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## To Be Gay and African: Addressing the Gross Human Rights Violations of Homosexuals in Cameroon and Uganda, and Legislative Remedies for Their Mistreatment

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# TO BE GAY AND AFRICAN: ADDRESSING THE GROSS HUMAN RIGHTS VIOLATIONS OF HOMOSEXUALS IN CAMEROON AND UGANDA, AND LEGISLATIVE REMEDIES FOR THEIR MISTREATMENT

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## INTRODUCTION

The treatment of homosexuals living in Africa, a continent comprised of fifty-four recognized states, has been anything but just, especially in recent years.<sup>1</sup> South Africa remains the only country in the entire continent that has legalized homosexuality.<sup>2</sup> As support for homosexual rights continues to grow around the world, countries

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1. The Sahrawi Arab Democratic Republic (SADR) and Somaliland have established themselves in Africa as sovereign states, but have yet to be officially recognized as sovereign African states in the eyes of the United Nations (UN).

2. David Masci et al., *Gay Marriage Around the World*, PEW RES. CTR. (Aug. 8, 2017), <http://www.pewforum.org/2017/08/08/gay-marriage-around-the-world-2013> [<https://perma.cc/Y3HZ-96HQ>].

like Cameroon and Uganda continue to foster and implement dangerous anti-homosexual cultural and social norms through existing legislation.<sup>3</sup>

Article 347-1 of Cameroon's Model Penal Code and Uganda's Penal Code of 1950 are the two dominant, ruling authorities governing the maltreatment of homosexuals in their respective countries.<sup>4</sup> In addition to Uganda's Penal Code, an anti-homosexuality bill (later ratified as existing legislation), the Anti-Homosexuality Act, was first introduced to Ugandan Parliament in 2009 and enacted as a law in 2014.<sup>5</sup> Before it was enacted as a law, the Act originally called for death penalty sentencings for repeat offenders of homosexual activity.<sup>6</sup> Sponsors of the Act required witnesses to report any sexual activity that they observed within twenty-four hours of seeing it.<sup>7</sup> The Act has played a significant and influential role in the burgeoning anti-homosexual sentiments of conservative Ugandans throughout the country.<sup>8</sup>

While South Africa has made significant advancements in its treatment of homosexuality, making it safer for homosexual individuals to live in harmony with heterosexuals, there is much progress to be made for gay people living in both Cameroon and Uganda.<sup>9</sup> Legalizing homosexuality in Uganda and Cameroon would undeniably be the best relief for their mistreatment and human rights violations.<sup>10</sup> However, this remedial measure is unlikely to pass as legislation in either country, due to the stringent biases that Cameroonian and Ugandan lawmakers have against homosexuality, and their steadfast convictions in traditional Christian ideologies.<sup>11</sup>

A more realistic alternative would be decriminalizing homosexuality by placing limitations on how the governing legislation that

3. Lucas Paoli Itaborahy & Jingshu Zhu, *State-Sponsored Homophobia*, INT'L LESBIAN GAY BISEXUAL TRANS & INTERSEX ASS'N, 22 [https://ilga.org/sites/default/files/ILGA\\_State\\_Sponsored\\_Homophobia\\_2013.pdf](https://ilga.org/sites/default/files/ILGA_State_Sponsored_Homophobia_2013.pdf).

4. See CAMEROON MODEL PENAL CODE § 347-1 (2016), <https://www.wipo.int/edocs/lexdocs/laws/en/cm/cm014en.pdf> (displaying the English text of Section 347-1 of the Cameroonian Model Penal Code); Itaborahy & Zhu, *supra* note 3, at 60.

5. Itaborahy & Zhu, *supra* note 3, at 60; *Uganda Anti-Gay Timeline*, GAY & LESBIAN ADVS. & DEF. (May 6, 2014), <https://www.glad.org/wp-content/uploads/2014/05/uganda-timeline.pdf>; Ewelina Kawczynska, *Life as a "Perpetrator of Evil"—Being Gay in Uganda*, EQUAL TIMES (Mar. 11, 2014), [https://www.equaltimes.org/life-as-a-perpetrator-of-evil-being-gay-in-uganda?lang=en#.WgyX\\_BOPJo4](https://www.equaltimes.org/life-as-a-perpetrator-of-evil-being-gay-in-uganda?lang=en#.WgyX_BOPJo4) [<https://perma.cc/M2DU-G3PW>].

6. *Obituary of David Kato*, ECONOMIST (Feb. 10, 2011), <https://www.economist.com/node/18111806> [<https://perma.cc/Q3YY-TNUT>].

7. *Id.*

8. See Kawczynska, *supra* note 5.

9. Itaborahy & Zhu, *supra* note 3, at 33–34.

10. See *id.* at 39.

11. See *id.* at 34–35.

already exists in Cameroon and Uganda is applied, and reconstructing the legislation in a way that does not necessarily promote homosexuality in both countries, but clearly and explicitly notes *who* the statutes apply to, and *how* they are to be applied, thus, protecting the rights and lives of Cameroonian and Ugandan homosexuals.<sup>12</sup> This Note will argue that revising the authorities that govern how homosexuality is treated in Cameroon and Uganda—through specific augmentation of which citizens are affected by the governing authorities, how they are affected, and why they are affected—will eventually lead to a decrease in the pervasive discrimination against and persecution of homosexuals living in both countries.

Part I of this Note will discuss the history of homosexuality in South Africa, a country regarded as a pioneer of the gay rights movement on the African continent, followed by a brief overview of the country's legislation advocating for gay rights, which was successfully passed in 2006.<sup>13</sup> The Note will then go on to discuss the positive impact that legalizing homosexuality has had on gay and lesbian individuals—and society in general—in South Africa.<sup>14</sup> Parts II and III of the Note will compare how (based on existing legislation) homosexuals are treated in South Africa, with legislation that is currently implemented in both Cameroon and Uganda, and how their ratified laws have a disparate impact on their homosexual communities.

Part IV of this Note will address how Cameroon and Uganda's current legislation can be altered to abolish persecuting homosexuals and provide for better treatment of gay individuals residing in both countries.

## I. HOMOSEXUALITY IN SOUTH AFRICA

### A. South Africa's Legalization of Homosexuality in 1996

South Africa's Apartheid regime, defined by discrimination, institutionalized racial segregation, and demarcation between white and black South Africans was a major part of the country's history from 1948 to 1994.<sup>15</sup> Because of this, many homosexuals felt the need to live their lives in secrecy, and resorted to forming their own separate communities and residential areas—for example, places like District Six

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12. See *id.* at 38 (discussing how other African countries have applied various laws to strengthen equality for LGBTIQ persons).

13. See Masci et al., *supra* note 2.

14. See discussion *infra* Section I.A.

15. *The History of LGBT Legislation*, SOUTH AFRICAN HIST. ONLINE, <https://www.sahistory.org.za/article/history-lgbt-legislation> [<https://perma.cc/Q5FU-Z6AR>].

in Cape Town, and Sophiatown in Johannesburg—that were tucked away from the larger metropolises where most South Africans resided.<sup>16</sup> These suburban, residential areas served as an escape for gay and lesbian South Africans, giving them the freedom to live their lives with others who shared similar isolating and oppressive experiences.<sup>17</sup>

The first piece of South African legislation that was drafted to restrict specific types of sexual relationships was the Immorality Act of 1957, which “prohibited sexual intercourse between people of different ethnicities.”<sup>18</sup> The Act restricted “unnatural/immoral sexual acts” in public, which essentially served as a euphemism for any “sexual act[s] associated with homosexuality or non-reproductive intercourse.”<sup>19</sup> The 1966 raid in Forest Town, Johannesburg was the impetus for South African lawmakers to create explicit anti-homosexual legislation.<sup>20</sup>

In January 1966, Johannesburg police arrested nine men for masquerading as women and “participating in ‘indecent activity’”; the raids in Forest Town brought homosexual subculture to the forefront of South African politics, which, in turn, antagonized the homosexual individuals living there who had found peace in embracing their identities in a communal environment.<sup>21</sup> The Immorality Act was amended in 1968, officially outlawing homosexuality.<sup>22</sup>

The eradication of South Africa’s Apartheid regime brought about a much-needed change in legislation for the country.<sup>23</sup> With Nelson Mandela’s release from prison in 1992 and the lifting of bans that had been placed on South Africa’s anti-Apartheid organizations (the African National Congress and the United Democratic Front), LGBT organizations felt free to engage in political discussions associated with their interests, such as making sexual freedom a fundamental human right in the revision of South Africa’s Constitution.<sup>24</sup> In 1996, Section nine under South Africa’s Bill of Rights (part of the South African Constitution) made discrimination based on sexual orientation illegal, stating:

3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour,

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16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *See id.*

21. *The History of LGBT Legislation*, *supra* note 15.

22. *Id.*

23. *See id.*

24. *Id.*

*sexual orientation*, age, disability, religion, conscience, belief, culture, language, and birth. 4. No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3) . . . 5. Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.<sup>25</sup>

Disallowing discrimination on the basis of sexual orientation marked the beginning of a “new South Africa,” one that refused to be marred by its history of prejudice, separatism, and oppression during the Apartheid.<sup>26</sup> In 2006, ten years after the South African Constitution was amended, Parliament legalized same-sex marriage.<sup>27</sup> This occurred exactly one year after the country’s highest court (the High Court of South Africa) ruled that the previous marriage laws put in place violated the South African Constitution’s guarantee of equal rights.<sup>28</sup>

South Africa’s constitutional amendment allows for religious institutions and civil officers to refuse to conduct same-sex marriage ceremonies, a provision that South African critics of homophobia say violates homosexual couples’ rights under the South African constitution.<sup>29</sup> The country’s new law “passed by a margin of greater than five-to-one,” with support from the African National Congress and its opposition party, the Democratic Alliance.<sup>30</sup> In the midst of this legislative victory, however, many traditional, conservative, South Africans—like the Zulu people—“maintain that homosexuality is morally wrong,” and thus, should remain illegal.<sup>31</sup>

### *B. Lingering Anti-Homosexual Sentiments in South Africa*

Although South Africa is the first country in Africa that has legalized homosexuality and same-sex marriage, hate crimes against gay people living there persist, which is illustrative of the notion that legalizing homosexuality may not prove entirely effective, due to the overbearing, negative biases people hold.<sup>32</sup> Motshidisi “Pasca” Melamu, a 21-year-old lesbian woman from Johannesburg, was found

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25. S. AFR. CONST., ch. 2 § 9 (1996) (emphasis added), <https://www.gov.za/documents/constitution/chapter-2-bill-rights#9> [<https://perma.cc/U3MY-BJDM>].

26. See *The History of LGBT Legislation*, *supra* note 15.

27. See Masci et al., *supra* note 2.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. See James Fletcher, *Born Free, Killed by Hate—the Price of Being Gay in South Africa*, BBC NEWS (Apr. 7, 2016), <https://www.bbc.com/news/magazine-35967725> [<https://perma.cc/2FW8-H3P9>].



dead in a nearby township after having gone to a party in December 2015.<sup>33</sup> Her body was found unrecognizable, as it had been severely beaten and mutilated.<sup>34</sup> At the morgue, the only way her family was able to identify her was by a distinct tattoo that she had on her leg.<sup>35</sup> Her family fervently believes the attack that led to her death was unjustified.<sup>36</sup> On accepting her homosexuality, her cousin said, “We had accepted her at home. We didn’t care what others had to say. [We] just want police to take action and use these people as an example, to show them that what they did [w]as wrong.”<sup>37</sup> At the time of Melamu’s death, the crime rate in South Africa was especially high, with black lesbians living in townships “fac[ing] particular risks and often suffer[ing] the most violent crimes.”<sup>38</sup> Much of the present-day danger South African women face relates to their vulnerability as women in a country with “one of the highest rates of rape in the world.”<sup>39</sup>

As women existing in a staunchly patriarchal and homophobic society, South African women, particularly lesbians, are exposed to the dangers of the notion that “they can be ‘changed’” through what South Africans refer to as “corrective rape.”<sup>40</sup> Corrective rape is a practice aimed at “curing” lesbians of their sexual preferences.<sup>41</sup> It is a hate crime “wielded to convert lesbians to heterosexuality,” an attempt to cure them of being gay.<sup>42</sup> Authorities on Melamu’s case suspected that she was correctively raped before she died; however, they were unable to prove this post-mortem.<sup>43</sup>

Similarly, Mvuleni Fana, a lesbian from Johannesburg, was attacked by four men on her way home from football practice one evening.<sup>44</sup> The men raped her, one by one, beating her until she passed out.<sup>45</sup> Before reaching complete unconsciousness, Fana distinctly remembered one of her attackers saying to her, “After everything

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33. *Id.*; see Kgothatso Mogale, *Slain Lesbian Woman’s Family Says Her Murder Was Unjustified*, EYEWITNESSNEWS, <http://ewn.co.za/2016/01/18/Slain-lesbian-family-says-her-attack-was-unjustified> [<https://perma.cc/2LQ7-SH3U>].

34. Fletcher, *supra* note 32.

35. *Id.*

36. Mogale, *supra* note 33.

37. *Id.*

38. Fletcher, *supra* note 32.

39. *Id.*

40. *Id.*

41. *Id.*

42. Patrick Strudwick, *Crisis in South Africa: The Shocking Practice of ‘Corrective Rape’—Aimed at ‘Curing’ Lesbians*, INDEP. (Jan. 4, 2014), <https://www.independent.co.uk/news/world/africa/crisis-in-south-africa-the-shocking-practice-of-corrective-rape-aimed-at-curing-lesbians-9033224.html> [<https://perma.cc/WE3K-MC37>].

43. See Fletcher, *supra* note 32.

44. See Strudwick, *supra* note 42.

45. *Id.*

we're going to do to you, you're going to be a real woman, and you're never going to act like this again."<sup>46</sup> Fana was lucky to have survived her attack, as many of South Africa's corrective rape victims do not.<sup>47</sup> Her case, in comparison to Pasca Melamu's, resulted in a criminal conviction.<sup>48</sup> Fana's attackers were found guilty and were sentenced to twenty-five years in prison.<sup>49</sup> Mvuleni Fana's case is unusual and atypical of rape victims, as it resulted in justice for her, unlike twenty-four out of twenty-five rapes that even reach trial in South Africa.<sup>50</sup> Those cases, along with Pasca Melamu's and many others, typically result in no prosecution.<sup>51</sup>

Although South African legislation is put in place to combat homophobic sentiments, LGBT activists feel helpless in a society in which their law enforcement and justice system seem to be failing them.<sup>52</sup> Residual anti-homosexual sentiments post-Apartheid remain an issue regarding South African law enforcement and other respected authorities protecting those covered under the country's constitution.<sup>53</sup> In response to a march held weeks after Melamu's death, Lindiwe Nhlapo, a member of Vaal LGBTI (one of the groups that organized the march), opined, "The police are not doing anything . . . [they] are failing us big time."<sup>54</sup>

Because of this failure, many LGBT-identifying South Africans continue to live in fear of being their authentic, whole selves.<sup>55</sup> Bontle Kahlo, a civil rights activist with the Ekurhuleni Pride Organizing Committee (EPOC) stated, "I can't walk with my partner on the street and hold [her] hand . . . I can't go out at night and say 'I'm going to dance somewhere,' because I'm not safe. I might get killed because of who I am, because of who I love."<sup>56</sup>

## II. HOMOSEXUALITY IN CAMEROON

### *A. Corruption at the Forefront of Enforcing Anti-Gay Laws*

Corruption remains at the epicenter of Cameroon's government, which is marked by an extremely authoritarian regime masked as

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46. *Id.*

47. *Id.*

48. *Id.*; see Fletcher, *supra* note 32.

49. *Id.*

50. Strudwick, *supra* note 42.

51. See *id.*; see also Fletcher, *supra* note 32.

52. See Fletcher, *supra* note 32.

53. See Strudwick, *supra* note 42.

54. Fletcher, *supra* note 32.

55. See *id.*

56. *Id.*



a democracy.<sup>57</sup> Because of this, Cameroon is a prime case study of the ways in which anti-homosexuality laws have been enforced to endorse persecuting homosexuals.<sup>58</sup>

The social climate and conditions for gay individuals in Cameroon have always been terrible, and continue to worsen.<sup>59</sup> The country engages in more prosecutions of sexual minorities than any other country in sub-Saharan Africa.<sup>60</sup> During his presidency, Obama spoke out against Uganda's anti-gay legislation and former Secretary of State, John Kerry, decried atrocities against Nigerian gays and lesbians; however, Cameroon has been "spared such an international spotlight, even though it has been quietly arresting, charging and imprisoning gay people" for years.<sup>61</sup> The Cameroonian government enforces its anti-homosexuality laws "beyond the letter of the law," with charges brought arbitrarily against individuals who are perceived to be gay.<sup>62</sup> "Charges are triggered by the *slightest suspicion* that someone belongs to the homosexual minority," with evidence of this "obtained through torture and ill-treatment" of the individual in question.<sup>63</sup>

"It's normal to kill somebody for being gay or lesbian in Cameroon," Cedric Tchante, a gay man from Douala, Cameroon, says.<sup>64</sup> "[Y]ou will have no problem with the police of the courts."<sup>65</sup> Tchante worked as "a peer counselor educator and HIV prevention education coordinator at Cameroon's first center for lesbian, gay, bisexual and transgender people," called Alternatives Cameroun.<sup>66</sup> Alternatives

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57. Yonatan L. Morse, *Cameroon Has an Election Sunday—and Everyone Already Knows the Winner*, WASH. POST (Oct. 6, 2018), [https://www.washingtonpost.com/news/monkey-cage/wp/2018/10/06/cameroon-has-an-election-sunday-and-everyone-already-knows-the-winner/?noredirect=on&utm\\_term=.661b081ede29](https://www.washingtonpost.com/news/monkey-cage/wp/2018/10/06/cameroon-has-an-election-sunday-and-everyone-already-knows-the-winner/?noredirect=on&utm_term=.661b081ede29) [<https://perma.cc/3VGT-4FVX>].

58. See Vincenzo Volpe, *The Crime of 'Homosexuality' Under Cameroon Criminal Law*, OXFORD HUM. RTS. HUB (Dec. 16, 2013), <http://ohrh.law.ox.ac.uk/the-crime-of-homosexuality-under-cameroon-criminal-law> [<https://perma.cc/995T-AZJA>].

59. See Suzy Frisch, *Attorneys of the Year: Julie Firestone and Daniel J. Supalla*, MINN. LAW. (Feb. 20, 2015), <https://minnlawyer.com/2015/02/20/attorneys-of-the-year-julie-firestone-and-daniel-j-supalla> [<https://perma.cc/2P52-J4Z6>].

60. Associated Press, *Gay Rights Activist Arrested in Cameroon, Colleagues Say*, FOX NEWS (Feb. 17, 2014), <https://www.foxnews.com/world/2014/02/17/gay-rights-activist-arrested-in-cameroon-colleagues-say.html> [<https://perma.cc/SJ42-7F7V>].

61. Andy Kopsa, *Abandoned and Imprisoned for Being Gay in Cameroon*, NATION (Mar. 4, 2014), <https://www.thenation.com/article/abandoned-and-imprisoned-being-gay-cameroon> [<https://perma.cc/C6LP-2QKG>].

62. Frisch, *supra* note 59; Volpe, *supra* note 58.

63. Volpe, *supra* note 58 (emphasis added).

64. Tiare Dunlap, *Inside the Struggle for LGBT Rights in Cameroon: 'It's Normal to Kill Somebody for Being Gay'*, PEOPLE MAG. (Dec. 8, 2015, 12:05 PM), <https://people.com/celebrity/inside-the-struggle-for-lgbt-rights-in-cameroon> [<https://perma.cc/MHM9-F2CW>].

65. *Id.*

66. *Id.*

Cameroun, located in Tchante's hometown of Douala, is known amongst the homosexual community as being "one of the only spaces in Cameroon where gay and lesbian people can come together and feel safe."<sup>67</sup> The center, which operates as an HIV/AIDS clinic, "offers healthcare services, counseling, legal aid and vocational training."<sup>68</sup> Tchante's job as peer counselor was a dangerous one "in a country [like Cameroon] where homosexuality is punishable by up to five years in prison."<sup>69</sup>

With regards to condemning individuals for being gay, convictions are usually based on allegations and denunciations from people "who have claimed to law enforcement officials that they are gay."<sup>70</sup> Corruption in Cameroon completely overshadows the pertinent fact that the country is a party to the International Covenant on Civil and Political Rights (ICCPR), a multilateral treaty adopted by the United Nations that prohibits arrests on the grounds of sexual orientation.<sup>71</sup> Cameroon's Constitution fails to incorporate the ICCPR in its domestic law, but, under Article 45, provides that international treaties override national law where there is a conflict: "Duly approved or ratified treaties and international agreements shall, following the publication, override national laws, provided the other party implements the said treaty or agreement."<sup>72</sup>

Article 347-1 of Cameroon's Model Penal Code, the country's governing authority over criminal law, instigates law enforcement and civilians to oppress those identifying as lesbian and gay, on the misconception that as homosexuals they are not recognized in the Code—nor even in the Constitution—and therefore do not have any legal rights.<sup>73</sup> Charges brought against presumed homosexuals in Cameroonian courts are simply unlawful, not only from an international law perspective, but are unconstitutional under the laws of Cameroon itself.<sup>74</sup>

In the extremely rare cases in which appeals against convictions of homosexuality *are* successful, Cameroonian courts are reluctant to release written judgments of their decisions, thereby preventing

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67. *Id.* (quoting filmmaker Shaun Kadlec).

68. *Id.*

69. *See id.*

70. The Associated Press, *Gay Man's 3-Year Sentence Upheld by Cameroon Court*, N.Y. TIMES (Dec. 17, 2012), <https://www.nytimes.com/2012/12/18/world/africa/gay-mans-3-year-sentence-is-upheld-by-cameroon-court.html> [<https://perma.cc/3QS9-P2CG>].

71. *See* Volpe, *supra* note 58.

72. CONSTITUTION OF THE REPUBLIC OF CAMEROON, art. 45, § 6 (amended 2011), [http://www.icla.up.ac.za/images/constitutions/cameroon\\_constitution.pdf](http://www.icla.up.ac.za/images/constitutions/cameroon_constitution.pdf).

73. Volpe, *supra* note 58.

74. *Id.*

defendants involved in subsequent, similar legal actions from relying on such vital precedent.<sup>75</sup> The legislative body's actions are an enemy of progress: they discourage what seems to be a never-ending, cyclical process to acquire justice for gay Cameroonians.

Charges and convictions of homosexuality severely breach Article II of the African Charter on Human and Peoples' Rights, which states: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status."<sup>76</sup> The principle of non-discrimination "provides the foundation for the enjoyment of *all* human rights" and corrupt Cameroonian authority, law enforcement, and lawmakers stand in the way of gay Cameroonians enjoying the rights afforded to them.<sup>77</sup>

### *B. How Article 347-1 Affects Gay Cameroonians*

Article 347-1 of Cameroon's Penal Code, originally penned in 1967, was amended in 1972.<sup>78</sup> A decree by former Cameroonian President, Ahmadou Ahidjo, effectuated the law without its usual review by the National Assembly.<sup>79</sup> The English translation of the amended article very clearly reads: "Whoever has sexual relations with a person of the same sex shall be punished with imprisonment for from 6 (six) months to 5 (five) years and a fine of from CFAF 20,000 (twenty thousand) to CFAF 200,000 (two hundred thousand)."<sup>80</sup> Because there is no standard metric applied to discern whether a certain individual is gay or not, "innocent" individuals under Cameroon's Penal Code are mistreated and detained against their will.<sup>81</sup>

Article 347-1's continued existence has led to numerous violations of international law, human rights, and freedoms that are

75. *Id.* (emphasis added).

76. African (Banjul) Charter On Human and Peoples' Rights, art. 2, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

77. *See* Volpe, *supra* note 58 (emphasis added).

78. Itaborahy & Zhu, *supra* note 3, at 45.

79. *Criminalizing Identities: Rights Abuses in Cameroon Based on Sexual Orientation and Gender Identity*, HUM. RTS. WATCH 10 (Nov. 4, 2010), <http://www.refworld.org/docid/4cd7d9c82.html>.

80. *See* CAMEROON MODEL PENAL CODE § 347-1. CFAF stands for CFA franc, which stands for Coopération financière en Afrique centrale. CFAF is the currency of the six independent states in central Africa: Cameroon, Central African Republic, Chad, Equatorial Guinea, Democratic Republic of Congo, and Gabon.

81. *See* Volpe, *supra* note 58.

provided to Cameroonians under the ICCPR.<sup>82</sup> Still, citizens arrested under the article are often held without charge for over forty-eight hours, longer than what is permitted under Cameroonian law.<sup>83</sup> More often than not, detainees are denied bail and are held captive for months before being heard at trial, where they are “often abused and treated inhumanely.”<sup>84</sup> Those arrested under Article 347-1 can be convicted and even sentenced without the necessary and appropriate evidence needed to prove that the arrestee actually engaged in homosexual behavior.<sup>85</sup>

*C. Mbede, Ayissi, et al.: Guilty of Being Gay Until Proven Innocent*

Roger Mbede’s harrowing story is especially salient in comprehending just how dangerous Article 347-1 is to the climate for homosexuals in Cameroon.<sup>86</sup> Mbede was a leading figure and “global face” of the gay rights movement in Cameroon.<sup>87</sup> In 2011, Roger Mbede was arrested and convicted under the assumption of being gay under Cameroon’s Penal Code provision, imposing prison terms of up to five years.<sup>88</sup> He was found guilty of homosexual conduct for sending a text message to a male acquaintance that read, “I’m very much in love with you.”<sup>89</sup> The appeals court upheld Mbede’s three-year sentence, empowering the anti-gay sentiments that many lawmakers, law enforcers, and civilians have been psychologically trained to harbor through existing legislation.<sup>90</sup> While the appeal was pending, Mbede was freed from imprisonment and could return to his home village of Ngoumou.<sup>91</sup> Activists commented that the court’s ruling presented yet another setback for gay people in Cameroon, a country

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82. Erica Nordberg, *Ignoring Human Rights for Homosexuals: Gross Violations of International Obligations in Cameroon*, 27 AM. U. INT’L L. REV. 439, 441 (2012).

83. *Id.* at 448–49.

84. *Id.* at 449.

85. *Id.*

86. See Robbie Corey-Boulet, *Who Killed Roger Mbede?*, ALJAZEERA AM. (Mar. 26, 2015, 5:00 AM), <http://america.aljazeera.com/articles/2015/3/26/who-killed-roger-mbede-gay-rights-cameroon.html> [https://perma.cc/Q2HK-HXGE].

87. *Id.*

88. *Id.* This is not unusual; Cameroonian officials have carried out waves of arrests targeting sexual minorities for the last ten years. *Id.* According to Human Rights Watch, the country prosecutes more people for homosexuality than any other country in sub-Saharan Africa, often on limited or even fabricated evidence. *Id.*

89. See The Associated Press, *supra* note 70.

90. *Id.*

91. See Agence France Presse, *Roger Jean-Claude Mbede, Cameroon Gay-Rights Icon, Dead at 35*, HUFFINGTON POST (Jan. 13, 2014, 12:26 PM), [https://www.huffingtonpost.com/2014/01/13/roger-jean-claude-mbede-dead\\_n\\_4588200.html](https://www.huffingtonpost.com/2014/01/13/roger-jean-claude-mbede-dead_n_4588200.html) [https://perma.cc/36Z5-MF89]; see also Corey-Boulet, *supra* note 86.

widely viewed as the “most repressive country in Africa” regarding its prosecution of same-sex couples.<sup>92</sup> The appeals court’s “decision sends a warning to LGBT Cameroonians that they risk beatings, arrests, and imprisonment simply because of their sexual orientation or gender identity.”<sup>93</sup>

Cameroon has very clearly created a culture in which a hatred of homosexuality is deeply rooted in the fabric and inner workings of the country.<sup>94</sup> “Taught to fear . . . homosexuality, citizens take the law into their own hands,” reporting those they speculate as homosexual.<sup>95</sup> The ruling in *Francois Ayissi et al. v. Cameroon* is exemplary of the homophobia that permeates Cameroonian culture.<sup>96</sup> The Working Group on Arbitrary Detention (The Working Group) wrote an opinion on the unlawful detainment of Francois Ayissi and ten of his Cameroonian colleagues, who were arrested one night at a bar known to be frequented by homosexuals.<sup>97</sup> They were charged under Article 347-1.<sup>98</sup> At their hearing, the prosecution was unable to provide any witness testimony or evidence to support its case, so the judge found Ayissi and the others not guilty for the offense with which they had been charged.<sup>99</sup> According to the Cameroonian government, “the basis for the court’s finding was Law No. 90/45 of 19 December 1990, which provides that persons accused of certain offences, including the offence to which Article 347-1 of the Criminal Code relates, must be brought directly before the competent court.”<sup>100</sup>

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92. See The Associated Press, *supra* note 70.

93. Faith Karimi, *Cameroonian Jailed for Texting ‘I’m in Love With You’ to Another Man*, CNN (Dec. 19, 2012, 7:28 AM), <https://www.cnn.com/2012/12/18/world/africa/cameroon-gay-text-jail/index.html> [<https://perma.cc/KK9Y-NTKG>].

94. See Nordberg, *supra* note 82, at 447.

95. *Id.* at 448.

96. See *id.* at 454.

97. François Ayissi et al. v. Cameroon, *Working Group on Arbitrary Detention*, ¶¶ 6, 7, Opinion No. 22/2006, U.N. Doc. A/HRC/4/40/Add.1 at 91 (2006), UNIV. OF MINN. HUM. RTS. LIBR. (Aug. 31, 2006), <http://hrlibrary.umn.edu/wgad/22-2006.html> [<https://perma.cc/2DEP-NHTA>]. The Working Group on Arbitrary Detention was formed as a result of resolution 1991/42 of the former Commission on Human Rights. With regards to Francois Ayissi’s case, the group’s mission is

[t]o investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned . . . [and] [t]o act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals . . . to concerned Governments to clarify and to bring to their attention these cases.

*Working Group on Arbitrary Detention*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx> [<https://perma.cc/WDJ5-SZT3>].

98. *Ayissi*, U.N. Doc. A/HRC/4/40/Add.1 at 91 ¶ 8.

99. *Id.* ¶ 10.

100. *Id.* ¶ 15.



Finally, The Working Group opined that “the deprivation of [the] liberty of [Francois and the ten other detainees] was arbitrary . . . regardless of the fact that they were ultimately released.”<sup>101</sup> Having rendered its opinion, The Working Group issued the following request: that the Cameroonian Government “take the necessary steps to remedy the situation by considering the possibility of amending domestic law,” in accordance with standards accepted by the Universal Declaration of Human Rights and the State.<sup>102</sup> Again, because Ayissi and his fellow detainees were present at a bar which many gay and lesbian Cameroonians frequented, they were automatically presumed to be homosexual.<sup>103</sup> The loose standards implied by Article 347-1’s amendment made it possible for Ayissi and his peers to be prematurely detained, for the purposes of “proceedings against them by the Court of First Instance of Yaoundé-Centre Administratif,”<sup>104</sup> but were too arbitrary for their conviction to withstand a court of law.

#### *D. The Solution: Reforming Article 347-1*

Accepting and tolerating homosexuality in Cameroon is predicated on the intrinsic, ingrained biases and beliefs held by lawmakers and power players in the country’s judicial system. As previously mentioned, in the unusual instances in which appealing homosexuality convictions are successful—and the accused is let free—the courts in Cameroon tend to abstain from releasing any written judgments, so as to make such precedent inaccessible to other defendants wanting justice for themselves.<sup>105</sup>

One solution to the anti-gay problem in Cameroon would be to completely rewrite Article 347-1. Making the article less broad and more nuanced could lead to less human rights violations and detentions of Cameroonians convicted of homosexual acts they did not do or were not part of committing.

The full text of Article 347-1, the provision of Cameroon’s Model Penal Code that pertains to the legality of homosexuality, currently reads: “Whoever has sexual relations with a person of the same sex shall be punished with imprisonment from six months to five years and fine of from 20,000 to 200,000 francs.”<sup>106</sup> Revising the part of the

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101. *Id.* ¶ 20.

102. *Id.* ¶ 23.

103. *See id.* ¶ 7.

104. Ayissi, U.N. Doc. A/HRC4/40/Add.1 at 91 ¶ 14.

105. Volpe, *supra* note 58.

106. *See* Itaborahy & Zhu, *supra* note 3, at 45.



provision pertaining to “sexual relations” between same-sex individuals would be helpful in reducing the number of individuals persecuted by law enforcement for being gay. As the article stands, this provision is entirely too broad.

How exactly do Cameroonian legislators and lawmakers define “sexual relations”? Under what parameters are two same-sex individuals having “sexual relations”? By sending simple texts reading, “I am very much in love with you,” as in Roger Mbede’s case, or through more explicit and physical acts? What is the gravity of the punishment associated with these acts? These are the important questions that Cameroon’s legislative body needs to consider in its reformation of Article 347-1. Making the article’s language more detailed and nuanced would deter gay and lesbian Cameroonians from committing the acts that they routinely have been detained and imprisoned for in the past.

Cameroon’s legislative body should also consider the country’s political climate when thinking of reforming Article 347-1. Colonized and partitioned by the British and French (and Germany, prior to 1919), Cameroon is a country that is predominately Francophone (French-speaking), with Anglophone (English-speaking) regions in its North-West and South-Western parts.<sup>107</sup> Cameroon has “parallel legal systems inherited from its two former colonial rulers.”<sup>108</sup> While the Francophone regions of the country abide by and follow the French legal tradition, Anglophone regions operate under British common law.<sup>109</sup> It is unclear as to whether Article 347-1 applies solely to Francophone Cameroonians, Anglophone Cameroonians, or both. There is much clarity needed regarding who is governed by the article, and the Penal Code generally.

Leaving Article 347-1 to such broad interpretation gives the Cameroonian legislature the authority to condemn, persecute, and detain homosexuals without having to satisfy prongs of a narrowly construed statute. Although not every arrest leads to prison sentences as referred to in Article 347-1, the burden of proof needed to arrest an individual on the suspicion of homosexuality is remarkably low. This is indicative of the legislative intent of conservative Cameroonian lawmakers.

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107. See Moki Edwin Kindzeka, *Cameroon Grappling with Barriers Dividing French, English-Speaking Regions*, VOICE AM. NEWS (Apr. 10, 2017), <https://www.voanews.com/a/cameroon-tensions-francophones-anglophones/3804039.html> [https://perma.cc/3Y9R-WS5H].

108. *Id.*

109. *Id.*

*E. Potential Obstacles with Reforming Article 347-1*

Legislation reform could further impose limitations on the ability of homosexual Cameroonians to freely express themselves. The country's current political climate itself presents a barrier to legislation being successfully passed.<sup>110</sup> There has historically been tension between the Anglophone and Francophone regions of Cameroon, but within the last few years tensions have escalated, with increasing demand for independence between the two regions.<sup>111</sup> Demonstrations and protests by separatists have run rampant in cities like Bamenda, a city in the North-West province; Douala, the country's largest city; and Yaoundé, the country's capital.<sup>112</sup> The intense political discord the country is currently experiencing could potentially have a negative effect on implementing legislative improvements and amendments to Article 347-1 moving forward.

Political climate aside, by narrowing existing legislation, there is a possibility that Cameroonian homosexuals may feel even more restricted by what they can and cannot do in public, and how they openly display their love for one another. By limiting provisions of Article 347-1, there could potentially be disagreement over what is meant by "sexual relations" according to the statute.

To more liberal Cameroonian lawmakers, sexual relations could consist of kissing in public, at the very least. To more conservative lawmakers and legislators, sexual relations under Article 347-1 could be considered as simply holding hands. Reaching an agreement regarding the types of acts outlawed by the provision and the severity of the punishments associated with each one—for example, a prison sentence of three months for affectionately holding hand with a person of the same sex in public, in comparison to spending a one-year term in jail for publicly kissing a member of the same sex on the lips—may prove difficult, but will settle the arbitrariness issue surrounding the government's persecution of individuals for their behavior.

It is safe to assume that specifying the actions outlawed under Cameroon's Penal Code provision would lead to less cases like Roger

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110. See *Cameroon Bans Pro-Independence Rallies in Anglophone Area*, BBC NEWS (Sept. 29, 2017), <http://www.bbc.com/news/world-africa-41442330> [<https://perma.cc/K6UQ-VLFY>].

111. *Id.*

112. *Cameroon Independence Protests Result in Deaths*, BBC NEWS (Oct. 2, 2017), <https://www.bbc.com/news/world-africa-41461007> [<https://perma.cc/8Q65-5H36>]; Siobhan O'Grady, *Africa's Next Civil War Could Be in Cameroon*, WASH. POST (May 30, 2018), [https://www.washingtonpost.com/news/worldviews/wp/2018/05/30/africas-next-civil-war-could-be-in-cameroon/?utm\\_term=.14cb77d3546b](https://www.washingtonpost.com/news/worldviews/wp/2018/05/30/africas-next-civil-war-could-be-in-cameroon/?utm_term=.14cb77d3546b) [<https://perma.cc/8ZWE-H6MY>]; Eyong Blaise Okie, *Cameroon Urged to Investigate Deaths Amid Anglophone Protests*, GUARDIAN (Dec. 13, 2016), <https://www.theguardian.com/world/2016/dec/13/cameroon-urged-investigate-clashes-anglophone-regions> [<https://perma.cc/7JWD-HXAA>].

Mbede's and Francois Ayissi's. There would be less unlawful detentions, less frivolous uses of resources on behalf of the Cameroonian government, and less time wasted attempting to get these types of cases litigated in court. Specifying provisions of the article could also lead to positive reformations of other articles that are similarly ambiguous and unclearly worded in Cameroon's Model Penal Code. While subscribing degrees of punishment to gay Cameroonians' displays of affection infringes on their rights and abilities to interact with their loved ones, the Penal Code's specifying (1) which acts are to be outlawed and (2) the severity of punishment for each outlawed act, eliminates any gray area for potential violations and offenders of Article 347-1.

### III. HOMOSEXUALITY IN UGANDA

#### *A. An Overview of Anti-Gay Ugandan Legislation: The Penal Code Act of 1950, the Anti-Homosexuality Bill of 2009, and the Anti-Homosexuality Act of 2014*

Homosexual relationships have been illegal in Uganda since the British colonial era, when gay people were still regular targets of threats and violence.<sup>113</sup> Homosexuality was officially criminalized in 1902, and carried a "life sentence of imprisonment until 1930."<sup>114</sup> Uganda's Penal Code Act was enacted on June 15, 1950.<sup>115</sup> The purpose of the Act was "to establish a code of criminal law" in Uganda.<sup>116</sup> The Act consists of 42 chapters, ranging from *General Rules as to Criminal Responsibility* to an entire chapter on criminal conspiracies, and is comprised of 395 sections throughout those chapters.<sup>117</sup> The sections that pertain to homosexuality are sections 145, 146, and 148, which are titled, "Unnatural offences," "Attempt to commit unnatural offences," and "Indecent practices," respectively.<sup>118</sup> These sections of the Ugandan Penal Code date back to the British colonial

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113. *After Fleeing Persecution in Uganda for Being Gay, This Refugee Still Wants to Help Others*, INT'L RESCUE COMM. (Jan. 18, 2017), <https://www.rescue.org/announcement/after-fleeing-persecution-uganda-being-gay-refugee-still-wants-help-others> [<https://perma.cc/D5E6-UZLQ>].

114. Bianca Britton, *Kasha Nabagesera: The Face of Uganda's LGBT Movement*, CNN (Mar. 6, 2017), <https://www.cnn.com/2017/03/05/africa/her-kasha-jacqueline-nabagesera-lgbt-campaigner/index.html> [<https://perma.cc/MFC8-PUMD>].

115. UGANDA PENAL CODE ACT, ch. 120 (June 15, 1950), <http://chapterfouruganda.com/sites/default/files/downloads/Penal-Code-Act.pdf>.

116. *Id.*

117. *Id.*

118. Itaborahy & Zhu, *supra* note 3, at 60.

era, which is indicia of the very antiquated and traditional views of the Ugandan Parliament.<sup>119</sup>

The sections read as follows:

145. Unnatural offences.

Any person who—

- (a) has carnal knowledge of any person against the order of nature;
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.

146. Attempt to commit unnatural offences.

Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years. . . .

148. Indecent practices.

Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.<sup>120</sup>

On October 13, 2009, David Bahati, a member of Parliament for the National Resistance Movement, the ruling party of Uganda, introduced the country's first-ever anti-homosexuality bill.<sup>121</sup> The bill initially provided for the death penalty in cases of "aggravated homosexuality."<sup>122</sup> This provision of the bill was later removed, per disapproval from Ugandan President Yoweri Museveni, who opposed the bill that he thought "impose[d] a death sentence for 'aggravated homosexuality'."<sup>123</sup> Museveni believed that though homosexuals were "sick . . . this [did] not mean [that] they should be killed or

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119. Michael K. Lavers, *Report: Anti-LGBT Persecution Increased Under Uganda Law*, WASH. BLADE (Apr. 22, 2016), <https://www.washingtonblade.com/2016/04/22/report-anti-lgbt-persecution-increased-under-uganda-law> [<https://perma.cc/4PW2-ZMXQ>].

120. See UGANDA PENAL CODE ACT, ch. 120, §§ 145, 146, 148.

121. *Uganda Anti-Gay Timeline*, *supra* note 5.

122. *Id.*

123. *Id.*

jailed for life.”<sup>124</sup> Removing the death penalty as a consequence of violating the bill was also influenced by international pressures, as some European countries threatened withdrawing aid to Uganda, a country that relies on millions of dollars from the international community.<sup>125</sup> Parliament adjusted the death penalty clause to a fourteen-year prison term for first convictions, and “imprisonment for life for the offense of aggravated homosexuality,” which includes acts of serial offenders in violation of the bill and cases in which one has sex with a minor—even protected or consensual—and is infected with HIV.<sup>126</sup> As homosexuality was already illegal in Uganda, this bill was put in place to further deter people from western influences promoting homosexuality amongst Ugandans.<sup>127</sup> The bill not only condemned homosexuality, but also made not reporting gay people and their committed acts illegal as well.<sup>128</sup>

Bahati further altered the bill to include “attempted homosexuality” as a violation.<sup>129</sup> This supplement to the bill helped it function as a means to bolster Uganda’s capacity to deal with emerging “internal and external threats to the traditional heterosexual family,” according to Bahati.<sup>130</sup> Parliament passed the bill in December 2013 and President Museveni officially signed it into law as the Anti-Homosexuality Act in February 2014.<sup>131</sup> Museveni signed it in front of “government officials, journalists and a team of Ugandan scientists who had said they found no genetic basis for homosexuality—a conclusion that Mr. Museveni cited in support of the new law.”<sup>132</sup> The bill’s passing into Ugandan law was met with scrutiny, criticism, and disappointment from the country’s allies.<sup>133</sup> In a statement made following Museveni’s ratification of the bill into law, John Kerry, U.S. Secretary of State, commented, “This is a tragic day for Uganda and for all who care about the cause of human rights . . . [u]ltimately, the only answer is repeal of this law.”<sup>134</sup>

124. *Uganda President Yoweri Museveni Blocks Anti-Gay Law*, BBC NEWS (Jan. 17, 2014), <http://www.bbc.com/news/world-africa-25775002> [<https://perma.cc/4PBE-4AES>].

125. Faith Karimi, *Ugandan Parliament Passes Anti-Gay Bill That Includes Life in Prison*, CNN (Dec. 23, 2013, 2:11 PM), <https://www.cnn.com/2013/12/21/world/africa/uganda-anti-gay-bill/index.html> [<https://perma.cc/M2RT-SFT6>].

126. Alan Cowell, *Ugandan Lawmakers Pass Measure Imposing Harsh Penalties on Gays*, N.Y. TIMES (Dec. 20, 2013), <https://www.nytimes.com/2013/12/21/world/africa/ugandan-parliament-approves-antigay-law.html> [<https://perma.cc/7R2X-3LF2>]; Karimi, *supra* note 125.

127. Cowell, *supra* note 126.

128. *Uganda President Yoweri Museveni Blocks Anti-Gay Law*, *supra* note 124.

129. *Uganda Anti-Gay Timeline*, *supra* note 5.

130. Kawczynska, *supra* note 5.

131. *Uganda Anti-Gay Timeline*, *supra* note 5.

132. Cowell, *supra* note 126.

133. *Id.*

134. *Id.*

*B. How the Ugandan Penal Code Affects Gay and Lesbian Ugandans*

LGBT activists estimate the number of people in the Ugandan gay community to be 500,000.<sup>135</sup> Val Kalende, a gay rights activist in Uganda, knows full well what it means to exist as openly lesbian in the country, and how problematic it is.<sup>136</sup> When Kalende came out as gay, she faced much criticism and isolation from her parents and the rest of her family: “[Her family] used to ask [her], ‘Don’t you want to have children? Don’t you want a man?’”<sup>137</sup> Homosexual Ugandans depending on their parents and family members as sources of income for their education and overall livelihood are faced with a dilemma: do they openly admit their sexuality, or not? Kalende states, “If you’re in school and your parents find out [that you are gay], they’ll stop paying school fees . . . [y]our family will avoid you.”<sup>138</sup>

The challenges gay Ugandans face go beyond familial issues, from social exclusion—being denied employment and an education—to discrimination while accessing healthcare services, being arrested, and getting verbally and physically attacked.<sup>139</sup> Kasha Jacqueline Nabagesera, a 36-year-old Ugandan LGBT activist who has made fighting for Uganda’s LGBT community her life’s work, has repeatedly been evicted from rental homes due to her sexual orientation.<sup>140</sup> Because her neighbors refuse to condone and accept her sexuality, and due to an intense fear of being brutalized by police or her fellow citizens, she refrains from using public transportation and walking the streets alone.<sup>141</sup> Being gay in Uganda has, in a sense, crippled Nabagesera’s freedom to live and move about in her home country, a place in which she, as a citizen, has unalienable rights.<sup>142</sup>

While anti-gay sentiments are hardly unique to Ugandan culture, Uganda is different than other countries in which being gay is considered a taboo—in its level of “official, government-sponsored anti-gay

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135. *Uganda Rejects a Gay Rights Call*, BBC NEWS (Aug. 17, 2007), <http://news.bbc.co.uk/2/hi/africa/6952157.stm> [<https://perma.cc/XP6S-44VP>].

136. See Jeffrey Gettleman, *Gay in Uganda, and Feeling Hunted*, N.Y. TIMES (Jan. 4, 2010), <https://www.nytimes.com/2010/01/04/world/africa/04gay.html> [<https://perma.cc/2JN5-K6HB>] [hereinafter Gettleman, *Gay in Uganda*].

137. *Id.*

138. *Id.*

139. Tonny Onyulo, *Uganda’s Other Refugee Crisis: Discrimination Forces Many LGBT Ugandans to Seek Asylum*, USA TODAY (July 14, 2017, 5:58 AM), <https://www.usatoday.com/story/news/world/2017/07/13/uganda-other-refugee-crisis-lgbt-ugandanss/475353001> [<https://perma.cc/XD55-Y2KU>].

140. See Britton, *supra* note 114.

141. *Id.*

142. See *id.*



hate speech,” and its endorsement through action by law officials.<sup>143</sup> George Mukhwezi “fled his home country of Uganda [to Kenya] because he was gay.”<sup>144</sup> Mukhwezi claims he was “attacked and assaulted [several times] by residents and even arrested by police,” and because of this, he escaped.<sup>145</sup> The persecution of gay and lesbian Ugandans has “spurred an exodus of LGBT refugees from the country in recent years,” many of them seeking asylum in Kenya, where being gay is also illegal, but enforcement of the law “has been more sporadic than in Uganda.”<sup>146</sup> Refugees like George Mukhwezi feel they cannot return to the country they once knew.<sup>147</sup> Mukhwezi says, “I can’t go back to Uganda . . . It’s very hard to live as an LGBT (person) in Uganda. People face discrimination from family members, authority, community and also religious leaders. You can die [at] anytime.”<sup>148</sup>

The late David Kato was deemed a hero in Uganda’s movement for LGBT rights.<sup>149</sup> Kato, described as a “slight, bookish-looking, soft-voiced man,” was a teacher at St. Herman Nkoni primary school in Bukoto West, Uganda.<sup>150</sup> In 2011, Kato was beaten to death with a hammer in his Kampala home, weeks after securing a high court injunction against *Rolling Stone*, a Ugandan tabloid that had been printing the names, photographs, and addresses of gay people and “openly calling for their execution.”<sup>151</sup>

Growing up in a very conservative home, Kato was brainwashed to believe “that it was wrong to be in love with a man.”<sup>152</sup> However, Kato firmly believed that there were only two ways to deal with being gay, or “kuchu,” which was slang used amongst Ugandan homosexuals, meaning “same,” as in same-sex.<sup>153</sup> Those two ways were either by (1) hiding it from others, or (2) being out and proud, which is what Kato preferred, despite the risks he incurred doing so.<sup>154</sup>

143. See Gettleman, *Gay in Uganda*, *supra* note 136.

144. Onyulo, *supra* note 139.

145. *Id.*

146. *Id.*

147. *See id.*

148. *Id.*

149. See Aaron Akinyemi, ‘His Death Made Us Stronger’: Uganda’s LGBT Groups on David Kato’s Murder, *GUARDIAN* (Jan. 26, 2016, 5:02 AM), <https://www.theguardian.com/world/2016/jan/26/uganda-lgbt-groups-david-kato-murder-5-years-on> [<https://perma.cc/25R8-KLAY>].

150. *Obituary of David Kato*, *supra* note 6.

151. Akinyemi, *supra* note 149; CNN Wire Staff, *Mourners to Remember Gay Rights Activist Beaten to Death*, *CNN* (Jan. 28, 2011, 6:37 AM), <http://www.cnn.com/2011/WORLD/africa/01/28/uganda.gay.activist/index.html> [<https://perma.cc/L2AV-KSUZ>].

152. Jeffrey Gettleman, *Ugandan Who Spoke up for Gays Is Beaten to Death*, *N.Y. TIMES* (Jan. 27, 2011), <https://www.nytimes.com/2011/01/28/world/africa/28uganda.html> [<https://perma.cc/FCU8-TE8C>] [hereinafter Gettleman, *Ugandan Who Spoke up*].

153. *Obituary of David Kato*, *supra* note 6.

154. *Id.*

Kato's coming out in Uganda was inspired by his coming out experiences as a teacher in South Africa: "[Kato] had seen apartheid fall, and the old anti-sodomy laws with it, and had decided at last to admit his homosexuality—he held a televised press conference to start the push for gay rights in his own country."<sup>155</sup> He was beat up by Ugandan police for admitting his homosexuality soon after.<sup>156</sup> Val Kalende attributed Kato's death to "the hatred [that was] planted in Uganda by U.S. evangelical [Christians]," a community in Uganda that held Kato to the least amount of respect, often referring to him as "a dog, [and] a pig, possessed by devils."<sup>157</sup> The priest presiding over Kato's funeral remarked that Kato was "worse than a beast, because animals at least [knew] the difference between a male and a female," insinuating that Kato did not.<sup>158</sup> It was then that Kalende urged for the Ugandan government and said evangelicals to "take responsibility for David's blood."<sup>159</sup>

Kato's death sparked little action from Parliament to eliminate Uganda's anti-homosexuality bill.<sup>160</sup> Amidst growing international pressures and threats from European countries to cut funding and monetary aid to Uganda, President Museveni indicated that "the bill would be scrapped."<sup>161</sup> However, President Museveni signed the bill into law as the Anti-Homosexuality Act in 2014.<sup>162</sup> Despite Kato's death leaving deep scars in Uganda, a nation profoundly divided on the issue of gay rights, his passing has "emboldened the Ugandan LGBT movement[,] not destroyed it."<sup>163</sup>

### *C. How Altering Uganda's Anti-Gay Legislation Will Improve the Country's Climate Surrounding Homosexuality*

Like Article 347-1 of Cameroon's Model Penal Code, Articles 145, 146, and 148 of the Ugandan Penal Code are similarly vague and broad in their definitions of what the legislature deems an "[u]nnatural offence" under Article 145, an "[a]tttempt to commit an unnatural offence" under Article 146, and what constitutes "[i]ndecent practices"

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155. *Id.*

156. *Id.*

157. Gettleman, *Ugandan Who Spoke up*, *supra* note 152; *Obituary of David Kato*, *supra* note 6.

158. *Murder of Ugandan Again Focuses Spotlight on U.S. Gay Bashers—Temporarily*, S. POVERTY L. CTR. (June 17, 2011), <https://www.splcenter.org/fighting-hate/intelligence-report/2011/murder-ugandan-again-focuses-spotlight-us-gay-bashers-%E2%80%94temporarily> [<https://perma.cc/U7Z6-VJ2F>].

159. Gettleman, *Ugandan Who Spoke up*, *supra* note 152.

160. *See id.*

161. *Id.*

162. *Uganda Anti-Gay Timeline*, *supra* note 5.

163. Akinyemi, *supra* note 149.

under the provision of Article 148.<sup>164</sup> There are many ways in which the existing text of the Code can be revised to better understand (1) who the provisions apply to; (2) what acts are deemed illegal under the applicable provisions; and (3) what punishment(s) will result as a violation of the articles.

Throughout the text of Articles 145, 146, and 148, the words “gay,” “lesbian,” or “homosexual” do not appear at all.<sup>165</sup> There is no definitive clause in any of the articles that explicitly references that the provisions of the code apply to LGBT individuals.<sup>166</sup> The provisions do not even reference the term “same-sex.”<sup>167</sup> Clarifying the type(s) of persons to whom the articles apply will ultimately lead to a decrease in the discrimination against and persecution of gay people in Uganda. Individuals identifying as homosexual will undoubtedly have to police their actions in public to avoid violating provisions of the code, however, knowing that there are significant repercussions for their actions under Articles 145, 146, and 148 could potentially save their lives.

Article 145 refers to those having carnal knowledge of any person “against the order of nature.”<sup>168</sup> For purposes of the article titled “Unnatural offences,” we can assume that the “order of nature” mentioned throughout the provision is a reference to the sexual practices that occur between two people—specifically, a heterosexual person’s sexual involvements with a person of the opposite sex.<sup>169</sup> There are dangers in assuming and misinterpreting legislative intent when deciphering statutory authority, and it is no different in this case with what the Ugandan legislative body meant by “unnatural offences.”<sup>170</sup>

The same notion applies to the phrase, “carnal knowledge.”<sup>171</sup> The legal definition of carnal knowledge is “an act of especially illegal sexual intercourse.”<sup>172</sup> The provision references permitting “a male person to have carnal knowledge of him or her against the order of

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164. UGANDA PENAL CODE ACT, ch. 120, §§ 145, 146, 148.

165. *See id.*

166. *Id.*

167. *Id.*

168. *Id.* § 145.

169. *See id.* Sexual dealings and encounters strictly between individuals of the opposite sex also relates to traditional, Christian beliefs that God endorses sexual desires to occur solely between a man and a woman. Any sexual desires fulfilled between members of the same sex are considered disgraceful in His image, as the book of Leviticus reads, “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.” *Leviticus* 20:13 (King James).

170. UGANDA PENAL CODE ACT, ch. 120, § 145.

171. *Id.*

172. *Carnal knowledge*, MERRIAM WEBSTER’S DICTIONARY, <https://www.merriam-webster.com/legal/carnal%20knowledge> [<https://perma.cc/QWV9-L42E>] (last visited Apr. 5, 2019).

nature.”<sup>173</sup> A layman unfamiliar with Ugandan law and the country’s sentiments towards homosexuality could very well misinterpret Article 145’s provision to simply concern issues of statutory rape (vis-à-vis “carnal knowledge”), without ever realizing the provision’s purpose is to outlaw homosexuality.<sup>174</sup>

It is unclear why the article references having carnal knowledge of an animal.<sup>175</sup> How does having carnal knowledge of an animal coincide with sexual relations between members of the same sex? If the aim of the provision is to describe the types of acts that are considered offenses in violation of Article 145, then all mentions of anything other than what those offenses are should be removed. Referencing having carnal knowledge of an animal in no way advances or bolsters the meaning and purpose of Article 145. It is distracting and unnecessary and should be removed from the penal code entirely. It is also unclear why the article specifically condemns allowing a male to have carnal knowledge of a person going against the order of nature.<sup>176</sup> This specific clause within the article needs revising for two reasons: (1) to reflect application to both males and females and (2) so that women are not arbitrarily convicted and sentenced under the provision.

Lastly, if these offenses are to be punished, there should be a measure of punishment depending on the gravity and severity of committing each offense. A person having carnal knowledge of any person against the order of nature should not be victim to the same punishment of life imprisonment as “[a]ny person who permits a male person to have carnal knowledge of him or herself against the order of nature.”<sup>177</sup> It is critical that Ugandan lawmakers and legislators identify the differences between these two provisions in the article, and, if violating the provisions must result in punishment, it is recommended that lawmakers assign appropriate and befitting consequences for violating the provisions, accordingly.

Article 146, which directly refers to the offenses (offences) indicated in Article 145, similarly does not specify how persons committing the acts in Article 145 are liable for their felonious behavior, resulting in up to seven years of imprisonment.<sup>178</sup> Again, the article’s explicit reference to same-sex couples, gays, lesbians, and homosexuals as individuals in this provision would allow for better focus on the specific *types* of behavior that it seeks to make illegal.

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173. See UGANDA PENAL CODE ACT, ch. 120, § 145.

174. See *id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. UGANDA PENAL CODE ACT, ch. 120, § 146.

Article 146 also only refers to an *attempt* to commit these “unnatural offences.”<sup>179</sup> Although it is presumed that those violating the provision by outwardly performing these acts will be subject to repercussions, the Code should definitively state this.

As mentioned in earlier discussion of Article 347-1 of the Cameroonian Model Penal Code, there is no indication of what offenses are deemed “unnatural” under Article 146.<sup>180</sup> Do the unnatural offenses that the provision seeks to illegalize only involve those sexual in nature, or do Ugandan lawmakers consider less promiscuous acts between individuals of the same sex (for example, hugging, kissing, holding hands, etc.) unnatural as well? Establishing these parameters is not only key for proper interpretation of the article and understanding legislative intent, but is important for gay Ugandans to know the types of deeds outlawed under the statute. The more detail that is given and the more they know, the less likely they will be to commit any of the offenses that Article 146 deems “unnatural.”

Again, there needs to be a range of consequences illustrated in Article 146 as punishable in one’s attempt to commit these offenses. Unless Ugandan lawmakers think a same-sex couple’s attempt to hold hands should be penalized to the same extent as said couple’s attempt to kiss or even have sex in public, there should be a myriad of punishments associated with the attempt to commit each act differentiated under the article.

Like Articles 145 and 146, Article 148 never explicitly refers to acts committed by people *of the* same sex as being “gros[sly] indecent.”<sup>181</sup> The article is awfully broad and entirely too generalized, as it states:

Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.<sup>182</sup>

How does Ugandan Parliament define what is considered a “gross indecency”? On its face, this provision could mean a number of different things—namely, that Parliament outlaws participating in sexual activities (if that is what is meant by “gross indecency”) in

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179. *See id.*

180. *Id.*

181. *Id.* § 148.

182. *Id.*

both public and private arenas. This provision is about as arbitrarily worded as the reasons for which people like David Kato, George Mukhwezi, and Kasha Jacqueline Nabagesera were arrested, evicted, and persecuted.

Article 347-1 of Cameroon's Model Penal Code and Article 148 of Uganda's anti-homosexuality bill are similar in the fact that the acts outlawed by both statutes are not clearly stated and defined, therefore making a range of activities between people of the same sex illegal.<sup>183</sup> A concisely worded, precise drafting of the articles would undeniably lead to less criminal convictions and persecutions of gay people in either country.

#### *D. Potential Roadblocks to Revising Provisions of the Ugandan Penal Code*

There will undoubtedly be challenges and resistance to reforming Articles 145, 146, and 148 of Uganda's Penal Code. Like reforming provisions in Cameroon's Model Penal Code, narrowly construing newly revised Articles 145, 146, and 148 could infringe on the ability of gay Ugandans to openly and outwardly express themselves, and the feelings for those they love.<sup>184</sup> Regarding Article 145, the Ugandan Parliament is bound to disagree over Article 145, and just how explicit and detailed it should be in describing the types of offenses it deems "unnatural" and "against the order of nature."<sup>185</sup> There may also be disagreement over whether to strictly refer to males ("permits a male person to have carnal knowledge of him or her against the order of nature"), as the provision currently stands, or to amend it to include a reference to females as well.<sup>186</sup> Liberal members of Parliament may regard "unnatural offenses" to mean members of the same sex kissing, or having sexual intercourse, while conservative Ugandan members of Parliament, on a completely opposite end of the spectrum, may construe "unnatural offenses" to consist of two men or two women simply holding hands.<sup>187</sup>

Article 148 may bring about another dispute regarding the semantics and choice of words in the provision. There may be debate as to whether "indecent practices" means the same thing as "unnatural offences," and whether they should be punished to equal or different

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183. See CAMEROON MODEL PENAL CODE § 347-1; UGANDA PENAL CODE ACT, ch. 120, § 148.

184. See UGANDA PENAL CODE ACT, ch. 120, §§ 145, 146, 148.

185. *Id.*

186. *Id.*

187. *Id.* § 145.



degrees. The subjects of Article 148 are “[a]ny person who . . . commits any act of gross indecency.”<sup>188</sup> Reform proposals for the article may call for specifying exactly *who* the article applies to; it will be up to the Ugandan Parliament to decide whether to tailor the provision for specificity, or to leave it open-ended and expansive in its application. Members of Parliament may be met with the challenge of maintaining sanctions over persons of the same sex committing acts in private arenas, which presumptively will be harder to prove than those committing the same acts in public.

### CONCLUSION

It is clear that the African continent must make progress in advocating for gay rights. Although legalizing homosexuality in South Africa was undoubtedly met with its own challenges, it is jarring that it still is the only country on the entire African continent that openly and legally advocates for the rights of its gay citizens.<sup>189</sup> Though South Africa has technically legalized homosexuality, hate crimes against gay individuals living in the country still persist, which is at the root of the tension that still lingers between the homosexual and heterosexual communities there.<sup>190</sup>

For countries like Uganda and Cameroon, South Africa is a beacon of hope that legislative action and reform can take place and better the lives of oppressed homosexuals who are impacted by Article 347-1 of Cameroon’s Model Penal Code, and Sections 145, 146, and 148 of Uganda’s Penal Code Act of 1950. The statutory authority that governs issues concerning homosexuality in Cameroon is entirely too vague, and thus, applied arbitrarily, leading to mistreatment and detainment of undeserving individuals against their will. Article 347-1 has breached international human rights protections afforded to gay Cameroonians under the ICCPR. Uganda’s Penal Code has impacted gay Ugandans far beyond social exclusion from society. Gay Ugandans are denied employment, education, and healthcare services, and are subject to arrests, detainment, persecution, and physical and verbal abuse, simply for being gay.

Hopefully within the coming years, through legislative reform that will narrow and specify the incredibly broad language of their respective legislative acts, these two countries will see less

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188. *Id.* § 148.

189. See Itaborahy & Zhu, *supra* note 3, at 33; Masci et al., *supra* note 2.

190. Michael Morris, *LGBT Community Still Faces High Levels of Violence—Report*, NEWS24 (Dec. 4, 2017, 12:07 PM), <https://www.news24.com/Analysis/lgbt-community-still-faces-high-levels-of-violence-report-20171204> [<https://perma.cc/L4DC-NGJV>].

criminalization of homosexuals simply being themselves—something that severely and negatively impacted the lives of people like Roger Mbede, Francois Ayissi, Val Kalende, Jacqueline Nabagesera, George Mukhwezi, and David Kato.

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\* Danielle Makia is a first-generation American whose family hails from Bamenda, Cameroon. She graduated from the University of Virginia in 2013, where she majored in Government, with a minor in English Literature. She thanks God, first and foremost, for giving her the strength needed to author this Note. Secondly, she thanks her Notes Editor, Sara Sapia, for her unwavering support and guidance throughout the Note-writing process. Lastly, she would like to thank her mother, Gladys Mbah, for the numerous sacrifices made to afford her success, such as the publishing of this Note. As an LGBTQ+ ally, Danielle dedicates this scholarship to those who feel marginalized and oppressed for who they are, and who they love. This Note is specifically dedicated to her African brothers and sisters living on the continent, who are victimized for simply being themselves.