

ARTICLE SYMPOSIUM

LAW, RELIGION, AND THE POLITICIZATION OF SEXUAL CITIZENSHIP IN KENYA

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ABSTRACT

In Kenya, debates about sexual orientation have assumed center stage at several points in recent years, but particularly before and after the promulgation of the Constitution of Kenya in 2010. These debates have been fueled by religious clergy and by politicians who want to align themselves with religious organizations for respectability and legitimation, particularly by seeking to influence the nation's legal norms around sexuality. I argue that through their responses and attempts to influence legal norms, the religious and political leaders are not only responsible for the nonacceptance of same-sex relationships in Africa, but have also ensured that sexuality and embodiment have become a cultural and religious battleground. These same clergy and politicians seek to frame homosexuality as un-African, unacceptable, a threat to African moral and cultural sensibilities and sensitivities, and an affront to African moral and family values. Consequently, the perception is that homosexuals do not belong in Africa—that they cannot be entertained, accommodated, tolerated, or even understood. Ultimately, I argue that the politicization and religionization of same-sex relationships in Kenya, as elsewhere in Africa, has masked human rights debates and stifled serious academic and pragmatic engagements with important issues around sexual difference and sexual orientation while fueling negative attitudes toward people with different sexual orientations.

KEYWORDS: Africa, Kenya, Pentecostal church in Kenya, LGBTQ rights in Kenya, religion and culture in Africa, Constitution of Kenya

PREFACE: A PRESIDENTIAL VISIT

In 2015, United States president Barack Obama paid a state visit to Kenya's president Uhuru Kenyatta, ushering in a politico-cultural moment, one of many in recent years, that brought the issue of homosexuality in Kenya into the limelight both in the national and global public spheres. The visit created tremendous anxiety and controversy about gay rights debates in unprecedented ways, both in Kenya and across the African continent.¹ Even before Obama set foot in Africa, Kenyan political leaders and religious groups opposed to gay rights warned him to keep off the controversial topic. Obama's highly

1 Norimitsu Onishi, "Obama Kenya Trip Sets off Gay Rights Debate in Africa," *New York Times*, July 21, 2015, <https://www.nytimes.com/2015/07/22/world/africa/africans-to-welcome-obama-but-not-a-scolding-on-gay-rights.html>. See also Morgan Winsor, "Obama Kenya Visit 2015: Africa Gay Rights Debate Heats up ahead of President's

anticipated visit came shortly after the United States Supreme Court ruled that same-sex marriage was a constitutional right. The ruling irked many in Africa and elsewhere who did not support gay marriage and who hoped that President Obama would not speak about it in his visit. The Obama administration's increased funding of gay rights groups abroad and creation of the position of special envoy for the human rights of lesbian, gay, bisexual, transgender, and intersex (collectively, LGBTI) people were moves that irked African leaders who were not accepting of gay rights.²

A lawmaker from the ruling Jubilee Party, Irungu Kangata, advised President Obama against mentioning gay rights.³ Similarly, Charles Kanjama, an advocate of the High Court of Kenya, chair of the Kenyan Christian Professional Forum, and a popular social, political, and legal analyst in the Kenyan media, organized a protest against Obama's visit.⁴ One little-known Kenyan political party, the Republican Liberty Party, even seized the occasion of the Obama visit as an opportunity to get free publicity by organizing a nude protest at Nairobi's Uhuru Park to show President Obama the physiological differences between males and females.⁵ Most of these protesting groups perpetuated the narrative that the African gay rights groups receive funds from the United States and European nations in order to impose gay rights and strange cultural practices on Africans. The imposition of sanctions on African countries that do not accept homosexuality has been met with disdain and resistance and has served to harden popular sentiments that fuel homophobia. In contrast, the executive director of the National Gay and Lesbian Human Rights Commission in Kenya explained that sanctions caused widespread repercussions against gay groups and individuals across the African continent.⁶

During the visit, President Obama and President Kenyatta publicly, but civilly, differed on the issue of gay rights. While Obama urged respect of all human rights, including gay rights, Kenyatta responded by arguing that the issue of gay rights was a "non-issue" and not on the agenda.⁷ In a televised news conference at Nairobi's State House, Obama called upon Kenya and other African governments to set an example by banning state discrimination against gays and lesbians, saying, "[W]hen you start treating people differently—not because of any harm they are doing to anybody, but because they're different, that's the path where freedom begins to erode and bad things happen."⁸ Kenyatta, a staunch Catholic and opponent of gay rights, responded that his priorities were improving health care, education, and entrepreneurship, arguing, "We need to speak frankly about some of these issues. Kenyans and

Trip," *International Business Times*, July 23, 2015, <https://www.ibtimes.com/obama-kenya-visit-2015-africa-gay-rights-debate-heats-ahead-presidents-trip-2020081>.

- 2 Adriaan van Klinken, "Gay Prayer in Uhuru Park, or Christianity and LGBT Empowerment in Kenya," *Sightings*, February 4, 2016, <https://divinity.uchicago.edu/sightings/gay-prayer-uhuru-park-or-christianity-and-lgbt-empowerment-kenya>.
- 3 David Smith, "Barack Obama Tells African States to Abandon Anti-gay Discrimination," *Guardian*, July 25, 2015, <https://www.theguardian.com/us-news/2015/jul/25/barack-obama-african-states-abandon-anti-gay-discrimination>
- 4 Van Klinken, "Gay Prayer in Uhuru Park."
- 5 Van Klinken.
- 6 Lucy Westcott, "Kenyan Leaders Respond to Obama's Support for LGBT Rights," *Newsweek*, July 27, 2015, <https://www.newsweek.com/kenyan-leaders-respond-obamas-support-lgbt-rights-357563>.
- 7 Gabe Joselow, "Kenyatta: ICC, Gay Rights 'Non-issues' during Obama Visit," *Voice of America*, July 21, 2015, <https://www.voanews.com/africa/kenyatta-icc-gay-rights-nonissues-during-obama-visit>; Ariel Zirulnick, "Obama Tells Kenya Gay Rights Are Not a 'Non-issue,'" *Quartz, Africa*, July 25, 2015, <https://qz.com/africa/464125/obama-tells-kenya-gay-rights-are-not-a-non-issue/>; Christi Parsons and Robyn Dixon, "The Tense Exchange between Obama and Kenya's President on Gay Rights," *Los Angeles Times*, July 25, 2015, <https://www.latimes.com/world/africa/la-fg-obama-kenya-ties-20150725-story.html>.
- 8 Barack Obama and Uhuru Kenyatta, Remarks by President Obama and President Kenyatta of Kenya in a Press Conference, The Obama White House, July 25, 2015, <https://obamawhitehouse.archives.gov/the-press-office/2015/07/25/remarks-president-obama-and-president-kenyatta-kenya-press-conference>.

Americans share ideals such as democracy, entrepreneurship and family values . . . We must admit that there are things we don't share, that our culture, our societies don't accept. There are some things that are not part of our religion or culture and there are some things we cannot impose on people that they don't like. It is very difficult for us to be able to impose on people that which they themselves do not accept."⁹

INTERROGATING RECENT SEXUALITY DEBATES IN KENYA

The meeting of presidents Obama and Kenyatta and the controversy over homosexuality that emerged is a useful departure point for understanding recent debates over sexuality in Kenya, and in Africa more broadly, particularly at the intersection of law and religion. It is significant that Kenyatta cited African culture and religion as the reason many Africans are not accepting of homosexuality. The subject of sexual orientation, broadly conceptualized, is extremely contested in Africa, because of the deeply ingrained social, cultural, religious, and political norms and values prevalent on the continent. As a report from the organization Human Rights Watch put it, "'Culture'—a supposedly monolithic realm of civilizational values—becomes the zone where political rhetoric and religious intolerance combine. Sexual or gender nonconformity is painted as 'un-African,' its agents symbolically—and actually—expelled from the community. The appeal to culture brings violence in its wake."¹⁰

In Kenya, the sexuality debates have a pronounced religious as well as cultural foundation, as the majority of religious organizations are violently opposed to homosexuality. Among mainline churches, the Anglican Church of Kenya and the larger Anglican Communion in Africa have long opposed sexual minorities in both church and society.¹¹ Pentecostal and charismatic churches in Kenya have been even more hostile, not just to homosexuality, but to sexual and other minority groups. Kenyan Pentecostal and charismatic churches, in fact, more than other religious groups, have long perpetuated homophobia, and they have contributed to growing intolerance of members of the LGBTI community. Muslim organizations in Kenya are also opposed to homosexuality. In the mind of most religious people, homosexuality is not just a sexual preference, it is a lifestyle. Homosexuality is often associated with witchcraft, evil, demonic spirits, non-belief, or more general opposition to cultural norms. Religious clergy in Kenya and elsewhere in Africa have described LGBT people as "abominations before the Lord," "sinners and perverts" who are only comparable to "dogs" or are "worse than terrorists" among many other such descriptions. The religious opposition to homosexuality in Kenya, particularly the especially strong opposition by Pentecostal and charismatic churches, raises questions about the role of religion in shaping ideologies and regulating sexual citizenship.¹²

9 Oscar Obonyo, "Presidents Barack Obama and Uhuru Kenyatta Differ over Gay Rights," *Standard Digital*, July 26, 2015, <https://www.standardmedia.co.ke/kenya/article/2000170428/obama-and-uhuru-differ-over-gay-rights>; see also Barack Obama and Uhuru Kenyatta, Remarks in a Press Conference, July 25, 2015.

10 Human Rights Watch, *Together Apart: Organizing around Sexual Orientation and Gender Identity Worldwide* (New York: Human Rights Watch, 2009), 11, <https://www.hrw.org/sites/default/files/reports/lgbt0509web.pdf>.

11 Most Mainline Churches in Kenya, including the Anglican Church of Kenya, Catholics, Seventh Day Adventists, Methodists and the Presbyterian churches, are opposed to homosexuality, citing religion and culture. The Anglican Church in Kenya has also recently had to turn to the law to settle its own disputes over homosexuality. See Paul O'Donnell, "Kenyan Court Orders Mediation to Solve Anglican Homosexuality Dispute," *Religion News Service*, November 6, 2018, <https://religionnews.com/2018/11/06/kenyan-court-orders-mediation-to-solve-anglican-homosexuality-dispute/>.

12 Damaris Seleina Parsitau and Adriaan van Klinken, "Pentecostal Intimacies: Women and Intimate Citizenship in the Ministry of Repentance and Holiness in Kenya," *Citizenship Studies* 22, no. 6 (2018): 586–87.

In this article, I examine the role of religion and politics in shaping public debates, discourses, and policies in Kenya, as well as public perceptions of same-sex relationships and the rights of LGBTI people. I focus on how national discourses intertwine with religion, politics, and the law to create a dangerous mix of religious and politically inspired homophobia that puts sexual minorities at risk. I examine particularly the roles of Pentecostal clergy during and after the promulgation of the 2010 Constitution of Kenya, as well as the more recent and controversial 2019 High Court of Kenya ruling that upheld existing antihomosexuality laws and refused to decriminalize same-sex relationships in Kenya. I also examine the role of conservative clergy, such as David Owuor of the Ministry of Repentance and Holiness, and how his rhetoric and that of Kenyan politicians continues to influence public policy and public perceptions of homosexuality and sexual citizenship, more broadly.

The analysis in this article is based on a variety of resources, including recent academic literature on sexuality in Africa, along with a wide array of national and international media and social media resources on sexuality debates in Kenya. This article examines legal, constitutional, and human rights debates, especially during the five-year constitutional review process preceding the national referendum on the 2010 Constitution and after the 2019 High Court ruling that failed to decriminalize homosexuality in Kenya. It further analyzes religious debates manifest in sermons, religious commentaries, and other resources. The article also includes social analysis of these sexuality discourses in interviews with religious communities where I have been carrying out ethnographic research on Pentecostals and sexual citizenship in Kenya for some time.¹³

Overall, I employ a sociologically descriptive, but normatively critical, analysis of homosexuality as a contested subject in the Kenyan public sphere in a bid to understand how debates on sexual orientation and the concept of sexual citizenship more broadly are understood, constructed, deconstructed, and contested in a socially conservative and heavily religious space. My particular focus is on how Pentecostal clergy and politicians have perpetuated homophobia throughout sub-Saharan Africa. Pentecostals, more than other groups in Africa, have used state power to enforce social and cultural norms around sexuality—co-opting African politicians, even as the politicians use Pentecostal clergy to prop up their own authority.¹⁴

My argument is based on the premise that Kenyan politics cannot be understood in isolation from religion, particularly the role of Pentecostal Christianity in public life, governance, and public policy. Many of these churches and their clergy have moved into the public sphere with the intention to influence not just politics but also public policy. This movement is not surprising, given that religion has for a long time played important roles in Kenyan politics.¹⁵ Many scholarly observers have characterized the relationship between politicians and clergy in Kenya as one in which each group seeks to court and co-opt the other for respectability and legitimacy.¹⁶ At the same time, religion frames public discourses on a number of public issues, including public morality, identities,

13 Parsitau and Van Klinken, "Pentecostal Intimacies."

14 See Adriaan van Klinken and Ezra Chitando, "Introduction: Public Religion, Homophobia, and the Politics of Homosexuality in Africa," in *Public Religion and the Politics of Homosexuality in Africa*, ed. Adriaan van Klinken and Ezra Chitando (London: Routledge, 2016), 1–16, at 9–10.

15 Paul Gifford, ed., *Christianity, Politics and Public Life in Kenya* (New York: Columbia University Press, 2009), 193.

16 See Parsitau and van Klinken, "Pentecostal Intimacies"; Gregory Deacon, "Driving the Devil Out: Kenya's Born-Again Election," *Journal of Religion in Africa* 45, no. 2 (2015): 200–20; Gregory Deacon, "Kenya: A Nation Born Again," *PentecoStudies* 14, no. 2 (2015): 219–40; Gregory Deacon and Gabrielle Lynch, "Allowing Satan In? Moving toward a Political Economy of Neo-Pentecostalism in Kenya," *Journal of Religion in Africa* 43, no. 2 (2013): 108–307; Gregory Deacon and Damaris Seleina Parsitau, "Empowered to Submit: Pentecostal Women in Nairobi," *Journal of Religion and Society* 19 (2017): 1–17.

and sexual citizenship. My interest is in the dominant role that religion plays, not only in shaping debates and discourses around homosexuality and same-sex relationships, but also in inspiring and fueling homophobia. I argue that the language and rhetoric of politicians and clergy concretely shape not just political and public discourses, but also public policy and public opinion in respect of social and moral issues. Specifically, my interest is on the role that Pentecostal Christianity plays in shaping public debates and policy on homosexuality and LGBTI rights.

THE ROLE OF RELIGION IN SHAPING HOMOPHOBIA AND THE POLITICIZATION OF HOMOSEXUALITY AND LGBTI RIGHTS

It should be acknowledged from the outset that in the African context of African sexuality debates, there are inherent complexities and contestations with respect to terminology. As Adriaan van Klinken and Ezra Chitando have pointed out, in the recent past, “Western . . . concepts of homosexuality, LGBTI identities and queer politics have been introduced to African contexts, and . . . have been adopted by local sexual minority communities and activists.”¹⁷ I use the terms *gay*, *lesbian*, and *homosexuality* because they are the terms that a majority of Kenyans use to describe homosexuality and same-sex relationships. I also use the acronym *LGBTI* to cover the full range of sexual identities at issue.

Issues of same-sex relationships and LGBTI rights have become the subject of significant public and political controversy in many African countries.¹⁸ Scholars have linked the politicization of same-sex relationships to the rise of Pentecostal and charismatic forms of Christianity in Africa. In many parts of contemporary Africa, there has been a resurgence of neo-Pentecostal and charismatic Christianity in the public sphere that has led to a sort of Pentecostalization of governance and public life in which Pentecostal and charismatic mores have infiltrated into the public sphere.¹⁹ In fact, many studies directly link this resurgence of neo-Pentecostalism to increased public and political mobilization against LGBTI rights and relationships. There is both sufficient data and anecdotal evidence to support this claim.

For example, according to Ezra Chitando and Adriaan van Klinken, “religion is part and parcel of the anti-homosexuality language that is voiced, and policies that are initiated, by political leaders and other public figures.”²⁰ This claim is not far-fetched, given that the emergence of antihomosexuality politics in Africa has been explained in reference to religion. As Adriaan van Klinken aptly

¹⁷ Van Klinken and Chitando, “Introduction,” 9.

¹⁸ See, generally, the contributions in van Klinken and Chitando, *Public Religion and the Politics of Homosexuality in Africa*.

¹⁹ Damaris Seleina Parsitau, “‘From the Periphery to the Centre’: The Pentecostalization of Mainline Christianity in Kenya,” *Missionalia: Southern African Journal of Missiology* 35, no. 3 (2007): 83–111. See Damaris Seleina Parsitau, “From the Fringes to the Centre: Pentecostal Christianity in the Public Sphere in Kenya (1970–2009),” in *Jesus and Ubuntu: Exploring the Social Impact of Christianity in Africa*, ed. Mwenda Ntarangwi (Trenton: Africa World Press, 2011), 123–45. See also Damaris Seleina Parsitau, “Soft Tongue, Powerful Voice, Huge Influence: The Dynamics of Gender, Soft Power, and Political Influence in Faith Evangelistic Ministries in Kenya,” in *Pentecostalism and Politics in Africa*, ed. Adeshina Afolayan (London: Palgrave Macmillan, 2018), 159–80.

²⁰ Van Klinken and Chitando, “Introduction,” 1. See also Adriaan van Klinken, “Beyond African Religious Homophobia: How Christianity is a Source of African LGBT Activism,” London School of Economics and Political Science, *LSE Religion and Global Society* (blog) July 20, 2018, <https://blogs.lse.ac.uk/religionglobalsociety/2018/07/beyond-african-religious-homophobia-how-christianity-is-a-source-of-african-lgbt-activism/>; David Mbote et al., “Kenyan Religious Leaders’ Views on Same-Sex Sexuality and Gender Nonconformity: Religious Freedom versus Constitutional Rights,” *Journal of Sex Research* 55, no. 4–5 (2018): 630–41.

points out, given the dominance of Christianity in many African countries in which homophobia seems on the rise, religion has been seen as fueling the repression of African LGBTI people. Van Klinken shows how Ugandan Evangelicals actively campaigned in favor the Anti-Homosexuality Bill. Further, he argues that Nigerian Catholics and Pentecostal clergy enthusiastically welcomed the Same Sex Marriage (Prohibition) Act of 2013.²¹ In much the same way, Kenyan Pentecostal and mainline clergy and their followers held celebrations after the High Court of Kenya's 2019 ruling that refused to decriminalize homosexuality in Kenya.²²

In Kenya, opposition to LGBT rights is often associated with religion, particularly Christian mainline, evangelical, and Pentecostal churches. In the Kenyan context, for example, various religious denominations have formed powerful lobbies and church bodies that push their agenda. Some of these include the Evangelical Alliance of Kenya, the Kenyan Christian Church Forum, and the powerful Catholic Justice and Peace Commission, which have all been very vocal on LGBTI rights, abortion rights, and sex education in primary schools. These powerful lobbies, as well as individual clergy, such as David Owuor, have sought to influence public policy on issues such as homosexuality and same-sex relationships, as well sexuality and sexual citizenship, more generally. These lobbies, as I discuss below, sought to influence both the passage of the 2010 Constitution and the 2019 High Court of Kenya ruling on the decriminalization of homosexuality. Others include the 2019 UN Conference on Population and Development (known as ICPD+25) held in Nairobi and the ongoing debates and contestation around the Reproductive Health Bill (2019), which religious leaders have vehemently fought because it allows abortion.²³

The religious lobbies have also aligned with powerful politicians, such as the current deputy president, William Ruto, a self-proclaimed "born again" Christian and a huge funder of Christian churches and clergy, who has on several occasions publicly condemned homosexuality.²⁴ In 2015, Ruto stated publicly in a Nairobi church: "The Republic of Kenya is a republic that worships God. We have no room for gays and those others!"²⁵ Ruto has heavily courted religious leaders in his personal quest for respectability and legitimacy and to clean up his image in a country where he is seen as a very corrupt, abrasive, and divisive figure. Besides funding church lobbies and clergy from various Christian denominations, Ruto heavily appropriates religious rhetoric and language to fight gay rights. Like many other Kenyan politicians, Ruto seeks to align not just with religious leaders and powerful lobbies, but with the Christian majority in a country where nearly 85 percent of the citizens identify as Christian.²⁶

Indeed, while Kenya is essentially a secular state, it is an open secret that Christianity is the de facto state religion. Christianity shapes public discourses around social and political issues but more

21 Van Klinken, "Beyond African Religious Homophobia."

22 Van Klinken, "Beyond African Religious Homophobia."

23 Laban Wanambisi, "Catholic Bishops, Pro-choice Lobbyists Clash over Reproductive Health Law," *Capital News*, July 5, 2020, <https://www.capitalfm.co.ke/news/2020/07/catholic-bishops-pro-choice-lobbyists-clash-over-reproductive-health-law/>.

24 DPPS, "Ruto Says No Apologies for Giving to Churches," *Capital News*, September 11, 2020, <https://www.capitalfm.co.ke/news/2020/09/ruto-says-no-apologies-for-giving-to-churches/>.

25 "Kenya's William Ruto Says There's 'No Room' for Gays in His Nation," *NBC News*, May 4, 2015, <https://www.nbcnews.com/news/world/kenyas-william-ruto-says-theres-no-room-gays-his-nation-n353161>.

26 Philip Jenkins, "Kenya Rising," *Christian Century*, April 8, 2020: 44–45. A version of Jenkins's article appears in the online edition of *Christian Century* under the title, "Christianity's Explosive Growth in Kenya," *Christian Century*, April 3, 2020, <https://www.christiancentury.org/article/notes-global-church/christianity-s-explosive-growth-kenya>.

recently, it is shaping debates on homosexuality and same-sex relations, gender issues such as reproductive health, and sex education. There is significant evidence suggesting that the emergence of Pentecostalism in Kenya's public sphere has played a critical role in fueling homophobia as well as the politicization and weaponization of same-sex relations and LGBTI rights in Kenya. At the same time, religion, in all its manifestations, has been an important aspect of identity and social practice for Africans generally and Kenyans in particular. This is hardly surprising in a country where religion and politics often intertwine in many ways. There is also a growing influence of Pentecostal clergy, not just in the public sphere, but also in the making of public policy. As Asonzeh Ukah has aptly observed of the Nigerian context, the resurgence of Pentecostal and charismatic Christianity has inspired homophobia in Nigeria.²⁷ Ukah argues that politicians have attempted to channel religious zeal and moral strength into governance to achieve legitimacy. Consequently, religious groups constantly jostle for political patronage and power to manipulate government structures in influencing policy-making procedures.

It is evident in Kenya that politicians and clergy patronize each other for respectability, legitimacy, and access to state resources in order to influence public policy. Similarly, there has been a proliferation of church lobbies and clergy who play critical roles in the framing of social, moral, legal, and policy issues. This is notable for a number of reasons. First, there is the increasing role of Pentecostal clergy in politics and law, as was witnessed in Kenya in both the debates on the 2010 Constitution and the 2019 High Court ruling on the petition to decriminalize homosexuality. In 2019, Christian and Muslim clergy engaged in religious mobilization and contestations over sexual and reproductive health rights and choices in Kenya, with a special focus on debates and contestations around the Reproductive Health Bill (2019) during the ICPD+25.²⁸ In connection with each of these law and policy debates, religious leaders led mobilizations over a wide range of issues and platforms in ways that engendered significant tensions and contestations around women's reproductive health rights, sexual citizenship, and gender justice. Since then, these leaders have continued to oppose laws and policies that touch on women's reproductive health rights and sexual citizenship, arguing that they allow for abortion and homosexuality.

During these mobilizations, clergy from different denominations and religious traditions, with Pentecostals being the most vocal, vehemently opposed policies and laws in a bid to control and regulate public morality. This is hardly surprising given that Pentecostals especially have been engaged in a quest for a national moral regeneration and reformation, in which Kenya is cast by leading Pentecostal clergy as a Christian nation, a God-fearing nation, or, in the words of African religion scholar Gregory Deacon, "a nation born again."²⁹ Others have cast Kenya as a springboard for revival in Africa and one guided by Christian morals, despite Kenya being one of Africa's most corrupt countries.³⁰ Christian clergy such as David Owuor have endeavored to image Kenya as a theocracy, despite the fact that Kenya is a secular state. In the recent past, Kenya has witnessed the emergence of powerful prophets, or what Asonzeh Ukah calls "prophetic politics," in which the prophet plays critical roles in the framing of social, political, policy, and

27 Asonzeh Ukah, "Sexual Bodies, Sacred Vessels: Pentecostal Discourses on Homosexuality in Nigeria," in *Christianity and Controversies over Homosexuality in Contemporary Africa*, ed. Ezra Chitando and Adriaan van Klinken (London: Routledge, 2016), 21–37.

28 Moses Njagih, "Clergy, MPs Uproar over Global Population Forum Set for City," *The Standard*, November 9, 2019, <https://www.standardmedia.co.ke/politics/article/2001348649/clergy-mps-uproar-over-global-population-forum-set-for-city>.

29 Deacon, "Kenya: A Nation Born Again"; Deacon and Lynch, "Allowing Satan In?"

30 Parsitau, "Soft Tongue, Powerful Voice, Huge Influence."

moral issues.³¹ To this end, Owuor has imaged himself as spiritual prophet of the country, tasked with policing the nation's morality.³² Increasingly, he dictates not just his followers' morals, but also attempts to project this into the national sphere, dictating women's dress and intimate lives, along with discourses around homosexuality. Increasingly, politicians use and mirror this rhetoric and religious language to weaponize public discourse around issues of homosexuality and same sex relationships, thereby whipping citizens' emotions around these rights.

Clergy such as Owuor seek to control state resources for respectability, power, and influence so they can manage and control public discourses around morality. Owuor has emerged as a sort of spiritual president who is policing the country's morality. But it is not just clergy such as Owuor who engage in the project of moral reformation. Increasingly, "born again" policy makers and leaders, such as Ezekiel Mutua, the CEO of the Kenya Film Classification Board, weaponize this morality to shape and influence the Kenyan art scene. Using Pentecostal language and idioms around morality, Mutua has banned many secular films and music because they are against national morals or because they corrupt national morality, earning him the nickname Kenya's "moral policeman."³³ Thus, religion not only shapes public, private, social, and political discourses on homosexuality, morality, and sexual citizenship, but it has also been a big mobilizing factor against LGBTI rights. This has contributed to recent politicization of homosexuality in Kenya and in other African countries.

In Kenya, debates on sexual orientation have assumed center stage at several points in recent years, but particularly before and after the promulgation of the new Constitution of Kenya in 2010. These debates have been fueled by religious clergy and politicians who want to align themselves with religious organizations for respectability and legitimation by seeking to influence the nation's legal norms around sexuality. During national referendums in 2005 and 2010, united under the auspices of the National Council of Churches of Kenya and the Evangelical Alliance of Kenya, Christian churches opposed the passage of what eventually became the 2010 Constitution because, among other reasons, it allowed for gay rights. Others hailed Kenya's 2010 Constitution as liberal because it safeguarded the human rights and dignity of all, including gay rights. Consequently, LGBTI rights issues gained recognition in national debates, with many LGBTI people coming out in the open to declare their sexual orientation and to demand respect.

In recent decades, gays and lesbians have attracted tremendous debates and discourses in religious and political circles across sub-Saharan Africa. They have also been the subject of both legal and religious controversies in scores of African countries, including Kenya, Uganda, Namibia, Zimbabwe, Zambia, and Nigeria.³⁴ The 2019 petition to decriminalize homosexuality before Kenyan courts and the Pentecostal Christians preaching and teaching in response have not only generated increased homophobia in Kenya's public and religious spaces but also inspired a kind of violent militarism against gays and lesbians in Kenya. Pentecostal clergy and influential followers in public life have

31 Ukah, "Sexual Bodies, Sacred Vessels," 22, citing Amos Yong, *In the Days of Caesar: Pentecostalism and Political Theology* (Grand Rapids: William B. Eerdmans, 2010), 11–14.

32 Parsitau and van Klinken, "Pentecostal Intimacies," 589–90.

33 "Ezekiel Mutua: The Man Who Polices Kenyan Pop Music," *BBC News*, August 30, 2019, <https://www.bbc.com/news/world-africa-46371971>.

34 See Seth Muchuma Wekesa, "A Constitutional Approach to the Decriminalisation of Homosexuality in Africa: A Comparison of Kenya, South Africa and Uganda" (PhD diss., University of Pretoria, 2016), 2, <http://hdl.handle.net/2263/56992>. On controversies in Nigeria, see two articles in this symposium: Asonzeh Ukah, "Apocalyptic Homophobia: Freedom of Religious Expression, Hate Speech, and the Pentecostal Discourse on Same-Sex Relations in Africa," *Journal of Law and Religion* 36, no. 1 (2021); Habib Oladosu-Uthman, "'This Man Is My Wife': The Same Sex Marriage Prohibition Act of 2014 in Nigeria," *Journal of Law and Religion* 36, no. 1 (2021).

sought to control and police morality and sexuality. Recent scholarship points to two recent developments, alongside legal shifts, as the drivers of debate: the increased politicization of homosexuality leading to increased criminalization of homosexuality in a number of African countries and the unprecedented growth of Pentecostal and charismatic Christianity in Africa and elsewhere.³⁵

All these developments have inspired increased violent homophobia, religious and political intolerance, and militant ideologies toward LGBTI persons and their activism in ways that have affected their sexual citizenship. In what follows, I examine the roles of religion, politics, and the law in shaping ideologies that seek to regulate homosexuality with a special focus on Kenyan politics, Pentecostal Christianity, and the law. I argue that these have become the central public and political concerns and have inspired not just homophobia, but also violent discourses that are being reproduced in specific social, cultural, and political contexts. In essence and in practice, religious and political leaders have used debates over homosexuality and the law to mask real issues such as corruption, human rights violation, and the politics of marginalization, exclusion, and inequality—especially of women, children, and sexual minorities.

HOMOSEXUALITY IN AFRICAN LAW AND POLITICS

In recent decades, a number of African countries have banned and criminalized homosexuality: it is now punishable with harsh prison sentences in scores of countries across the African continent. In countries such as Uganda, Zambia, Malawi, Cameroon, Nigeria, and Kenya,³⁶ homosexuality has been a prominent source of social and moral anxieties, along with new laws that enact homophobia and intolerance. Except for the Constitution of the Republic of South Africa, 1996, which forbids discrimination on the basis of sexual orientation, most sub-Saharan African nations criminalize same-sex relationships, even though some studies have shown that the practice of homosexuality or same sex-relationships has a long history on the continent.³⁷ In fact, recent data suggests that out of the forty-eight African countries, thirty-eight criminalize homosexuality.³⁸ In several countries, such as Uganda,³⁹ Nigeria,⁴⁰ Malawi,⁴¹ and Kenya,⁴² LGBTI people have been threatened with stricter laws, including recommendations of the death penalty by some legislators. In

35 See van Klinken, “Gay Prayer in Uhuru Park”; Patrick Awondo, Peter Geschiere, and Graeme Reid, “Homophobic Africa? Toward a More Nuanced View,” *African Studies Review* 55, no. 3 (2012): 145–68.

36 Adriaan van Klinken, “Christianity and Same-Sex Relationships in Africa,” in *The Routledge Companion to Christianity in Africa*, ed. Elias Kifon Bongmba (New York: Routledge, 2016), 487–501.

37 Stephen O. Murray and Will Roscoe, eds., *Boy-Wives and Female Husbands: Studies of African Homosexualities* (New York: St. Martin’s Press, 1998), 243–47.

38 See Staff of the Global Legal Research Directorate, *Laws on Homosexuality in African Nations* (Washington, DC: Law Library of Congress, 2014).

39 See, for example, Uganda’s Anti-Homosexuality Bill, 2014, which was originally proposed in 2009, when it received international notoriety as the “Kill the Gays Bill.” The long title of the 2014 bill is “An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters.” Anti-Homosexuality Act, 2014, accessed February 5, 2021, <https://www.refworld.org/pdfid/530c4bc64.pdf>.

40 Former Nigerian president Goodluck Jonathan signed into law the Same Sex Marriage (Prohibition) Act on January 13, 2014. Same Sex Marriage (Prohibition) Act, 2014, accessed February 5, 2021, <https://laws.lawnigeria.com/2020/01/10/same-sex-marriage-prohibition-act-2014/>.

41 “Malawi Gay Couple Gets Maximum Sentence of 14 Years,” *BBC News*, May 20, 2010, <https://www.bbc.com/news/10130240>.

42 “Kenya Chiefs Block Mombasa ‘Gay Wedding,’” *BBC News*, February 11, 2010, <http://news.bbc.co.uk/2/hi/africa/8511321.stm>.

Kenya, Uganda, Namibia, Nigeria, Zimbabwe, and Zambia, courts have criminalized same-sex relationships through antihomosexuality legislation.

On February 24, 2014, Uganda's president Yoweri Museveni signed into law the contentious Anti-Homosexuality Act, which had been passed in December 2013 by the Ugandan parliament, making homosexuality punishable by life imprisonment.⁴³ The bill included punishment of up to fourteen years of imprisonment for anyone who enters into a same-sex relationships and ten years imprisonment for any organizations or people who support gay rights, and for individuals who display same-sex affection in public. The proposed bill had been opposed both locally and internationally for nearly four years before its passage.⁴⁴ Other African countries have imposed harsh penalties for persons found engaging in homosexual activity. The death penalty is imposed for homosexual sex in Sudan, Somalia, Mauritania, and the twelve northern sharia law states of Nigeria.⁴⁵ Life sentences in prison and harsh sentences are prescribed by penal laws in Tanzania, Uganda, and Sierra Leone.⁴⁶ Nigeria, a deeply religious and conservative society that considers homosexuality a deviation and an abnormality, has also outlawed same-sex relationships.⁴⁷

Homophobia remains entrenched and contested across the continent, fueled by both the politicization and religionization of homosexuality in Africa, especially through the law. Even in countries like South Africa that do not have anti-sodomy laws, sexual minorities still remain vulnerable. In South Africa, for example, lesbians are still subjected to so-called "corrective rape" and other forms of violence as reported by Human Rights Watch in a 2011 report.⁴⁸ The existence of such laws, behavior, and rhetoric provides further legitimacy for the denial of human rights of sexual minorities. More importantly, it continues to perpetuate and inspire homophobia that could potentially endanger the lives of gays and lesbians who already suffer tremendous discriminations and stigma. According to a Pew Research Center survey that, since 2002, has periodically tracked global attitudes toward homosexuality, large portions of the public in African nations—at times, as many as nine in ten people—have been among the least accepting of homosexuality. In 2019, the most recent iteration of the survey, 91 percent of respondents in Nigeria and 83 percent in Kenya said that homosexuality should not be accepted (compare to the global median of 38 percent identifying with this attitude).⁴⁹

43 Faith Karimi and Nick Thompson, "Uganda's President Museveni Signs Controversial Anti-Gay Bill into Law," CNN, February 25, 2014, <https://www.cnn.com/2014/02/24/world/africa/uganda-anti-gay-bill/index.html>.

44 See Eric Mawira Gitari, "The Gay Debate: Decriminalising Homosexuality in Kenya," *The Elephant* (blog), February 28, 2019, <https://www.theelephant.info/features/2019/02/28/the-gay-debate-decriminalising-homosexuality-in-kenya/>.

45 Max Bearak and Darla Cameron, "Here Are the 10 Countries Where Homosexuality May Be Punished by Death," *Washington Post*, June 16, 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/06/13/here-are-the-10-countries-where-homosexuality-may-be-punished-by-death-2/>.

46 See Jason Burke, "Hundreds in Hiding as Tanzania Launches Anti-Gay Crackdown," *The Guardian*, November 5, 2018, <https://www.theguardian.com/world/2018/nov/05/tanzania-gay-people-in-hiding-lgbt-activists-crackdown>; Jason Burke and Samuel Okiror, "Ugandan MPs Press for Death Penalty for Homosexual Acts," *The Guardian*, October 15, 2019, <https://www.theguardian.com/world/2019/oct/15/ugandan-mps-press-for-death-penalty-for-homosexual-acts>; John Harrington, "The Most Difficult Places in the World to Be Gay," *24/7 Wall Streets*, June 2, 2020, <https://247wallst.com/special-report/2020/06/02/the-most-difficult-places-in-the-world-to-be-gay/>.

47 Associated Press, "Nigeria Passes Law Banning Homosexuality," *The Telegraph*, January 14, 2014, <https://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/10570304/Nigeria-passes-law-banning-homosexuality.html>.

48 See Human Rights Watch, "We'll Show You You're a Woman": *Violence and Discrimination against Transgender Men in South Africa* (New York: Human Rights Watch, 2011).

49 Jacob Poushter and Nicholas O. Kent, "The Global Divide on Homosexuality Persists," June 25, 2020, especially the data at 6, 7, 26, <https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/>.

Similarly, according to Amnesty International,⁵⁰ across sub-Saharan Africa, homophobic attacks and harassment are becoming ever more visible. There is also evidence that homophobia in Africa is largely inspired by both religious and political rhetoric.

The laws and political rhetoric serve as a tacit justification for further discrimination, harassment, stigmatization, marginalization, exclusion, hate speech, and the societal rejection of sexual minorities. Religiously inspired homophobia finds legitimization in political rhetoric and antihomosexuality laws. Anti-gay remarks by African leaders, often with support from religious leaders and the wider public, continues to fuel violent homophobia across the continent. Such remarks also perpetuate discrimination against LGBTI individuals and groups, who frequently face arrests, assault, violence, and even death. The promulgation and the enforcement of such laws in Kenya and elsewhere, coupled with the public pronouncements of political and religious leaders make it hard for the public to accept homosexual orientation. Since Uganda's passage of the Anti-Homosexuality Act, which was proposed in Parliament in 2009 and finally passed and signed by President Museveni in 2014, a number of gays and lesbians have been killed or imprisoned, while many have sought asylum in other African countries, such as South Africa and Kenya, and in Europe.⁵¹ Indeed, there have been significant numbers of Ugandan gay and lesbian refugees in Kenya as a result of these bills, even as the issue of homosexuality has been politicized in Kenya.⁵²

THE POLITICIZATION OF HOMOSEXUALITY IN KENYA

Since the 1990s, political leaders in Africa who support laws criminalizing homosexuality and same-sex relationships appear to have discovered the political advantages of promoting homophobia. In Kenya, Namibia, Uganda, Nigeria, Zimbabwe, and Zambia, political leaders have condemned gays and lesbians in extremely strong terms that have been mirrored by an equally homophobic general citizenry. According to comparative constitutional law scholar Seth Muchuman Wekesa, politicians have also harshly criticized gays and lesbian lifestyles and conduct, deeming them to be un-African, unnatural, foreign, immoral, an abomination, and sinful. In some African countries, for example, "political leaders target sexual orientation issues to distract attention from their overall human rights records, often marked by rampant corruption, discrimination and violence against women, corruption and lack of media freedom."⁵³

Politicians across a number of countries have also called for the arrests, attacks, deportation, imprisonment, and total elimination of sexual minority groups, a move that has led to attacks and forced migration of gays in Zimbabwe, Uganda, Namibia, and Mauritania. A few examples suffice. Ugandan president Museveni has called homosexuals "disgusting" and homosexuality "an abnormality" caused by either random breeding or the need to make money.⁵⁴ In a series of interviews with CNN, President Museveni argued that lesbians chose female partners because of sexual starvation and the failure to marry a man. Of the debate over homosexuality, Museveni mused,

50 "Amnesty International Condemns 'Homophobia' in Africa," *BBC News*, June 25, 2013, <https://www.bbc.com/news/world-africa-23033423>.

51 "Uganda: Brutal Killing of Gay Activist," Human Rights Watch, October 15, 2019, <https://www.hrw.org/news/2019/10/15/uganda-brutal-killing-gay-activist>.

52 Cyuzuzo Samba, "Gay Refugees Sent Back to 'Homophobic Kenya Camp'," *BBC News*, December 20, 2019, <https://www.bbc.com/news/world-africa-48703112>.

53 Wekesa, "A Constitutional Approach to the Decriminalisation of Homosexuality in Africa," 2.

54 Elizabeth Landau, Zain Verjee, and Antonia Mortensen, "Uganda President: Homosexuals are 'Disgusting,'" CNN, February 25, 2014, <https://www.cnn.com/2014/02/24/world/africa/uganda-homosexuality-interview/index.html>.

“The question at the core of the debate on homosexuality is what do we do with an abnormal person? Do we kill him/her? Do we imprison him/her? Or we do contain him/her?”⁵⁵ He further argued, “Even with legislation, they will simply go underground and continue practising homosexuality or lesbianism for mercenary reasons.”⁵⁶ “You cannot call an abnormality an alternative orientation. It could be that western societies on account of random breeding have generated many abnormal people,” Museveni added.⁵⁷ It is “disgusting behavior,” he has repeatedly intoned.⁵⁸

Employing similar rhetoric, the late Robert Mugabe, who was president of Zimbabwe for thirty-eight years, “devoted whole speeches to denouncing homosexuals as worse than ‘dogs and pigs.’”⁵⁹ He also exhorted members of his party, the ruling Zimbabwe African National Union–Patriotic Front, to tie up homosexuals and bring them to the police.⁶⁰ During Zimbabwe’s international book fair in August 1995, President Mugabe also mused “I find it extremely outrageous and repugnant to my conscience that such immoral and repulsive organizations like those of homosexuals who offend both against the laws of nature and the morals of religious beliefs espoused by our society should have any advocates in our midst and even elsewhere in the world.”⁶¹ In Gambia, former president Yahya Jammeh was quoted in 2008 as having said that homosexuals are like venom and must be fought like malaria-causing mosquitoes.⁶² He also “vowed to cut off the heads of homosexuals.”⁶³

In Kenya, former president Daniel Arap Moi “condemned homosexuality as something against Christianity and African culture.”⁶⁴ Similarly, speaking at a rally in Nairobi during the year of the new constitution, then prime minister Raila Odinga, said, “The Kenyan constitution on homosexuality was very clear that men or women found engaging in homosexuality will not be spared. . . . If we find a man engaging in homosexuality or a woman in lesbianism, we will arrest them and put them in jail.”⁶⁵ He later retracted these statements after local and international pressure from individuals and human rights groups. Kenya’s current deputy president, William Ruto, was reported by media to have said, “The Republic of Kenya is a republic that worships God. We have no room for gays and those others.”⁶⁶ In 2013, Ruto, the self-proclaimed “born again Christian,” was indicted by the International Criminal Court for crimes against humanity in connection with the violence that followed the 2007 elections, and he has been implicated in several major corruption scandals in Kenya.⁶⁷ The deputy president could have used such anti-LGBTI rhetoric to distract from both the massive corruption allegations facing him and

55 Agence France-Presse, “Ugandan President Refuses to Approve Law Jailing Gay People for Life,” *The Guardian*, January 17, 2014, <https://www.theguardian.com/world/2014/jan/17/uganda-president-law-jailing-gay-people-life>.

56 Agence France-Presse, “Ugandan President Refuses to Approve Law Jailing Gay People for Life.”

57 Landau, Verjee, and Mortenson, “Uganda President”

58 Landau, Verjee, and Mortenson.

59 Human Rights Watch, *Together Apart*, 10. See also Tabona Shoko “‘Worse than Dogs and Pigs?’ Attitudes toward Homosexual Practice in Zimbabwe,” *Journal of Homosexuality* 57, no. 5 (2010): 634–49, at 644.

60 Wekesa, “A Constitutional Approach to the Decriminalisation of Homosexuality in Africa,” 1.

61 As quoted in Wekesa, “A Constitutional Approach to the Decriminalisation of Homosexuality in Africa,” 1–2.

62 Hannibal Goitom, “Gambia: Law Enacted Making Aggravated Homosexuality a Crime,” *Global Legal Monitor*, November 26, 2014, <https://www.loc.gov/law/foreign-news/article/gambia-law-enacted-making-aggravated-homosexuality-a-crime/>.

63 Human Rights Watch, *Together Apart*, 10.

64 Wekesa, “A Constitutional Approach to the Decriminalisation of Homosexuality in Africa,” 2.

65 Aliza I. Kassim and Lillian Leposo, “Gay, Lesbian Groups Criticize Kenyan Leader’s Remarks,” *CNN*, November 30, 2010, <http://www.cnn.com/2010/WORLD/africa/11/30/kenya.gay.reaction/index.html>.

66 “Kenya’s Deputy President William Ruto Says There Is ‘No Room’ for Gays in His Country,” *Huffington Post*, May 5, 2015, https://www.huffpost.com/entry/william-ruto-kenya-gays_n_7203686.

67 Justus Wanga, “It’s Scandal after Scandal: Should Ruto First Clean His House?” *Daily Nation*, February 22, 2020, <https://nation.africa/kenya/news/politics/it-s-scandal-after-scandal-should-ruto-first-clean-his-house-253132>.

the crimes against humanity of which he was accused before the International Criminal Court (for which he was later indicted). But he has also often sought to align himself with the Christian conservative majority both for respectability and legitimacy especially through hefty monetary donations to churches across the country.⁶⁸

In the legislative branch, Aden Duale, the majority leader of the National Assembly of Kenya said in response to parliamentary debates on a ministerial report on the subject of sexual orientation that homosexuality is “as serious as terrorism,” and that the country needs to address the issue in the same way that it does Al-Shabaab terrorists.⁶⁹ During a particularly emotive debate on the subject of homosexuality in the Kenyan parliament, Duale argued that Kenya’s new constitution and penal code were sufficient in addressing the issue of homosexuality in the country. The debates in parliament were a reaction to a ministerial statement on non-enforcement of anti-gay laws in Kenya that indicated that the Kenya police had prosecuted 595 cases of homosexuality across the country between 2010 and 2014.⁷⁰ Kenyan human rights lawyer Eric Gitari argues that an independent due diligence review of this report found gross errors and conflation of homosexuality with bestiality and defilement charges.⁷¹ Gitari suggests the conflation was either deliberate or meant to increase social anxieties around homosexuality. It could also be due to errors caused by poor record keeping by the Kenyan police, whose documentation to date remains largely manual.

From these examples, it is clear that conversations around homosexuality and same-sex relationships become “more difficult when homosexuality is politicised with religious doctrines” whose nature hardly allows for pragmatic conversations and deliberations which are necessary for any democratic process.⁷² As Asonzeh Ukah aptly points out in the Nigerian context, political leaders in many African countries often use explicitly religious arguments against homosexuality, denouncing it as an un-African, un-biblical, and un-Christian, among many other negative characterizations.⁷³ Researchers and social justice activists have argued that “the political capital invested by the Kenyan state on homophobia is a tactic to distract the public from pressing economic issues, such as rampant corruption.”⁷⁴ Such political rhetoric, Gitari points out, has been found to thrive in countries with weak social and political institutions, poverty, inequality, unemployment amongst youth, and generally restrictive civic spaces.⁷⁵ And there is evidence that such political remarks, as well as antihomosexuality laws, have not just encouraged violence against gay and lesbian people, but have also further fueled homophobia in many parts of the African continent. Such rhetoric and laws have had severe and direct consequences for the rights of sexual minorities in Africa, who have recently faced increased rejection, threats, frequent harassment by police and members of the public, imprisonment, even murder in countries like Uganda.

68 “Deputy President William Ruto, Raila Clash on Church Donations,” *K24TV*, July 22, 2019, <https://www.k24tv.co.ke/news/deputy-president-william-ruto-raila-clash-on-church-donations-3437/>.

69 “Aden Duale: Homosexuality ‘As Serious as Terrorism,’” *Standard Digital*, March 27, 2014, <https://www.standardmedia.co.ke/kenya/article/2000107963/duale-homosexuality-as-serious-as-terrorism>.

70 Gitari, “The Gay Debate.”

71 Gitari, “The Gay Debate.” Gitari was the co-founder and executive director of the National Gay and Lesbian Human Rights Commission in Kenya (www.nglhrc.com); See also Eric Mawira Gitari, “Serious Challenges, with Some Green Shoots of Hope,” *Harvard Law Today*, October 7, 2019, <https://today.law.harvard.edu/serious-challenges-with-some-green-shoots-of-hope/>.

72 Gitari, “The Gay Debate.”

73 Ukah, “Apocalyptic Homophobia.” See also Asonzeh Ukah, “Pentecostal Apocalypticism: Hate Speech, Contested Citizenship and Religious Discourses on Same-Sex Relations in Nigeria,” *Citizenship Studies* 22, no. 6 (2018): 633–49.

74 Gitari, “The Gay Debate.”

75 Gitari, “The Gay Debate.”

RELIGION, HOMOPHOBIC POLITICS, AND THE 2010 KENYAN CONSTITUTION

If the homophobic rhetoric of the politicians is disturbing, then the role of clergy from both Muslim and Christian denominations is even more alarming. Many Christian and Muslim leaders have condemned same-sex relationships and conduct in the strongest words possible. Many have also rejected calls to respect the human rights of gay and lesbians in the country. Many view sexual orientation as un-natural, un-Christian/Muslim, un-African, and an abomination before the Lord. Their claims have not only supported the continued criminalization of homosexuality in the country, but also continue to perpetuate and inspire homophobia. In the run-up to the referendum on the 2010 Constitution, a majority of clergy from mainline, evangelical, Pentecostal, and charismatic churches vehemently opposed passage because it allowed for the legalization of homosexuality and abortion, among other contentious practices.⁷⁶

Christian mainline churches were led by Canon Reverend Peter Karanja, head of the Protestant National Council of Churches of Kenya, while the Catholic Church was led by Archbishop Cardinal John Njue, head of the Roman Catholic Church in Kenya. The Pentecostal, charismatic, and evangelical churches were led by Bishop Margaret Wanjiru of Jesus is Alive Ministries, Bishop Mark Kariuki, the general overseer of Deliverance Churches of Kenya, and the then chair of the Evangelical Alliance of Kenya, an umbrella body representing Pentecostal and charismatic churches. All these religious organizations and their clergy spearheaded debates to oppose the passage of the constitution, because it allowed for homosexuality. They all argued that the constitution did not meet religious, moral, and economic justice and concerns of religious groups.⁷⁷ Kenya adopted the Constitution of Kenya 2010 in August 2010 after a contested referendum. The Constitution of Kenya 2010 has an elaborate bill of rights that guarantees every citizens rights, justice, dignity, equality, and nondiscrimination. While it does not expressly allow for same-sex relationships, it guarantees protection for minorities and marginalized groups. By contrast, the colonial penal code criminalizes consensual same-sex acts.⁷⁸

A section of Kenyan Muslims was represented by clergy from the Council of Imams and Preachers of Kenya. In their churches and mosques, these clerics undertook civic education. They also mounted serious campaigns through televised religious sermons, radio talks and calls, church crusades, rallies, church publications, newspapers, and press releases in the media and other public spaces. In all these spaces and forums, spiritual leaders gave reasons why the constitution should not be adopted and promulgated.⁷⁹

Pentecostal clergy were particularly troubled by clauses in the constitution that appeared to allow for the legalization of homosexuality, which they deemed to be foreign, un-Christian, and an abomination before the Lord, an unacceptable sexual lifestyle, and a threat to family, marriage, and reproduction. Even without critical political thoughts, they fought hard to sway their followers

76 Adriaan van Klinken, "Homosexuality Remains Illegal in Kenya as Court Rejects LGBT Petition," *Conversation*, May 25, 2019, <https://theconversation.com/homosexuality-remains-illegal-in-kenya-as-court-rejects-lgbt-petition-112149>.

77 Oscar Gakuo Mwangi, "Religious Fundamentalism, Constitution Making and Democracy in Kenya: The Kadhi Courts Debate," *The Round Table: The Commonwealth Journal of International Affairs* 101, no. 1 (2012): 41–52; See also Richard Allen Greene, "Kenya's Churches Unite against Draft Constitution," CNN, August 4, 2010, <https://edition.cnn.com/2010/WORLD/africa/08/04/kenya.constitution.churches/index.html>.

78 Wekesa, "A Constitutional Approach to the Decriminalisation of Homosexuality in Africa," 1–2.

79 Damaris Seleina Parsitau, "Islamophobia or Space Contestations? Christian Churches and the Kadhi Courts Controversy during the Constitution Review Process in Kenya (1990–2010)," in *Fighting in God's Name: Religion and Conflict, in Local-Global Perspectives*, ed. Afe Adogame, Olufunke Adeboye, and Corey L. Williams (Lanham: Rowman & Littlefield, 2020), 189–211.

to reject the constitution. Bishop Wanjiru, then an elected member of parliament for the Nairobi constituency of Starehe and the assistant minister for housing and shelter, positioned herself alongside Pentecostal clergy to campaign against the passage of the new plebiscite. With the help of the Evangelical Fellowship of Kenya, they put up a unified front.⁸⁰ These Pentecostal clergy felt particularly threatened by the new constitution's emphasis on the bill of rights, particularly individual and civil rights, freedom of speech, and reproductive health rights, particularly its permissive provisions on abortion and pornography and its prohibition of discrimination based on gender and sexual orientations. Many clergy scored both political and spiritual capital out of this opposition.⁸¹ Wanjiru emerged as the face of Pentecostal opposition to the constitution reform process, a move that made her politically popular and vocal.⁸²

The politicization was not, however, peculiar to Kenyan Pentecostals.⁸³ Anthony Balcomb cites the example of post-apartheid South Africa, where “many evangelicals condemn[ed] the constitution's emphasis on individual rights and civil liberties when it comes to freedom of speech and choice, especially its pro-choice position on abortion, the forbidding of discrimination based on gender and sexual orientation, and its tolerance of pornography.”⁸⁴ Balcomb suggests that the perceived threat to their freedom brought about by the new constitutional dispensation in South Africa may have propelled Pentecostals into active politics with a new and combative zeal. Anecdotal data suggests that Christian and political opposition to the new constitution was backed by America's conservative religious right.⁸⁵ Christian opposition to the new constitution in Kenya and support for the anti-homosexuality bill in Uganda have also been linked to the American evangelical right, in a way that has given rise to a fundamentalist view of human sexualities among Pentecostals.⁸⁶ American dollars were also linked to Christian opposition to the 2010 constitution.⁸⁷ Yet, behind the anti-gay crusade in African countries lurks the powerful American evangelical lobby out to promote Christian values and traditional family life in Africa. Pentecostal and evangelical movements are burgeoning in Africa, Kenya included. Many groups have financial support from North American evangelicals. For example, many US-funded programs promoting sexual abstinence until marriage have “channel[ed] money to homophobic groups, while contributing to crippling silence around the sexualities of people who legally cannot marry the partners of their choice.”⁸⁸

80 These clergy were joined in opposition to the draft by others from newer churches such as House of Grace, Gospel Assemblies of Kenya also known as Jubilee Commonwealth Church, Jesus Manifestation Church International, Around the Globe Deliverance Ministries, Christian Foundation Ministries and many other religious organizations, including the Kenya Christian Lawyers Fellowship to oppose the draft.

81 Damaris Seleina Parsitau, “Arise, Oh Ye Daughters of Faith: Pentecostalism, Women and Public Culture in Kenya,” in *Christianity and Public Culture in Africa*, ed. Harri Englund (Columbus: Ohio University Press, 2011), 131–46, at 135.

82 Parsitau, “Islamophobia or Space Contestations?,” 199.

83 Parsitau, “Islamophobia or Space Contestations?,” 201.

84 Anthony Balcomb, “From Apartheid to the New Dispensation: Evangelicals and the Democratization of South Africa,” *Journal of Religion in Africa* 34, no. 1–2 (2004): 5–38, at 6.

85 David Smith, “US Evangelical Christians Accused of Promoting Homophobia in Africa,” *The Guardian*, July 23, 2012, <https://www.theguardian.com/world/2012/jul/24/evangelical-christians-homophobia-africa>.

86 See Jeffrey Gettleman, “American's Role Seen in Uganda Anti-Gay Push,” *New York Times*, January 3, 2010, <https://www.nytimes.com/2010/01/04/world/africa/04uganda.html>.

87 “US Dollars Fuelling Church Campaign,” *Daily Nation*, May 2, 2010, <https://nation.africa/kenya/news/politics/us-dollars-fuelling-church-campaign-632694>.

88 Human Rights Watch, *Together Apart*, 11.

According to Adriaan van Klinken, the rise of antihomosexuality politics in Africa is often explained with reference to religion, specifically African Pentecostalism.⁸⁹ He argues that religion is a major factor in fueling homophobia in Africa, and that the Bible and the Christian faith specifically have become sites of increased struggle. In scores of churches across the country and on televised church sermons, leading Pentecostal clergy aligned to the Evangelical Alliance of Kenya and led by the sermons of Bishops Wanjiru and Kariuki have organized teachings and bible study groups focused on the subject of homosexuality. Many of the sermons and utterances by clergy that have labeled homosexuals sinners and an abomination before the Lord have also blamed them for insurmountable challenges that most African countries face, ranging from climate change, to environmental issues, to death and disease, such as HIV/AIDS. Pentecostal groups have held crusades and undertaken civic education in their individual churches.

Clergy from these churches have sought to influence public policy, working alongside conservative Christian politicians, such as William Ruto, to campaign against the new constitution. One of the most interesting contradictions that emerged during the 2010 referendum was the ecumenical spirit exhibited by Kenyan Christian churches that are otherwise normally at sea when it comes to interfaith relations and ecumenical initiatives. A coalition of Christian clergy formed the Kenya Christian Leaders Constitutional Forum and the Kenya Church, representing all those who opposed the passage of the new constitution. Clergy also mounted public rallies, guised as “mega prayer rallies,” urging all Christians to reject the constitution because of the inclusion of clauses that allowed for homosexuality, and other contentious issues including abortion, and the existence of Islamic courts, also known as Kadhi Courts.⁹⁰

In a large crusade event at Uhuru Park in Nairobi, attended by hundreds of Christians and some legislators, the Kenya Christian Leaders Constitutional Forum officially launched the NO campaign against the new constitution, which was symbolized by the color red, signifying danger. According to historian Daniel Branch,⁹¹ the men and women of cloth spearheaded and stood alongside politicians at the head of the NO campaign. On several occasions, the Kenya Christian Leaders Constitutional Forum threatened the government to mobilize their members against the 2010 national referendum, if it dared to include the contentious issues in the draft constitution. They used resources and appropriated mass media technologies, including newspaper advertisements, radio and television announcements, press releases, posters, and many other means to warn Christians against voting for a draft that they claimed was poisonous and detrimental to the health of the nation. A paid press advertisement, signed by the National Council of Churches of Kenya (Anglican Church of Kenya, Methodist Church of Kenya, Friends Church, and the Evangelical Alliance of Kenya) challenged the government on these issues.⁹² Various clergy from varied denominations also mounted civic education programs in their respective churches.⁹³ Kenyan Pentecostal

89 Van Klinken, “Beyond African Religious Homophobia.”

90 See Parsitau, “*Islamophobia or Space Contestations?*,” 201. See also Hassan Juma Ndzovu, “Muslim Christian Contestations over the Entrenchment of Kadhi Courts in the New Constitution of Kenya: Challenging the Principle of a Secular State,” in *Religious Pluralism, Heritage and Social Development in Africa*, ed. M. Christian Green et al. (Stellenbosch: Sun MeDia, 2017), 121–36.

91 Daniel Branch, “Kenya’s Referendum: ‘In the Name of God, No!’,” *Open Democracy*, August 17, 2010, <https://www.opendemocracy.net/en/kenyas-referendum-in-name-of-god-no/>.

92 See Parsitau, “*Islamophobia or Space Contestations?*,” 201.

93 I attended a significant number of these civic education drives in various Christian churches in Nairobi and Nakuru in order to gain better perspective of what type of civic education was being rolled out. By and large, much of it concentrated on highlighting the issues that the churches viewed as contentious, such as Kadhi courts, abortion, homosexuality, and the bill of rights. Much of it appeared misinterpreted, distorted, and misleading. On

leaders spearheaded national campaigns and public debates to criminalize homosexuality during constitutional debates. In their numerous statements, sermons, television appearances, and interviews, they offered various arguments as to why the constitution should not be adopted.⁹⁴

Their framing of homosexuality was harsh and alarming, just like the politicians' utterances discussed above. Even without a critical political theology, Pentecostals aligned with politicians—and vice versa—for respectability and legitimation. Both groups suggested that homosexuality would negatively affect the family institution and reproduction in a bid to enforce social and cultural norms they believe families and communities can no longer uphold.

By framing homosexuality debates and discourses in terms of their supposed effects on marriage and family in this way, the clergy sought not only to construct the moral selves and moral subjectivities of their people but also to define marriage as a union between man and woman as the only ideal model of intimate relationships. In this way, religious leaders attempted to influence and regulate public morality.⁹⁵ Interestingly, Christian clergy have rarely raised issues about the explosion of single motherhood and the high rates of divorce in the country.⁹⁶ Instead, Christian clergy have appropriated notions of devils, demons, sin, death, and abomination to mobilize popular sentiments and emotions against homosexuality. The hardness of these positions and views has stifled more pragmatic and reasoned debates about homosexuality and same-sex relationships in Africa.

According to Adriaan Van Klinken, there is enough evidence to support that religion, particularly African Pentecostalism, is a major factor in fueling homophobia and a key obstacle in future prospects.⁹⁷ Pentecostal teachings, beliefs, and mobilizations against homosexuality have continued to inspire violent homophobia. It is therefore not surprising that Kenyan Christians, especially Pentecostals, welcomed and celebrated the criminalization of homosexuality in Kenya. The Roman Catholic Church and the Protestant churches, including the Anglican and Presbyterian churches, were equally vehemently opposed to the passage of the new constitution. The Anglican Church in Kenya (and across Africa), has long been in strong opposition to homosexuality both in church and society, as seen in the larger crisis facing the Anglican Church worldwide. All these churches aligned themselves with Deputy President Ruto to oppose the passage of the 2010 Constitution. Despite strong opposition from a section of politicians allied with Ruto and with religious clergy and their organizations, an overwhelming 67 percent of Kenyans voted for the new constitution, suggesting that many had different concerns from those of the clergy and politicians.

POST-2020 CONSTITUTION SUPREME COURT APPOINTMENT CONTROVERSIES

Christian churches' opposition to the new constitution propelled them into the public sphere, where they began to influence public policy and police sexual citizenship. For example, the new constitution demanded public vetting of constitutional office holders. Religious leaders and the organizations they represented, still smarting from the overwhelming approval of the 2010 constitution, wanted to influence the appointment of Kenya's Chief Justice, the deputy chief justice, and

several occasions, I challenged and gave my perspectives on what I thought were misleading facts, something that was not kindly received by some clergy.

94 See Parsitau, "Islamophobia or Space Contestations?," 200–03.

95 See also Adriaan van Klinken, "Gay Rights, the Devil and the End Times: Public Religion and the Enchantment of the Homosexual Debates in Zambia," *Religion* 43, no. 4 (2013): 519–40.

96 See Damaris Seleina Parsitau, "Praying for Husbands! Single Women Negotiating Faith and Patriarchy in Contemporary Kenya," in *The Palgrave Handbook of African Social Ethics*, ed. Nimi Wariboko and Toyin Falola (Cham: Palgrave Macmillan/Springer, 2020), 69–92.

97 Van Klinken, "Beyond African Religious Homophobia."

other judicial officers. Yet discourses around the law and homosexuality continued even after the constitution was promulgated and operationalized, although they remained increasingly emotive even as religious clergy sought to influence laws and public policy. This was demonstrated in the public vetting and hiring of Kenya's first chief Justice and his deputy under the new constitution.

In June 2011, Dr. Willy Mutunga, an advocate of the High Court of Kenya was nominated as the first Chief Justice of the Supreme Court of Kenya under the newly promulgated constitution. Mutunga, a progressive legal scholar, human rights defender, and social justice activist with a long history of advocacy for democracy and liberal reform in the country was shortlisted for the position. Under the 2010 Constitution and its Bill of Rights, it became a requirement to publicly vet all candidates occupying constitutional offices. Mutunga had a storied career as a human rights lawyer and academic, with impressive credentials, a record of personal integrity, and a record of fighting for the enlargement of Kenya's democratic space that earned him a jail term during Daniel Arap Moi's regime.⁹⁸ Mutunga's public vetting attracted tremendous attention because of the vetting panel's focus on Mutunga's personal sexual orientation and his support for human rights and gay rights, particularly in light of a stud earring that Mutunga wore.

Despite the many important issues and challenges facing the judiciary upon passage of the new constitution, the vetting panel focused on Mutunga's ear stud and publicly asked him on live television if he was gay.⁹⁹ Mutunga replied that he was not gay but supported human rights, including sexual minority rights. The panelists further asked him to explain his marital status. Mutunga had divorced his wife but was still single during the vetting process, and this also became a controversial issue. Further controversy swirled around his work as a senior project manager with the Ford Foundation, a US-based international philanthropy that promotes human rights and democracy. The vetting panel, many of whom were politicians, were suspicious that Mutunga was behind the gay rights organizations that had come out to demand their rights before and after the promulgation of the new constitution. It is also worth noting that Mutunga was a Christian who later converted to Islam.

Progressives and the LGBTI community welcomed the appointment of Mutunga, but Christian leaders fought bitterly and tried unsuccessfully to prevent both his nomination and subsequent appointment. Canon Karanja, leading the Protestant National Council of Churches of Kenya, and Bishop Kairruiki, leading the Evangelical Alliance of Kenya, both vehemently opposed Mutunga's nomination and suggested that he was too liberal on issues such as homosexuality, divorce, abortion, and other issues to be Chief Justice in a predominantly Christian nation.¹⁰⁰ The basis of much of the Christian leaders' opposition and resistance to Mutunga's appointment was his public defense of LGBTI groups during the course of his work at the Ford Foundation, where he penned, under the pseudonym "Cabral Pinto," several articles in defense of gay rights that the churches considered an attempt to normalize and "Africanize" homosexuality.¹⁰¹

98 "Reforms Activist Beats Judges in Race for CJ," *Daily Nation*, May 13, 2011, <https://nation.africa/kenya/news/politics/reforms-activist-beats-judges-in-race-for-cj-768324>.

99 "Mutunga, Barasa, Tobiko Vetting," KTN News Kenya, YouTube, June 7, 2011, 4:47, <https://www.youtube.com/watch?v=CzHPHQw3Q94>. Many Christians in the country deem men who wear ear studs to be homosexuals.

100 The findings of the Kenya Population and Housing Census 2009 show that Christians make up 31.8 million of Kenya's 38.6 million people representing 82.6 percent of the population, compared to 78 percent in the 1998. Muslims comprise of about 4.3 million. Kenya Bureau of National Statistics, Population and Housing Census of Kenya 2009, <https://www.knbs.or.ke/>; Kenya Bureau of National Statistics, Kenya Population and Housing Census, 2019, <https://www.knbs.or.ke/>.

101 Evan Mwangi, "Queer Agency in Kenya's Digital Media," *African Studies Review* 57, no. 2 (2014): 93–113, at 107, 107n9.

Mutunga's ear stud also turned the spotlight on his sexuality and spirituality. William Ruto, then minister and parliamentarian, echoed a section of Christian churches, warning, "we cannot have a C[hief] J[ustice] who spo[r]ts studs on his ears and claims he uses them to communicate with unseen spirits."¹⁰² Mutunga had explained that the earring was a source of ancestral inspiration for him and did not relate to his sexuality and declared, "There is no way I can remove this earring even if I become the chief justice! If am told I must remove it to get the job of CJ, I will say keep your job."¹⁰³

The nominee for deputy chief justice, Nancy Baraza, who was a doctoral candidate researching homosexuality in Kenya, similarly was the focus of significant controversy and debate about her sexual orientation and marital status. Baraza was asked during the public vetting to indicate her sexual orientation and to explain why she chose to focus on homosexuality as her dissertation topic. She vehemently denied allegations made by the vetting committee that she was a lesbian. She explained that she was straight, a divorced mother of three children whom she had raised singlehandedly. As it had with Mutunga, Baraza's marital status also created controversy, which was hardly surprising in a society that frowns upon single women. The topic of her doctoral research on homosexuality created quite a stir during the vetting exercise. Her critics, mainly a section of Christian clergy, argued that she did not represent family values because she was divorced. Christian leaders promote heterosexuality and monogamy as the ideal for Christian marital relationship. Many also questioned why she would research homosexuality if she was not a lesbian. These debates over judicial appointments gave greater visibility to the subject of sexual orientation in Kenya.

Following these debates over the new constitution and judicial appointments and after the two high-profile public vettings of Mutunga and Baraza, many members of the LGBTI community came out to openly declare their sexual orientation. The debates, as Sylvia Tamale has written of another context, "forced the issue of nonconforming sexualities 'out of the closet'" and into mainstream political and religious discourse."¹⁰⁴ It also "provided the space within which the issues could be aired and LGBTI groups could articulate not only their fears, but also their claims to equal citizenship."¹⁰⁵ Others were fighting to ensure that the question was an "intrinsic part of the democratic struggle" in the country and "not peripheral to it."¹⁰⁶ Since then, Kenyans have had more open—but also highly contentious—discourse about homosexuality in the public sphere. Human rights activists, academics, and media personalities have written on the subject of sexual orientation, urging the public to change its perceptions. US-based Kenyan legal scholar Makau wa Mutua has written about gay rights in Kenya's leading newspapers in a bid to engender pragmatic debates.¹⁰⁷

102 Philip Mwakio, "MPs: We'll Reject Mutunga, Baraza in Parliament," *The Standard*, May 16, 2011, <https://www.standardmedia.co.ke/business/article/2000035229/mps-we-ll-reject-mutunga-baraza-in-parliament>.

103 "Why Former Detainee Won Race for CJ," *Daily Nation*, May 13, 2011, <https://nation.africa/kenya/news/politics/why-former-detainee-won-race-for-cj-768320>.

104 Sylvia Tamale, "Confronting the Politics of Nonconforming Sexualities in Africa," *African Studies Review* 56, no. 2 (2013): 31–34, at 42.

105 Tamale, 42.

106 Tamale, 42.

107 For example, Makau Mutua's articles "Rights Body Has Finally Stood up for Gays and Lesbians," and "Why Homophobia Is a Fear of One's Own Sexuality," were published in the *Daily Nation*, but they are no longer available online. An excerpt of "Rights Body Has Finally Stood up for Gays and Lesbians," can be read on the blog *Global Equality Today*, accessed March 8, 2021, <https://globalequality.wordpress.com/2012/05/22/rights-body-has-finally-stood-up-for-gays-and-lesbians/amp/>.

Yet, even as Pentecostals work to influence public policies and regulate people's sexual lives, it is not lost on many that Kenyan clergy are hardly bothered by other social problems, such as the explosion of single motherhood in the country, drug and substance abuse, poverty, youth unemployment, and increased gender and sexual violence—this last category includes female genital mutilation, rape, child marriage, forced marriages, and teen pregnancy—all of which are rampant in Kenya. Despite Kenya being 83 percent Christian, the country is still one of the most corrupt and unequal countries in the world.¹⁰⁸ It is also increasingly ethnically divided, with a large majority of citizens feeling marginalized in all areas of public life. It is a country in which Pentecostal churches are found every five kilometers in urban areas and where prayers are part and parcel of the social and political culture. But that fact does not translate to any tangible social and moral reform.¹⁰⁹

Nonetheless, Pentecostal preachers vilify LGBTI groups from their pulpits, blaming homosexuality for the ills affecting the Kenyan society. Until 2000, controversies about homosexuality in Africa received little attention. Homosexuality was not a major subject of discussion in Kenya's religious and public spheres, even though there had been talk about its presence in prisons and boarding schools. Pentecostal churches were mostly silent about homosexuality, choosing to focus more on the prosperity gospel, faith healing, and similar themes and teachings. Paul Gifford, a scholar of African religion and politics, points out that homosexuality was not a burning issue for most Kenyans.¹¹⁰ The centrality of homosexuality in public debates in African societies, particularly in Christian circles over the last twenty-five years, has much to do with spread of the HIV/AIDS pandemic, in which Christian moralism began to assume center stage, but it also has to do with more general contestations over sexual citizenship and the role of religion in disciplining peoples' sexualities.¹¹¹

PENTECOSTAL APOCALYPTISM, HELLFIRE, AND CONTESTATIONS OVER SEXUAL CITIZENSHIP: THE CASE OF DAVID OWUOR

In the wake of increased influence of religion in the public sphere, and particularly Pentecostal Christianity as a public force, there has been a move toward a notion of sexual citizenship in which clergy seek to have power and influence over people's personal and sexual lives. This can be seen as a move by spiritual leaders seeking to influence governance and public policy, including the law. The tension between civil liberties and rights, as fronted by civil society activists, and religious values, as fronted by religious leaders, has come under increased scrutiny. In invoking religious authority and values, Kenyan clergy have sought to police and control people's sexualities and ultimately their very citizenship. Yet new notions of sexuality and rights continue to be contested and reconfigured. As Ukah has argued, "religious opposition to same-sex relationships touches on the nature of different types and modes of citizenships in modern African states.

108 Washington Osiro, "Corruption in Kenya: We All Know Uhuru Kenyatta's Government Is Corrupt But 'Raila Will "Nefa" Be President!'" *Huffington Post*, November 5, 2016, https://www.huffpost.com/entry/corruption-in-kenya-yes-w_b_12791380.

109 Damaris Seleina Parsitau, "The Civic and Public Roles of Kenyan Neo-Pentecostalism 1970–2010" (PhD diss., Kenyatta University, 2014), 31, 375–76.

110 Paul Gifford, *Christianity, Politics and Public Life in Kenya* (London: Hurst & Co, 2009), 249.

111 Damaris Seleina Parsitau, "'Keep Holy Distance and Abstain till He Comes': Interrogating a Pentecostal Church's Engagements with HIV/AIDS and the Youth in Kenya," *Africa Today* 56, no. 1 (2009): 44–64.

Many religious groups associate human sexuality—primarily—with procreation and oppose same-sex unions as the proper context to produce children.”¹¹²

Kenyan Pentecostal clergy have a strong social presence in the Kenyan public sphere. Pentecostal clergy, such as the self-proclaimed prophet David Owuor of the Ministry of Repentance and Holiness, have used both their church platforms, political, spiritual power, and public profiles to image themselves as the moral voices of the nation whose mission is to create a holy kingdom of God on earth in preparation for the much-anticipated Rapture. Owuor, whose teachings focus on sex and morality, frames issues affecting the country in sexual and apocalyptic terms. He has claimed that the problems with Kenya—including poor governance, corruption, politics of exclusion and marginalization, and sexual and gender-based violence—are all linked to the concept of sexual sin. Consequently, Owuor has recently emerged as a strong opponent of homosexuality and same-sex relationships, frequently condemning homosexuality in strong terms. Owuor, whose pet subject is immorality from trafficking in sexual sin, had this to say about homosexuality in a series of sermons he preached on sexual sin and its gravity:

Open gay homosexuality is now reigning in the church, including on global christian television where gays homosexuals and lesbians cannot be rebuked, but shockingly now publicly share views expressing their positions on the bible. As though this were not bad enough, the present-day church has taken this to a new height by openly and publicly anointing open gay and homosexuals as pastors and bishops. To add salt onto injury, there is a raging debate that is currently threatening to split the church of Christ onto whether this abomination of homosexuality should be included in worship practices or thrown out of church.

While all this is going on, the rest of the other christians are busy attending movies of immorality driven by hollywood.¹¹³

Owuor, who has in the past fifteen years emerged as the spiritual president of the country and a moral policeman, attempts to discipline, police, and legislate public morality, specifically that of women’s bodies and sexualities, in his church and in the country by instituting a “holy” and decent dress code for his women followers.¹¹⁴ As a highly influential Pentecostal leader in Kenya, Owuor’s movement has morphed into a large grass root movement while his social and political power has equally grown.

While Owuor was not part of the group that opposed the 2010 Constitution, he later emerged as an outspoken preacher against homosexuality and other sexual sins, which he terms an abomination before God. He has also framed it in eschatological and apocalyptic language in which God’s wrath will be manifested in the death and complete annihilation of sinners. According to him, rampant sexual sins not just in Kenya, but in the world as a whole, will lead to death and usher in the kingdom of God. He articulates his controversial teachings through hundreds of sermons, many of which have been uploaded to YouTube, and through church magazines, crusades and other large spiritual gatherings, and television and radio sermons. His popular perception as one of the mightiest prophets of the Lord adds not just to his mystique and social and political power, but also to his

¹¹² Ukah, “Pentecostal Apocalypticism,” 634.

¹¹³ David Owuor, “His Sons No More: Who Will Pitch the Lord’s Tent,” *highwayofholiness.us* (blog), February 3, 2015, <https://medium.com/@USAREpent/his-sons-no-more-9899dd7ec7f7>.

¹¹⁴ See Damaris Seleina Parsitau, “Violent Theologies, Women’s Bodies and the Church ‘Business’ in Kenya,” *The Elephant*, October 31, 2019, <https://www.theelephant.info/features/2019/10/31/violent-theologies-womens-bodies-and-church-business-in-kenya/>; Damaris Seleina Parsitau, “Body Shaming in Prophet Owuor’s Misogynistic Ministry,” *The Elephant*, November 21, 2019, <https://www.theelephant.info/features/2019/11/21/body-shaming-in-prophet-owuors-misogynistic-ministry/>.

spiritual power. He is largely viewed as the defender of the nation's morality and one who will usher in the kingdom of God.

As many commentators have rightly observed, religion and politics are part and parcel of the debates and controversies surrounding homosexuality in Africa. Pentecostals such as Owuor not only castigate homosexuals, but also frame acceptance and tolerance of homosexuality as the reason why the country is grappling with myriads of challenges—ostensibly because God is so angry with Kenyans for embracing queer sexual habits. Such teachings and conservative positions have not only fueled homophobia but have also whipped up emotions and make it impossible for societies to accept homosexuality or have divergent views on the subject. The wider religious and social opposition to homosexuality inevitably has an impact on the law and assessments of constitutional rights.¹¹⁵

DECRIMINALIZATION OF HOMOSEXUALITY IN KENYA: TWO STEPS FORWARD, ONE STEP BACK

The national referendum that produced the 2010 Constitution was widely recognized as a progressive plebiscite that guaranteed the human rights and freedom of all Kenyans. Even so, criminalization of homosexuality in Kenya continued to be heavily criticized by human rights groups, which saw the ongoing threats to LGBTI people as a huge setback to civil rights. Adriaan van Klinken argues that the key components of the penal code violated rights enshrined in the Constitution of Kenya, 2010, including the rights to privacy, freedom of expression, human dignity, health, and protection from discrimination.¹¹⁶ Members of the LGBTI community complained of frequent police harassment and discrimination while seeking medical care. Civil society organizations in Kenya have continuously documented human rights violations based on sexual orientation and gender identity. In 2010, for example, the Kenya Human Rights Commission found that LGBTI persons in Kenya were routinely harassed by police, evicted by landlords, fired from jobs, denied access to health care, and cut off from families, religious groups, and social support.¹¹⁷ Since 2012, the National Gay and Lesbian Human Rights Commission has also documented violations against LGBTI persons, which include “corrective rape,” physical assaults, arbitrary arrests, detentions, extortion, and blackmail, among many others.¹¹⁸

In 2015, following a petition made in 2013, in the case of *Eric Gitari v. Non-Governmental Organisations Co-ordination Board*, the High Court of Kenya at Nairobi, had allowed an LGBTI group to register their organization under the Nongovernmental Organizations Coordination Act.¹¹⁹ In that case, the National Gay and Lesbian Human Rights Commission, led by Eric Gitari, was thrice denied registration because its name was deemed “unacceptable” and because the Kenyan penal code “criminalizes gay and lesbian liaisons.”¹²⁰ The Non-Governmental Organizations Co-ordination Board,¹²¹ a government agency that regulates

115 For a recent survey of Kenyan religious leaders' views on sexuality and legal rights, see Mbote et al. “Kenyan Religious Leaders' Views on Same-Sex Sexuality and Gender Nonconformity.”

116 Van Klinken, “Homosexuality Remains Illegal in Kenya.”

117 Gitari, “The Gay Debate.”

118 Gitari.

119 See “Kenya High Court Orders LGBT Group Registration,” *Human Rights Watch*, April 28, 2015, <https://www.hrw.org/news/2015/04/29/kenya-high-court-orders-lgbt-group-registration>. See the decision in *Eric Gitari v Non-Governmental Organisations Co-ordination Board & 4 others* (2015) K.L.R. (H.C.K.).

120 Human Rights Watch, “Kenya High Court Orders LGBT Group Registration.”

121 See the Non-Governmental Organizations Co-ordination Board website, <https://ngobureau.go.ke>.

and monitors civil society organizations, issued the denials on the basis that it would be “furthering criminality and immoral affairs.”¹²² The High Court found that the denial violated Article 36 of the Kenyan Constitution guaranteeing freedom of association and that “conceptions of morality cannot serve as a justification to limit fundamental rights,”¹²³ ruling that transgender organizations be allowed to register as nongovernmental organizations, which essentially also allowed not just the registration of transgender groups, but also the change of gender markers on official documents issued by government to transgender persons.¹²⁴ This was a significant step forward for LGBT rights under Kenyan law.

A second advance came on March 22, 2018, when the Court of Appeal at Mombasa ruled that forced anal examinations on people accused of same-sex relations was unconstitutional.¹²⁵ Forced anal examination of people accused of homosexual activity was found to violate their right to privacy and dignity.¹²⁶ In describing the effects of the case, Gitari stated, ““My biggest concern was for the two young men; they will live with this for the rest of their lives. But it was progress nonetheless. It means that no other magistrate, no police officer, no government hospital can engage in anal testing to prove that someone is a homosexual. The practice has no value at all, as the court has said, in proving any crime or offense related to homosexuality.”¹²⁷ Indeed, Gitari reflected, “This case has given people confidence, to see what’s possible. . . we have a local precedent now, and it’s being supported. The court was very deliberate in using the African Charter on Human and Peoples’ Rights to speak about it. In this context, people are so keen to use knowledge that is constructed by institutions within the African continent, to push against all these injustices against homosexuals, to create litigation and to claim justice.”¹²⁸

The LGBTI victories would be short lived. On May 24, 2019, the High Court of Kenya at Nairobi rejected a petition calling for the decriminalization of homosexuality in Kenya.¹²⁹ The decision came at a time when there was speculation around the world that Kenya might legalize homosexuality.¹³⁰ The 2019 case followed two petitions that had been filed in 2016 by three

122 See van Klinken, “Homosexuality Remains Illegal in Kenya.”

123 Human Rights Watch, “Kenya High Court Orders LGBT Group Registration.”

124 Gitari, “The Gay Debate”; Human Rights Watch, “Kenya High Court Orders LGBT Group Registration.”

125 See *COI & another v Chief Magistrate Ukunda Law Courts & 4 others* (2018) K.L.R. (C.A.K.); see also Human Rights Watch, “Kenya Rules Forced Anal Exams Unconstitutional,” *Human Rights Watch*, March 22, 2018, <https://www.hrw.org/news/2018/03/22/kenya-court-finds-forced-anal-exams-unconstitutional>.

126 Nita Bhalla, “Rare Win for Gay Rights as Kenya Court Rules Forced Anal Tests Illegal,” *Reuters*, March 28, 2018, <https://www.reuters.com/article/us-kenya-lgbt-anal-tests/rare-win-for-gay-rights-as-kenya-court-rules-forced-anal-tests-illegal-idUSKBN1GY2SI>; see also Audrey Kunycky, “Eric Gitari LL.M. ’18 on Litigating a Landmark LGBT Case in Kenya: ‘It Has Given People Confidence to See What’s Possible,’” *Harvard Law Today*, May 14, 2018, <https://today.law.harvard.edu/eric-gitari-ll-m-18-litigating-landmark-lgbt-case-kenya-case-given-people-confidence-see-whats-possible/>.

127 Kunycky, “Eric Gitari LL.M. ’18.”

128 Kunycky.

129 Van Klinken, “Homosexuality Remains Illegal in Kenya.”

130 See Max Bearak, “Kenya Is Close to Legalizing Homosexuality. What about the Rest of Africa?” *Washington Post*, February 22, 2019, <https://www.washingtonpost.com/world/2019/02/21/kenya-is-close-legalizing-homosexuality-what-about-rest-africa/>; Brianna Duggan, “Kenya’s Top Court Considers Case to Legalize Homosexuality,” *CNN*, February 23, 2018, <https://www.cnn.com/2018/02/23/africa/case-legalize-homosexuality-kenya/index.html>. The decision to the contrary received global attention. See Reuben Kyama and Richard Pérez-Peña, “Kenya’s High Court Upholds a Ban on Gay Sex,” *New York Times*, May 24, 2019, <https://www.nytimes.com/2019/05/24/world/africa/kenya-gay-ban-british.html>; Frederick Nzwilli, “Kenyan Court Upholds Bans on Gay Intimacy,” *Religion News Service*, May 24, 2019, <https://religionnews.com/2019/05/24/kenyan-court-upholds-bans-on-gay-intimacy/>; Jacob Kushner, “The British Empire’s Homophobia Lives On in

LGBTI organizations, namely, the National Gay and Lesbian Human Rights Commission, the Gay and Lesbian Coalition of Kenya and the Nyanza, Rift Valley and Western Kenya Network.¹³¹ The LGBTI groups sought to repeal Sections 162 and 165¹³² of the colonial penal code, which criminalized sexual acts between persons of the same gender. The petitioners had asked the court to declare sections of the colonial penal code unconstitutional. Kenya's penal code, which dates to British rule, criminalizes sodomy. Under this law, a person who has carnal knowledge of any person against "the order of nature or permits a male person to have carnal knowledge of him or her against nature" commits a felony punishable on conviction by a fourteen-year prison term. To commit an unnatural offense is also punishable on conviction by a seven-year prison term.¹³³ The three-judge bench ruled that the impugned provisions of the penal code are not vague in describing the offense.¹³⁴ The judges argued that the petitioners had "failed to establish that the impugned provisions are discriminatory." Further, they argued that there was no evidence that the petitioners were discriminated as they sought healthcare.¹³⁵ The ruling followed petitions filed in 2016 by gay organizations that had asked the court to declare sections of the penal code unconstitutional.

The rejection of the decriminalization petition in Kenya in 2019 remains a huge setback to the LGBTI community, not just in Kenya, but across the African continent. Religious clergy and their followers welcomed the ruling as a victory for the country.

According to Gitari, "discourses about gay and lesbian issues have often been located also within Kenya's legal systems where there have sometimes been arbitrary interpretation and application of criminal rule under political bait, an instrument to regenerate political power both domestically and internationally."¹³⁶ In Gitari's assessment, this is made possible when "legal arguments intersect with religious doctrines and social anxieties over reproduction, marriage and the future."¹³⁷ My own interviews with ordinary Kenyans suggest that many Kenyans are homophobic, even though there are many younger progressive Kenyans who support gay rights.¹³⁸ A section of Kenyans have also pushed back against clergy like David Owuor and born-again moral policemen like Ezekiel Mutua on social media and other platforms.¹³⁹

CONCLUSIONS

The debates and discourses on the subject of homosexuality in Kenya have not only brought to the fore issues of same-sex relationships, but also brought to light the role of religion, politics, and culture in perpetuating homophobia and intolerance of LGBTI people. Given the institutionalized discrimination against homosexuals in various African countries, a debate focusing on the role of

Former Colonies," *The Atlantic*, May 24, 2019, <https://www.theatlantic.com/international/archive/2019/05/kenya-supreme-court-lgbtq/590014/>.

131 See *Eric Gitari v Attorney General & another* (2016) K.L.R. (H.C.K.).

132 The LGBTI community has continued to agitate for their rights, voice, and recognition including using social media hashtags such as #Repeal162, referring to Kenya's penal code.

133 Penal Code (1930) Cap. 63 § 162, 15.

134 *EG & 7 others v Attorney General; DKM & 9 others (Interested Parties); Katiba Institute & another (Amicus Curiae)* (2016) (H.C.K.).

135 *EG & 7 others*, paras. 199, 307.

136 Gitari, "The Gay Debate."

137 Gitari, "The Gay Debate."

138 Mwendu Kwalo and Jacky Grace (pseudonyms), telephone interviews with the author, May 25, 2020.

139 Ashley Lime, "Ezekiel Mutua: The Man Who Polices Kenyan Pop Music," *BBC News*, August 31, 2019, <https://www.bbc.com/news/world-africa-46371971>.

politics and religion is vital to understanding the factors behind increased homophobia in a majority of African countries.

Pentecostal Christianity, in particular, seeks to uphold specific interpretations of the Bible and apply that to public morality in a way that seeks to enforce sexual citizenship. This has created serious contestations and pushback by citizens who resent Pentecostal mapping of their teachings onto the public. Further, as reflected in constitutional debates and in ways that have seeped into recent court decisions, Pentecostal teachings and positions both create social anxieties and moral panic and inspire hostility and homophobia that endangers the lives of sexual minority groups. The Pentecostal community's need to police sexual citizenship in Kenya and Africa more generally points to the central roles that both religion and politics play in these debates and the effects that these can have on law.

Through their responses and attempts to influence legal norms, religious and political leaders, have not only promoted the nonacceptance of same-sex relationships in Africa, but also ensured that sexuality and embodiment have become a cultural and religious battleground in which the same clergy and politicians seek to frame homosexuality as un-African, unacceptable, and a threat to African moral and cultural sensibilities and sensitivities and to African moral and family values. Consequently, the perception is that homosexuals do not belong in Africa and cannot be entertained, accommodated, tolerated, or even understood. Ultimately, the politicization and religionization of same-sex relationships in Kenya, as elsewhere in Africa, has masked human rights debates, stifled serious academic and pragmatic engagements with important issues around sexual difference and sexual orientation, and fueled negative attitudes toward people with different sexual orientations.

In welcoming the ICPD+25 to Kenya in November 2019, President Uhuru Kenyatta welcomed an international population conference to Nairobi, but he also cautioned that Kenya “will not accept practices that are at conflict with our cultures.” The comment was understood to be a reference to proposals for legal abortion and LGBTI rights that were to be on the agenda. Kenyatta continued by observing, “We will welcome the visitors to Nairobi. We will be there and we will listen. But will be firm in rejecting what we do not agree with.” Indeed, Kenyatta stated, “We have a stand. . . But on things that do not conform with our cultures and religion, we will firmly reject.”¹⁴⁰ This is the current state of struggles for sexual rights at the intersection of law and religion in Kenya.

140 Michael Oduor, “Kenya’s President Uhuru Kenyatta Rejects Gay Agenda in Global Population Conference,” *Africanews*, November 9, 2019, <https://www.africanews.com/2019/11/09/kenya-s-president-uhuru-kenyatta-rejects-gay-agenda-in-global-population/>.