

Uganda's Anti-Homosexuality Act is Set Aside by Uganda's Constitutional Court - A Commissioner's Perspective



Today, I joined in breathing the collective sigh of relief heaved by LGBTI individuals and human rights activists present in the Constitutional Court when it dealt a fatal blow to the draconian Anti-Homosexuality Act (AHA), declaring it null and void.

The court was deciding on a petition that called for the nullification of the Act challenging several of its provisions that violated Uganda's 1995 Constitution. Among the rights under threat were those on equality, non-discrimination, privacy and dignity. But the petition also challenged the procedure of passing the law without the requisite quorum. The rules of procedure in parliament require the presence of at least one-third of MPs before any bill is voted upon, and for the Speaker to take certain steps whenever a question is raised about quorum.

The Constitutional Court held that Speaker Rebecca Kadaga 'committed an illegality' when she allowed the AHA to be passed without quorum, rendering the law null and void. It was a significant victory for the observance of constitutionalism and the respect for human rights in Uganda. Most importantly, it signaled to policy makers that they cannot contravene the rule of law with impunity. The verdict will also help to put an end to the actions of vigilantes and autocratic government officials alike who had been emboldened to take all manner of discriminatory and unjust actions. For example, the minister of Ethics and Integrity, Reverend Father Simon Lokodo had attempted to discontinue several programs of Makerere University's School of Law alleging that they were 'promoting homosexuality' under the Act.

The victory would have been sweeter had the Constitutional Court deliberated on the substantive elements of the Petition which challenged the criminalization of homosexuality and the numerous violations of fundamental rights and freedoms enshrined in the law. The Act imposed a life sentence to anyone engaging in homosexual activities and various prison sentences for those convicted of aiding, abetting or promoting homosexuality. However, the court's verdict on the procedural issue of quorum nipped the opportunity of a strong and affirmative statement about the substantive provision of the law in the bud.

The state may appeal the judgment in the Supreme Court which will prolong the agony and the possibility of continued violations of members of the LGBTI community. There is also a possibility of re-tableting the bill in parliament. However, given the politics and pressure that has accompanied this law since it was first introduced in 2009, chances of this course are slim. For now, we bask in the euphoria of this legal victory.

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