

**CONSTITUTIONAL PROTECTION OF THE LGBT RIGHTS AND ACCESS TO JUSTICE: A  
CASE ANALYSIS OF SELECT EAST AFRICAN COMMUNITY (EAC) STATES**

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**ABSTRACT**

*This study reviewed the constitutional protection of the LGBT rights and access to justice in the selected East African Community (EAC) states. The reviewed concentrated on public online information search of Kenya, Uganda, Tanzania, Rwanda and Uganda, covering the past two decades. The study showed that LGBT existed long before white occupation in East African's regions. The study indicated that the existing laws which were based on religious foundations while lacking any traditional or ethnic backing had not been revised even after the exit of the imperial powers. The study noted that modern day churches were active advocates of LGBT intolerance in Africa. The research noted that Pentecostal-Charismatic forms of Christianity had expanded magnificently across East Africa and all-over sub-Saharan Africa and they were leading in global opposition of same-sex relationships and increasing gay rights.*

**Key Words:** *LGBT Advocacy, Minority Rights, LGBT Protection, Justice*

## BACKGROUND

There is mounting evidence that persons who identify as Lesbians, Gays, Bisexual and transgender (LGBT) over the world continue to experience brazen violation of their universal human rights. In Africa, identifying with the LGBT invites not only suspicion, homophobia but also compares to having a death wish. The level of intolerance toward the group in African states over the past two decades has attracted international attention and calls for analysis of existing legal, constitutional and policy frameworks to ensure that the LGBT as a community are not discriminated against, their rights guaranteed and access to justice for the group increased. Available researches and reports indicate glaring lapses in law and in certain cases systemic loopholes.

Lesbian, gay, bisexual, and transgender (LGBT) community issues present unique socioeconomic, development challenges for most Sub-Saharan states Pervasive, poor understanding of the gender and sexuality-related circumstances of LGBT persons continues to expose the community to multiple dangers. Reports indicate that they are exposed to elevated levels of exclusion from critical social, economic and political processes, and human rights violations that not only often go largely unchallenged but also unprosecuted.

International treaties and standards affirm access to justice as both a basic human right and a means to protect other universally recognized human rights. For instance, the ILO contends that appropriate legal and institutional frameworks are critical to the realization of rights to social security and improved livelihoods. The organization observes that good regional policy and legal frameworks or instruments enshrine privileges in transparent ways and allow people to stake claims and obtain redress for violations of their rights, including sexual and reproductive rights. They protect people from arbitrary or discretionary decision-making, facilitate access to social protection, and help guarantee equality of treatment. Legal and institutional frameworks articulate the roles and responsibilities for actors, who design, deliver, monitor, and enforce protection.

The legal position of LGBT communities and their acceptance varies significantly across the globe. Beyers<sup>1</sup> noted in a study that in 70 out of 190 countries globally, same sex relationships are outlawed. However, the West has made tremendous steps and increased their tolerance levels to the group as compared to Africa and other emerging economies. This is as a result of effective advocacy that has been instrumental in the enforcement of protective measures. The impacts of discrimination of the LGBT on the various aspects of living abound. Among the notable, the need for increased legislation and policy formulation to protect the community is the overall impacts on economies and institutions. In a review of existing set of studies, Badgett et al<sup>2</sup> concluded that LGBT-supportive policies are linked to greater job commitment, improved increased job satisfaction, and improved health outcomes among LGBT employees. In addition, LGBT-supportive policies and workplace climates are also linked to decreased prejudice against LGBT and more openness about being LGBT.

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<sup>1</sup> Beyers, Jacob. "Insights from Hans Achterhuis Applied to the Violence on LGBT Communities in Uganda." *Journal for the Study of Religion*, vol. 29, no. 1, 2016, pp. 150–166. JSTOR, [www.jstor.org/stable/24805711](http://www.jstor.org/stable/24805711). Accessed 22 Jan. 2021.

<sup>2</sup> Badgett, Lee. Laura, Durso., Angeliki Kastanis, and Christy Mallory (2013) *The Business Impact of LGBT-Supportive Workplace Policies*. The Williams Institute.

In a global review, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)<sup>3</sup> reported that only 22 of Africa's 54 states recognize same-sex relationships. In remaining countries, same sex relationships are outlawed and punishable by death or bear lengthy prison sentences. It is arguable that the community is subject to a host of challenges due to stigma and intolerance in social, political and economic spaces.

A glaring fact is that, throughout history, African communities have accepted and lived with the queer. Although LGBT intolerance is currently hinged on religious and individual ideologies on sexuality and growing consider the of ethnic communities in E.A.C, Presently, the laws that outlaw gay and same sex relationships in east African nations follow the colonial and imperial laws which outlawed same sex relationships and arguably setting a precedent to creation of unfriendly LGBT laws. Political leaders have also used these laws and predispositions on the LGBT to gain political mileage or retain positions of power. According to observed trends and reports in local dailies across the E.A.C, politicians, including the heads of states have openly rallied their countries against legalizing same sex relationships.

This paper identifies and brings to light key existing regional legislative and policy instruments designed to support efforts aimed at promoting protection of LGBT rights, increasing their access to justice and ensuring their inclusion in socio-economic development in East Africa. The study adopts an analytical approach to regional policy and legislative documents and tools developed and published between 2000 and 2020 by East African Community (EAC) economies notably Kenya, Uganda, Rwanda and Tanzania.

### **Problem Statement**

Over the past few years, African states have been on the spot over mounting intolerance toward the LGBT. Violence and denial of justice feature prominently as leading indicators. The global community, especially the West has increased institutional, legal and policy frameworks to accommodate the queer. The results of these endeavors and investments are evident in increased legislation allowing same sex relationships and increased social acceptance of different sexual orientations. In the present global community, guaranteeing universal rights and creating societies accommodative to diversified sexual identities are critical. To achieve this, protection of vulnerable and marginalized groups should be enshrined in the constitution and state policies aimed at enhancing their access to universal rights clearly outlined.

Documented neglect and oppression of individuals who identify as members of the LGBT in sub-Saharan Africa are manifold. These range from forced displacements, high unemployment rates; poor access to quality livelihoods, housing, health and financial services; exposure to violence including arrests, detention, prejudice, and sexual assault.

LGBT victimization affects families and communities, saps household resources, strains family ties, and depresses family members.<sup>30,33</sup> To avoid violence, abuse, and stigma, LGBT persons may repress their behaviors to what is suitable to their victimizers and aggressors. It is on this premise that the need to increase protection of the group using effective legislation, enhancing development and adoption of friendly policies and instruments is hinged.

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<sup>3</sup> The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA).2018. Minorities Report 2017: Attitudes to sexual and gender minorities around the world.

## METHODOLOGY

This paper was primarily a review of existing research and available documents touching on the LGBT community. To identify the legal and policy instruments reviewed in this paper, we searched the websites and online databases of Kenya, Uganda, Tanzania, Rwanda and Uganda, regional organs such as The East African Legislative assembly for publicly available information on key policy documents and legal instruments developed by the countries and the regional body over the past two decades.

## EMPIRICAL REVIEW

In this section, the article explored existing literature and researches focusing on the issues relating to the LGBT in Africa with emphasis on East African states. Furthermore, the section explored national policy, constitutional provisions and practices that have been instrumental in influencing equity, inclusion, and guaranteeing protection of the rights of the LGBTQ in East African Communities.

Cases of homophobia and extreme intolerance to the queer people have been spiraling across the globe. In most African states, reports of violent attacks, adoption of strict anti-gay laws and open discrimination of the community abound. For instance, in a report Persaud<sup>4</sup> highlighted glaring violation of human rights committed against the queer in a case reported in Uganda. Interestingly, the High Court of Uganda awarded damages of UGX 5,000,000 to 20 homeless homosexuals, bisexual, gays and transgender people who had been indiscriminately detained and denied access to legal representation. In this landmark ruling, the question of protection of the queer in constitutional orders comes to the fore. Among these, exposure to arbitrary arrests and failure of the documents to create and mainstream LGBT friendly policies and protective laws are most evident. Uganda's case is not isolated, according to research and reports, Africa accounts for nearly half of the countries worldwide where homosexuality is outlawed. While a number of states have softened their legal stands on same sex relationships, most of the states in Africa have over the past few years propagated strict anti-gay laws.

Interestingly, the arguments in support of these laws base entirely on religious foundations and conspicuously lacking any traditional or ethnic backing. The place of tradition, culture and causes of violence toward this group in Africa is confounding. An undeniable fact is that Africans acknowledged and accommodated the LGBT long before white occupation. Additionally, the existing laws have not been reconsidered even after the exit of the imperial powers. To this end, it is arguable that the inherited laws, were designed to categorically outlaw what the colonial powers and their missionaries preaching Christianity considered immoral. In an apparent dismissal of claims that same sex relationships as an Un-African, Beyers<sup>5</sup> identifies the existence of these practices among various African cultures. He notes that among the Yoruba for instance, homosexuals are referred to as 'adofuro' to mean an individual who engages in anal sex. While the word sounds derogatory, the glaring fact is that the culture identifies the behavior. In East Africa, it is common knowledge that the group exists among communities. For example, in the Swahili speaking regions of the Indian Ocean coast, the word "Shoga" is commonly used to refer to the same group an indication that these communities and the cultures recognized accepted and protected gays, lesbians and transgender in their own unique ways.

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<sup>4</sup>Persaud, Ashley. (2020). Court Awards Damages to 20 LGBT Youth in Uganda. Human Rights Watch <https://www.hrw.org/news/2020/07/10/court-awards-damages-20-lgbt-youth-uganda>.

<sup>5</sup>Beyers, Jacob. "Insights from Hans Achterhuis Applied to the Violence on LGBT Communities in Uganda." *Journal for the Study of Religion*, vol. 29, no. 1, 2016, pp. 150–166. JSTOR, [www.jstor.org/stable/24805711](http://www.jstor.org/stable/24805711). Accessed 22 Jan. 2021.

In a separate research, Brockman<sup>6</sup> reports having found “explicit” Bushman artwork depicting men engaging in same-sex sexual activity. According to the research, there have been other pointers that prior to colonial and white invasion of the African continent, transition from boyhood to adulthood within many African ethnic groups involved same-sex sexual activities. Following in this argument, a number of factors have been attributed to the intolerance and general dissent toward the community. A notable factor is the increased popularity of fundamental Christianity and their increased advocacy against same sex relationships which the church dogmas largely perceive as sexual immorality.

### **Religious Homophobia and LGBT laws discourse**

The role of the church in directing public opinion in Africa predates colonization and the advent of Christianity. In African cultural practices, religious leaders played central roles in influencing decisions in critical issues since they were believed to be intermediaries between the living, the ancestors and the representative’s various deities they served. The powers these roles accorded made religion a major instrument in informing and controlling popular thought in communities.

Considered widely as religious homophobia, modern day churches have been on the spot as active advocates of LGBT intolerance in Africa. Van Klinken<sup>7</sup> brings out this in a recent analysis of the case of the queer in Kenya. Gifford<sup>8</sup> brings out this in an evaluation of the religious and cultural undertones directing LGBT rights debates in Africa. The researcher emphasizes that in most East Africans especially, Kenya, homosexuality hardly seems a major issue. However, this observation might have been correct at the time of the publication of his research. The situation has considerably changed Kenya evident in escalating public and political debates on homosexuality and ‘gay rights’, in line with the broader politicization of the subject across the continent. Gifford takes issue with the church as major player in politics and are always influential in constitution making processes.

Researchers implore that Pentecostal-Charismatic forms of Christianity have grown rapidly in recent decades across East Africa and all-over sub-Saharan Africa. The new churches are frequently viewed as attracting the urban middle-class population in particular, allowing them to consciously opt into modernity. However as much as these Pentecostal churches claim association with modernism, there are some contemporary developments they fervently oppose. Indisputably, these churches are at the forefront in global opposition of same-sex relationships and increasing gay rights. In African context, religion principally used to support and legitimize homophobia and anti-homosexual politics. Parsitau and Mwaura<sup>9</sup> observe that the influence of these churches on the general population and opinion leaders have overrun all aspects of African civic life and their grip and control of the society presently felt in the realm of politics, economics, cultural and socio-religious fields. To this end, it is arguable that the role of the church in legitimizing same sex relationships and ensuring protection of the rights of the LGBT in Sub-Saharan Africa is enormous and central. For instance, in the referendum that saw Kenya promulgate the 2010 constitution, the churches pushed against inclusion of rights of the queer.

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<sup>6</sup>Brockman, Norbert. Review of *Boy-Wives and Female Husbands: Studies of African Homosexualities*. Africa Today 47, no. 1 (2000): 153-155. doi:10.1353/at.2000.0005.

<sup>7</sup>Van Klinken, Adrian (2016). *A Kenyan Queer Prophet: Binyavanga Wainaina’s Public Contestation of Pentecostalism and Homophobia*. University of Leeds.

<sup>8</sup>Gifford, Paul (2009). *Christianity, Politics and Public Life in Kenya*. London: Hurst & Co.

<sup>9</sup>Parsitau, Damaris, and Philomena NjeriMwaura (2010). ‘God in the City: Pentecostalism as an Urban Phenomenon in Kenya’, *Studia Historiae Ecclesiasticae* 36/2, 95 – 112 .

## **East African States' Legal positions on the LGBT**

In the following section, the article reviews constitutional provisions and policy frameworks, and instruments in the countries under review.

### **Rwanda**

It is undeniable that Rwanda has been at the fore front in increasing its human rights space over the past decades. This is evident in ratification and being signatories to global declarations on increased rights to marginalized. Interestingly, Rwanda is the only signatory to the most recent United Nations joint statement reproving violence against the LGBT community unlike the neighboring Uganda, Burundi and Tanzania. On the other hand, persecution of the LGBTQ is still rife Rwanda. Reports have noted that the queer in Rwanda face unlawful arrests, torture and open discrimination in social spaces. Reports on the state's commitment and effectiveness of the law in protecting LGBT community in Rwanda indicate deplorable conditions and a hostile environment forcing the members of the community to seek alternative avenues of addressing their fears and overcoming their challenges. To begin with, the constitution of the republic of Rwanda does not clearly state whether homosexuality or homosexual acts are illegal in the country. However, various sections of the constitution criminalize these activities. Citing the constitution, Spartacus International<sup>10</sup> observes that in the country's constitutional present constitutional order, there are no legislative protections afforded to LGBT citizens. Further, the law does not recognize or provide for same-sex marriages. As espoused in the Constitution of Rwanda, the law states that "[o]nly civil monogamous marriage between a man and a woman is recognized". Other laws have been used to aggravate the discrimination and denial of the rights of the LGBTI in Rwanda. For instance, LGBT reports of harassment, blackmail, and even arbitrary arrests under a variety of laws dealing with morality and morality<sup>11</sup>.

The U.S. Department of State's on Rwanda especially in regard to Acts of Violence, prejudice, and other abuses founded on Gender Identity and sexual orientation noted thus: There are no laws that criminalize sexual orientation or consensual same-sex sexual conduct, and cabinet-level government officials expressed support for the rights of lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

The report notes further that LGBTI persons have reported societal discrimination and abuse, and in the advocacy for increased rights and recognition of the queer persons. The state department observed that LGBTI rights groups reported intolerance and increasing harassment of the community by their immediate neighbors and state police based entirely on their sexual orientation. There were no known reports of physical attacks against LGBTI persons, nor were there any reports of LGBTI persons fleeing the country due to harassment or attack.

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<sup>10</sup> Spartacus International Gay Guide, 2007. Bruno Gmunder Verlag,

<sup>11</sup> Ammon, Richard. Gay Rwanda 2008

## **Uganda and Anti-Gay Law Legislations**

The Ugandan experience and their history of oppression and deprivation of universal rights is not bemusing but continually elicited international outcries.

The infamous Anti-Homosexuality Bill (AHA) brought the world's attention to entrenched legal and social discrimination against the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Uganda, and popular political moves to strengthen punishment against the 'crime' of homosexuality.

Before this legislation, LGBT people in Uganda were an outlawed group. As Transparency International<sup>12</sup> commented, the Anti-Homosexuality Bill upped punishment to life sentences and extended the law to cover 'promotion' of homosexuality, so widened the remit of arrest to healthcare workers and lawyers and activists associated with LGBTI rights issues. Ratified and adopted by Uganda's national assembly in December 2013, the effects of the legislation were evident five months after it was passed. Following this, the Ugandan police detained many people for identifying as LGBTI, and those who were identified, alleged, and even perceived by others as being gay, lesbian or transgender.

The Act legitimized and fueled a public movement of homophobia; encouraged and led by political and religious leaders determined to isolate and punish individuals purely for not identifying as heterosexual, and the gender they were born.

Religious leaders have played a key role in stoking homophobia in Uganda creating a scenario where the entire country was out to mainstream heteronormativity and criminalize LGBTI. Pastor Ssempe, for example, led a rally of thousands at a Kampala airstrip following the passage of the law in to 'give thanks' for the discriminatory law. A fervent religious-led anti-gay movement, coupled with a lack of information about LGBTI issues or the Act itself, means that homophobia sentiment and homophobic attacks and discrimination have risen dramatically over the years culminating into the passage of the law.

## **Tanzania**

Although having a rich of history of acceptance and tolerance of the gay in the traditions and cultural definitions, Lesbian, gay, bisexual, and transgender (LGBT) community in Tanzania face legal challenges not experienced by heterosexual citizens. Presently, most Tanzanians consider homosexuality a social taboo. Besides these, same-sex relationships, consensual sex done in private are criminal offences often punishable by life imprisonment. The law also punishes heterosexuals who engage in oral sex and anal intercourse.

According to the 2007 Pew Global Attitudes Project, 95 percent of Tanzanian residents believed that homosexuality is a way of life that society should not accept, which was the seventh-highest rate of non-acceptance in the 45 countries polled. This brings to the fore the need to analyze the source of this high level of perceived intolerance. Before colonization and the spread Islam in Tanzania, same-sex relationships and homosexuality were accepted and commonplace among numerous contemporary Tanzania ethnic communities.

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<sup>12</sup> Transparency International (2020). Uganda's new anti-human rights laws aren't just punishing LGBTI people. Retrieved from <https://www.amnesty.org.uk/uganda-anti-homosexual-act-gay-law-free-speech> 24th January 24, 2021

In recent years, Tanzania has become particularly hostile to LGBT people. In October 2017, it deported several HIV/AIDS groups on the basis of "promoting homosexuality". The Government has also increasingly resorted to homophobic rhetoric, and supporting the discourse that homosexuality is "un-African". Worst of the country's intolerance was evident in 2018, witch hunt. Open government support and plans to round up all suspected gays showed the nations' leaderships' and weaknesses in law to provide adequate protection for the group. According to Human Rights Watch, the crackdown saw the suspected forced to go through dehumanizing anal examinations and torture<sup>13</sup>.

## **Review of Tanzania's Laws on LGBT Since 1945**

It should be noted that, throughout Tanzania, sexual intercourse between men are illegal and carry a maximum penalty of life imprisonment. Sex acts between women are not mentioned specifically in mainland Tanzanian law. The semi-autonomous region of Zanzibar outlaws same-sex sexual acts between women with a maximum penalty of five years imprisonment or a 500,000 shilling fine. Heterosexual oral and anal sex is also illegal.

### **Mainland Tanzania**

The legal provisions of the country's Penal Code of 1945 (as revised by the *Sexual Offences Special Provisions Act, 1998*) has various sections with stringent laws incriminating gay and homosexual activity. Section 138A holds that; Any person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, is guilty of an offence and liable on conviction to imprisonment for a term not less than one year and not exceeding five years or to a fine not less than one hundred thousand and not exceeding three hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, a pupil of a primary school or a student of secondary school the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of all amount determined by the court to the person in respect of whom the offence was committed for any injuries caused to that person.

According to Part I (3) of the *Sexual Offences Special Provisions Act, 1998*, "gross indecency" in Section 138A "means any sexual act that is more than ordinary but falls short of actual intercourse and may include masturbation and indecent physical contact or indecent behavior without any physical contact".

Section 154. Unnatural offenses (1) Any person who -

(a) Has carnal knowledge of any person against the order of nature; 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 and in any case to imprisonment for a term of not less than thirty years.

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<sup>13</sup> Human Rights Watch.(2018) Tanzania: Mixed Messages on Anti-Gay Persecution. Commitment to Rights Means Ending Arrests, Discrimination.



(2) Where the offence under subsection (1) of this section is committed to a child under the age of ten years the offender shall be sentenced to life imprisonment. Section 155 Attempt to commit unnatural offences, in this section the constitution of the country is clear that any person who attempts to commit any of the offences specified under section 154 commits an offence and shall on conviction be sentenced to imprisonment for a term not less than twenty years. Section 157. Indecent practices between males. Any male person who, in public or private (a) commits any act of gross indecency with another male, or (b) procures another male person to commit any act of gross indecency with him, or (c) attempts to procure a male to commit an indecent act to him, is guilty of an offence and may be sentenced to five years of imprisonment.

## **Zanzibar**

As an autonomous archipelago, Zanzibar's records on protection of the rights of the queer are appalling. The following analysis of the various sections of the law validates the assertion that mainland Tanzania and Zanzibar administrations do not accept and provide protection of the queer in their constitutional orders, national policies and mechanisms of increasing rights of the group.

The Zanzibar Penal Code of 1934, as amended in 2004, provides as follows

Section 132. (1) Any person who carnally knows any boy is guilty of an offence and shall on conviction be liable to imprisonment for life. (2) Any person who attempts to have carnal knowledge of any boy is guilty of an offence and shall on conviction be liable to imprisonment for a term not less than twenty-five years. Section 150 of the constitution is categorical that any anyone who:(a) has carnal knowledge of any person against the order of nature; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for a term not exceeding fourteen years.

Section 151 Any person who attempts to commit any of the offences specified in section 150 is guilty of a felony, and is liable to imprisonment for a term not exceeding seven years. Section 152 states that "Any person who unlawfully and indecently assaults a boy is guilty of a felony, and is liable to imprisonment for a term not less than twenty-five years." Section 153 holds that "Any woman who commits an act of lesbianism with another woman whether taking an active or passive role shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand shillings". Section 154 states; "Any person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, is guilty of an offence and liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding two hundred thousand shillings; save that where the offence is committed by a person of eighteen years of age or more in respect of any person under eighteen years of age, the offender shall be liable on conviction to imprisonment for a term not less than ten years, with corporal punishment, and shall also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for any injuries physical or psychological caused to that person.

According to Section 4, "gross indecency" means "any sexual act that falls short of actual intercourse and may include masturbation and physical contact or indecent behavior without any physical contact." Section 158 further declares that any individual who:(a) enter[s] or arrange[s] a union, whether

amounting to marriage or not, of the person of the same sex;(b) celebrate[s] a union with another person of the same sex, whether amounting to marriage or not; [or] (c) lives as husband and wife [with] another person of the same sex shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding seven years.

Conclusively, homosexuality in Tanzania is viewed as contrary to cultural norms leading to criminalization of same sex relationships. Following what is glaring government support to the discrimination of the group; arrests in connection with peaceful assemblies, non-attendance to HIV patients, as well as forcible evictions of persons due to their sexual orientation by local and religious communities have been reported. Moreover, representatives of the groups and other human rights defenders may not be willing to make public statements in favor of tolerance and decriminalization for fear of reprisals<sup>14</sup>. From the existing data, the few non-governmental organizations operating in the country have been at the forefront in offering emotional, psychological and in some cases legal support in cases of detention of their known members

## Kenya

Away from Tanzania, Kenya's history with the LGBT is no different from the rest of E.A.C states. Although the leading economy, the queer people have in history suffered discrimination given that there are no statutory provisions touching on LGBT rights. On the other hand, court rulings in favor of transgender rights have been witnessed in past these. Among these, the most notable the right to change the names used in legal documents. Apart from this, the country's negative attitude toward the community is revealed in its most recent constitution. Notably, the High Court on May 24, 2019 upheld laws criminalizing consensual intercourse between adults, a step backward in the advancement Kenya has made toward equality over the past few years, Human Rights Watch <sup>15</sup>In the 2010 constitution, the state does not recognize same sex relationships. Further, marriages between individuals of the same sex are banned under law. Fernety<sup>16</sup> in analysis of the nation concluded that the constitution does not provide explicit protections against intolerance on the basis of gender identity and sexual orientation. With these constitutional inadequacies, the country has no mechanisms and polices designed to protect the community. Rights, activists and researchers have openly identified Section 162 to 165 of the penal code as setting the ground for discrimination of the group and criminalizes sexual activity between same sexes. Section 162 of the 1930 and amended in 2006 declares that.

### Section 162. Unnatural offenses.

Any person who –

- (a) Has carnal knowledge of any person against the order of nature; or
- (c) Permits a male person to have carnal knowledge of him or her against the order of nature, is guilty of a felony and is liable to imprisonment for fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years

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<sup>14</sup> Human Rights Watch.2018. Tanzania: Mixed Messages on Anti-Gay Persecution.

<sup>15</sup> Ibid 14

<sup>16</sup> Finerty, Courtney. Being Gay in Kenya: The Implications of Kenya's New Constitution for its Anti-Sodomy Laws. Cornell International Law Journal.

Under the section, if convicted, the crimes carry up to 21years prison term. In the 2010 constitution, Section 163 considers engaging in same sex relationships is an Attempt to commit unnatural offense.

The section states clearly that:

“Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years”.

Lastly, section 165 of the constitution seals the fate of LGBT and limits government’s commitment to protecting the community.

Section 165. Indecent practices between males.

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

Conclusively, while African communities have lived and accepted the queer in their culture, the notion that the practice is alien to the African culture and traditions is questionable. As demonstrated in the cases analyzed in this study especially on the origins of the intolerance, it is a fact that the advent and increasing entry of Pentecostal churches have had significant impacts given their stringent attacks and extreme positions on gay relationships and sexual identity. The church and their influence on public debates in Africa is undeniably strong, politicians, seeking to gain political mileage have also encouraged intolerance to this group based on their selfish interests and craving for political mileage. In this regard, the rights of the LGBT in East Africa are threatened and the community exposed to violent attacks, discrimination and violation of other natural rights. The reviewed countries have rich histories of acceptance of the community before the colonial era and the advent of Christianity. Ironically, these same states have adopted strict anti gay laws and have continued to use the church to articulate and champion anti gay sentiments among the peoples.

## **CONCLUSIONS AND RECOMMENDATION**

This study concluded that African culture identified homosexuality behavior, which existed long before colonial invasion in Africa.

The study concluded that homosexuality was outlawed in Africa and this accounted to nearly half of the countries in the world. Many of the African countries had propagated strict anti-gay laws. The major contribution in support of these laws was found to be from religious foundations which were not based on any traditional or ethnic backing. From the study it was noted that the religious stand was based on colonial powers and their missionary’s preaching of Christianity that considered homosexuality as immoral, hence inheriting the same laws, that outlaw homosexuality.

The study concluded that there was increased popularity of fundamental Christianity in Africa and that meant increased advocacy against same sex relationships which the church perceived as sexual immorality. Hence the church was identified as active advocates of LGBT intolerance in Africa.

The study noted that other than that the African church was a major player in politics and was influential in constitution making processes. The Church did not legitimize same sex relationships and therefore the rights of the LGBT is not protected in Sub-Saharan Africa.

The study concluded that Rwanda was leading in increasing its human rights space due to its ratification and being signatories to global declarations on increased rights to marginalized. It was concluded that at the time of this study it was the only signatory to United Nations joint statement reproving violence against the LGBT community.

Ugandan had experience long history of oppression and deprivation of universal rights of LGBT community. This was crowned by passing of infamous Anti-Homosexuality Bill (AHA), strengthening punishment against the 'crime' of homosexuality.

Tanzania had a rich of history of acceptance and tolerance of the gay in the traditions and cultural definitions, Lesbian, gay, bisexual, and transgender (LGBT) community. The study concluded that most Tanzanians considered homosexuality a social taboo. Consensual sex done in private are criminal offences often punishable by life imprisonment. The law also punishes heterosexuals who engage in oral sex and anal intercourse.

It was also concluded that Kenya did not have statutory provisions touching on LGBT rights hence the queer people suffered discrimination.

Basing from the conclusions, this study recommended for domestication and adoption of continental LGBT policies from which would facilitate and improve lawful atmospheres for LGBT persons and offering a sustainable solution to decriminalization of the group. This would result to LGBT inclusivity and their respect in East Africa.

The study also recommended on awareness creation to support public and civil society and provide education on LGBT. The study recommended that LGBT rights should be clearly spelt out in legal documents and frameworks while and at the same time promoting advocacy and engagement with governments and judiciary.

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