

Expanded Criminalisation of Homosexuality in Uganda: A Flawed Narrative

Empirical evidence and strategic alternatives from
an African perspective



I. Is homosexuality alien to Africa?

A commonly cited reason for maintaining - or expanding - criminalisation of homosexuality is that it is a foreign phenomenon; that it is fundamentally un-African. Such a position has been outlined by many leading figures in Africa, such as Canon Taiwo of Nigeria, who said:

*They dare not come to the open. They will be shot. I can assure you that they will be stoned to death. We don't do it in Africa. It is only in the West that they are doing rubbish.*³

Although the construction of homosexuality as 'against African norms and traditions'⁴ is one of the most enduring modern discourses surrounding same-sex practises within Africa, does historical and anthropological evidence support such a position? President Yoweri Museveni has in the recent past publicly acknowledged that there were incidences of homosexuality in African traditions. He has noted that, '[in our society, there were a few homosexuals. There was no persecution, no killings and no marginalization of these people.]' This acknowledgement is in line with the writings of anthropologists that have extensively researched the issue in the region. President Museveni also acknowledged that, '[sex among Africans including heterosexuals is confidential].'⁵ It should be pointed out, however, that the President was in no way endorsing homosexuality.

Historical context

In their work anthropologists Stephen Murray and Will Roscoe provide wide-ranging evidence in support of the fact that throughout Africa's history, homosexuality has been a 'consistent and logical feature of African societies and belief systems'.⁶ Thabo Msibi of the University of Kwazulu-Natal documents many examples in Africa of same-sex desire being accommodated within pre-colonial rule.⁷ Deborah P. Amory speaks of 'a long history of diverse African peoples engaging in same sex relations'.⁸ Drawing on anthropological studies of the pre-colonial and colonial eras, it is possible to document a vast array of same-sex practises and diverse understandings of gender across the entire continent. Examples include:

- One notably 'explicit'⁹ Bushmen painting, which depicts African men engaging in same-sex sexual activity.
- In the late 1640s, a Dutch military attaché documented Nzinga, a warrior woman in the Ndongo kingdom of the Mbundu, who ruled as 'king' rather than 'queen', dressed as a man and

³ Canon Taiwo in interview with Kaoma, K., *Globalizing the Culture Wars: U.S. Conservatives, African Churches and Homophobia* (2012). Available at: <http://www.publiceye.org/publications/globalizing-the-culture-wars/pdf/africa-full-report.pdf> [last accessed 2 December 2013].

⁴ Former President of Kenya Daniel arap Moi, quoted in Mwaura, P. 'Homosexuality Un-African? It's a Big Lie' in *Daily Nation*, 5 June 2006.

⁵ See "Museveni Speaks out on Homosexuality" *The New Vision*, March 19 2013. Available at: <http://www.newvision.co.ug/news/640814-museveni-speaks-out-on-homosexuality.html>. In his statement President Museveni referred to attitudes in the past as also considering homosexuals 'deviants'.

⁶ Murray, S. and Roscoe, W., *Boy-Wives and Female Husbands: Studies of African Homosexualities* (1998), p. XV

⁷ Msibi, T., 'The Lies We Have Been Told: On (Homo) Sexuality in Africa' in *Africa Today*, Vol. 58, No. 1 (2011), p. 99

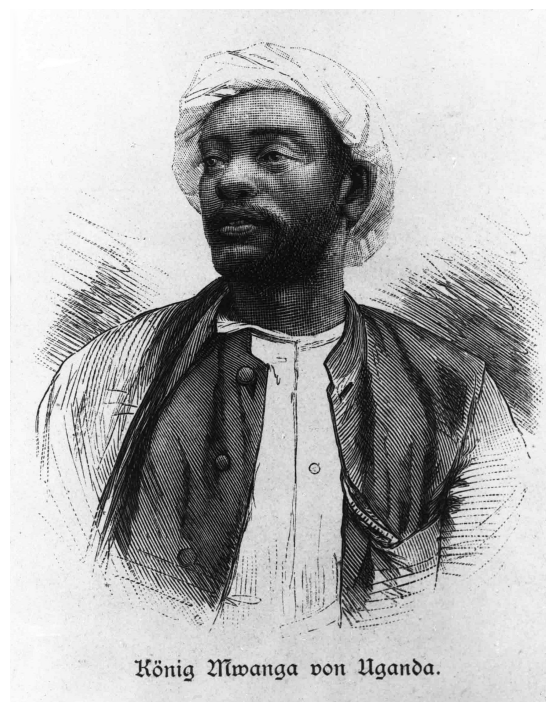
⁸ Amory, D. P., "'Homosexuality" in Africa: issues and debates' in *Journal of Opinion XXV*, No. 1, Commentaries

⁹ Epprecht, M., 'The 'Unsayings' of Indigenous Homosexualities in Zimbabwe: Mapping a Blindspot in an African Masculinity' in *Journal of Southern African Studies*, Vol. 24, No. 4, Special Issue on Masculinities in Southern Africa (1998), p. 631.

surrounded herself with a harem of young men who dressed as women and who were her 'wives'.¹⁰

- Eighteenth century anthropologist, Father J-B. Labat, documented the Ganga-Ya-Chibanda, presiding priest of the Giagues, a group within the Congo kingdom, who routinely cross-dressed and was referred to as 'grandmother'.¹¹
- In traditional, monarchical Zande culture, anthropological records described homosexuality as 'indigenous'.¹² The Azande of the Northern Congo 'routinely married'¹³ younger men who functioned as temporary wives – a practise that was institutionalised to such an extent that warriors would pay 'brideprice' to the young man's parents.
- Amongst Bantu-speaking Pouhain farmers (Bene, Bulu, Fang, Jaunde, Mokuk, Mwele, Ntum and Pangwe) in present-day Gabon and Cameroon, homosexual intercourse was known as *bian nkû'ma*¹⁴ – a medicine for wealth which was transmitted through sexual activity between men.
- Similarly in Uganda, amongst the Nilotic Lango, men who assumed 'alternative gender status'¹⁵ were known as *mukodo dako*. They were treated as women and were permitted to marry other men. Same-sex relationships were reported amongst other groups in Uganda, including the Bahima,¹⁶ the Banyoro and the Baganda. King Mwanga II, the Baganda monarch, was widely reported to have engaged in sexual relations with his male subjects.

Fig. 1 King Mwanga II of Buganda



¹⁰ Murray and Roscoe (1998) at n. 4, p. 1.

¹¹ Ibid, pp. 9-10.

¹² Evans-Pritchard, E. E., *The Azande: History and Political Institutions*. Oxford: Clarendon Press (1971), p183.

¹³ Murray and Roscoe (1998), p. XII.

¹⁴ Murray, S. (undated), 'Homosexuality in "Traditional" Sub-Saharan Africa and Contemporary South Africa', p. 9. Available at: http://semgai.free.fr/doc_et_pdf/africa_A4.pdf [last accessed 25 November 2013]

¹⁵ Msibi, (2011), at n 5 p. 99.

¹⁶ Mushanga, M., 'The Nkole of Southwestern Uganda' in Molnos, A. (ed.), *Cultural Sources Materials for Population Planning in East Africa: Briefs and Practices* (1973).

- A Jesuit working in Southern Africa in 1606 described finding ‘*Chibadi*, which are Men attired like Women, and behave themselves womanly, ashamed to be called men’.¹⁷
- In the early 17th century in present-day Angola, Portuguese priests Gaspar Azevedo and Antonius Sequerius encountered *chibados*, men who spoke, sat and dressed like women, and who entered into marriage with men. Such marriages were ‘honored and even prized’.¹⁸
- In the Iteso communities, based in northwest Kenya and Uganda, same-sex relations existed amongst men who behaved as and were socially accepted as women.¹⁹ Same-sex practises were also recorded among the Banyoro²⁰ and the Langi.²¹
- In pre-colonial Benin, homosexuality was seen as a phase that boys passed through and grew out of.²²
- There were practises of female-female marriages amongst the Nandi and Kisii of Kenya, the Igbo of Nigeria, the Nuer of Sudan and the Kuria of Tanzania.²³
- Among Cape Bantu, lesbianism was ascribed to women who were in the process of becoming chief diviners, known as *isanuses*.²⁴

This is by no means an exhaustive list. Given the overwhelming evidence of pre-colonial same-sex relations which continued into the colonial and post-colonial eras, as well as historical evidence of diverse understandings of gender identity, it is clear that homosexuality is no more ‘alien’ to Africa than it is to any other part of the world. As stated by Murray and Roscoe:

*Numerous reports also indicate that in the highly sex-segregated societies of Africa, homosexual behaviour and relationships were not uncommon among peers, both male and female, especially in the years before heterosexual marriage... These kinds of relations were identified with specific terms and were to varying degrees institutionalized.*²⁵

What the colonisers imposed on Africa was not homosexuality ‘but rather intolerance of it – and systems of surveillance and regulation for suppressing it’.²⁶

The history of anti-homosexual laws

The laws governing same-sex sexual conduct in Uganda are derived from legislation enacted in the United Kingdom and adopted in its colonies – the so-called ‘sodomy’ laws, which concerned ‘buggery’, although this was never actually defined, and ‘gross indecency’ laws, which were so vaguely worded as to give police ample ‘opportunities to arrest people on the basis of suspicion or appearance’ and could include simple intimacies between two men.²⁷

¹⁷ Murray (undated), at n. 12, p. 13.

¹⁸ Ibid.

¹⁹ Lawrance, J., *The Iteso: Fifty Years of Change in a Nilo-Hamitic Tribe of Uganda* (1957)

²⁰ Needham, R., ‘Right and left in Nyoro symbolic classification’ in Needham, R. (ed.), *Right and Left: Essays on Dual Classification* (1973)

²¹ Driberg, J., *The Lango*, (1923).

²² Tendi, B M, ‘African myths about homosexuality’, *The Guardian* (UK), 23 March 2010, available at: <http://www.theguardian.com/commentisfree/2010/mar/23/homophobia-africa-gay-rights> [last accessed 9 January 2014]

²³ Tamale, S., ‘A Human Rights Impact Assessment of the Ugandan Anti-Gay Bill’ in *Equal Rights Review*, Vol. 4 (2009), p. 50. Available at: <http://www.equalrightstrust.org/ertdocumentbank/Sylvia.pdf> [last accessed 25 September 2013].

²⁴ Murray (undated), at n. 12, p. 47.

²⁵ Murray and Roscoe (1998), at n. 4, p. 9.

²⁶ Ibid., p. XVI.

²⁷ Gupta, A., *This Alien Legacy: The Origins of “Sodomy” Laws in British Colonialism*, Human Rights Watch (2008), p. 11. Available at: http://www.hrw.org/sites/default/files/reports/lgbt1208_web.pdf [last accessed 8 October 2013]