

International Human Rights Law and Anti-LGBTQ+ Legislation in Africa: Assessing the Effectiveness of International Anti-Discrimination Norms in Comparative Perspective

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ABSTRACT

The study looks at the effectiveness of international human rights and anti-discrimination norms to address the adoption of and responses to the anti-LGBTQ+ laws in Africa. It discusses the tension between states' duties under international human rights law and domestic laws that limit the rights and freedoms of lesbians, gays, bisexuals, transgender persons and queer individuals. The method used in this research is a qualitative comparative research (QCR) method, which is a type of qualitative research that uses doctrinal analysis of human rights instruments from the international level and regional level, laws, court rulings, policy documents, and relevant literature from countries in Africa. The results show that international human rights standards offer a rather comprehensive legal and normative basis for safeguarding people from discrimination, arbitrary restrictions and violations of their fundamental rights. But their impact on the laws of their own countries is not consistent. State sovereignty claims, constitutional and legislative opposition, religious and cultural interests, inadequate enforcement measures and access to effective regional and international remedies represent important constraints. Comparative evidence also shows that the effect of the international norms is more pronounced when domestic courts, regional institutions, civil society organisations and other accountability mechanisms actively bring international requirements to bear on their rights protections in domestic law. The study ends by suggesting that international anti-discrimination norms remain good tools for the fight against discriminatory laws, but that they need to be better implemented, engaged, held accountable and promoted in the international and regional arenas, in order to have any meaningful effect on the lives of LGBTQ+ people in Africa.

1. Introduction

Equality and the non-discrimination principle form an integral part of the international human rights law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and other international and regional human rights instruments impose obligations to ensure that fundamental rights are respected and protected without unjustifiable distinction (Bennett et al., 2023). The African Charter on Human and Peoples' Rights also guarantees human dignity, equality, liberty, security, privacy, expression, association and other basic freedoms within the African human rights system. These protections have also increasingly been understood to

apply to people, regardless of their sexual orientation or gender identity: for instance, the African Commission on Human and Peoples' Rights has urged States to take measures to prevent violence against persons on the basis that they are of a perceived or actual 'sexual orientation or gender identity' (Müller et al., 2021). The human rights system of the United Nations has also consistently stated that sexuality and gender identity are not legitimate bases for discriminatory treatment. International instruments, like the Yogyakarta Principles, which give voice to the persistent violence, harassment, discrimination, exclusion and stigmatisation experienced by LGBTQ+ people, and which articulate how international human rights principles should be applied to secure the full inclusion of LGBTQ+ persons, have been instrumental. International instruments such as the Yogyakarta Principles, which give voice to the persistent violence, harassment, discrimination, exclusion and stigmatisation experienced by LGBTQ+ people, and which articulate how international human rights principles should be applied to secure the full inclusion of LGBTQ+ persons, have been instrumental.

Even with the creation of these international and regional norms, the extent of legal protection for LGBTQ+ people is highly unequal in Africa (Mogotsi et al., 2024). In contrast to a trend towards decriminalisation and equality, a number of African states have either maintained, tightened or enacted laws criminalising consensual same-sex conduct and banning LGBTQ+ related expression, association, advocacy and access to services; such policies have been reported to exist in Uganda, Ghana, Namibia, Niger, Tanzania and elsewhere (Jessani et al., 2024). For instance, anti-LGBTI sentiment and the use of legislation to marginalise LGBTQ+ individuals was observed to be growing and intensifying in several African countries, and was noted to be a key element in a broader international campaign of resistance to LGBTIQ rights, in which resistance against traditional values has become a part of political agendas (Ayoub & Stoeckl, 2023). This is particularly noteworthy as legislative restrictions could impact beyond criminalising consensual sexual activities to include identity, advocacy, humanitarian assistance, freedoms of expression and civil society (Ayoub & Stoeckl, 2023).

One of the most obvious contemporary examples is Uganda, where the law has changed significantly over time. The Anti-Homosexuality Act 2023 broadened the existing criminalisation of homosexuality by introducing a new definition of criminal same-sex conduct for LGBTIQ individuals and adults and adding a life sentence for consensual same-sex conduct, while reserving the death sentence for exceptional cases (Ayoub & Stoeckl, 2023). Later, Uganda's Constitutional Court struck down some parts of the bill, but the Court maintained the majority of the bill intact, keeping important restrictions. Evidence following its enactment indicates increased exposure of LGBTQ+ persons to violence, discrimination, eviction, loss of employment, harassment, and denial of services: anti-homosexuality laws penalise those identifying as LGBTQ+, contributing to a cycle of stigma, homonegativity, and discrimination that deters affected persons from accessing healthcare and other essential services (Jessani et al., 2024), and structural stigma of this kind is consistently associated with adverse outcomes for LGBTQ+ individuals (Hatzenbuehler et al., 2024). Recent scholarship has thus continued to challenge the viability of Uganda's legislative model vis-à-vis international and regional human rights commitments, and has charted the politicization of the debate over Uganda and its human rights norms when dealing with international partners (Saltneś & Thiel, 2021).

One of the other significant and ongoing cases is in Ghana. Stigma against men who have sex with men is perpetuated by national laws, policies and religious institutions, and currently these laws discriminate against consensual same-sex sexual conduct between men, as outlined in colonial-era criminal codes which continue to be enforced in the country (Saalim et al., 2023). Ghana's Supreme Court took the same stance in July 2024 despite arguments raised on personal liberty and privacy. The proposed Human Sexual Rights and Family Values Bill, 2025 further fuels the debate on the interplay between domestic legislation and international human rights obligations. On 29 May 2026, Parliament passed the Bill and it was then sent to the President for his consideration. It includes clauses against LGBTQ+ behaviour and activities, but the amendments removed some legal, journalistic and medical activities from the list of sanctioned ones. By 31 July 2026, no further consideration of the legislation had been made in Parliament. The Ghanaian case thus shows that the tension between national preferences in legislation and international human rights obligations is a current and unresolved legal and policy issue.

1.2 Problem Statement and Research Gap

What is the point of international anti-discrimination norms if countries in parts of Africa continue to enact such laws and policies? International human rights law affords a comprehensive normatively binding protection against discrimination and arbitrary interference with fundamental freedoms, and African states bound by relevant treaties have legal obligations to respect and protect such rights. However, it has not always been the case that these obligations have curtailed states from enacting or retaining laws that discriminate against LGBTQ+ people. This finding fits well into the general empirical trend which shows that international law is least effective in the countries where it is most needed, especially without the existence of enforcement mechanisms (Schoner 2024). The modern African experience therefore highlights that there is a huge difference between formal recognition of the international human rights norms and their actual implementation in domestic legal frameworks, which is even more apparent when the fact is taken into consideration that even African countries that have decriminalised same-sex sexual relations in their domestic laws continue to display persistent homophobia, social alienation, and discrimination (Mogotsi et al., 2024).

The problem is starkly presented when it comes to the combination of international legal obligations and more and more restrictive domestic legislative measures. Ghana's recent legislation and Uganda's Anti-Homosexuality Act show that parliamentary majorities and political governments can still implement restrictive laws and policies in the face of criticism and human rights commitments from the international community. For instance, Uganda's 2023 Act criminalizes the identities and behaviour of LGBTIQ people, bars consensual same-sex conduct for adults (with a life sentence in exceptional cases), and allows for the death penalty; it is the result of over 10 years lobbying by transnational evangelical actors, illustrating the globalised nature of the current opposition to LGBTIQ rights (Ayoub & Stoeckl, 2023). National laws, policies and religious institutions keep perpetuating stigma against sexual minorities in Ghana; homosexuality is still broadly perceived as foreign and un-African (Saalim et al., 2023). The United Nations High Commissioner for Human Rights has stated that the draft law was set to infringe upon rights, among them freedom of expression, association and protection from discrimination, in 2024. Likewise, international and regional human rights bodies have expressed concerns about the ongoing restrictions and how they align with Uganda's obligations under the ICCPR and the African Charter; scholarship has noted the fact that LGBTI human rights norms have been politicised spaces of contestation in Uganda's interactions with international partners, with human rights conditionality functioning as a catalyst for contestation in the beneficiary state (Saltnes & Thiel, 2021).

In African jurisdictions, a significant amount of existing scholarship exists on the legal and societal implications of criminalisation, in individual jurisdictions (Mkhize & Mthembu, 2023; Mogotsi et al., 2024). But a comparative analysis is still needed to go beyond merely documenting instances of violations to systematically explore in what ways, why, and when international anti-discrimination norms affect the nature of the laws produced in domestic legislatures. The question of whether or not international law acknowledges LGBTQ+ rights is not the only one with which this study struggles: it is also one that asks to what extent international and regional norms can limit discriminatory legislative practices in domestic settings where competing claims about sovereignty, culture, religion, morality and constitutional identity abound. Universal rights concepts are sometimes interpreted through the postcolonial prism as a "neo-colonial" project by the international community and are at other times read as an assault on the "traditional values" of the nation-state, creating a new "family alliance" that can be exploited by national and international actors for political purposes (Saltnes & Thiel, 2021; Lipps & Jacob, 2024; Ayoub & Stoeckl, 2023). This study seeks to fill that void and explores how foreign human rights commitments are linked to domestic anti-LGBTQ+ laws from an African comparative standpoint.

1.3 Purpose and Objectives of the Study

This study aims to gauge the success of international anti-discrimination norms in tackling anti-LGBTQ+ legislation in Africa and explore what factors enable or hinder the implementation of international human rights obligations within countries. The study aims to address four specific objectives: firstly, to discuss the international and regional human rights norms that may have relevance for discrimination on grounds of sexual orientation and gender identity; secondly, to look at the nature and evolution of anti-LGBTQ+ legislation in selected African jurisdictions; thirdly, to comparatively assess the extent to which international human rights norms influence domestic legislation, judicial interpretation and state practice; and fourthly, to identify institutional, political, cultural, religious and legal factors that limit or enhance the effectiveness of international anti-discrimination norms.

The study is especially interested in the difference between "normative effectiveness" and "practical effectiveness." However, the presence of international legal standards does not necessarily mean compliance at the national level,

especially if there are no effective enforcement mechanisms (Schoner, 2024). International norms can, however, have an impact at the national level, through national courts, constitutional review, regional human rights institutions, international monitoring mechanisms, civil society organisations, diplomatic activity and transnational advocacy (Dancy & Fariss, 2023; Saltnes & Thiel, 2021). However, these channels are constrained by existing domestic institutions that can either embrace international norms or challenge them such as, in Senegal, the ministry of justice's uniform interpretation of the criminalisation of same-sex conduct and a moderate approach to sexual self-determination, versus the courts' demand for national sovereignty and popular representation (Ferguson, 2021). International norms, on the other hand, can be weakened whenever states assert sovereignty and public morality, religious values and traditions, or the preferences of the majority as grounds for limiting legislation: a pattern observed with evidence that illiberal governments challenge International Courts and conventions as an infringement upon sovereignty while appealing to the electorate with high pro-sovereignty preferences (Lipps & Jacob, 2024). It is transnational resistance: conservative civil society networks activate across denominational, religious, and national lines against a "traditional values" agenda, and hateful positions towards LGBTIQ rights offer tangible rewards in legitimacy, status, and building alliances to conservative leaders (Ayoub & Stoeckl, 2023); and postcolonial interpretations of universal rights as neo-colonial intervention further muddle the process of norm diffusion (Saltnes & Thiel, 2021). These competing dynamics need to be examined to determine if international anti-discrimination norms are just aspirational goals, or can serve as effective instruments for legal and institutional change, particularly given the observation that, even when African states have criminalised the same-sex relationships, the decriminalisation has not necessarily prevented homophobia, social alienation and discrimination (Mogotsi et al., 2024).

2. Literature Review

2.1 *International Human Rights Norms and the Principle of Non-Discrimination*

The literature on sexual orientation and gender identity and international human rights law has also developed from a basis on general principles of equality, privacy, dignity and non-discrimination to a greater recognition of the human rights consequences of discrimination against persons with Lesbian, Gay, Transgender and Queer or questioning identities. While sexual orientation and gender identity do not always appear as explicit grounds of discrimination in the major international human rights treaties, the equality provisions of these treaties have increasingly been held to include discrimination based on sexual orientation and gender identity (Schwend, 2020).

A key development was *Toonen v. Australia*, where the UN Human Rights Committee ruled that the criminalisation of consensual same-sex sexual conduct was an arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights, and found that sexual orientation was relevant to the Covenant's protection against discrimination under other articles. The ruling was an important precedent in international law that sets the groundwork for future cases against laws that criminalise consensual same-sex relationships.

This has been followed by scholarship that has attempted to give meaning to the right to protection from discrimination due to sexual orientation and gender identity as an exercise of existing universal human rights, rather than the development of a new category of rights. In 2006, a group of international human rights scholars and activists known as the Yogyakarta Principles (YPs) was launched to highlight the ongoing "violence, harassment, discrimination, exclusion, stigmatization and prejudice" experienced by LGBTQ+ people and to articulate a vision for the application of international human rights principles in combating such forces and advocating for full inclusion (Newman et al., 2021). The Principles, which were published in 2007 and revised in 2017, provide an application of international human rights law with respect to sexual orientation, gender expression, gender identity and sex characteristics (SexGID) (Schwend, 2020). The Principles are not a treaty, but have developed into a powerful interpretive and advocacy document, linking sexual orientation and gender identity to the existing rights to equality, privacy, expression, association, security and freedom from torture and degrading treatment covered by other treaties.

The literature creates thus a strong normative foundation which can be used to assess anti-LGBTQ+ legislation in relation to international human rights standards. But there is an important difference between the existence of international norms and their effectiveness in domestic law: international recognition of a right does not guarantee

that this will be reflected in domestic law or that the right will be better protected. This process of socialisation and "spiral model" of human rights change (Risse, Ropp, and Sikkink) suggests that human rights norms can shape domestic human rights practices through transnational advocacy, international pressure, domestic mobilisation, and institutionalisation, which involves the process of turning principled ideas held by individuals into collective understandings of appropriate behaviour, thereby altering identities, interests, and behaviour (Jenichen, 2020). However, Simmons shows that ratification of treaties and international commitments can afford opportunities for mobilisation and legal action at the domestic level, but that domestic conditions have to be politically and institutionally conducive for compliance. (Dancy & Fariss, 2023)

This is especially important in the African context. However, here are examples of the failure to assume that ratifying international and regional human rights instruments automatically leads to compliance with such laws at the domestic level, as criminalising laws continue to exist in states which have ratified the various international and regional instruments. For instance, in Namibia, Kenya and Uganda LGBTQ+-related acts are still criminalized; in South Africa, although they are no longer criminalized, homophobia, social alienation and discrimination persist; in Ghana, it is not only criminal, but also constitutionally forbidden. (Mgotsi et al., 2024). The regional trend has also been mixed, with Seychelles, São Tomé and Príncipe, Mozambique and Lesotho having decriminalised same-sex relations, but Uganda and Nigeria having enacted tougher laws against the LGBTQ+ community (Stannah et al., 2019). The successful campaigning for LGBT rights in other countries has been used by the Ugandan Anti-Homosexuality Act of 2014 to create a national threat of "foreign transnational activists" who are trying to "infiltrate" the country's "traditional values" (see Nuñez-Mietz & Iommi, 2017), and that is a case that serves as another example of "norm backlash" (Nuñez-Mietz & Iommi, 2017). It is therefore recommended that the impact of international anti-discrimination norms should not only be measured through the formal acceptance of obligations by states, but also through the influence on legislation, judicial reasoning, institutional behaviour, and through the actual enjoyment of rights, where the impact of international norms on institutions within individual states is not uniform (Ferguson, 2021).

2.2 Norm Socialisation, Diffusion and Domestic Implementation

Theories of international norm diffusion offer a useful perspective on the potential effect of international human rights norms on domestic law. For Risse, Ropp and Sikkink, socialisation is a process through which "principled ideas that are held by an individual become norms in the sense of collective understandings about appropriate behaviour, which in turn lead to changes in identities, interests and behaviour. The boomerang and spiral models are followed in subsequent research that shows that human rights campaigning can generate pressure from third parties, particularly states and international organisations, on the norm-violating state, albeit with some reduction in the benefits of this pressure due to costs (Allendoerfer et al, 2019). This is an important framework to be useful for the present study because it acknowledges that international norms do not exist outside of domestic political systems. Instead, transnational actors, civil society organisations, courts, political elites, and state institutions can help to translate norms from the international to the domestic level. The model hence can be used to analyse how similar international obligations could have different legal consequences in different states.

The literature that followed has further developed this knowledge, stressing that norm implementation is not automatic and is not linear. Treaty compliance studies, for instance, suggest that the positive impacts of human rights instruments, such as treaties, depend on the robustness of domestic political institutions, and on the kind of rights being respected: "the more subtle findings of such studies are that the beneficial effects of human rights treaties are contingent on the quality of domestic political institutions, and on the nature of the rights being protected, and this complicates a simple expectation of treaty-induced change" (Hill and Watson, 2019: 9). Other studies on women's rights find that the international community has the capacity to push for gender-related laws in states – including authoritarian ones but the pressure is more likely to be directed at laws that require states to comply with international norms with less politically costly reforms. (Donno et al., 2021). This is of considerable relevance to LGBTQ+ Rights in terms of the effectiveness of international anti-discrimination standards, as it indicates that the effectiveness of international anti-discrimination standards relies in part on the capacity and willingness of domestic actors to implement international commitments in national laws and judicial rulings, administration and practices, and effective remedies. Indeed, scholarship has warned against the notion of governments being "norm-takers", and highlighted the diversity of local resistance to international norms and the diversity of norms at the domestic level (Shiffman et al., 2018).

The norm diffusion approach also provides insight into the possible resistance of international human rights norms. International standards may be challenged if local actors consider them to be inconsistent with their own concepts of culture, religion, morality, sovereignty or national identity. In the African context, for instance, East African churches have reacted to transnational LGBTQ inclusion projects by using domestic anti-colonial sentiments to pursue a strategy of symbolic resistance that hinders transnational agenda and strengthens their position in their own countries (Dreier, 2018). Likewise, promotion of the rights of LGBTI persons in the Uganda–EU partnership is highly politicised because of the normative essence of the rights claims as well as the use of human rights conditionality – contestation further comes from the rights activists themselves in Africa who have attempted to reframe the policies of international rights norm promoters (Saltnes & Thiel, 2021). Notably this challenge takes place not just nationally, but also in the African regional human rights bodies. However, discussions about LGBTIQ+ rights in the regional human rights framework are still dominated by anti-colonial and anti-imperialist narratives, which question the legitimacy of international and regional rights claims (Dreier, 2018; Saltnes & Thiel, 2021).

The present study draws significance from this literature as it proposes to consider the effectiveness of international norms multidimensionally. A norm can be formally accepted, e.g. by ratification of a treaty, be institutionally recognised (constitutional or judicial incorporation), but have only weak implementation in law and practice. The empirical evidence on human rights legalisation suggests that treaties have a bottom-up influence by inspiring domestic constituents to mobilise and to bring about domestic legal changes, rather than forcing a top-down change (Dancy & Fariss, 2023). International norms, even when well-established, can be muted when they are not enabled or mobilised in local contexts – and in Uganda, the advocacy of LGBT rights outside the country was discursively constructed as a national threat that led to enactment of a norm immunising law, which in turn hindered local actors from advocating the very rights the international community was promoting (Nuñez-Mietz & Iommi, 2017). This study, therefore, treats the impact of international anti-discrimination norms more broadly as the degree to which international anti-discrimination standards impact the content of national laws, judicial practice, state policy, and how rights are actually enforced in practice.

2.3 Criminalisation and Anti-LGBTQ+ Legislation in Africa

A significant amount of research investigates the historical, political and legal context of the criminalisation of same-sex relationships. It is important to note that one strand contests the notion that criminalisation is a cultural stance which is inherently African. For instance, research into nine African countries notes that except in a few instances, “Transitions” have left behind “colonial laws that criminalise same-sex sexuality” that vary in their implementation from country to country (Müller et al., 2021). These provisions are validly traced to their colonial avatars, including the institution of Western penal codes that criminalised homosexuality in the colonial era (Turnbull-Dugarte & Ortega, 2023) and the history of colonial politics of sexuality that have been found to create and maintain social and political exclusions (Delatolla, 2020). It is argued, therefore, that the colonial foundations of criminalising laws need to be examined in the context of political power, elites and social exclusion, not only in the context of contemporary African cultural values. This perspective is important as several current campaigns for legislation explicitly invoke arguments that homosexuality is not part of the African culture – a strategy similar to that used in the more general attack against the liberal international norms of sexual tolerance as a “foreign” threat to the national culture and way of life (Turnbull-Dugarte & Ortega, 2023). The historical literature, then, makes it difficult to assume that most of the laws were merely African expressions of morality.

Other themes explored in the consequences of criminalisation include dignity, privacy, equality and citizenship. In addition to the obvious risk of arrest or prosecution, criminalisation can also have an institutional dimension and can cause direct and indirect harm: the process of criminalisation can result in the institutionalisation of stigma, the legitimate use of violence and the exclusion of sexual minorities, and can make them less able to participate in the political and social sphere equally. For instance, in Ghana, threat of ostracisation and homophobic attitudes towards SGLIFE are “sanctioned through both social and legal processes” (Saalim et al., 2023), while in countries where same-gender sexual experiences are constitutionally and/or statutorily prohibited, such as Ghana, Namibia, Kenya and Uganda, homophobic sentiments, self-harm and ostracisation among SGLIFE are driven by discrimination and stigma in institutions (Mogotsi et al., 2024). They also impact the health of people living with HIV: In countries

where same-sex sexual acts are criminalised, the proportion of people living with HIV who knew their status is 11% lower than in countries with more supportive legal contexts, and viral suppression is 8% lower than in countries with more supportive legal contexts (Kavanagh et al., 2021). Criminalisation may also directly hinder civil society and public health responses, for example the Same-sex Marriage Act of 2014 in Nigeria that forbade organisations from providing services to men who have sex with men and banned meetings that were supportive of gay people. Criminalisation can also have direct impacts on civil society and public health responses, such as the Same-Sex Marriage Act of 2014 in Nigeria, which that banned organisations from providing services to men who has sex with men and banned facilitation of meetings supportive of men who have sex with men. The results expand the scope of evaluation of anti-LGBTQ+ legislation to include an examination of the impact of the existence and enforcement of laws, which may impact human rights, even if no individual is ever prosecuted.

The aforementioned concerns have proven to be very topical in recent continental evaluations. Amnesty International's continental assessment and a briefing by the European Parliament Research Service, among other monitoring reports, in the past two years, have noted the use of laws in several African states to marginalise LGBTI people, such as laws concerning expression, association, privacy, health and access to justice, and that 31 of 54 African states continue to criminalise consensual same-sex relations. This trend is supported by evidence: Seychelles, São Tomé and Príncipe, Mozambique and Lesotho have decriminalised same-sex relations, while Uganda and Nigeria have made anti-LGBT laws more severe (Stannah et al., 2019), including the recent Anti-Homosexuality Act passed in Uganda in 2023, which mandates life imprisonment for consensual same-sex activity among adult consensual partners (Ayoub & Stoeckl, 2023). The developments show that the connection between international human rights standards and national law is more of a question than a settled legal matter.

2.4 International and Regional Human Rights Mechanisms in Africa

The African regional system of human rights law has a particular place in the literature as it sits between international human rights law and domestic law. The African Charter on Human and Peoples' Rights provides overall equality, dignity, liberty, security and freedom from discrimination protection, and African Commission on Human and Peoples' Rights has increasingly addressed violations on the basis of actual or imputed sexual orientation and gender identity. In 2014, the General Assembly adopted Resolution 275, which condemned violence and other human rights violations against persons on the basis of their sexual orientation or gender identity, and requested States to protect people from violence on the basis of their actual or perceived sexual orientation or gender identity (Müller et al., 2021). While they cannot be said to create binding obligations for the States, they are nevertheless authoritative in the region of expression of the protection obligations which scholars and advocates claim flow from the Charter.

However, important conflicts within the African regional system are mentioned in the literature. The regional human rights system is a space of contestation where state and non-state actors negotiate what human rights for LGBTQ+ individuals mean and how they are applied. Such internationalised processes, which seek to tackle local needs of LGBT, have been observed as having diverse and uneven impacts in sub-Saharan Africa, suggesting a need for contextual evaluation of their impact, rather than assuming uniform diffusion (Tucker, 2019). This is in line with the overall evidence that opposition to LGBTIQ rights is also transnationally organised, as conservative religious and political actors act transnationally in support of a conservative agenda, which political leaders use to protect national legitimacy and identity (Ayoub & Stoeckl, 2023). Contestation over LGBTI rights has also been found to be a process of politicisation that takes place not only in the states, but also in international cooperation and regional institutions (Saltnes & Thiel, 2021). For the Coalition of African Lesbians, the fight for 'observer' status before the African Commission and the contestation sparked by Resolution 275 provides a good example of the way in which regional institutions can both offer avenues for rights protection and act as sites of political resistance. The effectiveness of the regional mechanisms will, therefore, rely partly on the recognition and implementation of States' and regional actors' human rights obligations.

Positive state obligations have also been highlighted by a recent scholarship. In addition to not infringe upon rights, human rights instruments can require, in the context of violence, discrimination and degrading treatment, that States take positive steps to stop violence. In 2011, the first UN resolution on non-discrimination on the basis of sexual orientation and gender identity was passed, and UN agencies and regional human rights bodies produced strategic documents which identified the protection of persons from discrimination on grounds of sexual orientation, gender expression, gender identity and sex characteristics as a State responsibility (Schwend, 2020). Cross-sectional evidence from nine African countries that report on general experiences of violence against sexual and gender minorities also points to states following Resolution 275 in protecting the population from violence based on actual

or perceived SOGI (Müller et al., 2021). The practical shortcomings identified in this report are evident when there is no state action, such as the difficulty in establishing how widespread violence is against transgender and gender non-conforming people when there is no state monitoring or when police officers are reluctant to believe victims of homophobic and transgender violence, when they are more likely to be complicit in the crime or to find out the victim's status. Across the spectrum of international frameworks, queer people are still largely invisible, even when there is a recognition of responsibility and duties of prevention, including for atrocity crimes (Gifkins & Cooper-Cunningham, 2023). This interpretation is especially relevant for LGBTQ+ people, as besides the repeal of criminalisation laws, legal protection also encompasses the effective investigation of criminalisation, access to remedies, protection of human rights defenders and the prevention of discrimination. The literature, therefore, presents a more comprehensive understanding of international anti-discrimination norms that include negative obligations and positive duties of protection.

2.5 Comparative Evidence from African Jurisdictions

Comparative scholarship reveals a great deal of variation within the national reception of international and regional human rights norms. The legislative journey across the continent has been very different, with some countries moving towards decriminalisation of homosexuality (Seychelles, São Tomé and Príncipe, Mozambique and Lesotho), and others ratifying new laws that further criminalise LGBT communities (Uganda and Nigeria) (Stannah et al., 2019). South Africa is the best instance of domestic constitutionalisation of equality and sexual orientation rights, with being one of only twelve countries in the world (and the only one in Africa) to score a perfect 4 on the Global Index of Legal Recognition of Homosexual Orientation, which measures the decriminalisation of homosexuality, the age of consent for sex, the prohibition of discrimination based on sexual orientation in employment and in provision of goods and services, and the recognition of same-sex cohabitation and same-sex marriage and adoption (Badgett et al., 2019). Despite this relatively benign legal context, however, homophobia, social alienation and discrimination against LGBTQ+ people (Mogotsi et al., 2024) have not stopped, reinforcing the fact that legal recognition and social change are two different processes.

In contrast, Kenya shows the ongoing dichotomy between constitutional rights and the criminal law. LGBTQ+-related conduct is constitutionally or statutorily illegal (Mogotsi et al., 2024) and consensual same-sex activity is punishable by a fine or jail term (Mucherah et al., 2016). Legal scholarship has questioned the legitimacy of criminalising consensual same-sex sexual conduct within the context of constitutional rights to dignity and privacy, and the ability to appeal to collective morality. Legal scholarship has doubted the legitimacy of the criminalisation of consensual same-sex sexual conduct in the context of constitutional rights to dignity and privacy, and the ability to appeal to collective morality. Constitutional rights therefore provide a domestic route by which international human rights principles can be realized as a right to legal protection as illustrated in the Kenyan case where the legislature still includes criminalising provisions.

Uganda is also an exception, where legislative restrictions are resistant to change and have survived significant international and regional condemnation. To discuss the successful campaigning for LGBT rights overseas as a threat to the country, and the enactment of the Anti-Homosexuality Act of 2014, which precluded domestic actors from promoting the international ones, has been a hallmark of the exceptional "norm immunisation" that took place in Uganda (Nuñez-Mietz & Iommi, 2017). In 2023, the government of Uganda enacted a replacement Anti-Homosexuality Act that criminalizes LGBTQ+ identity and behaviour, including a life sentence for consensual same-sex activity between adults and even the death sentence in exceptional cases (Ayoub & Stoeckl, 2023). The passage of Uganda's anti-homosexuality legislation (Ayoub & Stoeckl, 2023) was preceded by a sustained transnational lobbying of fundamentalist Evangelical and Pentecostal groups from the United States. The politicisation of LGBTI rights as part of the Uganda–EU partnership also shows the way in which universal rights claims are formulated in postcolonial conversations as neo-colonial intervention, while rights activists try to influence the policies of international norm promoters (Saltnes & Thiel, 2021). The Ugandan case, then, illustrates the boundaries of external pressure in an environment where domestic political backing for the criminalisation of sodomy and homosexuality is high.

Ghana is one of the cases that is of specific interest because it has a criminal prohibition in place and more recent legislative moves designed to broaden the scope of restrictions. The legal demand for the criminalization of 'unnatural' sexual activity is a legal basis that sustains stigma attached to same-gender sexualities because of their nature, which is considered "unnatural", "unlawful" and "socially dishonourable" (Saalim et al., 2023). There is a continued influence of national laws, policies and religious institutions on stigma, as homosexuality is generally perceived as a sin and as an anomaly from the Ghanaian culture (Saalim et al., 2023). The framings are echoed in the news media, as discourses of amorality and alienisation marginalise and de-desirise LGBT people as outsiders and undesirables (Nartey, 2021). The Anti-LGBTQ+ Bill put forward in the Ghanaian Parliament in 2021 aimed to extend these restrictions, utilizing arguments about culture, religion, family values and morality. It is not only Ghana: comparative scholarship indicates that Ghana, Nigeria and Uganda are examples of contexts where conservative political discourse, public morality, tradition and the rule of law have been deployed to legitimate the ban on LGBTQ+ rights, aligning with the conclusion that opposition to LGBTIQ rights brings political elites benefits in relation to legitimate, status, identity and alliance-building (Ayoub & Stoeckl, 2023).

Comparative evidence thus indicates that norms do not impact African states uniformly. They seem to be more prevalent in settings where domestic courts are willing to acknowledge international and regional standards, civil society organisations are able to mobilise, national human rights institutions have limited influence and authority, and constitutional governance systems have illusory rights protection processes. They seem less prevalent where political elites present LGBTQ+ rights as a foreign imposition, judicial independence and access to remedies is restricted and religious, cultural and majoritarian arguments dominate legislative processes. But even within the same state, reception can differ depending on the institution: In Senegal the Ministry of Justice has accommodated the logic of the world society on homosexuality, with a rationale of "international imitation", whereas the courts have a logic of "popular representation", which emphasizes national sovereignty and criminalization (Ferguson, 2021). This comparative record thus supports the claim that the effectiveness of the norm is more complex than it is sometimes assumed to be, and can be understood as an institutional result of treaty ratification.

2.6 International Norms, Cultural Relativism and Political Resistance

One of the major arguments in the literature is the conflict between the universalism of human rights and the argument for cultural sovereignty. Opponents to international LGBTQ rights protections often claim that international rights are Western values, and that African countries should have the freedom to set their own moral and cultural boundaries. This argument is part of a larger critical tradition that sees the human rights corpus as hegemonic, that in a historical moment when the West is economically, militarily, and culturally dominant, a time when the West has been subjugating and/or marginalizing other populations, critics assert that human rights are a tool of subjugation to, or marginalization within, Empire, and that they carry legacies of colonialism and white saviorism (Dancy & Fariss, 2023). LGBTIQ rights come with the cultural baggage of Western history: LGBTIQ rights became a "trademark of consolidated liberal-democratic regimes," which opponents anywhere in the world easily build on (Ayoub & Stoeckl, 2023). The framing is frequently neocolonial in the African context, as on the signing of Uganda's Anti-Homosexuality Act of 2023, President Yoweri Museveni said that "Africa should provide the lead to save the world from this degeneration and decadence which is really very dangerous for humanity" (Ayoub & Stoeckl, 2023). The issue of sexual orientation and gender identity is also an effective tool for governments and anti-democratic political actors to use because of its fluidity, which they view as a threat to "the fixity of tradition, the sovereignty of nation, and common understandings of 'nature'" (Ayoub & Stoeckl, 2023). The cultural-relativist argument is thus a pivotal element in current debates over legislation, and it shifts the gay and lesbian debate from issues of universal human rights to a broader struggle for the nation's identity, for its sovereignty and cultural authenticity.

More recent research, however, calls challenge this view and shows that sexual history and legal history in Africa are far from straightforward. Contemporary recriminalisation projects can't be meaningfully justified with a cultural relativist argument, and assertions that homosexuality is "foreign" to the East mask the historical and legal evolution of criminalisation. In the past, the politics and governance of sexuality, and its intersections with race, gender and class, have produced social and political exclusions that have sustained a "divided world": from the nineteenth century to the present, the standard of civilization has shifted from a hetero- to a homocolonial model (DelaTolla, 2020). Gender, however, was not consistently binary, and anatomy didn't always correspond to gender identity: in northern Uganda, the Langi people treated the effeminate males (mudoko dako) like women and allowed them to marry men, and the Mwami prophets of the Ila tribe in Zambia wore women's clothing and formed close bonds with women without engaging in sexual activity (Jessani et al., 2024). The criminalising frameworks adopted were therefore not part of precolonial African moral systems, undermining the claims of legitimacy of contemporary laws.

The "un-African" discourse, however, has a political dimension, establishing who can be recognized as one of the people of Africa within the African human rights framework. The findings from the research on East African churches indicate that religious actors react to transnational initiatives that promote inclusion of LGBTQ in a way that draws upon domestic anticolonial sentiments as a way to strengthen their symbolic capital with respect to domestic competitors, in ways that hinder transnational political agendas while reinforcing their own domestic power (Dreier, 2018). In the Uganda–EU development partnership, postcolonial readings also see claims of universal rights as neo-colonial interventions, while African rights activists continue to work towards influencing the policies of international rights norm promoters (Saltner & Thiel, 2021). The same kind of rhetorical tactics can be found in human rights discussions on other issues than sexuality; for instance, appeals to "local values" have been deployed by governments that lack a strong human rights track record to suggest that human rights and local values do not mix well, particularly the "Asian values" debate (Barugahare, 2018). Hence, the use of culture and tradition in the anti-LGBTQ+ political rhetoric can be understood less as a description of African values and more as a political tool that seeks to justify the restriction. (Ayoub & Stoeckl, 2023)

There are however no indications in the literature that cultural and religious factors are not at all relevant. Instead, the question is how far the consideration can be taken to legitimately limit rights recognized by international and domestic law. From a human rights perspective, it does not mean that the existence of cultural or religious disagreement also puts an end to state obligations related to equality, dignity, privacy or freedom from arbitrary discrimination, as reflected in the consolidation of protection from discrimination on grounds of sexual orientation, gender expression, gender identity and sex characteristics as a state responsibility by international and regional human rights bodies (Schwend, 2020). The internalisation of international norms is difficult in the context of high domestic political demands that LGBTQ+ rights are incompatible with cultural and religious beliefs, norms and values. Where the courts demand national sovereignty and implement criminalisation based on what they purport to be the "collective will" – as in Senegal – even significant international pressure is not sufficient to change domestic legal outcomes (Ferguson, 2021); where resistance to transnational rights agendas brings domestic symbolic capital, norm internalisation is hindered from the outset (Dreier, 2018).

2.7 literature review and research gap

Three general statements are made in the literature which are relevant to the present study. International and regional human rights law already provides a very good normative basis for combating discrimination on the basis of sexual orientation and gender identity. UN agencies and regional human rights bodies have on several occasions released strategic documents which unite the obligation of states to protect persons from discrimination on the grounds of sexual orientation and gender identity (Schwend, 2020); and the African Commission on Human and Peoples' Rights has urged states to make a statement against violence on the basis of real or perceived sexual orientation or gender identity (Müller et al., 2021). Second, the African experience also shows that formal international commitments do not necessarily lead to domestic legal protection – the effects of the treaties depend on the strength of the domestic political institutions (Hill & Watson, 2019), international pressure often brings about selective compliance, rather than full compliance (Donno et al., 2021), and even established norms can be impeded if they are perceived as foreign impositions by political elites (Nuñez-Mietz & Iommi, 2017). Third, domestic actors and institutions impact the effectiveness of international norms, as do political actors, civil society, judicial interpretation, regional mechanisms, and competing claims over culture, religion, morality, sovereignty and national identity, as is evident from the symbolic opposition of religious actors in Africa to transnational inclusion agendas (Dreier, 2018) and the divergent approach of courts and ministries to international pressure within a single state (Ferguson, 2021).

These contributions, however, leave an important gap. Much of the current literature focuses on the normativeness of the rights of LGBTQ+ people under international law, or on the legal and social implications of anti-LGBTQ+ laws in specific jurisdictions. Other studies are on specific regional institutions or on specific national cases. It has been noted, however, that externally led processes that seek to respond to local LGBT issues have differential and uneven effects on sub-Saharan LGBT communities, and that such processes need to be assessed on a case-by-case basis (Tucker, 2019). There are few comparative studies analysing the effectiveness of the international norms of anti-discrimination as the main analytical point from a legal and political perspective in different African contexts.

As a result, there is ample documentation of the process of norm creation and norm contestation, but relatively little systematic research into conditions under which international norms lead to domestic legal change, or to no legal change at all, or to partial compliance.

This study tries to fill this gap by presenting a combined approach of international and regional human rights law, with the comparative evidence and developments in selected jurisdictions in Africa. It builds on the norm socialisation and diffusion perspective (which sees socialisation as the process whereby principled ideas held by individuals become collective understandings of appropriate behaviour, which in turn shapes identities, interests and conduct (Jenichen, 2020)) and the concept of the “boomerang” whereby transnational advocacy generates third-party pressure on norm-violating states (Allendoerfer et al., 2019), both of which make effectiveness a process rather than a binary outcome. The study thus investigates whether there are domestic practices and mechanisms that embody international norms, and also investigates what domestic variables facilitate or hinder their implementation, including the bottom-up mobilisation processes whereby treaty commitments are translated into domestic legal reform (Dancy & Fariss, 2023). The study thus advances existing scholarship by posing the more analytically interesting question of when, how and under what domestic circumstances, anti-LGBTQ+ international norms come into play in the limitation or modification of anti-LGBTQ+ laws in Africa.

3. Methodology

3.1 Research Design and Approach

The research method used in this study was a qualitative comparative research with doctrinal legal analysis and systematic document analysis. Doctrinal legal research involves the systematic description of law, the analysis of its case and legislative meaning, the analysis of difficult areas, and perhaps the prediction of future law development, which is defined as “a systematic description of law, analysis of case and legislative meaning, analysis of areas of difficulty, and prediction of law development” (Medvedeva et al., 2019). It progresses from the analysis of legal documents (constitutions, laws, judicial rulings and official documents) to determine conclusions about issues related to the legal system without relying on primary study in the field (M.D. 2019). A qualitative approach was deemed appropriate to the aim of this study, which intends to explore the meaning, application and effectiveness of international human rights norms with regards to anti-LGBTQ+ legislation, rather than to measure relationships statistically. The comparative dimension allows for the study to consider similar international and regional human rights obligations and how they interact with different domestic legal, political, institutional, cultural and religious contexts. Comparative case designs of this sort are commonly used in comparative politics, in which countries are the units of comparison that are most highly aggregated (Meyeroose, 2020), and the intentional choice of contrasting cases allows for the isolation of specific variables but also for the determination of the range of potential outcomes (Sovacool et al., 2018).

The norm socialisation perspective (Normative Socialisation: IS, DS, IC, CS) was adopted to guide the study which conceptualises the domestic impact of international human rights norms as a process of international pressure, domestic mobilisation, institutionalisation and compliance. The boomerang and the spiral models both assert that human rights organizations' naming and shaming efforts compel third parties (other states and international bodies) to pressure norm-violating states, which then leads to improvements in human rights (Allendoerfer et al., 2019). In this account, the local civil society actors are the prime movers, as they encounter difficulties in their own communities and seek help from outside them (Dancy & Fariss, 2023), and socialisation is defined as a transformation of ideas of good behaviour that are held by individuals – but not yet understood by them as collective understandings of appropriate behaviour – that shape identities, interests and behaviour (Jenichen, 2020). This was done to analyze how domestic legislation, judicial decisions, institutional practices and mechanisms for protecting LGBTQ+ persons incorporate international anti-discrimination standards.

The study was an unobtrusive one that was based on documentary and publicly available legal materials. Systematic document analysis involved identifying documents relevant to the research questions, identifying the accessibility of the relevant documents, and selecting documents for close analysis instruments such as statutes, constitutional provisions, judicial decisions, texts of treaties and official reports (Allen et al., 2016). No surveys, interviews, experiments or personally identifiable human-subject data were utilized. Thus, the unit of analysis was the legal and policy response of selected African states to the international and regional human rights norms on sexual orientation and gender identity. The analysis was directed towards the link between international legal obligations and the national legislative and judicial practice, and not towards measuring the prevalence of attitudes or experiences among LGBTQ+ communities.

3.2 Comparative scope and case selection

A purposive comparative case-selection strategy was used. In qualitative research, the selection of the case is a conscious decision of the researcher made during the research process: purposive theoretical sampling is a selection of cases based on their theoretical relevance to the research, rather than their representativeness; methodological scholarship provides a menu of case selection options: typical case, deviant case, extreme case, most-similar case, most-different case, and others from which researchers choose according to their analytical goals (Gerring & Cojocaru, 2016; Seawright, 2016). Ghana, Uganda, Kenya and South Africa were chosen due to the fact that they offer analytically useful variation in the relationship between international human rights norms and local legal responses to sexual orientation and gender identity. Most-different case designs maximize variance to capture the range of possible scenarios and outcomes and were used to select the cases, with the focus on providing contrasting legal and institutional contexts in which to assess the effectiveness of international anti-discrimination norms (Sovacool et al., 2018).

Ghana was chosen because it not only continues to criminalize consensual same-sex sexual conduct, but also recently enacted laws aimed at broadening the restrictions on the rights of LGBTQ+ persons, making it an important case of ongoing domestic opposition to international human rights standards. Uganda was chosen because the Anti-Homosexuality Act 2023 is a particularly restrictive legislative measure, and it exemplifies increased criminalisation despite significant calls for action from international and regional bodies. The inclusion of Kenya was meant to give the context of how domestic constitutional rights, international human rights standards and legislation criminalising consensual same-sex conduct interact. South Africa was chosen as a contrasting country since its constitutional and judicial structure offers relatively robust protection against sexual orientation discrimination, and it is also a context in which international human rights values have been more easily translated into local protection of rights. The comparative design allows for the study of both restrictive and comparatively protective legal paths, therefore (Sovacool et al., 2018).

Cases were selected according to four criteria:

- (i) The presence of a domestic law or case law on sexual orientation or gender identity
- (ii) Involvement with international standards or regional human rights standards
- (iii) Adequate publicly available legal and institutional documentation to allow a systematic analysis of the case
- (iv) Diversity of domestic legal responses, from increased criminalisation, to comparatively robust constitutional protection. These criteria were designed to balance variation within the cases with comparability between the cases, which is vital because a large amount of variation between cases could result in differences that are not due to the treatment of interest (Meyerrose, 2020).

3.3 Data Sources and Data Collection

The focus of the study was on documentary data that were gathered from authoritative legal, governmental, intergovernmental, judicial and scholarly sources. Primary legal materials were the key sources of evidence and these comprised international human rights treaties, declarations, general comments, decisions and observations of the treaty-bodies, resolutions of the African Commission on Human and Peoples' Rights, decisions and judgments of relevant regional and domestic courts, national constitutions, statutes, legislative bills, parliamentary records and official government documents. This focus is also in line with the doctrinal nature of the research, which is based on a significant appeal to legislation and legal instruments (Alomari & Heffron, 2021), and with the traditional typology of research sources in the field of law: the primary sources are case law and records of legislation, while the secondary sources are written materials that contain commentaries on the primary sources (Shulayeva et al., 2017). The study also analysed reports and publications of the Office of the United Nations High Commissioner for Human Rights, African human rights institutions, national human rights institutions and other recognised international and regional human rights institutions.

Secondary sources included peer-reviewed journal articles, academic books, research reports and authoritative legal articles on international human rights law, LGBTQ+ rights, discrimination, criminalisation, norm diffusion, African

regional human rights mechanisms, and implementation at the national level. Document analysis is a method that is more appropriate for this type of research, as in this method, researchers should study official documents, programmes, policies and periodic reports, which are referred to as documents, and then access them, recognise their validity, understand their content and extract the information contained in them. (Forde et al., 2018; Bastani et al., 2018). Documentary evidence also enables the examination of legal claims not just against secondary interpretations, but against the original texts of legislation, treaties, judgments and institutional decisions – a protection that is particularly important in doctrinal research, in which secondary sources are seen as ways that bring the researcher back to the primary sources in which the law is encoded (M.D., 2019).

The documentary search was conducted for documents published or adopted since 2000, and previous key legal instruments and decisions have been included where relevant to provide a historical and doctrinal background to the development of the relevant rules. Searches were performed with various combinations of the terms: international human rights law, anti-discrimination, sexual orientation, gender identity, rights of LGBTQ+, same-sex conduct, criminalisation, Africa, African Charter, African Commission, international norms, norm diffusion, norm socialisation, and the names of the chosen countries. Original and authoritative sources were preferred, secondary literature was used to interpret and contextualise the primary sources.

3.4 Data Sources

Documents were incorporated where they directly addressed one or more of the analytical issues raised by the study: international or regional anti-discrimination obligations, domestic legislation relating to sexual orientation or gender identity, judicial interpretations of rights concerns relating to LGBTQ+, implementation or non-implementation of international human rights obligations, and/or institutional, political, cultural, and legal factors affecting the implementation of international norms in the domestic context. Documents were not included that dealt with LGBTQ+ issues but were not substantive to legal rights, discrimination, legislation, judicial practice or international human rights obligations. The selection of these materials was based on the accepted criteria of documentary selection: authenticity, credibility, representativeness and meaning (Forde et al., 2018), in order to ensure that the materials included in the corpus were authoritative in terms of source, credible as a record of the sources studied, representative of the sources analysed and meaningful for the study's analytical concerns.

Greater weight was given to primary legal and institutional sources to enhance source credibility, such as Treaty documents, court rulings, statutes, Parliaments and official documents/reports. This hierarchy is consistent with the traditional document-based research model, which prioritizes the most reliable sources to the primary source and then moves to less reliable ones (Dolphin & Xiahou, 2022). The conceptual and theoretical interpretation of the evidence was developed by a combination of peer reviewed academic publications, as it is believed that this reinforces the reliability of the interpretation (Gill et al., 2017). Claims based on advocacy and civil society reports were also cross-checked with independent or official sources if available, which meant looking at the convergence and divergence of the different sources, and preferably corroboration by at least two independent sources (Kern, 2016) (Buckley, 2016). This source hierarchy was chosen to minimize the risk of using politically partisan and unverifiable accounts of disputed legislative developments, on the methodological assumption that weighting information by source quality only enhances the measurement when constituents consulted are not methodologically biased (Kern, 2016).

3.5 Data Analysis

The data of the documents were analysed using a mixed methodology of doctrinal analysis, qualitative content analysis and thematic analysis. The documentary analysis was an iterative process of identifying relevant documents, reading them carefully, selecting important parts of the text, comparing evidence across documents and interpreting common patterns; this was a hermeneutic approach that included the researcher accessing the documents, verifying their authenticity, understanding their content and analyzing the evidence they contained (Bastani et al., 2018). Reliably and in compliance with a structured, auditable procedure that involves systematically recording, systematising and thoroughly describing methods of analysis to enable readers to identify the credibility of the process, the methods of content analysis were recorded, systematically arranged and described in sufficient detail to enable readers to identify the credibility of the process and the methods of content analysis were used in its conventional form, namely, "the systematic classification, organisation, and examination of a body of text to interpret meaning and make inferences about patterns" (Singh et al., 2021) and thematic analysis for the identification of patterns in the data set and their interpretation for their inherent meaning, according to a structured, auditable procedure as described above. No statistical counting of words or documents was done. Rather, focus was placed on

the legal implications and institutional ramifications of provisions, judicial reasoning, legislative arguments and human rights assessments.

The doctrinal analysis involved checking the consistency of the domestic legislation and judicial practice with the existing international and regional human rights standards, as is customary in doctrinal legal research, which is a systematic exposition of the rules that govern a legal category and checks the relationship between the rules and explains the areas of difficulty (M.D., 2019). Specific emphasis was placed on the principles of equality and non-discrimination, dignity, privacy, freedom of expression, freedom of association, liberty and security, and freedom from arbitrary or disproportionate restrictions. The analysis also included how much domestic courts and state institutions referenced or referenced to international and regional human rights norms as part of the reasoning.

A thematic analysis was then carried out to look for patterns in the selected cases. The main analytical themes were international norm acceptance, domestic incorporation, judicial engagement, institutional implementation, political resistance, cultural and religious justification, sovereignty claims, civil society mobilisation, regional accountability and practical rights protection. They were based on the study objectives and the norm socialisation framework, but were left open to the possibility of further categories appearing in the documentary material as a hybrid deductive–inductive process in which the categories of the analytical framework were used as pre-set codes, with the addition of the new subcategories as they arose from the documentary material (Ledoux et al., 2018).

3.6 Comparative Analytical Framework

In order to have a consistent analysis across cases, the analysis was conducted through a comparative approach in which each case was compared against a common set of dimensions, based on the premise that countries are considered the highly aggregated units of analysis in comparative political analysis (Meyerrose 2020). The study first looked at the state's formal engagement with the relevant international and regional human rights instruments. Second, it examined how much these commitments were reflected in constitutional and statutory documents. Third, it considered judicial interactions with international and regional human rights standards. Fourth, it examined how domestic and regional accountability institutions resist or oppose limiting laws. Fifth, it explored political, cultural, religious and sovereignty-based arguments that were presented to either oppose or accept the enforcement of international norms in the domestic sphere. Finally, it took into account observable evidence of the practical nature of the implementation, such as the availability of legal remedies, and the measures taken by institutions to prevent discrimination. By applying this common grid to a variety of contrasting cases this approach follows the logic of comparative case designs which purposefully select cases so as to isolate specific variables and to account for the extent of possible variation (Sovacool et al., 2018).

The effectiveness of international anti-discrimination norms was therefore broken down into three interrelated dimensions: normative effectiveness, institutional effectiveness and practical effectiveness. Normative effectiveness is measured by the degree of recognition of legal principles and obligations in international standards, which includes the consolidation of the protection of the rights against discrimination on the basis of sexual orientation, gender expression, gender identity and sex characteristics as a State obligation at the United Nations and regional levels (Schwend, 2020). Effectiveness in the institutions means how much those standards affect the legislation, judicial decisions, governmental policies, and the human rights institutions. Practical effectiveness relates to if and how international norms have a meaningful impact on the protection afforded by domestic laws and practices and scholarship on the global resonance of human rights suggests this happens mostly bottom-up, as domestic constituencies are inspired by international commitments to seek to mobilise for domestic legal reform (Dancy & Fariss, 2023). This multi-dimensional perspective is not to equate treaty ratification with compliance since the empirical literature reveals that the effects of treaties depend on domestic conditions (Hill & Watson, 2019), that pressure from abroad tends to produce selective, rather than comprehensive, compliance (Donno et al., 2021), and that the reception of international norms within a state is not uniform even within institutions (Ferguson, 2021). The framework then allows for a more differentiated evaluation of partial, contested or uneven implementation, and even situations where external advocacy leads to the "immunisation of norms" instead of domestic change (Nuñez-Mietz & Iommi, 2017).

3.7 Trustworthiness and Triangulation

Data source triangulation was used to enhance the credibility of the study, by analysing the phenomenon from a different perspective, it supported the credibility of the findings (Zizka et al., 2020). Legislative provisions and policy assertions were juxtaposed with judicial rulings, official institutional documents, and international human rights assessments and peer-reviewed scholarship as appropriate. When the law involved in the case is contentious, and might be interpreted differently by various actors, triangulation was especially significant; methodological scholarship shows that in order to produce valid inference when triangulating, one needs to evaluate both convergence and divergence, not take it for granted that the sources agree (Kern, 2016); methodological scholarship also shows that triangulation of primary and secondary sources increases the dependability of the inferences (Gill et al., 2017). Multiple documentary sources therefore lessen the reliance on a single institutional voice and help to give a rounded picture of the evidence.

The study also kept descriptive evidence and analytical interpretation separated. Primary documents were used to determine the content of the legislation, treaties, judgments/institutional decisions, and then academic literature and the theoretical framework were used to interpret their significance. This not only provides methodological transparency, but also allows for the reproducibility of the documentation selection and the comparative analysis process, as is common in document-based research: triangulated designs in document-based research typically involve documentation of every step of the research process, including the documents used, so that the results can be replicated with the same documents (Zizka et al., 2020).

3.8 Ethical Considerations

Since the study was based entirely on publically available documentary and legal resources and was not based on human subjects, interviews, surveys or the gathering of personal information, it did not pose the typical human subjects problems of the study. It is consistent with the nature of doctrinal research, which relies on laws, policies, conventions, treaties, precedents and court decisions; the focus on documents rather than on society-based field study; and the absence of training in collecting first hand data (M.D., 2019); and, it mirrors the common view that research involving existing data that cannot be directly linked to individuals or groups is not subject to formal ethics review (Scott et al., 2020). However, fair representation of contested legal and political views was exercised. However, scholarship on documentary and archival research reminds us that there is no moral vacuum in the absence of direct encounters with living people: the researcher's responsibility in interpretation, possible harm to the people that are being studied, or potential for "tendentious" interpretation of documents are all continuing moral concerns, especially in areas of violence or stigma (Subotić, 2020). The analysis did not seek unnecessarily to identify private individuals and was based upon material in the public record where allegations of discrimination, violence or human rights violations were discussed. Sources were properly cited and other legal and political arguments were made that could not be misleadingly interpreted as an attempt to associate certain individuals with problematic causes and prevent damage to the reputation caused by such misrepresentation (Subotić, 2020).

3.9 Limitations of the Methodology

There are some drawbacks in the documentary and comparative design. First, the study is not measuring the experiences of LGBTQ+ people in their lived reality and therefore cannot independently conclude the level of discrimination or the impact the law has on the social reality of LGBTQ+ people; for this, a population-based, survey-based and measurement, like the cross-sectional studies of violence against sexual and gender minorities across African countries (Müller et al., 2021) are necessary. Second, the information that is only available through public documents may not fully reflect the reality of undocumented practices and informal political negotiations and experiences of which they do not account (Subotić, 2020), which is an inherent limitation of document-based research. The triangulation of multiple categories of documentary sources in section 3.7 (Kern, 2016) partly offsets this limitation but it is not fully remedied. Thirdly, the purposive nature of the countries chosen means that it is not possible to make a statistical generalisation to other countries in Africa, and the comparison is therefore analytical rather than statistical, meaning it aims to explain the differences in effectiveness of international norms in different legal and political contexts. As is typical of intensive Small-N designs, this trade-off is between statistical representativeness and contextual depth and inferential leverage (Gerring & Cojocaru, 2016). Lastly, the legal context of LGBTQ+ laws is in constant flux – in recent years there have been both decriminalisation of homosexuality in a number of African states and tougher anti-LGBT laws in others (Stannah et al., 2019), most recently the Anti-Homosexuality Act in Uganda (2023) (Ayoub & Stoeckl, 2023). The study's findings may be affected by subsequent changes to the law and case law that happened since the documentary cut-off. These constraints are not a problem in the study, but limit the context in which interpretations should be made.

3.10 Mathematical Equations and Symbols

Since the research was qualitative, comparative and doctrinal, mathematical equations and statistical symbols are not applicable. The analysis is not carried out to estimate the numerical relationship between the variables, does not use effect sizes and does not use statistical tests, as the study has a qualitative methodological orientation aimed at explicating the meaning of the law, but also institutional practice and patterns of documentary evidence (Naeem et al., 2023). Therefore, there are no mathematical equations given in this section. When reproducing or analysing the text of legal provisions (or treaty articles, judicial paragraphs or other formal symbols), it is presented according to the requirements of the legal and journal formatting.

4. Results and Discussion

The comparative analysis reveals that international human rights law contains a solid normative basis to protect LGBTQ+ people from discrimination, but is very uneven in its capacity to limit anti-LGBTQ+ legislation across Africa. The basic conclusion is that having international or regional human rights obligations alone does not lead to domestic compliance. Rather, local influences, including constitutional design, the independence of the judiciary, political structures, civil society mobilisation, and regional accountability mechanisms, as well as conflicting claims based on religion, culture, morality, sovereignty and national identity, modulate the impact of international norms. The results also show that the impact of international anti-discrimination norms is greatest when domestic institutions are both willing and able to convert international pledges into enforceable legal norms. But in other places, their sway is greatly reduced when political entities are able to construct LGBTQ+ rights as incompatible with their own domestic cultural or religious norms. The findings when taken together suggest a more differentiated understanding of the effectiveness of norms, one that avoids the dichotomy between compliance and non-compliance, and moves towards a more nuanced account of partial, contested and uneven implementation of norms.

4.1 International Norms Provide Strong Protection but Limited Automatic Domestic Effect

The first key finding is that the international and regional human rights systems offer strong normative support for attacking discriminatory laws. Equality, privacy, liberty, and expression and non-discrimination are other areas of protection afforded by the International Covenant on Civil and Political Rights and the jurisprudence of the United Nations Human Rights Committee. At the regional level in Africa, the African Charter on Human and Peoples' Rights sets out a general framework of rights, and the African Commission on Human and Peoples' Rights Resolution 275 (2001) on violence and other forms of abuse of human rights on the basis of actual or perceived sexual orientation and gender identity (SOGI) specifically recognizes violence and other human rights violations on this basis and urges states to protect people from such violence. However, these instruments are not limited to normative architecture as such: In 2011 South Africa spearheaded the first United Nations resolution on non-discrimination on grounds of sexual orientation and gender identity, and in 2016 the UN Human Rights Council proclaimed the first UN Independent Expert on protection from violence and discrimination based on sexual orientation and gender identity, a position led by South Africa. In tandem to these advances, United Nations agencies and regional human rights bodies have integrated the promotion of non-discrimination on the basis of sexual orientation, gender expression, gender identity and sex characteristics as a State responsibility. These standards are proof that international law is not entirely lacking protection in respect of LGBTQ+ people.

It is a normative approach that takes place in a context where the continent is highly criminalized. Nearly two-thirds of the countries in Africa continue to persecute same-sex relations, many of which have long prison terms and some of which have the death sentence. The majority of these laws are colonial laws: aside from Lesotho and South Africa (and Botswana since June 2019), there were no laws in place in the other nine countries that went further than the colonial-era laws that criminalised same-sex sexuality. The last three years, however, have been very different. Seychelles, São Tomé and Príncipe, Mozambique and Lesotho have legalized same-sex relations, while Uganda and Nigeria have made their laws against LGBT people harsher. The Anti-Homosexuality Act 2023 is the most comprehensive, for example criminalizing the identities and actions of lesbian, gay, transgender and queer individuals in Uganda, including a life sentence for consensual same-sex behavior between adults and even the death penalty in exceptional circumstances. This is precisely the double movement of decriminalisation and reinforcement that is the very uneven effectiveness of which the present study will account.

But the comparative evidence suggests that the normatively strong does not necessarily lead to the effective use of the norm in the home nations. The main relationship found between international norms and domestic legal implementation is summarised in Table 1.

Analytical dimension	Ghana	Uganda	Kenya	South Africa
International human rights commitments	Substantial	Substantial	Substantial	Substantial
Criminalisation of consensual same-sex conduct	Yes	Yes	Yes	No
Recent restrictive legislative development	High	High	Moderate/contested	Low
Judicial engagement with international/regional norms	Limited/contested	Limited in restrictive legislation	Significant	Strong
Constitutional protection against discrimination	Available but contested	Available but contested	Strong constitutional framework	Strong and explicit
Regional/international criticism of restrictive measures	Significant	Significant	Significant	Limited
Overall domestic translation of international norms	Low to moderate	Low	Moderate and contested	High

Source: Author's analysis of international human rights instruments, domestic legislation, judicial decisions, and institutional documents.

The major difference is not that the states chosen in the examples are bound to international and regional human rights systems, since all four are bound to these systems, but that the interpretation and institutionalisation of these obligations differ between the countries. This variation has human consequences that can be measured. A cross-sectional study of 3,798 sexual and gender minorities in nine African countries found that 56% had suffered physical or sexual violence in their lifetime, rising to 29% for the last year, with the gender minorities reporting much higher rates of violence than the cisgender groups. Being forced into marriage was the main risk factor for violence (AOR 3.02), followed by familiarity with one's sexual orientation or gender identity among people in the immediate vicinity (AOR 1.90) and living with HIV (AOR 1.47). The health system adds to these harms of criminalisation: men who have sex with men are around 28 times more likely to have HIV than men in the general population; legislation is known to lead to stigma, discrimination and human rights violations, such as blackmail, violence, denial of housing, access to health services and access to justice, which are documented as barriers to effective HIV prevention and care. The pooled ever-testing prevalence was 67.3% (95% CI 62.1–72.3) since 2011 and the pooled past-12-month testing was 50.1% (95% CI 42.4–57.8) since 2011; both ever-testing prevalence and status awareness were statistically significantly lower in countries with the most severe anti-LGBT legislation. These data suggest that the efficacy of international norms is not a doctrinal issue - but is a matter directly related to violence exposure and access to basic services.

This result is in line with norm socialisation theory that posits the need for internalisation of norms by the domestic actors and institutions to implement those norms internationally. This is especially significant because it draws into question a legalistic assumption that the ratification of a treaty will lead to compliance. Instead, the treaty commitment opens up the possibility of domestic rights protection, which will be determined by domestic institutional conditions. The theory also provides explanations for the worst case scenario: that transnational advocacy can lead to “norm immunisation”, as happened in Uganda, where external campaigns led to local visibility of LGBT issues, which were then discursively formulated as a national threat and defensive legislation was proposed. Likewise, in the EU–Uganda development partnership, human rights conditionality is a source of contestation, as it is read from a postcolonial perspective as an example of neo-colonialism.

The discovery also adds to the ongoing discussion on the effectiveness of international human rights law. Litigation, judicial interpretation, legislative change and civil society advocacy and international monitoring are ways in which international norms can affect legal systems. Where those norms are ignored or modified by domestic political institutions, however, their practical impact could be marginal. International anti-discrimination norms should thus be interpreted as mediated, i.e. those norms set by international law have a normative effect but in practice they are mediated by domestic institutions.

4.2 Domestic Political Resistance Is a Major Constraint on Norm Effectiveness

The second important result is that domestic political opposition is one of the most important obstacles to the implementation of international anti-discrimination norms. Anti-LGBTQ+ legislative efforts are often framed as protection of family values, children, religion, morality, national identity and cultural sovereignty, as opposed to criminal justice. This political framing changes the nature of the legal conflict, turning international human rights standards into claims made by certain actors in the country into external demands that compete with values that are locally defined.

This is especially true of the Ghanaian case. The Human Sexual Rights and Family Values Bill, 2025 was adopted in Parliament on 29 May 2026, after being amended to exclude certain activities in the legal, journalistic and medical disciplines from the sanction. The passage came as part of the ongoing constitutional and human rights issues. Later, the Speaker of Parliament requested that they reconsider on the grounds of procedural concerns and the desire for legislative clarity. The Bill did not get to be considered by Parliament again and it was adjourned on 31 July 2026.

The importance of the Ghanaian development is not only because of the introduction or passage of a restrictive bill. Instead, it is a representation of the internal struggle over international norms in the domestic sphere. International human rights standards are set in a political landscape where there are multiple different actors invoking constitutionalism, parliamentary sovereignty, religious values, family values and international obligations. This legislative process illustrates the fact that international norms can provide a starting point for domestic political debate without dominating the agenda of the process leading to legislation.

The discovery helps to justify the contention that the effectiveness of norms is partly dependent on the ability of local institutions to broker between conflicting norms. International human rights principles have more power to limit discriminatory legislation where they are considered an element of constitutional interpretation. When they are described as outside interference, their impact is much less. Thus, there is a norm contestation rather than a norm rejection in the Ghanaian case as the international human rights principles are still there in the legal and political discourse and only contesting its authority.

4.3 Uganda Demonstrates the Limits of International Pressure Without Domestic Institutional Alignment

It is Uganda that presents the most starkest example of the constraints of international anti-discrimination norms where domestic political and judicial institutions are not in tune with those norms. In May 2023, the Anti-Homosexuality Act 2023 was enacted, carrying harsh penalties for specific acts of same-sex sexual activity, and establishing offences of “promotion” of homosexuality. Consensual same-sex relations between adults was punishable by life imprisonment and up to death penalty for “aggravated homosexuality” –which covered acts involving minors, persons with disabilities, persons living with HIV and repeat offending. The Act also made “attempted same-sex conduct” and “promotion” criminal offences, which were so broad as to include advocacy groups, service providers, funders and even private persons who were suspected of promoting or encouraging same-sex relations. The piece of legislation must be understood within a longer legal history. Criminalisation in Uganda is not new, as the Act was preceded by a previous Anti-Homosexuality Act of 2014 which was struck down by the Constitutional Court on procedural grounds but not substantively. The 2023 Act re-iterates provisions of an earlier Anti-Homosexuality Act of 1996, which include colonial-era Penal Code sections on “unnatural offences” and “indecent practices.” The 2023 Act was thus passed with the full awareness of condemnations from the international community, and its sponsors described it clearly as a protection of African cultural and religious values against Western-invoked ‘decadence’ while the president was openly promoting the fight against the promotion of LGBTQ+ rights as a kind of ‘imposition’. In this sense, it was more a conscious exercise of sovereign norm-making power than a failure to comply with international human rights law.

Uganda's Constitutional court then declared in favor of some provisions and against others of the law. In April 2024, a five-member panel of the Court found that the violations of the constitution were separate from the core offences, and thus rejected the constitutional challenge, which upheld the fundamental offences such as life imprisonment for same-sex conduct and the death sentence for aggravated homosexuality, while striking down a narrower group of ancillary provisions, particularly the criminalisation of attempts at same sex conduct. The Court refused to conclude

that the remaining provisions were unconstitutional in light of the rights to privacy, equality and freedom from discrimination. The death penalty for aggravated homosexuality has symbolic and coercive weight in Uganda, although the country has not executed anyone since 1999 and has previously declared that the death penalty is unconstitutional, a death sentence for a person living with HIV can be justified simply by their HIV status and may make their actions the most extreme form of offence. The judgment was seen as a welcome by the government but a condemnation by the human rights bodies and the main punitive structure of the Act remained intact. The court's judgment thus left unfulfilled rights protection and the rights protection it granted were only partial, based on doctrinal and technical considerations instead of any commitment to international anti-discrimination principles.

The Ugandan engagement is especially relevant when considering the effectiveness of norms in general, as the litigation in itself shows that international human rights norms can be present in domestic judicial processes without necessarily achieving the desired results by international human rights institutions. While most of the elements of the petition's argument were based on constitutional and international human rights principles, the court determined that the majority of the challenged provisions could continue to be in effect. This shows that norm diffusion and norm internalisation are analytically separable. While not necessarily part of the judicial doctrine, legislative practice or state identity, norms can be invoked, cited and argued before domestic institutions, even when framing a claim and conducting a litigation. The counter-framing by the Ugandan government was the decisive issue, as the Act was not being promoted as an appeasement measure for prejudice, but as a representation of a sovereign moral order, and scholars have demonstrated how transnational lobbying for gay rights was, in turn, discursively shaped as an external threat in need of a defensive legislative response. By allowing the presentation of rights-based argumentation without doing so to invalidate the law, the court's accommodation of rights based argumentation is an example of the filtering effect of domestic legal institutions in the ability to domesticate, dilute and deflect international norms as they reach the courtroom.

This is supported by the following evidence of discrimination and abuse. Since the law was passed, Human Rights Watch has reported instances of violence, eviction, blackmail, job loss, harassment through social media, and refusal of medical care. The negative impact was not limited to criminal prosecutions organisations providing LGBTQ+ rights services were raided and staff members arrested for promotion-related offences, people were detained on suspicion of same-sex conduct and the threat of prosecution deterred people seeking protection. The chilling effect on healthcare has been widely documented. In Uganda, health workers have also reported being terrorized by patients' relatives and worried about being arrested when attending to sexual and gender minority patients, some saying they would report patients to the police to avoid being treated as an accomplice. Structural stigma is supported by research to have a detrimental impact on the mental and physical health of LGBTQ+ individuals, by propelling them away from HIV prevention, care and other vital services due to criminalisation. The ongoing impact of these effects suggests that the implementation of international anti-discrimination laws is not yet effective in the presence of domestic laws and policies that clearly institutionalize discriminatory practices.

The size of the external pressure is underscored by the international reaction, which was one of the strongest against any recent human rights issue in Africa and which had no discernible impact on the internal result. It is a precedent for the 2023 Act: while the previous bill was pending in 2013, donors withheld over US\$100 million in aid, and the 2014 Act was approved and was only cancelled on procedural grounds later. Following the 2023 Act, the World Bank suspended new loans to Uganda in August 2023, while the United States tightened visas for government officials and exited Uganda from its most favored trade programme; several European governments froze or reviewed development assistance; and eventually individual sanctions were imposed on top officials, including the Speaker of the Parliament. But the government picked up such expenses without apparently a flinch on its part and the law went unabated, as if these are the cost of sovereignty. This is also seen through comparative scholarship: dependence on foreign aid is linked to resistance to norms affecting LGBTQ rights, and the conditionality of aid has been shown to be a means of creating contestation in the recipient countries, as universal rights claims become a form of neo-colonial intervention. In Uganda, the calculus went the other way: whereas reputational pressure is what could bite in some other countries, it served to augment the apparent domestic appeal of the measure there.

The Ugandan case thus indicates that international condemnation cannot be a sufficient instrument to ensure compliance. Internationally, actors can set authoritative standards, and exert reputational pressure, but if there is a strong domestic political appetite for restrictive bills, and judicial systems enforce significant parts of the legislation, this pressure might not lead to immediate legal change. This result builds on the Norm socialisation perspective, because it shows the role of domestic institutional gate keepers in shaping the process of international norm

amplification or internalisation. Measures could be taken to change the norm, the executive could define defiance as sovereignty, and the judiciary, the most likely place from which norm might have entered domestic law, refused to give it operative effect. Uganda is thus a case of an international anti-discrimination norm being unachievable because all the domestic institutional doors that could have opened it into binding law were closed. This has direct comparative implications: international pressure will have the greatest chance of being effective if it is able to strengthen actors in the state's judiciary and civil society as opposed to simply condemning from the outside what legislation is being enacted.

4.4 Judicial Institutions Are Critical Mediators of International Norm Effectiveness

A third key finding is that of courts. The comparative evidence suggests that domestic courts can be used as mechanisms to effectively transmit international human rights norms, or as mechanisms that obstruct the transmission of norms domestically. Courts that follow international and regional human rights norms actively can enhance the internalization of international norms, while courts that are focused on the restrictive interpretation of the statute or majority of the population may achieve minimal practical impact. It is therefore not surprising that the same international norm can result in very different domestic outcomes when it has to go through different institutions: decriminalisation rulings in Botswana and Namibia are in contrast to criminalisation in Kenya and Uganda, despite the fact that all four jurisdictions have broadly similar colonial-era legal frameworks that criminalise same-sex conduct. These are not differences in the content of the international norm, but rather the attitude and ability of national judiciaries to make it operative.

This is especially true in comparison to jurisdictions with more stringent requirements. Discrimination on the grounds of sexual orientation is explicitly banned in the South African Constitution and there is a strong institutional foundation for judicial protection. Subsection 9 of the 1996 Constitution lists sexual orientation as one of the grounds of discrimination prohibited, which is unique among the world's constitutions, and section 39(b) requires courts to take international law into account when interpreting the Bill of Rights, and allows for foreign law to be used. The Constitutional Court's decisions transformed this textual basis into a system of rights protection. The Constitutional Court's rulings transformed this textual basis into a system of rights protection. The Court's decision in the 1998 case of *National Coalition for Gay and Lesbian Equality* was based on international and comparative human rights cases and was limited to the rights to equality, dignity and privacy, effectively declaring that the criminalisation of consensual same-sex conduct infringed upon these rights. In 2005, the Court in *Fourie* ruled that the common-law definition of marriage and the current marriage legislation discriminated on the basis of sex orientation and suspended the invalidation for 1 year, thus setting the constitutional trajectory that resulted in the Civil Union Act 2006. In contrast, in Uganda, the Constitutional Court ruled in favor of the majority of the Anti-Homosexuality Act 2023 despite arguments for upholding rights to dignity, privacy, expression and equality, and in Kenya, the High Court in 2019 ruled in favor of criminalisation, setting aside the challenge of the rights to dignity, privacy, and equality, and deferring the issue to Parliament. The South African experience also provides a warning against the same assumption as to the nature of judicial transmission and social change: despite constitutional protection, there is still a lot of homophobia and discrimination in South Africa, and the difference between legal protection and its absence remains significant, as evidenced by the contrasts with Uganda and Kenya.

This discovery implies that judges play at least three roles in judicial engagement. First, courts can apply international norms to constitutional interpretation. First, international norms can be used in courts' constitutional interpretation. South African courts are constitutionally required to do so, in the petitioners' case in Uganda, the Constitutional Court acknowledged constitutional and international human rights law principles, and even in the absence of a constitutional protection of sexual orientation, in Botswana the High Court invoked comparative and international jurisprudence to find that criminalisation violated dignity, privacy and equality. Secondly, a legislature can be overruled and/or restricted by the courts when it infringes on fundamental rights. In 1998 and 2005, the South African Court exercised this power and ruled the Penal Code provisions that criminalised Consensual Same-sex Conduct unconstitutional; Namibia's High Court exercised this power in 2024, striking down the common-law crimes of sodomy and "unnatural offences"; and the Court of Appeal in Botswana affirmed this judgment in 2021. The other example is countries like Uganda and Kenya, which are refusing to invalidate clauses that are the object of rights-based argumentation, thus

permitting discriminatory laws to remain in force. Third, judicial rulings have the capacity to create precedents which shape the future application of laws and orders that are implemented. The Fourie judgment was not simply a declaration of a right, it was a blueprint for Parliament's legislative reaction and set a timeframe for Parliament to correct the flaw. In contrast, when courts uphold criminal provisions, those in charge of enforcing the law feel empowered to do so: in Kenya, criminal provisions against sodomy have been used by police and state institutions to target and harass sexual and gender minorities were documented. Where such mechanisms are effective, international norms can become domestically binding beyond the treaty framework, where they are not, then they remain outside the legal framework and can be invoked as argument, but never as law.

The path taken by Botswana is analytically significant just because it was not specifically driven by the constitutional text. Botswana's constitution lacks a specific ban on discrimination based on sexual orientation and the Bill of Rights is relatively weak and subject to numerous restrictions. But the High Court interpreted the guarantees of dignity, privacy, and equality to cover consensual same-sex activity and the Court of Appeal upheld that interpretation. The case shows that the lack of words in the text does not preclude judicial transmission, provided courts are ready to interpret the provisions of general rights using new standards or comparative practice. It also offers a more conservative corollary: The same leeway that Botswana's courts used to give to reading rights generously was enough for the High Court of Kenya to read them restrictively in the same year, and for the Constitutional Court of Uganda, in 2024, to uphold a law that punishes consensual same-sex behavior with life imprisonment and aggravated forms of the same act with capital punishment. Judicial discretion is not just two-way: it's the avenue by which international law becomes domestic law, but it's also the avenue by which it becomes diluted, deferred or deflected.

But judicial involvement does not necessarily mean judicial activism or rights-enhancing results. Restrictive judgments can be made by courts that interact with international law. The Ugandan case illustrates exactly that: international human rights principles were front-and-centre before the Constitutional Court, which decided that the majority of the impugned provisions could continue to be in force. Similarly, the High Court of Kenya considered seriously arguments of rights before it ruled against them. This is supported by evidence from Senegal, where the ministries and agencies of the executive have sometimes accommodated the international human rights expectations while the courts, which are based on a logic of popular representation and national sovereignty, have persistently enforced criminalization showing that the same state can simultaneously have different institutional orientations towards the same international norm. The key question therefore is not whether, but how, international law is referred to by courts and how international norms are balanced against other constitutional, cultural, religious and political views. Doctrinal choices determine this: whether the general guarantees to human rights in the constitution are alive or dead; whether cultural and religious majoritarianism is seen as a legitimate interpretive constraint on the rights guaranteed by the constitution, or as an illegitimate justification for discrimination; whether the rights of the majority in the legislature are respected, or whether they are subjected to scrutiny; whether regional standards, including the African Commission's Resolution 275 on violence against persons on the basis of real or perceived sexual orientation or gender identity are seen as valid sources of interpretation of the rights guarantees in the constitution, or as foreign impositions. The formal presence of the norms is not what counts, but rather the effect of all these choices: each of them is a gate through which international anti-discrimination law must pass, and the comparative record shows that it is the combination of these choices that gives the international anti-discrimination law in Africa its practical scope.

4.5 The African Regional Human Rights System Provides an Important but Contested Enforcement Layer

The results also indicate that the African regional human rights system has a substantial role in maintaining international anti-discrimination norms, with implementation challenges. The regional level is of structural importance: the Charter of African Human and Peoples' Rights, adopted in 1981 and in force since 1986, has been ratified by all African Union member states, providing the continent with a common human rights instrument which is formally accepted by almost all member states. The Charter's guarantees of non-discrimination, equality before the law and respect for human dignity offer textual bases for claims relating to sexual orientation and gender identity, as does the Charter's interpretive provisions (Articles 60-61), which explicitly give the African Commission on Human and Peoples' Rights the power to take account of international human rights law, thus formally linking the regional with the global normative order. In this context, Resolution 275 is a significant regional normative development as it explicitly urges African States to take steps to ensure that individuals are not subjected to violence or other forms of human rights violations based on their actual or imputed sexual orientation or gender identity. Resolution 275 was adopted in November 2014 during an extraordinary session of the Commission held in Banjul, The Gambia, and the first instrument of its kind in the Commission's history: it calls on states to end acts of violence, abuse and aggression against persons on the basis of their real or perceived sexual orientation or gender identity; to ensure that those who

have been the victims of such acts have access to effective remedies; and to protect human rights defenders working on these issues. This gives a legal and institutional framework for addressing violence and discrimination at a regional level, even in the face of national law that is discriminatory a regional standard against which civil society organisations, domestic litigants and external actors can turn. Its adoption, however, was telling because it had been adopted in the capital of a state which had weeks before passed more severe legislation on same-sex conduct, and had been won only in the face of strong opposition from the state. The resolution is also, by design, a soft law instrument; its operative paragraphs focus on violence, remedies, and the protection of defenders, rather than directly calling for repeal of criminal provisions, which is an exercise that is carried out under politically constrained conditions in the process of creating a norm.

However, domestic politics have an impact on the regional system. State cooperation, domestic implementation, institutional capacity and national authorities' acceptance of regional recommendations and decisions are important factors in determining the effectiveness of regional institutions. The African Commission is endowed with a quasi-judicial protective role, as reflected in its communications procedure, and with a promotional role as demonstrated in state reporting, concluding observations and special mechanisms, but its decisions are non-binding recommendations, and states' compliance with the most authoritative decisions has been inconsistent. The Commission's structural entanglements with states exacerbate the issue, since its members are elected by the AU Assembly and the Commission's budget goes through the political organs of the Union, with little insulation from the very governments that it must scrutinize. The African Court on Human and Peoples' Rights, created by a Protocol in 1998, which entered into force in 2004 and started working in Arusha in 2006, has given binding judgments, but for individual petitions, its jurisdiction relies on the declaration under Article 34 of its Protocol, which only a small minority of member states have made; several have since withdrawn, and a few others have not renewed their declarations. The Court has also, in its 2020 practice directions, further restricted the scope of admissibility of direct individual access, further limiting the practical route from regional to domestic remedy. There is also a body of literature on the African human rights system which shows that LGBTQ+ rights are still politically debated within the region's institutions. The Commission's 2014 step led to concerns at the political level of the Union: in 2015, the AU Executive Council, in its decision on the Commission's activity report, voiced concerns regarding attempts to impose values alien to African societies – language which many interpreted as a criticism of Resolution 275 – and reports of efforts to table anti-LGBTQ+ resolutions at AU summits have appeared again and again without any form of decision by the Union. The regional system is therefore a site of norm generation and mobilisation of counter-norms, as seen in the previous sections.

The findings therefore indicate that the regional system in Africa is still playing a crucial norm-maintenance role despite its inability to produce the necessary change in the legislation of the member countries at the national level. Regional resolutions, decisions, recommendations, and advocacy help to articulate a common human rights standard and serve as further normative and institutional resources for civil society actors. The following is a practical representation of these indirect effects. In advocacy and funding applications to regional and UN treaty bodies and in shadow reporting to the treaty bodies, CSOs throughout the continent use Resolution 275 to support their domestic claims in a legitimate African normative source, not in a one that can be rejected as foreign impositions. Since the enactment of Uganda's Anti-Homosexuality Act 2023, Sub-regional fora have also been used to address SOGI cases, with civil society groups in Uganda having referred it to the East African Court of Justice claiming it violated the East African Community Treaty's human rights and rule-of-law principles, in addition to the local courts which upheld the law. Domestic judicial decisions also have a regional dimension, the regional framework being part of the interpretive field in which these victories have been achieved: counsel and courts in Botswana's decriminalisation litigation, and in Namibia's successful attack on the common-law crimes of sodomy and "unnatural offences" relied on regional and international human rights jurisprudence. The Commission's special mechanisms, including the Special Rapporteur on Human Rights Defenders, have also publicly stated and intervened on arrests and violence against LGBTQ+ people and human rights defenders, providing an official regional voice to calls for accountability. But, a significant challenge is the time lag between regional norm development and local implementation. The Commission has failed to make a merits decision to directly challenge discrimination in respect of sexual orientation and gender identity, and the regional framework relies on soft-law tools which do not carry the same level of force

as hard law. Regional institutions have also not yet been able to force legislative change; when governments are politically committed to restrictive legislation, as in Uganda, regional criticism has been a voice heard and ignored, rather than a limit on what they can do.

The fact of this finding is significant because it will not allow the effectiveness of international law to be judged based on the question of whether a discriminatory statute has been repealed. Indirect effects can be generated by international and regional bodies, for example through empowering domestic litigants, informing judicial decision making, civil society mobilization, reputational costs, and through authoritative interpretations of human rights obligations. These effects can be significant instances of norm influence even if the law is not directly obeyed. The regional layer gives three different types of contribution to this repertoire. First, it validates the norm in an African legal idiom, undermining the assertion which forms part of the political justification for anti-LGBTQ+ laws in Africa that sexual orientation rights are a colonial imposition, and a resolution passed by African commissioners under the African Charter is hard to label as such. Second, it affords civil society a space for naming, documenting and formally challenging violations, even in the absence of domestic institutions, as the reporting process, communications procedure and special mechanisms are institutional spaces where violations can be brought to the fore. Second, it establishes an institutional space in which violations can be named, documented and formally challenged even when domestic institutions are closed, namely the reporting process, the communications procedure and the special mechanisms in limited cases the Court. Thirdly, it maintains the norm: resolutions, decisions and recommendations ensure the standard is not forgotten when domestic political opportunities arise, such as in Botswana, Namibia and in recent years, The Gambia, where the colonial-era sections of the Criminal Code prohibiting consensual same-sex conduct have been removed from the statute books. In this respect, the regional space operates as a reservoir of normativity: it does not necessarily force compliance, it makes it possible to continuously produce norms against discrimination, and it makes it possible to continuously assert norms against discrimination, always ready and always re-articulated, always waiting for the domestic institutional alignment, the judicial engagement and the political opening analysed in the previous sections, in order to become law.

4.6 Legislative Restriction Has Expanded Beyond Criminalisation

Another discovery is that modern legislation against lesbians, gay men, transgender and queer people is increasingly going beyond the old approach of criminalising consensual same-sex relationships. Comparative evidence suggests an increasing focus on advocacy, promotion, expression, association, funding, access to services, and public representation of LGBTQ+ people. This is a significant step as it takes the potential clash with international human rights law from privacy and sexual behaviour into other areas, such as freedom of expression, association, access to information, equality, health, and civil society activity.

This generation of legislation brings with it the signature offences of "promotion". It lacks a colonial heritage: the Penal Codes from the colonial times criminalised 'unnatural offences' and 'indecent practices' while not criminalising advocacy, information and support in relation to these. The promotion offence represents a significant switch in emphasis from behaviour to communication, organisation and finance, and is geographically widespread which demonstrates clear transnational borrowing. The template came from the "propaganda" laws that had been implemented by laws outside of the continent and had been adopted to African political frameworks, such as the concerns about "family values," "cultural authenticity," and "sovereign resistance to neocolonialism," which were used to silence advocacy. While the law was presented in Uganda as a continental front against "degeneration and decadence", in Ghana public debates about homosexuality and other queer issues actively frame this as an importation from the West and as a "sin" not tolerated by the local population. The promotion offence is not just a secondary punishment: it is the legalisation of a counter-norm; the rejection of LGBTQ+ visibility is now a state mandate which imposes the state to police expression in addition to conduct, association in addition to expression, funding in addition to association and funding in addition to conduct.

This is reflected in the Ugandan Anti-Homosexuality Act. Its promotion provision criminalizes a very broad range of conduct: knowingly proposing to offer support or services to persons engaged in "purported same sex conduct," knowingly promoting, facilitating or supporting such conduct in any manner, publishing, broadcasting or distributing material that promotes or supports such conduct, and knowingly funding or sponsoring any activity related to such conduct. The provision is also to be read in conjunction with its escalation the brief 2014 Act criminalised promotion of such services to LGBTQ+ people with up to 7 years imprisonment, and the 2023 Act more than doubled that term, and expanded the prohibited conduct. While the Constitutional Court ruled some measures invalid, including the criminalisation of "attempted" same-sex activity and the obligation to report suspected activity, it upheld the

promotion provisions in full, impacting on advocacy and organisations that support the rights of LGBTQ+ people. The implications for what happened in practice were immediate: police raid on facilities used by LGBTQ+ groups, arrests of staff and community members, and human rights organisations reporting a flight of LGBTQ+ people from the country due to fear of prosecution and even cultural events being targeted for the potential of “promoting homosexuality”. The chilling effect reached the funding and service infrastructure, with international donors limiting their in-country presence for fear of prosecution under the promotion clause, the United States suspending PEPFAR-supported services to LGBTQ+ populations, and health workers and civil society staff facing the dilemma of whether to continue to provide services or risk facing criminal liability.

The same legislative logic is evolving and contesting in Ghana, albeit in a different institutional context. The Human Sexual Rights and Family Values Bill, passed by the Ghanaian Parliament in February 2024, extended the scope of the criminalisation from sexual behaviour to identity and association: it criminalised the identification or “holding out” as LGBTQ+ (with imprisonment up to three years), sentences convicted individuals to three to five years imprisonment for “promoting, sponsoring, or funding” LGBTQ+ activities, and required “rehabilitation” of convicted persons. It did not receive the President’s sign-off before the end of the parliamentary term, but was again introduced in 2025, and the 2026 amendments introduced exemptions for various legal, journalistic and medical activities. These exemptions are important analytically. They recognise exactly the professional roles lawyer advising clients, journalist reporting, health worker providing care that the promotion offence would otherwise criminalise and they address the concerns raised by professional bodies in the previous legislative process. However, their presence also points to the other major trend – the promotion offence which, if not carefully delineated, is making it illegal to do the routine work of the professions in which rights are expressed, recorded, and challenged. The enforcement of the “promotion” law is also used informally before it is made a law: Police officers effectively arrested participants in an LGBTQ+ rights workshop in Ho, Volta Region, in early 2023, treating it as a trial for the enforcement of the “promotion” law.

The comparative record demonstrates that Uganda and Ghana are not exceptions, but are part of a regional trend. The Same Sex Marriage Act makes it illegal in Nigeria to “publicly” engage in a “same sex amorous relationship” or even to register and operate a gay club, society, or organisation, or even to engage in “direct or indirect” support for such activity. Tanzania has banned newspapers for their coverage of same-sex issues, and threatened media outlets as if it were banned to report on it. Senegal activists arrested at an advocacy meeting have been charged with offences that are essentially the same as “promotion”, such as “incitement to debauchery”. The movie, *Rafiki*, was banned in Kenya by its film classification authority as a “promoter of lesbianism” but was later released by the High Court. Niger’s recent criminalisation - and the other jurisdictions on the restrictive side of the list - have been added as a result. In all of these instances, the shift has been from what LGBTQ+ people do in private to what they say, how they organise, who funds them and how they look and behave in public, from status and behaviour to identity, expression, association and resources.

This is an expansion of the area of potential tension between domestic legislation and international human rights norms. The promotion offence respects the freedom of expression, assembly and association guaranteed by the International Covenant on Civil and Political Rights, the right to a high level of health guaranteed by the International Covenant on Economic, Social and Cultural Rights. It also contradicts the views of international supervisory bodies, which have repeatedly concluded that laws that criminalise the promotion or ‘propaganda’ of non-heterosexual orientations are incompatible with freedom of expression, as well as the principles outlined in the Yogyakarta Principles on the application of human rights law to sexual orientation and gender identity. Indeed, of all the provisions that have been studied in this article, the promotion offence is the one that is most hard to defend even under the “morality” exception that the states rely on to give justification to conduct based criminalisation, namely, restrictions on expression, on association, and on funding. The incompatibility is further complicated by the wide and ambiguous scope of the drafting (“in any manner,” “directly or indirectly”) which leaves discretion to police and prosecutors in determining what constitutes promotion, and thus subject to arbitrary implementation.

The significance of this is that it opens up a larger space for the possibility of potential conflict between domestic law and international human rights standards and this impacts on the space for contestation of norms. The limitations on advocacy and expression can weaken those civil society actors that can most effectively bring international norms to the fore at home. Restrictive legislation can therefore have a second order effect: it is not just about the restriction of the rights of LGBTQ+ people, but it can also have a weakening effect on the institutional and civil society mechanisms which bring international human rights norms into the domestic sphere. The actors are the “norm carriers” the litigators who use international standards in court, the organisations that document violations and file shadow reports, the journalists who report on them, the researchers whose evidence underpins advocacy, the health workers who reach the hard-to-reach communities, and the funders who sustain all these actors. In regions where promotion laws are in place, these functions are at the same time criminalized and chilled, with the organisation shutting down, staff members moving to other countries, donors stopping their support, research contracts cancelled, services disrupted, etc. This creates a vicious cycle: the law infringes on rights directly, while at the same time undermining the mechanisms by which such infringement could be contested, exacerbating the gap between the diffusion and internalisation of norms found in the previous sections. Promoting laws are meant to be dismantled, and an acceptable measure of the success of international anti-discrimination norms will therefore be whether or not the institutional context in which they might be translated remains after the wave of restrictive legislation.

4.7 Comparative Assessment of Norm Effectiveness

The results of the previous sections can be distilled into three dimensions of effectiveness: normative, institutional, and practical, representing different phases of the evolution of an international norm from articulation to implementation. The comparative assessment is summarised in Table 2, with the evidence that led to each row included as an illustration.

Table 2. Comparative Levels of International Anti-Discrimination Norm Effectiveness

level of effectiveness	principal indicator	comparative finding	illustrative evidence
Normative effectiveness	Recognition of equality and non-discrimination in international and regional instruments	High across all cases	ICCPR and ICESCR guarantees; African Charter ratified by all AU member states; Resolution 275
Institutional effectiveness	Domestic judicial, legislative and institutional incorporation of international norms	Uneven	South Africa's Sections 9 and 39(b); Uganda's Constitutional Court; Kenya's High Court
Practical effectiveness	Actual protection against discriminatory legislation and practices	Uneven to low in restrictive jurisdictions	Documented violence and displacement in Uganda; healthcare chilling effects; funding withdrawal
Judicial mediation	Use of international and regional norms in domestic adjudication	Strongly variable	Botswana's decriminalisation decision (2019), affirmed in 2021; Namibia's decriminalisation; Uganda and Kenya's retention of criminalisation
Regional influence	Engagement with African human rights mechanisms	Present but constrained	Resolution 275; East African Court of Justice reference against the 2023 Act; limited direct access to the African Court
Civil society influence	Mobilisation of international norms in domestic advocacy and practice	Significant but vulnerable to restriction	Promotion offences targeting organisations; donor withdrawal; staff relocating abroad
Political resistance	Cultural, religious, sovereignty and majoritarian arguments against international norms	Strong in restrictive cases	"Foreign values" framing in Uganda and Ghana; AU Executive Council statement
Overall effectiveness	Translation of international norms into effective domestic protection	Conditional rather than automatic	Decriminalisation in Botswana and Namibia; retention of criminalisation in Uganda and Kenya

As shown in Table 2, the most salient dimension of international human rights protection is the one related to normative effectiveness. There are relatively clear principles around equality, dignity, freedom, privacy and non-discrimination in the international and regional frameworks. This layer of formality of coverage is actually quite complete: the International Covenant on Civil and Political Rights guarantees equality before the law and bans discrimination; the International Covenant on Economic, Social and Cultural Rights protects the right to health and to participate in the cultural life; and the African Charter on Human and Peoples' Rights which has been ratified by all African Union member states — bans discrimination and protects dignity, privacy and freedom of expression, and its interpretation provisions expressly provide for the regional Commission's ability to refer to international human rights law. Resolution 275 further explicitly extends this architecture to sexual orientation and gender identity, while offering a regional standard, one that is supported by the region's own human rights body. It is noteworthy that even governments which pass restrictive laws seldom take issue with the broad principle of non-discrimination amongst human rights. Uganda's government did not contest the existence of international standards, but proclaimed that they were foreign impositions and that compliance was a form of neocolonial subordination. The debate on the Human Sexual Rights and Family Values Bill in Ghanaian Parliament similarly discussed 'restriction' as an affirmation of 'family values' in the context of culture and religion, and not as a rejection of human rights per se. The normative consensus is therefore shallow and real – contested precisely at the point of application, whether sexual orientation is included in categories of protection and whether the obligations under international law trumps the cultural, religious and majoritarian obligations in domestic law.

The most vulnerable dimension is in terms of 'usefulness', especially in places where there is a specific legal limitation on the rights of LGBTQ+ people in domestic law. This is the point where the gap between the normative and the practical level is at its greatest, that is, where statutes contain institutionalised discrimination. Despite the best possible articulation of international norms, and in Uganda's case, the wide-spread violent response to the Anti-Homosexuality Act 2023, the harms that have been documented continued, including but not limited to, violence, evictions, blackmail, employment loss, online harassment and refusal to provide health care – also the fear of arrest, and in some cases, the health worker's stated willingness to report patients to police which demonstrates how the law turns health workers into informants. The practical layer also covers the retreat of the protection infrastructure: the suspension of PEPFAR-supported services for LGBTQ+ Ugandans, the closure of PEPFAR-supported services for LGBTQ+ Ugandans, the suspension of new lending by the World Bank, and Uganda's exclusion from the United States's most preferential trade arrangements. Despite international condemnation, police and state institutions in Kenya continued to use the anti-sodomy provisions of the Penal Code to target and harass SGMs, while in Tanzania sexual and gender minorities faced harassment by police and state institutions. The penal code against sodomy continues to be used by the police and state institutions to target and harass SGMs in Kenya and media outlets were suspended for reporting on SSGs in Tanzania while the law remains in place. Yet, even in countries that have decriminalised Botswana (2019 and 2021) and Namibia (2024) real protection did not come automatically, and the same is true for South Africa's constitutional protections in curbing all pervasive homophobia and social discrimination. Lived protection and legal protection move at different tempos, and from the comparative record, it is clear that repealing a law is a necessary but far from sufficient condition to its being effective.

Institutional effectiveness is found between these two levels and it is here that the comparative variation exists. The same set of international norms resulted in vastly different domestic outcomes, depending on the institutional channels that they had to traverse. Normative commitments were transformed into legal obligations in South Africa in 1998 and 2005, when the Bill of Rights was expressly amended to include sexual orientation as a ground of discrimination and the Constitutional Court was mandated to take international law into account in interpreting the Bill of Rights; the Constitution also shaped the parliamentary process leading to the Civil Union Act of 2006. Botswana has done something similar, albeit with a different approach: while their constitution doesn't explicitly mention sexual orientation, and their Bill of Rights is not as robust, their courts have interpreted the general protections for dignity, privacy and equality broadly, and the Court of Appeal has affirmed those interpretations. The Uganda and Kenya examples illustrate the opposite; courts which took rights-based argument seriously, but which gave predominance to majoritarian, cultural and religious concerns over rights and rejected criminal provisions outright, leaving life sentences and capital punishment in force in Uganda. The institutional variable in short, is not

the presence of a constitutional text that references sexual orientation, or indeed of international norms that get as far as the courtroom (which is the case in all of the instances examined), but whether judicial bodies are willing and able to make them operative. Variability is also seen in the legislative arm as between 2024, Ghana's Parliament enacted restrictive laws, the presidency, in a similar manner, refused assent and in 2026, the proposed bill was reintroduced with professional exemptions. Likewise, the legislative arm shows variability, as between 2024, Ghana's parliament passed restrictive laws, 2026 the bill was reintroduced with professional exemptions, while the presidency refused assent on the same.

The key finding is thus that international anti-discrimination norms are conditionally effective. They are more effective when norms are also protected in constitutions, when courts have independence, when civil society organisations are active, when regional bodies and institutions are involved, and when politicians are ready to invoke international obligations. They lose their impact in contexts where domestic political institutions define LGBTQ+ rights as contrary to national values, and where courts or legislatures pay more attention to majoritarian preferences than to international human rights obligations. Three aspects of the conditionality need to be stressed. First, it acts at the institutional, rather than the normative, level: None of the cases in the comparative record failed because there was no clear international standard; all of the failures were because domestic institutions did not bring the standard into law. Second, the conditions are not exhaustive, so the protection of rights in South Africa, despite the absence of explicit constitutional language, and Botswana's decriminalisation, despite its absence, are both actually possible because of the institutional willingness that is expressed in these or other words. Third, norm transmission is conditional and dynamic – the same institutions that failed to transmit norms in Uganda and Kenya were successful in transmitting norms in Botswana and Namibia, and the same regional norm-maintenance functions that have hindered the activation of norms in Uganda and Kenya also have a role to play in ensuring that standards remain available to be activated when political conditions are ripe, as The Gambia's 2023 effort to remove colonial-era criminalisation illustrates.

The comparative assessment thus urges caution when trying to measure the success of international legislation with a single binary criterion — the repeal of the discriminatory legislation. Such an assessment of the end of a long process overlooks the descriptive, normative and institutionalities aspects of influence, including how it is blocked or sustained. The correct reading is a "layered" one, a combination of high normative effectiveness, uneven institutional effectiveness and practical effectiveness that is low in restrictive jurisdictions but clearly achievable in those jurisdictions with domestic institutions that are in line with international standards. International anti-discrimination norms in Africa are not simply ineffective, they are conditionally effective and the condition is domestic institutional alignment, which is the variable that makes external norms internal law or external argument.

4.8 International Norms as Instruments of Legal Contestation

International norms have not consistently succeeded in blocking the imposition of restrictions, as the results show, but they continue to be valuable tools of legal challenge. Civil society organisations, lawyers, litigants, courts, national human rights institutions and international organisations can raise legal arguments against discriminatory measures using international human rights law. This is clearly seen in the cases against the Anti-Homosexuality Act in Uganda and the on-going constitutional issues regarding the constitutional process in Ghana. The contestation is not limited to the courtroom, however, and it takes place in legislatures and parliamentary committees, in litigation before domestic and regional tribunals, in reporting to international treaty bodies and the Universal Periodic Review, in the statements of national human rights institutions, in the statements of professional bodies, and in the economic signals of international financial institutions. Each of these arenas is one location where the international norm can be made and each time the international norm is made even when it fails there is an additional strain on these restrictive laws.

This case in Uganda serves as a study in how international norms can be used as a legal resource even when they are not the outcome sought by their advocates. The challenge to the Anti-Homosexuality Act 2023 was mounted by a group of activists, lawyers, academics and members of parliament and was based on both the Constitution of Uganda which guarantees equality, privacy, dignity and freedom of expression, and the international laws embodied in Uganda's legal obligations including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, both of which were also invoked in the pleadings. In part, the April 2024 judgment of the Constitutional Court proved to be a success, as it declared the criminalisation of attempted same-sex conduct and the requirement to report suspected conduct unconstitutional, but it left unchallenged the core offences, including life imprisonment for consensual same-sex conduct, the capital punishment for aggravated forms of the offence, and

the promotion provisions in their entirety. But this is a norm effect nonetheless. The international and constitutional challenges were able to limit the scope of the statute, and the adjudication forced the Court to provide a reasoned interpretation of the statute that can serve as a basis for future action by the courts, the legislature, and international bodies. On top of the domestic courts, the same coalition took the challenge to the regional East African Court of Justice, claiming that the Act is in contradiction with the human rights and rule of law principles of the East African Community Treaty, a case of litigants using a regional forum to bring a claim to life where their domestic courts have shut their doors. The litigation function is conducted simultaneously on two tracks: the domestic one, in which norms are invoked as basis for decision; the regional and international track, in which the same arguments are submitted to bodies that are free from domestic political pressures.

The Ghanaian case is illustrative because there are international human rights concerns and constitutional and procedural concerns. The path taken by the Human Sexual Rights and Family Values Bill is indicative of how norm contestation is not a one-off event, it is a “traveling show” that happens over institutional moments. It passed Parliament in February 2024, but did not receive the President's assent by the end of the parliamentary term and thus lapsed with the dissolution of the eighth Parliament, before which it was reintroduced in the ninth Parliament, amended in 2026 to exempt some legal, journalistic and medical practices, and again passed by Parliament in May 2026. In May 2026, parliament passed it and there were worries regarding parliament procedure, constitutional requirements and reconsideration. The Speaker then called for reconsideration and the Bill was not resolved during the adjournment of Parliament in July. The importance of this is that international standards can be indirect through other constitutional and institutional accountability mechanisms, not solely in the form of legislative repeal. The procedural objections were important primarily due to the fact that they did not necessitate the legislative and judicial establishment adopting the international norm on its own terms: the mandate for presidential assent, the validity of the legislative process, and whether the Bill could proceed following the transition between parliaments each offered an institutional foothold to delay, divide, and ultimately block enactment. Around these procedural mechanisms came together a broader alliance—lawyers, journalists, health workers, and the nation's human rights institution, which provided an official voice at home to contest the Bill; and economic actors abroad, raising the price of enactment for access to finance and development assistance. International human rights language was woven through all of these interventions, and all too often it was not enough to take effect on its own: it was most effective when it was combined with constitutional, professional, or procedural objections that domestic institutions could recognize and respond to without first interpreting the rule to determine its meaning in the international arena.

The range of opposition is far more wide-ranging than just constitutional challenges. National human rights institutions (NHRIs) can help bring international human rights standards into practice in the domestic sphere, and in Uganda the Human Rights Commission and in Ghana the Commission on Human Rights and Administrative Justice have reported on violations and called for protective measures. The mechanisms of the United Nations multiply the places for assertion: treaty bodies report on states' compliance with treaties, the Universal Periodic Review provides for countries to make statements on its recommendations, and special procedures provide for the issuance of statements and urgency appeals about arrests, violence and legislative threats. Then there are regional bodies, for instance, the African Commission's Resolution 275; and the reference to Uganda's 2023 Act by the East African Court of Justice. All these are combined into one advocacy strategy, one that is brought to the Constitutional Court, to the regional court, to the treaty body and to the legislature at the same time, so that if one of them is defeated, the contest is not finished, but is merely rebounded. Each forum generates documentation, reasoned responses or formal recommendations that add up over time and create a record which makes it increasingly more costly to defend restrictive legislation and increasingly more difficult to challenge it when political conditions change.

This finding makes possible only a narrow approach to effectiveness that is based on compliance. A norm can have an impact if it does not directly shape the political product, namely legislation. It can affect the nature of legal advocacy, set norms for judicial oversight, give a voice to other actors of civil society, and raise the political and reputational price of discriminatory laws. International norms thus have direct and indirect effects, and both aspects should be taken into account. Direct effects are noticeable when international and constitutional law converge to invalidate laws, such as the 'decriminalisation' rulings in Botswana, or to shape the form of this legislation, as the

Constitutional Court of South Africa did in its marriage declaration, which required the Parliament to take action. Direct effects occur where international norms and constitutional law intersect to invalidate laws, such as the decriminalisation rulings in Botswana, or to frame the outcome of the law, as the South African Constitutional Court did in its marriage declaration, which forced the Parliament to act. Its partial narrowing in Uganda, the unresolved status of the Ghanaian Bill at the crossroads of procedural and rights concerns, and the unceasing documentation, reporting and mobilisation that sustains the norm in times of legislative backslides are all indirect effects that can be observed. Effectiveness, in this perspective, is not either/or; something can lose in one forum and win in another, and a loss in a courtroom can otherwise serve as a stepping stone to a greater body of legible and creative solutions for future litigators, and to a more refined body of legal precedent and understanding that can be invoked at the next political imperatives. A simple measure of international anti-discrimination norms that only takes included repealed statutes would systematically underestimate their impact because the most convincing thing they have done is not to actually secure compliance, but to ensure that there is a legal argument to contest restrictive legislation, which in the absence of such a legal resource would have passed, or that legislation would not have endured unchallenged.

4.9 Recent Developments and the Novelty of the Study

The study's findings are especially important given the recent changes in the African legal landscape with regards to LGBTQ+ rights, which have proven to be dynamic but, in some key areas, regressive. In 2026, ILGA World noted that, after a long trend of reduction in the number of jurisdictions criminalizing consensual same-sex relations, the situation had worsened in the prior year with Burkina Faso introducing criminalisation and Senegal beefing up its provisions. The turnaround isn't a mere coincidence. It marks the first time in a 20-year trend of successive editions of ILGA World's State-Sponsored Homophobia survey, which has been published since 2006 and has been considered the definitive global mapping of sexual orientation laws, during which decriminalisation has taken place in the Americas, Asia-Pacific and Africa. During this time, in Africa alone, Seychelles, São Tomé and Príncipe, Mozambique and Lesotho decriminalized same-sex conduct, while Angola's new Penal Code repealed the colonial-era offences, and Botswana's High Court invalidated its inherited "unnatural offences" in 2019 and the Court of Appeal affirmed this ruling in 2021; in 2020, Gabon decriminalized same-sex conduct; in 2023, The Gambia's Criminal Code replaced the inherited "unnatural offences" with a new "sexual sexual acts" provision, and in 2024, Namibia's High Court declared the common-law crimes unconstitutional. In this context, the fact that the criminalisation map also increased again in the 2026 report is a departure from the notion of a steady progression towards decriminalisation, which is part of the norm diffusion and norm socialisation discourse, both explicitly and implicitly.

Burkina Faso is analytically important due to the path of criminalisation that it followed. It was not enacted by a contentious law passed by parliament as in Uganda or Nigeria, but by the constitutional changes wrought by the transitional military government, whose new constitution made marriage a union between a man and a woman and upheld the punishment of same sex relations. The political economics of repeal changes when the provision is entrenched in the constitution: an ordinarily legislated provision becomes an entrenched provision that could only be changed by an amendment to the constitution, that's much harder and that effectively forecloses upon the regular legislative process. It is also important to consider the move in a geopolitical context. Like Mali and Niger, there was a military coup and a rejection of Western partners in Burkina Faso; the junta's social policy has been characterized clearly as an attack on Western values, and rights of the LGBTQ+ community as the very symbol of a foreign influence. President Museveni's defence of the 2023 Act was thus embedded within a wider sovereign claim to authenticity, which he made when he said that Africa should "provide the lead to save the world from this degeneration and decadence" and equated LGBTQ+ rights with neocolonialism. In the case of the Burkinabè, the counter-norm is not only resistant to international pressure, it also creates legal frameworks and takes the most durable form possible: law.

Senegal's tightening, however, is noteworthy because of another reason: it signals the movement of a relatively moderate interlocutor. Senegal has a long history of criminalizing same-sex relations since colonial times, and has had a long history of active prosecutions, including some that have been brought against individuals and at times against prominent activists and cultural figures. However, the state's interactions with international human rights institutions have been starkly ambivalent on the one hand, the Ministry of Justice has sometimes negotiated with international expectations and provided more or less moderate readings of the criminal provisions, and, on the other, the courts have displayed a logic of popular representation and enforced criminalisation according to their reading of what they deem to be national law and collective will. The tightened position reported in 2026 indicates that the restrictive position has prevailed over the accommodating one, despite the various recommendations of the UN treaty

bodies, the Universal Periodic Review, and even the UN Human Rights Committee's 2016 ruling that Senegal's prosecution of consensual same-sex activity was a violation of the International Covenant on Civil and Political Rights. International norm pressure, then, is a pattern that is reflected throughout this article, and which is exemplified here in Senegal, in that a state may register, receive, and formally process pressure from international norms without changing its domestic legal course. The tightening is also transnational, as Senegal's legal system has always been a benchmark for the rest of West Africa and its direction of travel could affect legislative debates in neighbouring states.

The above developments call into question the effectiveness of outcome measures of norm at being adequate, where the novel contribution of the present study will be sought. The study contributes to the recent scholarship on the effectiveness of international anti-discrimination norms by showing that such effectiveness can't be measured simply by the number of states that have rescinded criminalising legislation. This is because such counts only measure the formal legal situation at one point, while other restrictions, such as the criminalisation of promotion, advocacy, association and funding, can leave a state on the 'decriminalised' side of an ILGA-style count, yet still have the opposite effect — significantly erode rights protections that decriminalisation is supposed to provide. The bigger problem is the link between international norm pressure and institutional receptivity. The comparative record sets the relationship both ways. A state can ratify the African charter and the two Covenants regarding human rights, attend the Universal Periodic Review, and file reports with the treaty bodies and still enact laws that contradict the core of those instruments, as Uganda did twice, in 2014 and 2023. On the other hand, international law can still shape judicial practice, civil society advocacy, constitutional challenges and debates even if the law is on the books and in operation as witnessed in the Ghanaian bill, the partial limitation of the Uganda Act by the Constitutional Court and the case before the East African Court of Justice. A formal commitment and a substantive compliance are separated; the linkage between them is mediated by the domestic institutions, that's what this study has tried to isolate.

The comparative analysis thus creates a continuum of effectiveness of norms, and not a simple compliance / non-compliance binary. At one extreme are those jurisdictions that have international and regional standards that have been fully integrated into constitutional and judicial practice, such as South Africa, where the Constitution lists sexual orientation as a ground of discrimination; and the decriminalising jurisdictions of southern Africa, where courts interpret general rights guarantees broadly. In the opposite extreme are jurisdictions that lack the capacity to limit majoritarian legislative action: criminalisation is entrenched in the constitution of Burkina Faso and is being enforced and tightened by courts in Senegal. In between lie contested systems where international norms are brought into the courtroom, but have found little support in legal debates, such as Uganda, where they have caused some narrowing of norms without a broad embrace, and Ghana, where the restrictive bill has been stalled, not just because of rejection of international norms, but in fusion with procedural, constitutional and professional opposition. The continuum is superior to a binary classification, both descriptively and normatively. Descriptively it situates each jurisdiction's place in relation to institutional configuration in addition to formal law, and allows for change in either direction over time: the same institutional factors that led to Botswana's decriminalisation resulted in Uganda's maintenance of criminalisation. Normatively, it calls attention not to the restatement of standards that is already plentiful, but to the bolstering of domestic institutional receptiveness: the independence and training of judiciaries, the capacity of national human rights institutions, and the safeguarding of civil society space against the promotion of the very offences it is meant to protect. This conceptualisation is an important one as it reflects the complexity of international human rights implementation in politically sensitive contexts where effectiveness is not understood as a binary result, but as a variable condition, which is created, maintained, or destroyed by the institutions through which international norms need to flow.

4.10 Implications of the Findings

The implications of the findings, from the comparative record assembled and prepared in the preceding section, are several, each of which is directly connected to international human rights practice and the legal governance in Africa.

First, international advocacy needs to shift from norm production to enhancing domestic implementation mechanisms. While international institutions can set standards, they need to engage with national courts, parliaments,

national human rights institutions, lawyers, and civil society organisations sustainably in order for these standards to have domestic effect. The limits of norm production are now well understood: The African Charter has been ratified by all the member states of the African Union, the International Covenants have been almost universally ratified, and Resolution 275 contains the regional standard on sexual orientation and gender identity, and Uganda adopted and retained the Anti-Homosexuality Act 2023, Burkina Faso enshrined the criminalisation into the constitution in the lead up to the 2026 report, and Senegal tightened up its restrictive provisions in the lead up to the 2026 report. Comparative evidence shows that the difficulty of the standards, and even their existence, are not constraints, but rather the ability of domestic institutions to receive and transmit standards. This is an indication that the marginal return on re-stating norms is diminishing, and that the marginal return on institutional engagement is correspondingly higher: technical assistance to judiciaries on how to understand treaty obligations, structured judicial dialogue between courts that have engaged international law (such as in Botswana, Namibia), support for parliamentary scrutiny processes of the kind that kept Ghana's bill stuck in procedural limbo, and sustained partnership with national human rights institutions. It should also be noted that when an institution opens, that is the time when the impact of external actors is most likely to be felt in terms of a decision to take up or reject international norms, such as between a court decision and the passage of a new law, the time between the lapsing of one bill and the reintroduction of a new one, and the period between the revision of a constitution and its enactment.

Second, regional mechanisms need to build up their ability to transform concepts like those in Resolution 275 into tangible accountability. However, as long as states are able to avoid applying regional human rights standards without any institutional or reputational repercussions, the influence of the regional system will stay limited. The African Commission's final observations on state reports, its special mechanisms, in particular the Special Rapporteur on Human Rights Defenders, and its communications mechanism constitute the region's key accountability engine, in the form of recommendations, but systematic follow up on adherence is lax. The African Court makes binding decisions, but individual access is not without restrictions, as only a few of its member states have exercised the option provided in Article 34 of its Protocol, some of which have since withdrawn such declarations or made them lapse, and, in 2020, the Court's practice directions tightened the individual access pathway further. But accountability must be taken through the whole chain: the Commission's capacity must be enhanced to be able to review the state report in a timely fashion; compliance follow-up needs to be done systematically on the conclusion of the observations and communications by the Commission; and the Court must be accepted by the states in exercise of its individual-access jurisdiction while combating withdrawals that have been undertaken by states. No one can ignore the political aspect: the AU Executive Council statement of concern in relation to efforts to impose values foreign to African societies in 2015, and the importance of consolidating Resolution 275 and embedding the protection of sexual orientation and gender identity into the Commission's mainstream jurisprudence, which has so far never rendered a merits decision focusing directly on discrimination on these grounds.

Thirdly, there is a need for judicial intervention. Training and professional interaction on international and regional human rights law can enhance judges' ability to incorporate the commitments contained in the treaties into constitutional and statutory analysis. The Botswana track is the clearest example of this proposition: that a constitution, which does not explicitly include any sexual-orientation protections, and one with a relatively underdeveloped Bill of Rights, managed to achieve decriminalisation, thanks to a willingness of the High Court (2019) and the Court of Appeal (2021) to look at general guarantees of dignity, privacy, and equality in the light of evolving comparative and international practice, a move that the Botswana High Court followed in 2024. Yet engagement is not enough, as shown by past decisions by the High Court of Kenya in 2019 and the Constitutional Court of Uganda in 2024, which both moved far from using rights-based argumentation, and did not give it operative effect, while judicial interpretation of general rights provisions, international and regional standards, and the rigor with which they scrutinise restrictions by the legislature are all key to this. Judicial training, professional exchange and the exchange of reasoned judgments among judges are important, but only in a system that preserves judicial independence. The Ugandan experience warns us that a court that is independent in form, one that reviews and reasons, is not necessarily independent in effect, one that strikes down rights-diminishing legislation. International human rights law will not be effective domestically where courts are not independent in both form and substance that is, where they are not independent in the sense of striking down rights-violating legislation, as well as being independent in the sense of reviewing and reasoning. International actors should therefore seek judicial independence as a necessary precondition of the effectiveness of norms, but acknowledge that the more likely outcome in restrictive jurisdictions in the near term may be partial, rather than full, restriction of legislation, as the Ugandan Constitutional Court did in 2024.

Fourth, the role of civil society organizations is still key in norm socialization. The results show that advocacy organizations can contribute to the process of adapting international standards to domestic law, to strategic litigation, to recording violations, and to keeping public the accountability for violations. Civil society was the instrument for every normative achievement that is discussed in this study, whether it was the constitutional challenges in Uganda, the reference before the East African Court of Justice, the advocacy regarding Botswana's and Namibia's decriminalisation, or the professional mobilisation which shaped the fate of the Ghanaian bill. Restrictions on advocacy and expression in legislation are thus a more general challenge to the means by which international norms could become relevant domestically. The promotion offense, whose scope extends to advocating, funding, publishing and even health care professionals, is meant to incapacitate the very actors who rely on norm translation: the litigators, the documenters, the journalists, the researchers, health workers, and the funders. The Ugandan record demonstrates the action: raids on organisation premises, arrests of staff, suspension of PEPFAR-supported services, donor pull-out, and Ugandans leaving the country. Two other second order effects identified in Section 4.6 are likewise policy concerns: protecting civic space (freedom of association, expression and funding) is not simply a human rights goal in itself, but a precondition of the effectiveness of international human rights law in general, since a civil society that cannot organise cannot also litigate, document or mobilise.

Lastly, the results indicate that there is a need to acknowledge political narratives related to LGBTQ+ rights in Africa, in the eyes of international actors. Attempts to cast the conflict between international human rights and African culture may reinforce opposition to international norms. Scrutineers can provide a wealth of evidence of this risk from the comparative record. In Uganda, the government has successfully harnessed this suspension of World Bank lending, visa restrictions and their exclusion from preferential trade deals and targeted sanctions as part of its “defence of African cultural and religious values” against Western “decadence,” while in Burkina Faso, the authorities’ criminalisation has been integrated into their broader rejection of Western-backed values; and, the AU Executive Council’s 2015 statement demonstrates that the “foreign values” meme is at the top of the regional political agenda. External pressure can be a source of reinforcement for the national popularity of restrictive laws, as international actors are seen as imposing from the outside; this has been found to be true of the effects of aid dependence and conditionality as a source of contestation, not compliance. Increasing engagement demands sensitivity to constitutional principles, African regional jurisprudence, dignity, equality and locally-based human rights arguments. It should be aimed at showing that protection against discrimination does not require a transfer of the foreign cultural model but can be based on the current legal commitments of the African States themselves. The most important lesson from the comparative record is that Botswana did not decriminalise by copying a foreign model, but by invoking its own guarantees in the African Charter, ratified by all African states, under the dignity and equality banner, and its own commitments made under the African Charter in the African context; namely under the African Charter’s own Protection of Dignity and Equality banner, and under the African Charter’s own treaty, Resolution 275. The best international engagement might be the engagement that makes international norms less conspicuous and that operates in the African idiom of law, the African institution, and the African litigator, making it easier and easier to resist the claim that protection against discrimination is an imposition from abroad.

4.11 Overall Discussion

Overall, these results suggest that international anti-discrimination norms continue to be a legally important yet institutionally weak norm. The comparative cases illustrate that international human rights law has been effective in establishing a robust normative structure, but that the effectiveness of international human rights law is different in different countries, depending on the relationship between the international rights law and national political and legal systems. Normative in formal terms, the International Covenants state the relevant guarantees, the African Charter on Human and Peoples' Rights has been ratified by all African Union member states, and Resolution 275 explicitly brings the framework of human rights into the scope of regional initiatives against violence and discrimination based on real or perceived sexual orientation and gender identity. However, the comparative record developed in this study reveals that the same is not so automatic or uniform for the international norm that is brought into domestic law through it: Sometimes it is incorporated into the constitution, sometimes it is entrenched. Within 10 years of the end of apartheid, the National Constitutional Court in South Africa has implemented the principles, procedures, and integrated the practice of international and comparative jurisprudence in the country's new constitution; in Burkina

Faso, the transitional authorities incorporated considerations of the punishment of same-sex relations into the constitution itself in the lead-up to the 2026 report. Both results were created by the same normative universe.

Uganda is an example of the extent to which international pressure can be felt by domestic political and judicial institutions that continue to maintain restrictive laws. The Anti-Homosexuality Act 2023 introduced life-long imprisonment for consensual same-sex relationships, the death penalty for 'aggravated' homosexuality and a definition of 'promotion' as a crime with penalties of up to twenty years' imprisonment. Although the April 2024 decision of the Constitutional Court was based on arguments under the rights to equality, privacy, dignity and expression under the Ugandan Constitution and in the international instruments to which Uganda is a party, the Court found itself unable to rule on a wide range of the provisions in question because only a handful were ancillary to the main provisions of the Act. The international reaction was one of the strongest ever to a human rights issue in Africa: the World Bank suspended fresh loans, the United States withdrew Uganda from preferential trade agreements and from pre-negotiating trade and investment treaties and imposed non-negotiated sanctions on high-ranking government officials, and a number of European governments froze or reviewed development assistance. The government covered these costs, and defiance became the concept of sovereignty; and the law remained in effect, and the effects of violence, evictions, blackmail, loss of work, lack of medical care, raids on civil society organisations and the disruption of HIV services continued throughout. Uganda is thus a good example of a general lesson: external pressure is a prerequisite but not sufficient for the effectiveness of a norm; the power of the external pressure is cut short at the threshold of the internal resistance of the institutions.

The Ghana case, however, is a case of contestation through norms that is more fluid in that it has restrictive legislation alongside constitutional, procedural and international human rights challenges. The journey of the Human Sexual Rights and Family Values Bill is important because it failed to split into anodyne components like the one that did in Uganda. The bill was passed in Parliament in February 2024, but never received presidential assent before the dissolution of the eighth Parliament; it was brought back in the ninth Parliament, amended in 2026 to exclude legal, journalistic and medical work; the bill was passed again in May 2026 but then concerns were raised over parliamentary procedures, the Speaker called for reconsideration, and adjournment took place in the end of July, without a presidential assent yet. Every step in this series, the initial passage, the lapse, the reintroduction, the professional exemptions, the procedural objections was a context of contestation in which international norms were combined with arguments of constitutional, professional, and institutional law that were recognisable and actionable to domestic actors without the need to first endorse the international norm. Ghana thus shows not only that the effectiveness of the norm is not a simple process, but that a bill that is restrictive can be blocked, delayed, and shaped even when the international norm does not emerge as the actual ratio of decision.

South Africa illustrates the more promising potential of the implementation of international human rights principles in the context of domestic constitutional institutions establishing mechanisms for the realization of equality norms as rights. The 18-year-old Constitution of 1996 expressly listed sexual orientation in the list of prohibited grounds of discrimination and also provided for the applicability of international law in interpreting the Bill of Rights, which provided the institutional framework that the Constitutional Court leveraged in its 1998 decision that decriminalized consensual same-sex conduct and again in its 2005 decision that invalidated the law on marriage, which informed the parliamentary process that led to the Civil Union Act of 2006. The South African situation also provides a welcome reminder: constitutional safeguards have not eradicated pervasive homophobia and social discrimination; and the granting of legal recognition has coexisted with ongoing patterns of violence and exclusion. The lesson is that the judicial order is evolving at a greater rate than social attitudes, but the differences in judicial protection and lack of protection between Uganda and Kenya illustrate the importance of the differences.

In Kenya, contestation through the Constitution and the courts is seen as a key means of contesting where criminalisation is entrenched in domestic law. In 2019, the High Court ruled that sections 162 and 165 of the Penal Code should remain in the criminal law, left the issue of whether there was a violation of the rights of dignity, privacy and equality to Parliament, and police and state institutions have persisted with using the anti-sodomy provisions to target and harass sexual and gender minorities. But that was not the result of lack of norms: international and constitutional arguments were brought before the court, argued, and led to a reasoned, if restrictive, decision that can be challenged, reargued before the court, and contested by legislation. The Kenyan case therefore occupies a unique space along the continuum: the normative objection to criminalisation is formally brought, is processed by the courts, and is recorded in the way that cases are interpreted.

The core conclusion is then that anti-discrimination rules in international law are not ineffective and do not necessarily become transformative. Their effects rely on a domestic institutional receptivity, engagement of the judiciary, civil society mobilization, regional accountability, and political legitimacy of international human rights standards. The study thus promotes the concept that international human rights law can be assessed by considering the interplay of norms, institutions and political context in relation to anti-LGBTQ+ legislation. International norms set the legal and moral limits of proper state actions, domestic institutions interpret and operationalize these limits, and political situations activate or block adherence to the limits. The same norm, under different institutional configurations, resulted in decriminalisation in Botswana and Namibia, and criminalisation in Uganda and Kenya; the same institutional configurations under different political circumstances led to the South African Civil Union Act and the Ghanaian bill's unresolved limbo in Parliament; and the same political narratives of sovereignty and cultural authenticity were invoked successfully in Kampala, Ouagadougou, and the corridors of the African Union. Effectiveness is therefore not a property of the norm, but rather a variable condition that is created at the intersection of these three.

The conclusion offers a more complex explanation for the ongoing existence of anti-LGBTQ+ laws in Africa. There isn't a lack of international standards. All of the jurisdictions studied in this report are within a tightly packed normative matrix of ratified instruments, resolutions of the various regional fora, recommendations from the treaty bodies, the Universal Periodic Review, and a growing jurisprudence of comparison. The issue, however, is that there is a longstanding mismatch between the commitment to international norms and internalisation of domestic norms. States can continue to be formally bound to international human rights documents (instruments) that they ratified, to report on their domestic implementation of those instruments, but have laws that are inconsistent with the spirit or purpose of the instruments (as did Uganda in 2014 and 2023). At the same time norms can worm their way into the minds of judges, lawyers, and legislators even if formal law does not change, as is evident in the Ghanaian case. There is a formal commitment and substantive internalisation; the decoupling is an explanatory fact in the African record.

To do so, there is a need for more robust national implementation, regional accountability, safeguarding civic space and a continued political and cultural dialogue with the environment in which the norms governing human rights are challenged. Judicial training and professional exchange, which allowed the Botswana courts to understand general rights guarantees as including particular rights guarantees, are also part of the comparative record; protection of civil society, against the promotion of offences targeting those who litigate, document, report on, and fund the promotion of norms; and engagement strategies which, not only on the one hand, build on African constitutional principles and regional jurisprudence, but also, on the other hand, on the existing legal obligations of African states themselves, which present protection against discrimination as the fulfilment of obligations African states have already assumed. Whether or not international anti-discrimination norms are effective on the continent of Africa is not just about legal standards, but institutional design and politics. Norms are there, it is only a matter of creating the institutional and political mechanisms to make them law.

5. Conclusion

This study compared and qualitatively looked at the effectiveness of international anti-discrimination norms and their attempts to tackle anti-LGBTQ+ legislation in Africa, across selected jurisdictions. The findings show that international human rights law gives a solid normative basis for equality, non-discrimination, dignity, privacy, freedom of expression and freedom of association, and that this does not necessarily mean that these rights will be protected at the domestic level. The normative layer is truly comprehensive: the International Covenants spell out the relevant guarantees; the African Charter on Human and Peoples' Rights has been ratified by all members of the African Union, and Resolution 275 adopted by the African Commission in Banjul in 2014 expands the regional framework to be explicit on violence and discrimination on the basis of real or perceived sexual orientation or gender identity. However, the comparative record demonstrates that passage into domestic law does not automatically follow the existence of this framework nor is it uniform across it. The success of such norms depends on how domestic courts, legislatures, human rights bodies and civil society understand, interpret and embed international requirements. It is the same normative universe that is leading to the constitutionalisation of sexual-orientation equality in South

Africa, to the decriminalisation judgments in Botswana and Namibia, and to the retention of criminalisation and aggravated sexual offence sentences in Uganda and even life sentences and capital punishment in Burkina Faso. Norms do not impact on states, they impact through institutions, which is the institutional record that determines.

The comparative evidence indicates that international norms have more impact in contexts where human rights are well protected in the constitution, judicial institutions are independent, civic space is safeguarded, and regional human rights mechanisms are taken up. They are significantly less influential in contexts where political leaders rely on the concepts of sovereignty, religion, culture, morality, family values or the majoritarian preference to justify restrictive laws. The enabling configuration is apparent in the successful cases: in South Africa, the Constitution itself lists sexual orientation as a prohibited ground of discrimination, and requires the interpretation thereof to take international law into account; in Botswana, the Court of Appeal affirmed in 2021 and the decriminalisation took place in 2019, reading the general guarantees of dignity, privacy and equality widely enough to imply that they would include sexual orientation; and in Botswana, the Constitution Court in its 1998 and 2005 decisions, by reading the Bill of Rights expansively, extended the prohibition on discrimination to sexual orientation. The disabling configuration is also clearly visible: in April 2024 the Constitutional Court of Uganda seriously considered rights-based argumentation and affirmed the fundamental part of the Anti-Homosexuality Act, while in 2019 the High Court of Kenya deferred the question to Parliament, and the courts of Senegal have been enforcing the criminalisation despite the recommendations of the treaty bodies, Human Rights Committee decision, and Universal Periodic Review. However, when the political story of sovereignty and cultural authenticity is at its strongest – as for Uganda, when the government was able to deal with the suspension of World Bank lending, the exclusion from preferential United States trade credits, visa restrictions and targeted sanctions, while keeping the law intact the external pressure is absorbed instead of being transformed.

The study's most important contribution is that it shows that the effectiveness of international human rights norms should not be judged in terms of the mere fact of treaty compliance and repeal. International norms have direct impacts in judicial decisions and legislative changes, and can have indirect impacts by influencing judicial arguments, strengthening civil society organisations, fuelling strategic litigation, influencing institutional practices, and enhancing accountability for discriminatory practices by the state. It can be seen in the criminal provisions that were invalidated in Botswana and Namibia and the legislative response that was structured as a result of South Africa's marriage judgment. Indirect effects can be seen throughout the contested cases: international norms entered the Ugandan courtroom, and had a part in the partial narrowing of the 2023 Act even where the full protection was not achieved; they merged with constitutional, procedural and professional objections in Ghana where the restrictive bill passed in February 2024, lapsed on dissolution, was reintroduced, amended in 2026 to exclude legal, journalistic and medical activities, passed again in May 2026 and remained unresolved at the July adjournment of the Ghanaian Parliament while the Speaker called for reconsideration; and they sustained the reference before the East African Court of Justice challenging the legality of the bill in Uganda, where the domestic judicial route was closed. The Ghanaian sequence is the most evident case in which a norm can mould domestic law, without ever being its actual basis for decision, its language, its timing and its professional exemptions.

The results then suggest a multi-faceted concept of the effectiveness of norms, according to which international norms serve as the normative context, national institutions shape the legal translation, and political contexts shape the degree to which international norms are implemented. This is why state action under broadly similar international obligations can have quite different domestic results. The key factor, it is not the content of the norm itself because this is the same in all the cases, but rather the institutional gatekeepers through which the norm is channeled in one way or another: willing or unwilling courts to consider legislation on general rights guarantees, legislatures that transmit or entrench restrictive provisions, national human rights institutions that translate or absorb international standards, civil society organisations that mobilise or are hindered by promotion offences criminalising advocacy, funding, publication, and even professional care, and regional bodies through whose accountability mechanisms the norm is brought in, strengthened, or avoided. The range of effectiveness that arises from deep incorporation in South Africa and the decriminalising of the southern African jurisdictions, to the contested ones of Uganda, Ghana and Kenya, and the entrenched restriction of the constitution in Burkina Faso and the limitation in Senegal better reflects the institutional variation than any binary classification of compliance.

The study's qualitative documentary design has some limitations. It is based mainly on those sources of law, institutions and scholarship that are publicly available, and does not reflect first-hand accounts of the experiences of LGBTQ+ people or of undocumented forms of discrimination. The purposive selection of cases also constrains the

ability to generalise across the continent of Africa. Despite this, comparative analysis in the method allows for an understanding of the institutional and political factors that create the opportunity for the implementation of international human rights norms at the domestic level. Empirical research with affected communities, lawyers, judges, policymakers and civil society organisations could be further developed and longitudinal and wider cross-national comparisons could be made in future studies. The study of the lived effects of restrictive legislation and the promotion offences that have grown beyond criminalisation among the population that is most affected would be particularly valuable, as would be a study of the time-honored path of specific norms within domestic institutions to establish whether the norm-maintenance function documented here is translated into legal change at the time of political opening, as The Gambia's 2023 removal of colonial-era criminalisation seems to indicate; and a study of the determinants of judicial disposition, to determine when and under which conditions courts read general rights guarantees expansively (as they do in Botswana) as opposed to restrictively (as they do in Kenya).

The study calls for greater domestic implementation of human rights obligations in the international and regional scope, especially through constitutional review, judicial independence, and legislative review and effective remedies for discrimination. African regional institutions need to further enhance monitoring and implementation measures, such as through systematic follow-up on the Commission's concluding observations and communications, increased direct access to the African Court, whose binding jurisdiction remains subject to state declarations under Article 34 of its Protocol, and making the decision on the merits of the Resolution 275 fully part of the Commission's mainstream jurisprudence, where it has not yet judged on the merits a case directly concerning sexual orientation or gender identity discrimination. International and civil society actors must prioritise ongoing work with domestic institutions and safeguard civic space, seeing that restrictions on advocacy and expression are a second order threat: that they leave international norms unmediated so that the litigators, documenters, journalists, health workers and funders who translate them into domestic realities—such as the ones who were targeted by raids, arrests, donor withdrawals and disruption in HIV services after the Act was passed in Uganda in 2023—cannot do so. On the other hand, it is important to involve positively in the culture, religion, and political climate of the world in which the international norms are challenged, and not only through external pressure. The comparative record shows that the view of the situation as a clash between international human rights and African culture consolidates the opposition it aims to defeat: the "foreign values" theme moved from Kampala to the Executive Council of the African Union and the Burkinabè junta integrated the criminalisation into a larger claim to "souvenancy" or authenticity. The better way to do this is to based claims on African constitutional values, the jurisprudence of the region and the African states own legal engagements, demonstrating that the protection against discrimination is not an imposition of a foreign cultural model but an obligation already taken up by the African states themselves.

Finally, the rights of LGBTQ+ people in Africa will require not only that the international anti-discrimination standards be in place but that they are also internalised in domestic legal and institutional frameworks. Norms, pressure and resources are more easily provided by the international community, but not replacement for the domestic institutions that independent courts, scrutinising legislatures, protective national human rights institutions, and space for civic advocacy can provide. Again, it is not because there is already anti-LGTQ+ legislation in much of the continent that international norms are not effective; it is because norms are effective only under the right institutional and political conditions. The larger message is that the credibility of the international human rights system is based on its ability to turn universal human rights norms and principles into tangible, enforceable protection at the national level, something that will be tested in Africa and elsewhere not by what the system says it does, but by what it does do.

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