

**EXAMINING THE ROLE AND INFLUENCE OF LOCAL AND
TRANSNATIONAL ANTI-LGBTIQ+ ACTORS ON LAWS AND POLICIES
IN KENYA, UGANDA, AND GHANA**

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ABSTRACT

This thesis examines how local and transnational anti-LGBTIQ+ actors influence laws and governance structures in Kenya, Uganda, and Ghana. Drawing on document analysis and theoretical frameworks including postcolonial theory, transnational advocacy networks, and vernacularization, it reveals how these actors co-produce political homophobia as a governance strategy. The research finds that transnational actors provide financial resources, ideological frameworks, and legitimizing narratives, while local actors in transnational movements adapt these into culturally resonant forms. Their collaborative actions have expanded colonial-era restrictions into comprehensive systems of criminalization framed paradoxically as resistance to Western imperialism. Beyond LGBTIQ+ rights, these efforts establish precedents for restricting civil society, redefining sovereignty, and limiting rights protections more broadly. The study demonstrates that political homophobia functions not merely as cultural expression but as a governance mechanism with implications for democratic institutions, civil society independence, and human rights frameworks, within a system of authoritarian advancement masked as cultural authenticity.

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACLJ	American Center for Law and Justice
AHA	Anti-Homosexuality Act (Uganda, 2023)
ATM	Abiding Truth Ministries
CHRAJ	Commission on Human Rights and Administrative Justice (Ghana)
CSE	Comprehensive Sexuality Education
EACLJ	East African Center for Law and Justice
FWI	Family Watch International
HRAPF	Human Rights Awareness and Promotion Forum
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOF	International Organization for the Family
KCPF	Kenya Christian Professionals Forum
KFCB	Kenya Film Classification Board
KNCHR	Kenya National Commission on Human Rights
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer and other non-binary identities
MSM	Men who have sex with men
NGLHRC	National Gay and Lesbian Human Rights Commission (Kenya)
NGO	Non-Governmental Organization
SMUG	Sexual Minorities Uganda
SOGIESC	Sexual Orientation, Gender Identity and Expression, and Sex Characteristics
SPLC	Southern Poverty Law Center
TWAIL	Third World Approaches to International Law
UDHR	Universal Declaration of Human Rights
UN	United Nations
UPR	Universal Periodic Review
WCF	World Congress of Families

CHAPTER 1: INTRODUCTION

1.1 Background and Context

Despite best practices from several countries and progressive interpretations of the rights of lesbian, gay, bisexual, transgender, intersex, queer and other non-binary identities (LGBTIQ+)¹ by United Nations (UN) and African regional human rights bodies, a majority of African countries continue to criminalize same-sex sexual acts and relationships and discriminate against people on the basis of their sexual orientation, gender identity and expression, or sex characteristics (SOGIESC). In British-colonized countries, this situation is even more pronounced. Countries like The Gambia, Kenya, Zimbabwe, and Malawi – to name a few – continue to uphold and enforce colonial-era legislation that hegemonized heteronormativity and originated the criminalization of same-sex sexual acts. In countries like Uganda, Nigeria, and Ghana, new laws have been proposed or enacted in addition to legacy laws to criminalize a broader scope of acts and identities. Local and international media and NGO reports² have documented the lived experiences of community members in these contexts and the continued violations, perpetrated by both state and non-state actors, that they experience.

Despite the efforts of human rights activists across Africa working to challenge discriminatory laws and policies or to hold states accountable for human rights violations, the overall context continues to look bleak. And yet it gets bleaker. There is a growing network of local and transnational anti-LGBTIQ+ actors in Africa threatening the minimal progress that has

¹ While broad public discourse and legal developments in the focus countries often deal with sexual orientation and often manifest as homophobia specifically, this thesis uses the terminology of “LGBTIQ+” for several reasons. First, as will be discussed in this paper, the empirical evidence shows that various actors increasingly target transgender identities and gender expression alongside sexual orientation. Second, while intersex persons receive comparatively less attention from these actors and their issues tend to be more legally nuanced, they do face targeting in society and merit inclusion in the analytical framework. Third, the “Q+” formulation acknowledges that the standard identity categories may not capture diverse forms of non-normative sexuality and gender expression in African contexts. However, it should be acknowledged that the transnational mobilization examined in this thesis focuses disproportionately on sexual orientation (the LGB component), with transgender issues (T) representing an area of increasing but secondary focus, and intersex issues (I) receiving the least systematic attention from the actors under study. The thesis assumes that similar, though not identical, factors affect discrimination based on gender identity and expression, while recognizing that intersex-specific issues tend to be more nuanced.

² “Africa: We Are Facing Extinction: Escalating Anti-LGBTI Sentiment, the Weaponization of Law and their Human Rights Implications in Select African Countries” (9 January 2024), online: *Amnesty Int* <<https://www.amnesty.org/en/documents/afr01/7533/2024/en/>>.

been made and reshaping local laws, policies, and governance structures in various African countries to prevent further advancements.³ This phenomenon has emerged within a global-level network where progress in LGBTIQ+ rights has been met with coordinated transnational resistance. This resistance is even more significant in African contexts where colonial-era legislation intersects with contemporary debates about sovereignty, culture, religion, and national identity.⁴

These transnational anti-LGBTIQ+ actors, operating within their own “movements,”⁵ have arisen and continue to arise to influence domestic policies and governance structures across Africa as “pro-life” or “pro-family” movements.⁶ Their strategies encompass direct policy advocacy, financial support for local organizations, public campaigns, and the establishment of research institutes producing academic-style publications to legitimize their positions.⁷ These efforts in Africa have not been extensively explored by scholars and bear scrutiny in order to better understand their nature, scope and impacts. In terms of impacts, it is reasonable to hypothesize that there are harmful effects of these interventions that extend far beyond their immediate implications for LGBTIQ+ persons and their rights (especially continued risk of stigma and violence, arbitrary arrests, and deprivation of other freedoms) considering that the involvement of transnational anti-rights actors in domestic spaces has been documented as a danger to democratic processes, civil society independence and policy-making autonomy.⁸ As Kaoma explains, these actors have developed very sophisticated approaches to influence policy, creating a challenge for democratic governance and human rights protection in contemporary Africa.⁹ Additionally, their activities intersect with what scholars identify as “political homophobia” – the strategic use of anti-LGBTIQ+ sentiment by political leaders to consolidate power or divert attention from other

³ Kapyra Kaoma, “Exporting the Anti-Gay Movement” (24 April 2012), online: *The American Prospect* <<https://prospect.org/api/content/ac9abf96-2f24-5d71-b4e2-942cbe0efd79/>>.

⁴ Marc Epprecht, *Sexuality and Social Justice in Africa: Rethinking Homophobia and Forging Resistance* (London: Zed Books, 2013); Sylvia Tamale, “Confronting the Politics of Nonconforming Sexualities in Africa” (2013) 56:2 *Afr Stud Rev* 31–45.

⁵ Elżbieta Korolczuk & Agnieszka Graff, “Gender as “Ebola from Brussels”: The Anticolonial Frame and the Rise of Illiberal Populism” (2018) 43:4 *Signs J Women Cult Soc* 797–821.

⁶ *The International Anti-Gender Movement: Understanding the Rise of Anti-Gender Discourses in the Context of Development, Human Rights and Social Protection*, Working Paper, by Haley McEwen & Lata Narayanaswamy, www.econstor.eu, Working Paper 2023–06 (UNRISD Working Paper, 2023) online: <<https://www.econstor.eu/handle/10419/278575>> [*The International Anti-Gender Movement*].

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Kaoma, *supra* note 3.

issues.¹⁰ And when we return to consider the British colonial legacy, this situation is further complicated by a pseudo-postcolonial discourse, where anti-LGBTIQ+ actors frame their opposition as resistance to Western imperialism, despite the clear historical evidence that homophobia itself has colonial roots, with many anti-sodomy laws being remnants of British colonial rule.¹¹ All these factors demand a study of how, and with what consequences, transnational anti-LGBTIQ+ actors operate across varying national contexts, particularly given the paradoxical situation where conservative Western actors support African opposition to LGBTIQ+ rights in the name of resisting Western influence.

1.2 Research Problem

Although significant scholarship has been dedicated to the growth and influence of transnational anti-LGBTIQ+ actors on a global scale,¹² there is still space for an integrated analysis of how these actors impact legal frameworks and governance systems in the relevant African contexts, particularly at the intersection of several overarching issues that affect all African societies: the globalization of conservative movements, postcolonial and decolonial politics, democratic governance, and human rights.

1.2.1 Focus Countries

Kenya, Uganda, and Ghana present compelling case studies for examining the influence of transnational anti-LGBTIQ+ actors. Generally, the selection of these countries is motivated – and their study facilitated – by my familiarity with their LGBTIQ+ movements and contexts and the relationship between these movements and the law. Specifically, there are other factors that make them ideal for comparative analysis.

First, the three countries share a British colonial legacy that embedded anti-sodomy laws within their legal systems, providing a common historical foundation from which to examine

¹⁰ Michael J Bosia & Meredith L Weiss, “Political Homophobia in Comparative Perspective” in Meredith L Weiss & Michael J Bosia, eds, *Global Homophobia: States, Movements and the Politics of Oppression* (Urbana: University of Illinois Press, 2013) 1.

¹¹ Enze Han & Joseph O’Mahoney, *British Colonialism and the Criminalization of Homosexuality: Queens, Crime and Empire* (London: Routledge, 2018).

¹² Kaoma, *supra* note 3; Korolczuk & Graff, *supra* note 5; McEwen & Narayanaswamy, *supra* note 6.

divergent contemporary developments. Second, the countries represent varying extents of democratic consolidation and different approaches to LGBTIQ+ rights. Third, all three countries have experienced significant recent activity by transnational anti-rights actors, which has manifested in new legislation, policy initiatives, and public debates. Uganda's 2023 Anti-Homosexuality Act¹³ represents one of the harshest legislative responses to LGBTIQ+ rights globally. Ghana's parliament recently passed the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill¹⁴ (resubmitted to parliament in March 2025 after expiring at the end of the previous legislative term in December 2024) that would significantly restrict LGBTIQ+ rights and advocacy. Kenya, maintaining colonial-era criminalization through sections 162 and 163 of its Penal Code but not adding new legislation,¹⁵ has shown some progressive tendencies through court rulings protecting broader human rights for LGBTIQ+ persons.¹⁶ The divergence in their treatment of LGBTIQ+ rights and the development of their democratic institutions provide rich analytical ground for understanding how transnational anti-LGBTIQ+ influences operate across varying national contexts.

The sequence of analysis in this thesis: Kenya, Uganda, Ghana focuses on the progression from relatively limited to comprehensive criminalization. Kenya continues to be a context of maintained colonial-era restrictions with some judicial protection of limited rights; Uganda represents the most successful systematic expansion of criminalization; and Ghana is an instance of ongoing legislative efforts toward comprehensive criminalization. Through this sequence, this thesis examines how transnational actors operate across different degrees of restrictive legal environments and varying levels of "success" in their agenda implementation.

1.2.2 Research Issues

By employing a comparative approach informed by theories of transnational networks, vernacularization, and postcolonial/decolonial studies, this research seeks to illuminate the strategies these actors use, their interactions with legal frameworks, and their broader implications for democratic governance and human rights in contemporary Africa. Despite the wide area of

¹³ *Anti-Homosexuality Act, 2023*.

¹⁴ *Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill* (2021).

¹⁵ *Penal Code of Kenya*, Cap 63 Laws of Kenya.

¹⁶ *Non-Governmental Organization Co-ordination Board v Eric Gitari & others*, [2023] KESC 17 (KLR) (SC Kenya).

influence that the activities of transnational anti-LGBTIQ+ actors cover, there are specific, if interrelated, problems that their actions raise in the African contexts that require investigation.

First, there is the question of how these actors operate across different national contexts, adapting their strategies and narratives to local conditions while maintaining coherent transnational agendas.¹⁷ Understanding these evolving tactics is crucial for analyzing their influence on legal frameworks and governance structures – and, although not itself the purpose of the thesis, for guiding strategies and methods to counter their tactics and influence.

Second, there is the problem of how these actors' activities affect domestic legislative and policy-making independence. Their involvement raises questions about the nature of civil society, the role of external influences in domestic affairs, and the balance between international human rights norms and local cultural values.¹⁸ This aspect is also layered by the ways in which political leaders leverage anti-LGBTIQ+ sentiment for their own purposes, that is, the generation and deployment of political homophobia.¹⁹

Within this second problem is the challenge of understanding how transnational anti-rights action intersects with postcolonial/decolonial politics and governance. While these actors often frame their opposition to LGBTIQ+ rights as resistance to Western imperialism, this narrative ignores both the colonial origins of anti-sodomy laws and the significant role of Western conservative organizations in supporting contemporary anti-LGBTIQ+ movements in Africa.²⁰ This paradox requires careful analysis of how different actors navigate and exploit postcolonial tensions. It also requires an unmasking of how putative anti-colonial discourses are fused with monolithic images of the state and its society as homogenous, so as to ignore diversity of experience and perspectives within the country. For example, such discourses ignore the significance of the active welcoming of pro-human rights solidarity from abroad – whether from the transnational NGO sector, from international institutions or, less comfortably, from foreign states – by segments of society most affected by suppression of their rights as well as by societal allies committed to human rights in their moral and political philosophies and commitments. Or,

¹⁷ Margaret E Keck & Kathryn A Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y: Cornell University Press, 1998).

¹⁸ Rachel Murray & Frans Viljoen, "Towards Non-Discrimination on the Basis of Sexual Orientation: The Normative Basis and Procedural Possibilities before the African Commission on Human and Peoples' Rights and the African Union" (2007) 29:1 Hum Rights Q 86–111.

¹⁹ Bosia & Weiss, *supra* note 10.

²⁰ Han & O'Mahoney, *supra* note 11.

if they do not ignore it, they deploy their discourse of ‘one’ national perspective to attack the legitimacy of these societal segments connecting with external solidarity networks – or even indeed to challenge their patriotism for turning to external assistance.

Finally, still within the second problem, there is the question of how these dynamics affect broader human rights and democratic governance frameworks as the institutionalization of intersectional discrimination²¹ against one group can create precedents and mechanisms that undermine rights protections more broadly. Understanding the fallout helps in assessing the full impact of transnational anti-rights activism in African contexts.

Despite growing scholarly attention to LGBTIQ+ rights in Africa,²² significant gaps remain in legal analysis of how transnational anti-LGBTIQ+ actors influence laws, policies, and governance in the African context. While studies have examined LGBTIQ+ activism²³ and lawfare,²⁴ less scholarly attention has been paid to the strategies and influence of external actors on African legal and policy landscapes. Moreover, existing legal scholarship predominantly examines the content of LGBTIQ+-related laws in Africa and rarely investigates the political and social determinants that influence how these laws are created and interpreted by legislators and judges.

The problems identified above therefore justify an examination of how transnational anti-LGBTIQ+ actors operate in Africa (with Kenya, Uganda, and Ghana as focus countries), and what implications their activities have for laws, policies, and governance in these countries. The study considers legal and policy outcomes as well as broader implications for democratic institutions, civil society independence, and human rights frameworks. By focusing on these three countries with varying political contexts but similar colonial legacies, this research offers insights into the interactions between global conservative movements, local political dynamics, and the development and consolidation of governance structures in contemporary Africa.

²¹ Kimberlé Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) 1989 U Chi Leg F 139.

²² Epprecht, *supra* note 4; Sylvia Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power” (2014) 14 Afr Hum Rights Law J 150–177; Charles Ngwena, *What is Africanness? Contesting Nativism in Race, Culture and Sexualities* (Pretoria: Pretoria University Law Press, 2018).

²³ Ashley Currier, *Out in Africa: LGBT Organizing in Namibia and South Africa* (University of Minnesota Press, 2012).

²⁴ Adrian Jjuuko et al, eds, *Queer Lawfare in Africa: Legal Strategies in Contexts of LGBTIQ+ Criminalisation and Politicisation* (Pretoria: Pretoria University Law Press, 2022).

1.2.3 Theoretical Framework

The evaluation of laws, policies and legal consequences in this study is guided by a normative framework grounded in a human rights approach to law and queer legal theory. This normative foundation encompasses the ideals of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the various global and African human rights treaties that recognize and protect the equal rights and dignity of every person without discrimination.²⁵ Queer legal theory provides perspectives on how rigid binaries permeate legal frameworks and prioritise heterosexual constructions of gender and sexuality.²⁶ The relevance of a human rights framework and queer legal theory are immediately apparent from the nature of this research and will be discussed further in Chapter 2. However, distinct from the normative framework, this study – as socio-legal research – employs a theoretical framework that draws from three theoretical strands to examine how local and transnational actors legalize and institutionalize homophobia through legislation and governance structures. These theoretical strands are: (i) transnational advocacy networks, (ii) vernacularization, and (iii) postcolonial/decolonial theory. Together, they are useful analytical tools for understanding the interplay between local and global forces in shaping laws and policies.

Transnational advocacy networks theory, as initially developed by Keck and Sikkink,²⁷ explains cross-border organization that primarily focuses on what one might call progressive advocacy. Its framework can serve as the foundation for also understanding how conservative actors operate across borders to influence policy. However, rather than applying this framework

²⁵ Frans Viljoen & Ayodele Sogunro, “The promotion and protection of sexual and gender minorities under the African regional human rights system” in Andreas R Ziegler, Michael Lysander Fremuth & Berta Esperanza Hernández-Truyol, eds, *The Oxford Handbook of LGBTI Law* (Oxford University Press) 0.

²⁶ Martha Albertson Fineman, “Introduction: Feminist and Queer Legal Theory” in *Feminist and Queer Legal Theory* (Routledge, 2010).

²⁷ Keck & Sikkink, *supra* note 17. Thomas Risse-Kappen made foundational theoretical contributions to transnational advocacy networks theory in parallel with Keck and Sikkink’s development, particularly through his work on domestic structures and transnational coalitions. Risse-Kappen’s framework focused primarily on the institutional mechanisms through which transnational actors achieve policy influence, which while a useful point of reference, does not capture the ideological orientations or strategic approaches of networks, which is a central concern of this thesis. See Thomas Risse-Kappen, “Ideas Do Not Float Freely: Transnational Coalitions, Domestic Structures, and the End of the Cold War (1994)” in *Domestic Politics and Norm Diffusion in International Relations*, 1st ed (London: Routledge, 2016) 221.

uncritically to anti-rights movements, this study, following the work of Clifford Bob,²⁸ seeks to extend and deconstruct its application by examining the ways in which conservative networks operate differently from the progressive networks that were the focus of the theory's early development, even as adopt and utilize some of the approaches by progressive networks. Of particular interest in the study is how anti-rights networks leverage both moral and material resources globally while simultaneously claiming to resist global influence.

The concept of vernacularization, specifically as developed by Sally Merry,²⁹ illuminates the role of local actors and local adaptation and explains how global human rights norms are translated into local contexts. This concept can also offer insights into how transnational anti-rights discourses are adapted to local settings. While Merry focused on progressive rights translation and local resistance to women's rights, this framework helps illuminate how conservative actors localize global anti-gender narratives while claiming to defend authentic local values. This theoretical tension between global and local claims is particularly relevant for understanding anti-rights movements' strategic positioning.

Postcolonial theory, particularly through the work of Mahmood Mamdani³⁰ on the colonial roots of contemporary governance structures and the work of Sylvia Tamale³¹ that provides an African feminist decolonial perspective, frames how current anti-LGBTIQ+ efforts connect to colonial legacies and contextualizes the efforts of anti-LGBTIQ+ actors historically. This framework helps explain the paradox of anti-rights actors deploying colonial-era laws while claiming to resist Western influence. It also illuminates how current governance structures continue to reflect colonial patterns of using law to regulate sexuality and gender.

²⁸ Clifford Bob, *The Global Right Wing and the Clash of World Politics* (Cambridge: Cambridge University Press, 2012) Cambridge Studies in Contentious Politics.

²⁹ Sally Engle Merry, "Human Rights and Transnational Culture: Regulating Gender Violence through Global Law" (2006) 44:1 *Osgoode Hall Law J* 53–75; Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006) Chicago Series in Law and Society. Merry's account of vernacularization is neither the only one nor even the first. Her work was preceded by analogous work by Abdullahi An-Na'im whose theoretical framework for human rights legitimacy married cross-cultural dialogue with vernacularized internal discourse. However, I focus on Merry as her approach is more sociological while An-Na'im's work is a more normative theory, even as, of course, each of their work could be viewed together as "socio-legal theory."

³⁰ Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Harvard University Press, 2012); Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 2018) Princeton Studies in Culture/Power/History.

³¹ Tamale, "Exploring the Contours of African Sexualities", *supra* note 22.

1.3 Research Question

This study is guided by the following primary research question: *In a context of colonial legacies, postcolonial politics, and similar dynamics, how do local and transnational anti-LGBTIQ+ actors interact to legalize, or otherwise institutionalize, homophobia or to influence laws, policies and governance structures in Kenya, Uganda, and Ghana and what are the broader implications of these efforts, particularly for human rights and democracy in these countries? What do the case studies tell us, by way of comparison, about the importance of the actors and factors at play?* To address this research question, the research undertakes responses to the following sub-questions, each of which also corresponds to a major chapter or section of the thesis:

1. What are the key legal and policy frameworks affecting LGBTIQ+ rights in Kenya, Uganda, and Ghana, and how have they evolved in recent years (leaving aside, at this stage, a discussion of the processes and forces that have led to their existence)?
2. How do local and transnational anti-rights actors operate in these countries to influence public opinion, policy-making, and legal processes regarding LGBTIQ+ rights and what narrative accounts can be pieced together from assorted sources of information on the impact (or not) of these operations on the legal and policy frameworks presented under sub-question 1?
3. Recognizing this sub-question may already have been given an initial treatment under sub-question 2, in what ways is existing homophobia and the further inculcation of homophobia at a social level used as a political tool by various actors in these countries (severally and comparatively), and – in light of the legal and policy frameworks and the narratives of anti-rights actors' operations (in sub-questions 1 and 2) – what does such use imply not only for LGBTIQ+ rights but also the overall legal landscape for human rights and democracy?

1.4 Significance of the Study

Essentially, the research addresses a knowledge gap in existing literature on anti-LGBTIQ+ movements in Africa. While scholars have extensively examined the rise of anti-gender movements globally as well as LGBTIQ+ rights in Africa in the context of human rights and social

debates,³² less academic attention has been paid to legal research and how local and transnational anti-LGBTIQ+ actors collaborate to legalize homophobia through formal governance mechanisms. By focusing on these dynamics in Kenya, Uganda, and Ghana, this study offers some insight into how anti-LGBTIQ+ efforts manifest in the specified African contexts while contributing to broader theoretical understanding of transnational anti-LGBTIQ+ movements. The timing of this research is also significant given current developments in the focus countries: Uganda's 2023 Anti-Homosexuality Act, upheld by the Constitutional Court,³³ continues to pose a danger to LGBTIQ+ communities; Ghana's Family Values Bill remains a looming threat having been resubmitted to parliament despite being denied presidential assent; and there are ongoing judicial challenges alongside parliamentary and public debates in Kenya representing efforts to institutionalize homophobia through formal mechanisms. By examining these contemporary cases, the study can serve as a timely analysis that spotlights the extra-legal aspects of legal processes, lays bare (and thus opens the way to delegitimization of) the activities of anti-rights actors, and identifies potential patterns of authoritarian advancement in African countries through anti-LGBTIQ+ laws.

1.5 A Note on Terminology

Anti-LGBTIQ+ Actors

Anti-LGBTIQ+ actors are also often referred to broadly, in policy, activist, news reporting and scholarly sources, as anti-gender, anti-feminist, or anti-rights actors. However, considering the focus of this research on LGBTIQ+ issues, I use the term anti-LGBTIQ+ in this thesis with the understanding that the terminology varies across the literature and in different contexts and, where necessary, I will use anti-rights to signify a wider discourse. However, it is not fully accurate to characterize transnational actors by reference to a single-issue oppositional positioning and it may be more useful to acknowledge their affirmative political project rather than merely what they oppose.³⁴

³² Adrian Jjuuko & Sylvie Namwase, eds, *Protecting the Human Rights of Sexual Minorities in Contemporary Africa* (Pretoria: Pretoria University Law Press, 2017).

³³ *Hon Fox Odoi & 21 Others v Attorney General & 3 Others*, 2024 Constitutional Court of Uganda.

³⁴ While recognizing some force in that critique, I have found no cohesive way to characterize these actors without distortion or clumsiness of expression. For instance, a term like “transnational authoritarian religious conservatism.”

As discussed in this study, these actors advance a vision of sovereignty that prioritizes national self-determination against what they frame as external normative impositions, while simultaneously working to consolidate authority in institutions they view as legitimate (typically traditional, religious, family, and cultural structures). Their transnational activities extend beyond opposition to LGBTIQ+ rights to encompass a broader reconceptualization of democratic legitimacy, that is, one that contests liberal pluralistic frameworks of rights and proffers an alternative conception of the social order. As such, the actors do not position themselves explicitly as “anti-rights” or “anti-LGBTIQ+” but as proponents of an alternative rights hierarchy anchored in conceptions of “natural law”, “traditional values”, and cultural-relativism rather than universal rights frameworks. Importantly, this strategic deployment of cultural relativism often operates alongside deference to a theological universalism, particularly a shared Christian normative framework that both transnational and local actors invoke as a binding principle, thus creating a dual rhetoric that simultaneously rejects liberal universalism while asserting religious universalism as a higher-order organizing principle.

Transnational

The concept of “transnational” has been variously defined, with foundational work by Keohane and Nye establishing transnational relations as “contacts, coalitions, and interactions across state boundaries that are not controlled by the central foreign policy organs of governments.”³⁵ This definition essentially distinguishes transnational relations from purely interstate interactions by the cross-border involvement of, at least, one non-state actor. Risse-Kappen refined this understanding to encompass “regular interactions across national boundaries when at least one actor is a non-state agent or does not operate on behalf of a national government or an intergovernmental organization.”³⁶ Keck and Sikkink further develop this conceptual foundation by focusing specifically on transnational advocacy networks as structured relationships among actors “working internationally on an issue, who are bound together by shared values, a common discourse, and

In any event, much is lost in terms of clarity of focus (and real-world human targets) by not framing these actors around their overlapping “anti-LGBTIQ+” ideologies and purposes.

³⁵ Joseph S Nye & Robert O Keohane, “Transnational Relations and World Politics: An Introduction” (1971) 25:3 *Int Organ* 329–349 at 331.

³⁶ Thomas Risse-Kappen, “Bringing Transnational Relations Back In: Introduction” in Thomas Risse-Kappen, ed, *Bringing Transnational Relations Back In*, 1st ed (Cambridge University Press, 1995) 3 at 8.

dense exchanges of information and services,”³⁷ in which they highlight the value-driven nature of these networks from other forms of transnational relations. Scott’s framework describes a form of “transnational socio-legal pluralism” wherein non-state entities, including religious organizations, advocacy groups, and private foundations, establish normative frameworks that exist in spaces that are “neither national nor international, nor public nor private, at the same time as being both national and international, as well as public and private.”³⁸

This thesis draws on these definitions and considers as “transnational,” not just the foreign non-state actors working and advocating within Africa, but also the relationships and interactions they have with local actors, as well as the sum of the interactions of the various local actors across state boundaries within Africa.

1.6 Methodology

For this study, I employ a qualitative comparative case study approach. The methodology analyzes documentary evidence while acknowledging both the possibilities and limitations of text-based research into sensitive political topics. Using the comparative case study design, the study undertakes an examination of how anti-LGBTIQ+ efforts manifest in different national contexts. Following George and Bennett’s³⁹ approach to structured, focused comparison, the study examines similar aspects across each case while remaining attentive to context-specific factors. This approach enables identification of both common patterns and important variations in how local and transnational actors collaborate to influence legal outcomes.

While doctrinal analysis is employed in assessing legislation and court decisions in relation to the human rights and queer legal normative foundations of this research, document analysis forms the core methodological approach, focusing on four principal sources of textual evidence. The first two are: (i) legal and policy documents that provide the foundation for understanding formal institutional frameworks (national constitutions, legislation, court decisions, parliamentary records, and governmental policy papers) through which I examine both successful and unsuccessful attempts to institutionalize discrimination, tracking how legal language evolves

³⁷ Keck & Sikkink, *supra* note 17 at 2.

³⁸ Craig Scott, ““Transnational Law” as Proto-Concept: Three Conceptions” (2009) 10:6–7 *Ger Law J* 859–876 at 873.

³⁹ Alexander L George & Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (MIT Press, 2005).

across contexts and over time; and (ii) organizational documents (public statements, advocacy or policy briefs, campaign materials, and website content from both local and transnational organizations) from local and transnational anti-LGBTIQ+ actors that illuminate their strategies and self-presentation. Using Fairclough's⁴⁰ approach to critical discourse analysis ("not simply describe and evaluate existing realities but [seek] to explain..., e.g., by showing ... [the] effects of structures or mechanisms or forces"), these texts are examined for how they frame issues, construct arguments, and adapt messaging to different audiences. The third and fourth sources then are: (iii) traditional and digital media coverage that illustrate public discourse and the political dynamics surrounding anti-rights campaigns, with particular attention to how local and transnational actors present their positions and how their efforts are reported; and (iv) reports from civil society organizations, academic researchers, and international bodies that give additional perspective on anti-rights activities and their influence. A fifth could be added, although it is not a primary source as such: (v) to the extent found reliable, published academic works in which empirical evidence is presented or discussed.

Specifically, regarding the first sub-question: *examining legal and policy frameworks affecting LGBTIQ+ rights*, this involves doctrinal and document analysis of primary sources including national constitutions, penal codes, and laws targeting LGBTIQ+ individuals. Relevant court cases and judgments are also examined to understand how these decisions interpret constitutional and legal principles to define rights for LGBTIQ+ persons.

The second sub-question, *identifying transnational anti-LGBTIQ+ actors and their strategies*, utilizes document analysis of secondary sources such as academic studies, reports from human rights organizations, and media reports. Critical discourse analysis is also applied to examine the language and rhetoric used by actors in public statements and campaign materials. This process helps uncover the strategies and narratives employed by transnational actors and how these influence local contexts.

The third sub-question, *assessing the local use of homophobia and its implications not only for LGBTIQ+ rights but also on the overall legal landscape for human rights and democracy*, involves a combination of doctrinal analysis and critical discourse analysis. Key legislative processes, court decisions, and policy initiatives where transnational actors have played a significant role are examined and how the language of anti-LGBTIQ+ actors translate directly or

⁴⁰ Norman Fairclough, "Critical Discourse Analysis and Critical Policy Studies" (2013) 7 Crit Policy Stud 177–197.

indirectly into legislative texts, court decisions, and policies. The analysis considers both the content of these outcomes and the discourse surrounding their development and implementation as well as the broader implications of these on the overall legal landscape for human rights and democracy.

This research covers developments from approximately 2009 to August 2025, with 2009 marking the introduction of Uganda's first Anti-Homosexuality Bill as a watershed moment for transnational anti-LGBTIQ+ mobilization in Africa. The analysis extends through August 2025, encompassing Uganda's 2023 Anti-Homosexuality Act and its Constitutional Court validation in 2024, Ghana's parliamentary passage of the Family Values Bill in 2024, and ongoing legal developments in Kenya including the 2023 Supreme Court ruling on LGBTIQ+ organizational rights. While more recent events may continue to emerge, this timeframe captures the key period of intensified transnational anti-LGBTIQ+ mobilization and its concrete legal outcomes. The cut-off date of August 2025 is based on both the practical constraints of thesis completion and the assessment that the major legislative and judicial developments central to this analysis have crystallized by this point, providing sufficient clarity for meaningful analysis of the outcomes and implications.

Despite the foregoing, I acknowledge several methodological challenges that are inherent in studying sensitive political topics through documentary evidence. For instance, access to executive policymaking process documents and organisational records is limited, particularly regarding private meetings and informal networks. Some key processes are also deliberately kept off the official record, especially in the contexts of low-accountability systems. Additionally, the documents themselves may reflect power relations that exclude certain perspectives. To address these limitations, I contextualize available documents within broader political and social dynamics. This means maintaining an awareness of what could be missing from the documentary record while avoiding speculation beyond what the evidence can support. In any case, the comparative approach helps to identify patterns that might not have been visible from examining single cases in isolation.

Regarding the ethical framework, I recognize my responsibilities to both accurate scholarship and to avoiding inadvertent harm to LGBTIQ+ communities in Africa. Although working primarily with public documents and other assorted sources of information, the analysis is always mindful of potential risks to vulnerable populations from how findings are presented.

1.7 Literature Review

The relevant literature for framing the research problem and for addressing the research question is broadly categorised into the following intersecting themes: (i) transnational advocacy networks and localization; (ii) anti-rights conservatism and global politics; and (iii) LGBTIQ+ rights within postcolonial African discourse.

1.7.1 Transnational Advocacy Networks and Localization

As indicated previously, an analysis of how conservative actors operate across borders to influence policy and law requires an understanding of transnational advocacy networks and the influence of cross-border organizations on local policy. This framework, as pioneered by Keck and Sikkink⁴¹ identifies why and how networks emerge, how they operate (information politics, symbolic politics, leverage politics, and accountability politics), and the conditions under which they are effective. The authors argue that networks can circumvent state resistance through a “boomerang” pattern where domestic groups partner with international allies to pressure their governments. While this framework remains influential and serves as a key framing for the analysis undertaken by this thesis, subsequent scholarship has highlighted important limitations and complexities in how transnational networks function. For instance, Clifford Bob⁴² describes how conservative networks adapt and deploy similar advocacy strategies while operating differently from the progressive networks that were Keck and Sikkink’s primary focus. This work is especially pertinent in the examination of how anti-LGBTIQ+ actors maintain narratives of local authenticity and cultural sovereignty while receiving substantial support from Western or global conservative organizations. The research focuses on documenting and analyzing how these actors operate and attempt to influence legal frameworks and governance structures in the relevant African contexts. Following Bob’s insights,⁴³ this study pays special attention to how conservative networks may operate differently from progressive networks. This point brings up issues of localization and how

⁴¹ Keck & Sikkink, *supra* note 17.

⁴² Bob, *supra* note 28.

⁴³ *Ibid.*

ideas and practices are adapted as they move between international and local spheres, with particular attention to the role of intermediaries in this process. Following in the tradition of Annie Bunting⁴⁴ and Abdullahi Ahmed An-Na'im⁴⁵ who theorise on how legal norms are translated across different cultural contexts and the need to develop internal cultural legitimacy for human rights norms respectively, Sally Merry's⁴⁶ theoretical insights on vernacularization, although focused primarily on progressive rights translation as sociological and anthropological description and explanation more than having the normative legitimacy focus of Bunting and An-Na'im, are valuable for analyzing how conservative movements adapt their messaging and strategies to local contexts. This framework helps explain how anti-LGBTIQ+ actors can present themselves as defenders of local values while participating in global conservative networks.

Using Merry's engagement with the mechanisms through which ideas are translated across contexts, the thesis examines not only the content of anti-LGBTIQ+ advocacy in the focus countries, but also the processes through which these actors translate their messages and strategies across cultural and political boundaries. In addition, the thesis attempts to address the effect and effectiveness of these strategies and their concrete operations – however much the answers to that question can be only provisional and tentative given the limitations of the available evidence of a study without field work and within the compressed time frame of an LLM thesis.

1.7.2 Anti-rights Conservatism in Global Politics

Growing scholarship on the operation of anti-rights actors has revealed undeniable patterns in how anti-rights movements operate globally. McEwen and Narayanaswamy's⁴⁷ analysis demonstrate how these movements have developed parallel structures that mirror progressive rights organizations, including research institutes, advocacy networks, and funding mechanisms. Their work is particularly significant for this thesis in showing how these movements have strategically co-opted human rights language and development frameworks, using the very discourse of rights

⁴⁴ Annie Bunting, "Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies" (1993) 20:1 J Law Soc 6.

⁴⁵ Abdullahi Ahmed An-Na'im, ed, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment" in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2010) 19.

⁴⁶ Merry, "Human Rights and Transnational Culture", *supra* note 29; Merry, *supra* note 29.

⁴⁷ McEwen & Narayanaswamy, *supra* note 6.

to ultimately restrict rights. This strategic inversion of rights-based language presents a fundamental challenge to traditional human rights advocacy approaches. Kaoma's research⁴⁸ offers empirical evidence for how these dynamics manifest in African contexts. His work documents how U.S. conservative groups, facing domestic setbacks, have strategically redirected their attention and resources to countries like Uganda. These groups have developed transnational networks linking U.S. religious right organizations with African religious and political leaders. The local actors working with these networks are particularly effective at maintaining narratives of African authenticity while obscuring their substantial reliance on external funding and strategic guidance.

The work of Korolczuk and Graff⁴⁹ further illuminates how these movements have successfully framed their opposition to LGBTIQ+ rights within broader narratives about defending traditional values and national sovereignty. This framing allows them to present their position as a defense of authentic local culture against foreign influence, even as they themselves represent a form of external intervention (in the name of values they consider both divine and universal). This strategic positioning helps explain their effectiveness in influencing local legal and policy frameworks while maintaining legitimacy with local constituencies.

This body of scholarship reveals a paradox in how anti-rights movements operate transnationally. As Corrêa and others cited by McEwen and Narayanaswamy have shown,⁵⁰ these movements have become adept at operating simultaneously at local and global levels. They maintain seemingly contradictory positions - claiming to resist global influence while actively participating in transnational networks; and invoking local cultural authenticity while advancing externally developed strategies and arguments. This body of literature provides this thesis the context needed for understanding how anti-LGBTIQ+ actors operate in Kenya, Uganda, and Ghana. Using the foregoing discourses, the thesis examines not only the direct advocacy efforts of

⁴⁸ *Colonizing African Values: How the U.S. Christian Right is Transforming Sexual Politics in Africa*, by Kapyka Kaoma (Political Research Associates, 2012) online: <<https://politicalresearch.org/sites/default/files/2018-10/Colonizing-African-Values.pdf>>; Kaoma, *supra* note 3; *Globalizing the Culture Wars: U.S. Conservatives, African Churches, and Homophobia*, by Kapyka Kaoma (Political Research Associates, 1 December 2009) online: <https://politicalresearch.org/2009/12/01/globalizing-culture-wars#The_African_Context> [*Globalizing the Culture Wars*].

⁴⁹ Korolczuk & Graff, "Gender as "Ebola from Brussels", *supra* note 5.

⁵⁰ McEwen & Narayanaswamy, *supra* note 6; Laura Murray, "'Missing the Point': A Conversation with Sonia Corrêa about the Emergence and Complexities of Anti-Gender Politics at the Intersections of Human Rights and Health" (2022) 17:11 *Glob Public Health* 3243–3253; Adriaan van Klinken, Barbara Bompani & Damaris Parsitau, "Religious Leaders as Agents of LGBTIQ Inclusion in East Africa" (2023) 122:487 *Afr Aff* 299–312.

transnational anti-LGBTIQ+ actors and their local partners, but also the ways through which they frame their arguments and claim legitimacy as authentic voices for “African values” while advancing transnational agendas in the style of colonial systems.

1.7.3 LGBTIQ+ Rights in Postcolonial African Discourse

Related to the foregoing, the thesis also relies and builds on the diverse literature examining LGBTIQ+ rights in postcolonial African contexts and the various intersections between colonial legacies, indigenous traditions, and contemporary human rights frameworks. For instance, Mamdani’s work on colonial governance structures⁵¹ provides a theoretical grounding for understanding how current regulatory approaches to sexuality continue colonial patterns of legal and social control. His analysis illuminates how colonial powers created and manipulated customary law systems that continue to influence contemporary governance, including regulation of gender and sexuality.

Marc Epprecht’s historical research, particularly in *Sexuality and Social Justice in Africa*,⁵² challenges simplistic narratives about African sexualities by documenting diverse pre-colonial practices and demonstrating how colonial interventions reshaped understandings of gender and sexuality. His work is particularly relevant for analyzing how contemporary anti-LGBTIQ+ actors invoke “traditional values” while defending colonial-era legal frameworks. This historical perspective also helps to spotlight the paradox of movements claiming to resist Western influence while relying on Western colonial legal structures. Tamale⁵³ provides insights on theorising African sexualities through indigenous frameworks rather than Western paradigms. She demonstrates how colonial interventions fundamentally altered African approaches to gender and sexuality while claiming to preserve tradition. This analysis is essential for understanding how contemporary regulation of sexuality continues colonial patterns while claiming decolonial authenticity.

The literature on the development of LGBTIQ+ rights under the African regional human rights system adds another important dimension to this analysis. Murray and Viljoen⁵⁴ show how

⁵¹ Mamdani, *supra* note 30.

⁵² Epprecht, *supra* note 4.

⁵³ Tamale, “Exploring the Contours of African Sexualities”, *supra* note 22.

⁵⁴ Murray & Viljoen, “Towards Non-Discrimination on the Basis of Sexual Orientation”, *supra* note 18.

African regional institutions can engage with LGBTIQ+ rights within broader human rights frameworks and a more recent contribution⁵⁵ provides important insights into how these issues have been negotiated in the African human rights system. The goal here is to highlight the regional context and situate how transnational anti-LGBTIQ+ actors navigate between international human rights norms and regional legal frameworks. Other recent scholarship⁵⁶ has examined contemporary LGBTIQ+ rights struggles within modern African contexts, documenting how LGBTIQ+ advocates are using legal strategies to challenge discrimination within current African legal systems. This growing body of literature situates LGBTIQ+ rights within broader struggles for democracy and human rights in postcolonial African contexts,⁵⁷ demonstrating how these movements engage with both colonial legacies and contemporary political challenges.

This literature provides essential context for analyzing how transnational anti-LGBTIQ+ actors operate in Kenya, Uganda, and Ghana. It suggests the need to examine their activities not only through the lens of current policy debates but also within broader historical and theoretical frameworks addressing colonialism, decolonization, and the evolution of African legal systems. The thesis utilizes and builds on these perspectives to analyze how these actors navigate between colonial legacies, postcolonial politics, and contemporary human rights frameworks while advancing their agenda through formal legal mechanisms.

1.8 Structure of the Thesis

The thesis consists of five chapters, with four substantive chapters addressing the research sub-questions, and building upon each other to analyze the dynamics between transnational anti-LGBTIQ+ actors and domestic policymaking in the focus countries. Each substantive chapter incorporates comparative analysis across the three focus countries, allowing for the identification of patterns, similarities, and differences in how transnational anti-LGBTIQ+ actors operate and influence policy in different national contexts.

⁵⁵ Viljoen & Sogunro, *supra* note 25.

⁵⁶ Adrian Jjuuko & Namwase, *supra* note 32; Jjuuko et al, *supra* note 24.

⁵⁷ In this broader context, LGBTIQ+ activists also fit into progressive transnational networks. However, unlike the contradictory nationalist/anti-universalism rhetoric of transnational anti-LGBTIQ+ actors, progressive activists are generally self-aware of their transnational nature and do not typically deny their reliance on international human rights laws or association with foreign movements and donors.

Chapter 2 builds on the theoretical bases established in this introduction while Chapter 3 directly addresses the first sub-question: *examining legal and policy frameworks affecting LGBTIQ+ rights*. This chapter analyzes existing legal structures, including constitutional provisions, penal codes, and recent legislative developments. It establishes the legal context within which transnational actors operate, examining judicial interpretations and policy trends across the three countries.

Chapter 4 explores the second sub-question, *identifying transnational anti-LGBTIQ+ actors and their strategies*. This chapter identifies key transnational anti-LGBTIQ+ actors and analyzes their strategies for influencing laws and policies. It examines their methods of engagement with local contexts, including collaboration with domestic movements, interaction with political structures, and navigation of cultural and religious landscapes. The analysis reveals how these actors adapt their approaches across different national contexts while maintaining consistent objectives.

Chapter 5 concludes the thesis by addressing the third sub-question, *assessing the local use of homophobia and its implications not only for LGBTIQ+ rights but also for the overall legal landscape for human rights and democracy*. This chapter evaluates the concrete outcomes of interventions by transnational anti-LGBTIQ+ actors in each country. It examines their influence on legislation, their role in key court cases, and the broader implications of these interventions for democratic processes and human rights protections more broadly.

CHAPTER 2: A BRIEF OVERVIEW OF THE THEORETICAL FRAMEWORKS

2.1 Introduction

Africa is a complex continent with a variety of societies, cultures and histories. Sexuality, ordinarily complex within any discipline of study, is even more complicated by legal issues. As such, any academic undertaking of the legal and political landscape concerning LGBTIQ+ rights in Africa cannot be understood through a single analytical lens. Instead, the terrain is shaped by multiple intersecting forces, including international human rights norms, colonial legacies, transnational influences, and local political dynamics. As noted in the previous chapter, this thesis' aim—to comprehensively analyze how local and transnational anti-LGBTIQ+ actors influence laws, policies, and governance structures in Kenya, Uganda, and Ghana—requires an integration of complementary analytical approaches: a human rights normative foundation, queer theory, postcolonial theory, transnational advocacy networks, and vernacularization.

These theoretical strands are not merely academic abstractions but essential tools for understanding the multi-layered reality of how sexuality and gender are regulated in postcolonial African contexts. The human rights approach provides the normative foundation for evaluating laws and policies affecting LGBTIQ+ persons, grounded in the principles of universality, dignity, equality, and non-discrimination embedded in United Nations and regional human rights instruments. This approach is complemented by insights from queer theory, which problematizes heteronormative assumptions in legal and policy frameworks and attends to the intersectional nature of discrimination based on sexual orientation and gender identity. Postcolonial theory illuminates how colonial governance structures continue to shape contemporary regulation of sexuality and gender expression in these countries. Alongside these colonial legacies, contemporary anti-LGBTIQ+ politics in Africa is increasingly shaped by transnational networks and influences. This theoretical perspective, along with the concept of vernacularization, helps explain how the organizations that will be reviewed in Chapter 4 of this thesis operate across borders to influence LGBTIQ+ policy in Kenya, Uganda, and Ghana.

Together, these theoretical approaches (human rights principles, queer theory, postcolonial theory, transnational advocacy networks, and vernacularization) provide a more suitable framework for analyzing the complex dynamics at play in the regulation of LGBTIQ+ rights in Kenya, Uganda, and Ghana. By integrating these perspectives, this thesis aims to move beyond

simplified narratives of cultural authenticity or foreign imposition to examine how local and transnational forces interact to shape laws, policies, and governance structures affecting LGBTIQ+ persons.

The following sections elaborate on each of these theoretical strands. Section 2.2 outlines the human rights normative framework that grounds this research, complemented by insights from queer theory that address structural aspects of heteronormativity and power. Section 2.3 explores postcolonial theory through the work of Mamdani and Tamale alongside a brief engagement with the Third World Approaches to International Law (TWAIL) family of thought, to focusing on how colonial governance structures and interventions continue to shape contemporary regulation of sexuality. Section 2.4 examines transnational advocacy networks through the frameworks of Keck and Sikkink and Bob, highlighting the mechanisms through which conservative networks operate across borders to influence domestic policy. Section 2.5 investigates vernacularization through Merry's work, analyzing how global ideas about rights and sexuality are translated into local contexts.

2.2 The Guiding Normative Framework

This research is grounded in a normative framework that recognizes the universality and indivisibility of human rights, including the rights of LGBTIQ+ persons. This section outlines the well-established human rights principles that form the foundation for analyzing the legal and policy frameworks affecting LGBTIQ+ persons in Kenya, Uganda, and Ghana, while also acknowledging the limitations of human rights discourse and the complementary value of queer theory in examining systemic aspects of heteronormativity and power.

2.2.1 Human Rights Approach to Sexuality and Gender

The human rights approach that guides this research is embedded in the core international human rights treaties, particularly the International Bill of Rights comprising the Universal Declaration of Human Rights (UDHR),¹ the International Covenant on Civil and Political Rights (ICCPR),² and the International Covenant on Economic, Social and Cultural Rights (ICESCR).³ Although the

¹ United Nations, *Universal Declaration of Human Rights* (1948).

² United Nations, *International Covenant on Civil and Political Rights* (1966).

³ United Nations, *International Covenant on Economic, Social and Cultural Rights* (1966).

inclusion of sexuality within international human rights law has been contested, significant progress has been made through various decisions, UN resolutions, and interpretive instruments such as the Yogyakarta Principles.⁴

The principle of non-discrimination is central to this normative framework. Article 2 of the UDHR states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁵ Similar provisions appear in Article 2(1) and 26 of the ICCPR and Article 2(2) of the ICESCR, establishing non-discrimination as a foundational principle of international human rights law.

While these core treaties do not explicitly mention sexual orientation or gender identity, they have been interpreted to include protection against discrimination based on SOGIESC (sexual orientation, gender identity and expression, and sex characteristics). For instance, in 1992, the United Nations Human Rights Committee held in *Toonen v Australia*⁶ that the ICCPR’s prohibition of discrimination on the grounds of “sex” extends to discrimination based on sexual orientation, establishing that laws criminalizing consensual same-sex conduct violate the Covenant. This interpretation was further reinforced in *Young v Australia*,⁷ where the Committee found that denying same-sex couples the same benefits as heterosexual couples constituted discrimination under Article 26 of the ICCPR. The Committee on Economic, Social and Cultural Rights has similarly clarified in its General Comment No. 20 that the term “other status” includes sexual orientation within its scope.⁸

2.2.2 UN Resolutions and the Yogyakarta Principles

The United Nations Human Rights Council has adopted resolutions that specifically address violence and discrimination based on sexual orientation and gender identity. Resolution 17/19 of 2011 expressed “grave concern at acts of violence and discrimination, in all regions of the world,

⁴ International Commission of Jurists, *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (March 2007), online: <<https://yogyakartaprinciples.org/principles-en/>>.

⁵ United Nations, *supra* note 1 art 2.

⁶ *Toonen v Australia*, 1994 UN Human Rights Committee.

⁷ *Young v Australia*, 2003 UN Human Rights Committee.

⁸ *General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights*, by Committee on Economic, Social and Cultural Rights, E/C.12/GC/20 (2 July 2009) at para 32 [*General Comment No. 20*].

committed against individuals because of their sexual orientation and gender identity” and commissioned a study on discriminatory laws and practices.⁹ Resolution 27/32 of 2014 requested an update to this report, including good practices for combating such discrimination.¹⁰

The UN General Assembly has also called on states to “investigate promptly and thoroughly all killings, including those targeted at specific groups of persons, such as... killings of persons... because of their sexual orientation or gender identity.”¹¹ These resolutions establish that protecting LGBTIQ+ persons from violence and discrimination is a matter of international human rights concern.

The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, formulated by experts from 25 countries in 2006, provide a comprehensive framework for applying international human rights law to issues of sexual orientation and gender identity.¹² Although not in the form of a binding treaty, the Principles are considered “soft law” and recognized as an authoritative interpretation of how existing human rights obligations apply to LGBTIQ+ persons.¹³ The Principles address a wide range of rights, including non-discrimination, recognition before the law, security of person, privacy, freedom from torture, and access to justice. In 2017, the Yogyakarta Principles plus 10 (YP+10) were released to address developments in international human rights law and emerging issues affecting LGBTIQ+ persons. These additional principles cover rights such as legal recognition, bodily integrity, protection from poverty, and freedom from criminalization based on sexual orientation, gender identity, gender expression, or sex characteristics.¹⁴

⁹ UN Human Rights Council, *Human Rights, Sexual Orientation and Gender Identity*, A/HRC/RES/17/19 (14 July 2011).

¹⁰ UN Human Rights Council, *Human Rights, Sexual Orientation and Gender Identity*, A/HRC/RES/27/32 (2 October 2014).

¹¹ UN General Assembly, *Extrajudicial, Summary or Arbitrary Executions*, A/RES/67/168 (20 December 2012) at para 6(b); UN General Assembly, *Extrajudicial, Summary or Arbitrary Executions*, A/RES/77/218 (15 December 2022) at para 7(b).

¹² International Commission of Jurists, *supra* note 4.

¹³ Juliana Santos De Carvalho, “Doing Legality as Doing Drag: the Yogyakarta Principles and the Productive Power of Performing International Law-making” (2024) 12:2 *Lond Rev Int Law* 155–180.

¹⁴ International Commission of Jurists, *Yogyakarta Principles Plus 10: Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (10 November 2017), online: <https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf>.

2.2.3 African Regional Human Rights System

The African Charter on Human and Peoples' Rights (African Charter), adopted in 1981 and entered into force in 1986, establishes the normative framework for human rights protection within the African regional system.¹⁵ Its preamble affirms that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples” and that “fundamental rights stem from the attributes of human beings.”¹⁶

Articles 2 and 3 of the African Charter guarantee non-discrimination and equality before the law, respectively. Article 2 states: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without the distinction of any kind; such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”¹⁷

The African Commission on Human and Peoples' Rights has interpreted the phrase “other status” to include grounds not explicitly mentioned in the African Charter. In the 2006 case of *Zimbabwe Human Rights NGO Forum v Zimbabwe*,¹⁸ the Commission noted that Article 2 aims “to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation,”¹⁹ an interpretation that affirms the African Charter's protection of LGBTIQ+ persons.

A significant milestone in the protection of LGBTIQ+ rights within the African human rights system is Resolution 275 of the African Commission,²⁰ adopted at its 55th Ordinary Session in 2014. Drawing on Articles 2, 3, 4, and 5 of the African Charter (the rights to non-discrimination, equality, life, and dignity), Resolution 275 condemns violence and other human rights violations against persons based on their real or imputed sexual orientation or gender identity. The resolution calls on states to enact and enforce appropriate laws prohibiting and punishing violence against LGBTIQ+ persons, ensure proper investigation and prosecution of such violence, and provide remedies for victims. This regional framework provides a necessary counterpoint to claims that LGBTIQ+ rights are foreign impositions, demonstrating that the authoritative African human

¹⁵ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* (1981).

¹⁶ *Ibid.*

¹⁷ *Ibid* art 2.

¹⁸ *Zimbabwe Human Rights NGO Forum v Zimbabwe*, 2006 African Commission on Human and Peoples' Rights.

¹⁹ *Ibid* at para 169.

²⁰ African Commission on Human and Peoples' Rights, *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*, ACHPR/Res.275(LV)2014 (12 May 2014).

rights mechanism recognizes the need to protect individuals from violence and discrimination based on sexual orientation and gender identity.

2.2.4 Queer Theory as a Complementary Analytical Approach

While human rights law provides the normative foundation for this research, queer theory offers a complementary analytical approach that addresses some limitations of rights-based discourse. Queer theory problematizes the primacy of heterosexual norms in society, particularly the rigid binaries of gender (man versus woman) and sexuality (homosexual versus heterosexual) that permeate legal frameworks.²¹ By questioning these binaries, queer theory enables a more nuanced analysis of how law constructs and regulates both sexuality and gender. As Ngwena argues, queer theory provides a “a crucial theoretical archive for framing sexualities in settings where the LGBTI taxonomy and its normative identities may distort local grammars of sexualities, such as in African settings where transgressive sexualities historically remain hidden and not openly lived and articulated.”²² This perspective requires that we avoid imposing Western identity categories on diverse African sexual practices and expressions, allowing for a more contextually sensitive analysis— an approach which lines up with vernacularization theory discussed later. To this extent, this thesis acknowledges that even though “LGBTIQ+” is used as an umbrella term for this study, the terminology itself is limiting in the way transgressive sexualities are understood in African contexts and also inadvertently reinforces claims that such sexualities are foreign impositions.

Queer intersectionality further enriches this analysis by examining “the ways in which power informs and constitutes privileged and marginalized subjects.”²³ This approach recognizes that discrimination based on sexual orientation and gender identity intersects with other forms of oppression related to race, class, religion, and colonial legacies. By attending to these intersections, this research aims to avoid simplistic narratives that treat LGBTIQ+ rights in isolation from broader struggles for justice and equality.

²¹ Martha Albertson Fineman, “Introduction: Feminist and Queer Legal Theory” in *Feminist and Queer Legal Theory* (Routledge, 2010).

²² Charles Ngwena, *What is Africanness? Contesting Nativism in Race, Culture and Sexualities* (Pretoria: Pretoria University Law Press, 2018) at 237.

²³ Cathy J Cohen, “Punks, Bulldaggers, and Welfare Queens: The Radical Potential of Queer Politics?” (1997) 3:4 *GLQ J Lesbian Gay Stud* 437–465 at 438.

2.2.5 Limitations of Human Rights Discourse

While human rights principles provide a valuable normative framework, it is important to acknowledge their limitations, including in their limited ability, when implemented, to address power dynamics in society, particularly when it affects groups of people instead of individuals.²⁴

This thesis specifically explores a very important limitation, namely, that the language of rights can be manipulated by anti-LGBTIQ+ actors who appropriate concepts such as religious freedom, cultural rights, or protection of children to oppose LGBTIQ+ equality. Moreover, advocating for governing elites to respect human rights may be ineffective without first challenging the hegemonic structures that maintain their power –and with which anti-LGBTIQ+ actors can link up. This recognition necessitates engagement with theoretical frameworks that address structural aspects of power and society, such as postcolonial theory.

Despite these limitations, human rights principles remain valuable for grounding advocacy, challenging discriminatory laws under constitutional guarantees, and highlighting the disconnect between citizenship aspirations and lived realities. Throughout this thesis, this human rights approach foregrounds the legal analysis while being complemented by more critical theoretical perspectives that are cognizant of and seek to address systemic power imbalances and cultural complexities.

2.3 Theoretical Strand: Postcolonial/Decolonial Theory

Postcolonial and decolonial theoretical frameworks are critical analytical tools for understanding how colonial legal heritage continues to shape contemporary governance of sexuality and gender expression in Kenya, Uganda, and Ghana. These approaches illuminate the historical processes through which European colonial powers imposed rigid heteronormative frameworks across Africa and how these structures have been maintained, adapted, and sometimes intensified in

²⁴ Peter Gabel & Paul Harris, “Building Power and Breaking Images: Critical Legal Theory and the Practice of Law” (1982) 11 *NU Rev Law Soc Change* 369–411; It is also important to acknowledge counterarguments to these critiques such as Scott’s work on the need for human rights interpretation to avoid rigid categories that abstracts rights from their social context and to avoid disconnecting formal legal meaning from grassroots experiences and social meaning: Craig Scott, “Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights” (1989) 27:3 *Osgoode Hall Law J* 769–878; Craig Scott, “Reaching Beyond (Without Abandoning) the Category of “Economic, Social and Cultural Rights”” (1999) 21:3 *Hum Rights Q* 633–660; Craig Scott, “Toward the Institutional Integration of the Core Human Rights Treaties” in *Giving Meaning to Economic, Social, and Cultural Rights* Osgoode Legal Studies Research Paper (Philadelphia: University of Pennsylvania Press, 2022) 7.

postcolonial contexts. Two theorists are particularly relevant to this analysis: Mahmood Mamdani, whose work on colonial governance structures helps explain the persistence of colonial regulatory patterns, and Sylvia Tamale, whose feminist decolonial critique addresses how colonial intervention transformed African understandings of sexuality.

2.3.1 Mamdani's Analysis of Colonial Governance

Mamdani's scholarship on colonial governance addresses the foundational question of how African legal systems continue to reflect colonial patterns of rule. In *Define and Rule*,²⁵ Mamdani argues that indirect rule colonialism was not merely a pragmatic response to limited resources but represented a comprehensive mode of governance that sought to shape the subjectivity of entire populations.²⁶ The colonial project, as Mamdani conceptualizes it, was to “define and rule” native populations by casting them in a nativist mold through historiography, census categorization, and legal frameworks.

Mamdani's analysis highlights the distinction between how colonial powers governed settler and native populations. He argues: “The difference between the modern democratic state and its colonial version is this: the modern state ensures equal citizenship in political society while acknowledging difference in civil society, but its colonial counterpart institutionalized difference in both the polity and society.”²⁷ This institutionalization of difference is an essential feature in the legal frameworks affecting LGBTIQ+ rights in postcolonial African states, where colonial-era distinctions continue to shape citizenship and rights. And so, Mamdani describes how colonial power operated by defining the native as “pinned down, localized, thrown out of civilization as an outcast, confined to custom, and then defined as its product.”²⁸ This conceptualization is re-echoed in contemporary anti-LGBTIQ+ rhetoric, which frames homosexuality as “un-African,” and reproduces colonial modes of defining authenticity and tradition. The colonial state's preoccupation with defining and managing difference as “the essence of governance”²⁹ has now created a template for postcolonial governance that continues to shape how sexuality and gender are regulated today.

²⁵ Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Harvard University Press, 2012).

²⁶ *Ibid* at 2.

²⁷ *Ibid*.

²⁸ *Ibid* at 2–3.

²⁹ *Ibid* at 2.

In *Citizen and Subject*,³⁰ Mamdani further develops the concept of the “bifurcated state” that emerged under colonialism, where urban areas were governed by civil law while rural areas remained under customary law administered by native authorities.³¹ This bifurcation has persisted, both symbolically and to a significant extent formally, in postcolonial states, creating complex legal landscapes where constitutional protections of equality and dignity coexist with customary laws and colonial-era statutes that criminalize non-normative sexualities.

2.3.2 Tamale’s Decolonial Feminist Perspective

While Mamdani provides a broad framework for understanding colonial governance structures, Tamale’s scholarship specifically addresses how colonial intervention and its contemporary heirs transformed African understandings of sexuality and gender. Tamale demonstrates how colonial powers and its successors deployed law as a mechanism to regulate African bodies and sexualities.³² She argues that “[t]he concepts of sin (religious), taboo (cultural) and criminalisation (legislation) play a crucial role in constructing sexuality and the manner in which African people experience it, ultimately exercising a regulatory and controlling role.”³³ Her work also underscores the fact that pre-colonial African societies often accommodated diverse sexual and gender expressions. She notes examples such as the *mudoko dako* (effeminate males) among the Langi in Uganda, who were accepted as women and could marry men, or the ritualized same-sex practices among the Azande and Nupe.³⁴ Colonial legal systems pathologized and stigmatized these and other practices, displacing any indigenous fluidity on sexuality with standardized colonial tests of “repugnancy” that conflated diverse African sexualities with primitivity.³⁵

This epistemic violence has enabled the systematic erasure of nonconforming sexualities, which, as Tamale notes, postcolonial elites later weaponized as “un-African” to consolidate political power.³⁶ She identifies how postcolonial states have perpetuated this regulation through

³⁰ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 2018) Princeton Studies in Culture/Power/History.

³¹ *Ibid* at 16–23.

³² Sylvia Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power” (2014) 14 Afr Hum Rights Law J 150–177 at 161–162.

³³ *Ibid* at 162.

³⁴ Sylvia Tamale, “Confronting the Politics of Nonconforming Sexualities in Africa” (2013) 56:2 Afr Stud Rev 31–45 at 35.

³⁵ Sylvia Tamale, “The Right to Culture and the Culture of Rights: A Critical Perspective on Women’s Sexual Rights in Africa” (2008) 16:1 Fem Leg Stud 47–69 at 50.

³⁶ Tamale, *supra* note 34 at 39.

Foucauldian “disciplinary power,” where “African people [are fashioned] to conform to the mainstream notions of sexuality, thus ‘voluntarily’ colluding with patriarchal-capitalist sexual moral standards.”³⁷ In this way, not only do the postcolonial elites use law coercively but also maintain a continuing internalization of colonial values regarding sexuality and gender in postcolonial societies, where heteronormativity is now defended as authentic African tradition and paves the way for anti-LGBTIQ+ actors to claim their agenda as a defense of “African values”. And so, the paradox where anti-LGBTIQ+ rhetoric is framed as resistance to Western imperialism despite the colonial origins of anti-sodomy laws becomes complete.

In *Decolonization and Afro-Feminism*,³⁸ Tamale further develops her analysis of how colonial intervention reshaped African understandings of gender and sexuality, imposing patriarchal and heteronormative frameworks that erased the diverse sexual practices and gender expressions that existed in pre-colonial societies.³⁹ She argues for the need to recover these erased histories as part of a broader decolonial project that challenges both colonial legacies and contemporary forms of neocolonial domination.

2.3.3 Parallel Insights of Third World Approaches to International Law (TWAIL) Scholarship
Beyond Mamdani and Tamale’s work, the Third World Approaches to International Law (TWAIL) family of critical legal theory can also offer a valuable complementary framework for analyzing how colonial legacies continue to shape international legal regimes. As Okafor explains, TWAIL represents a “shared ethical commitment to the intellectual and practical struggle to expose, reform, or even retrench those features of the intellectual legal system that help create or maintain the generally unequal, unfair, or unjust global order.”⁴⁰ This approach may be relevant for understanding how international human rights discourse, including LGBTIQ+ rights, is simultaneously invoked and contested within postcolonial African contexts.

TWAIL scholarship problematizes the presumed universality and neutrality of international law, demonstrating how it continues to reproduce colonial hierarchies even as it

³⁷ Tamale, “Exploring the Contours of African Sexualities”, *supra* note 32 at 157.

³⁸ Sylvia Tamale, *Decolonization and Afro-Feminism* (Ottawa: Daraja Press, 2020).

³⁹ *Ibid* at 28–29.

⁴⁰ Obiora Chinedu Okafor, “Newness, Imperialism, and International Legal Reform in Our Time: A Twail Perspective” (2005) 43:1/2 *Osgoode Hall Law J* 171–191 at 176–177.

purports to advance equality and human rights. The “fragmented unities,” as Okafor describes it,⁴¹ that characterize TWAIL as a school of thought reflect the complex and sometimes contradictory ways in which postcolonial states engage with international legal frameworks, by simultaneously rejecting aspects perceived as Western impositions while strategically invoking others to assert sovereignty or advance particular political agendas. This can help explain the apparent paradox whereby African political leaders may invoke international human rights norms in some contexts while rejecting them in others, particularly regarding LGBTIQ+ rights.

However, in this thesis, I limit myself to Mamdani and Tamale as core referents for postcolonial analysis. While TWAIL scholarship offers valuable insights into how international legal frameworks reproduce colonial hierarchies and the contradictory ways postcolonial states engage with international law, the particular insights from TWAIL emphasized above do not constitute the most developed or central aspects of TWAIL scholarship. Given that Mamdani's work on colonial governance structures and Tamale's decolonial feminist critique provide comprehensive analytical tools for understanding how colonial legacies shape contemporary regulation of sexuality and gender expression, only limited additional value beyond these foundational theorists can be found in TWAIL scholarship for the specific purposes at hand in this research.

2.3.4 Application to Contemporary Legal Frameworks

Together, Mamdani's analysis of colonial governance structures and Tamale's decolonial feminist critique provide a strong bulwark that this thesis leans on for understanding how colonial legacies continue to shape contemporary legal regulations of sexuality and gender expression in Kenya, Uganda, and Ghana. From this perspective, several key dynamics become apparent, which I discuss below.

First, we can use this understanding to explain the persistence of colonial-era anti-sodomy laws in postcolonial African legal systems. Rather than being rejected as colonial impositions, these laws have been integrated by post-colonial states into national legal frameworks and are now defended as expressions of authentic African values. This selective maintenance of colonial legal structures while developing independent constitutional frameworks creates contradictions that

⁴¹ Obiora Chinedu Okafor, “Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?” (2008) 10:4 Int Community Law Rev 371–378 at 375.

courts struggle to resolve, as we will discuss when examining domestic legal frameworks in Chapter 3 of this thesis.

Second, it becomes apparent how and why postcolonial states have expanded upon colonial-era restrictions through new legislation such as with the case of Uganda and Ghana discussed in the next chapter. These expansions represent not a break from colonial patterns but an intensification of colonial governance logic, using state power to define and control sexual and gender expressions deemed deviant.

Third, the framework illuminates how anti-LGBTIQ+ rhetoric in these countries often reproduces colonial epistemologies that positioned homosexuality as unnatural, now re-interpreted as “foreign” or “un-African,” despite historical evidence of diverse sexual practices and gender expressions in pre-colonial African societies. This rhetorical strategy serves to legitimize engagement with transnational anti-LGBTIQ+ actors while obscuring the colonial origins of contemporary homophobia. It also explains the strategic deployment of postcolonial discourse in anti-LGBTIQ+ politics. Political leaders in Kenya, Uganda, and Ghana frequently invoke national sovereignty and cultural authenticity to resist international human rights norms regarding LGBTIQ+ rights, while simultaneously accepting other aspects of international governance and human rights frameworks.

Through the application of these postcolonial and decolonial theoretical perspectives, this thesis will examine and analyze the role and impact of local and transnational anti-LGBTIQ+ actors in perpetuating colonial legal heritage to shape contemporary governance mechanisms in the focus countries, creating contradictions between rights-based constitutional frameworks and persisting criminalization of same-sex conduct.

2.4 Transnational Advocacy Networks

Considering that the principal focus of this thesis examines the impact of transnational anti-LGBTIQ+ actors in African legal systems, the theoretical framework of transnational advocacy networks provides analytical tools for understanding how these movements operate across borders to influence domestic policy in African contexts. While much scholarship on transnational advocacy has focused on progressive networks promoting human rights and environmental protection, this analysis draws on these frameworks to understand conservative networks opposing LGBTIQ+ rights in the focus countries. To this extent, this thesis relies on two major theoretical

approaches: Keck and Sikkink’s pioneering work on transnational advocacy networks and Bob’s extension of this framework to conservative movements.

2.4.1 Keck and Sikkink’s Framework

Margaret Keck and Kathryn Sikkink’s seminal work, *Activists Beyond Borders*,⁴² established the theoretical foundation for understanding transnational advocacy networks. They define these networks as “forms of organization characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange.”⁴³ It also includes “actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services.”⁴⁴ In essence, these networks create channels for values, ideas, and strategies to flow between domestic and international contexts, transforming how advocacy operates in a globalized world.

Keck and Sikkink identify four tactics that transnational advocacy networks employ: information politics, symbolic politics, leverage politics, and accountability politics.⁴⁵ These are explained as:⁴⁶

“(1) information politics, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact; (2) symbolic politics, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away; (3) leverage politics, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and (4) accountability politics, or the effort to hold powerful actors to their previously stated policies or principles.

Within the context of this research, these tactics help explain how anti-LGBTIQ+ networks operate in African contexts, where they strategically deploy information, symbols, leverage, and accountability claims to advance their agenda.

A key concept in the framework is the “boomerang pattern,” where domestic groups facing resistance from their governments connect with international allies who then pressure these

⁴² Margaret E Keck & Kathryn A Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y: Cornell University Press, 1998).

⁴³ *Ibid* at 8.

⁴⁴ *Ibid* at 2.

⁴⁵ *Ibid* at 16–25.

⁴⁶ *Ibid* at 16.

governments from outside.⁴⁷ There is nothing sacrosanct about progressive goals for transnational networks. With respect to the reverse case of conservative actors seeking to *reduce* human rights compliance, the four tactics and the boomerang pattern can help explain how anti-LGBTIQ+ actors engage with international conservative networks when facing hesitation by domestic governments to their agenda.

There is also the recognition that strategies have to vary across national contexts while maintaining consistent objectives. Thus, Keck and Sikkink emphasize that successful network advocacy requires the strategic framing of issues in ways that resonate with existing cultural and political contexts. They note that “framing issues successfully is especially problematic” for transnational networks because they “need to fit with belief systems, life experiences, and stories, myths, and folk tales in many different countries and cultures.”⁴⁸ While this task may prove a difficult one in the progressive contexts that Keck and Sikkink researched, it is one that certainly offers a comparative advantage for transnational anti-LGBTIQ+ actors who can frame their opposition easily in terms that resonate with the internalized colonial norms and disciplinary postcolonial legal systems of the African contexts they are advocating in.

While Keck and Sikkink’s framework was primarily developed to analyze progressive networks promoting human rights, environmental protection, and gender equality, they acknowledge that “different transnational actors have profoundly divergent purposes and goals.”⁴⁹ This recognition opens space for applying their framework to understanding how anti-LGBTIQ+ networks operate across borders, to create a “dense webs of interactions and interrelations among citizens of different states which both reflect and help sustain shared values, beliefs, and projects”⁵⁰ albeit for conservative rather than progressive ends.

2.4.2 Bob’s Framework for Conservative Networks

Clifford Bob’s work, particularly *The Global Right Wing and the Clash of World Politics*,⁵¹ significantly extends Keck and Sikkink’s framework by specifically addressing how conservative networks operate. Where Keck and Sikkink focused primarily on progressive advocacy, Bob

⁴⁷ *Ibid* at 12–13.

⁴⁸ *Ibid* at 204.

⁴⁹ *Ibid* at 210.

⁵⁰ *Ibid* at 213.

⁵¹ Clifford Bob, *The Global Right Wing and the Clash of World Politics* (Cambridge: Cambridge University Press, 2012) Cambridge Studies in Contentious Politics.

examines how conservative actors use similar transnational strategies to oppose rights expansion. Bob's central contribution is his focus on conflict between opposing networks, not just between networks and states. As he argues, "conflict among rival networks, whatever their ideology, is seldom examined, in favor of studies that highlight one side's efforts to persuade decision makers."⁵² As will be discussed in the analysis of the strategies used by anti-LGBTIQ+ actors in Africa, this perspective is important because the aim of these actors is to directly confront and respond to LGBTIQ+ rights progress and advocacy – including that supported by transnational pro-LGBTIQ+ advocacy networks – rather than simply operating in isolation.

While Keck and Sikkink emphasize persuasion, Bob highlights dissuasive strategies: "Even as each side builds its own coalition, it works to unbuild its opponents'. As it enters institutions, it strives to exclude its rivals. As it sets agendas, it toils to unset its enemy's."⁵³ Nowhere is this attention to network "unbuilding" tactics truer than in how anti-LGBTIQ+ groups in Africa began their rise just as decriminalization advocacy in Africa began to yield results. As will be discussed in Chapter 4 of this thesis, the strategy of these actors seems to operate to delegitimize opponents and block progressive values rather than simply advancing their own agenda. Bob also introduces several analytical concepts particularly relevant for understanding anti-LGBTIQ+ networks. His concept of "rival issue entrepreneurs"⁵⁴ explains why conservative organizations establish African affiliates that mirror the strategies of well-known human rights international NGOs. As Bob notes, "[a]s one side constructs a problem, opposing entrepreneurs, motivated by their own mix of moral and material concerns, mobilize too."⁵⁵ In essence, conservative legal networks are likely to respond to progressive litigation strategies by developing parallel legal infrastructures and courtroom interventions.⁵⁶

Another key concept is "framejacking," where "rivals seize the offensive ...[to]... hijack their foe's cherished frames, maneuvering them in contradictory ways" and argue that a proposed solution to a human rights violation is, instead, also a human rights violation.⁵⁷ As has been pointed

⁵² *Ibid* at 3.

⁵³ *Ibid* at 6.

⁵⁴ *Ibid* at 21.

⁵⁵ *Ibid* at 22.

⁵⁶ Lisa Harms, *Faith in Courts: Human Rights Advocacy and the Transnational Regulation of Religion* (Oxford: Hart Publishing, 2022).

⁵⁷ Bob, *supra* note 51 at 29; Harms, *supra* note 56 at 48.

out by McEwen & Lata Narayanaswamy,⁵⁸ anti-LGBTIQ+ networks appropriate human rights language, anti-colonial rhetoric, or protection of children frameworks, inverting progressive discourses to serve conservative ends. When the organizations discussed in Chapter 4 of this thesis frame their opposition as defending African values or national sovereignty, we can characterize this as “framejacking”.

Another concept discussed by Bob is “authentication” which arises as follows:⁵⁹

Because adversaries often deny a problem’s existence, opposition spurs activists to link with, fund, or fashion local allies who embody the problem’s pernicious effects. Grassroots partners authenticate the issues and encourage pseudo-democratic claims: that the network represents a substantial constituency, even “the people” themselves. Authentication makes it easier to dismiss foes as denialists, a proliferating slur in recent policy wars.

This process legitimizes the issues as local agitations, disguising the transnational conservative organizations who invest heavily in creating or supporting these seemingly indigenous African organizations, and presents opposition to LGBTIQ+ rights as authentically African rather than a foreign-imposed agenda.

2.4.3 Transnational Advocacy Networks Theory and Anti-LGBTIQ+ Actors

Together, Keck and Sikkink’s framework of transnational advocacy networks and Bob’s refinements for understanding conservative movements explain how transnational actors operate across borders, adapting transnational strategies to local contexts. As will be examined in Chapter 4, these organizations and actors employ information politics (through research reports and policy papers), symbolic politics (framing LGBTIQ+ rights as threats to sovereignty, children and families), leverage politics (using religious authority and political connections), and accountability politics (demanding governments uphold “traditional values” and sometimes filing court cases to this end) to push their agenda.

⁵⁸ *The International Anti-Gender Movement: Understanding the Rise of Anti-Gender Discourses in the Context of Development, Human Rights and Social Protection*, Working Paper, by Haley McEwen & Lata Narayanaswamy, www.econstor.eu, Working Paper 2023–06 (UNRISD Working Paper, 2023) online: <<https://www.econstor.eu/handle/10419/278575>> [*The International Anti-Gender Movement*].

⁵⁹ Bob, *supra* note 51 at 23.

Through this framework, we can also analyze how these networks build local partnerships to authenticate their agenda—in particular, how they affiliate with local intermediaries that present anti-LGBTIQ+ advocacy as indigenous and authenticate their actions to gain legitimacy. It also explains their strategic framing to align their message with local cultural and religious contexts. By presenting opposition to LGBTIQ+ rights as protection of “African values,” “natural family,” or “national sovereignty,” these networks adapt global conservative discourses to resonate with local audiences. This framing process helps explain how seemingly contradictory narratives—simultaneously rejecting “Western” LGBTIQ+ rights while embracing Western conservative religious ideologies—coexist in anti-LGBTIQ+ discourse.⁶⁰

Also, the application of this framework situates the simultaneous operation of these networks in domestic and international arenas. Anti-LGBTIQ+ actors strategically engage with multiple venues, from domestic courts, religious institutions and parliaments to regional bodies and international forums.⁶¹ The financial support flowing to anti-LGBTIQ+ advocacy in Africa represents both ideological commitment and organizational self-interest.

Through these theoretical perspectives, this research recognizes that these dynamics involve not just a series of tactics but also strategic action by both international and local actors, operating within what Bob describes as ongoing contestation rather than definitive outcomes: “Of course at moments, rivals may engage in high-minded dialogue. More typically, advocates work to destroy their foes’ reputations, ideas, and values.”⁶² It recognizes these networks not as passive reflections of local cultural values, but as active, strategic actors engaged in transnational advocacy to advance a conservative agenda regarding sexuality and gender.

2.5 Vernacularization

The concept of vernacularization provides another theoretical pillar for this research. This framework, developed primarily by Sally Engle Merry in her seminal work, *Human Rights and Gender Violence: Translating International Law into Local Justice*,⁶³ which focuses on human rights translation, complements the discussion on transnational networks by considering how

⁶⁰ Tamale, *supra* note 34 at 40.

⁶¹ Kristopher Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms: LGBT+ Rights in a Contested World” (2023) 128:5 *Am J Sociol* 1381–1429 at 1387.

⁶² Bob, *supra* note 51 at 17.

⁶³ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006) Chicago Series in Law and Society.

global ideas about sexuality and gender are adapted to local contexts. While Merry's research dealt with how progressive human rights concepts are translated into local settings, her analytical framework is equally valuable for understanding how conservative movements adapt their messaging across cultural boundaries.

Merry defines vernacularization as the process by which human rights ideas are “translated into local terms and situated within local contexts of power and meaning.”⁶⁴ This process operates bidirectionally and is shaped by power dynamics, cultural understandings, and intermediaries who navigate between global and local spaces. Central to Merry's framework is the role of intermediaries or “translators” who mediate between transnational and local spheres. As she explains, “[i]ntermediaries such as NGO and social movement activists play a critical role in interpreting the cultural world of transnational modernity for local claimants.”⁶⁵ These actors “appropriate, translate, and remake transnational discourses into the vernacular,” adapting global ideas to local cultural contexts while maintaining connections to transnational networks and discourses “with a kind of double consciousness.”⁶⁶ Merry identifies three dimensions for effective translation: framing the advocacy through local cultural narratives; adapting the advocacy to local structural conditions; and flexibility in redefining target populations.⁶⁷

The process that Merry calls “indigenization” occurs when global ideas are presented through local cultural symbols and religious frameworks yet without these being “fully indigenized” but retain their core ideological principles.⁶⁸ This delicate balance between adaptation and preservation is essential for both legitimacy and effectiveness, with legitimacy serving as foundational to effectiveness. Merry's study of domestic violence programs in Hong Kong illustrates this dynamic. When Harmony House, a women's shelter, was established, it was initially described as offering “treatment and shelter for abused women rather than promoting women's human rights in order to diminish opposition.”⁶⁹ Only when developing publicity materials did they begin discussing “family violence” in rights terms. This strategic framing enabled the program to gain local acceptance and government funding while maintaining its core mission of protecting women from violence. The Hong Kong activists employed what Merry terms

⁶⁴ *Ibid* at 1.

⁶⁵ *Ibid* at 3.

⁶⁶ *Ibid*.

⁶⁷ *Ibid* at 136–137.

⁶⁸ *Ibid* at 137.

⁶⁹ *Ibid* at 153.

“indigenization”—they “rely on concepts of gender equality, understanding feelings, and the icon of a power/control wheel developed in the United States”.⁷⁰ This translation process allowed international human rights concepts to gain legitimacy within local cultural frameworks, which proved foundational to their effectiveness in securing government subventions and community acceptance. Without such cultural translation, the programs would likely have been rejected as foreign impositions, regardless of their potential effectiveness. In similar ways, transnational conservative ideas can maintain coherence across diverse cultural contexts even as they adapt their presentation to local settings.⁷¹ The same vernacularization process is operated in reverse, with transnational anti-rights movements translating restrictive ideologies into local cultural frameworks by claiming to defend authentic values against foreign liberal influence, thereby achieving policy objectives through domestic proxies rather than direct international intervention.

2.6 Conclusion

This chapter has presented an integrated theoretical framework to explain the framing of this research into how local and transnational anti-LGBTIQ+ actors influence laws, policies, and governance structures in Kenya, Uganda, and Ghana. The framework draws on four complementary theoretical strands: a human rights normative foundation, postcolonial theory, transnational advocacy networks, and vernacularization. Each theoretical perspective contributes essential analytical tools for understanding different dimensions of this study.

The normative framework grounded in international and regional human rights principles establishes the foundation for evaluating laws and policies affecting LGBTIQ+ persons. It recognizes the universality of human rights and their applicability to sexual and gender minorities, while acknowledging the ongoing contestation around these principles. This approach is

⁷⁰ *Ibid.*

⁷¹ The concept of cultural translation discussed here builds upon the pioneering work of Abdullahi An-Na‘im on “internal discourse” and how it emerges from external interactions through cross-cultural dialogue. An-Na‘im argues that “internal discourse relates to the struggle to establish enlightened perceptions and interpretations of cultural values and norms” while “cross-cultural dialogue should be aimed at broadening and deepening the area of agreement among human cultures.” See Abdullahi Ahmed An-Na‘im, ed, “Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment” in *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus* Pennsylvania Studies in Human Rights (Philadelphia: University of Pennsylvania Press, 2010) 19 at 27. Although his framework is conceived in the ideal mode of cross-cultural dialogue aimed at advancing human rights universality, this does not preclude external actors from entering as conservative ‘dialogue’ partners who strategically deploy anti-rights language in ways that resonate with subsets of target societies.

complemented by insights from queer theory, which problematizes heteronormative assumptions in legal and policy frameworks and attends to the intersectional nature of discrimination based on sexual orientation and gender identity.

Postcolonial theory, particularly through the work of Mamdani and Tamale, illuminates how colonial governance structures continue to shape contemporary regulation of sexuality and gender expression. It explains the paradox whereby anti-LGBTIQ+ rhetoric is framed as resistance to Western imperialism despite the colonial origins of anti-sodomy laws. This theoretical perspective reveals how postcolonial states selectively maintain colonial legal structures while developing independent constitutional frameworks, creating contradictions between rights-based principles and persisting criminalization of same-sex conduct.

Transnational advocacy networks theory provides analytical tools for understanding how conservative movements operate across borders to influence domestic policy. It explains how transnational actors employ information politics, symbolic politics, leverage politics, and accountability politics to advance their agenda in African contexts. It also highlights the contentious nature of transnational advocacy and the strategies conservative networks use to counter progressive rights claims.

Vernacularization theory, on the translation of global ideas into the internal discourse of local contexts, explains how anti-LGBTIQ+ ideas circulate between global and local spheres. It illuminates the role of intermediaries who adapt transnational conservative discourses to local cultural and religious contexts, making them culturally and semantically resonant while maintaining their core ideological content. This approach helps explain how seemingly contradictory narratives, rejecting “Western” LGBTIQ+ rights while embracing Western conservative religious ideologies, coexist in anti-LGBTIQ+ discourse.

This integrated framework guides the subsequent chapters of this thesis. Chapter 3 applies postcolonial theory to analyze the legal and policy frameworks affecting LGBTIQ+ rights in Kenya, Uganda, and Ghana, examining how colonial legal heritage shapes contemporary governance mechanisms. Chapter 4 employs transnational advocacy networks theory and vernacularization to identify key transnational anti-LGBTIQ+ actors and analyze their strategies for influencing laws and policies. Chapter 5 returns to the theoretical strands to assess the broader implications of these efforts for LGBTIQ+ rights, human rights and democratic governance in Africa.

In this way, this thesis aims to contribute to an understanding of the role and impact of local and transnational anti-rights actors in the focus countries through the interplay between local and global factors, colonial legacies, and processes of cultural translation in shaping contemporary legal and political landscapes affecting the rights of LGBTIQ+ persons.

CHAPTER 3: LEGAL AND POLICY FRAMEWORKS AFFECTING LGBTIQ+ RIGHTS

3.1 Introduction

Having grounded the theoretical framing of this thesis, this chapter commences the substantive response to the research question and undertakes a response to the first sub-question:

What are the key legal and policy frameworks affecting LGBTIQ+ rights in Kenya, Uganda, and Ghana, and how have they evolved in recent years (leaving aside, at this stage, a discussion of the processes and forces that have led to their existence)?

Accordingly, this chapter situates the legal and policy frameworks regulating sexuality and gender identity within which local and anti-rights actors in Ghana, Kenya and Uganda operate. However, these legal contexts cannot be examined without an understanding of the historical conditions through which current legal frameworks emerged and the legacy of these circumstances.¹ This requirement is not about an historical overview as standard formality, but rather is a necessary aspect towards the subsequent postcolonial critique of how current anti-LGBTIQ+ movements operate within existing legal frameworks and governance structures while simultaneously deploying anti-colonial rhetoric to advance their agenda.

And so, this chapter situates the legal and policy frameworks in the context of their colonial legal heritage. This principally requires a discussion on the British colonial system and its introduction of rigid heteronormative frameworks that continue to influence postcolonial regulation of sexuality and gender expression.² These inherited structures created and continue to perpetuate challenges for realizing human rights protections in postcolonial African states.

As noted in Chapter 1 of this thesis, the shared British colonial heritage of Kenya, Uganda, and Ghana also make them compelling cases for comparative analysis, considering how they have followed divergent paths in their treatment of LGBTIQ+ rights. While all three countries maintain colonial-era provisions criminalizing same-sex relations, they have responded differently to

¹ Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Harvard University Press, 2012).

² Sylvia Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power” (2014) 14 Afr Hum Rights Law J 150–177; Enze Han & Joseph O’Mahoney, *British Colonialism and the Criminalization of Homosexuality: Queens, Crime and Empire* (London: Routledge, 2018).

contemporary pressures. Uganda has moved toward intensified criminalization through its 2023 Anti-Homosexuality Act,³ while Ghana’s parliament has advanced similar restrictive legislation through its (not yet in force) Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill (Family Values Bill).⁴ Meanwhile, Kenya has shown some progressive tendencies through court decisions protecting broader human rights for LGBTIQ+ persons,⁵ even as it maintains colonial-era criminal provisions.⁶

As a comparative analysis, this chapter will also examine these varying legal frameworks by looking at similar aspects across each jurisdiction while remaining attentive to context-specific factors. This approach enables identification of both common patterns and important variations in how different jurisdictions regulate LGBTIQ+ rights through law and policy. The comparison will also illuminate how inherited colonial structures interact with contemporary constitutional frameworks, international human rights obligations, and domestic policy imperatives.

The chapter proceeds in five main sections. Following this introduction, the second section examines the broad shared colonial legal heritage and its contemporary implications. The subsequent three sections analyze the specific legal frameworks of Kenya, Uganda, and Ghana respectively, examining constitutional provisions, criminal laws, court decisions, and administrative policies affecting LGBTIQ+ persons. The final section draws comparative insights from this analysis, identifying patterns and variations across jurisdictions. This structured examination will provide the foundation for analysis in subsequent chapters of how transnational actors influence these legal frameworks and of their broader implications for human rights and democracy in contemporary Africa.

3.2 Colonial Legal Heritage and Contemporary Implications

The contemporary legal regulation of sexual orientation and gender identity in Kenya, Uganda, and Ghana cannot be divorced from its colonial origins. As discussed in Chapter 2 through the analysis of Mamdani and Tamale’s works, British colonial rule introduced and institutionalized specific forms of legal control over sexuality that continue to shape contemporary governance

³ Anti-Homosexuality Act, 2023 of Uganda (“AHA”).

⁴ Parliament of Ghana, *Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill*, July 2021.

⁵ *NGOs Co-ordination Board v Eric Gitari and Others*, 2023 Supreme Court of Kenya.

⁶ *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)*, 2019 High Court of Kenya.

structures, and this section examines how colonial legal frameworks created enduring patterns of regulation that influence current approaches to LGBTIQ+ rights in these jurisdictions.

Setting the Stage

The British Empire's approach to regulating sexuality emerged from Victorian moral ideologies that sought to impose heteronormative standards across colonial territories.⁷ These laws, typically embedded within criminal and penal codes,⁸ established a legal architecture of criminalization that would outlive colonial rule itself. The persistence of these colonial-era provisions in contemporary legal systems is an example of Mamdani's work on how colonial governance structures continue to have far reaching implications in postcolonial states.⁹ The introduction of anti-sodomy laws through the Indian Penal Code of 1860, which served as a model for other British colonies, marked the beginning of systematic criminalization of same-sex relations in colonial territories.¹⁰ This colonial imposition had enormous significance in African contexts where, as scholars have documented, pre-colonial societies often maintained more fluid approaches to sexuality and gender expression.¹¹

The mechanism through which these laws were introduced tells us a lot about their contemporary implications. Rather than emerging from local democratic processes, anti-sodomy provisions were imposed through colonial administrative fiat, often justified through civilizing rhetoric that characterized indigenous approaches to sexuality as primitive or barbaric.¹² However, the colonial legacy extends beyond mere legal provisions. As Tamale argues,¹³ colonial intervention fundamentally altered African understandings of sexuality and gender, imposing a patriarchal, heteronormative framework that displaced the more fluid pre-colonial approaches. It is this historical process of revision and exclusion that has now influenced contemporary debates

⁷ Han & O'Mahoney, *supra* note 2 at 3–5.

⁸ The Indian Penal Code (1860) and the Queensland Criminal Code (1899) would form the basis of various adaptations across the British colonial empire.

⁹ Mamdani, *supra* note 1; Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton, NJ: Princeton University Press, 2018) Princeton Studies in Culture/Power/History.

¹⁰ Alok Gupta, "This Alien Legacy" (2008) Human Rights Watch, online: <<https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>>.

¹¹ Marc Epprecht, *Sexuality and Social Justice in Africa: Rethinking Homophobia and Forging Resistance* (London: Zed Books, 2013).

¹² Tamale, "Exploring the Contours of African Sexualities", *supra* note 2; Ayodele Sogunro, "An Analysis of Political Homophobia, Elitism and Social Exclusion in the Colonial Origins of Anti-Gay Laws in Nigeria" (2023) 22:2 Afr Hum Rights Law J 1–27.

¹³ Tamale, "Exploring the Contours of African Sexualities", *supra* note 2 at 161–166.

about sexual rights and national identity. Mamdani shows how the colonial period effectively established the institutional and legal mechanisms, and Tamale explains how it provided societal norms for regulating sexuality that postcolonial states would inherit and adapt for self-regulation.

Continuing Influences

This colonial origin story continues to complicate contemporary debates about LGBTIQ+ rights, as African political actors paradoxically defend colonial-era restrictions as expressions of “African values” while characterizing LGBTIQ+ rights as Western and yet, “it is never explained how homosexuality was imposed on Africa, and exactly when such an imposition took place.”¹⁴ The inherited colonial legal architecture continues to create challenges for postcolonial governance. At independence, Kenya, Uganda, and Ghana all maintained colonial penal code provisions criminalizing “carnal knowledge against the order of nature.”

Generally, newly independent African states maintained these colonial-era provisions, often as part of broader nation-building projects by an elite that inherited colonial power.¹⁵ As Epprecht observes,¹⁶ these new postcolonial leaders frequently framed heteronormativity as essential to African authenticity, despite documented evidence and continuing practices that demonstrate the historical existence of diverse sexual and gender expressions in several pre-colonial African societies. This use of homophobia as an aspect of the nation-building project inevitably led to the emergence of political homophobia, where anti-LGBTIQ+ sentiment became instrumentalized for political purposes, used alongside other strategies to rally public opinion and delegitimize local and foreign critics, particularly in moments of crisis or political transition.¹⁷ These criminalising provisions have proven durable, surviving civil wars, revolutions, military rule and multiple constitutional reforms and continuing to influence contemporary approaches to regulating sexuality. Their persistence across time and space is proof that colonial legal structures succeeded in shaping not only formal law but also social and moral frameworks concerning sexuality and appropriate subjects for state regulation. This process of socialization was so thorough that by independence, colonial moral understandings had become sufficiently internalized within both political leadership and broader society to enable their ready exploitation

¹⁴ Thabo Msibi, “The Lies We Have Been Told: On (Homo) Sexuality in Africa” (2011) 58:1 *Afr Today* 55–77 at 62.

¹⁵ Epprecht, *supra* note 11 at 124–128.

¹⁶ *Ibid.*

¹⁷ *Global Homophobia: States, Movements, and the Politics of Oppression* (University of Illinois Press, 2013) at 32.

for political purposes. The postcolonial elite's deployment of anti-LGBTIQ+ sentiment thus operated not merely as cynical instrumentalism but as some kind of sincere belief in the justifiability of the moral position, with a political elite having themselves been socialized into colonial moral frameworks that they now perceived as authentically African. Contemporarily, this transformation manifests as the paradox where political actors defend colonial-era restrictions as expressions of "African values" without recognition of their foreign origins, having internalized these imposed moral standards so completely that they appear natural rather than historically contingent.

New Waves of Homophobic Legislation

The 1990s and early 2000s marked a significant shift in this historical trajectory. The emergence of visible LGBTIQ+ movements in various African countries, coupled with growing international advocacy for sexual orientation and gender identity rights, prompted new forms of political and legal contestation. This period saw the first systematic legal challenges to colonial-era anti-sodomy laws in South Africa, where post-apartheid constitutional reform created openings for LGBTIQ+ rights recognition through the guarantee of non-discrimination on the basis of sexual orientation in the 1994 interim (and 1996 final) constitution.¹⁸ South Africa's jurisprudence in this area would ultimately influence progressive court decisions in neighbouring Namibia, Botswana, and Mauritius.¹⁹ However, this period also witnessed intensified backlash, with several countries proposing or enacting "a second wave"²⁰ of legislation to expand criminalization beyond colonial-era provisions. At the regional level, South Africa's unique constitutional position drew comments from a member of the African Commission on Human and Peoples' Rights who was curious about the validity of same-sex marriage in relation to the African Charter on Human and Peoples' Rights.²¹

The contemporary period, roughly from the mid-2000s onward, has seen the emergence of a new wave of homophobic legislation in response to developments in the Global North, and

¹⁸ Frans Viljoen & Ayodele Sogunro, "The promotion and protection of sexual and gender minorities under the African regional human rights system" in Andreas R Ziegler, Michael Lysander Fremuth & Berta Esperanza Hernández-Truyol, eds, *The Oxford Handbook of LGBTI Law* (Oxford University Press) 0.

¹⁹ *Ibid.*

²⁰ John Ambani, "A Triple Heritage of Sexuality? Regulation of Sexual Orientation in Africa in Historical Perspective" in Adrian Jjuuko & Sylvie Namwase, eds, *Protecting the Human Rights of Sexual Minorities in Contemporary Africa* (Pretoria: Pretoria University Law Press (PULP), 2018) 14.

²¹ Viljoen & Sogunro, *supra* note 18.

filtering into Africa through a coordinated transnational effort between religious and political leaders to influence African sexual rights policies.²² This development represents a new phase in the historical evolution of LGBTIQ+ rights governance in Africa, characterized by the increasing involvement of external actors in domestic policy processes. As McEwen and Narayanaswamy document,²³ these transnational networks have developed sophisticated approaches to influencing policy, often working through local partners while maintaining connections to global conservative movements as will be discussed in detail in the next chapter.

Human Rights Tensions

The tension between inherited colonial restrictions and contemporary constitutional rights frameworks, reminiscent of Mamdani's bifurcated state,²⁴ has become an area of contestation for courts and policymakers. While all three countries have adopted constitutions guaranteeing equality and human dignity, the continued presence of colonial-era criminal provisions creates contradictions that courts struggle to resolve.²⁵ This situation is pertinent in Kenya, where courts have attempted, not very elegantly as will be discussed later in this chapter, to reconcile colonial-era criminalization with constitutional protections for equality and dignity.²⁶

The administrative structures, institutionalizing difference,²⁷ as inherited from colonial rule also continue to influence how laws affecting LGBTIQ+ persons are implemented. This situation is evident in how law enforcement approaches the policing of sexuality, often maintaining colonial-era practices of surveillance and control even in contexts where formal law on police procedure and fair trial rights have evolved.²⁸

The contemporary efforts to reform or reinforce these colonial-era provisions have yielded mixed results. While Kenya has shown some movement toward limited constitutional protection

²² Kapya Kaoma, "Exporting the Anti-Gay Movement" (24 April 2012), online: *The American Prospect* <<https://prospect.org/api/content/ac9abf96-2f24-5d71-b4e2-942cbe0efd79/>>.

²³ *The International Anti-Gender Movement: Understanding the Rise of Anti-Gender Discourses in the Context of Development, Human Rights and Social Protection*, Working Paper, by Haley McEwen & Lata Narayanaswamy, www.econstor.eu, Working Paper 2023-06 (UNRISD Working Paper, 2023) online: <<https://www.econstor.eu/handle/10419/278575>> [*The International Anti-Gender Movement*].

²⁴ Mamdani, *supra* note 9 at 16-23.

²⁵ Viljoen & Sogunro, *supra* note 18.

²⁶ *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)*, *supra* note 6.

²⁷ Mamdani, *supra* note 1 at 2.

²⁸ Ayodele Sogunro, *Advocacy, Social Control, and the Criminalisation of Same-Sex Relationships: The Evolution and Enforcement of 'Anti-Gay Laws' in Nigeria* (University of Pretoria, 2020).

of LGBTIQ+ rights through court decisions that have condemned assaults on gay men and lesbian women and refusal to register LGBTIQ+ organisations, Uganda and Ghana have proposed new legislation that would significantly expand colonial-era restrictions. This divergence in national trajectories suggests that, while the commonality of a colonial legal heritage continues to be influential, it does not entirely determine contemporary approaches to regulating sexuality and gender identity.

Nevertheless, the persistence of these colonial legal frameworks has implications for advocacy around LGBTIQ+ rights and opportunities for local and transnational anti-LGBTIQ+ actors to utilise these frameworks, as evidenced later in this thesis. Consequently, activists in the three countries have to navigate a double-edged terrain where, on one hand, colonial-era restrictions are defended as expressions of authentic cultural values, while on the other hand, rights-based arguments are dismissed as foreign impositions.²⁹ This situation means activists must also find a way to translate international human rights standards into meaningful local cultural contexts and maintain the legitimacy of their work.³⁰

3.3 Kenya's Legal Framework

Kenya's legal landscape concerning LGBTIQ+ rights is a contradiction between its comparatively progressive 2010 Constitution and its restrictive colonial-era criminal laws. This discrepancy between constitutional law and criminal law is a common one across similar African countries including Ghana and Uganda. However, in Kenya it has created a uniquely legally ambiguous environment where LGBTIQ+ persons and organisations have to navigate judicially enforced constitutional protections and judicially upheld legal criminalization as the courts have occasionally recognized limited rights for LGBTIQ+ persons even while maintaining criminal prohibitions against same-sex conduct.

The Kenyan legal framework demonstrates the angst of the bifurcated state, seemingly unable to decide between maintaining colonial legal structures or developing an independent constitutional rights framework and so it settles for both. Unlike Uganda's aggressive expansion of criminalization, Kenya has maintained, but not substantially expanded, colonial-era restrictions,

²⁹ Siri Gloppen et al, "Queer Lawfare in Africa: Introduction and Theoretical Framework" in Adrian Jjuuko et al, eds, *Queer Lawfare in Africa: Legal Strategies in Contexts of LGBTIQ Criminalisation and Politicisation* (Pretoria: Pretoria University Law Press (PULP), 2022) 1 at 10.

³⁰ Ambani, *supra* note 15 at 37–41.

creating space for limited rights recognition in specific areas. This approach has produced a fragmented legal regime where LGBTIQ+ persons face criminalization of intimate conduct but may access certain organizational and associational rights. The country's mixed legal position, neither fully protective nor wholly repressive, creates an arena of contestation for both rights advocates and opponents. The following subsections analyze the constitutional provisions, criminal laws, administrative practices, and judicial interpretations that shape LGBTIQ+ rights in Kenya, establishing the legal environment within which transnational actors operate.

3.3.1 Constitutional Framework

The Constitution of Kenya³¹ establishes a human rights framework that theoretically protects LGBTIQ+ persons through its emphasis on equality and non-discrimination. Article 27(4) states:

The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

While sexual orientation and gender identity are not explicitly included, the open-ended nature of this provision leaves room for inclusive interpretation. In addition, other constitutional provisions with potential application to LGBTIQ+ rights include Article 28 (right to human dignity), Article 29 (freedom and security of the person), Article 31 (privacy), and Article 36 (freedom of association). These rights create a theoretical legal foundation for LGBTIQ+ equality claims. As Muguongo et al. note,³² these constitutional guarantees offer avenues for legal protection despite the absence of explicit mention of sexual orientation or gender identity.

The adoption of the 2010 Constitution was a watershed moment for legal opportunity structures in Kenya, creating a foundation for strategic litigation by LGBTIQ+ organizations.³³ Article 27 has been interpreted by advocacy groups as including sexual orientation as an analogous

³¹ *Constitution of Kenya*, 2010.

³² *Kenya LGBTI: Landscape Analysis of Political, Economic & Social Conditions*, by Wanja Muguongo et al (Astraea Lesbian Foundation for Justice, 2015) at 5 online: <https://globalphilanthropyproject.org/wp-content/uploads/2017/01/AstraeaUSAID.Kenya_04_11_16.pdf>.

³³ Nicholas Orago, Siri Gloppen & Matthew Gichohi, "Queer Lawfare in Kenya: Shifting Opportunities for Rights Realisation" in Adrian Jjuuko et al, eds, *Queer Lawfare in Africa: Legal Strategies in Contexts of LGBTIQ Criminalisation and Politicisation* (Pretoria: Pretoria University Law Press, 2022) 107 at 119–120.

ground of prohibited discrimination since the list contained in article 27(4) is not exclusive.³⁴ The constitution also improved access to courts through progressive rules enabling class action and public interest litigation, and empowered courts to issue remedies enhancing rights vindication.³⁵ These advances coincided with judicial reforms, including appointment of more progressive judges and simplification of court standing rules, which made litigation a more promising strategy for transforming the protection of rights relating to sexual orientation and gender identity.³⁶

However, the Constitution contains limitations that undermine full LGBTIQ+ rights recognition. The clearest instance is Article 45(2) which specifically states that “every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.” This provision has been interpreted as implicitly excluding same-sex marriage from constitutional protection. The High Court in *EG & 7 others v. Attorney General*³⁷ concluded that the drafters of the Constitution deliberately limited marriage rights to opposite-sex couples, foreclosing constitutional recognition of same-sex relationships.

In this way, the Kenyan framework simultaneously embraces universal equality while maintaining culturally specific exceptions that limit its application to sexual minorities. As Kenya’s constitutional jurisprudence continues to develop, these competing interpretations form the basis for ongoing legal contestation over the status and rights of sexual and gender minorities in the country, leaving a door open for local and transnational anti-rights actors to step in.

3.3.2 Criminal Law Framework

Kenya’s criminal law continues to enforce colonial-era provisions targeting same-sex conduct as the principal legal basis for discrimination against LGBTIQ+ individuals. Sections 162 and 165 of the Penal Code criminalize “carnal knowledge against the order of nature” and “gross indecency,” with penalties of up to 14 years’ imprisonment.³⁸ These provisions originate directly from the British colonial legal system as part of the enduring colonial regulation of sexuality in postcolonial states.³⁹

³⁴ *Ibid* at 119.

³⁵ *Ibid* at 118.

³⁶ *Ibid* at 110.

³⁷ *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)*, *supra* note 6.

³⁸ *Penal Code*, 1930, ss 162 & 165.

³⁹ Han & O’Mahoney, *supra* note 2.

The practical application of these criminal provisions extends beyond their textual scope. Though the laws technically criminalize certain sexual acts rather than identities or orientations, law enforcement authorities frequently use them to target LGBTIQ+ individuals based on perceived identity.⁴⁰ As far back as 2011, the Kenya Human Rights Commission documented how police apply these laws to justify arbitrary detention, harassment, and extortion of LGBTIQ+ persons, perpetuating what Ngwena describes as a state of “precarity” that affects LGBTIQ+ individuals regardless of their actual conduct.⁴¹

Recent efforts to challenge the constitutionality of these penal provisions have proven unsuccessful. In *EG & 7 others v. Attorney General*,⁴² the High Court of Kenya upheld sections 162 and 165 against claims that they violated constitutional rights to dignity, privacy, and equality. The court determined that the constitutional drafters were aware of these penal provisions but chose not to explicitly protect sexual orientation, thus making the provisions compatible with the 2010 Constitution. The court also accepted the state’s argument that decriminalization would open the door to same-sex marriage, which the court believed was explicitly excluded by Article 45(2) of the Constitution. The judgment’s reasoning reveals the judicial navigation of competing legal frameworks. The court acknowledged international human rights trends toward decriminalization but emphasized that Kenyan courts must apply Kenyan law in light of local values and context and, in essence, affirmed judicial deference to perceived cultural consensus on matters of sexuality, in the typical demonstration of the postcolonial paradox of defending colonial era laws as resistance to “foreign” values.

The criminal law framework impacts LGBTIQ+ lives beyond direct enforcement. The continued criminalization creates a basis for societal discrimination, limits access to services and inhibits full citizenship for LGBTIQ+ Kenyans.⁴³ Health service providers, employers, and landlords cite the criminal status of homosexuality to justify discriminatory practices.⁴⁴ In this way, colonial-era criminal provisions continue to shape social and institutional treatment of

⁴⁰ Orago, Gloppen & Gichohi, *supra* note 33 at 134.

⁴¹ Charles Ngwena, *What is Africanness? Contesting Nativism in Race, Culture and Sexualities* (Pretoria: Pretoria University Law Press, 2018) at 204.

⁴² *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)*, *supra* note 6.

⁴³ Zanele Nyoni, “The Struggle for Equality: LGBT Rights Activism in Sub-Saharan Africa” (2020) 20:3 Hum Rights Law Rev 582–601 at 584.

⁴⁴ Kenya: *Query Response on the Situation and Treatment of the LGBTQI+ Community* (Asylum Research Centre, January 2024) online: <https://asylumresearchcentre.org/wp-content/uploads/2024/01/ARC_Query-response-LGBTQI_Kenya.pdf>.

LGBTIQ+ persons even in contexts where direct prosecution is rare. Although Kenya has not followed Uganda’s path of expanding criminalization through new legislation, political actors occasionally propose enhancing penalties or broadening prohibitions related to homosexuality.

3.3.3 Administrative and Policy Framework

Kenya’s treatment of LGBTIQ+ rights extends beyond formal laws to administrative practices and policies that shape daily experiences of LGBTIQ+ individuals. This administrative framework operates through state institutions, regulatory bodies, and policy directives that often amplify the effects of criminal laws while creating additional barriers for LGBTIQ+ persons seeking to exercise their constitutional rights.

Administrative regulation of LGBTIQ+ organizations has become a central battleground in Kenya’s sexual rights landscape. Until the 2023 Supreme Court decision overruling this, the NGO Co-ordination Board, tasked with registering civil society organizations, had consistently refused to register organizations with LGBTIQ+-related objectives. This refusal forced many LGBTIQ+ groups to operate informally or under broader human rights mandates, limiting their legitimacy and access to resources.⁴⁵

The 2015 landmark case of *Eric Gitari v. NGOs Co-ordination Board*⁴⁶ challenged this administrative practice. The High Court ruled that the Board’s refusal to register the National Gay and Lesbian Human Rights Commission (NGLHRC) violated constitutional rights to freedom of association. The Court held that Kenya’s constitution protects all persons, including those who identify as LGBTIQ+, from discrimination in accessing state services. The Supreme Court in 2023 affirmed this ruling in the *NGOs Co-Ordination Board v. Eric Gitari*,⁴⁷ establishing that LGBTIQ+ persons have the right to form associations regardless of the criminal status of same-sex conduct.

In the health sector, Kenya has developed contradictory approaches to LGBTIQ+ needs. The National AIDS Control Council recognizes men who have sex with men (MSM) as a key population in HIV prevention efforts, authorizing targeted health interventions.⁴⁸ However, these

⁴⁵ Jane Wothaya Thirikwa, “Emergent Momentum for Equality: LGBT Visibility and Organising in Kenya” in Nancy Nicol et al, eds, *Envisioning Global LGBT Human Rights: Neocolonialism, Neoliberalism, Resistance and Hope* (Erscheinungsort nicht ermittelbar, 2018) at 317.

⁴⁶ *Eric Gitari v NGOs Co-ordination Board and others*, 2015.

⁴⁷ *NGOs Co-ordination Board v Eric Gitari and Others*, *supra* note 5.

⁴⁸ [Parinita Bhattacharjee et al. “Can a National Government Implement a Violence Prevention and Response Strategy for Key Populations in a Criminalized Setting? A Case Study from Kenya” \(2018\) 21:S5 J Int AIDS Soc e25122.](#)

pragmatic public health policies coexist with broader healthcare discrimination.⁴⁹ For transgender and intersex persons, the absence of clear policies regarding gender-affirming care creates additional challenges, including inability to obtain identity documents that match their gender identity.

Kenya’s Film Classification Board has used its regulatory authority to ban media content featuring LGBTIQ+ themes, including films and television programs with gay characters or content deemed to “promote or glamourize” homosexuality.⁵⁰ These censorship practices extend beyond traditional media to streaming sites creating restrictions on LGBTIQ+ expression and information access.⁵¹

The Kenya National Commission on Human Rights (KNCHR) and the National Gender and Equality Commission have occasionally addressed LGBTIQ+ rights issues within their broader mandates.⁵² However, because of the political and legal contexts in which they operate, there is a limit on their effectiveness in challenging discrimination against sexual minorities and their various reports rarely translate into policy reforms or accountability measures for perpetrators.

3.3.4 Court Interpretations and Implementation

As noted above, Kenyan courts have developed contradictory jurisprudence on LGBTIQ+ rights in an attempt to balance constitutional rights claims against supposed social consensus. This jurisprudence forms a critical component of Kenya’s legal framework, as courts navigate tensions between colonial-era criminalization and post-2010 constitutional protections.

Generally, the courts’ approach to LGBTIQ+ rights has followed distinct trajectories in different legal domains. In cases involving freedom of association and organization, courts have

⁴⁹ *Ibid.*

⁵⁰ *note 44 at 21.*

⁵¹ Sam Kisika, “Netflix Stops Streaming LGBTQ-specific Movies in Kenya” (21 June 2023), online: <<https://www.washingtonblade.com/2023/06/21/netflix-stops-streaming-lgbtq-specific-movies-in-kenya/>, <https://www.washingtonblade.com/2023/06/21/netflix-stops-streaming-lgbtq-specific-movies-in-kenya/>>.

⁵² The Kenya National Commission on Human Rights (KNCHR) and National Gender and Equality Commission (NGEC) have addressed LGBTIQ+ rights cautiously within legal and societal constraints. KNCHR documents abuses, critiques discriminatory laws and advocates indirectly via partnerships. NGEC frames issues under gender equality, referencing “intersex/sexual minorities” in reports or by participating in the intersex law reform process. See “Taskforce on Policy, Legal, Institutional and Administrative Reforms regarding Intersex Persons in Kenya - Kenya Law Reform Commission (KLRC)”, online: <<https://www.klrc.go.ke/index.php/projects/on-going-projects/612-taskforce-on-policy-legal-institutional-and-administrative-reforms-regarding-intersex-persons-in-kenya>>.

generally extended constitutional protections to LGBTIQ+ persons. For instance, in *Republic v NGO Co-ordination Board: Ex-parte Transgender Education and Advocacy*,⁵³ the High Court of Kenya compelled registration of a transgender advocacy organization, stating (amongst other reasons) that “to discriminate persons [*sic*] and deny them freedom of association on the basis of gender or sex is clearly unconstitutional.” As mentioned above, the same position was taken by the High Court in *Eric Gitari v Non-Governmental Organizations Co-ordination Board*,⁵⁴ where it was affirmed that freedom of association applies to all persons regardless of sexual orientation, compelling registration of the National Gay and Lesbian Human Rights Commission. The Court determined that LGBTIQ+ organizations’ right to register could not be limited by cultural or religious norms since these are not “law” as required by the constitutional limitation clause. Justice Lenaola further emphasized that the Constitution does not define “every person” in a way that excludes sexual orientation, establishing that LGBTIQ+ persons enjoy equal protection under the law.⁵⁵ This reasoning was affirmed by the Court of Appeal in 2019⁵⁶ and later by the Supreme Court in 2023,⁵⁷ creating judicial recognition of organizational rights for LGBTIQ+ persons.

In the area of gender identity rights, the 2010 case of *RM v Attorney General*⁵⁸ brought by an intersex person challenging the binary categorization of sex in Kenya’s legal system produced mixed results. While recognizing the petitioner’s claims of violation during detention, the court refused to recognize intersex as a third gender, stating this was Parliament’s responsibility. The 2014 *Baby A* case⁵⁹ took a more progressive approach, ordering the registration of an intersex child and directing the state to develop appropriate legal frameworks. This led to practical changes, including Kenya becoming the first African nation to officially document intersex persons in the 2019 census. Transgender rights saw progress through the 2014 *Republic v Kenya National Examination Council: Ex-Parte Audrey Mbugua Ithibu* case,⁶⁰ where the High Court ordered the

⁵³ *Republic v Non-Governmental Organizations Co-ordination Board & another ex-parte Transgender Education and Advocacy & 3 others*, 2014 High Court of Kenya.

⁵⁴ *Eric Gitari v NGOs Co-ordination Board and others*, *supra* note 46.

⁵⁵ *Ibid* at paras 76, 148.

⁵⁶ *Non-Governmental Organizations Co-ordination Board v EG & 5 others*, 2019 Court of Appeal at Nairobi, <https://new.kenyalaw.org/akn/ke/judgment/keca/2019/902/eng@2019-03-22/source>.

⁵⁷ *NGOs Co-ordination Board v Eric Gitari and Others*, *supra* note 5.

⁵⁸ *RM v Attorney General & 4 Others*, 2010 High Court of Kenya.

⁵⁹ *Baby ‘A’ (Suing through her Mother, EA) & another v Attorney General & 2 others; Kenya National Commission on Human Rights & 2 others (Interested Parties); Kenya Human Rights Commission (Amicus Curiae)*, 2014 High Court of Kenya.

⁶⁰ *Republic v Kenya National Examinations Council & another Ex-Parte Audrey Mbugua Ithibu*, 2014 High Court of Kenya.

issuance of academic certificates reflecting a transgender woman's gender identity. The Court's decision connected gender identity, autonomy and human dignity, adopting a progressive interpretation of the law envisaged by the transformative 2010 Constitution. However, there has been no decision establishing broader rights to legal gender recognition outside specific contexts.

In cases concerning privacy and criminalization, however, courts have taken a more conservative stance. As mentioned earlier, the High Court's 2019 decision in *EG & 7 others v. Attorney General*⁶¹ (different from the NGOs Board registration cases) upheld the constitutionality of sections 162 and 165 of the Penal Code criminalizing same-sex conduct. The court concluded that these provisions do not target any particular group but rather prohibit specific acts regardless of who commits them. This curious reasoning enabled the court to maintain criminalization while avoiding direct endorsement of discrimination based on sexual orientation. Of note is the fact that the court also invokes the argument of resistance to foreign imposition, stating:⁶²

We take this view fully aware of numerous decisions from different foreign jurisdictions that have decriminalized provisions similar to ours. However persuasive these decisions may be, they are not binding to this court. We however observe that courts across the world are divided on this issue. Even where it has been allowed, it has not been unanimous.

This setback was exacerbated by shifts in the legal opportunity structure,⁶³ including appointment of a more conservative Chief Justice and political attacks undermining judicial independence.⁶⁴ This approach evidences a disinterest by the Kenyan courts in a direct confrontation with dominant social attitudes while still being judicially inclined to carve out limited protections in what they deem to be less controversial areas.

Even then, as noted earlier, progressive jurisprudence does not always translate into implementation, highlighting the limits on judicial power to transform social practice through legal pronouncements alone. Successful litigation successes have produced mixed responses. On one hand, they have created space for organizational advocacy and limited the extent of policing power.

⁶¹ *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)*, *supra* note 6.

⁶² *Ibid* at para 398.

⁶³ That is, "factors affecting the chances of advancing the cause through court-centered mobilization" See Siri Gloppen, "Conceptualizing Lawfare: A Typology & Theoretical Framework" (2017) at 18.

⁶⁴ Orago, Gloppen & Gichohi, *supra* note 33 at 135.

On the other hand, visible LGBTIQ+ organizing and litigation victories have triggered backlash. Following the 2015 *Eric Gitari* decision,⁶⁵ the *Weekly Citizen* newspaper published names and photographs of 12 leading LGBTIQ+ activists, exposing them to harassment and intimidation⁶⁶ especially in the coastal region.⁶⁷ The 2016 *COL v Resident Magistrate - Kwale Court* case⁶⁸ illustrated this hostility, with the High Court initially upholding forced anal testing for those accused of same-sex conduct, though this was later overturned by the Court of Appeal in 2018.⁶⁹ This created fear and distrust of the health system among sexual minorities, with potential long-term adverse effects on health-seeking behaviour.⁷⁰ Additionally, perceptions of homosexuality have been instrumentalized in other contexts, such as in the 2016 *JMM v Anglican Church* case,⁷¹ where clerics were accused of homosexuality in church leadership contests, leading to their suspension and to subsequent successful litigation for reinstatement.⁷²

Likewise, the legal uncertainties created by contradictory judgments also complicate the landscape in the context where courts have recognized LGBTIQ+ persons' constitutional rights to association and dignity while simultaneously upholding criminal provisions that effectively render their intimate lives illegal. The courts' approach to international human rights norms has been selective. In progressive decisions, judges cite international standards to support progressive interpretations of constitutional provisions. In the conservative ones, they emphasize "Kenyan values" and downplay international obligations, which is more indication that judges display a strategic selectiveness when it comes to LGBTIQ+ rights.

3.4 Uganda's Intensified Criminalized Legal Landscape

Uganda's legal framework regarding LGBTIQ+ rights is unarguably one of the most restrictive approaches globally, characterized by expanding criminalization and diminishing protections. The country's legal treatment of LGBTIQ+ persons has evolved from colonial-era restrictions to increasingly comprehensive forms of criminalization, culminating in the 2023 Anti-

⁶⁵ *Eric Gitari v NGOs Co-ordination Board and others*, *supra* note 46.

⁶⁶ Orago, Gloppen & Gichohi, *supra* note 33 at 130.

⁶⁷ *Ibid* at 130–132.

⁶⁸ *COL & Another v Resident Magistrate - Kwale Court & 4 Others*, 2016 High Court of Kenya.

⁶⁹ *COI & Another v Chief Magistrate Ukunda Law Courts & 4 Others*, 2018 Court of Appeal.

⁷⁰ Orago, Gloppen & Gichohi, *supra* note 33 at 130–132.

⁷¹ *JMM & 2 others v Registered Trustees of the Anglican Church of Kenya*, 2016 Employment and Labour Relations Court of Kenya.

⁷² Orago, Gloppen & Gichohi, *supra* note 33 at 132.

Homosexuality Act. Uganda's context fully demonstrates Tamale's analysis of postcolonial states expanding on the disciplinary powers of colonial-era restrictions, and Mamdani's analysis of the intensification of colonial governance logic by using state power as a means to define and control transgressive sexualities.

3.4.1 Constitutional Framework

Uganda's 1995 Constitution⁷³ has provisions, including protections for human dignity (Article 24), privacy (Article 27), and freedom of association (Article 29), that provide a notional foundation for human rights protection, including provisions guaranteeing equality, dignity, and freedom from discrimination. Article 21 also prohibits discrimination on various grounds, though, like many African constitutions, it does not explicitly mention sexual orientation or gender identity. However, the Constitution's protection of LGBTIQ+ rights is significantly undermined by both specific provisions and broader interpretive approaches. For instance, Article 31(2)(a) explicitly restricts marriage to opposite-sex couples. Following a 2005 amendment, Article 31(2)(a) was further strengthened to prohibit same-sex marriage specifically.

3.4.2 Development of Criminal Law Framework

Uganda's postcolonial criminal law framework regarding LGBTIQ+ rights can be categorised into three distinct phases, each marked by progressively harsher restrictions.⁷⁴ This evolution is one of the stark examples in Africa of the transformation of colonial-era provisions into a modern apparatus of state control over sexuality and gender expression.

The first phase began with independence in 1962, when Uganda retained the colonial Penal Code provisions criminalizing "carnal knowledge against the order of nature." Sections 145 and 146 of the Penal Code⁷⁵ established penalties of up to life imprisonment for same-sex conduct. These provisions created a foundation for later expansions of criminalization. The vague language

⁷³ *Constitution of the Republic of Uganda*, 1995.

⁷⁴ For the discussion following on Uganda, see generally: Adrian Jjuuko & Stella Nyanzi, "Court Focused Lawfare Over LGBT Rights: The Case of Uganda" in Adrian Jjuuko et al, eds, *Queer Lawfare in Africa: Legal Strategies in Contexts of LGBTIQ Criminalisation and Politicisation* (Pretoria: Pretoria University Law Press, 2022) 145; Adrian Jjuuko & Fridah Mutesi, "The Multifaceted Struggle Against the Anti-Homosexuality Act in Uganda" in Nancy Nicol et al, eds, *Envisioning Global LGBT Human Rights: Neocolonialism, Neoliberalism, Resistance and Hope* (Erscheinungsort nicht ermittelbar, 2018).

⁷⁵ *The Penal Code Act*, 1950.

of these colonial-era laws—referring to acts “against the order of nature”—allowed for arbitrary application and interpretation.

The second phase emerged in 2009 with the introduction of the Anti-Homosexuality Bill⁷⁶ by MP David Bahati – whose motivations will be discussed in the next chapter of this thesis. This proposed legislation marked a radical extension of criminalization beyond the colonial framework. The bill introduced the concept of “aggravated homosexuality” punishable by death, created new offenses related to “promotion of homosexuality,” and imposed reporting obligations on families and professionals.⁷⁷ In line with the dilution and erasure of African sexualities by the postcolonial state, this bill emerged in the context of reframing Victorian-era norms as African traditions. As Jjuuko notes:⁷⁸

The authors of the Bahati Bill argue that pro-homosexuality campaigns have increased and because of this homosexuality is a serious threat in Uganda today. There is thus [in the view of the bill’s proponents] a need for a stronger law to protect the ‘traditional family’ as it appears the present laws have not been effective.

Though the bill generated international controversy and condemnation, it gained substantial domestic political support. After multiple revisions, Parliament passed the Anti-Homosexuality Act in December 2013, with the death penalty provision replaced by life imprisonment. This 2014 Anti-Homosexuality Act was subsequently nullified by the Constitutional Court in *Oloka-Onyango & 9 Others v. Attorney General*,⁷⁹ but on narrow procedural grounds related to parliamentary quorum requirements rather than substantive human rights considerations.⁸⁰ The Court explicitly avoided addressing the constitutional rights issues raised by petitioners, focusing instead on the technical violation of parliamentary procedure. This nullification provided only temporary relief, as the law’s fundamental provisions continued to remain available for future legislative action – which did follow.

⁷⁶ Parliament of Uganda, *The Anti-Homosexuality Bill*, 18 of 2009 (25 September 2009).

⁷⁷ Jjuuko & Nyanzi, *supra* note 74 at 149.

⁷⁸ Adrian Jjuuko, “The Incremental Approach: Uganda’s Struggle for the Decriminalisation of Homosexuality” in Corinne Lennox & Matthew Waites, eds, *Human Rights, Sexual Orientation and Gender Identity in the Commonwealth: Struggles for Decriminalisation and Change* (London: Institute of Community Studies, 2013) 381 at 383.

⁷⁹ *Oloka-Onyango & 9 Others v Attorney General*, 2014 Constitutional Court of Uganda.

⁸⁰ Jjuuko & Nyanzi, *supra* note 74 at 155.

The third phase began with the 2023 Anti-Homosexuality Act (“AHA”), which reinstated and expanded upon the 2014 legislation. The Act was passed by Parliament in March 2023 and signed into law by President Museveni in May 2023, and immediately distinguished itself as one of the world’s most far-reaching frameworks for criminalizing LGBTIQ+ identity and advocacy. This law reintroduced “aggravated homosexuality” as a capital offense, applying to mostly non-consensual sexual acts but also, unjustifiably, to consensual sexual acts with persons with disabilities, or by a “serial offender.”⁸¹ The AHA also creates the crime of “promotion of homosexuality,” with penalties of up to twenty years’ imprisonment for organizations or individuals perceived to be advocating for LGBTIQ+ rights.⁸² Most unusually, it imposes mandatory reporting requirements, potentially compelling family members, medical professionals, and others to report known or perceived LGBTIQ+ persons to authorities.⁸³

The AHA marks a profound expansion of state authority to regulate sexuality and gender expression. Unlike the colonial provisions that focused on specific sexual acts, the new law establishes a broad system for suppressing LGBTIQ+ identity, expression, and advocacy. Tamale highlights how Uganda’s 2009 Anti-Homosexuality Bill – precursor to the 2023 Act – exemplifies the political instrumentalization of sexuality, where leaders invoke colonial-era morality laws to deflect attention from governance failures.⁸⁴ She notes that homophobia is strategically deployed during periods of crisis, such as rising inflation or electoral contests, to manufacture “moral panics” that unify conservative religious and political factions.⁸⁵

The Constitutional Court upheld the AHA in April 2024 in the case of *Hon Fox Odoi & 21 Others v Attorney-General & 3 Others*,⁸⁶ rejecting claims that it violated constitutional protections of equality, privacy, and freedom of expression. The Court determined that limitations on these rights were justified to protect children, public morality and traditional values, embracing the state’s argument that homosexuality threatens Ugandan society and culture. This decision solidified the legal foundation for expanded criminalization, marking the failure of constitutional rights protections to limit legislative anti-LGBTIQ+ measures.

⁸¹ Section 3(2) of the AHA.

⁸² Section 11 of the AHA.

⁸³ Section 14 of the AHA.

⁸⁴ Sylvia Tamale, “Confronting the Politics of Nonconforming Sexualities in Africa” (2013) 56:2 Afr Stud Rev 31–45.

⁸⁵ *Ibid* at 33–34.

⁸⁶ *Hon Fox Odoi & 21 Others v Attorney General & 3 Others*, 2024 Constitutional Court of Uganda.

3.4.3 Implementation and Enforcement Patterns

As Tamale states “[d]isciplinary power, in the Foucauldian sense,⁸⁷ fashions African people to conform to the mainstream notions of sexuality, thus ‘voluntarily’ colluding with patriarchal-capitalist sexual moral standards.”⁸⁸ This point is poignant in Uganda’s implementation of anti-LGBTIQ+ laws through a system of institutional, bureaucratic and discursive practices extending even beyond formal prosecution.⁸⁹ Although the constitutional framework, as previously discussed, offers general protections for human dignity, privacy, and equality, administrative practice frequently departs from these guarantees. Rather than operating as neutral or rights-based entities, many state institutions have functioned as instruments of repression, embedding anti-LGBTIQ+ sentiment into state policy and service delivery, effectively institutionalising homophobia.

Even before the passing of the AHA, law enforcement authorities have applied colonial anti-LGBTIQ+ provisions inconsistently but strategically and the police often use these laws to justify harassment and brutality, arbitrary arrests, detention, and extortion of LGBTIQ+ individuals.⁹⁰ There are documented instances where police officers would detain individuals based on their perceived sexual orientation or gender expression before releasing them without charges, in a pattern of “arrest and release” without formal legal proceedings.⁹¹

The implementation of the AHA has intensified these practices. In the first nine months following the Act’s passage, human rights organizations documented increases in cases of arbitrary

⁸⁷ Foucault's concept of disciplinary power operates through two key mechanisms. First, power functions productively by generating knowledge systems, social norms, and subject identities rather than merely restricting actions. Second, disciplinary mechanisms achieve compliance through observation and normalization processes that eliminate the need for direct force, as individuals learn to regulate their own conduct according to established standards. This approach shapes compliant subjects through continuous monitoring and behavioural modification rather than through coercive measures. People incorporate surveillance into their self-perception and develop an autonomous adherence to norms. See generally, Michel Foucault, *Discipline and Punish: The Birth of the Prison*, 2nd ed (New York: Vintage Books, 1995).

⁸⁸ Tamale, “Exploring the Contours of African Sexualities”, *supra* note 2 at 157.

⁸⁹ Jjuuko, *supra* note 78 at 383.

⁹⁰ Jjuuko & Nyanzi, *supra* note 74 at 173.

⁹¹ “UGANDA: Police Raids Uganda Pride Event, Arrests Several Human Rights Defenders and Assaults Participants”, online: *Int Fed Hum Rights* <<https://www.fidh.org/en/issues/human-rights-defenders/uganda-police-raids-uganda-pride-event-arrests-several-human-rights>>.

detention, forced evictions, and physical violence targeting LGBTIQ+ persons.⁹² These incidences directly affecting 1043 LGBTIQ+ persons, compared to just 306 cases in the prior period.⁹³ Despite directives from the Director of Public Prosecutions in August 2023 to be more circumspect in implementing the AHA,⁹⁴ law enforcement continued to make arrests and file charges. Regardless, few cases of arrest proceeded to formal prosecution, justifying the point that homophobic laws function primarily as a tool for harassment and social control rather than judicial punishment.

A key enforcement pattern involves targeting visible LGBTIQ+ community spaces and organizations. For instance, in August 2022, prior to the AHA, authorities forced the closure of Sexual Minorities Uganda (SMUG), the country's most prominent LGBTIQ+ rights organization, after refusing its registration for years.⁹⁵ Similarly, healthcare facilities serving LGBTIQ+ communities have also faced scrutiny. In March 2020, the police carried out a raid on an LGBTIQ+ community shelter and arrested 20 people on charges of non-compliance with pandemic lockdown rules as a pretext for the larger targeting of the community.⁹⁶ While the Constitutional Court eventually nullified section 14 of the AHA that restricted healthcare access, health service disruptions continue to be reported following the passing of the law.⁹⁷

Perhaps most disturbing has been the implementation of the AHA through non-state actors. The act effectively deputized family members, landlords, medical professionals, and community members to monitor and report suspected LGBTIQ+ persons. This expanded enforcement network has triggered evictions and community violence against individuals perceived to be LGBTIQ+.⁹⁸

⁹² "Rights Violations for Uganda's LGBTQ Community are Escalating, Advocacy Group Says" (4 June 2024), online: *NBC News* <<https://www.nbcnews.com/nbc-out/out-news/rights-violations-ugandas-lgbtq-community-are-escalating-advocacy-grou-rcna155433>>.

⁹³ "*Eteeka Lyayita... Unwanted, Outlawed, and Illegal*": *The Cry of LGBTQ+ Ugandans* (Strategic Response Team Uganda, 2024) at 6, 8 online: <<https://www.arcusfoundation.org/publications/unwanted-outlawed-and-illegal-the-cry-of-lgbtq-ugandans/>>.

⁹⁴ <https://minbane.wordpress.com/2023/09/01/https-wp-me-plxtjg-p0x/>

⁹⁵ "Uganda Bans Prominent LGBTQ Rights Group | Human Rights Watch" (12 August 2022), online: <<https://www.hrw.org/news/2022/08/12/uganda-bans-prominent-lgbtq-rights-group>>.

⁹⁶ "LGBT Community Raided in Uganda Over Social Distancing" (1 April 2020), online: *AP News* <<https://apnews.com/article/90bfe0acc37214852d366ee4c11e740a>>.

⁹⁷ note 93 at 6.

⁹⁸ note 92.

Human Rights Awareness and Promotion Forum (HRAPF) documented increasing cases of eviction violence and arrests in the three months following the Act's passage.⁹⁹

The impact of this enforcement extends beyond directly targeted individuals to affect entire communities. The combination of formal legal prohibitions, administrative restrictions, and deputized civilian enforcement creates an environment where LGBTIQ+ persons face obstacles in virtually every aspect of public and private life, driving some to seek asylum in other countries while leaving others trapped in conditions of ongoing persecution. Their exclusion is not accidental or incidental but fulfills what Tamale describes as the disciplinary function of anti-homosexuality laws,¹⁰⁰ that is, controlling not just those directly criminalized but establishing normative boundaries for all citizens.

3.4.4 Administrative and Policy Framework

As with the case of Kenya, the enforcement of anti-LGBTIQ+ laws does not just rest in criminal law enforcement but also in the administration of government. Uganda's administrative apparatus creates additional layers of regulation beyond criminal law, affecting healthcare access, civil society operations, media content, and public discourse. For instance, the NGO Bureau, responsible for regulating non-governmental organizations, has used its administrative authority to restrict LGBTIQ+ organizing, refusing organisations the right to register and thereafter suspending them for failing to register.¹⁰¹

The administration and regulation of the media and communication space is another site for anti-LGBTIQ+ enforcement. The Uganda Communications Commission published the Standards for General Broadcast Programming in Uganda¹⁰² which contains section 6 dedicated to "Public Morals and Social Values." Section 6(5) states:

Information, themes or subplots on lifestyles such as homosexuality, lesbianism, bisexuality, transsexualism, transvestism, pedophilia and incest should be treated with utmost caution. Their treatment should not in any way promote, justify or glamorize such lifestyles.

⁹⁹ *Report on Violence and Violations Based on Real or Presumed Sexual Orientation or Gender Identity During the Third Month of The Enforcement of the Anti-Homosexuality Act 2023* (Human Rights Awareness and Promotion Forum, 13 September 2023) online: <<https://hrapf.org/mdocs-posts/hrapfs-report-on-cases-of-violence-september-2023/>>.

¹⁰⁰ Tamale, "Exploring the Contours of African Sexualities", *supra* note 2 at 157.

¹⁰¹ Jjuuko & Nyanzi, *supra* note 74 at 149–150.

¹⁰² *Standards for General Broadcast Programming in Uganda* (2019).

Educational institutions reinforce this normative process, for instance, by dismissing students they believed to be LGBTIQ+ persons.¹⁰³ In March 2024, the Minister of State for Primary Education is reported to have closed the boarding section of a primary school after allegations of sodomy, citing congestion as a factor contributing to homosexuality.¹⁰⁴

Local government authorities have also used administrative powers to target LGBTIQ+ persons, including expelling people from the village even as families have been willing to do the same with their own members.¹⁰⁵ These practices are generally propelled by moral panic through claims of “child recruitment,” with social media platforms like WhatsApp, Twitter (now X), and Facebook serving as key vectors.¹⁰⁶

The Uganda Human Rights Commission, despite its constitutional mandate to protect all Ugandans’ rights, has largely remained silent on LGBTIQ+ issues. This failure to address LGBTIQ+ concerns undermines its broader human rights mission and leaves affected communities without institutional recourse.

3.4.5 Court Interpretations and Judicial Approaches

In the face of overreaching executive and legislative control of sexuality, Ugandan courts have generally been reluctant to challenge these powers. Although the Constitutional Court’s 2014 nullification of the first Anti-Homosexuality Act in the *Oloka-Onyango case*¹⁰⁷ represented a limited “victory” for LGBTIQ+ rights advocates,¹⁰⁸ this decision hinged entirely on procedural grounds related to parliamentary quorum requirements rather than substantive human rights considerations. The Court avoided addressing arguments regarding privacy, dignity, and non-discrimination rights, stating that having found a procedural violation, it was unnecessary to engage the substantive issues.

By contrast, the Constitutional Court’s April 2024 decision in the *Fox Odoi case*,¹⁰⁹ upholding the AHA, marked a shift toward judicial deference to legislative anti-LGBTIQ+

¹⁰³ note 93 at 32.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid* at 27–28.

¹⁰⁶ *Ibid* at 34–35.

¹⁰⁷ *Oloka-Onyango & 9 Others v. Attorney General, supra* note 79.

¹⁰⁸ This court “victory” only delayed the process of criminalization and the latter version of the bill would be just as, if not more, draconian in content.

¹⁰⁹ Consolidated Petitions 14, 15, 16 & 85 of 2023.

objectives. The Court determined that constitutional limitations on rights were justified by the state's interest in protecting public morality and social values. The court embraced the government's argument and focused on an interpretation of rights that subjected individual rights to the "socio-cultural interests of the Ugandan society" effectively endorsing legislative authority to restrict constitutional rights based on majoritarian moral claims.

Lower courts have shown similar deference to anti-LGBTIQ+ state actions. In the 2008 case of *Mukasa and Oyo v. Attorney General*,¹¹⁰ the High Court acknowledged that police raids on LGBTIQ+ persons' homes violated constitutional rights to privacy and dignity. However, the court framed these violations narrowly as procedural misconduct rather than as discrimination based on sexual orientation, avoiding broader rights implications. Similarly, in *Kasha Jacqueline & Others v. Rolling Stone*,¹¹¹ the High Court in 2010 protected LGBTIQ+ individuals from media exposure and incitement to violence but carefully noted that it was not decriminalizing homosexuality or recognizing new rights. The treatment of LGBTIQ+ organizations further demonstrates this cautious approach. In *Frank Mugisha & Others v. Uganda Registration Services Bureau*,¹¹² the High Court ordered the registration of Sexual Minorities Uganda after years of administrative obstruction. However, the judgment focused on technical registration requirements rather than associational rights for LGBTIQ+ groups.¹¹³

The judicial approach in Uganda positions courts not as independent protectors of constitutional rights but as institutions that largely defer to legislative and executive anti-LGBTIQ+ objectives. This pattern of judicial behaviour in Uganda differs significantly from Kenya's more mixed jurisprudence. While Kenyan courts have recognized limited protections for LGBTIQ+ persons in certain contexts despite maintaining criminalization, Ugandan courts have generally aligned with broader state efforts to restrict LGBTIQ+ rights.

¹¹⁰ *Victor Juliet Mukasa and Yvonne Oyo v Attorney General*, 2008 High Court of Uganda.

¹¹¹ *Kasha Jacqueline, David Kato Kisule and Onziema Patience v Rolling Stone Ltd and Giles Muhame*, 2010 High Court of Uganda.

¹¹² *Frank Mugisha & 2 Others v Uganda Registration Services Bureau*, 2016 High Court of Uganda.

¹¹³ Despite this apparent legal victory, Sexual Minorities Uganda (SMUG) remains unregistered as of 2025. The organization has been unable to complete the registration process, and the passage of the Anti-Homosexuality Act 2023 has effectively precluded any possibility of registration, as the Act criminalizes the "promotion of homosexuality" and organizations that support LGBTIQ+ rights. Frank Mugisha, SMUG's executive director, has faced continued harassment and surveillance, and the organization operates in an increasingly constrained environment. This is a typical instance of how procedural legal victories can prove hollow when the broader legal and political framework remains hostile to LGBTIQ+ rights. The 2018 court decision provided no protection against subsequent legislative changes that would render such registration impossible or illegal.

3.5 Ghana's Legal Framework

The Ghanaian legal framework on LGBTIQ+ rights is one of expanding restrictions by building upon colonial-era criminalization. Unlike Uganda's decades-long multiple legislative iterations or Kenya's significant judicial engagement, Ghana's framework has evolved through a sudden and more focused legislative process, starting in 2018 and culminating in the 2021 introduction and 2024 legislative passage (and subsequent temporary expiration) of the Family Values Bill.¹¹⁴

3.5.1 Constitutional Framework

The 1992 Constitution of Ghana¹¹⁵ establishes a human rights foundation with unrealized potential for LGBTIQ+ rights. Although it lacks explicit provisions protecting sexual minorities, its guarantees could theoretically extend to LGBTIQ+ persons, including protection against discrimination.¹¹⁶ Article 17(1) declares that "all persons shall be equal before the law," while Article 17(2) prohibits discrimination on grounds including "gender, race, color, ethnic origin, religion, creed or social or economic status." Though sexual orientation and gender identity are not specifically mentioned, the open-ended nature of this provision permits the possibility of an inclusive interpretation by the courts.

Beyond equality provisions, the Constitution guarantees other rights applicable to LGBTIQ+ persons. Article 15 protects human dignity and prohibits torture and degrading treatment. Article 18 guarantees privacy rights, stating that "no person shall be subjected to interference with the privacy of his home, property, correspondence or communication." Article 21 protects freedoms of association, assembly, and expression. These provisions create a constitutional basis for challenging state actions that marginalize or target LGBTIQ+ individuals.

However, Ghana's Constitution also contains provisions that have been used to limit LGBTIQ+ rights recognition. The most direct provision is Article 39(1) which requires the state to:¹¹⁷

¹¹⁴ *Family Values Bill*, *supra* note 4.

¹¹⁵ *Constitution of the Republic of Ghana*, 1992.

¹¹⁶ Ernest Yaw Ako & Amanda Odoi, "LGBTIQ+ Lawfare in Response to the Politicisation of Homosexuality in Ghana" in Adrian Jjuuko et al, eds, *Queer Lawfare in Africa: Legal Strategies in Contexts of LGBTIQ Criminalisation and Politicisation* (Pretoria: Pretoria University Law Press (PULP), 2022) 275 at 279.

¹¹⁷ *Constitution of the Republic of Ghana*, *supra* note 115 art 39(1).

take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national planning.

Courts and politicians have interpreted this directive as justifying legislation that restricts LGBTIQ+ rights in the name of cultural preservation, creating constitutional tension between universal rights guarantees and cultural systems.¹¹⁸ Similarly, Ghana's constitutional rights limitations clause in Article 12(2) states that fundamental rights may be limited for purposes including "public safety, public health or public morality" providing potential constitutional cover for restrictions on LGBTIQ+ rights.

Institutionally, the Constitution empowers the Commission on Human Rights and Administrative Justice (CHRAJ) to investigate human rights violations and promote rights education.¹¹⁹ However, other than presenting a memo on the potential impact of the Family Values Bill,¹²⁰ CHRAJ has largely avoided direct engagement with LGBTIQ+ issues, meaning that constitutional protections remain unimplemented for the LGBTIQ+ community.¹²¹

Nevertheless, Ghana's constitutional framework differs from Kenya's and Uganda's in several respects. Unlike Uganda, Ghana's Constitution lacks explicit language limiting marriage to opposite-sex couples. Unlike Kenya's 2010 Constitution, which emerged from a recent participatory drafting process, Ghana's 1992 Constitution precedes much of the global discourse on LGBTIQ+ rights recognition. These differences create distinct constitutional environments for rights claims across the three countries. Still, the gap between constitutional text and implementation is equally substantial across all three countries.

3.5.2 Criminal Law Framework

In contrast to the constitutional framework, Ghana's criminal law framework has evolved from colonial-era prohibitions to increasingly expansive contemporary restrictions. In this manner, the inherited colonial provisions serve as a foundation for modern criminalization efforts that extend far beyond their original scope.

¹¹⁸ Ako & Odoi, *supra* note 116 at 287.

¹¹⁹ Section 216 & 218 Ghana Constitution.

¹²⁰ *Memorandum on the Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021: Comments from the Commission on Human Rights and Administrative Justice (CHRAJ)* (Ghana Commission on Human Rights and Administrative Justice, 29 September 2021) online: <<https://chraj.gov.gh/wp-content/uploads/2025/03/MEMORANDUM-LGBTI-BILL.pdf>>.

¹²¹ Ako & Odoi, *supra* note 116 at 300.

The principal legal basis for criminalizing same-sex conduct in Ghana is section 104 of the Criminal Offences Act,¹²² which prohibits “unnatural carnal knowledge.” The provision creates two distinct offenses: section 104(1)(a) criminalizes unnatural carnal knowledge “without his consent” as a first-degree felony punishable by five to twenty-five years imprisonment, while section 104(1)(b) criminalizes the same conduct “with his consent” as a misdemeanour. This distinction explicitly acknowledges consensual same-sex conduct as a separate, lesser offense from non-consensual acts. Despite this distinction, law enforcement and courts systematically collapse this differentiation to criminalize all same-sex sexual conduct uniformly. Police authorities routinely treat all same-sex activity as inherently criminal regardless of consent despite this approach directly contradicting the textual recognition of consent as a legally relevant factor that affects both the nature and severity of the offense.

The vague language of “unnatural manner” enables selective enforcement against LGBTIQ+ persons based on perceived identity rather than specific conduct.¹²³ This criminal provision derives from British colonial law, specifically the Criminal Code Ordinance of 1892, which was incorporated into Ghana’s post-independence legal system. The colonial origins of Ghana’s anti-sodomy law undermine claims, like those expressed by Sam George (legislative sponsor of the Family Values Bill), that criminalization of same-sex conduct reflects authentic Ghanaian cultural values,¹²⁴ as historical evidence suggests diverse sexual practices existed in pre-colonial Ghana.¹²⁵

The criminal law framework expanded dramatically with the introduction of the Family Values Bill in 2021, which Ghana’s Parliament passed in February 2024. First introduced in Parliament in July 2021 by eight parliamentarians led by Sam George,¹²⁶ the bill aims to provide a comprehensive legal framework for criminalizing LGBTIQ+ identity, expression, advocacy, and support.

The bill defines “Ghanaian family values” in ways that explicitly exclude LGBTIQ+ persons. These values include “respect for the sanctity of marriage as a lifelong relationship

¹²² *Criminal Offences Act*, 1960.

¹²³ Ako & Odoi, *supra* note 116 at 275–277.

¹²⁴ “*Ghana is Not the 51st State of the United States.*” - Hon Sam George on Ghana’s Anti-LGBTQ Bill (News Central TV, 2024).

¹²⁵ Ako & Odoi, *supra* note 116 at 294.

¹²⁶ Jonas Nyabor, “Sam George; 7 Other MPs Sponsor Bill for Criminalization LGBTIQ+ Activities”, *Citi Newsroom* (29 June 2021), online: <<https://citinewsroom.com/2021/06/sam-george-7-other-mps-sponsor-bill-for-criminalization-lgbtqi-activities/>>.

between a man and a woman, each of whose gender is assigned at birth” and recognition of the nuclear and extended family as the basic unit of Ghanaian society.¹²⁷ This framing establishes a normative basis for excluding LGBTIQ+ persons from legal protection and social acceptance.

The bill’s scope extends far beyond the existing criminalization of “unnatural carnal knowledge.” Section 6 criminalizes not only same-sex sexual activity but also identification as lesbian, gay, bisexual, transgender, queer, or any other non-binary gender identity. This explicit criminalization of identity¹²⁸ rather than merely conduct represents a shift in Ghana’s legal approach to sexual and gender minorities. Persons convicted under this provision face penalties including imprisonment for three to five years. The bill also criminalizes advocacy and support for LGBTIQ+ rights. Section 12 prohibits promoting or supporting LGBTIQ+ activities, with penalties of five to ten years imprisonment. This provision extends to media representations, educational materials, and public statements that could be interpreted as normalizing homosexuality. Section 13 specifically targets advocacy aimed at children, potentially criminalizing age-appropriate comprehensive sexuality education.

In addition, the bill imposes reporting obligations on citizens. Section 5 requires persons who witness activities prohibited by the bill to report them to police, political leaders, or traditional authorities. This mandatory reporting provision effectively deputizes the general public to monitor and report suspected LGBTIQ+ persons, creating a surveillance mechanism that threatens privacy and personal security. The bill also restricts healthcare access for LGBTIQ+ persons. It prohibits gender-affirming medical interventions for transgender individuals and limits healthcare providers’ ability to offer specialized services to LGBTIQ+ persons. Section 18 additionally bans LGBTIQ+ persons from adopting or fostering children.

Beyond its specific provisions, the bill’s approach to LGBTIQ+ identity reflects the language and agenda of global anti-gender movements. It contains rhetorical elements common to anti-LGBTIQ+ legislation worldwide, including claims that homosexuality threatens traditional family values, corrupts children, and represents foreign cultural imposition. This framing is a

¹²⁷ *Family Values Bill*, *supra* note 4, s 2.

¹²⁸ Section 6 of the Family Values Bill criminalizes persons “who hold themselves out as lesbian, gay, bisexual, transgender, transsexual, queer, ally, pansexual,” those who embrace “any socio-cultural notion of sex or sexual relationship that is contrary to the ideas of male and female,” and even persons “questioning their sexuality,” but the bill provides no clear evidentiary standards for establishing what constitutes such identity, leaving enforcement authorities with broad discretion to determine identity based on appearance, behaviour, association, self-declaration, or any other evidence deemed relevant.

reflection of Merry’s vernacularization, where in this instance, it is not rights but global anti-LGBTIQ+ discourses that are adapted to local contexts.

Constitutional and human rights experts have raised serious concerns about the bill’s constitutionality. In a memorandum submitted to Parliament’s Constitutional, Legal, and Parliamentary Affairs Committee, legal scholars argued that the bill violates constitutional provisions on equality, privacy, and freedom of expression.¹²⁹ In its 2021 memo,¹³⁰ the CHRAJ, usually reticent on LGBTIQ+ rights issues, also expressed concerns that the bill exceeds constitutional limitations on rights restrictions.

Although the Family Values Bill was not assented to by the previous president of Ghana before the expiration of the legislative term in December 2024, the bill was reintroduced to parliament in March 2025. If passed into law, the bill would make Ghana’s legal framework one of the most restrictive worldwide regarding LGBTIQ+ rights. Its comprehensive approach to criminalization exceeds even Uganda’s Anti-Homosexuality Act in scope, targeting not only sexual conduct but identity, expression, advocacy, and support networks. The bill thus represents a major escalation in Ghana’s approach to regulating sexuality and gender identity. Nevertheless, Ghana’s approach to criminalization differs from Kenya’s and Uganda’s in important ways. While Kenya has maintained but not substantially expanded colonial-era provisions, and Uganda has enacted comprehensive anti-homosexuality legislation through swift parliamentary action, Ghana followed a more deliberate legislative process involving extensive public consultation that prevented the bill from being enacted. Nevertheless, this process has allowed the bill to generate broad domestic political support while the government attempts to maintain international legitimacy through claims of democratic consensus.¹³¹

3.5.3 Court Interpretations and Judicial Approaches

Ghana’s judiciary has played a cautious yet decisive role in shaping the legal landscape for LGBTIQ+ rights. Unlike Kenya’s relatively active jurisprudence or Uganda’s explicit anti-LGBTIQ+ rights judicial reasoning, Ghanaian courts have, so far, affected LGBTIQ+ rights

¹²⁹ *Memorandum to Parliament of Ghana Against Passage of the “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill”, 2021*, by Group of Ghanaian Citizens (Ghana Commission on Human Rights and Administrative Justice, 4 October 2021) online: <<https://cddgh.org/wp-content/uploads/2021/10/ANTILGBT-BILL-PRESS-STATEMENT.FINAL-1.pdf>>.

¹³⁰ CHRAJ, *supra* note 120.

¹³¹ Ako & Odoi, *supra* note 116 at 288.

mainly through institutional avoidance and procedural approaches rather than substantive rights engagement.

The courts' handling of cases involving LGBTIQ+ persons has typically followed procedural rather than rights-based approaches. When LGBTIQ+ individuals have brought cases challenging detention or police harassment, courts have occasionally provided relief based on procedural irregularities in arrests or detention rather than acknowledging discrimination based on sexual orientation or gender identity.¹³² This procedural focus enables courts to avoid directly addressing the status of LGBTIQ+ persons under Ghana's constitutional framework, maintaining legal ambiguity while providing case-specific remedies.

In 2024, the Supreme Court of Ghana delivered two landmark decisions with implications for LGBTIQ+ rights. In July 2024, the Court upheld the colonial-era law criminalizing consensual same-sex conduct, rejecting a challenge by Prince Obiri-Korang, a law lecturer at the University of Ghana. The suit had sought to overturn Section 104(1)(b) of Ghana's Criminal Offences Act on grounds that it violated constitutionally protected rights to privacy and personal liberties. In dismissing the challenge, the Court expanded the interpretation of "unnatural manner" to include the use of sex toys, adopting language reminiscent of the Anti-LGBTIQ+ Bill.¹³³

In a separate ruling in December 2024, the Supreme Court dismissed two legal challenges to the Anti-LGBTIQ+ Bill itself. Amanda Odoi and Richard Sky had filed separate cases seeking to declare the bill illegal and prevent the president from signing it. Justice Avril Lovelace-Johnson, speaking for the seven-member panel, ruled that the cases were premature, stating: "Until there's presidential assent, there is no act."¹³⁴ This ruling effectively cleared the path for the president to sign the bill into law. Fortunately, the president – freed from the pressures of a re-election campaign – delayed providing assent to the bill before the legislative term expired in December 2024. In March 2025, the bill was resubmitted to the new parliament and is, at the time of writing, awaiting continuation of the legislative process.¹³⁵

¹³² Eric Nana Yaw Kwafo, "21 Alleged LGBTIQ+ Members Freed by Ho Court over Insufficient Evidence" (6 August 2021), online: *Modern Ghana* <<https://www.modernghana.com/news/1096753/vr-21-alleged-lgbtqi-members-freed-by-ho-court.html>>.

¹³³ "Ghana: Supreme Court Upholds Colonial-Era Anti-LGBT Law" (29 July 2024), online: <<https://www.hrw.org/news/2024/07/29/ghana-supreme-court-upholds-colonial-era-anti-lgbt-law>>.

¹³⁴ "Ghana Supreme Court Rejects Legal Challenges to Anti-LGBT Bill", *Reuters* (18 December 2024), online: <<https://www.reuters.com/world/africa/ghana-supreme-court-dismisses-legal-challenges-anti-lgbt-bill-2024-12-18/>>.

¹³⁵ Thomas Naadi & Jake Lapham, "Ghanaian MPs Reintroduce Controversial Anti-LGBT Bill" (4 March 2025), online: *BBC News* <<https://www.bbc.com/news/articles/cdjy91gr48lo>>.

Unlike in Kenya, where courts have issued multiple judgments addressing organizational rights for LGBTIQ+ groups, Ghana’s judiciary has not established precedents protecting LGBTIQ+ associational rights. Attempts by LGBTIQ+ organizations to challenge registration denials have generally remained unresolved within the court system. This judicial inaction effectively endorses administrative discretion to restrict LGBTIQ+ organizing, creating a legal environment where LGBTIQ+ groups operate with minimal institutional protection. The courts’ approach aligns more closely with Uganda’s judicial deference to legislative anti-LGBTIQ+ objectives, though through different mechanisms. While Ugandan courts have actively endorsed anti-homosexuality legislation, Ghanaian courts have enabled similar outcomes through institutional avoidance and procedural decisions. Both approaches effectively limit constitutional protection for LGBTIQ+ persons, but Ghana’s courts have maintained legal ambiguity through their reluctance to issue definitive judgments on substantive LGBTIQ+ rights questions prior to 2024.

3.5.4 Administrative and Policy Framework

The treatment of LGBTIQ+ rights in Ghana’s administrative systems varies across different government sectors, sometimes contradictorily, which thus creates a framework of selective accommodation, that distinguishes significantly from the more systematic exclusion seen in Uganda but existing without the clear judicial protections in Kenya. For instance, unlike Kenya’s judicial directive to register LGBTIQ+ organizations or Uganda’s systematic deregistration efforts, Ghana has allowed several LGBTIQ+ organizations to achieve formal registration through strategic naming and mandate framing (avoiding explicit LGBTIQ+ terminology and focusing on broader health and human rights mandates).¹³⁶ However, in recent years, this administrative tolerance has proven fragile with police raids and forced closures becoming more frequent.¹³⁷

The health sector has the most coherent policy approach to LGBTIQ+ issues, and this has been driven primarily by the need for HIV prevention rather than human rights considerations. For

¹³⁶ “HIV Policy and Advocacy Monitor - March 2015”, online: <<https://archive.constantcontact.com/fs186/1110274899743/archive/1120139772616.html>>.

¹³⁷ Emmanuel Akinwotu, “Ghanaian LGBTQ+ Centre Closes After Threats and Abuse”, *The Guardian* (25 February 2021), online: <<https://www.theguardian.com/global-development/2021/feb/25/lgbtq-ghanaians-under-threat-after-backlash-against-new-support-centre>>.

example, the 2019 National HIV and AIDS Policy¹³⁸ recognizes men who have sex with men (MSM) as a key population requiring targeted interventions. LGBTIQ+ organizations also operate health programs targeting LGBTIQ+ persons with tacit government support including advocating for the inclusion of water-based lubricants in the national essential drug list.¹³⁹ However, access to healthcare is still discriminatory and systematic barriers, including fear of disclosure in healthcare settings and provider bias, are prevalent. For instance, while a 2017 study found that 18.1% of MSM in Ghana are HIV-positive compared to 1.6% in the general population, many affected individuals avoid healthcare services due to anticipated discrimination, and negative attitudes toward LGBTIQ+ patients.¹⁴⁰

CHRAJ, Ghana's national human rights institution, has implemented an online complaint system that receives reports of discrimination, including cases based on sexual orientation and gender identity, with 36 of 75 discrimination complaints between 2013 and 2017 originating from LGBTIQ+ persons.¹⁴¹ As discussed earlier, the commission's most notable intervention occurred in 2021 when it submitted a memorandum to Parliament regarding the Family Values Bill, expressing concerns about the legislation's constitutionality and recommending constructive engagement with LGBTIQ+ communities rather than criminalization. However, CHRAJ faces substantial resource constraints that limit its effectiveness, has consistently received less than its budgetary allocation, and lacks adequate staffing.¹⁴²

3.6 Comparative Analysis

The examination of legal frameworks affecting LGBTIQ+ rights in Kenya, Uganda, and Ghana shows how postcolonial African states navigate questions of sexuality and gender identity regulation. While the authorities in each country utilize distinct approaches, several common themes emerge regarding the interaction between colonial legal heritage and contemporary governance structures.

¹³⁸ Ghana AIDS Commission, *National HIV and AIDS Policy* (2019), online: <<https://www.prepwatch.org/wp-content/uploads/2022/03/Ghana-National-HIVAIDS-Guideline-2019.pdf>>.

¹³⁹ note 136.

¹⁴⁰ Sameer Kushwaha et al, "'But the Moment They Find Out That You Are MSM...': A Qualitative Investigation of HIV Prevention Experiences Among Men Who Have Sex With Men (MSM) in Ghana's Health Care System" (2017) 17:1 BMC Public Health 770.

¹⁴¹ Raymond A Atuguba, "Homosexuality in Ghana: Morality, Law, Human Rights" (2019) 12:4 J Polit Law 113.

¹⁴² Ako & Odoi, *supra* note 116 at 300.

In all three countries, we witness Mamdani’s “institutionalization of difference,” within a “bifurcated” state, where the state maintains different legal standards for different populations. The criminalization of same-sex conduct serves as a mechanism through which certain citizens are rendered less equal than others, within nominally equal citizenship frameworks. Likewise, the disciplinary power of the state, as expressed by Tamale, further illuminate how these legal structures do not merely restrict behaviour but actively shape subjectivity, compelling citizens to “voluntarily collude” with heteronormative standards by internalizing them as natural rather than as colonial impositions. The following comparative analysis explores these patterns while highlighting key variations in legal approaches across jurisdictions.

3.6.1 Common Patterns

All three countries demonstrate a pattern of building upon, rather than dismantling, colonial-era restrictions on same-sex conduct. The retention of colonial penal code provisions criminalizing “unnatural offences” or “carnal knowledge against the order of nature” provides a common foundation for contemporary regulation. This persistence of colonial legal frameworks reflects broader challenges in reforming inherited governance structures in postcolonial contexts.

The expansion of colonial-era restrictions through new legislation represents another common pattern. Uganda’s AHA and Ghana’s Family Values Bill both broaden the scope of criminalization beyond colonial provisions. Even Kenya, while not enacting new restrictive legislation, has maintained and reinforced colonial-era criminalization through court decisions. This expansion trend indicates that rather than moving toward decriminalization in line with global human rights developments, these jurisdictions have intensified legal restrictions on LGBTIQ+ persons.

All three countries exhibit tensions between constitutional rights guarantees and practical implementation for LGBTIQ+ persons. Despite constitutional provisions protecting equality, dignity, and privacy, these protections rarely translate into effective rights recognition for sexual and gender minorities. This implementation gap underscores the limitations of constitutional frameworks in transforming social practice without both supportive judicial interpretation and political will.

The paradoxical invocation of anti-colonial rhetoric to defend colonial-era restrictions appears across all jurisdictions. Political leaders in Kenya, Uganda, and Ghana frame opposition

to LGBTIQ+ rights as resistance to Western imposition, despite the colonial origins of anti-sodomy laws. In essence, these postcolonial states selectively embrace or reject colonial legacies based on contemporary political objectives rather than consistent decolonization principles.

3.6.2 Variations in Legal Approaches

Despite these commonalities, important variations exist in how these countries manage LGBTIQ+ rights claims. Kenya's approach is characterized by judicial ambivalence, with courts upholding criminalization while recognizing limited organizational and dignity rights for LGBTIQ+ persons. This creates a fragmented legal landscape where constitutional protections operate alongside continued criminalization, producing inconsistent outcomes for LGBTIQ+ individuals.

Uganda's approach, at the time of its enactment, represented the most aggressive expansion of criminalization both in substance and process, moving from colonial-era act-based prohibitions to comprehensive identity-based regulation with little or no public consultation on the need for this. The AHA extends state control beyond sexual conduct to LGBTIQ+ identity, expression, advocacy, and support services. Ghana's bill, while still under consideration, is even more aggressive in its substantive reach than Uganda's. However, it has attempted to follow a more deliberate legislative process, with extensive public consultation and parliamentary debate—which partly contributed to delays that resulted in its expiration at the end of the legislative term. Nevertheless, this process helped to generate broad domestic political support for the bill while still attempting to maintain international legitimacy through claims of democratic consensus. Meanwhile, Ghana's courts have played a more limited role in LGBTIQ+ rights jurisprudence compared to Kenya's more active judicial engagement.

Administrative implementation also varies across jurisdictions. Uganda's implementation focuses on systematic suppression of LGBTIQ+ visibility and organizing, with direct targeting of community organizations and healthcare providers. Kenya's administrative approach is more inconsistent, with some recognition of LGBTIQ+ organizations alongside continuing police harassment. Ghana's implementation has been mildly tolerant (until the recent political and legislative events stirred up negative social attitudes), emphasizing minimal LGBTIQ+ public visibility while allowing some public health interventions for key populations.

The courts' role differs substantially across countries. Kenya's courts have established limited protections for LGBTIQ+ organizational rights while maintaining criminalization of same-

sex conduct. Uganda’s courts have generally deferred to legislative and executive anti-LGBTIQ+ objectives, with recent explicit endorsement of expanded criminalization. Ghana’s courts have largely avoided substantive engagement with LGBTIQ+ rights questions, creating judicial ambiguity through procedural approaches rather than rights-based reasoning.

3.6.3 International Engagement and Sovereignty Claims

All three countries navigate tensions between international human rights obligations and domestic sovereignty claims regarding LGBTIQ+ rights. However, the three countries exhibit distinct attitudes and approaches toward managing international human rights scrutiny on LGBTIQ+ issues, particularly through UN mechanisms. Kenya engages more actively with international human rights mechanisms, with courts occasionally referencing international standards in domestic decisions. It has pursued selective accommodation, transitioning from hostility to limited engagement during its January 2015 Universal Periodic Review (UPR), where it accepted Human Rights Council recommendations to protect sexual minorities from violence and discrimination while maintaining criminal provisions under Section 162 of the Penal Code.¹⁴³ This trend continued in its January 2020 UPR, with Kenya accepting non-discrimination recommendations but rejecting decriminalization.¹⁴⁴

Uganda has adopted a more confrontational stance, explicitly rejecting international criticism of its anti-LGBTIQ+ legislation as foreign interference. This stance was intensified by the passage of the AHA. During the legislative period and after its enactment, government officials rejected international aid tied to LGBTIQ+ rights and dismissed international criticism as neocolonial interference; or in the words of the country’s parliamentary Speaker, “Let’s protect Ugandans, let’s protect our values, our virtues. The Western world will not come and rule Uganda.”¹⁴⁵ Unsurprisingly, Uganda did not accept any UPR recommendations related to LGBTIQ+ persons during its 2022 review.

¹⁴³ *Report of the Working Group on the Universal Periodic Review: Kenya (29th Session)*, by UN Human Rights Council, A/HRC/29/10 (UN Human Rights Council, 26 March 2015) at paras 83, 141 online: <https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_10_ENG.doc>.

¹⁴⁴ *Report of the Working Group on the Universal Periodic Review: Kenya (44th Session)*, by UN Human Rights Council, A/HRC/44/9 (UN Human Rights Council, 20 March 2020) online: <<https://undocs.org/en/A/HRC/44/9>>.

¹⁴⁵ “Uganda Parliament Passes Harsh Anti-LGBTQ Bill Mostly Unchanged”, *Reuters* (2 May 2023), online: <<https://www.reuters.com/world/africa/uganda-parliament-passes-mostly-unchanged-version-anti-lgbtq-bill-2023-05-02/>>.

Ghana has attempted to balance international reputation concerns with domestic anti-LGBTIQ+ policies through careful diplomatic positioning. Broadly, Ghana affirms international commitments while advancing restrictive domestic legislation. For instance, during its January 2023 UPR, the state noted its opposition to “inflicting harm on minorities or people of a different sexual orientation” while insisting that the Family Values Bill would ensure non-violence to LGBTIQ+ persons.¹⁴⁶ The state then agreed to engage with the various recommendations on the protection of LGBTIQ+ persons. Despite these assurances, the Family Values Bill moved ahead in parliament, although denied assent by the president, illustrating just how Ghana’s dual identity insulates domestic policy from international criticism by appealing to the sovereignty of the democratic process (different from Uganda’s appeal to state sovereignty).

All of these goes to show that postcolonial states with similar colonial legal heritage can develop distinct approaches to regulating sexuality and gender based on different political contexts, institutional dynamics, and international positioning strategies. The divergent paths taken by the three countries indicate that colonial legal frameworks shape, but do not wholly determine, contemporary approaches to LGBTIQ+ rights in African legal systems.

3.6.4 Implications for Transnational Influence

The legal frameworks examined reveal different vulnerabilities to transnational influence. Kenya’s mixed legal position, with limited rights recognition alongside continued criminalization, creates openings for strategic engagement by both LGBTIQ+ rights advocates and opponents through litigation and advocacy. Uganda’s comprehensive criminalization restricts formal channels for rights advocacy while creating human rights implementation challenges with support from transnational anti-LGBTIQ+ actors. Ghana’s deliberate legislative process has allowed greater public participation in shaping legal outcomes but also created space for transnational actors to influence public discourse and parliamentary debate regarding LGBTIQ+ rights. These legal variations shape the environment within which transnational actors operate, affecting their strategies, access points, and potential impact across different jurisdictions. The following chapters

¹⁴⁶ *Report of the Working Group on the Universal Periodic Review: Ghana (53rd Session)*, by UN Human Rights Council, A/HRC/53/7 (UN Human Rights Council, 24 March 2023) at para 9 online: <<https://undocs.org/en/A/HRC/53/7>>.

will examine how these actors navigate these varying legal landscapes to influence laws, policies, and governance structures affecting LGBTIQ+ rights in contemporary Africa.

3.7 Conclusion

This chapter has analyzed the legal and policy frameworks affecting LGBTIQ+ rights in Kenya, Uganda, and Ghana through a comparative lens that reveals both shared patterns and important divergences. By examining the historical context alongside current legal structures, the analysis shows the enduring influence of colonial legal systems in shaping contemporary governance of sexuality and gender expression.

The historical analysis demonstrates how British colonial rule introduced heteronormative legal frameworks that postcolonial states have maintained and often expanded. Rather than dismantling these colonial impositions, all three countries have built upon them, though in different ways. Both Uganda (successfully) and Ghana (unsuccessfully, at the time of writing) have pursued aggressive and expanded criminalization through new legislation while Kenya has, despite some political agitations to expand criminalization, maintained colonial-era restrictions limited by judicial interpretation.

Three key findings emerge from this comparative examination. First, there is a clear pattern across all jurisdictions of expanding rather than dismantling colonial-era restrictions. Uganda's Anti-Homosexuality Act and Ghana's Family Values Bill extend criminalization far beyond colonial provisions, while Kenya maintains colonial prohibitions through judicial decisions that uphold their constitutionality. Second, all three countries exhibit pronounced tensions between constitutional rights guarantees and their practical implementation for LGBTIQ+ persons. Despite constitutional provisions protecting equality, dignity, and privacy, these protections rarely translate into effective rights recognition for sexual minorities. Kenya has established limited protections in specific domains like organizational registration, Uganda's courts have endorsed legislative limitations on constitutional rights based on morality claims, and Ghana's judiciary has largely avoided substantive engagement with LGBTIQ+ rights questions. Third, these countries increasingly navigate between domestic political imperatives and international human rights obligations through strategic claims about sovereignty and cultural preservation. This balancing act has produced legal justifications for restrictions that invoke cultural authenticity while

defending colonial-era legal structures, creating contradictions in how postcolonial states engage with both colonial legacies and international norms.

These findings provide essential context for understanding how transnational actors influence domestic legal frameworks. The varying approaches to LGBTIQ+ rights regulation create different opportunities and constraints for external influence. The analysis lays the necessary groundwork for examining how local and transnational anti-LGBTIQ+ actors interact with these legal frameworks to advance their agendas as discussed in the next chapter. It also provides context for understanding how these interactions affect broader democratic governance and human rights protection beyond LGBTIQ+ issues – which will be discussed in Chapter 5. By establishing the legal environments within which these actors operate, this chapter enables deeper analysis of their strategies, impacts, and implications for human rights and democracy in contemporary Africa.

CHAPTER 4: TRANSNATIONAL ANTI-LGBTIQ+ ACTORS: STRATEGIES AND LOCAL INTERACTIONS

4.1 Introduction

This chapter builds upon the examination of legal and policy frameworks in Kenya, Uganda, and Ghana presented in Chapter 3, advancing the substantive analysis by focusing on the second research sub-question:

How do local and transnational anti-rights actors operate in these countries to influence public opinion, policy-making, and legal processes regarding LGBTIQ+ rights, and what narrative accounts can be pieced together from assorted sources of information on the impact (or not) of these operations on the legal and policy frameworks presented under sub-question 1?

Accordingly, this chapter maps and analyzes the network of local and transnational anti-LGBTIQ+ actors working to shape laws and governance structures in the three focus countries. By examining their organizational strategies, networks, and rhetorical approaches, the chapter illuminates how these actors navigate between global conservative movements and local contexts to institutionalize homophobia through formal legal and policy mechanisms.

As shown in the previous chapter, countries such as Uganda, Kenya, and Ghana have considered or enacted increasingly repressive measures, using legal systems to institutionalize discrimination against LGBTIQ+ persons, and reinforcing systemic marginalization. However, while the examination in Chapter 3 discussed the role of legislation, court decisions and law enforcement in this marginalization, a significant factor that accelerated this trend is the influence of transnational movements, particularly U.S.-based evangelical and non-profit organizations, that have played a critical role in amplifying anti-LGBTIQ+ sentiment in African countries. These actors have provided both financial and ideological support for restrictive laws on sexual and reproductive rights, further entrenching discrimination and shaping the legal and social landscape in these nations.¹

¹ *The International Anti-Gender Movement: Understanding the Rise of Anti-Gender Discourses in the Context of Development, Human Rights and Social Protection*, Working Paper, by Haley McEwen & Lata Narayanaswamy, www.econstor.eu, Working Paper 2023-06 (UNRISD Working Paper, 2023) online:

Over the past decade, transnational conservative movements have mobilized in opposition to LGBTIQ+ rights, strategically invoking their own interpretations of international human rights law to legitimize their stance.² This opposition intensified in response to progressive legal reforms, giving rise to a transnational backlash led by illiberal anti-LGBTIQ+ networks.³ These networks have adeptly appropriated human rights rhetoric and leveraged international institutional mechanisms to undermine progressive policies while promoting alternative cultural frameworks.⁴ They construct narratives that depict rights as fundamentally incompatible with traditional values, which in turn are defined variably across different national and regional contexts.⁵ In sum, these observations are consistent with Bob’s analysis of conflict between rival networks⁶ as discussed in Chapter 2 of this thesis.

This emergence of transnational anti-LGBTIQ+ networks is part of a broader illiberal backlash against international human rights norms. Central to this backlash is the rise of “anti-gender” discourse, which has further reinforced conservative mobilization. Rather than relying solely on religious justifications, these actors have increasingly aligned their rhetoric with international development frameworks, deploying economic and social arguments to contest LGBTIQ+ rights.⁷ This evolution toward a globally coordinated resistance aligns with emerging scholarship on the contested nature of human rights promotion,⁸ with the relationship between pro-LGBTIQ+ and anti-LGBTIQ+ movements being characterized as a “double-helix,” in which the advances of progressive movements are met with an equally dynamic conservative opposition.⁹

<<https://www.econstor.eu/handle/10419/278575>> [*The International Anti-Gender Movement*]; Kapya Kaoma, “Exporting the Anti-Gay Movement” (24 April 2012), online: *Am Prospect* <<https://prospect.org/api/content/ac9abf96-2f24-5d71-b4e2-942cbe0efd79/>>; Elżbieta Korolczuk & Agnieszka Graff, “Gender as “Ebola from Brussels”: The Anticolonial Frame and the Rise of Illiberal Populism” (2018) 43:4 *Signs J Women Cult Soc* 797–821; Lisa Harms, *Faith in Courts: Human Rights Advocacy and the Transnational Regulation of Religion* (Oxford: Hart Publishing, 2022); Phillip M Ayoub & Kristina Stoeckl, “The Double-Helix Entanglements of Transnational Advocacy: Moral Conservative Resistance to LGBTI Rights” (2024) 50:2 *Rev Int Stud* 289–311; Abadir M Ibrahim, “LGBT Rights in Africa and the Discursive Role of International Human Rights Law” (2015) 15:2 *Afr Hum Rights Law J* 263–281; Satang Nabaneh et al, “Contesting Gender and Coloniality: A Lens on Conservative Mobilisations in South Africa, Kenya and Ghana” (2023) 168:4 *Polit Afr* 1–25.

² Ayoub & Stoeckl, “The Double-Helix Entanglements”, *supra* note 1 at 290.

³ Kristopher Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms: LGBT+ Rights in a Contested World” (2023) 128:5 *Am J Sociol* 1381–1429 at 1382.

⁴ *Ibid* at 1391.

⁵ Ayoub & Stoeckl, “The Double-Helix Entanglements”, *supra* note 1 at 296.

⁶ Clifford Bob, *The Global Right Wing and the Clash of World Politics* (Cambridge: Cambridge University Press, 2012) *Cambridge Studies in Contentious Politics* at 3.

⁷ McEwen & Narayanaswamy, *supra* note 1 at 13.

⁸ Ayoub & Stoeckl, “The Double-Helix Entanglements”, *supra* note 1 at 292.

⁹ *Ibid* at 296.

With the foregoing as an important background, this chapter unfolds across five main sections. Section 4.2 identifies and examines the key transnational anti-LGBTIQ+ organizations operating in Kenya, Uganda, and Ghana, mapping their interconnections and resource flows. Section 4.3 analyzes their primary strategies for influencing laws and policies, including lobbying, public opinion campaigns, legal interventions, and the co-option of human rights rhetoric. Section 4.4 explores how global anti-LGBTIQ+ discourse is translated into local contexts through collaboration with domestic movements, engagement with political structures, and strategic navigation of cultural and religious landscapes. Section 4.5 offers a comparative analysis of how these strategies and interactions manifest across the three countries, identifying common patterns and variations based on local opportunities and constraints. Through this examination and learning on the practices of transnational advocacy networks and vernacularization as understood in light of the theories presented in Chapter 2, this chapter provides insight into how transnational networks shape domestic laws and policies affecting LGBTIQ+ persons while maintaining an appearance of local authenticity that shields them from accusations of foreign interference.

4.2 Key Transnational Anti-LGBTIQ+ Actors and Networks

The backlash against LGBTIQ+ rights in Africa is driven by a complex and coordinated network of transnational actors. Among these, U.S.-based evangelical and non-profit organizations play a pivotal role, providing both financial support and ideological justification for restrictive policies in African contexts. As will be demonstrated in this chapter, these international actors collaborate closely with local religious leaders and community influencers, who paradoxically mobilize grassroots opposition by framing LGBTIQ+ rights as a threat to traditional values and national sovereignty. This section examines the key actors operating within Kenya, Uganda, and Ghana, analyzing their strategies, interactions, and the broader implications of their influence. The section reveals not only the specific organizations active in each country but also the transnational connections that link these seemingly separate efforts into a coordinated global campaign.

4.2.1 Key Organizations in Kenya

Since its transition to a new constitution in 2010, Kenya has become a focal point for transnational anti-LGBTIQ+ organizations seeking to influence policy and public opinion across the East African region. As detailed in the following paragraphs, several international actors have

established a significant presence in the country, working through local partners to advance their agendas.

CitizenGo

Founded in August 2013, CitizenGo presents itself as a “community of active citizens” advocating for “life, family, and liberty” through online petitions and action alerts aimed at ensuring that “those in power respect human dignity and individual rights.”¹⁰ It is noteworthy that the well-known phrase, “life, liberty, and the pursuit of happiness” from the US Declaration of Independence is reframed in their objectives with the word “family” taking a central place. The protection of “family” or “family values” is a universal framing for efforts to undermine reproductive and LGBTIQ+ rights that CitizenGo shares with other organizations across multiple regions worldwide.¹¹ As Naureen Shameem documents in a report by the Association for Women’s Rights in Development (AWID):¹²

In recent years, anti-rights actors have pivoted to language on the family, or the “natural” or “traditional family.” The discourse on the family functions as a seemingly innocuous and secular umbrella term that actually houses and perpetuates multiple patriarchal and heteronormative anti-rights positions. The US Christian Right’s focus on the “traditional family” has enabled it to forge global alliances with other fundamentalist movements. An alliance of 25 states launched the Group of Friends of the Family in 2015¹³ and is devoted to mainstreaming this restrictive conception of family in the UN.

And so, CitizenGo serves as a primary online outlet for a diverse coalition that includes the U.S. Christian right, militant European Catholics, Russian Orthodox hardliners, and even sanctioned oligarchs—all collaborating in a concerted campaign against progressive rights.¹⁴ The organization

¹⁰CitizenGo, “About us”, (updated 13 November 2024), online: CitizenGo.org <<https://help.citizengo.org/article/906-about-us>>.

¹¹ *Rights at Risk: Time for Action*, by Naureen Shameem, in *Observatory on the Universality of Rights Trends Report* (Association for Women’s Rights in Development (AWID), 2021) at 73 online: <https://www.awid.org/sites/default/files/2022-01/RightsAtRisk_TimeForAction_OURsTrendsReport2021.pdf>.

¹² *Ibid* at 77.

¹³ Including Uganda.

¹⁴ Jasper Jackson et al, “Unholy Alliance: The Far-Right Religious Network Attacking Reproductive And LGBTQ+ Rights” (25 September 2022), online: *The Bureau of Investigative Journalism* <<https://www.thebureauinvestigates.com/stories/2022-09-25/unholy-alliance-the-far-right-religious-network-attacking-reproductive-and-lgbtq-rights>>.

is particularly known for employing “large-scale public stunts” for its campaigns.¹⁵ Kenya is a key focus for CitizenGo’s activities, with Ann Kioko¹⁶ (also a Kenyan national) as the organization’s campaign director in Africa, playing a central role in mobilizing opposition, organizing media appearances, and coordinating conferences and advocacy efforts.¹⁷

International Organisation for The Family/ World Congress of Families

The International Organization for the Family (IOF) positions itself as a defender of the “natural family,” and it promotes its agenda through its flagship initiative, the World Congress of Families (WCF).¹⁸ WCF operates as a global network connecting conservative organizations “to affirm, celebrate, and defend the natural family as the only fundamental and sustainable unit of society.”¹⁹ Using the guise of promoting “family values,” WCF actively campaigns for policies restricting LGBTIQ+ rights, reproductive rights, and gender equality.²⁰ The organization also claims to unite global leaders, policymakers, and grassroots activists to advocate for its definition of traditional family structures.²¹ WCF conferences and events have been strategic platforms for mobilization and educating attendees on issues such as marriage, parental rights, and opposition to LGBTIQ+ and reproductive rights. Nairobi has hosted a regional WCF conference, through which the organization attempts to shape Kenyan policy and societal norms.²² On its website, WCF lists two Kenyan organizations, the Kenyan Christian Professionals Forum (KCPF) and the African Organization for the Family, as its partners.²³

In view of its persistent efforts to erode LGBTIQ+ rights worldwide, WCF is considered an anti-LGBTIQ+ hate group by an authoritative monitor of hate groups, the US-based Southern Poverty Law Centre (SPLC).²⁴ WCF’s global spread includes ties to the Russian Orthodox Church

¹⁵ “CitizenGo | Equity Forward”, online: <<https://equityfwd.org/global-spotlight/trump/citizengo>>.

¹⁶ Jackson et al, *supra* note 14.

¹⁷ *Ibid.*

¹⁸ “Mission – IOF”, online: <<https://profam.org/mission/>>.

¹⁹ *Ibid.*

²⁰ *World Congress of Families* online: <<https://www.splcenter.org/resources/extremist-files/world-congress-families/>>.

²¹ World Congress of Families, “WCF Conferences and Events – IOF”, online: <<https://profam.org/wcf-conferences-and-events/>>.

²² *Ibid.*

²³ “World Congress of Families Partners 2017”, (14 September 2017), online: <https://profam.org/world-congress-of-families-partners-2017/>.

²⁴ Evelyn Schlatter, “18 Anti-Gay Groups and Their Propaganda” (4 November 2010), online: *Southern Poverty Law Center* <<https://www.splcenter.org/resources/reports/18-anti-gay-groups-and-their-propaganda/>>.

and the Putin regime²⁵ and it has openly praised Russia’s strict anti-LGBTIQ+ laws, aligning itself with global right-wing movements that oppose liberal democratic values and human rights advancements.²⁶

One of WCF’s key Kenyan partners, the KCPF, describes itself as an advocate for “upholding core values centered around Life, Family, Religion, Value-Based Education, and Governance,”²⁷ which, even at face value, is an unusual choice of focus for what is nominally a professional network. In fact, KCPF acts more as a network of conservative Christians who happen to be professionals than as a network of professionals who happen to be conservative Christians. From this perspective, it then makes sense that KCPF provides legal and technical support to shape legislation and policy in alignment with biblical values by bringing together Christian professionals from various denominations.²⁸ The organization has publicly condemned LGBTIQ+ rights, including the 2023 Kenyan Supreme Court ruling²⁹ that allowed LGBTIQ+ persons to form associations, arguing that it would normalize “homosexual behaviors” that are allegedly destructive to individuals, families, communities, and the nation.³⁰ KCPF is currently headed by Charles Kanjama,³¹ a senior Kenyan lawyer who has also initiated or appeared in various litigation challenging progressive rights interpretation.

The African Organization for the Family, another WCF-affiliated group founded by Ann Kioko,³² has a minimal digital footprint which makes it more difficult to assess its statements. Its only known online presence appears to be a Facebook page that is either restricted, deleted, or inaccessible to the public.³³ Nevertheless, through these partnerships, WCF has continued to strengthen its influence in Kenya, embedding itself within local advocacy networks that push for restrictive policies under the pretext of defending Kenyan traditions.

²⁵ note 20.

²⁶ *Exposed: The World Congress of Families; An American Organization Exporting Hate* (Human Rights Campaign, August 2014) at 12 online: <<https://assets2.hrc.org/files/assets/resources/ExposedTheWorldCongressOfFamilies.pdf>>.

²⁷ “KCPF -Kenya Christian Professionals Forum”, online: <https://kcpf.or.ke/>.

²⁸ “KENYA: Christian Professionals in Kenya March to Advocate for Protection of Life and Family Values”, online: <<https://communications.amecca.org/index.php/2023/03/31/kenya-christian-professionals-in-kenya-march-to-advocate-for-protection-of-life-and-family-values/>>.

²⁹ *NGOs Co-ordination Board v Eric Gitari and Others*, 2023 Supreme Court of Kenya.

³⁰ “X.com”, online: X (Formerly Twitter) <https://x.com/KenyaCPF/status/1639571226304626688>.

³¹ “KCPF -Kenya Christian Professionals Forum”, online: <<https://kcpf.or.ke/team/charles-kanjama>>.

³² note 20.

³³ <https://www.facebook.com/FamiliesAfrica/>.

The American Center for Law and Justice (ACLJ)

The American Center for Law and Justice (ACLJ) – infamous, amongst other acts, for the *Dobbs v Jackson Women’s Health Organization* litigation that overturned *Roe v Wade* in the U.S. – is self-described as mandated to “to protect religious and constitutional freedoms” through engagement with “legal, legislative, and cultural issues by implementing an effective strategy of advocacy, education, and litigation.”³⁴ It was founded in 1990 by evangelical leader Pat Robertson and, as evidenced by the several litigation cases documented on its website, has played a key role in advancing conservative Christian legal activism in the U.S. and abroad.³⁵ ACLJ is currently led by Jay Sekulow and has been widely criticized for its opposition to LGBTIQ+ rights, reproductive freedoms, and anti-discrimination protections.³⁶ While it claims to protect religious liberty, its efforts frequently target legislation and policies that seek to expand rights for marginalized groups, particularly in the Global South.

In Kenya, the ACLJ operates through its regional affiliate, the East African Center for Law and Justice (EACLJ), based in Nairobi, Kenya.³⁷ The EACLJ was established with the support of the ACLJ in the wake of Uganda’s 2009 Anti-Homosexuality Bill to influence the constitutional and legislative reform process in Kenya and beyond.³⁸ The EACLJ was particularly active during the drafting of Kenya’s 2010 Constitution, arguing that its non-discrimination and medically necessary abortion provisions could create a legal pathway for LGBTIQ+ rights and expanded access to abortion.³⁹ The organization actively campaigned against the draft constitution, with its director warning that it promoted “gay rights and abortion,”⁴⁰ and sought to mobilize Kenyan voters against its passage. Despite these efforts, the constitution was approved, though the EACLJ and its allies have continued working to restrict any perceived progressive advancements.⁴¹ The EACLJ also partners with other conservative Christian organizations in Kenya, including the

³⁴ “About the ACLJ | American Center for Law and Justice”, online: American Center for Law and Justice <https://aclj.org/our-mission/about-aclj>.

³⁵ *Ibid.*

³⁶ *Colonizing African Values: How the U.S. Christian Right is Transforming Sexual Politics in Africa*, by Kapyra Kaoma (Political Research Associates, 2012) at 10–11 online: <<https://politicalresearch.org/sites/default/files/2018-10/Colonizing-African-Values.pdf>>.

³⁷ *Ibid* at 11.

³⁸ Kapyra Kaoma, “Major Christian Right Actors Seek to Criminalize Homosexuality in Africa” (2012) Polit Res Assoc, online: <<https://politicalresearch.org/2012/11/05/major-christian-right-actors-seek-criminalize-homosexuality-africa>>.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Kaoma, *supra* note 36 at 11.

KCPF,⁴² to pursue legal challenges and public campaigns against LGBTIQ+ rights and reproductive health policies.⁴³ These collaborations have sought to influence public opinion through media engagements, legal petitions, and advocacy efforts targeting lawmakers.⁴⁴

Beyond advocacy, the ACLJ has played a key role in shaping conservative policies in the United States. The organization was instrumental in drafting the U.S. Defense of Marriage Act (DOMA), which sought to define marriage as exclusively between a man and a woman.⁴⁵ It has actively opposed non-discrimination protections for LGBTIQ+ individuals, fought against marriage equality, and lobbied against hate crime legislation such as the Matthew Shepard and James Byrd Hate Crimes Prevention Act.⁴⁶ The ACLJ's work in Africa mirrors these efforts, leveraging religious and legal narratives from the Global North to reinforce conservative social policies in Africa.

4.2.2 Key Organizations in Uganda

Uganda has been particularly susceptible to the influence of transnational anti-LGBTIQ+ actors and their allies in Africa since the late 2000s, resulting in some of the most severe anti-LGBTIQ+ legislation on the continent. Several transnational actors, working with local politicians, have played instrumental roles in shaping Uganda's legal and social landscape regarding sexual orientation and gender identity.

International Organisation for The Family/ World Congress on Families

As noted above, the World Congress of Families (WCF) – IOF's flagship event – plays an important role in shaping anti-LGBTIQ+ policies, including in Uganda.⁴⁷ In 2018, the Uganda Conference on the Family, hosted by Uganda Christian University, was prominently featured on the International Organization for the Family (IOF) website.⁴⁸ This conference was billed as:⁴⁹

⁴² "About Us", online: *East African Center for Law and Justice* <<https://eacj.com/about-us.html>>.

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *The Legal Arm of the Christian Right*, by Brian Tashman, politicalresearch.org (Political Research Associates, 11 May 2012) online: <<https://politicalresearch.org/2012/11/05/the-legal-arm-of-the-christian-right-inside-the-american-center-for-law-and-justice>>.

⁴⁶ *Ibid.*

⁴⁷ note 26 at 6.

⁴⁸ "2018 Uganda Conference on the Family, Uganda Christian University, May 21 -22" (27 April 2018), online: <<https://profam.org/2018-uganda-conference-on-the-family-uganda-christian-university-may-21-22/>>.

⁴⁹ *Ibid.*

an ideal opportunity for a good mix of key societal delegates – religious, political and governmental, non-governmental, and cultural leaders, researchers/educators, etc. – to come and reason together about the situation of the family (past, present & future) with focus on the African family, while drawing lessons from other cultures and histories.

It is no wonder then that there was significant pressure to pass policies criminalizing same-sex relationships, contributing to the harsh legal framework that led to the Anti-Homosexuality Acts.⁵⁰ WCF's strengthened its efforts in Uganda through ties to high-profile political figures, particularly First Lady Janet Museveni. Janet Museveni attended the WCF conferences in New York (2002) and Abuja, Nigeria (2009), alongside the wives of the then president and vice president of Nigeria, years before Uganda hosted its own WCF conference in 2018.⁵¹ These events coincide with the emergence of severe anti-LGBTIQ+ bills in the parliaments of both countries. To date, WCF continues to be one of the platforms through which ideological support, resources, and networking opportunities are provided in Uganda, emboldening Ugandan lawmakers to pursue increasingly restrictive policies against LGBTIQ+ individuals.⁵²

Abiding Truth Ministries/Scott Lively

Abiding Truth Ministries (ATM) is a U.S.-based nonprofit organization founded in 1997 by Scott Lively, a well-known vocal opponent of LGBTIQ+ rights. The organization, also classified as a hate group by the Southern Poverty Law Center,⁵³ promotes anti-LGBTIQ+ rhetoric, the criminalization of same-sex relationships, and conversion therapy.⁵⁴ Lively is also infamous for co-authoring *The Pink Swastika*, a book that falsely claims homosexuals played a central role in Nazi Germany. His writings and speeches propagate conspiracy theories, including unfounded assertions linking LGBTIQ+ individuals to global atrocities such as the Rwandan genocide.⁵⁵

⁵⁰ note 26 at 6.

⁵¹ *Ibid* at 18.

⁵² Soita Khatondi Wepukhulu, “The West Has Queer Africans’ Blood on its Hands”, online: *Open Democr* <<https://www.opendemocracy.net/en/5050/africa-queer-rights-lgbtqi-western-anti-rights-groups-accountable/>>.

⁵³ Schlatter, *supra* note 24.

⁵⁴ Alex Bollinger, “Christian Pundits say Homosexuality is a Bigger Sin than Slavery, So Black People Should Get Over It”, online: *LGBTQ Nation* <<https://www.lgbtqnation.com/2020/06/christian-pundits-say-homosexuality-bigger-sin-slavery-black-people-get/>>.

⁵⁵ Rodrigo Santodomingo, “The homophobic agenda of ultra-conservative US Christians is taking hold in Uganda” (24 June 2023), online: *EL PAÍS* <<https://english.elpais.com/international/2023-06-24/the-homophobic-agenda-of-ultra-conservative-us-christians-is-taking-hold-in-uganda.html>>.

Lively has been deeply involved in anti-LGBTIQ+ advocacy in Uganda, most notably attending a 2009 conference in Kampala where he described the LGBTIQ+ movement as “an evil institution” seeking to “defeat the marriage-based society and replace it with a culture of sexual promiscuity.”⁵⁶ He has also been a frequent speaker at World Congress of Families (WCF) events,⁵⁷ and represents a clear demonstration of the interconnectedness of Western conservative organizations advancing anti-LGBTIQ+ agendas in Africa.

Consequently, Lively has worked closely with several Ugandan leaders known for their anti-LGBTIQ+ activism, including Stephen Langa, Martin Ssempe, James Buturo, and David Bahati.⁵⁸ Stephen Langa, the leader of Uganda’s Family Life Network,⁵⁹ advocates for what he describes as traditional family values and morals of the Ugandan society. Martin Ssempe, a pastor known for his inflammatory rhetoric against homosexuality, publicly opposed the death penalty provision in Uganda’s Anti-Homosexuality Bill but remained a staunch supporter of stricter criminalization.⁶⁰ James Buturo, the former Minister of Ethics and Integrity, frequently denounced LGBTIQ+ rights.⁶¹ David Bahati, infamously, was the principal sponsor of the 2009 anti-LGBTIQ+ bill.

Ugandan activists and human rights organizations widely believe that Lively’s advocacy played a significant role in shaping Uganda’s 2014 Anti-Homosexuality Act, which initially included provisions for life imprisonment and the death penalty for same-sex conduct before being struck down by the Constitutional Court. In response to his activities, Sexual Minorities Uganda (SMUG) filed a lawsuit⁶² against Lively in a U.S. federal court in Massachusetts, accusing him of inciting persecution under international law. Although the case was dismissed on jurisdictional grounds, the court underscored the transnational impact of his actions noting that: “Anyone reading this memorandum should make no mistake. The question before the court is not whether

⁵⁶ “Scott Lively”, online: *South Poverty Law Cent* <<https://www.splcenter.org/resources/extremist-files/scott-lively/>>. ⁵⁷ note 26 at 6.

⁵⁸ *Sexual Minorities Uganda v Scott Lively*, 2017 United States District Court (Massachusetts).

⁵⁹ Emerson Hodges, “Despite Denials, Harsh Anti-LGBTQ+ law in Uganda Appears to Be Based on U.S. Rhetoric and Pseudoscience” (13 February 2024), online: *Southern Poverty Law Center* <<https://www.splcenter.org/resources/hatewatch/despite-denials-harsh-anti-lgbtq-law-uganda-appears-be-based-us-rhetoric-and-pseudoscience/>>.

⁶⁰ “Uganda Gay Death Penalty Rejected by Pastor Ssempe”, *BBC News* (10 May 2011), online: <<https://www.bbc.com/news/world-africa-13346693>>.

⁶¹ “Buturo Quits Cabinet”, *New Vis* (10 April 2015), online: <<https://web.archive.org/web/20150410224821/http://www.newvision.co.ug/D/8/12/749139>>.

⁶² *Sexual Minorities Uganda v Scott Lively*, *supra* note 58.

Defendant’s actions in aiding and abetting efforts to demonize, intimidate, and injure LGBTI people in Uganda constitute violations of international law. They do.”⁶³ Lively’s attempt to appeal this statement in the district court’s decision was ultimately dismissed.⁶⁴

Family Watch International

Family Watch International (FWI), expectedly, describes itself as an advocate for preserving and promoting “traditional marriage” as well as “parental rights,” “human life,” “religious liberty,” and “the health and innocence of children.”⁶⁵ Despite the seemingly lofty rhetoric of its self-description, its anti-LGBTIQ+ activities have earned it a designation by the SPLC as a hate group.⁶⁶ Its president, Sharon Slater, is a well-known anti-rights actor in Uganda who promotes conversion practices,⁶⁷ and has made statements portraying LGBTIQ+ identities as inherently harmful, characterizing same-sex relationships as “fraught with heartache and disease” and claiming that “the homosexual lifestyle is generally promiscuous.”⁶⁸ Beyond Uganda, FWI actively campaigns against LGBTIQ+ rights and reproductive health policies worldwide, particularly at the United Nations. Between 2019 and 2022, it increased its financial presence in Africa by 495%,⁶⁹ operating under the name Global Helping to Advance Women & Children,⁷⁰ a name that obscures its primary anti-LGBTIQ+ agenda. FWI also sponsors in-country and overseas conferences with themes such as “African Family Policy Conference” and “African Inter-Parliamentary Conference on Family Values and Sovereignty”⁷¹ where politicians, lawyers, and religious leaders from various African countries are able to interact and exchange ideas that ultimately translate into policy and legislative proposals.

⁶³ *Ibid.*

⁶⁴ *Sexual Minorities Uganda v Scott Lively*, 2018 United States Court of Appeals (First Circuit).

⁶⁵ “About Us” (21 August 2017), online: <<https://familywatch.org/about-us/>>.

⁶⁶ Schlatter, *supra* note 24.

⁶⁷ “Family Watch International”, online: *Southern Poverty Law Center* <<https://www.splcenter.org/resources/extremist-files/family-watch-international/>>.

⁶⁸ *Ibid.*

⁶⁹ *Following the Money: Inside the U.S. Christian Right’s Spending Boom in Africa* (Institute for Journalism and Social Change (IJSC), 23 October 2024) at 14 online: <<https://static1.squarespace.com/static/67b73a68e16b30181e91bfb9/t/67bc4dbc09b20d50d7c78f16/1740393927962/Inside+The+U.S.+Christian+Right%27s+Spending+Boom+in+Africa+-+IJSC.pdf>>.

⁷⁰ *Ibid* at 8.



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Day 1 - Wednesday, May 1st 2024 THEME: Re-Affirming our African Family and Cultural Values

7:30 am	Hotel Breakfast Buffet	
8:15 am	Arrivals and settling in at the Conference Venue	
8:30 am	Principals Assembled	
8:45	VIPs assemble in Holding Rooms	
SESSION I		
	Protocol and Introductions	Hon. Sarah Opendi, Member of Uganda Parliament: Conference (15 min) Mr. Heek Jan Van Soestbergen, Director Christian Council International- Good will message (3 min)
	Welcome and Official Opening of the Conference	Hon. Hon. Thomas Tayebwa, Deputy Speaker of the Parliament of Uganda and Patron Uganda Parliamentary Forum on the Family, Opening Remarks (10 min) H. Rev. Dr. Sheldon Nsubigwa, Bishop of Ankole Diocese and Chancellor of Bishop Stuart University in Kabale Uganda, Speech: "Protecting the African Children and families from emerging global threats: a Religious perspective" (20 min) H.H. Sylvia Nagginda, The Nabagereka of the Kingdom (obwa Kabaka) of Buganda, Keynote address: " safeguarding our Traditional and Cultural Inherit against External Influence" (23 min) H. Hon Phando T.C. Skelton, Speaker of the National Assembly of Botswana: Good will message (10 min) H. Hon. Fabakary Tembong Jatta, Speaker of the National Assembly of the Gambia: Good will message (10 min) H. Hon. Anthe Annet Amang, Speaker of Uganda Parliament, Speech and Officially Open the Conference (10 min)
9:00 am		
10:30 am	PHOTO SESSION AND HEALTH BREAK	
SESSION II		
	Session Chair: H. Hon. Thomas Tayebwa, Deputy Speaker of the Parliament of Uganda	
11:00 am	Understanding the ACP-EU (Suzanne) Commitment, its implications, and the Oversight role of parliamentary oversight	Hon Ashem Songwe MP Malawi and Head of Delegation Malawi
11:30 pm	Country presentations by Heads of Delegations and Debate on substance of the agreement (15 minutes each)	Heads of Delegation (representatives (by order of registration): Ghana, Zimbabwe, Malawi, Cameroon, Gambia, Zambia, Tanzania, Comoros, South Sudan, Nigeria, Ethiopia, Egypt, Burundi, Somalia, Botswana, Eswatini, Burkina Faso, Kenya
1:00 pm	LUNCH BREAK	
SESSION III		
2:00 pm	Legal options available in face of the ACP-EU signing	Mr. Hanibal Uwafu, President African Bar Association
2:20 pm	Discussions over the model Reservations and Amendments	Mr. Charles Kajjama, SC Chairperson Kenya Christian Professionals Forum and Board Member African Christian Professionals Forum
2:40 pm	Debate on the legal options	President: Hon Ashem Songwe MP Malawi and Head of Delegation Malawi
4:30 pm	TEA BREAK	
END OF DAY ONE		
DINNER		
7:00 pm	HOSTED BY THE SPEAKER OF PARLIAMENT OF UGANDA GUEST SPEAKER: Hon Dr. Miria Mutande former Minister of Ethics and Integrity Good will messages: Dr. Seyoum Antonis FWA, Mr. Heek Jan Van Soestbergen- CCI VENUE: Imperial Botanical Beach Hotel	

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Figure 1 Screenshots of webpage and conference files from FWI events

The Fellowship Foundation

The Fellowship Foundation, also known as “The Family,” is a prominent U.S.-based religious organization that primarily promotes Christian fellowship but has also been linked to anti-rights movements. Although not as visible and vocal in its anti-LGBTIQ+ agenda as some of the other actors discussed above, its anti-rights activities have been occasionally documented. For instance, between 2008 and 2018, it provided over \$20 million to Uganda, making it the largest U.S. financial backer of conservative Christian movements in the country.⁷¹ As the sponsor of the “National Prayer Breakfast” in the U.S., it has played a key role in Uganda’s National Prayer Breakfast which serves as an influential event fostering ties between Ugandan leaders, including President Museveni, and U.S. evangelical figures.⁷² The foundation has close ties to Ugandan MP David Bahati who, as noted above, was the sponsor of the 2009 ‘Kill the Gays Bill’ that laid the groundwork for Uganda’s 2009 and later 2023 Anti-Homosexuality Acts. Bahati was a mentee of Tim Kreutter,⁷³ a U.S. citizen who represents the organization in Uganda, and Kreutter has been credited as the inspiration for Bahati’s legislative actions.⁷⁴

In October 2023, US Republican Congressman Tim Walberg, a co-chair of The Family, publicly endorsed Uganda’s anti-LGBTIQ+ stance while speaking at Uganda’s National Prayer Breakfast, urging Ugandan leaders to resist international criticism.⁷⁵ His audience included President Yoweri Museveni of Uganda, who had earlier signed the law in May 2023, further proof of the organization’s deep entanglement in Uganda’s legislative processes.

4.2.3 Key Organizations in Ghana

Ghana has also become a significant focus for transnational anti-LGBTIQ+ advocacy in recent years in response to growing pro-LGBTIQ+ advocacy in Ghana, with a number of organizations with links to Kenya and Uganda playing pivotal roles in shaping policy and public opinion against

⁷¹ Lydia Namubiru & Soita Khatondi Wepukhulu, “Exclusive: US Christian Right Pours More Than \$50m Into Africa” (29 October 2020), online: *Open Democr* <<https://www.opendemocracy.net/en/5050/africa-us-christian-right-50m/>>.

⁷² Jonathan Larsen, “Uganda National Prayer Breakfast Rallies Against Gay Rights” (10 October 2022), online: *Young Turks* <<https://tyt.com/reports/inside-the-family/2022/10/10/a627839142e5f9e48>>.

⁷³ Jonathan Larsen, “The Family’s Secret History in Uganda” (6 April 2023), online: *Young Turks* <<https://tyt.com/reports/inside-the-family/2023/04/06/5dd03304b650e5339>>.

⁷⁴ *Ibid.*

⁷⁵ Jonathan Larsen, “U.S. Prayer Breakfast Co-Chair Defends Uganda’s “Kill the Gays” Law” (20 December 2023), online: *Young Turks* <<https://tyt.com/reports/inside-the-family/2023/12/20/prayer-breakfast-chair-defends-kill-gays-law>>.

LGBTIQ+ rights. These organizations have strategically leveraged local partnerships and cultural contexts to advance their agendas, culminating in the introduction of Ghana’s Family Values Bill to parliament in June 2021.

CitizenGO

CitizenGO, discussed earlier in the Kenyan context, has also strategically focused on Ghana, with 34 of its 52 Africa-related petitions targeting both Kenya and Ghana.⁷⁶ The organization has actively pushed for stricter anti-LGBTIQ+ legislation in Ghana, using digital advocacy to mobilize conservative resistance against progressive reforms.⁷⁷ CitizenGO has collaborated with Advocates for Christ Ghana, a group positioning itself as a Christian voice in national affairs. In March 2020, a petition hosted on CitizenGO’s platform called for the cancellation of an LGBTIQ+ conference in Ghana,⁷⁸ garnering over 19,000 signatures and extensive social media engagement. The campaign successfully pressured the government to cancel the event, demonstrating CitizenGO’s ability to shape Ghana’s sociopolitical discourse through local partnerships.⁷⁹ The local partner, Advocates for Christ Ghana, describes itself as “a growing movement of professionals, parents, pastors and of all Christians seeking to provide a permanent and proactive voice on national issues in Ghana”⁸⁰ and requires its members, among other directives, to be “vigilant and alert about laws, policies, trends, practices and issues that could compromise the biblical standards required of Christians,”⁸¹ firmly tying the group’s objectives to that of similar U.S. based evangelical transnational actors. As such, CitizenGO uses this alignment with Ghanaian conservative groups to embed anti-LGBTIQ+ narratives within national debates, reinforcing its broader transnational agenda against reproductive freedoms and LGBTIQ+ rights.

International Organization for the Family/ World Congress of Families

The World Congress of Families (WCF), described above in the Kenyan and Ugandan contexts for its opposition to LGBTIQ+ rights and reproductive freedoms, held its 2019 African Regional

⁷⁶ Jackson et al, *supra* note 14.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ “Who We Are - Advocates for Christ - Ghana” (25 August 2021), online: <<http://www.advocates4christgh.com/who-we-are/>>.

⁸¹ *Ibid.*

Conference in Accra, Ghana.⁸² The event served as a platform to connect political and religious leaders committed to promoting the “pro-family movement” and the “natural family”⁸³ which, again, are phrases for indicating their opposition to LGBTIQ+ rights, abortion, and a liberal human rights framework. Ghana’s political and religious leaders who shared this ideological leaning were part of this event.⁸⁴

WCF emphasized its goal of making Africa “a more active advocate within the global pro-family movement.”⁸⁵ In this aim, the organization was successful as its activities played a crucial role in reinforcing anti-LGBTIQ+ rhetoric and policies within Ghana leading to the emergence of Ghana’s anti-LGBTIQ+ legislation within two years.

One of WCF’s partners within Ghana is the National Coalition for Proper Human Sexual Rights and Family Values, an influential coalition of anti-LGBTIQ+ organizations composed of political, religious, and cultural elites.⁸⁶ This coalition, whose name would be eventually adopted for Ghana’s anti-LGBTIQ+ legislation in 2022, played a central role in shaping public opinion in Ghana with WCF’s support, contributing to an increasingly hostile environment for LGBTIQ+ individuals. WCF also maintains it links to CitizenGo, with Ann Kioko of CitizenGo serving as a keynote speaker at the 2019 Conference.⁸⁷

4.2.4 Analysis of Cross-Border Network Linkages and Material Support

The transnational anti-LGBTIQ+ actors operating in Kenya, Uganda, and Ghana do not function in isolation but rather, in the words of Keck and Sikkink, as “dense exchanges of information and

⁸² “World Congress of Families Regional Conference, Accra, Ghana 2019 – Report – Family and Human Life Unit”, online: <<https://fhl.csn-churchandsociety.org/world-congress-of-families-regional-conference-accra-ghana-2019-report/>>; Beyonce Diamond Kpogli, “African Regional Conference Of World Congress Of Families To Be Held In Accra”, *Modern Ghana* (25 September 2019), online: <<https://www.modernghana.com/news/957212/african-regional-conference-of-world-congress-of.html>>.

⁸³ Kpogli, *supra* note 82.

⁸⁴ Rufaro Samanga, “The World Congress of Families is Expanding its Homophobic Agenda into West Africa”, (7 November 2024), online: OkayAfrica <<https://www.okayafrica.com/world-congress-of-families-holds-anti-lgbtqi-conference-in-ghana/>>.

⁸⁵ “Ghana Should Resist World Congress of Families’ Anti-LGBT Message” (31 October 2019), online: <<https://www.hrw.org/news/2019/10/31/ghana-should-resist-world-congress-families-anti-lgbt-message>>.

⁸⁶ Lydia Namubiru, “The Disinformation Campaign Targeting Ghana’s LGBT Community”, *Open Democracy* (21 March 2022), online: <<https://www.opendemocracy.net/en/5050/ghana-lgbt-queer-community-media-disinformation-campaign/>>.

⁸⁷ Jackson et al, *supra* note 14.

services,”⁸⁸ each acting as part of an interconnected global network that shares resources, strategies, and personnel. These cross-border linkages enable the effective translation of conservative ideology into local contexts while maintaining cohesive messaging and goals across different countries.

A notable feature of these networks is their substantial financial backing. As noted above, Fellowship Foundation provided over \$20 million to Uganda between 2008 and 2018, while Family Watch International significantly increased its financial presence in Africa between 2019 and 2022. This material support enables local partners to conduct advocacy campaigns, organize public events, and influence policymaking processes in ways that would be impossible without external assistance. The substantial financial backing provided by transnational organizations also translates into different forms of leverage across the three countries. In Uganda, this support enabled the development of direct political relationships with key lawmakers, including David Bahati who sponsored the bill that resulted in the 2009 Anti-Homosexuality Act. In Kenya, financial resources have supported sophisticated legal advocacy through the EACLJ, which engages in strategic litigation and constitutional interpretation. In Ghana, financial backing has facilitated public campaigns and grassroots mobilization through organizations like the National Coalition for Proper Human Sexual Rights and Family Values.

These variations in how financial resources are deployed reflect strategic assessments of where leverage can most effectively be applied in each national context. The material dimensions of transnational advocacy, as Bob notes, are not merely incidental to ideological commitments but represent strategic investments in creating sustainable opposition to LGBTIQ+ rights across different political environments.⁸⁹ This financial support creates dependencies and influences that extend far beyond individual policy battles, embedding anti-LGBTIQ+ perspectives within institutional structures and civil society organizations.

The interconnectedness of these networks is also demonstrated by the overlap in key personnel and organizational partnerships. The shared presence of organizations like WCF and CitizenGO across multiple countries facilitates the transfer of knowledge, strategies and tactics between different national boundaries and contexts. Approaches that proved successful in Uganda

⁸⁸ Margaret E Keck & Kathryn A Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y: Cornell University Press, 1998) at 2.

⁸⁹ Bob, *supra* note 6 at 116.

were adapted and deployed in Kenya and Ghana evident, for instance, in the similar framing of anti-LGBTIQ+ legislation in Uganda and Ghana, both presented as defenses of national sovereignty and cultural values despite their common origins in transnational advocacy. Likewise, Ann Kioko of CitizenGO operates across both Kenya and Ghana, while the WCF maintains partnerships with local organizations in all three countries.

These networks also show significant ideological coherence despite operating in different cultural contexts. Their messaging consistently frames LGBTIQ+ rights as foreign impositions that threaten national sovereignty, family values, and the well-being of children. This framing is adapted to resonate with local audiences but maintains the core generic message of opposition to LGBTIQ+ rights, reproductive freedom, and gender equality. The networks also engage with different institutional venues depending on the opportunities available in each country. In Kenya, where courts have occasionally recognized limited rights for LGBTIQ+ persons, organizations like EACLJ focus more on using the courts as a battleground, initiating or intervening in litigation to restrict constitutional rights interpretation. In Uganda, where courts are already “captured” by the policy positions of the Museveni regime, groups like The Fellowship Foundation focus on leveraging close political connections to influence legislation directly. In Ghana, with more public participation in political processes and policymaking, organizations focus on mobilizing public opinion campaigns to pressure political leaders.

Beyond the vertical connections between Western organizations and local African partners, these networks have fostered horizontal cooperation across African countries that creates a continental anti-rights ecosystem. Through “family values” conferences and workshops, African politicians, lawyers, and religious leaders can gather to interact and exchange ideas that ultimately translate into policy and legislative proposals. These conferences create platforms for cross-pollination of strategies and provide space for developing coordinated responses to progressive advocacy across the continent. Consequently, the similarities between Ghana’s proposed “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill” and Uganda’s 2023 Anti-Homosexuality Act are not coincidental, as they bear similarities in their legal approaches to LGBTIQ+ issues, suggestive of systematic coordination and information sharing between anti-LGBTIQ+ networks across these countries.⁹⁰

⁹⁰ Peter Fabricius, “Ghana and Uganda Echo Each Other’s Clamp Down on Gay People” (26 April 2024), online: *ISS Africa* <<https://issafrica.org/iss-today/ghana-and-uganda-echo-each-other-s-clamp-down-on-gay-people>>.

The following section will examine the specific strategies these organizations employ, analyzing how they utilise Keck and Sikkink’s four tactics of information politics, symbolic politics, leverage politics, and accountability politics⁹¹ to advance their agendas in Kenya, Uganda, and Ghana.

4.3 Strategies for Influencing Laws and Policies

Across Africa, these transnational conservative networks continue to shape legal and policy frameworks that restrict LGBTIQ+ rights. These networks employ a range of strategies to influence public opinion, legal systems, and political structures, leveraging professional organizations, religious institutions, and legal advocacy to advance their agendas. Under the guise of protecting national sovereignty and cultural values, these actors have mobilized resistance to LGBTIQ+ rights, reproductive freedoms, and gender equality. This section examines the primary strategies employed by these networks, with a particular focus on their effectiveness in Kenya, Uganda, and Ghana.

4.3.1 Lobbying and Direct Engagement with Policymakers

Keck and Sikkink define leverage politics as “the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence.”⁹² They suggest that this ability often involves two forms: material leverage, where economic or political resources are linked to policy changes, and moral leverage, which employs the “mobilization of shame” by exposing actors’ behaviors to international scrutiny.⁹³ And so, while homophobia in Africa is not new, the recent intensification of anti-LGBTIQ+ policies and rhetoric has been fueled by substantial ideological and financial backing from Western conservative Christian groups,⁹⁴ increasing the leverage that local actors would otherwise not have had within their domestic contexts.

Lobbying is a strategic approach to raising public awareness and mobilizing support for specific causes. Its primary goal is to influence decision-makers to take or refrain from taking

⁹¹ Keck & Sikkink, *supra* note 88 at 16–25.

⁹² *Ibid* at 16.

⁹³ *Ibid* at 23.

⁹⁴ Ibrahim, *supra* note 1.

particular actions.⁹⁵ In the context of transnational anti-LGBTIQ+ actors, lobbying and direct engagement with policymakers positions actors to target points of vulnerability and apply pressure through influential allies, institutions, or public exposure to alter the cost-benefit calculations of their targets.⁹⁶ In this way, these actors can achieve influence disproportionate to their formal power, effectively pressuring more powerful entities like governments or corporations to adopt their preferred policies.

Transnational anti-LGBTIQ+ networks have systematically infiltrated United Nations (UN) mechanisms through organized platforms including the Group of Friends of the Family.⁹⁷ The Group of Friends of the Family, launched in 2015 by 25 states including Uganda, has mainstreamed restrictive family concepts within UN discourse.⁹⁸ McEwen and Narayanaswamy describe how anti-gender movements use professionalized lobbying strategies, leveraging their influence at international institutions such as the UN to promote pro-family policies while blocking progressive resolutions.⁹⁹ Various organizations including Alliance Defending Freedom and Family Watch International (US) have obtained Special Consultative ECOSOC Status at the UN, enabling them to access UN spaces and organize side events.¹⁰⁰ As Velasco also notes at the UN Human Rights Council, “between 2008 and 2016, 33 member states issued 136 recommendations to strengthen the ‘natural’ or ‘traditional’ family during the Universal Period Review.”¹⁰¹ Family Watch International, working with members of the UN Family Rights Caucus - a global anti-rights network concerned with “the natural family” – has actively campaigned against LGBTIQ+ rights at the UN.¹⁰²

At the African Union level, anti-rights actors have targeted reproductive rights mechanisms. The Catholic organization, Human Life International, and Catholic clergy successfully lobbied several African states against adopting the Maputo Protocol in its entirety

⁹⁵ Lois Levy, “Lobbying: A Tactic for Social Change” (26 March 2019), online: *The Commons* <<https://commonslibrary.org/lobbying-a-tactic-for-social-change/>>.

⁹⁶ Keck & Sikkink, *supra* note 88 at 29.

⁹⁷ Shameem, *supra* note 11 at 77, 119.

⁹⁸ *Ibid* at 77.

⁹⁹ McEwen & Narayanaswamy, *supra* note 1 at 14.

¹⁰⁰ Haley McEwen, “Nuclear Power: The Family in Decolonial Perspective and ‘Pro-family’ Politics in Africa” (2017) 34:6 *Dev South Afr* 738–751 at 13.

¹⁰¹ Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3 at 1392.

¹⁰² Nabaneh et al, *supra* note 1 at 7–8.

because Article 14 expands access to medical abortion.¹⁰³ In Kenya, Catholic clergy urged the government not to sign the Maputo Protocol in 2007 and 2009, following Pope Benedict XVI's condemnation of the document.¹⁰⁴ These coordinated efforts across UN and AU mechanisms, even when not directly engaged with LGBTIQ+ rights, are still cable of providing states with "cover for anti-LGBTI animus and policies that transgress pro-LGBTI norms."¹⁰⁵ In recent years, organizations like Citizen Go and FWI have started engaging the African human rights mechanisms, particularly the African Commission on Human and Peoples' Rights (ACHPR) and, as discussed in Chapter 5, have led campaigns to stir outrage against pro LGBTIQ+ norms advanced by the ACHPR.

In the context of anti-LGBTIQ+ advocacy, rather than rejecting international institutions outright, these actors strategically engage with them, reframing transnational conservative messages to align with local legal and cultural contexts that can serve as a "moral leverage." This is how organizations like the World Congress of Families (WCF) influence African policymakers in enacting legislation that curtails LGBTIQ+ rights.

In Uganda, for example, U.S. evangelical and conservative figures, including Scott Lively, have mobilized African clerics and politicians against perceived threats to traditional values.¹⁰⁶ Lively's involvement in the drafting of Uganda's notorious "Kill the Gays" bill, as well as the subsequent alien torts claim filed against him for his role in advocating anti-LGBTIQ+ legislation, highlight the increased capacity that transnational actors bring to lobbying efforts.¹⁰⁷ Likewise, the Fellowship Foundation has played a pivotal role in sustaining political support for these policies through the National Prayer Breakfast in Uganda, which fosters alliances between conservative politicians and religious leaders.¹⁰⁸ In Kenya, the ACLJ actively tried to lobby against the adoption of broad non-discrimination provisions in the 2010 Constitution, through its local affiliate EACLJ and, although unsuccessful, was able to mobilize moral panic on LGBTIQ+ rights.¹⁰⁹ The anti-LGBTIQ+ legislative proposals and constitutional amendments introduced in parliament tend to

¹⁰³ Lison Guignard, "Résistances Catholiques au Protocole de Maputo. Mobilisations et Controverses Autour de la Libéralisation de l'Avortement en Afrique" (2017) 18 Genre Sex Société, online: <<http://journals.openedition.org/gss/4076>>.

¹⁰⁴ *Ibid.*

¹⁰⁵ Velasco, "Transnational Backlash and the Deinstitutionalization of Liberal Norms", *supra* note 3 at 1392.

¹⁰⁶ Kaoma, *supra* note 36 at 8.

¹⁰⁷ Ibrahim, *supra* note 1 at 266.

¹⁰⁸ Larsen, *supra* note 72.

¹⁰⁹ Kaoma, *supra* note 36 at 11.

be drafted by local actors “ideologically mentored” and trained by transnational actors,¹¹⁰ creating a dynamic where proposed legal frameworks reflect American evangelical or global conservative priorities rather than the lived realities of African societies.¹¹¹

These type of leverage politics are often deployed alongside the other tactics identified by Keck and Sikkink. For instance, lobbying often takes place in high-profile contexts such as conferences and the national breakfast, demonstrating the intersection of leverage politics and information politics, that is, “the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact.”¹¹² As noted earlier, WCF and ACLJ frequently organize conferences and workshops attended by high-ranking government officials and religious leaders. WCF, in particular, uses regional and international gatherings to strengthen political networks and launch targeted anti-gender campaigns. These events create spaces where information is strategically shared with decision-makers who have the power to implement legislative changes, while simultaneously building networks of influence across different levels of governance.

Keck and Sikkink describe how progressive transnational networks also use information politics to lobby policymakers:¹¹³

Networks strive to uncover and investigate problems and alert the press and policymakers. One activist described this as the “human rights methodology [...] promoting change by reporting facts.” To be credible, the information produced by networks must be reliable and well documented. To gain attention, the information must be timely and dramatic. Sometimes these multiple goals of information politics conflict, but both credibility and drama seem to be essential components of a strategy aimed at persuading publics and policymakers to change their minds.

Considering how transnational anti-LGBTIQ+ actors mimic the tactics of human rights actors, it is not surprising that one of the most effective lobbying tactics employed by CitizenGO and its allies involves a hybrid online-to-offline strategy. By gathering digital petition signatures, CitizenGO has been able to secure meetings with policymakers, presenting these petitions as

¹¹⁰ *Ibid* at 9.

¹¹¹ *Ibid*.

¹¹² Keck & Sikkink, *supra* note 88 at 16.

¹¹³ *Ibid* at 19.

evidence of widespread public support for restrictive legislation.¹¹⁴ These efforts are often accompanied by press conferences to generate media coverage and public pressure. Transnational anti-rights actors also integrate lobbying and direct legislative involvement into their broader strategies.¹¹⁵ Their presence extends across multiple international institutions, including the United Nations Human Rights Council, the European Union, and the Organization of American States (OAS).¹¹⁶ Through these avenues, conservative networks exert disproportionate influence and shape policy discussions to advance their anti-LGBTIQ+ agendas.¹¹⁷

These lobbying tactics are indicative of a highly sophisticated, well-organized, and professionalized approach to advocacy, one that rivals leading human rights organizations. Unlike the domestic homophobia that often manifests as harassment, blackmail, assault, death threats, mob violence, and killings, or the violent and hateful rhetoric typical of grassroots religious conservatism, these movements operate with a strategic understanding of political power and influence. Their lobbying spans multiple levels, from local communities and national legislatures to regional entities such as the African Union and global platforms such as the United Nations.

4.3.2 Public Opinion Campaigns and Grassroots Mobilization

Public opinion campaigns and grassroots mobilization have become central strategies employed by transnational anti-LGBTIQ+ networks to shape societal attitudes and influence policy decisions. These efforts frequently adopt what Keck and Sikkink describe as symbolic politics “the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away.”¹¹⁸ In the African anti-LGBTIQ+ context, symbolic politics are not used to illustrate rights violations in far-away locales as progressive politics often do but to frame LGBTIQ+ rights as external impositions from far away (Western) societies and international institutions that threaten national sovereignty, religious and cultural values, and the “natural” family as discussed in the previous section of this chapter.

¹¹⁴ Shameem, *supra* note 11 at 81.

¹¹⁵ *Ibid* at 92.

¹¹⁶ Korolczuk & Graff, “Gender as “Ebola from Brussels””, *supra* note 1; McEwen & Narayanaswamy, *supra* note 1; Ines M Pousadela & Dominic R Perera, “The Enemy Within? Anti-Rights Groups and Restrictions on Civil Society” (2021) 12:S5 *Glob Policy* 34–44; Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3.

¹¹⁷ Shameem, *supra* note 11 at 97.

¹¹⁸ Keck & Sikkink, *supra* note 88 at 16.

As such, one of the most effective tactics employed by local and transnational anti-LGBTIQ+ actors is the characterization of rights discourse as a form of “Western neocolonialism.” By portraying LGBTIQ+ identities as foreign imports, these actors can deploy powerful cultural symbols to strengthen their networks and successfully generate resistance to international human rights norms within African nations.¹¹⁹ Through petitions, rallies, and social media campaigns, organizations such as CitizenGo and the WCF actively disseminate anti-LGBTIQ+ narratives across multiple regions. A pertinent example is the discourse surrounding comprehensive sexuality education (CSE) in which Sharon Slater, President of Family Watch International (FWI), addressed Ghanaian parliamentarians during a breakfast meeting, asserting that CSE represents a covert agenda by the United Nations (UN) to impose LGBTIQ+ rights on Africa.¹²⁰ Through such claims, public opinion campaigns are strategically deployed to cultivate resistance to gender and sexual diversity.

Clearly, there is increasing appropriation of decolonization rhetoric to justify opposition to LGBTIQ+ rights by these transnational anti-LGBTIQ+ networks in a way that is resonant with people and societies in Africa. By falsely arguing that the recognition of diversity in sexuality and gender are Western constructs, anti-LGBTIQ+ actors position themselves as defenders of indigenous cultural values. Without any sense of irony, religious leaders also play a significant role in amplifying these narratives,¹²¹ invoking theological arguments rooted in Christian and Muslim traditions¹²² to reinforce “traditional values.” Yet, as Tamale points out, these anti-rights groups today are often aligned with ideologies and groups that had been resistant to African liberation struggles in the past,¹²³ raising questions about the genuineness of their commitment to African decolonization.

¹¹⁹ Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3 at 1393.

¹²⁰ Nabaneh et al, *supra* note 1 at 1.

¹²¹ Sylvia Tamale, “Confronting the Politics of Nonconforming Sexualities in Africa” (2013) 56:2 Afr Stud Rev 31–45 at 40.

¹²² While Ghana, Kenya and Uganda are predominantly Christian countries, anti-LGBTIQ+ networks have created interfaith alliances to engage across religious divides and extend U.S. evangelical ideas to Muslim communities. These networks have formed what Bob describes as a “‘Baptist-Burqa’ coalition [of] Catholic, Protestant, Orthodox, and Muslim NGOs and states.” See Clifford Bob, “The Global Right Wing and Theories of Transnational Advocacy” (2013) 48:4 Int Spect 71–85 at 75. These actors have partnered with traditionally conservative states and stakeholders in Muslim-majority countries, such as the Organization of Islamic Cooperation, and have invested in research institutes and think-tanks including the Doha Family Institute, funded by the Government of Qatar, McEwen & Narayanaswamy, *supra* note 1 at 9.

¹²³ Tamale, *supra* note 121 at 34.

The use of symbolic politics to resonate Western anti-LGBTIQ+ agenda with local issues also ties into what Bob describes as ‘framejacking’, where groups “hijack their foe’s cherished frames, maneuvering them in contradictory ways.”¹²⁴ For instance, these organizations employ “UN-style rhetoric and tools within their country and global level advocacy, developing parallel human rights declarations and documents such as the Geneva Consensus Declaration (2020) and the San Jose Articles” to shift international discourse.¹²⁵ Similarly, the Geneva Consensus Declaration, signed by over 30 countries in October 2020,¹²⁶ uses this strategy to co-opt development frameworks to restrict reproductive rights yet claiming to promote “women’s health” and “strengthening the family.” As Bob notes, conservative networks have “stymied even the UN’s official recognition of the basic concept of “sexual orientation”, let alone its promulgation of international standards on gay rights.”¹²⁷ In this way, conservative networks are able to appropriate and invert progressive decolonization discourse to serve opposite ends. And so, the paradox in these movements is striking: local anti-LGBTIQ+ actors want to characterize sexual and gender diversity as Western cultural imperialism while being ideologically and financially supported by U.S. evangelical and conservative organizations.

To be clear, the use of symbolic politics should not be construed as negating the agency of local actors and their followers. Longstanding legal frameworks and the use of political homophobia by the postcolonial elite have ensured the internalization of colonial values in many African societies. However, while these systems entrenched homophobia in African legal and ethical systems, much of the contemporary rise in homophobic rhetoric and sudden agitation against LGBTIQ+ communities is influenced by Western-led campaigns. As discussed in the previous section of this chapter, major local actors in these movements are often Western-educated conservatives or directly funded and supported by American anti-LGBTIQ+ advocacy groups.

Another key method employed by global anti-rights actors to shape public opinion is the dissemination of disinformation and the harassment of pro-rights activists.¹²⁸ Misinformation and media manipulation are used to instill fear and hostility toward LGBTIQ+ rights. For example, in

¹²⁴ Bob, *supra* note 6 at 29.

¹²⁵ McEwen & Narayanaswamy, *supra* note 1 at 15.

¹²⁶ Julian Borger, “US Signs Anti-Abortion Declaration With Group of Largely Authoritarian Governments”, *The Guardian* (22 October 2020), online: <<https://www.theguardian.com/world/2020/oct/22/us-trump-administration-signs-anti-abortion-declaration>>.

¹²⁷ Bob, *supra* note 122 at 75.

¹²⁸ Nabaneh et al, *supra* note 1 at 4.

a televised interview in Ghana,¹²⁹ Sharon Slater falsely conflated comprehensive sexuality education with child sexualization, fabricated alarming claims about curriculum content (e.g., teaching toddlers about masturbation), and constructed conspiracy theories about Western organizations like Planned Parenthood having financial motives to corrupt African values.

Strategic alliances with political and religious figures further bolster the effectiveness of these public opinion campaigns. As discussed previously, the various “family values” conferences in Ghana and Uganda attracted high-profile attendees and were instrumental in garnering support for both Ghana and Uganda’s anti-LGBTIQ+ legislation, which was subsequently passed by their respective parliaments.

This intensification of public opinion campaigns by transnational anti-LGBTIQ+ networks ties into a broader backlash against advancements in gender justice, feminist movements, and LGBTIQ+ rights. Bob argues that these actors see themselves as “rival entrepreneurs” to progressive actors and generally “work to destroy their foes’ reputations, ideas, and value.”¹³⁰ This goal explains why these organizations have strategically expanded their influence by establishing local offices, appointing regional spokespersons, and providing funding and training to grassroots activists and why U.S. anti-LGBTIQ+ groups collaborate with African leaders to frame LGBTIQ+ rights as Western impositions despite the irony of their own involvement as transnationally networked actors and their support for colonial legacy criminalization.

4.3.3 Legal Interventions and Support for Litigation

A key strategy of the networks of local and transnational anti-LGBTIQ+ actors is the use of legal interventions, often through litigation to modify legal frameworks through judicial review, enforce legal norms, or drive compliance.¹³¹ Legal interventions can also be undertaken through legislative drafting and parliamentary submissions. This weaponization of legal systems at the legislative end represents leverage politics at its most direct, using state power and formal institutional mechanisms to enact and enforce discrimination. By embedding their agenda in legal frameworks, anti-LGBTIQ+ networks transform their moral preferences into enforceable norms backed by state coercion.

¹²⁹ *Hot Issues: with Sharon Slater, President, Family Watch International* (3News - TV3 Ghana, 2019).

¹³⁰ Bob, *supra* note 6 at 17, 21.

¹³¹ Nabaneh et al, *supra* note 1 at 9.

These legal interventions also serve the role of accountability politics as defined by Keck and Sikkink as: “the effort to hold powerful actors to their previously stated policies or principles,”¹³² and is a method of pressuring or forcing governments and institutions to publicly declare their position on the issues, particularly after a successful lobbying process.

The effectiveness of these legal strategies depends on the relationships between transnational organizations and local partners in a process that Bob describes as “authentication” where “[g]rassroots partners authenticate the issues and encourage pseudo-democratic claims: that the network represents a substantial constituency, even “the people” themselves.”¹³³ This process creates a mutually reinforcing dynamic: transnational actors provide resources, expertise, and strategic guidance, while local partners provide cultural legitimacy and direct access to legal and political processes. This arrangement allows transnational anti-LGBTIQ+ actors to present their interventions as authentic expressions of domestic values rather than products of foreign influence.

Kenya, in particular, has an active litigation scene and anti-LGBTIQ+ actors have strategically intervened in court cases to prevent the recognition of LGBTIQ+ rights. The Kenya Christian Professionals Forum (KCPF), headed by lawyer Charles Kanjama, has established itself as a persistent legal antagonist in LGBTIQ+ cases. KCPF participated as an interested party in *EG & 7 others v Attorney General*,¹³⁴ opposing the litigants who sought to decriminalize same-sex intimacy. During these proceedings, KCPF utilized testimony from Dr. Wahome Ngare, who made scientifically unsupported assertions linking homosexuality to childhood sexual abuse,¹³⁵ adopting a common strategy where conservative religious NGOs misrepresent established research or produce unverified studies to support legal arguments against LGBTIQ+ rights.

The KCPF’s pattern of legal intervention extends beyond sexuality-focused cases to include even cultural production. In 2018, when filmmaker Wanuri Kihiu sued the Kenya Film Classification Board (KFCB) for banning her lesbian-themed film *Rafiki*, KCPF filed to be enjoined in the case, justifying their intervention as necessary “to protect the interest of the family” and stated they were acting to “safeguard adherence to the law that outlaws homosexuality.”¹³⁶

¹³² Keck & Sikkink, *supra* note 88 at 16.

¹³³ Bob, *supra* note 6 at 23.

¹³⁴ *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)*, 2019 High Court of Kenya.

¹³⁵ Nabaneh et al, *supra* note 1 at 13.

¹³⁶ Thomas Matiko, “Christian Group Asks to be Enjoined in Lesbian Case”, *Nairobi News* (20 September 2018), online: <<https://nairobinews.nation.africa/christian-group-asks-enjoined-lesbian-case/>>.

Likewise, following the February 2023 Supreme Court decision that granted LGBTIQ+ individuals the right to form associations,¹³⁷ KCPF – whose chairperson represented the registration board in court as counsel – now switched its role from courtroom litigant to political activist and intensified its legal and legislative advocacy. The organization, along with seventy religious groups, mobilized to pressure Parliament to fast-track the “Family Protection Bill” sponsored by MP George Peter Kaluma. This proposed legislation represented a significant escalation in anti-LGBTIQ+ legal architecture, imposing hefty fines of not less than one million Kenyan shillings or jail terms of at least 10 years (or both) for promoting LGBTIQ+ activities. Most disturbingly, the bill proposed the death penalty for what it termed “aggravated homosexuality” in certain cases,¹³⁸ reminiscent of the original drafts of the Ugandan Anti-Homosexuality Act. In February 2024, KCPF organized a press conference where Kanjama employed accountability politics by directly invoking President William Ruto’s previous statements against LGBTIQ+ activities, strategically comparing Ruto’s position with the more explicitly anti-LGBTIQ+ stances of neighboring leaders Yoweri Museveni of Uganda and Samia Suluhu Hassan of Tanzania.¹³⁹

As mentioned earlier, research by Kaoma indicates that anti-LGBTIQ+ legislation is often drafted by local actors who have been “ideologically mentored” by U.S. conservatives, resulting in laws that reflect American rather than African realities.¹⁴⁰ These transnational anti-LGBTIQ+ organizations—WCF, FWI, and the ACLJ—actively lobby English-speaking African nations to adopt conservative Christian values in their legislation and policies. Their efforts promote laws that not only criminalize LGBTIQ+ identities but, taking a step beyond colonial anti-sodomy laws, also require the public and private sectors to actively reinforce a heterosexual, patriarchal family model as the only legally recognized family structure.

As such it is no surprise that in Ghana, conservative legal actors have collaborated closely with legislators to develop the “Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill.” This legislation, as discussed in Chapter 3, represents a comprehensive attempt to regulate sexuality and gender expression through legal means, reflecting the strategies observed in

¹³⁷ *NGOs Co-ordination Board v Eric Gitari and Others*, *supra* note 29.

¹³⁸ Yunis Dekow, “Religious leaders unite against LGBTQ agenda, call for stricter law”, *Eastleigh Voice News* (1 February 2024), online: <<https://eastleighvoice.co.ke/charles-kanjama/14935>>.

¹³⁹ *Ibid.*

¹⁴⁰ Kaoma, *supra* note 36 at 9.

Uganda and Kenya. The similarities between Ghana’s proposed legislation and Uganda’s 2023 law are not coincidental. In fact, they “echo each other”¹⁴¹ in their legal approaches to LGBTIQ+ issues, suggesting coordination and information sharing between anti-LGBTIQ+ networks across these countries.

These legal interventions continue to have negative implications for human rights and democracy in the focus countries. By weaponizing legal systems against marginalized groups, anti-LGBTIQ+ networks undermine the neutrality and fairness of judicial institutions. Their success in shaping legislation and influencing court decisions threatens to erode constitutional protections for equality and dignity. However, these efforts have not gone unchallenged. Civil society organizations (sometimes with the support of local and international “mainstream” human rights organizations) have actively contested regressive laws. In Kenya, this pushback has been undertaken through collaborative efforts among groups such as the Key Populations Consortium and the National Gay and Lesbian Human Rights Commission (NGLHRC).¹⁴² These coalitions have enabled prompt responses to human rights violations against LGBTIQ+ individuals. Similar resistance efforts are evident in Uganda and Ghana, where LGBTIQ+ advocates employ counter-litigation strategies to challenge discriminatory laws.¹⁴³

4.4 Vernacularization and Translation into Local Contexts

The preceding analysis illustrates how transnational anti-rights actors collaborate with local intermediaries to “authenticate” their agendas, creating an appearance of domestically driven initiatives while advancing transnational agendas. This section examines the often-subtle translation processes through which global anti-rights ideologies are adapted to resonant local forms in African contexts, specifically Kenya, Uganda and Ghana. As discussed earlier, this vernacularization process¹⁴⁴ exhibits a fascinating paradox: conservative networks simultaneously appropriate anti-colonial rhetoric while depending on Western resources and ideological frameworks.

¹⁴¹ Fabricius, *supra* note 90.

¹⁴² Nina Sun, Megan McLemore & Joseph J Amon, “Pushing Back: Civil Society Strategies to Address Punitive Anti-LGBTQI Laws in Uganda, Ghana, and Kenya” (2024) 26:2 Health Hum Rights J 61–67 at 65.

¹⁴³ Sun, McLemore & Amon, *supra* note 142; Adrian Jjuuko et al, eds, *Queer Lawfare in Africa: Legal Strategies in Contexts of LGBTIQ+ Criminalisation and Politicisation* (Pretoria: Pretoria University Law Press, 2022).

¹⁴⁴ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: University of Chicago Press, 2006) Chicago Series in Law and Society at 1.

According to Merry, for successful translation to occur, “the images, symbols, and stories through which the program is presented draw on specific local cultural narratives and conceptions” and the campaign must be adapted to “the structural conditions in which it operates.”¹⁴⁵ Merry also adds a third requirement: flexibility around the target population.¹⁴⁶ In any case, she also acknowledges that “even though programs are translated into new contexts and framed in culturally specific ways, they are never fully indigenized” and still retain their core transnational human rights elements.¹⁴⁷ However, unlike the progressive rights translation that Merry originally documented, conservative vernacularization involves translating restrictive ideologies into local contexts while claiming to defend “authentic” values against foreign influence. This apparent contradiction, embracing Western conservative support while denouncing Western liberal influence, is resolved through strategies that selectively incorporate elements aligned with certain local cultural and religious narratives.

This dynamic creates a feedback loop between transnational and local anti-LGBTIQ+ movements: global networks influence domestic policy through strategic localization, while domestic “successes” are then leveraged to reinforce resistance in international forums. The cumulative effect contributes to what Velasco identifies as the deinstitutionalization of LGBTIQ+ rights in international spaces,¹⁴⁸ replacing them with alternative cultural models prioritizing traditional family structures and national sovereignty.¹⁴⁹

4.4.1 Authentication via Local and Grassroots Movements

Transnational organizations actively cultivate relationships with local anti-LGBTIQ+ movements to mask their presence, amplify their message and mobilize support for their network. As discussed earlier, the key transnational actors and organizations partner with or establish local partners in Africa with African figureheads and spokespersons who then function as crucial intermediaries connecting international anti-LGBTIQ+ agendas to local communities. These are what Merry describes as “translators”, intermediaries between the transnational and the local. These intermediaries operate with the “double consciousness” that characterizes effective translators—fluent in both international conservative discourse and local cultural frameworks.¹⁵⁰

¹⁴⁵ *Ibid* at 136.

¹⁴⁶ *Ibid* at 137.

¹⁴⁷ *Ibid*.

¹⁴⁸ Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3 at 1396–1397.

¹⁴⁹ Merry, *supra* note 144 at 3.

¹⁵⁰ *Ibid*.

Anti-LGBTIQ+ collaborations also effectively reverse traditional advocacy patterns. Where progressive rights networks typically bypass resistant domestic governments by seeking international support, conservative networks invert this dynamic. Facing resistance in international human rights institutions, transnational conservative actors connect with receptive domestic partners who can advance restrictive policies at the national level while framing such measures as expressions of cultural integrity rather than transnational agenda-setting.¹⁵¹ This strategy enables international actors to achieve policy outcomes through local proxies while maintaining plausible deniability regarding foreign interference.

4.4.2 Adaptation to Political Structures and Institutions

Political engagement constitutes another critical dimension of vernacularization. In Uganda, organizations like The Fellowship Foundation have cultivated political support for conservative policies through strategic relationship-building with legislators and executive officials. The National Prayer Breakfast has served as an effective vehicle for connecting transnational religious networks with Ugandan political leadership. These religiously framed networking events create spaces where conservative ideologies can be communicated to decision-makers outside formal policy channels, establishing durable influence networks that transcend individual electoral cycles.

In Ghana, transnational conservative organizations have developed diverse approaches to engaging with political structures. The WCF has cultivated relationships with parliamentarians like Sam George, who maintains connections with international conservative networks while presenting anti-LGBTIQ+ legislation as a defense of Ghanaian sovereignty.¹⁵² Kenyan political engagement follows similar patterns, with organizations like CitizenGo and the American Center for Law and Justice (ACLJ) establishing strategic relationships with influential policymakers. These relationships ensure that, taking a step beyond legacy sodomy laws, conservative agendas are reflected in legal frameworks and policy discussions despite constitutional protections for equality and dignity.¹⁵³

¹⁵¹ Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3 at 1393, 1396.

¹⁵² Emmanuel Akinwotu, “Explainer: what makes Ghana’s anti-gay bill so extreme?”, *The Guardian* (3 August 2022), online: <<https://www.theguardian.com/global-development/2022/aug/03/explainer-what-makes-ghana-draft-anti-gay-lgbtq-bill-so-extreme>>.

¹⁵³ Sadiya Ansari, “How New Anti-LGBTQ+ Bills in Africa Expand Crackdown on Rights”, *Context* (29 January 2024), online: <<https://www.context.news/socioeconomic-inclusion/how-new-anti-lgbtq-bills-in-africa-expand-crackdown-on-rights>>.

Just as critically, the form of engagement relies heavily on effective local structures. In Uganda where religiosity is critical in governance, engagement takes the shape of national prayer breakfasts and Christian themed political gatherings; in Kenya with its advanced litigation scene, it takes the form of court interventions, and in Ghana with legislative depth in national discourse, it involves the constant invocation of national and cultural sovereignty. This diversity of engagement with political structures maximizes influence on policy outcomes and creates resilient support networks that can withstand isolated political setbacks. By operating simultaneously through formal channels (legislative drafting, parliamentary testimony) and informal networks (prayer breakfasts, international conferences), transnational anti-LGBTIQ+ actors establish durable institutional relationships that transcend individual political appointments or electoral cycles.

4.4.3 Reinterpretation of Social, Cultural and Religious Norms

Perhaps the most insidious aspect of anti-rights vernacularization involves the strategic framing of LGBTIQ+ rights as multidimensional threats to society in ways that are calculated to resonate with local audiences. As Velasco observes, this “antithetical vernacularization” process translates global ideas not as benefits but as existential dangers.¹⁵⁴ Across Kenya, Uganda, and Ghana, anti-LGBTIQ+ actors have deployed a remarkably consistent three-pronged narrative framework that portrays LGBTIQ+ rights as threats in Velasco’s categorisation of: (1) the “natural family” and traditional gender roles; (2) national sovereignty and self-determination; and (3) the well-being, innocence, and demographic future of children.¹⁵⁵

The first narrative strand positions LGBTIQ+ rights as fundamentally incompatible with what anti-rights actors term the “natural family”, defined not merely as a structural arrangement between individual adults and their adopted or biological relatives but as a normative institution with prescribed gender roles.¹⁵⁶ In all three countries, religious and political leaders consistently invoke this framework. In Uganda, for example, religious leaders supporting the Anti-Homosexuality Act explicitly framed it as protecting the heteronormative family as the

¹⁵⁴ Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3 at 1393.

¹⁵⁵ *Ibid* at 1393–1396.

¹⁵⁶ *Ibid* at 1393.

“traditional” unit of society.¹⁵⁷ In Kenya, KCPF and allied religious organizations have emphasized that LGBTIQ+ rights undermine “the family as safeguarded in the Constitution.”¹⁵⁸

The second narrative strand portrays LGBTIQ+ rights as threats to national sovereignty and self-determination.¹⁵⁹ This framing has proven especially potent in post-colonial African contexts where the issue of neo-colonialism permeates political debates and intellectual discourse. In Uganda, President Museveni has consistently positioned anti-LGBTIQ+ legislation as a defense of Ugandan sovereignty against Western impositions.¹⁶⁰ Similarly, in Ghana, MP Sam George explicitly frames the Family Values Bill as protecting Ghanaian sovereignty against foreign interference stating “We are not puppets and stooges of the West.”¹⁶¹ This sovereignty framing represents a disingenuous appropriation of postcolonial rhetoric, selectively deploying anti-imperial language yet reinforcing colonial-era regulations of sexuality. The contradiction becomes apparent when considering that many of the “traditional values” invoked were themselves colonial impositions that displaced more fluid pre-colonial approaches to gender and sexuality.¹⁶² The sovereignty frame is particularly effective because it draws legitimacy from established international norms of self-determination while positioning LGBTIQ+ rights as neo-imperial impositions. Religious leaders in Kenya claimed LGBTIQ+ rights are being imposed on African nations through “foreign agencies” attempting to “change the country’s penal laws.”¹⁶³ This framing allows conservative actors to ignore the human rights aspects of constitutional challenges to sodomy laws and present resistance to LGBTIQ+ rights as a legitimate defense of national autonomy, regardless of the transnational support they themselves receive. This framing also allows unsuspecting participants to add legitimacy to the movement, particularly when platforms are framed as legitimate concerns. For instance, the October 2025 conference by the African Bar Association (ABA) themed “Foreign Interests in Africa: Exploitation or Investment” seems like

¹⁵⁷ Emma Sanderson, “The Unholy Relationship Between Uganda’s Anti-LGBTQ+ Law and US Evangelicalism” (6 August 2023), online (Blog Post): <<https://globalaffairs.org/commentary-and-analysis/blogs/unholy-relationship-between-ugandas-anti-lgbtq-law-and-us>>.

¹⁵⁸ Matiko, *supra* note 136.

¹⁵⁹ Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3 at 1394.

¹⁶⁰ Fabricius, *supra* note 90.

¹⁶¹ “*Ghana is Not the 51st State of the United States.*” - Hon Sam George on Ghana’s Anti-LGBTQ Bill (News Central TV, 2024).

¹⁶² Sylvia Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power” (2014) 14 Afr Hum Rights Law J 150–177; Tamale, *supra* note 121; Sylvia Tamale, “The Right to Culture and the Culture of Rights: A Critical Perspective on Women’s Sexual Rights in Africa” (2008) 16:1 Fem Leg Stud 47–69.

¹⁶³ Dekow, *supra* note 138.

an innocuous and legitimate debate to a potential participant until it is pointed out that the ABA is a collaborator with (transnational) organizers of the various “family values” conferences¹⁶⁴ and this is an event coded in far-right sovereignty obfuscations.

The third narrative strand, and perhaps the most emotionally potent, casts LGBTIQ+ rights as direct threats to children.¹⁶⁵ This framing manifests in two key claims: that LGBTIQ+ people are harmful to children’s development, and that recognition of LGBTIQ+ rights endangers demographic reproduction.¹⁶⁶ Slater used this tactic in her campaign in Ghana¹⁶⁷ and, as noted above, KCPF in Kenya employed pseudo-scientific claims about child development, providing this as expert testimony in opposition to litigation challenging sodomy laws.¹⁶⁸ Uganda’s Constitutional Court received and relied on unverified testimony that LGBTIQ+ persons were recruiting children to uphold the provisions of the 2023 Anti-Homosexuality Act.¹⁶⁹ The discourse around “protecting children” provides moral urgency while positioning opponents of LGBTIQ+ rights as defenders of society’s most vulnerable members.

What makes these narrative frameworks especially effective is in their ability to translate global conservative ideologies into locally resonant terms. By framing LGBTIQ+ rights as threats to deeply held values around family, nationhood, and children, anti-rights actors create narratives and moral panics that resonate with local audiences while obscuring the transnational dimensions of their advocacy. This strategic deployment of cultural symbols facilitates what Merry describes as “indigenization,”¹⁷⁰ presenting global ideas through local frameworks while maintaining their core ideological content.

4.5 Conclusion

This chapter examines how the rise of a new wave of anti-LGBTIQ+ sentiment in Ghana, Uganda, and Kenya is driven by local and transnational forces. It shows how these anti-rights actors strategically engage with local contexts by collaborating with domestic movements, influencing

¹⁶⁴ “1st African Inter-Parliamentary Conference – African Bar Association”, online: <<https://afriobar.org/tag/1st-african-inter-parliamentary-conference/>>.

¹⁶⁵ Velasco, “Transnational Backlash and the Deinstitutionalization of Liberal Norms”, *supra* note 3 at 1395.

¹⁶⁶ *Ibid.*

¹⁶⁷ note 129.

¹⁶⁸ Nabaneh et al, *supra* note 1 at 13.

¹⁶⁹ *Hon Fox Odoi & 21 Others v Attorney General & 3 Others*, 2024 Constitutional Court of Uganda at paras 65, 242, 416.

¹⁷⁰ Merry, *supra* note 144 at 137.

political structures, and navigating cultural and religious landscapes and how they have gained legitimacy by framing their positions as essential to national development and social stability, co-opting human rights rhetoric to legitimize regressive laws. This chapter has also demonstrated how transnational organizations provide support through funding, resources, and ideological guidance, while local figures amplify these messages. The weaponization of legal systems marginalizes LGBTIQ+ individuals, exacerbating stigma and discrimination. Understanding these dynamics is essential for counteracting rising authoritarianism and promoting genuine human rights protections. By exposing the tactics of anti-rights actors and supporting local civil society, it is possible to challenge discriminatory legislation and foster a more inclusive and equitable society especially as the immediate and broader effects of these influences, to be examined in the next chapter, continue to rise.

CHAPTER 5: TRANSNATIONAL POLITICAL HOMOPHOBIA AND ITS IMPLICATIONS FOR DEMOCRACY AND HUMAN RIGHTS

5.1 Introduction

Having established the legal frameworks affecting LGBTIQ+ rights in Chapter 3 and analyzed the strategies of transnational anti-LGBTIQ+ actors in Chapter 4, this chapter now turns to how these elements interact with domestic political dynamics to produce political homophobia and reshape legal and social institutions in specific and broad ways. This chapter also serves as the concluding chapter for the entire thesis, with its analysis and conclusions synthesizing the findings across all preceding chapters. Accordingly, this chapter responds to sub-question 3:

Recognizing this sub-question may already have been given an initial treatment under sub-question 2, in what ways is existing homophobia and the further inculcation of homophobia at a social level used as a political tool by various actors in these countries (severally and comparatively), and – in light of the legal and policy frameworks and the narratives of anti-rights actors' operations (in sub-questions 1 and 2) – what does such use imply not only for LGBTIQ+ rights but also the overall legal landscape for human rights and democracy?

Answering this question requires an examination of: (i) the co-production of political homophobia through the interaction between local actors and their transnational support systems; (ii) how homophobia functions as a political tool in Kenya, Uganda, and Ghana; and (iii) the implications of this phenomenon for LGBTIQ+ persons and also for democracy and human rights more broadly.

For clarity, this chapter uses “political homophobia” as conceptualised by Weiss and Bosia,¹ that is, a calculated strategy employed by states to consolidate power, often facilitated by transnational networks and shaped by colonial legacies.² This phenomenon has garnered

¹ *Global Homophobia: States, Movements, and the Politics of Oppression* (University of Illinois Press, 2013).

² Michael J Bosia & Meredith L Weiss, “Political Homophobia in Comparative Perspective” in Meredith L Weiss & Michael J Bosia, eds, *Global Homophobia: States, Movements, and the Politics of Oppression* (Urbana: University of Illinois Press, 2013) 1 at 2. Although “political homophobia” is the umbrella term, the empirical reality encompasses what might more precisely be termed “political homo/transphobia.” This strategic deployment of anti-LGBTIQ+ sentiment by political actors targets not only homosexuality but also transgender identities, gender non-conformity, and, to a lesser extent, intersex persons. However, the term “homophobia” remains dominant in both scholarly literature and political discourse, and the mechanisms of political instrumentalization operate similarly across these different targets.

increasing scholarly attention, as states worldwide have incorporated it into their domestic policies.³ Political homophobia has been used to legitimize authoritarian regimes, such as Russia and Hungary, foster national unity, and emphasize the distinctiveness of seemingly “national values” in opposition to Western ideals.⁴ In these cases, political homophobia differs from personal prejudice or socially prejudice in its deliberate deployment for political purposes, becoming a state-sponsored tool for both reinforcing power and suppressing dissent. The deployment of political homophobia is strategic and frequently employed in response to legitimacy crises within the state, diverting attention from governance failures, consolidating political coalitions, asserting state sovereignty against perceived external pressures, and establishing boundaries of national belonging.⁵ Political homophobia is often supported by transnational actors who provide essential tools, resources, and legitimizing frameworks that enable local political actors to effectively deploy homophobia for political advantage.⁶

The analysis in this chapter builds upon insights from previous chapters that homophobia in African contexts cannot be understood as a simple expression of “traditional values” or the popular will. As discussed in Chapter 3, contemporary homophobia operates through legal frameworks that have colonial origins but have been expanded and reinforced in the postcolonial period by postcolonial political elites. Furthermore, as shown in Chapter 4, transnational anti-LGBTIQ+ actors have played substantial roles in shaping how homophobia manifests in these countries, providing resources, strategies, and ideological frameworks that local political actors adapt to their specific purposes. Organizations like CitizenGo, Family Watch International, and the World Congress of Families have developed well-funded strategies for exporting anti-LGBTIQ+ advocacy across borders, creating what can be understood as a global “political technology”⁷ of homophobia that local actors can adopt and adapt to their specific contexts.

The chapter proceeds through five main sections. Following this introduction, section 5.2 examines the theoretical framework for understanding political homophobia as a transnational governance strategy, focusing on how anti-LGBTIQ+ rhetoric and tactics are co-produced for the

³ Nikita Sleptcov, “Political Homophobia as a State Strategy in Russia” (2017) 12:1 J Glob Initiat Policy Pedagogy Perspect (Russia Relations in Today’s World) 140–161.

⁴ *Ibid.*

⁵ Michael J Bosia, “Why States Act: Homophobia and Crisis” in Meredith L Weiss & Michael J Bosia, eds, *Global Homophobia: States, Movements, and the Politics of Oppression* (Urbana: University of Illinois Press, 2013) 30.

⁶ Bosia & Weiss, *supra* note 2 at 2, 14–16.

⁷ For a detailed discussion on the concept as derived from Russian origins, see Andrew Wilson, *Political Technology: The Globalisation of Political Manipulation*, 1st ed (Cambridge University Press, 2023).

benefit of local and transnational actors. Section 5.3 provides country-specific analyses of how political homophobia operates in Uganda, Kenya, and Ghana, examining the specific ways local political actors leverage transnational support while maintaining the appearance of authentic local concerns. Section 5.4 examines the implications for LGBTIQ+ rights specifically, while section 5.5 explores the broader implications for democracy and human rights beyond LGBTIQ+ issues.

In examining political homophobia as a co-produced governance strategy rather than merely a cultural phenomenon, this chapter contributes to understanding how sexuality and gender become a site of transnational political contestation with implications that extend far beyond the rights of LGBTIQ+ persons. In fact, the attacks on LGBTIQ+ persons and advocacy, enabled and amplified by transnational networks, often serve as mechanisms for consolidating political power, restricting civil society space, and undermining democratic institutions in ways that affect entire societies and that are consistent with a global far-right vision of society. This perspective moves beyond framing LGBTIQ+ rights purely as a matter of individual freedoms to recognize their interconnection with broader questions of democratic governance, constitutional rights, and the evolving relationship between national sovereignty and universal human rights norms.

5.2 Political Homophobia as Transnational Governance Strategy

Understanding homophobia as a political tool rather than merely personal prejudice is an important aspect of examining governance in postcolonial African contexts. This section adopts a framework for analyzing how political homophobia operates as a governance strategy that is neither wholly imported nor entirely indigenous but rather co-produced through transnational-local interaction with specific political utility.⁸

Bosia and Weiss's conceptualization of political homophobia⁹ provides an essential starting point. Their insight that anti-LGBTIQ+ sentiment functions as a purposeful and modular political strategy rather than spontaneous cultural reaction shifts our focus from individual attitudes to institutional power. In their words:¹⁰

We consider political homophobia as purposeful, especially as practiced by state actors; as embedded in the scapegoating of an "other" that drives processes of state building and retrenchment; *as the product of*

⁸ Rahul Rao, "The Locations of Homophobia" (2014) 2:2 Lond Rev Int Law 169–199.

⁹ Bosia, *supra* note 5.

¹⁰ Bosia & Weiss, *supra* note 2 at 2.

transnational influence peddling and alliances; and as integrated into questions of collective identity and the complicated legacies of colonialism. (Emphasis mine)

Their framework also explains why political homophobia has intensified in Kenya, Uganda, and Ghana over the past decade despite increasing global recognition of LGBTIQ+ rights. To this end, the process of vernacularization by transnational anti-LGBTIQ+ actors does not just translate global ideas into locally resonant terms, it also transforms existing local prejudice into an actionable governance strategy.¹¹ In essence, it is not just the global far-right agenda that is being spread in the African context. There is also a purposeful exportation of governance techniques, rhetorical frameworks, and organizational strategies, with techniques developed in one context being adapted and deployed to others with similar political utility even if through different cultural justifications. As Bosia notes “modularity is still paralleled by local [e]mbeddedness.”¹²

This modular aspect serves specific governance functions that transcend cultural particularities. First, it creates moral panics that divert attention from governance failures or economic grievances, such as Ugandan politicians focusing on public debate on homosexuality amid rising inflation.¹³ Second, political homophobia establishes boundaries of belonging that define legitimate citizenship and, by describing homosexuality as un-African, anti-LGBTIQ+ actors implicitly define authentic national identity through sexual conformity. Third, it enables visible demonstrations of state power that reinforce disciplinary authority through control of deviant bodies.¹⁴

These functions explain why transnational actors can successfully stimulate political homophobia across different regime types. In Uganda’s increasingly authoritarian system, it serves regime maintenance by fragmenting opposition and creating external enemies, who conveniently happen to be civil society activists and lawyers that resist authoritarian policies more generally and protect the rights of LGBTIQ+ persons as part of a wider commitment. In Kenya’s comparatively competitive democracy, it functions as a coalition-building tool that unites otherwise diverse political factions against a common opponent. In Ghana’s democracy with its

¹¹ *Ibid* at 23.

¹² Bosia, *supra* note 5 at 32.

¹³ Sylvia Tamale, “Confronting the Politics of Nonconforming Sexualities in Africa” (2013) 56:2 *Afr Stud Rev* 31–45 at 38–40.

¹⁴ Sylvia Tamale, “Exploring the Contours of African Sexualities: Religion, Law and Power” (2014) 14 *Afr Hum Rights Law J* 150–177.

weakening institutions, it provides mechanisms for defining national identity amid economic and social change. Across these varied contexts, political homophobia offers similar utility for the local actors despite different political systems.

The effectiveness of political homophobia stems partly from its ability to create what Gramscian analysis typifies as governance through consent rather than coercion.¹⁵ Political leaders position themselves as defenders of authentic values against foreign corruption, and claim a moral authority that transcends material interests. This moral leadership enables governance strategies that might otherwise face resistance, including restrictions on civil society, media censorship, or judicial capture. Once established as legitimate tools for regulating sexuality, these governance mechanisms can be directed towards broader political control.

However, political homophobia's emergence in contemporary Africa cannot be understood without examining the transnational actors that enable and amplify it. As discussed in Chapter 4, these actors provide critical resources that transform diffuse prejudice into effective governance strategy. Financial support from organizations like The Fellowship Foundation or Family Watch International creates sustainability that purely local mobilization might lack. Technical expertise from groups like the American Center for Law and Justice provides obfuscatory legal expertise that helps navigate constitutional obstacles. Their access to global media platforms and communication networks enables coordination across different national contexts.

More importantly and beyond material resources, transnational actors provide ideological frameworks that shape how political homophobia is articulated and justified in ways that, arguably, local actors would not have evolved by themselves. The consistent emphasis, discussed in Chapter 4, on “protecting children,” “defending sovereignty,” and preserving “natural families” across different African contexts reflects not spontaneous cultural consensus but deliberate framing strategies developed by transnational networks and then adapted to local conditions. These frames transform prejudice from merely negative personal attitudes to a deliberate political program with specific governance objectives. Furthermore, this tactic exploits public anxieties, positioning LGBTIQ+ persons as societal enemies and creating an “us versus them” dichotomy that allows the extant hegemony to consolidate political power and forge alliances between religious leaders and politicians.

¹⁵ Antonio Gramsci, *Selections from the Prison Notebooks*, translated by Quintin Hoare & Geoffrey Nowell Smith (London: International Publishers Co, 1971) at 12.

And so, we can come to an understanding of political homophobia in Africa as a hybrid phenomenon, co-created by transnational and local actors, with either component highlighted or emphasized as the strategy requires. In this way politicians can cite or showcase American evangelicals when defending local criminalisation while simultaneously claiming to resist Western influence. This understanding of political homophobia in Africa as a *co-produced transnational governance strategy* rather than cultural expression also explains why it persists despite the costs and economic consequences of anti-LGBTIQ+ legislation. Costs such as policing and enforcement expenses, aid reductions, diplomatic isolation and investor concerns create material disincentives that would typically outweigh other considerations. Yet, the persistence of political homophobia despite these costs suggests ulterior utility that a standard cost-benefit analysis fails to capture. This utility comes in the form of fragmenting opposition, mobilizing political constituencies, creating external enemies, and justifying restrictions on civil society, all of which can offer regime legitimization opportunities that outweigh immediate economic or diplomatic costs. This governance utility extends far beyond regulating sexuality to encompass broader projects of power consolidation and opposition management.

The transnational co-production of political homophobia also serves the interests of external actors. For American religious organizations facing diminishing influence in their domestic contexts, African engagement offers opportunity to demonstrate continued relevance and impact.¹⁶ For global organizations with ties to authoritarian regimes such as Russia, African anti-LGBTIQ+ politics serves broader geopolitical agendas of undermining Western liberal norms.¹⁷ For European far-right groups like CitizenGo, African campaigns can generate content that implies a global reach to domestic constituencies. In essence, these diverse external interests converge around supporting African political homophobia despite different ultimate objectives.

The resulting governance strategy from these relationships and interactions can neither be considered as simple cultural expression nor external imposition but as a strategic co-production through transnational-local interaction.¹⁸ Local political actors selectively adopt external resources and frameworks that serve domestic political objectives, while transnational actors adapt their

¹⁶ *Globalizing the Culture Wars: U.S. Conservatives, African Churches, and Homophobia*, by Kapyra Kaoma (Political Research Associates, 1 December 2009) at 22 online: <https://politicalresearch.org/2009/12/01/globalizing-culture-wars#The_African_Context> [*Globalizing the Culture Wars*].

¹⁷ Sleptcov, *supra* note 3 at 141.

¹⁸ Rao, *supra* note 8.

approaches to resonate with local contexts. This co-production creates political homophobia that appears authentically African while incorporating sophisticated external political technology. While the specific form depends on local political conditions, historical contexts, and institutional structures, the underlying function remains consistent: creating governance mechanisms that extend far beyond regulating sexuality to serve broader political objectives.

The framework also illuminates why political homophobia threatens democratic governance and human rights beyond LGBTIQ+ issues. Political homophobia creates avenues to establish problematic precedents for rights restrictions, the erosion of judicial independence, the shrinking of civil society space, and the reconfiguring sovereignty discourse, thereby laying the groundwork to repurpose governance mechanisms for broader authoritarian projects. This analysis necessarily shifts understanding of what is at stake in conflicts over LGBTIQ+ rights in Africa. Beyond specific discrimination against sexual minorities, these conflicts involve fundamental questions about democratic governance, citizenship, and rights in postcolonial contexts. The strategic co-production of political homophobia through transnational-local interaction is an insight into the tension between universal rights principles and sovereignty claims that extend far beyond sexuality to shape the future of governance and rights in postcolonial African states.

5.3 The Co-Production of Political Homophobia in Country Contexts

5.3.1 Uganda: The Transnational Scaffolding of Political Homophobia

Political homophobia, alongside resistance to gender equality and women's rights,¹⁹ has become a central governance strategy of the Museveni regime in Uganda, and it is deployed at key moments to consolidate the regime's power as a form of continuing resistance to colonialism.²⁰ What distinguishes Uganda's case from the other countries is not merely the severity of its anti-homosexuality legislation but the systematic integration of anti-LGBTIQ+ rhetoric into the broader architecture of regime maintenance, allowing anti-LGBTIQ+ legislation to function as a moral panic that distracts public opinion from governance failures and economic grievances.²¹

¹⁹ Sylvia Tamale, *Decolonization and Afro-Feminism* (Ottawa: Daraja Press, 2020) at 324.

²⁰ Chlöe Shahinian, "Understanding, and Problematizing, the Allegedly Anti-colonial Justifications of Anti-LGBTI Legislation in Uganda" (2023) 12:1 Cent Hum Rights Leg Plur CHRLP Work Pap Ser 6–49 at 23, 25.

²¹ Tamale, *supra* note 13 at 38–40.

The role of transnational actors in supporting this political strategy extends beyond mere ideological alignment and stretches into active organizing and funding.²² As discussed in Chapter 4, The Fellowship Foundation (also known as “The Family”) has cultivated direct relationships with Ugandan political leadership, including Bahati himself, who was mentored by Tim Kreutter, the organization’s representative in Uganda.²³ This relationship granted Bahati access to U.S. political networks that enhanced his domestic standing while providing American conservative actors access to Ugandan legislative processes. The \$20 million funding channelled by The Fellowship Foundation to Uganda between 2008 and 2018²⁴ can be described as an investment in political relationships that yielded successful legislative outcomes.

These transnational connections provide the Museveni regime with both material resources and rhetorical ammunition. For instance, Museveni can point to support from American religious figures like US Congressman Tim Walberg, who publicly endorsed Uganda’s anti-homosexuality stance at Uganda’s 2023 National Prayer Breakfast.²⁵ This endorsement can allow the Museveni regime to present homophobia not as a uniquely Ugandan position but as a legitimate stance shared by political leaders in Western democracies, a position that is further solidified with the election of President Donald Trump and his immediate issuance of executive orders against diversity, equity and inclusion programs.²⁶ It is noteworthy that in the *Fox Odoi case* that upheld the AHA, Uganda’s Constitutional Court made specific reference to the U.S. *Dobbs* decision, as though acknowledging its transnational alliance with U.S. conservatives, stating that:²⁷

[T]he US Supreme Court considered the nation’s history and traditions, as well as the dictates of democracy and rule of law, to overrule the broader right to autonomy. The court considered the implications of upholding the right to autonomy under the guise of personal dignity, such as conferring a licence for the right to use illicit drugs and held that it was time to return the permissibility of abortion and the limitations thereon to the

²² *Ibid* at 33–34.

²³ Jonathan Larsen, “The Family’s Secret History in Uganda” (6 April 2023), online: *The Young Turks* <<https://tyt.com/reports/inside-the-family/2023/04/06/5dd03304b650e5339>>.

²⁴ Lydia Namubiru & Soita Khatondi Wepukhulu, “Exclusive: US Christian Right Pours More Than \$50m Into Africa” (29 October 2020), online: *Open Democracy* <<https://www.opendemocracy.net/en/5050/africa-us-christian-right-50m/>>.

²⁵ Jonathan Larsen, “U.S. Prayer Breakfast Co-Chair Defends Uganda’s “Kill the Gays” Law” (20 December 2023), online: *Young Turks* <<https://tyt.com/reports/inside-the-family/2023/12/20/prayer-breakfast-chair-defends-kill-gays-law>>.

²⁶ The White House, “Fact Sheet: President Donald J. Trump Removes DEI From the Foreign Service” (18 March 2025), online: *White House* <<https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-removes-dei-from-the-foreign-service/>>.

²⁷ *Hon Fox Odoi & 21 Others v Attorney General & 3 Others*, 2024 Constitutional Court of Uganda at paras 266–267.

people's elected representatives as demanded by the Constitution and the rule of law. That is precisely what was done with the issue of homosexuality in Uganda.

The regime's deployment of anti-LGBTIQ+ rhetoric also serves to fragment political opposition. In framing LGBTIQ+ rights as a threat to Ugandan values, the government forces its opposition to either support unpopular positions on sexuality or abandon human rights principles altogether. This strategy effectively prevents the formation of unified opposition coalitions that might otherwise coalesce around economic grievances or demands for democratic reform. The international controversy generated by anti-homosexuality legislation further benefits the regime by positioning Museveni as a defender of Ugandan sovereignty against Western interference, distracting from his decades-long hold on power.

Most critically, Uganda's political homophobia serves as a mechanism for disciplining civil society more broadly. The Anti-Homosexuality Act's provisions criminalizing "promotion" of homosexuality create legal ambiguity that can be weaponized against any organization critical of the government. Human rights groups, independent media, and opposition parties must self-censor on LGBTIQ+ issues or risk legal consequences, effectively shrinking civic space beyond just LGBTIQ+ advocacy. This broader suppression of civil society would be difficult to justify without the moral panic around homosexuality provided by transnational actors.

In essence, transnational networks have been able to provide a scaffolding for the Museveni regime that enhances the effectiveness of political homophobia as a governance strategy. The regime draws on resources, rhetorical frames, and international legitimation provided by these networks while adapting them to serve regime maintenance goals. The result is not simply imported homophobia but a strategically co-produced governance tool that extends far beyond regulating sexuality to maintaining political control.

5.3.2 Kenya: Transnational Legal Activism and Political Opportunity

Kenya's multi-party system, relatively independent judiciary, and stronger civil society allows for a political landscape where homophobia operates principally as a wedge issue in electoral politics and a vehicle for coalition-building rather than primarily as a mechanism of state repression. As such, political homophobia in Kenya manifests differently than in Uganda's authoritarian context, although it still features transnational-local interaction. As with Uganda, Kenyan political actors

deploy homophobia opportunistically during electoral cycles. The 2010 constitutional referendum saw politicians exploit ambiguities in the proposed constitution to suggest it would legalize same-sex marriage, despite explicit language limiting marriage to opposite-sex couples.²⁸ This rhetoric aimed to mobilize religious constituencies against the constitution by linking it to perceived moral threats. Similarly, prior to and during the 2022 presidential campaign, William Ruto positioned himself against LGBTIQ+ rights to distinguish his candidacy, and his policy positioning as president-elect of Kenya.²⁹

Transnational actors provide Kenyan politicians with legal and rhetorical frameworks for opposing LGBTIQ+ rights even as the state maintains the appearance of constitutional compliance. This is evident, for example, in how the American Center for Law and Justice, through its local affiliate, the East African Center for Law and Justice (EACLJ), has presented legal arguments in court that frame homophobia in constitutionalist language rather than overtly religious terms.³⁰ Likewise, the Kenya Christian Professionals Forum (KCPF), with its connections to the World Congress of Families, is another instance of how transnational legal activism creates political opportunities. KCPF's consistent intervention in court cases involving LGBTIQ+ rights provides Kenyan politicians with legally articulated positions they can endorse.³¹ KCPF's chairperson, Charles Kanjama, appeared as appellant counsel on behalf of the government registrar (the NGOs Coordination Board) in the *Eric Gitari* case where the Kenyan Supreme Court ultimately affirmed the registration rights of LGBTIQ+ associations.³² Essentially, the impact of KCPF has been blunted only by the continuing independence of Kenya's judiciary from political pressures.

Unlike Uganda where homophobia is centrally deployed by the state, and often proceeds from positions of political power, the Kenyan environment displays a more distributed pattern where various political actors engage with different transnational networks to advance their goals.

²⁸ *Colonizing African Values: How the U.S. Christian Right is Transforming Sexual Politics in Africa*, by Kapyra Kaoma (Political Research Associates, 2012) at 11 online: <<https://politicalresearch.org/sites/default/files/2018-10/Colonizing-African-Values.pdf>>.

²⁹ Geoffrey Mosoku, "DP William Ruto: Homosexuals Have No Place in Kenya" (5 July 2015), online: *The Standard* <<https://www.standardmedia.co.ke/mobile/article/2000168074/dp-william-ruto-homosexuals-have-no-place-in-kenya>>; Mumbi Makena, "Behind Homophobia of Kenya's President-Elect", online: *Open Democracy* <<https://www.opendemocracy.net/en/5050/william-ruto-kenya-president-elect-homophobia-transphobia-evangelism-colonialism/>>.

³⁰ Kaoma, *supra* note 28 at 11.

³¹ Satang Nabaneh et al, "Contesting Gender and Coloniality: A Lens on Conservative Mobilisations in South Africa, Kenya and Ghana" (2023) 168:4 *Polit Afr* 1–25 at 13.

³² *NGOs Co-ordination Board v Eric Gitari and Others*, 2023 Supreme Court of Kenya.

CitizenGo mobilizes grassroots opposition through digital petitions and public demonstrations, thus generating media coverage that politicians can respond to. Meanwhile, organizations like EACLJ engage in more elite-focused legal advocacy that provides intellectual legitimation for political homophobia.

The Kenyan situation also shows how political homophobia operates alongside actual legal gains for LGBTIQ+ persons. Despite judicial rulings allowing LGBTIQ+ organizations to register associations and protecting some basic rights, political rhetoric against LGBTIQ+ communities has intensified. This backlash underscores the utility of homophobia as a useful tool for local and transnational actors even when it is unsuccessful at achieving specific legal changes. Politicians can position themselves as defenders of “Kenyan values” regardless of judicial outcomes, not only maintaining or securing political benefits even when legal objectives fail but also delegitimizing courts and judges in the process. In essence, Kenya presents a case where political homophobia manages to function effectively within a relatively democratic system, a different but equally important form of co-production than that of Uganda’s more authoritarian context.

5.3.3 Ghana: Transnational Networks and National Sovereignty Claims

The Ghanaian situation is a third distinct pattern of political homophobia from the previous two. Although it shares elements of legislative prejudice and judicial hesitation with both the Ugandan and Kenyan approaches respectively, Ghana’s deployment of political homophobia has principally been framed by local actors within a narrative of postcolonial national identity and resistance to perceived Western cultural imperialism.³³ Yet, despite this framing, Ghana’s Family Values Bill evolved firmly under the guidance of transnational actors such as The World Congress of Families (WCF) whose 2019 African Regional Conference in Accra brought together political and religious leaders committed to opposing LGBTIQ+ rights, creating a platform for coordinating strategy and building political momentum. Similarly, Family Watch International (FWI) contributed to Ghana’s political homophobia through strategic misinformation campaigns. Sharon Slater in Ghana, plays the same role as Tim Walberg in Uganda, providing Ghanaian politicians with seemingly credible justifications for opposing LGBTIQ+ rights.³⁴

³³ “Ghana is Not the 51st State of the United States.” - Hon Sam George on Ghana’s Anti-LGBTQ Bill (News Central TV, 2024).

³⁴ *Hot Issues: with Sharon Slater, President, Family Watch International* (3News - TV3 Ghana, 2019).

Local political actors have attempted to leverage these transnational resources while maintaining nationalist rhetoric. The bill's name itself, "Promotion of Proper Human Sexual Rights and Ghanaian Family Values", is interesting as it appropriates a global human rights language "*human sexual rights*" while qualifying it with transnational far-right terms "*proper human sexuality; family values*" with a nationalist twist "*Ghanaian.*" This kind of rhetorical strategy allows politicians to position themselves as not opposing human rights *per se* but rather promoting an alternative, culturally authentic interpretation of rights.

Essentially, while Uganda's political homophobia is central to regime maintenance, the actors in Ghana are more concerned about having starring roles in nation-building discourses and deploying homophobia as part of defining national identity in the postcolonial context. Opposition to LGBTIQ+ rights then becomes perceived as essential to preserving Ghanaian cultural authenticity against neocolonial influence, making homophobia appear patriotic rather than prejudiced. The parliamentary process surrounding the bill further demonstrates this. Extensive public consultations created an appearance of democratic deliberation grounded in local legitimacy, whereas international conservative support provided resources and expertise to steer the conclusion to a pre-determined position. This approach helped generate broad domestic political support while attempting to maintain international legitimacy through claims of democratic consensus. Ghana's trajectory has been successfully framed as a product of public will rather than political calculation, with transnational networks that shaped its content and timing greatly obscured.

5.4 Implications for LGBTIQ+ Rights

While anti-LGBTIQ+ rhetoric and laws have existed since colonial times in the focus countries, there is a reasonable argument that the emergence of political homophobia as a transnationally co-created governance framework has fundamentally altered the landscape in which LGBTIQ+ rights claims can be articulated and pursued. Through the strategy of positioning LGBTIQ+ rights as inherently foreign, anti-democratic, or culturally inauthentic, this emergent governance framework creates epistemological barriers that precede and complicate legal obstacles. LGBTIQ+ individuals and activists must navigate a discursive environment where their very existence is framed as incompatible with authentic citizenship.

In Uganda, the Anti-Homosexuality Act has created an environment where discrimination is not merely an individual or societal attitude, but a legally enshrined and judicially validated framework. The Constitutional Court’s April 2024 ruling in *Fox Odoi*³⁵ explicitly endorsed the state’s argument that homosexuality threatens Ugandan cultural identity, establishing a legal precedent that places LGBTIQ+ persons outside constitutional protection. This judicial endorsement essentially abdicates Ugandan courts’ role as potential sites of rights protection and forecloses all possibility of future judicial review, leaving LGBTIQ+ Ugandans with almost no domestic legal recourse outside of political change. In Kenya, despite constitutional protections for equality and dignity, the actions of local and transnational anti-LGBTIQ+ actors have created a contradictory rights regime where, for example, LGBTIQ+ organizations can legally register but their members remain criminalized, fragmenting citizenship identity and participation. The incremental progress that was being made against legacy colonial sodomy laws has effectively been resisted by the incursion of transnational actors who have empowered local anti-rights actors to intervene in courtrooms, obfuscate legal arguments, and blackmail judges with criticisms of their sexuality.³⁶ Instead of continuous progress, LGBTIQ+ Kenyans have to continually navigate legal ambiguity, never fully secure in their rights claims despite partial victories. For Ghana, the Family Values Bill explicitly subordinates LGBTIQ+ rights claims to “proper human sexual rights” that redefines the concept of rights itself, creating an alternative rights framework that excludes sexual and gender minorities. Through this exclusionary language, Ghanaian actors attempt to make it more difficult for LGBTIQ+ advocates to appeal to universal rights principles without being cast as opponents of “proper” rights and of propriety itself.

Across all three countries, the transnational dimension of political homophobia creates additional barriers to rights recognition. Because domestic political actors frame LGBTIQ+ rights as external impositions, they can position international human rights mechanisms as tools of neocolonial interference rather than legitimate, treaty-based, protections. This framing makes it even more difficult for LGBTIQ+ advocates to leverage international human rights standards without reinforcing perceptions of foreign agenda-setting.

³⁵ *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others*, *supra* note 27.

³⁶ Sean Jacobs, “The Gay Judges in Kenya” (6 May 2025), online: *Africa is a Country* <<https://africasacountry.com/2011/06/the-gay-judge-in-kenya>>.

5.5 Implications for Democracy and Human Rights

Based on the analysis in the preceding chapters, there is a reasonable (or at least, a plausible) argument to be made that the expansion of transnationally co-created political homophobia in the focus countries contributes to consequences extending far beyond the direct regulation of sexuality and gender identity and its impact on LGBTIQ+ persons, and that it affects democratic institutions, rule of law, and human rights frameworks more broadly, thereby revealing its function as a governance strategy with systemic implications. When we trace these wider effects, we can understand this iteration of political homophobia as not just discrimination against a specific group but as a mechanism through which fundamental aspects of democratic governance and rights protection are reconfigured in the focus countries.

5.5.1 Democratic Institutions and Civil Society Space

The logical understanding of the emergence of transnational support for political homophobia in Kenya, Uganda, and Ghana as a *governance strategy* suggests that this situation is not merely a cultural or moral issue—it represents a strategic assault on democratic institutions. Political homophobia is deliberately mobilized by state and non-state actors to erode the rule of law, curtail human rights protections, suppress political participation, and dismantle civil society. The invocation of “African values” or “family values” as a rationale for these laws masks the underlying political agenda of consolidating authoritarian power under the guise of cultural authenticity.

Hegemonic regimes are able to manufacture enemies and redirect public scrutiny away from governance failures by criminalizing non-normative sexualities and gender expressions. The strategic incitement of moral panic fuels popular support for repressive legislation while legitimizing extrajudicial violence and state-sanctioned discrimination. This creates a direct feedback loop where institutionalized forms of repression intensify with rising anti-LGBTIQ+ rhetoric, resulting in cascading effects on democratic norms and principles. This form of political homophobia can, therefore, serve as a new tool in the hands of African leaders to “legitimately” undermine democratic institutions and restrict civic space through several interconnected mechanisms. Once deployed against LGBTIQ+ persons, the framework creates precedents, practices, and justifications that can subsequently be extended to target other elements of democratic governance.

Judges and the judicial system are not immune from this potential onslaught. If politicians can successfully pressure courts to validate anti-LGBTIQ+ legislation despite constitutional protections for equality and dignity, then judicial reasoning becomes subordinated to political commands. For instance, the Ugandan Constitutional Court³⁷ determined that limitations on rights, particularly the right to human dignity, were justified to protect cultural and communal interests, and thus legitimized a precedent where constitutional rights can be overridden by majoritarian moral claims, thereby weakening the ability of courts to constitutionally constrain government power.

Similarly, in Ghana, the Supreme Court was reluctant to engage with substantive rights questions,³⁸ preferring an avoidance strategy that prevented direct conflict with the legislature in the short term but ultimately undermines the judiciary's role as a check on legislative and executive overreach. It is not a stretch to say that as courts abdicate their responsibility to protect minority rights, their capacity to defend other constitutional principles diminishes as well.

Legislative quality and integrity are also likely to depreciate even more through the evolution of political homophobia in the focus countries. The new wave of transnationally backed anti-LGBTIQ+ legislation is phrased in ways that violate basic legislative drafting standards, creating vague prohibitions that expand state discretion and reduce legal certainty. Uganda's Anti-Homosexuality Act criminalizes ill-defined actions like "promoting" homosexuality, while Ghana's Family Values Bill creates unclear obligations for citizens to report suspected LGBTIQ+ persons. These provisions all involve ambiguity that enables selective enforcement, expansion of state surveillance powers, and weakening of due process protections.

Most critically, political homophobia undermines the fundamental principle that democratic governance must protect minority rights against majoritarian excess. The anti-LGBTIQ+ arguments, which frame LGBTIQ+ exclusion as an expression of democratic will rather than a violation of constitutional principles, establish a dangerous precedent that rights protections are subject to popular approval. This conceptual framework, resisted by international human rights norms and legitimized by transnational anti-rights actors, threatens not only LGBTIQ+

³⁷ *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others*, *supra* note 27.

³⁸ Komla Adom & Danai Nesta Kupemba, "Ghana Anti-LGBT Bill: Supreme Court Dismisses Legal Challenges" (18 December 2024), online: *BBC* <<https://www.bbc.com/news/articles/crrw2r8epw8o>>.

communities but any minority group whose rights might conflict with majority preferences or dominant cultural norms.

5.5.2 Sovereignty and International Human Rights Norms

There is a case to be made that the rise in co-produced political homophobia between local and transnational anti-LGBTIQ+ actors affects the relationship between national sovereignty and international human rights norms, creating new challenges for rights protection globally. Although the debate over LGBTQ+ rights in Africa has connections to actors on both sides in the West,³⁹ African LGBTQ+ activists rarely, if ever, deny their reliance on international human rights norms on universal human rights. However, African political leaders frequently invoke national sovereignty and cultural authenticity to justify the criminalization of queer identities, with such claims often masking the colonial origins and ongoing foreign entanglements of anti-LGBTIQ+ laws and rhetoric.

But as has been discussed in Chapter 3, the historical data is clear that pre-colonial African societies, in fact, displayed diverse understandings of gender and sexuality, often viewing them as fluid rather than binary.⁴⁰ Despite this antecedent, proponents of anti-LGBTQ+ legislation have embedded colonial ideologies so deeply into the legal and moral fabric of society that they are no longer perceived as foreign. The persistence of colonial laws has normalized homophobia to the point where it is now defended politically as a core cultural value. This distorted narrative both erases the historical diversity of African sexual expressions and ironically reframes queerness as a symbol of Western cultural imperialism.

Within this framework, postcolonial discourse is then turned upside down as African sovereignty becomes performative rather than decolonial, cast as defiance against Western neo-imperialism but reliant instead on the very colonial legacies and transnational alliances it claims to resist. In this process, alternative normative frameworks are created that prioritize cultural relativism, majority rule and the undermining of the universal human rights protection. Yet, while domestic politicians claim to resist foreign influence when rejecting LGBTQ+ rights, they simultaneously accept support from foreign conservative organizations. This selective openness to

³⁹ Abadir M Ibrahim, “LGBT Rights in Africa and the Discursive Role of International Human Rights Law” (2015) 15:2 Afr Hum Rights Law J 263–281 at 265.

⁴⁰ Marc Epprecht, *Sexuality and Social Justice in Africa: Rethinking Homophobia and Forging Resistance* (London: Zed Books, 2013).

external influence reveals that what is at stake is not truly sovereignty itself, but rather which external influences are deemed legitimate; the debate over African sovereignty and LGBTIQ+ rights is a fundamentally political rather than principled discourse.

As such, when we examine these sovereignty claims, they typically exhibit three distinctive problematic features. First, they selectively invoke national autonomy to reject specific rights obligations while accepting other forms of human rights oversight. Uganda, Kenya, and Ghana all maintain commitments to international human rights treaties while claiming that LGBTIQ+ rights constitute illegitimate foreign interference. There is no clear explanation of why one aspect of a corpus of rights constitute illegitimate foreign interference but other aspects of the same international corpus are domestically observed, in principle at least.

Second, sovereignty claims in anti-LGBTIQ+ contexts frequently conflate the temporal government or political position with an enduring interpretation of national values. Local actors in Uganda, Kenya and Ghana implicitly claim authority to define “culture” by asserting that homosexuality threatens it, erasing the possibility of internal cultural diversity and contestation. Politicians and government figures position themselves as authoritative interpreters of those values rather than accept their limited role as elected representatives with fixed term mandates.

Third, sovereignty claims in these contexts often assert the existence of collective cultural rights in opposition to individual human rights. The Uganda Constitutional Court in the *Fox Odoi* case,⁴¹ for instance, leaned hard into this argument, grounding the existence of individual dignity as valid only in a cultural context and not distinct from it. This framing creates an artificial opposition between collective and individual rights, ignoring how true protection of cultural diversity requires respecting individual differences within cultural communities.

These sovereignty claims have implications for international human rights mechanisms, as the successful rejection of human rights obligations through the invocation of sovereignty and cultural authenticity logically weakens the normative force of human rights treaties. Worse, transnational anti-LGBTIQ+ actors play active roles in reshaping sovereignty discourse and advocating for United Nations resolutions that prioritize cultural relativism over universal rights.⁴² These efforts aim not merely to exclude LGBTIQ+ persons from rights protection but to

⁴¹ *Hon. Fox Odoi & 21 Others v Attorney General & 3 Others*, *supra* note 27.

⁴² Asser Khattab, ““Protection of the Family”: Concerns Regarding Latest UN Resolution” (19 June 2017), online: *International Commission of Jurists* <<https://www.icj.org/protection-of-the-family-concerns-regarding-latest-un-resolution/>>.

fundamentally reorient human rights discourse toward cultural relativism, state sovereignty, and religious authority.

The consequences extend to regional human rights systems as well. The African Commission on Human and Peoples' Rights (ACHPR) has faced backlash from anti-LGBTIQ+ actors for its prior progressive stance on sexual orientation and gender identity.⁴³ The African Union's Executive Council, composed of state officials, has claimed that the Commission is importing foreign values, despite the ACHPR's grounding in the African Charter's own provisions on non-discrimination, equality, and dignity.⁴⁴ More recently, some of the transnational anti-rights organizations have also attempted to register with the ACHPR as observers⁴⁵ to push back against progressive stances and bring their international weight to bear at the ACHPR. FWI (strategically rebranded as Family Watch Africa) themed its conference in May 2025 as "Towards an African Charter on Sovereignty and Values."⁴⁶ This essentially makes a direct target of the African human rights mechanism, attempting to reconceptualize its frameworks of rights in a way that fits the global far-right's conception of the social order. This kind of resistance, without corresponding pushback from civil society, is weakening the regional human rights mechanisms' authority and independence on other issues beyond LGBTIQ+ rights.

Equally concerning is how political homophobia creates alternative conceptual frameworks for understanding rights themselves through notions like Ghana's "proper human sexual rights," which allows political actors to assert authority to determine which rights are legitimate rather than recognizing rights as inherent to human dignity. This means that rights are not necessarily constraints on state power but treated both as selective grants from the state and as grants that are circumscribed by religiously generated notions, fundamentally altering the relationship between citizens and governments in ways that threaten all rights claims.

⁴³ "Say NO to African Commission on Human and Peoples' Rights Embrace of LGBT Doctrine", online: *CitizenGO* <<https://citizengo.org/en/fm/71504-say-no-african-commission-human-and-peoples-rights-embrace-lgbt-doctrine>>.

⁴⁴ "Banjul Civil Society Joint Declaration – The CIAC", online: <<https://achprindependence.org/banjul-civil-society-joint-declaration/>>.

⁴⁵ At the 77th ordinary session in October 2023, where I was present, the ACHPR denied these applications on grounds that the organizations did not have a registered office in an African country.

⁴⁶ "Home- Inter Parliamentary Forum", online: <<https://interparliamentaryforum.org/index.php?page=home>>.

5.5.3 Rights Frameworks Beyond LGBTIQ+ Issues

From the analysis above, it is also arguable that the actions of transnational and local anti-LGBTIQ+ actors generate ripple effects that extend to other rights domains, creating a scenario where restrictions initially targeting LGBTIQ+ persons expand to affect other groups and issues. These spillover effects operate through legal precedents, conceptual frameworks, and enforcement patterns that, once established for regulating sexuality, can be repurposed for broader application. As documented in Chapter 4, many transnational actors opposing LGBTIQ+ rights maintain broader agendas encompassing opposition to reproductive rights, comprehensive sexuality education, gender equality, and secular governance. Their engagement in Africa extends beyond sexual orientation and gender identity to promote comprehensive ideological frameworks that reconfigure multiple rights domains.

Women's rights are particularly vulnerable to this kind of rights rollback. The same "traditional values" frameworks used to justify discrimination against LGBTIQ+ persons frequently incorporate restrictive gender norms that limit women's autonomy.⁴⁷ The concept of the "natural family" incorporates notions of proper gender roles that reinforce patriarchal authority structures. These are the kind of overlapping restrictions that connect political homophobia to broader projects of gender regulation. The conceptual linkage between anti-LGBTIQ+ politics and restrictions on women's reproductive autonomy is especially notable. Family Watch International simultaneously campaigns against LGBTIQ+ rights and comprehensive sexuality education, positioning both as threats to traditional families. Organizations like CitizenGo target both LGBTIQ+ rights and abortion access, viewing them as interconnected assaults on natural family structures.

Religious freedom also faces reconfiguration through political homophobia. While anti-LGBTIQ+ actors often claim to defend religious liberty, they typically advance narrow conceptions that privilege one type of religious perspective while marginalizing other faiths or dissenting views within major religions. The influence of American evangelicals in African religious communities has shrunk religious pluralism in Africa, despite the fact that evangelicals are "the minority within mainline churches"⁴⁸ in the United States itself.

⁴⁷ *The International Anti-Gender Movement: Understanding the Rise of Anti-Gender Discourses in the Context of Development, Human Rights and Social Protection*, Working Paper, by Haley McEwen & Lata Narayanaswamy, www.econstor.eu, Working Paper 2023-06 (UNRISD Working Paper, 2023) online: <<https://www.econstor.eu/handle/10419/278575>> [*The International Anti-Gender Movement*].

⁴⁸ Kaoma, *supra* note 16 at 3.

Finally, the principle of equal citizenship that underlies all rights frameworks is seriously compromised. Political homophobia creates hierarchical citizenship where rights depend on conformity to majority norms rather than inherent human dignity. Once established for LGBTIQ+ persons, this hierarchical citizenship can be extended to other groups deemed culturally inauthentic, morally suspect, or politically undesirable.

5.5.4 Governance Implications: The Authoritarian Playbook

Viewed collectively, the broader implications of the activities of local and transnational anti-LGBTIQ+ actors in Kenya, Uganda and Ghana is the establishment and maintenance of a set of governance tactics that use moral panics around sexuality to advance broader political objectives. This playbook includes several key elements that appear across Kenya, Uganda, and Ghana despite their different political systems.

First, the activities of these actors provide justifications for expanded state surveillance and intervention in private life. While African leaders have rarely needed an excuse to do this, they have often been constrained by international concerns that they are acting anti-democratically or in violation of human rights principles. However, with the backing of these tactics for use in monitoring and controlling sexuality, the legitimacy derived can be pressed into the service of broader political surveillance and control.

Second, new frameworks for limiting civil society independence are being legitimized under the invasive provisions of the new anti-LGBTIQ+ laws. Governments are able to create mechanisms for restricting organizations by characterizing certain advocacy positions as contrary to national values or public morality, and thus regulate these associations based on their viewpoints rather than their conduct. These restrictions may initially target LGBTIQ+ groups but their deployment creates precedents and procedures applicable to other civil society organizations, implying a shrinking of civic space and reduction of external checks on government power.

Third, these activities provide a template for managing international pressure through strategic resistance to particular norms. If the governments of the focus countries are able to successfully resist international criticism of anti-LGBTIQ+ policies by invoking sovereignty and cultural authenticity, they can establish tactics for deflecting external pressure on other human rights concerns. This selective engagement with international norms enhances domestic political

actors' ability to resist accountability yet maintain access to international resources and legitimation.

The effectiveness of this authoritarian playbook stems partly from its ability to advance illiberal governance while maintaining democratic appearances. Unlike the previous iteration of domestic homophobia that featured colonial (or, in countries like Nigeria, additional military) imposed sodomy laws, the new wave of anti-LGBTIQ+ legislation, backed by transnational actors, typically passes through formal democratic procedures, receives majority support, and claims to express popular will. This democratic veneer helps obscure how such measures undermine substantive democratic principles like equality, minority rights protection, and limited government. The result is a wider democratic backsliding, a gradual erosion of democratic substance even in the presence of procedural formalities. The implications for democracy and human rights protection are profound. The rise of co-produced political homophobia functions as a “canary in the coal mine” for African democracies, an early indicator of broader democratic deterioration and rights restrictions. By understanding its operation and implications, human rights scholars and activists can better recognize how attacks on LGBTIQ+ rights serve as vehicles for more comprehensive challenges to democratic governance and human rights protection across multiple domains.

5.6 Conclusion

This chapter has examined how homophobia functions as a political tool in Kenya, Uganda, and Ghana, analyzing its co-production through transnational-local interactions and its implications for both LGBTIQ+ rights and broader democratic governance. The analysis indicates that this iteration of political homophobia is not merely cultural prejudice or religious conviction but functions as a strategic governance mechanism that serves multiple political functions while threatening fundamental aspects of democratic governance and human rights protection.

The evidence presented shows that transnational anti-LGBTIQ+ actors work with local partners to create governance strategies that extend far beyond regulating sexuality. In Uganda, political homophobia functions as a regime maintenance tool that fragments opposition, deflects attention from governance failures, and justifies restrictions on civil society. In Kenya, it serves as a coalition-building mechanism that unites otherwise diverse political factions. In Ghana, it provides a framework for local politicians to redefine national identity in postcolonial contexts.

Across all three countries, political homophobia has been strategically deployed during moments of political uncertainty or economic crisis to create moral panics that distract from more substantive governance issues.

The consequences of this phenomenon extend beyond LGBTIQ+ communities to affect democratic institutions and rights frameworks more broadly. By weaponizing law against marginalized groups, anti-LGBTIQ+ actors establish precedents for rights restrictions that can be repurposed for other political objectives. The strategic invocation of sovereignty claims against international human rights norms undermines treaty-based protections while obscuring the transnational influences shaping domestic policies. The conceptual frameworks established through anti-LGBTIQ+ advocacy, particularly notions of hierarchical citizenship, majoritarian decision-making, and state authority to determine which rights are legitimate, threaten the fundamental principles upon which rights protection depends.

Returning to the central research question of how local and transnational anti-LGBTIQ+ actors interact to influence laws and governance structures, the comparative analysis reveals some key insights about the relative importance of different actors and factors. First, transnational actors provide essential resources and frameworks, but their success depends critically on local political opportunity structures and the strategic capacity of domestic intermediaries. Uganda's comprehensive criminalization resulted from the intersection of substantial transnational investment with a political system that benefits from moral panic governance and local actors skilled at adapting global conservative discourses to domestic contexts. Second, the most effective transnational strategies combine material resources, ideological frameworks, and strategic relationship-building over sustained periods. The long engagement preceding Uganda's 2023 law contrasts with the more recent and limited engagement in Kenya, where transnational actors have influenced discourse but achieved fewer concrete policy outcomes. Third, local factors often prove more determinative than transnational resources in shaping outcomes. Kenya's relatively independent judiciary and competitive democratic politics have constrained anti-LGBTIQ+ advances despite substantial transnational investment through local organizations. Conversely, Uganda's authoritarian consolidation enabled the success of transnational strategies that might have failed in more competitive political environments. The case studies therefore reveal that, while transnational anti-LGBTIQ+ actors have become significant players in African legal and political landscapes, their influence operates through rather than despite local political dynamics,

succeeding where domestic political structures create opportunities for moral panic governance and failing where democratic institutions and civil society provide effective resistance.

Even with these conclusions in view, it is important to acknowledge the empirical limitations of this analysis. The claims advanced in this thesis are based on available documentation, legal texts, and observable patterns of transnational interaction, but comprehensive quantitative data on funding flows, organizational networks, and direct causal relationships remain difficult to access due to the often-opaque nature of these transnational arrangements. The analysis therefore relies on qualitative examination of available evidence to identify patterns and relationships that suggest plausible causal mechanisms rather than definitive proof of direct causation.

Nevertheless, the findings in this thesis highlight the need to recognize political homophobia not as a peripheral social issue but as an early indicator of broader democratic deterioration and rights restrictions. The transnational co-production of political homophobia is a refined governance strategy that uses moral panics around sexuality to advance broader political objectives including establishing surveillance mechanisms, restricting civil society independence, and managing international pressure through strategic resistance to progressive norms. Understanding this playbook is essential for developing effective responses that protect both LGBTIQ+ rights and democratic governance more broadly. The stakes for Africa extend far beyond debates about sexuality to encompass fundamental questions about democratic governance, citizenship, and rights in postcolonial contexts. The co-production of political homophobia through transnational-local interaction is one part of the multiple interplay of global and local forces shaping contemporary African politics and governance structures with implications that warrant further attention from scholars, activists, and policymakers concerned with human rights protection and democratic consolidation in Africa.

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