



Sexual Orientation and the Criminalisation of Private Consensual Sexual Acts Between Adults of the Same Gender

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Abstract

As of September 2023, consensual same-sex sexual acts between adults (for both men and women) in private were criminalised in a total of 67 United Nations (UN) member States. Most of these States were in Africa, a continent of more than 1.4 billion people, where more than 30 out of Africa Union's 55 States criminalised consensual same-sex sexual acts between adults in private. The justification advanced in favour of criminalisation is that non-heterosexual sexual acts do not conform to the moral, cultural or religious views of a section of society. In some States, consensual same-sex sexual acts between adults in private were punishable by a maximum penalty of death or long prison sentences. The African Charter on Human and Peoples' Rights (the Charter) and several protocols adopted under the Charter do not prohibit explicitly discrimination based on real or perceived sexual orientation, gender identity and sexual characteristics. Thus, sexual orientation has remained on the margins of the African regional human rights system and has also remained largely outside the consideration of the African Commission (and the African Court) on Human and Peoples' Rights, the limited jurisprudence is mainly between negative and retrogressive. This article examines the criminalisation of private, consensual same-sex relations, sexual or affective, between adult persons of the same gender or sex in Africa with particular reference to Uganda's Anti-Homosexuality Act 2023 and its impact on human rights including respect for life, privacy, human dignity, integrity, liberty and security of the