‘WE ARE MORE THAN JUST OUR BODIES’:
HIV/AIDS AND THE HUMAN RIGHTS COMPLEXITIES AFFECTING YOUNG WOMEN WHO HAVE SEX WITH WOMEN IN UGANDA

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HURIPEC
WORKING PAPER No. 36
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This working paper is published under the 3rd phase of HURIPEC's Economic, Social and Cultural Rights (ESCR) Program supported by the Ford Foundation. Entitled, ‘Between Vulnerability and Resilience: Young Women's Sexual and Reproductive Health and Rights (SRHRs) and HIV/AIDS in Uganda,’ the project consists of the following working papers:

Busingye Kabumba, *Behind the Numbers, Beyond the Law: Young Women and the HIV/AIDS Pandemic in Uganda* (WP No. 34);

Zahara Nampewo, *Too Few to Worry About? Young, Disabled, HIV Positive and Female* (WP No. 35);

J. Oloka-Onyango, ‘*We Are More than Just Our Bodies*: HIV/AIDS and the Human Rights Complexities Affecting Young Women Who Have Sex with Women in Uganda’ (WP No. 36);

Ben Kiromba Twinomugisha, *Beyond ‘Malaya’ or Prostitute: Interrogating the Sexual and Reproductive Health Rights of Young Female Sex Workers in the Context of HIV/AIDS in Uganda* (WP No. 37), and


The author is grateful to Sylvia Tamale for her always incisive advice and critical eye; to Jackie Tumusiime and Lillian Kobusingye who provided research assistance and to Esther Namulemye who typed the transcripts of all the field interviews. I also thank Adam Branch, the discussant of the initial draft and all the participants at the HURIPEC dissemination workshop held on January 12, 2012. Finally, I am extremely grateful to all the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals and organizations who so graciously gave of their time and resources to buttress the findings of this research. *Aluta continua!*
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<thead>
<tr>
<th>ABBREVIATIONS</th>
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<tr>
<td>ABC</td>
<td>Abstinence, Be Faithful and Condom-use</td>
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<tr>
<td>AGHA</td>
<td>Action Group for Health, Human Rights &amp; HIV/AIDS</td>
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<td>AHB</td>
<td>Anti-homosexuality Bill</td>
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<td>CHOGM</td>
<td>Commonwealth Heads of State and Government Meeting</td>
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<tr>
<td>CSCHRCL</td>
<td>Civil Society Coalition on Human Rights and Constitutional Law</td>
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<td>FARUG</td>
<td>Freedom and Roam Uganda</td>
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<tr>
<td>IPPF</td>
<td>International Planned Parenthood Foundation</td>
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<td>KULHAS</td>
<td>Kuchus Living with HIV/AIDS</td>
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<tr>
<td>LGBTI</td>
<td>Lesbian, Gay, Bisexual, Transgender and Intersex</td>
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<td>LGBTQQI</td>
<td>Lesbian, Gay, Bisexual, Transgender. Queer, Questioning and Intersex</td>
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<td>MARPs</td>
<td>Most-At-Risk Populations</td>
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<tr>
<td>MSM</td>
<td>Men-who-have-sex-with-Men</td>
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<tr>
<td>NRM</td>
<td>National Resistance Movement</td>
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<td>PWDs</td>
<td>Persons with Disabilities</td>
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<td>SRHRs</td>
<td>sexual and reproductive health rights</td>
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<td>SMUG</td>
<td>Sexual Minorities Uganda</td>
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<td>UHSPA</td>
<td>Uganda Health and Science Press Association</td>
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<td>UAC</td>
<td>Uganda Aids Commission</td>
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<td>UNAIDS</td>
<td>Joint United Nations Programme on HIV/AIDS</td>
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<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<td>VCT</td>
<td>Voluntary Counseling and Testing</td>
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<td>W2W</td>
<td>Walk-to-Work</td>
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<td>WSW</td>
<td>Women who have Sex with Women</td>
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<td>WHO</td>
<td>World Health Organization</td>
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SUMMARY

If there is any group of individuals who have not received significant academic or intellectual attention in the discussion about HIV/AIDS in Uganda, it is women who have sex with women (WSW). That silence may in large part be a reflection of the ‘low-risk’ designation that epidemiologists and Public Health specialists have given to the possibility of viral transmission between two women, but it nevertheless conceals or obscures a great deal, just as it discloses and reveals. In the first instance a designation relying essentially on risk is problematic because it focuses primarily on behavior or conduct, rather than on the broader sociological, economic, legal and political factors implicated by the pandemic. Secondly, there is a serious dearth of research on the issue of young WSW living with or affected by HIV/AIDS, whether in terms of Public Health or epidemiology or in respect of the wider social and political questions implicated. Thirdly, young WSW are often ignored within the framework of State-backed or official interventions which target so-called ‘Most-At-Risk Populations’ (or ‘MARPs’) which includes groups such as sex workers, men who have sex with men (MSM) and drug users. Again, this raises the question—risk for themselves, or risk for the wider, heterosexual, non-drug using community? Implicit in the MARPs designation is also the idea that certain groups or individuals who are engaged in ‘bad’ sex are the ‘drivers’ of the pandemic and necessitate containment. Finally—and most importantly for this paper—there are a host of human rights impacts experienced by young WSW living with or affected by HIV/AIDS that are neither fully documented, nor for which there is an adequate policy or practical response. These extend from the hostile environment that pervades the system of healthcare, to the mechanisms of prevention, treatment and attention that have been established to address the pandemic. Obviously, any discussion of young WSW implicates broader issues relating to the status—legal, social and political—of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals.

In response to the loud silence of the Academy over the matter, this paper sets out to surface the legal and human rights complexities involved, with due attention being given to the two related phenomena of heterosexism and homophobia which compound the situation of young WSW living with or affected by HIV/AIDS. It critically examines the different factors that impact on three key elements in their Sexual and Reproductive Health Rights, commencing with the issue of autonomy, which includes reproductive health and sexuality as defined in the broadest sense of the term. The question of access is also examined with a particular focus on the manner in which young WSW living with or affected by HIV/AIDS are treated by the overwhelmingly heterosexual healthcare system. The study concludes with an examination of the rights of young WSW to protection, with particular attention given to the phenomenon of sexual and gender-based violence. Of major concern to the study is the manner in which the Law and official policy play a disempowering role in the first instance by criminalizing same-sex conduct and thereby penalizing and delegitimizing the relations and affiliations of LGBTI persons. Consequently, unlike heterosexual women or women with disabilities—groups who face similar gender and sexuality-related constraints—young WSW face a higher degree of complexity in the face of HIV/AIDS simply on account of their legal and social invisibility. Despite these oppressive conditions, the study takes note of the many acts of resistance and expressions of empowerment which young WSW have adopted in ensuring the realization of their broader human rights in general, and of their sexual and reproductive health rights in particular. Against the backdrop of the Anti-homosexuality Bill which sought to re-criminalize same-sex erotics and individuals, the community of young WSW has put up a spirited fight. Coupled with a host of socio-legal and political factors which are explored in the study, it is a fight which is testimony to the resilience of the community as it braces for a battle against one of the last bastions to full gender equality and the elimination of discrimination on the basis of sexual orientation.
I. INTRODUCTION

1.1 Background

Recent debate about sexuality, human rights and morality in Uganda has reached a crescendo. In the wake of the furore generated by the Anti-Homosexuality Bill (the ‘Bahati Bill’), the launch of a media campaign outing individuals that are or were perceived to be lesbian and gay, coupled with continuing attempts to further penalize sex work, Uganda is in the grip of what can only be described as a ‘sex’ or ‘moral’ panic (Reddy, 2001: 83, Herdt, 2009, Tamale, 2011c). That panic has raised the sexual bogeyman as the source of all our problems, and set as its main agenda the goal of re-criminalizing or abolishing supposedly ‘abnormal’ sexual activity and punishing those allegedly involved in its propagation. It is a panic that is increasingly expressed in the vocabulary of Law, whether with respect to the 2005 constitutional bar to same-sex marriage (Mujuzi, 2009a), or with its most recent target, pornography.\(^1\) The panic obviously has far-reaching consequences for public policy, law reform and struggles for gender reconceptualization and freedom from violence (Bennett, 2010a). It particularly has implications for the enhanced promotion and protection of the human rights of the socially-vulnerable and marginalized such as young women-who-have-sex—women (WSW) living with or affected by HIV/AIDS,\(^2\) the main focus of this study.

From a human rights perspective, a major issue of concern is that the approach of health practitioners and policy makers to HIV/AIDS has largely been dominated by considerations of Public Health, namely viral transmission and how to control the disease spread.\(^3\) Witness for example, the early campaigns on ‘Abstinence, Be Faithful and Condom-use’ (‘ABC,’ with an emphasis on the ‘A’) (Twesiime-Kirya, 2008, Kippax, 2010). More recently, we have been bombarded with advertisements counseling against eating a ‘Side Dish’ and strident warnings (targeted mainly at married couples) to get off the so-called Sexual Network. All these emphasize prevention tied to sexual fidelity within a context of heteronormative (and polygynous) relations (Esacove, 2010).\(^4\) It is a strategy best described as one of ‘fright-or-flight,’ or ‘fear-mongering and misinformation (Silberschmidt, 2011: 122),\(^5\) privileging the act of sex over identities and feelings. At

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\(^1\) An Anti-Pornography Bill proposes the establishment of a committee to ‘...take all necessary measures to ensure early detection and prohibition of pornography.’ See Bill No.12 of 2011, and Moses Mulondo, ‘Exposing Breasts Might Get You 10 Years in Jail,’ New Vision, November 6, 2011 at 2. The Minister of Ethics, the Rev. Fr. Simon Lokodo was quoted as saying, ‘There is moral decay in the country. The importation of European culture has increased moral degeneration. We shall not allow that to continue as if we are a Godless nation.’

\(^2\) I use the term WSW as opposed to ‘lesbian,’ for a variety of conceptual and practical reasons that will be made clear in later sections of the study (See also Matebeni, 2009a: 107-108, 2009b: 352, and 2008: 90, as well as Epprecht, 2008: 4, and Kendall, 2001: 223). The age group covered in this study is from 18 to 35 years.

\(^3\) For a short history of the medical response to HIV, see Cacere and Race, 2010.

\(^4\) ‘Heteronormativity’ refers to the sociocultural system that assumes the existence of only two sexes/genders and views human sexual relations between a man and a woman as being natural and normal, with no other possibilities (Tamale, 2011a: 641).

\(^5\) For example, a recent edition of Straight Talk—Uganda’s most prominent magazine tackling the HIV pandemic addressed to adolescents—gave three responses to the question: ‘It is 28 years of HIV and it is still spreading? Why?’ Dr. Stephen Watiti, working with Mildmay Centre says it is because of three reasons. 1. Sex 2. Sex 3. Sex.’ See ‘What is Good Sex?’ Straight Talk, Vol.16., No.2 (March 2010) at 1.
the same time the sub-text of this drive is overshadowed by moral constructs of what constitutes ‘good sex (Rubin, 1984: 267).’

When the attention of law and policy is reluctantly turned to marginalized populations (so-called Most-at-Risk Populations or ‘MARPs’), such as sex workers, substance users and men-who-have-sex-with-men (MSM) the strategy once again emphasizes the aspects of control and containment. But this is also done in a punitive and discriminatory manner, overlooking considerations of human rights and with serious implications for addressing the HIV/AIDS pandemic (Muyunga n.d.1). Like Janus, government policy in the face of demands by sexual minorities for more inclusion in programs addressing the pandemic is two-faced. It simultaneously mainstreams and demonizes. On the one hand, there is some recognition of the significance of such groups in dealing with the pandemic after years of denying their very existence (Uganda AIDS Commission 2009: 15-17). But on the other, the State steadfastly refuses to decriminalize, or at a minimum legalize the actions, relations and status of sexual minorities. This is blatantly opportunistic, to say the least. Citing the high incidence of infection among them, sexual minorities are targeted as significant ‘drivers’ of HIV. Such a perspective ignores the structural and attitudinal factors such as homophobia, criminalization, discrimination and inequality which are the real problems at issue. Indeed such an approach may even reinforce existing social prejudices about these communities. It also undermines the diversity of the sexual rights issues at stake and minimizes the vast range of other concerns—from sexual well-being to bodily autonomy to simple pleasure—implicated in this debate (Global Rights, 2008). In the words of one young WSW, ‘We are more than just our bodies.’

Most studies and analyses of the HIV/AIDS pandemic rank WSW in a low risk category (Semugoma, 2005: 26 and Johnson, 2007: 39-41). While this may be correct from a purely epidemiological point of view, it is certainly questionable from a perspective of human rights. There are several reasons why. In the first instance, it is impossible to ignore the gendered dimensions of such a classification in a context where women’s sexuality is excessively regulated, scrutinized and forced to remain within the confines of heterosexual control. Activist Val Kalende states that this is because of the ‘…common knowledge that issues concerning women work within cultural, political and religious frameworks where a woman is a lesser citizen.’ It also conceals the many intersecting dimensions through which young WSW interact and express themselves (Matebeni, 2009a: 106). For various reasons, many young WSW have, on multiple occasions, had sex with men. Others

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6 Gayle Rubin argues that the dominant ideology presents good sex to be, “… heterosexual, married, monogamous, procreative, non-commercial, in pairs, in a relationship, same generation, in private, bodies only and vanilla.”
7 The Uganda AIDS Commission (UAC) reports that MSM contribute less than 1% to HIV transmission in Uganda, but observes that the rate of infection within the group (at 13.7%) is much higher than the average. The assertion that gays and lesbians were ‘drivers’ of the disease was made by UAC Director General, Dr. Kihumuro Apuuli at a May 2, 2008 press conference. See, The Advocate, ‘Gays Not Part of Uganda’s HIV Treatment Plan,’ accessed at: http://www.advocate.com/article.aspx?id=42761 (on December 28, 2011).
8 Interview with CN, on October 17, 2010.
9 Interview with Val Kalende, lesbian queer activist on December 28, 2011.
10 Although there are no statistics in the case of Uganda, a 1996 study published by the American Journal of Public Health found that 81% of lesbians and bisexual women in San Francisco reported sex with men over a three year period. In the case of Britain, the figure was 85%. See Mercer et al (2007) and Kathy Belge, “Can Lesbians Get HIV/AIDS?” accessed at: http://lesbianlife.about.com/od/lesbianhealth/a/LesbianAIDS_2.htm?p=1 (on December 28, 2011). See also, The Pink Elephant, ‘Lesbians and HIV/AIDS,’ available at: http://thepinkelephant.ca/archives/3862 (accessed on March 23, 2010), which confirms that there are no confirmed cases of female-to-female sexual transmission, but states, ‘However case reports of female-to-female transmission of HIV and the well-documented risk of female-to-male transmission indicate that vaginal secretions and menstrual blood are potentially infectious and that mucous membrane (for example, oral, vaginal) exposure to these secretions has the potential to lead to HIV infection.’ It is also generally recognized that younger WSW often experiment
were born with the HIV virus. And although rare, transmission can take place between women. Moreover, the homophobic attacks, legal regimes and social practices directed against sexual minorities do not exclude WSW from their operation (Altman, 1998). Sexual and Gender Based Violence, which inordinately focuses on women much more than it does on men, is an additional factor. It is also important to underscore the point that sexual minority communities are themselves not immune to patriarchal and misogynistic inclinations where gay men, transgender men, and butch women silence the voices of lesbian women. The discourse sidelines WSW because of the running assumption that since ‘lesbians do not have (real) sex’ they are not at risk. It is a discourse that also permeates the community. This was the gist of a discussion I had with ZM—a 25 year old lesbian activist working with a mainly homosexual rights organization in Kampala:

Yes, there is an attitude like of not thinking that HIV is a problem for lesbians… Also me before (I was the same)….. because there is a group of people who came and asked me about HIV testing they were like… ‘do you go for HIV testing before you sleep with your girl friend?’ We were like … what!!? We had never really thought about it because the danger is apparently very small. But our attitude has changed a bit lately … therefore such information is generally … is just not there.

The above facts have wider implications for the design of appropriate solutions in addressing the broader issues around fighting the pandemic. They also raise serious concerns about the whole project of human rights (Matebeni, 2009). It is thus erroneous to believe that WSW are at low risk (Johnson, 2007: 7). Even if such a premise were to be accepted, low risk does not mean no risk. And that is the crux of human rights protection, i.e. focusing on the minority and the vulnerable, whether social, political or cultural. Patience ‘Pepe’ Julian Onziema of Sexual Minorities Uganda (SMUG) responded in the following way when asked about the risks young WSW face:

PO: There are issues involved (which some people do not look at). We are all at risk of course. There is a saying ‘the most at risk.’ But let’s take it from the risk point, we are all at risk. Why lesbians or women who have sex with women are at risk is because in Uganda you cannot be exclusively a woman who has sex with a woman … it is hard, the social pressure you get to conform makes it hard.

JOO: Even for someone like you?

PO: For me no, I am sexually assertive and clear, but I know there are very few of us really, but most people are actually bisexual not by choice but due to society or by circumstances. Society is the one that pushes them to be like that. But I know that condom use is not as universal as it should be … so if I am dating this woman and this woman is sleeping with a man because this man does not know this is my girlfriend, there is no way you are going to deny him access without a condom. We are in a very promiscuous country (and) there is no way that you can guarantee that this girl is sexually with men, either on account of social pressure or because of the stigma of being non-heterosexual. Many of the respondents in this study revealed that they had had sexual contact with men for various reasons.

12 Risks of transmission extend from rough sex (including fisting and certain sadomasochism (S&M) activities; hand play with long fingernails or cuts; cunnilingus (oral sex) during menses or with cuts and sores; sharing sex toys that have vaginal fluids, blood or faeces on them; drug injection; donor sperm insemination (without an HIV test), and condom-less penetrative anal or vaginal sex with a man (Johnson, 2007: 39-41). The key issue is the existence of an entry point for the virus in the form of cuts, broken skin, or tears in the mucous membrane (Tallis, 1992). The US Centre for Disease Control & Prevention states, ‘Despite the absence of confirmed cases of female-to-female transmission of HIV, the findings do not negate the possibility,’ in ‘HIV/AIDS Among Women Who Have Sex with Women,’ CDC HIV/AIDS Fact Sheet, June 2006. Also see, ‘Health Needs of Women Who Have Sex with Women,’ British Medical Journal, Vol.327, October 25, 2003.

13 Kalende interview, op.cit. In this perspective ‘real sex’ is penile-vaginal or penile-anal sex.
Pepe’s responses underscore the many dimensions and levels of risk involved in understanding the impact of HIV/AIDS beyond a purely medical or healthcare perspective. First, there is the individual level (condom use, multiple sexual partners and exposure to disease). Next, there are the social and sexual networks and finally, there is the community and national levels, all of which have been identified as significant actors in recent studies of the effects of the pandemic in the African context (Poteat, et al 2011). We may also add another level, namely the global/international which has come to play an increasingly prominent role in the manner in which the pandemic is tackled, whether positively or otherwise (Seckinelgin, 2009).

In light of these different levels of analysis, this study adopts a human rights framework and approach with particular emphasis on sexual and reproductive health rights (SRHRs). It queries whether the dominant approach of policy makers, health workers and even of human rights activists sufficiently acknowledges, demarginalizes and empowers young WSW caught up in the pandemic. While recognizing the wide range of SRHRs, extending from family planning to obstetric healthcare, we are mainly concerned with the right to Autonomy (over one’s own body, reproductive health and sexuality); the right to services or Access for the prevention and treatment of STIs, particularly HIV/AIDS, and the right to freedom from Sexual and Gender Based Violence, or Protection. When grouped together, the above broad categorizations are important because they traverse all categories of human rights, i.e. civil and political as well as economic, social and cultural, and they also surface the most crucial aspects implicated by the HIV/AIDS pandemic.

Underpinning all of them is the right to Voice (encompassing the notions of expression, participation and association). These are central organizing or due process principles in ensuring the full realization of all categories of human rights (Yamin, 2009). Without effective voice, as exemplified by the struggles of other marginalized groups such as heterosexual women and persons with disabilities (PWDs) living with or affected by HIV/AIDS, the plight of young WSW will not receive similar notice and enforcement. In other words, WSW will remain invisible. For young WSW living with or affected by HIV the discrimination implicit in the absence of voice is multiplied. But the story is not so straightforward; WSW are not located in the same physical or conceptual space as heterosexual women, disabled or not, simply because they are denied the most basic of rights, that of social presence and legal personality. Such denial greatly complicates the framework within which the struggle for their rights must be located.

To unpack the human rights complexities involved in this investigation, the study begins with an explanation of the methodology used, rounded off with my own reflexive ‘doings’ in this research project. Part 2 of the study explores the conceptual aspects of the subject, also reviewing the available literature on the questions of sexuality, health and human rights. In Part 3, I surface the

14 Interview with Patience ‘Pepe’ Julian Onziema on October 26, 2010.
key findings of the study in relation to issues of identity and definition in the Ugandan context as well as the lived realities of young WSW confronted by the HIV/AIDS pandemic. The particular focus is on Autonomy, Access and Protection. Resistance, Voice and Struggle are the themes taken up in Part 4 of the study, while conclusions and recommendations are made in Part 5.

1.2 A Note on Methodology and Reflections on the ‘Self’
Primarily qualitative in nature, the methods of data collection employed in this study foregrounded the actual experiences and perspectives of young WSW. At the same time, the paper also sought to marry those experiences to a framework of analysis that took into account the broader socioeconomic, cultural, political and especially the legal context of contemporary Uganda. In *African Sexualities: A Reader*, Sylvia Tamale (2011) argues that a good sexuality project does not view methodology as a mere appendage or a way of carrying out an enquiry, but rather as a means to get beyond the tired polemics of violence, disease and reproduction and to explore the layered complexities that lie beyond heterosexual normativity. It is a lesson I have encountered on numerous occasions in carrying out the research for this study, which in many respects was exploring fairly new territory. Hence, the research for this study was guided in the main by feminist methods, foregrounding the lived experiences and interpretations of the research participants, excavating complex phenomena such as emotions and beliefs, avoiding objectification and working within a human rights framework (Tamale, 2011a: 29). It was complemented by in-depth dialogues or interviews with nine young WSW who variously identified themselves as lesbian and transgender. All the transgender people interviewed identified themselves as ‘transmen’ which means that biologically they were women, or their partners were women, which justifies their inclusion in the WSW category. Of the nine, five were key informants. One of them—Sheila ‘Stosh’ Mugisha—identified herself as both lesbian and HIV+ and is thus a major source of information for this study. Others interviewed included three homosexual activists who head human rights organizations actively involved in the struggle for the realization of the rights of Men-who-have-sex-with-Men (MSM), as well as diverse Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) individuals. Most of the interviews were recorded and transcribed.

None of the interviewees explicitly identified themselves as bisexual although through the course of the interviews it was revealed that a number of respondents had indeed had sex across the gender lines, and the context and meaning of such encounters will be the subject of analysis. Research permission was granted by the Uganda National Council on Science & Technology. Informants were identified using the snowball method of sampling, and also in other contexts of interaction and participant observation such as LGBTI workshops, social events, meetings of activists and at training sessions in which I acted as a facilitator. Only in cases where explicit permission was granted or where names are already in the public domain do I use the real names of the fieldwork respondents. In order to protect the identity of those respondents who sought anonymity, I have used initialized pseudonyms. Also interviewed were a variety of actors—two medical doctors, a counselor and a nurse—involved in the provision of medical or counseling services to LGBTI persons, human rights activists of varied interests addressing questions arising within the framework of the HIV/AIDS pandemic or the struggle for human rights, policy makers, officials of governmental and international bodies, and youth groupings focused on issues of sexual health and well-being.

Of course there were some obvious limitations that are written into this study. First of all, I did not hire a research assistant drawn from within the LGBTI community. That may have curtailed a more complete access and understanding of the community, but I saw this as an opportunity for me to get
personally involved in a subject which was both intellectually stimulating and methodologically challenging: I thus undertook all the LGBTI interviews myself. My assistants concentrated on meetings with international and national public and private (non-governmental) agencies involved in one way or another in addressing the issue of HIV/AIDS in Uganda. Secondly, I interviewed only one WSW (Stosh) who was also open about her HIV status, and hoped to use the snowball method to lead me to others. However, neither Stosh nor any of the other respondents in the study were able or willing to identify any other HIV+WSW aside from Stosh herself. I explore the various reasons for this later in the study, but the statement, ‘When they get to know you are (HIV) positive … tojja kufuna mudala!’ spoke volumes of the multiple stigmas that Stosh so eloquently described on being out as an HIV+WSW.

I make no excuse for the sample size. Being a qualitative research, ‘… an ‘n’ (sample size) of one is as ‘significant’ as an ‘n’ of five or 500 (Undie, 2011: 522).’ There were also questions around age: given the cohort the study targeted, i.e. the ‘E-generation’ born in the late 20th century, a great deal of contact and interaction which would be of relevance to the study now takes place on Social Networks and new forms of media such as Facebook and Twitter. Affairs, discussions, information-exchange and strategies to combat homophobia and address issues of safe sex are today given much more expression through new media. This study does not address the phenomenon. Thirdly, the interviewees were drawn exclusively from Kampala, and as such represented a fairly elite, educated and urban collection of personalities who are at the forefront of the organizational expression of LGBTI politics in contemporary Uganda. While I recognize that there is a fairly substantial array of urban, peri-urban and even rural young WSW, this study considers itself merely as a first tentative step into an area that has received very little academic attention. Much more can and should be done in the exploration of the more generalized situation of LGBTI individuals and communities in Uganda.

**Reflections on the ‘self’**

‘[I can’t believe] ‘You’re studying lesbians?!?’’ Is the exclamatory question I was asked at every turn in doing the fieldwork for this project. The question was posed from different standpoints: genuine curiosity and embrace (‘That sounds interesting…’), prurient (snickered) interest (‘You dirty old man!’), or outright hostility, as in ‘This is not your territory!’ As a male, prima facie heterosexual, married, 50+ professor of law, namely as a ‘triple outsider,’ what motivated me to look at the issue of young WSW? How well equipped was I to do so, and what limitations did I bring to the study? Why—given the massive challenges presented by the pandemic such as the lack of access to medicines, the search for a vaccine, and the manner in which the virus mutates—was I concerned about young WSW and HIV/AIDS of all things? After all, I was told, HIV/AIDS on the African continent is predominantly a heterosexual disease. But even if I wanted to look at the non-heterosexual community, had I been looking at MSM rather than WSW that would be understandable since the former are at ‘greater risk.’ I found that view to be an interesting twist on the dominant view that the face of the pandemic is that of a poor, rural, heterosexual woman trapped in a polygynous relationship. Indeed, one Gay Rights activist cited the famous Crane study and bluntly told me: ‘you are researching a non-issue; it is really MSM which needs to be explored.’ Interestingly, there are no similar studies on WSW, reinforcing the dominant ‘no-risk’ paradigm, and reason enough to question why. For some MSM facing the brunt of the pandemic, a focus on WSW

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16 Literally translated as ‘you won’t get a lay!’

17 The study reported a 13.7% prevalence rate in MSM in Uganda—more than double that among the heterosexual male population. See King *et al.* (2010), and Raymond *et al.* (2009).
is a mistaken and wasteful diversion of resources, while for the heterosexual majority, WSW simply do not exist. So why study them?

In reflecting on my motives for doing this study, as originator and supervisor of the general project of which it is just a part, I obviously had first choice over which of the five subjects under research to tackle, starting with the general background analysis of the socio-legal context within which young women confront the HIV/AIDS pandemic. I have a long background in teaching and research on Sexual and Gender-Based Violence and Refugee Law, and thus could have looked at the situation of young displaced women, or at the case of young women with disabilities (Oloka-Onyango, 1996). While the subject of young sex workers presented similar methodological challenges to that of WSW, the largely heterosexual framework within which sex work takes places would mean fewer adjustments from my general comfort zone. My original goals for taking up the research were fairly mundane: I chose young WSW because I thought they were the most marginal of the marginalized—the ultimate ‘victims’ in Uganda’s heterosexual mainstream. As a ‘human rights professor’ it would be easy to fit them within the general context of the ‘marginal,’ ‘invisible’ and ‘vulnerable’ communities that I have made the focus of my attention throughout my professional and academic life. This assumption has been debunked by this study which revealed that far from being helpless victims, WSW are engaged in a constant struggle to survive and fully realize their sexual and reproductive health rights.

Through the two-year duration of this project, I variously interacted with the LGBTI community as a whole, intellectually, politically and socially and with individual young MSM and WSW in particular. I witnessed both considerable peaks of euphoria—as when the High Court declared that the Rolling Stone newspaper could not ‘out’ members of the community—accompanied by serious bouts of collective depression, for example, in the aftermath of David Kato’s brutal murder only a few weeks later. I attended various social events including a gay marriage and social sessions at ‘straight-friendly’ bars,18 as well as Kato’s funeral service and burial which provided poignant testimony to the various dimensions of the ‘moral panic’ and the sexuality debate in Uganda today.

Overall I found the reception to my research warm and welcoming. Certainly, the frankness with which participants discussed their life experiences opened up for me a new frontier of honesty and sexual emancipation; far from being surrounded by fear and trepidation, the young women I interacted with were full of optimism, laughter and committed to the struggle for LGBTI liberation. Their language was uninhibited and shorn of academic jargon; the interviews were frank and candid, peppered with four-letter words and x-rated references to body parts. I was given literature and material that was so risqué I had to conceal it from my staff.

Ethical and professional dilemmas were confronted during the research. Studying young WSW tested all my assumptions about my own masculinity/femininity, my sexuality, and perhaps most importantly, my history of commitment to progressive causes and to human rights. Did the respondents in the study actually believe that my concern about their issues was a genuine one? How would I be able to get respondents who both identified themselves as WSW and as living with HIV/AIDS? What about the implicit and explicit power-based relations between myself (as a Law Professor) and the (much younger, mainly female) respondents? I have no doubt that my entry into

18 ‘Straight-friendly’ is a twist on the ‘gay-friendly’ descriptor that is used to describe mainstream (heterosexual) bars and similar places of entertainment that accommodate LGBTI individuals. ‘Straight-friendly’ bars are usually owned or run by LGBTI individuals.
the LGBTI community was facilitated both by previous relations with individuals and organizations in the community, membership in the civil society coalition formed to combat the Bahati Bill\(^{19}\) and by familial ties to one of the most active Ugandan academics dealing with sexual minorities.\(^{20}\) But as an ‘outsider’ was I being tolerated simply on account of those relations? Could my intervention be viewed opportunistically as one of the many joining the growing bandwagon that has emerged over LGBTI issues in Uganda in the wake of the hysteria over the Bahati Bill? Or was I (even subconsciously) joining those whose main aim it is to, ‘…discipline female sexuality, to drive females into ‘servicing’ heterosexuality and thus to perpetuate masculine domination (Ratele, 2011: 406).’ In other words, was I reasserting my dominant masculinity by conducting this research?\(^{21}\)

Finally, as a lawyer who has mainly worked in the area of Human Rights and Constitutionalism, the ethnographic dimensions of the research represented a departure from the usual methodological approaches used in the discipline of Law. I was also forced to bring more nuance to my understanding of the impacts of stigma, violence and discrimination on marginal communities and to question whether the legal frameworks and remedies in which I have been schooled were always the most appropriate tools with which to address human rights issues. All things considered, I found the research for this paper among the most challenging in which I have ever engaged, not only on account of the intimate nature of sexuality issues, but also on account of the general atmosphere in which LGBTI issues in Uganda are currently situated, engulfed in controversy, rancor and illegality.

Aside from the ethnographic dimensions of the study, I learnt something else about Methodology. At the beginning of the study and in light of the relative dearth of written material on LGBTI issues in general and on the particular topic of WSW in Uganda, everybody directed my attention to South Africa. South Africa was the place where the work on sexual minorities in Africa was at its most developed, I was told. South Africa was the first country on the continent (if not the world) to constitutionally outlaw discrimination on the grounds of sexual orientation. There was so much more theoretical, experiential and empirical work on the area. The lesbian movement is one of the most powerful anywhere. ‘Look to South Africa,’ went the advice, and the metaphorical ‘heavens’ of African LGBTI research will be opened unto you. But as I began the basic research for the study, I found that to be a wrong approach. Sexuality research needs to start with what is the known. And the known in this case was local, whether or not it had been written and conceptualized. In other words, research on sexuality needs to be grounded in the lived realities of those who are the subjects of the research. This is not to suggest that exploring comparative situations is wrong. However, it is only by first studying what is local that one can tell what to look for when the lens are turned elsewhere. WSW in Uganda have similar lived experiences with their sistren below the Limpopo. But by first looking inside Uganda instead of the reverse, I learnt a lesson of huge conceptual significance. While there are many things which are the same as elsewhere in the world, there is a lot that is different. In sum, rather than starting from the theory to build the ground, I started from the ground to build my theory.\(^{22}\)

\(^{19}\) The Civil Society Coalition on Human Rights & Constitutional Law.


\(^{21}\) This is always a danger in research that attempts to ‘cross’ conceptual and methodological boundaries. Sylvia Tamale offers a serious criticism of how white female researchers from the North can suffer from these kinds of limitations (Tamale, 2008: 135-138)

\(^{22}\) Grounded theory was first described by Glaser and Strauss (1967).
One of the main lessons of the study is that the predominant concern of the general public and even of scholars mainly revolves around the question: ‘Is there a right to be LGBTI?’ This study instead turns the question on its head and asks ‘Do LGBTI individuals have human rights?’ or more directly: *Are LGBTI individuals human?*, because at the end of the day this is what the issue of attention should really be, given the many denials of basic rights that society has conspired to deprive LGBTI individuals of, while simultaneously and discriminately allowing heterosexual individuals of both genders to enjoy those rights with only very clearly stipulated legal limits. The study is also addressed to the familiar but misleading admonition which claims that there are more important or ‘serious’ issues of social concern to be dealt with (than, for example, the situation of young WSW living with or affected by the HIV/AIDS pandemic) or that addressing a minority question requires broader structural reform (Menon, 2005: 33). Overall, therefore, this working paper should be regarded as a small, initial contribution to what must invariably become a much more engaged debate on the issue of sexuality, human rights and the particular situation of WSW in Uganda.

1.3 Statement of the Problem

Although there has been a plethora of studies about the impact of HIV/AIDS on heterosexual women of all ages and social status, such focus has not extended to the situation of women who have sex with women. The legal prohibitions, myths, erroneous assumptions and societal prejudices facing young WSW inordinately focus on sexual activity and the body, ignoring the multiple dimensions and interlocking impacts of the HIV/AIDS pandemic. They particularly overlook the intersections associated with sexual orientation, gender identity, sexual ambiguity, social invisibility, economic status, violence, religious belief and age. Human rights concerns relating to autonomy, access and protection are given short shrift. The sexuality and reproduction capacities and interests of WSW are often minimized, missed and invisibilized. Ignoring such populations has implications for the country’s comprehensive HIV/AIDS response program, not to mention for the well-being and human rights of young WSW as a minority within the larger group of sexual minorities. Hence there is a need to factor WSW into the complex equation of HIV/AIDS in Uganda.

1.4 Objectives of the Study

The general goal of the study was to surface the legal and human rights complexities surrounding the situation of young WSW and to examine the different factors which impact on the realization of their autonomy, access and protection rights within the context of the HIV/AIDS pandemic.

The specific objectives of the study included the following:

(i) To chart out the broad socio-legal and political context within which young WSW living with and affected by HIV/AIDS are placed in Uganda;

(ii) To surface the key autonomy, access and protection rights questions presently faced by young WSW;

(iii) To consider the nature of official and non-state programs of support and empowerment for young WSW living with and affected by HIV/AIDS;

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(iv) To review the different ways in which young WSW have themselves organized to address their plight; and

(v) To sketch out a rights-based framework for addressing the situation of young WSW facing the HIV/AIDS pandemic.

1.5 Research Questions
The following are the broad questions which guided the study:

(i) How do young WSW locate themselves within the context of the HIV/AIDS pandemic in Uganda?

(ii) What are the main autonomy, access and protection rights issues facing young WSW living with or affected by HIV/AIDS in Uganda?

(iii) What is the socio-legal and policy context within which young WSW seek to realize these rights?

(iv) How effective is that framework in promoting and protecting the human rights of young WSW particularly in the face of the HIV/AIDS pandemic?

(v) Who are the main actors in influencing and implementing that framework and how successful have they been in either facilitating or prohibiting the realization of young WSW rights of autonomy, access and protection?

(vi) What needs to be done in order to improve the rights-based approach to addressing the plight of WSW and to enhance their resistance to the scourge of HIV/AIDS?

II. UNPACKING THE DISCOURSES ON SEXUALITY AND WSW: CONCEPTUAL AND LITERATURE REVIEW
There has been a long and extended concern with the issue of sexuality, sexual orientation and gender identity in Western academies and popular literature. In the case of Africa that concern is more recent albeit growing, with most scholarly output coming from South(ern) Africa or by Africanist scholars outside the continent. Among these are the works by Signe Arnfred (2004), Morgan & Wieringa (2005), Anderson (2007), Johnson (2007), Epprecht, (2008), Steyn and van Zyl (2009), Reddy et al (2009) and Obono (2010). Moving closer home, the mid-decade publication of a critique of the place of human rights defenders vis-à-vis the situation of LGBTI individuals targeted homophobic attitudes and practices in the East African region (Kiragu & Nyong’o, 2005), while Kuria (2005) specifically looked at the situation of homosexuals in Kenya. More recently, Sylvia Tamale’s African Sexualities (2011) has directly challenged the Southern Africa dominance of the academic landscape and richly extended the debate, although the northern part of the continent on the whole is less well-represented in the collection.

With specific respect to Uganda, scholarly attention to issues of non-normative sexuality or same-sex erotics has emerged especially in the wake of the debate around the Bahati Bill (e.g. Tamale, 2009; UHAI/EASHRI, 2010; Mubangizi & Twinomugisha, 2011, and Ssebaggala, 2011), although there have been works predating these events (e.g. Tamale, 2003 and Singiza, 2007), and even some fiction
(de Nyeko, 2007). The literature concerns the long-standing penal prohibitions on sex against the ‘order of nature,’ the legal and human rights implications of the Bahati Bill, issues around health, welfare, violence and physical safety; consideration of the organizational capacities of LGBTI organizations, as well as some commentary on the wider socio-cultural, political and global dimensions of the issue. Nevertheless, there is a glaring absence of an in-depth, extended discussion of the general situation of WSW, let alone of those living with or affected by HIV/AIDS. The one fairly extensive study which I did find by Trondheim University student Mari Stǿrvold Holan (2009) focuses on the specific question of Lesbian, Bisexual and Transgender women in Uganda and the issue of marginalization in general. Thus, it covers a host of subjects including social exclusion, security and danger, health and love, education and employment and power and participation. Despite this breadth, the thesis spends little more than a few paragraphs on the issue of HIV/AIDS (Id., 66-70). Furthermore, it was written before the introduction of the Bahati Bill which dramatically altered the situation for WSW in several material respects.

A number of observers ascribe the contemporary concerns expressed about sexuality to the HIV/AIDS pandemic which forced governments to be more open about addressing issues of sexuality. Others relate it to the spate of international conferences such as those in Cairo (1994) and Beijing (1995), which placed sexual and reproductive health rights firmly on the table of global political concern. Some commentators argue that it is related to the threat posed by homosexuality to hegemonic masculinities (Reddy, 2001 at 84). Yet others ascribe it to the reconfiguration of political forces and the growing mobilization of conservative African forces—ranging from governments, to religious leaders to so-called cultural activists—in the quest to find scapegoats for the corrupt, incompetent and scandal-ridden organizations which they head. Directly opposed to this has been the rise of local and global movements which have contested ‘…the hegemonic definitions of cultural propriety and appropriate sexuality, thus questioning discourses at the heart of the patriarchal body politic (Horn, 2006: 7).’ This growth has been coupled with the emergence of visible and strong social movements including those ‘…around men who have sex with men, identified gay and lesbian groups, HIV health and rights groups and women’s health and rights groups, especially those responding to sexual violence (Miller & Roseman, 2011).’

The preceding review reflects a relative dearth of local Ugandan studies of same-sex erotics and particularly of WSW whether young or old and irrespective of HIV-status. It is thus crucial to give some context to the way in which the discussion should be framed. Hence the next section of the study provides the conceptual framework. The final part of this section concludes with an examination of some of the literature that marries the issue of healthcare and well-being to that of expression and voice.

2.1 Law and Sexual Politics: The Theoretical Framework

What explains the recent upsurge in concern about sexuality in general and on same-sex erotics in particular? Against such a development, how best should a study of young WSW living with or affected by HIV be theorized? And given that this study is mainly addressed to human rights complexities, what is the place of the law within such a framework? As a starting point, it is necessary to understand the central place of the body to any understandings of Sexuality. Kirk and Okazawa-Rey (2010: 149) point out that the body ‘… is where biological sex, socially constructed gender, and sexuality come together.’ They argue further that in fact four distinct sexual categorizations are identifiable, namely inclination, behavior, identity and politics. Thus, ‘One may have sexual inclinations but may decide not to act on them. One may engage in certain sexual
behaviours but not adopt LGBTQQI identity.\textsuperscript{24} One may identify as a lesbian or Transgender woman but not act on that identity in a political way (Id. 159).’ In understanding the ‘bodies’ of young WSW in Uganda, it is thus necessary to mediate our understandings and interpretations of them not only through their sexual categorizations, but also through the socio-cultural and political frameworks and other influences in which they live. We also need to take into account the fact that the body can be ‘… manipulated mechanically, genetically, mentally and physiologically (Winker & Degele, 2011: 55).’ The main focus of concern in this study is the manner in which the body is also subject to different types of legal control, license and sanction, especially in the sense deployed by Michel Foucault, who related sexuality to politics and the deployment of power or more appropriately to ‘governmentality’ (Foucault, 1998, Nyanzi, 2011a: 481-482).

The theoretical framework of this study is thus rooted in an understanding of the politics of sexuality and particularly in the notion that certain sexual practices are ‘good,’ while others are ‘bad’ and that the law either sanctions, licenses or punishes them depending on the constellation of political and other forces (such as religion, culture and gender) which influence law’s promulgation (Tamale, 2003: 43). Sharon Preves makes this connection in relation to the discourse on and legal framing of the institution of marriage:

\begin{quote}
The legal motivation for making precise sex distinctions was, and is, grounded in a morally based attempt to preserve heterosexuality and the institution of marriage, which are both predicated on the existence of two and only two sexes.... Although our legal discourse surrounding the validity of marital unions concentrates on sex (as in genitals, gonads and chromosomes), the underlying motive for the insistence upon “opposite” sex wedlock appears to be social insurance against sodomy (Preves, 2003: 37-38).
\end{quote}

In other words, implicit in such an insistence is the idea that there is a sexual hierarchy \textit{ala} Gayle Rubin (1984), which resonates quite well with the situation in Ugandan society. Rubin explains that dominant discourse creates a deeply entrenched and value-laden system that places sexual expression on a scale of acceptable/unacceptable, natural/unnatural and good/bad. On this scale, same-sex erotics together with prostitution and other sex outside the heteronormative marital bond is considered morally reprehensible. It is this very conception of sexual hierarchies that justifies the criminalization of homosexuality and prostitution in Uganda. At the same time, it is necessary to underscore the point that the hallmark of sexuality is its complexity (Nyanzi, 2011b: 48).

While accepting the basic premise of the arguments about risk in the HIV/AIDS pandemic, this study argues that we in fact need to move beyond the risk and healthcare paradigms; beyond the epidemiological dimensions of the pandemic and to examine its psychosocial, cultural and conceptual dimensions. There is no doubt that the issue of HIV/AIDS provided the initial platform for LGBTI activism and engagement with the wider issues around same-sex erotics.\textsuperscript{25} Indeed, the public health framework and the AIDS pandemic in particular represent a watershed for the struggle by LGBTI individuals to battle homophobia and address structural discrimination. But these can only be regarded as a first step. From a human rights perspective, the study of so-called ‘low-risk’ populations in the HIV/AIDS discourse such as WSW can tell us volumes about the larger

\textsuperscript{24} The two ‘Qs’ in this formulation refer to ‘queer’ and ‘questioning,’ the latter denoting people who are uncertain about their sexual orientation.

\textsuperscript{25} As Dennis Altman observes, ‘…AIDS has undoubtedly been one of the major factors leading to a rapid globalization of gay identities….’ (Altman, 1998: 20). Also see Gosine, 2005: I-2.
questions, biases and assumptions which inform the approaches of those at the forefront of fighting the pandemic. In other words, what commences in a debate about health, ultimately needs to be transformed into a discussion about sexual politics.

At the same time, we need to be mindful of Dworkin’s caution that, ‘Individuals do not have singular identities or experiences within social structures that expand or limit social practices, but rather, intersecting ones (Dworkin, 2005: 618).’ Those identities and experiences form part of what can be described as a complex system of multiple, simultaneous structures of oppression. Such oppression takes place within the broader context of social life, but it is also internal to the specific oppressed community. Thus, I was somewhat surprised to find that one of the major internal issues of concern among young WSW is sexual and gender based violence and abuse that takes place within the community. In other words, there are a complex interplay of rights and power issues at play both outside and within the community. Those complexities need to be surfaced and examined.

Going back to Foucault (1998), there is another dimension to his work on sexualities that this study invokes in its conceptual framework, namely the idea that through the increasing discourse on non-normative sexuality there is a productive and empowering consequence that permeates society as a whole. Although originally and historically bourgeois—according to Foucault—sex induces specific class effects that destabilize the status quo. Hence, we witness increased empowerment in the first instance through the enhanced visibility of LGBTI individuals and groups—even in the teeth of the increased oppression and governmentality. Secondly, LGBTI issues become matters of national and international prominence and attention. Talking about or organizing around LGBTI issues becomes a possibility notwithstanding the numerous obstacles that still stand in the way. And while Ugandan law outlines certain aspects of same-sex erotics, the legal and human rights roots of this study are anchored in the ground-breaking Yogyakarta Principles on Sexual Orientation and Gender Identity. Although what would be described as ‘soft law,’ the Yogyakarta Principles are important because they are simply a restatement of existing law, and not an attempt to formulate new doctrine. Or to put it another way, they are a combination of ‘modest demands,’ ‘stable foundations’ and ‘strategic deployment’ (Thoreson, 2009).

Hence, the conception of young WSW must address both the specific and direct issues of marginalization and exclusion which they face, as well as the broader questions around social inequality and domination and its reverse, empowerment, especially through human rights principles. At the same time, in reviewing the political processes that young WSW operate within there can be no assumption of ‘natural alliances’ or indeed of ‘natural enemies.’ Thus, although the religious community has in general been a major force of repression against the expression of non-normative sexuality, there are powerful voices that transmit a different message on the issue. Moreover, the study found that many young WSW invoke both ‘God’ and religion as major sources of solace and sustenance in facing the struggle.

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27 In the case of Uganda, the most prominent religious voice is that of Bishop Christopher Ssenyonjo, defrocked by the Anglican Church of Uganda for supporting LGBTI individuals and causes, and the founder/head of St. Paul’s Centre for Equality and Reconciliation.
Insofar as allies are concerned, while the concerns of young WSW would seem to naturally fall into the broader framework of struggles by heterosexual women against discrimination and domination, the fact is that when it comes to the issue of sexuality, it is important to remember that feminists have differing views on the issue. According to Menon, ‘…feminists have learnt the lesson too well from patriarchy when it comes to sexuality. If not being actively homophobic, our movement’s best response tends to be along the lines of ‘not now, this is not the time (Menon, 2006: 34).’ Part of this response stems from the influence of the phallocentric culture which is structured to meet the needs of the masculine imperative, and thus is related to the ways in which we think and desire and how these are linked to the cultural meanings attributed to gender difference. Within phallocentric culture sexuality is always presumed to be hetero, and becomes the universal by which every other practice or ‘deviation’ is judged (Smart, 1999: 78-79). When considering the influence of law on these issues, Smart advises that we need to ‘… consider the ways in which law constructs and reconstructs masculinity and femininity, maleness and femaleness, and contributes routinely to a common-sense perception of difference which sustains the social and sexual practices which feminism is attempting to challenge (Smart, Id.).’ Also, it is important not to homogenize feminism; feminism is diverse and heterogenous and needs to be problematized (Matebeni, 2009b: 352).

Finally, this study takes the position that our understanding of the situation of young WSW living with or affected by HIV/AIDS in Uganda can only be complete if we have a full appreciation of the place of violence in the production of this gendered politics. But we need to look at violence beyond the binary manner which has been traditional. In an incisive review of the literature on gender and violence, Bennett urges that where we have reached in this debate, we can begin,

\[ \text{re-imagining worlds in which becoming human … does not entail, as a primary politics, the process of becoming gendered. The politics of sexual and gender identity have moved questions of masculinity, agency, sexual choice and freedom from violence beyond dichotomization (perpetrator/victim; man/woman; white/black) towards ideas which destabilize predictability and insist on a politics of transformation far beyond notions of gender balance (Bennett, 2010a: 38).} \]

This study considers such re-imagining as a central platform through which the issue of violence can be contextualized.

### 2.2 Health and Voice: Surfacing Rights across the Divide

Given that much of the discussion about LGBTI issues has arisen within a context of concern with the HIV/AIDS issue, the link with the right to health is manifest. And yet, as much of the literature has pointed out, the rights-based approach to the pandemic has been rather slow in keeping pace with the many developments in the area, stretching from the issue of vaccine trials to that of access to medicine. While the human rights component to health has become more prominent, it is not immune to bias, especially with respect to what is regarded as ‘normal’ sexual behavior and ‘proper’ gender roles (ICHRP, 2009: 34). Indeed, as the International Council for Human Rights Policy points out, ‘The rights-based components of programmes are often conditioned by their health focus, marginalized in government budgets or distorted by the attachment of inappropriate moral judgments (ICHRP, Id.).’ The regime of health policies as well as the larger body of human rights work has failed to address the health rights and needs of sexual minorities in a sense keeping issues of sexuality firmly ‘in the closet’ (Mahon, 2009, 239).

In many different ways, Chinese Walls are erected to prevent scrutiny of the intersection between different levels of oppression and between a rights based approach to Health, versus a perspective
routed simply in Public Health or epidemiology. Indeed, it is now a well-known fact that while HIV/AIDS is only one of a number of killer diseases (e.g. malaria, tuberculosis (TB) and cancer), it impacts not only the physical health of individuals, but also on their social identity and condition. Hence, when trying to respect the various components of the right to health, Claire Mahon argues that there is a need to see its linkages to other rights, including privacy, education, family life and even housing and employment (Id. 236). This leads to our first theoretical position on the right to health. Even though we are addressing HIV/AIDS which is obviously a health matter, we need to link it to broader rights that foster agency, autonomy and mobilization. More directly, the right to health has to be linked to sexual rights including and extending to individual issues of body, pleasure and desire (Correa, et al, 2008).

Although changing—as witnessed with the growing discourse around issues to do with MSM—there is still a need for some caution about the kind of embrace which the dominant structures of power and economy have sought to exercise over sexual minorities. Indeed, it is also necessary to be careful about the specific framework of sexuality that is being pursued with official and non-governmental programs of prevention, treatment and physical welfare. This is because, as Miller and Vance (2004: 6) point out, there is no guarantee that the knowledge being deployed is not misleading, biased or inaccurate, ‘...sexuality has hidden and sometimes unexamined connections to hierarchies or structures of power that are inimical to equality, diversity and freedom. Most importantly, sexuality varies in complex ways across time and place (Id. 6).’ In other words, sexuality per se is not value-neutral, and consequently those who are in a vulnerable or minority position need to be fully aware of the different objectives to which a particular intervention can be put. Thus, recent interventions recognizing the place of MSM in the HIV/AIDS pandemic are welcome, but cannot be taken at face value. In that respect, the conceptual framework within which we view the issue of the right to health and its connection to the situation of young WSW who are living with or affected by HIV/AIDS is provided by the 2008 International Planned Parenthood Foundation (IPPF) Sexual Rights Declaration.28

Turning specifically to the situation of young WSW, there is still a major silence on the issue. It is a silence which reflects both the nature of medical classifications and the discourse around them, as well as the issue of vulnerability itself.29 Thus, in asking what is ‘epidemiologically fathomable’ in the HIV/AIDS epidemic, Shari Dworkin asserts that it is important to reflect not only on what is inside the frame of the discourse on vulnerability to HIV, but also on ‘... what is excluded or silenced’ (Dworkin, 2005: 619). Surveying the major existing classification systems and critiquing them for their overly-heterosexual focus, she argues that such a focus ‘... erases a wide variety of risky sexual practices and identities other than heterosexual, but also leaves many women in a position to not be able to assess their risk accurately (Id.)’ Such classifications feed into popular misconceptions about the lack of risk surrounding woman to woman sex. It is these perceptions and conceptions about young WSW that this study sets out to challenge.

29 According to Andil Gossine, ‘... action must be taken to curb HIV/AIDS among MSM, not because that in itself is meaningful and important, but because they are seen as sexual deviants who might infect the whole community. Given the higher risk for male-to-male transmission, a gendered order has also resulted, with most attention given to MSM populations, and almost negligible attention to women. This has meant that WSW receive very little of the funding available to sexual health efforts, and must therefore confront both heterosexist biases in the women’s movement and sexism in gay male groups in their attempts to organize; the message, effectively, is that WSW do not matter since they are not perceived to be a high-risk group’ (Gossine, 2005: 6).
III. AUTONOMY, ACCESS AND PROTECTION: ISSUES FROM THE FIELD

Just like heterosexuals, most LGBTI people think sex is a very important part of their lives. Others think it is of relatively minor consequence; yet others think nothing at all of sex. Regardless of the difference in perspective, sexual rights (such as freedom from coercion, discrimination and violence, as well as pleasure) and Reproductive Health Rights are of crucial importance to all LGBTI individuals and to the community. As a central aspect of human development throughout life, Sexuality has been defined to encompass sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. It is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors. Moreover, ‘...people have sex not merely for reproductive, economic or socio-cultural reasons but very often engage in erotic activity for reasons that are inexplicable without a view of the internal logic of eroticism and sexual cultures’ (Groes-Green, 2011).

One’s sexual orientation and gender identity should therefore have very little relation to one’s ability to access and exercise their human rights. Unfortunately, homophobia, patriarchy and the social and legal structures of violence, inequality and heterosexual discrimination ensure that they do. The reason such structures actively stand in the way of increasing the rights of sexual minorities are myriad, and they will be the subject of subsequent analysis. However, we need to go beyond asking why these structures have been created to exploring the specifics of their manifestation in the Ugandan context. Some of the reasons relate to the question of identity, which is the first issue that we tackle in this section of the Working Paper. Drawing further from the fieldwork undertaken for this study, we then move on to asking a practical question: what does it actually mean to be an LGBTI person who is also HIV+ in contemporary Uganda? This is Stosh’s story, which is then followed with a broad analysis of the context within which homophobia and the overall negative reaction to non-normative sexuality in contemporary Uganda has arisen. What has been its impact on the situation of young WSW? Focusing particularly on the issue of autonomy, we underscore the way in which homophobia and heterosexism affect the sexual and reproductive health of young WSW. Autonomy and choice are of particular concern because they lay the foundation for a more detailed consideration of the question of healthcare and access. The section concludes with an examination of the issue of protection, with a particular focus on the place of sexual and gender based violence in this debate.

3.1 The Question of Identity: Self-determination or Behaviour?

Right from the beginning of this study it was revealed that there is still a great deal of conceptual confusion and even basic ignorance about the LGBTI community in Uganda, not only in the manner in which individuals within the community relate to the wider world, but also to the way in which they relate among themselves. Thus, it became important for me to seek clarification of the understanding of what these terms actually mean within the specific Ugandan context. I found this necessary because the use of internationally recognized categorizations (such as LGBTI) can silence...
difference as well as articulate it (Seckinelgin, 2009). As Aeyal Gross points out, ‘… the notion of LGBT rights at a global level seems to assume universal sexual identities, when sexuality, in reality, takes many diverse forms (Gross, 2008, 249).’ These terms originated in the West and carry cultural-specific meanings that relate to their origins, as does the term ‘Queer’ which is abundantly used within the LGBTI community in the West, but finds only scant reference in Uganda. In addition, women or men who fall within one general category, e.g. ‘lesbian’ or ‘gay’ are not homogenous (Cabrera, 2010: 10), nor indeed do they necessarily fit within the ‘text-book’ definition of what these terms may imply (Matebeni, 2009). Finally, it is important to point out that most attention in the literature and public commentary has focused on the ‘L’ and the ‘G’ representing ‘lesbian’ and ‘gay’ individuals respectively, without much focus on the ‘B’ (Bisexual), the ‘T’ (Transgender) and the ‘I’ (Intersex).

Considerable focus in the West relates to questions of identity politics, i.e. a distinct lifestyle choice around which a sociopolitical movement touting Gay and Lesbian liberation was built. While identity is an important factor in the Ugandan situation, it is necessary to underscore the point that attention also needs to focus on the question of behaviors or practices, as well as on culture and the wider socioeconomic, political and legal environment, particularly within the context of the discussion about HIV/AIDS (Parker, 2001: 168). Hence, not all WSW identify themselves as ‘lesbian’.32 Furthermore, while many Ugandans may not identify as ‘bisexual,’ there is no doubt that such behavior is a feature of the sexual landscape in the country, raising numerous issues of concern which would arise with people who have sex with both men and women in terms of the dilemmas and paradoxes presented by the HIV/AIDS pandemic, and the manner in which both the construction of messages to do with viral transmission, and the targets of intervention are designed.

Are labels important? When I asked KJS about how she identified herself, she replied,

I do not know how to describe myself, because I do not like labels anyway, yeah I am simply someone … I am simply a woman who is interested in women. I can be someone … you know labels are given to you as they see you. Some will say you’re ‘lesbian,’ others will say you’re ‘transgender,’ others will say you’re ‘butch,’ others will say you are ‘kuchu’ … you know … I am simply a woman who loves other women.33

Pepe was more direct on this point:

JOO: First of all I have some questions about identity, who are you … how do you identify yourself?

PO: I am Pepe Julian Onziema I am 29 years old and identify as transgender although I came out as a lesbian.

JOO: Explain the difference when you say you came out as lesbian and you identify yourself as transgender?

32 As Bennett points out, the term ‘lesbian’ is an ‘imposition’ over most (African) linguistic descriptors for sexual and reproductive identities (Bennett 2010b: 37).
33 Interview with KJS on October 11, 2010.
PO: I felt at a younger age I was attracted to females. Lesbian relationships ... usually involve two biological women who are emotionally and physically attracted to each other. It was the easiest way for me to come out to my family, to my friends and to people basically... I was relating with.

JOO: It was easier for you to come out as a lesbian?

PO: It's basically what I knew anyway though when I was growing up I was really boyish. I came out to my family as lesbian but as I grew up I got to know and understand the term transgender ... that a person who is born is assigned a different gender at birth but expresses (themselves) or identify as the opposite.

BA gave the following response to the identity question:

I call myself a 'transperson' ... my gender identity does not match, so I call myself transperson ... my body looks not the way I feel upstairs, so I am a person that is attracted to the same sex people and being transperson I have always felt like a man deep inside me. I have never accepted being a girl since I was born ... but just because of the conditions in Uganda at times you just have to pretend.34

In describing her first sexual experiences and the internal and external conflicts she underwent, Stosh gave the following account, which I reproduce in extenso because of its relevance to the identity issue:

I first slept with a woman at the age of 9 and that was my cousin and all my life I did not know what it was because I always wanted to be a boy ... I do not know why but I always wanted to be a boy because I had always got the maize cobs and put them in my private parts ... then I could pretend like a man but then I did not know there was this thing called a lesbian, transgender, gay. I did not know until when I was in form six that was in 1998. I got to come to terms with myself that I think I am a lesbian because I asked my friends now what is 'lesbian'? What does it mean? Because where I grew from there was nothing like sex talk, if there would be sex talk then it could be talks to 'go to the bush'35 and do those things. So some friend told me this is a person who sleeps with women but I did not come to terms with it still. But I think for God's sake I came to terms that I am a lesbian in 2000 that's when I really came to terms with it because my grand mum found me... she was bitter but she had nothing to do. That's when I came to terms with it ... that I am a lesbian. I realized that I had interest in women because I had a crush on my auntie but it could be so hard to tell her that.

And finally ZM:

JOO: Can I ask you some personal questions ... How do you identify yourself?

ZM: I identify myself as a lesbian. I think it's a process ..., it's a gradual process because once you know and you figure out your feelings then you know what is going on then you will look back and realize that this was something the was always there. But before that and I don't know at what point that was. I realized why you like this English class so much is because you would realize there is this white beautiful woman who was teaching it... I like used to pick for her roses but at

34 Interview with BA on October 14, 2010.
35 Going to the bush is a euphemism for the practice of elongating the labia minora.
that point you are in primary school and you cannot really connect. So it is gradual so when you go
to school you see everyone is writing to boys in the other schools. But for you maybe you probably
have a crush on a girl in your class but for other girls it is you are being friendly … you are
emotional … its allowed for relationships.

The responses above cover both the issue of sexual orientation and that of gender identity, albeit
not in as clear-cut distinction as the two terms may imply. The former covers sexual desires, feelings
and practices and can be directed towards people of the same or of different sexes. Gender identity
on the other hand is about the complex relationship between sex and gender. It seeks to capture an
individual’s experience of self expression in relation to the social constructions of masculinity and
femininity that exist in a particular society. The issue of gender identity raises a host of different
questions.

There is a great deal of misunderstanding about what being transgender, i.e. ‘transman’ or
‘transwoman’ means, and indeed over whether they belong with the other sexual minorities whose
focus is mainly sexual orientation (Mbugua, 2011). Thus, when I asked one respondent whether she
was lesbian, s/he appeared to be greatly offended by the inference. Although s/he physically looked
like a woman to me and was involved in a relationship with a woman (who s/he referred to as
‘wife’), s/he quite clearly identified her/himself as a man, to the extent of adopting a title which
reflected her/his identification as a man, rather than her/his sex as a woman. In his/her own
words, ‘I would stare at the sun as it sets … hoping that my genitals would change; I always wanted to be a boy or to
have a dick.’ Such identification as being something other than what on the face of it you appear to be to society at large
goes to the core of the issue of gender identity. It also challenges the binary
distinctions between male/female, homo/hetero and masculine/feminine which currently dominates
this debate, and raises several legal complexities which remain unresolved. Unfortunately, it also
results in a host of human rights violations which are treated with impunity (Global Rights, 2008 at
89). As Audrey Mbugua (2011, at 1) points out,

Transgender persons have to deal with issues of changes of names and sex markers on identification
documents and academic certificates…. Transgender persons need to access medical services such as
hormone therapy, castration, mastectomy and oopherectomy…. Is discrimination in employment and
access to public service the same for homosexuals as it is for transgender (people)?

Although the above quotation does not specifically mention the issue of HIV/AIDS, it nevertheless
throws some light on the complexity of the transgender issue within the broader healthcare context,
as well as in relation to the question of identity. The brochure of the organization Transgender,
Intersex & Transexuals (Uganda) or ‘TITS Uganda,’ is more explicit on the issue:

In addition the transgender community suffers the impact of HIV/AIDS because of the pronounced
deviant expression of their gender. This makes it impossible for members to approach health service
providers because of the obvious transitional changes in their bodies and/or dressing. More sadly,
such gender connotations are associated with the homosexual sexual orientation and thus result into
hostility. The transgender community has the highest number of risk cases where people, mainly in
the prime of their lives face death each day as a result of the AIDS/HIV (sic!) related illnesses that
go unattended to due to a gripping fear of more gruesome consequences. Also given the fact that
trans people are easily identified, always makes them a centre of attraction to every kind of

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36 Interview with YR on April 12, 2011.
discrimination and hate crimes and thus making them the ‘sacrificial lamb’ of the LGBTI community.

The above reflections lead to the first broad conclusion of this study; we need to think of gender and sexuality more fluidly than the current rigid and binary categories enshrined in the law, or as understood by society at large.

Most misunderstood of all is the category of intersex. Better described as ‘sexual ambiguity,’ Intersex individuals are persons who ‘… inhabit bodies whose very anatomy does not afford them an easy choice between the gender lines (Preves, 2003: 2).’ Because of the ambiguity intrinsic to this category of individual it poses a serious challenge to the efforts by the patriarchal state to adhere to a binary understanding of sex and gender. Indeed for reasons that are not very clear, even the United Nations classification of sexual minorities excludes the ‘I’ from its ambit.37 Nongovernmental society does not appear to fare much better, leading to Julius Kaggwa’s description of them as the ‘forgotten constituency (Kaggwa, 2011).’ Thus, Intersex activists have complained that they were completely overlooked in the Yogyakarta Principles. In other words, despite their widespread celebration and endorsement, the Principles suffer from a degree of exclusion and homogenization. More importantly for the purposes of this study, the category of Intersex raises numerous questions for handling the HIV/AIDS pandemic that have not even been placed on the table for discussion.

At the end of the day, the question of identity is a fundamental one in understanding both the context and the strategic possibilities that are available. As Kapano Ratele points out,

- how we identify ourselves and others is very important. The act of naming … is soaked in politics. One has to be careful about one’s words then, for at times, the terms of engagement can be more rather than less confusing of what we wish to relate. Words can be an act of submission or resistance, supportive of the status quo or defy prevailing structures. Naming, as part of discourse, is then a central element of the process of making ourselves as sexual beings and the world in which we express that sexuality (Ratele, 2011: 411).

The politics of naming is abundantly clear also in the way in which society at large names sexual minorities. The Luganda word ‘Abasyayazi’ which is the dominant descriptor of LGBTI persons in the Media and in popular parlance in Uganda today makes no distinction between the sexes.38 It is also employed as a term of abuse.39 ‘Kuchu’—the word adopted by the community itself—does not appear to have any entomological relation to any local language,40 but as a political statement represents the attempt by the LGBTI community to assert its own handprint on how it wants to be viewed and characterized (Tamale 2003). Against this background we can begin to tease out some of the theoretical issues involved in examining the situation of young WSW living with and affected by HIV/AIDS. But first of all, what does it actually mean to be an HIV+WSW?

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37 This is the case throughout the organization’s attention to the issue of sexual orientation and gender identity, and even in its most recent, ground-breaking report (See UNHCHR, 2011).
38 The full expression is ‘Abalyi b’ebusiyaga,’ which literally means ‘those who eat gasiya’ or rubbish.
39 Bennett asserts that ‘… there is no widely accepted, positive, non-colonial term for a celebrated and chosen, non-conventional sexual identity (Bennett, 2010a: 37),’ but see Murray & Roscoe, 2001.
3.2 Being ‘LGBTI’ and HIV+ in Uganda: Stosh’s Story

Although the number of LGBTI organizations in the country is on the rise, only a handful of them declare themselves exclusively devoted to addressing the issue of HIV/AIDS. Frank n Candy, Icebreakers, Sexual Minorities of Uganda (SMUG), Queer Youth and Freedom and Roam Uganda (FARUG) are the best known, and all of them have aspects of healthcare and physical and emotional well-being that they address in their programs. Kuchus Living with HIV/AIDS (KULHAS or ‘Cool House’) was explicitly established to address the place of LGBTI persons (with an emphasis on WSW) within the pandemic, hence the direct reference to the same in the name of the organization. And Sheila ‘Stosh’ Mugisha was the main face behind KULHAS. Thirty-three year old Stosh is out both as a lesbian as well as being HIV positive and public about her status. In the course of responding to a question about whether her neighbours, friends or colleagues knew about either or both, she explained to me what these interlocking identities really mean:

JOO: Which people?

SM: The people around asked ‘are you fine?’ because that’s when the (Babati) bill was like at its peak … that is last year, 17th December 2009 … so the bill… I do not like the bill, I even hate thinking about it but I have to think about it, especially now that it affects people with HIV and Aids … mba ndabiladala nga (Tr: I just see that) … they are going to kill me!

JOO: So it’s a real problem?

SM: Yeah.

JOO: So what will you do to address those issues … what do you think could be the best way to do this?

SM: I have been trying to think so hard … but I think I need another big head to help me because I do not care what my colleagues will do, but I feel I must stand up as lesbian and positive and speak out. I need somebody to help me address something … because I did not create myself. I never gave birth to myself, I never chose to be positive … there are people of my kind who are really dying inside and now they are even so many in the closet who cannot come up and talk because of the bill…. to hell! They say, ‘…if Stosh is out … let her die alone.’ But I think even people in parliament who really represent people cannot say these things because they do not know, maybe they are ignorant or maybe they are scared. Sometimes I really feel I should stand up …. But I know if I stand (up) a person with a bullet will be standing somewhere waiting for me, though it may not be that but… I want to make up a campaign to sensitize people that there are people who have HIV/AIDS and are homosexual and they are living healthier than the negative people and they can even do certain things (better) than people who really think (they) have potential … because for us they see us as if we are insane (laughs). Somebody told me, ‘You … your brain is sick of HIV and you cannot tell me you are thinking straight when you are telling me you are lesbian.’ I looked

41 Queer Youth, for example states its vision to be ‘… a well organized LGBTI Youth Community which is aware and capable of Advocating, Defending and Fighting to (sic!) their Fundamental Human Rights and Protecting themselves from STIs including HIV/AIDS.’ Unlike Kuchus Living with HIV/AIDS, though, Queer Youth is largely made up of young men. (Interview with Sam ‘Laeticia’ Opio, Queer Youth Executive Director, November 21, 2011). The term ‘kuchu’ is the local term in common use to refer to people who have sex with others of the same gender.

42 The other was a medical doctor.
at him and in my mind I was like ‘this one is going too far’ … I looked at the person and of course for me I am not sick and I cannot fight with him. Later he told me in my language … I do not know whether I should say it…?

JOO: Yes, you can say it.

SM: Kachuge nyoko (go fuck your mum). Now I first thought of my mum who is in the grave … so I realize he was sick, more than I am. Then I left him … so I really need to design a nice campaign, I need somebody to help me to let people know that I am living for 18 years with HIV and I am lesbian for now 33 years and I am positive, thinking positive and happy and I have people who love me and I have people I love and care for in this world.

The account above demonstrates that being an HIV+WSW is no easy matter. But the situation is not made any easier by the social, cultural and especially the legal context within which such an individual is supposed to manoeuvre on a daily basis. We examine that context before coming back to consider the more personal dimensions of Stosh’s experience as a lesbian living with HIV.

3.3 Battling Homophobia and Heterosexism: From the Bahati Bill to the Death of David Kato

Homophobia or the irrational fear or hatred of homosexuals is a global socio-historical phenomenon, but it is only in the mid to late 19th century that it found legal expression, particularly within the framework of English penal systems that were exported to all its colonies, starting with Section 377 of the Indian Penal Code, the infamous provision outlawing sex ‘against the order of nature.’ As a form of discrimination, homophobia therefore has both social and legal dimensions. The former is played out overtly by way of hate speech, every-day prejudices such as harassment and intimidation, and culminating in physical violence against LGBTI individuals. More subtle forms of discrimination against LGBTI individuals—what can be described as heterosexism—extend from social pressures, media reportage and advertising as well as other forms of communication which seek to reinforce what is regarded as the ‘natural’ heterosexual order of society, and the continuous construction and reconstruction of socially-accepted notions of masculinity and femininity (Epprecht, 2008: 17).

Kiragu and Nyong’o (2005: 12) provide a useful summary of the different forms of discrimination LGBTI people face:

> Discrimination of sexual minorities can be in the form of criminalization of homosexuality, institutionalized homophobia, abuse in state institutions, pathologizing, forced medication and cruel treatments, neglect of the existence and needs of LGBTI people with disabilities, young and elderly LGBTI persons, diminished access to health care, work place discrimination and violence and harassment from official state representatives including execution. Social repression with or without state tolerance can be manifested in the form of verbal abuse, silence, ridicule, hate crimes, ‘corrective rape’ of lesbians, honor related violence and forced marriage.

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43 This 150-year old provision was overturned in the 2009 High Court case *Naz Foundation (India) Trust v. Government of NCT Delhi*, 160 DELHI LAW TIMES 277 (DHCr, 2009).

44 According to Mark Epprecht, ‘… heterosexism means naively assuming that the social ideals and norms of heterosexual reproduction, marriage, sexual attraction, and so on are not predominantly natural phenomenon, intrinsic to the human race and consequently not historical.’
Homophobic discrimination is also a form of gender-based violence given that it is directed against individuals largely on account of their gender identity, sexual orientation, or location within the hierarchy of the various male-dominated social systems that humankind has constructed and takes for granted such as the family (Reddy, at 83). One WSW participant likened homophobia to a vicious dog being let out of its kennel and the owner putting it back at their convenience.\textsuperscript{45}

The legal dimension of homophobia seeks to transform the social forms of homophobia into the black letter of the law, and in so doing perpetuate forms of injustice as well as prejudice and stigmas inherent in the sexual hierarchy (Miller & Vance, 2004). Best known of those forms are the penal sanctions covering sex ‘against the order of nature’\textsuperscript{46} and ‘acts of gross indecency.’\textsuperscript{47} Within the context of Uganda, scholarly accounts of sexuality—hetero or otherwise—in the pre-colonial period are not in abundance. While recognizing that such societies were not sexual nirvanas, what is very clear is that either there were no sanctions for same-sex behavior, or if they indeed existed, they were not severe, as we have no accounts linking homo-erotic behavior to exceptionally harsh penal punishments (Murray & Roscoe, 2001). Colonial homophobia codified and criminalized same-sex activity with the ultimate goal of institutionalizing heterosexuality as the dominant mode of social intercourse. Commenting on section 377 of the Indian Penal Code, Sumit Baudh (2005: 4) points out,

\textit{The underlying and unquestioned assumption (behind s.377) being that heterosexuality is ‘normal’ or ‘natural’. Conversely, all that is outside of this heterosexuality is abnormal or unnatural. By proscribing what is unnatural, namely non heterosexual sex, the law makes it compulsory that sexual activity be sought exclusively within the boundaries of heterosexuality—between a man and woman. S. 377 in effect imposes compulsory heterosexuality. It takes away the erotic and sexual self-determination of every person.}

The Ugandan equivalent of India’s S.377 is S.145 of the Penal Code. What is striking about this provision is that despite being on the statute books for so many years, there is not a single recorded conviction for the offence in the Ugandan courts of law.\textsuperscript{48} This is not to suggest that same-sex activity in the colonial and post-colonial eras did not draw scorn and sanction, but rather to say that there was a much higher level of tolerance (or a simple lack of official concern) about the issue.\textsuperscript{49} At the same time, it is also important to emphasize that while prosecutions may not have been commonplace, there is no doubt that LGBTI persons suffered harassment, intimidation and other forms of discrimination and stigma.

In specific relation to the subject matter of this study, there is a general conception that S.145 does not cover WSW. Hence in a 2004 asylum case decided in the United Kingdom about whether a lesbian woman would face persecution on account of her sexual orientation if returned to Uganda, the judge made the following statement: “Under the Ugandan Penal Code homosexuality is illegal for men, and the maximum penalty is imprisonment. Homosexual acts between women are not

\begin{itemize}
  \item \textsuperscript{45} Interview with ZM, on December 19, 2011.
  \item \textsuperscript{46} Section 145 of the Uganda Penal Code Act, 2000.
  \item \textsuperscript{47} Section 148.
  \item \textsuperscript{48} Most charges for homo or other-sexual conduct are brought either under the offense of ‘indecent dressing,’ or being ‘idle and disorderly.’
  \item \textsuperscript{49} It is a tendency that continues until the present time. Hence, available Police Crime statistics over the last three years (2008, 2009 and 2010) have no records of ‘unnatural offences,’ leading anti-gay protagonists to allege a cover-up by the Inspector General of Police. See, Michael Mubangizi, ‘Police Report Omits Gay Sex Crime Again,’ \textit{The Observer}, May 5-8, 2011 at 31.
\end{itemize}
mentioned.” The judge went on to conclude that “Homosexuality amongst women is not illegal in Uganda,” as his main ground for denying the application. In a more recent case, although the judge was more sympathetic to the plight of the lesbian applicant, he stated, “It is uncertain whether, as a matter of law, this (Section 145) criminalises intimacy between women.”

Even if the statement of the two judges represents a general perception about the legality of same-sex activity among women in Uganda, it is a wrong interpretation of the law. Indeed, it is questionable whether the judges actually read the penal provision in question or they instead simply relied on the opinion of some ‘expert.’ What exactly does Section 145 say? Entitled ‘Unnatural Offences,’ S.145 states as follows:

“Any person who—

(a) has carnal knowledge of any person against the order of nature;

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life (emphasis added).”

As Elnathan John points out, the word used in the penal legislation of all former British colonies is ‘person,’ not ‘male’ or ‘man,’ engaging in sex ‘against the order of nature,’ meaning that the offence is gender-neutral. Although not directly addressed to the criminal aspects of this debate, recent Ugandan court decisions challenging acts of harassment and discrimination against LGBTI individuals make it clear that the claimed distinction is non-existent. In the cases of Victor Juliet Mukasa v. Uganda and that of Kasha Jacqueline, David Kato Kisuule & Onziema Patience v. Rolling Stone Ltd. & Giles Muhame—although the judges in both instances were at pains to emphasize that the cases were not about ‘homosexuality’ or sexual orientation—no distinction was made in the rulings between the situation of (gay) men or (lesbian) women.

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52 It is also possible that the judges were using outdated versions of the Penal Code, as the amendment which made no distinction between men and women offenders was introduced in 2000. Given that the first case was decided in 2004, and the second in 2010, this would have been rather surprising.
54 For a typical judicial decision on this provision—none have been decided in Uganda—see the Nigerian case of Major Bello M. Magaji v. The Nigerian Army (2008) 8 NWLR (Pt. 1089) 338: ‘While carnal knowledge is an old legal euphemism for sexual intercourse with a woman, it acquires a different meaning in section 81. The section 81 meaning comes to light when taken along with the proximate words "against the order of nature". The order of nature is carnal knowledge with the female sex. Carnal knowledge with the male sex is against the order of nature and here, nature should mean God and not just the generic universe that exists independently of mankind or people.’ Of course, if ‘carnal knowledge’ is defined as penile-vaginal penetration, then it could be argued that the provision excludes women from its ambit, but that would be a very androcentric interpretation of the phrase.
55 Miscellaneous Cause No.247 of 2006, unreported.
56 Miscellaneous Cause No.163 of 2010, unreported.
While there has been only one conviction under S.145, it is a seriously flawed piece of legislation, because as Gayati Singh points out, it ‘... does not make any distinction between consensual and coercive sex, heterosexual or homosexual affiliations, or bestiality. It does not discriminate on the basis of identities, but certain acts, including oral sex and anal sex, whether between opposite sex or same sex partners (Singh, 2008).’ In sum, it is a highly subjective and overly-broad penal sanction. Moreover, the simple message that the provision transmits is that persons indulging in this kind of activity are in some ways ‘inhuman’ because they are doing something ‘unnatural.’

However, there are other dimensions to the legal apartheid of which S.145 is only the most bold expression that affect LGBTI people which are largely overlooked. And yet, these penal and civil provisions have an enormous impact on the lives of members of the LGBTI community. In some cases, this may even result in the reversal of basic principles of the law, such as the burden of proof and the presumption of innocence. The simple message being sent is the following: if you do not fall within the accepted gender prescriptions of identity and orientation, you are less deserving of the legal protections that should be available to us all. Thus, the Global Commission on HIV and the Law has pointed out that while the penal proscriptions are quite overt and exercise a severe constraint on same-sex conduct, there is an additional problem with laws described as more ‘subtle’ which,

…may be laws of general application, on adultery for example, that are applicable to people engaged in same-sex sexual conduct while married to a person of the opposite sex. Laws may be selectively applied to same-sex couples, such as laws on age of consent. Public order laws addressing lewd public behavior or disorderly conduct have been regularly enforced in gay venues, even where same-sex sexual behavior is not per se illegal. Laws and police may target people who are dressed in a way that is perceived to be inconsistent with their physical gender (Burris, et al, 2010).

When combined, the social and legal forms of homophobia lead to an overall situation of sexual apartheid. Likening it to racism, Australian judge Michael Kirby has stated ‘It (homophobia) divides people into strict categories. It ignores their basic natures (sexual or racial). It imposes harsh legal restrictions. It makes them second-class citizens. It denies them full entitlement in matters such as love, sex and identity (Kirby, 2011: 9).’ Homophobia forces LGBTI people to ‘...cover their faces with a kind of metaphorical whitener and pretend, all their lives, to be heterosexual (Id., at 10),’ Homophobia also means that LGBTI individuals are routinely omitted in official data and statistics.

Both forms of homophobia—the social and the legal—have largely negative co-extensive implications for a variety of human rights and freedoms including freedom of expression, the rights to equality and dignity and the right to be free from all forms of discrimination. People who come from the privileged and dominant segments of society tend to take freedom from discrimination for granted. As a person who experienced discrimination first hand, Nelson Mandela made it one of his number one priorities when he took office as president of South Africa in 1994, declaring, “Our single most important challenge is therefore to help establish a social order in which the freedom of the individual will truly mean the freedom of the individual.” 57 Several young WSW in this study expressed a desperate desire to experience complete freedom just as other Ugandan citizens do—freedom from homophobia and freedom to be themselves. Stosh captured this feeling best:

I want to be free but I feel I am bound. Me being open to you Joe, I am telling you my status, my experience but in some other communities I am closeted. Binding my breasts is just something I do because I do not like them …

Against the backdrop of the HIV/AIDS pandemic, homophobia presents a range of problems including stigma, psycho-social afflictions, violence and extensive personal misery (Kirby, op.cit. at 8). In a highly moralistic and homophobic atmosphere such as that which exists in contemporary Uganda, it is extremely difficult for WSW to exercise their right to autonomy. For example, those who are interested in parenting confront several obstacles. When Pepe and his partner sought to have a child through artificial fertilization, they approached the most popular fertility clinic in Kampala. He recounted his experience in the following way:

They are so religious I was in shock… you know that they have prayer hour or something at that place… I started by writing an email to Doctor X, I was just trying to find out if there’d be a reply. Then I’m like, “I am making this inquiry about same-sex people, do you do it (fertilize)”? I resent the email but got no reply. And then I called. They told me ‘call again.’ Then they said they’d call back. So I called again and they asked, “Is this Julian?” and I was like, “Yes, I’m following up on my inquiry.” They said, “Do you believe in God?” So, I wondered how that was connected (to my request).

Homophobia descends on Uganda in periodic waves (Tamale 2003), the latest being triggered by the Bahati Bill introduced in 2009. Preceding these developments was the 2005 constitutional amendment58 which explicitly outlawed marriage outside a heterosexual relationship, an amendment which added to the growing homophobia in the country. Nevertheless it was the Bahati Bill that projected the existing homophobia to an entirely different level insofar as the security and well-being of LGBTI people was concerned. The Bill led to a heightened situation of homophobia, not simply by attempting to translate the existing fear into legally-sanctioned forms of targeting the LGBTI community, but by increasing the penalties against same-sex behavior, extending the sanctions for the alleged ‘promotion’ of such conduct to counselors, lawyers and even academics, and providing for the Ugandan government to opt out of any international treaties that went against the spirit of the Bill. If S.145 could be accused of some ambiguity, the Anti-Homosexuality Bill leaves no doubt; it indiscriminately and explicitly targets all LGBTI persons and even goes beyond them.

While the greater percentage of the clauses in the Bill were not in fact new (Tamale, 2009: 516), the overall impact of the proposal was to send a severe chill down the spines of LGBTI individuals. In the words of Pepe when asked to recount his experience with the Bahati bill:

PO: That bill has increased homophobia and the fact that it has a religious backing it’s been strongly received. But the disappointing point is that the population in society has been deceived or conned because for a long time they did not know the content of the bill. They just looked at the title and they were excited. We have tried to sensitize people and several minds have been changed (about the Bill) but remember people are still church going and this bill has gone into churches; it has become like the bible for many Pentecostal churches. So people still believe that what the pastor says is right so people still have that, they claim to be religious and yet they are ready in the first place to stone a gay or lesbian person. For us homophobia has definitely increased. Like I said, the title (of the Bill) is very attractive to people who are ready to spread prejudice …

58 Article 31(2a) 1995 Constitution of Uganda.
Responding to the same issue, Stosh gave an account of how that homophobia reached her doorstep in a manner that it had not done previously:

**JOO:** How do you feel about the general homophobia in Uganda and specifically your experience with the Bahati bill how has that affected you?

**SM:** It has affected me seriously because now they came to my place. I am just giving you my experience, I don’t know what others go through, now I am wondering in my place where I stay, if they come to know that I am a girl … they would slaughter me.

**JOO:** So they know you as a boy?

**SM:** Yeah.

**JOO:** Because of what?

**SM:** Because my chest is flat, now I am wondering if this secret of my mine is known. Am I going to get out of the house? Sometimes I want to walk free. Sincerely, I really want to take my shirt off … even if I have breasts but I just want to be free in my compound. But I’m like … if there is someone seeing me outside??? The Bahati Bill … has messed everything up.

From the above verbatim accounts of LGBTI individuals, the many negative impacts of the Bahati Bill—even if it has not yet been enacted into law—can be summarized in just a few words, among them increased scrutiny and stigma, coupled with increased fear and hiding. All of these have a significant bearing on the manner in which young WSW living with or affected by HIV/AIDS respond to their varied situations. It does not help that to the general public, there is little difference between a Bill and a fully-fledged law. In the words of Dr. Muyunga, ‘… there is no difference (in popular perception) between ebaggo (the Bill) and etteka (the Act).’

Given the heavy print and radio media exposure that the Bill received, it is clear that many people acted on the Bill as if it had in fact become law: If before the Bill LGBTI persons were reluctant to expose themselves to a healthcare system which was hostile and unwelcoming, how much more so when the Bill explicitly targeted providers, counselors and other kinds of professionals? If before the Bill they knew that the most they faced from their actions was harassment and intimidation, after the Bill the message transmitted was that homosexual activity could earn you life in prison or death.

But many of the respondents pointed to another dimension of the Bill, or what could be described as its ‘silver lining.’ ZM stated that immediately after the Bill, LGBTI people simply ‘vanished,’ as the issue flooded the Print media and the radio airwaves. However, eventually they returned and found that the debate had in fact generated a certain level of protection for them, even if the homophobia is still as intense as before Bahati introduced the Bill in Parliament. In a perverse way, the Bahati Bill projected the issue of sexual minorities and their rights to the centre of political debate in the country. And this, according to Sylvia Tamale (2011c) was not necessarily a bad thing because,

… it forced the issue of non-conforming sexualities ‘out of the closet’ and into the mainstream of political discourse and debate; even as it stirred homophobic expressions to an unprecedented level, it also provided the space within which the issue could be aired and where LGBTI groups came to the fore in articulating not only their fears, but also their claims to equal citizenship. At the same time,

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59 Interview with Dr. Thomas Muyunga on September 9, 2010.
it compelled mainstream organizations to re-examine their own (largely conservative) positions vis a
vis non-conforming sexualities.

In the cold light of historical hindsight the Bahati bill may actually be assessed to have contributed
to an opening up of the space for LGBTI individuals to come out of their closets and make their
voices heard. As Kikonyogo Kivumbi of the UHSPA stated,

…there is a revised way of looking at LGBTIs. Someone may not agree with what you are saying,
but they know that these people exist … I mean no one is saying you can’t speak. We speak freely
we have not chosen to put a sign post out there but I mean no one is threatening us … we are not
feeling intimidated and you cannot intimidate us. So the Bahati bill campaign I think has been in
a way helpful in the general realization that some people are different from what many consider
average or normal.60

The activism that followed the bill was also boosted by hitherto closeted individuals seeking
solidarity in the newly discovered space of sexual politics. In the words of Pepe:

It has been a great opportunity for us because we have managed to interact with the young people
they say we are recruiting. Many have actually come out to seek for our help. They know that we
are not recruiting. They are not asking us for money they are just asking us to pay attention to them
just to listen to them, we are not even meeting them. We just talk to them on phone. Some wanted
to kill themselves; we have managed to turn that around over sexual orientation and identity and we
have of course made referrals to psychologists, to people who can help them better than we can.

Unfortunately, just as the furore over the Bahati Bill appeared to be dying out, the LGBTI and
human rights community was hit by the death of David Kato, the charismatic gay rights activist who
had recently been one of the litigants in the court case against the Rolling Stone newspaper. Kato’s
death and subsequent funeral—which I personally attended—needs to be regarded as a pivotal
landmark in the struggle against homophobia in contemporary Uganda, aside from raising numerous
additional questions that need to be the subject of further critical scholarly analysis. In the first
instance, it was perhaps the first high-profile event concerning an LGBTI activist in the country.
Secondly, the community effectively took over the ceremony and turned it into a celebration of
resistance and resolve, condemning the main celebrant at the service for his homophobic remarks,
boldly confronting the latent violence that pervaded the funeral atmosphere and chastising the
government for its nonchalant response to the murder. Finally, Kato’s funeral sent out a national
and international message—given its global coverage and attendance by diplomats from several
Western embassies—that the LGBTI movement in Uganda had finally come of age.

Soon after Kato’s death, however, the LGBTI community was hit by a deep sense of foreboding
and loss.61 Events scheduled for the following months were postponed. Many of the most
prominent activists went underground, while those with international connections took ‘sabbaticals’
and stayed off the scene for several months. A number of them—including Stosh—simply
disappeared and are yet to return to the activism they were engaged in before the dastardly murder.
In sum, while Kato’s death brought the LGBTI movement together in a show of solidarity, it also
underscored how fragile and tenuous the roots of the movement were, and how homophobia

60 Interview with Kivumbi Kikonyogo of the Uganda Health and Science Press Association (UHSPA) on September 30, 2010.
at 22.
continues to be a major social force in Uganda. That fragility and tension is also apparent in the manner in which young WSW confront the system of healthcare.

3.4 Healthcare and Access Issues
Uganda’s healthcare system is wholly built on the assumption that everybody is heterosexual. Furthermore, the system is also affected by the broader societal homophobia and heterosexism we have unpacked in the preceding section of this study. Hence for non-heterosexuals, there is both a feeling of alienation and denial in dealing with the system. While heterosexuals do not have to think twice about entering a medical facility, for WSW several considerations have to be taken into account. Nurse PLW explained to me why:

You find that it is difficult for a woman to walk into a clinic with her girlfriend and say, “We want to take an HIV test … maybe, before they go further they will be asking questions: “how and why?” “where is your boyfriend?” … things like that. In most cases even if somebody thought about the risk of HIV, even if somebody wanted to get the partner, even if they are in love or something that they want to have a stable relationship, they will not go and have that test unless they go on individual levels by themselves. But then, also that one raises the issue of trust. How can you trust this person that he or she is telling me the truth?

For HIV+WSW, criminalizing homosexual activity and targeting sexual minorities exacerbates the already existing anxiety and stigmatization associated with LGBTI people living with HIV. Stosh gives vent to these feelings:

The place where I get my ARVs and everything … I wish I could stand and tell them I am this and that but then I have to take precautions… I realized that I am in the world of my own, I cannot express myself … so just go and get my medication, if I have a problem then I could have it taken like a straight person’s problem.

What is it like to confront the healthcare system for a sexual minority? A ground-breaking study of MSM in Nairobi listed several problems they faced including stigma and discrimination, fear of humiliation when accessing health care services, concerns about the involuntary disclosure of sexual behavior, power differentials between partners in negotiating condom use, fundamental misconceptions about HIV risk, self-medication for sexually transmitted diseases, and low uptake of HIV testing (Sharma, 2008; van Griensven, 2008). These studies and many others since (e.g. Poteat, et al, 2011), demonstrate that at a general level people whose sexual orientation is different from the mainstream feel like double misfits and are acutely aware of their stigmatized difference. Is there any distinction between MSM and WSW in this regard? Before answering this question, there is a need to consider the overall policy framework within which healthcare structures in Uganda are situated. Given its early action on the issue of HIV/AIDS, Uganda has long been the epicenter of numerous policies and of different actors—local and global—who have influenced the context and the framework of implementation that has grown around the pandemic. But who are the people who make this policy? We thought it would be important to hear them in their own voices.

Perspectives from Healthcare Policy-Designers and Implementors
A look at Uganda’s major policy documents will reveal a loud silence over the issue of sexual minorities, with the recent exception of the discourse about the MARPs. With respect to those actors in the healthcare arena who have an influence on domestic policy in the country, the position
varies. Hence, World Health Organization (WHO) official Dr. Innocent Nuwagira stated that the debate on sexual orientation with respect to the issue of access to health services was ‘irrelevant.’ Arguing that government should not legislate consensual sexual behavior he stated:

Sexual orientation should not be a factor to deny or even advantage someone in regards to access to health services. The aspect of sexual and gender orientation is a glaring reality, extremely confusing and strange, especially for the earlier generations who only knew of two genders. It is more of a cultural shock. I also do sympathize with people who are not yet open to these realities. Minorities have to be protected but government need not recognize them, (or) legislate for or against them.62

The same official was somewhat dismissive about concerns raised about sexuality and its relationship to the right to health and argued that:

Why would someone wear a big placard with the word ‘MSM’? If one cannot wear a placard indicating that she or he is female or male, then it is unnecessary and irrelevant for one to wear a similar placard indicating that he or she is MSM or WSW. Such approaches create a lot of doubt and controversy in respect of their actual motive.63

But the WHO position appears to have been at variance with that of UNAIDS, which heads the United Nations Country Team (UNCT). UNAIDS argues that the protection of a full range of human rights is recognized as the core to protecting public health. In the view of the UNCT, the criminalization of same-sex relations would affect the exercise of the right to health since it criminalizes twice: for being homosexual and for being homosexual living with HIV/AIDS. At the time of our interface, the UNCT was concerned that the Bahati Bill would also negatively impact on the availability, accessibility, acceptability and quality of health services for LGBTI persons living with HIV. The net result would be a negative impact on Uganda’s national response to HIV/AIDS and its outreach activities towards affected populations, particularly the vulnerable. It would also undermine the vital HIV/AIDS work of community based organizations that primarily deal with servicing the needs of LGBTI, in the light of the broader HIV/AIDS response.64

In between WHO and UNAIDS is the UNFPA, which responded to the queries about how it viewed the situation of young WSW living with or affected by HIV/AIDS in the following manner:

In general, sexual minorities should have access to HIV prevention based on public health as well as international human rights standards. However, UNFPA’s interventions are defined and determined by government priorities and supported by evidence. Thus, lack of sufficient data on HIV trends among MSM and WSW in Uganda as well as the restrictive legal and policy environment poses an enormous challenge in respect to developing specific programs. However, cases have been reported in which some of these sexual minorities including the lesbians have had access to the STD clinic at MARPI.65

UNFPA’s point of view with respect to the situation of young women living with HIV/AIDS was that there was a need for more evidence: “The key issue is we need evidence and government

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62 Interview with Dr. Innocent Nuwagira of WHO on August 28, 2010.
63 Id.
64 Interview with Meredith Lwanga and Jotham Mubangizi of UNAIDS on July 18, 2010.
65 Interview with Rose Mary Kiryomunda, UNFPA on 18th October 2010.
support to promote specific interventions. Without these two components, it is almost impossible for UNFPA to directly engage with the wider community of sexual minorities.\(^{66}\)

It is thus clear that even with the most proactive of the international agencies on the issue of sexual minorities—UNAIDS—there is still a degree of ambivalence towards WSW. Given this policy context, what are the similarities and differences between the way in which young WSW living with or affected by HIV/AIDS are treated in comparison to their MSM counterparts, especially given the different levels of risk-assessment attached to the two?

**Experiences of Young WSW**

In light of the similarity of spatial occupation as LGBTI persons, young WSW face many of the same problems as those listed above confronted by MSM. Like MSM, young WSW find that they are either denied service or given inferior service on account of their sexual orientation. That level of service may be on account of bias and homophobia or from a general lack of knowledge about the sexual orientation of the individual being treated. Stosh described one experience of visiting a clinic:

> SM: Like I told you, that clinic … sometimes I just boycott it because I know I have medicine to take for the next two months. When I feel I do not want to go I do not go. Now sincerely speaking there is one thing that hurts me so much about what I feel which is supposed to be part of the treatment were emotional, physical, I just have to tell a doctor. I had a chest pain, then they checked me and asked, “What have you been doing?” Then you say “I have been smoking” then they asked me, “Why don't you reduce smoking?” … I think there are things I really would like to share with a doctor. I shared with one doctor and she cried … she told me she would call me but she did not call me again.

In many respects this experience could also have been the same for an MSM. Where there are major differences in the experiences of young WSW in comparison to MSM is with respect to issues such as reproductive healthcare and advice. Most MSM do not list issues of reproduction as a high priority. Thus, one MSM respondent told me: ‘…Out of the 365 days in the year, people spend less than 2 days making babies … all the time we are looking for intimacy, pleasure, fantasy … these are enshrined in national policy … So these are part of (our) sexuality. Reproduction is just one-tenth of sexuality … it really doesn’t matter.’\(^{67}\) The reverse is true for WSW. Many of the respondents interviewed for this study were very clear about wanting to have children, either themselves or from their partners, although one participant told me, ‘I just cannot wake up and see myself pregnant … that is not part of me.’\(^{68}\) The right to have children (or indeed not to) is an essential reproductive health right. However, heterosexual values and homophobic prejudices assume even higher prominence with respect to reproductive health issues, with WSW routinely facing subtle marginalization or outright discrimination, reinforcing the idea that it is only heterosexuals who are entitled to such services. KJS laid out how she would want to give expression to her reproductive rights:

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\(^{66}\) Asked about her office’s encounters with sexual minorities, Kiryomunda reported that UNFPA were approached for legal assistance in 2008 after the Global Implementers meeting, however any support was ruled as being clearly beyond UNFPA’s mandate (Interview with Kiryomunda).

\(^{67}\) Interview with JQ on November 3, 2010.

\(^{68}\) Interview with BA.
JOO: When they talk about lesbians they say things like abortion, pregnancy … things which heterosexual women are concerned about do not concern lesbians; is that correct?

KJS: Who tells them that a lesbian will not have a kid? It does not mean that you being lesbian you do not want kids.

JOO: Do you want to have kids?

KJS: Yes, I was supposed to be pregnant in February this year but I gave allowance to the team because I play rugby, so I think it will be next year February. It does not mean that being a lesbian you do not want a kid; I love kids.

JOO: But how are you going to overcome that?

KJS: Sexually.

JOO: You are going to get a man to do it?

KJS: Yes.

JOO: Have you identified the man?

KJS: Not yet, if these process of the donor was available I would do that, but it’s not available. I cannot wait. I am growing old (laughs). I cannot wait for that technology. I am getting too old … if I was like 14 or 15 maybe I could wait, maybe they can introduce it within two years or three years, but I cannot wait for that. Lesbians have a lot of… what affects a (heterosexual) woman out there affects a lesbian’ they are heterosexuals who do not want to have kids, nothing to do with kids, but for us there are very many who want kids and there are others who don’t want kids.

JOO: In other words you are the same as the rest of the population, so you would like to have children? Have you discussed this with your partner?

KJS: Yeah … because we thought of having two kids from the some person, so that the father is the same. That is easier to bring them up if the father is the same.

JOO: Which one of you would have them?

KJS: Both of us should have one.

JOO: You would not see that as a problem?

KJS: No.

JOO: But you would have to go across for the man…

KJS: Yeah, I would because she had agreed to find someone but we have not yet.

At the same time, there are WSW who get pregnant and need to procure an abortion for a variety of reasons. Aside from the fact that it is illegal, there are also questions with the community about one’s identity. In the words of BA:
…these people are too ‘butch’ and ‘big’ … now if this person gets pregnant she will start fearing what the community will say so they end up aborting, so that is a big problem. Then others have just been raped but you fear coming out in public and saying ‘I was raped.’ So you just end up doing things your way or end up with (an) abortion …

Further healthcare issues for young WSW arise in relation to the phenomenon of violence. With respect to young WSW who face violence—whether from their own-sex partners or within a context of heterosexual coercive intercourse, rape or abuse—numerous issues arise around treatment and support. Such WSW face multiple stigmas: they may be hesitant to report abuse fearing exposure of their sexuality, or they may find that available resources cater primarily to those in heterosexual relationships. They may also face discrimination from those who are supposed to be providing them services and solace (Global Rights, 2008: 30). In other words, whereas heterosexual individuals can walk into any clinic and receive treatment, it is not as straight forward for WSW. As LGBTI-friendly nurse PLW narrated to me:

I remember one time when I was still working in Y clinic one of my lesbian friends came in but she was really tortured because they kept on tossing her around. They told her, ‘Go to this section.’ ‘Are you a woman or are you a man?’ Imagine someone has come for health services and then they’re tossing them around. Then the nurses start gossiping, ‘Come and see these lesbians.’ So it’s not easy even if it’s a private hospital and you are paying your money still you are going to be psychologically tortured.69

She added,

The rules and regulations of health workers be it doctors, nurses or whatever, you swear that you shall treat all people equally. It does not matter who they are whether they are poor or rich, their race, ethnicity or even their sexual orientation. Treat people as humans, but that is not what is happening on the ground… So the attitude of the medical workers in Uganda should first change if we are to fight HIV as a collective issue.

In most cases healthcare workers are simply at a loss as to how to deal with what they perceive as ‘freaks’ when they are confronted with a case of MSM or WSW. As Stosh narrated:

I once shared with one doctor and she cried. She promised to call me but she did not call me again… she saw me and thought I was a boy. She asked me ‘who are you?’ And I answered that I am a girl. She responded, ‘are you sure?’ Then I told her to look at my card, she further asked me are you one of these people I hear…(meaning lesbians) then I answered, ‘Yes, I am a lesbian … I told her a lot. She looked at me and said, ‘What?’ For me I used to think that these things are only for people I see on TV, you are also in this clinic?” Then I answered, ‘Yes, I am in this clinic and there are very many people (like me) in this clinic.” Then she said you cannot be serious, she shed tears. … Maybe even when you tell them they have a feeling that they cannot take it on others. They feel overwhelmed, they feel they are going to be sacked… they think maybe … Because according to how the doctor talked to me, she was treating me as someone who is very abnormal… because she was very astonished. She could not believe I was talking to her. Then she told me I will call you and we talk. She got scared.

69 Interview with Nurse PLW on October 5, 2011.
The reverse of this situation is where you have a healthcare worker who is sympathetic to WSW and actually carries out her assigned tasks without discrimination. The system is hostile to those who try to reach out and not discriminate. As Nurse PLW recounted:

JOO: There are no friendly doctors, nurses or health providers where the lesbian community can go to approach?

PLW: We have friendly doctors I know of one, Doctor Paul … that one you can approach in case you have a problem … friendly nurses I do not know.

JOO: So you are exceptional in that sense?

PLW: Even if I may be friendly, but like my hands are tied the only thing I can give is information. I will give you an example. I lost my job one time. I was working in a clinic and these friends were coming … you know there are the prominent lesbians, the ones who are known, someone came just to seek malaria treatment or something and then my boss started raising questions and then in no time she told me they were restructuring because I had seen that coming. I had seen the attitude she was showing to me when she had started asking me questions. Who is so and so?... How do you know them? So I started having the feeling that she was opposed to the association and after like two, three weeks they told me they were restructuring and who was terminated? It was me, even though they never gave me a clear reason why, they just used (the) restructuring issue but I know that the reason was that. So you find it’s very difficult because at my place I cannot freely invite someone to freely come over and may be re run test and redo all these things because first of all both of us are at a risk.

Another dimension to the healthcare perspective is the issue of mental and psychosocial health. Public health workers have long recognized that the shock of an HIV+ diagnosis can have many different psychosocial impacts. While the shock itself affects both men and women, with some studies noting higher rates among women than men (Lennon & Wilcock, 2011 at 26), the manner in which they respond to it will vary according to gender, social placement and personal circumstances. A positive diagnosis may have complicated implications for the relationship with one’s lovers, sex partners, family and friends. Indeed, the shock can result in delaying the commencement of treatment, which may affect a positive person’s health if needed immediately (Id.). For young WSW living with HIV, this is compounded by both the very low level of mental health services in the country, as well as by the absence of any attention to the mental health situation of LGBTI individuals in particular. Doctor MD articulated the problem in the following way:

For mental health … it’s a big issue especially among the young. There is the stress of the fact that you are different and trying to hide yourself … it is a very big issue (and) it leads to mental health problems. Among the lesbians its depression, self harm, and eating disorders ... HIV (among lesbians) is a particular problem … it is hidden … they do not want to talk about it. The stigmatization also comes in from there … they say that those who get HIV must have got it from men and if they got it from men then they are not real lesbians. For example there is this lady … she must have got a lot of problems with them because they could not really accept her because she is HIV positive but even the gays do not accept the HIV positive men who come out because of that.70

70 Interview with Dr. MD on September 22, 2010.
Thus mental health problems such as depression, bipolar disorder and panic attacks are not uncommon. Furthermore, there is a high level of substance use and abuse within the community, apparent from even casual interaction, but confirmed by many of the respondents and by mental health experts (Muyunga, n.d.).

For those who contract HIV, there are even more psychological problems. First of all is the general belief that HIV/AIDS is a heterosexual disease; if you are a real lesbian, how then did you get ‘it’? I was shocked by the several participants who responded to my initial query about whether there is a need for WSW to access HIV/AIDS services by saying that WSW do not need those services because they are not ‘at risk.’ ‘Lesbians,’ they told me, ‘do not get HIV … it is a heterosexual disease.’ Such an attitude may seem rational if the respondent has sex exclusively with women, in light of the dominant messages about transmission between women or because of the lack of them, and also given the existing evidence on the matter. But as earlier pointed out, it is often not the case, which further complicates the matter. In other words, many WSW believe that because they identify as lesbian they are immune from the virus because it is a disease which is caught only by those who identify as heterosexuals and practice heterosexual sex! It is similar to the response of Ugandan gay men who had long believed that HIV could only be transmitted through heterosexual contact, and were convinced that anal sex was safe. The second problem concerns the ‘invisible’ existence young WSW are living. Hiding is the norm. Stosh narrated how she learnt of her HIV+ status:

So I went to AIC [AIDS Information Centre] in Mengo and they told me to pay 4000/= they took a test but before the test they counseled me. I had gone with a friend and I was like … now if I find out that I am positive what am I going to do? If I am not, what I’m I going to do? But then they counseled me, first of all I trusted myself that I had never slept with a man … you know the other incident of rape that had happened before, they (my family) made me feel guilty and I thought may be it was normal. So the test took like 30min I think, and they told me I was positive…. I couldn’t cry, I could not laugh, smile I was just there. And I accepted my paper, good enough those days they could not put whether you are positive or negative. I think even now they are still doing the same thing. I told my friends but they could not understand me, they asked me you are happy sometimes then another time you are not. I am like fine, but this is when I was anticipating to commit suicide because I felt everything now was against me.

Because of the predominantly heterosexual context within which health services are distributed, for a person who is homosexual, there is a much higher likelihood that they will not participate in the programs of education, receiving treatment information and counseling or participate in other programs aimed at building better levels of social inclusion. That feeling of exclusion and isolation is compounded for WSW and MSM individuals. Once again, Stosh told me of the range of feelings she underwent, up to the point of contemplating suicide and taking active measures to end her life following the positive diagnosis:

SM: The only thing that I wanted to do was not to tell anybody … because nobody could believe me. I thought … maybe I commit suicide and just go, but even though I tried to commit suicide things did not work out … I tried like so many times.

71 Id.
JOO: What did you do?

SM: So when I realized I had HIV/AIDS I tried to commit suicide but things did not work. I bought chloroquine and quinine. I took the quinine and a bottle of Uganda waragi, ... thinking I would black out in my room, but then I woke up alive .... I have many relatives around but I knew (that) if I told them (about my status) nobody could believe me. So I just resorted to being a spoilt child .... I never cared for my body and whoever wanted to be friendly I would tell them that I am HIV positive. For example, if you are using my glass you had better know that you can catch it (meaning HIV/AIDS) from there. At one time I was at my auntie’s place and they were taking my cups differently, my plates differently, everything of mine was different. So I thought maybe it could even affect others in my association. So I would tell them you had better know ... please don’t get so close but I know with time I came to live with it.

One of the key issues dealt with in the fieldwork was the extent to which young WSW were not only aware of their healthcare rights and issues of access to HIV/AIDS services, but also whether they had basic information about such rights.

ZM gave the following opinion:

Actually most of the lesbians in our community don’t even know that we get those STDs which we can get. We have brochures in our organizations that show the kind of STIs and STDs that we can acquire from intercourse. It’s something that is new to those girls, because first of all the access to information is not there unless they come to our organizations because we cannot give out brochures in clubs even if we wanted to. However much we would like to actually raise awareness, the space for it is not there ... although it can be created. For example it’s very hard for a girl to come out as a lesbian not only because of the stigma that comes along with it but it’s not easy to tell who is who, so unless you have a lesbian friend who knows a lesbian friend it’s a small circle but I think it stretches big.

Needless to say, even the minimal access to information about HIV/AIDS to WSW was adversely affected by the Anti-Homosexuality bill. As one health provider working with FARUG explained:

I think it [the bill] has made the situation worse. First of all people were a bit more free and people could meet and you know when you meet you talk and exchange ideas. In those days, before the bill, we could like go for health talks and may be over 30 members would attend. But now people have gone into hiding so you find that you call an awareness meeting then may be only 10 people or even 5 will come ... the numbers have really reduced. So you find that those who are not there have gone into hiding because of the hostility you find now that it becomes hard to get this information across to discuss these issues.73

For young WSW particular importance is attached to sexuality education, clinical counseling and the availability of contraceptives. It is especially important that young WSW who are merely exercising their right to sexual pleasure are not penalized for this. Nevertheless, education and information by themselves are insufficient to address the sexual rights concerns of young WSW. It is clear that there is a glaring dearth of the equipment, such as dental dams, finger condoms, rubber gloves etc. which are some of the basic tools for safe sex between women. In the words of Dr. Thomas

73 Interview with Nurse PLW.
Muyunga, “… all the messages which are passed on are targeting heterosexuals. Basic supplies like dental dams, oils for gay men that are necessary cannot be found at public health facilities. We think that it’s a violation of LGBTI rights.” WSW try to partially fill the gap by looking to gay-friendly development partners for donations of female condoms, dental dams and other protective gear. However, these would only be available to those that have access to the urban-based NGOs where they are distributed:

Yes we get dental dams and condoms, especially those who are in organizations that are registered. We receive them freely from other countries they just donate them at least they are there so there is no problem in terms of access if you want to get them.74

But even if available, at least one respondent expressed the view that some of these instruments were not ‘user-friendly’ and interfered with the pleasure of having sex.75

What all the experiences above demonstrate is that there is a clear need in the first instance for an overall empowerment of young WSW. But just as importantly, there is need to raise the awareness of healthcare providers about different sexualities. Such awareness raising must begin with a more general and comprehensive approach to human rights within the healthcare system. It should also cover the basic education of doctors. In the words of Doctor MD:

The medical school is going to have a problem. It should be the (Institute of) Public Health and the Ministry of Health that should push for more a psychiatrists…. Uganda has a lot of (mental health) problems generally speaking. I mean the psychiatric burden in Uganda is quite huge … but I think we have about 20 to 30 psychiatrics in the whole Uganda. It’s not considered a big thing … may be later as the country develops as the country changes, public health and especially with regards to the HIV … that’s where the push should be coming from.

Ironically, it was the Anti-Homosexuality bill that opened the door for mainstream health policies and practices to seriously consider LGBTI individuals. Prior to that they did not even feature in the discussions of the Ministry of Health, health rights NGOs or the National AIDS Commission.

A couple of other developments in health policy need to be noted. First is the Ministry of Health’s 2006 National Policy Guidelines and Service Standards for Sexual and Reproductive Health and Rights. While they do not mention sexual orientation, they do underscore the issue of non-discrimination. The Guidelines even go so far as providing Comprehensive Abortion Care Services, ‘… to a woman or a couple seeking advice and services either for terminating a pregnancy or managing complications arising from an abortion.’76 This is an important provision for WSW victims of corrective rape, an issue we deal with in the next section of the study. The question of actual implementation is of course an entirely different matter.

A further step in making health policy and practice more sensitive has been made with the 2009 issuance by the Ministry of Health of the Patient’s Charter. Although it is a general charter and not specifically directed to HIV/AIDS, it reaffirms the right to medical care by providing: ‘Every person in need of medical care is entitled to impartial access to treatment in accordance with regulations, conditions and arrangements obtaining at any given time in the government health care system.’77

74 Id.
75 Interview with BA.
76 See Guideline 4.13.
77 See Article I.
Article 2 confirms the prohibition against discrimination, which in addition to outlawing discrimination on grounds of religion, political affiliation, disability, race, sex, age, social status, ethnicity, nationality, country of birth or other such grounds, also includes ‘disease,’ which can be interpreted to mean HIV-status. The Charter does not mention ‘gender,’ but International Law has interpreted ‘sex’ to include ‘gender.’ Is it possible to argue that the phrase ‘other such grounds’ includes sexual orientation? We will return to this issue after exploring the issue of sexual and gender based violence in the following section of the paper.

3.5 WSW and Sexual & Gender Based Violence

The goal of violence in general is to maintain the social status quo and to prevent transgressions against it. This is particularly the case with sexual and gender based violence where the overriding goal of such action is to ensure that the dominance of those who are socially stronger is retained (Garcia-Moreno, 2010). Transgressions to that order are historically met with severe punishments, ranging from mob justice (lynching) to the state-imposed death penalty. Rather than viewing violence as the isolated and/or sporadic acts of individuals operating within a context of private freedom, violence needs to be viewed as part of the structural framework within which the subordination of marginal and vulnerable individuals and groups takes place. In other words, it is an expression of sexual and gender-based oppression on a social scale (Charlesworth & Chinkin, 2000: 10-14). At the same time, we need to retain a nuanced view to such action. As Jane Bennett has argued: ‘How do we rethink relationships between gender and violence so that we are neither deaf to what it is that is experienced … nor reified into caricatures of agency, hollow at the core with grief, brittle and full of projective rage at the skin? (Bennett, 2010b: 2).’

In a sense, the Bahati Bill—by taking recourse to punitive sanctions (including the death penalty as the ultimate punishment)—is a deep reflection of the prevalence and social acceptance of sexual and gender based violence in Ugandan society. Put another way, violence directed against women (and non-conforming men) is acceptable. Thus, all women in Uganda (and some men) are vulnerable to violence. But sexual minorities are even more vulnerable to such violence, hence MSM, WSW, and sex workers stand at particular risk of assault, extending from sexual harassment and abuse, humiliation, ill-treatment and torture in places of custody, right through to death. In that sense it is not really surprising about the number of people who publically expressed support for the death penalty prescription in the Bill without batting an eyelid. In sum, the violence directed against LGBTI persons has become ritualized and normalized. This is why homosexuality forms the main focus of attack from religious pulpets just as it does from politicians soap boxes. And in such a context, even religious leaders do not feel any compunction about being violent. As BA told me when I asked her whether she had ever experienced violence directed against her:

**JOO:** I want to talk about the issue of violence … have you ever experienced violence outside where you live whether physical or psychological or emotional?

**BA:** Yeah … like emotionally I have someone who is violating me and that is (Pastor) Sempa because he knows my weakness whenever he meets me.

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78 According to Garcia-Moreno (2010 at 282), ‘Sexual violence is used as a form of punishment; a tactic of control; to assert masculinity and men’s right to sexual pleasure….’

79 The Bill proposes the death penalty for ‘aggravated homosexuality’ (Clause 3) by an offender who is: (a) a person living with HIV; (b) a parent or guardian of the victim; (c) a person in authority over the victim; (d) a serial offender. See also Amnesty International (2008).
JOO: So does he know you?

BA: Yes, whenever he sees me. What really pisses me off is the word (ebisyaga). For him he insists on using that word … and really that tortures me a person like me it really tortures me.

JOO: Can’t you ignore Sempa?

BA: At times I can, but it becomes too much and I can’t ignore. You know you are sitting in a seminar and then you are facing him and then he is pointing at you … he wants to criticize you so there are times you just cannot avoid him and then everyone is looking at you … because you know they know who you are. He (Sempa) thinks that whenever he finds you he wants to prove to everyone around you that you are lesbian.

BA expounded on the violence that she has experienced aside from that from Pastor Sempa:

BA: we do not go to open bars … because the moment you are there you start hearing people chattering … “you are doing this, you are a curse, unnatural…” They are really torturing us psychologically, physically. I have experienced … yeah … during CHOGM I was on TV and was on a boda boda I have a rainbow t-shirt … as I was passing Uhuru (on Kafumbe Mukasa Road) people started shouting and I just told the guy, ‘You know what? I just have to run.’ I was in Mbale carrying out research on how did homosexuality originate in Uganda … my God I was almost burned because I was with a white girl and after everything … it was a session (and) after these sessions it was a dialogue.

JOO: Who was involved in the dialogue?

BA: Those leaders and there was a demonstration a day before of the Sempa’s against homosexuality in Mbale streets. They demonstrated … so for us we did not know about it because we were just on our way. On reaching there we did not know so in the morning we go meet people

JOO: Who were you meeting?

BA: LCIII person they had a meeting … so we used that advantage of the meeting a group of leaders discussing what we are looking for so we went in we were invited … everything went on well although there was that language barrier …. We are like everything is okay but then there was a gang of guys (who) came following us … making noise, stones, shouting “you are promoting homosexuality here in Mbale, we are going to kill you!” We were three because we had hired someone to translate for us from the local government. They gave us that person to take us around to the local leaders deep in the villages. My God, it was in Mbwagoba (sic!) sub county we had to just run got onto the bicycles and there were no Boda boda … it was a big thing and we did not hear what they were saying because this girl was trying to really communicate to them telling them, ‘no … that there are just researchers,’ but they did not want to know anything to do with homosexuality they just wanted to burn and kill.

Why is there so much institutionalized violence directed against sexual minorities? There are several explanations, the main one being that they transgress and subvert the dominant heteronormative sex/gender dichotomies. But that reason alone is insufficient. The real need to seek recourse in violence against others, particularly ‘non-conforming’ women, is linked to the power, resources and privileges that flow from such dichotomies; a loss of that power is a loss that is both personal and political. In such a context, the law plays an all-important role in maintaining the sexual status quo.
through recourse to penalties such as being idle and disorderly, living off the earnings of prostitution and having sex against the order of nature. All these form part of the pantheon of legally-sanctioned violent measures which the State can take against sexual ‘deviants’ in order to ensure that the heterosexual status quo is not disturbed. Hence, violence (both legal and socio-cultural) becomes a tool used to force LGBTI people back into the fold of heterosexuality. In the words of Jane Bennett (2010a at 32) this is ‘the violence of heteronormativities.’ It is within this context that violence against LGBTI persons in general and against young WSW in particular should be understood.

For young WSW, that violence takes various forms including sexual harassment on the street and in other public spaces, threats of violence and actual beatings, extortionate behavior on the part of State functionaries, especially Local Government, Police and Prisons officials, and a general lackluster response to requests for intervention from the authorities.

Victor Mukasa’s case exemplified the kind of state-sanctioned violence that LGBTI persons frequently experience.80 Commenting on the treatment that Victor’s companion Yvonne Oyo underwent at the hands of the Local Council chairman, Justice Arach-Amoko remarked:

*The 2nd applicant was arrested by the Local Council (LC)1 chairman while she was in the 1st applicant’s house resting. He took her to the police post forcibly via his office where he denied her the use of the toilet. From there he took her to the police under escort of Local Defence Units (LDUs) from where she was forcibly undressed and “examined” and her breast fondled by the Police Officer-in-Charge (O.C) to establish her sex.*81

In many respects Victor’s case is both unique and unremarkable. It is unremarkable in that many persons of same-sex orientation face the kind of harassment and violence to which Yvonne (Victor’s partner and co-petitioner) was subjected to by the government officials on a daily basis. In that sense, the treatment received by the two was not unusual. The difference is that they decided to sue the government on account of that treatment. And despite the assertion by the judge that the case was ‘… not about homosexuality,’82 there is no doubt that the issue of sexual orientation was the ‘… large elephant in the room…’ in the words of Busingye Kabumba (2009: 221).

Although the Victor Mukasa case was successfully prosecuted and won in the Ugandan courts, it underscored the structural nature of the violence that LGBTI individuals face, as well as the general position of the State and the public at large as one of acceptance of such violence. This point surfaced in bold relief in the later case of Kasha & Others. Repeating the same mantra that the case was ‘…not about homosexuality per se,’ the judge nevertheless was firm in asserting that the call to violence against sexual minorities, particularly LGBTI persons was not acceptable:

*Clearly the call to hang gays in dozens tends to tremendously threaten their right to human dignity. Death is the ultimate end of all that is known worldly to be good. If a person is only worthy of death, and arbitrarily (sic!), then that person’s human dignity is placed at the lowest ebb. It is threatened to be abused or infringed.*83

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81 Id., at I6.
82 Id., at I8.
But, there is also *intra*-community (or domestic) violence and discrimination between same-sex partners, a phenomenon which has also been noted within the wider community (Staunton, 2009). As BA told me:

> Yeah like I said being gay doesn't mean you are far away from (being) heterosexual. Everything that heterosexuals face, we also face it. With domestic violence … yes we have it just because we are the minority. We keep in rotation around just like you know 'I slept with this one' now I come to you and the other one knows about it … just because we are a small group.

Finally, WSW face the additional risk of what is known as “corrective” rape whereby men forcibly have sex with WSW individuals as a way of curing them of “lesbianism” or turning them “straight” (Mubangizi & Twinomugisha, 2011: 338-339). But more importantly, it is also a mode of punishment against those who deviate from hetero-normativity. Such rape is perpetuated by strangers and relatives alike. As Nurse PLW told me:

> … with the society we are living in there are so many lesbians that are being raped. They are raped some times by thier relatives because they want to take away that … (they want) to cure them of their 'lesbian-hood.' They say its unGodly and a disease.

JOO: And you have heard of cases like this?

PLW: Yeah there are cases and there are some people who feel so disgusted and have attempted suicide just because such a thing has happened to them. So if someone is raped, of course that increases the vulnerability and risk.

Aside from the sheer trauma of the experience, there are a number of additional issues involved with the question of WSW rape. The first is the most obvious link between such ‘corrective rape’ and the spread of HIV. The second point that flows from this is that the majority of survivors of such incidents do not have access to post-exposure prophylaxis, enhancing their risk levels of contracting HIV. The third point relates to the psychosocial dimensions of the issue. While there are only a handful of post-rape trauma specialists and centres in the country, it is doubtful whether they are equipped to deal with the phenomenon of corrective rape against WSW, given that the support mechanisms for heterosexual victims of rape in the country are themselves clearly inadequate. So being a woman and one who is sexually attracted to fellow women creates a double-jeopardy within the context of sexual and gender-based violence. Although largely considered to be an issue in South Africa (Mkhize et al, 2010), Stosh’s testimony about her first sexual encounter with a man illustrates that corrective rape happens in Uganda too:

SM: It was really a taboo. I was in my form two (S2) and there was a shamba boy at home we used to play football, hide and seek and all that, but he used to find me in corners twinkling girls then he be told me that no no … I want to teach you bow to play with boys… I was like, … ‘we always play with boys is there any thing new? what other thing are you going to teach me?’  So this was day that came and it was a very bad day for me. I do not want to think about it, it really hurt me. But it has made me live because it's what I have gone through. So now one day when no body was at home this boy came … the shamba boy. I was putting on my shorts like a child, I did not know, some times you are free with some one I was free with him and on that day when he came he told me remove this thing meaning the short and he was older than me, so be tore my short and put his dick into me,… am sorry Joe I have to speak because I am free with you. Now for the first time I felt
the thing in me, it was like my life was ending but of course not, and it was not for long. But I was feeling pain and I bled. So I waited for my grandparents when they came back home told them the whole story but they thought it was a lie, they said ‘he is your friend, how can you tell us he forced you to do something like that?’ I told them please be forced me but nobody believed me. That thing hurts me up today, it really hurt me that nobody would accept it because everyone thought I was stubborn …. My grandmother told me to go to the bathroom and take a shower and the things ended like that.

ZM described a case which exemplified all the problems faced by a WSW who has been raped and in the process finds herself pregnant—psychosocial, practical and even legal:

...for example in Bwaise … there was a girl who was a victim of corrective rape and now she is pregnant … so she was asking us where she should go because she is a lesbian. She doesn’t know where to go. She wants to get counseling and everything the heterosexuals get especially information on how to get a baby who is HIV free, breast feeding and all those things. But she wants to feel secure enough and maybe she has a problem with her partner because usually they will call for her partner. So she came to us asking for that type of counseling then we sent her to Saint Paul recreation centre… I am sure they have been able to help her.

As the above two cases illustrate, dealing with violence in a patriarchal heterosexual society is bad enough. When homosexuality is added into the mix, it becomes much more complicated. It is as if the hetero-patriarchal society is secretly complicit in strategies to ‘straighten’ queer individuals. When the shamba man raped Stosh, her grandparents/guardians did nothing to punish him: “So I thought maybe they (had) wanted this guy to rape me because they never did anything to him.”

Stosh’s case involved non-state/familial actors. However, the experience of activist Victor Mukasa illustrates that the State is often complicit in reinforcing this attitude of closure and denial. A victim of corrective rape, when Victor (a transman) attempted to recount his experience of corrective rape on a local radio station the Uganda Broadcasting Council—the statutory body supposed to regulate the content of electronic media in the country—indefinitely suspended the presenter and controller of the show. In sum, the State itself not only does not want to believe that young WSW actually exist, it has also closed its ears to the voices of those of them who may be the victims of such violence. Nevertheless, it is a voice that can no longer be silenced.

IV. RESILIENCE, RESISTANCE AND STRUGGLE

Against the background of the conceptual framework and the practical issues arising from the fieldwork undertaken for this study, we can now return to a further assessment of the way in which both can help us understand the current obstacles as well as the transformative potentials of young WSW living with and affected by HIV/AIDS. First, it is necessary to look at the general question of organization and mobilization, the quintessential expression of voice, resilience and resistance in any political or social struggle. Such an analysis is necessary in order to obtain a basic understanding of how LGBTI activists and groups are finding their voice within the context of general human rights activism: What tactics do they use? To what extent do they represent a different mode of doing business from traditional human rights activists? How successful have they been? The second part specifically engages with young WSW’s positioning in the HIV/AIDS pandemic and considers the main issues of concern that arise within that context and are yet to be addressed under the new

MARP's framework. Moving on, the last part of this section of the study offers the view that the struggle of young WSW living with or affected by HIV/AIDS is also one with international ramifications. Understanding the global political economy of activism and ‘imperial’ influences in this context is crucial.

4.1 LGBTI Organizing: Struggling within the Struggle

Few struggles for the improved realization and protection of human rights have been successful without an organizational framework through which the cause at issue is articulated. Rights of association, assembly and organization are crucial in bringing like-minded or similarly-affected individuals together and in better articulating a general grievance which may fail to find expression if articulated by disparate, disunited and individual voices. And if there is a face to the organized struggle and resistance to the resurgence of homophobia, abuse and discrimination against LGBTI individuals in Uganda, that face belongs to Kasha Jacqueline Nabagesera. Head of the lesbian group FARUG and the 2011 winner of the prestigious Martin Ennals Human Rights prize, Kasha has been at the forefront of the fight against the different forms of discrimination leveled against LGBTI people in Uganda. Sitting in her offices at FARUG, Kasha told me the essential goal behind FARUG was to find a way of,

... addressing the psychological and physical torture (facing LGBTI people), and also to console one another. A few of us who shared the same sexual orientation came together with the goal of addressing the obstacles in realizing our rights. It was a fight for our freedom, and a determination to devote ourselves to activism. The initial stages were difficult, but we were committed to changing our experiences and committed to battling homophobia.

Since its formation, FARUG under Kasha has been active not only in bringing the concerns of the community to the surface—whether through media appearances or via court litigation—she has also been key in organizing the community to take a more pro-active stance towards the discrimination and homophobia that has been in resurgence over recent years. Kasha worked hard to mainstream WSW issues within the feminist movement in Uganda. Through her testimonies and awareness-raising efforts, she managed to transform the Uganda Feminist Forum, which had previously paid scant attention to the issue of same-sex erotics.

Alongside MSM groups which have focused on the issue, Kasha has been a forceful voice in seeking for more inclusion of WSW issues in the discussion about the impact of HIV/AIDS on WSW, questioning many of the epidemiological and risk-based assumptions that have informed the debate. In this respect Kasha is part of a new crop of female and transgender activists coming to the fore through LGBTI activism. Together with people like Val Kalende, Victor Mukasa and Pepe Onziema, these activists have challenged the heterosexual status quo by addressing both the institutional mechanisms which are in place, as well as some of the rigid attitudes that have fueled the latent homophobia in the country.

The struggle for more voice on behalf of LGBTI organizations has been a long and difficult one, stretching back to the early 2000s, although marked by several setbacks including the overall shroud of illegality under which LGBTI groups operate. The NRM government has blown hot and cold on the issue, with the former Minister of Ethics and Integrity (Nsaba Buturo) being a vociferous opponent to the idea that LGBTI organizations had any freedoms of association or expression. Thus, one of the main obstacles to the establishment of such groups is their inability to secure official registration, although on the whole, this has not stopped them from accessing resources and
carrying out a modicum of activities. Pepe gives some indication of how difficult the struggle to give organizational expression to the goals of LGBTI organizations was:

If you can remember the days we were at Dizzy Drop\textsuperscript{85} we were starting to organize ourselves. Sometimes we could sleep at the bar and for me particularly people who knew I was sleeping at the bar would ask me because they were shocked and they could ask me, “You have a good home and people who support you. You can come to my house, there is a spare room you can stay there.” My response would be: “I am not staying here because I lack these things, but because people like me lack these things and its an expression of solidarity (with them).

When the LGBTI movement initially took root in Uganda, the organizing mainly revolved around social issues.\textsuperscript{86} They were happy and relieved to meet people like themselves able to operate in a homophobic environment. BA expressed how happy she was to find out that,

… there were (other) people just like me … and so many of them! I was really happy that I am not the only one. We are 1000s and 1000s of lesbians and you know I attended a certain party and we were very many people and I meet very many people I knew and I could not believe or expect them to be there.

Initially, a lot of time was spent on issues of social survival rather than on the political issues affecting their communal existence. Later, the various organizations ventured beyond partying and having fun, and started tackling serious issues of human rights, including healthcare. Stosh traces this development:

We used to talk about sex and pleasure but now we also talk about STDs… We talk about safe sex … we talk about condoms, dental dams, lubricants because that’s almost all that we know. There are many things we are supposed to know, though there are many books to read. For example how do you get along living with HIV? Not everyone really knows how they get around living with HIV; sometime I might read something and I don’t understand it, and I may feel shy to come and ask for an explanation.

The majority of these activists were young, in their early twenties, with a few reaching into the 30s. They were brave and prominent even in the LGBTI movement as a whole. They adopted methods of activism that shook the heterosexual status quo. At an international meeting of HIV/AIDS implementers held in Kampala in mid-2008, they forced their way into the conference hall and unveiled placards protesting discriminatory statements by government officials such as those made by the head of the Uganda Aids Commission.\textsuperscript{87} To the shock of the assembled delegates from all over the world, they were arrested and spent a night in Police detention.\textsuperscript{88} Despite this, the activists succeeded in getting the chair of the Commission to make a direct, albeit half-hearted reference to LGBTI individuals in a plenary session following the disruption of the session. Dr. Apuuli Kihumuro promised to engage in discussions with the LGBTI community, particularly with a view to the inclusion of MSM in the UAC programs.\textsuperscript{89} Activism thereafter took various forms, including

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\textsuperscript{85} ‘Dizzy Drop’ was one of the very first gay-friendly bars in Kampala, established in the early 2000s.
\textsuperscript{86} See profile on Kasha Jacqueline, ‘There is Hope … We Are Not Giving Up,’ Feminist Africa, No.11: 123-127.
\textsuperscript{87} See note 6, supra.
\textsuperscript{89} Interestingly, to date, Dr. Apuuli has never followed up on this promise. Interview with Pepe Onziema on January 9, 2011.
press conferences at which many of the participants wore colourful masks. Their appearance caused a major stir in the Media as complaints were made about their disguised appearance, but more importantly about the issues they were talking about.

In sum, the challenges that WSW groups faced in organizing themselves in the fight against discrimination are many. As marginalized individuals that face discrimination in every aspect of their lives (family, employment, healthcare, etc.), the challenges are multiplied compared to the average community. Pepe discussed having to change his place of abode:

\[
\text{We are struggling with life; many of us do not have good homes you know… we are like pastoralists. Having something to eat is a challenge in itself and the [Babati] bill has made things worse for us.}
\]

BA spoke not only of having to shift house, but also of the limitations she faces in everyday life:

\[
[\text{Y}ou have to keep shifting houses because at times you are not comfortable… There are a lot of commas, question marks in our lives. People ask, ‘How is that?’ ‘Her dressing style,’ ‘What does she do?’ So you feel uncomfortable and everyone on the road is looking at you. Like me who is out … I cannot use public means because I am always feeling insecure because of the homophobic people around. I do not trust the society I’m in.}
\]

Since the early days, the movement has evolved. In the first instance, there are many more groups on the scene, although their legal status is still something of a battle with the authorities. Most of them are concentrated in Kampala, but a number of them report outreach activities and ‘cells’ stretching out into the major towns around the country. Many groups find themselves caught between activism and service with the former entailing a more prominent and explicit focus on identity, while the latter address issues of orientation, providing support, assistance and solidarity with the LGBTI community (Tamale, 2003: 46). The different types of activism raise a fundamental question: Does an organization concentrate on the rights of homosexuals or gender identity, or does it focus instead on the broader questions of privacy rights, the separation of state and religion, and the issue of decriminalization? Should the approach be one of provocative radicalism or the adoption of a more ‘softly-softly’ strategy? (Kiragu & Nyong’o, 2005: 22). The implications of doing so were made clear by BA:

\[
\text{Yeah, as FARUG we try to raise awareness about public health among our members Yeah. But they do not turn up in large numbers because of the fear of being spotted as most of them are not yet out and there are some who are out but they do not want to go political and once you look into a TV camera and you are on Uganda screen then you are political.}
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Of course, this raises questions about the methods of activism that LGBTI groups adopt in the struggle for the better protection of their rights. Richard Ssebagala challenges the mode of activism which apes the tactics used by human rights groups in the West:

\[
\text{The implication is that anyone who openly “flaunts” his or her homosexuality in Uganda does so at his or her own peril. For while there is nothing wrong or novel about same-sex loving, it is}
\]

unfortunately un-Ugandan to put it out there in public bars, on the streets, on radio, or on television talk shows. Indeed, when Ugandans say that same-sex loving is a Western import, what they really mean is that “flaunting” it is a Western import, since talking about any kind of sex, sexual practices, or sexuality is a Western phenomenon that many Africans are still clumsily trying to grapple with (Ssebagala, op.cit. B-50).

Obviously, this view raises a number of salient points about both the methodology of LGBTI interventions as well as about the context within which they are operating. To what extent should the kind of cultural sensibilities and sensitivities Ssebagala is referring to be an issue of concern to LGBTI organizers? Is there a specifically ‘Ugandan’ way of loving? And what is the most appropriate method of activism on a human rights issue?

LGBTI organizing cannot be viewed in isolation. The message needs to be transmitted to mainstream organizations too. In a context of enforced heterosexuality, the specific situation of LGBTI individuals is directly linked to the broader human rights struggles by mainstream organizations, particularly those that deal with the various rights of heterosexual women, those concerned about conflict and violence and groups addressing the HIV/AIDS pandemic. In a bid to avoid social victimization, the mechanisms adopted by LGBTI people include engagement in heterosexual relationships, often multiple and concurrent. This intersection implies that there is a need for a much broader base for the understanding by mainstream organizations of the nature of the rights issues they are addressing. Unfortunately, the uptake by mainstream groups of the human rights violations against LGBTI has been very slow. Thus, very few mainstream human rights and women’s rights groups made public statements of condemnation of the Bahati Bill.

Significant problems still remain for LGBTI activism whether on HIV/AIDS or in broader struggles for the protection and promotion of human rights. At the general level most of the groups are small, poorly-financed, highly reliant on donor funding and unable to use many of the methods typically adopted by their mainstream counterparts. They rely on voluntary and non-professional staff with minimal training in all of the basics of nongovernmental activism and administration. Capacity building is a major issue as is the lack of strategic planning and ordinary managerial skills. A major issue of concern is the extent to which groups are able to organize and handle their finances. An opportunity exists for enhanced mobilization over the electronic media. However, most groups still have a limited web-presence; the content of their sites is minimal and initiation or engagement with campaigns is limited (Ssebagala, 2011).91

But it is important not to forget that LGBTI activists face even broader problems than ordinary mainstream activists. Stosh has faced considerable pressure in terms of attacks on her home affecting her ability to ensure that KULHAS is able to operate. Stosh was a victim of the Rolling Stone outing, alongside some of the better known activists like Kato (who was on the front page), Victor and Kash. However, less than a month later, the notorious tabloid Red Pepper ran an article specifically on Stosh featuring several pictures of her kissing her lover and entitled ‘Shock as City Lesbo Snogs Lover on TV: Our Beloved Nation is Going to the Dogs.’92 As if that was not bad enough, at the end of the story came the following request: ‘Do you know stuff about STOSH


92 Red Pepper, Friday November 05, 2010 at 13.
MUGISHA and where she lives? Call the editor on 78205368.\textsuperscript{93} Quite clearly this is a different level of risk and exposure than that to which non-LGBTI activists are usually exposed. While the dominant threat to such activists comes almost exclusively from the State or from powerful economic and political forces, LGBTI activists also face the threat of socialized violence. Motivated by homophobia, the attack can come from literally anywhere, including from within one’s own neighbourhood. The Red Pepper advertisement is a call not simply to make contact, but to carry out nefarious (and possibly violent) actions against Stosh. Indeed, the advertisement is akin to the type sent out by corporate organizations and the Police wishing to find individuals who have committed criminal acts—such as embezzlement or murder. The notice could as well have been head-lined with the words: ‘WANTED … dead or alive!’ Organizing as an LGBTI activist thus carries even higher risk for an LGBTI indentified individual (Hawthorne, 2005/06 at 36-37).

4.2 Repositioning WSW Struggles within the HIV/AIDS Pandemic:
The story of WSW and HIV/AIDS is a story of numerous double and multiple forms of discrimination and marginalization. The fact that LGBTI issues are publicly debated in Uganda at all today cannot be taken for granted. This is a far cry from where Uganda was on the issue of same-sex erotics and HIV/AIDS even eight short years ago. In 2004 when the country representative of UNAIDS tried to broach the subject of MSM with Ugandan Ministry of Health officials, he found himself in the centre of a major diplomatic row. Eventually he was thrown out of the country. Although homophobia is still pervasive in the country today, the degree of intolerance to LGBTI issues in public health has gone down and the discussion has started (albeit grudgingly) under the framework of the MARPS initiative.\textsuperscript{94} That we have made this progress is to a large extent thanks to the activism of WSW and MSM organizations and individuals in strategically repositioning themselves within the HIV/AIDS pandemic. But why is there a need for a more concise positioning of LGBTI groups within the effort to address the pandemic? Secondly, given the general dominance of the MSM issue in the discussion about LGBTI questions within the pandemic, what should the approach of groups addressing the situation of young WSW be?

First of all, what are the current demographics of the pandemic? HIV prevalence is still relatively high and has ‘plateaued’ or ‘stagnated’ in other words, while infection rates do not appear to be getting worse, they are not coming down. Also, although antiretroviral therapy has greatly eased the burden of the pandemic, there are still many individuals who remain outside this care circuit. Finally, it is important to point out that the first generation of Ugandan children born with HIV is entering adulthood, i.e., youths aged between 18 and 25. This has serious implications for the prevention messages that are sent out for the youth, regardless of their sexual orientation. As KJS pointed out, it is extremely important to be candid in letting the youth appreciate that there are people that are differently-oriented sexually:

\textquote[That way] kids will know okay there are people who sleep with fellow women and there are men who sleep with men. Maybe somehow the kid will be protected from being raped somewhere because they know that even if I am in school and have anal sex, I can contract HIV. Somewhere the kid will try to avoid and try to deal with it, because when you look at the generation at present many of us were born with HIV. From the 80s and above many of the kids where born with HIV and these are the very kids who are in school and something would happen this kid will have anal sex

\textsuperscript{93} Id.

\textsuperscript{94} Interview with Dr. Thomas Muyunga.
with another one you find out your kid is HIV and there is no information to show that when you have anal sex you can get HIV.

The above account demonstrates that far from the issue being the need to address adult actors on the scene, we need to start much earlier. But this is no easy task. This is exactly what UNICEF tried to do in its controversial booklet entitled ‘A Teenagers Toolkit.’ One of the key messages in the book was that it was quite normal for one to be sexually-attracted to peers of the same sex. In response, the Minister of Ethics and Integrity informed Parliament that the UN agency was promoting homosexuality in Uganda and the booklets were withdrawn from schools.95 And this incident happened before the tabling of the Bahati Bill.

In light of the practical demographics of the pandemic today, there is a particular need to target the human rights and sexuality groups that handle issues affecting adolescent girls and boys in order to make the right to sexuality education for persons of that age group a reality (Paiva, et al (2010). As it is, not a very good job is being done of this. The Straight Talk Foundation is the most prominent civil society organization devoted to the discussion of issues affecting adolescents and HIV/AIDS. However, the Director of Radio at the Foundation told me that while they do receive a fair number of communications (letters and phone-ins) relating to same-sex issues from their young listeners, a decision was made not to publish them because their pull-out magazine is a national one, and because of the likelihood of ‘opposition from the general community.’96 In other words, the Ugandan community would not take kindly to print or broadcast responses to queries about sexual orientation. When asked about the stand of the Foundation on the Bahati Bill and its implications for adolescent sex, the Director responded that their focus was on ‘prevention,’ and thus they had not taken a public position on the issue. When I asked about how they respond to questions about same-sex practices by their young readers and listeners, I was told that the advice such writers or listeners are given is that the practice is ‘illegal.’ Public airing of the issue is not done: ‘it is like (the question of) abortion,’97 I was told. And she ended her response with a saying: ‘If you are the heir in a house, you aren’t allowed to make decisions when you father is still alive.’ According to her, this meant that The Time (for addressing issues of same-sex erotics) will eventually come, as it did for persons with disabilities.98

It is trite to point out that the right to education includes the right to receive comprehensive, accurate and age-appropriate information regarding human sexuality in order to ensure young people have access to the information needed to lead healthy lives, make informed decisions and protect themselves and others from sexually-transmitted infections, including HIV (United Nations High Commissioner for Human Rights (2011: 19). If young people are raising questions around same-sex erotics, and sexuality, an organization like Straight Talk should find the means of addressing those concerns (cf. Tolman & Costa, 2010: 390-391).

As already noted, there are only a handful of groups addressing the question of HIV/AIDS within the LGBTI community. Stosh and a few MSM colleagues started KULHAS to offer counseling services to the LGBTI community on issues of HIV/AIDS. But the organization finds itself in a double bind of confronting two stigmatized disclosures. This impedes the progress of their work in

96 Interview with Annette Kyosimire, Director of Radio at the Straight Talk Foundation, Kampala on October 15, 2010.
97 Id.
98 Id.
many ways. Moreover, the sensitization work faces hitches when it comes to printing literature relevant to the community. According to Stosh:

For lesbians and gays I have to make flyers and pullouts but which newspaper is going to accept a pullout in this society? You can try once to see what they will say and then we know where we are… But the problem is they are going to edit it, and to remove it by the time it comes out it’s very normal—like for straight people, but people must understand we are different.

As Dr. MD put it, LGBTI are an “invisible minority” that is they are off the radar of Uganda’s health system.

One of the ways that young WSW reposition themselves in the struggle against HIV is to take advantage of social media in sending out messages on prevention and empowerment. For example, FARUG regularly uses Facebook and SMS facilities to spread their health messages within the community. Almost all Ugandans have seen the popular HIV “Get off the Sexual Network” campaign billboards and heard them on radio and television (see image A below).
The basic message behind this campaign is that multiple, concurrent “side dishes” place you and your partner on the sexual network, thus increasing your risk of HIV infection. What Ugandans do not know is that Ugandan WSW and MSM individuals had a role in the conception of that effective campaign. Ironically, the graphics that depict the sexual network omitted same-sex sexual partnerships demonstrating once again, the numerous hurdles that stand in the way of LGBTI groups effectively positioning themselves within the official structures erected to address the pandemic. WSW organizations do work closely with a number of local mainstream human rights NGOs e.g., Global Rights Alert, the Uganda Health and Science Press Association (UHSPA) and Action Group for Health, Human Rights & HIV/AIDS (AGHA)—the leading network of health professionals—to lobby the Ministry of Health to include LGBTI individuals among the MARPs within the Ugandan national health policy plan. But it is still a long struggle. As Pepe explained with respect to the struggle over the ad above (Image A):

I like that advert because we were consulted as MARPs. I actually spoke to the director of that health marketing group. I was telling him you know... actually we drew the network images before it was officially out there, because we had been telling them you guys things are going on like this. If you really are paying attention you guys have the power to do this ... and there is a part where it says ‘Bob’ and I know some gay boy called ‘Bob’ and I was like that arrow is totally wrong ... they
Indeed, Pepe’s graphic would have looked more like the one below (See Image B):

**IMAGE B: THE SEXUAL NETWORK BOARD FROM AN LGBTI PERSPECTIVE**

The packaging of HIV/AIDS prevention messages is extremely important. As stated earlier, the core message in Uganda focuses on heterosexual sexual relations. This leads many individuals who engage in same-sex erotics to believe that they are not at risk:

*They say it’s a heterosexual disease, it’s not us… they talk about the penis/vaginal sex. There are some people who think that if I sleep with a fellow man I will not get HIV and there are men who think that if I sleep with a lesbian I will not get HIV or married women who want to sleep with...*
lesbians think they won’t get HIV and there are some lesbians who think by sleeping with a gay man you cannot get AIDS.99

Many WSW individuals do not see themselves as MARPs. They have bought into the popular stereotype that there is no risk for HIV transmission among WSW: “Others are like, ‘I am just having sex with a fellow woman… why should I protect myself?’” A simple change in the graphic with black arrows inserted alongside the red ones would convey a much more relevant (and correct) message on the issue of ‘networking.’ (See Image B above)

But the issue of media messages is not the only problem. The same limitations also apply to those in the healthcare industry:

"I just want [health providers] to come and face us. They are scared of dialogue; let them come with this mentality that we are going to meet human beings, we want to hear what George and Stosh have to say. Not just to bark at us, because we have gone through hell, even the press, every time someone barks at us… actually for me when someone barks at me I lose my self esteem there and then I cannot express myself…. They must come around, get our views properly because my views are mine… as a positive person I really feel I should talk to these top health policy makers."101

Because LGBTI individuals were routinely written out of the country’s response to the HIV/AIDS pandemic, activists have had to re-write the whole script in the sensitization literature. As Pepe explains:

“I worked [at the AIDS Information Centre] as a peer-to-peer counselor, some people from my community would ask questions about their orientation because [they thought] it was okay for me to deal with it. But there was no sheet… the data that we were given did not have anything like that so, I was doing it on a personal… improvising here and there…. Eventually it caused problems and they just told me that you know you are going to cause issues for us, you have to go. But people have a right to information, just because it’s not written down and not in the organization’s procedures, it does not mean that I can’t share. So they blocked me from disseminating that information and letting that information go out.

JOO: So did they say that this is not an issue?
PO: One, it’s not an issue, two, it’s immoral, it’s against the moral setting of society and it should not be discussed. But I am amazed that recently some one got in touch with us and now they want to talk about it.

Even though mainstream groups may face internal resistance, they need to be reminded of their social obligations and human rights commitments. As the Executive Director of AGHA pointed out:

“[Y]ou know the issue of LGBTI is controversial and AGHR has not escaped that controversy, there has been a lot of conflict in the organization and even amongst the board members on whether to do some advocacy on the issue, but well… AGHR was founded basically to promote the issue of

99 Interview with KJS.
100 Interview with BA.
101 Interview with Stosh.
right to health among health workers. So on AGHR position on LGBTI, the issue is that AGHR is an organization that promotes health rights and at the core of this is non discrimination. Actually one of our programs areas is converting stigma and discrimination particularly among vulnerable population. It started with HIV/AIDS but increasingly we are moving toward other vulnerable groups like LGBTI and that explains why we are doing this [2010] baseline survey. So AGHR’s position, irrespective of whether members subscribe to the issue of homosexuality or not, we promote non discrimination in access to health.¹⁰²

Strategic alliances have also been forged with their allies in the MSM community in empowering themselves and reducing their vulnerability to HIV/AIDS. For example, they seek out the services of medical professionals within the MSM community to educate them. As Doctor MD explained:

When I went to the gay community in Kampala, we basically started addressing HIV and I found out that ignorance was not only with the MSM but also with the WSW. That is when I started basically self help and discussion groups and I availed myself. For some reason health is not okay yes, it’s highly technical and people are not interested in it, it’s not very attractive or popular. People don’t want to talk about it but okay, with political self awareness it’s good… WSW tend to be better organized than the gay community, I think that is true.¹⁰³

Unfortunately, the stigmatization that people that live with HIV suffer from in the general population spills over into the LGBTI community. This explains why I came across only one WSW who was open about their sero-status. Organisations like KULHAS and Frank n Candy therefore have the task of dealing with the double stigma even within their own community. Dr. MD described it as a “double-edged sword.”¹⁰⁴ WSW wish their voices to be heard. They feel that nobody cares about what they have to say, according to Stosh:

...as a lesbian who is positive with HIV/AIDS… it has given me strength to live… very many people are struggling and fighting that feeling of being double stigmatized; I am stigmatized but I am always jolly. I always want to make sure that unless some thing presses me to the bone thing are always cool.

Aside from the belief in their invincibility, it was also clear that very few WSW either have basic information about healthcare, or know about their HIV status. As Chi-Chi Undie points out, it is essential for any struggle to succeed for there to be genuine knowledge and choice about what options are available (Undie, 2011). This applies particularly to LGBTI individuals who are forced to live double lives and as a result fuel rather than stem the pandemic. It is a matter of choice:

How much choice do we have if we can only be our authentic selves in a clandestine fashion? How much choice do any of us really have when we lack relevant information? The lack of knowledge, which translates into lack of true/informed choice, gives rise to vulnerability and plays a major role in fuelling the HIV/pandemic (Undie, 2011: 54).

The question of choice can even be a problem within the community, let alone for services which are provided mainly within a heterosexual context. Thus, Icebreakers, a mainly MSM organization,

¹⁰² Interview with Sandra Kiapi, Executive Director, AGHA on September 30, 2010.
¹⁰³ Interview with Dr. MD.
¹⁰⁴ Id.
recently recruited a young WSW to address issues relating to the health status of WSW.\(^{105}\) So far, very few women have participated in the Voluntary Counseling and Testing (VCT) sessions that are regularly held at their headquarters, while the reverse is true for the sessions held for men. ZM—who runs the program—suggested that the low turn-out of WSW could be due to the location of the service within a predominantly gay organization. However, it might have broader links to the overall perception of WSW towards the question of illness. As Doctor MD explained,

That is not only a problem in Africa. It has been noted in the west (that) lesbians tend to believe that they do not have problems with illness, they do not have the usual checks which a woman or a heterosexual will get in the West and in Africa usually the biggest things like cervical cancer or breast cancer because okay they assume it’s usually in going to see a doctor that you are reminded checking your breast also getting a pap smear that is making sure you do not have cervical cancer we have very high rate of cervical cancer here. Pap smear had been proven in the West to actually decrease on the high risk of cervical cancer but a pap smear has to be done once every three years which means that you have to see a doctor. If a lesbian is not thinking of giving birth she is not going to think about taking a test, so they come down with cervical cancer. Now what happens here is … I think … is that they are not just reminded. You just fall sick and that is when you present with cancer and then very little can be done about it. That is a problem which has been noted in the West but here there is no research.

On the contrary Nurse PLW argued that it is more a question of stigma:

Maybe they have been exposed, or they are at a risk or they may have the HIV or may be some of them know that they really do have it … but this is something we have to start now (and) rearrange a program where we intensively talk about it … open up people’s mind (and) remove the stigma, because it is also like stigmatizing to say “I am a lesbian and HIV positive.” Its a double: they are so many questions raised and the way people start looking at you and they are wondering how you got the HIV … all those things but I think if we talk about it more if we had a facility available. And maybe the other reason people may not know that they have the HIV is because they have not tested. I would say the testing rate is very low. If you really carried out a test to see how many lesbians have really tested not even only HIV … even they are also other things issues affecting women like the cervical cancer.

JOO: You think that lesbians are more affected than the non lesbians?

PLW: Yes you will find may be 0.5% who have really taken that initiative to take a pap smear.

WSW individuals realize that homophobia in Uganda stems primarily from ignorance, misinformation and fear. Therefore one way that they deal with it is by trying to raise the awareness of the public through advocacy. For some it begins with their own families:

Most people did not know the content [of the Babati bill], as for my mum, she supported the bill in the first place but when I discussed it with her… Babati actually went to Kabale sensitizing people about the bill. But since I had talked to my mum she got a clear picture about what was going to happen. She became more understanding… She actually went to the radio and told people that this

\(^{105}\) Interview with ZM on December 19, 2011.
Like all other oppressed people, LGBTI individuals in Uganda devise some coping mechanisms that help them survive the hostile, homophobic environment. These range from peer support to social gatherings to self empowerment. Pepe shared:

…the tone they would use was like… I felt like okay, this was negative so I basically turned the word into a power thing so people would call me that [derogatory names] and I would just smile and feel like its okay and then people were shocked and they’d say, “You’re supposed to be pissed, why are you happy about it?” So the bashing cooled down.

Finally, there is still a phenomenal struggle that has to be waged within the institutions of Medical learning and training—the Medical Schools and Nursing tertiary institutions. As Dr. MD stated, ‘Sexuality per se is not taught (in our universities) … which is a very bad thing (and) which is one of those subjects which needs to be tackled now … LGBTI issues should be part of the curriculum, but its not … So it happens that its kind of shunted aside … people just continue with the assumptions they get from society.’

Thus, while WSW and MSM groups have done quite a lot to change the terms of the debate about HIV/AIDS specifically and the issue of Sexuality more broadly, there is still a lot to be done. This point was made by an official of the United Nations Fund for Population Activities

4.3 Linking the Local and the Global

There is no doubt that the local context of discussion about LGBTI issues in Uganda has been greatly influenced by international concern and attention to the Bahati bill and by other related developments on the Ugandan domestic scene connected to the sex panic. In fact, few human rights issues concerning the country—including the massive Walk-to-Work (W2W)protests in mid-year—have drawn as much attention from international human rights activists and Western governments. The subsequent global media description of the country as one of ‘the most dangerous countries in the world for gay people’ has heightened that scrutiny. Just one indicator of the increased international interest in the situation concerning LGBTI individuals in Uganda is in the area of Asylum Law. Whereas up to the latter part of the last decade courts in the UK routinely rejected the applications of lesbian asylum-seekers on the grounds that Ugandan law only affected gay men, things changed dramatically after the arrival of the Bahati Bill. Thus, on October 10, 2010, a UK court noted that, ‘… the situation for homosexuals (in Uganda) has materially deteriorated.’ The court cited evidence of pronouncements by Ugandan government leaders on the ‘criminalization of lesbians,’ as well as arrests and violent treatment (including rape) in detention. The court concluded as follows:

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106 Id.
107 Interview with PS on September 22, 2010.
109 See SB (Uganda) v. SOSHD, op.cit.
There is evidence that both the public and the state in Uganda are now more active in their opposition to the gay and lesbian community. The force of the evidence relating to the AHB (which of course has not yet been passed), and evidence that those in authority in Uganda are increasingly suggesting that the current Penal Code provisions relate to lesbians as well as gay men, is that it arguably reflects a growing willingness on the part of the state to enforce anti-homosexuality legislation in Uganda.\footnote{Id. at para. 46.}

So what exactly is the link between the local and the global which should concern our study? In the first instance, there have been significant developments on the international scene moving towards the recognition of sexual orientation as a human right. Whether one looks at the Human Rights Committee, the European Court of Human Rights or at courts in the domestic arena, there is a great deal more acceptance of the idea than there was just a short decade ago (Mutua, 2011: 457-458). Indeed some countries are moving beyond Sexual Rights to the implementation of what have been referred to as 'Love Rights,' i.e. those concerning same-sex partnership and marriage (Wintemute, 2002: 187-191).

The crowning achievement of the struggle for the recognition of LGBTI individuals and relevant subjects of concern has been the recent report by the United Nations High Commissioner on Human Rights (2011) on Discriminatory Laws and Practices and Acts of Violence against LGBTI individuals. That report will most certainly pave the way for more engagement on the issue within the Human Rights Council. Furthermore, international agencies such as UNAIDS\footnote{Interview with Meredith Lwanga and Jotham Mubangizi, UNAIDS on July 18, 2010. The approach of UN agencies is not uniform. For example, the United Nations Fund for Population Activities (UNFPA) was at pains to stress that they operate within the framework of the National Strategic Plan for HIV/AIDS (NSP), which excludes LGBTI individuals (Interview with Rosemary Kiryomunda on October 18, 2010). They also argued that the percentage of infections among MSM was too small to support any meaningful interventions, and that there was a lack of data with regard to behavioural and sexual patterns among sexual minorities. Criminalization adds to the difficulties of accessing the community.} and the Global Fund have adopted a more pro-active—although still cautious—stance on the question of sexual orientation and the need to reach out to MSM in particular (Seale, \textit{et al}, 2010). Regardless of the amount of pressure brought to bear on them and irrespective of the amounts of money involved, Government officials often express exasperation at the insistence on the inclusion of sexual minorities in country programs. Thus, for example, Dr. Zainab Akol, the AIDS Control Manager at the Ministry of Health was reported to have stated, “It is as if the global agenda is to use HIV to propagate sexual minority groups. Let them use the proper channels to deal with such issues.”\footnote{\textit{UN Global Fund Cuts US$270M to in AID to Uganda, Blames Homophobic Policies},' accessed at: \url{http://www.mask.org.za/un-global-fund-cuts-270m-in-aid-to-uganda-blames-homophobic-policies/}. See also Stephen Wandera, 'Uganda Healthcare System Derailing HIV Fight—Report,' \textit{The Daily Monitor}, November 15, 2011.}

For Local WSW and MSM activists in Uganda, there is no doubt that international action has moved the discussion about improved government response to LGBTI issues along. And indeed many groups have liaised with global actors in this sector as is this case with myriad other human rights struggles. For example, they link up with international NGOs such as Health Gap and multilateral organizations such as UNAIDS. They also make sure that when Ugandan processes of health policy formulation are concluded, they are reviewed at the international level to ensure that these processes meet international human rights standards. At the time of concluding this study the process of preparing the third Health Sector Strategic Plan (HSSP3) was reaching its final stages and there was...
some optimism that LGBTI would be incorporated in it. In the words of Dr. Muyunga, the
government cannot avoid meeting its international obligations:

We are reminding them because by virtue of Uganda having ratified the International Covenant on
Economic, Social and Cultural Rights, the right to health is embedded there so when Uganda... The
most important thing about HSSP 3 is you have a policy where all the donors are going to place
resources in a basket fund. Now these guys who want to use public resources are going to get money
from this basket and spend it. So access to medicine, counseling, information, sensitization… if
LGBTIs do not appear in the frames and budget there’ll be a problem…113

But there is a more problematic aspect to the international dimension of the discussion about
LGBTI issues and their expression within the domestic context brought forth both by the
problematic imperial relations between countries such as Uganda and the West, as well as by the
issue under discussion, i.e. sexual orientation and gender identity. That dimension came sharply to
the surface when British Prime Minister David Cameron recently announced that future aid to
developing countries would be conditioned on their policies and laws on homosexuality.114 Asked
by BBC reporter Andrew Marr whether the Commonwealth Summit was prepared to take a ‘hard
line’ on those countries which impose criminal penalties on LGBTI individuals, he responded as
follows:

Well this is something we raise continually, and the fact is you know different Commonwealth
countries are at different positions on this issue and we want them to move. We’re not just talking
about it. We’re also saying that British aid should have more strings attached in terms of do you
persecute people for their faith or their Christianity, or do you persecute people for their sexuality?
We don’t think that’s acceptable.115

Although not specifically mentioned, there is little doubt that the countries in target would include
Uganda. As would have been expected, the statement caused a furore in government and other
circles. Presidential Advisor John Nagenda accused Cameron of displaying an ‘ex-colonial’
mentality, and of treating Ugandans like children: “Uganda is, if you remember, a sovereign state and
we are tired of being given these lectures by people,” he told the BBC’s Newsnight programme. “If
they must take their money, so be it.”116 We are yet to see the specifics of the proposed aid-
conditionality. Nevertheless, Cameron’s suggestion surfaces the international and post-colonial
reach of the HIV/AIDS pandemic in bold relief: to what extent is such a measure a step in the way of the
domestic empowerment of the LGBTI community in Uganda? Also, what does it tell us of the contemporary
global political economy?

In the same way it affects other vulnerable communities, international politics is especially important
in relation to the place of LGBTI individuals in the HIV/AIDS pandemic. As Seckinelgin points out,

113 Interview with Dr. Thomas Muyunga of the AIDS Indicator Survey, on September 9, 2010.
114 The US government followed suit but declined to tie aid to legal and policy changes on the issue of sexual orientation. See
115 Transcript of the Andrew Marr show on the BBC, October 30, 2011, available at:
(accessed on December 28, 2011).
HIV/AIDS is a complex disease both in its causes and in its consequences. The disease tends to highlight existing social, economic and cultural exclusion patterns in society. It also creates new patterns of inequalities and injustices. In this, the lack of political voice and participation of those who are impacted by the disease within the policy processes has been instrumental. In this context the disease and the way international actors have been responding to it have highlighted enduring colonial attitudes within the international policy environment towards the knowledge claims and the agency of people in their own socio-economic and cultural contexts. The lack of political voice and participation of people in the international politics of HIV/AIDS is producing a new layer of inequality and injustice at a global level (Seckinelgin, 2008: 146).

The Cameron statement implicates the wider issue of aid-conditionality, which has long been an item of major concern within the framework of the contemporary global political economy. That it emerges once again within the context of the discussion about LGBTI issues is not a surprise, and we need not delve into the obvious problems that aid-conditionality in general entails. However, for the subject under discussion there are a number of problems that the statement implicated. Hence, several African social justice activists (including the present author) signed and issued a statement in response to the threat. Among other things, it said,

Donor sanctions are by their nature coercive and reinforce the disproportionate power dynamics between donor countries and recipients. They are often based on assumptions about African sexualities and the needs of African LGBTI people. They disregard the agency of African civil society movements and political leadership. They also tend, as has been evidenced in Malawi, to exacerbate the environment of intolerance in which political leadership scapegoat LGBTI people for donor sanctions in an attempt to retain and reinforce national state sovereignty.  

But the Cameron Doctrine is also a reflection of a deeper problem. If in Uganda we are caught up in a sex panic, the ‘international community’ is enmeshed in a ‘culture panic.’ It is a panic that sees all the developments around sexuality through the prism of a thinly-veiled racial lens. As Sylvia Tamale pointed out in assessing the international response to the Bahati Bill: ‘Most reports and commentaries on the bill penned by Western pundits and scholars are told in an ahistorical and paternalistic manner, and in the process, simply reinforce the racist juxtaposition of modern ‘civilized’ Western sexuality and backward ‘uncivilized’ Africa (Tamale, 2011 at 4-5).’ In other words, LGBTI issues have provided an ideal fulcrum for the reintroduction of the colonial discourse and for a reinforcement of the process of ‘othering.’

Implicit in the threat of sanctions is the racialization of homophobia, i.e. presenting homophobia as if it is somehow a uniquely African thing. A number of points need to be made about this. The first is that legal homophobia was imported to Commonwealth African countries via the colonial laws regarding sexual conduct. But secondly, it is trite to point out that in the UK, problems still remain with the phenomenon of homophobia. In other words, homophobia is not a culturally- or geographically-specific phenomenon. Finally, such racialization delinks the current homophobia on the continent from the international influences, especially of the global evangelical Christian movements, which by all accounts were fairly influential in driving the Bahati Bill (Kaoma, 2009,

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Indeed, it is easy to forget from such posturing by government officials like Cameron how virulently homophobic countries like the United States were until a few years back, joining hands with Islamic countries at the United Nations to oppose the inclusion of MSM in various declarations over the years (Altman, 2010: 196). Finally, aid-conditionality also raises the question of lip-service responses, as has been experienced for example in the case of phenomena such as gender, where there is an add-in-and-stir element to many of the internationally-assisted donor programs that do little to change social relations on the ground. Ultimately, therefore, the struggle for an improvement in the lives of LGBTI individuals has to be a Ugandan one. By way of conclusion, we now turn to an elaboration of the shape that struggle should preferably assume.

V. ON WHAT STILL NEEDS TO BE (UN)DONE? A SOCIOLEGAL PERSPECTIVE

This study has basically sought to answer a single broad question: To what extent can legal or human rights remedies provide a useful framework of recourse in the struggle for more inclusion and empowerment of young WSW living with or affected by the HIV/AIDS pandemic? A number of basic principles need to be restated before we return to provide an answer to this question. In the first instance all States have an International Law obligation to uphold the principle of non-discrimination, an obligation which finds local expression in constitutional instruments, parliamentary legislation and executive regulations (United Nations High Commissioner for Human Rights (2011: 4-5). Although only a handful of countries explicitly prohibit discrimination on the basis of sexual orientation, we need to interrogate whether it is still permissible in the 21st century to discriminate solely on that basis or indeed on any other. The explicit criminalization of consensual homo-erotic activities would also violate other rights such as those to privacy and to freedom of expression (Murray & Viljoe, 2007 at 88). It is thus our contention that laws which impose restrictions on homosexual behavior or identity are impermissible, unless also applied to all persons regardless of sexual orientation and gender identity. Indeed, one could argue that even when applied equally across the board irrespective of gender identity or sexual orientation, laws which violate individual sexual autonomy, e.g. criminal adultery, abortion or the many proscriptions against sex of any kind between consenting adults violate fundamental principles of human rights. The same argument is applicable to the attempted criminalization of HIV-transmission, which has also been a recent subject of debate in Uganda.

Secondly, it goes without saying that respect for human dignity and effective responses to HIV/AIDS are inextricably linked. Obviously, HIV/AIDS per se does not violate the dignity of those who are forced to live with or are affected by the disease. Rather it is the institutions, laws, policies and structures that are created to respond to the disease which either promote human dignity or violate it. In this respect the HIV/AIDS pandemic provides both a crisis and an opportunity. As Frans Viljoen points out, the opportunity emerges because HIV/AIDS lays bare the negative consequences of patriarchy (Viljoen, 2004 at 50). We can add to this the argument that it also exposes the clear limitations of heterosexism, which we have defined as the belief in the natural order of a heterosexual human existence, shutting out any other form of sexual contact. The

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119 In the words of Daniel Tarantola, ‘If HIV is the root cause of AIDS, stigmatization and discrimination are the root causes of the AIDS pandemic (Tarantola, 2009: 9).
crisis will continue if the focus of our strategies is on the pandemic and not on the wider structural conditions that make HIV a mechanism to entrench violence, discrimination, homophobia and patriarchy: ‘Failure to legislate (on HIV/AIDS) is a failure to acknowledge that factors such as inequality, polygyny, early marriage and violence against women fuel the spread of HIV (Id.).’ In other words, the problem is not sex per se, rather it is the social conditions in which sex is conducted. Failure to tackle homophobia and heterosexism will compound the many problems implicated by HIV/AIDS.

By focusing on the legal and human rights contexts and complexities which influence the impact of HIV/AIDS on a particular sexual minority, viz., young WSW, the study has surfaced the major autonomy, access and protection rights issues faced by such individuals. It has also reviewed the presence or absence of laws and law enforcement practices. We sought to assess the extent to which such a minority benefits from human rights protections and is able to access justice in a real and not merely a theoretical sense. It is quite clear from such an analysis that a positive legal environment goes some distance in ensuring that those most vulnerable to stigma are fully protected. This is clear in the recent turn-around by the Ministry of Health, which accepted to have MSM participation in the formulation of the HSSP-3. Hence, the headway made by the Uganda Aids Commission (UAC) and the Ministry of Health to include the situation of MSM in their programming needs to be supported. More importantly, the establishment of MARPS is a positive measure.

MARPS is nevertheless limited in terms of its ambit and purview. It is still married to the harm-reduction idea, not to the wider goal of dealing with the structural conditions that ensure that MARPS remain second-class citizens insofar as the approach to the pandemic is concerned. First, is the fact that the inclusion of MSM or sex workers in their target groups is directly related to their impact on heterosexuals, much less than it is concerned about the impact of HIV/AIDS on MSM or sex workers per se. In other words is ‘at risk’ directed to the specific MARPS community, or to the wider (heterosexual) public? But secondly, in the absence of a decriminalization of same-sex practices and identities, the focus on MSM actually reinforces the penalization of the kind of homoerotic sexual practices in which MSM are engaged. If this was not the implicit message behind the inclusion of MSM in these programs, then why don’t the advocates for their inclusion proceed to the next stage, i.e. challenging the laws penalizing same-sex behaviour? As it is, even the present inclusion of MSM is shrouded in secrecy, double-speak (“MARPs”) and indignity as they fall in the ‘other’ category. And moving beyond the MARPS framework, the same approach of officialdom confirming the illegality of same-sex activities and identities is manifest in many other diverse spaces, ranging from the limitations imposed on access to the recently-established Equal Opportunities Commission (EOC), to the attempts to criminalize the transmission of HIV in the Bill which has been in play in Parliament for the past several years. The short point is that the struggle involves more than just a focus on risk reduction and extends to the wider process of social transformation which will tackle the questions of inequality and injustice that underpin the structures of control and governance in the HIV/AIDS arena.

Some idea could be taken from the changes that have recently been underway in Kenya. There the government has established special, round the clock clinics for the gay community, facilitated the importation of protective gear (such as condoms and lubricants), trained health workers on how to

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120 Interview with Kikonyogo Kivumbi.
121 See S.15(d) of the Equal Opportunities Act, No. of 2007, which sought to prevent the Commission from cases involving sexual and other controversial minorities. The provision has been challenged in the Constitutional Court in the case of Adrian Jjuuko v. Attorney General, Constitutional Petition No.1 of 2009.
handle those seeking healthcare and rolled out a vigourous sex education campaign among the youth.\textsuperscript{122} While these initiatives represent a bare minimum because they still do not confront the root causes of the situation of those who are most-at-risk, adopting similar strategies in Uganda would help us move away from the dominant paradigm of risk/harm reduction and presents the potential for addressing the situation of sexual minorities in a different way. Finally, there is also a need to address the packaging of the media and other messages which are sent out about HIV/AIDS, which are often ‘…unpleasant, incomprehensible to the lay audience, unnecessarily explicit, highly suggestive and culturally insensitive (Afolabi, 2010: 37).’

But none of these measures directly address the situation of the main subjects of attention in this study, i.e. young WSW living with and affected by HIV/AIDS. First, is the need for much more research in the area. As Cary Johnson (op.cit. 105) states:

\begin{quote}
No group has been more abandoned within HIV programming that same-sex practicing women. Governments and NGOs must recognize than women who have sex with women are at risk for HIV and should not be neglected. This must begin with a more complete understanding of the complexities of the lives of same-sex practicing women and the nature of their HIV-related risk.
\end{quote}

Second, there is a need to recognize the distinct human rights questions that affect WSW, and which may be different from those that affect MSM and other sexual minorities. What would the extension of the full panopoly of sexual and reproductive health rights to WSW and other same-sex individuals—including the right to marry—actually mean? Here we must return to the area of Human Rights and to the question we posed at the start of this section. As the title to this section of the study indicates What is to be Done (or rather undone?), the arena of human rights work is primarily an arena of struggle. It is both a struggle against the wider structural conditions in which individuals find themselves enmeshed, as well as an internal battle of values.

It is clear that the range of obstacles facing young WSW living with or affected by HIV/AIDS are numerous. Together with other sexual minorities they remain largely invisible in both the policy and legislative frameworks that address issues of health, discrimination and equality. Thus, for example, Uganda’s initial report to the Committee on Economic, Social and Cultural Rights (incidentally drafted 24 years after Uganda ratified the instrument) makes no mention of the varied issues that LGBTI persons confront in accessing these rights. When mention is made or action taken on the issue of LGBTI person, it is largely punitive or discriminatory.

Related to this is the dearth of materials and equipment addressed to WSW. There is an absence of accessible public health information about HIV which is specifically addressed to WSW. Hence there is a package of rights that should be unlocked for young WSW. Knowledge and information for young WSW living with or affected by HIV/AIDS is key.\textsuperscript{123} This would include knowledge about safe sex, transmission and prevention. However, information alone is insufficient and needs to be accompanied with the necessary materials to ensure that young WSW can have safe sex in practice. This is a point reiterated in the LGBT Abuja Declaration addressed to African health ministers:

\textsuperscript{122} See Cosmas Butunyi, ‘New Drive to Fight AIDS among Gays,’ The EastAfrican, May 31-June 6, 2010 at 32.

We are frustrated by the huge absence of appropriate STI and HIV transmission and prevention materials specifically geared toward us in our countries. We want to engage in respectful and loving safer sex practices and therefore demand adequate provision of appropriate prevention materials. We want target-specific pamphlets, dental dams, water-based lubricants, appropriate condoms and gloves. We demand access to STI and HIV treatment.  

Improved access needs to come with improved messages about HIV and AIDS. There is still a shock (‘Grim Reaper’) element to the advertisements and other means of communication about the disease, which also reinforce heteronormative relations. There is an urgent need to send messages to young WSW that they are not immune from the disease, and that there are mechanisms available which they can access for advice and support. Stigma and discrimination are further obstacles to securing medication and support services for HIV+WSW. As we have already argued, this negatively impacts on mental health, increases violence and ultimately leads to the further transmission of HIV and the progression of the disease. It also runs counter to the non-discrimination principle in several treaties to which Uganda is party.  

Although a non-binding instrument, Principle 3 of the IPPF Sexual Rights Declaration offers a comprehensive framework for how the issue of non-discrimination should be addressed:

Individuals experience different barriers to the fulfillment of their sexual rights. Substantive equality requires these barriers to be removed in order for diverse individuals to enjoy fundamental rights and freedoms on an equal basis with others. This may require that particular attention be paid to marginalized and under-served groups.

We can address our observations and recommendations about human rights to various categories of individuals involved in ensuring that the rights of WSW living with or affected by HIV/AIDS are fully realized. First, it is necessary to underscore the point that the Ugandan government bears primary responsibility for guaranteeing human rights. The obligations herein follow the well-known respect, protect and fulfill typology, which covers non-coercion in healthcare, protection against human rights violations particularly for individuals and groups described as ‘vulnerable’ and the adoption of necessary measures to ensure that the right to health is realized for young WSW. In meeting the obligation to fulfill, states undertake a further level of obligation including those of Availability, Accessibility, Acceptability and Quality. As a guideline, Principle 17 of the Yogyakarta Principles reiterates the principle of non-discrimination and goes on to detail nine aspects of state obligations that underpin this right. Among the nine obligations are: (i) the duty to take legislative and other measures to ensure the right to health and access to healthcare; (ii) the treatment of medical records with confidentiality; (iii) the design and development of healthcare resources and programs to improve the health status of LGBTI people and address discrimination and prejudice; (iv) the need for informed and empowered decisions regarding medical treatment and care; (v) non-discrimination and respect for the diversity of sexual orientations and gender identities in sexual health, education, prevention, care and treatment, including recognition of next of kin, and (vi) facilitating access to gender reassignment treatments and adopting policy-making and education and training programs for healthcare workers to improve treatment for LGBTI people. See also Corrêa & Muntarbhorn (2010) at 59-62.

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125 The most important being the Universal Declaration, the two international covenants, the African Charter on Human & Peoples’Rights (and the 2003 Women’s Protocol) as well as the many declarations and proclamations to which Uganda has subscribed, such as the 2001 Abuja Declaration on HIV/AIDS, Tuberculosis and Other Infectious Diseases, available at: [http://www.uneca.org/adf2000/abuja%20declaration.htm](http://www.uneca.org/adf2000/abuja%20declaration.htm) (accessed on December 28, 2011).

126 Among the nine obligations are: (i) the duty to take legislative and other measures to ensure the right to health and access to healthcare; (ii) the treatment of medical records with confidentiality; (iii) the design and development of healthcare resources and programs to improve the health status of LGBTI people and address discrimination and prejudice; (iv) the need for informed and empowered decisions regarding medical treatment and care; (v) non-discrimination and respect for the diversity of sexual orientations and gender identities in sexual health, education, prevention, care and treatment, including recognition of next of kin, and (vi) facilitating access to gender reassignment treatments and adopting policy-making and education and training programs for healthcare workers to improve treatment for LGBTI people. See also Corrêa & Muntarbhorn (2010) at 59-62.
transmitted infections and HIV/AIDS. It may also extend to the provision (or at least the non-prevention) of access to sexual tools of pleasure such as sex toys, vibrator and dildos.

However, it is important to remember that it is not the State or the Government alone, which actually implements these obligations. Healthcare professionals may become complicit in human rights violations by carrying out activities on behalf of the state or on their own behalf that violate fundamental rights or by adhering to healthcare policies and programs which discriminate on the basis of sexual orientation or other prohibited grounds. It is therefore necessary for healthcare providers to familiarize themselves with human rights standards and learn to identify situations of competing loyalties in a bid to ensure that the rights of patients are prioritized over competing and conflicting interests (Centre for Reproductive Rights, 2011: 11-12). Sexuality in all its diversity defies norms and uses human rights standards to help in resisting regressive standards (Miller & Vance at 13). We need to develop policies that foster the ability to experience chosen sexualities, without coercion, and allow more diverse public conversations about what can be desired and done, without inadvertently reinforcing a single normative standard of sexuality or pleasure (Id., at 14). Hence, there is clearly a need for the revamping of the Sexual and Reproductive Health and Rights courses in our systems of Public Health education (Allotey et al, 2011).

There is nevertheless some need for a word of caution. A human rights approach can be unduly restrictive because it is grounded in legalisms, and may fail to produce the required results (Mertus, 2007). In other words, at what point do you adopt an assimilation-oriented strategy which seeks inclusion into existing institutions and structures, versus oppositional strategies which ‘…advance new priorities and advocate for alternative discourses within new or significantly revised institutions’ (Mertus, 2007: 1051). This is an ongoing issue of tactical concern. A human rights strategy can also fix individuals and communities within a particular ‘identity’ category, ignoring the internal tensions and even conflicts within that category and privileging those with access, power and resources within it. Such categorization can result in victimhood and ghettoization, problems from which the broader struggle for women’s human rights has often suffered.

Strategically therefore, much thought needs to be given to an approach grounded in human rights. While stigma and discrimination are a problem that still surrounds the situation of people who live with or are affected by HIV/AIDS, there is no doubt that for young WSW the plight is multiplied. Although the Bahati Bill makes only scant mention of HIV/AIDS, it is quite clear that its general homophobic slant made the situation of sexual minorities living with or affected by the disease all the more precarious. Although not yet passed into law, one could say that it affected both ‘law on the street,’ as well as access to justice potentials for young WSW. This is because, especially in the initial aftermath of the Bill’s introduction, it further invisibilized WSW, and reduced the extent to which they sought to access services. Hence, the struggle for law reform or more appropriately for ensuring that any reform of the law is sensitive and all-embracing, must be fought on several fronts. Simultaneous to the introduction of the Bahati Bill has been the debate around the HIV/AIDS bill, which among other things, has sought to criminalize HIV transmission, exposure and non-disclosure. There is little doubt that if such a law were to be enacted, it would exacerbate the conditions of stigma for those living with or affected by HIV/AIDS. For WSW who are even more marginalized, the inequalities and stigmas will be emphasized. Activists must thus fight tooth and nail in order to ensure that the Bill doesn’t see the light of day in its present form.

127 See also General Comment No.3 (2003) by the Committee on the Rights of the Child.
Looking to the courts of law or pursuing judicial strategies as the main mechanism through which the rights can be enforced is another typical tactic. While some success has been made in Uganda in terms of protecting the rights of LGBTI individuals through recourse to the judiciary in cases like Victor Mukasa and Kasha et al, the limitations in such a strategy need to be noted (Mubangizi & Twinomugisha, 349-350 and Kabumba, 2009, 220-224). Neither of these two cases—important though they are in the struggle for the recognition of the rights of LGBTI persons—turned on sexual orientation or directly dealt with the myriad issues surrounding the structural problems sexual minorities face. Indeed, the dangers of a judicial strategy were manifest in the case of Uganda Association of Women Lawyers & 5 Others v. The Attorney General, (the ‘FIDA case’) in which women’s rights activists sought a declaration from the Constitutional Court that the Divorce Act was unconstitutional because it provided for the disparate treatment of men and women in terms of the grounds of divorce.

While the court found that the Act was indeed discriminatory, instead of declaring the fault principle on which it was based unconstitutional, it declared that the Act should be applied equally to both women and men. In effect, this compounded the structural problems affecting divorce and reinforced the hierarchy of norms within this particular sector of the Law. The same problem happened in the case of Mifumi v. The Attorney General, which failed to overturn the practice of bride wealth. It is important to note that all these cases turn on the question of women’s human rights, taking us back to Val Kalende’s trite observations about the issue of citizenship. In other words, when it comes to the case of women’s rights—the penultimate frontier to genuine and full liberation for the human race—we are clearly confronted by a one-step-forward, two-steps-back syndrome. Thus, there is no guarantee, for example in a petition on the decriminalization of the sodomy law that a court in Uganda today would follow the best-case example of South Africa where the offence was declared unconstitutional, or the worst-case scenario of Zimbabwe, where the court held that it did not contravene the non-discrimination clause of the constitution, and that it was, in any event, reasonably justifiable given the prevailing conservative social norms in that country. The global jurisprudence on decriminalization is decidedly mixed.

Does this mean we should abandon the pursuit of the decriminalization of homosexuality as an offence? Our answer is a firm ‘No.’ However, taking the route of litigation must be done with a degree of care and critical introspection, with a particular view to timing, context and the quality and composition of the Bench to which such a petition would be addressed. As Carol Smart cautions, ‘In the field of law feminist work has to be especially careful in that in identifying problematic or even harmful practices, invoking the law may merely introduce a new set of problems rather than solutions (Smart, 1999 at 121).’ This study argues—in line with the Yogyakarta Principles—that as a matter of fact, the legal regime is sufficient to address the situation of sexual minorities, including that of young WSW irrespective of the situation in which they find themselves. We are not looking for law reform. At the same time, it is particularly important to subject legal regimes to human rights impact assessment exercises in order to gauge the extent to which legislation impacts.

129 While men only had to prove one ground (fault) to secure divorce (Adultery), women had to prove two, i.e. Adultery coupled with desertion, apostasy or violence.
133 Baudh, op.cit. at 18 points out that the judicial record is ‘scattered and varied.’
negatively on the protection and enforcement of human rights. Hence, some caution is in order. In the words of Miller and Vance,

*Advocates working on the sexual rights of a stigmatized group often work to 'promote' their group, that is, move them up a rung or two in the sexual hierarchy, from a more to a less penalized level. But all advocates should be critically interrogating the sexual hierarchy as a whole: Are its underlying principles defensible from a rights-based perspective? Do the standards of sexual legitimacy promote a rights-enhancing culture? If the answer is no, advocacy must encompass the larger project of transforming the sexual hierarchy, or at the very least of not validating and strengthening it, when they advance the interests of their constituency* (Miller & Vance, 2004 at 8).

Central to effecting full legal rights is the right of access to legal services. Obviously, this must be linked to the reasons for which such access is routinely (and even institutionally denied), i.e. the criminalization of same-sex activity and identity. The issue of decriminalization thus has to be at the forefront of any struggle to achieve improved rights of access for LGBTI persons in general and for young WSW in particular. Criminalization implies that the very existence of such individuals is negatively subjected to the whims of law enforcement officials, healthcare providers or any other person in a position of power and authority. Even if the Bahati Bill were to remain a dead-letter, the Sword of Damocles that it introduced still hangs over the heads of LGBTI individuals. With specific regard to the issue of HIV/AIDS and the pandemic, the approach adopted thus far goes some way, but it is premised on the wrong assumptions. In the words of Kenyan Gay Rights activist David Kuria, ‘Decriminalization is a necessary condition for addressing both human rights violations and securing access to health services for our community.’ This is the position adopted in the *African LGBTI Declaration* of April 18, 2010 (Tamale, 2011a: 182). Decriminalization must therefore be the first order of business in seeking to ensure that there is a transformation of the current politics of sexuality in Uganda (Hollander, 2009).

Finally in this struggle, there is the danger of the ‘foreign’ tag and the claim that the recognition of a right to sexual orientation offends cultural values. How do you address the issue of culture? Ssebagala warns that whatever one may think of the need for the human rights of same-sex individuals to be respected, there are obvious cultural constraints that have to be tackled:

> Ugandans do know that homosexuals exist in their midst and are having sex with each other in the privacy of their homes, but they really don’t want to hear talk about it. When they hear talk about it, it drives them to think that those who are calling for homosexuals to be jailed have a point because, for Ugandans, the sex they don’t hear talked about—gay or straight—doesn’t happen. In other words, to push people to talk openly about sex between men and men, when they don’t even talk about sex between men and women, is to them morally unconscionable. Like it or not, changing traditional mindsets takes time, even when people are willing and armed with the tools to change (Ssebagala, op.cit, at B-50).

Ssebagala’s caution needs to be read much more as one of form rather than substance, i.e. a question of strategic retreat rather than one of surrender. There is no doubt of the importance of being sensitive to the cultural context within which one is waging a struggle for human rights. But there is no single, static uncompromising ‘culture’ in Africa. Indeed, many aspects of African culture in

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general—and Ugandan culture in particular—are built on ideas of inclusion (ubuntu) and engagement (palaver) not discrimination and hegemonic discourses. Culture is not static and constantly changes in a bid to stay relevant to world-views that are likewise always in flux (Tamale, 2008c, 53). The legal forms by which sexuality was controlled in most pre-colonial African societies did not pay much attention to sexual orientation. Indeed, the many varied forms which same-sex relations assumed is testimony to a much higher degree of tolerance and accommodation than those which are being paraded in the name of African culture on the continent today. Moreover, the really foreign influences are homophobia and sexual intolerance, which were mediated through external religious (Islamic and Christian) influences; Ugandan societies were and are basically pluralistic and polytheist. It is those qualities that we need to harness, revisit and reintroduce into the contemporary structures of the forces governing sexual politics in the country, and into our strategies for addressing homophobia and heterosexism.

It is necessary to end this paper by returning to Val Kalende’s original observation about citizenship, in which women are, in general, accorded a lower status than men. While recognizing some of the many limitations that a human rights approach brings to the study of sexualities, it is essential in one regard, namely that it seeks to equalize all persons, irrespective of the social and other inequalities from which they suffer. In other words, it strives to reify the notion of citizenship and in this instance, the idea of a sexual citizenship. Such citizenship entails ‘… upholding the rights and responsibilities of all people to have (full) control over their sexual and reproductive health (Lepani, 2010: 23).’ Within the African context such citizenship needs to be tied to the struggles against poverty and gender inequalities (Nyanzi, 2011a: 486-489). It would also cover the ability to ‘… express sexual identity, desire and pleasure in healthy and safe ways, free of fear, harm, and force….’ (Lepani, 2010: 23). Legal, social, cultural and religious arguments for the failure to accord sexual minorities equal protection ultimately amount to a deprivation of the right to citizenship. And there lies the rub!
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