



C/2023/452

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## **Universal Decriminalization of Homosexuality, in light of recent developments in Uganda**

**European Parliament resolution of 20 April 2023 on the universal decriminalisation of homosexuality in the light of recent developments in Uganda (2023/2643(RSP))**

(C/2023/452)

*The European Parliament,*

- having regard to the Universal Declaration of Human Rights,
- having regard to the African Charter on Human and Peoples' Rights,
- having regard to the American Convention on Human Rights,
- having regard to the European Convention on Human Rights,
- having regard to the International Covenant on Civil and Political Rights,
- having regard to the resolution on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola from 28 April to 12 May 2014,
- having regard to the joint statement signed by 85 countries at the UN Human Rights Council of 22 March 2011 on ending acts of violence and related human rights violations based on sexual orientation and gender identity,
- having regard to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity,
- having regard to the report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity of 11 May 2018,
- having regard to the work of the UN LGBTI Core Group, in particular its statement of 19 March 2023 calling on the UN Security Council to better integrate LGBTI human rights into its international peace and security mandate,
- having regard to UN Resolution 70/1 entitled 'Transforming our world — the 2030 Agenda for Sustainable Development' (the 2030 Agenda), adopted at the UN Sustainable Development Summit on 25 September 2015 in New York and establishing the Sustainable Development Goals (SDGs),
- having regard to the 2022 decision of the UN Committee on the Elimination of Discrimination Against Women (CEDAW) in the case of *Rosanna Flamer-Caldera v Sri Lanka*,
- having regard to the joint communication from the Commission and the High Representative of the Union for Foreign Affairs and Security Policy of 25 March 2020 entitled 'EU Action Plan on Human Rights and Democracy 2020-2024' (JOIN(2020)0005),
- having regard to the Commission communication of 12 November 2020 entitled 'Union of Equality: LGBTIQ Equality Strategy 2020-2025' (COM(2020)0698),
- having regard to the Partnership Agreement between the African, Caribbean and Pacific (ACP) Group of States and the EU (the Cotonou Agreement) of 2000, and to the human rights clauses and commitments contained therein, particularly Articles 8(4), 9, 31a(e) and 96, as well as Article 65,

- having regard to the EU Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTIQ) persons, adopted on 24 June 2013,
  - having regard to the EU Guidelines on Death Penalty, adopted on 12 April 2013,
  - having regard to the EU Human Rights Guidelines on Non-Discrimination in External Action, adopted on 18 March 2019,
  - having regard to Council Regulation (EU) 2020/1998 of 7 December 2020 concerning restrictive measures against serious human rights violations and abuses<sup>(1)</sup>,
  - having regard to the Treaty on European Union (TEU), in particular Articles 21 and 26 thereof,
  - having regard to the 2023-2025 inclusion and diversity agenda in the European External Action Service, adopted on 6 March 2023,
  - having regard to the Ugandan Anti-Homosexuality Bill of 21 March 2023,
  - having regard to the 1995 Constitution of Uganda,
  - having regard to its previous resolutions on Uganda,
  - having regard to the statement made on 29 March 2023 by UN experts condemning egregious anti-LGBT legislation in Uganda,
  - having regard to the statement of the UN High Commissioner for Human Rights, Volker Türk, of 22 March 2023;
  - having regard to Rule 132(2) and (4) of its Rules of Procedure,
- A. whereas all human beings are born free and equal in dignity and rights;
  - B. whereas the Universal Declaration of Human Rights upholds the inherent dignity and equal rights of all human beings without distinction of any kind, including the inalienable rights to life, liberty, personal security and protection from discrimination, freedom from arbitrary arrest or detention and respect for privacy;
  - C. whereas different sexualities and gender identities have traditionally existed in many ancient cultures, including African cultures;
  - D. whereas the African Charter on Human and People's Rights provides that 'every individual shall be entitled to the enjoyment of rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind' (Article 2), that 'every individual shall be equal before the law' and 'every individual shall be entitled to equal protection of the law' (Article 3), and that 'every human being shall be entitled to respect for his life and the integrity of his person' and 'no one may arbitrarily be deprived of this right' (Article 4);
  - E. whereas the International Covenant on Civil and Political Rights (ICCPR) recognises the right to life as a fundamental human right and explicitly states that the death penalty should not be imposed for non-violent offences or for crimes committed by individuals who were under the age of 18 at the time of the offence; whereas the ICCPR prohibits discrimination based on sexual orientation and whereas the imposition of the death penalty for same-sex relationships violates this principle;
  - F. whereas 61 countries around the globe — mainly in Africa, the Middle East and Asia — criminalise homosexuality and transgender identity by law; whereas two additional countries de facto criminalise it; whereas in Qatar, Saudi Arabia, Afghanistan, Iran, Yemen, Somalia, United Arab Emirates, Brunei, Northern Nigeria, Mauritania and Pakistan, the penalty for consensual same-sex sexual acts is death;
  - G. whereas laws that criminalise consensual same-sex sexual activity violate fundamental and internationally protected human rights;

<sup>(1)</sup> OJ L 410 I, 7.12.2020, p. 1.

- H. whereas there is a global movement towards decriminalising homosexuality and transgender identity, as the number of countries that criminalise consensual same-sex acts has decreased from 113 in 1990 to 64 in 2023; whereas this movement is being fuelled by an increasing realisation that laws that criminalise homosexuality and transgender identity are discriminatory and violate fundamental human rights, and that societal progress demands equal access to rights; whereas this growing momentum offers hope that the world is moving towards a more just and equitable future in which all individuals will be free to enjoy their rights without fear of discrimination or persecution;
- I. whereas in April 2023, the Cook Islands became the latest country to decriminalise homosexuality by amending its Crimes Act; whereas in early 2023, Singapore decriminalised 'indecent acts between men' by amending its Penal Code;
- J. whereas in many recent cases, the decriminalisation of consensual same-sex relations has resulted from court rulings, such as the Barbadian High Court's oral ruling of December 2022 and the Eastern Caribbean Supreme Court's ruling of August 2022;
- K. whereas on 21 March 2023, the Ugandan Parliament adopted the Anti-Homosexuality Bill (hereinafter 'the Bill'); whereas the Bill proposes the application of the death penalty for the offence of 'aggravated homosexuality', life imprisonment for the offence of 'homosexuality', up to 14 years in prison for 'attempted homosexuality', and up to 20 years in prison for 'promoting homosexuality'; whereas the latter entails the complete censorship of LGBTIQ issues, including for civil society organisations undertaking human rights-based advocacy and healthcare work; whereas this legislation conflicts with Uganda's own constitutional provisions stipulating equality and non-discrimination for all;
- L. whereas previous iterations of similar bills banning the promotion of homosexuality and homosexual acts were already proposed in 2009, 2012, 2013 and 2014, signalling a propensity for the systematic scapegoating of LGBTIQ people; whereas politicians and national and foreign religious leaders have played a pivotal role in inciting hateful rhetoric against LGBTIQ persons in Uganda; whereas an increase in verbal and physical violence is already being witnessed as a result of the adoption of the Bill;
- M. whereas President Museveni has made inflammatory statements; whereas he has not yet promulgated the Bill;
- N. whereas in February 2023 alone, more than 110 LGBT people in Uganda reported incidents, including arrests, sexual violence, evictions and public stripping;
- O. whereas Uganda has been a party to the ICCPR since 1995;
- P. whereas the EU is Uganda's largest development cooperation partner; whereas the EU's multiannual indicative programme for Uganda for 2021-2024 has a total budget of EUR 375 million;
- Q. whereas the new EU global human rights sanctions regime, under the EU action plan on human rights and democracy, allows the EU to target serious human rights violations and abuses worldwide, irrespective of where they occur, including cases of arbitrary killings and inhuman or degrading treatment or punishment;
- R. whereas the situation in Uganda risks having negative effects in the region, with Kenya, Niger and Tanzania tabling similar bills;
- S. whereas all EU Member States have repeatedly stated their unwavering opposition to the death penalty at all times and in all circumstances, considering it to be inhuman and degrading treatment and contrary to human dignity; whereas the Member States have committed to advocate tirelessly for the total abolition of capital punishment;
- T. whereas all EU Member States have unambiguously condemned discriminatory laws, policies and practices, including the criminalisation of consenting same-sex relations between adults or of transgender identities; whereas the Member States have called for the EU to work to achieve the decriminalisation of homosexuality and transgender identity; whereas on numerous occasions, Parliament has called on non-EU countries to move towards decriminalisation as a way to ensure the indivisibility and enjoyment of all human rights by all LGBTIQ persons;

- U. whereas Article 21 TEU stipulates that the Union's 'action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement', in particular 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law';
- V. whereas the EU's common foreign and security policy aims to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms;
- W. whereas the European Consensus on Development commits the EU and its Member States to implementing a human rights-based approach to development cooperation, encompassing all human rights;
- X. whereas the EU's Everything but Arms (EBA) scheme removes tariffs and quotas for all imports of goods (except arms and ammunition) coming into the EU from least developed countries; whereas the EU can withdraw EBA preferences for serious and systematic violations of principles laid down in international conventions on fundamental human rights and labour rights, such as systemic human rights abuses;

### ***Recent developments in Uganda***

1. Condemns, in the strongest possible terms, the Bill adopted on 21 March 2023 by the Ugandan Parliament, which increases sentences and widens the scope of Uganda's legislation criminalising homosexuality and transgender identity; considers that its adoption is in stark violation of the Ugandan Constitution and Uganda's international obligations arising from the African Charter and the UN international law architecture, such as the Universal Declaration of Human Rights, the ICCPR and the UN Charter; highlights that this bill also runs counter the country's political commitments on sustainable development, in particular SDGs 3, 5, 10 and 16, and actively puts people's rights, health and safety at grave risk;
2. Is alarmed by the fact that only 2 out of 389 legislators voted against the Bill; deplores the comments by President Museveni, who has further contributed to the hateful rhetoric about LGBTIQ persons; is concerned by the number of politicians, religious leaders and media figures who have instigated hatred; considers that the scapegoating of LGBTIQ people by the majority of the Ugandan political class constitutes a grave development affecting the principles of democracy, the rule of law and respect for internationally recognised human rights; considers that the promulgation of this Bill would inevitably strain relations between the EU and Uganda and would require the EU to re-orient its focus;
3. Reminds the Ugandan Government of its obligations under international law and under the Cotonou Agreement, which calls for universal human rights and fundamental freedoms to be respected;
4. Expresses its support and admiration for the Ugandan parliamentarians and civil society representatives who had the courage to stand up and publicly speak out against the Bill;
5. Believes that the gravity of the situation warrants the strongest of institutional responses and condemnation and merits a reaction at all levels of EU diplomacy;
6. Recalls that this Bill is only Uganda's latest step on the worrying path it has been following for several years, coming amid a rise in homophobic rhetoric among politicians, religious leaders and other significant figures in Ugandan society, with ever increasing pressure being put on civil society, as well as a rise in state-sponsored anti-LGBTIQ hate speech, which incites hatred and violence; condemns this bigotry, prejudice and discrimination in the 21st century;
7. Recalls further that sexual violence against women and girls is widespread in Uganda and that there is a correlation between hatred and violence directed towards LGBTIQ people and violence against women and the lack of gender equality;

8. Recalls that Uganda has been a trailblazer in fighting HIV and the associated stigma; recalls that the prevalence of HIV in men who have sex with men in 2021 was 12,7 %; notes with concern that this prevalence is significantly higher than for heterosexual men and above the national average; stresses that the law should not be used to deny Ugandans the right to HIV services and medication and calls on the government to provide better access to them; refers to the insurmountable evidence presented by UNAIDS that criminalising laws drive communities away from life-saving services;

9. Strongly deplores and condemns the decision by the Ugandan National Bureau for Non-Governmental Organizations of 5 August 2022 to shut down Sexual Minorities Uganda, the country's leading LGBTIQ rights organisation; gives its unwavering support to Frank Mugisha, the founder and leader of this organisation, who has devoted his life to fighting for LGBTIQ rights in Uganda;

### ***The situation of decriminalisation in the world***

10. Unambiguously condemns all laws, practices and official positions criminalising homosexuality and transgender identity;

11. Considers such laws to be in full opposition to international human rights law and in violation of the human rights of LGBTIQ persons, including the right to life, privacy, liberty, security, health and expression, as well as the freedom of peaceful assembly and association; considers that the criminalisation of homosexuality and transgender identity creates an apartheid situation by depriving part of the population of the protection of the state and the law, regardless of the penalties prescribed;

12. Insists that, by outlawing their existence, the criminalisation of homosexuality and transgender identity makes LGBTIQ people a target, increases their risk of being blackmailed by the authorities or other citizens and encourages hate speech, hate crimes and discrimination against them;

13. Recalls the health risks caused by the criminalisation of homosexuality and transgender identity, as criminalisation prevents community-based health policies and prevents LGBTIQ people from having access to reliable information about their health, in particular concerning their HIV status and related prevention, screening, tracing and treatment;

14. Reiterates its unwavering opposition to the death penalty at all times and in all circumstances; considers it to be an inhuman and degrading treatment that is contrary to human dignity;

15. Welcomes the positive international trend towards decriminalisation of homosexuality, with 49 UN member states undertaking legal reform in the last 30 years, in particular Mozambique in 2015, Belize and Seychelles in 2016, Trinidad and Tobago and India in 2018, Botswana in 2019, Gabon in 2020, Angola and Bhutan in 2021, Antigua and Barbuda, Singapore and Barbados in 2022 and the Cook Islands in 2023; recalls, nevertheless, that there are also countries where laws criminalising same-sex conduct have been tightened or reintroduced, such as Chad, Brunei, Nigeria and, lastly, Uganda, which highlights the need for a universal movement advocating decriminalisation; recalls precedents where UN bodies have provided legal recourse against criminalisation, such as the Human Rights Council in *Toonen v Australia* in 1994 and CEDAW in *Rosanna Flamer-Caldera v Sri Lanka* in 2022;

16. Recalls that the promotion of the SDGs is a responsibility of the 193 UN member states which signed up to them, Uganda included, and that they must serve the goal of 'leaving no one behind'; acknowledges the inherent link between respect for LGBTIQ persons' human rights and the SDGs, and understands that any discriminatory practice, particularly one which envisages the death penalty, is in radical opposition to these goals;

17. Refutes the narrative developed by some political and religious leaders that homosexuality and transgender identity are Western concepts; recalls that most of the laws criminalising homosexuality and transgender identity in the world have their origin in the laws of the Western colonising powers; deplores the dissemination of anti-LGBTIQ propaganda by any foreign actors, including those based in Europe, active in Uganda; also condemns, in this regard, the significant role played in Uganda and elsewhere by US evangelical preachers and organisations in the promotion of anti-LGBTIQ legislation and the spread of harmful disinformation;

18. Refutes the narrative that decriminalising homosexuality and transgender identity would go against fundamental religious principles or hinder freedom of religion; welcomes, in this regard, the statements made by the Pope on 24 January 2023 affirming that laws criminalising homosexuality and transgender identity are 'unjust' and that 'being homosexual is not a crime';

19. Is worried about the current global anti-rights, anti-gender and anti-LGBTIQ rhetoric movements, which are fuelled by some political and religious leaders around the world, including within the EU; believes that these movements dramatically hinder efforts to achieve the universal decriminalisation of homosexuality and transgender identity, as they legitimise the rhetoric that claims LGBTIQ people are an ideology rather than human beings; strongly condemns the spread of such rhetoric by some influential political leaders and governments in the EU, such as in Hungary, Poland and Italy;

20. Expresses concern about the adoption of so-called anti-gay propaganda bills in some countries, which contribute to a culture of intolerance and discrimination, and sounds the alarm about the way in which such laws can have a spillover effect in other countries, paving the way for the adoption of more severe measures, such as the criminalisation of same-sex sexual relations and other aspects of sexual orientation, gender identity and expression, and sex characteristics; notes that recent research shows that conspiracy theories and disinformation are increasingly popular in many EU Member States; is concerned that hatred, conspiracies and disinformation online lead to violence offline and can cost lives; is concerned by the fact that according to research by the International Lesbian, Gay, Bisexual, Trans and Intersex Association <sup>(2)</sup>, 2022 has been the most violent year for the LGBTIQ community as a result of hate speech and disinformation;

21. Is concerned about the growing trend towards LGBTIQ criminalisation in some parts of Africa, such as in Ghana, Niger and Kenya, where bills similar to the Ugandan Bill have been proposed and are under consideration by countries' respective parliaments, and about the likelihood that the promulgation of the Ugandan Bill will have a significant impact on the outcomes of these bills;

22. Praises the work of grassroots human rights-focused civil society organisations around the world, which tirelessly work to protect and defend LGBTIQ people and fight against stigma and prejudice, sometimes at the price of the safety of their members; believes that the Member States and the EU should support these civil society organisations and activists, including financially;

23. Recalls that protecting the rights of lesbian, gay, bisexual, transgender and intersex people throughout the world is a priority for the EU and that the universal decriminalisation of homosexuality and transgender identity is an objective that the EU should continue to pursue for as long as necessary;

### ***Call for action***

24. Calls for the universal decriminalisation of homosexuality and transgender identity;

25. Calls for the universal abolishment of the death penalty;

26. Urges the 63 countries that have not yet done so to comply with international law and take all necessary measures, legislative or otherwise, to ensure that sexual orientation and gender identity are no longer the basis for criminal sanctions;

27. Calls on Ugandan President Yoweri Museveni not to promulgate the Bill and to categorically refuse to give his assent to any similar initiative in future, dissuading further attempts in this direction; urges the Ugandan authorities to promote the principles of tolerance, acceptance and respect for human rights, and to review any law criminalising homosexuality and transgender identity, notably under sections 145 and 146 of the Penal Code; Calls on the Ugandan authorities to investigate, prosecute and sanction all hate-based attacks against individuals and organisations as a result of the adoption of the Bill, and to stop any retaliatory actions against civil society organisations involved in human rights and LGBTIQ advocacy, such as raids and the blocking of bank accounts, as the latter are crucial to providing community-based services;

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<sup>(2)</sup> <https://www.ilga-europe.org/report/annual-review-2023/>



28. Calls on the Commission and the European External Action Service (EEAS) to use all necessary diplomatic, legal and financial means at its disposal to convince the Ugandan President to refrain from signing the Bill passed by the Ugandan Parliament; further calls on the EU to make full and effective use of the political dialogue provided for under Article 8 of the Cotonou Agreement as well as the Council of the EU's Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender People (LGBT Toolkit) and its accompanying guidelines in its dialogue with the Ugandan authorities in order to help promote human rights in Uganda, decriminalise homosexuality, reduce violence and discrimination and protect LGBT human rights defenders;

29. Urges the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity to swiftly engage with the President and Parliament of the Republic of Uganda, LGBTIQ activists and the Ugandan authorities in order to obtain unfettered access to the country;

30. Should the Bill be signed into law by the Ugandan President:

- calls on the Commission to consider withdrawing EBA preferences for Uganda in accordance with Article 19 of Regulation (EU) No 978/2012<sup>(3)</sup> on the basis of serious and systemic human rights violations,
- calls for immediate action under the 'essential elements' clause of the Cotonou Agreement,
- calls on the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) to consider triggering the EU global human rights sanctions regime, as it applies squarely to the violations or abuses the Bill prescribes,
- insists that decisions taken and sanctions adopted in relation to Uganda should, as a priority, target and affect the political and religious leaders who instigated and supported the Bill; urges the Commission to direct its cooperation and support towards strengthening Ugandan LGBTIQ and human rights organisations and calls on the EEAS, the EU Delegation to Uganda and Member States' embassies in Uganda to support community members, partners and allies by means of a targeted LGBTIQ support package,
- calls on the EEAS to increase its efforts in ensuring that Ugandan human rights defenders have access to funding, support, protection, relocation, visas and shelter, when appropriate, in line with the EU Guidelines on Human Rights Defenders;

31. Calls on the Commission, under the supervision of the VP/HR, to mobilise all external policies of the EU to achieve the objective of establishing an EU strategy for the universal decriminalisation of homosexuality and transgender identity, which would include the following measures:

- creating a broad coalition of those willing to support these endeavours within the international community focused on international instruments such as UN General Assembly resolutions,
- making decriminalisation a requirement for access to the Generalised Scheme of Preferences, including the EBA scheme, and withdrawing all countries that continue to criminalise consensual same-sex sexual acts from the EBA list,
- considering including a 'no backtrack on human rights' clause in its international partnership agreements, through which a partnership, including its financial aspects, could be suspended if a partner country backtracks on the protection of human rights, including by criminalising homosexuality or transgender identity,
- systematically addressing the issue of decriminalisation of consensual same-sex sexual acts and of diverse gender identities as well as gender-affirmative care at EU-African Union summits, as well as at every summit involving the countries concerned, and placing the topic at the centre of future discussions,
- including action against interaction-based recommender systems on social media in the upcoming defence of democracy package, as these systems are known to amplify hate and disinformation,

<sup>(3)</sup> Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

- making proactive and systematic EU contributions to the universal periodic review of every country still criminalising homosexuality and transgender identity, calling on their governments to repeal such legislation,
- extending financial support to grassroots LGBTIQ and human rights organisations based in countries that criminalise homosexuality and transgender identity, and establishing a dedicated EU fund to offer financial, technical and legal aid to these organisations as well as to lawyers involved in challenging these laws in international courts,
- taking inspiration from the March 2023 decision on sanctions based on sexual violence and other violations of women's rights to devise a more systematic triggering of the EU global human rights sanctions regime against individuals and entities responsible for perpetuating or inciting violence against LGBTIQ people, especially in countries that continue to have and apply criminalising provisions;

32. Stresses the importance of safe and legal EU pathways for people in need of international protection, including LGBTIQ people fleeing countries where they risk being persecuted because of their sexual orientation, gender identity or expression, or sex characteristics;

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33. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the governments and parliaments of the EU Member States, the UN High Commissioner for Human Rights, the President, Government and Parliament of Uganda, also translated into Swahili, and the authorities of the 63 other countries still criminalising homosexuality and transgender identity.

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