

IDS Bulletin

Transforming Development Knowledge

Volume 55 | Number 1 | March 2024

UNDERSTANDING GENDER BACKLASH: SOUTHERN PERSPECTIVES

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Unravelling and Countering Backlash: Uganda's Sexual Offences Legislation*

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Abstract Considerable progress has been seen in Ugandan women's collective advocacy for their rights since independence. Notably, women activists' efforts in the early 1990s culminated in the institutionalisation of gender equality in Uganda's constitution and a subsequent resurgence of the women's movement. Despite these efforts, certain egalitarian and inclusive policy reforms have been postponed, stripped of clauses that question patriarchal power, watered down, bureaucratically frustrated, or outrightly rejected. This article draws on ongoing contestations around the stalled Sexual Offences Bill, 2019 to address the following questions: How do we understand the current and recent swell of anti-feminist backlash? What motivates backlash against gender equity reforms? And what will it take to counter these oppositional forces? The article reveals overt and covert forms of backlash in the sexual offences legislative process, the ways in which gender justice actors countered these, and the implications for understanding and countering backlash in Uganda and beyond.

Keywords gender justice, backlash, sexual offences, patriarchy, women's rights, parliament, Uganda Women Parliamentary Association (UWOPA), law.

1 Introduction

Uganda has had an uneven experience around gender equity policy reforms. In its recent history, we see women's collective mobilisation right from the 1940s, inspired by anti-colonial actions on laws such as marriage and inheritance of family property (Tamale 1999). Women formed coalitions such as the Uganda Council of Women (UCW) in 1947 and the Young Wives Group – to fight for women's rights (e.g. citizenship, voting rights, marriage, divorce, and inheritance). The years of political instability in the 1970s and early 1980s dampened women's collective mobilisation, but the women's rights movement regenerated in the late 1980s and early 1990s (Tripp *et al.* 2008). For example, from 1989 to 1995, women as individuals and as a collective were part of

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The *IDS Bulletin* is published by Institute of Development Studies, Library Road, Brighton, BN1 9RE, UK.

This article is part of *IDS Bulletin* Vol. 55 No. 1 March 2024 'Understanding Gender Backlash: Southern Perspectives'; the Introduction is also recommended reading.

the countrywide consultative meetings convened by different actors within and outside the state to contribute towards a constitutional review process (Matembe 2002; Ahikire and Mwiine 2020). The nationwide, relatively inclusive exercise presided over by the National Resistance Movement (NRM) government in its early years of ascending to power following a five-year guerrilla struggle, heightened optimism around gender equity promotion, especially through its outcome – the 1995 Constitution – which institutionalised the language of gender equality, at least in the formal sense.

The Constitution outlawed discrimination based on sex and made specific provisions on the rights of women as being citizens of equal worth with men. In Article 32, the Constitution introduced affirmative action in favour of groups marginalised due to gender, age, disability, or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them (Republic of Uganda 1995). Naming women as citizens of equal worth and recognising specific contexts of social positioning of women and other marginalised groups were among the outstanding achievements of the NRM government reforms.

The sense of optimism motivated a series of gender equity policy reforms in the immediate aftermath of the constitutional review. Characterised by Tripp *et al.* (2008: 55) as 'new women's movements', the newly created women's organisations sustained advocacy for affirmative action on women's political representation, girls' education, gender mainstreaming, and other gender equality agendas, as well as action against domestic violence. Though incremental, these milestones were 'important steps towards achieving legislation to enable the rights granted in the 1995 Constitution' (Wang 2013: 116).

Yet, despite the progress, advocacy for gender equity policy reforms has remained largely an uneven and rather rugged terrain (Wang 2013). For instance, laws governing land, inheritance, domestic relations, and sexual rights have been on the women's movement agenda for several decades without substantive success. Often, gender equity reforms are characterised by intense negotiations and compromises leading to instrumentalist and watered down versions of policy reforms (Ahikire and Mwiine 2020). For example, compromises on domestic violence legislation in 2009 saw the passage of the law but without the contentious clause on marital rape as a form of sexual abuse. A decade later, marital rape was re-introduced in the 2019 Sexual Offences Bill (SOB) without much success. The 'consent clause' – the idea that a person can withdraw their consent before or during a sexual act – became contentious and consequently frustrated the bill's passage. Beyond the realm of policymaking, visibility of women's rights has also created a moral panic, demonstrated by worries about the family, the place of women *vis-à-vis* men in the domestic and public sphere, and especially worries about

whether women want to rule their husbands. There is a clear shift in discourse, 'where the need to protect the family has regained traction and gender equality is seen as a threat to society' (Mwiine *et al.* 2023: 11).

This article uses the notion of backlash advanced by Flood, Dragiewicz and Pease (2018) to make sense of the opposition to gender equity reforms. Flood *et al.* (2018) deploy the terms 'backlash' and 'resistance' interchangeably as the inevitable responses to social change. They argue that, 'with regard to gender, backlash is one of the many practices and processes which maintain or reinforce gender inequality' (2018: 5). At a methodological level, we use a specific policy case – the SOB – to explore ways in which deliberate threats to feminist gains manifest, their motive, the feminist effort to counter these, and the implication legislative processes have for long-term conversations on substantive gender transformation in Uganda and beyond.

This analysis is based on a larger study involving qualitative and participatory research methods. These included desk reviews, content analysis of parliamentary record (*The Hansard*), popular media stories about the SOB, group conversations with women's rights organisations, and in-depth interviews with actors from women's coalition alliances and those opposed to the bill. Group conversations with women's and human rights organisations, allies and opponents to the bill, and state bureaucrats formed the bulk of our engagements. Convenings of this nature provided space for participants to reflect on informal and formal reform processes, and to identify actors both in the coalition alliance and those opposed to the reform and the power each category held in relation to the other. Collectively, participants looked back, took stock of key milestones despite the bill failing to pass, and identified centres of influence and those whose voice mattered in the process, the spaces they operated in, and the power they wielded. Qualitative and participatory methods provided spaces for revelation, especially for the reform allies as they connected the dots of what seemed random, unplanned, and unsystematic yet well-coordinated resistance to the policy reform.

The rest of the article is structured as follows. Section 2 describes the legislative context around the SOB. Section 3 explores the process of framing, tabling, and debating the bill, and the resulting manifestations of gender backlash. Next, section 4 discusses efforts by the SOB coalition to counter backlash to the bill, and section 5 concludes.

2 The legislative context around the SOB

The SOB was drafted in response to a high incidence of sexual violence, including new forms that could not be addressed by existing legislation. Tabled as a private member's bill by Monica Amoding, a member of parliament and then Chair of the Uganda Women Parliamentary Association (UWOPA), it sought

to consolidate existing pieces of legislation into a specific law on sexual offences for the effectual prevention of sexual violence. The SOB proposed multiple reforms around sexual violence in general (rape, sexual assault, incest, and more) and against children, provided for court procedures on handling sexual violence offenders and survivors, and the creation of a sex offenders register.

Tabled in November 2019 for its first reading, the bill was debated in May 2021 and passed for presidential assent. But just three months later, President Yoweri Museveni declined to assent to the bill and referred it back to parliament for further scrutiny and reconsideration. The president cited duplication with existing laws addressing morality and advised the proponents to work with the Uganda Law Reform Commission – which was apparently opposed to the SOB – to come up with amendments beyond disjointed legislation, essentially putting the bill on hold.

In effect, such a move, of vaguely 'delegating the change to those who disagree with it, and actively sabotaging the change process' (Flood *et al.* 2018) is a form of backlash. Hence, the bill's return to parliament may not be the real manifestation of backlash, but rather the vague manner in which it was returned. Like its predecessor gender equity reforms, the SOB found itself on the shelf with no clarity as to when it would be re-tabled. Instead, one of its clauses on same-sex sexual relations was extracted and tabled independently – the Anti-Homosexuality Bill, in February 2023. The initial framing of the SOB included clause 11 on unnatural offences as already exists in the Penal Code Act 2007, i.e. 'a person who (a) performs a sexual act with another person contrary to the order of nature; or (b) engages in a sexual act with an animal; commits an offence and is liable on conviction, to imprisonment for ten years' (Parliament of Uganda 2019: 9). The bill prohibiting same-sex sexual relations and their 'promotion or recognition' was later debated, passed by parliament, and assented to by the president in record time – three months.

3 Manifestations of gender backlash

In this section, we examine the **process** of framing, tabling, and debating the bill, tracing manifestations of backlash both in the procedure as well as the content of the bill. In tracing these conversations, we look closely at the actors (coalition alliance members and the opposition), and their interests and motivations in supporting and/or opposing the bill. In effect, backlash manifested in the process and content, as we proceed to elaborate.

3.1 Denial of due certification – foot-dragging as backlash

Backlash against the SOB manifested itself at the initial stage. At a procedural level, the bill was denied a certificate of financial implication, a mandatory step in the initiation tabling. According to parliamentary procedure, all bills require

certificates of financial implication issued by the Ministry of Finance, Planning and Economic Development as provided for in the Public Finance Management Act (Republic of Uganda 2015). Monica Amoding, the motion mover, reported frustrations that characterised the early stages of tabling the SOB. She recalled years of bureaucratic foot-dragging by the government which she characterised as tactics intended to frustrate the bill's tabling. She informed the house that in contrast to usual formal procedure, the SOB had strangely failed to acquire the certificate from the government ministry:

Madam Speaker, I beg to move that a bill entitled, 'The Sexual Offences Bill, 2015' be read for the first time. However, I would like to inform the house that this bill is not accompanied by a certificate of financial implications. I am however protected by section 76 (4) of the Public Finance and Management Act. I beg to lay.

... I wish to further inform the house why this is so. For the last 15 years, the Uganda Women Parliamentary Association has been advocating for the Sexual Offences Bill to be brought to this house. In the eighth parliament [2006–11], we worked hard to see that this bill comes but it did not. We were informed that the bill was at cabinet level. In the ninth parliament [2011–16], since the first year we have been telling the ministry responsible to table this bill before the house, but it had not come. (Monica Amoding, parliamentary sitting, Thursday 14 April 2016)

Amoding's submission above reveals a mixture of emotions, frustration from state bureaucratic foot-dragging and state negation of gender equity reforms, but also activists' agential efforts in negotiating institutional blockages. The bill was thus moved on extraordinary grounds because the Ministry of Finance had spent more than 60 days without issuing the certificate. Evidence laid out in parliament indicated that for almost ten months UWOPA had not been granted the certificate to table the bill despite relentless requests.

Bureaucratic foot-dragging through time-wasting or unfounded claims that gender reforms are in the pipeline tend to deter individuals from initiating such reforms. These tactical delays rendered such reforms peripheral to government legislative business in a given parliamentary term, leading to the tabling of many of them in haste as the parliamentary session came to an end. This was the case with the prohibition of female genital mutilation (FGM) and the Domestic Violence Act (DVA) in 2010, and now the SOB, which was debated two weeks before the end of the tenth parliament.

The DVA and anti-FGM laws exemplify Uganda's typical political settlement story of populist laws with little implementation (Ahikire and Mwiine 2015). For example, in 2014, the parliamentary

gender committee summoned the Minister for Gender, Labour and Social Development to explain the slow progress regarding implementation of the DVA. The parliamentary summons was motivated by a supreme court judge who reported research which revealed that some judges and magistrates had not even accessed the DVA 2010, whilst others had ignored an act that they considered to fall under the heading of 'women's issues' (Mujuzi 2014; Ahikire and Mwiine 2015). We argue that these moments of refusal and delays, however subtle and informal they might look, point to a seemingly well-coordinated opposition within the state bureaucracy. That sexual offence issues have been on the women parliamentarians' agenda for 15 years without a breakthrough to the parliamentary legislative agenda attests to deep-seated gender backlash.

3.2 In the content of the bill

The framing and content of the SOB also critically became the subject of backlash. The UWOPA-led coalition agreed to a tactical framing of the SOB which included leaving out potentially controversial issues such as marital rape and sex work among others. Policy reforms that contradict the explicit doctrine, codified tradition, or sacred discourse of the dominant religion or cultural group, such as criminalising sexual abuse marriages, ownership of marital property, and cohabitation, had all been resisted in previous reform efforts (Matembe 2002; Kawamara-Mishambi and Ovonji-Odida 2003). The coalition framed marital rape (an issue earlier rejected in the DVA 2010), as 'seeking consent'. The framing was an intentional strategy to steer clear of contentions that had potential to derail the bill. Yet what the coalition had avoided turned out to become the source of contention. When the bill reached parliamentary committee stage,³ where women's rights activists had no control, the bill received additional clauses that became the focus of opposition. These included proposals on criminalising sex work and 'unnatural offences'. According to coalition members, the new version of the SOB looked like a re-invention of the Anti-Homosexuality Law of 2014, commonly referred to as the 'Bahati Law',⁴ earlier annulled by the constitutional court.

Women activists saw the insertions as a hijack of the SOB agenda. Whether this was intentional or not, it was not without effect. In practice, the insertions generated intense resistance within parliament as well as externally amongst the international community and derailed the progress of legislative reform. Monica Amoding, who moved the bill, felt isolated by the additions, especially by informal dealings in which she was pressured to accept the new provisions or risk losing the entire bill. The criminalisation of same-sex relations and prostitution created another layer of backlash, this time with opposition emerging from within previously supportive coalitions such as some of the women's rights and civil society organisations. One women's rights activist expressed her frustration with the additions to the bill she once supported:

We would rather forego the bill and then wait for another opportune time for us to present something that is more acceptable. We would rather not have it at all than have something that criminalises a section of women.⁵

Clearly, the parliamentary committee had its own interests in the bill – introducing new provisions criminalising prostitution and same-sex relations – which unfortunately derailed the entire reform process. In our view, this was procedural backlash.

3.3 Humour in agony – Uganda’s parliament as a cradle of backlash

Parliament seems to have been the epicentre of backlash to the bill, notably manifesting in the clause about consenting to sexual intercourse. The bill read ‘[n]otwithstanding that a person has consented to performing a sexual act with another, he or she may withdraw such consent at any time before or during the performance of the sexual act’ (Parliament of Uganda 2019: 18). As stated earlier, the coalition had intended this clause to re-introduce the question of marital rape earlier scrapped from the domestic violence law. The clause on consent was strongly opposed mostly by male legislators. Legislators asked how practical it would be to gather evidence in a matter that concerns two adults in private. Some argued that consent to sex is a psychological issue and believed that legislating on issues of emotion could be problematic. Yet others thought consenting or withdrawing consent could be used by one party against another in case of any disagreement. Regardless, contentions over the consent clause pointed to men resisting giving up the patriarchal benefits of controlling women’s sexuality.

Beyond oppositional concerns, majority legislators severely sexualised the debate, thereby infantilising and ridiculing the entire reform. For example, one male legislator said:

Consent is given at the stage of take-off and all of us fly. Now, we are on a plane; we have taken off and we are at cruise speed, and you say, stop! What do you want the pilot to do? To crash the plane? [Laughter] – Aren’t you causing trouble to stop in the middle of nowhere?
(Parliament of Uganda 2021)

Coded language revering male sexual organs in symbolic ways such as ‘big manhood’, ‘size of the needle’, ‘men who are impossible’, and the legislators’ laughter that ensued in the house grossly trivialised concerns over horrific and pervasive cases of sexual violence. The analogy of the plane was quickly appropriated and deployed by different actors opposed to the bill to the effect that the issue was no longer a serious concern that deserved public attention. Similar horrific humour was displayed as parliament passed the Anti-Homosexuality Bill

in 2023. In a televised parliamentary debate, a male legislator supporting the bill illustrated his case as follows:

Madam speaker, when I look at you and the honourable ladies in this house, there is no reason for a man to run after a man for sex... Right honourable speaker, there's nothing so sweet and so good for a man more than a woman.
(NTV Uganda 2023)

The normalisation of such debasing characterisation and the casual use of the speaker in a sexualised manner without attracting warning entrenches a patriarchal culture that reinforces predatory violence. These kinds of symbolic representations of masculine sexual domination drew on heteronormative-patriarchal frameworks to mobilise male opposition against the bill, while pathologising women activists' motive of ending sexual violence. Persistent debates of this nature produce a patriarchal parliamentary culture that stymies support for social justice in the country. This culture was clearly demonstrated in the uncritical support of the grossly homophobic Anti-Homosexuality Act 2023.

4 Efforts to counter backlash

The SOB coalition engaged in diverse strategies to counter and negotiate resistance. These included attempts to discursively frame the bill with previous contentions in mind, using an existing law to table the bill on extraordinary grounds after being denied a certificate of financial implication, strategic disengagement from the media, reliance on credible individual actors, forging issue-based coalitions, and mobilising support from within and outside parliament (e.g. recruiting male allies).

Earlier, we talked about how the bill was resisted in its formative stages and how it was strategically moved on extraordinary grounds as provided for in the Public Finance Management Act. The other strategic negotiation related to women allies was on deliberately excluding media coverage. Frequently, the media is seen as an important tool for raising and sustaining critical policy agendas in the public realm. For instance, Ahikire and Mwiine (2020) show that in the past, women activists trained media actors on gender-sensitive reporting during legislation on domestic violence. Women coalition members engaged the media to ensure that domestic violence legislation remained in the limelight. However, in the case of the SOB, the coalition avoided engaging with the media because it had become the biggest enemy, often trivialising debates on gender, especially issues of sexuality. Indeed, during parliamentary debates where the media could not be avoided, the reporting was 'comical', sexualising women's bodies, and infantilising and ridiculing the bill as anticipated. Activists noted that had this trivialisation begun in the early days of policy framing, the bill may not have even made it to parliament.

UWOPA was crucial in sponsoring the SOB and offering an influential platform upon which to forge an alliance amongst different actors within and outside parliament. It was used as a collective platform to generate the women's legislative agenda but also to come up with a series of strategies, negotiations, concessions, and compromises. UWOPA equally spearheaded collaboration and alliance building across women's and human rights organisations to handle different gender reforms. It particularly formed a coalition with Action for Development (ACFODE) and the Center for Health, Human Rights and Development (CEHURD). Indeed, coalition/alliance building in gender equity policy reform processes has been recorded as a strategic step to enhancing women's voice in policymaking processes (Ahikire and Mwiine 2019; Mwiine 2022; Nazneen and Hickey 2019). For instance, while examining reforms on gender violence, Nazneen, Hickey and Sifaki (2019: 7) argue that 'where coalition-building strategies have reached beyond parliaments to build alliances with actors in broader institutional spaces, success rates seem to have been higher'. Despite intense opposition, the coalitions sustained a national (and indeed international) conversation on the sexual rights of women in an otherwise dominantly patriarchal and heterosexist public. These lessons will be critical for further efforts to counter backlash.

5 Conclusion

The process of legislating on sexual offences in Uganda reveals a complex web of gender justice struggles, particularly in the surge of resistance. Some of these forms of resistance are becoming increasingly explicit while others remain subtle whilst severely undercutting the momentum of gender justice in the country. In sum, this analysis contributes to existing literature on the conceptualisation of gender backlash. Revealing normalised sexualised humour in parliament and its trivialising impact, for example, resonates with Flood *et al.*'s (2018) argument that opposition to gender equality is shaped by sexist norms and widespread acceptance of gender inequalities as biologically inevitable and justified. We argue that unquestioned sexualised humour is not without effect. It normalises sexism and entrenches a male-club culture that holds back women's legislative voice.

Of particular interest was the notable fragmentation of women's voice within the women's movement. The voice was divided and largely incoherent. While some women celebrated parliament's passing of the bill, other sections of the coalition decried what they saw as its regressive nature, especially in its criminalisation of sex work and same-sex relations. Yet the fact that women activists mobilised around women's individual rights within the context of marriage and culture alerts us to their collective voice on sexuality – a normally private issue. Their efforts in articulating the relevance of the SOB, mobilising coalitions, working in alliance with some men, and moderating a discussion within the public on

sexual offences placed them 'outside the reach of power [and] upset the established laws' (Foucault 1978: 6); and demonstrated their deliberate exercise of power in a highly patriarchal and heteronormative society, even when the bill was not passed into law. The debate made visible sexual offences that are often taken for granted and opened up public debate on the possibility of naming and therefore countering backlash against gender justice in the long run.

Notes

- * This *IDS Bulletin* was produced as part of the Countering Backlash: Reclaiming Gender Justice programme, funded by the Swedish International Development Cooperation Agency (Sida). The opinions are those of the authors and do not necessarily reflect the views or policies of the funder.
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- 3 After the first reading, bills are referred to the Legal and Parliamentary Affairs Committee for scrutiny. This committee is mandated to ensure quality and fairness of the provisions; receive and consider public submissions on the bill; and discuss, make recommendations, and present the scrutinised bill to parliament for consideration.
- 4 Hon. David Bahati was the member of parliament who introduced the Anti-Homosexuality Bill in 2009. The bill was passed by parliament in December 2013 and signed into law by the president on 24 February 2014. Months later (August 2014), the Constitutional Court annulled the law on the basis that it was passed by MPs without the requisite quorum and was therefore illegal.
- 5 Interview, 2 December 2021.

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