Homosexuality Laws in Kenya and How They Have Been Shaped Throughout History by Western Colonial Impact

Figure 15: A Woman in a Red Shirt is Holding a Flag, Photograph taken by Hassan Kibwana, 2024.

OUTDATED LAWS OR AN OUTDATED MINDSET?

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The laws surrounding homosexuality in Kenya reflect the country's complicated history that is deeply influenced by Western colonialism. Western colonialism had lasting effects on local cultures and legal systems in Kenya. Before British colonial rule, many communities in Kenya had diverse views about sexuality with many indigenous societies having a more fluid mindset on gender and sexual orientation. However, when European colonizers arrived in the late 19th century a significant shift occurred in how sexual behavior, especially homosexuality, was viewed and regulated. Western ideas of morality and law, which were heavily influenced by Christian values, were forced onto Kenyan society. This transformation criminalized same-sex relationships.

British colonial officials introduced laws that specifically targeted "unnatural offenses" such as sodomy. These rules and regulations were based on British laws that saw any deviation from heterosexuality as immoral and illegal. These colonial-era laws were not only an attempt to control sexual behavior but also served to suppress indigenous cultures and enforce European standards. When Kenya gained independence in 1963, these colonial laws remained strong in the legal system, continuing to shape the way homosexuality was treated in the country. The Penal Code 162-165, inherited from the British, still contains sections that criminalized same-sex acts even though Kenya was no longer a colony.[53]

The persistence of these laws and the influence of colonial-era ideas about sexuality have had a profound impact on contemporary Kenyan society. They have contributed to a stigma against LGBTQ+ individuals and created a legal environment that makes it difficult for many to openly express their sex-

Figure 16: Demonstrators hold placards and chant slogans during the protests in Nairobi, Photograph taken by John Ochieng, 2022.

Figure 17: Mau Mau Suspects at Manyani in Kenya, Photograph taken by Authenticated News, 1955.

"The criminalization of homosexuality in Kenya cannot be fully understood without recognizing the impact of colonialism"

ual identities. Despite ongoing advocacy from human rights organizations and LGBTQ+ groups, the legal and social status of homosexuality in Kenya remains an issue. In this article, we will explore how homosexuality laws in Kenya have evolved over time, from the colonial period to the present day, and analyze the ongoing influence of Western colonialism on Kenyan legal and cultural perspectives on sexuality. By understanding this historical context, we can better grasp the challenges and struggles faced by LGBTQ+ individuals in Kenya today.

The article "Fake History: Misunderstanding Colonial Legacies and the Demonization of Homosexuality in Africa" provides an insightful critique of colonial legacies in Africa, and how they have shaped attitudes and laws surrounding homosexuality.[54] In the article, the author Aileen Waitaaga Kimuhu argues that the knowledge for anti-LGBTQ+ ideas in African societies when compared to traditional African cultures is inaccurate and oversimplified. In reality, the criminalization of same-sex relationships in Kenya and other African countries is largely a result of colonial laws and Western moral ideas forced upon them during the colonial period.

During British colonial rule, Kenya, like many other African nations, inherited the Penal Code which criminalized homosexuality. As Kimuhu highlights, these laws were not a reflection of pre-colonial African traditions but were instead products of European legal systems that said homosexuality was immoral and unnatural. This legal shift was a significant 180 from pre-colonial

Figure 18: Anthony, a volunteer at Ishtar, Photograph taken by Nell Freeman, 2012

societies where sexuality was more fluid and open to a range of expressions.

Following Kenya's independence in 1963, the colonial-era laws that criminalized homosexuality stayed, further embedding the lasting effects of Western influence. As the article points out, the demonization of homosexuality in Kenya cannot be fully understood without recognizing the impact of colonialism. The post-colonial Kenyan government, while striving for independence found itself fighting the contradictions of inherited colonial laws. Consequently, the criminalization of homosexuality persisted, despite the fact that Kenya was now a sovereign state.

"The struggle for LGBTQ+ rights in Kenya is ongoing with legal reforms being complicated by deep colonial legacies."

Today, Kenya continues to face significant challenges regarding LGBTQ+ rights, and the influence of colonial-era laws remains a key factor in this ongoing struggle. As Kimuhu suggests, debates about homosexuality in Kenya are often framed in terms of African cultural values and Western ideals. However, the persistence of colonial laws in Kenya reveals the deep roots of these legal systems in the country's history. Until these colo-

THE CURRENT LAWS IN KENYA

- Censorship - State enforced
- Changing Gender - Ambiguous (New legislation only allows intersex persons identified as male or female at birth to request a change to "I.")
- Gender Affirming Care - Restricted
- Nonbinary Gender Recognition - Intersex only
- Discrimination - Illegal in some contexts
- Employment Discrimination - No protections
- Housing Discrimination - No protections
- Adoption - Illegal
- Intersex Infant Surgery - Full ban
- Military - Illegal
- Donating Blood - Ambiguous
- Conversion Therapy - Not banned

nial influences are fully acknowledged and addressed, the path toward legal reform and greater acceptance of LGBTQ+ individuals in Kenya remains difficult.

The article “Kenya: The Shameful Truth About British Colonial Abuse and How It Was Covered Up” by Duffy Aoife sheds light on the abuse by the British colonial authorities in Kenya, particularly during the Mau Mau uprising in the 1950s.[55] While the article primarily focuses on the physical and political repression faced by Kenyans during colonial rule, it also indirectly addresses the larger colonial idea that tried to reshape almost every aspect of Kenyan life, including sexual norms. The adding of Western legal systems and morality during this period laid the groundwork for the criminalization of same-sex relationships in Kenya, a legacy that persists in the country's laws and attitudes today.

The article shows the cover-up efforts by Britain to hide their abuse during the colonial period which was largely ignored or suppressed for many years. This culture of denial and repression is important when considering the colonialism in Kenya, especially in the context of sexuality. The British colonial regime not only imposed a rigid sexual morality but also set in motion the stigmatization of LGBTQ+ individuals. The criminalization was used to suppress Kenyan culture and identity, which led to the distrust of both the British colonial system and the foreign laws forced upon Kenyans.

Equaldex provides an overview of the current legal landscape for LGBTQ+ individuals in Kenya, shedding light on how colonial-era laws continue to shape the nation’s approach to homosexuality.[56] Section 162 of the Kenyan Penal Code, which criminalizes "unnatural offenses" such as sodomy, was introduced during British rule and remains in place today. As the webpage notes, Kenya's laws against homosexuality are a direct result of colonial laws that were meant to regulate the personal lives of the colonized population. The continued existence of these laws is a reminder of the influence of colonialism on Kenya's legal and social society, particularly in regard to issues of sexuality and identity.

The data gathered on Equaldex highlights the ongoing criminalization of homosexuality in Kenya. Although the country is no longer a British colony, the colonial legal structure has persisted, and the stigma against LGBTQ+ individuals remains deeply ingrained. The refusal to repeal or amend these colonial-era laws has led to a situation where LGBTQ+ individuals are at constant risk of prosecution and harassment.

The current legal situation in Kenya has been a source of ongoing debate. While some groups continue to advocate that the laws should go away but there is significant opposition from both political leaders and religious groups. This opposition is often in terms of a defense of Kenyan cultural values even though as the history of colonialism demonstrates, these "values" were largely constructed by the West. The thought that homosexuality as a foreign practice is still common belief in Kenya.

All in all, the legacy of British colonialism continues to play a major role in the legal and social treatment of LGBTQ+ individuals in Kenya. The laws that criminalize homosexuality are a direct result of colonial-era policies that imposed Western moral standards on Kenyan society. The struggle for LGBTQ+ rights in Kenya is ongoing with legal reforms being complicated by colonial legacies. While there is growing support for LGBTQ+ rights within the country and internationally, the path to full equality and acceptance in Kenya remains blocked by the influence of these laws. Understanding this historical context is crucial for anyone seeking to understand the legal and cultural challenges faced by LGBTQ+ individuals in Kenya today.

EVANGELISM, DRACONIAN LAWS, THE AIDS CRISIS, AND HOMOPHOBIA IN UGANDA

BY JOSEPH MARTINDALE

The nation of Uganda has engaged in some of the harshest crackdowns on queer and homosexual rights in the world. Codified in national law in 2023 and upheld in court in April 2024. Why is this, what does this act entail, and how has this come to be? These laws are not unprecedented within Uganda's history, both in the long and short terms, and connect with the response to the HIV/AIDS epidemic and the actions of fundamentalist groups both inside and outside Uganda. While there is a long and storied history with homophobia in Uganda, thisarticle will choose to focus on more recent history roughly within the last twenty-five years. To understand the present situation of queer rights in Uganda it is also important to look at the recent history leading up the current day. There have been multiple attacks on Uganda's queer communities and rights groups both by the nation's governmental bodies and private domestic groups such as two high profile cases with newspapers printed in the country.

One of the first legally canonized restrictions on queer rights in Uganda was in 2005 when the Ugandan Parliament amended the nation's constitution to only legally recognize heterosexual marriages. The first of the homophobic attacks produced by newspaper groups came in August 2006. The Red Pepper tabloid paper, which has been in operation since 2001, leaked the first names and professions of forty-five Ugandan men it alleged were gay. This was followed a month later with a list of 13 women it alleged were lesbians. The second tabloid's release in turn was followed by threats of further leaks, though these seemingly were not followed up on. While condemned for this, the tabloid and its publishers suffered little consequences for these articles. As of April 2025, the tabloid is still in operation, though it was subject to a police raid in 2013 and evicted from its offices in 2022 and was forced to relocate. Both happenings are unrelated to the magazine's published allegations. The

other case and the more notable event occurred in October 2010. The Rolling Stone magazine, a small right-wing publication. unrelated to the Rolling Stone magazine in the US, released an article leaking images, full names, and addresses of 100 homosexual Ugandans, with a yellow banner that said, "hang them."[57] The magazine released another article afterwards which claimed a connection between queer Ugandans and a Somali terrorist group al-Shabaab. Queer rights group Sexual Minorities Uganda successfully appealed for the Ugandan High Court to order a verdict to cease production of the doxxing paper, shut down, and pay a 1.5 Ugandan shilling fine, in addition to court costs. This large scale doxxing was followed by the murder of David Kato, who was a high-profile member of Sexual Minorities Uganda, and who was one of those whose names and addresses were listed, was murdered in his home in January 2011. A large part of the onus of his death can be attributed by the actions of Rolling Stone. The naming, and with Rolling Stone doxxing, is one the more apparent results of the atmosphere of homophobia which is prevalent in Uganda. Attacks and threats against suspected queer people often spike after public events such as these or with the passing of legislation such as the Anti-Homosexuality Act. A similar version of the current Anti-Homosexuality Act was signed by the president Yoweri Museveni but was overturned on procedural grounds not long afterwards that same year. This version was very similar to the current act, though it came with more severe punishments for the imposed offenses. The next attempted law to try to criminalize queer expression was the Sexual Offenses Bill in 2021, which was vetoed by President Museveni on the grounds that the bill's contents were too like other laws already on the record. This was then followed by the 2023 act that is now codified in law. One of Uganda's queer rights organizations, Sexual Minorities Uganda (SMUG), was ordered by the Ugandan government to shut down operations in 2022. This ban was justified ostensibly as being due to issues with the name of the organization, which was labeled as "undesirable and unregistrable" for an LGBTQ rights group, this ban has not yet been altered.[58] The group now operates as SMUG international though is no longer directly based in Uganda. It's important to note that many of the bans being applied to LGBTQ groups are similar to bans which have been doled out to human rights organizations in Uganda as well. It's necessary to understand that these are not the actions of a healthy government and by extension people who all choose to be hateful but instead connected to a corrupt regime looking for ideal targets.

10 years

in prison is the minimum sentence for acts of "aggravated" homosexuality

$6.9 billion

2023 PEPFAR Funding budget

$500 million

2025 PEPFAR reauthorized budget

"The Red Pepper tabloid paper, which has been in operation since 2001, leaked the first names and professions of 45 Ugandan men it alleged were gay. This was followed a month later with a listof 13 women it alleged were lesbians"

This recent historical context is important in understanding the present atmosphere and background for the current laws in Uganda. These are laws that have been repeatedly pushed for years, meeting both successes and failures in cracking down on human rights. This victimization gay and queer people have in turn been supported, funded, and promoted by many US based groups.

T he 2023 Anti-Homosexuality Act which has been passed and upheld in court bans all homosexual sexual activity and criminalizes committing the "offense" of homosexuality. As defined in the words of the act itself: "A person commits the offence of homosexuality if the person performs a sexual act or allows a person of the same sex to perform a sexual act on him or her."[59] The punishments mentioned within the act range from sentences varying from up to 10 years to life, or execution for acts of "aggravated" homosexuality. Aggravated homosexuality mainly falls under cases of rape, molestation of minors, and concerning those listed as "serial offenders". The wording of the act in many ways equates homosexuality with sexual crimes, and even links child grooming as a related offense. Additionally, the law bans consent as a defense. The act also fines people who knowingly allow homosexual acts on their premises, bans the promotion of homosexuality with charges up to twenty years, and mandates a duty for people with "a reasonable suspicion" of others committing the act of homosexual conduct to report them to the police. Within the text of the law many threads can be made to homophobic rhetoric by linking it with acts of pedophilia and the criminalization of promoting homosexuality connects with arguments of the "gay agenda" and the concept of gay people preying on children. Beyond the legal charges, the act effectively encourages a state of suspicion and ostracization around any suspected homosexual actors. How is it that this current state came to be? Homophobic tensions in Uganda and even the law itself has had a palpable presence for years. There is a long history with homophobia in Uganda, enshrined even in the history of the nation itself with the story of the Buganda King Mwanga and his execution of Christian pages who refused to engage in sexual ritual practices demanded by Mwanga.

Part of what led to the present state of affairs is the massive influence evangelical groups or other anti-LGBT groups such as Family Watch International have within Uganda. These religious groups and NGOs are split between groups from outside Uganda. These are generally Evangelical groups located within the United States, and these are paired with actions by religious

Figure 19: Map of Uganda, 2025, Mappr.

groups based in Uganda itself. The foreign American groups act in Uganda most prominently by using Non-Governmental Organizations, or NGOs, to influence Uganda and promote their ideals. This influence can range from taking the form of charitable donations, up to personal meetings like that when Family Watch International's founder Sharon Slate met with Uganda's First Lady Janet Museveni in April 2023 weeks before the Anti-Homosexuality Act was codified. Many forms of social work, healthcare, and other social services that are run by governments in many other nations are instead owned and run by NGOs that are operating within Uganda, enshrining and promoting these Evangelical groups within the nation's civil framework. Many of these NGOs in turn benefit from US foreign aid programs such as the President's Emergency Plan For Aids Relief or PEPFAR that help them provide their funding.

Looking briefly at PEPFAR itself, it is important to note that the program is responsible for bettering countless lives in acting against the AIDS epidemic since it was created by George W. Bush in 2003. It is also important to note the program is conservative in its nature, with two thirds of its funding being dedicated to promoting questionably effective abstinence until marriage programs and requiring organizations receiving funding from it to undertake an anti- prostitution pledge. As such the act most supports views pushed by religious conservatives. Since then, the state of US based Evangelical NGOs engaging in funding social work and services has only become more entrenched, though it is unclear if this will be the situation in the near future as of writing. While in the process of blind fire executing US foreign aid President Donald Trump has massively cut funding for PEPFAR, and all other forms of US foreign aid. Currently the program still exists in a butchered state, with "$500 million of PEPFAR was reauthorized; the program had a budget of $6.9 billion in 2023."[60] The program is effectively not currently in operation. This paired with the colossal layoffs for USAID as a whole and the cuts for all other aid programs have essentially broken off funding for

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those in need. While the near complete Evangelical control of services that are state run in other nations is an awful status quo, not having an existing form of social services or health care is worse.

In many ways the dependency on NGOs and the United States' funding has spurred the development of neocolonial practices enforcing a dependency for the United States's funding in the receiving nations. These practices are not healthy for the receiving nations and have helped to give rise to fundamentalist groups with Uganda.

The presence of these evangelical NGO groups is tied to and is partially responsible for the general rise of religious fundamentalism within the entire nation. Home grown fundamentalist groups exert additional influence in Uganda, fundamentalist sects have given rise to the trend of people who have labeled themselves as the Balokole, meaning "the redeemed" or "the saved" people, within the nation. Pentecostal-Charismatic and other fundamentalist preachers and ministers exert great influence, enough that government officials greatly benefit from obtaining endorsements from them. Aside from the influence of NGO groups Ugandan evangelical churches also work to provide outreach for the HIV epidemic as well.

There are many strands of connective tissue between the HIV/AIDS epidemic in Uganda and the actions of religious groups as well. The moralization of the Ugandan response to the epidemic is painted with the same brush as the often religiously motivated homophobia now prevalent in the nation. The presence of the AIDS crisis has additionally aided Evangelists in recruiting and converting as well. By treating HIV as being caused by immoral behaviors that must be mended with moral sexual behavior, proper Christian sexual behavior of abstinence until marriage and faith becomes the true way to behave and act. This rhetoric has incited a move to promote a "moral revolution" within the country by Pentecostal groups. This is a move away from older tactics such as the ABC model, which promoted Abstinence, Being faithful, and Condom use to only an AB model. Queer Ugandans are exempted from relief and treatment within the current setup for HIV and AIDS relief. The moralization of HIV/AIDS in turn connects with the demonization of queer people who are choosing to engage in corrupt behavior.

The actions against homosexuals and queer groups in Uganda is tied with the erasure of acknowledging homosexuality historically. With the case of King Mwanga, his court's homosexual practices are often erased from renditions of the narrative, or the blame for them placed on foreign, such as Arab, influences pressed onto him. Homophobic rhetoric regards homosexuality as being unnatural or imposed, Uganda cannot have homosexuality or native homosexuals in it. Queer people must be "paid to be gay" from outside the nation and are attempting to "recruit" susceptible people into

"UNLIKE WHAT THESE ALLEGATIONS CLAIM THIS STATE OF RAMPANT HOMOPHOBIA IS AN IMPORT RATHER THAN HOMOSEXUALITY ITSELF ... HOMOPHOBIA IS THE IMPORT, NOT HOMOSEXUALITY."

becoming homosexual with their presence.[61] Unlike what these allegations claim this state of rampant homophobia is an import rather than homosexuality itself. Aspects of what is considered in the current day as queer sexuality and identity has existed in Uganda at least to the late pre-colonial era. Homophobia is the import, not homosexuality. One fundamentalist and anti-LGBTQ group, the Fellowship Foundation, had by 2020 spent over twenty million dollars of funding into Uganda since 2010. These processes and funding affect not just Uganda but many of the nations within Africa as a whole. The connections which many of the nation's religious groups bear with neo imperialism should not be missed. There is a clear coloniality in these ideologies in imposing a Eurocentric and regressive view of sexuality and gender. There is a great deal of overlap with the methods and tactics seen here action here in Uganda and those involved in coloniality within the gender system as presented by Maria Lugones. The erasure of gay history and the treatment of queer people as corrupt is an extent of the efforts to enshrine and naturalize anti-LGBTQ and Christian fundamentalist ideology within the nation of Uganda. Homosexuality becomes as such a white import being pressed into Uganda by outsiders, and a threat to the "traditional" values of the Ugandan people.

With this it is also important to note that the actions being made in Uganda are not just relevant for Uganda alone but instead are to be concerned everywhere. The religious justifications and bad faith arguments such as defenses of acting in favor of "family values" and labeling being homosexual as a choice which are present within Uganda homophobic rhetoric are present in nearly the same shape everywhere, just adapted slightly from place to place. The draconian laws within Uganda are the natural result of homophobic ideology.

Before concluding it is important to bring up that queer groups within Uganda have not been silent about these abuses of authority and are still active within the nation. For example, Sexual Minorities Uganda International, founded in 2004, is still acting and operational. While the organization has been forced to close its headquarters and hosting workshops thegroups still maintain an active site and engage in outreach programs. An additional queer rights group present within the country is Freedom and Roam Uganda, or FARUG. FARUG, established in 2003, is a feminist women's rights group focusing on the promotion of lesbian, bisexual, and queer advocacy and support. The tactics and laws being used to repress LGBT people in Uganda are not made with the genuine belief that gay and queer people are an actual social illness to be fixed. The people enacting and signing laws such as President Museveni do know better but choose to enable and enact repressive legislation. The end goal is to force LGBT either into the closet, into exile, or into the grave. These are goals which are pushed by religious and anti LGBT groups in the United States and modeled on Eurocentric norms. Awareness of this is critical in understanding the motives, history, and tactics of fundamentalist hate groups. Uganda's draconian anti-gay laws are the model in which all these groups strive to enact everywhere.

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Mau Mau suspects are rounded up by police outside a camp in Manyani, Kenya, Photograph taken by Authenticated News, Mau Mau Suspects at Manyani in Kenya, 1955, Getty Images Archive Photos.

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