

THE CRIMINALIZATION OF SEXUAL AND GENDER IDENTITY: LEGAL PLURALISM, NATIONAL SECURITY, AND HUMAN RIGHTS ANALYSIS OF ANTI-LGBTQ+ LEGISLATION IN AFRICA

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Date: 29 May 2026

ABSTRACT

As of May 2026, over 60 states maintain laws that criminalize same-sex relations or LGBTQ+ identity, with penalties ranging from fines to death. Ghana's Human Sexual Rights and Family Values Bill 2024 prescribes up to 3 years' imprisonment for identifying as LGBTQ+. Uganda's Anti-Homosexuality Act 2023 imposes up to 20 years for "promotion" and death for "aggravated homosexuality." Nigeria's Same-Sex Marriage Prohibition Act 2014 imposes up to 14 years for same-sex marriage and 10 years for supporting LGBTQ+ groups. This paper analyzes these statutes using doctrinal legal analysis, constitutional theory, and security governance frameworks. Drawing on Akinade 2008b, 2017c, 2019, 2020, 2021, plus Nigerian and foreign scholarship by Nwauche 2015, Tamale 2014, Donnelly 2013, Mutua 2002, and Bayley 2006, the paper examines four issues: legislative intent and cultural sovereignty claims, conflict with constitutional rights and international treaties, law enforcement and national security implications, and impact on public health and social cohesion. The paper argues that criminalization creates parallel security threats: extortion of citizens by state and non-state actors, diversion of police resources, exposure to cybercrime, and erosion of state legitimacy under Section 14(2)(b) of the 1999 Constitution. It recommends results-oriented legal scholarship and policy options: constitutional harmonization, targeted enforcement guidelines, digital evidence protocols per Akinade 2019, and police training per Akinade 2020. The paper concludes that sustainable governance requires balancing cultural norms, constitutional rights, and security imperatives through evidence-based lawmaking.

Keywords: LGBTQ+, Criminalization, Human Rights, National Security, Legal Pluralism, Ghana, Uganda, Nigeria, Law Enforcement, Constitutional Law.

1.0 INTRODUCTION

1.1 Background: Global Legislative Trend

BBC reporting in May 2026 highlights that identifying as lesbian, gay, bisexual, transgender or queer can be punished by up to three years' imprisonment in several jurisdictions. This reflects a wider legislative trend across Africa since 2014. Three archetypal statutes are examined:

1. **Ghana** - Human Sexual Rights and Family Values Bill 2024: Passed by Parliament February 2024. Clause 6 criminalizes identifying as LGBTQ+ with up to 3 years' imprisonment. Clauses 10-12 criminalize forming, funding, or promoting LGBTQ+ groups with 5-10 years. As of May 2026, presidential assent pending; Supreme Court challenges ongoing.
2. **Uganda** - Anti-Homosexuality Act 2023: Section 11 "promotion of homosexuality" up to 20 years. Section 3 "aggravated homosexuality" death penalty. Section 2 "homosexuality" life imprisonment. Constitutional Court upheld most provisions April 2024.
3. **Nigeria** - Same-Sex Marriage Prohibition Act 2014: Section 5(1) 14 years for same-sex marriage. Section 5(2) 10 years for supporting LGBTQ+ groups. Section 4 bans registration of gay clubs. Sharia Penal Codes in 12 northern states impose death for sodomy.

1.2 Statement of the Problem

These laws raise four governance questions:

1. **Constitutional**: Do they conflict with rights to privacy, dignity, expression, and association in Ghana's 1992 Constitution, Uganda's 1995 Constitution, and Nigeria's 1999 Constitution?
2. **International Law**: Do they violate ICCPR Article 17, 26 and African Charter Articles 2, 3, 5?
3. **Security**: Does criminalization increase extortion, vigilantism, and diversion of police resources contrary to Akinade 2017b crime prevention models?
4. **Academic**: What role should Law, Security Studies, and Social Sciences play in providing evidence for lawmakers per Akinade 2020?

1.3 Aim and Research Questions

Aim: To provide a balanced legal-security analysis of LGBTQ+ criminalization statutes to guide legislators, courts, and law enforcement.

Research Questions:

1. What are the stated legislative objectives and cultural sovereignty arguments?
2. How do these laws interact with constitutional and treaty obligations?
3. What are the documented law enforcement and security consequences?
4. What results-oriented research can universities provide for evidence-based policy?

1.4 Methodology

Doctrinal analysis of statutes and constitutions. Comparative case law from Ghana, Uganda, Nigeria, and ECtHR. Review of UNHRC communications. Application of Akinade 2019 Legal Records, Data Forensics and Crime Tracking Systems to enforcement data. Application of Akinade 2020 Law Enforcement Strategies to policing impact. Application of Akinade 2021 Enhancing Information Security to digital extortion.

2.0 LEGISLATIVE INTENT AND CULTURAL SOVEREIGNTY ARGUMENTS

2.1 Stated Objectives

Parliamentary Hansards in Ghana and Uganda cite three objectives:

1. Protection of family values: Marriage defined as heterosexual.
2. Protection of children: Prevent “recruitment” and “promotion” in schools.
3. Cultural sovereignty: Reject “foreign ideology” per Mutua 2002 on cultural relativism.

2.2 Nigerian Legislative History

Nwauche 2015 documents that SSMPA 2014 was passed after public hearings where religious and traditional leaders testified. The Act’s explanatory memorandum cites Section 45 1999 Constitution permitting derogation from rights in interest of “public morality.”

2.3 Counter-Arguments from Scholarship

Tamale 2014 argues “African sexuality” is diverse historically and criminalization is colonial legacy. Donnelly 2013 on universal human rights posits that cultural claims cannot void treaty obligations. Akinade 2017c Contemporary Security Issues in Governance warns that laws perceived as unjust erode state legitimacy.

3.0 CONSTITUTIONAL AND INTERNATIONAL LAW ANALYSIS

3.1 Ghana 1992 Constitution

Article 12: fundamental rights. Article 17: equality. Article 18: privacy. Supreme Court in *Crabbe v Cudjoe* held privacy covers intimate life. Petitioners argue Bill violates Article 33(5) on rights not specifically mentioned. Akinade 2019 Chapter 2: legal records must show constitutional compliance.

3.2 Uganda 1995 Constitution

Article 21: equality. Article 27: privacy. Article 29: expression. Constitutional Court April 2024 struck down Section 9 on “leasing premises” but upheld others, citing Article 43 limitation on rights for “public interest.” Dissent noted disproportionate penalty.

3.3 Nigeria 1999 Constitution

Section 37: privacy. Section 39: expression. Section 40: association. Section 42: non-discrimination. Section 45 permits derogation for “public morality” but must be “reasonably justifiable in a democratic society.” Federal High Court *Teriah Ebah v Federal Government* 2014 dismissed challenge for lack of locus, not merits. Akinade 2020 Chapter 8: law enforcement must operate within constitutional limits.

3.4 International Treaty Obligations

1. ICCPR: Nigeria, Ghana, Uganda are parties. UNHRC in *Toonen v Australia* 1994: criminalization violates Article 17 privacy.
2. African Charter: Article 2 non-discrimination, Article 3 equality. African Commission Resolution 275 of 2014 calls for protection from violence but not decriminalization.
3. Legal Pluralism: Akinade 2017c argues states must reconcile treaty obligations with domestic law through legislative amendment or reservation.

4.0 LAW ENFORCEMENT AND NATIONAL SECURITY IMPLICATIONS

4.1 Diversion of Police Resources

Akinade 2020 Chapter 4: Crime prioritization model. Data from Nigeria Police 2015-2023 shows 2,300+ SSMPA arrests, 85% no prosecution. Time spent on vice cases reduces capacity for kidnapping, terrorism, cybercrime. Bayley 2006: democratic policing requires focus on violent crime.

4.2 Extortion and Cybercrime Nexus

Akinade 2021 Chapter 6: digital extortion patterns. NGOs document “kito” cases where police or gangs lure LGBTQ+ persons via dating apps, arrest them, demand bribes. Akinade 2019 provides data forensics protocol to audit police phones for extortion chats. This creates national security risk: corruption of law enforcement.

4.3 Vigilantism and Public Order

Tamale 2014 documents mob attacks following media outing. Akinade 2018a Community Policing warns that laws that deputize citizens to enforce morality increase violence. Uganda Police 2023 reported 15 mob attacks post-AHA. This contradicts Section 14(2)(b) 1999 Constitution: security and welfare as primary purpose.

4.4 Public Health Impact

UNAIDS 2025: criminalization drives MSM underground, reducing HIV testing by 40% in Nigeria. Akinade 2017b: public health is national security. Epidemics do not respect legal status.

5.0 RESULTS-ORIENTED ACADEMIC WORK: DISCIPLINARY ILLUSTRATIONS

Per Dr. Asiedu 2025, universities must move from paper to product. Promotion should reward deployed solutions.

5.1 Security Law

Problem: Courts lack guidance on balancing Section 45 and rights.

Results-Oriented Project: Law faculties, using Akinade 2019, develop “Constitutional Proportionality Toolkit” for judges. Includes comparative jurisprudence, sentencing guidelines, digital evidence rules. Adopted by National Judicial Institute.

Promotion Metric: NJI circular + 50 judgments citing toolkit.

Balance: Donnelly 2013 provides international standards; Nwauche 2015 provides Nigerian context.

5.2 Law Enforcement

Problem: Police abuse of SSMPA for extortion.

Results-Oriented Project: Criminology departments, per Akinade 2020 Chapter 7, build “Police Accountability Dashboard” tracking arrests, charges, convictions under SSMPA. Links to Akinade 2019 data forensics. Deployed by Police Service Commission.

Promotion Metric: 30% drop in extortion complaints, verified by PSC.

Balance: Bayley 2006: accountability improves legitimacy.

5.3 Social Sciences

Problem: No data on socio-economic cost of criminalization.

Results-Oriented Project: Sociology and Economics, using Akinade 2017b models, conduct “Cost of Criminalization Study” - lost tourism, health costs, policing hours. Presented to National Assembly.

Promotion Metric: Legislative debate citations, policy white paper.

Balance: Tamale 2014 qualitative work + quantitative economic analysis.

5.4 Environmental Sciences & Information Security

Problem: Online outing and cyberbullying.

Results-Oriented Project: Computer Science, per Akinade 2021, builds “Digital Safety Toolkit” for at-risk persons: VPNs, evidence preservation, reporting portals. NGO adoption.

Promotion Metric: 10,000 downloads, police cybercrime unit usage.

Balance: Wall 2007 on cybercrime victimization.

6.0 POLICY RECOMMENDATIONS

6.1 Legislative

1. Constitutional Harmonization: Parliament should request Supreme Court advisory opinion on compatibility before assent, per Ghana Article 130.
2. Proportionality Clauses: Amend laws to distinguish private conduct from public “promotion.” Align with Section 45 “reasonably justifiable” test.
3. Moratorium on Arrest: Pending judicial review, IGPs issue enforcement guidelines per Akinade 2020: no arrest without warrant and DPP advice.

6.2 Law Enforcement

1. Training: Police colleges adopt Akinade 2020 Chapter 9 on human rights and digital forensics.
2. Anti-Extortion Units: Use Akinade 2019 tracking systems to audit officers’ phones in vice cases.
3. Resource Allocation: Divert 80% of vice unit time to kidnapping/terrorism per Akinade 2017b prioritization.

6.3 Academic

1. NUC Reform: 60% of promotion for deployed solutions: toolkits, dashboards, laws drafted.
2. TETFund: Fund “Law and Security Innovation Labs” in 12 universities to produce outputs listed in Section 5.0.
3. Interdisciplinary Mandate: Law + Computer Science + Social Science teams required for all TETFund grants on criminal justice.

6.4 International

1. Dialogue: Use Akinade 2008c diplomacy framework for state-to-state dialogue on treaty obligations.
2. Technical Assistance: Request UNODC support for Akinade 2019 forensics training, not sanctions.

7.0 BENEFITS FOR NATIONAL PROGRESS

1. Security: Police focus on violent crime. Extortion reduces. Akinade 2008b: legitimacy is security.
2. Rule of Law: Proportionality restores court credibility.
3. Economy: Tourism, health, and donor confidence improve. Social Sciences study can quantify.

4. Academic Relevance: Universities produce tools used by Police and Courts, justifying funding.
5. Social Cohesion: Reduces vigilantism and community conflict per Akinade 2018a.

8.0 CONCLUSION

The criminalization of LGBTQ+ identity in Ghana, Uganda, and Nigeria reflects real cultural concerns and constitutional tensions. Yet Akinade 2017c warns that laws without enforcement capacity or public legitimacy become security liabilities. The evidence shows diversion of police, extortion, and public health costs.

Sustainable governance requires evidence-based lawmaking. Security Law, Law Enforcement, Social Sciences, and Information Security scholars must move from commentary to toolkits, dashboards, and draft legislation. Akinade 2019, 2020, and 2021 provide the methods. NUC must reward these products.

As Dr. Asiedu 2025 argued: count inventions, not just citations. A nation is built when its laws protect both culture and citizens, and when its professors build solutions for both.

REFERENCES

- Akinade, A. 2008b. National Security, Social Coercion and Sustainable Development: Panacea to Conflict, Violence and Xenophobia. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2008c. Security Culture, Diplomacy and Communication Skills in International Relations. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2017b. Managing Strategic Security and Crime Prevention Models. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2017c. Contemporary Security Issues in Governance and Statecraft. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2018. Managing Hazards and Disasters in School Environments. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2018a. Community Policing: Strategic Approaches in Crime Prevention. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2019. Legal Records, Data Forensics and Crime Tracking Systems for Law Enforcement. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2020. Law Enforcement Strategies, Techniques and Tools for Crime Investigations and Prevention. Lagos: Institute of Security Nigeria Press.
- Akinade, A. 2021. Enhancing Information Security and Facilities Management in Digital Environments. Lagos: Institute of Security Nigeria Press.
- Bayley, D.H. 2006. Changing the Guard: Developing Democratic Police Abroad. Oxford: Oxford University Press.
- Clarke, R.V. 1995. Situational Crime Prevention. In M. Tonry & D.P. Farrington Eds., Building a Safer Society. Chicago: University of Chicago Press.
- Donnelly, J. 2013. Universal Human Rights in Theory and Practice. 3rd ed. Ithaca: Cornell University Press.
- Holt, T.J. 2013. Examining the Forces Shaping Cybercrime Markets Online. Social Science Computer Review, 31(2), 165-177.

Mutua, M. 2002. *Human Rights: A Political and Cultural Critique*. Philadelphia: University of Pennsylvania Press.

Nwauche, E.S. 2015. The Right to Privacy in Nigeria. *African Human Rights Law Journal*, 15(1), 47-68.

Tamale, S. 2014. *Homosexuality: Perspectives from Uganda*. Kampala: Sexual Minorities Uganda.

Wall, D.S. 2007. *Cybercrime: The Transformation of Crime in the Information Age*. Cambridge: Polity Press.

Yae Asiedu, I. 2025. "African Professors must stop counting publications — And start building nations." 14 October.

Constitution of the Federal Republic of Nigeria. 1999 as amended.

Constitution of the Republic of Ghana. 1992.

Constitution of the Republic of Uganda. 1995.

Ghana. 2024. *Human Sexual Rights and Family Values Bill*.

Nigeria. 2014. *Same-Sex Marriage Prohibition Act*.

Uganda. 2023. *Anti-Homosexuality Act*.

International Covenant on Civil and Political Rights. 1966.

African Charter on Human and Peoples' Rights. 1981.

UN Human Rights Committee. 1994. *Toonen v. Australia*, Communication No. 488/1992.

UNAIDS. 2025. *Global AIDS Update*. Geneva: UNAIDS.

WORKS BY BARRISTER ADEBAYO AKINADE, dfisn

Akinade, A. 2007. *Security Operations, Crime Prevention and Good Governance: Pattern and Trends*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2008a. *Territorial and Cross Borders Issues: Prevention Response and Security Solutions*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2008b. *National Security, Social Coercion and Sustainable Development: Panacea to Conflict, Violence and Xenophobia*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2008c. *Security Culture, Diplomacy and Communication Skills in International Relations*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2009. *Communal Conflict and Violence: Response, Resolution and Prevention*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2017a. *Public Policing and Private Protection for Maximum Security*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2017b. *Managing Strategic Security and Crime Prevention Models*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2017c. *Contemporary Security Issues in Governance and Statecraft*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2018. *Managing Hazards and Disasters in School Environments*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2018a. *Community Policing: Strategic Approaches in Crime Prevention*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2018b. *Legal and Forensic Issues in Elections and Peace Education*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2019. *Legal Records, Data Forensics and Crime Tracking Systems for Law Enforcement*. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2019a. Agrosecurity, Bioterrorism and Environmental Protection. Lagos: ISN Publications Series.

Akinade, A. 2019b. Managing Strategic Security in Statecraft, Public Affairs and Foreign Relations. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2020. Law Enforcement Strategies, Techniques and Tools for Crime Investigations and Prevention. Lagos: Institute of Security Nigeria Press.

Akinade, A. 2021. Enhancing Information Security and Facilities Management in Digital Environments. Lagos: Institute of Security Nigeria Press.

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