

**A Threshold of Moral Tolerance: Accommodating LGBTI Human Rights
in Contemporary Uganda**

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Abstract

The environment of traditional and cultural secular moral values in contemporary Uganda presents practical challenges to the creation and sustaining of a deliberative environment for addressing and resolving contentious human rights issues. In Uganda, the actual and perceived conflicts between universal human rights based values and a *relativistic set* of traditional cultural values tends to obfuscate and frustrate any serious deliberation on essential human and legal rights for the embattled lesbian, gay, bisexual, transgender, and intersex (LGBTI) community there. This paper delineates the characteristics of those competing moralities, considers the traditional values that seem to be most under threat from the claims of universal human rights values, and considers the nature of the threshold that must be reached and passed if basic human dignity and the enjoyment of fundamental human rights are to be achieved for all Ugandans.

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Gay people are born into and belong to every society in the world...Being gay is not a Western invention. It is a human reality.

Hillary Clinton, U.S. Secretary of State

The whole town knows I'm a lesbian. And they accused me of recruiting because we were putting up posters that said "Hate no more," and "Stop sexual violence against LGBTI persons." They said I was giving money to recruit people. People called into our office hotline and said, "If you come back we'll kill you."

Jay Abang, lesbian activist in Uganda

Introduction

The response to U.S. Secretary of State Hillary Clinton's December 6th, 2011 unequivocal assertion in Geneva that members of sexual minorities constitute an integral and equal part of the diverse human tapestry – in every society in the world – is strikingly varied. While many people responded with great enthusiasm, others considered her words to be intentionally provocative, and no doubt still others were more strongly vexed. Lesbian, gay, bisexual, transgender & intersex (LGBTI) persons and their issues are topical and elicit controversy; in both the United States and in Uganda there are people who are quick to take sides. While some may consider LGBTI persons to be somehow flawed or misguided, most Ugandans do not deny them their humanity or view them as a threat. Yet, there is a small number of Ugandans with extreme views that categorize LGBTI persons as non-human or as something less than human, something to be reviled and cast out. Some who adopt intolerant such positions

even advocate that LGBTI Ugandans should be killed, such views as expressed by Ugandans to openly lesbian activist Jay Abang.¹

Beyoncé Karungi, one of the few transgender Ugandans who has come out, has described the kind of suffering that they endure as nearly unbelievable as she says:

We transgender people suffer multiple times; within the LGBTI people and beyond. We are chased from pubs, we cannot choose toilets because we are considered neither of the two, we are burned with cigarettes, humiliated as non-human being, and even when you are taken for sex service, your customer often wants to punish including wanting to kill you! (Interview on March 12th 2012).²

Contrasted to these unfavorable perspectives, there are people who welcome LGBTI persons as equals, celebrating the remarkable and welcome diversity that characterizes humanity everywhere. And then there are LGBTI persons themselves, who live with and often stand proudly in the reality of their status, often forging their own “sexual minority” communities where they feel accepted and valued, regardless of their sexual orientation or gender identity.

Governments also stake out differing positions; the governments of many European, North American, and other more economically developed nations officially take a universalist position, asserting that compared to heterosexual and cisgender (non-transgender) persons all LGBTI persons in any country are equally worthy of respect, i.e. equally entitled to all human rights protections and freedoms regardless of their sexual orientation or gender identity. Other countries criminalize LGBTI status, behavior, or “promotion,” the latter being an unsubstantiated assertion that LGBTI persons somehow recruit non homosexuals to become gay.³ In Uganda, after attempting to pass a draconian anti-homosexuality law that would have imposed the death penalty in some circumstances, the bill’s sponsor in parliament is now content to revise the bill to remove the worst punishments, asserting that the more important focus is not on LGBTI status, but instead should be on stopping the promotion of gay rights and criminalizing even the

¹ In our on-going research in Uganda, one of the old respondents, Mr. Dradria James of Nebbi District claimed that even if it were his son who was gay, he should be killed. Interview was conducted on September 13th 2011 at Nebbi Primary School, Uganda.

² Interview between Prof. Rukooko and Beyoncé Karungi at Makerere University on March 12, 2012

³ In the earlier referred to on-going research, there is so far, no empirical evidence that there is a foreign hand to induce anybody to become gay – youths or adults – in spite of this being a widely held view among many Ugandans.

public discussion of homosexuality (Delany 2012). Under this revision, now pending in Uganda's parliament, even those persons who are heterosexual and cisgender but who advocate as allies for the human rights and freedoms of LGBTI persons in Uganda face potentially serious criminal punishments on the basis that such persons are promoting lifestyles and behaviors that are contrary to important African traditional values.⁴

With views this divergent, complicated by an evident conflict of values between more economically developed (Northern) societies and the traditional values of less developed (Southern) African societies, can a resolution of such opposing views be found? Gays, lesbians, and bisexual persons argue for the right of privacy – i.e. that the intimate behavior of consenting adults is not an appropriate object of state scrutiny. Transgender persons demand that their authentic gender identity be legally and respectfully recognized, and their associated name changes also be legally accommodated, even when their declared gender conflicts with the sex assigned to them at birth (Schwenke 2009). And all LGBTI persons insist that their identity as members of sexual minority populations is not a matter of choice or “lifestyle” but is instead an integral and undeniable characteristic of their lives; they should not be denied their human rights or treated with less respect than others simply because of their LGBTI status. These claims have found little traction in Uganda, where the preponderant view is to reject out of hand the claim of equality for LGBTI persons, and it is evident – as measured by the overwhelming popular support for the pending anti-homosexuality legislation – that the majority of Ugandans refuse to accept LGBTI persons in their society as full citizens with the same human rights as others who are neither gay nor transgender. While attitudes and arguments vary, this divide is clearly drawn in moral terms. The U.S. Government asserts universal moral values framed in human rights principals (US State Department 2012). The Ugandan government largely turns away from this argument by claiming that the rejection of LGBTI equality is sufficiently and persuasively justified by African cultural values, and that the universal values assertion in this instance is alien to African sensibilities.

This paper attempts to delineate the moral claims on both sides of this *universal* vs. *relativistic* ethical divide on the basis of secular human rights theory, while considering whether

⁴ The definition of promotion is also recklessly broad in the sense that it obliges teachers, medical officers, even parents to report to authorities within 24 hours after observing gay tendency in another person.

suitable processes exist to bridge this divide. By drawing a clear divide between secular values (and rule of law) and religious doctrine, the authors by intention do not address the conflicting theological arguments that are often used to support or alternatively to undermine each contending side. Instead, the authors explore whether an appeal to the universality of legal and ethical principles based on human rights might prove sufficiently persuasive – even within the cultural bounds of Ugandan values – to resolve the discord through deliberative processes among Ugandans of opposing views. If such deliberation appears on careful reflection to be unworkable, does there remain a viable process – through persuasive moral argument or interpretation – that would sufficiently reconcile universal and relative values such that increasing the levels of tolerance and accommodation of LGBTI diversity within Uganda becomes plausible? Alternatively, after examining relevant Ugandan cultural values, is the moral conviction underpinning the rejection of such diversity simply too engrained and distinctive to Ugandan identity at the present time to be trumped by more universal notions?

Unpacking the Moral Arguments

From a human rights perspective, LGBTI persons around the world are asserting at least four fundamental claims which they argue are supported by universal moral values. First, they claim the right to love or express their attraction to those whom they feel led to love and whom they are attracted to, regardless of the sex of that person compared to their own. Second, transgender and intersex persons (the “T” of LGBTI) assert the moral claim of identity – the right to be accepted and socially accommodated in the gender identity that they feel is appropriate to them, regardless of their sex as assigned at birth. Third, all persons, LGBTI or not, demand the human right to privacy, arguing that the private lives and intimate relations between consenting adults should be protected from state scrutiny or from any form of morality policing. Finally, in a claim that is arguably as empirically rooted as morally argued, LGBTI Ugandans join LGBTI persons worldwide to strenuously reject the argument that their status as lesbian, gay, bisexual, or transgender is a choice, or something that they have been recruited or persuaded into; instead they assert that being LGBT or I is an integral, constitutive, and ultimately undeniable reality in these persons’ lives.

While empirical evidence is thin to non-existent, there are four opposing moral arguments supported by anecdotal accounts of traditional Ugandan values that can be summarized as follows: To begin with, homosexual relations are considered abnormal, unintelligible and illogical, hence unnatural. As a corollary, it is further asserted that even animals do not behave in this way. This claim is the most extensive rebuttal in the debate about homosexuality in traditional societies with specific reference to Uganda; namely, that sex was ordained by God to take place between heterosexuals and not between same-sex couples. This naturalist argument is also extended to the social determination of gender affecting transgender or intersex people. In general terms, Africans consider gender ambiguities or physical manifestations of gender variance (intersex) to be biological accidents or health problems that should be corrected. Under this interpretation, transgender and intersex persons are “unfortunate” people who should be helped. There is very little information and hence little popular understanding, regarding the transgender phenomenon and the reality of a person with the physical traits of an assigned gender claiming instead to be “misgendered”; this is confounding to most Ugandans. However, for the intersex person, Ugandans are generally willing to trust the medical experts to reach a determination of which sex assignment should prevail, depending on the predominating physical evidence of the individual’s physical sexual traits – which genitalia is most emphasized – so that medical interventions can remove any overt ambiguity between male or female and avoid a confusing combination of the two (even though intersex status is tagged in one’s chromosomes, which no medical intervention can revise). Intersex status is statistically very rare, far more so than the incidence levels of being transgender, so among most Ugandans there is very little popular knowledge about intersex persons. One prominent Ugandan who is intersex (now corrected as male), Julius Kaggwa, has made a concerted effort to raise awareness of the intersex phenomenon so that young intersex Ugandan children can receive support and appropriate care (Dreger 1998) (Kaggwa 1997).

Second, in addition to contemporary attitudes and experience, it is also noteworthy that LGBTI status is not explicitly registered in Ugandan history or culture, and therefore it is considered to be foreign⁵. To the extent that it is recognized to have occurred, it is deemed to be a

⁵ This point is subject to some controversy. It is alleged that the Buganda king Mwanga in the 1880s was a homosexual who used his powerful status to engage in same sex relations with his pages at court. These pages were

colonial legacy and not a part of African traditional history. This view of the foreign nature of LGBTI status is reinforced by a very pervasive religious heritage that springs from Islam and Christian beliefs. Accordingly, it is claimed that the religious beliefs, teachings and practice which have formed the more recent history of Uganda construe LGBTI status and homosexual behavior to be against God's will as expressed in the Biblical story of Sodom and Gomorrah – a well-known and frequently cited story in Uganda (Chothia 2011).

Third, the sexual behavior associated with homosexuality is popularly considered to undermine the integrity of heteronormative sex; i.e. that sexual relations between adults should be conducted in specific ways and under specific circumstances. It is a morally structured act as much as a physical act, whose rendition should be as expected according to heteronormative Ugandan tradition, i.e., penetrative, orgasmic and strictly between male and female married adults, thereby excluding out-of-wedlock sexual intercourse. Consequently, the type of sexual behavior that characterizes homosexual sexual intimacy appears to heterosexual Ugandans to lack the essence of "proper" sex. Because of this, a pejorative set of adjectives are applied to describe intimate sexual relations between homosexuals: perverted, characteristic of waywardness, licentiousness, shameful and repugnant, or simply horrible. In this Ugandan author's language, the term for a homosexual is "ekitiingwa" which denotes an extreme form of contemptuous sexual misconduct, fit to be described as inhuman!

Fourth, Ugandans place high value on reproduction of human beings – values which also are used to justify the practice of polygamy. Since homosexual sexual relations do not result in procreation, it is argued that homosexuality would ultimately undermine the existence of the human race. Indeed, Ugandans are known to despise or revile a person who elects to be celibate or who proves to be barren, for any reason. At best he/she was sympathized with and everything possible would be done to assist the person in question to produce offspring. If necessary, and in most cases this was so, they had to seek the services of a witchdoctor to help them end their celibacy or overcome their infertility so as to produce children. If all this failed on the part of the males, they would ask their siblings to produce offspring on their behalf but the resulting

ultimately put to death by Mwanga when they resisted the king's advances, as they had been instructed by Christian missionaries to do (Ssempe 2005).

children would be in the name of the person who biologically failed to produce (Unitarian Universalist United Nations Office, 2010).

Fifth, the epistemological-moral reality of the Ugandan as a society is derived from the metaphysics of collective existence as being prior to individual truth claims. This is expressed in the old saying coined by the Kenyan born, Ugandan educated religious philosopher John Mbiti that “we are, therefore I am” and “I am because we are (Mbiti 1969)”. It is not because I am that we are, but rather that communal existence determines and guarantees my existence, me, the individual. This is somehow strengthened by another proverb that a lonely life is only affordable by beasts. This thinking is a rich ground for majoritarian dictatorship as is often the case in communitarian or communal societies, even though it is becoming clear that communalism is gradually giving way to liberal and deliberative, rational thinking societies. Nonetheless, taking a different stance from what others think about an issue is risky as is well known in political processes played out around identities of ethnicity, religion, ideologies and others including sexual identities. Sexual orientations or variant gender identities which are considered different from the majority orientations are deemed by the majority to be morally wrong, hence, not to be allowed to continue. Not surprisingly under such a view, those involved should be punished.

These differing moral views are not commensurable. Those who hold traditional Ugandan moral values perceive the morality of LGBTI Ugandans and their allies abroad not only to be anathema or simply wrong, but also to be a threat – corrosive to their own cultural identity, social structures, and tradition. They are opposed by those who argue that all human beings, regardless of their sexual orientation or gender identity, deserve to be treated with dignity, equality, and respect. Only by resolving this moral conflict can the moral merits of denying LGBTI Ugandans the equal enjoyment of certain human rights be assessed, but is there a resolution procedure acceptable to Ugandans holding these contending viewpoints?

A deliberation threshold to an intra-cultural dialogue about LGBTI status

Deliberation to resolve conflicting positions requires the active engagement of two or more parties. When one of those parties to the deliberation is unable to attain a *threshold of tolerance* sufficient to allow them a safe and respected venue for such engagement, only their “straight” (non-homosexual) or cisgender (non-transgender) advocates can represent them. Such

advocates and allies themselves face considerable stigmatization in Uganda when they speak about LGBTI human rights issues. How can Ugandans achieve this threshold so that a deliberative process can begin?

The threshold experience in the United States was achieved (although this is still localized) when sufficient numbers of LGBTI Americans “came out”. Once “out”, LGBTI persons in the United States and other similarly developed countries frequently seek to identify areas of common humanity in their appeal to their non-LGBTI compatriots, often sharing with them their compelling narratives of their struggles to overcome victimization (Gaita 2010). Seeking to normalize their LGBTI status by such direct dialogue, these LGBTI Americans act to inculcate a view that LGBTI status represents no harm to any other person, or to American society as a whole. While not examined in this paper, LGBTI persons who disclose their status (“coming out”) are increasingly also making reference to a growing body of scientific, sociological, psychological, and anthropological data regarding sexual orientation and gender identity. LGBTI Americans also attempt to normalize their place in the societal tapestry, often by reference to publicly “out” celebrities and public figures, and by harkening back to well-known persons from the past who manifested homosexual or transgender characteristics. Ultimately, LGBTI Americans have made the most progress in their normalization by the act of “coming out” and appealing to their close family and friends for acceptance (Jones 2008).

LGBTI Ugandans try to carve out a space of social tolerance sufficient to serve as a foundation for deliberation about conflicting secular values through tactics that share certain similarities, but also present striking differences, from the examples described above. The relationship of LGBTI Ugandans to their larger society is largely characterized by not being “out” in public. Moreover, due to the stigma attached to homosexuality coupled with less empirical knowledge being available about it, the fear of engaging in any form of communication or deliberation on the subject becomes anathematic. As noted Ugandan LGBTI activist Frank Mugisha said:

Traditional culture silences open discussion of sexuality. I am 29. I grew up in a very observant Catholic family in the suburbs of Kampala. From the time I was old enough to have romantic feelings, I knew I was gay, but we weren't supposed to speak of such things (Mugisha 2011).

LGBTI Ugandans instead arrange quiet or secret assemblies or communication, hampered by isolation and fear of persecution or attack – verbal insult, exclusion, gossip, emotional outbursts of ridicule, hate speech and even threats of violence. Openly gay Nigerian theologian Rowland Macaulay has indicated thus:

Lesbians and gay men of African descent, like myself, today struggle to affirm our identity because we have often been expected to deny our sexuality for the sake of surviving in our spiritual communities. Religious tradition has too often emphasized the holiness of heaven over the holiness of the earth (Macaulay, 2007).

Culturally at the present time, it would seem inconceivable for LGBTI Ugandans to directly appeal for tolerance to the Uganda community in a public place for fear of mob attack, ridicule, and opprobrium. Powerful players like the church, local leaders, which are expected to contribute positively to the lives of all persons – presumably including homosexuals and transgender persons, instead mobilize to entrench stigma and subvert understanding, appreciation and meaningful deliberation of the issues of LGBTI people, and on the conflicting moral views between LGBTI and non-LGBTI Ugandans. Ultimately, negative emotions are built, violence planted, and attitudes hardened. Thus Uganda gays and lesbians like anywhere in traditional societies of Africa operate secretly which leads to a lack of self-esteem, increased insecurity, loneliness and sometimes suicide (Macaulay, 2007).

As such, either LGBTI persons accept their hostile environment and remain isolated and not “out”, or they move about in stealth identifying and offering mutual support as well as discretely shared information about those in Ugandan society who are potential supporters and allies, pleading with them for recognition. Such contacts may include the Uganda Human Rights Commission, as well as certain human rights organizations and activists, both national and international. In order for LGBTI Ugandans to be effective in this mutual support and advocacy they have formed their own organizations which also maintain a half-covert, half-overt stance, because, after all, they are illegitimate and illegal entities.

To break this isolation and build tolerance toward LGBTI Ugandans, some limited deliberation is beginning, but rarely is this led by LGBTI Ugandans. Instead, initial efforts to

begin a dialogue of understanding and acceptance are led by other civil society leaders, academics, and human rights activists. In the past, Ugandan President Museveni and other prominent Ugandan leaders openly condemned homosexual behavior as ignominious and un-African, claiming that it is a vice of the West that is being brought to Africa for the purpose of undermining African values. For instance, like the Zimbabwean President Mugabe, President Museveni he claimed that homosexuality was a western vice against which African youth should fight (Gyezaho,2007). Mugabe's likening of homosexuals to pigs and dogs is well documented (United Press International, 2011). In Uganda, both successive ministers of ethics and integrity who should have been more protective, have instead behaved violently against homosexuals. The current Minister, Hon Lukodo recently – and without legal justification – dispersed a leadership training session of gays claiming that it was illegal and unwanted. (Monitor, Feb. 20th 2012). The former minister, Mr. Nsaba Buturo, has since 2006 continued to violently condemn and mobilize Ugandans against homosexuality in Uganda⁶, to the extent of blaming the loss of his parliamentary constituency in the 2011 February elections on his gallant fight against homosexuality.⁷

The Ugandan environment of intolerance is not monolithic and immutable, however. Uganda's Minister of Justice has advised that homosexuals should be tolerated and that criminalizing them would be difficult to enforce, but he qualified his advice by cautioning LGBTI persons to refrain from demonstrating same-sex attraction or related sexual behavior within the public space. The Uganda Human Rights Commission has submitted to Parliament its judgment that it would be illegal for Uganda to legislate against homosexuality. Lately, President Museveni has conceded that homosexuals have in fact existed in traditional African society and acknowledged that in the past these people were not persecuted.

Given these influences, does Uganda now offer any opportunities for a dispassionate deliberative process addressing the human rights of LGBTI persons? As Ugandans discuss topics of homosexuality or variant gender identity within their society and with the international

⁶ Thaddeus M. Baklinski, <http://www.lifesitenews.com/news/archive/ldn/2009/apr/09040605>, accessed on March 16th 2012

⁷ <http://www.queerty.com/ugandas-ethics-minister-james-nsaba-buturo-ditching-his-job-but-not-his-kill-the-gays-support-20110316/> accessed on March 16th 2012

community, it is clear that many Ugandans would approach such deliberative exchanges with profoundly different assumptions and expectations. Very few would be sufficiently inured of the stigma surrounding these issues to attempt the most pure form of deliberative practice, in which people with differing views consent to come together in an unrushed process in which they take turns to share and listen to opposing reasons, and to tolerate disagreement, all in the quest for a basis of consensus – some sense of the common good and the resolution of moral conflicts through these deliberations. This philosophers’ model, in which deliberations are organized as an on-going iterative process where participants calmly and thoughtfully reflect on issues, offer and respond to arguments, consider alternatives, and gradually move towards a greater or lesser consensus on development priorities, looks to be an unworkable model for contemporary Uganda (Coppel and Rains, 1993). An alternative model shows more promise of adoption in Uganda – a superficial deliberative process in which participants do not attempt to persuade or appeal to common reason, but instead establish an arena in which interests intentionally clash, confident that their interests will prevail. The consensus-builder under this alternative risks being thwarted by the adversarial participants if the rules of the process are “to the victors go the spoils,” but others would argue that the powerful interests are only acting rationally and in alignment with their firmly held values in relying on their power to bargain to their own best advantage. While the consensus-builder demonstrates commitment to values of equality and the recognition of essential human dignity in all persons, the adversarial participant by contrast is more likely to be playing a self-interested game in which power trumps any other considerations.

In Uganda, only a few attempts at structured deliberation on LGBTI human rights have been attempted, spanning both the consensus building and the adversarial models.⁸ Even in Uganda’s universities discussion leading to a better understanding of human rights issues associated with homosexual and transgender experience is very constrained, leading to few cogent recommendations for national public policy. When any structured deliberation does

⁸To the Ugandan author’s best recollection, the first ever public discussion about LGBTI issues took place in the College of Humanities and Social Sciences at Makerere University from January 22 – 25, 2012, under the Ugandan author’s supervision as one of the Deans in the college. It was organized as a summer school between the Zurich Centre for Applied Ethics, University of Zurich, and the Philosophy Department, Makerere University. On March 16, 2012, another dialogue was convened by the Ugandan author at Makerere University for the purpose of developing recommendations to parliament before the Anti-homosexual Bill was debated.

occur, it often takes the forms of abstractions, with limited exploration of specific arguments involved. Instead, these attempts at discussion are characterized by emotional outbursts, hampering the patient, ratiocinative engagement that is requisite of such sensitive matters. Already formed and stigmatized positions often take the dominant stage, rendering the prospect of finding common ground or at least mutual understanding of disagreements unlikely within such gatherings.

In international workshops outside Uganda, LGBTI Ugandans and their allies may enjoy liberty to discuss freely and confidently, in view of the fact that their safety is guaranteed. In such forums, they express all that pains them because they are confident that the environment they are in is not only protective of their rights but is also receptive of their views, with a clear if unstated desire to understand their problems as well as identify with their problems. But on returning to Uganda they naturally prefer to avoid persecution, keeping quiet or sharing informally with their known LGBTI colleagues.

In those national workshops organized jointly by local and international human rights organizations, deliberation takes the form of LGBTI Ugandans presenting their issues of concern to local audiences comprised of carefully chosen people, with a view to secure greater acceptance, a more empathetic response, and access to the policy makers. In this environment, deliberation involves assessment of the situation and strategizing how best to overcome the challenges. To some extent, LGBTI Ugandans use such opportunities to try to convince the majority of the workshop's participants regarding their human rights claims. LGBTI Ugandans also use such gatherings to urge prominent organizations and individuals to take a stance; though the Uganda Human Rights Commission was clearly from the beginning opposed to the bill and indeed went ahead to submit a position paper explaining the grounds for its rejection (UHRC, Dec. 2009). However, its vigor has been hardly recognized or visible. LGBTI Ugandans call attention to the silence of key opinion makers – a silence that combines with sensationalized homophobic press to encourage ignorance, entrench stigma and invite violence (Associated Press 2011).

The other important forum of deliberation over the issues of homosexuality is the Parliament of Uganda. Unfortunately, no-one has dared to stand for parliament on a platform openly supportive of the human rights of LGBTI Ugandans and a fortiori, there is no Member of Parliament that has indicated that he/she is gay or transgender. Consequently, in Parliament the stage set for same sex relationships or gender identity variance is one of a political environment dominated by entrenched stigmatized positions with little room for genuine consideration of the views being raised on the floor of parliament. Therefore, LGBTI Ugandans prefer working through human rights organizations and the few other powerful and courageous members of Ugandan society who advocate for their human rights and dignity within the wider community of Ugandans. In this context, the civil society organizations must be recognized for the tremendous work they are doing. They continue to engage the public, the individuals and the international community. As Ugandan lawyer and activist Adrian Jjuuko indicated: “we have been able to successfully fight the Anti-Homosexual Bill at the international level, but at the national level, it remains very difficult”.⁹ They have demonstrated consistence, resilience and courage to the extent that after presenting their statement to Parliament on 16th February, 2012, there has been more restraint in commenting on the LGBTI issues, especially after the President’s and Minister of Justice’s comments on the need for tolerance of homosexuals.

It should be pointed out that whereas such deliberation may take place in Uganda’s urban areas, it remains extremely difficult, indeed almost impossible, to pursue even rudimentary deliberation on this sensitive topic in the outlying peri-urban and rural areas, due to strong adherence to the traditional values and cosmologies. Uganda’s towns are more liberal because of the higher rate of exposure to new ideas.

Deliberative processes are doomed to failure unless the participants share some sense of common purpose at the outset of a deliberative process – some sense of “we’re all in this together”. Unless the powerful are motivated to use deliberation instead of power, the exercise is

⁹ This was revealed both at an interview held with Mr. Adrian Jjuuko and the Ugandan author at the latter’s Makerere University office on Wednesday, March 14, 2012 and at a subsequent conference at Makerere University on Friday, March 16, 2012. Jjuuko is also the coordinator of Civil Society Coalition on Human Rights and Constitutional Law Uganda, an association that brings together 40 civil societies for the purpose of fighting for the LGBTI persons.

pointless. In its most general sense, the common good may be said to consist of the policies and actions that best serve to promote the essential components of human well-being or flourishing for all. Identifying the “common good,” or its equivalent phrase, the “public interest,” is a controversial issue because of different conceptions of human well-being or flourishing, particularly with respect to LGBTI and non-LGBTI populations. In utilitarian thinking, the common good is the best net score of individual interests in the community – a concept that would obviously sacrifice the interests of the LGBTI minority to that of the “straight” majority. Others however contend that the common good can be articulated only roughly, and is often subject to moral disagreements (Gutmann and Thompson, 1996). Amy Gutmann and Dennis Thompson describe an ideal process – the philosopher’s model – in which people in conflict reason reciprocally, recognizing the moral worth of the opposing person, even when they consider his or her position to be morally wrong. Under this concept of deliberative democracy, there exists a mutual obligation of respect towards opponents – a trait decisively lacking in the Ugandan social climate now.

Without an opportunity for deliberation in which views can be openly challenged and justifications offered, Ugandans are denied the opportunity to reevaluate their values and concepts regarding members of sexual minorities, and are therefore significantly constrained in their ability to work with other Ugandans to forge agreements that (most) everyone can accept. An appreciation of Ugandan social dynamics is also important to effective public participation. When confronted with ingrained cultural or social constraints, an interest group might become more conscious of social cleavages and hence become more entrenched and intransigent. But the alternative is also true; such an interest group might change its stated priorities.

Human rights - universal versus relativist moral values

There is a perennial debate in philosophy and ethics between universalism and relativism. How does one select and justify the choice of moral values from the different values evident in many societies? This question raises several fundamental divisions of thought within

development ethics, which Crocker summarizes in three meta-ethical views: *universalists*¹⁰, *particularists*¹¹, or a position based on cross-cultural consensus, embracing elements of both (Crocker, 2001).

This dilemma of choice between moral values is echoed in large measure by Booth's critique on what he terms *Culturalism*, in which he questions whether the demands of cultural authenticity and relativism are a permanent impediment to progress on the universal acceptance of human rights. Does culture (or cultures) become the trump card in any debate about human rights (Dunne and Wheeler, 1999)?

Many arguments on moral values assert that each culture is unique, and that its behavior, social order, operative moral norms, and development priorities differ from those in other cultures and can only be understood and addressed by reference to the particular beliefs, traditions, rationalities, and values of that culture. Others such as the philosopher David Crocker counter that this view is extreme, arguing that we can accept great diversity with respect to operative moral norms, and still work to evolve agreement about cross-culturally valid norms (Crocker, 2001). And we must also be careful what we are referring to as a "culture," as Booth remarks:

Culturalism assumes there is an objective reality to cultural authenticity, but it can be shown in practice that these ostensible Archimedean points are invariably contested from *within*, and human rights are supposed to be *relative* to the traditions and outlooks of particular cultures, to what, or whom, within that disputed culture are human rights supposed to be relative? ...For some reason, these days, culture is privileged above all, and especially when human rights is the subject. Against those who assert that human

¹⁰The universalist position in development ethics seeks to formulate and justify – in the light of universally valid ethical principles – a set of development goals that ought to apply equally to all human beings and human societies.

¹¹Moral particularism, in its strongest version, is the claim that there are no defensible moral principles, that the morally perfect person should not be conceived as the person of principle, and that moral thought does not consist in the application of moral principles to cases. There are more cautious versions, however. The strongest defensible version, perhaps, holds that though there may be some moral principles, the rationality of moral thought and judgment does not depend on a suitable provision of such things – the perfectly moral judge would require more than a grasp on an appropriate range of principles and the ability to apply them. Under this view, moral principles are, at best, simply aids that a morally sensitive person would not require, and indeed the use of such aids might even lead us into moral error (Dancy 2001). A variant of this, Aristotelian particularism, holds that moral judgment must be sensitive to the particularity of specific moral situations. Certain Aristotelian thinkers, such as Nancy Sherman, argue that Aristotle was advocating a third way between particularism and general ethical theories, in which there is room for general moral rules or principles, even if these are not deemed to be universal (Sherman 1997).

rights must be embedded in an ethical community, I would say: which 'ethical community' – that of culture (which usually means traditionalism) or that of class, gender, nation, generation, or some other category such as the 'poor', 'the hungry', 'the oppressed' – the victims? To whom or what has human rights relativism to be relative? (Dunne and Wheeler 1999, italics in text).

Extreme relativism also can make it problematic to challenge the traditional status quo – and that culture's distribution of winners and losers in wealth and power. For example, traditional societies may encourage a fatalistic view of one's place in society, as seen with the caste system in India, and can make – through their prevalence – certain practices seem acceptable, such as domestic violence or female genital cutting.

Another challenge to the universality of human rights comes from those who perceive the claim that human rights have universal validity as nothing more than a means of extending the political power, influence and cultural values of the North

Peter Baehr successfully refutes the claims of cultural imperialism by the North, however. His argument is that it is the critics in the South who are paternalistic by claiming that people in the South are either not ready or see no cultural relevance for human rights and the associated political freedoms (Dunne and Wheeler 1999, 54). Still, the view persists that human rights concepts are part of a Western (or Northern) political agenda, and that human rights are unsuitable for development objectives in non-Western (Southern) societies (Falk, 1999).

Jack Donnelly has explored the arguments of cultural relativism in considerable detail, articulating a range of positions from radical cultural relativism (culture is the *sole* source of validity of a moral right), to strong cultural relativism (culture is the *principal* source of validity of a moral right), and finally to weak cultural relativism (culture is an *important* source of validity of a moral right). Donnelly accepts that while human rights are based in human nature, human nature is to a certain extent culturally defined. In a move that many find persuasive, Donnelly argues for the latter position, weak cultural relativism, allowing for a deviation in universal human rights standards primarily in the manner in which they are implemented (Donnelly, 1989). Donnelly also offers a very interesting test on the premise of the universalism of human rights in the context of implementation:

Rights are formulated with certain basic violations, or standard threats to human dignity, in mind. Therefore, the easiest way to overcome the presumption of universality is to demonstrate that the anticipated violation is not standard in that society, that the value is justifiably not considered basic in that society, or that the object of the right is guaranteed by an alternative mechanism...Such a test can be met only rarely today (Donnelly, 1989).

Booth offers yet further arguments in support of the actual (and justified) universalism of human rights, observing that there already exists a significant level of universality in these terms, and that a high degree of value commensurability exists between communities and across cultures. Booth also argues that a consensus already exists among all people – perceived from our animal nature and social character – of what constitutes a wide range of human wrongs. He further contends that universal ethical communities appropriate to human rights considerations already exist, based not on territory or culture but on the multiple identities all people have as parents, oppressed women, white collar workers, poor people, gay or transgender people, etc., and – with reference to Rorty – out of our common experience as human beings (Dunne and Wheeler, 1999).

As stated by Mary Robinson, the United Nations High Commissioner for Human Rights, in the UNDP *Human Development Report 2000*:

Universality is, in fact, the essence of human rights: all people are entitled to them, all governments are bound to observe them, all state and civil actors should defend them. The goal is nothing less than all human rights for all (United Nations Development Programme, 2000).

In any culture, deliberative approaches have limitations when addressing conflicts that are framed on universal versus traditional (relativistic) moral values. Yet a central claim about human rights is that they are universal – a contention that is grounded in several moral theories, including that known as natural law. Natural law is a universalist view which posits that there is a *natural law* that is derived from nature or God, which exists independently of the positive laws of politics, and which is discernible through reason. It relates human rights to the aspiration for human flourishing, and therefore allows for a distinction to be made between absolute (in the

sense of “exceptionless”) rights, and rights that may sometimes be overridden by other rights or are subject to trade-offs in pursuit of the common good (Dunne and Wheeler 1999). Natural law is itself open to challenge by those who question the grounding of universal moral concepts on transcendent Platonic forms or moral laws. Among those who ground human rights on natural law are some leading human rights theorists, such as Chris Brown, Tim Dunne, and Nicholas Wheeler (Dunne and Wheeler, 1999). This paper will not address the metaphysical status of human rights, but the authors’ assumption of the grounding of human rights is compatible with a variety of views on the metaphysics of value.

In many contexts outside LGBTI human rights, the universalist premise is not without controversy, but it does not depend for its defense on natural law. However, the moral debate between the implications of adopting universalist or relativist assumptions – or something bridging these two – characterizes many deliberations on human rights. Chris Brown offers a middle view, describing how a human rights culture can emerge in reaction to a wide range of perceived injustices – racism, sexism, religious intolerance, and intolerance of sexual minorities – and that this, in turn, can become part of a society’s shared moral identity. He attributes this process not only to being able to sympathize with the plight of others, but also to the achievement of a level of security in a society in which one is able to assert one’s self-respect and worth without having to try to diminish these attributes in others. Brown’s views allow only for the limited influence of human rights deliberations ultimately making the inculcation of human rights values possible within a given society. Like the philosopher Richard Rorty, he views human rights as effective only after they have been broadly internalized into the moral identity of a society, but unlike Rorty he accepts that beliefs may have a role to play. Brown contends that without having achieved this moral identity, the external imposition of human rights concepts such as “LGBTI human rights” onto a society such as that of Uganda will not immediately or directly result in a shift in attitudes and values by that society. In this light, international efforts to secure universal human rights standards and behavior in the context of LGBTI human rights will only bear fruit – if at all – in the long term, as Ugandan society gradually contends with a range of social and developmental issues in which those involved in the deliberations see the value of using human rights as an effective lens to these specific

deliberations. Brown sees human rights much more as an end than a means to development, a symptom of civilization instead of a cause, when he argues:

Rights are best seen as a by-product of a functioning ethical community and not as a phenomenon that can be taken out of this context and promoted as a universal solution to the political ills of an oppressive world (Dunne and Wheeler, 1999).

Whether human rights are simply an indicator of some level of civilized community coherence is debatable. Most philosophers agree that human rights are means, particularly means to the achievement of human dignity. Others, but not all, argue that human rights can be conceived as both means and ends; for example those who hold that human rights are intrinsically valuable as ends may also view them as means to such goals as equitable development and inclusion. Ken Booth takes the argument so far as to view human rights as a means to being human, claiming that since human beings are socially made beings, human rights are a part of what constitutes their social identity at this place in human history. “We have human rights not because we are human, but because we want the species to become human” (Dunne and Wheeler, 1999).

From a traditional Ugandan values perspective, the moral values that are constitutive of Ugandan cultural identity are the priority. The general views of Ugandan religious leaders, members of parliament, and other government leaders especially the minister of State for Ethics and Integrity, Mr. Simon Lokodo (who is a former Roman Catholic priest), all demonstrate an attitudinal posture that cultural identity is preponderant over, if not anathematic to universality of human rights. It should not, however, be conceded therefore, that because of this position they believe in the social definition of human beings as in contemporary queer theory. Culture is seen instead as a natural predisposition which, of course, is a misrepresentation. That is why the translation of culture in Runyankore is “ebyobuhaangwa” which translates to those “of creation” or “natural”; among the Baganda, the biggest ethnic group in Uganda, “ebyobutonde”, denotes the same as used among the Banyankore.¹²

The defense of the cultural identity of Ugandan is largely shared by a number of philosophers including F. Kasozi and Sango Mwanahewa the former of whom is advocating for a

¹² Runyankore is a language of the people called Banyankore in south western Uganda and the Luganda is the language of the Baganda, the largest ethnic group in Uganda which lives in central region.

re-writing of human rights instruments that reflect African – not European – culture.¹³ Kasozi further argued that human rights must be understood as claims of the individual on the society but that such rights are only operationalized when the society accepts them, and since the African community in Uganda hasn't yet accepted them, gay rights or any other so-called rights that have not yet been accepted by the Ugandan society could not be treated or recognized as human rights in Uganda. In this regard, achieving the status of operational human rights in Uganda is morally seen as an end in itself.

Kasozi's view however, is not in concordance with other African thinkers like Julius Nyerere whose view is that "Binadamu wote ni ndugu zangu", which translates in "All human beings are brothers" (Nyerere, 1966). In the work of Kwasi Wiredu's *An Akan Perspective on Human Rights (1990)*, the ends view of human rights is emphasized because the Okra – the divine element in every person – constitutes his/her intrinsic value. It is also for this reason that Africans as a whole tend to adopt a more universalist view of human dignity, believing that every human being is entitled to basic respect in equal measure (Wiredu, in Hyden, 2001). In the same vein, the universality of rights is implied by the generalization that every person has *okra*-dignity. Surprisingly, the universality of human rights was expressed by the Ugandan Minister of Justice Kahinda Otafiire who said:

The Minister¹⁴ together with the government should stop harassing the gays. They have their rights as homos and they should be left to enjoy their rights. The government is not god who created them. We should leave them to God to judge them as He has powers not the minister, government nor public (Mwesigwa, February 19, 2012).

Moreover, Ugandan President Museveni indicated a similar hands-off position in his prominently televised interview with Stephen Sacker on the BBC World Service "Hard Talk" program¹⁵. Ugandan feminist lawyer and academic Dr. Sylvia Tamale¹⁶ is also creating her own

¹³ Ferdinand Kasozi is a lecturer at the Department of Philosophy and he was presenting a paper at the Summer School, at Makerere University, January 23-25th, 2012. Sango Mwanahewa also made strong statements in support of Kasozi's position.

¹⁴ In this context, Minister of Justice Hon. Kahinda Otafiire was referring to another minister, of Ethics and Integrity, Hon. Simon Lokodo for raiding and dispersing the conference organized earlier for the LGBTI in Entebbe.

¹⁵ BBC Hard Talk, February 23, 2012: www.bbc.co.uk/2/hi/programmes/hardtalk/9698847.stm

deliberative space in finding some resolution of the LGBTI issues. Tamale has argued that African societies have to refer to their heritage in solving their problems and in her view the philosophy of “obuntu” comes in handy.¹⁷ Obuntu translates as the quality of being human, or humanness, kindness, and respecting all – which implies living and treating others with dignity, arguably a core value that all African societies have cherished. In this context therefore, it is being advocated that Ugandans should exploit this type of obuntu thinking when dealing with policy and legal issues affecting LGBTI people. Thus, the LGBTI persons must be respected like everyone else and no discrimination ought to be allowed as according to Ugandan culture. However, the authors’ view is that rights are essentially guaranteed by the state and therefore the same state should not be encouraged to generate laws that are discriminatory- especially this anti-homosexuality bill that remains before parliament.

On the other hand, the authors view human rights as both means and ends for various reasons. Human rights are seen as interdependent and therefore the protection and respect of human rights also encourages the respect of other rights and freedoms. Human rights therefore act as necessary conditions and measures taken for enjoyment of more rights, knowing well that human rights are ever unfolding. Second, it is generally held that human rights are realized progressively (especially economic, social and cultural rights) as attitudes change and as resources become progressively more available and used most optimally.

For these authors, it is more of a challenge to accept human rights only as ends in themselves. What is essential is that the preconditions for enjoying human rights exist. For instance, in the case of the human right to access to food, what is important is not the fact that I have food now, but that in the case that food becomes unavailable at any time, I should get timely redress or compensation. The state or any other duty bearer should ensure that conditions exist such that I am able to access the food that is appropriate to my needs all the time. It is not the food that is the right, but rather a gamut of measures put in place by the state that together

¹⁶ Dr. Sylvia Tamale is a professor of law at Makerere University, and perhaps the best known academic in favour of the rights of LGBTI persons in Uganda and beyond. She was speaking at the conference organized by Philosophy Department, at Makerere University, on March 16th 2012.

¹⁷ Obuntu among Banyankore (an ethnic group living in South Western Uganda and many Bantu in much of central and southern Africa or Ubuntu in Rwanda is derived from the noun “omuntu” which means a person.

constitute conditions for enjoying my right to food. In a circular sense, human rights provide for my realization of capabilities by which I enjoy my human rights!

Conflicting International Values

Many Ugandans are puzzled by the intensity of the sentiments expressed by the U.S. and other governments of developed countries, and by international civil society advocates, as they appear to focus disproportionately on those human rights claims of LGBTI Ugandans over and above the many other human rights claims of non-LGBTI Ugandans. These critics may even go so far as to argue that human rights themselves are an imposition of Northern values, or even an extension of Northern cultural imperialism. If human rights are based on ethics, whose ethics apply? Are LGBTI lobbyists in the North framing the human rights agenda to give disproportionate weight to homosexuals and transgender persons and their allies? These critics question why the ethical standards and principles that underlie human rights should be actually or ideally universal across all cultures and all societies. Aren't there significant differences, they argue, in operative¹⁸ human values and ethics that make the definition of human rights meaningful only within the context of a specific group or society?

If one takes the position that less developed societies such as Uganda's are fundamentally unable to respect the human rights claims of LGBTI Ugandans, then the conception of human rights as an instrumental means for the larger development goals of Uganda becomes questionable, at least until that society attains some "threshold" where the moral weight of human rights protections becomes operative even for members of sexual minorities (and arguably for other minorities as well, such as persons with disabilities). Before and after this threshold is reached, the end goal of development remains the achievement of a "civilized" society characterized by the full protection and promotion (within reason) of those valuable features of all people's lives – LGBTI persons included – that human rights address. But in the pre-threshold state of affairs under this conception, deliberations on policy formulation, development, and governance would be directed at the creation and maintenance of a general

¹⁸There may be significant differences between values that are valid and values that are actually operative in people's lives. One set of values that are valid for everyone – for example, that all human beings should be treated with respect – does not preclude the existence of enormous differences in operative values.

“enabling environment,” and less specifically (or not at all) at human rights as a means to the ultimate end of a the “civilized” society described above. Under this view, human rights might be perceived in two ways. First, the universal respect of human rights might be considered merely as an attribute of a “more developed” state of affairs, in which there is a discernible lack of threats to certain valuable features of a person’s life such as their sexual orientation or gender identity. Alternatively, human rights retain their descriptive sense as an attribute of a “more developed” society, but at a certain stage – some moral threshold – they also become an effective and additional means to guide that society’s development and governance.

The goal of facilitating a society’s arrival at the moral threshold at which human rights becomes instrumentally effective for all persons including LGBTI persons appears to be a more plausible target, but only until one has to determine and justify the basis for the specific threshold conditions. Where does one demarcate that the threshold used in determining when an enabling environment (focused, one assumes, on other means leading to development, such as economic growth) has resulted in a state of affairs in which the human rights of LGBTI Ugandans are respected and enforced *enough*? Would this determination require different threshold conditions for each recognized human rights claim of LGBTI Ugandans? These questions make plausible answers very difficult; for this reason the threshold condition problem is commonly ignored in arguments advocating that development policy and governance ignore human rights. These arguments concentrate instead on the creation and evolution of the “enabling environment” – the general social bases – leading progressively to an end-state ideal of a society in which the protections offered by human rights are simply unnecessary, because no threats exist to the valuable features of people’s lives that human rights address and promote – in this instance meaning that there are no such threats against the sexual orientation and gender variant identity of LGBTI Ugandans. Arguably one cannot and should not concentrate on creating the enabling environment for development without reference to human rights values enjoyed by all, except in the context of some future state of affairs. It is both arbitrary and inaccurate to argue that society must achieve some (undefined but – one assumes – intuitively perceived) threshold condition of civilization before governance and decision-making on the common good is appropriately subject to the direct influence of human rights values applied universally without exclusion. As development progresses, due perhaps in some measure and at

some stage to conscious development efforts to bring about or consolidate a human rights culture, a society gradually grows in its capacity to both respect and institutionalize human rights in that society's laws, practices, and deliberations, and apply them without discrimination to all persons.

Prioritizing LGBTI human rights?

Are the human rights claims of LGBTI Ugandans to be considered as exceptional, perhaps to be ignored because they are so controversial? Should Uganda prioritize other human rights based objectives and consider the human rights claims of LGBTI Ugandans and their allies as “non-basic”? There may indeed be a need to distinguish basic from non-basic human rights, although even with this ordering the full range of human rights continues to exercise moral authority under the concept of imperfect duties. Human rights are always *prima facie* or presumptive, and always can be overridden in relation to more pressing rights, other normative considerations, or other practical considerations such as survival or national self-interest. But the moral burden remains on those who would override human rights, including the human rights of LGBTI Ugandans and their allies – their justifications must be rational and persuasive.

Without a global power above the state to demand human rights performance, will human rights only be recognized and become influential with respect to domestic public policy when countries reach a certain level of development and stability? Chris Brown takes this view, saying that only as states become civilized will they achieve the Universal Declaration's standards. Standards do not civilize states, argues Brown (Dunne and Wheeler, 1999).

Richard Rorty approaches this debate from a very different perspective. In his view, rhetorical pronouncements intended to impart moral *knowledge* or better beliefs are ineffectual; Rorty claims that only through an “education of the sentiments” by which a society develops its consciousness of human solidarity will human rights values be instilled as a guide to actual behavior.

The authors of this paper argue that human rights principles have the power to inspire and empower all Ugandans – including LGBTI Ugandans – to assert their demands for a form of

development that respects their human dignity. The authors reject Rorty's strict separation of sentiment and argument; instead contending that a human rights approach contains argument and sentiment, moral intuition and articulated moral principles.

The Nobel Laureate economist and philosopher Amartya Sen and others view human rights as a set of ethical claims, which need not be identified with legislated legal rights. In some cases, human rights have influence where legal rights would be inappropriate. For example, the moral right of a wife to share equally with her husband in making important decisions affecting the family would not lend itself to police enforcement, but still carries weight without being legislated. Similarly, the human right to be treated with dignity and respect does not translate into specific legislation. In short, LGBTI Ugandans need not wait until a law is passed in Parliament to assert their moral claims for dignified treatment and respect.

Conclusion - Responding to LGBTI human rights claims

Rights entail duties. Under this view, asserting a claim based on a human right becomes incoherent unless a specific duty (and duty-bearer) is identified and that duty is somehow enforced. Otherwise, notes Sen wryly:

Human rights, in this understanding, are heartwarming sentiments, but they are also, strictly speaking, incoherent. Thus viewed, these claims are best seen not so much as rights, but as lumps in the throat (Sen 1999).

While the narratives of courageous members of persecuted minorities in Uganda may generate sympathy and occasionally "lumps in the throat", their narratives must do more. The majority of Ugandans must be persuaded first to acknowledge the humanity and fundamental human dignity of LGBTI Ugandans before appropriate and effective deliberations on their detailed human rights claims can begin, and relevant duty-bearers identified. Only when that threshold is passed, when the moral and cultural values of Ugandans no longer permit the dehumanization of minority groups such that the human rights claims of those groups are ignored or dismissed, will the enabling environment come into being where detailed deliberation on all of the measures needed to achieve fundamental human rights and freedoms becomes effective.

In the interim, universal human rights do have an important but not exclusive role to play in monitoring and guiding Uganda's development and governance with respect to the current marginalization and persecution of LGBTI persons. They may also be the only viable recourse when attitudinal change fails, as in the case when confronting genuinely intolerable abuses such as the murder of Ugandan LGBTI activist David Kato, or the legally questionable intervention by the Ugandan Ethics and Integrity Minister Simon Lokodo to shut down an advocacy training workshop in Entebbe being led by LGBTI activists on the basis that the activists were "recruiting children into the gay life" (McConnell, 2012).

All Ugandans who recognize human rights and wish that their rights be respected should stop human rights violations wherever and whenever they occur. As always, people are entitled to their opinion including freedom to disapprove of same-sex relationships, for example, by demonstration, or using any other legitimate means; they have every right to worship any god or God, to their legitimate cultural beliefs and practices; but they have no right to violate or allow the violation of the rights of others. In practical terms the government of Uganda needs to deliberately create a protective environment for the LGBTI people through bringing national laws and practice into line with international standards, while also tackling discriminatory attitudes at the roots. With specific reference to Uganda, the Anti-Homosexuality Bill (2009) should be rejected as unconstitutional as the Uganda Human Rights Commission and other legal organization like Uganda Law Society and non-legal players, both national and international have advised. In the meantime, like U.N. High Commissioner for Human Rights Navi Pillay advises, serious state responses should be enforced through thorough investigation, prosecution and punishment of those responsible for violations against LGBTI people (Pillay 2012).

As discussed earlier in this paper, the conflict between universalism and relativism in the context of human rights is a long-standing challenge to the implementation of human rights. However, as High Commissioner Pillay points out below, the balance between tradition and culture, on the one hand, and universal human rights, on the other, must be struck in favor of rights as the Vienna Declaration and Program of Action:

I know that it takes time, patience and persuasion to tackle it. But in the end, my life has taught me that ignorance and bigotry are no match for the power of education. Over time, as people start to talk with one another, they will overcome their discomfort. As they start

to focus on facts not fear, prejudice will start to ebb away. States can speed up the process with effective public information campaigns that challenge homophobia and negative stereotypes (Pillay, March 7, 2012).

Clearly with current views as polarized as they are in Uganda, the narrow middle “common ground” has not yet been found there. Moral discourse on the human rights of LGBTI persons must avoid the pitfall of moralizing and moral extremism – utopian rhetoric demanding extensive, expansive and/or priority human rights that can neither be supported by popular will nor be translated into effective action. Similarly, the pitfall of rigid moral prescriptionism – where moral demands are repressively imposed on situations without regard to particular needs and conditions faced by LGBTI Ugandans and their allies – must be avoided if that common ground is to be established as the threshold to genuine deliberation.

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