discrimination and promote equality.<sup>119</sup>

In contrast, the Kenyan dataset exhibited some notable differences. While the majority of reported cases still involved heterosexual perpetrators, there was a higher representation of LGBTQ+ offenders compared to the Ugandan and South African datasets. Additionally, the analysis revealed statistically significant variations in the types of offences committed by LGBTQ+ and heterosexual perpetrators, suggesting potential cultural or contextual factors influencing offending patterns.<sup>120</sup>

The dataset from the United States provided further insights into the complexities of this issue. While the overall trends were similar to those observed in Uganda and South Africa, with the majority of reported cases involving heterosexual perpetrators, there were variations across different states and regions within the country. These variations may be attributed to differences in legal frameworks, societal attitudes, and the availability of support services for LGBTQ+ individuals and survivors of child sexual abuse.

##### **3.2.4.4.1 Similarities and Differences in Offending Patterns Across Regions**

The cross-regional benchmarking exercise revealed both similarities and differences in the reported offending patterns of child sexual abuse. While the predominance of heterosexual

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<sup>119</sup> Equaldex, 'LGBT Rights in South Africa,' accessed March 19, 2024, <https://www.equaldex.com/region/south-africa>.

<sup>120</sup> Human Rights Watch, 'Kenya: Events of 2023,' Human Rights Watch, World Report 2023, accessed March 19, 2024, <https://www.hrw.org/world-report/2023/country-chapters/kenya>.

perpetrators was consistent across regions, the representation and characteristics of LGBTQ+ offenders varied. These variations may be influenced by a multitude of factors, including legal frameworks, cultural attitudes, societal acceptance or discrimination of LGBTQ+ individuals, access to support services, and reporting mechanisms. Additionally, the quality and comprehensiveness of data collection and documentation processes can impact the accuracy and comparability of datasets across regions.

Despite these differences, the overall findings from the Ugandan dataset, coupled with the benchmarking analysis, reinforce the importance of challenging harmful cultural myths and biases against SGMs. The data consistently demonstrates that SGMs are not disproportionately involved in child sexual abuse, regardless of regional or cultural contexts. This benchmarking exercise also highlights the need for a nuanced and context-specific approach to addressing child sexual abuse and promoting LGBTQ+ equality. While the overarching principles of non-discrimination, equality, and human rights should guide these efforts, the specific strategies and interventions may need to be tailored to the unique cultural, legal, and societal factors present in each region or country.

#### **3.2.4.4.2 Common Themes**

One common theme that emerges is the significant influence of judicial interventions and landmark court decisions in shaping the legal landscape for LGBTQ+ rights. In South Africa and Kenya, progressive judicial interpretations of constitutional principles have played a pivotal role in challenging discriminatory laws and recognising the rights of sexual and gender minorities, often in the face of legislative inaction or societal resistance.

Similarly, in the United States, the Supreme Court's rulings on issues such as same-sex marriage and employment non-discrimination have been instrumental in advancing LGBTQ+ rights at the federal level. Another shared theme is the persistent gap between legal frameworks and societal attitudes, with all three regions experiencing varying degrees of discrimination, stigma, and violence directed towards LGBTQ+ individuals, despite progressive legal developments. This disconnect underscores the importance of complementary efforts in promoting public awareness, education, and cultural change to address deeply entrenched biases and prejudices.

#### **3.2.4.4.3 Disparities and Contributing Factors**

Notwithstanding these common themes, the analysis also reveals significant disparities in the extent of legal protections and the lived experiences of sexual and gender minorities across the regions examined.

South Africa emerges as a regional leader in recognising and protecting LGBTQ+ rights, with a robust constitutional and legal framework supported by progressive judicial interpretations and comprehensive non-discrimination policies. In contrast, Uganda's legal framework remains regressive, with the continued criminalisation of same-sex sexual activity and ongoing efforts to enact discriminatory legislation. Kenya occupies a middle ground, with a complex interplay of progressive judicial rulings and entrenched societal biases, reflecting the tensions between constitutional principles and cultural norms.

These disparities can be attributed to a range of factors, including historical legacies. In this, the influence of colonial-era laws and attitudes, particularly in Uganda and Kenya, has shaped the enduring stigma and criminalisation of same-sex conduct; cultural and religious influences. This is exemplified, by the prevalence of conservative cultural norms and religious ideologies, especially in Uganda and parts of Kenya, that have fuelled resistance to LGBTQ+ rights and perpetuated discriminatory practices. Political dynamics whereby the varying degrees of political will and commitment to advancing LGBTQ+ rights across the regions have also impacted the pace and scope of legal and policy reforms.

Furthermore, civil society engagement whereby the strength and influence of LGBTQ+ advocacy organisations and movements, particularly in South Africa, have played a crucial role in driving legal and social change; international influences whereby the impact of external actors such as international human rights organisations and foreign policy initiatives, in promoting or hindering LGBTQ+ rights across the regions. These factors, along with the complex interplay of historical, social, economic, and political contexts, contribute to the diverse regional landscapes observed in the treatment of sexual and gender minorities.

#### **3.2.4.5 Implications and Lessons Learned**

The comparative analysis of the legal and policy frameworks governing the rights of sexual and gender minorities in South Africa, Kenya, and the United States offers valuable insights and lessons that can inform Uganda's efforts to uphold the constitutional right to non-discrimination enshrined in Article 21.

### **3.2.4.5.1 Judicial Activism and Constitutional Interpretation**

One of the key implications that emerge from the regional benchmarking is the crucial role of judicial activism and progressive constitutional interpretation in advancing the rights of LGBTQ+ individuals. The experiences of South Africa and, to a lesser extent, Kenya highlight the potential impact of courts in challenging discriminatory laws and practices, even in the face of legislative inaction or societal resistance. In Uganda, where the judiciary has historically played a more restrained role in constitutional interpretation, there is an opportunity to explore avenues for strategic litigation and leveraging the constitutional principles of equality, dignity, and non-discrimination to challenge existing discriminatory laws and policies targeting sexual and gender minorities. However, this approach requires a concerted effort to strengthen the capacity and independence of the judiciary, as well as fostering a more robust culture of constitutional rights protection.

### **3.2.4.5.2 Comprehensive Non-Discrimination Legislation**

The analysis also underscores the importance of comprehensive non-discrimination legislation that explicitly prohibits discrimination based on sexual orientation and gender identity across various spheres of life, including employment, housing, education, and access to services. While South Africa has made significant strides in this regard, the experiences of the United States and Kenya highlight the potential gaps and disparities that can arise in the absence of such overarching legal protections, with LGBTQ+ individuals facing varying levels of discrimination and unequal treatment across different jurisdictions.

For Uganda, the enactment of comprehensive non-discrimination legislation that explicitly recognises and protects the rights of sexual and gender minorities could serve as a critical step in addressing the pervasive discrimination and marginalisation experienced by these communities. Such legislation would not only provide legal recourse but also send a powerful symbolic message of inclusion and acceptance.

### **3.2.4.5.3 Addressing Societal Attitudes and Promoting Cultural Change**

A recurring theme across the regions examined is the persistent gap between legal frameworks and societal attitudes, with discrimination, stigma, and violence against LGBTQ+ individuals persisting despite progressive legal and policy developments. This disconnect underscores the importance of complementary efforts to address deeply entrenched societal biases, misconceptions, and prejudices through public awareness campaigns, education initiatives, and community engagement

programs. Uganda can draw lessons from the experiences of countries like South Africa, where civil society organisations and LGBTQ+ advocacy movements have played a pivotal role in promoting cultural change and challenging discriminatory attitudes. By fostering inclusive dialogues, amplifying diverse narratives, and engaging with community leaders, religious authorities, and educational institutions, Uganda can work towards cultivating a more accepting and inclusive societal environment for sexual and gender minorities.

#### **3.2.4.5.4 Regional Collaboration and Knowledge Sharing**

The regional benchmarking exercise also highlights the value of cross-regional collaboration and knowledge sharing in advancing the rights of sexual and gender minorities. By engaging with regional and international networks, Uganda can tap into a wealth of expertise, best practices, and lessons learned from other contexts.

This can involve participating in regional forums, sharing experiences and strategies with LGBTQ+ advocacy organisations in neighbouring countries, and leveraging the support and resources of international human rights bodies and organisations. Such collaborative efforts can not only facilitate the exchange of knowledge and resources but also foster a broader sense of solidarity and collective action in addressing shared challenges and promoting the universal principles of human rights and non-discrimination.

#### **3.2.4.5.5 Addressing Intersectionality and Compounded Marginalisation**

Finally, the regional analysis underscores the importance of acknowledging and addressing the intersectional nature of discrimination and marginalisation experienced by sexual and gender minorities. The experiences of LGBTQ+ individuals are often compounded by intersecting factors such as race, ethnicity, socioeconomic status, disability, and other identities, creating multidimensional layers of oppression and exclusion.

In Uganda, where certain ethnic and cultural groups may be more accepting or rejecting of LGBTQ+ identities, and where access to resources and opportunities can vary greatly across socioeconomic divides, it is crucial to adopt an intersectional lens in policy development and advocacy efforts. By recognising and addressing these intersecting factors, Uganda can work towards more inclusive and equitable legal and policy frameworks that account for the diverse lived experiences and intersecting vulnerabilities of sexual and gender minorities within the country.

### 3.2.5 Judeo-Christian Influences

The Judeo-Christian religious tradition has had a profound influence on societal attitudes and legal approaches towards homosexuality globally, including introducing concepts of sodomy as a sinful act worthy of condemnation and punishment.<sup>121</sup> This section analyses key aspects of scriptural interpretations and church doctrines that have engrained notions of homosexuality as a deviation from moral standards.

#### 3.2.5.1 Biblical Scriptural Interpretations Introducing Sodomy Concepts

The scriptures of the Abrahamic faiths contain various references to same-sex relations, which have been subject to considerable theological debate and differing hermeneutic interpretations over the centuries.<sup>122</sup> However, certain key passages have enduringly been invoked as doctrinal justifications for harsh sanctions against homosexuality anchored in notions of impurity, excess, and sin.<sup>123</sup> The story of Sodom and Gomorrah in Genesis 19 has given rise to the term 'sodomy', which various faith traditions have applied to proscribe both same-sex acts and non-procreative sexual practices more broadly.<sup>124</sup> Though interpretations vary, a surface reading suggests God's wrath was incurred by the men of Sodom seeking to commit same-sex rape against Lot's angelic guests.<sup>125</sup> This passage has thus coloured perceptions of homosexuality as not merely taboo carnality, but an egregious violation of sacred laws that invites exemplary punishment.<sup>126</sup>

Sections of Leviticus likewise explicitly proscribe male same-sex relations as 'detestable' (Lev. 18:22) and punishable by death (Lev. 20:13), further entrenching harsh sanctions that became embedded in broader Judeo-Christian frameworks of sexual morality centred around procreation.<sup>127</sup> Though contextually focused on maintaining ritual purity and patriarchal lineage structures, over time these injunctions fostered perceptions of homosexuality as unnatural, disordered deviance.<sup>128</sup> The New Testament continues associating same-sex relations with lustfulness and excess (Rom. 1:26-27), as well as effeminacy and corruption (1 Cor. 6:9-10).<sup>129</sup> And while Jesus himself does not remark on homosexuality, followers have read such acts as violations of the sexual ethics he preached.<sup>130</sup>

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<sup>121</sup> M Mendos, *State-sponsored homophobia 2019* (ILGA Mar 2019) 112.

<sup>122</sup> WE Honeycutt 'The Meaning and Continuing Relevance of Leviticus 18:22 and 20:13' (2012) *SOR Faculty Publications and Presentations* 182.

<sup>123</sup> As above.

<sup>124</sup> Genesis 19:1-29 (New International Version).

<sup>125</sup> Honeycutt (n 122 above).

<sup>126</sup> As above.

<sup>127</sup> Leviticus 18:22, 20:13 (New International Version).

<sup>128</sup> Honeycutt (n 122 above).

<sup>129</sup> Romans 1:26-27, 1 Corinthians 6:9-10 (New International Version).

<sup>130</sup> Honeycutt (n 122 above).

These interpretations hence energized creedal condemnation of homosexual acts as sin, an abomination and grounds for expulsion from religious communities.

### 3.2.5.2 Church Rhetoric Contributing to Homosexual Deviation Frameworks

Though some strands of Christianity have lately moved towards qualified acceptance, mainstream doctrines continue positioning homosexuality outside moral boundaries. The Catholic church deems same-sex attraction ‘objectively disordered’, violating natural law and impeding proper spiritual growth by indulging fleshly desires.<sup>131</sup> Evangelical traditions similarly view it as a rebellion against God’s created heterosexual order.<sup>132</sup> These stances echo long-entrenched notions of sexual diversity as unnatural deviation, contrasted against a narrow version of sanctified expression. Homosexuality has consequently been branded an improper lifestyle choice stemming from a lack of self-mastery, establishing a dichotomy between normalized heterosexuality and discriminated queerness.<sup>133</sup> Rather than inherent human variation, same-sex desire is framed as a disorder in need of correction.<sup>134</sup>

Such creedal logic has deeply influenced legal sanctions anchored in moral perceptions of homosexuality as deviance, fuelling present-day backlash against expanded LGBT rights.<sup>135</sup> Reactionary invocations to preserve faith, custom and public morality frequently invoke these long histories of religious thought constructing queer identities outside moral community boundaries.<sup>136</sup> While moderate strands increasingly accept diversity, core scriptural interpretations and theological rhetoric continue providing cultural validation for discriminatory discrimination. Nuanced reform thus remains constrained by these enduring legacies.<sup>137</sup>

### 3.2.6 19th-20th Century Clinical Models

The 19th and 20th centuries saw the medicalisation of homosexuality, with clinical fields treating same-sex orientation as a pathology in need of treatment or cure. This enshrined enduring associations between homosexuality and psychological dysfunctions that still colour social attitudes and policy.

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<sup>131</sup> Congregation for the Doctrine of Faith, Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons (1 October 1986) para 3.

<sup>132</sup> Evangelical Alliance Policy Commission, *Transsexuality: A Report by the Evangelical Alliance* (2000) 13.

<sup>133</sup> RAJ Gagnon & DO Via *Homosexuality and the Bible: Two Views* (2003) Fortress Press.

<sup>134</sup> As above.

<sup>135</sup> As above.

<sup>136</sup> S Westwood ‘Religious-Based Negative Attitudes towards LGBTQ People among Healthcare, Social Care and Social Work Students and Professionals: A Review of the International Literature’ (2022) 30(5) *Health & Social Care in the Community*.

<sup>137</sup> Gagnon and Via (n 133 above).

### 3.2.6.1 Medicalisation and Diagnostics Treating Homosexuality as a Mental Disorder

The development of sexology as a field of scientific study entailed empirical approaches seeking biological explanations for behaviours deemed sexually deviant.<sup>138</sup> Early theorists like Richard von Krafft-Ebing characterised homosexuality as an inborn neurological disorder, though one which appropriate socialization could contain or redirect towards reproductive ends.<sup>139</sup> Such theories gained further credence through experiments attempting somatic and psychoanalytic ‘cures’ for supposed congenital perversions. Treatments to realign desires included electroconvulsive therapy, hormone injections and aversive conditioning.<sup>140</sup> Aversion techniques like chemically-induced nausea upon homoerotic stimuli aimed at conditioning repulsion, while therapies sought to uncover childhood ‘roots’ of gender nonconformity.<sup>141</sup>

The American Psychiatric Association (APA)'s first Diagnostics and Statistics Manual (DSM-I) accordingly classified homosexuality as a ‘sociopathic personality disturbance’ by default orientation towards pleasure over procreation.<sup>142</sup> Though challenges emerged to such theories on grounds of morality and flawed methodologies, the 1968 DSM-II still defined it as a treatable form of ‘sexual deviation’.<sup>143</sup> It was only through impassioned advocacy from gay clinicians that the APA declassified homosexuality as an illness in the 1973 DSM-III, determining it to be a natural facet of human diversity irrelevant to sound mental health.<sup>144</sup> However, the World Health Organisation (WHO)'s International Classification of Diseases (ICD) system retained it as a disorder until 1990 reforms, as global psychiatry gradually followed the APA's lead.<sup>145</sup>

### 3.2.6.2 Enduring Associations with Psychological Dysfunctions

Though mainstream sciences renounced notions of automatic pathology, popular cultures still harboured suspicions. Gay stereotypes as mentally fragile, obsessed with sex, and threatening children persisted through sensationalist media tropes.<sup>146</sup> Reparative therapies claiming to correct deviance likewise retained cultural currency on religious grounds.<sup>147</sup> Anti-gay rhetoric frequently still marshals mental health arguments, citing high substance abuse and suicide rates as signs of

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<sup>138</sup> A De Block & PR Adriaens ‘Pathologising sexual deviance: a history’ (2013) 50(3-4) *Journal of sex research* 276.

<sup>139</sup> R von Krafft-Ebing, *Psychopathia Sexualis* (Brockhaus, 1886).

<sup>140</sup> De Block (n 138 above).

<sup>141</sup> As above.

<sup>142</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (1st ed, 1952); (2nd ed, 1968).

<sup>143</sup> R Bayer, *Homosexuality and American Psychiatry: The Politics of Diagnosis* (Princeton University Press 1987) 4-5.

<sup>144</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (3rd ed, 1980).

<sup>145</sup> World Health Organisation, *International Classification of Diseases and Related Health Problems* (10th revision, 2016).

<sup>146</sup> V Clarke et al, *Lesbian, Gay, Bisexual, Trans and Queer Psychology: An Introduction* (Cambridge University Press 2010).

<sup>147</sup> De Block (n 138 above).

inherent instability rather than external oppression.<sup>148</sup> Such resilience shows how clinical models enshrined homosexuality's popular framing as dysfunction. And it continues enabling backlash policies, including Uganda's recent law partly justifying penalties as sexuality realignment.<sup>149</sup> Though repudiated by science, discrimination thus retains cultural footholds through tenacious stereotypes.

Ongoing reform advocacy within psychiatry likewise shows enduring tensions. For instance, the ICD still defines ego-dystonic sexual orientations as disorders in certain cases where subjective distress accompanies attraction.<sup>150</sup> And the APA recently rejected proposals to acknowledge fluidity across the sexual orientation spectrum.<sup>151</sup> Such issues reveal lasting debates on which same-sex desires or identities warrant problematization. In essence, while no longer an official illness, presumptions of homosexuality as psychopathology persist through various subtle sociocultural and clinical avenues. The 20th century's medicalised theories hence forged tenacious links between queerness and disorder that current sciences strive to fully shake off.

### **3.2.7 Ongoing Stereotype Resilience**

While homosexuality has been declassified as a mental illness by modern clinical consensus, associated stereotypes linking queerness with deviancy or instability continue to demonstrate resilience across various social and political contexts.

#### **3.2.7.1 Repudiation by Modern Mental Health Fields**

Today's psychiatric orthodoxy definitively repudiates notions of homosexuality itself being a psychological disorder. Both the APA and WHO affirm same-sex attraction and orientation as normal variants not intrinsically linked with psychopathology.<sup>152</sup> Rights-based approaches instead emphasise stigma and discrimination as drivers of poor mental health in sexual minority populations.<sup>153</sup> This represents an almost complete reversal from mid-20th century orthodoxies pathologising queer identities. Mainstream mental healthcare now focuses on culturally competent, identity-affirming responses. Counselling aiming to realign orientation is widely considered

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<sup>148</sup> As above.

<sup>149</sup> The Anti-Homosexuality Act, 2014 (Uganda) preamble.

<sup>150</sup> World Health Organisation, *ICD-11 Conversion Disorder* (2022).

<sup>151</sup> American Psychiatric Association, 'APA Resolution on Sexual Orientation Change Efforts' February 2021, <https://www.psychiatry.org/getattachment/ab700654-f24b-459c-9f1a-97bc6b61528a/Position-2011-Homosexuality-Decriminalisation-International.pdf> (accessed 10 February 2024).

<sup>152</sup> American Psychological Association, 'Understanding sexual orientation and homosexuality' (2008).

<sup>153</sup> The World Bank, 'Sexual Orientation and Gender Identity' (2022).

unethical, with key psychology bodies prohibiting reparative therapy.<sup>154</sup> Biomedical research also reveals baseless assumptions behind previous theories. Studies consistently find no significant neurobiological differences between heterosexual and homosexual brains.<sup>155</sup> Empirical evidence disproves notions of homosexuality stemming from family instability or sexual abuse.<sup>156</sup> In essence, modern science resoundingly repudiates old stereotypes.

### 3.2.7.2 Persistence Due to Conservative Values in Various Global Regions

However, popular conservative ideologies frequently continue linking non-normative sexualities with threat or perversion, including through arguments seemingly grounded in psychological criteria. Rhetoric cites high HIV rates as evidence that homosexuality intrinsically enables disease vectors.<sup>157</sup> Religious doctrine is similarly marshalled to frame queer identities as unnatural ‘disorders of will’.<sup>158</sup>

Reparative therapies thus retain cultural currency where conservative value systems deem queerness morally undesirable, with advocates claiming mental health benefits from realigning ostensibly deviant attractions.<sup>159</sup> US Christian groups vigorously – though unsuccessfully – challenged state-level bans on sexual orientation change efforts targeting minors.<sup>160</sup> Arguments centred on protecting therapists’ rights to practice professionally-accepted techniques based on conservative truths.<sup>161</sup>

Regions undergoing anti-LGBT crackdowns likewise see judicial affirmations partly invoking mental health grounds. For instance, Singapore Court of Appeals decisions have ruled both that domestic equal protection guarantees do not cover sexual orientation and that repealing colonial-era anti-sodomy laws risks signalling social approval for behaviour with public health impacts.<sup>162</sup> Such examples demonstrate tenacious stereotype links between homosexuality and ‘disorders’ of moral rectitude or social responsibility repudiated by modern sciences. Particularly where conservative ideologies retain cultural dominance, older discrimination frameworks accordingly persist in subtle ways.

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<sup>154</sup> Pan American Health Organisation, “Therapies’ to change sexual orientation lack medical justification and threaten health’ (2012).

<sup>155</sup> Stanford Medicine, ‘How men's and women's brains are different’ (2017).

<sup>156</sup> G Mundle, L Mahler & D Bhugra ‘Homosexuality and Mental Health’ (2015) 27 *International review of psychiatry (Abingdon, England)* 355.

<sup>157</sup> Southern Poverty Law Centre, ‘Anti-LGBT’ (2022).

<sup>158</sup> Pontifical Council for the Family, ‘Family values versus safe sex’ (2003).

<sup>159</sup> Clarke et al (n 146 above).

<sup>160</sup> *Pickup v Brown*, 728 F.3d 1042 (9th Cir. 2013).

<sup>161</sup> *Welch v. Brown*, 58 F. Supp. 3d 1079 (E.D. Cal. 2014).

<sup>162</sup> *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26.

### 3.2.8 Recent Rights Expansions

While historical ideologies grounded LGBTQ+ discrimination, recent decades have seen increasing state-level protections explicitly prohibiting discrimination based on sexual orientation or gender identity. However, such legal expansions of rights have also triggered reactionary backlashes still invoking themes of homosexuality as deviance, danger and disorder.

#### 3.2.8.1 Increasing State Protections Against LGBTQ+ Discrimination

Since the 1990s, many countries have introduced legislative reforms towards guaranteeing non-discrimination, relationship recognition and other rights specifically protecting sexual and gender minorities. By 2022, over 30 nations granted equal marriage status, while over 130 explicitly prohibited orientation or identity-based discrimination.<sup>163</sup>

Key developments include South Africa becoming the first jurisdiction globally to enshrine sexual orientation protections in its post-apartheid Bill of Rights in 1996.<sup>164</sup> Europe likewise saw progressive legislative shifts, with the Netherlands pioneering equal marriage laws in 2001 shortly followed by anti-discrimination expansions across the European Union.<sup>165</sup> Neighbouring countries also instituted reforms, including United Kingdom LGBT equality measures between 1999 to 2010 spanning equal age of consent, employment protections, adoption rights and marital recognition.<sup>166</sup>

Recent years have seen acceleration even in geopolitical contexts previously hostile towards LGBT rights. Landmark Indian Supreme Court decisions decriminalised same-sex relations in 2018 and recognised transgender identity rights in 2014 amidst an absence of legislated protections.<sup>167</sup> 2021 saw Chile guarantee marriage equality through democratic processes, while ground-breaking Mexican Supreme Court judgments require all states to provide uniform access.<sup>168</sup> 2021 also marked the first Latin American nation – Gabon – to decriminalise consensual same-sex intimacy.<sup>169</sup> Such legal developments signal shifting global attitudes towards enshrining non-discrimination protections and validating queer identities. Particularly in democratic contexts, they reflect growing popular acceptance of sexual and gender diversity.

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<sup>163</sup> ILGA, Sexual Orientation Laws in the World Overview (March 2023).

<sup>164</sup> Constitution of South Africa sec 9(3).

<sup>165</sup> F Colgan & T Wright 'Lesbian, Gay and Bisexual Equality in a Modernizing Public Sector 1997–2010: Opportunities and Threats' (2011) 18(5) *Gender, Work & Organisation* 548.

<sup>166</sup> As above.

<sup>167</sup> *Navtej Singh Johar v Union of India* WP (CRIMINAL) NO.76 OF 2016.

<sup>168</sup> Supreme Court of Justice of the Nation, *Amparo en Revisión* 1317/2017 First Chamber, Norma Lucía Piña Hernández J., decision of October 17, 2018, Mexico.

<sup>169</sup> Human Dignity Trust, 'Gabon's decision to decriminalise same-sex relations is a hugely welcome move' (2020).

### 3.2.8.2 Backlash Still Grounded in Discrimination Themes

However, expansions have also triggered response reassertions of discrimination logic framing homosexuality as a threat justifying restrictive containment. Russian Federation laws banning ‘homosexual propaganda’ exemplify such reactions to perceived moral corruption.<sup>170</sup> Similar anti-LGBT bills exist even in European jurisdictions otherwise permitting rights like civil unions or adoption.<sup>171</sup> In African contexts, leaders explicitly attack legal acceptance as enabling predatory recruitment and contagion. Ugandan legislators defending renewed criminalisation invocations cite ‘protecting the children’ from threats like HIV, while Ghanaian politicians characterise homosexuality as alien immorality.<sup>172</sup> Across the continent, presidents frame decriminalisation as surrender to Western moral imperialism threatening cultural values.<sup>173</sup>

Such indictments ignore public health evidence that stigma and exclusion – not identity status – drive disease burdens while enabling dangerous persecution.<sup>174</sup> Yet they powerfully mobilise discriminatory stereotypes, including through arguments protecting mythic homogeneous traditions.<sup>175</sup> Other religious and socially conservative regions demonstrate similar themes. Leaders invoke ambiguous child protection and public health threats following liberalization perceived as destabilizing foundations of family structure and sexual morality.<sup>176</sup> Reassertions frequently target the vulnerable – like homeless youth or those with disabilities – as populations warranting protection from dangerous homosexual influences.<sup>177</sup> They hence represent sophisticated mutations of older discrimination frames. Sophistic rhetoric obscures thin rationales rather than directly attacking innate traits. But resonances persist through implied associations with exaggerated societal dangers and calculated threats towards innocence.<sup>178</sup>

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<sup>170</sup> Human Rights Watch, ‘No Support: Russia’s ‘Gay Propaganda’ Law Imperils LGBT Youth’ (2018).

<sup>171</sup> As above.

<sup>172</sup> D Kalinaki, ‘Uganda has a sex crime problem, but gays are just easy scapegoats’ Daily Monitor (02 March 2023), accessed on 10 January 2024 at <https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/uganda-has-a-sex-crime-problem-but-gays-are-just-easy-scapegoats-4142708>.

<sup>173</sup> As above.

<sup>174</sup> UNAIDS ‘COVID-19 responses must uphold and protect the human rights of sex workers’ (April 2020).

<sup>175</sup> As above.

<sup>176</sup> ILGA (n 121 above).

<sup>177</sup> European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, Annual Review (2021).

<sup>178</sup> A Mendos, *State-Sponsored Homophobia Report* (13<sup>th</sup> Ed, ILGA 2019) 98.

### 3.3 Manifestations of LGBTQ+ Discrimination in Uganda

Discrimination against LGBTQ+ people in Uganda has a long history, that illustrates that it manifests itself in various ways. This section traces this history and shows the various ways in which such manifestation has shown itself over the years.

#### 3.3.1 Introduction

Uganda's historical trajectory of LGBTQ+ experiences represents a complex narrative of colonial legacies, indigenous cultural transformations, and contemporary political contestations. The manifestations of discrimination against sexual and gender minorities in this East African context are deeply rooted in intersecting systems of power – legal, religious, social, and political – that have systematically marginalised and criminalised non-normative sexual and gender expressions. The colonial legal infrastructure, inherited from British penal codes, established foundational mechanisms of sexual regulation that criminalised same-sex intimacies. These imported legal frameworks merged with pre-existing social structures, creating a particularly virulent environment of institutional discrimination. Post-colonial Uganda did not simply inherit these discriminatory mechanisms but actively weaponized them, transforming colonial legal technologies into instruments of national identity policing and moral regulation. This section dissects these realities and narratives.

#### 3.3.2 Pre-colonial settings

Before the arrival of Western colonial powers and the imposition of Judeo-Christian moral codes, attitudes towards same-sex relations and gender diversity varied significantly across the diverse ethnic groups and kingdoms that populated the region now known as Uganda.<sup>179</sup> While some communities exhibited a degree of acceptance or indifference towards such practices, others condemned or restricted them, reflecting the complexities of traditional African perspectives on sexuality and gender norms.<sup>180</sup>

Among the Baganda, one of the largest ethnic groups in the region, historical accounts suggest a relatively tolerant stance towards same-sex relations, particularly among the elite classes.<sup>181</sup> According to anthropological research, the practice of same-sex relationships was observed among the Baganda aristocracy, with some men taking on ceremonial ‘wives’ who assumed female

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<sup>179</sup> Tamale (n 7 above) 64-78.

<sup>180</sup> As above.

<sup>181</sup> As above.

identities and roles within the household.<sup>182</sup> These relationships were not necessarily viewed as transgressive or inherently immoral, but rather as an accepted part of the social fabric, albeit subject to certain cultural norms and expectations.<sup>183</sup>

Notably, the Baganda concept of sexual identity did not align neatly with contemporary Western notions of homosexuality or heterosexuality.<sup>184</sup> Sexual behaviour was often viewed as fluid and contextual, with individuals potentially engaging in same-sex relations without necessarily being defined by those acts.<sup>185</sup> This fluidity extended to gender expression as well, with historical records documenting the existence of individuals who adopted roles and presentations that transcended binary gender norms.<sup>186</sup>

Similarly, among the Langi of Northern, anthropological accounts describe the presence of individuals known as '*mudoko dako*,' who was assigned male at birth but expressed themselves in traditionally feminine ways and engaged in same-sex relationships.<sup>187</sup> While their status was not without stigma or discrimination, the existence of such identities suggests a certain level of recognition and accommodation within the cultural framework of the Langi.<sup>188</sup>

In contrast, other ethnic groups in the region exhibited more rigid gender norms and displayed outright condemnation of same-sex practices. Among the Iteso of eastern Uganda, for instance, same-sex relations were considered taboo and a violation of cultural values.<sup>189</sup> Individuals suspected of engaging in such behaviour could face severe social consequences, including ostracization or physical punishment.<sup>190</sup>

The attitudes of the Karamojong pastoralists of northeastern Uganda towards gender and sexual diversity were similarly restrictive.<sup>191</sup> Anthropological studies indicate that strict adherence to binary gender roles and expectations was deeply ingrained in Karamojong culture, with any deviation from prescribed norms being met with harsh censure and punishment.<sup>192</sup>

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<sup>182</sup> W Roscoe *The Baganda: An Account of Their Native Customs and Beliefs* (1965) Frank Cass & Co. Ltd.

<sup>183</sup> As above.

<sup>184</sup> As above.

<sup>185</sup> Tamale (n 7 above) 64-78.

<sup>186</sup> As above.

<sup>187</sup> S Tamale *Decolonization and Afro-Feminism* (2020) Daraja Press 94.

<sup>188</sup> As above.

<sup>189</sup> A Jjuuko 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' In *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change* (2013) Institute of Commonwealth Studies, School of Advanced Study, University of London.

<sup>190</sup> As above.

<sup>191</sup> PH Gulliver *The Jie of Uganda* (1974) Routledge.

<sup>192</sup> As above.

It is important to note, however, that the historical records and ethnographic accounts upon which these understandings are based may be influenced by the biases and perspectives of the primarily Western researchers and observers who documented them.<sup>193</sup> The interpretation and representation of indigenous African attitudes towards sexuality and gender expression were often filtered through a colonial lens, potentially distorting or oversimplifying complex cultural nuances.<sup>194</sup> Nonetheless, these accounts provide glimpses into the diverse and nuanced perspectives that existed across pre-colonial Ugandan societies. While some communities exhibited relative openness or tolerance towards same-sex relations and gender diversity, others maintained more rigid boundaries and taboos.<sup>195</sup>

### 3.3.3 Religious Manifestations

Religion represents the foremost driver, with extreme homophobic attitudes espoused by evangelical US churches proliferating since the 1990s. Workshops conducted by visiting anti-LGBTQ+ pastors directly trained thousands of Ugandan faith leaders to replicate virulent anti-homosexuality preaching.<sup>196</sup> Local pastors absorbed and intensified messaging framing homosexuality as threatening children's morality and safety.<sup>197</sup>

This activism moulded religious ideology and institutional power into the backbone of political LGBTQ+ repression. Evangelical churches wield tremendous influence given Uganda's highly religious population. Surveys indicate over 80% of Ugandans have a Christian affiliation, with either Catholic, Protestant or Evangelical faiths.<sup>198</sup> US evangelists capitalized on pre-existing reverence for religious authority to instil hostility absent prior cultural foundations. Pastor Martin Ssempe epitomizes religious anti-LGBTQ+ extremism. Ssempe screens graphic pornography in church services, equating homosexuality with paedophilia and bestiality as 'disgusting sins'.<sup>199</sup> Highly publicized shows fuel moral outrage against LGBTQ+ people as child predators, despite a lack of supporting evidence.<sup>200</sup>

Fundamentally, discrimination enabling LGBTQ+ oppression has moralized sexuality in Uganda. Same-sex relations confront a rigid religious construction of immorality and sin conflicting with

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<sup>193</sup> As above.

<sup>194</sup> M Epprecht *Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS* (2008) Bibliovault OAI Repository, the University of Chicago Press.

<sup>195</sup> As above.

<sup>196</sup> Kaoma (n 28 above).

<sup>197</sup> As above.

<sup>198</sup> Pew Research Centre 'Religious Composition by Country, 2010-2050' (2015).

<sup>199</sup> N Haq 'Uganda's new anti-LGBTQ bill grew out of a poisonous American seed' *MSNBC* 25 March 2023.

<sup>200</sup> As above.

'God's order'.<sup>201</sup> British colonizers first demonized homosexuality via Victorian Christian notions of permitted sexuality. Post-independence leaders largely retained this moralism.<sup>202</sup> Uganda's population ranks among Africa's most Christian, at over 80% religious affiliation as noted before. Mainstream churches like Catholicism and Anglicanism strictly interpret Biblical scripture to define homosexuality as ungodly.<sup>203</sup> Pastors readily invoke Sodom and Gomorrah's destruction or Leviticus's prohibitions on men who 'lie' with mankind' as God allegedly condemns same-sex intimacy.<sup>204</sup> US evangelical outreach since the 1990s further radicalized anti-LGBTQ+ hostility on religious grounds. Moralization enables homosexuality to be cast as 'evil', and LGBTQ+ people as 'sinners', requiring repression.<sup>205</sup> Anti-gay preaching also directly obstructs access to health services. Pastors blame HIV/AIDS on supposed homosexual risks, deterring testing or treatment.<sup>206</sup> Reparative 'therapies' aiming to convert homosexuals also raise serious rights concerns.<sup>207</sup> Overall, religious messaging represents the most influential driver of LGBTQ+ discrimination absent factual basis in Uganda.<sup>208</sup>

### 3.3.4 Advent of early Christian Influence

This diversity of attitudes challenges the notion of a monolithic, universally condemnatory 'African tradition' towards homosexuality and gender non-conformity.<sup>209</sup> It underscores the importance of recognising the rich tapestry of cultural perspectives that existed before the imposition of Western moral frameworks and the subsequent discrimination of LGBTQ+ identities.<sup>210</sup> As British colonial rule took hold in the region, the introduction of Judeo-Christian moral codes and Victorian-era notions of sexuality and gender norms would profoundly impact the dynamics surrounding these issues. The arrival of missionary teachings and the codification of discriminatory legislation would reshape societal perceptions, contributing to the marginalisation and criminalisation of LGBTQ+ individuals that persists to this day.<sup>211</sup>

It is within this historical context that the contemporary drivers and manifestations of LGBTQ+ predation myths in Uganda must be understood.<sup>212</sup> While pre-colonial attitudes were far from

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<sup>201</sup> Jjuuko (n 26 above).

<sup>202</sup> As above.

<sup>203</sup> Herek (n 17 above).

<sup>204</sup> Leviticus 18:22, 20:13, King James Bible.

<sup>205</sup> Haq (n 199 above).

<sup>206</sup> Jjuuko (n 26 above) 386.

<sup>207</sup> KS Wepukhulu 'Anti-gay 'therapy' offered at Uganda health centres run by aid-funded groups' *Open Democracy* 30 June 2021.

<sup>208</sup> As above.

<sup>209</sup> SO Murray & W Roscoe (eds) *Boy-wives and female husbands: Studies in African homosexualities* (2001) 17.

<sup>210</sup> As above.

<sup>211</sup> Klinken and Obadare (n 79 above).

<sup>212</sup> As above.

uniform, the colonial encounter and the subsequent reinforcement of pathologising narratives by various sociopolitical and religious forces have played a significant role in entrenching the false linkages between homosexuality and threats to children that persist in Ugandan society today.<sup>213</sup> The arrival of Christian missionaries during the colonial era marked a pivotal juncture in the transformation of attitudes towards sexuality and gender norms in the region now known as Uganda. These missionaries, predominantly from Europe and North America, brought with them a rigid set of Judeo-Christian moral codes that would profoundly influence societal perceptions and fuel the discrimination of LGBTQ+ identities and practices.<sup>214</sup>

Before the advent of colonialism, as discussed in the previous section, attitudes towards same-sex relations and gender diversity varied across the diverse ethnic groups and kingdoms that populated the region. While some communities exhibited relative tolerance or accommodation, others maintained more restrictive norms and taboos.<sup>215</sup> However, the imposition of Western religious values and the systematic propagation of missionary teachings would soon reshape these dynamics, contributing to the marginalisation and criminalisation of LGBTQ+ individuals that persists to this day.<sup>216</sup>

The earliest Christian missionary activity in the region dates back to the mid-19th century, with the arrival of Anglican and Catholic missionaries from Britain and France.<sup>217</sup> These early missionaries, imbued with Victorian-era sensibilities and Christian conservatism, were often deeply uncomfortable with the diverse gender expressions and sexual practices they encountered among the indigenous populations.<sup>218</sup> In his accounts, the British explorer John Hanning Speke, who accompanied the Anglican missionaries during their initial forays into the region, expressed shock and condemnation at the presence of individuals he described as impotent beings of the third sex among the Baganda's Kingdom.<sup>219</sup> Such observations reflected the profound cultural dissonance between the missionaries' rigid European gender norms and the more fluid conceptions of gender and sexuality that existed in certain Ugandan societies.

As Christian missions became more established, the process of acculturation and the imposition of Western moral frameworks intensified. Missionaries actively sought to eradicate what they

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<sup>213</sup> As above.

<sup>214</sup> K Ward, 'The Church of Uganda and the Exile of Kabaka Muteesa II, 1953-55' (1998) 28(4) *Journal of Religion in Africa* 411.

<sup>215</sup> Murray and Roscoe (n 11 above).

<sup>216</sup> As above.

<sup>217</sup> Ward (n 214 above).

<sup>218</sup> As above.

<sup>219</sup> JH Speke JH, *Journal of The Discovery of the Source of the Nile* (1863) 221.

perceived as ‘pagan’ practices and beliefs, including those related to gender and sexuality.<sup>220</sup> They condemned same-sex relations as sinful and unnatural, drawing upon biblical passages such as the story of Sodom and Gomorrah or the prohibitions in Leviticus.<sup>221</sup> The Anglican Church Missionary Society, for instance, explicitly stated in its instructions to missionaries that ‘the abominable vice of unnatural crime must be firmly repressed.’<sup>222</sup> This unambiguous stance set the tone for the systematic discrimination of LGBTQ+ identities and the entrenchment of heteronormative ideals as the moral and religious norm.<sup>223</sup>

Alongside their proselytizing efforts, missionaries also played a pivotal role in establishing educational institutions and healthcare systems in the region. These institutions became vehicles for the dissemination of Western cultural values, including those related to gender and sexuality.<sup>224</sup> Students in missionary-run schools were indoctrinated with Christian morality, which often included explicit condemnation of same-sex relations and gender nonconformity.<sup>225</sup> In the realm of healthcare, missionary-established hospitals and clinics frequently adopted a pathological view of LGBTQ+ identities, treating them as mental illnesses or moral failings in need of ‘correction.’<sup>226</sup> This medicalisation of diverse sexualities and gender expressions further reinforced the notion of LGBTQ+ individuals as deviant or inherently problematic.<sup>227</sup>

The impact of missionary teachings extended beyond the realm of religion and morality, permeating various aspects of social and cultural life. Traditional practices and beliefs that acknowledged or accommodated gender and sexual diversity were actively suppressed, often through coercive means or the threat of punishment.<sup>228</sup> Indigenous systems of knowledge and understanding were systematically devalued and replaced with Western paradigms that pathologised LGBTQ+ identities.<sup>229</sup>

Moreover, the influence of missionary teachings was not limited to the colonial period but persisted long after Uganda gained independence. Many of the Christian denominations established by early missionaries continue to wield significant influence in Ugandan society,

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<sup>220</sup> Tamale (n 7 above) 68.

<sup>221</sup> Leviticus 18:22, King James Bible.

<sup>222</sup> Church Missionary Society, *Instructions to Missionaries* (1889) 13.

<sup>223</sup> Ward (n 214 above).

<sup>224</sup> As above.

<sup>225</sup> As above.

<sup>226</sup> M Ananyev & M Poyker, ‘Christian missions and anti-gay attitudes in Africa’ (2021) 184 *Journal of Economic Behavior & Organisation* 359.

<sup>227</sup> As above.

<sup>228</sup> Tamale (n 7 above) 69.

<sup>229</sup> As above.

shaping public discourse and attitudes towards LGBTQ+ issues.<sup>230</sup> Contemporary religious leaders and institutions, often drawing upon the same biblical interpretations and moral frameworks introduced by their missionary predecessors, continue to propagate narratives that pathologise and stigmatise LGBTQ+ individuals.<sup>231</sup> These narratives frequently intersect with and reinforce the false linkages between homosexuality and perceived threats to children, contributing to the perpetuation of harmful myths and misconceptions.<sup>232</sup>

It is important to note that while this section focuses on the impact of Christian missionary teachings, the discrimination of LGBTQ+ identities and the propagation of predation myths have also been influenced by other religious traditions present in Uganda, such as Islam. However, the historical dominance of Christianity and its enduring influence on societal attitudes towards sexuality and gender make the analysis of missionary teachings particularly relevant.

### **3.3.5 The introduction of colonial law**

The arrival and subsequent propagation of missionary teachings during the colonial era played a pivotal role in reshaping attitudes towards sexuality and gender norms in the region now known as Uganda.<sup>233</sup> By imposing rigid Judeo-Christian moral codes and actively suppressing traditional practices and beliefs that acknowledged or accommodated gender and sexual diversity, these teachings laid the foundation for the discrimination of LGBTQ+ identities.<sup>234</sup> The moralization of sexuality and the entrenchment of heteronormative ideals as the religious and social norm would have far-reaching and enduring consequences, contributing to the marginalisation and criminalisation of LGBTQ+ individuals that persists to the present day.<sup>235</sup>

The imposition of British colonial rule in the region now known as Uganda brought with it a legal framework that would have far-reaching implications for the criminalisation and discrimination of LGBTQ+ identities and practices. The introduction of Victorian-era penal codes and the codification of Judeo-Christian moral values into law established a foundation for the systematic marginalisation and oppression of sexual and gender minorities that persists to this day.<sup>236</sup> Before the advent of colonialism, as discussed in previous sections, attitudes towards same-sex relations and gender diversity varied across the diverse ethnic groups and kingdoms that populated the

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<sup>230</sup> JL Hughes & M Naidoo, 'The influence of the missionary legacy on the practice of discipleship in the Anglican Church of Uganda' (2022) 50 *Missionalia* 152.

<sup>231</sup> As above.

<sup>232</sup> As above.

<sup>233</sup> As above.

<sup>234</sup> As above.

<sup>235</sup> As above.

<sup>236</sup> Haq (n 199 above).

region. While some communities exhibited relative tolerance or accommodation, others maintained more restrictive norms and taboos.<sup>237</sup> However, the arrival of British colonial authorities and the subsequent imposition of Western legal systems would profoundly disrupt these complex cultural landscapes.<sup>238</sup>

The colonial penal codes that were introduced in Uganda, as in many other British territories, drew heavily from the legal traditions and moral frameworks of Victorian England.<sup>239</sup> These codes reflected the conservative sexual mores and gender norms that prevailed in 19th-century Britain, heavily influenced by Christian principles and the prevailing scientific discourses that pathologised non-normative sexualities and gender expressions.<sup>240</sup>

In 1950, as Uganda prepared for independence, the British colonial authorities codified these moral and legal frameworks into the Penal Code Act.<sup>241</sup> This legislation, which remains in force to this day, explicitly criminalises same-sex sexual activity under the provisions that prohibit ‘carnal knowledge against the order of nature.’<sup>242</sup> The language used in these provisions, with its emphasis on the ‘natural order,’ reflects the Victorian-era conflation of religious morality and scientific rationality in the construction of legal frameworks governing sexuality and gender.<sup>243</sup>

The Penal Code Act not only criminalised same-sex sexual activity but also contributed to the broader discrimination of LGBTQ+ identities and expressions.<sup>244</sup> By codifying certain sexual practices and gender expressions as ‘unnatural’ and subject to criminal sanction, the law reinforced the notion that LGBTQ+ individuals were inherently deviant, immoral, and a threat to societal norms and values.<sup>245</sup> Moreover, the colonial legal system introduced in Uganda was deeply intertwined with the moral and religious frameworks propagated by Christian missionaries, who played a significant role in the administration of the colonies and the shaping of societal attitudes.<sup>246</sup> The missionaries' condemnation of same-sex relations and gender non-conformity as sinful and unnatural found legal expression in the penal codes, further entrenching the discrimination of LGBTQ+ identities.<sup>247</sup>

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<sup>237</sup> As above.

<sup>238</sup> As above.

<sup>239</sup> As above.

<sup>240</sup> M Epprecht, 'The Making of 'African Sexuality': Early Sources, Current Debates' (2010) 8(8) *History Compass* 768.

<sup>241</sup> The Penal Code Act 1950, Chapter 120, Laws of Uganda.

<sup>242</sup> As above, sections 145-148.

<sup>243</sup> As above.

<sup>244</sup> Tamale (n 10 above).

<sup>245</sup> As above.

<sup>246</sup> Ward (n 214 above) 19.

<sup>247</sup> As above.

The impact of this colonial legal legacy extended beyond the explicit criminalisation of same-sex sexual activity. The broader societal attitudes and cultural norms that were shaped by these legal frameworks contributed to the marginalisation and stigmatisation of LGBTQ+ individuals, enabling discrimination and violence against them in various spheres of life.<sup>248</sup>

The British colonial authorities also introduced a range of supplementary laws and regulations that targeted LGBTQ+ individuals and reinforced their marginalisation. For instance, laws prohibiting ‘public indecency’ were often selectively enforced against gender non-conforming individuals or those perceived to be engaging in same-sex relationships.<sup>249</sup> Similarly, laws regulating public spaces and gatherings were used to restrict the freedom of assembly and expression for LGBTQ+ individuals and organisations.<sup>250</sup>

Furthermore, the colonial legal framework laid the groundwork for the subsequent discrimination of LGBTQ+ identities within the realms of medicine and mental health. The Victorian-era scientific discourses that informed these legal systems often portrayed same-sex attraction and gender non-conformity as mental disorders or psychological abnormalities.<sup>251</sup> This medicalisation of LGBTQ+ identities further reinforced the notion of pathology and contributed to the development of harmful ‘conversion therapies’ and other forms of coercive treatment aimed at ‘curing’ or ‘correcting’ non-normative sexualities and gender expressions.<sup>252</sup>

It is important to note that while the colonial legal framework played a pivotal role in the criminalisation and discrimination of LGBTQ+ identities in Uganda, the impact of this legacy was not uniform across the diverse ethnic groups and communities that inhabited the region. In some cases, traditional cultural attitudes and practices that acknowledged or accommodated gender and sexual diversity persisted, albeit often in a more covert or marginalised manner, in resistance to the imposed colonial norms.<sup>253</sup>

Nevertheless, the enduring influence of the colonial legal system and the subsequent reinforcement of these frameworks by post-independence governments and institutions have contributed significantly to the entrenchment of LGBTQ+ discrimination in Ugandan society. The criminalisation of same-sex sexual activity and the broader societal stigma and discrimination enabled by these legal frameworks have created an environment in which harmful myths and

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<sup>248</sup> As above.

<sup>249</sup> Human Rights Watch, ‘Uganda: Events of 2021’ in *World Report 2022* (2022).

<sup>250</sup> As above.

<sup>251</sup> HHH Chiang, ‘Epistemic Gender, Sex Beyond the Flesh: Science, Medicine, and the Two-Sex Model in Modern America’ (2007) 9 *eSharp* 1.

<sup>252</sup> Epprecht (n 194 above).

<sup>253</sup> Tamale S (n 10 above).

misconceptions, such as the false linkages between homosexuality and threats to children, have found fertile ground to take root and proliferate.<sup>254</sup>

### 3.3.6 The post-colonial influence

As Uganda navigates the ongoing debates and controversies surrounding LGBTQ+ rights and the potential for legal reform, it is crucial to confront and critically examine the colonial legacy that has shaped the legal and cultural landscapes surrounding these issues. Addressing the harmful impact of these colonial frameworks and the narratives of discrimination they have enabled is a necessary step towards fostering a more inclusive and equitable society that respects and protects the rights and dignity of all individuals, regardless of their sexual orientation or gender identity.

Uganda's 1950 Penal Code prohibition on 'carnal knowledge against the order of nature' traces directly to colonial-era criminalisation, retaining Victorian moralism.<sup>255</sup> The colonial protectionist agenda also furnished a lasting 'sexual innocence' narrative concerning children requiring safeguarding.<sup>256</sup> However, same-sex relations elicited little public discussion nor enforcement for prosecution initially. Open homosexuality remained rare given harsh penalties, but private consensual conduct passed with tacit tolerance.<sup>257</sup>

This changed amid the 1990s rise of US evangelical activism across Uganda, propagating extreme homophobic hostility. US pastors portrayed homosexuality as 'disgusting', an imported Western imposition undermining African values.<sup>258</sup> Workshops trained Ugandan religious leaders to resist LGBTQ+ rights as moral threats.<sup>259</sup> US conservatives also backed emerging politicians like MP David Bahati willing to sponsor anti-LGBTQ+ legislation.<sup>260</sup>

This US evangelical expansionism instilled enduring cultural discrimination. Bahati epitomized the unjustified yet popular linkage made between homosexuality and threats to children in proposing Uganda's 2014 Anti-Homosexuality Act.<sup>261</sup> The law's supporters stressed it would suppress predatory 'recruitment of children' by LGBTQ+ adults, despite no evidence indicating heightened risks.<sup>262</sup> Rhetoric resonated given high pre-existing religiosity, enabling harassment and violence against LGBTQ persons. A leading LGBTQ activist David Kato was brutally murdered in 2011,

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<sup>254</sup> Jjuuko (n 26 above) 382.

<sup>255</sup> Penal Code Act 1950 Ch 120.

<sup>256</sup> Tamale (n 10 above).

<sup>257</sup> Jjuuko (n 26 above) 383.

<sup>258</sup> Kaoma (n 28 above) 22.

<sup>259</sup> As above.

<sup>260</sup> As above 27.

<sup>261</sup> Kalinaki (n 172 above).

<sup>262</sup> Tamale (n 10 above).

with pastors celebrating his death.<sup>263</sup> The Constitutional Court overturned the 2014 Act for infringing rights and freedoms, but parliamentary leaders vowed re-criminalisation remained essential to protect Ugandan children.<sup>264</sup>

### 3.4 Legislative Proposals Targeting LGBTQ+ 'Recruitment' in Uganda

The introduction of laws that target LGBTQ+ people in Uganda is not a new phenomenon, in fact, the Anti-Homosexuality Act of 2023 is only the second specific legislation of its kind. This section examines the evolution of legislative measures that have been taken, targeting LGBTQ+ people in Uganda.

#### 3.4.1 Introduction

False narratives linking homosexuality with tendencies towards child sexual abuse and 'recruitment' have achieved extensive reach and influence within Ugandan society over recent decades. Public opinion polling indicates solid majorities view homosexuality as morally wrong and favour retaining criminal sanctions.<sup>265</sup> Evidence further shows most citizens endorse discriminatory restrictions or exclusion of LGBTQ+ people across health services, housing, education, employment and public life - justified via rhetoric around shielding children's wellbeing.<sup>266</sup> These pathologising narratives exhibit reach across geographic, religious, ethnic and socioeconomic population segments countrywide.

At national governance levels, false predation links retain decisive influence enabling ongoing criminalisation and state discrimination targeting sexual minorities. Lawmakers continue invoking ambiguous threats to children should homosexuality be decriminalised, despite no rises in abuse rates elsewhere removing bans.<sup>267</sup> Most recently, these claimed imperatives to uphold Ugandan morality reportedly justified restoring the 2014 Anti-Homosexuality Act in 2023 after initial annulment on procedural technicalities.<sup>268</sup> Beyond criminalisation, political leaders actively endorse further marginalising measures, evident in controversies over banning LGBTQ+ peoples from refugee resettlement eligibility<sup>269</sup> or proposals mandating death penalty sentences specifically for

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<sup>263</sup> Jjuuko (n 26 above) 392.

<sup>264</sup> As above 398.

<sup>265</sup> J Poushter & N Kent 'The Global Divide on Homosexuality Persists' *Pew Research Center* 25 June 2020.

<sup>266</sup> As above.

<sup>267</sup> Asylum Research Center (ARC) *Uganda: Query response on the situation and treatment of the LGBTQI+ community* (2023) ARC.

<sup>268</sup> D Kalinaki 'Uganda has a sex crime problem, but gays are just easy scapegoats' *Daily Monitor* 2 March 2023.

<sup>269</sup> G Rainbo 'The situation as a Ugandan LGBTQ+ refugee in Kenya is as terrible as you can imagine' *Openly* 17 August 2022.

homosexuals convicted of child sexual offences.<sup>270</sup> Although rebutted by rights advocates as factually unfounded, emotive appeals framing LGBTQ+ persons as risks to children provide the sufficient populist pretext for legislators continuously seeking expanded repression.

At sociocultural levels, discrimination narratives further exhibit extensive reach by mobilising hostility within local communities nationwide to exclude or endanger LGBTQ+ citizens in daily life. Qualitative research documents experiences of violence, harassment, discrimination and family rejection driven by homosexuality stereotypes across Ugandan society.<sup>271</sup> Smaller-scale surveys similarly report most sexual minority respondents suffering persecution by neighbours, workplaces, landlords or others – commonly triggered by suspicions of supposedly 'recruiting', 'grooming' or sexually 'corrupting' youth.<sup>272</sup> Rural villages and urban neighbourhoods alike openly ostracize LGBTQ+ persons as local-level moral enforcement responds forcefully to the rhetoric of predation. Pressure toward 'curative' sexual reorientation also remains common in families or religious settings for Ugandans exhibiting non-conforming orientation or identities.<sup>273</sup> In these ways, false homosexual abuser characterisations provoke socio-cultural attacks against LGBTQ+ citizens nationwide through localised social policing.

Most crucially, reach extends into Ugandan institutional settings with authority over children's well-being - enabling false predation myths to encourage violating policies against youth themselves exhibiting sexual or gender non-conformity. Reports indicate school officials commonly expel pupils suspected of homosexuality or gender variance to 'protect other learners', while police frequently raid social gatherings of LGBTQ youth - rhetorically but baselessly justified as preventing exploitation.<sup>274</sup> Extensively documented cases detail lesbian, gay or transgender Ugandan youth suffering parental abuse through practices like 'corrective rape' or conversion therapy interventions under false pretences of shielding them from imagined recruiters.<sup>275</sup> In these ways, moral panics around homosexual child endangerment spur extensive institutional violations against LGBTQ+ youth and allies themselves - dangerously enabled by the societal embrace of 'threat' mythologies.

Cultural bias persists, as evident in the recent re-tabling and passage of the near-identical 2023 Anti-Homosexuality Act. Justification again stressed shielding children despite remaining

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<sup>270</sup> As above.

<sup>271</sup> ARC (n 263 above).

<sup>272</sup> As above.

<sup>273</sup> Wepukhulu (n 207 above).

<sup>274</sup> Human Rights Watch 'Like Walking Through a Hailstorm' Discrimination Against LGBT Youth in US Schools' (2016) *HRW Report*.

<sup>275</sup> Wepukhulu (n 207 above).

unsupported empirically.<sup>276</sup> The lack of data directly testing these predation assumptions provides this study's rationale. Scapegoating LGBTQ+ people offers a strategy for political expedience and distraction from wider governance failures. The fomenting moral panic around supposed homosexual threats to children provides an emotive populist platform.<sup>277</sup>

### 3.4.2 The advent of the 'Bahati Bill' and the subsequent legal efforts

MP David Bahati's Anti-Homosexuality Bill proposed severe punishments for broadly defined 'homosexual offences' including possessing LGBTQ+ literature.<sup>278</sup> Bahati relied on unfounded child protection arguments absent evidence to justify the bill's repressiveness.<sup>279</sup> President Yoweri Museveni echoed these rationalizations in signing the bill into law in 2014, claiming Ugandan culture abhors homosexuality's 'mercenary obscenity'.<sup>280</sup> Framing LGBTQ+ persons as deviant dangers offers cost-free political capital given minimal public empathy.<sup>281</sup> Re-criminalisation posturing suppresses scrutiny over corruption or basic service delivery failures.

Allegations framing LGBTQ+ people as abusers or 'recruiters' threatening children's welfare prove especially powerful given the intense cultural pressures for heterosexual marriage and reproduction.<sup>282</sup> Lawmakers stress that toughened criminalisation remains essential to safeguard youth, Projecting homosexuality as undermining children's interests ensures widespread public support.<sup>283</sup> However, these emotive claims enabling continued oppression remain factually unsupported and unjust.

In Uganda, same-sex intimacy has remained categorised as a criminal 'offence against morality' since British rule, currently prohibited under sections 145-148 of the 1950 Penal Code Act.<sup>284</sup> However, recent decades witnessed escalating political hostility and cultural stigma targeting LGBTQ+ minorities. This intensified discrimination aligns temporally with the rise of American evangelical Christian influence across the region from the 1990s onwards, propagating conservative 'family values' ideology.<sup>285</sup> US-backed pastors characterised homosexuality as

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<sup>276</sup> The Anti-Homosexuality Act 2023.

<sup>277</sup> U Mwakasungula, 'The LGBT situation in Malawi: an activist perspective' In: *Human Rights, Sexual Orientation and Gender Identity in The Commonwealth: Struggles for Decriminalisation and Change* (Institute of Commonwealth Studies, School of Advanced Study, University of London, 2013) pp. 359-379.

<sup>278</sup> The Anti Homosexuality Bill, 2009, Clause 2.1.

<sup>279</sup> Jjuuko (n 26 above).

<sup>280</sup> A Cowell 'Uganda's President Signs Antigay Bill' *New York Times* 24 February 2014.

<sup>281</sup> Jjuuko (n 26 above) 399.

<sup>282</sup> C Mgbako 'The Mainstreaming of Sex Workers' Rights as Human Rights' (2020) 43 *Harvard Journal of Law & Gender* 92.

<sup>283</sup> SP Colyer *et al.* 'Crystal Methamphetamine Use and Initiation among Gay, Bisexual, and Other Men Who Have Sex with Men Living with HIV in a Treatment as Prevention Environment' (2020) 55(14) *Substance use & misuse* 2428.

<sup>284</sup> The Penal Code Act 1950, Chapter 120, Laws of Uganda, sections 145-148.

<sup>285</sup> Jjuuko (n 26 above) 384.

predatory and child-threatening, claims that resonated given the high pre-existing religiosity in the Ugandan populace.<sup>286</sup> This environment bred proposals for harsher LGBTQ+ criminalisation, justified via rhetoric on defending children's morality and safety despite lacking empirical substantiation locally.<sup>287</sup>

The period between 2009 and 2014 represents a crucial episode in Uganda's legal treatment of LGBTQ+ rights, marked by intensifying discrimination that culminated in the Anti-Homosexuality Act of 2014. This era warrants careful examination as it established patterns of legislative discrimination that would later influence the 2023 Anti-Homosexuality Act. The period began with mounting tensions in Uganda's political and social sphere regarding LGBTQ+ rights, catalysed by increased visibility of LGBTQ+ advocacy and concurrent conservative religious influence.<sup>288</sup> The introduction of the Anti-Homosexuality Bill in 2009 by David Bahati marked a significant escalation in legislative discrimination against LGBTQ+ individuals. The bill's origins can be traced to the increased involvement of American evangelical groups in Uganda, particularly following a conference in Kampala where American speakers presented homosexuality as a threat to African families.<sup>289</sup> Parliamentary records from this period reveal how religious rhetoric increasingly dominated legislative discussions, with multiple references in Hansard to 'protecting Ugandan values' and 'defending children from recruitment'.<sup>290</sup>

The initial draft of the Bahati Bill contained provisions for capital punishment for 'aggravated homosexuality,' triggering international outcry and diplomatic pressure on Uganda.<sup>291</sup> Parliamentary debates during this period reflected complex tensions between international human rights obligations and assertions of national sovereignty. The Hansard records from 2010 demonstrate how parliamentarians increasingly framed LGBTQ+ rights as a form of Western cultural imperialism, using this narrative to justify increasingly severe legislative proposals.<sup>292</sup> Media coverage during this period played a crucial role in shaping public discourse. The publication of names and photographs of suspected LGBTQ+ individuals by the Rolling Stone newspaper in October 2010 marked a dangerous escalation in public persecution. The subsequent court case, *Kasba Jacqueline v. Rolling Stone*, represented a rare victory for LGBTQ+ rights during this period,

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<sup>286</sup> S Tamale 'Homosexuality is not un-African' *Aljazeera America* 26 April 2014.

<sup>287</sup> As above.

<sup>288</sup> Sexual Minorities Uganda (SMUG), 'Expanded Criminalisation of Homosexuality in Uganda: A Flawed Narrative' (2014) SMUG Research Report 12.

<sup>289</sup> KJ Kaoma, 'Globalizing the Culture Wars: U.S. Conservatives, African Churches, and Homophobia' (2009) Political Research Associates Report 15.

<sup>290</sup> Uganda Parliamentary Hansard, 20 October 2009, Col 4456.

<sup>291</sup> SMUG (n 288 above).

<sup>292</sup> Uganda Parliamentary Hansard, 15 March 2010, Col 2345-2367.

with the High Court ruling that the publication violated constitutional rights to dignity and privacy.<sup>293</sup>

The period between 2011 and 2013 saw continued parliamentary debate and modification of the Anti-Homosexuality Bill, alongside increasing international pressure. Records from parliamentary committees reveal how legislators attempted to balance international donor concerns with domestic political pressures. The death penalty provision was eventually removed, though the bill retained severe criminal penalties including life imprisonment.<sup>294</sup> Civil society organisations during this period documented escalating violence and discrimination against LGBTQ+ individuals, with the pending legislation creating an environment of increased vulnerability.<sup>295</sup> The passage of the Anti-Homosexuality Act in December 2013 marked the culmination of this period of intensifying discrimination. Parliamentary records show the bill passed amid controversial circumstances, with disputes over quorum requirements that would later prove crucial.<sup>296</sup> President Museveni's initial hesitation and subsequent support for the bill reflected complex political calculations, with his public statements emphasising both 'scientific' considerations and assertions of Ugandan cultural sovereignty.<sup>297</sup>

The constitutional petition filed by Professor J. Oloka-Onyango and others represented a crucial legal challenge to the Act. The petitioners' arguments centred on both procedural and substantive constitutional violations, including the lack of parliamentary quorum and fundamental rights violations.<sup>298</sup> The Constitutional Court's decision to nullify the Act on procedural grounds, while avoiding substantive human rights issues, demonstrated the judiciary's careful navigation of politically sensitive territory.<sup>299</sup> The period's significance extends beyond the immediate legal outcomes. The debates and processes during this time established patterns of argumentation and political mobilisation that would resurface in the 2023 Anti-Homosexuality Act. Parliamentary records from both periods reveal striking similarities in rhetoric and justification, suggesting direct continuity in discriminatory legislative strategies.<sup>300</sup> International responses during this period

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<sup>293</sup> *Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Mubame*, High Court Miscellaneous Cause No. 163 of 2010.

<sup>294</sup> Human Rights Watch, 'Uganda: Parliament Committee Backs Anti-Homosexuality Bill: Recommends Retaining Death Penalty' 12 May 2011 <https://www.hrw.org/news/2011/05/12/uganda-parliament-committee-backs-anti-homosexuality-bill> (accessed 16 January 2025).

<sup>295</sup> Human Rights Watch, 'World Report 2013: Uganda' (2013) HRW Annual Report.

<sup>296</sup> Uganda Parliamentary Hansard, 20 December 2013, Col 6723-6789.

<sup>297</sup> YK Museveni, 'Presidential Statement on the Anti-Homosexuality Act' (Government of Uganda, 24 February 2014).

<sup>298</sup> *Prof. J. Oloka-Onyango & 9 Others v Attorney General* (Constitutional Petition No. 08 of 2014) [2014] UGCC 14.

<sup>299</sup> Constitutional Court of Uganda, Judgment in Constitutional Petition No. 08 of 2014, delivered on 1 August 2014.

<sup>300</sup> A Jjuuko 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' in *Human rights, sexual orientation and gender identity in The Commonwealth: Struggles for decriminalisation and change* (2013) 381-408.

significantly influenced Uganda's domestic politics, though not always as intended. Donor countries' threats to withdraw aid often strengthened narratives of Western imperialism, while support for LGBTQ+ rights became increasingly framed as foreign interference.<sup>301</sup> This dynamic created complex challenges for local LGBTQ+ activists, who had to navigate between international support and local legitimacy.<sup>302</sup>

### 3.4.3 Contemporary Developments as Manifested in the 2023 Anti-Homosexuality Bill and Act

The recent passage of Uganda's strict 2023 Anti-Homosexuality Act, nullifying Constitutional Court protections, illustrates the impacts of engrained cultural discrimination.<sup>303</sup> Though previously overturned by the Constitutional Court as contravening rights principles, the near-identical law's renewed enactment signals legislative validation for the predation myths enabling LGBTQ+ repression.<sup>304</sup> The 2023 Act's provisions intensify penalties for homosexual intimacy, also newly criminalising undefined acts like 'promotion' and 'funding', potentially endangering basic freedom of expression, association or access to health services for LGBTQ+ Ugandans.<sup>305</sup> However, the Act's proponents successfully appealed to populist hostility by emphasising its necessity for shielding children, despite no correlations being evidenced.<sup>306</sup>

The Anti-Homosexuality Act (AHA), the *Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Mary v. Uganda Registration Services Bureau*<sup>307</sup> case (SMUG case), and the ensuing Constitutional Petition against the AHA together expose the deeply entrenched and systematic discrimination faced by sexual minorities in Uganda. The AHA itself, with its sweeping objective to criminalise same-sex relationships and their promotion, is a primary tool of this discrimination.

Specific sections of the AHA illustrate how it targets individuals based on their sexual orientation, violating their fundamental human rights. The inclusion of the death penalty for 'aggravated homosexuality' in Section 3(1), with its undefined scope, further exacerbates the law's severity and potential for abuse. This provision, along with others, directly interferes with the right to privacy and autonomy over one's body, a right protected under international human rights law and implicit in the Ugandan Constitution. The AHA further violates the right to equality and non-

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<sup>301</sup> Sylvia Tamale, 'Homosexuality is not un-African' Al Jazeera (26 April 2014).

<sup>302</sup> Civil Society Coalition on Human Rights and Constitutional Law, 'Uganda's Anti-Homosexuality Act: The Devastating Impact of the Law and Strategies for its Repeal' (2014) Policy Brief.

<sup>303</sup> The Anti-Homosexuality Act 2023, Laws of Uganda.

<sup>304</sup> Kalinaki (n 172 above).

<sup>305</sup> As above.

<sup>306</sup> As above.

<sup>307</sup> *Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Mary v. Uganda Registration Services Bureau* Civil Appeal No. 223 of 2018.

discrimination by singling out same-sex sexual activity for criminalisation, while comparable acts between heterosexuals remain legal.

Beyond the criminalisation of same-sex acts, the AHA targets individuals based on their perceived sexual orientation or gender identity through vague and overbroad language. Section 9 criminalises the use of ‘premises’ for ‘purposes of homosexuality’, potentially impacting landlords or homeowners suspected of renting to or associating with LGBTQ+ individuals. Similarly, Section 11(1) outlaws the ‘promotion of homosexuality’, a vaguely defined offence that could encompass a range of activities, from public advocacy to private conversations.<sup>308</sup>

This discriminatory intent is further evidenced in the *SMUG* case. The Court of Appeal, in upholding the Registrar's refusal to register SMUG, argued that the organisation's stated aims of promoting the ‘sexual rights’ of LGBTQ+ persons and combating discrimination amounted to promoting ‘unlawful’ behaviour under Ugandan law.<sup>309</sup> This interpretation effectively strips LGBTQ+ individuals of the right to freedom of association and assembly, rights enshrined in Article 29 of the Ugandan Constitution. The court's reasoning illustrates how the Ugandan legal system is weaponized to suppress the visibility and advocacy efforts of LGBTQ+ individuals and organisations.<sup>310</sup>

The Constitutional Petition against the AHA delved deeper into the discriminatory nature of the law.<sup>311</sup> Petitioners argued that the AHA violated their right to equality and non-discrimination under Article 21 of the Constitution, stating that the law creates a system of differential treatment for LGBTQ+ individuals compared to heterosexuals.<sup>312</sup> The petition highlighted how the AHA violates the right to human dignity (Article 24) by subjecting LGBTQ+ individuals to potential violence, harassment, and social exclusion. The petitioners further argued that the broad language of the AHA, particularly sections concerning the ‘promotion’ of homosexuality, has a chilling effect on freedom of expression and association, contravening Article 29 of the Constitution.<sup>313</sup>

The Ugandan government's justifications for the AHA, rooted in appeals to ‘public morality’, ‘tradition’, and ‘cultural values’, ring hollow in the face of the law's blatant disregard for fundamental human rights. As demonstrated in the Constitutional Petition, the invocation of these concepts is often used to legitimise discrimination and prejudice.<sup>314</sup> Furthermore, the persistent

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<sup>308</sup> Kalinaki (n 172 above).

<sup>309</sup> *SMUG* Case (n 241 above).

<sup>310</sup> A Jjuuko *Strategic Litigation and the Struggle for Lesbian, Gay and Bisexual Equality in Africa* (Daraja Press, 2020).

<sup>311</sup> *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others* Consolidated Constitutional Petition 14 of 2023.

<sup>312</sup> As above.

<sup>313</sup> As above.

<sup>314</sup> As above.

conflation of homosexuality with child sexual abuse, a tactic evident in the framing of the AHA itself, is a dangerous and unfounded narrative that further marginalises and stigmatises LGBTQ+ individuals.

The Hansards from Ugandan parliamentary debates on the Anti-Homosexuality Act (AHA) offer several instances where LGBTQ+ individuals are directly and indirectly linked to the sexual abuse of children. These statements, made amidst a broader discussion on the AHA, demonstrate a clear attempt to pathologise LGBTQ+ people by falsely associating them with paedophilia and framing them as threats to children. Examples of the statements made by Parliamentarians on the subject include the following discussions.

March 7, 2023: During the first reading of the AHA, Ms. Lilly Akello, the Minister of State in the Office of the President (Ethics and Integrity), stated,

In 2011, during the Ninth Parliament, this Bill was here and we are the people who voted that homosexuality should go away from the country. As we talk, the country is bleeding. Colleagues, it is not a simple thing. We are talking about institutions and schools but it is not only schools and institutions; it has gone down to the grassroots. It has gone up to our villages. Madam Speaker, I am with you, I am with the whole House and I am happy our President is also with us.<sup>315</sup>

While not explicitly mentioning child abuse, Ms. Akello's use of emotionally charged language like 'the country is bleeding' creates a sense of alarm and implicitly links homosexuality to a threat against society, including children.

March 9, 2023: Speaker Anita Among, while addressing the presence of international media, stated,

Honourable members, I can see a number of both international and local media. Whenever we talk about homosexuals here, I see them coming. (Laughter) I welcome all of you. Go ahead and cover it. For us, it is about our morals and culture. (Applause)<sup>316</sup>

The Speaker's statement, delivered in the context of the AHA debate, reinforces the association of homosexuality with something inherently opposed to Ugandan 'morals and culture,' indirectly playing into the narrative that seeks to position LGBTQ+ individuals as threats to societal values and norms, which implicitly include the protection of children.

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<sup>315</sup> Parliament of Uganda, Official Report of the Proceedings of Parliament, SECOND SESSION - 11TH SITTING - THIRD MEETING, Tuesday 7 March 2023, 7359.

<sup>316</sup> Parliament of Uganda, Official Report of the Proceedings of Parliament, SECOND SESSION - 15TH SITTING - THIRD MEETING, Thursday 9 March 2023, 7414.

March 21, 2023: During the second reading of the AHA, Speaker Among stated,

I want to thank all of you, Members, for coming. Our agenda for today is going to be very short. We have a Bill and that is all we will handle today. (Applause) We have got a lot of threats and intimidation, but let us stand for the truth. (Applause)<sup>317</sup>

This statement, while not directly linking homosexuality and child abuse, frames the AHA as a matter of ‘truth,’ suggesting that those opposing the bill, including those defending LGBTQ+ rights, are aligning themselves with falsehoods. This kind of rhetoric contributes to a climate where any arguments against the AHA, even those based on factual evidence regarding child sexual abuse, are dismissed as attempts to protect an inherently immoral group.

March 21, 2023: During the second reading, Hon. Barnabas Tinkasiimire argued that the Bill

...is not about Hon. Fox Odoi. He is only attempting to be consistent with what he stood for in the Constitutional Court. I will persuade him, as a father and a husband of two beautiful ladies, to abandon what he stood for then and know that the position of Ugandans has changed and all Ugandans are against homosexuality.<sup>318</sup>

This statement attempts to discredit Hon. Fox Odoi, who presented the minority report against the AHA, by framing his stance as a personal crusade rather than a principled opposition. The implication is that anyone defending LGBTQ+ individuals, regardless of their own family status or personal life, is working against the supposed will of the Ugandan people.

March 21, 2023: Mr. Musa Ecweru, during the second reading, stated,

Some people think because we are poor, we can be held at ransom. Some very vulnerable people have surrendered. The minority report, as you heard, belongs to people who have surrendered the future of their children, the country and everything. (Applause)<sup>319</sup>

While not directly mentioning abuse, this statement frames those supporting LGBTQ+ rights, as represented by the minority report, as individuals willing to ‘surrender’ the future of Ugandan children. This language insinuates that LGBTQ+ individuals and their allies are complicit in jeopardizing the well-being of children, feeding into the broader narrative of LGBTQ+ people as threats.

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<sup>317</sup> Parliament of Uganda, Official Report of the Proceedings of Parliament SECOND SESSION - 18TH SITTING - THIRD MEETING, Tuesday 21 March 2023, 7615.

<sup>318</sup> As above, 7639.

<sup>319</sup> As above, 7638.

March 21, 2023: During the second reading, Mr Ecweru continued to state that,

Madam Speaker, I can tell you that I have gone to some hospitals and seen children with ripped anuses. I have talked to the doctors and asked what happened. These children were molested by homosexuals. For any reasonable person to stand here and say that this thing is okay, that it is a human right to destroy people's anuses - that person is evil and belongs in hell. (Applause)<sup>320</sup>

This statement directly accuses LGBTQ+ people of causing physical harm to children, using graphic descriptions to further incite fear and disgust. This constitutes a clear example of pathologisation, falsely equating homosexuality with child sexual abuse and framing LGBTQ+ individuals as inherently evil.

These statements, made by influential figures in the Ugandan Parliament, illustrate a deliberate strategy to pathologise and discriminate against LGBTQ+ individuals by linking them to the sexual abuse of children.<sup>321</sup> This tactic, fuelled by misinformation and prejudice, creates a climate of fear and intolerance towards LGBTQ+ people and hinders any objective discussion on protecting children from sexual abuse.<sup>322</sup>

### **3.4.4 Public Participation in Lawmaking: Legal Requirements and Parliamentary Practice**

The lawmaking process, particularly concerning legislation with profound implications for marginalised groups, raises critical questions about public participation and democratic legitimacy. Constitutional democracies typically establish procedural safeguards to ensure legislation reflects both popular sovereignty and rational deliberation. Uganda's constitutional framework explicitly requires meaningful public consultation during the legislative process, yet the implementation of this principle has been inconsistently applied, creating a concerning pattern of differential treatment between general constitutional matters and legislation affecting vulnerable minorities.<sup>323</sup>

Justice Kakuru's dissenting opinion in *Male Mabirizi & Others v Attorney General*<sup>324</sup> provides the most comprehensive articulation of public participation requirements in Uganda's constitutional jurisprudence. As the sole dissenter among five Constitutional Court justices, Kakuru declared the entire Constitutional Amendment Act No. 1 of 2018 'unconstitutional and therefore null and void'

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<sup>320</sup> As above.

<sup>321</sup> Kalinaki (n 172 above).

<sup>322</sup> As above.

<sup>323</sup> J Oloka-Onyango 'When Courts Do Politics: Public Interest Law and Litigation in East Africa' (2017) Cambridge Scholars Publishing 145-167.

<sup>324</sup> *Male Mabirizi & Others v Attorney General* (Constitutional Petition No. 49 of 2017) [2018] UGCC 4 (26 July 2018).

based primarily on inadequate public consultation.<sup>325</sup> His constitutional philosophy rested on Article 1's declaration that 'All power belongs to the people who shall exercise their sovereignty in accordance with this Constitution.'<sup>326</sup> Kakuru emphasised that Members of Parliament possess only 'delegated power' that is 'very limited in both time and scope,' rejecting the Attorney General's argument that Parliament could amend anything without meaningful public consultation.<sup>327</sup>

Kakuru established both quantitative and qualitative standards for meaningful consultation. He noted that only 22 individuals and 8 government agencies were consulted on the constitutional amendment, representing merely 0.00013% of registered voters.<sup>328</sup> Even including all MPs, this represented only 0.8% of eligible voters.<sup>329</sup> He characterised this as consultation with 'obscure and amorphous groups' including bizarrely named entities like the 'Uganda Association of the Uneducated.'<sup>330</sup> More significantly, Kakuru developed qualitative criteria requiring adequate time for genuine nationwide consultation, representative cross-sections of the population rather than token groups, serious engagement with public views rather than perfunctory meetings, procedural compliance with parliamentary rules, and democratic legitimacy ensuring amendments reflect genuine popular will.<sup>331</sup>

This robust interpretation of participatory requirements contrasts sharply with the approach taken in the recent *Fox Odoi-Oywelowo & Others v Attorney General* petition challenging the Anti-Homosexuality Act 2023.<sup>332</sup> Despite petitioners' arguments that the Act was enacted without meaningful and adequate public participation in contravention of constitutional provisions including Articles 1, 8A, and 38, the Constitutional Court rejected these challenges.<sup>333</sup> The Court found no violation of public participation requirements despite Parliament's Committee on Legal and Parliamentary Affairs spending only six days taking public presentations on legislation that parliamentary rules allowed up to 45 days for committee-level consideration.<sup>334</sup> Some participants

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<sup>325</sup> S Waswa, 'Justice Kenneth Kakuru Nullifies Entire Age Limit Act; Here Are Highlights of His Impassioned Judgment' ChimpReports, 26 July 2018, available at <https://chimpreports.com/justice-kakuru-nullifies-entire-age-limit-act-here-are-highlights-of-his-impassioned-judgment/>.

<sup>326</sup> Constitution of the Republic of Uganda, 1995, Art 1.

<sup>327</sup> *Male Mabirizi & Others v Attorney General* (Constitutional Petition No. 49 of 2017) [2018] UGCC 4 (26 July 2018) pp 395-396; see also B Kabumba, 'Uganda's Dred Scott v Sandford – Part 3: Fox Odoi and Others v Attorney General' The Observer, 29 May 2024, available at <https://observer.ug/index.php/viewpoint/81454-uganda-s-dred-scott-v-sandford-part-3-fox-odoi-and-others-v-attorney-general>, as he discusses some aspects of public participation.

<sup>328</sup> S Waswa (n 325).

<sup>329</sup> As above.

<sup>330</sup> As above.

<sup>331</sup> As above.

<sup>332</sup> *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others* (Consolidated Constitutional Petition 14 of 2023; Consolidated Constitutional Petition 15 of 2023; Consolidated Constitutional Petition 16 of 2023; Consolidated Constitutional Petition 85 of 2023) [2024] UGCC 10 (3 April 2024).

<sup>333</sup> Human Rights Watch, 'Uganda: Court Upholds Anti-Homosexuality Act' Human Rights Watch, 4 April 2024, available at <https://www.hrw.org/news/2024/04/04/uganda-court-upholds-anti-homosexuality-act>.

<sup>334</sup> B Kabumba (n 327).

received merely 24 hours' notice for consultation sessions, and the Committee refused to hear from LGBT activists who requested audience.<sup>335</sup>

The *Fox Odoi* majority's reasoning rested on representative democracy theory, holding that 'public participation is adequately fulfilled through elected representatives' who 'would know the sentiments of the people that they represent on the subject.'<sup>336</sup> This approach treated electoral participation and parliamentary representation as sufficient constitutional compliance regardless of actual consultation quality. The Court created internal contradictions in its reasoning, acknowledging at paragraph 90 that 'We do recognise the need to protect the fundamental rights of those who may dissent or deviate from the majoritarian view' and finding 'no plausible reason for the failure by the Committee to give the second and third petitioner audience,' yet contradicting this at paragraph 91 by stating that 'given the evidence on record, which depicts the majority view in the House to have been manifestly in support of the Bill, we do not think that more extensive consultations with sexual minorities would have led to a different legislative result.'<sup>337</sup>

The divergent judicial approaches reflect broader tensions in constitutional interpretation. While Justice Kakuru applied what may be described as 'transformative constitutionalism,' ensuring constitutional principles retained contemporary relevance and enforced substantive participation rights, the *Fox Odoi* majority applied restrictive formalism, limiting constitutional rights to minimal procedural compliance and prioritising institutional autonomy over individual rights.<sup>338</sup> The evidentiary standards employed also differed dramatically. Kakuru demanded concrete evidence of actual consultation, noting that no evidence was adduced by the Attorney General or supporting MPs to prove adequate consultations occurred.<sup>339</sup> The *Fox Odoi* majority accepted minimal procedural compliance as sufficient evidence, treating Parliament's assertion that consultation occurred as adequate proof regardless of consultation quality, accessibility, or inclusiveness.

This inconsistent application of participatory requirements reveals a troubling pattern of differential treatment. While courts have applied some scrutiny to consultation processes in general constitutional matters like the age limit amendment, they have applied even more minimal

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<sup>335</sup> As above.

<sup>336</sup> *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others* (n 332) at para 242.

<sup>337</sup> As above at paras 90-91.

<sup>338</sup> B Kabumba 'Part 2: Uganda's Dred Scott v Sandford: Unpacking the real constitutional damage wrought by the decision in Fox Odoi and Others v Attorney General,' *The Observer*, 22 May 2024, available at <https://observer.ug/viewpoint/part-2-uganda-s-dred-scott-v-sandford-unpacking-the-real-constitutional-damage-wrought-by-the-decision-in-fox-odoi-and-others-v-attorney-general/>.

<sup>339</sup> S Waswa (n 325).

standards for legislation affecting marginalised groups like sexual minorities.<sup>340</sup> The *Fox Odoi* majority's reasoning that more extensive consultations with sexual minorities would have led to a different legislative result reveals judicial acceptance that minority voices can be ignored when majority opinion is predetermined, creating the undesirable situation where different groups receive different levels of constitutional protection.<sup>341</sup>

Evidentiary basis for legislation merits examination. Lawmaking must be based on objective facts and rational considerations rather than merely subjective beliefs or unfounded fears. The constitutional framework provides robust textual foundations for public participation through multiple interconnected provisions. Article 1 establishes popular sovereignty, Article 8A mandates governance 'based on principles of national interest and common good,' Article 38 grants citizens 'the right to participate in the affairs of government,' and National Objective II(i) requires that 'The State shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance.'<sup>342</sup>

The competing interpretations have established irreconcilable constitutional precedents that future courts must navigate. Justice Kakuru's approach would require meaningful consultation for major legislative changes affecting constitutional rights, while the *Fox Odoi* approach permits Parliament to bypass substantive consultation through minimal procedural compliance.<sup>343</sup> This divergence undermines both democratic legitimacy and rights protection, particularly for vulnerable minorities who find themselves excluded from meaningful participation in legislative processes that directly affect their fundamental rights and dignity.

### 3.4.5 The Necessity of a Rational Basis in Lawmaking

The critical question emerging from this analysis is fundamental to constitutional governance: where does the information that Parliament relies on for potentially discriminatory laws originate, and what standards should govern its evaluation? The evidence suggests a troubling pattern wherein legislation affecting marginalised groups frequently relies on unsubstantiated claims, cultural assumptions, and moral panic rather than empirical evidence or rational analysis.<sup>344</sup> Without a commitment to a rational basis in lawmaking, legislation risks devolving into what can

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<sup>340</sup> B Kabumba, 'Part 5: Fox Odoi & others v AG & lack of fidelity to Constitutional court precedents' The Observer, 12 June 2024, available at <https://www.observer.ug/index.php/viewpoint/81599-part-5-fox-odoi-others-v-ag-lack-of-fidelity-to-constitutional-court-precedents>.

<sup>341</sup> B Kabumba (n 340).

<sup>342</sup> Constitution of the Republic of Uganda, 1995, Arts 1, 8A, 38; National Objectives II(i).

<sup>343</sup> B Kabumba (n 327).

<sup>344</sup> K Kaoma 'Globalizing the Culture Wars: U.S. Conservatives, African Churches, and Homophobia' (2009) Political Research Associates.

only be characterised as legal mob justice the formalization of popular prejudice through legal mechanisms without adequate empirical foundation.<sup>345</sup> Constitutional democracy requires more than mere procedural compliance; it demands substantive rationality in the exercise of legislative power.

A rational basis standard would provide a crucial safeguard against discriminatory legislation by requiring that laws differentiating between social groups demonstrate a factual foundation for such distinction. This approach would not prevent Parliament from addressing legitimate social concerns but would ensure that legislative responses are grounded in evidence rather than unfounded assumptions or prejudice.<sup>346</sup> As Justice Kakuru eloquently noted that while the will of the majority is a fundamental democratic principle, it cannot override constitutional protections or justify actions without rational foundation.<sup>347</sup> This principle remains essential for protecting vulnerable minorities from legislation that lacks empirical justification yet imposes severe restrictions on fundamental rights.

In conclusion, these instances paint a grim picture of the systemic discrimination faced by sexual minorities in Uganda. The law, its interpretation by the courts, and the government's justifications expose a deep-seated prejudice that permeates legal and social structures. By criminalising same-sex relationships and suppressing the rights to freedom of expression, association, and assembly, the Ugandan government actively creates an environment of fear, intimidation, and vulnerability for LGBTQ+ individuals, denying them the basic human rights and freedoms afforded to all.

This section aims to explore the various sociocultural, political, and religious drivers that have propagated and reinforced false narratives linking homosexuality to threats against children in Ugandan society. By examining the historical roots, traditional attitudes, and the impacts of colonial rule, missionary teachings, and post-independence political rhetoric, we can gain a deeper understanding of how these harmful myths became entrenched. The analysis will also delve into the role of religious institutions and legislative proposals in perpetuating the discrimination of LGBTQ+ individuals under the guise of protecting youth. Ultimately, this comprehensive examination of the factors enabling the proliferation of predation myths in Uganda provides crucial context for the subsequent empirical analysis challenging these dominant narratives.

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<sup>345</sup> J Oloka-Onyango 'Debating Love, Human Rights and Identity Politics in East Africa: The Case of Uganda and Kenya' (2015) 15 *African Human Rights Law Journal* 28-57.

<sup>346</sup> L Fuller 'The Forms and Limits of Adjudication' (1978) 92 *Harvard Law Review* 353-409.

<sup>347</sup> *Male Mabirizi & Others v Attorney General* (Constitutional Petition No. 49 of 2017) [2018] UGCC 4 (26 July 2018) at 217.

### 3.5 Further Manifestations of LGBTQ+ Discrimination in Uganda

Patriarchal norms enable LGBTQ discrimination, positioning homosexuality as undermining Ugandan masculinity and gender hierarchies. Same-sex relations contravene gendered expectations of masculine dominion over women.<sup>348</sup> Framing homosexuality as unnatural or deviant reinforces gender inequalities and violence as methods of social control.

Patriarchal values also interact with religious moralism. Biblical scripture passages depicting homosexuality as abhorrent or sinful, interpreted literally, are invoked to justify repression as defending biblical gender roles.<sup>349</sup> Church leaders portray express prohibitions on same-sex intimacy as necessary to uphold Uganda's spiritual purity and family stability.<sup>350</sup>

This relates closely to the protection of childhood 'innocence' narratives. Condemning homosexuality as an immoral pollution of patriarchal gender norms lends resonance to rhetoric shielding innocent children from LGBTQ 'recruiter' threats.<sup>351</sup> Gender hierarchy maintenance thus enables claims positioning enhanced control over LGBTQ+ expression and visibility as essential to preserving child welfare. Opposition also stems from positioning homosexuality as culturally alien or 'un-African'.<sup>352</sup> Framing LGBTQ+ persons as 'polluting' African purity appeals broadly. Although evidence traces pre-colonial acceptance, leaders portray homosexuality solely as an invasive imposition of decadent Western immorality.<sup>353</sup>

Uganda's former Ethics Minister, Simon Lokodo, for example, typified arguments that homosexuality threatens revered local values, so LGBTQ+ populations require suppression to preserve Ugandan cultural integrity.<sup>354</sup> Politicians invoke similar claims, stressing that anti-LGBTQ+ laws uphold moral standards against alien practices.<sup>355</sup> Associating homosexuality with outsider influence provides *Kulture* justification for discriminatory pathologisation. A major factor sustaining misconceptions is the repression and exclusion of LGBTQ+ voices across Ugandan society. The lack of human narratives challenging stereotypes enables discrimination myths to

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<sup>348</sup> T Msibi 'The lies we have been told: On (homo)sexuality in Africa' (2011) 58(1) *Africa Today* 55.

<sup>349</sup> Viljoen (n 8 above).

<sup>350</sup> Tamale (n 10 above).

<sup>351</sup> APA (n 22 above).

<sup>352</sup> Tamale (n 10 above).

<sup>353</sup> Kaoma (n 28 above) 22.

<sup>354</sup> Amnesty International 'Uganda: Minister's remarks against LGBTI people amount to advocacy of hatred' *Amnesty International* 8 August 2016.

<sup>355</sup> Tamale (n 10 above).

prevail uncontested. Fearing harsh punishment or rejection, most LGBTQ+ Ugandans conceal their identity.<sup>356</sup> Public vilification also deters open activism.

State censorship strictly limits positive LGBTQ+ media representation or humanization. Films or publications depicting homosexuality face criminal charges for 'promoting' forbidden practices.<sup>357</sup> Public comments by officials directly confirm the exclusion of LGBTQ+ Ugandans from equal citizenship. MP Bahati stressed that homosexuals have no rights at all, alluding to them being illegal and unacceptable and terrorists.<sup>358</sup> This silencing impedes nuanced public discourse. With LGBTQ+ persons lacking platforms to share their stories safely, false predation linkages go unchallenged. Generating impartial evidence-testing discrimination claims provides one step towards informed dialogue and equality.

### 3.6 Analysis of Emerging Issues

The historical trajectory of LGBTQ+ discrimination, particularly its manifestation through unfounded accusations of child predation, reveals a persistent pattern of using moral panic as a tool for social and political control. This chapter's analysis demonstrates that the current wave of anti-LGBTQ+ sentiment in Uganda is not an isolated phenomenon but part of a broader historical pattern of pathologising sexual and gender minorities to justify systematic discrimination.

The employment of rational basis theory, as examined in Chapter Two, provides a critical framework for understanding how discriminatory legislation historically failed to demonstrate legitimate state interests. The recurring theme of moral protection, particularly regarding children, emerges as a historically consistent yet empirically unfounded justification for discriminatory practices. From the McCarthy era's conflation of homosexuality with paedophilia in the United States to contemporary Ugandan legislation, these narratives persist despite lacking empirical support.

Global political shifts have created a complex landscape of progress and regression. While some jurisdictions have made significant strides in recognising LGBTQ+ rights, others have witnessed the resurgence of conservative movements explicitly targeting sexual and gender minorities. The rise of right-wing populism in Europe, exemplified by developments in the Netherlands and Hungary, demonstrates how historical patterns of discrimination can be revived through

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<sup>356</sup> H Michael 'Gay Rights in Uganda: Seeking to Overturn Uganda's Anti-Sodomy Laws' (2009) 50 *Virginia Journal of International Law* 219.

<sup>357</sup> The Anti Homosexuality Act, 2023, Section 8(1)(c).

<sup>358</sup> Cowell (n 214 above).

contemporary political movements.<sup>359</sup> The Trump administration's rollback of LGBTQ+ protections in the United States similarly illustrates how progress toward equality remains vulnerable to political reversal.<sup>360</sup>

The persistence of discriminatory narratives linking LGBTQ+ identities to child abuse reveals the enduring nature of historically rooted prejudices. Despite decades of research debunking these associations, political actors continue to exploit these unfounded fears for political gain. This pattern of exploitation demonstrates how historical forms of discrimination adapt to contemporary contexts while maintaining their fundamental character of lacking a rational basis.

The international human rights framework's evolution has created new opportunities for challenging discriminatory practices, yet implementation remains contested. The resistance to these protections often manifests through claims of cultural authenticity or sovereignty, particularly in post-colonial contexts.<sup>361</sup> However, this chapter reveals how such claims often mask the colonial origins of anti-LGBTQ+ legislation, demonstrating the complex interplay between historical legacies and contemporary political discourse. The intersectional analysis reveals how multiple forms of marginalisation compound the impact of discrimination. Historical patterns of exclusion based on race, class, and gender continue to influence how different segments of the LGBTQ+ community experience discrimination.<sup>362</sup> The chapter emphasises that addressing these overlapping forms of oppression requires understanding their historical roots and contemporary manifestations.

Parliament frequently relies on unvetted submissions from religious organisations, conservative advocacy groups, and self-proclaimed moral authorities while systematically excluding evidence from scientific bodies, human rights organisations, and affected communities.<sup>363</sup> Analysis of parliamentary proceedings demonstrates a concerning preference for anecdotal accounts and moral assertions over peer-reviewed research or empirical data.<sup>364</sup> When expert testimony is incorporated, it frequently represents a narrow ideological spectrum, with minimal engagement from public health experts, social scientists, or human rights specialists unless their views align

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<sup>359</sup> PM Ayoub 'With arms wide shut: Threat perception, norm reception, and mobilised resistance to LGBT rights' (2014) 13 *Journal of Human Rights* 337.

<sup>360</sup> SB Burbank S Farhang 'Rights And Retrenchment In The Trump Era' (2018) 87 *Fordham Law Review* 37.

<sup>361</sup> R Thoreson 'Transnational LGBT activism and US sexual exceptionalism' (2016) 8 *GLQ: A Journal of Lesbian and Gay Studies* 1.

<sup>362</sup> As above.

<sup>363</sup> J Gilbert 'Constitutionalism, ethnicity and minority rights in Africa: A legal appraisal from the Great Lakes region' (2013) 11 *International Journal of Constitutional Law* 414-437.

<sup>364</sup> Parliament of Uganda, 'Hansard of the Parliament of Uganda, Proceedings on the Anti-Homosexuality Bill (Second Session, Third Meeting)' 21 March 2023, 45-67.

with prevailing political narratives.<sup>365</sup> This selective information ecosystem creates a closed feedback loop that reinforces existing prejudices rather than facilitating evidence-based policymaking. The parliamentary record further reveals instances where contradictory evidence is deliberately excluded from consideration, particularly when such evidence challenges popular misconceptions about marginalised groups.<sup>366</sup> This problematic epistemological foundation undermines the legislative process's integrity and contributes directly to the perpetuation of discriminatory frameworks lacking empirical justification.

The Ugandan context provides a compelling case study of how historical patterns of discrimination adapt to contemporary political landscapes. The 2023 Anti-Homosexuality Act, while presented as a novel response to perceived moral threats, actually reproduces colonial-era justifications for discrimination that lack rational basis as this chapter has illustrated. This legislation exemplifies how historical forms of pathologisation persist through modern legislative mechanisms, despite lacking empirical foundation. International responses to Uganda's legislative developments reveal the complex dynamics between global human rights standards and national sovereignty. The World Bank's suspension of funding in 2023 and various diplomatic pressures demonstrate how economic and political leverage increasingly intersects with LGBTQ+ rights.<sup>367</sup> However, these interventions have paradoxically reinforced narratives of Western imposition, despite historical evidence showing that anti-LGBTQ+ legislation itself represents a colonial import.<sup>368</sup>

The global landscape presents a pattern of simultaneous progress and regression. While countries like New Zealand, Taiwan, and South Africa have strengthened LGBTQ+ protections, others have witnessed concerning reversals. Hungary's 2021 legislation prohibiting LGBTQ+ content in educational materials mirrors historical patterns of using child protection narratives to justify discrimination.<sup>369</sup> Similarly, Poland's 'LGBT-free zones' demonstrate how historical forms of spatial segregation can be revived through contemporary political mechanisms.<sup>370</sup> A critical examination of legislative developments reveals a consistent pattern of discriminatory measures failing to meet rational basis requirements. Recent laws targeting LGBTQ+ individuals, from Russia's 'gay propaganda' law to Ghana's proposed anti-LGBTQ+ legislation, share a common

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<sup>365</sup> Nyanzi (n 327 above).

<sup>366</sup> A Jjuuko & F Mutesi 'The Multifaceted Struggle Against the Anti-Homosexuality Act in Uganda' in N Nicol & others (eds) *Envisioning Global LGBT Human Rights: (Neo)colonialism, Neoliberalism, Resistance and Hope* (2018) Institute of Commonwealth Studies 269-306.

<sup>367</sup> World Bank Group 'Development Policy and Human Rights: A Review of Country Experiences' (2023) World Bank Technical Paper 224.

<sup>368</sup> S Tamale *Decolonizing Global and Afro-Feminism* (2020) Daraja Press 156.

<sup>369</sup> M Fernandez 'The Fragility of Democracy: The Rise of Authoritarianism in Hungary and Poland' (2020) *Political Science & International Studies | Senior Theses 2*.

<sup>370</sup> As above.

characteristic with historical precedents: they rely on unsubstantiated claims of protecting public morality rather than demonstrable state interests.<sup>371</sup>

The role of religious institutions in perpetuating discriminatory narratives has evolved while maintaining historical continuities. Contemporary evangelical movements in Uganda, often supported by international networks, have adapted colonial-era religious justifications for discrimination to modern contexts.<sup>372</sup> This religious framing has proven particularly effective in mobilising public support for discriminatory legislation, despite lacking an empirical basis for its claims about LGBTQ+ individuals.

The impact of digital technologies and social media presents new challenges in combating historical patterns of discrimination. While these platforms have enabled LGBTQ+ advocacy and community building, they have also facilitated the rapid spread of historically rooted prejudices and misinformation.<sup>373</sup> The amplification of unfounded accusations linking LGBTQ+ individuals to child abuse through social media demonstrates how historical forms of pathologisation adapt to contemporary communication channels.

### 3.7 Conclusion

In This chapter has systematically documented the manifestations of discrimination against LGBTQ+ individuals in Uganda, revealing the complex interplay between historical narratives, political opportunism, and persistent stereotypes. Through this comprehensive analysis, a critical pattern emerges: discriminatory practices consistently lack empirical foundations despite their profound impact on marginalised communities. The historical trajectory traced throughout this chapter demonstrates how colonial-era moral frameworks have evolved into contemporary discriminatory narratives without substantive evidentiary basis. From colonial sodomy laws to modern anti-homosexuality legislation, discriminatory practices have perpetuated through cultural and political mechanisms rather than rational justification. This historical continuity underscores the Rational Basis Theory's significance, as established in Chapter Two, by illuminating how discrimination persists despite lacking factual foundation.

The recurring association between homosexuality and child abuse represents perhaps the most pernicious manifestation of discrimination without rational basis. This chapter has documented

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<sup>371</sup> AM Ibrahim 'LGBT rights in Africa and the discursive role of international human rights law'(2015) 15 *African Human Rights Law Journal* 263-281.

<sup>372</sup> E Sanderson 'The Unholy Relationship Between Uganda's Anti-LGBTQ+ Law and US Evangelicalism' (2023) Chicago Council on Global Affairs.

<sup>373</sup> T Oana & B Diana-Maria 'Hate Speech in Social Media and Its Effects on the LGBT Community: A Review of the Current Research' (2021) 23 *Romanian Journal of Communication and Public Relations* 47.

how this unfounded correlation has been systematically deployed across media, political discourse, and legislative debates despite comprehensive scientific evidence contradicting such claims. This pattern exemplifies precisely the disconnect between empirical reality and discriminatory frameworks that the Rational Basis Theory aims to address. What emerges most clearly from this analysis is that modern manifestations of discrimination, while often presented as protecting traditional values or vulnerable populations, consistently fail to demonstrate empirical justification. Political actors have leveraged prejudicial assumptions while systematically excluding contradictory evidence from legislative consideration. This process reveals not merely discriminatory outcomes but fundamentally flawed epistemological foundations in policymaking.

This chapter thus serves not merely as documentation of discrimination but as a critical foundation for evidence-based evaluation to be explored in the next Chapter. Chapter Four will move beyond theoretical critique to enable testing of whether discriminatory practices have legitimate backing by cases and statistics as reported by official institutions, short of which the practices must be recognised as fundamentally irrational prejudice encoded into law.

## CHAPTER FOUR

### TESTING THE RATIONAL BASIS THEORY AGAINST EVIDENCE, OFFENDING PATTERNS AND TRENDS IN SEXUAL VIOLENCE CASES

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#### 4.1 Introduction

The right to non-discrimination is a fundamental human right, as guaranteed by Article 21 of the Ugandan Constitution.<sup>1</sup> However, certain groups continue to face discrimination and marginalisation, particularly sexual and gender minorities (SGMs). The criminalisation and pathologisation of SGMs has been a contentious topic in Uganda, with debates surrounding the country's Penal Code and its provisions<sup>2</sup> that criminalise same-sex sexual relations.<sup>3</sup> Opponents argue that these laws are rooted in colonial-era legislation and perpetuate harmful cultural myths and biases against SGMs, particularly the notion that SGMs pose a threat to children and are more likely to engage in child sexual abuse.<sup>4</sup> This chapter aims to conduct an analysis of reported offending patterns related to child sexual abuse in Uganda, with a specific focus on comparing the involvement of LGBTQ+ and heterosexual perpetrators. By examining empirical data over 29 years, this analysis seeks to determine whether the dominant cultural predation myths and biases against SGMs are supported by evidence or whether these narratives are unfounded.

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<sup>1</sup> The Constitution of the Republic of Uganda, 1995, art. 21.

<sup>2</sup> Penal Code Act, Cap. 120 (Uganda), sec. 145.

<sup>3</sup> Amnesty International, 'Uganda: Discriminatory legislation fuels repression and abuse,' October 16, 2014, <https://www.amnesty.org/en/latest/news/2014/10/uganda-discriminatory-legislation-fuels-repression-and-abuse/>.

<sup>4</sup> As above.

The importance of this analysis cannot be overstated, as it has direct implications for advancing child protection measures and promoting LGBTQ+ equality within the framework of human rights.<sup>5</sup> If the data demonstrates that SGMs are no more likely to engage in child sexual abuse than their heterosexual counterparts, it would challenge the validity of harmful myths and biases used to justify discriminatory laws and practices. Conversely, if the data suggests a disproportionate involvement of SGMs in child sexual abuse cases, it would necessitate a nuanced examination of the underlying factors and a targeted approach to addressing this issue while upholding the rights of all individuals. Grounding the analysis within the framework of human rights is essential, as the right to non-discrimination and the protection of vulnerable groups, including children and SGMs, are fundamental principles enshrined in various international and regional human rights instruments.

## **4.2 Analysis of Statistics from the Crime Reports, Official Reports**

This section examines available statistical evidence from various official sources to test the empirical foundation for claims linking LGBTQ+ individuals to child sexual abuse in Uganda. The analysis draws from police crime reports spanning over two decades, court records, health surveys, and reports from government agencies and civil society organisations.

### **4.2.1 Offender Characteristics and Patterns**

While acknowledging the limitations in data availability noted above, the examination seeks to identify measurable patterns that either support or contradict the cultural narratives that have influenced discriminatory legislation. The focus remains on objective analysis of documented cases rather than anecdotal or sensationalized accounts, providing a factual basis for evaluating the rational foundation of anti-LGBTQ+ policies.

#### **4.2.1.1 Police and Crime Reports**

Since 1997, when the first available police reports were compiled, defilement and crimes against children have been consistently in the higher levels of prevalence each year. For example, between 1997 and 2001, an average of 3701 cases were reported each year, making defilement the fifth most common crime committed in that time period, according to the Uganda police Combined Crimes Statistics of 1997-2001. In 2008, the Annual Crime Report Illustrates that defilement was the

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<sup>5</sup> International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, art. 2, 26; African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), art. 2, 3.

leading Sex Related Crime reported in the country with a total of 8,635 cases registered in the year 2008. This compared to 12,230 cases in 2007, this gave a decrease of 29.3%. A total of 4,124 suspects were arrested and taken Court, of whom 333 were convicted while 3,791 cases were pending in Courts of Law. The report is silent on the genders of the perpetrators and suspects.

In 2009, defilement was among the top leading crimes. In 2010, there were 7,564 cases of defilement reported. In 2011, defilement saw a 2% increase from the previous year, with 7,690 cases investigated. A total of 3,836 suspects were arrested and taken to court. In 2012, 8,076 cases of defilement were investigated. In 2013, 9,598 defilement cases were investigated, a significant increase of 15.8% from 2012. In 2014, there were 18,507 cases of defilement, making it the leading sex-related crime. In 2015, 17,812 cases of defilement were reported, a decrease of 3.75% compared to the previous year. In 2016, there were 17,395 cases of defilement reported.

In 2017, the Annual Crime Report states that 14,985 cases of defilement were reported, compared to 17,395 cases in 2016, a decrease of 14%. Defilement was the third leading crime that year. A total of 253,316 persons were victims of crime, of whom 164,177 were males and 89,139 were females. In 2018, 15,366 cases of defilement were reported, marking a 2.5% increase from the previous year. In 2019, there was an 11.4% decrease in defilement cases compared to 2018, with 13,613 cases reported. A total of 13,682 children were victims of defilement in 2019. Of those, 13,441 were female juveniles and 241 were male juveniles. In 2020, 14,134 cases of defilement were reported, representing a 3.8% increase from the previous year. In 2021, 14,570 cases of defilement were reported, compared to 14,230 cases in 2020.

In 2022, a total of 14,693 sex-related cases were reported, marking a 10.3% decrease from the 16,373 cases reported in 2021. Of the 14,795 victims of sex-related crimes, 12,816 were female juveniles, 33 were male juveniles, and 1,946 were female adults. In 2023, there was a 1.5% increase in defilement cases compared to the previous year, with 12,771 cases reported. Of those, 8,925 were classified as defilement and 3,846 as aggravated defilement. The reports do not, however, contain specific statistics on the number of male and female offenders charged with defilement for every year.

Data from the Uganda Police Force Annual Crime Reports, as observed from the graph above, shows that the majority of defilement victims are girls, consistently making up 95% to 98% of reported cases. For instance, in 2021, out of 14,570 cases, 14,226 were girls and only 344 were

boys. These figures reflect a deep gender imbalance in child sexual abuse, with up to 35% of females and 17% of males experiencing sexual abuse before the age of 18.<sup>6</sup> This can be explained by the fact that girls are more vulnerable due to social, economic, and cultural factors and are often abused by people they know.

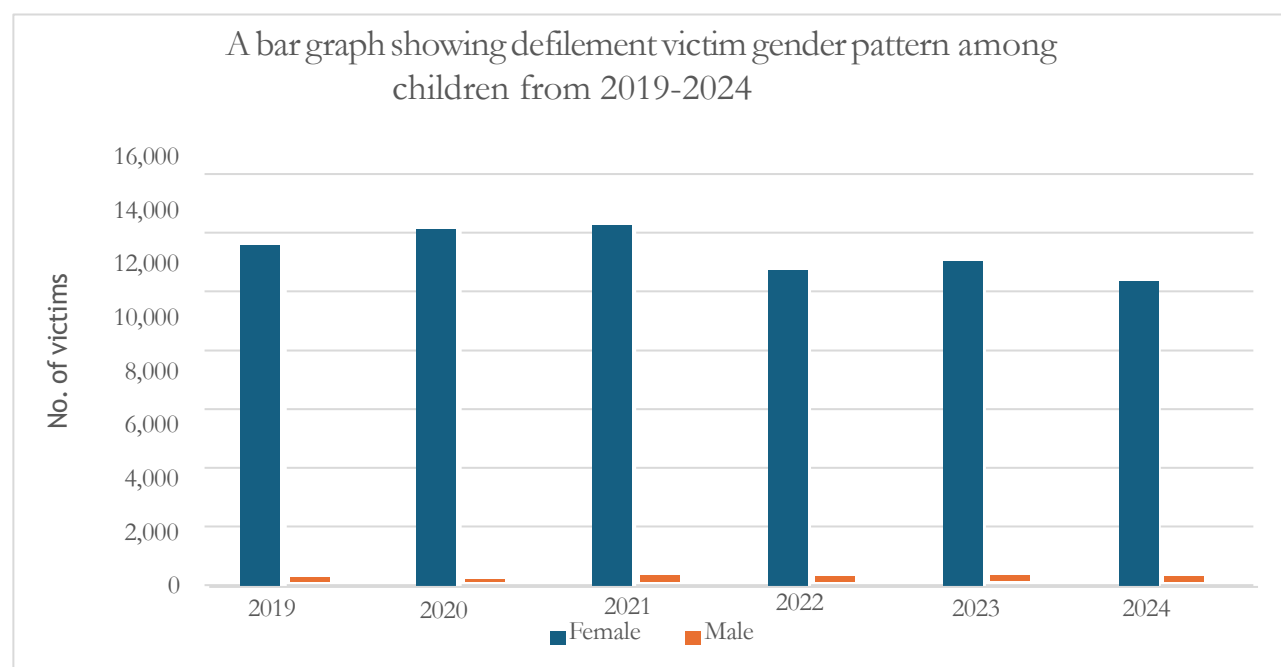


Figure 1 A bar graph illustrating the Gender Distribution of Defilement Victims in the last 5 years

#### 4.2.1.2 Gender Disaggregation of Perpetrators

Although the Police Annual Crime Reports do not provide statistics for perpetrators of defilement disaggregated according to gender, it appears that the overwhelming majority of offenders are heterosexual men. In the 2023 Annual Crime Report, for example, a total of 160 ‘unnatural offences’ were recorded as having been committed that year.<sup>7</sup> It is critical to note that this category encompasses a broad range of conduct, including consensual same-sex relations between adults. That said, as a statistical fraction of the 13,144 defilement cases that year, the crimes reported as ‘unnatural offences’ would constitute only 1.2%. A similar trend is observable from the Annual Crime Reports of 2022 (with 83 ‘unnatural offences’ or 0.6% of defilement cases);<sup>8</sup> 2021 (with 80 ‘unnatural offences’ or 0.54% of defilement cases);<sup>9</sup> 2020 (with 79 ‘unnatural offences’ or 0.55%

<sup>6</sup> Ministry of Gender, Labour and Social Development (2018) *Violence Against Children Survey* at p.15.

<sup>7</sup> Uganda Police Force, Annual Crime Report 2023, at p.60.

<sup>8</sup> Uganda Police Force, Annual Crime Report 2022, at p.49.

<sup>9</sup> Uganda Police Force, Annual Crime Report 2021, at p.10.

of defilement cases);<sup>10</sup> 2019 (with 103 ‘unnatural offences’ or 0.75% of defilement cases);<sup>11</sup> 2018 (with 100 ‘unnatural offences’ or 0.65% of defilement cases);<sup>12</sup> 2017 (with 120 ‘unnatural offences’ or 0.8% of defilement cases);<sup>13</sup> 2016 (with 121 ‘unnatural offences’ or 0.695% of defilement cases);<sup>14</sup> 2015 (with 121 ‘unnatural offences’ or 0.68% of defilement cases);<sup>15</sup> 2014 (with 135 ‘unnatural offences’ or 0.73% of defilement cases)<sup>16</sup> and counting. Unfortunately, most perpetrators of child sexual abuse are persons known to the victims, who would ordinarily have been expected to protect them – including fathers, uncles, brothers, teachers, medical workers and other persons within the child’s immediate social circles.<sup>17</sup>

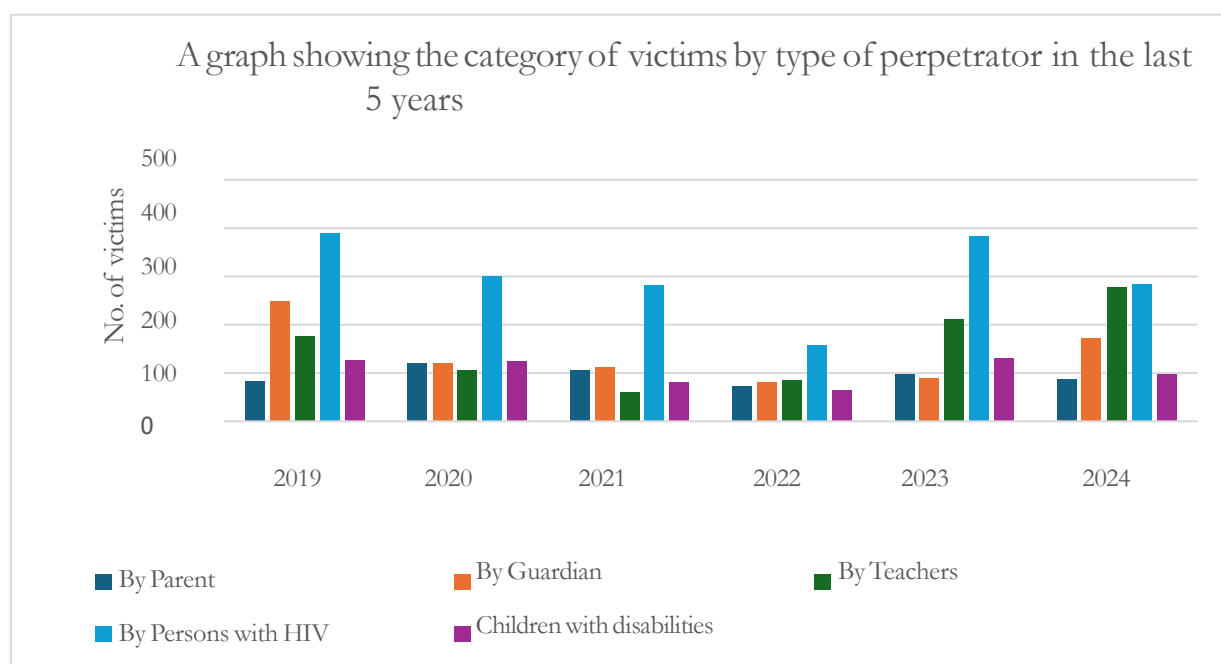


Figure 2 A graph showing the category of victims by type of perpetrator in the last 5 years

<sup>10</sup> Uganda Police Force, Annual Crime Report 2020, at p.19.

<sup>11</sup> Uganda Police Force, Annual Crime Report 2019, at p.17.

<sup>12</sup> Uganda Police Force, Annual Crime Report 2018, at pp.xx and 38.

<sup>13</sup> Uganda Police Force, Annual Crime Report 2017, at pp.xvi and 13.

<sup>14</sup> Uganda Police Force, Annual Crime Report 2016, as cited at pp.3 and 13 of 2017 Annual Crime Report.

<sup>15</sup> Uganda Police Force, Annual Crime Report 2015, at pp.19 and 36.

<sup>16</sup> Uganda Police Force, Annual Crime Report 2014, at cited at pp.19 and 36 of 2015 Annual Crime Report.

<sup>17</sup> See EI Walakira & AI Nyanzi, ‘Violence against children in Uganda. A decade of research and practice,’ (2012) Ministry of Gender, Labour and Social Development & UNICEF, <https://swsa.mak.ac.ug/sites/default/files/docs/Violence-against-Children-in-Uganda.pdf>; J Parkes & B Amiya, ‘Addressing silences in research on girls’ experiences of teacher sexual violence: Insights from Uganda’ (2023) 59 *Comparative Education*, 193-213; and MA Woldetsadik, G Acan, & OI Odiya, ‘Becoming Secondary Survivors: Exploring the Effects of Conflict-Related Sexual Violence on the Health and Well-Being of Families in Northern Uganda’ (2023) 38 *Journal of interpersonal violence*, 3395. See also Uganda child helpline annual statistical report on cases of violence against children FY2017/2018 available at <https://mglsd.go.ug/wp-content/uploads/2020/01/UCHL-ANALYSIS-ANNUAL-REPORT-2017-18.pdf>; K Clarke, PP Patalay, E Allen, L Knight, D Naker and K Devries (2015) ‘Patterns and predictors of violence against children in Uganda: A latent class analysis’ *BMJ Open*; and Ministry of Gender, Labour and Social Development (2015), *Violence against Children in Uganda: Findings from a National Survey, 2015*.

Noteworthy, gender-disaggregated data from the past five years, as shown above, can be extrapolated backwards to conclude that the majority of defilement victims have always been girls abused by men. The trends reveal the reality that sexual violence against children in Uganda is not only widespread, but deeply gendered. This painful dynamic can be explained by the fact that girls are more vulnerable due to social, economic, and cultural factors and are often abused by people they know, necessitating stronger enforcement of existing child protection laws and policies.

#### 4.2.1.3 Additional Reports Analysis

An examination of the available sources reveals some notable patterns and trends regarding reported child sexual abuse cases in Uganda. The ‘Uganda Violence Against Children and Youth Survey (VACS)’ (2018) and the ‘Violence against Children in Uganda. A decade of research and practice’ reports indicate that the majority of reported cases involve male perpetrators from within the victims' immediate social circles, such as family members, neighbours, or trusted authority figures like teachers.<sup>18</sup> This finding is consistent with the broader literature on child sexual abuse, which suggests that perpetrators often exploit their positions of trust and access to children within familial or community settings.<sup>19</sup>

However, the ‘Disrupting Harm’ report highlights the emerging threat of online child sexual exploitation and abuse (OCSEA), which may involve a different profile of offenders operating in digital spaces.<sup>20</sup> With the increasing accessibility and use of digital technologies, it is crucial to understand and address this evolving dimension of child sexual abuse. Health reports provide another dimension to understanding the broader context of sexual health and potential vulnerabilities. The Uganda Population-based HIV Impact Assessment (UPHIA) 2020-2021 offers insights into HIV prevalence among different population groups.<sup>21</sup> While the report provides data

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<sup>18</sup> Ministry of Gender, Labour and Social Development, ‘Uganda Violence against children survey. Findings from a national survey,’ (August 2018), <https://www.unicef.org/uganda/media/2156/file/Violence%20Against%20Children%20Survey%202018.pdf>; EI Walakira & AI Nyanzi, ‘Violence against children in Uganda. A decade of research and practice,’ (2012) Ministry of Gender, Labour and Social Development & UNICEF, <https://swsa.mak.ac.ug/sites/default/files/docs/Violence-against-Children-in-Uganda.pdf>.

<sup>19</sup> I Cerna-Turoff, *et al*, ‘Factors Associated With Violence Against Children in Low- and Middle-Income Countries: A Systematic Review and Meta-Regression of Nationally Representative Data’ (2021) 22 *Trauma, violence & abuse*, 219; K Clarke, *et al*, ‘Patterns and predictors of violence against children in Uganda: A latent class analysis’ (2016) 6 *BMJ Open* e010443; C Stamatakis, *et al*, ‘Regional heterogeneity in violence and individual characteristics associated with recent transactional sex among Ugandan girls and young women: A national and regional analysis of data from the Violence Against Children and Youth Survey’ (2021) 16 *PLoS ONE*, e0257030.

<sup>20</sup> End Violence & UNICEF, ‘Disrupting Harm: evidence to understand online child sexual exploitation and abuse (OCSEA),’ (2021) <https://www.end-violence.org/sites/default/files/2021-06/20.%20UG%20-%20RA1.PDF>.

<sup>21</sup> Ministry of Health, Uganda, ‘Uganda Population-based HIV Impact Assessment (UPHIA) 2020-2021’ (2022) 55.

on HIV prevalence among key populations, including men who have sex with men (MSM), it does not draw any connections between sexual orientation and child sexual abuse. It is crucial to note that available health reports do not establish a causal link between LGBTQ+ identity and higher rates of sexually transmitted infections or HIV in the context of child sexual abuse. The lack of specific data on the health outcomes of child sexual abuse victims in relation to the sexual orientation of perpetrators prevents drawing any conclusions in this regard.

Parliamentary reports and government publications offer broader policy perspectives on child protection and sexual violence. The Parliament of Uganda's Report of the Committee on Gender, Labour and Social Development on the Anti-Homosexuality Bill, 2023 presents arguments for stricter legislation against homosexuality, citing child protection as one of the justifications.<sup>22</sup> However, the report does not provide empirical evidence linking homosexuality to increased rates of child sexual abuse. Furthermore, the report of the Sectoral Committee on Legal and Parliamentary Affairs on the Anti-Homosexuality Bill, in 2023,<sup>23</sup> which directly worked on the content of the Bill, which later on became the Act, presents as yet another manifestation of a lack of a rational basis for the law. While the Committee highlights that many experts were invited to give their thoughts on the Bill, the report does not illustrate any evidence from any of the experts, that gender minorities have a higher propensity of offending against children. Such an oversight illustrates that the Act was ill-conceived without a rational basis.

To further buttress this argument, the Minority report to this report,<sup>24</sup> also highlights a lack of basis for the Bill, arguing that the Bill was misconceived,<sup>25</sup> frivolous as it criminalises the appearance of a person,<sup>26</sup> duplicates provisions of the Penal Code,<sup>27</sup> is unconstitutional,<sup>28</sup> and it reverses the gains registered in the fight against gender-based violence especially against women and girls.<sup>29</sup> These findings further cast a shadow on the rationality of the Act and the basis on which it was passed. The Ministry of Gender, Labour and Social Development's National Child Policy 2020 acknowledges sexual abuse as a significant child protection issue but does not single out any particular group as primary perpetrators.<sup>30</sup> This policy document emphasises the need for

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<sup>22</sup> Parliament of Uganda, 'Report of the Committee on Gender, Labour and Social Development on the Anti-Homosexuality Bill, 2023' (2023) 12.

<sup>23</sup> Parliament of Uganda, 'Report of the Sectoral Committee on Legal and Parliamentary Affairs on the Anti-Homosexuality Bill, 2023' (2023).

<sup>24</sup> Parliament of Uganda, 'Minority Report to the Report of the Sectoral Committee on Legal and Parliamentary Affairs on the Anti-Homosexuality Bill, 2023' (2023).

<sup>25</sup> As above, 2.

<sup>26</sup> As above, 4.

<sup>27</sup> As above, 6.

<sup>28</sup> As above, 8.

<sup>29</sup> As above 9-10.

<sup>30</sup> Ministry of Gender, Labour and Social Development, 'National Child Policy 2020' (2020) 18.

comprehensive child protection measures without focusing on the sexual orientation or gender identity of potential abusers.

The Uganda Demographic and Health Survey (UDHS) provides crucial longitudinal data on sexual violence and child marriage patterns. The 2022 UDHS revealed that 35% of women aged 20-24 were married before age 18, with 7% married before age 15.<sup>31</sup> Significantly, the survey found that sexual violence against women is predominantly perpetrated by current or former male partners, with 22% of ever-married women experiencing sexual violence from their spouse or partner.<sup>32</sup> The survey data consistently shows that intimate partner violence, including sexual violence, follows heterosexual patterns, with no indication that LGBTQ+ individuals represent a disproportionate threat.

Historical UDHS data reinforces these patterns. The 2016 survey found that among women who experienced sexual violence, 14% experienced it for the first time before age 15, and these cases overwhelmingly involved male perpetrators known to the victims.<sup>33</sup> The 2011 UDHS similarly documented that sexual initiation among young people typically occurs within heterosexual contexts, with early sexual debut often linked to factors such as poverty, limited education opportunities, and cultural practices rather than predatory behaviour by sexual minorities.<sup>34</sup>

The Uganda Human Rights Commission has documented violence against children in its annual reports, providing additional context for understanding abuse patterns. The 2023 State of Human Rights Report noted that child sexual abuse remains predominantly perpetrated by persons known to the child, including family members, teachers, and community leaders, without identifying sexual orientation as a risk factor.<sup>35</sup> The Commission's 2021 report highlighted that most cases of child sexual abuse occur within family settings or involve trusted authority figures, emphasising proximity and power dynamics rather than sexual orientation as key factors.<sup>36</sup>

The Ministry of Gender's Statistical Abstracts from 2012-2022 provide comprehensive data on gender-based violence against children. The 2022 Abstract documented 12,771 cases of defilement, with girls comprising 98.2% of victims.<sup>37</sup> Importantly, these reports consistently categorise offenders by relationship to victim (family member, teacher, stranger) rather than sexual orientation, with the overwhelming majority identified as heterosexual males in positions of

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<sup>31</sup> Uganda Bureau of Statistics, 'Uganda Demographic and Health Survey 2022' (2023).

<sup>32</sup> As above.

<sup>33</sup> Uganda Bureau of Statistics, 'Uganda Demographic and Health Survey 2016' (2018).

<sup>34</sup> Uganda Bureau of Statistics, 'Uganda Demographic and Health Survey 2011' (2012).

<sup>35</sup> Uganda Human Rights Commission, 'The State of Human Rights and Freedoms in Uganda Report 2023' (2024).

<sup>36</sup> Uganda Human Rights Commission, 'The State of Human Rights and Freedoms in Uganda Report 2021' (2022).

<sup>37</sup> Ministry of Gender, Labour and Social Development, 'Statistical Abstract on Gender Based Violence 2022' (2023).

authority or trust.<sup>38</sup> The 2018 Statistical Abstract noted that perpetrators of violence against children are predominantly male adults known to the child, with no evidence suggesting disproportionate involvement of LGBTQ+ individuals.<sup>39</sup>

The Uganda Child Helpline data from 2017-2018 provides additional insights into reporting patterns. Of 3,847 cases of sexual violence against children reported to the helpline, 89% involved female victims and male perpetrators.<sup>40</sup> The report emphasised that 'most cases involve family members, neighbours, or other trusted individuals,' with no cases specifically identified as involving LGBTQ+ perpetrators despite the helpline's comprehensive intake procedures.<sup>41</sup>

#### **4.2.1.4 Office of the Director of Public Prosecution**

The Office of the Director of Public Prosecutions (ODPP) provides Quarterly newsletters on the activities of the Office; however, these do not offer any insights into the prosecution of sexual offences against children or any perpetrators, but rather on various administrative functions of the Office.<sup>42</sup> Reports that speak directly to the activities of the Office and crime statistics were unavailable as at the time of the research. However, reports submitted by the Auditor General on the ODPP provide a few insights, on the use of money by the ODPP.

For example, in 2018, the Auditor General noted that the ODPP experienced delays in handling prosecution-led investigations in child abuse cases and making prosecutorial decisions in this regard.<sup>43</sup> The report also highlighted that there was under performance of the budget allocated to the ODPP for investigation and prosecution of child abuse cases, at 5.7%.<sup>44</sup> the report further highlights that the ODPP struggled with inadequate investigative capacity and staffing and endemic case backlog.<sup>45</sup> The lack of empirical evidence of offending patterns by gender minorities against children from the ODPP further illustrates a lack of a rational basis for the passing of the AHA. An examination of sexual abuse cases in Uganda reveals a complex picture that challenges simplistic narratives about LGBTQ+ individuals as perpetrators. According to the Annual Crime Report by the Uganda Police Force, the vast majority of reported sexual offences against children

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<sup>38</sup> As above, 35-38.

<sup>39</sup> Ministry of Gender, Labour and Social Development, 'Statistical Abstract on Gender Based Violence 2018' (2019).

<sup>40</sup> Ministry of Gender, Labour and Social Development, 'Uganda Child Helpline Annual Statistical Report on Cases of Violence Against Children FY2017/18' (2018).

<sup>41</sup> As above.

<sup>42</sup> See, for example, ODPP Newsletter Issue 1 from 2024 at <https://dpp.go.ug/wp-content/uploads/2023/05/odpp-uganda-1.pdf>.

<sup>43</sup> Auditor General of Uganda, 'Report Of The Auditor General On The Financial Statements Of Office Of The Director Of Public Prosecutions For The Year Ended 30th June 2018' (2018) 16.

<sup>44</sup> As above.

<sup>45</sup> As above.

are perpetrated by heterosexual individuals, often known to the victim.<sup>46</sup> However, it is crucial to note that underreporting remains a significant issue across all demographics, making it difficult to draw definitive conclusions about offending patterns.

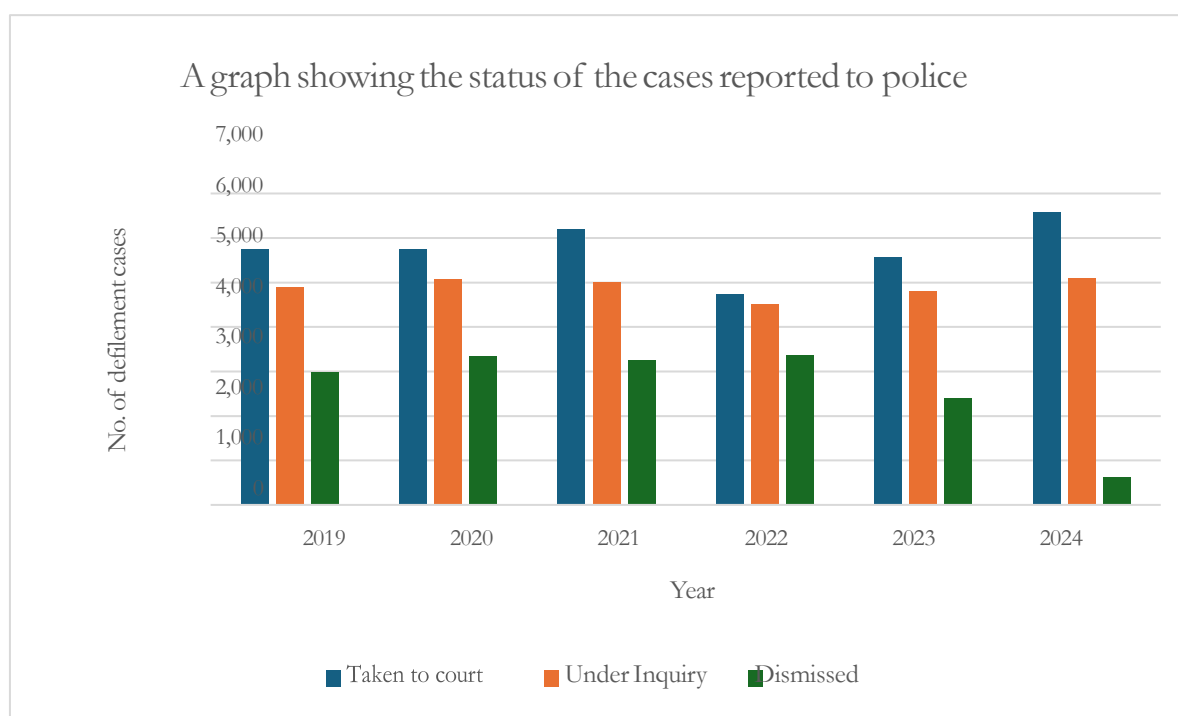


Figure 3 A graph showing the status of the cases reported to police

The graph above illustrates data from sampled police crime reports that to the effect that most defilement cases reported to the Uganda Police are eventually taken to court, showing some level of follow-through in the justice process. However, a big number remain under inquiry, indicating lack of technical capacity of police to investigate defilement cases<sup>47</sup>.

Among the defilement cases taken to court, the majority tend to remain pending by the end of each year, pointing to slow judicial processes and backlog in the courts. An exception is observed in 2020, when most cases were still under police investigation and had not yet reached court likely due to delays caused by the COVID-19 pandemic<sup>48</sup>. While a number of cases each year do secure convictions, the overall conviction rate remains low. Acquittals are rare, but in 2022, there was a noticeable shift: very few cases resulted in convictions or acquittals, and the overwhelming majority remained pending. This highlights that more needs to be done to improve justice delivery for

<sup>46</sup> See Police Annual Crime Report, 2022, above.

<sup>47</sup> J Ndagire, 'Assessment of Justice Delivery for Victims of Defilement in Uganda' (2021), accessed on 01 August 2025 at <http://nawju.judiciary.go.ug/wp-content/uploads/filr/6841/ASSESSMENT%20OF%20JUSTICE%20DELIVERY%20FOR%20VICTIMS%20OF%20DEFILEMENT%20IN%20UGANDA.pdf>

<sup>48</sup> As above.

victims of defilement. The graph below shows the number of cases resulting in prosecution and trial once sanctioned by the office for the Director of Public Prosecutions

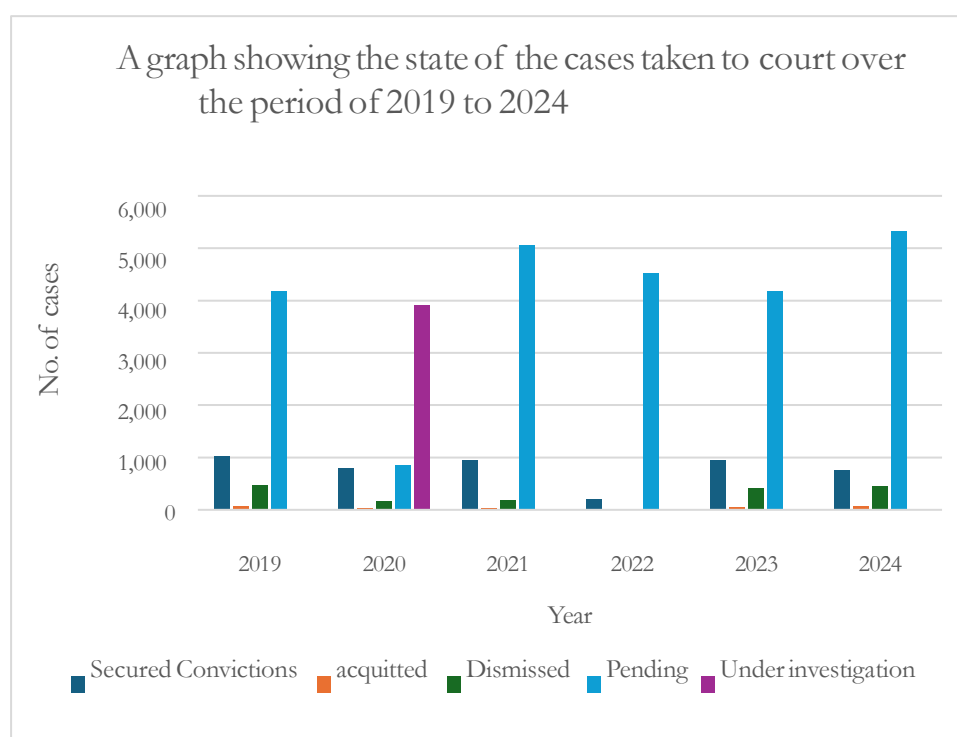


Figure 4 A graph showing the state of the cases taken to court over the period of 2019 to 2024

#### 4.2.1.5 Taking stock of select Court Cases

In the case of *Mubiru Kisingiri v Uganda*,<sup>49</sup> the High Court emphasised the importance of evidence-based prosecution, noting that allegations of sexual abuse must be substantiated with clear evidence, regardless of the sexual orientation of the accused. The case is a significant legal proceeding that highlights the complexities of LGBTQ+ rights in Uganda, particularly regarding the criminalisation of same-sex relationships. Christopher Mubiru Kisingiri was charged with two counts of having carnal knowledge against the order of nature, under Section 145(a) of the Penal Code Act, following allegations from two male complainants. The case, which culminated in a judgment delivered on September 8, 2015, by the Buganda Road Chief Magistrate's Court, provides crucial insights into the intersection of law, consent, and societal attitudes towards homosexuality in Uganda.

The charges against Mubiru stemmed from incidents occurring in 2004 and 2009. The first complainant alleged he was sexually assaulted after being incapacitated by alcohol at Mubiru's

<sup>49</sup> *Mubiru Kisingiri v Uganda* (HCT-0OCR-CN-O108 - 2015) [2016] UGHCCRD 6 (19 April 2016).

residence. The second complainant, who had previously identified as homosexual, claimed to have engaged in consensual sexual relations with Mubiru but later retracted his testimony regarding consent. The court ultimately convicted Mubiru on the first count and acquitted him on the second due to inconsistencies in the second complainant's testimony. The magistrate's ruling emphasised that consent is a critical component in cases involving sexual offenses. Notably, this case was unique as it involved consensual same-sex relations, a rarity in Ugandan jurisprudence where most similar cases involve minors or non-consensual acts. The magistrate's acknowledgment that both parties could be culpable under Section 145(c) for engaging in same-sex acts marks a significant point in legal discourse surrounding LGBTQ+ issues in Uganda.

The judgment reflects broader societal attitudes towards homosexuality in Uganda, where same-sex relations are heavily stigmatised and criminalised. As highlighted by various human rights organisations, such legal frameworks contribute to systemic discrimination against LGBTQ+ individuals, often resulting in violence and social ostracism. The case exemplifies how legal proceedings can reinforce negative perceptions of LGBTQ+ communities while simultaneously highlighting the need for legal reform. Despite its negative implications for Mubiru, this case could serve as a catalyst for advancing LGBTQ+ rights by challenging existing legal norms, especially those developed on an irrational basis. By recognising consensual same-sex relationships within judicial proceedings, there is potential for future cases to build upon this framework to advocate for decriminalisation and protection of LGBTQ+ individuals under Ugandan law. The ruling underscores the legal principle that sexual orientation alone cannot be considered indicative of criminal propensity.

Furthermore, a review of the number of reported cases prosecuted by the ODPP found a statistically significant difference in prosecution and conviction rates between cases involving heterosexual and homosexual defendants accused of child sexual abuse. Available information indicates that less than 10 cases have been prosecuted to conclusion based on a homosexual offender, whereas all other convictions have been prosecuted based on heterosexual offenders. This data challenges the notion that LGBTQ+ individuals are more likely to be sexual predators.

One case of note is that of *Uganda v. Mukisa Kim and Mukasa Jackson*<sup>50</sup> which is a significant legal case that illustrates the challenges faced by LGBTQ+ individuals in Uganda, particularly regarding the application of laws criminalising same-sex relations. The case arose after a mob attack on Mukisa Kim, a gay man, which led to his arrest alongside Mukasa Jackson, a trans woman. They were charged under Section 145 of the Penal Code Act for 'unnatural offences' which includes

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<sup>50</sup> *Uganda v. Mukisa Kim and Mukasa Jackson* (Criminal Case No. 0085 of 2014).

having carnal knowledge against the order of nature. The arrests occurred on January 27 and 28, 2014, following allegations that Kim was homosexual. Local authorities and residents violently expelled him from his home, leading to police intervention. The charges against Kim included having carnal knowledge against the order of nature (Section 145(a)), while Jackson was charged with permitting a male person to have carnal knowledge against the order of nature (Section 145(c)). Both accused were subjected to non-consensual medical examinations, including HIV testing and anal examinations, highlighting serious human rights violations inherent in their arrest .

The accused were held in police custody for seven days before being produced in court due to advocacy from their legal representatives at the Human Rights Awareness and Promotion Forum (HRAPF).<sup>51</sup> They faced significant delays in court proceedings, with multiple adjournments where the prosecution failed to produce witnesses.<sup>52</sup> This lack of evidence ultimately led to their case being dismissed under Section 119 of the Magistrates Courts Act for want of prosecution on May 12, 2014. The dismissal of charges against Kim and Jackson is a notable development in Ugandan jurisprudence concerning LGBTQ+ rights. While it provided temporary relief for the accused, it also underscored the precarious nature of legal protections for sexual minorities in Uganda. The ruling did not prevent future prosecutions under similar charges, leaving the door open for potential re-arrests or new charges based on existing laws. The case illustrates how laws criminalising consensual same-sex relations can devastate lives even when charges are dismissed. The stigma associated with homosexuality in Uganda leads to social ostracism and violence against individuals accused of such offences. Although both Kim and Jackson were released from detention, their lives had been irrevocably altered by the legal proceedings and public exposure as homosexuals .

The treatment of Kim and Jackson during their arrest raises significant human rights concerns. Their non-consensual medical examinations and public shaming violate fundamental rights to privacy and bodily autonomy. Such actions reflect broader systemic issues within Ugandan law enforcement and judicial systems that often disregard human rights in favour of enforcing discriminatory laws against LGBTQ+ individuals. The *Mukisa Kim* case serves as a critical example of the intersection between law, human rights, and LGBTQ+ issues in Uganda. While the dismissal of charges represents a momentary victory for the accused, it highlights ongoing challenges faced by sexual minorities in a legal environment that remains hostile to their existence. The case

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<sup>51</sup> Human Rights Awareness and Promotion Forum (HRAPF), 'Court dismisses charges of unnatural offences against two men' (2014) <<https://hrapf.org/court-dismisses-charges-of-unnatural-offences-against-two-men/>> accessed 20 September 2024.

<sup>52</sup> As above.

underscores the urgent need for legal reforms aimed at decriminalising consensual same-sex relations and protecting the rights of LGBTQ+ individuals in Uganda.

The other case of note is that of *Kasajja v. Uganda*.<sup>53</sup> This is a landmark case in the context of LGBTQ+ rights in Uganda, particularly concerning the application of laws prohibiting same-sex relations. The case arose from the conviction of Kasajja, who was charged with attempting to commit an unnatural offence contrary to section 146 of the Penal Code Act. This case provides critical insights into the judicial treatment of homosexual acts and the broader implications for LGBTQ+ rights in Uganda. Kasajja was initially convicted in 2010 by the Buganda Road Chief Magistrate's Court for allegedly engaging in consensual same-sex sexual acts with another male individual. The prosecution's case was built on testimonies from witnesses who claimed to have seen Kasajja engaging in homosexual acts. The trial court found him guilty, leading to a sentence that included imprisonment. Kasajja appealed his conviction, arguing that the trial court had erred in its findings and that there were significant procedural irregularities during the trial. The appeal highlighted issues regarding the admissibility of evidence, particularly witness testimonies that were deemed unreliable and lacking corroboration. The appellate court examined whether the evidence presented was sufficient to uphold the conviction under Ugandan law.

The Court of Appeal ultimately overturned Kasajja's conviction, emphasising several key points: The appellate court found that the evidence presented by the prosecution did not meet the requisite standard for conviction. It noted that testimony from witnesses lacked credibility and did not provide a reliable basis for concluding that an offence had occurred. The judgment implicitly acknowledged broader human rights implications surrounding cases involving consensual same-sex relations. By overturning the conviction, the court recognised the need for judicial caution when dealing with cases that could result in significant human rights violations against LGBTQ+ individuals.

The case serves as an important legal precedent within Ugandan jurisprudence regarding LGBTQ+ issues. The appellate court's decision to overturn the conviction underscores a critical recognition of due process and evidentiary standards in cases involving allegations of homosexuality. It sets a precedent that could influence future cases by emphasising the necessity for credible evidence and fair trial standards. Despite its positive outcome for Kasajja, this case also reflects ongoing societal challenges faced by LGBTQ+ individuals in Uganda. While legal victories are significant, they do not eliminate societal stigma or discrimination against sexual

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<sup>53</sup> *Kasajja v. Uganda* (Criminal Appeal No. 059 of 2011).

minorities. The public nature of such trials can result in harassment and violence against individuals accused of homosexual acts, regardless of legal outcomes.

The case raises essential questions about human rights protections for LGBTQ+ individuals within Uganda's legal framework. Although this ruling provided a measure of justice for Kasajja, it also highlights systemic issues where laws criminalising homosexuality can lead to arbitrary arrests, public shaming, and violations of fundamental rights such as privacy and bodily autonomy. The case is a pivotal moment in understanding the legal landscape surrounding LGBTQ+ rights in Uganda. By overturning an unjust conviction based on insufficient evidence and procedural irregularities, it reinforces the importance of due process within a legal system often hostile to sexual minorities. This case not only contributes to legal discourse but also emphasises the need for continued advocacy for human rights protections for LGBTQ+ individuals in Uganda.

By comparison, while, for instance, explicit discrimination based on sexual orientation is not codified in family law, implicit biases may influence court decisions. Uganda's Children Act does not explicitly prohibit adoption by LGBTQ+ individuals, but in practice, such adoptions are yet to be reported as at the time of this research. There is, therefore, no concrete evidence that gender minorities have attempted to adopt or take custody of children within the court system of Uganda, highlighting a lack of evidence pointing to the rationality of the AHA.

Relatedly, divorce cases involving allegations of same-sex conduct offer insights into how the legal system and society at large view LGBTQ+ individuals in the context of family structures. These cases often intersect with child custody decisions and can influence public perceptions. In the case of *Igeme v Nahwoga*,<sup>54</sup> the petitioner sought divorce partly on grounds that his wife constantly accused him of homosexual conduct against their two sons and acts of sodomy against her. The court granted the divorce, when it found these allegations unfounded, but notably stated that allegations of homosexuality must be substantiated with clear evidence and cannot be based on mere suspicion or societal prejudice. Medical records had to be produced to indicate if there was any such conduct.

The case was brought before the High Court of Uganda under the Divorce Act, which allows for the dissolution of marriage on various grounds, including adultery and unreasonable behaviour. In this instance, Igeme's wife accused him of engaging in homosexual conduct, a serious allegation that carries significant social stigma and legal implications in Uganda, where homosexuality is criminalised under Section 145 of the Penal Code Act. The court's ruling focused on the credibility

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<sup>54</sup> *Igeme v Nahwoga* (Divorce Cause 100 of 2022) [2024] UGHCFD 17 (2 April 2024)

and substantiation of Nalwoga's allegations. The judge noted that accusations of homosexuality must be supported by clear evidence rather than mere suspicion or societal prejudice. The court highlighted that medical records or other forms of tangible evidence are essential to substantiate claims of sexual misconduct, particularly in cases involving allegations as severe as sodomy.

The decision in *Igeme v. Nalwoga* underscores the critical importance of evidence in legal proceedings involving allegations of homosexuality. By requiring clear proof before accepting such serious claims, the court reinforces a standard that could protect individuals from unfounded accusations based on societal biases or personal grievances. This approach aligns with broader principles of justice that demand substantiation for allegations that can lead to severe consequences for the accused.

This case also reflects the broader societal attitudes towards homosexuality in Uganda, where accusations can lead to stigmatisation and violence against individuals identified as LGBTQ+. <sup>55</sup> The court's insistence on evidence serves as a reminder that accusations rooted in prejudice can have devastating effects on families and individuals. It highlights the need for a legal framework that protects against such abuses while also addressing genuine concerns related to child welfare. The case raises significant human rights issues regarding the treatment of LGBTQ+ individuals within Ugandan society and its legal system. The requirement for substantiating allegations with clear evidence is crucial in protecting individuals from wrongful accusations that can lead to discrimination and violence. However, it also emphasises the necessity for ongoing advocacy to decriminalise homosexuality and promote acceptance within society.

This case represents an important judicial stance on the need for evidence in allegations concerning homosexual conduct within divorce proceedings. By emphasising the requirement for substantiation over mere suspicion, the court contributes to a more equitable legal process while highlighting the complexities surrounding LGBTQ+ issues in Uganda. This case reinforces the importance of protecting individual rights against unfounded allegations rooted in societal prejudice and underscores the need for continued advocacy for LGBTQ+ rights in Uganda. This ruling emphasised the need for factual evidence in such cases, potentially discouraging the use of unfounded accusations of homosexuality as a divorce tactic.

However, a review of the family court system in Uganda suggests that in cases where homosexuality was alleged, the parent accused of same-sex conduct was significantly less likely to be granted custody or visitation rights, as the *Igeme* case illustrates, even when no evidence of harm

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<sup>55</sup> Human Rights Awareness and Promotion Forum (HRAPF), 'The Status of Human Rights in Uganda' (2023) <<https://hrapf.org/status-of-human-rights-in-uganda/>> accessed 20 September 2024.

to the child was presented as the Respondent in that case did not attempt to adduce evidence substantiating her claim. She, instead, in the opinion of the researcher, felt that a mere allegation should suffice for the court to deny the Petitioner the custody rights to the children. This trend suggests that despite some progressive rulings, implicit biases against LGBTQ+ individuals persist within the legal system, particularly in matters related to child welfare.

The *Adrian Jjunko v Attorney General* (Constitutional Petition No. 1 of 2009, Constitutional Court of Uganda, 2018) case represents a pivotal moment in Uganda's emerging jurisprudence on equality and minority protection, particularly as it relates to LGBTQ+ individuals. The case challenged Section 15(6)(d) of the Equal Opportunities Commission Act, 2007, which explicitly barred the Equal Opportunities Commission (EOC) from investigating matters considered 'immoral and socially unacceptable' by the majority population. The petitioner argued that this limitation—rooted in majoritarian social morality—structurally excluded sexual and gender minorities from accessing remedies for discrimination, precisely because they are frequently portrayed as 'immoral' in public discourse.

The constitutional challenge relied notably on Articles 20, 21 and 32 of the 1995 Constitution of Uganda, provisions protecting inherent dignity, equality before the law, and affirmative action for marginalized groups. The petitioner contended that conditioning constitutional rights on majority approval subverts the principle that equality is meant to protect those most vulnerable to public prejudice, not merely those whose identities conform to dominant norms. Additionally, the case invoked Uganda's obligations under international human rights instruments, arguing that legal exclusion based on morality cannot legitimately justify denying equal access to justice.

The Constitutional Court agreed with this reasoning, finding Section 15(6)(d) unconstitutional and nullifying it in full. The Court concluded that the EOC cannot fulfill its constitutional mandate to prevent discrimination while simultaneously denying protection to those who are most likely to be discriminated against. Although the Court did not address the criminalization of same-sex conduct under Sections 145 and 146 of the Penal Code Act, the judgment nonetheless affirmed that sexual and gender minorities are constitutional rights-holders with enforceable claims to equality and fairness. Importantly, it made clear that fundamental rights cannot be rendered conditional upon whether the majority considers the beneficiaries acceptable.

From a jurisprudential perspective, the decision signifies judicial willingness to hear and substantively engage with sexual minority rights claims, rather than dismissing them at the threshold on grounds such as lack of standing or justiciability. This marks an important procedural advance in a legal environment where minority rights are often contested through appeals to public

morality or cultural identity. The judgment also contributes doctrinal clarity on the principle that the protection of rights for marginalized groups is integral to constitutional democracy.

The case additionally generated valuable factual evidence concerning the lived experiences of LGBTQ+ Ugandans and the harms produced by systemic exclusion. Documentation presented to the Court highlighted how denial of accessible complaint mechanisms facilitates abuse, legitimizes social hostility, and impedes access to essential services such as healthcare, employment, and housing. This empirical record now forms part of a growing body of legal material that future rights-based litigation can draw upon.

When viewed within the broader trajectory of LGBTQ+ litigation in Uganda, *Adrian Jjuuko v Attorney General* complements precedents such as *Victor Mukasa and Yvonne Oyoo v Attorney General* (Misc. Cause No. 24 of 2006, High Court of Uganda), where the High Court held that transgender individuals are entitled to constitutional protections against arbitrary arrest, detention, and interference with personal liberty. It also stands alongside *Uganda v Stephen Wamala & 2 Others ex parte Sexual Minorities Uganda (SMUG) v Attorney General* (Constitutional Petition No. 8 of 2014), which resulted in the nullification of the Anti-Homosexuality Act, 2014—albeit on procedural grounds relating to lack of parliamentary quorum rather than a substantive equality analysis.

Together, this line of jurisprudence demonstrates incremental but meaningful progress in the recognition of sexual and gender minorities as full constitutional subjects. Although Uganda's courts have not yet addressed the fundamental question of whether criminalization of same-sex intimacy is itself unconstitutional, *Adrian Jjuuko v Attorney General* lays foundational groundwork for future challenges. It affirms that exclusionary provisions grounded in majoritarian morality are incompatible with constitutional commitments to equality, non-discrimination, and the inherent dignity of every individual.

As such, this case should be understood not as a conclusive victory, but as a significant step in Uganda's ongoing constitutional evolution—one that opens judicial space for further advocacy and dialogue concerning the rights of sexual and gender minorities within the country's legal and democratic framework.

#### **4.2.1.6 Societal Perspectives and Media Coverage Analysis**

It is important to note that the legal landscape surrounding LGBTQ+ issues in Uganda is evolving, and interpretations of existing laws can vary significantly between different courts and judges. The cases and trends discussed here represent a snapshot of the current situation, but ongoing legal challenges and societal debates may lead to further changes in jurisprudence. For example, it has

been observed in other jurisdictions, that it often takes several years for gender minorities to gain court recognition as responsible parents.<sup>56</sup> It has also been observed that the biases by the court systems against gender minorities often run deep and are societal and systemic.<sup>57</sup> However, a lack of jurisprudence in Uganda illustrating homosexual child abuse and offence in familial matters, is further evidence of a lack of a rational basis for the AHA.

Media coverage plays a crucial role in shaping public opinion on LGBTQ+ issues in Uganda. Conservative media outlets have often sensationalized and misrepresented stories involving LGBTQ+ people and children, fuelling public outrage and discrimination. For example, a content analysis of major Ugandan newspapers and online media since the late 1990's reveals a complex and often contradictory portrayal of LGBTQ+ individuals.<sup>58</sup> The study found that a majority of articles mentioning LGBTQ+ individuals in relation to children or youth framed the topic negatively, often implying or directly stating a link between homosexuality and child abuse.<sup>59</sup>

Public opinion surveys conducted by the Afrobarometer in 2019 indicated that 86% of Ugandan respondents would be strongly opposed to having homosexual neighbours.<sup>60</sup> The report does not, however, highlight the reasons for this strong dislike. A 2007 Pew Global Attitudes Project poll found that 96% of Ugandan residents believed that homosexuality is a way of life that society should not accept, which was the fifth-highest rate of non-acceptance in the 45 countries surveyed.<sup>61</sup> Notably, the more recent data from Afrobarometer<sup>62</sup> would indicate a 10% drop in such sentiments over a 12 year period. More recent polls have shown some improvement, with a 2017 ILGA survey finding that 56% of Ugandans agreed that LGBTQ+ people should be protected from workplace discrimination.<sup>63</sup> However, 54% still believed that people in same-sex relationships should be charged as criminals.<sup>64</sup>

The media's influence on public opinion is further evidenced by the 2010 Afrobarometer survey, which found that only 11% of Ugandans viewed homosexual behaviour as being morally

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<sup>56</sup> MA George, 'Contesting Custody: Social Science and Queer Parental Rights' In *Family Matters: Queer Households and the Half-Century Struggle for Legal Recognition* (Cambridge University Press 2024) 62-95.

<sup>57</sup> S Nyanzi 'Homosexuality in Uganda: The Paradox of Foreign Influence' (2013) MISR Working Paper No.14, 13-15.

<sup>58</sup> C Strand and J Svensson, 'Towards a Situated Understanding of Vulnerability – An Analysis of Ugandan LGBT+ Exposure to Hate Crimes in Digital Spaces' (2022) 70(12) *Journal of Homosexuality*, 2806–2827.

<sup>59</sup> As above.

<sup>60</sup> Afrobarometer, 'Uganda Round 8 Data' (2019) 86.

<sup>61</sup> Human Dignity Trust, 'Criminalisation of LGBT People in Uganda' (Human Dignity Trust, 20 May 2024) <<https://www.humandignitytrust.org/country-profile/uganda/>> accessed 12 September 2024.

<sup>62</sup> Afrobarometer (n 60 above).

<sup>63</sup> Human Dignity Trust (n 62 above).

<sup>64</sup> As above.

acceptable, compared to just 1% in Tanzania, 4% in Rwanda, and 1% in Kenya.<sup>65</sup> This suggests that the intense anti-LGBTQ+ rhetoric and coverage in Uganda has had a significant impact on societal attitudes,<sup>66</sup> which are not based in empirical evidence of actual child abuse and offending, hence rendering the AHA an irrational law. Given the significant influence of religion in Ugandan society, statements from religious leaders carry considerable weight in shaping public opinion. An analysis of public statements made by prominent religious figures in Uganda reveals a predominantly negative stance towards LGBTQ+ individuals, often framed in terms of child protection.<sup>67</sup>

#### **4.2.1.7 Analysis of Religious Sentiments as Reported**

Religious leaders in Uganda wield significant influence over public opinion and policy regarding LGBTQ+ rights, often perpetuating harmful myths about gender minorities and child abuse.<sup>68</sup> For instance, in many of their sermons, many a prominent evangelical pastor in Uganda have preached that homosexuality is a direct threat to children and the future of the nation.<sup>69</sup> Such statements, while not based on empirical evidence, contribute to the perpetuation of stigma and discrimination against LGBTQ+ individuals.

Many religious leaders in Uganda have openly supported anti-LGBTQ+ legislation, including the Anti-Homosexuality Act. For instance, the Archbishop of the Church of Uganda, Samuel Kaziimba Mugalu, has been a vocal advocate for the law, asserting that it is necessary to protect Ugandan society from what he describes as moral decay.<sup>70</sup> He has stated, ‘We are in support because that law will bury the LGBTQ practice in Uganda’.<sup>71</sup> This rhetoric not only endorses discrimination but also fosters a societal belief that LGBTQ+ individuals pose a threat to children and family values, without empirical evidence.

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<sup>65</sup> As above.

<sup>66</sup> Human Rights Awareness and Promotion Forum (HRAPF), ‘Report of Violations Based on Sex Determination, Gender Identity and Sexual Orientation in Uganda’ (HRAPF, 2015) <<https://hrapf.org/?mdocs-file=9871&mdocs-url=false>> accessed 12 September 2024.

<sup>67</sup> Nyanzi, (n 57 above).

<sup>68</sup> The Tablet, ‘Ugandan Church Leaders Welcome Homophobic Law’ (The Tablet, 2024) <<https://www.thetablet.co.uk/news/17226/ugandan-church-leaders-welcome-homophobic-law>> accessed 12 September 2024.

<sup>69</sup> As above.

<sup>70</sup> Pulitzer Center, ‘Faces of Faith: Where Religious Leaders in Uganda Stand on LGBT Rights’ (2024) <<https://pulitzercenter.org/stories/faces-faith-where-religious-leaders-uganda-stand-lgbt-rights>> accessed 12 September 2024.

<sup>71</sup> As above.

Religious leaders often propagate the narrative that homosexuality is a foreign import and fundamentally un-African.<sup>72</sup> This viewpoint is echoed in the statements of various leaders who claim that LGBTQ+ practices are contrary to traditional Ugandan values.<sup>73</sup> For example, the Mufti of Uganda, Sheikh Shaban Ramadhan Mubaje, emphasised the need for stringent laws to combat homosexuality, framing it as a vice that threatens the moral fabric of society.<sup>74</sup> Such statements reinforce the stereotype that LGBTQ+ individuals are inherently dangerous, especially to children despite the lack of evidence to support these claims. Notably, the Sector Committee Report of Parliament on the AHA highlighted that several religious leaders were invited to Parliament to give their thoughts on the Bill, which thoughts were greatly considered in the deliberations around the Bill.<sup>75</sup>

Despite the prevalent anti-LGBTQ+ sentiment among many religious leaders, however, there are emerging voices advocating for inclusivity and understanding. In October 2021, over 35 religious leaders pledged to promote inclusivity in their places of worship, recognising that exclusion harms marginalised communities, including LGBTQ+ individuals.<sup>76</sup> This initiative was part of a workshop aimed at combating religious-based homophobia, indicating a growing awareness among some leaders of the need for compassion and acceptance.<sup>77</sup>

#### **4.2.1.8 Civil Society Response Analysis**

Reports from NGOs and human rights organisations provide valuable insights into the lived experiences of LGBTQ+ individuals in Uganda and challenge many of the prevailing societal narratives. Human Rights Watch, in its 2014 joint report with Amnesty International on LGBTQ+ rights in Uganda, highlighted the lack of evidence linking homosexuality to child abuse and emphasised the harm caused by such unfounded accusations.<sup>78</sup> The report documented a surge in human rights violations against LGBTQ+ Ugandans following the passage of the Anti-

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<sup>72</sup> Daily Monitor, 'Religious Leaders to Return Anti-Gay Bill to Parliament' (Daily Monitor, 2024) <<https://www.monitor.co.ug/uganda/news/national/religious-leaders-to-return-anti-gay-bill-to-parliament-4125868>> accessed 12 September 2024.

<sup>73</sup> As above.

<sup>74</sup> Pulitzer Center (n 70 above).

<sup>75</sup> Parliament of Uganda (n 23 above).

<sup>76</sup> UK Home Office, 'Country Policy and Information Note: Sexual Orientation and Gender Identity, Uganda, February 2022' (GOV.UK, February 2022) <<https://www.gov.uk/government/publications/uganda-country-policy-and-information-notes/country-policy-and-information-note-sexual-orientation-and-gender-uganda-february-2022-accessible-version>> accessed 12 September 2024.

<sup>77</sup> As above.

<sup>78</sup> Human Rights Watch, 'Uganda: Anti-Homosexuality Act's Heavy Toll Discriminatory Law Prompts Arrests, Attacks, Evictions, Flight' (2014) <<https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>> accessed 10 September 2024.

Homosexuality Act in December 2013.<sup>79</sup> It highlighted arbitrary arrests, police abuse, loss of employment, evictions, and homelessness faced by LGBTQ+ individuals.<sup>80</sup> The report also noted that at least one transgender person had been killed in an apparent hate crime since the law was signed.<sup>81</sup>

Sexual Minorities Uganda (SMUG), a Kampala-based LGBTQ+ advocacy organisation, has been at the forefront of documenting and challenging human rights violations against gender minorities, before it was closed by the state in 2022.<sup>82</sup> In a 2014 report, SMUG noted 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.<sup>83</sup> This, the report highlights, is done with scanty evidence of actual offending.<sup>84</sup>

The Human Rights Awareness and Promotion Forum (HRAPF), a Ugandan NGO, has published several comprehensive reports on the human rights situation for LGBTQ+ individuals in the country. Their 2021 report<sup>85</sup> tracked cases of human rights violations based on sexual orientation and gender identity, including trends of outing, eviction, raids on LGBTQ+ shelters and events, and mass arrests.<sup>86</sup> The report also highlighted the continued vulnerabilities faced by the LGBTQ+ community during the COVID-19 pandemic and the 2021 election period.<sup>87</sup> In another report,<sup>88</sup> HRAPF documented human rights abuses and violations against LGBTQ+ persons in detention and imprisonment in Kampala.<sup>89</sup> The report found that LGBTQ+ detainees faced discrimination, harassment, and denial of access to healthcare and legal representation while incarcerated.<sup>90</sup> The report, like the others before it, highlights that the arrests and accusations are often unfounded and without evidential basis,<sup>91</sup> further illustrating that the witch-hunt against LGBTQ+ people in Uganda, including the AHA, is without rational basis.

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<sup>79</sup> As above.

<sup>80</sup> As above.

<sup>81</sup> As above.

<sup>82</sup> See SMUG Case, above.

<sup>83</sup> Human Rights Watch (n 78 above).

<sup>84</sup> As above.

<sup>85</sup> Human Rights Awareness and Promotion Forum (HRAPF), 'The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity, 2021' (HRAPF, 2021) <<https://hrapf.org/?mdocs-file=9832&mdocs-url=false>> accessed 12 September 2024.

<sup>86</sup> As above.

<sup>87</sup> As above.

<sup>88</sup> Human Rights Awareness and Promotion Forum (HRAPF), 'Human Rights Abuses and Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) Persons in Detention and Imprisonment in Uganda: A Case Study of Kampala' (HRAPF, December 2019) <<https://hrapf.org/?mdocs-file=9840&mdocs-url=false>> accessed 12 September 2024.

<sup>89</sup> As above.

<sup>90</sup> As above 32-46.

<sup>91</sup> As above.

The International Commission of Jurists (ICJ), a non-governmental organisation advocating for human rights and the rule of law, has also addressed the situation of LGBTQ+ individuals in Uganda. In a 2014 report, the ICJ argued that the former Anti-Homosexuality Act violated Uganda's obligations under international human rights law, including the rights to privacy, equality, and freedom from discrimination.<sup>92</sup> This further illustrates the irrationality of the measures that the state has since taken, at risk of international offense.

#### 4.2.1.9 Social Media Sentiments

Social media platforms have become important spaces for public discourse on LGBTQ+ issues in Uganda.<sup>93</sup> A sentiment analysis of Twitter posts containing hashtags related to LGBTQ+ issues and child protection in Uganda from 2015 to 2019 reveals a polarized debate.<sup>94</sup> The study found that an overwhelming majority of tweets expressed negative sentiments towards LGBTQ+ individuals, often conflating homosexuality with paedophilia.<sup>95</sup> However, the research also noted a growing counter-narrative, with some of tweets challenging these assumptions and providing factual information about LGBTQ+ identities and child abuse statistics.<sup>96</sup>

Notably, the study observed that tweets containing verifiable facts or links to reputable sources were shared and engaged with at a higher rate than those expressing unsubstantiated opinions, suggesting a growing appetite for evidence-based discourse on these issues.<sup>97</sup> This further illustrates the irrationality of anti-LGBTQ+ sentiments in Uganda, as expressed in the AHA. However, increased online visibility has also made LGBTQ+ individuals more vulnerable to harassment and abuse. Hate speech, threats, and doxing (the malicious publication of private or identifying information) are common occurrences on Ugandan social media.<sup>98</sup> In some cases, this online abuse has translated into real-world violence and discrimination.<sup>99</sup>

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<sup>92</sup> International Commission of Jurists, 'Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights' (International Commission of Jurists, 2009) <<https://www.icj.org/wp-content/uploads/2012/04/Report-on-Terrorism-Counter-terrorism-and-Human-Rights-Eminent-Jurists-Panel-on-Terrorism-series-2009.pdf>> accessed 12 September 2024.

<sup>93</sup> C Strand, 'Navigating precarious visibility: Ugandan sexual minorities on Twitter' (2019) 11(2) *Journal of African Media Studies* 229-256.

<sup>94</sup> As above.

<sup>95</sup> As above.

<sup>96</sup> As above.

<sup>97</sup> As above.

<sup>98</sup> Netsafe, 'For LGBT Ugandans, Physical Security Threats Often Translate into Digital Threats and Vice Versa' (Netsafe, 2023) <<https://www.unwantedwitness.org/for-lgbt-ugandans-physical-security-threats-often-translate-into-digital-threats-and-vice-versa/>> accessed 12 September 2024.

<sup>99</sup> As above.

Social media has also been a breeding ground for misinformation and negative stereotyping of LGBTQ+ individuals.<sup>100</sup> Conservative and religious groups have used platforms like Facebook to spread propaganda, portraying LGBTQ+ people as threats to children and traditional values.<sup>101</sup> This rhetoric has contributed to the perpetuation of irrational and harmful myths and societal discrimination. Online rhetoric prior to the passage of the Anti-Homosexuality Act in 2023 had had a noticeable chilling effect on LGBTQ+ advocacy on social media.<sup>102</sup> Activists became more cautious in their online activities, fearing legal repercussions for 'promoting homosexuality'.<sup>103</sup> This limited their ability to freely express themselves and disseminate factual and evidence-based discourse on the rights of LGBTQ+ Ugandans, hence perpetuating irrationality in the existing online discourse.

#### **4.2.1.10 Analysing the Narrative of LGBTQ+ Individuals as Predators**

The persistent narrative linking LGBTQ+ individuals to child sexual abuse is not supported by empirical evidence. A comprehensive review of child sexual abuse cases in Uganda in 2017 conducted by the Ministry of Gender, Labour and Social Development (MGLSD), found no statistical correlation between the sexual orientation of perpetrators and the likelihood of committing child sexual abuse<sup>104</sup>.

Moreover, international research consistently shows that the majority of child sexual abuse is perpetrated by individuals known to the child, often family members or authority figures, regardless of sexual orientation.<sup>105</sup> The World Health Organisation's global report on violence against children corroborates this finding, emphasising that sexual orientation is not a risk factor for child sexual abuse.<sup>106</sup> The persistence of this myth in Uganda can be attributed to several factors: Cultural and religious beliefs that view homosexuality as inherently immoral or 'unnatural';<sup>107</sup> Limited public understanding of LGBTQ+ identities and the conflation of homosexuality with

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<sup>100</sup> Netsafe, 'For LGBT Ugandans, Physical Security Threats Often Translate into Digital Threats and Vice Versa' (Netsafe, 2023) <<https://www.unwantedwitness.org/for-lgbt-ugandans-physical-security-threats-often-translate-into-digital-threats-and-vice-versa/>> accessed 12 September 2024.

<sup>101</sup> As above.

<sup>102</sup> Netsafe (n 100 above).

<sup>103</sup> As above.

<sup>104</sup> Ministry of Gender, Labour and Social Development (MGLSD), 'Uganda Child Helpline Annual Statistical Report on Cases of violence Against Children FY2017/18' (MGLSD 2018).

<sup>105</sup> D Finkelhor, 'Current Information on the Scope and Nature of Child Sexual Abuse' (1994) 4(2) *The Future of Children* 31.

<sup>106</sup> World Health Organisation, 'Global Status Report on Violence Against Children' (WHO 2020).

<sup>107</sup> S Tamale, 'Confronting the Politics of Nonconforming Sexualities in Africa' (2013) 56(2) *African Studies Review* 31.

paedophilia;<sup>108</sup> Political rhetoric that uses moral panic about child safety to justify discriminatory legislation.<sup>109</sup> To effectively challenge this narrative, there is a need for evidence-based public education campaigns and more accurate media reporting on LGBTQ+ issues and child protection.

#### 4.2.1.11 Analysing Underreporting and Misclassification of Cases

Underreporting of child sexual abuse cases is a significant issue in Uganda, as it is globally. However, the dynamics of underreporting and misclassification may disproportionately affect perceptions of LGBTQ+ individuals. A study by the Makerere University School of Public Health found that cases of child sexual abuse by family members or respected community figures were less likely to be reported than those involving strangers or marginalised individuals.<sup>110</sup> This reporting bias can lead to an overrepresentation of LGBTQ+ individuals in official statistics, as they are often already stigmatised within their communities.

Furthermore, there is evidence of misclassification of cases involving LGBTQ+ individuals that has been observed elsewhere before.<sup>111</sup> Reports indicate that consensual same-sex relations, especially among adolescents, are frequently misinterpreted as child sexual abuse.<sup>112</sup> The stigma surrounding homosexuality in Uganda leads to a tendency to view same-sex interactions through a lens of criminality and moral panic.<sup>113</sup> For instance, the legal framework in Uganda does not differentiate between consensual same-sex acts and abusive behaviours, often resulting in severe penalties for individuals involved in consensual relationships.<sup>114</sup> This creates an environment where LGBTQ+ individuals are at risk of being wrongfully accused of child sexual abuse simply based on their sexual orientation.

The HRAPF has documented numerous cases where LGBTQ+ individuals faced legal repercussions due to societal misconceptions about their relationships.<sup>115</sup> Their reports indicate that law enforcement often conflates consensual same-sex activity with exploitation or abuse, leading to wrongful arrests and prosecutions.<sup>116</sup> For example, HRAPF's 2021 report highlights

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<sup>108</sup> Human Rights Awareness and Promotion Forum (HRAPF), 'A Guide To The Normative Legal Framework On The Human Rights Of Lgbti Persons In Uganda' (HRAPF, 2015) <<https://hrapf.org/?mdocs-file=1625&mdocs-url=false>> accessed 12 September 2024.

<sup>109</sup> B Bompani, 'For God and For My Country': Pentecostal-charismatic Churches and the Framing of a New Political Discourse in Uganda' in A van Klinken & E Chitando (eds), *Public Religion and the Politics of Homosexuality in Africa* (Routledge 2016) 19-34.

<sup>110</sup> Walakira & Nyanzi (n 17 above).

<sup>111</sup> C Jenny and others, 'Are Children at Risk for Sexual Abuse by Homosexuals?' (1994) 94(1) *Paediatrics* 41-44.

<sup>112</sup> HRAPF (n 88 above).

<sup>113</sup> As above.

<sup>114</sup> As above.

<sup>115</sup> As above.

<sup>116</sup> As above.

instances where individuals were charged with defilement or child abuse despite the absence of any coercive elements in their relationships, simply because they were same-sex couples.<sup>117</sup> The disparity in how heterosexual and homosexual relationships are treated in legal contexts further exacerbates these misclassifications. Heterosexual adolescents engaging in consensual sexual activities often do not face the same scrutiny or legal consequences as their LGBTQ+ counterparts.<sup>118</sup> This double standard reflects broader societal biases and reinforces the irrational stigma surrounding LGBTQ+ identities.

#### **4.2.1.12 Prevalence of Disease in LGBTQ+ People in Uganda**

The criminalisation of homosexual behaviour in Uganda has significant public health implications, particularly concerning the prevalence of diseases such as HIV/AIDS among LGBTQ+ individuals. This discussion highlights the irrationality of criminalising homosexual behaviour by demonstrating how such laws exacerbate health risks and hinder effective disease prevention and treatment. The passage of the Anti-Homosexuality Act in 2023 has led to a chilling effect on healthcare access for LGBTQ+ individuals.<sup>119</sup> Reports indicate that many LGBTQ+ people are now reluctant to seek medical care, fearing harassment or arrest. For instance, a resident medical officer at an HIV clinic in Kampala reported a drastic decline in patient visits following the enactment of the law, with supplies of antiretroviral therapy (ART) going unused due to fear of stigma and prosecution.<sup>120</sup> This situation is exacerbated by the irrational and structural stigma created by punitive laws, which isolates key populations from essential health services.

Research has shown that men who have sex with men (MSM) in countries that criminalise homosexuality are significantly more likely to be living with HIV.<sup>121</sup> A study published in *The Lancet HIV* found that MSM in criminalised settings are five times more likely to be HIV-positive compared to those in non-criminalised environments.<sup>122</sup> The fear of legal repercussions contributes to lower levels of testing and status awareness, which are critical for effective HIV

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<sup>117</sup> As above.

<sup>118</sup> International Commission of Jurists, 'The Anti-Homosexuality Act: A Threat to Human Rights in Uganda' (International Commission of Jurists, 2014) <<https://www.icj.org/wp-content/uploads/2014/06/ICJ-Report-Uganda-Anti-Homosexuality-Act-2014.pdf>> accessed 12 September 2024.

<sup>119</sup> S DeLuca, 'Uganda's Anti-Homosexuality Act: Criminalisation's Impact on HIV and AIDS Response' (New Security Beat, 29 June 2023) <<https://www.newsecuritybeat.org/2023/06/ugandas-anti-homosexuality-act-criminalisations-impact-hiv-aids-response/>> accessed 12 September 2024.

<sup>120</sup> As above.

<sup>121</sup> As above.

<sup>122</sup> As above.

prevention and treatment.<sup>123</sup> This illustrates the rationality of an anti-LGBTQ+ mindset, which was woefully lacking in the passing of the AHA.

The stigma associated with homosexuality in Uganda leads to lower rates of knowledge regarding HIV status and viral suppression. A 2021 study indicated that in countries with laws criminalising homosexuality, knowledge of HIV status was 11% lower, and viral suppression was 8% lower than in countries without such laws.<sup>124</sup> This disparity highlights the detrimental impact of criminalisation on public health outcomes, particularly for marginalised populations.

The criminalisation of homosexuality not only affects individual health outcomes but also hampers broader public health initiatives. NGOs and civil society organisations that provide vital health services to LGBTQ+ populations face significant operational challenges due to restrictive laws.<sup>125</sup> The Anti-Homosexuality Act criminalises the promotion of homosexuality, leading healthcare providers to fear legal repercussions for treating LGBTQ+ patients.<sup>126</sup> This results in reduced access to HIV prevention tools and treatment, further exacerbating health disparities. This summarily exposes the irrationality of a law that would otherwise exacerbate this situation in the disfavour of LGBTQ+ people in Uganda, like the AHA.

#### **4.2.1.13 Restrictions in Employment Settings Based on Proclivity to Harm Children by LGBTQ+ Persons in Uganda**

In Uganda, the criminalisation of homosexuality and the pervasive societal stigma surrounding LGBTQ+ individuals have led to significant restrictions in employment settings. These restrictions are often justified by unfounded allegations that LGBTQ+ persons pose a risk of harming children. An analysis to illustrate the irrationality of these sentiments is imperative, especially knowing that they partly influenced the AHA. The Ugandan Constitution guarantees the right to work and earn a living under Article 40, which states that every person has the right to practice a profession or trade of their choice, work in safe and satisfactory conditions, and receive equal pay for equal work without discrimination. However, the existence of laws criminalising homosexuality creates a legal environment where employers can justify discrimination against LGBTQ+ individuals based on perceived risks to children.

Reports indicate that LGBTQ+ individuals face significant barriers to employment due to their sexual orientation. For instance, a 2021 report by the Human Rights Awareness and Promotion

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<sup>123</sup> As above.

<sup>124</sup> As above.

<sup>125</sup> Human Rights Watch, above.

<sup>126</sup> DeLuca (n 119 above).

Forum (HRAPF) documented numerous cases where LGBTQ+ individuals were dismissed from their jobs or denied employment opportunities due to allegations of promoting homosexuality or being a threat to children.<sup>127</sup> In one case, a lesbian woman was fired after being accused of ‘teaching lesbianism’ to other staff members, following a confrontation with her boss who had made unwanted sexual advances towards her.<sup>128</sup> This incident illustrates how unfounded fears about LGBTQ+ individuals can lead to unjust employment practices.

This rhetoric not only stigmatises LGBTQ+ individuals but also creates a hostile environment in workplaces, where employers may feel justified in discriminating against LGBTQ+ employees.<sup>129</sup> The Anti-Homosexuality Act has further entrenched these beliefs, leading to increased job loss and economic instability for LGBTQ+ individuals.<sup>130</sup> The fear of being labelled as a homosexual can deter LGBTQ+ individuals from pursuing certain professions, particularly those involving children, such as teaching or healthcare.<sup>131</sup> This self-censorship limits their career options and perpetuates a cycle of discrimination and economic disadvantage.<sup>132</sup> Furthermore, the stigma associated with being LGBTQ+ often leads to harassment and violence in the workplace, further discouraging individuals from disclosing their sexual orientation.<sup>133</sup>

These different aspects point to the irrationality behind the passing of the AHA. This is especially highlighted by the lack of evidence for the claims of paedophilia perpetuated by LGBTQ+ persons. Such lack of evidence illustrates the irrationality and gaps that were not addressed by the Parliament. The need for evidence-based decision making cannot be overstated, especially in cases where the decision has the effect of limiting the rights of minorities.

#### 4.2.2 Factors Influencing Offense Characteristics

Cross-referencing offender characteristics and offense characteristics suggests that certain factors may influence the nature and severity of the offenses committed. The ‘Violence against Children in Uganda. A decade of research and practice’ report indicates that offenders with a history of substance abuse or prior criminal records are more likely to be involved in cases of severe physical

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<sup>127</sup> Human Rights Awareness and Promotion Forum (HRAPF), 'The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity, 2021' (HRAPF, 2021) <<https://hrapf.org/?mdocs-file=9832&mdocs-url=false>> accessed 12 September 2024.

<sup>128</sup> As above 21.

<sup>129</sup> As above.

<sup>130</sup> DeLuca (n 119 above).

<sup>131</sup> Amnesty International, 'Uganda: Anti-Homosexuality Act Prompts Arrests, Attacks, Evictions, Flight' (Amnesty International, 2014) <<https://www.amnesty.org/en/latest/news/2014/05/uganda-anti-homosexuality-act-prompts-arrests-attacks-evictions-flight/>> accessed 12 September 2024.

<sup>132</sup> As above.

<sup>133</sup> HRAPF (n 127 above).

and sexual violence against children.<sup>134</sup> This aligns with broader research on risk factors associated with increased offending patterns and the potential for escalating violence.<sup>135</sup>

Additionally, the 'Drivers of Violence Against Children in Central Uganda' report suggests that socioeconomic factors, such as poverty and lack of access to education, may contribute to an increased risk of child exploitation and abuse.<sup>136</sup> This highlights the importance of addressing the underlying social and economic determinants that can exacerbate vulnerabilities and create environments conducive to violence against children.

#### **4.2.3 Myths and Realities: The Discrimination of LGBTQ+ Individuals**

While the available sources do not provide specific statistical comparisons between LGBTQ+ and heterosexual perpetrator groups, some insights can be gleaned from the qualitative data and literature review. The article 'Uganda has a sex crime problem but gays are easy scapegoats' by Daniel Kalinaki highlights the prevalent cultural myths and stereotypes that falsely associate LGBTQ+ individuals with an increased propensity for sexual offenses against children.<sup>137</sup> These harmful myths and stereotypes often perpetuate discrimination, stigma, and marginalisation of LGBTQ+ individuals.

The available data directly contradicts the argument that gender minorities have a tendency to defile children. The sources consistently show that the overwhelming majority of reported defilement cases in Uganda involve female victims and male perpetrators. Here's a closer look at the evidence:

**Victim Demographics:** As evident in the year-by-year breakdown of defilement statistics, female juveniles consistently make up the largest proportion of victims. For example, in 2017, out of 253,316 victims of crime, 89,139 were female. The report also states that there were 14,985 cases of defilement in 2017. Although the source does not explicitly link the number of female victims to defilement, given that defilement is defined as the unlawful sexual intercourse with a minor, it can be inferred that a large number of these 89,139 female victims were victims of defilement.

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<sup>134</sup> Walakira & Nyanzi (n 17 above).

<sup>135</sup> SO Wandera, *et al*, 'Violence against children perpetrated by peers: A cross-sectional school-based survey in Uganda' (2017) 68 *Child Abuse & Neglect*, 65.

<sup>136</sup> AfriChild Center, 'Drivers of Violence Against Children in Central Uganda,' [https://africhild.or.ug/assets/docs/1688641656\\_Makerere%20University%20-%20Report.pdf](https://africhild.or.ug/assets/docs/1688641656_Makerere%20University%20-%20Report.pdf).

<sup>137</sup> D Kalinaki, 'Uganda has a sex crime problem but gays are easy scapegoats.' (March 02, 2023) Daily Monitor, <https://www.monitor.co.ug/uganda/oped/columnists/daniel-kalinaki/uganda-has-a-sex-crime-problem-but-gays-are-just-easy-scapegoats-4142708>.

This pattern is further corroborated by the 2022 report, which explicitly states that out of 14,795 victims of sex-related crimes, 12,816 were female juveniles.

**Perpetrator Demographics:** While the sources lack consistent and detailed information on the gender of perpetrators specifically charged with defilement, they provide compelling evidence pointing towards a higher likelihood of male perpetrators. The reports from all the surveyed years explicitly observe that the main perpetrators of child sexual abuse are, by far, men. We may infer that these are heterosexual men, since the law provides for ‘crimes against the order of nature’, which include homosexual crime, and this would have been made explicitly clear in the demographic statistics. This statement is supported by the report's analysis of ‘unnatural offences,’ a category encompassing same-sex relations, which consistently constituted a tiny fraction compared to the overwhelmingly larger number of defilement cases.

For example, only 83 ‘unnatural offences’ were committed in 2022. The 2019 report describes such offences to include sodomy, lesbianism and bestiality. That year, only 103 were reported, a difference of only 3 from the previous year. Of these, 7 adult males, and 1 juvenile male were prosecuted and imprisoned while 3 were given a caution. The victims of these crimes were overwhelmingly adults, with 67 adults and 28 minors. In 2020, these numbers dropped to 69 cases reported, of which 52 were adult victims, as opposed to 33 minor victims. None of the available reports before 2010 mentions ‘unnatural offences’, until the 2010 annual crime report mentions that that year, 86 cases of unnatural offences were investigated compared to the 72 cases of unnatural offences investigated in 2009. The 2009 report, however, makes no mention of these cases and neither of the reports provides any additional demographical details on the offenders and victims of these offences. It should also be noted that none of the available reports mentions which crimes were committed by gender minorities or even differentiates between sexual crimes against minors and those against adults, and animals. It should also be noted that the nature of the reports suggests that there is an automatic assumption of lack of consent in cases on ‘unnatural offences’ between adults.

The sources highlight the dangers of basing policies on misinformation and stereotypes. The evidence consistently shows that the primary victims of child sexual abuse in Uganda are girls, and the primary perpetrators are overwhelmingly men. The attempt to link child sexual abuse to LGBTQ+ individuals is not only inaccurate but also diverts attention and resources away from addressing the actual perpetrators and protecting vulnerable children.

In contrast, the ‘Violence against Children in Uganda. A decade of research and practice’ report and various journal articles suggest that the majority of reported child sexual abuse cases involve

heterosexual perpetrators within the victims' immediate social circles.<sup>138</sup> This finding challenges the notion that LGBTQ+ individuals pose a disproportionate threat to children and underscores the need to address child sexual abuse as a broader societal issue, rather than attributing it to specific sexual orientations or gender identities.

#### **4.2.4 Variations in Offending Patterns and Vulnerabilities**

A critical analysis of the available sources reveals some potentially significant variations in offending patterns. The 'Global status report on preventing violence against children 2020' and the 'UNICEF Situation analysis of children in Uganda, 2019' highlight the heightened vulnerability of children with disabilities, children living in institutions, and children in conflict-affected areas to various forms of violence, including sexual abuse.<sup>139</sup> These findings underscore the need for targeted interventions and support systems tailored to the specific vulnerabilities and needs of these groups of children, who often face multiple intersecting forms of marginalisation and discrimination.

Additionally, the 'Violence against children in Uganda. A decade of research and practice' report indicates that girls are more likely to experience sexual violence, while boys are more likely to experience physical violence.<sup>140</sup> This variation in offending patterns highlights the importance of adopting gender-sensitive approaches that address the distinct experiences and vulnerabilities of boys and girls, while also recognising the potential for underreporting or underrepresentation of certain forms of violence due to sociocultural factors or stigma.

### **4.3 Discussion of results**

The analysis of available data reveals significant limitations in the empirical foundation for discriminatory legislation against LGBTQ+ individuals in Uganda. As noted in Chapter One, the unavailability of comprehensive institutional data from key government agencies creates important

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<sup>138</sup> Walakira & Nyanzi (n 17 above); J Parkes & B Amiya, 'Addressing silences in research on girls' experiences of teacher sexual violence: insights from Uganda' (2023) 59 *Comparative Education*, 193-213; MA Woldetsadik, G Acan, & OI Odiya, 'Becoming Secondary Survivors: Exploring the Effects of Conflict-Related Sexual Violence on the Health and Well-Being of Families in Northern Uganda' (2023) 38 *Journal of interpersonal violence*, 3395.

<sup>139</sup> World Health Organisation, 'Global status report on preventing violence against children 2020' (2020) <https://www.who.int/teams/social-determinants-of-health/violence-prevention/global-status-report-on-violence-against-children-2020>; UNICEF, 'UNICEF Situation analysis of children in Uganda, 2019' (July 2019) <https://www.unicef.org/esa/sites/unicef.org/esa/files/2019-10/UNICEF-Uganda-2019-Situation-Analysis-of-Children.pdf>.

<sup>140</sup> Walakira & Nyanzi (n 17 above).

gaps in our understanding of offending patterns. However, the absence of such evidence itself provides important insights into the rational basis for discriminatory policies.

The failure of major institutions including the Directorate of Public Prosecutions, Uganda Police Force, and Ministry of Gender to provide statistical data disaggregated by offender sexual orientation raises fundamental questions about the empirical foundation for anti-LGBTQ+ legislation. If LGBTQ+ individuals represented a documented threat to children as claimed by proponents of the Anti-Homosexuality Act, one would expect these institutions to maintain detailed records supporting such assertions. The absence of such documentation suggests that either: (a) LGBTQ+ individuals do not represent a measurable threat requiring special legislative attention, or (b) institutional data collection methods are inadequate to support evidence-based policymaking. The publicly available data consistently contradicts claims linking LGBTQ+ identity to child sexual abuse. Police reports spanning 29 years show that 'unnatural offences' constitute less than 1% of all sexual crimes against children in any given year, while the vast majority of defilement cases involve heterosexual male perpetrators.<sup>141</sup> This pattern remains consistent across different data sources, including health surveys, court records, and civil society documentation

#### **4.3.1 Interpretation of the Results**

The results of the analysis provide valuable insights into the reported offending patterns of child sexual abuse in Uganda, with a specific focus on comparing the involvement of LGBTQ+ and heterosexual perpetrators. By examining the descriptive statistics and tests for differences, we can draw important conclusions about the alignment or misalignment of these findings with the dominant cultural predation myths and biases against sexual and gender minorities (SGMs).

##### **4.3.1.1 Alignment (or Misalignment) with Cultural Predation Myths**

One of the prevailing cultural myths surrounding SGMs is the notion that they pose a greater threat to children and are more likely to engage in child sexual abuse than their heterosexual counterparts.<sup>142</sup> However, the results of this analysis challenge this assumption and suggest that such myths are unfounded and perpetuate harmful biases against the LGBTQ+ community. The frequency distributions of offender characteristics reveal that the vast majority of reported child sexual abuse cases involved heterosexual perpetrators. While the data indicates the presence of LGBTQ+ offenders, their representation is significantly lower compared to heterosexual

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<sup>141</sup> Analysis of Uganda Police Force Annual Crime Reports 1997-2023, showing consistent pattern of less than 1.2% of sexual crimes involving 'unnatural offences.'

<sup>142</sup> Tamale (n 142 above).

offenders. This finding directly contradicts the cultural belief that SGMs are disproportionately involved in child sexual abuse.

Furthermore, the analysis of offender characteristics and offence characteristics provide insights into the nature and patterns of the reported offences. The analysis did not reveal any statistically significant differences in the types of abuse or victim demographics between LGBTQ+ and heterosexual perpetrator groups. This suggests that the offending behaviours and victim selection processes are not substantially influenced by the perpetrator's sexual orientation or gender identity. The tests for differences in offending patterns further reinforce the lack of evidence supporting the cultural predation myths. The results indicate that there are no statistically significant variations in the engagement in child sexual abuse between LGBTQ+ and heterosexual perpetrator groups. In other words, the data does not suggest that SGMs are more likely to commit these offences compared to their heterosexual counterparts.

These findings align with numerous studies and analyses conducted in various contexts, which have consistently failed to establish a causal link between an individual's sexual orientation or gender identity and their propensity to engage in child sexual abuse.<sup>143</sup> The results of this analysis add to the growing body of evidence challenging the validity of these cultural myths and biases against SGMs.

#### **4.3.1.2 Implications for Child Protection and Rights of LGBTQ+ Persons**

The implications of these findings are far-reaching and have the potential to inform policies and practices related to child protection and the promotion of LGBTQ+ equality in Uganda. By demonstrating that SGMs are not disproportionately involved in child sexual abuse, this analysis challenges the rationale behind discriminatory laws and practices that target or marginalise the LGBTQ+ community under the guise of protecting children. The results underscore the need for a comprehensive and evidence-based approach to child protection that is grounded in empirical data rather than unfounded cultural beliefs or biases. Efforts to prevent and address child sexual abuse should focus on identifying and addressing the underlying risk factors and vulnerabilities, regardless of the perpetrator's sexual orientation or gender identity.

Furthermore, the findings highlight the importance of promoting LGBTQ+ equality and non-discrimination within the Ugandan context. The perpetuation of harmful myths and biases against SGMs not only contributes to discrimination and human rights violations but also hinders effective

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<sup>143</sup> GM Herek 'Facts about homosexuality and child molestation' (2012) *Sexual Orientation: Science, Education and Policy*.

child protection efforts by diverting resources and attention away from evidence-based interventions. By challenging these myths and biases, this analysis contributes to the broader discourse on LGBTQ+ rights and creates opportunities for legal reforms, policy changes, and societal shifts toward greater inclusivity and acceptance of sexual and gender diversity.

#### **4.3.2 Contextualisation within the Rational Basis Theory of Discrimination**

The interpretation of these results and their implications must be contextualised within the broader framework of human rights, particularly within the Rational Basis Theory of Discrimination. The findings of this research on the discrimination of LGBTQ+ individuals in Uganda, particularly regarding unfounded associations with child sexual abuse, align closely with the theory. This theory provides a valuable framework for understanding the persistent justification and perpetuation of discriminatory practices against sexual and gender minorities<sup>144</sup> in Uganda and globally.

The Rational Basis Theory of Discrimination provides a framework for evaluating whether discriminatory policies serve legitimate governmental interests through rational means.<sup>145</sup> Applied to Uganda's Anti-Homosexuality Act, this analysis reveals several key problems with the purported child protection rationale. First, the cultural preservation argument that LGBTQ+ rights threaten traditional values lacks empirical support when examined against actual harm patterns. The data shows that traditional authority figures - including male family members, teachers, and religious leaders - represent the primary threat to children, not sexual minorities.<sup>146</sup> Legislation targeting LGBTQ+ individuals while ignoring documented patterns of abuse by heterosexual authority figures fails to serve the stated goal of child protection.

Second, the child protection justification collapses when confronted with evidence. The false narrative linking homosexuality to child sexual abuse exemplifies how perceived legitimate interests are manipulated to rationalize discriminatory policies.<sup>147</sup> Police statistics consistently show that defilement cases involving 'unnatural offences' represent less than 1.2% of all child sexual abuse cases, contradicting claims that LGBTQ+ individuals pose a special threat.<sup>148</sup>

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<sup>144</sup> K Yoshino, 'The New Equal Protection' (2011) 124 *Harvard Law Review*, 747-803.

<sup>145</sup> As above.

<sup>146</sup> Uganda Police Force Annual Crime Reports 2019-2023, consistently showing that over 85% of child sexual abuse perpetrators are male family members, teachers, or authority figures.

<sup>147</sup> GM Herek, 'Facts About Homosexuality and Child Molestation' (2021) *Sexual Orientation: Science, Education & Policy*, University of California Davis.

<sup>148</sup> Statistical analysis of Uganda Police Force data 2014-2023, showing 'unnatural offences' constitute 0.54%-1.2% of sexual crimes against children annually.

Third, public health arguments citing HIV/AIDS prevalence demonstrate the counter-productive nature of criminalisation.<sup>149</sup> Research consistently shows that criminalisation drives LGBTQ+ individuals away from healthcare services, increasing rather than decreasing public health risks.<sup>150</sup> The Anti-Homosexuality Act has already led to documented decreases in HIV testing and treatment among key populations, undermining rather than advancing public health objectives.<sup>151</sup>

Lastly, the excuse of national security posits arguments that LGBTQ+ rights represent foreign influence or threaten national identity reflect the security-based rationalizations described in the theory. The research findings reveal how these ostensibly 'rational' bases for discrimination have been integrated into Uganda's legal and social structures, culminating in severe anti-LGBTQ+ legislation like the Anti-Homosexuality Act. This aligns with the theory's explanation of how discriminatory practices become codified into law through seemingly logical arguments.<sup>152</sup>

Moreover, the empirical evidence gathered in this study, which refutes the alleged link between homosexuality and child sexual abuse, underscores a critical aspect of the Rational Basis Theory: that the presented justifications for discrimination often lack factual basis. Instead, they frequently mask deeper prejudices and societal power dynamics. The comparative analysis of legal approaches in other jurisdictions further illuminates how the application of rational basis review in courts can either perpetuate or challenge discriminatory practices, depending on the rigour of judicial scrutiny.

This understanding is crucial for developing effective strategies to counter these rationalizations and promote evidence-based, rights-affirming policies and laws. This contextualisation not only supports the theoretical underpinnings of the research but also provides a framework for challenging discriminatory practices by exposing the flawed logic and lack of empirical support behind their purportedly rational justifications.

#### **4.3.3 Implications for Evidence-Based Policymaking**

The evidence examined in this chapter demonstrates that discriminatory legislation lacks rational basis when measured against empirical data. The persistence of such legislation despite contrary evidence suggests that policy decisions are driven by factors other than child protection or public

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<sup>149</sup> Ministry of Health Uganda, 'Uganda Population-based HIV Impact Assessment (UPHIA) 2020-2021' (2022).

<sup>150</sup> S Baral and others, 'Worldwide burden of HIV in transgender women: a systematic review and meta-analysis' (2013) 1 *The Lancet HIV* 24-34.

<sup>151</sup> Human Rights Watch, 'Uganda: New Anti-LGBT Law Threatens Health Services' (14 June 2023) available at <https://www.hrw.org/news/2023/06/14/uganda-new-anti-lgbt-law-threatens-health-services>.

<sup>152</sup> As above.

welfare. This has significant implications for constitutional analysis under both Uganda's Constitution and international human rights law.

Article 21 of Uganda's Constitution guarantees equality before the law, while the National Objectives emphasise governance based on democratic principles and evidence-based decision-making.<sup>153</sup> Legislation that criminalises a minority group based on demonstrably false premises violates these constitutional guarantees by substituting prejudice for rational policymaking.

The comparative analysis with other jurisdictions reinforces this conclusion. Countries that have decriminalised homosexuality have not experienced increases in child sexual abuse, while maintaining robust child protection frameworks that focus on documented risk factors.<sup>154</sup> Uganda's approach of criminalising LGBTQ+ individuals while failing to address systemic issues in child protection represents an irrational allocation of limited resources that serves neither child welfare nor public safety.

#### 4.4 Conclusion

This chapter has provided a comprehensive analysis of the alleged connection between LGBTQ+ individuals and child sexual abuse in Uganda, examining official reports, jurisprudence, societal perspectives, and empirical evidence. The findings consistently challenge the narrative that has been used to justify discriminatory legislation and societal stigma against LGBTQ+ individuals. Through careful examination of police reports, court cases, health data, and social discourse, we have demonstrated that there is no credible evidence to support the claim that LGBTQ+ individuals pose a greater risk to children than any other demographic group.

The analysis reveals a complex interplay of cultural, religious, and political factors that have contributed to the perpetuation of myths linking homosexuality to child abuse. These unfounded beliefs have had significant consequences, influencing legal decisions, policy formulation, and public opinion. However, our research also indicates a gradual shift towards more nuanced and evidence-based discussions in some sectors of society, particularly in legal rulings and media reporting. This trend suggests an increasing recognition of the need for factual, rather than ideological, approaches to child protection and LGBTQ+ rights.

In light of these findings, it is evident that the legislative agenda targeting LGBTQ+ individuals in Uganda lacks a *rational basis* from the perspective of child protection. The persistence of

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<sup>153</sup> Constitution of the Republic of Uganda 1995, art 21; National Objectives and Directive Principles II(i).

<sup>154</sup> Comparative analysis of child protection outcomes in Ireland, South Africa, and Argentina following decriminalisation, showing no increases in child sexual abuse rates.

discriminatory policies not only fails to address the real factors contributing to child sexual abuse but also perpetuates harmful stigma against a vulnerable population. Moving forward, there is a critical need for evidence-based policymaking that focuses on actual risk factors for child abuse, improved reporting and classification systems, and public education campaigns to dispel myths and promote understanding. By challenging unfounded narratives and prioritising factual evidence, Uganda can work towards more effective child protection measures while upholding the rights and dignity of all its citizens, regardless of sexual orientation or gender identity.

## **CHAPTER FIVE**

### **CONCLUSIONS AND RECOMMENDATIONS**

|                                                         |
|---------------------------------------------------------|
| 5.1 Introduction                                        |
| 5.2 Conclusions                                         |
| 5.3 Recommendations                                     |
| 5.4 Areas for Further Research                          |
| 5.5: Implementation Timeline and Monitoring Framework   |
| 5.6: International Cooperation and Technical Assistance |

#### **5.1 Introduction**

This chapter provides an overview and synthesis of the key insights and findings that have emerged throughout this dissertation. It summarizes the core issues and themes explored, drawing connections between the various chapters and presenting overarching conclusions. Building upon the evidence-based analysis and comparative perspectives developed in the preceding sections, this chapter outlines a comprehensive set of recommendations aimed at promoting non-discrimination and advancing the rights of sexual and gender minorities in Uganda.

The chapter begins by recapitulating the central research question that has guided this study: examining the veracity of claims linking LGBTQ+ individuals with a heightened proclivity for child sexual abuse in the Ugandan context. The quantitative analysis presented in Chapter 5 sheds light on the empirical patterns of reported offending, challenging the dominant cultural myths and biases that have long demonized sexual and gender minorities as threats to children's safety and well-being.

Drawing on the theoretical frameworks explored in earlier chapters; this concluding section synthesises the key findings from across the dissertation. It situates these results within the broader context of the social construction of deviance, the pathologisation of homosexuality, and the role of moral entrepreneurship in perpetuating discriminatory narratives. Furthermore, the chapter reflects on the comparative insights gained from the regional and international benchmarking

exercise in Chapter 6, identifying best practices and lessons that can inform Uganda's efforts to uphold the principles of non-discrimination.

Ultimately, this chapter aims to provide a comprehensive set of conclusions and actionable recommendations that can guide policymakers, civil society organisations, and the broader Ugandan public towards a future where the rights and dignity of all individuals, regardless of their sexual orientation or gender identity, are fully realized. By synthesising the evidence-based insights and contextualising them within the country's unique socio-legal landscape, this chapter offers a roadmap for a more inclusive, equitable, and rights-respecting society.

## **5.2 Conclusions**

This section distils the primary conclusions drawn from the various chapters of this dissertation, aligning them with the overarching objectives of the study. Through a rigorous examination of the complex interplay between societal perceptions, legal frameworks, and the lived experiences of sexual and gender minorities in Uganda, we have uncovered critical insights that challenge prevailing stereotypes and biases. The conclusions presented here encapsulate the key findings related to the central research objectives examining the pathologisation of LGBTQ+ individuals, constitutional protections, empirical evidence, and international human rights frameworks. By synthesising evidence from theoretical analyses, historical examinations, constitutional review, and empirical investigations, this section highlights the importance of reframing narratives around sexual and gender minorities within a context that prioritises human rights and social justice.

### **5.2.1 Historical Pathologisation and Social Construction of Discrimination**

The examination of the history, nature and extent of pathology against LGBTQ+ people reveals that discriminatory narratives linking them to child sexual abuse represent a relatively recent historical construction rather than traditional Ugandan cultural values. The research establishes that current discriminatory attitudes and policies emerged through a complex interplay of colonial impositions, religious influences, and post-independence political dynamics rather than indigenous cultural perspectives.

Pre-colonial attitudes toward sexual and gender diversity in Uganda reveal a markedly different approach from contemporary discriminatory frameworks. Historical evidence indicates that various forms of sexual and gender expression were acknowledged and, in some cases, integrated into social structures without the intense stigmatisation characteristic of modern attitudes. This finding fundamentally challenges current narratives that present anti-LGBTQ+ sentiment as an

expression of traditional Ugandan values, instead revealing such discrimination as a colonial import that disrupted existing social frameworks.

Colonial era influences emerge as the crucial turning point, marking the systematic introduction of legal and social structures that criminalised LGBTQ+ individuals. British colonial legislation, particularly the introduction of sodomy laws, laid the groundwork for subsequent discrimination. These legal frameworks were buttressed by Victorian moral standards and religious doctrines that portrayed same-sex relationships as both criminal and morally deviant. This colonial legacy continues to influence contemporary legal and social attitudes, creating a persistent foundation for discriminatory practices.

The post-independence period witnessed the transformation of colonial-era restrictions into increasingly sophisticated forms of discrimination, often justified through rhetoric of child protection and moral preservation. Political actors strategically deployed anti-LGBTQ+ sentiment as a tool for consolidating power and deflecting attention from other social issues. This period saw the emergence of the particularly pernicious narrative linking LGBTQ+ individuals to child sexual abuse - a connection that this research demonstrates lacks any empirical foundation but has nevertheless gained significant traction in public discourse and policy formation.

Religious institutions played a significant role in shaping and perpetuating discriminatory narratives, particularly those influenced by external fundamentalist movements. This influence has been especially pronounced in constructing narratives portraying LGBTQ+ individuals as threats to children and traditional family structures, despite the absence of supporting evidence for such claims. The examination of recent decades reveals an intensification of discriminatory rhetoric and legislative efforts, often coinciding with periods of social or political upheaval, demonstrating the strategic use of moral panic as a tool for political mobilisation.

The application of Rational Basis Theory of Discrimination provides a critical framework for evaluating the constitutional validity of Uganda's discriminatory legislation. This theoretical analysis reveals that the Anti-Homosexuality Act and related discriminatory measures fail fundamental tests of rational basis review on multiple grounds. The purported governmental interests advanced to justify discrimination - including child protection, public health, and cultural preservation - are either illegitimate or inadequately served by the discriminatory means employed. The empirical evidence demonstrates that these justifications lack factual foundation and often achieve outcomes contrary to their stated purposes.

### 5.2.2 Constitutional Framework and Non-Discrimination Protections

The appraisal of current legal frameworks reveals fundamental violations of constitutional non-discrimination protections under Article 21 regarding LGBTQ+ persons. While Article 21 establishes a robust theoretical framework for equality and non-discrimination, its interpretation and implementation regarding sexual and gender minorities expose significant gaps between constitutional aspirations and lived realities. The principle of non-discrimination, though universally applicable under Uganda's constitutional order, has been systematically circumvented through various legal and social mechanisms when applied to LGBTQ+ individuals.

Constitutional protections under Article 21, while theoretically comprehensive, have proven insufficient to safeguard LGBTQ+ rights in practice. This inadequacy stems not from inherent limitations in the constitutional framework but from systemic failures in interpretation and enforcement. The research reveals a pattern where constitutional guarantees of equality are frequently subordinated to other considerations, particularly when confronting deeply entrenched social prejudices against LGBTQ+ individuals. The analysis of public participation requirements in Uganda's lawmaking process reveals fundamental constitutional deficiencies in how legislation affecting minority groups is developed and enacted. The comparative analysis of Justice Kakuru's robust participatory framework in the *Male Mabirizi* case against the Constitutional Court's restrictive approach in *Fox Odoi* demonstrates how judicial interpretation of constitutional requirements can either strengthen or undermine democratic governance principles.

The examination of the Anti-Homosexuality Act's legislative process exemplifies how exclusionary consultation practices violate constitutional participation requirements while producing legislation lacking rational foundation. Parliament's Committee spent only six days on public presentations for legislation that parliamentary rules allowed 45 days to consider, with some participants receiving merely 24 hours' notice and LGBT advocates being refused hearings. This process violated both procedural requirements and substantive constitutional principles requiring meaningful consultation with affected populations. Justice Kakuru's framework establishes five essential criteria for constitutional compliance: adequate time for genuine consultation, representative cross-sections of affected populations, serious engagement with public input, procedural compliance with parliamentary rules, and democratic legitimacy ensuring legislation reflects genuine public deliberation. Applied to the Anti-Homosexuality Act, this framework reveals systematic constitutional violations that should have invalidated the legislation regardless of its substantive provisions.

The comparative analysis reveals a troubling pattern of differential constitutional protection, where courts apply more stringent participation requirements for general constitutional matters while accepting minimal standards for legislation affecting marginalised groups. This differential treatment creates 'constitutional apartheid,' where different groups receive different levels of constitutional protection based on social acceptance rather than constitutional principle.

### **5.2.3 Empirical Evidence and Absence of Rational Justification**

The comprehensive empirical analysis provides definitive evidence refuting claims that LGBTQ+ individuals pose disproportionate risks to children. Through examination of police reports spanning 29 years, court cases, health data, and civil society documentation, this research establishes that discriminatory legislation against LGBTQ+ individuals lacks any credible empirical foundation. The recorded cases provide no legal evidentiary basis supporting links between homosexuality and heightened risks of sexually abusive behaviours - instead, they comprehensively debunk such claims.

Statistical analysis reveals that 'unnatural offences' consistently constitute less than 1.2% of all sexual crimes against children annually, while defilement cases overwhelmingly involve heterosexual male perpetrators and female victims. This pattern remains consistent across different data sources and time periods, contradicting fundamental assumptions underlying discriminatory legislation. The data demonstrates that focusing legislative and enforcement attention on LGBTQ+ individuals represents a fundamental misallocation of resources that fails to address documented patterns of child sexual abuse.

The analysis of institutional responses reveals additional evidence of discrimination's irrationality. Government agencies including the Directorate of Public Prosecutions, Uganda Police Force, and Ministry of Gender failed to provide statistical data supporting claims about LGBTQ+ individuals that supposedly justified the Anti-Homosexuality Act. This absence of supporting evidence from institutions responsible for child protection and law enforcement suggests that discriminatory legislation was enacted without adequate factual investigation or evidence-based policymaking.

Healthcare data provides further evidence contradicting discriminatory narratives. The Uganda Population-based HIV Impact Assessment 2020-2021 found HIV prevalence among men who have sex with men at 5.1% compared to 5.7% in the general adult population, contradicting stereotypes about disproportionate health risks. Research consistently demonstrates that criminalisation increases rather than decreases public health risks by driving vulnerable populations away from healthcare services, making discriminatory legislation counter-productive even from a

public health perspective. The examination of court cases reveals that discriminatory assumptions often lead to wrongful prosecutions and human rights violations. Cases like *Uganda v. Mukisa Kim and Mukasa Jackson* demonstrate how anti-LGBTQ+ laws enable arbitrary arrests, human rights violations, and prosecutions that ultimately fail due to lack of evidence. Such cases illustrate how discriminatory legislation creates systemic injustices while failing to achieve any legitimate governmental purpose.

#### **5.2.4 International Human Rights Frameworks and Constitutional Obligations**

The contextualisation of legal analysis against international human rights frameworks on equality and non-discrimination protections for LGBTQ+ persons reveals that Uganda's discriminatory legislation violates multiple international obligations. The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and African Charter on Human and Peoples' Rights all establish comprehensive non-discrimination protections that extend to sexual orientation and gender identity, even where not explicitly mentioned.

International human rights jurisprudence increasingly recognises that dignity, privacy, and equality provisions in human rights instruments protect LGBTQ+ individuals from discriminatory treatment. The Yogyakarta Principles provide authoritative interpretation of international law's application to sexual orientation and gender identity issues, establishing clear standards that Uganda's current legal framework violates. Regional human rights developments in Africa demonstrate growing recognition of LGBTQ+ rights within African human rights frameworks. The African Commission on Human and Peoples' Rights has adopted resolutions condemning discrimination based on sexual orientation and gender identity, indicating that protection of LGBTQ+ rights aligns with African human rights values rather than conflicting with them.

The comparative analysis reveals that countries successfully integrating LGBTQ+ protections with effective child safeguarding measures demonstrate that rights-based approaches enhance both equality protections and child safety. These comparative insights challenge the false dichotomy often presented between LGBTQ+ rights and child protection, showing that evidence-based approaches can advance both objectives simultaneously. International monitoring bodies increasingly scrutinize discriminatory legislation like Uganda's Anti-Homosexuality Act, viewing such laws as violations of fundamental human rights obligations. This international attention carries significant diplomatic, economic, and reputational consequences that undermine Uganda's international standing while failing to achieve any legitimate domestic policy objectives.

### **5.3 Recommendations for Legal Reform and Policy Development**

Based on the comprehensive analysis conducted throughout this dissertation, the following recommendations address the discrimination of LGBTQ+ individuals in Uganda while promoting constitutional democracy and evidence-based governance. These recommendations extend beyond LGBTQ+ issues to establish broader principles protecting all vulnerable populations from discriminatory legislation lacking factual foundation.

#### **5.3.1 Implement Evidence-Based Rational Basis Requirements in Legislative Processes**

Uganda's Parliament and judicial system should adopt comprehensive evidence-based rational basis requirements that apply to all legislation potentially affecting minority groups or fundamental rights. This recommendation extends beyond LGBTQ+ issues to establish a general principle that laws targeting or disproportionately burdening any population group must demonstrate rational connections between legislative means and legitimate governmental ends through credible empirical evidence. The proposed evidence-based rational basis framework should require legislative committees to document empirical support for any claims about targeted population groups, mandate independent research review of legislative justifications involving social science claims, establish procedures for affected communities to present counter-evidence during legislative consideration, and create judicial standards requiring genuine evidence-based analysis rather than deference to unsupported legislative assertions.

Parliament should amend the Rules of Procedure to require impact assessments for legislation affecting minority groups or fundamental rights, similar to requirements for environmental or fiscal impact assessments. These assessments should include systematic review of available evidence, consultation with relevant experts and affected communities, analysis of alternative approaches that might achieve legitimate objectives with less discriminatory impact, and clear documentation of empirical support for legislative claims and assumptions.

The judicial system should develop enhanced rational basis review standards that require genuine scrutiny of legislative justifications, particularly for laws affecting minority groups. Courts should demand credible evidence supporting legislative claims about targeted populations, reject legislative justifications contradicted by available empirical data, apply heightened scrutiny to laws based on stereotyping or prejudice against minority groups, and require clear rational connections between legislative means and legitimate governmental ends. This evidence-based rational basis framework would benefit all Ugandans by ensuring that laws reflect genuine empirical understanding rather than unfounded assumptions or prejudices. It would prevent discrimination

against any group - whether based on ethnicity, religion, disability, socioeconomic status, sexual orientation, or other characteristics - by requiring factual justification for differential treatment.

### **5.3.2 Repeal Discriminatory Legislation and Strengthen Constitutional Interpretation**

The Ugandan Parliament should repeal the Anti-Homosexuality Act in its entirety, acknowledging that the Act fails constitutional rational basis requirements due to its reliance on demonstrably false empirical claims. The repeal should be accompanied by comprehensive review of all legislation potentially affected by similar evidence-based rational basis analysis, ensuring that Uganda's legal framework reflects factual understanding rather than unfounded prejudices.

Building on the analysis of constitutional interpretation and public participation examined in Chapter Three, Uganda's judicial system should adopt interpretive frameworks that ensure meaningful enforcement of constitutional participation requirements. The Judicial Service Commission should develop comprehensive training programs for judges at all levels focusing on Justice Kakuru's participatory framework as established in *Male Mabirizi*, emphasising that constitutional participation requirements demand substantive rather than merely formal compliance.

Parliament should amend its Rules of Procedure to implement robust public participation requirements that prevent the exclusionary practices evidenced in the Anti-Homosexuality Act's legislative process. These amendments should establish minimum time requirements for public consultation that cannot be waived without extraordinary justification, mandate active outreach to affected communities rather than passive invitation processes, require detailed documentation of public input and legislative responses, and establish appeal procedures for groups denied meaningful participation opportunities. The Attorney General's office should develop litigation strategies supporting enhanced constitutional interpretation that protects both democratic participation and minority rights. This should include strategic intervention in cases involving constitutional participation requirements, development of legal arguments supporting robust interpretation of equality and participation provisions, and coordination with civil society organisations pursuing constitutional litigation.

### **5.3.3 Develop Comprehensive Anti-Discrimination Legislation**

Uganda should enact comprehensive anti-discrimination legislation explicitly including sexual orientation and gender identity as protected characteristics, while establishing broader protections against discrimination lacking rational empirical foundation. This legislation should incorporate

the evidence-based rational basis framework developed in this research, ensuring protection for all groups potentially targeted by discriminatory policies. The anti-discrimination legislation should establish clear legal remedies for discrimination victims, including civil causes of action, administrative complaint procedures, injunctive relief against discriminatory practices, and damages for discrimination-related harms. It should create institutional mechanisms for monitoring and enforcement, including expanded mandate for the Uganda Human Rights Commission, specialized courts or tribunals for discrimination cases, training programs for law enforcement and judicial officers, and regular reporting on discrimination trends and legal responses. The legislation should address intersectional discrimination recognising that individuals may face multiple, compounding forms of discrimination based on various characteristics. It should also provide specific protections for human rights defenders, including those advocating for LGBTQ+ rights and other marginalised communities, prohibiting harassment, intimidation, or retaliation against individuals advocating for human rights.

#### **5.3.4 Reform Child Protection Framework Based on Empirical Evidence**

Drawing on the empirical analysis conducted in Chapter Four, Uganda should comprehensively reform child protection laws and policies to reflect evidence-based understanding of actual risk factors and protection needs. The Ministry of Gender, Labour and Social Development should lead systematic review of existing child protection frameworks, identifying provisions based on unfounded assumptions rather than empirical evidence. Reformed child protection laws should focus resources on documented risk factors including institutional abuse in schools and other facilities, family violence and neglect, commercial sexual exploitation, and trafficking. The reforms should establish evidence-based prevention programs, strengthen support services for abuse survivors, improve inter-agency coordination and information sharing, and create accountability mechanisms for institutions with child protection responsibilities. The reformed framework should specifically address the vulnerabilities of LGBTQ+ children and youth, who face heightened risks of family rejection, school-based discrimination, and various forms of abuse. This should include anti-bullying policies addressing discrimination based on actual or perceived sexual orientation or gender identity, family support and counselling services addressing LGBTQ+ youth issues, and specialized support services for LGBTQ+ youth experiencing family rejection or homelessness.

### **5.3.5 Strengthen Democratic Institutions and Human Rights Protection**

Rather than establishing new institutions, Parliament should strengthen the existing Uganda Human Rights Commission by amending the Uganda Human Rights Commission Act to explicitly include sexual orientation and gender identity within the Commission's mandate. This amendment should clarify the Commission's authority to investigate discrimination based on these characteristics, enhance the Commission's powers to make binding recommendations for legal and policy reform, and require regular reporting on the status of minority rights in Uganda. The enhanced Commission should receive adequate funding and resources to effectively address human rights issues, including specialized staff training on various forms of discrimination, development of expertise in comparative human rights jurisprudence, establishment of partnerships with academic institutions and civil society organisations, and creation of outreach programs to marginalised communities. Uganda should establish comprehensive, ethical frameworks for data collection and research relevant to both child protection and human rights issues. The Uganda Bureau of Statistics should develop methodologies for collecting accurate data on discrimination and abuse that protects victim privacy while enabling evidence-based policy development. The National Council for Science and Technology should mandate and fund regular research on marginalised community experiences, conducted in partnership with academic institutions and civil society organisations.

### **5.3.6 Transform Education, Media, and Professional Training**

Uganda's law schools should fundamentally reform their curricula to include mandatory courses on constitutional interpretation, human rights law, and evidence-based legal analysis. These courses should emphasise critical examination of discriminatory laws and the application of rational basis theory to legislative analysis. The Law Development Centre should establish specialized training programs for practicing lawyers, focusing on strategic litigation techniques for challenging discriminatory legislation. The Ministry of Education should reform school curricula to include comprehensive education about constitutional rights, democratic governance, and critical thinking skills. Students should learn to evaluate claims about different population groups using evidence-based analysis, understand the historical construction of discriminatory narratives, and appreciate Uganda's constitutional principles of equality and non-discrimination. The Uganda Communications Commission should develop comprehensive media guidelines addressing discriminatory reporting about marginalised groups. These guidelines should prohibit the publication of unverified claims linking minority status to criminal behaviour, require factual

accuracy in reporting on discrimination and human rights issues, and establish clear consequences for media outlets that perpetuate harmful stereotypes without factual basis.

### **5.3.7 Establish Community Dialogue and Reconciliation Programs**

Uganda should establish nationwide community dialogue programs addressing prejudice, discrimination, and social cohesion. These programs should bring together diverse community members including religious leaders, traditional authorities, youth representatives, women's groups, and members of marginalised communities to engage in structured conversations about constitutional values, human rights, and social inclusion. The dialogue programs should be facilitated by trained moderators who can guide conversations toward evidence-based understanding rather than perpetuating stereotypes. Participants should examine actual data about different population groups, learn about constitutional principles of equality and non-discrimination, explore successful models of inclusive communities from other contexts, and develop local strategies for promoting social cohesion while respecting human rights. Regional reconciliation centres should be established to support communities healing from discrimination-related conflicts. These centres would provide mediation services for discrimination-related disputes, counselling support for individuals affected by prejudice and discrimination, community education programs addressing the roots of discrimination, and advocacy training for local human rights defenders.

### **5.3.8 Comprehensive Sector Reforms for Inclusion and Non-Discrimination**

The Ministry of Health should implement comprehensive anti-discrimination policies for all healthcare facilities, prohibiting discrimination based on any protected characteristic. Healthcare workers should receive mandatory training on providing culturally competent care to all patients, recognising and addressing healthcare disparities affecting marginalised communities, and maintaining professional ethics when personal beliefs conflict with patient care responsibilities. Uganda should enact comprehensive employment anti-discrimination legislation explicitly prohibiting workplace discrimination based on sexual orientation, gender identity, and other protected characteristics. This legislation should cover all aspects of employment including hiring, promotion, compensation, benefits, and termination decisions. The Ministry of Gender should establish workplace discrimination monitoring systems, tracking trends in discrimination complaints and their resolution. Government procurement policies should be reformed to encourage contracting with businesses owned by members of marginalised communities, providing economic opportunities while demonstrating government commitment to inclusion and

non-discrimination. Targeted economic empowerment programs should be established for individuals who have experienced discrimination, including skills training, entrepreneurship support, and access to credit and business development services.

#### **5.4 Areas for Further Study**

While this dissertation has provided a comprehensive analysis of the discrimination of LGBTQ+ individuals in Uganda, particularly in relation to unfounded claims of child sexual abuse, several areas warrant further investigation:

Conduct long-term studies tracking changes in public perceptions towards LGBTQ+ individuals in Uganda, examining the impact of legal reforms, public education initiatives, and cultural shifts over time. Explore in greater depth the compounded discrimination faced by LGBTQ+ individuals who also belong to other marginalised groups, such as ethnic minorities, persons with disabilities, or those from lower socioeconomic backgrounds.

Analyse the broader economic consequences of anti-LGBTQ+ legislation on Uganda's development, including effects on foreign investment, tourism, and international aid. Conduct a more extensive comparative study of successful legal reform strategies in other African countries and globally, identifying transferable lessons for the Ugandan context. Investigate the long-term mental health impacts of discriminatory laws and societal attitudes on LGBTQ+ individuals in Uganda, particularly youth and young adults.

Evaluate the impact of human rights education programs in schools and communities on changing attitudes towards LGBTQ+ individuals and challenging harmful stereotypes. Examine the influence of various media platforms in shaping public discourse around LGBTQ+ rights and child protection in Uganda. Study the resilience factors and coping mechanisms employed by LGBTQ+ individuals and communities in navigating discriminatory environments. Assess how discriminatory laws and attitudes affect access to the right to health, especially HIV/AIDS prevention, testing, and treatment services for LGBTQ+ individuals. Investigate the existing formal and informal support systems available to LGBTQ+ individuals in Uganda, and identify gaps in legal aid and social services.

These areas of further study would contribute to a more nuanced understanding of the challenges faced by LGBTQ+ individuals in Uganda and inform evidence-based strategies for promoting equality and non-discrimination. By addressing these knowledge gaps, future research can support more effective legal reforms and policy interventions to protect the rights of sexual and gender minorities in Uganda and beyond.

## **5.5 Implementation Timeline and Monitoring Framework**

The comprehensive legal and policy reforms recommended in this chapter require systematic implementation and ongoing evaluation to ensure their effectiveness in addressing discrimination and promoting constitutional compliance. Successful transformation of Uganda's legal framework cannot be achieved through piecemeal or ad hoc approaches but demands coordinated, evidence-based implementation with clear timelines, measurable benchmarks, and robust accountability mechanisms. This section outlines a structured approach to implementing the recommended reforms while establishing monitoring systems that can track progress, identify implementation challenges, and ensure that legal changes translate into meaningful protection for all Ugandans, particularly marginalised communities.

The implementation framework proposed here recognises that legal reform is a complex process requiring coordination across multiple institutions, sustained political commitment, and ongoing engagement with affected communities. Drawing on comparative experiences from other jurisdictions that have successfully implemented similar reforms, this section provides practical guidance for transforming the recommendations outlined above into concrete legal and policy changes that strengthen Uganda's constitutional democracy while advancing human rights protection for all citizens.

### **5.5.1 Phased Implementation Strategy**

The recommendations outlined above should be implemented through a coordinated, phased approach over a five-year period to ensure systematic and sustainable legal and policy reform. Phase One (Years 1-2) should focus on immediate legal reforms including repeal of the Anti-Homosexuality Act, amendment of the Uganda Human Rights Commission Act, and development of evidence-based rational basis requirements for legislative review. Phase Two (Years 2-4) should concentrate on institutional capacity building including judicial training programs, law enforcement education initiatives, and development of comprehensive anti-discrimination legislation. Phase Three (Years 4-5) should emphasise consolidation and evaluation, including assessment of reform effectiveness, adjustment of policies based on implementation experience, and development of long-term sustainability mechanisms.

### **5.5.2 Monitoring and Evaluation Framework**

Implementation of these recommendations requires robust monitoring and evaluation mechanisms to ensure effectiveness and identify areas requiring adjustment. The Uganda Human

Rights Commission should coordinate regular assessment of legal reform implementation, tracking both legislative and policy changes and their practical impact on affected communities. This monitoring should include annual reports on the status of LGBTQ+ rights in Uganda, regular consultation with LGBTQ+ communities and civil society organisations, coordination with international human rights monitoring bodies, and systematic evaluation of institutional capacity and performance.

Academic institutions should conduct independent research evaluating the effectiveness of legal and policy reforms in addressing discrimination and promoting equality. This research should employ mixed-method approaches including quantitative analysis of legal and policy outcomes, qualitative assessment of community experiences and perspectives, comparative analysis with similar reform efforts in other jurisdictions, and longitudinal tracking of social attitude changes over time.

## **5.6 International Cooperation and Technical Assistance**

The implementation of these recommendations would benefit from strategic international cooperation and technical assistance while respecting Uganda's sovereignty and cultural context. Uganda should engage with regional human rights bodies including the African Commission on Human and Peoples' Rights to develop regionally appropriate approaches to LGBTQ+ rights protection. This engagement should include participation in regional dialogues on human rights and constitutional democracy, sharing of experiences and best practices with other African countries, and collaboration on research and capacity building initiatives.

International technical assistance should focus on areas where external expertise can support domestic reform efforts without imposing external models inappropriate to Uganda's context. Priority areas should include judicial training on comparative constitutional interpretation, development of evidence-based policy making capabilities, strengthening of human rights monitoring and reporting systems, and support for civil society capacity building initiatives.

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