

A rights-based critique of cultural and religious intolerance against LGBTQIA+ persons in five African countries

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ABSTRACT: This article analyses the stigmatisation and discrimination experienced by LGBTQIA+ persons in Cameroon, Ghana, Nigeria, South Africa and Uganda, as it pertains to cultural and religious arguments used as a basis for such persecution and condemnation. The article shows the interconnections of intolerance against LGBTQIA+ persons in the respective countries, based on perspectives from activists and academics from Africa

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and the African Diaspora. Relying on doctrinal and comparative legal research methodologies, this article reflects on domestic legal frameworks, including proposals by a significant number of African countries to re-criminalise consensual same-sex relationships, as well as human rights advocacy, while disproportionately punishing LGBTQIA+ persons. Most importantly, the contribution compares and draws lessons from the jurisdictions under study to ascertain common denominators and factors that fuel stigmatisation and discrimination against LGBTQIA+ persons. The scope of the comparison is to assess and interpret the mechanisms through which religious and political actors have polarised the sensitive and conservative nature of African societies to politicise human rights discourse, resulting in cultural and religious intolerance negatively impacting on LGBTQIA+ persons.

TITRE ET RÉSUMÉ EN FRANÇAIS:

Une critique sur l'intolérance culturelle et religieuse à l'égard des personnes LGBTQIA+ fondée sur les droit dans cinq pays africains

RÉSUMÉ: Cet article analyse la stigmatisation et la discrimination subies par les personnes LGBTQIA+ au Cameroun, au Ghana, au Nigeria, en Afrique du Sud et en Ouganda. En ce qui concerne les arguments culturels et religieux, on assiste à une persécution et une condamnation. Cet article démontre les interconnexions de l'intolérance à l'égard des personnes LGBTQIA+ dans leur pays respectif, tout en justifiant leurs fondements sur les points de vue des activistes et universitaires d'Afrique et de la diaspora africaine. S'appuyant sur les méthodologies de recherches juridiques doctrinales et comparatives, cet article se penche sur les cadres juridiques nationaux, notamment les propositions d'un grand nombre de pays africains visant à recriminaliser les relations consenties entre personnes de même sexe, ainsi que sur la défense des droits de l'homme tout en punissant de manière disproportionnée les personnes LGBTQIA+. Une étude comparée tirée des leçons sur les différentes contributions des juridictions concerner afin de déterminer les dénominateurs communs et les facteurs qui alimentent la stigmatisation et la discrimination à l'encontre des personnes LGBTQIA+. L'objectif de la comparaison est d'évaluer et d'interpréter les mécanismes par lesquels les acteurs religieux et politiques, ont polarisés la nature sensible et conservatrice des sociétés africaines aux fins de politiser les discours sur les droits de l'homme, ce qui entraîne une intolérance culturelle et religieuse ayant un impact négatif sur les personnes LGBTQIA+.

KEY WORDS: African culture, religion, criminalisation, LGBTQIA+ persons, discrimination

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1 INTRODUCTION

Historically, varied forms of sexual and gender diversity were present in various African communities before the fifteenth century.¹ Early and first instances of criminalisation were introduced by the then colonial authorities throughout African territories, namely, for the crime of sodomy and unnatural carnal knowledge.² Such legislation was carried over into African states once their independence was achieved, and remains as part of the criminal laws of the countries studied in this article. However, South Africa remains the outlier, with full legal recognition and protection of lesbian, gay, bisexual, transgender, queer, questioning, intersex, asexual (LGBTQIA+) persons.³

In general, consensual⁴ same-sex sexual conduct⁵ is criminalised in more than 30 African countries, in many instances, involving a *de facto* criminalisation of LGBTQIA+ persons more generally.⁶ Among the five country contexts presented in this article, we⁷ show that there should be significant concern about reactionary beliefs pertaining to LGBTQIA+ persons and the impact of such beliefs on religious, political and legal developments. The significance of religious institutions in modern societies cannot be underestimated.⁸

Attempts to decriminalise consensual same-sex sexual conduct and legislate for the rights of African LGBTQIA+ persons is largely opposed across the African continent. There have been changing developments

1 CM Okwenna 'Homosexuality in traditional Africa' in SL Oladipupo (ed) *African philosophy: whose past and which modernity* (2021) 277-292.

2 As above.

3 We acknowledge the sensitivity as well as diversity linked to the acronym/abbreviation of 'LGBTQIA+'. The contributors use 'LGBTQIA+ persons' as an inclusive term in this article. If another acronym/abbreviation is used, it is done to reflect the applicable context. Eg, in the Cameroon part 'LGBTQ+' persons is used.

4 We emphasise that *consensual* sexual conduct is criminalised, as oftentimes there is a conflation between legislation that criminalises non-consensual sexual violence/assault/rape with consensual sexual activity between people of the same sex. As consent is essential in all contexts, having established that in the settings, consent is present and governments still criminalise the conduct. Eg, in Uganda's Anti-Homosexuality Act 2023 consent is explicitly not a valid defence against being charged with a crime.

5 In this article the term 'consensual same-sex sexual conduct' is mostly used. There are contexts where a different phrase is used, eg, in Cameroon, we mention 'same-sex activity'. In Ghana, we mention 'consensual same-sex relationships'.

6 ILGA *Area 1 Legal frameworks criminalisation of consensual same-sex sexual acts*, www.database.ilga.org/criminalisation-consensual-same-sex-sexual-acts (accessed 18 July 2023).

7 Throughout this article, to indicate solidarity with human rights defenders, the pronouns 'we', 'our' and 'us' are utilised. The contributors acknowledge and thank African LGBTQIA+ persons and LGBTQIA+ persons of African descent, as well as Dr Mariel Reiss, Mounir Baatour, Trinah Kakyō, among many more, who paved the way for us to present the analyses.

8 LG Mpedi & TE Coleman 'Human rights: ethical institutions/religious bodies between foundation and watering down legally testified rights' in M Okayuz and others (eds) *Human rights in a changing world: reflections on fundamental challenges* (2023) 184.

by a number of African Union (AU) member states to further criminalise consensual same-sex sexual conduct and human rights advocacy, for example, in Burundi,⁹ Egypt,¹⁰ Kenya,¹¹ Namibia¹² and Senegal.¹³ According to some academics, there is a ‘second wave’ of criminalising consensual same-sex conduct in many African countries.¹⁴ Justification of this re-criminalisation is informed by polarising cultural and religious arguments. Culturally, for instance, it is argued that being LGBTQIA+ is a choice that is ‘un-African’.¹⁵ We note several core human rights contained in international and regional human rights law to which LGBTQIA+ persons are entitled, including the right to dignity,¹⁶ the right to life and integrity,¹⁷ freedom from discrimination,¹⁸ the right to equality,¹⁹ freedom of association,²⁰ and the right to liberty and security.²¹ Thus, the aim of the article is to contribute to intersections of activism and academia²² that analyse and critique the stigmatisation and discrimination against African LGBTQIA+ persons.

Equally, we articulate the harms of legislation that can systematically decrease social inclusion and increase social exclusion. Examples are article 347(1) of Cameroon’s Penal Code, Ghana’s Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021, Uganda’s Anti-Homosexuality Act 2023 (AHA

- 9 AFP ‘Burundi court charges 24 for “homosexual practices”’ *The East African* 9 March 2023, www.theeastafrican.co.ke/tea/news/east-africa/burundi-charges-24-lgbt-members-4152138 (accessed 29 September 2023).
- 10 J Holleis ‘LGBTQ rights in Egypt: queer community battles crackdown’ *DW* 30 March 2023, www.dw.com/en/lgbtq-rights-in-egypt-queer-community-battles-crackdown/a-65170739 (accessed 29 September 2023).
- 11 Nation Homa Bay MP Peter Kaluma criticises the Supreme Court judgement on the rights of LGBTQ+ community’ *Nation YouTube* 14 September 2023, www.youtube.com/watch?v=48jITV4XGrc&ab_channel=Nation (accessed 29 September 2023).
- 12 Rédaction Africanews ‘Namibia: vote on a law against same-sex marriage’ *Africanews* 20 July 2023, www.africanews.com/amp/2023/07/20/namibia-vote-on-a-law-against-same-sex-marriage/ (accessed 29 September 2023).
- 13 Rédaction Africanews ‘Rise of homophobia in Senegal forcing LGBTQ people into the shadows’ *Africanews* 29 July 2022, <https://www.africanews.com/amp/2022/07/29/rise-of-homophobia-in-senegal-forcing-lgbtq-people-into-the-shadows/> (accessed 29 September 2023).
- 14 JO Ambani ‘An analysis of the second wave of criminalisation of homosexuality in Africa against the backdrop of the “separability thesis”, secularism, and international human rights’ LLD thesis, University of Pretoria, 2016.
- 15 S Olaoluwa ‘The human and the non-human: African sexuality debate and symbolisms of transgressions’ in Z Matebeni, S Monro & V Reddy (eds) *Queer in Africa: LGBTQI identities, citizenship, and activism* (2018) 20-40.
- 16 Art 5 African Charter; art 3 Maputo Protocol.
- 17 Art 4 African Charter; art 4 Maputo Protocol; art 6 International Covenant on Civil and Political Rights (ICCPR).
- 18 Art 2 African Charter; art 2 Maputo Protocol; art 26 ICCPR.
- 19 Art 3 African Charter; art 3 ICCPR.
- 20 Art 11 African Charter; art 22 ICCPR.
- 21 Art 6 African Charter; art 4 Maputo Protocol; art 9 ICCPR.
- 22 J Wax-Edwards, G Champion & G Funari ‘Introduction: intersections of activism and academia’ (2021) 41 *Journal for the Society of Latin American Studies* 505-507.

2023),²³ and Nigeria's Same Sex Marriage (Prohibition) Act 2013 (SSMPA). There are complexities of harm such as emotional, psychological, physical, social or economic harm.²⁴ In this regard, harms of legislation, where enacted, become problematic in terms of the rule of law being affected, due to the unpredictability and uncertainty of these so-called 'anti-gay' laws; the recurring ethical circumstances of extreme high risk to an African state; the selectively applied humane protections by an African state upon its citizens; wider intercommunity biases and prejudices; as well as insecurity within an African state.

For purposes of the article, social exclusion is defined as a complex and multidimensional process, involving

the lack or denial of resources, rights, goods and services, and the inability to participate in the normal relationships and activities, available to the majority of people in a society, whether in economic, social, cultural or political arenas. It affects both the quality of life of individuals and the equity and cohesion of society as a whole ... social inclusion is a process which ensures that those at risk of poverty and social exclusion gain the opportunities and resources necessary to participate fully in economic, social, political and cultural life and to enjoy a standard of living that is considered normal in the society in which they live. It ensures that they have greater participation in decision making which affects their lives and access to their fundamental rights.²⁵

The article deals with three central questions. First, as related to polarising cultural and religious arguments, do African LGBTQIA+ persons in Cameroon, Ghana, Nigeria, South Africa and Uganda experience increased stigmatisation and discrimination?²⁶ If yes, are there sizeable numbers of politicians and other citizens proposing for and agreeing with more stringent and expansive legislation against consensual same-sex sexual conduct? Thereafter, how are the relevant contexts pertinent to domestic law as well as African regional and international human rights law?

A main limitation – with regard to the current knowledge²⁷ about stigmatisation and discrimination against African LGBTQIA+ persons – is that published authors are researching principally from a scholarly vantage point. Our arguments in this article are necessary and

- 23 Uganda's AHA 2023 was signed into law by President Yoweri Museveni in 2023.
- 24 M Githahu 'Religious parties, civil society in last-ditch attempt to get Hate Speech Bill dropped' *IOL* 25 May 2023, <https://www.iol.co.za/capeargus/news/religious-parties-civil-society-in-last-ditch-attempt-to-get-hate-speech-bill-dropped-7cec0393-eb57-428a-b767-a36f19c72f9b> (accessed 20 July 2023).
- 25 UN Department of Economic and Social Affairs Report on the World Social Situation 2016 *Leaving no one Behind: The Imperative of Inclusive Development: Report on the World Social Situation* (2016) 17, <https://digitallibrary.un.org/record/3806782?ln=en> (accessed 22 May 2023).
- 26 The jurisdictions under study are essential, especially considering recent developments by political, cultural and religious leaders to re-criminalise consensual same-sex relationships as well as human rights advocacy whilst disproportionately punishing LGBTQIA+ persons. Lessons are thus drawn from the South African experience on mechanisms to legally recognise and protect LGBTQ+ persons.
- 27 There are increasing numbers of reports, papers, journal articles, internet articles, and additional sources that focus on the stigmatisation and discrimination against LGBTQIA+ persons in Africa. Eg, CIVICUS 2023 State of Civil Society Report,

pertinent, due to the fact that the contributors articulate viewpoints from intersections of activism and academia.

Also, the strength of this contribution lies in the extensive doctrinal reflection and comparative assessment of domestic legislation in the jurisdictions under study, especially through the prism of cultural and religious intolerance against African LGBTQIA+ persons and related debate. The comparative assessment, for instance, highlights the similarities and divergence in factors that exacerbate stigmatisation and discrimination against LGBTQIA+ persons. It also serves as a way to assess and interpret the mechanisms through which religious and political actors have polarised the sensitive and conservative nature of African societies to politicise human rights discourse, resulting in cultural and religious intolerance negatively impacting LGBTQIA+ persons.

2 STIGMATISATION AND DISCRIMINATION IMPACTING ON AFRICAN LGBTQIA+ PERSONS

2.1 Relevant regional and international human rights contexts

Before presenting analyses of the five country contexts, five points within the regional and international human rights contexts are important to specify. First, in the African regional human rights system, specific acknowledgments regarding the need to protect LGBTQIA+ persons from discrimination and violence have been made. For example, the African Commission on Human and Peoples' Rights (African Commission) at its 74th ordinary session in 2023, adopted Resolution 552 on 'Promotion and protection of the rights of intersex persons in Africa'.²⁸ Also, at its 55th ordinary session in 2014, the Commission adopted Resolution 275 on the 'Protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity'.²⁹

CHEVS 2022 Annual Report, Redress 2022 Report on Unequal Justice: Accountability for Torture against LGBTIQ+ People in Africa, 2022 United Nations Human Rights Report, 2021 House of Commons Library Briefing on LGBT+ Rights and Issues in Sub-Saharan Africa, art 19 2021 International Annual Report: A Critical Juncture, and 2021 UCLA School of Law Institute Report on Social Acceptance of LGBTI Persons in 175 Countries and Locations.

28 African Commission 'Resolution on the Promotion and Protection of the Rights of Intersex Persons in Africa' ACHPR/Res.552(LXXIV) 2023 21 March 2023, <https://achpr.au.int/en/adopted-resolutions/resolution-promotion-and-protection-rights-intersex-persons> (accessed 29 July 2023).

29 Centre for Human Rights 'Resolution 275: what it means for state and non-state actors in Africa' Centre for Human Rights, <https://cfnhri.org/resources/resolution-275-what-it-means-for-the-state-and-non-state-actors-in-africa/> (accessed 22 July 2023).

In 2006, in *Zimbabwe Human Rights NGO Forum v Zimbabwe*³⁰ the Commission confirmed, albeit in passing, that ‘other status’ as set out in article 2 of the African Charter on Human and Peoples’ Rights (African Charter)³¹ is not limited to the grounds stated but extends to other factors, including ‘sexual orientation’. Furthermore, the Commission indicated that article 2 aims to ‘ensure equal treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or *sexual orientation*’.³² This specification, together with Resolutions 275 and 522, are regarded as additional achievements to confirm the rights of African LGBTQIA+ persons under the African Charter.

Yet, in 2022, at the African Commission’s 73rd ordinary session, the applications for observer status by three non-governmental organisations (NGOs), namely, Alternative Côte d’Ivoire, Human Rights First Rwanda and Synergia (Initiatives for Human Rights), were rejected. Contrary to what had been previously expressed in Resolution 275, for example, the Commission argued that ‘sexual orientation’ is not an expressly-recognised right or freedom under the African Charter and, thus, in their opinion contrary to the virtues of African values, as envisaged by the Charter.³³ This continues an unfortunate trend, as the Commission in 2018, after having granted observer status to the NGO Coalition of African Lesbians, under pressure from the AU Executive Council reversed its decision.³⁴

Second, Murray and Viljoen assert that the exclusion of certain terminologies (such as sexual orientation, from key international instruments curated by the AU, such as the African Charter) was because those terminologies were not used when the African Charter entered into force.³⁵ Although LGBTQIA+ persons are not specifically mentioned in any of these instruments, the instruments nevertheless emphasise the everyday concerns of LGBTQIA+ persons and set forth strong and ambitious visions for inclusivity and practical positive action on the marginalisation and concerns of LGBT persons and communities in Africa.³⁶

30 (2006) AHRLR 128 (ACHPR 2006).

31 Adopted 27 June 1981, entered into force 21 October 1986.

32 Para 169 (our emphasis).

33 African Commission ‘Final Communiqué of its 73rd Ordinary Session of the ACHPR’ ACHPR 18 November 2022, www.achpr.au.int/index.php/en/news/final-communicues/2022-11-18/final-communicue-73rd-ordinary-session (accessed 22 May 2023).

34 F Viljoen ‘LGBTQ+ rights: African Union watchdog goes back on its own word’ *The Conversation* 20 March 2023, www.theconversation.com/lgbtq-rights-african-union-watchdog-goes-back-on-its-own-word-197555 (accessed 28 July 2023).

35 R Murray & F 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 *Human Rights Quarterly* 86-111.

36 C Izugbara and others ‘Regional legal and policy instruments for addressing LGBT exclusion in Africa’ (2020) 28 *Sexual and Reproductive Health Matters* 99-112.

Third, since 2003 the United Nations General Assembly (UNGA) has repeatedly called attention to violence against LGBTQIA+ persons based on SOGIESC³⁷ through various resolutions, including those focusing on extrajudicial, summary or arbitrary executions.³⁸ Moreover, similar to the Commission's Resolutions 275 and 552, the United Nations Human Rights Council (HRC) has on several occasions addressed issues related to the rights of LGBTQIA+ persons, including establishing the mandate of the independent expert on protection against violence and discrimination based on sexual orientation and gender identity, and its subsequent renewals.³⁹

Fourth, notwithstanding the growing consensus within the international community on human rights for all, most AU member states continue to oppose recognition and protection of what they consider as separate rights for LGBTQIA+ persons, contesting the creation of a 'new set of rights'; also that such recognition and protection is an affront to their respective religion and cultures.⁴⁰ All people are entitled to their fundamental rights, including LGBTQIA+ persons.⁴¹ Additionally, the re-criminalisation of consensual same-sex relationships – based on cultural grounds, for example – is not justifiable since there is evidence that sexual diversity did exist in certain African communities prior to the fifteenth century.⁴² As one example, in Yoruba culture, there is reference to words expressing homosexual behaviour and, in Hausa culture, homosexual identity.⁴³ Both facts account for the enactment of laws by former colonial authorities, especially the British, to criminalise such practices, which were considered an affront to European Christian religion and culture.

Fifth, the AU Agenda 2063 is the African continent's strategic framework that aims to deliver on its goal for inclusive and sustainable development and is a concrete manifestation of the pan-African drive for unity, self-determination, freedom, progress and collective prosperity pursued under pan-Africanism and African renaissance.⁴⁴

37 The contributors agreed to use sexual orientation, gender identity, gender expression and sex characteristics (SOGIESC) as an inclusive acronym/abbreviation in this article. Where applicable, a different acronym/abbreviation may be utilised contextually; eg, at times, SOGISC, SOGI and SOGIE are utilised.

38 UNGA 'Extrajudicial, summary or arbitrary executions' (30 January 2015) A/Res/69/182.

39 HRC 'Protection against violence and discrimination based on sexual orientation and gender identity' (15 July 2016) A/HRC/RES/32/2.

40 JM Voss 'Contesting sexual orientation and gender identity at the UN Human Rights Council' (2018) 19 *Human Rights Review* 3.

41 K Appiagyei-Atua 'Minority rights, democracy and development: the African experience' (2012) 12 *African Human Rights Law Journal* 69-88.

42 SO Murray & W Roscoe *Boy-wives and female husbands: studies in African homosexualities* (1998).

43 B Alimi 'If you say being gay is not African, you don't know your history' *The Guardian* 9 September 2015, www.theguardian.com/commentisfree/2015/sep/09/being-gay-african-history-homosexuality-christianity (accessed 22 July 2023).

44 African Union Commission and African Union Development Agency 'Agenda 2063: the Africa We Want' (2015) 4.

Accordingly, the persecution and condemnation of LGBTQIA+ persons on the African continent contradicts the essence of Agenda 2063.

2.2 Cameroon: harassment, torture, coercion, and extortion of LGBTQ+ persons

In this part we provide insights into harms against LGBTQ+ persons in Cameroon. We show that the Cameroonian Constitution provides equal rights for all its citizens, certainly, with the signing and ratification of international human rights instruments aimed at protecting all Cameroonians without exception. Also, the part examines intolerance against the LGBTQIA+ community in Cameroon, with a focus to counter misconceptions about Cameroonian culture and religion.

The 1967 Penal Code of Cameroon (article 347*bis*) specifies having homosexual relations as a crime.⁴⁵ This law, also known then as a Cameroonian ordinance, was limited in application of law and had the power of statutory law. Specifically, the then ordinance could be revoked and had a limited time of application. Furthermore, and equally critical, ordinances in Cameroon are laws that can be made by the President of the Republic, so ordinances have the force of law and can become laws when later validated by Parliament. For example, in 2016 homosexuality as a crime was enacted into law by Parliament (article 347(1) of the Cameroon Penal Code). To date, the punishment for engaging in homosexual relations in Cameroon is imprisonment from six months to five years, and a fine of 20 000 to 200 000 CFA francs.⁴⁶ This provision has been actively enforced by the Cameroonian police force and judicial institutions, with increased cases filed in the courts.

Another important legal provision to be considered is article 83 of the Cybercrimes and Cyber Security Law,⁴⁷ which deems it illegal for a person to make 'sexual propositions to another person of the same sex' through electronic communications. Alleged violators are subject to imprisonment and/or fines, and those penalties double if followed by sexual relations. This particular law infringes on the right to privacy, for example, when the police arrest suspected LGBTQ+ persons. Equally problematic is what the state deems and enforces as protection of so-called morality. Chapter 5 of the Cameroonian Penal Code⁴⁸ enshrines public decency or public morals and morality. The law does not define what constitutes public decency. Instead, in its articles 263 and 264 the law makes reference to public indecency and corruption of morals, respectively. The legislature, perceiving homosexuality to be immoral, fits it into the scope of what the law makes reference to. Thus, there is no explicit definition of what constitutes public decency or public morals and morality under Cameroonian law.

45 Penal Code 67/LF/1.

46 Law 2016/007 of 12 July 2016 relating to the Penal Code.

47 Cyber Security and Cyber Criminality in Cameroon, Law 2010/012.

48 Law 2016/007 of 12 July 2016 relating to the Penal Code.

Two insights into the human rights contexts of Cameroon are the African Commission's 2018 Resolution on the Human Rights Situation in the Republic of Cameroon⁴⁹ and the 2020 Resolution on the Deterioration of the Human Rights Situation in Cameroon during the COVID-19 period, particularly, the Commission's deep concern at the continuation of human rights violations in the far north, north-west and south-west regions of Cameroon.⁵⁰ In this regard, we note especially the harms experienced by LGBTQ+ persons there. For example, LGBTQ+ persons are subject to death threats, forced public displays of nudity and harassment. Also, commonplace are mass arrests, arbitrary detention as well as torture and violence while in custody.⁵¹ Such incidents of harm against LGBTQ+ persons are not indigenous to Africa with an emphasis on the fact that penalisation of consensual same-sex sexual conduct is an import from Europe.

A microcosm of the increased stigmatisation and discrimination experienced by LGBTQ+ persons in Cameroon is the arrest and sentencing of Njeukam Loic Midrel (Shakiro) and Mouthe Roland (Patricia), both Cameroonian citizens. They were charged with 'attempted homosexuality', indecent dressing⁵² and lack of identification papers.⁵³ There is no law in Cameroon that criminalises women, men and intersex persons for the types of clothing they wear. By assuming such powers, the Cameroonian government becomes the guarantor of moral values and what is deemed incorrect or correct; specifically, a prerogative to maintain the so-called morality factor. Thus, the government considers men wearing what is considered women's clothing to be culturally incorrect. Further, transgender women are disproportionately targeted by measures such as these.⁵⁴

Homosexuality cases are marked by a staggering number of due process violations and other rights abuses, comprising torture and ill-treatment (including anal examinations), violations of privacy, and blatant homophobia on the part of judges and law enforcement

49 African Commission 'Resolution on the Human Rights Situation in the Republic of Cameroon' (2018) Res 395 (LXII), www.achpr.au.int/en/adopted-resolutions/395-resolution-human-rights-situation-republic-cameroon-achprres (accessed 27 July 2023).

50 African Commission 'Resolution on the Deterioration of the Human Rights Situation in Cameroon during the COVID-19 Period' (2020) Res 442 (LXVI).

51 Human Rights Watch 'Cameroon: rising violence against LGBT people, no protection from group attacks; authorities arrest, detain victims' 11 May 2022, <https://www.hrw.org/news/2022/05/11/cameroon-rising-violence-against-lgbti-people> (accessed 20 July 2023).

52 As mentioned by the International Commission of Jurists, there is sensitivity around the phrase 'cross-dressing' especially one's choice of attire that may be described as an expression of individual liberty and autonomy, or an expressive statement protected under the right to freedom of expression.

53 Allegations of not having proper identification papers may be used as another manner of criminalisation of LGBTQ+ persons in Cameroon, especially transgender and gender non-conforming persons.

54 T Snyman & A Rudman 'Protecting transgender women within the African human rights system through an inclusive reading of the Maputo Protocol and the proposed Southern African Development Community Gender-Based Violence Model Law' (2022) 33 *Stellenbosch Law Review* 57.

officials. Other instances of stigmatisation and discrimination against LGBTQ+ persons in Cameroon are extended stays in custody before being charged, denial of access to counsel, denial of contact with family, biased law enforcement and judicial officials, use of forced confessions, allegations of bribery to avoid arrest.⁵⁵

Moreover, extreme religious beliefs have contributed to the spreading of anti-homosexual sentiments countrywide. In 2012 Archbishop Tonye Bakot (the then Archbishop of Yaoundé) stated that homosexuality is shameful, and a disrespectful criticism of God who created man and woman.⁵⁶ While it may be suggested that a Christian's belief deems homosexuality as a sin, such does not permit for instigation and perpetuation of violence against LGBTQ+ persons. As shown by Msibi, homosexuality has been part of Africa. The contradictory ideas on morality and religion as well as the use of outdated imported laws to prosecute LGBTQ+ individuals is not African.⁵⁷ Ndjio's findings show that before the arrival of white people in Cameroon, most regions, towns, and villages in Cameroon had some practices of homosexuality. Ndjio's findings counter the arguments that suggest homosexuality is an import or was introduced in Africa with the coming of the white man.⁵⁸ Ngoumou's argument that 'before the arrival of the colonisers, homosexuality in all its forms was always known in Africa long before the advent of *civilising* missions'.⁵⁹ Ngoumou also contends that the lives of lesbians and homosexuals before the arrival of the colonisers were characterised by peace, harmony and good living conditions and they lived within the Cameroonian society. Mbebe confirms this.⁶⁰ We specify that there is increased lesbiphobia, biphobia, homophobia and transphobia in Cameroon in 2023 with specificity to harassment, torture, coercion, and extortion of LGBTQ+ persons.

Connected to the above harms are calls for stringently-wider legislation against consensual same-sex sexual conduct. For example, after the French Ambassador Jean-Marc Berthon was to visit Cameroon to hold a conference on gender and sexual identity, the

55 Human Rights Watch 'Guilty by association' 21 March 2013, <https://www.hrw.org/report/2013/03/21/guilty-association/human-rights-violations-enforcement-camerouns-anti> (accessed 20 July 2023).

56 Reuters staff 'Cameroon archbishop calls same-sex marriage crime against humanity' *Reuters* 25 December 2012, www.reuters.com/article/cameroon-homo-sexuality-idINDEE8BO04K20121225 (accessed 20 July 2023).

57 T Msibi 'The lies we have been told: on (homo) sexuality in Africa' (2011) *Africa Today* 55-77.

58 B Ndjio 'Post-colonial histories of sexuality: the political invention of a libidinal African straight' (2006) 82 *Africa: Journal of the International African Institute* 609-631.

59 LF Ngaoumou *Social analysis of the LGBTQ+ issues in the historical, social, religious and legal context in Cameroon* (2021) 8.

60 P Awondo and others 'Homophobic Africa? Toward a more nuanced view' (2011) 55 *African Studies Review* 145-168.

Cameroonian government stated that the discussion topics breached anti-homosexuality legislation.⁶¹ The fact that Berthon's planned visit was weeks after the passage of Uganda's AHA 2023 is up for further analysis. Also, some religious leaders denounced the planned visit, insinuating that homosexuality is against nature and is an abomination which should not be tolerated.⁶²

As a state party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁶³ Cameroon is to ensure that there is no room for justification for acts of torture. Enforcement of articles 83 and 347(1) constitutes a violation of Cameroon's international human rights obligations.⁶⁴ This position is supported by reference to article 45 of the Cameroonian Constitution, which stipulates that '[d]uly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement'.⁶⁵ Moreover, pertaining to laws in Cameroon, article 1 of the Penal Code, article 16 of the Civil Code and article 84 of the Labour Code all enshrine the principles of equality and non-discrimination against any person.⁶⁶ Article 65 of Cameroon's Constitution, which states that 'the Preamble shall be part and parcel of the Constitution', implies that the rights guaranteed in the Preamble are legally binding. The Preamble sets out the respect of the principles of the Universal Declaration of Human Rights and non-discrimination as well as protection of minorities and rights of Indigenous persons. We note that, in the Cameroonian Constitution, drafters of the Constitution do not explicitly explain which category of persons are within the term of 'minority'.

In the above regard, homosexuality in Cameroon remains illegal with human rights advocacy at high physical, mental, social as well as financial costs to LGBTQ+ persons there. We emphasise the long-term implications of suppressing human rights advocacy in Cameroon and violating a person's human rights.

61 Reuter staff 'Cameroon opposes French LGBT+ rights ambassador's visit' *Reuters* 21 June 2023, www.reuters.com/world/africa/cameroon-opposes-french-lgbt-rights-ambassadors-visit-2023-06-21 (accessed 1 October 2023).

62 Canal2 International 'Le Journal 19h50 du Jeudi 22/06/23' *Canal2 International YouTube* 22 June 2023, https://www.youtube.com/live/6ToBvF_fk_I?si=TUChwEqryMLAUWtq (accessed 6 October 2023).

63 Adopted 10 December 1984, entered into force 26 June 1987.

64 OHCHR UN Treaty Body Database: Ratification Status for Cameroon, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Home.aspx (accessed 27 July 2023). Cameroon has ratified seven of the nine key UN human rights treaties, and is a signatory to the rest.

65 Constitution of the Republic of Cameroon, 2008.

66 CD Ndongo 'The impact of the Maputo Protocol on Cameroon' in VO Ayeni (ed) *The impact of the Maputo Protocol in select African states* (2016) 23.

2.3 Ghana: polarising religious and para-Christian ideas that inform the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021

Ghana's Parliament is considering passing the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill 2021 (Ghana's Anti-LGBTQ+ Bill). A section of the members of parliament sponsored the Bill. The scope of restrictions on human rights in the Bill has caused extensive debates and opposition from some sections of Ghanaian society, especially in academic, political and religious settings. The Bill's core aim is informed by polarising religious institutions and para-Christian bodies such as the Ghana Pentecostal and Charismatic Council, the Coalition of Muslim Organisations of Ghana, and Advocates for Christ.⁶⁷ For example, it is purported that LGBTQIA+ persons are at variance with the very moral, cultural and religious foundations of Ghanaian society. This part provides insights on the existing legal framework, development on the re-criminalisation of consensual same-sex relationships as well as human rights advocacy while disproportionately punishing LGBTQ+ persons. Due consideration is given to the opinion of Ghana's Attorney-General and Minister for Justice and other government officials in terms of potential human rights infractions by the Bill. This part further shows incidents of stigmatisation and discrimination of LGBTQIA+ persons in Ghana.

The Fourth Republican Constitution of Ghana of 1992 provides elaborate rights and freedoms, which all persons are entitled to enjoy in Ghana. The 1992 Constitution is explicit against discrimination on the grounds of social or economic status, gender, race, religion, creed and ethnic origin.⁶⁸ The 1992 Constitution also provides instances where differential treatment should not be considered as discriminatory in character, especially where such treatment is in respect of, for instance, the implementation of government policies aimed at redressing social, economic and educational imbalances in Ghanaian society.⁶⁹ In the context of protecting LGBTQIA+ persons against discrimination, the much-touted debate is that the anti-discrimination provision in the 1992 Constitution does not offer explicit protection to homosexuals in Ghana. This triggered a debate and assessment of the provision during the Constitution review processes in 2011.⁷⁰ The crux of the debate and submissions to the Constitution Review Commission (CRC) was the suggestion to include 'sex' in the anti-discrimination clause of the 1992 Constitution.⁷¹ The Commission, however, concluded that including

67 Parliament of Ghana www.parliament.gh/docs?type=Bills&OT_Bills (accessed 26 November 2022).

68 Art 17(2) Constitution of the Republic of Ghana, 1992.

69 Art 17(4) Constitution of the Republic of Ghana, 1992.

70 Constitution Review Commission Report of the Constitutional Review Commission of Ghana 'from a political to a developmental Constitution' (2011) 656-657.

71 As above.

‘sex’ in the anti-discrimination clause of the 1992 Constitution could potentially lead to the interpretation that Ghana accepts LGBTQ+ practices.⁷² The ultimate recommendation by the Commission was that issues of such nature should be left for interpretation and determination by Ghana’s apex court.⁷³ The debate thus rages on, especially with sponsors of the Bill claiming that the 1992 Constitution permits for positive discrimination. Accordingly, it is believed that through laws, LGBTQIA+ persons could be discriminated against without offending the provisions of the 1992 Constitution.

From a statutory standpoint, section 104(1)(b) of Criminal Offences Act 29 of 1960 criminalises ‘unnatural carnal knowledge’ – this provision by nature prohibits consensual same-sex conduct between men, but not between lesbians.⁷⁴ Section 104(1)(b) of the Criminal Offences Act was imported from the then Criminal Ordinance 12 of 1892 promulgated by the British colonial government.⁷⁵ The Criminal Ordinance 12 was the first piece of legislation to introduce ‘unnatural carnal knowledge’ in a bid to quell homosexual activities in the then Gold Coast of Ghana.⁷⁶ Unfortunately, section 104(1)(b) of the Criminal Offences Act is seen by many politicians and religious leaders as insufficient to adequately put an end to so-called LGBTQIA+ activities in Ghana. Thus, overly-stringent legislation has been proposed, coupled with extreme cultural and religious beliefs, and aimed at restricting fundamental rights and freedoms – such as freedom of association, freedom of expression, freedom of speech, including academic freedom, the right to equal treatment, the right to human dignity, freedom of assembly, the right to demonstrate, and the right to personal liberty.

Aside from the religious undertones and influences of the Bill, the main goal is to provide a comprehensive piece of legislation beyond the contours of section 104(1)(b) of the Criminal Offences Act and to decisively end the so-called LGBTQIA+ activities in Ghana. According to the Bill’s sponsors, the provisions of the Bill, that are to restrict LGBTQ+ persons in Ghana, are justified on several grounds.

Chief is the pursuance of the cultural aspirations and desires of Ghanaians articulated in article 39 of the 1992 Constitution of Ghana. Article 39 of the 1992 Constitution of Ghana enjoins the government to integrate appropriate customary values into ‘the fabric of national life through formal and informal education’.⁷⁷ Article 39 also requires the government to ensure that appropriate customary values are adapted

72 As above.

73 As above.

74 Sec 104(1)(b) Criminal Offences Act 29 of 1960.

75 WB Griffith (ed) *Ordinances of the Gold Coast Colony and the rules and orders thereunder in force* (1903); JS Read ‘Ghana: the Criminal Code, 1960’ (1962) 11 *International and Comparative Law Quarterly* 272.

76 As above.

77 Art 39(1) Constitution of the Republic of Ghana, 1992.

and developed as an integral part of the growing needs of the society as a whole.⁷⁸ The sponsors of the Bill support the pursuance of this cultural aspiration of Ghana with further claims that homosexuality is alien to Ghanaian and African culture, and that the majority of Ghanaians, based on their religious beliefs, abhor such practices.⁷⁹ Accordingly, stringent criminalisation aligns with the cultural and religious beliefs of Ghana, while promoting the cultural aspirations of the framers of the 1992 Constitution. Academic reflections and case law do not support the reliance on article 39 of the 1992 Constitution and the claim that fundamental rights and freedoms of LGBTQ+ persons should be restricted because of the religious beliefs of the majority of Ghanaians.

According to Coleman and others, article 39 of the 1992 Constitution prescribes a specific procedure through which the cultural objectives of Ghana can be realised.⁸⁰ According to them, article 39 prescribes that the integration of cultural values and norms into national life must be through formal and informal education.⁸¹ This constitutional provision does not prescribe an imposition of criminal sanctions, especially through a penal code as suggested by the sponsors of the Bill. The authors accordingly argue that the reliance on article 39 and imposition of penal sanctions as the foundation to actualise the cultural objectives of Ghana is a complete mischaracterisation and reading of the 1992 Constitution of Ghana.⁸² Also, regarding the advancement of religious and moral beliefs of Ghanaians, several case laws have expressed the view that Ghana is not governed by the teachings and dogmas of a particular religion, but rather the laws of the state. In the case of *Osam Pinanko v Lartey & Another*,⁸³ Archer J stated that ‘there is no established religion in Ghana recognised as the religion of the state. The courts of Ghana apply the laws of the country and not what the Christian Bible teaches.’⁸⁴

Similarly, in *James Kwabena Bomfeh Jnr v Attorney-General*⁸⁵ the Supreme Court of Ghana remarked and emphasised the secular nature of the Ghanaian society. According to the Court, ‘the Constitution of the Fourth Republic, while secular in nature, affirms and maintains the historical, cultural, and religious or atheist character of the Ghanaian society’.⁸⁶ That is to say, the fact that the majority of Ghanaians abhor homosexuality because of their faith does not imply that such religious dogmas should be imposed on all Ghanaians as the law of Ghana. While it is admitted that majoritarian rule is a guiding

78 Art 39(2) Constitution of the Republic of Ghana, 1992.

79 Memorandum to the Bill 1.

80 TE Coleman, EY Ako & JG Kyeremateng ‘A human rights critique of Ghana’s Anti-LGBTQ+ Bill of 2021’ (2023) 23 *African Human Rights Law Journal* 96-122.

81 As above.

82 As above.

83 (1967) GLR 380 382-385.

84 *Osam-Pinanko v Lartey & Another* (1967) GLR 380 382-385.

85 Writ J1/14/2017 (unreported).

86 *James Kwabena Bomfeh Jnr v Attorney-General* Writ J1/14/2017 (unreported) 18.

principle under the 1992 Constitution of Ghana, the position of the majority must be guided by the need to protect the most vulnerable in society, particularly the minority. The rule by majority is thereby circumscribed within certain parameters. The reason for such checks and balances is to prevent situations where the majority is tyrannical in nature.⁸⁷

In terms of the claim that homosexuality is foreign to African culture, the existence, if not the acceptance, of homosexual relationships in some parts of Ghana is supported by the scholarly works of Signorini. For example, in a study on the patterns of kinship amongst the people of Nzema in the current western region of Ghana, Signorini uncovered a unique form of marriage known as *agonwole agyale* – a system of marriage between persons of the same sex.⁸⁸ This marriage system represented a ‘sublimation of deep feeling which is of considerable value as a social cohesion in Nzema culture and which is recognised by that society’.⁸⁹ Admittedly, Signorini was speculative on whether there existed a sexual relation in such a type of marriage. Nevertheless, the existence of this type of marriage among the people of Nzema is uncontested, indicating that homosexual relationships are not foreign to Ghanaian culture. It is noteworthy that the fact that the practice did exist does not imply that it was accepted by society as a whole or as part of the so-called norm. Ako argues that some pre-colonial African societies did not abhor consensual same-sex relationships.⁹⁰ He explains that while pre-colonial African societies cherished heterosexual relationships (for purposes of childbirth and continuity of family generations) they also valued consensual same-sex relationships.⁹¹ In addition, Ngwena asserts that same-sex relationships have been part of our Africanness.⁹² Similarly, Epprecht⁹³ and Ambani⁹⁴ reaffirm the existence and acceptance of homosexuality in some parts of pre-colonial African societies.

Indeed, the degree of constitutional infractions by the provisions of the Anti-LGBTQ+ Bill on the fundamental rights and freedoms of individuals necessitated that Ghana’s legal chief provide an opinion on the constitutional challenges and potential exposure of the government

87 Coleman and others (n 80) 113-114.

88 J Signorini ‘Agonwole agyale: the marriage between two persons of the same sex among the Nzema of Southwestern Ghana’ (1973) *Journal Des Africanistes* 221-222; SO Dankwa ‘The one who says I love you: same-sex love and female masculinity in postcolonial Ghana’ (2011) *Ghana Studies* 223-224.

89 Signorini (n 88).

90 EY Ako ‘Domesticating the African Charter on Human and Peoples’ Rights in Ghana: threat or promise to sexual minority rights?’ (2020) 90 *African Human Rights Yearbook* 99-106.

91 As above.

92 C Ngwena *What is Africanness? Contesting nativism in race, culture, and sexualities* (2018).

93 M Epprecht ‘Bisexuality and the politics of normal African ethnography’ (2006) 48 *Anthropologica* 190-192.

94 J Ambani ‘A triple heritage of sexuality? Regulation of sexual orientation in Africa in historical perspective’ in S Namwase & A Jjuuko (eds) *Protecting the human rights of sexual minorities in contemporary Africa* (2017) 23-24.

of Ghana to unwarranted civil actions, especially about the operationalisation and validity of the Bill. The Attorney-General, in his response to the Chairperson of the Committee on Constitutional, Legal and Parliamentary Affairs of the Parliament of Ghana on the Request for Memoranda on the Government's Position on the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021⁹⁵ remarked that 'parts of the Bill in its present form violates fundamental rights and freedoms enshrined in the Constitution, including the right to freedom of expression, thought and conscience and freedom from discrimination'.⁹⁶ The Attorney-General, however, admitted that other provisions of the Bill pass the constitutionality test, whereas others are repetitions from existing legislation.⁹⁷

Another critical constitutional point considered by the Attorney-General was on the nature of the Bill (Private Members Bill) and whether or not its implementation would have financial implication for the state.⁹⁸ On this question, the Attorney-General expressed the opinion that the obligation on collective responsibility of citizens, educational institutions as well as state institutions, the provision of prison facilities, among others, may have financial implications for the government.⁹⁹

On the issue of restriction of fundamental rights and freedoms of individuals, the Attorney-General concluded:

Chapter five of the Constitution guarantees the fundamental rights and freedoms of every person. These are rights that are to be upheld and respected by the Legislature, the Executive and the Judiciary and all organs of government and its agencies and all natural and legal persons. Aspects of the Bill in its current form may violate some fundamental rights, and freedoms enshrined in the Constitution, including the right to freedom of expression, thought and conscience, and freedom from discrimination.¹⁰⁰

Most significantly, the practical realisation and implementation of the Bill will also be fraught by some legal challenges, including an incursion into the privacy rights of individuals, particularly LGBTQ+ persons in Ghana. This assertion is corroborated by the concluding remarks of the Attorney-General who averred that 'attention is drawn to the possible implementation challenge likely to be faced after the Bill is passed. Some provisions when implemented, will violate fundamental rights and freedoms, particularly the right to privacy.'¹⁰¹

Notwithstanding the extensive clause-by-clause analysis by the Attorney-General to ascertain the constitutionality of the provisions of

95 The Attorney-General and Ministry of Justice 'Re: Request for Memoranda on the Government's Position on the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021' (19 October 2022), www.citineewsroom.com/wp-content/uploads/2022/11/A-Gs-Opinion_Promotion-Of-Proper-Human-Sexual-Rights-Bill-2021.pdf (accessed 3 October 2023).

96 As above.

97 As above.

98 As above.

99 As above.

100 As above.

101 As above.

the Bill, several issues that constitute a fundamental part of Ghana's constitutional framework and jurisprudence were ignored. For instance, the position of the Attorney-General completely ignored Ghana's obligation under key international instruments and resolutions. Also, the Attorney-General's conclusion on ascertaining the constitutionality of the Bill did not consider the case law in Ghana on the proper mechanics, rubrics and programmatic structure of limiting fundamental rights and freedoms.¹⁰² The sponsors of the Bill also failed to consider the case law on the proper approach to limit fundamental rights and freedoms under the 1992 Constitution of Ghana. The authors assert that a careful assessment of the case law, coupled with a consideration of recent international commitment by Ghana would have impacted some of the justifications advanced by the sponsors of the Bill to restrict the rights and freedoms of LGBTQIA+ persons.

On the issue of Ghana's obligation under key international instruments and resolutions, Ghana, for instance, is a member of the HRC. Recently, meaningful engagements on the ways to end violation of human rights of sexual minorities and the re-criminalisation of consensual same-sex affairs was conducted during the Fourth Cycle of the Universal Periodic Review on 24 January 2023.¹⁰³ Prior to that, Ghana in 2017 moved away from its hostile position on the homosexuality debate and in principle supported the recommendations by the HRC.¹⁰⁴ Also, Ghana is a state party to the International Covenant on Civil and Political Rights (ICCPR) and thus is bound by the decisions of the Human Rights Committee – which has pronounced in several cases that discrimination on the grounds of sexual orientation is at variance with the non-discrimination provision, the right to human dignity and privacy under ICCPR.¹⁰⁵

- 102 See the following cases on limitation of rights analysis under Ghanaian law not considered by the Attorney-General and the sponsors of the Bill to justify the limitation of rights under the 1992 Constitution of Ghana: *Ahumah Ocansey v The Electoral Commission and the Centre for Human Rights & Civil Liberties v The Attorney-General* [2010] SCGLR 575 (in this case, the Supreme Court of Ghana adopted the Canadian proportionality test or Oakes test in *R v Oakes* [1986] 1 SCR 103 as the framework to limit fundamental rights and freedoms); *Republic v Thompson Books Limited No 2* [1996-1997] SCGLR 484; *Charles Ayuune Akurugu v The Attorney-General* Suit HR/00039/2015 (29 March 2017) (unreported).
- 103 United Nations Human Rights Council 'Universal Periodic Review – Ghana Fourth Cycle: Tuesday 24 January 2023, 14:30-18:00', www.ohchr.org/en/hr-bodies/upr/gh-index (accessed 3 October 2023).
- 104 See United Nations Human Rights Council 'Universal Periodic Review – Ghana Third Cycle: Tuesday 17 November 2017 14:30-18:00' www.ohchr.org/en/hr-bodies/upr/upr-ghana-un-contributions-s28 (accessed 3 October 2023).
- 105 See the following cases: *G v Australia* Communication 2172/2012 CCPR/C/119/D/2172/2012 28 June 2017; *Toonen v Australia* HRC (31 March 1994) UN Doc CCPR/C/50/D/488 (1992); *Kirill Nepomnyashchiiy v Russian Federation* Communication 2318/2013 CCPR/C/123/D/2318/2018 23 August 2018.

The Bill has received mammoth support from the majority of the Ghanaian population (largely due to the religious beliefs and perceptions that homosexuality is an act imposed by morally-depraved Western countries).¹⁰⁶ We argue that one cannot deny the reality that certain constitutional safeguards in the 1992 Constitution of Ghana, guaranteeing respect for the fundamental rights and freedoms of LGBTQ+ persons, cannot be eroded by the provisions in the Bill. Suffice it to say, the Attorney-General gave the greenlight to certain aspects of the Bill that are seen not to be inconsistent with the 1992 Constitution of Ghana. Consequently, it is expected that the Bill will undergo an overhaul to accommodate the government of Ghana's position to not expose the state to unwarranted civil litigations on incursions into people's fundamental rights and liberties. Moreover, even though some aspects of the Bill have been ruled to be at variance with some provisions of the 1992 Constitution, the extreme support of the majority of Ghanaians – coupled with the debate's sensitive and conservative nature – have been linked to stigmatisation and discrimination against LGBTQ+ persons between 2021 and 2023.

For instance, the Ghana police service is on record to have raided the LGBTQ+ office/advocacy centre and ordered the premises to close down.¹⁰⁷ The raiding and closure of the office flowed from the consistent pressure mounted on the government by religious leaders. Also, threats and stigma against the LGBTQ+ community was witnessed when the Kwabenya Traditional Council in the Ga East Municipality recently threatened to burn down a house in Ashongman alleged to be the meeting place of some members of the LGBTQ+ community.¹⁰⁸ Furthermore, the politicisation of LGBTQ+ debates in Ghana has assumed a different dimension with some religious leaders openly threatening law makers/legislators to take a stand to support the Anti-LGBTQ+ Bill or risk being voted out of power by their members. For instance, the Chairperson of the Church of Pentecost (the leader of one of the most populous churches in Ghana), Apostle Eric Nyamekye, stated that his outfit will vote out any political party and, by extension, members of parliament that stand against the promulgation of the Anti-LGBTQ+ Bill in Parliament. He remarked that 'we're going to cause people to come onto the street, we're going to warn any

106 L Ossé 'Ghanaians are united and hospitable but intolerant towards same-sex relationships', www.afrobarometer.org/wp-content/uploads/2022/02/ad461-ghanaians_united_and_tolerant_-_except_toward_same-sex_relationships-afrobarometer_dispatch-29june21.pdf (accessed 2 October 2023).

107 'Police raid and close down Ashongman office of LGBTQ+ group' *MyJoyOnline* 24 February 2021, www.myjoyonline.com/police-raid-and-close-down-ashongman-office-of-lgbtq-group/ (accessed 2 October 2023).

108 EE Abbey 'Kwabenya traditional council threatens to burn down LGBTQI meeting place' *Graphic Online* 23 February 2021, www.graphic.com.gh/news/general-news/kwabenya-traditional-council-threatens-to-burn-down-lgbtqi-meeting-place.html (accessed 2 October 2023).

government that if you vote against this bill, we will vote you out, that is it. There's no room for neutrality.'¹⁰⁹

Another disturbing trend of stigmatisation, discrimination and threats against LGBTQ+ persons was recorded at the height of the COVID-19 pandemic in 2021, where the court was used as a tool to attack some LGBTQ+ persons. In May 2021 a group of young activists who famously became known as the 'Ho 21' were arrested and charged in Ho, the regional capital of the Volta region of Ghana, for allegedly engaging in homosexual activities, unlawful assembly and participation in a LGBTQ+ workshop.¹¹⁰ These activists were detained and denied bail for several weeks. The young activists were discharged in August 2021 after the case had been struck out for lack of evidence of their engagement in homosexual activities.¹¹¹

In summary, stigmatisation and discrimination against LGBTQ+ persons in Ghana is most concerning. Moreover, with attempts by some members of parliament to impose stringent sanctions on LGBTQ+ persons in Ghana, increased cultural and religious intolerance might become more ingrained among the majority of Ghanaians who support the passage of the Bill into law.

2.4 Nigeria: religious and cultural disapproval of consensual same-sex sexual conduct

In the Cameroon and Ghana parts above, cultural and religious intolerance is shown as linked to polarising viewpoints about human rights. According to some political purviews, there are cultural and religious arguments that refute the human rights of LGBTQIA+ persons. These purviews are examined also in the Nigerian context, particularly, to further critique misinterpretations of human rights.

In the case of Nigeria, 10 years after the passage of the SSMPA, its enforcement has expanded. Allen and others emphasised that

despite the increased attention to human rights issues, public debate unequivocally favoured the SSMPA and its discriminatory effects on persons perceived to be LGBTQI in Nigeria. As though the effects of the SSMPA are not dire enough, more discriminatory laws have been enacted at state levels, such as Benue state's Same-

109 KA Darko 'We will vote out any government that opposes anti-LGBTQ+ Bill – Church of Pentecost' *MyJoyOnline* 7 October 2021, <https://www.myjoyonline.com/we-will-vote-out-any-government-that-opposes-anti-lgbtq-bill-church-of-pentecost/> (accessed 2 October 2023).

110 E Akinwotu 'Outcry after 21 people arrested in Ghana for "advocating LGBTQ activities"' *The Guardian* 24 May 2021, <https://www.theguardian.com/world/2021/may/24/outcry-people-arrested-ghana-advocating-lgbtq-activities> (accessed 3 October 2023). For a detailed assessment of the politicisation and stigmatisation against LGBTQ+ persons in Ghana, see EY Ako & A Odoi 'LGBTQ+ lawfare response to the politicisation of homosexuality in Ghana' in A Jjuuko, S Gloppen, A Msosa & F Viljoen (eds) *Queer lawfare in Africa: legal strategies in contexts of LGBTQ+ criminalisation and politicisation* (2022) 275-312.

111 Agence France-Presse in Accra 'Ghana court frees 21 arrested for attending May LGBTQ+ event' *The Guardian* 5 August 2021, www.theguardian.com/world/2021/aug/05/ghana-court-frees-21-arrested-for-attending-may-lgbtq-event (accessed 3 October 2023).

Sex Marriage Prohibition Law. It is noteworthy that these discriminatory laws are products of colonialism, with a clear example being the Criminal Code Act of 1916 passed down from Victorian era law. Additionally, despite change at the institutional level (as seen with the Nigerian Human Rights Commission's recognition of human rights violations based on SOGIE), cases of arbitrary arrests and unlawful detentions perpetrated by the Nigerian police force and other law enforcement agencies have persisted.¹¹²

As in the case of Cameroon and Ghana, instances of arrests in Nigeria may be linked to a presumption of and/or suggested affinity to homosexuality. These instances, we argue, are not legally based. According to human rights lawyer Festus Onifade, the law on presumption of innocence as per the Nigerian Constitution is not clear. For a person to be arrested, there must be a known offence under the law that the person has contravened. Onifade continues that section 1(3) of the Constitution is clear about every other law ... that is, that goes head to head with the Constitution will fall ... the right to their dignity in the presumption of their innocence to those suspects should be [upheld].¹¹³

Another complexity of presumption and proposed affinity is the interpretations about sex, gender, income and class. For instance, larger assaults or attacks on low-income LGBTQI+ women increasingly occur where they are perceived as overt proponents of LGBTQI+ rights or attempting to become men.¹¹⁴ Also, for such overtness, there appears to be intolerance by way of harms against loved ones; unsafe working environments; attempted assassination of character; extortions; and rape.¹¹⁵ The inconsistency of the rule of law is problematic primarily because application becomes subject to interpretation; interpretation, especially to enforce at will and which can include mob justice. A revert to the courts might be an alternative. In the interim, LGBTQIA+ persons continue to experience high risks in terms of accessing their basic needs such as food, shelter, employment, health services and security.

A search of the International Lesbian and Gay Association (ILGA) World database in respect of Nigeria reveals that the country does not offer protection against discrimination based on SOGIESC, or protection against discrimination in respect of (i) the provision of good and services; (ii) health; (iii) education; (iv) employment; and (v) housing. The ILGA World database also reveals that, in terms of the

112 PC Allen and others 'Absolute sovereignty exceptions as well as legal obligations of states to protect the rights of LGBTQI and gender diverse persons' *LGBTQ Policy Journal* 29 April 2021, <https://hksspr.org/absolute-sovereignty-exceptions-as-well-as-legal-obligations-of-states-to-protect-the-rights-of-lgbtqi-and-gender-diverse-persons-gdp/> (accessed 23 July 2023).

113 Arise News 'Gay suspects arrest: parading them breaches their rights to presumption of innocence – Festus Onifade' *Arise News YouTube* 31 August 2023, <https://youtu.be/GB2Omkf-pL4?feature=shared> (accessed 30 September 2023).

114 Nigeria, like in Cameroon and Ghana, does not have a law against cross-dressing.

115 E Akinkuotu 'Again, lesbian group sues CAC over non-registration' *Punch* 3 February 2020, <https://punchng.com/again-lesbian-group-sues-cac-over-non-registration/?amp> (accessed 27 July 2023); The Initiative for Equal Rights '2022 social perception survey on LGBT persons' rights in Nigeria' 2022, <https://theinitiativeforequalrights.org/> (accessed 31 July 2023).

hate crime law, Nigerian laws neither aggravate penalties for crimes committed on the basis of SOGIESC nor do they explicitly consider such crimes hate crimes. No laws in force in Nigeria currently prohibit incitement to hatred, violence or discrimination on the basis of SOGIESC.

Proponents of SSMPA maintain that most Nigerian citizens have not accepted (and will not accept) consensual same-sex sexual conduct as one's culture or as being sinless. Like the previous contexts of Cameroon and Ghana, there is religious and cultural disapproval of consensual same-sex sexual conduct. It is not surprising that this disapproval, in 2023, has led to increased instances of arrests and intolerances.

Furthermore,

Nigeria has ratified many regional and international treaties that mandate the protection of people living within its territory from abduction, violence, torture and other ill treatment, slavery, forced prostitution, and discrimination based on sex. These instruments obligate Nigeria to adopt effective measures for the prevention, investigation, prosecution and punishment of serious human rights abuses. Nigeria is also required to fulfil the right of its citizens to education and the highest attainable standard of health, as well as to provide redress and reparations to survivors of human rights abuses.¹¹⁶

These agreements appear to be strained during implementation with politicised arguments suggesting that, ultimately, national contexts supersede any global obligations and ultimate authority reverts to the AU member states.

2.5 South Africa: religious exceptionalism within the legal framework and its impact on LGBTQIA+ persons

South Africa has the most developed legal authority on the African continent with regards to the recognition and protection of the rights of LGBTQIA+ persons. Beyond the regional and international obligations as confirmed by South Africa's ratification of the African Charter, the Maputo Protocol and seven of the nine core UN human rights treaties, relevant domestic legislation that recognises and protects the rights of LGBTQIA+ persons includes section 9 of the Constitution,¹¹⁷ the Civil Union Act,¹¹⁸ the Promotion of Equality and Prevention of Unfair Discrimination Act,¹¹⁹ the Alteration of Sex Description and Sex Status Act,¹²⁰ the Civil Union Amendment Act,¹²¹ as well as the proposed Prevention and Combating of Hate Crimes and Hate Speech Bill.¹²²

116 Allen and others (n 112).

117 Constitution of the Republic of South Africa, 1996.

118 Act 17 of 2006.

119 Act 4 of 2000.

120 Act 49 of 2003.

121 Act 8 of 2020.

122 B9B of 2018.

However, even as South Africa recognises and protects LGBTQIA+ persons through various legal measures, the impact of religious arguments seems to undermine such recognition and protection in practice. As such, LGBTQIA+ persons continue to experience stigma, discrimination and violence, and factors such as race, income level and geography have a noticeable impact on this.¹²³ Moreover, religious justification continues to exacerbate the situation.

In South Africa, the LGBTQIA+ community continues to be some of the most targeted people, with high rates of hate crimes specifically perpetuated against them. This targeting is a contradiction of religious values such as dignity and equality as well as a violation of rights as contained in South Africa's domestic law, African regional human rights law as well as international human rights law. Unlike the other country contexts assessed in this article, with noticeable challenges of re-criminalisation, there is no clear reason why religiously-motivated discrimination and violence, and legal exceptionalism, are able to continue in a context such as South Africa. Noticeably, certain religious concessions have been made throughout legislation.

As one illustration, South Africa has had marriage equality since 2006, namely, the rights of all people to marry their person of choice regardless of their sexual orientation. South Africa was the first African country, and fifth country worldwide, to pass such legislation. The Civil Union Act was enacted in 2006 as a companion to the already-existent Marriage Act.¹²⁴ In consideration of the right to religion and religious manifestation being used as a justification to exclude or discriminate against LGBTQIA+ persons and their rights, sections 5 and 6 of the Civil Union Act are worth noting. Section 6 sets out the following:

A marriage officer, other than a marriage officer referred to in section 5, may in writing inform the Minister [of Home Affairs] that he or she objects on the ground of conscience, religion and belief to solemnising a civil union between persons of the same sex, whereupon that marriage officer shall not be compelled to solemnise such civil union.

Notably, this section allowed a marriage officer to refuse to marry a couple on the grounds of their conscience, religion or belief. Also, it only referred to marriage officers who were not already deemed religious marriage officers – as due to section 5, religious marriage officers in any case have no obligation to solemnise a marriage that they could argue might violate the doctrines of their religion. Thus, even though technically, all people in South Africa have had the right to marry their partner of choice since 2006, many LGBTQIA+ couples were being denied this right *de facto* due to section 6 of the Civil Union Act. In 2016 it was found that only 28,6 per cent of Home Affairs

123 Intersecting factors of discrimination manifest to the current reality that black lesbian and transgender women seem to be the most targeted persons in South Africa, often victims of assault, rape and murder. There is much research that has been done and is currently underway regarding what is often described as the crime of 'corrective rape', but also in general high rates of violence targeting sexual and gender minorities continue.

124 Act 25 of 1961.

branches had marriage officers who were willing to marry same-sex couples.¹²⁵ In 2017 a follow-up report found that 37 per cent of marriage officers at the time were exempted from performing civil union marriages because of their objection on the grounds of their religion or belief.¹²⁶ Accordingly, the number of couples turned away from being married and required to travel from their area to another where an officer might approve of their union – in order to access this fundamental legally-provided right – revealed a stark pattern of discrimination. Section 6 of the Civil Union Act was repealed in 2020, with the enforcement of the Civil Union Amendment Act.¹²⁷ Section 6 was found to be unconstitutional and a violation of the right to equality. During the process of repeal, the South African Constitution was quoted, arguing that in consideration of the basic values and principles governing public administration, ‘services must be provided impartially, fairly, equitably and without bias’.¹²⁸ Notwithstanding this win for LGBTQIA+ couples, section 5 remains within the Civil Union Act and, thus, any LGBTQIA+ couple who might want to be married within the traditions of their faith still has the chance of being turned away.

Furthermore, the pending Prevention of Hate Speech and Hate Crimes Bill, which aims to criminalise hate speech¹²⁹ as well as hate crimes,¹³⁰ explicitly includes ‘sexual orientation, gender identity or expression or sex characteristics’ as protected grounds.¹³¹ The provisions regarding hate crimes are straightforward; the provisions regarding hate speech less so. Notably, in the latter half of section 4, a possible exception with regard to the offence of hate speech:

125 R Igual ‘Shocking! Only 28% of Home Affairs offices will marry lesbian and gay couples’ *Mambo Online* 8 September 2016, www.mambaonline.com/2016/09/08/farce-28-home-affairs-offices-will-marry-gay-people/ (accessed 10 November 2022).

126 L de Barros ‘Home Affairs minister rejects call to amend discriminatory Civil Union Act’ *Mambo Online* 12 July 2017, www.mambaonline.com/2017/07/12/home-affairs-minister-rejects-call-amend-discriminatory-civil-union-act/?platform=hootsuite (accessed 10 November 2022).

127 Centre for Human Rights ‘Press statement: Centre for Human Rights welcomes South Africa’s repeal of section 6 of the Civil Union Act’ 14 July 2020, www.chr.up.ac.za/sogiesc-news/2159-press-statement-centre-for-human-rights-welcomes-south-africa-s-repeal-of-section-6-of-the-civil-union-act (accessed 31 May 2022).

128 Sec 195(d).

129 The offence of ‘hate speech’ is defined in the Bill as ‘any person who intentionally publishes, propagates or advocates anything or communicates to one or more persons in a manner that could reasonably be construed to demonstrate a clear intention to - (i) be harmful or to incite harm; or (ii) promote or propagate hatred, based on one or more of the following grounds’.

130 A hate crime is defined in the Bill as ‘an offence recognised under any law, the commission of which by a person is motivated by that person’s prejudice or intolerance towards the victim of the crime in question because of one or more of the following characteristics or perceived characteristics of the victim or his or her family member or the victim’s association with, or support for, a group of persons who share the said characteristic’. Thus, the hate crime would already be a recognised crime in South Africa, with the added factor of the motivating prejudice.

131 Sec 1(o).

The provisions ... do not apply in respect of anything done ... if it is done in good faith in the course of engagement in ... any *bona fide* interpretation and proselytising or espousing of any religious conviction, tenet, belief, teaching, doctrine or writings, that does not advocate hatred that constitutes incitement to cause harm.¹³²

The phrasing of this section possibly provides a loophole where an accused person could claim that they were genuinely engaging in their religious beliefs, or acting on their religious values, and yet did not have the intention to incite harm against a LGBTQIA+ person. This ignores the question of whether harm was caused and could be used as a legally-valid defence. A few other problems of this section include its vague phrasing and that there is no test outlined for how to prove intention. It remains unclear how this provision would practically operate, leaving reason to fear that hate speech targeting members of the LGBTQIA+ community would go unchallenged as soon as it is argued to be part of someone's religious beliefs. While there are several issues with the Bill, specifically relating to definitions as well as appropriate penalties – notwithstanding in the debate stage – it is important to note how some Christian and Muslim groups have specifically contested that the Bill threatens their right to freedom of expression and freedom to manifest their religious beliefs, even though section 4(2)(d) provides them a specific loophole.¹³³

Beyond these legal concessions, religious convictions within society in general, and political parties specifically, continue to perpetuate harmful stereotypes against LGBTQIA+ persons regardless of the various legal provisions recognising and protecting their rights. For instance, the political party of Al Jama-ah – in a 2023 press release regarding the revising of the national policy on families in South Africa – stated that the LGBTQIA+ community must 'stop imposing their practices on society' and, further, that they were alarmed 'at the increasing campaigns both in the business sectors and educational institutions to enforce questionable behaviour patterns under the notion of "normalising" the LGBTQIA+ agenda'. Furthermore, they called on South Africans to revolt against the 'gradual, systematic destruction of traditional God-given norms and values' and warned against the 'devious methods [which are] a direct destructive onslaught on all Abrahamic faiths and many cultural communities that accept and reinforce ubuntu'.¹³⁴ While the right to freedom of religion and religious manifestation is a fundamental human right, simultaneously, the manifestation of religious beliefs that violate the human rights of others is a violation of South Africa's domestic law as well as African regional and international human rights law.

¹³² Sec 4(2)(d).

¹³³ M Githahu 'Religious parties, civil society in last-ditch attempt to get Hate Speech Bill dropped' *IOL* 25 May 2023, <https://www.iol.co.za/capeargus/news/religious-parties-civil-society-in-last-ditch-attempt-to-get-hate-speech-bill-dropped-7ceco393-eb57-428a-b767-a36f19c72f9b> (accessed 20 July 2023).

¹³⁴ Al Jama-ah 'Press release: Al Jama-ah tells LGBTQI+ groups to stop forcing its practices on society' 7 June 2023, <https://www.aljama.co.za/al-jama-ah-tells-lgbtqi-groups-to-stop-forcing-its-practices-on-society> (accessed 20 July 2023).

In summary, South Africa's legal framework that enshrines LGBTQIA+ persons' fundamental human rights requires continuous accountability to counteract religious exceptionalism, and the outright negation of rights on the grounds. While this section only explored certain aspects of legislation, we re-emphasise the human rights commitments made by South Africa on the domestic, regional and international level. While South Africa is a diverse nation, the right of freedom of religion for private citizens and politicians alike does not justify legal exclusion or negation of LGBTQIA+ persons' rights.

2.6 Uganda: manifestations of stigmatisation and discrimination against LGBTQIA+ persons

One remaining context is Uganda. In this part we address the purported harms of the AHA 2023 that are largely in effect several months after its passage. The said Act is considered to be one of the harshest criminalisation of LGBTQIA+ persons in the world. For example, Pan-Africa ILGA – the African region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association – condemned the passage of the Anti-Homosexuality Bill in Uganda by Parliament, expressing that the Bill is another way of using the law to punish people who cause no harm but for being who they are.¹³⁵ Months later, in June 2023, an expert of the UN Human Rights Committee stated that '[c]redible information had confirmed the adoption of the Anti-Homosexuality law had intensified the hostile climate for [LGBTI] persons. They had been denounced for "suspicion" of homosexuality, been detained and healthcare professionals had refrained from distributing safe sex materials for fear of being targeted as "promoting homosexuality"'.¹³⁶

In terms of further alleged violations and unconstitutionality, Human Rights Awareness and Promotion Forum (HRAPF),

under its Legal and Human Rights Analysis of the Amendments to the Anti-Homosexuality Bill 2023, recommended that [Ugandan President Yoweri Museveni] should send the Bill back to Parliament, drop the Bill or overhaul it in order for it to align with the Constitution. It stated further that the Bill could not be cured of its unconstitutionality since it is fundamentally discriminatory as it targets a specific group of people for sanctioning solely based on their sex, gender and/or sexual orientation. It can, therefore, only be saved by completely overhauling or shelving the Bill in favour of a more comprehensive law on protection of all persons from sexual exploitation, abuse and harassment, regardless of their sexuality.¹³⁷

HRAPF's filings before the Uganda's Constitutional Court and East African Court of Justice is pertinent also, since utilisation of the courts

135 Pan-Africa ILGA 'Statement' X 22 March 2023, www.twitter.com/PanAfricaILGA/status/1638326990158659587 (accessed 6 October 2023).

136 OHCHR 'In dialogue with Uganda, experts of the Human Rights Committee commend improvement of prison conditions, raise issues concerning the anti-homosexuality law and free elections' *OHCHR News* 28 June 2023, www.ohchr.org/en/news/2023/06/dialogue-uganda-experts-human-rights-committee-commend-improvement-prison-conditions (accessed 6 October 2023).

137 HRAPF 'HRAPF's analysis of the changes to the Anti-Homosexuality Bill 2023' *HRAPF* 3 May 2023, www.hrapf.org/hrapfsanalysis-of-the-changes-to-the-anti-homosexuality-bill-2023/ (accessed 6 October 2023).

is a longer-term legal approach to mitigate stigmatisation and discrimination against LGBTQIA+ persons. As was mentioned in prior country contexts, and as was demonstrated when the AHA 2014 was quelled in the courts, litigation can hold favourable outcomes. Litigation avenues being limited, since, in Uganda – as in the case of Cameroon, Ghana, Nigeria and South Africa – there remains, in the immediate, increased stigmatisation and discrimination experienced by LGBTQIA+ persons at recurring peaks. ‘Lives at Risk: a report on documented human rights violations and abuses of LGBTQIA+ in Uganda’ specifies how:

Documentation of abuses in this climate of violence and discrimination remains extremely difficult as many survivors are understandably reluctant to share their experiences because of fear of reprisals and the total absence of safe channels to seek redress formally. Violations are also not straightforward to classify; it is not unusual for an incident to result in multiple violations to the rights of an individual at the same time. During the reporting period the Strategic Response Team documented a total of 306 human rights violations and abuses against LGBTQIA+ persons from 1 January 2023 to 31 August 2023. All the recorded violations and abuses were wholly or partly premised on the [SOGEISC] of the victims.¹³⁸

We note concerns that growing numbers of LGBTQIA+ persons who are marginalised in Uganda are experiencing physical, mental, social and financial harms as a result of the AHA 2023 implementation. Religious and cultural intolerance is not far removed, and has been attributed to stigmatisation and discrimination against LGBTQIA+ persons in Uganda. Thus, we suggest that AHA 2023 implementation is linked to religious and cultural intolerance, similar to the contexts in Cameroon, Ghana, Nigeria and South Africa. We lay emphasis on the fact that the AHA 2023 (like SSMPA in Nigeria and the proposed Anti-LGBTQ+ Bill in Ghana) violates human rights and, therefore, is unconstitutional. For example, we know that Uganda ratified international and regional human rights instruments as well as declarations that explicitly mention legal obligations surrounding universal human rights standards and principles. In contrast, Uganda has at least five national laws that explicitly discriminate against or indirectly promote discrimination against LGBTQIA+ and [gender diverse persons]. For example,

the Penal Code (Amendment) Act 2007, Caption 120, contains a number of provisions that criminalise same-sex conduct, including section 145 on carnal knowledge against the order of nature; section 146 on attempts to commit unnatural offences; and section 148 on indecent practices. The Registration of Persons Act 2015 can also carry legal implications for transgender persons.¹³⁹

In closing, we emphasise once more that the harms against LGBTQIA+ persons in Uganda, which can be due to cultural and religious intolerance, are not justified legally. In the conclusions and recommendations we reiterate this fact and additional facts to wrap up our previously-shared points.

138 SRT ‘Lives at risk: a report on documented human rights violations and abuses of LGBTQIA+ in Uganda’ 1 October 2023 SRT, <https://i-base.info/htb/46384> (accessed 6 October 2023).

139 Allen and others (n 112).

3 CONCLUSIONS AND RECOMMENDATIONS

In relation to the various country contexts, this article has sought to show that there is increased stigmatisation and discrimination experienced by African LGBTQIA+ persons in Cameroon, Ghana, Nigeria, South Africa and Uganda, as related to polarising cultural and religious arguments. Second, that there are sizeable numbers of politicians and additional citizens proposing for and/or agreeing with stringently-wider legislation against consensual same-sex sexual conduct. However, these contexts are pertinent to domestic law as well as African regional and international human rights law and, thus, all country contexts as discussed have an obligation to recognise and protect the human rights of LGBTQIA+ persons. In consideration of this, we sought to prove that persecution and condemnation of LGBTQIA+ persons in Cameroon, Ghana, Nigeria, South Africa and Uganda is legally contrary to adhering to one's fundamental human rights, and African LGBTQIA+ persons should not be excluded from human rights recognised and protected in the constitutions of these countries and as per their regional and international commitments.

In this regard, we present two recommendations to the governments of Cameroon, Ghana, Nigeria, South Africa and Uganda and other the AU member states similarly situated. First, while not disregarding the right to freedom of religion, we urge the governments of these countries to work towards promoting religious tolerance because freedom of religion also extends to the freedom not to belong to any religion. Second, we ask the five governments to reiterate that the duty of the state is not to legislate morality, let alone condone anti-human rights claims on cultural grounds since culture is ahistorical.