



## ARTICLE

# LESBIAN, GAY, BISEXUAL, AND TRANSGENDER (LGBT) PEOPLE AND RIGHTS IN AFRICA: AN EXPOSITION OF DOMESTIC LAW AND CONTEMPORARY GLOBAL POLITICS

Agama Ferdinand Onwe\*

## Abstract

*African States and people are still homophobic. Accordingly, most Africans have an aversion and negative view regarding LGBT practices, which are still considered taboo in the greater part of the continent. Despite external pressures, especially from the West, and some international organizations, many African States have refused to consider increasing the rights of LGBT people but rather have enacted laws criminalizing and increasing the sanctions against LGBT practice. Accordingly, for over three decades now, homosexuality has become an issue of political contestation across the continent, with authorities criminalizing and sanctioning every form of homosexual activity. Using doctrinal method, this study, therefore, seeks to examine the current global LGBT politics in relation to the anti-homosexual laws and their combined effects on LGBT rights in Africa. It also explores the nature of LGBT persons and rights in Africa as a result of non-acceptance by the States and the society. Additionally, the study discusses the role of the acronym (LGBT) and other related terms and examines why Africa is still homophobic. It concludes that LGBT people and rights still face major difficulties in Africa despite efforts by LGBT proponents globally. Considering the religious and cultural connotation/undertone of LGBT rights issue and, given that Africa is a religiously and culturally conservative continent, the study recommends that, any approach by the Western powers and other adherents of homosexual rights to indoctrinate Africa on homosexuality must be cautious and toe the line of persuasion rather than confrontation.*

**Keywords:** LGBT, LGBT Rights, Domestic Law, African LGBT, Global Politics

---

\* (LLB, BL, LLM, PhD) fedinchrist@yahoo.com, fagama@noun.edu.ng 08039368014

## 1. Introduction

Conundrums relating to sexuality, sexual orientation, gender identity and expression have continued to divide opinion across the globe. Specifically, in Africa, for over three (3) decades now, LGBT has become an issue of political contestation across the continent, with authorities criminalizing and sanctioning every form of homosexual activity. Irrespective of the trends towards greater LGBT rights in advanced democracies, the rights of sexual minorities are restricted throughout Africa. Greater part of the continent maintains aversive disposition when it comes to LGBT people and rights. Homophobic behaviour towards LGBT persons in the continent is found among African people and the various strata of political, religious and traditional leadership. When it comes to sexual orientation and gender identity, majority of African people and States regard LGBT behaviour as a taboo. Accordingly, most of African States still criminalise homosexual behaviours. For instance, during the 2011, the United Nations General Assembly Declaration for LGBT rights in which State parties were given a chance to express their position on the topic, only few African States<sup>1</sup> expressed their support for LGBT people and rights. Majority of African countries were opposed to it. Over a decade now, some advanced democracies, especially the West, started taking steps towards implementing laws that limit or prohibit general budget support to countries that continue to restrict LGBT people's rights and refuse to reform their laws banning homosexuality<sup>2</sup>. In spite of the threats, many African countries have refused to consider increasing LGBT rights, instead, in some cases have drafted laws that impose stricter sanctions against LGBT people<sup>3</sup>. It was even within the period of this declaration that many African States began to enact more stringent laws and sentences against homosexual activities. Uganda's Anti-Homosexuality Act, for instance, was enacted between 2009 and 2014 which originally proposed death sentence for some same-sex crimes, but for the international backlash<sup>4</sup>. Ghana recently enacted Anti-Gay law as most Africans believe that LGBT behaviour is foreign to Africa and being not part of our

---

<sup>1</sup>Cape Verde, Central African Republic, Gabon, Guinea-Bissau, Mauritius, Rwanda, São Tomé and Príncipe, Seychelles, Sierra Leone, and South Africa

<sup>2</sup>For instance, the then UK Prime Minister, David Cameron threatened to withhold UK aid from governments that do not reform legislation banning homosexuality. "*Cameron threat to dock some UK aid to anti-gay nations*", *BBC News*, 30 October 2011" < [https://en.wikipedia.org/wiki/LGBT\\_rights\\_in\\_Africa](https://en.wikipedia.org/wiki/LGBT_rights_in_Africa)>. Accessed on 23 March, 2023.

<sup>3</sup> '*Uganda fury at David Cameron aid threat over gay rights*', (31 October 2011) *BBC News*. < <https://www.bbc.com/news/world-africa-15524013>>. Accessed on 23 March, 2023.

<sup>4</sup>D. Sarah, et al, 'African, Religious, and Tolerant? How Religious Diversity Shapes Attitudes Toward Sexual Minorities in Africa', (2020) *Politics and Religion*. 13 (2): 273–303

culture, was imported into the continent from other parts of the world. This perhaps, informed the reason why the former president of Kenya, *Uhuru Kenyatta*, like most African leaders and people would, maintained that our (African) culture and societies do not accept homosexuality<sup>5</sup>.

This work discusses the meaning of the acronym (LGBT) and other related terms, examines the view of Africa on homosexuality and why Africa is still homophobic. It explores the nature of LGBT persons' rights in Africa, examines the current global LGBT politics vis-a-vis the anti-homosexual laws and their combine effects on LGBT rights in the continent.

The article is divided into seven sections. It commences with an introduction. Section two discusses the meaning of LGBT and other related terms while section three examines the concept of LGBT in African perspective. Section four considers the rights of LGBT people in Africa and section five investigates the impacts of domestic laws on their legal rights, unpacking the reasons for anti-LGBT laws in the continent. Section 6 explores the current global politics on African LGBT politics and rights while section seven concludes the study and recommends persuasive, rather than confrontational approach if Africa can be coaxed to accept homosexuality.

## 2. Meaning of LGBT

LGBT is an initialism that has been in use since 1990s and it represents the terms 'lesbian, gay, bisexual and transgender'<sup>6</sup>. Just like some of its common variants, LGBT functions as an umbrella term for certain sexualities and sexual orientations. It actually describes the distinct groups within the gay culture and community. While these terms have increasing global resonance, other terms<sup>7</sup> may be used to describe people who are attracted to persons of the same sex and those who have non-binary gender identities by different people in different contexts<sup>8</sup>. It is therefore particularly important to use and respect the names, terms and pronouns that people use to refer to themselves. In a human rights context, LGBT people face both common and distinct challenges. Accordingly, persons who are bisexual or transgender have not only been originally and traditionally left out, or

---

<sup>5</sup>B Alimi, 'If you say being gay is not African, you don't know your history', (2015), A week in Africa, LGBTQ+ rights. <<https://www.theguardian.com/commentisfree/2015/sep/09/being-gay-african-history-homosexuality-christianity>>. Accessed on 23 March, 2023.

<sup>6</sup>C Mike, 'Approaches to Research on Intersectionality: Perspectives on Gender, LGBT, and Racial/Ethnic Identities', (2013) *Sex Roles*, 68.11-12<

<sup>7</sup>Such as 'hijra, meti, lala, skesana, motsoalle, mithli, kuchu, kawein, travesty, muxé, fa'afafine, fakaleiti, hamjensgara and Two-Spirit'

<sup>8</sup>'OHCHR and the Human Rights of LGBT People'< <https://www.ohchr.org/en/sexual-orientation-and-gender-identity>>. Accessed on 22 June, 2023.

underrepresented in social structures, research studies and health initiatives but faced apparent rejections.

There are other terms that bear some relationship with LGBT that require mention and explanation in this study. Some of these terms include:<sup>9</sup>

**Ally:** A person who challenges heterosexism, sexism, homophobia, biphobia, transphobia and heterosexual privilege in themselves and others based on concern for the well-being of LGBT persons.

**Asexuality:** This describes a person who has no sexual attraction or a desire for partnered sexuality. Asexuality is different from celibacy, which is the deliberate abstention from sexual activity.

**Biphobia:** Fear or hatred of people who are bisexual, pansexual, or omnisexual.

**Bisexual:** A person whose primary sexual and affectional orientation is toward people of different genders

**Gay:** A sexual orientation toward people of the same gender.

**Gender Expression:** The way in which one expresses oneself, with regard to dress, mannerisms and/or behaviours that society characterizes as "masculine" or "feminine."

**Genderqueer:** A person whose gender identity and/or gender expression falls outside of the usual societal norm for their assigned sex, is beyond genders, or is some amalgamation of them.

**Heterosexism:** The belief that all people are or should be heterosexual. Heterosexism excludes the needs, concerns, and life styles of LGBT people while it promotes heterosexual people.

**Heterosexuality:** A sexual orientation in which a person feels physically and emotionally attracted to people of a gender other than their own.

**Homophobia:** The irrational dislike and fear of LGBT people. Homophobia occurs in form of prejudice, discrimination, harassment, and acts of violence brought on by fear and hatred.

**Homosexual/Homosexuality:** A sexual orientation in which a person has the desire and feels physically and emotionally attracted to people of the same gender.

---

<sup>9</sup>Lesbian, Gay, Bisexual and Transgender Resource Center' < <https://lgbt.ucsf.edu/glossary-terms>>. Accessed on June 20, 2023.

**Intersex:** People who, without medical intervention, develop primary or secondary sex characteristics that do not fit properly into society's definitions of male or female.

**Lesbian:** A woman who is sexually or romantically attracted to people of the same gender.

**Pansexual/Omnisexual:** Terms used to describe people who have romantic, sexual or affectional desire for people of all genders and sexes.

**Sexual Orientation:** An enduring emotional, romantic, or sexual attraction. Sexual orientation is fluid.

**Transphobia:** The fear or dislike of transgender people or people who do not conform to the society's gender role expectations.

**Transgender:** One whose gender identity or expression does not fit assigned birth sex and gender; a gender outside of the man/woman binary; Having no gender or multiple genders.

### **3. Discussing LGBT in African Perspective**

LGBT was once hated and criminalized by most countries of the world including the West<sup>10</sup>. This is commonly described as 'homophobia' and often manifests in the form of prejudice, discrimination, harassment, as well as acts of violence arising from fear and hatred. Experience shows that homophobia occurs on personal, institutional, societal and state levels. In the modern Africa, most States are constitutional democracies that guarantee extensive human rights and fundamental freedoms, and safeguard the dignity of their citizens<sup>11</sup>. However, right to express sexuality or gender identity was never included in the range of rights afforded by these constitutions. The reason might not be far from the general belief in Africa, that homosexuality is contrary to morals, public interest, protection and progress of the community<sup>12</sup>. It is in line with this belief that former Zimbabwe President, *Robert Mugabe* was quoted as saying, 'we do not believe they (gay men and lesbians) have any rights at all', stressing that homosexuality is "un-African, a disease coming from so-called developed nations."<sup>13</sup> In the same way, the former

---

<sup>10</sup>Huma Dignity Trust, 'A History of LGBT Criminalisation' <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>. Accessed on 17 November, 2023.

<sup>11</sup>M. O. Ajei, 'Homosexuality and Africa: A Philosopher's Perspective' (2020). <https://theconversation.com/homosexuality-and-africa-a-philosophers-perspective-185536>. Accessed on 27 July, 2023.

<sup>12</sup>*Ibid.*

<sup>13</sup>'More Than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa', (May, 2023). <https://www.hrw.org/report/2003/05/13/more-name/state-sponsored-homophobia-and-its-consequences-southern-africa>. Accessed on 27 July, 2023.

Namibian president *Sam Nujoma*, while deriding the idea of LGBT rights revealed that ‘most of ardent supporters of this perverts are Europeans who imagine themselves to be the bulwark of civilization and enlightenment...’<sup>14</sup>

The same position is maintained among African peoples and leaders including Nigeria, where the former President Goodluck Jonathan signed the Same-Sex Marriage (Prohibition) Act on January 7, 2014 a very stern anti-LGBT Bill into law before leaving office in 2015<sup>15</sup>. State-sponsored homophobia had been rampant across Africa. The former Ugandan President *Yoweri Museveni* was quoted as saying, "I have told the Criminal Investigations Department (CID) to look for homosexuals, lock them up and charge them’<sup>16</sup>. The same situation goes for Zimbabwe, Namibia, Zambia, and Botswana, even in South Africa where the constitution has promised an end to discrimination based on sexual orientation and gender identity<sup>17</sup>. President *Sam Nujoma* referred to lesbians and homosexuality as madness and maintained that ‘in Namibia, there will be no lesbian and homosexual’ and cautioned the West to remain with their cultures in Europe.<sup>18</sup> It is doubtful though, whether homosexuality had been part of European culture originally. The doubt is based on the fact that, even sodomy laws which criminalize certain sexual acts including homosexuality<sup>19</sup> was deep rooted in the West and therefore, have colonial origin. In fact, homosexual activity was criminalized in most of Europe, possibly even punishable by death in the mid centuries.<sup>20</sup>

The presence of anti-homosexuality law and verbal attacks by leaders in Africa fuel intolerance and give impetus to homophobic activities by members of the public. Although, some argue that anti-homosexual laws and actions in Africa and other parts of the world violate certain aspects of international human rights norms<sup>21</sup>, the proponents are yet to clearly and convincingly show, at what point LGBT rights became part of the concept of human rights. Although, most African States are constitutional democracies that guarantee extensive fundamental rights and freedoms, and

---

<sup>14</sup>C Dunton and M. Palmberg, ‘Human Rights and Homosexuality in Southern Africa’, (1996) *Current African Issues* 19. Pp. 9-10.

<sup>15</sup>Same-Sex Marriage (Prohibition) Act, 2014.

<sup>16</sup>More Than a Name (n11)

<sup>17</sup>*Ibid.*

<sup>18</sup>C. Maletsky, "Namibia: Madness 'on the loose,' says Nujoma," (April 23, 2001) <https://allafrica.com/stories/200104230157.html>. Accessed on 24 November, 2023.

<sup>19</sup>S. Andrew, "Unnatural Law" (24 March 2003) *The New Republic*. Vol. 228, No. 11.

<sup>20</sup>A B Goldstein, ‘History, Homosexuality and Political Venues: Searching for the Hidden Determinants Bowers V. Hardwick’ (1988) *The Yale Law Journal*, Vol. 97. No.6.

<sup>21</sup>More Than a Name (n15)

safeguard human dignity of their citizens, the so-called ‘human sexual rights’ are not within the purview<sup>22</sup>. Homosexuality has been widely rejected by most African States and people on the ground of public interest, culture, religion<sup>23</sup>, moral and protection of the community<sup>24</sup>. Even Ghana which is believed to have more liberal constitution regarding LGBT rights; has enacted antigay law in 2024 to promote “proper human sexual rights and Ghanaian family values, and ban the promotion of and advocacy for LGBTQ+ practice”<sup>25</sup>. Apparently, the rejection of homosexual activities is common to most African States.<sup>26</sup>

#### **4. LGBT People and Rights in Africa**

Some LGBT proponents have argued that many African countries have poor ‘reputations’ with regard to LGBT rights<sup>27</sup> and that sexual and gender minorities are being marginalised by the political, religious and traditional leaders in the continent. Accordingly, instances of violence against LGBT people in different States of Africa are still rampant. This ranges from physical assault to murder of LGBT persons by security forces and members of the public<sup>28</sup>. The social, political, religious and legal difficulties faced by LGBT persons cut across Africa, even in countries like South Africa where they had been assured of legal protections.

For instance, not less than twenty-four (24) people were killed in bias-motivated attacks within 2021 in South Africa.<sup>29</sup> Cameroon still actively enforces *Article 347* of its Penal Code, which penalizes same-sex relations with up to five years jail terms. The Article criminalises sexual contact between members of the same sex which attracts ‘a penalty of six (6) months to five (5) years in prison and a fine of CFA francs 20,000 to 200,000. If the prohibited acts are carried out with a minor of sixteen (16) to twenty-one years (21) of age, the penalties are doubled. During the first quarter of 2021, not less than 27 (27) persons were arrested in Cameroon in connection to

---

<sup>22</sup>M O Ajei, ‘Homosexuality and Africa: A Philosopher’s Perspective’, (2020) <https://theconversation.com/homosexuality-and-africa-a-philosophers-perspective-185536>. Last accessed on 30 October, 2023.

<sup>23</sup>From religious viewpoints, homosexuality is unacceptable because, it is sinful, being contradictory to the word and will of God

<sup>24</sup>M O Ajei (n22)

<sup>25</sup> Memorandum, Promotion of Proper Human Rights Sexual Rights and Ghanaian Family Values Bill, 2021.

<sup>26</sup>M O Ajei (n24)

<sup>27</sup>G Reid, ‘Progress and Setbacks on LGBT Rights in Africa: An Overview of the Last Year’ (2022) *Daily Maverick* <https://www.hrw.org/news/2022/06/22/progress-and-setbacks-lgbt-rights-africa-overview-last-year>. Accessed on 31 October, 2023.

<sup>28</sup>*Ibid.*

<sup>29</sup>*Ibid.*

homosexual conducts, and in the same period in 2022, at least eleven (11) persons were victims of mob violence who were later detained on ground of consensual same-sex conduct as well as gender non-conformity<sup>30</sup>. Also, Tunisian security agents have reportedly targeted activists promoting activities related to sexual orientation and gender identity at protests, in the form of indiscriminate arrest, physical assault, and threats. In like manner, the Egyptian security forces have continued to engage in the arrest, detention and torture of LGBT people<sup>31</sup>. In June 2021, five men accused of homosexual conduct were arrested in Kano State, Nigeria by a religious police unit that enforces Sharia, or Islamic law.

#### 4.1 Glimpse of Hope for African LGBT People

While African LGBT people and rights seem to be having some breakthrough, the trend is neither comprehensive nor steadfast. Presently, about 22<sup>32</sup> African countries including all former Portuguese colonies in the continent have legalised same-sex conduct<sup>33</sup>. An African State, Cape Verde is currently a member of the ‘UN LGBTI Core Group’, a network of States seeking to advance the rights of LGBTI people within the United Nations. Also, South Africa entrenched in its Constitution, provisions<sup>34</sup> affording protections to LGBT people and rights. In essence, South Africa became the first country in the world to safeguard sexual orientation as a human right in its Constitution. In the same vein, Gabon reportedly abandoned its short experiment with criminalising same-sex conduct when its legislature reversed a 2019 law that had criminalised same-sex relation for the first time.<sup>35</sup> In Mauritius also, Equal Opportunities Act of 2008 protects against discrimination based on sexual orientation, including employment, education, and accommodation.

The question however is, how effective are these laws in relation to the protection of the so-called LGBT rights in the African countries where they exist? For instance, Ghana, which sometime in

---

<sup>30</sup>*Ibid.*

<sup>31</sup>This was noted in a joint declaration signed by 31 States and delivered by Finland at the UN Human Rights Council in March 2021, condemning Egypt’s human rights record

<sup>32</sup>A Rakhetsi, ‘Six Countries in Africa that have Legalised Same-sex Relationships in the past ten Years’ (2021) *Global Citizen* <https://www.globalcitizen.org/en/content/countries-legalized-same-sex-relationships-africa/>. Accessed on 31 October, 2023.

<sup>33</sup>G Reid (n32).

<sup>34</sup>Section 9 in particular, forbids discrimination on the basis of sex, gender or sexual orientation.

<sup>35</sup>G W Ogbangome and B Felix, ‘Gabon Votes to Reverse Ban on Homosexuality’ (2020) <<https://www.reuters.com/article/us-gabon-lgbt-lawmaking-idUSKBN240258>>. Accessed on 31 October, 2023.

2016 showed signs of tolerance for LGBT persons through its ambassador, *Sammie Pesky Eddico*, who announced at the United Nations Human Rights Council in Geneva that “Ghana’s Constitution prohibits discrimination of all kinds” and did not object to the appointment of the independent expert on sexual orientation and gender identity. But this move was short lived when in February 2021, religious and political leaders forced an LGBT centre to close in Accra Ghana<sup>36</sup>. Then in May, police arrested twenty-one (21) people attending a human rights workshop in Ho city, Volta region. In August the same year, the parliament proposed a bill so far-reaching that, simply saying you are gay or lesbian, incriminates and may land prison for up to ten (10) years<sup>37</sup>. In the same way, although, same-sex relationship is not criminalised in Rwanda, authorities and security forces are known to have engaged in indiscriminate arrest and detention of ‘people regarded as socially undesirable, including over a dozen gay and transgender people...’<sup>38</sup> In May 2019, Kenyan’ High Court upheld the country’s sodomy laws, stating that the laws were not discriminatory as they applied to everyone, irrespective of sexual orientation. The court contended that the constitution’s definition of marriage as a union between people of the opposite sex justified the criminalisation of same-sex relationships and argued that the laws did not specifically target LGBT people but the general public and so, are not discriminatory<sup>39</sup>.

Experience shows that although LGBT rights have recorded some breakthrough within the UN system in the recent years, the African group<sup>40</sup> has consistently and, with some uniformity formed opposition to the development and has been at the forefront of the charge against the appointment of an independent expert on sexual orientation and gender identity. Also, events within the African regional human rights system, indicate that even the African Union has not absorbed the concept of LGBT rights when it scolded the African Commission on Human and People’s Rights for acting

---

<sup>36</sup>Ghana Security Forces Shuts Down LGBTQ Office: Right Group’ (24 February, 2021) <https://www.aljazeera.com/news/2021/2/24/ghana-shuts-down-lgbt-office-rights-group>. Accessed on 31 October, 2023.

<sup>37</sup>G Reid (n34)

<sup>38</sup>*Ibid.*

<sup>39</sup>P Gathara, ‘How an LGBTQ Court Ruling Sent Kenya into More Panic’, (March 2023) <https://www.aljazeera.com/opinions/2023/3/15/how-an-lgbtq-court-ruling-sent-kenya-into-a-moral-panic>. Accessed on 24 November, 2023.

<sup>40</sup>Including the leaders, religious groups and the youths. See A Sguazzin, ‘African Youths Oppose Boosting LGBTQ Rights, Survey Shows’ (July 2023) <https://www.bloomberg.com/news/articles/2023-07-18/african-youths-opposed-to-boosting-lgbtq-rights-survey-shows#xj4y7vzkg>. Accessed on 2 November, 2023; K G Asiedu *et al*, ‘Across Africa, Major Churches Strongly Oppose LGBTQ Rights’, (2021) <https://apnews.com/article/lifestyle-africa-religion-relationships-united-states-3b1115a1a9ed40a1211dd508ae996141>. Accessed on 2 November, 2023

contrary to African values by recognising a lesbian group<sup>41</sup>. Consequently, later in 2022, the Commission rejected the applications for observer status from three non-governmental organisations insisting that “sexual orientation” was not an “expressly recognised right” in the African Charter on Human and Peoples’ Rights. It argued further that protecting and promoting sexual and gender minority rights was “contrary to the virtues of African values”<sup>42</sup>

## **5. Domestic Laws and their Impacts on African LGBT People and Rights**

Contrary to the Western expectation, there was an upsurge recently, of laws and policies targeting homosexuals in Africa. Accordingly, within this year alone, six African countries<sup>43</sup> took deliberate steps to tighten their anti-homosexuality laws. Study show that Africa has the largest number of States pushing for anti-LGBT laws in recent years.

**In Uganda** for instance, the Anti-Homosexuality Act was just passed in May 2023,<sup>44</sup> with some far-reaching provisions. The law creates the obligation to contact and report to the police, any ‘reasonable suspicion that a person has committed or intends to commit’ acts of homosexuality or any other offence under the law<sup>45</sup>. It imposes death penalty for ‘aggravated homosexuality,’ which includes serial offenders, same-sex rape, sex with people under eighteen (18) or the involvement of an HIV-positive person, homosexual acts committed by a person with a previous conviction of homosexuality etc.<sup>46</sup> It penalises activities such as persuading, advertising, financing, providing spaces, and operating organisations, intended to promote homosexuality with twenty (20) years’ jail term. Under the law, it is a crime to provide medical care for homosexuals, accommodate or represent them in court.

---

<sup>41</sup>The Coalition of African Lesbians (a network of 19 organisations struggling to transform Africa into a continent where lesbian and bisexual women and gender non-conforming people enjoy the full range of human rights)

<sup>42</sup>‘LGBTQ+ Rights: African Union Watchdog goes Back on its Own Word’, (March 2023) <https://theconversation.com/lgbtq-rights-african-union-watchdog-goes-back-on-its-own-word-197555>. Accessed on 2 November, 2023.

<sup>43</sup>Ghana, Kenya, Namibia, Niger, Tanzania and Uganda

<sup>44</sup>A Budoo-Scholtz, ‘Uganda’s President Signs Repressive Anti-LGBT Law’, (2023) < <https://www.hrw.org/news/2023/05/30/ugandas-president-signs-repressive-anti-lgbt-law>>. Accessed on 2 October, 2023

<sup>45</sup>Article 14

<sup>46</sup> A Richards, ‘Uganda Anti-Homosexuality Bill Sets Death Penalty as Punishment’, (2023) *The Times* [https://en.wikipedia.org/wiki/Capital\\_punishment\\_in\\_Uganda](https://en.wikipedia.org/wiki/Capital_punishment_in_Uganda). Accessed on 6 October, 2023.

Likewise, the **Ghanan** lawmakers during July 2023 unanimously approved a bill that increases penalties and creates new offences that criminalise LGBT persons<sup>47</sup>. In fact, the Ghana's Supreme Court had earlier on, dismissed a legal suit seeking to block legislature from passing a stringent anti-LGBT bill, paving the way for its ratification<sup>48</sup>. Interestingly, the Ghanan Parliament has just passed the anti-gay bill to law on 28 February, 2024<sup>49</sup>. Still in June 2023, **Namibia** through its National Council, passed two bills to define 'spouse' as 'a man and a woman' in a union of two people of the opposite sex. The bill intends to overturn a Supreme Court judgment that recognises same-sex marriages performed abroad between a Namibian citizen and a foreign spouse as legal<sup>50</sup>. For **Niger**, the Presidential Communication Office had announced that the new Penal Code included punishment for homosexual conducts. This was premised on the 'declaration by the country's then president to criminalise organisations convening, hosting or funding 'gay clubs' or advocating for LGBTQ rights'<sup>51</sup>. In **Tanzania** the lawmakers are 'debating further criminalising consensual same-sex sexual acts despite the current Penal Code already providing for life imprisonment'<sup>52</sup>. In **Kenya**, two National Assembly processes seek to introduce severer anti-gay laws. The Family Protection Bill (2023) seeks to amend the definition of 'family' in the constitution and impose harsher penalties for consensual same-sex relations. The second process is a motion to prohibit the discussion, publication and dissemination of LGBTQ+ information.

Anti-homosexual laws and homophobic attitudes are intentionally repressive, with a sweeping and negative effect on the ability of LGBT people to organize, to express themselves, to appear in the public sphere, to exercise basic freedoms, and to access essential services<sup>53</sup>. In some instances, the effect of these anti-LGBT laws goes far beyond the legal penalties they stipulate, to create and maintain prejudice and stigma.

---

<sup>47</sup> O A Maunganidze and O Cohen, 'Anti-gay Laws: Africa' Human Rights Regression' (Sept. 2023) *Institutes for Security Studies* <https://issafrica.org/iss-today/anti-gay-laws-africas-human-rights-regression>. Accessed on 2 October, 2023.

<sup>48</sup> M A Adombila and C Akorlie, 'Ghana Supreme Court Rejects Bid to Block Anti-LGBTQ Bill' (2023) <https://www.reuters.com/world/africa/ghana-supreme-court-rejects-bid-block-anti-lgbtq-bill-2023-07-19/>. Accessed on 2 October, 2023.

<sup>49</sup> O Adeduyite, 'Ghana Passes Anti-Gay Law' (February 2024) <https://punchng.com/just-in-ghana-passes-anti-gay-law/>. Accessed on 4 April, 2024.

<sup>50</sup> O A Maunganidze and O Cohen, (n46).

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> More Than a Name (n21)

## 5.1 Reasons for Anti-Homosexuality Law in Africa

There is an inextricable relation between law and the society it governs. Laws evolve over time in response to societal needs and changes, indicating a direct relationship between the two. Accordingly, the enactment, implementation and interpretation of laws are influenced by the cultural, moral as well as religious beliefs of the people within that society. It follows that the society itself shapes the evolution and enforcement of the law. Consequently, to be legally recognized, effective and useful, law must be socially and historically constructed<sup>54</sup>. On the above premise, one will be curious to understand the nature of African society that makes anti-LGBT laws thrive in the continent despite the coaxing by the West and other concerned organisations.

### i. Colonial Anti-Sodomy Laws

Many of the laws criminalising homosexual conducts, particularly in Africa, have colonial origin<sup>55</sup>. Twenty-nine (29) out of the fifty-three (53) countries in the Commonwealth have laws that criminalise same sex relations, most of which are former British colonies<sup>56</sup>. However, while the original British laws on sodomy applied only to men, countries that criminalise homosexuality today also have punishment for women who engage in same-sex conduct.<sup>57</sup> The view is that when the British Empire was introducing legal systems around the world, law against sodomy was among the laws they introduced in the formal colonies<sup>58</sup>. Anti-LGBT law is said to be ‘an often-overlooked legacy of British colonial rule in India, where in 1860, the first prohibition on sodomy was written into a penal code<sup>59</sup>. The law was eventually exported across the British colonies, stretching across roughly forty (40) places in Africa, Asia and the Pacific and, while countries had long gained independence, the laws are still on the books<sup>60</sup>. The British former Prime Minister Theresa May in 2018 reportedly ‘expressed regret for

---

<sup>54</sup>S Esudu, ‘On the Relationship Between Law and the Society Today’ (2017) *Munich, GRIN Verlag* <https://www.grin.com/document/453478>. Accessed on 6 October, 2023.

<sup>55</sup>‘Homosexuality: Countries Where it is Illegal to be Gay’ (2023) <https://www.bbc.com/news/world-43822234>. Accessed on 7 October, 2023.

<sup>56</sup>*Ibid.*

<sup>57</sup>*Ibid.*

<sup>58</sup>E Han and J O’Mahoney, ‘The British Colonial Origins of Anti-Gay Laws’, (2014) <https://www.washingtonpost.com/news/monkey-cage/wp/2014/10/30/the-british-colonial-origins-of-anti-gay-laws/> accessed on 7 October, 2023.

<sup>59</sup>This Alien Legacy, The Origins of “Sodomy” Laws in British Colonialism’ (2008) *Human Rights Watch* [https://www.hrw.org/sites/default/files/reports/lgbt1208\\_webwcover.pdf](https://www.hrw.org/sites/default/files/reports/lgbt1208_webwcover.pdf). Accessed on 7 October, 2023.

<sup>60</sup>*Ibid.*

Britain's role in criminalizing homosexuality in former colonies and urged Commonwealth countries to overhaul their anti-gay laws'<sup>61</sup>. This study however, conveys a contrary view as it maintains that it is not all about what is written on the papers/books during colonial era but all about the people's culture, belief and view on LGBT activities.

## ii. Religious and Cultural Conservatism

Africa's rejection of homosexuality is principally founded on religious and cultural factors. Conservatism refers to a cultural, social, and political philosophy that seeks to promote and to preserve traditional institutions, customs, as well as values<sup>62</sup>. Religious conservatism basically applies the teachings of particular religions to political, social and public life. This it does, sometimes by just proclaiming the value of those teachings, while in some cases, by having those teachings influence laws<sup>63</sup>. Religious conservatives typically oppose LGBT behaviours and sexual activity outside of marriage which are considered as sinful. Therefore, from religious perspective, homosexuality is sinful because it offends against God's will<sup>64</sup>. Africans are known for their commitment and tenacity to their religious teachings, values and ideas, which substantially shape their opinions and decisions. It is simple to understand in this regard, that the two dominant religions in Africa-Christianity and Islam are opposed to the concept of LGBT. Accordingly, Christian missions had and still exert a long-term impact on anti-gay attitudes in Africa<sup>65</sup> since Christian doctrines oppose homosexuality<sup>66</sup>. Also, culturally,

---

<sup>61</sup>M K Makol, 'Today's Anti-LGBTQ Laws Trace Their Roots to British Colonialism' (2022) <https://www.bloomberg.com/news/newsletters/2022-08-18/today-s-anti-lgbtq-laws-trace-their-roots-to-british-colonialism#xj4y7vzkg>. Accessed on 7 October, 2023.

<sup>62</sup>Y Hazony, 'Conservatism: A Rediscovery', (2022) *Swift Press*, 142-153.

<sup>63</sup>A Margaret *et al*, 'Sociology, Understanding a Diverse Society' (2022) at the Wayback Machine Cengage Learning, 4<sup>th</sup> Ed. (2005) pp. 469-470.

<sup>64</sup>M O Ajei, 'Homosexuality and Africa: A Philosopher's Perspective', (2022) *The Conversation Africa* <file:///C:/Users/user/Desktop/Homosexuality%20and%20Africa%20a%20philosopher's%20perspective.htm>. Accessed on 13 November, 2023.

<sup>65</sup>M Ananyev and M Poyker, 'Christian Missions and Anti-Gay Attitudes in Africa' (2021) *Journal of Economic Behaviour and Organisation*, Vol. 184, 359-374.

<sup>66</sup>**Leviticus 18:22** "Thou shalt not lie with mankind, as with womankind: it is abomination"; **Leviticus 20:13** "If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them"; **Romans 1 :26-27** "...Even their women exchanged natural sexual relations for unnatural ones, In the same way the men also abandoned natural relations with women and were inflamed with lust for one another. Men committed shameful acts with other men, and received in themselves the due penalty for their error"; **Mark 10:6** "But from the beginning of the creation God made them male and female".

majority of African people and leaders hold the view that ‘homosexuality is not only external to their traditional beliefs but also antithetical to them’.<sup>67</sup>

### **iii. Homosexuality Contradicts the Natural Law**

Aside, religious reason which tags LGBT behaviour sinful, another ground for widespread homophobic attitude in Africa is the fact that such behaviour is against the nature and its law. It has been argued in line with this thought that, in spite of the existing publicity enjoyed by the claim that ‘one’s sexual preference’ is no one’s business but one’s own, the intuition that there is something unnatural about homosexuality remains vital<sup>68</sup>. The erect penis, for instance, fits the vagina better than any other natural orifice, so, penis and vagina seem made for each other. This intuition is another way of projecting the idea that the penis is not for inserting into the anus of another man, as it is not supposed nor intended to be so used<sup>69</sup>. Accordingly, the natural law ethicists have maintained that homosexual conduct is immoral because it is unnatural<sup>70</sup>. The idea that homosexuality is unnatural has long been maintained from Plato, Aristotle, Thomas Aquinas, even till the present-day popular culture<sup>71</sup>. Modern cultural conservatives hinge their argument empirically on the absence of homosexuality in nature as evidence that it is unnatural<sup>72</sup>.

### **iv. Homosexuality is Un-African**

African leaders and peoples who oppose LGBT behaviours have consistently maintained that such conducts are un-African and therefore, view the campaigns by Western governments for LGBT rights in Africa as cultural imperialism. The ‘Africanness’ or otherwise, of homosexuality has been a debated point as some LGBT proponents have argued that the intolerance and homophobia among Africans are rather as a result of the view held by Western Missionaries who condemned the traditional practices in the continent as pagan, primitive and

---

<sup>67</sup>H Onapajo and C Isika, ‘The Global Politics of Gay Rights: The Straining Relations between the West and Africa’, (2016) *Journal of Global Analysis*, Vol. 6. No 1.

<sup>68</sup>M Levin, ‘Why Homosexuality is Abnormal’ (1984) *The Monist*, Vol. 64. No. 2 pp. 251-283.

<sup>69</sup>*Ibid.*

<sup>70</sup>S J Pope, ‘Scientific and Natural Law Analyses of Homosexuality: A Methodological Study’, (1997) *The Journal of Religious Ethics*, Vol. 25 No. 1. 89-126

<sup>71</sup>P D Hopkins, ‘Naturalizing Homosexuality: Biology, Sexual Orientation, and the Nature/Culture Distinction’, (2012) *Queer Philosophy* <https://brill.com/display/book/edcoll/9789401208352/B9789401208352-s002.xml>. Accessed on 10 October, 2023.

<sup>72</sup>*Ibid.*

evil<sup>73</sup>. This same source argues that according to the anthropologist's record, homosexuality existed in various pre-colonial African societies<sup>74</sup>. The question however is, if homosexuality existed or was recorded, how did the society react to it? Was it ever an accepted part of African culture? The mere fact that homosexuality was practiced by certain deviants in the primitive, pre-colonial Africa does not make it African.

#### v. African Family Value and Concept of Marriage.

Marriage and family are two concepts that form the nucleus of any culture across the globe, especially in Africa. Family and marriage are regarded as the foundation of human existence, hallowed and considered to be sacred because it was instituted by God himself.<sup>75</sup> Africans have a high regard for marriage and family values at all times as clearly shown in 'the sacredness of marriage institution to the social functioning of individuals and society members'<sup>76</sup>. The marriage and family remain the most basic trait of social organization in Africa and the world at large. These concepts are responsible for procreation, child upbringing and transmission of knowledge, traditional norms and values, beliefs, cultural activities and practical skills needed for continuity and future survival<sup>77</sup>. Opponents of homosexuality therefore, maintain that the practice is incompatible with values and the principles of procreation and sustainability of the family system in Africa<sup>78</sup>. Despite this, there is a perspective that patterns/practice of homosexuality had been in place in Africa prior to the colonial era<sup>79</sup>.

#### vi. Domestic and Continental Support

The success and sustenance of anti-LGBT laws in Africa is also attributable to the overwhelming supports such laws enjoy/ elicit from the citizens and other African States. The

---

<sup>73</sup>R Jaji, 'Homosexuality: "Unnafricanness" and Vulnerability', (2018) [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3148335](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3148335). Accessed on 10 October, 2023.

<sup>74</sup>*Ibid.*

<sup>75</sup>T Ojua *et al.*, 'Exploring the Neglect of African Family Value Systems and its Effect on Sustainable Development' (2014) *American Journal of Human Ecology* 3 (3).

<sup>76</sup>*Ibid.*

<sup>77</sup>*Ibid.*

<sup>78</sup>D Aarti, "Is Homosexuality 'Un-African'?", (2011) *Think Africa Press*, <<http://thinkafricapress.com/gender/homosexuality-un-african-colonialism>>. Accessed on 15 November, 2023.

<sup>79</sup>S Murray and W Roscoe, 'Boy-Wives and Female Husbands: Studies of African Homosexualities', (1998) New York" St Martins's Press.

anti-LGBT legislation is not just a product of the African leaders' attitude towards homosexuality but a true reflection of the popular disposition of African peoples on same-sex conduct. For instance, Pew Research on attitudes towards homosexuality conducted back then in 2013 revealed that the peoples of Africa and Muslim countries recorded the least places where homosexuality was accepted<sup>80</sup>. In sub-Saharan Africa, Nigerians (98%), Senegalese (96%), Ghanaians (96%), Ugandans (96%) and Kenyans (90%) were against giving homosexuality societal acceptance. Even in South Africa where same-sex conduct has some constitutional recognition, it was discovered that 61% of the population was against homosexuality<sup>81</sup>. Conclusively, anti-LGBT laws are in accordance with the cultural and religious beliefs of African people<sup>82</sup>. Above all, African States back and support themselves on the adoption and implementation of anti-LGBT laws. The West and LGBT rights activists were for instance, taken aback when even South Africa which is a major promoter of gay rights at the global level, refused to condemn other African States' anti-LGBT laws but rather gave recognition to the States' rights to adopt their own laws<sup>83</sup>.

## **6. Exposition of Global Politics on African LGBT Politics and Legal Rights**

There is currently, an increasing campaign and advocacy, especially by the West and some international organisations, for the recognition and protection of LGBT rights in the global scale. However, despite the lobby, pressure and threats, particularly from the Western powers against criminalization of LGBT behaviours, most African States are opposed to the idea of LGBT rights and have gone ahead to pass laws criminalizing homosexuality. LGBT rights issue has become one of the major issues of global politics since recently<sup>84</sup>. However, the emergence and development of the contemporary LGBT rights at the national and international levels owes its success so far, to a vast array of pro-LGBT movements that have been in existence over time<sup>85</sup>.

---

<sup>80</sup>H Onapajo and C Isika, (n67).

<sup>81</sup>Pew Research, "The Global Divide on Homosexuality", (June 2013) <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>. Accessed on 15 November, 2023.

<sup>82</sup>Al Jazeera, 'Nigeria Passes Law against Gay Relationships', (Jan. 2014) <https://www.aljazeera.com/news/2014/1/13/nigeria-passes-law-against-gay-relationships>. Accessed on 15 November, 2023.

<sup>83</sup>IOL News, 'SA Respects Uganda Anti-gay Laws: Zuma', (April 2014), <<http://www.iol.co.za/news/africa/sa-respects-uganda-anti-gay-laws-zuma-1.1673100>>. Accessed on 15 November, 2023.

<sup>84</sup>H Onapajo and C Isika, (n81).

<sup>85</sup>*Ibid.*

The former president of the Gambia *Yahya Jammeh*, while reacting to the Western threats and pressure to decriminalize same-sex conducts reportedly retorted that they will fight homosexuals the same way they are fighting malaria-causing mosquitoes.<sup>86</sup> These statements indicate much of the contradictory positions between the West and Africa when it comes to LGBT rights.

These contradictions raise a concern regarding the essence, and effect of the global LGBT politics in relation to African LGBT politics and rights. Also, the veracity of the Western concept or norm on LGBT rights still begs the question. To begin with, the emergence, movement and advocacy for LGBT human rights on the global scale is akin to the theory on norm evolution or life cycle of global norms<sup>87</sup>. In this process, norms influence in modern global politics undergoes three main stages, including norm emergence, norm cascade and internalization. The first stage, the emergence of norms, comes through persuasion by those referred to as “norm entrepreneurs”<sup>88</sup> who are State and non-State actors that actually set the agenda on an expected behaviour or standard for other actors to imbibe. This is typified in the initiation, spread and influence of LGBT rights movements in the contemporary global politics. The second stage is explained by the socialization of other actors into believing and accepting the norm so introduced, through transfer/transmission of idea, information, knowledge among others, from one population or region to another<sup>89</sup>. This process may be in form of ‘coercion, competition, learning or pressure’<sup>90</sup> The pressure and threat of the use of sanctions by Western powers against anti-LGBT African countries fall under this stage and a good indication of how powerful States often use the means of coercion to institutionalise norms in the global system<sup>91</sup> The third and last stage happens when the diffusion of the norms succeeds to the extent that the norms are accepted by everyone as a normal way of behaviour. This is the target of the Western powers and all LGBT proponents globally. There are however, frequent instances where actors remain adamant and resistant, thereby stall the transmission and diffusion process of the norms for various reasons<sup>92</sup>. This is

---

<sup>86</sup>R Staff, “Gambia’s Jammeh Calls Gays ‘Vermin’, Says to Fight like Mosquitoes”, (18 February 2014) <https://www.reuters.com/article/us-gambia-homosexuality-idUSBREA1H1S820140218>. Accessed on 14 November, 2023.

<sup>87</sup>F Martha and S Kathryn, ‘International Norms and Dynamic Change’, (1998) *International Organisation*, 52, 4.

<sup>88</sup>*Ibid.*

<sup>89</sup>C Jeffrey, ‘Norms, Institutions and National Identity in Contemporary Europe’, (1999) *International Studies Quarterly*, 43,

<sup>90</sup>H Onapajo and C Isika, (n83)

<sup>91</sup>*Ibid.*

<sup>92</sup>Some of such reasons for African position on LGBT human rights have been explained in this work.

explained by the persistent attempts by the Western powers to impose LGBT rights as an aspect of international human rights on African States and the vehement refusal by the latter.

Unlike the EU and other Western States, the issue of LGBT rights has not enjoyed a full support at the United Nations (UN) for some obvious reasons. Homosexuality as a concept, basically affects religion and culture, at the same time, the UN is an assemblage of countries with different religious and cultural backgrounds. Accordingly, politics around LGBT rights has produced two major opposing blocs<sup>93</sup> – “the Catholic-Muslim-Evangelical Alliance” and “the Western Alliance” – in the United Nations<sup>94</sup>. While the former represents group of States, which on religious and cultural grounds, are opposed to the issues relating to sexual orientation and gender identity; the latter, based on their liberal principles, supports and advocates for equal recognition and protection of LGBT human rights. As a matter of fact, the LGBT rights issue marks an uncommon experience in the history of Africa’s participation in global politics and international relations. Most African leaders seem undeterred and so, have shown a rare audacity, squaring up to the Western powers on the issue of human rights of LGBT people, in full assertion of the sovereignty of African States to determine and preserve their own values.

## **7. Conclusion**

This study reveals that LGBT people and rights still face major difficulties in Africa as a result of non-acceptance by the States and the society. Most African States are radically unreceptive to LGBT rights while homosexual behaviours are outlawed in significant parts of the continent. However, LGBT rights situation in Africa contradicts one of the recent and main foreign policies of the West on securing the recognition and protection of LGBT people and their rights around the world. They seek to achieve this policy by the use of persuasion, pressure and sanctions against the anti-LGBT States, most of which are in Africa. But, considering Africa’s religious and cultural values, many African States are unwaveringly opposed to LGBT rights and have gone ahead to enact laws criminalizing all forms of homosexuality, not minding the threats of, or any sanctions by the Western powers. The argument in favour of LGBT rights, has been that the ‘law's function

---

<sup>93</sup>V Lhant, ‘LGBT Rights on International Stage: An Analysis of Diplomatic Practice’, (2019) *LGBTQ Policy Journal* <<https://lgbtq.hkspublications.org/2019/05/22/lgbt-rights-on-the-international-stage-an-analysis-of-diplomatic-practice/>> Accessed on 16 November, 2023.

<sup>94</sup>H Onapajo and C Isika, (n91)

is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against exploitation and corruption of others ...' the law is not meant to intervene in the private life of citizens, or to seek to enforce any particular pattern of behaviour'. Based on this premise, proponents of LGBT rights conclude that homosexual relations between consenting adults in private should no longer be a criminal offence. Many African States have chosen to differ in this respect and have consistently projected African identity and value in the international politics, regarding LGBT rights.

This study while taking the path of anti-LGBT group, recommends that, considering the religious and cultural connotation/undertone of LGBT rights issue and, given that Africa is a religiously and culturally conservative continent, any approach by the Western powers and other adherents of LGBT rights to indoctrinate Africa on homosexuality must be cautious and follow the path of persuasion rather than confrontation. To achieve this, LGBT proponents must first, be able to dismantle and explain away the reasons, factors and basis upon which the rejection of homosexuality by Africans is based. This is because, even in the global politics, LGBT rights is still a divisive and controversial notion, not within the internationally agreed human rights legal framework. Consequently, it lacks the fundamental universality that international human rights generally command in the comity of nations.