



## AFRICA RIGHTS TALK - SEASON 2 EPISODE 4

### Understanding the rights of sexual minorities as human rights *In conversation with Dr Adrian Jjuuko*

*Africa Rights Talk* is a [Centre for Human Rights podcast series](#) exploring human rights through conversations with academics, practitioners and activists. The Africa Rights Talk series is hosted by [Tatenda Musinahama](#). Each episode offers insight into the African human rights system and the state of human rights in Africa, and globally.

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**Edited by Tatenda Musinahama**

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Thiruna: My name is Thiruna Naidoo, and I am from the [Sexual Orientation, Gender Identity and Expression and Sex Characteristics \(SOGIESC\) Unit](#) at the [Centre for Human Rights](#) and today I am in conversation with Dr. Adrian Jjuuko, a Ugandan human rights lawyer, researcher and consultant. He is the founder and executive director of the [Human Rights Awareness and Promotion Forum](#), and is also an [alumnus](#) of the Centre for Human Rights. Welcome Adrian.

Adrian: Yeah, thank you very much Thiruna.

Thiruna: So I wanted to know what motivated you to get involved in advocating for the rights of sexual minorities and other marginalised groups in Uganda?

Adrian: I would like to also know that, but I think I have an idea. I think my background is about marginalisation. So I was orphaned at the age of 12, and being without parents was something that was quite an experience for me- sometimes going without food, sometimes being looked at as a child of no one, which was kind of true, but it gets to you; you feel discrimination, you know how it hurts. So for me, even when I joined Law school, I knew I would always do work on human rights. I wasn't sure which kind of human rights I would work

on but I was pretty sure I was going to work on human rights and when I left law school that was the time when the [Anti Homosexuality Bill](#) was being tabled in Uganda. And then I just took on the work, began coordination with the coalition and before I knew it, I was deep inside the work of LGBT right organising. I started going to court, using the law that had gone to school to study. And that's how it came to be.

Thiruna: Why do you think it is difficult to realise the equality of persons who identify within the LGBTQ plus group?

Adrian: I think it all has to do with our background as Ugandans. I don't know about other countries but as Ugandans you know you go to school, you grow up in a family, you go to work within a particular setting which is where they call your culture, what they call what is normal, how you're supposed to behave and how you're supposed to act. The church tells you how to act and how to behave [and] your society tells you how to behave. And you grow up thinking that people who are LGBT are not even human, that human beings can't do this. These are things that most people believe, so it becomes difficult to convince someone that LGBT rights and just about people having anal sex because that's what people believe is central to homosexuality. In their view it's all about anal sex, and if people don't go beyond sex, then they can never get to the point of equality.

For me, I think people need to understand that sexual orientation or gender identity is part of what someone is it's not just what someone does, but part of what someone is. And bridging that gap from someone thinking of homosexuality as just anal sex to them thinking about it as someone being homosexual as a sexual orientation as a gender identity is that gap we need to bridge. It's not easy to bridge because everything else tells you, no this is not true. Everything tells you know what, it's not what's supposed to be. That's where activists need to do work. That's where they need to come in, that's where they need to engage people. That's where we need to see examples of LGBT people who have made it in life, because you grew up thinking it thinking LGBTQI people are just homosexuals who are up to no good. And that means the examples you see, people that you see who are said to be homosexual are people who appear to be up to no good. So there are no positive examples. In Uganda there are very few people who say, I'm gay, they come out as gay and they are lawyers, they are doctors, they are members of parliament, they are businessmen who are successful. So, there not even positive images anywhere; not in the movies, not on radio; not on TV of LGBT people. So, how do we then bridge that gap where people feel like these are terrible people and they don't see them anywhere being people who can be seen as role models in society. So, bigger issues we also have to go to the economics. Because marginalisation also goes to economics. The people who are marginalised are

also poor, because they're poor they won't to be visible and because they're invisible, they won't be protected. So it's a bigger conversation around, lifting up people who are like marginalised, around empowerment, around visibility and around how we can use tools like the law to actually defend rather than oppress LGBTI persons.

Thiruna: What is the influence of religious views in relating to the issues affecting LGBTQ+ plus rights?

Adrian: Okay, so, I think generally speaking, religious views are supposed to be a good influence on the protection of LGBT rights, because for me, what I know as the basic message of religion [i.e.]Christianity, Islam, even African Traditional Religion is that love your neighbour as you love yourself, do good, ubuntu as it is said here. "I am because we are." So I don't think religion intrinsically, is a problem to LGBT rights. However, what has become a problem is conservative fundamental religion coming with the precept notions of what Christian should be, of what a Muslim should be of who a traditional African should be or how they should be should be behaving. So they interpret the scriptures in their own way, and in a way that's abrasive and aggressive. What happens at the end of the day, is that anyone who is seen to be not toeing the line of intolerance and hatred is seen as a person who is an outcast. So people are forced. And that's how religion acts, people are forced to do what the religious leaders tell them to do because of their conservatism.

So, in Uganda, if you look at the wave of operation and opposition against LGBT people, you find that people who are at the forefront of that anti LGBT movement are religious leaders, that's for sure. So everywhere you go, they put up their banner of religion. They don't read the scriptures that actually do promote equality for everyone. They read the scriptures that don't promote equality and this is where the problem comes in. So for me at this is a matter of fundamentalism. It's a matter of people being obsessed with scriptures in the Bible and the Quran that may not be friendly to LGBTI people but then they forget the equality provisions in the same books. So religion should be a good influence and there are some progressive churches of course that have taken on the cause for LGBT equality. But then for every one progressive church there are more than 100, churches that are not progressive and this is where the bigger challenge comes in.

Thiruna: What challenges do you face advocating for marginalised groups in what appears from the outside, or hostile legal environment in Uganda? Are there any similarities between the legal environment in Uganda and other African countries?

Adrian: I'm going to start with the question around the similarities between Uganda, and other African countries and also I'm going to unpack the issue of a hostile legal environment. So if you look at the law in Uganda. Yes, Ugandan Law, prohibits same sex marriages in the Constitution. Ugandan law criminalises same sex conduct. It calls them unnatural offences or what we call carnal knowledge against the order of nature and if you go into details of what that means, it may not actually be same sex conduct as criminalised. In fact, no single individual has ever been convicted for consensual same sex relations in more than 100 years of Uganda's penal code. And that is important because it's not exactly what the law says and what the law criminalises, but what people imply that the law criminalises. Because right now the implication is that the law criminalises LGBT organising. It doesn't. I don't see the connection between holding a meeting talking LGBT issues, and the criminalization of homosexuality. Now the law is also seeming to criminalise organisations; I don't see that connection between that. So the law is used as an excuse to cover up all sorts of homophobic actions. So for me I don't think the biggest issue is the law and I don't think the legal environment is necessarily hostile. People are hostile and they use the law for their own hostility.

However, I will I say that Uganda, as a country I wouldn't regard it as very homophobic place. In fact, the research I've done seems to suggest that Uganda is quite an ignorant place. People don't know what homosexuality is. I did my LLB research and I asked people, whether they will be okay with homosexual people or not. And they said they wouldn't. I asked him what homosexuality is and the answer was homosexuality is anal sex. Now, if we're not comfortable, if you don't know what homosexuality is, if you think homosexuality is just anal sex, then how can you say, "I don't support homosexuality"? How can you say I'm completely against homosexuality when you don't know what homosexuality is? So for me, the issue of ignorance comes in as a big issue. People need to be aware that homosexuality is not just about sex. It's far much more than sex although sex is an intrinsic part of who a human being is. But it's not just about sex, it's about the whole human being. A person with needs, a person who needs water, a person who needs electricity, a person who goes to school, a person who has a mother, a person is a whole human being, not just a sexual act. For me I think that's where that disconnect is.

So the law is used as an excuse for homophobia, for people to practice their hatred but the law doesn't actually necessarily promote hate. The law doesn't go into details, it doesn't tell you to beat up someone. It just says if someone commits this offence- which in many cases is no one has ever been caught committing that offence so may not even have evidence in court- then you imprison them for this number of years. So for me, what I see is homophobia from certain groups of people. Most Ugandans are not necessarily fully aware

about LGBT people and LGBT rights and sexual and gender identity. So I don't think they actually homophobic, in the sense of the word, that they fear homosexuality. They fear homosexuals. So, they're ignorant of who a homosexual is and what homosexuality is all about.

So, that's the issue about hostility but also if I compare Ugandan law and the law in other countries, I don't think Uganda, law is that most unfriendly in Africa. We criminalise homosexuality but so do so many former colonies of the British in the same terms that we criminalise it. Maybe our punishment of life imprisonment is quite higher than many other places but like I've told you no one enforces it. So no one has actually ever be sent to jail for life, because of homosexuality. No one has ever been convicted in the first place. So for me, Uganda is not a very hostile environment. There has been a lot of talk around the Homosexuality Act. That was discussed for about five years it had provisions that included this penalty and stopping of organising. But no, it became law then we got it nullified within a period of three months. Countries like Nigeria, which has the Same Sex Prohibition Act- their laws are much worse than the law in Uganda, which is simply the colonial law that we lived with for a 100 years.

The next part that I will and talk about is challenges that we find in advocacy in an environment not so friendly but at the same time not entirely a place where people would be murdered every single day. In fact, I always tell people that you rarely hear murders of lesbians or transgender people or gay people in Uganda. That's quite common in countries that have a better legal environment, including South Africa. I'm Uganda you rarely hear that. Yes, recently, like last year we had at least two murders that were proven to be homophobic murders, that's for sure. But that is the once off. It hasn't been like that for a long time. Yes the police sometimes comes in and arrest with people, just because it's the criminal law. But sometimes you can go for quite some time without people being arrested under that provision of the law. So it's not as bad as portrayed out there.

But all the same, the environment When you're doing legal work- as long as we are protected because we are lawyers, because lawyers can use the law they know their rights, they go to court- but for people who don't have the use of the law, it becomes a little bit more complicated. First of all because organising is limited, you can't easily start an organisation, which works and protects the rights of LGBT people without having interference from either the community, or the state. For starters you may not get registered. You may also not organise meetings unless you disguise them as fake meetings for other things. And that's a common challenge that is faced in advocacy. However, as an organisation Human Rights Awareness and Promotion Forum, our work is quite public, our

meetings are all advertised but no one has ever stopped them for the past 12 years that we've worked. That shows you that, yes, maybe then it's the more underprivileged people, that is, the common LGBTI people that get their meetings stopped. For us as lawyers, I think there is that kind of immunity that comes with the power of being a lawyer that our meetings can basically go on. But also, truth of it is the meetings are legal. There's nothing wrong with holding a meeting if I'm going to discuss the law [or] if I'm going to discuss a case in court. You can't stop such a meeting. But they have been stopping them for so many other things including pride for LGBT people. Then the other thing is people feeling like you are doing the wrong thing. That is, it goes more to how you feel about how people feel about your work. Lawyers don't think that we are lawyers too, because how can lawyers, protect homosexuals. Other professionals feel like there's something wrong with us doing the work that we're doing. Government people look at us and be like, "oh these are promoters of homosexuality, that's all they do". So there's no real value in the work that we do for the general population. Of course the population thinks this is promotion of homosexuality.

It's important that your work is recognised because that way people give it respect and when they give it respect, then what is hope to be achieved will be achieved. But nevertheless, we've been able to train police officers- more than 500 senior police officers on LGBT issues and this has been defended by the police leadership itself. We have been able to train local council leaders on LGBT issues and we speak LGBT language and nothing really happens to us. We have been able to train LGBT people- more than 150 LGBT persons as paralegals who can stand up for their rights and defend their rights if something happens to them. They also go out and engage other LGBT persons in legal awareness and legal protection and that is important. So we still manage to get a lot of work done despite the challenges within that restrictive legal environment.

Of course there is the risk of attack. That's an ever existing risk. My organisation has been attacked twice. The first time was in 2016 when five people jumped into the fence and murdered the security guard on duty. And then entered the office and took nothing. So they came back again, that was in 2018, that's three years later, repeated the same routine- they almost murdered two people who were on duty, luckily enough they managed to escape with grave wounds and then they still entered the office and still took nothing. It's like they're giving you a warning; the first time you didn't heed the warning now here we are back again. I remember them leaving a big iron bar on my chair. That's something I won't forget because it doesn't get out of your mind. You ask yourself why they left this iron bar on my seat. Is it a sign? Did they forget it? What happened? The police doesn't think that's important to investigate. Up to now we don't have investigations completed on the case and the last time we



asked for the case file, it was nowhere to be seen. So those are some of the challenges that your work is not taken serious, you're taken as before who can be beaten and nothing happens. You are taken as if the human rights work that you're doing is not actual human rights work. We even get that from our colleagues. People feel like "Hey, why do you choose to do LGBT work?" After the break in, we were asked, "why you take on such dangerous work. Why don't you choose nicer things that are not controversial?" So, you make your bed then you have to lay in it because playing it because you chose that area of work. So it's complicated, challenging and tough. But for me, I don't think if today the law changed, and it now recognises homosexuality, that everything will be okay. I think it's more about the homophobia, the deep seated feelings, the religion and all those influences that we actually need to work on changing people's mindsets.

**Thiruna:** So you've been actively involved in building some of the strategic litigation efforts to take on some of the different aspects of approaching sensitive areas that will eventually lead to decriminalisation. So can I get your insight on some of the factors you consider when building up a case or choosing what to look at first?

**Adrian:** Yes, that that goes to our litigation strategy. Our litigation strategy is largely flexible and unwritten. So we respond when something happens. We basically look for test cases, we take cases that have not been taken to court to court before. Before 2006 there was no single precedent at all on LGBT rights. Now we have precedents that have been established by us going to court. So, the first area that we thought of was the area of personal space and freedom because everyone thinks that since you are gay we can enter into your house thus the victim has a case. The outcome of that case was that it doesn't matter what the person is you can't get into their personal space. And that was important [it was] the very first time court said that. The next time we had to go to court was because of a law that came out, [Equal Opportunities Commission Act](#) which has provisions stopping the Commission from handling any matters regarded as immoral or socially unacceptable. We went to court and actually also won in that case. And then we had a case challenging a newspaper the, Rolling Stone newspaper, which came up with, with names, addresses and details of LGBT persons and called them upon to be hanged. We also won on that one.

And then we started losing. The next case was on meeting, [that is] stopping of meetings. We lost. Then the next case was on registration of an LGBT organisation. We also lost that one. Then we had the case taken for the homosexuality act [that is] nullifying and we had that one nullified on the grounds of quorum. But at least we got the law nullified. So, we think about many things. And for me, the main thing that we think about is impact. What's

the impact of a loss? What's the impact of a victory? If you win in court, what does that mean? If a court case is successful in court, will it also be successful for creating social change within the community? So just winning in court, doesn't mean that you're also going to win in the community and you have to be careful that sometimes wins can become losses, because you win and then people are beaten up in the street because you won. So you have to be careful on how to get victories, without necessarily getting losses for your community. For us that's very important. How do we frame, a case in such a way that it's got only benefits, and not necessarily cause great backlash against the people.

Number two is we also look at areas that may not have completely block the way for LGBT people. This way we don't want to challenge for example Section 145 of the penal code which criminalises same sex conduct, because we may go to court and lose. And that may mean you may not get another chance to challenge the same law, because now if the constitutional court says that the Constitution of Uganda basically justifies the criminalisation, then everything that has been said, will be justified then- that you can do anything because the constitution also allows the criminalisation.

So in such an environment, we don't do that, challenging section 145 should be something that we start with at the moment. So we challenge the other things around it, and then for the time being we leave section 145 alone. So, impact is one thing, but also are we going to block the way for everyone else. It's also something very important for us to consider and also the courts ,of course. Who sits on the courts at that time. Which judges are likely to handle this case and what are their kind of views. We also think through all those things

**Thiruna:** What would you encourage other advocates of social change to do when engaging with state actors that are not open to recognising the rights of LGBTIQ+ plus people?

**Adrian:** For me, I think it's not a good thing to force people to believe what you believe even if you think it's right. I believe that we are right, that LGBT rights are human rights, and that everyone deserves to have their rights protected. Now not so many people believe that. It looks like a simple statement, but not so many people believe that. I don't want to force anyone to love LGBT people. However, if you are a government official there are things that you follow. The Constitution is in place; There are also other laws which want you to do certain things. The only prohibits same sex relationships meaning you cannot refuse to register an organisation, because the law is the law says, everyone has freedom of association. The law says everyone is equal, before and under the law. So there's no justification a person who represents it the state actually discriminating against LGBT persons because of their sexual orientation or gender identity and this is the message that has to come clear every single



time. When you meet them, you have to tell them that they have a duty and have an obligation. It's not charity, it's the human rights based approach. You are not doing charity, you are doing your job and your job is to register my organisation. You can discriminate against me when you are the state.

It's not about loving people; we don't need you to love them, just do your job as you're supposed to do it. So for me I would encourage activists to be firm. Be firm and stand for what is right. Walk around with your constitution, walk around with your other laws and tell the person to show you where it says you got to provide that service to someone else. So that's the important thing for me; being consistent; being firm, even though they refuse to open the doors you bang again. If someone says "no you can't come in, you go over them to the next person." Take them to court; something gives when you take them to court. They know that; "okay these guys will go to court so we must just give them what they want".

We've been able to make some headway in the health sector and that has been through discussions around HIV; because HIV was such a big issue and people realise that if you don't fight HIV among the key populations then you are going to have to re-infect, the general public and that resonates and it works. We hear stories of HIV; they work with the public because they know no one can run it from HIV unless certain things are done to protect people. And if you don't protect LGBTI people you always won't be protecting the general public from HIV. So such messages resonate. Telling stories- stories are powerful. If you tell stories of LGBT people; what they go through; their experiences; that's more powerful than just giving us facts on the law. So for me; I think that if it LGBTI people are given space, if people are engaging with the government [and] they go with LGBT people who speak.

When we do police trainings, we bring LGBTI people, in the room to speak to police officers !and that's empowering to the LGBTI people, but also the police realise that we're dealing with humans; sons and daughters of someone not simply people we just imagine. These are real human beings with blood. That's important and powerful; showing them the actions you take as a state official actually have a direct impact on the person, on why this person can't go to school, [on] why they cannot access health services.

Thiruna: So, how much work has the African commission done to protect and promote the LGBTIQ+ plus communities' rights on the continent and to what extent do these efforts, translate and affect the daily experiences of LGBTIQ plus persons?

Adrian: There is the African Commission and then there are the people and African Commission is over here; an elitist body made up of lawyers accomplished

jurists and whoever. Then there are the people down here who have never been to Banjul, who have never been on a plane, who live their lives every single day as LGBTI people. Now, making the link between them.; These ones have never met the other ones and the others also have never met the other ones. And now, in between these two are activists, people work on the ground to link the community to these bodies. Now, having LGBTI people at the African Commission is something that started about a decade ago and people were going over to the African Commission speaking to them and showing them that, "we are here as African people; we are African, we are gay, we are lesbian, or transgender."

At first there was quite a lot of hostility, I was part of the conversations initially in Banjul. Equally from the NGO forum, there still are but at least progress has been made to the point that a resolution has been put in place to protect LGBTI people. But for me now I think going beyond the resolution, what do activists do on the ground to make that resolution, reflecting the realities of ordinary people? How do governments respect the resolutions of the African Commission? Most of the governments are quite hostile to LGBTI people, including my own Ugandan government. I referred to [Resolution 275](#) they're like, "Yeah, yeah right it's there, but it talks about violence." It's not asking them to love LGBTI people; it's telling them to stop violence against LGBTI people, and you see an effort, even by the government to respond; that there are no situations of violence in Uganda, even though they are lying. But at least it brings them on the table to start engaging because they know you cannot be promoting violence against a particular group of people. So that's the power that comes from these centres, they are far from the people but when activists come and stand in the middle these groups, whatever they say starts to be felt on the ground.

You can use the tools by the African Commission, not a European Court, not the UN; it's the African Commission and then you take them to your government because the government is part of the African Commission; part of the African Union so they cannot deny saying that these are not our own documents. Of course, there's much more hostility against the African Commission by the African Union, but that was kind of expected and I think that the African Commission has to go and do its job. For me, what's more important is that we as activists have to go to the ground and do our job [which is] to get the African Charter to the people. To get the resolutions of the African Commission to the people, get Resolution 275 to people so they understand it [and] they appreciate what it says, but also what it means to them as people that they can demand for rights, and they have to be protected. So for me, that's what I see as the connection between the international levels, and the activism that we do at the grassroots.

Thiruna: Thank you for your time today.