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Revitalizing the Fight against Homophobia in Africa

Richard Downie¹

Introduction

On February 24, 2014, the president of Uganda, Yoweri Museveni, invited journalists to witness the unveiling of a new law at State House, near Kampala. In front of the assembled media, he signed the Anti-Homosexuality Act, 2014, a variation on a bill that had first been introduced by an ambitious young member of Parliament five years earlier and fought over ever since. The new law is sweeping and draconian. It raises the penalty for homosexual conduct to life in prison. A homosexual is broadly defined to include any individual who “touches another person with the intention of committing the act of homosexuality.” Among its other clauses, the bill outlaws the promotion of homosexuality, which covers a range of offenses including the funding or sponsorship of homosexuality or related activities. Perhaps with certain culprits in mind, the law spells out that “where the offender is a corporate body or a business or an association or a non-governmental organization, on conviction its certificate of registration shall be cancelled and the director, proprietor or promoter shall be liable, on conviction, to imprisonment for seven years.”² Explaining his decision to sign the act, President Museveni castigated “the arrogant and careless Western groups that are fond of coming into our schools and recruiting young children into homosexuality and lesbianism, just as they carelessly handle other issues concerning Africa.”³ By claiming that homosexuality is a lifestyle choice exported to Uganda by the West, President Museveni tapped into a deep reservoir of societal homophobia and championed Uganda’s independence from its American and European donors.

Just weeks earlier, across the continent in Nigeria, a similarly tough law was passed against the lesbian, gay, bisexual, and transgender (LGBT) community. It received none of the fanfare of its Ugandan equivalent. Nigerians could be forgiven for missing the event; President Goodluck Jonathan signed the bill sometime in early January without any formal announcement. Furthermore, it was passed during a particularly tumultuous time in Nigerian public life, which coincided with an upsurge in the bloody insurgency by the Islamist terrorist group Boko Haram, a mass defection of lawmakers from the ruling party, and a mounting corruption scandal at the national oil company. Some Nigerians may have wondered why tougher laws were needed in a country where homosexual conduct is technically punishable by death in northern

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² The full text of the bill can be found at <http://www.scribd.com/doc/208880087/Anti-Homosexuality-Act-2014>.

³ “President Museveni’s full speech at signing of Anti-Homosexuality bill,” *Daily Monitor*, February 24, 2014, <http://www.monitor.co.ug/News/National/Museveni-s-Anti-Homosexuality-speech-/688334/2219956/-/vinrt7/-/index.html>.

states governed by Sharia law.⁴ Although the bill was called the Same Sex Marriage (Prohibition) Act, 2013, the title only tells part of the story. Not only does the act declare same-sex marriages illegal, to be punished by 14 years' imprisonment; it also outlaws any "public show of same sex amorous relationship . . . directly or indirectly." The law also prescribes a jail term of 10 years for any person or group who "supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria."⁵

The international response to this legislative assault on the LGBT community was swift and condemnatory. The United Nations high commissioner for human rights, Navi Pillay, said of Nigeria's law: "Rarely have I seen a piece of legislation that in so few paragraphs directly violates so many basic, universal human rights."⁶ The chorus of voices against Uganda's law was even louder. The World Bank froze a loan to Uganda's health system worth \$90 million. Four European nations cut direct budget support to the Ugandan government totaling nearly \$30 million. The United States issued some of the most outspoken statements. In a message published just before the Ugandan bill was signed, President Obama said the law was "more than an affront and a danger to the gay community in Uganda. It will be a step backward for all Ugandans and reflect poorly on Uganda's commitment to protecting the human rights of its people."⁷ Shortly after the law was passed, the State Department announced a review of the U.S. relationship with Uganda. But while these high-level, targeted responses put African governments under the spotlight, they had little effect in the immediate term other than to provoke belligerent accusations of foreign interference and neocolonialism. Uganda's presidential spokesman Ofwono Opondo bluntly summed up the attitude on his twitter feed: "West can keep their aid to Uganda over homos, we shall still develop without it."⁸

This report examines the reasons why multiple African governments have strengthened already tough laws against homosexual conduct or are debating doing so. To understand this situation, it is essential to spotlight clearly the powerful factors that motivate and empower this form of virulent bigotry. The report explains why the United States and other Western partners have so far been unable to make a positive impact on gay rights in Africa, despite active support of global LGBT rights. It details the costs of this surge in legislative homophobia to U.S. national interests in Africa—in particular, the need to uphold human rights principles and protect public health investments. And it concludes by discussing a U.S. strategy that over the long term can most effectively rebut homophobia, in partnership with others.

The United States has extensive, sometimes fraught, bilateral relations with Nigeria and Uganda, spanning diplomacy, development, trade, and security cooperation. Both countries are among the largest recipients of U.S. development assistance in Africa;

⁴ Sharia law is enforced to varying degrees in 9 of Nigeria's 36 states.

⁵ The full text of the bill can be found at <http://www.refworld.org/docid/52f4d9cc4.html>.

⁶ Fabrice Coffrini, "Nigeria Gets First Visit from UN Rights Chief," Agence France-Presse, March 12, 2014, <https://za.news.yahoo.com/nigeria-gets-first-visit-un-rights-chief-203956229.html>.

⁷ White House, Office of Press Secretary, "Statement by the President on the Anti-Homosexuality Bill in Uganda," February 16, 2014, <http://www.whitehouse.gov/the-press-office/2014/02/16/statement-president-anti-homosexuality-bill-uganda>.

⁸ Ofwono Opondo, tweet from @OfwonoOpondo, February 26, 2014, https://twitter.com/OfwonoOpondo?original_referer=http%3A%2F%2Frt.com%2Fnews%2Fuganda-gay-law-sanctions-329%2F&tw_i=439366215807795200&tw_p=tweetembed.

Nigeria is the single-largest destination for U.S. health assistance on the continent, receiving \$626 million in FY 2013 alone.⁹ The United States is Uganda's largest bilateral donor, directing more than \$400 million of health funding to the country in 2013, enough to sustain 500,000 Ugandan HIV/AIDS patients on antiretroviral drugs.¹⁰ In addition, the United States provides well in excess of \$100 million to Uganda in security assistance and peacekeeping training each year, helping the Uganda People's Defense Force (UPDF) play a proactive—and not always helpful—role in the region.

Arguably, the tangle of U.S. security, humanitarian, and economic ties limits its leverage against LGBT discrimination, at least in the near term. This report looks at the reasons why, and considers whether a modified approach might better deter other African governments from jumping on the bigotry bandwagon, and in the case of actively homophobic countries, more effectively raise the pressures upon them to reverse course. It argues that the United States has frequently been hamstrung by fitful engagement, poor coordination, competing interests, and public messaging that appeared to focus too narrowly on gay rights and ignored other fundamental human rights concerns. Furthermore, vehement but at times inconsistent U.S. pronouncements have inadvertently played into the hands of African autocrats who have responded with potent accusations of neocolonial interference in the African way of life. New tactics and arguments will be required in order to refute this misleading rhetoric.

Summary of Recommendations

This report recognizes that the United States faces a policy quandary that offers no easy way out. It is caught between challenging homophobia loudly and publicly wherever it occurs and risking blowback from African partners; and charting a more pragmatic course based on quiet diplomacy that might offend a global human rights community and risk the appearance of abandoning individuals and groups fighting for LGBT rights on the ground. In reality, the United States has no choice but to pursue a mixed strategy, constantly recalibrating its approach from country to country. Winning the battle against homophobia will be extremely difficult but avoiding the fight is not an option. African laws that victimize LGBT citizens threaten core U.S. human rights principles and public health investments involving billions of dollars.

As it reviews its approach toward gay rights in Africa, the United States should adopt a long-term strategy guided by the views of LGBT Africans. It should maintain high-level public and private pressure on homophobic governments and integrate gay rights within broader efforts to advance *all* human rights in Africa. It should strengthen the capacity of African civil society to battle homophobia and encourage other Africans to speak out against discrimination. In parallel, the United States should creatively deploy bilateral and multilateral tools to apply targeted pressure to discriminatory governments and individuals, and systematically strengthen the protections of African LGBT citizens at risk of violent harm.

⁹ Kaiser Family Foundation, "U.S. Global Assistance and Presence of Anti-LGBT Laws by Country" (unpublished paper, March 18, 2014).

¹⁰ Ibid.; and U.S. Department of State, Bureau of African Affairs, "U.S. Relations with Uganda," fact sheet, October 8, 2013, <http://www.state.gov/r/pa/ei/bgn/2963.htm>.

1. The Rising Tide of State-Sanctioned Homophobia in Africa

LGBT Africans have become accustomed to the state taking an unhealthy interest in their love lives. The problems they face are not new; neither are they confined to Uganda and Nigeria. Five African states carry the death penalty for homosexual acts, in all or in part of their territories. In total, 38 countries in Africa criminalize homosexual conduct, many of them through sodomy laws dating back to colonial times. While many do not enforce these laws, some do. Cameroon is notoriously aggressive in its pursuit of homosexuals. According to a 2013 report by Human Rights Watch, the authorities charged at least 28 individuals with homosexual conduct in the preceding three years.¹¹ But whether implemented or not, laws criminalizing homosexuality create fear and uncertainty for LGBT citizens living under them.

Several factors explain the surge in homophobic legislation and behavior in Africa:

- Homophobia is widespread and ingrained in African society, providing an opportunity for governments to use prejudice in order to mobilize popular support. Even in South Africa, whose constitution outlaws discrimination on grounds of sexual orientation and guarantees the right to same-sex marriage, deep-seated homophobia has led to appalling violence against members of the LGBT community. Lesbians have been particularly vulnerable to attack, targets of so-called corrective rape. The police have often treated the victims of these assaults with indifference. Africa is also a deeply religious continent in which the fastest-growing denominations, both in Christianity and Islam, take an uncompromising stance on homosexuality. In Nigeria, a country of high sectarian tensions, opposition to homosexuality is one of the only issues that bridge the religious divide. It is an uncomfortable fact that the antigay laws passed by Nigeria and Uganda have been popular with the public. A month after signing the Anti-Homosexual Act, President Museveni addressed thousands of Ugandans at a “thanksgiving” rally in Kampala attended by religious leaders, politicians, and party supporters.
- Bigots from outside Africa have been quick to seize the opportunity. The export of bigotry—and dollars—by extremists on the fringes of the U.S. evangelical movement may be helping African partner churches expand their base, their voice, and their influence. LGBT activists in Uganda commonly point to the visit of an American evangelist, Scott Lively, in 2009 for a series of lectures titled “Exposing the Homosexual Agenda” as the catalyst for official efforts to tighten the laws against homosexuality. While the battle for so-called family values is falling short at home, people like Scott Lively see Africa as the place where a counterattack can be launched. Their support for the growing Pentecostal movement threatens the mainline churches, which fight back with bigotry of their own in a bid to retain their influence and congregations. The Anglican Church in Uganda has become stridently homophobic, even at the cost of opening up an already-growing split in the global communion.

¹¹ For more details, see Human Rights Watch, *Guilty by Association: Human Rights Violations in the Enforcement of Cameroon’s Anti-Homosexuality Law* (New York: Human Rights Watch, March 2013), http://www.hrw.org/sites/default/files/reports/cameroon0313_ForUpload.pdf.

- Political expediency is an important driver of state-sanctioned homophobia. For insecure autocrats, populist antigay discrimination works, at least in the short term. It plays out well with large sections of the public and provides opportunities to score points against overbearing donors who criticize it. President Museveni's decision to sign the Anti-Homosexuality Act was ultimately driven by political calculations rather than moral opposition to homosexuality. In private conversations with U.S. officials in the preceding weeks, he had repeatedly denied he would sign the bill, describing it as "fascist" during a meeting with U.S. civil society activists in which the archbishop of Cape Town, Desmond Tutu, joined by phone. Only days later, he committed a volte-face following a party retreat for the ruling National Resistance Movement in which rank-and-file members expressed strong support for the bill. For President Museveni, now in the 29th year of his tenure, the opportunity to make a populist move and secure an advantage over the speaker of Parliament, Rebecca Kadaga—a political rival who had loudly championed the bill—was too tempting to resist. It more than outweighed the cost of angering his international partners.

There is another significant reason for authoritarian-leaning leaders to champion discrimination. Many of the laws they enact, while appearing to target a specific group, are in reality broad and ill-defined, encroaching on broader civil liberties, rights of assembly, and free speech. For aspiring despots, they provide populist cover for what are in reality crude attempts to further erode the rule of law and strengthen their positions. They can be used arbitrarily to target opponents and stifle civil society.

- The downside of democratization partly explains the proliferation of antigay laws in Africa. One of the unintended consequences of encouraging democratic development is that it opens the field to destructive as well as constructive debate. Newly independent and assertive legislatures can provide platforms for parliamentarians to launch campaigns against the LGBT community, creating competitive bigotry between legislatures and executives. The author of Uganda's original antigay law, David Bahati, is an example of this: A first-term member of Parliament looking to make a name for himself by taking up a populist cause.
- African governments are beginning to understand that the goal of achieving an HIV/AIDS-free generation requires reaching out to LGBT citizens. Some governments find this idea unpalatable and are resisting it. The unfinished business of tackling HIV/AIDS necessitates a sharper focus on special populations, such as men who have sex with men (MSM), injection drug users (IDUs), and commercial sex workers (CSWs). A prerequisite for successful prevention and treatment programs is to treat these groups as legitimate populations. There is a constellation of nongovernmental organizations in African countries that receive funding to implement HIV/AIDS programs. While they may be reasonably discrete in how they interact with MSM, their activities may nevertheless trigger counter-reactions. The risk of counter-reactions is particularly strong as the President's Emergency Plan for AIDS Relief (PEPFAR) transitions to a country ownership model. The United States faces the prospect of ceding its focus on LGBT communities to host governments that may not care about them, which poses a major threat to PEPFAR's legacy in Africa. The enormous bilateral U.S. investment in tackling HIV/AIDS—\$52 billion spent globally to date through PEPFAR, the

majority in HIV/AIDS programs in sub-Saharan Africa—is being undermined by host governments that would rather persecute than assist one of their most at-risk populations.¹² A similar argument can be made for the risk that homophobia poses to the programs supported by the Global Fund to Fight AIDS, Tuberculosis and Malaria: the United States accounts for one-third of the fund’s \$23 billion in investments. Like PEPFAR, the majority of those dollars went to Africa.

- Antigay rhetoric and legislation can be used as tools to push back against globalization. African states feel that overweening donors in Europe and North America are imposing a new global norm of legitimatizing LGBT populations. They respond by asserting their independence through the rhetoric of “African” values. The paradox is that their method of doing so is to champion homophobia, itself a Western import dating back to colonial times.¹³ Although the argument is full of inconsistencies, the resentment lying behind it is real and must be skillfully challenged by the United States. Its use is not confined to would-be autocrats seeking a political advantage. The fact that democratically elected leaders like Senegal’s Macky Sall, Sierra Leone’s Ernest Bai Koroma, and Liberia’s Ellen Johnson Sirleaf have also linked the issue of gay rights with external interference reflects a groundswell of genuine anger among many Africans about perceived Western cultural imperialism.¹⁴ Although the issue is different, the arguments for and against the right of the International Criminal Court to try African citizens for war crimes and crimes against humanity play out in exactly the same way.
- The spread of legislation against LGBT communities has a contagious effect in Africa, with nations drawing confidence from the bigotry of their neighbors. State-sanctioned homophobia is generating momentum, creating comfort in numbers. The spotlight is now shifting from Nigeria and Uganda to other countries of concern. These include the Democratic Republic of Congo, where a draft bill presented in the National Assembly would outlaw homosexuality for the first time and where a previous bill floated in 2010 placed homosexuality and zoophilia in the same category of offences. In Ethiopia, where homosexuality is already banned, lawmakers have been considering a bill to make it an unpardonable offence ranking alongside terrorism. There are concerns that Kenya could be the next battleground in the battle against discrimination: A caucus of members of Parliament has been formed to agitate for tougher penalties against homosexuals.

¹² Total figure as of March 2014, <http://www.pepfar.gov/documents/organization/189671.pdf>; country-by-country breakdown as of September 30, 2013, <http://www.pepfar.gov/documents/organization/219702.pdf>.

¹³ For more details on the origins of African legislation on homosexuality, see Lucas Paoli Itabovahy and Jingshu Zhu, *State-Sponsored Homophobia: A World Survey of Laws*, 8th ed. (Brussels: International Lesbian Gay Bisexual Trans and Intersex Association, May 2013), pp. 43–62, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2013.pdf.

¹⁴ For example, during President Obama’s visit to Senegal in June 2013, President Macky Sall, when asked by an American journalist why Senegal criminalized homosexuality, argued that cultural norms were country specific. He then pointedly referred to the use of capital punishment in parts of the United States to argue against external interference in matters of culture: “In our country, we have abolished it [the death penalty] for many years. In other countries, it is still the order of the day, because the situation in the country requires it. And we do respect the choice of each country.” Evan McMorris-Santoro, “Senegalese President Defends Jailing of LGBT Citizens, Hits Obama over the Death Penalty,” BuzzFeed, June 27, 2013, <http://www.buzzfeed.com/evanmcsan/president-of-senegal-we-may-jail-gays-but-at-least-we-dont-h>.

Fortunately, Kenyan civil society is strong and fairly united despite facing increasing pressure.

- Civil society has mounted little effective pushback against the surge of homophobia. This is despite two decades of growth, accompanied by progress in championing human rights, democratization, and good governance. In Nigeria, civil society is poorly organized and mainstream groups have been reluctant to identify with LGBT rights. In Uganda, wider civil society has embraced the issue but it has taken time. The fact that the LGBT movement in Uganda now enjoys strong leadership and the commitment of brave advocates offers some hope for the future.

It is also important to note that the broader landscape for civil society is changing in many parts of Africa. In places like Uganda, Kenya, and Ethiopia, nongovernmental organizations are coming under severe pressure from governments that have become suspicious of their activities and are seeking to limit their influence and access to funding. In this nonpermissive environment, civil society struggles to make its voice heard and is more likely to shy away from the most contentious issues such as gay rights, particularly when they lack strong public support.

2. Implications of the Crackdown on LGBT Rights

Implications for LGBT People

The introduction of homophobic legislation in countries like Nigeria and Uganda and the febrile atmosphere it has generated is likely to have serious consequences for LGBT communities. These laws entrench discrimination, providing an excuse to deny LGBT citizens access to schools, health care, employment, and housing. The victims of these abuses are understandably reluctant to report them, making it impossible to quantify the scale of the problem.

Furthermore, the laws themselves have already led to miscarriages of justice and acts of violence against LGBT citizens. Since Nigeria's law was passed, five men have been convicted of homosexual conduct in one state alone: Bauchi state, where Sharia law was already in operation. All were sentenced to 20 lashes. During a preliminary hearing, an angry crowd gathered outside the court demanding the death penalty for the men, who claimed they were beaten in custody and forced to make confessions.¹⁵

An additional problem with state-sanctioned homophobia is that it is likely to be interpreted by some members of the public as an open invitation to attack, intimidate, and make malicious accusations against LGBT individuals. Uganda and Nigeria are countries where rule of law is already weak. Homophobic legislation emboldens the public to engage in vigilante activity and provides opportunities for unprofessional, poorly paid state security forces to take part in victimization and extortion. At the very least, it sends a message that crimes against LGBT citizens do not merit serious investigation. This atmosphere of impunity seeps into the media, where hate speech

¹⁵ "Nigeria gays: 20 lashes for 'homosexual offences,'" BBC, March 6, 2014, <http://www.bbc.com/news/world-africa-26469501>.

against LGBT communities has become commonplace. The most egregious example came in a front-page article in Uganda's *Red Pepper* newspaper, the day after President Museveni signed the Anti-Homosexuality Act, which "outed" what it called the country's "top 200 homosexuals."

Anecdotal evidence suggests LGBT people have fled Uganda since the law was passed, seeking refuge in neighboring countries or further afield. Those who have stayed have faced intimidation and harassment by the security forces. According to one of Uganda's leading LGBT activists, Clare Byarugaba, the law has had an immediate impact on the gay community. LGBT groups have been unable to find venues for meetings, hotels have refused rooms to same-sex couples, and one of the few bars willing to host events for the LGBT community has stopped doing so because its patrons were getting arrested on their way to and from the venue. In one case, religious leaders launched a campaign to have the children of a lesbian couple removed by the authorities.¹⁶

Implications for Public Health

Discriminatory laws make it more difficult for public health professionals to reach groups who are particularly vulnerable to HIV/AIDS, tuberculosis, and other diseases. MSM and other at-risk LGBT groups are likely to be driven underground, making them less likely to seek treatment and preventive care. This will place a formidable obstacle to achieving the goal of an AIDS-free generation—a goal to which the governments of Nigeria and Uganda are publicly committed.¹⁷ Furthermore, although the intention of these laws is to single out a specific community, they actually discriminate against the broader population. Health care providers cannot practically separate out from the general population those the law orders them to discriminate against. A probable outcome is that services will be withdrawn altogether.

It is too early to properly assess the impact of the Ugandan and Nigerian laws but the early signs are ominous. In April 2014, Ugandan police raided the offices of a U.S.-funded health facility conducting HIV/AIDS research at Makerere University. A member of staff was detained on suspicion of recruiting homosexuals before being released following the intervention of the U.S. embassy. Officers photographed patients in the clinic.

Partial data from Nigeria appears to support the assertion that state-sanctioned homophobia is driving MSM communities away from health services. Before the law was passed, the Population Council had provided HIV screening and other health services to approximately 1,700 men in a three-month period. In the aftermath of the law, the figure dropped to zero.¹⁸ This could have catastrophic implications for efforts to eradicate HIV/AIDS in a country where the HIV rate among MSM is 13.5 percent, four times the rate among the general population.

¹⁶ Clare Byarugaba, co-coordinator of Civil Society Coalition on Human Rights and Constitutional Law (presentation at RFK Center for Justice and Human Rights, Washington, DC, April 10, 2014).

¹⁷ See, for example, African Union, "Abuja+12 Special Summit: African Leaders Commit to Take Actions toward the Elimination of HIV and AIDS, Tuberculosis and Malaria in Africa by 2030," press release, July 16, 2013, <http://www.au.int/en/sites/default/files/PR%20Closing%20Special%20Summit%20Abuja+12.pdf>.

¹⁸ Spokeswoman for Population Council, "The Public Health Impacts of Anti-LGBT Laws in Africa" (presentation at congressional briefing, Washington, DC, April 10, 2014).

The emerging evidence from Nigeria and Uganda is supported by previous research. Studies of the Senegalese MSM community following the conviction in 2008 of nine HIV-prevention workers for “acts against nature” suggest they were less inclined to access prevention and treatment services.¹⁹

Implications for Broader Society

Africa’s homophobic laws must be placed into a broader context. Not only do they touch the lives of LGBT people directly, they also impact society as a whole. These laws are broad and carelessly worded, restricting civil society and limiting the ability of both homosexuals and heterosexuals to exercise their political rights and civil liberties. The laws are part of a pattern of repression in Uganda and to some extent Nigeria. They are diversionary tactics by leaders who would rather perform political stunts than come to grips with their governance shortcomings. They are blatant attempts to distract attention from national problems such as rampant corruption, insecurity, and poor public service delivery. As Nigeria enters a critical election period in 2015 and Ugandans go to the polls a year later, these laws could be used to muzzle journalists, crack down on freedom of expression, and pursue political opponents.

Implications for U.S. Policies and Programs

It is hard to avoid the conclusion that the current policy approach is not having the desired impact, at least in the near term. The Obama administration has spoken more loudly, eloquently, and consistently on the rights of LGBT people—both at home and abroad—than any of its predecessors. In 2011, President Obama issued a presidential memorandum that for the first time instructed all arms of the U.S. government to work together in support of LGBT rights abroad and draw up strategies to do so. The United States has led calls at international organizations like the United Nations and the World Health Organization for more attention to be paid to the issue. It has established a Global Equality Fund to harness public-private partnerships to combat discrimination. Yet in Africa, these efforts have coincided with an outpouring of homophobic legislation that has not only set back the human rights of LGBT people but also increased pressure on civil society more broadly and damaged bilateral relations with two important U.S. partners.

These developments have been largely beyond the control of the United States but it is worth analyzing the United States’ actions and statements at critical junctures. The first crucial question is whether the U.S. government is the best messenger for public engagement on the issue of LGBT rights in a continent where claims of neocolonialist interference and culture wars carry such weight. Loud statements in opposition to antigay legislation may have served their purpose in offering encouragement to LGBT Africans, but they have goaded their leaders into championing homophobia as a way of thumbing their noses at the West. One of Uganda’s leading commentators, Andrew Mwenda, is not alone in arguing that U.S. public diplomacy made the passage of the Anti-Homosexuality Act more, not less, likely: “When Obama asked him not to sign the bill in a public letter that even threatened consequences, he boxed Museveni into a corner. If Museveni declined to sign the bill, people would interpret it as a result of

¹⁹ For more details, see Tonia Poteat et al., “HIV Risk among MSM in Senegal: A Qualitative Rapid Assessment of the Impact of Enforcing Laws That Criminalize Same-Sex Practices,” *PLoS One* 6, no 12 (December 2011): e28760, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3237497/>.

Obama's threats, a factor that would have made the Ugandan president look weak and cowardly."²⁰

None of this is to say that the United States should refrain from challenging African leaders on the issue of discrimination. The United States should, however, reflect on how its messaging could be handled more effectively, and whether it should be delivered in a public or private setting.

Part of the problem is that U.S. messages on global LGBT rights have been insufficiently linked to the broader dialogue on good governance and human rights. As a result, the perception among Africans is that the United States privileges some rights over others. A closer inspection of Uganda's recent history exposes this lack of consistency. U.S. statements were not issued following serious attacks on human rights such as the passage of a Public Order Management Act in August 2013, which gives police wide powers to prevent public meetings. In the aftermath of Uganda's controversial 2011 elections, U.S. statements were fairly mild, expressing "concern" over aspects of the polling and the violent arrests of former presidential candidates Kizza Besigye and Norbert Mao in the peaceful "walk-to-work" protests that followed.²¹ Contrast that with the language on the passage of the Anti-Homosexuality Act that bluntly described the law as an "affront" and a "danger."²²

Even on the issue of LGBT rights, U.S. engagement has been highly variable. In Uganda, there was a period of active engagement by the embassy team under former ambassador Jerry Lanier, characterized by frequent one-on-one meetings with Ugandan parliamentarians, civil society leaders, and other key decisionmakers. However, a more hands-off approach was subsequently adopted, at least until the bill was passed. In Nigeria, there appeared to have been little engagement on the issue at all. Also, little contingency planning occurred in either country for what to do if the bills became law. In both Uganda and Nigeria, the legislatures passed antigay bills weeks before their presidents signed them into law. Yet despite this forewarning, the United States was apparently caught by surprise when the laws received presidential approval and appeared unsure of how to respond. In Nigeria, aside from a critical statement by the secretary of state, there was barely any official response at all. In Uganda, the Anti-Homosexuality Act prompted a much more vocal response and the announcement of a review of bilateral relations. The inconsistency was striking.

In the weeks following the beginning of the Uganda review, observers waited for signs of activity. Some moderate, sensible actions were announced. They included taking away \$6.4 million of U.S. funding from the Inter-Religious Council of Uganda, which had delivered health programs for the United States while publicly advocating for the enactment of the antigay law; redirecting \$3 million for promoting tourism from the government to civil society groups; and moving several military conferences to locations outside Uganda. Unfortunately the presentational impact of these announcements was almost entirely undermined by the simultaneous revelation that U.S. military support to Uganda was being stepped up as part of the operation to track

²⁰ Andrew Mwenda, "How Obama Played Museveni's Hand," *The Independent* (Kampala), February 26, 2014, <http://independent.co.ug/the-last-word/the-last-word/8747-how-obama-played-musevenis-hand>.

²¹ See, for example, Mark Toner, "Ugandan Opposition Leaders Arrested for 'Walk-to-Work' Protest," U.S. embassy, Kampala, April 12, 2011, http://kampala.usembassy.gov/statements_04122011_3.html.

²² White House, "Statement by the President on the Anti-Homosexuality Bill in Uganda."

down the remnants of the rebel group, the Lord's Resistance Army. The overall impression was of government agencies working at cross-purposes, and of a White House unable to manage them.

3. Policy Recommendations

The current administration has made support for LGBT rights around the world a cornerstone of its human rights policy; and rightly so. But the pursuit of these interests inevitably comes into conflict with other priorities in places like Uganda and Nigeria—countries considered important to the United States whose governments do not uphold what the United States considers universal human rights. There is no perfect way of balancing these competing goals. In Uganda, for example, tensions between U.S. policy priorities are inevitable, which include supporting the Ugandan military on regional security peacekeeping missions while ensuring that its sizable public health investments and commitment to human rights are not put at risk by the draconian antigay law. It is not realistic to expect the United States to resolve these tensions by dropping one set of priorities in favor of another. It must pursue all of them as best it can. This inevitably leads to imperfect outcomes but with careful thought and execution, the damage can be minimized.

A policy toward LGBT rights in Africa will contain several key elements: clear goals, renewed leadership, and flexible methods.

Clear Goals

It is important to distinguish between what can be achieved in the short term and what is possible only through long-term efforts, and to craft a strategy that combines both sets of goals.

- **Short-term:** An overall policy approach should seek to prevent the surge of legislative homophobia spreading any further in Africa. In countries where such legislation has been passed, the United States should seek to minimize its impact on human rights. It should do this by protecting and assisting people who suffer under these laws and by confronting the authorities and individuals who implement them. It should consider punitive measures against governments in an effort to deter others. At the same time, it must balance its desire to be forceful and proactive with the need to “do no harm” to LGBT citizens, guarding against actions that may provoke a backlash. The United States should look for additional ways to reorient nonessential funding from homophobic governments toward civil society. It should ensure that all recipients of U.S. funds act in a nondiscriminatory manner. Finally, it should undertake urgent efforts to better understand the impact of homophobic laws on public health and take measures to protect the integrity of U.S.-funded programs.

In other countries, the primary goal for the United States will be to prevent homophobic legislation becoming law and in those countries where laws are in place but dormant, discourage their enforcement. Achieving these goals will require a less public approach, centered on private but persistent engagement with African governments, policymakers, and thought leaders, alongside efforts to galvanize civil society to actively oppose discrimination.

- Long-term: A longer-term strategy should seek not only to stop the spread of state-sponsored homophobia but to fight back against it, forcing the homophobes into retreat. The United States should try to achieve this by improving the climate for human rights overall, not just gay rights. It should seek to delegitimize bigots, empower civil society, and ensure that public health programs reach LGBT populations. This long-term strategy will involve disabling some of the drivers of antigay legislation. These include widespread homophobia within African societies and poor governance, which encourages nondemocratic leaders to stir up moral panics and launch witch hunts against gay people in order to rally public support and divert attention from their own shortcomings. Changing attitudes and behavior will inevitably take time. Tackling the root causes of poor governance in Africa, for example, is a mammoth task requiring efforts to increase government transparency and accountability; boost civil society; strengthen countervailing institutions such as judiciaries and legislatures; and improve the quality of elections. These endeavors are broad and ambitious but they offer the best chance of fundamentally improving the human rights climate in Africa.

Strong Leadership

The challenge of tackling homophobia in Africa will require revitalized leadership from the U.S. government. Every agency working on LGBT rights must pull in the same direction, with clear lines of communication among them.

- Leadership: The newly appointed assistant secretary of state at the Department of State's Bureau of Democracy, Human Rights, and Labor, Tom Malinowski, should be the lead official on LGBT issues in Africa. This designation will help place LGBT rights firmly within the overall human rights agenda and not as some separate—or special—concern. Assistant Secretary Malinowski should develop close working relationships with other key agencies, including the Office of the U.S. Global AIDS Coordinator and the Bureau of African Affairs, which should take on a more assertive role in fashioning a continent-wide strategy on LGBT rights. As he settles into his new position, the assistant secretary should embark on a listening tour of U.S. agencies, African missions, and African civil society groups to gather information on the current situation facing LGBT Africans and hear ideas on possible ways forward.
- Coordination: The National Security Council must play a stronger coordinating role on LGBT issues, ensuring that relevant agencies are in regular contact and speaking with one voice as much as possible. Better coordination will help avoid a repeat of the scenario whereby policy sanctions are declared against Uganda by one branch of government while across town, the White House is announcing additional military support to the counter-LRA effort.
- Policy: One of the most surprising aspects of the Ugandan saga is that the United States was apparently caught off guard by President Museveni's decision to sign the Anti-Homosexuality Act. The strategic review of relations with Uganda, announced shortly afterwards, provides an opportunity to frame general policy guidance for advancing LGBT rights in Africa and for making country-specific recommendations. The U.S. government should not be caught flat-footed when the next battle erupts. The review should therefore include efforts to identify

countries where moves might be afoot to further restrict LGBT rights. It should also highlight long-term opportunities to help reverse repressive laws in other countries. It should contain a strategy for strengthening African human rights organizations, protecting U.S.-funded public health programs put at risk by homophobic legislation, and providing assistance to LGBT citizens who suffer abuse and violent attacks under these laws. The strategy should be clearly communicated to the U.S. public and disseminated to embassy staff in Africa.

Methods

The United States must be nimble and adaptive in its approach to tackling homophobia in Africa, deploying a mix of methods that vary from country to country but fall within an overall guiding strategy. These methods will include smarter diplomatic engagement, cultivating new allies, empowering civil society, protecting health programs, confronting bigots, providing support to victims, and strengthening legal systems.

Use smarter messaging: The United States should review the way it discusses LGBT rights in Africa, considering several key components:

- **Tone:** The United States should acknowledge the limited influence it can bring to bear on a debate that first and foremost must be conducted among Africans themselves. It should approach the issue with humility and recognition that it has its own problems with homophobia and a legal environment that has discriminated against LGBT people.
- **Content:** The United States must be consistent in its messaging, speaking out against human rights abuses wherever and whenever they occur. It should place LGBT rights firmly within the conversation about human rights and good governance more broadly. It should guard against words or actions that privilege LGBT rights over other human rights. It is highly damaging to feed the misperception that LGBT rights are the defining issue in U.S. foreign policy in Africa, a position that inevitably breeds resentment in societies with pressing concerns such as rampant poverty, insecurity, gender-based violence, and poor governance.

The United States has missed opportunities to speak out against the curtailment of basic freedoms under President Museveni, but several new or pending pieces of legislation in Uganda provide an opportunity to take such a stand: the Anti-Pornography Act, Patriotism Bill, and the Public Order Management Act.²³ In addition, the United States must find a way to address the yawning inconsistency in its current responses to Uganda and Nigeria's homophobic legislation. If the Ugandan law triggered a wide-ranging review of bilateral relations, why did not the equally odious Nigerian law?

²³ Police have used the Anti-Pornography Act 2014 to harass and detain women for wearing clothing deemed indecent, such as miniskirts. The Patriotism Bill would require Ugandans to support government development programs and defend national property. Under the Public Order Management Bill, police have discretionary powers to break up meetings of three or more people if they believe them to be political.

The United States should refresh the debate on homosexuality and strengthen the arguments it uses. Sober, dispassionate arguments are needed to chip away at prejudice in a long-term, patient effort to shift attitudes. It is important to confront aggressively the falsehoods peddled by some African leaders and religious groups. These include the assertion that homosexuality is a lifestyle choice, that homosexuals actively seek recruits, and that homosexuality and pedophilia are one and the same.

The bogus arguments trotted out by self-serving African leaders about neocolonialism and cultural imperialism should be exposed. Many Africans are rightly concerned about external interference but these arguments, coming from the mouths of authoritarian leaders, are tired attempts to delegitimize valid criticism.

- **Format:** The decision about whether to conduct diplomacy on LGBT rights in public or private will depend upon local circumstances. In places like Uganda, where tough laws have already been passed, the United States should be loud and forceful in its diplomacy, using every opportunity to speak out in opposition to the Anti-Homosexuality Act and offer encouragement to those who are affected by it. As one Ugandan activist put it: “Silence is very dangerous.”²⁴ Going quiet would also signify a tacit acceptance of bigotry in Uganda.

In countries where homophobic legislation is up for debate, the United States will need to be mindful that its public diplomacy could be counterproductive, producing the very result it hopes to avoid. In Kenya, for example, where sensitivities are already acute over supposed Western interference in its affairs, overt pressure on the issue of gay rights could tip the debate in favor of the homophobes. However, inaction is inexcusable. Engagement should be active but discreet, working with key decisionmakers one-to-one. In the short term, the forthcoming African Leaders’ Summit in August 2014 provides an opportunity for President Obama to address LGBT rights directly with individual heads of state. He should do this in private, to avoid sparking a backlash whereby African leaders line up in solidarity against U.S. “interference.”

Build new partnerships: While the content of the messaging on LGBT issues is important, the identity of the messenger is equally, if not more, important. Acting alone, the United States will not shift attitudes on LGBT rights. Efforts should be made to encourage and equip African leaders and representatives from the global south to speak out. To date, few have been willing to do so, apart from Archbishop Tutu and former Mozambican president Joaquim Chissano. A better approach may be to look to the younger generation. Young Africans can be a powerful ally against the homophobia of their elders. Eloquent advocacy by the likes of Nigerian writer Chimamanda Ngozi Adichie and the personal testimony of gay Kenyan author Binyavanga Wainaina is arguably more powerful than anything the U.S. government can say.

Another potential ally is the African scientific community. In Uganda, the findings of a panel of scientists were manipulated by President Museveni to make the case for

²⁴ Byarugaba (presentation at RFK Center for Justice and Human Rights).

discrimination. However, African scientists can also be a valuable source of independent fact-based research. One positive initiative being planned by the U.S. Institute of Medicine will engage counterparts in Africa to write a science-based report on the causes of homosexuality.

The United States should also work with business constituencies to make the case against discrimination. When the French telecoms company Orange ended its advertising contract with the Ugandan newspaper, *Red Pepper*, in March, it sent a clear message that bigotry and incitement to violence comes with a price.²⁵ U.S. companies with operations in Uganda and Nigeria often lead by example by setting robust internal policies to protect their staff from workplace discrimination. But none have publicly committed to taking state-sanctioned homophobia into account when making global investment decisions.

The U.S. government should also empower multilateral organizations in the fight against homophobia. Some, such as the World Health Organization and African Union, have made little progress and will require long-term efforts. But others show more immediate signs of promise. The World Bank is a potentially important ally on LGBT rights following strong statements against discrimination by President Jim Yong Kim and the controversial decision to freeze a \$90 million health grant to Uganda. These announcements have prompted some dissent both inside and outside the organization; the United States can use its influence within the World Bank to push for more discussion and press for more evidence-based research into the economic cost of discrimination.²⁶

The United States should start a long-term effort to persuade faith leaders to take a stand against intolerance. This should not be confined to African faith leaders but should also include Western evangelists like Benny Hinn and Franklin Graham who are currently part of the problem but potentially an important part of the solution given their huge influence across Africa.

Finally, other bilateral partnerships can be leveraged to push for nondiscrimination. South Africa has a particular claim for leadership in support of LGBT rights. Its constitution allows for gay marriage and it was the cosponsor of a resolution at the UN Human Rights Council in 2011, which for the first time expressly recognized the human rights of LGBT people. However, its public statements in the wake of Uganda's Anti-Homosexuality Act have been cautious, even anemic. South Africa should be given the space to chart its own course on the issue given its sensitivity to external interference and desire to maintain good relations with its fellow African governments, but the United States can discreetly encourage that leadership, attempting to nurture rather than lead the debate.

²⁵ Antonia Malloy, "Orange Pulls Advertising from Uganda's Anti-gay Red Pepper Newspaper," *The Independent* (Kampala), March 10, 2014, <http://www.independent.co.uk/news/world/africa/orange-pulls-advertising-from-ugandas-antigay-red-pepper-newspaper-9182236.html>.

²⁶ The debate has played out in *The Economist* magazine, with an editorial critical of the World Bank's suspension of the grant followed by a rebuttal by a coalition of LGBT advocates: "Right Cause, Wrong Battle," *The Economist*, April 12, 2014, <http://www.economist.com/news/leaders/21600684-why-world-banks-focus-gay-rights-misguided-right-cause-wrong-battle>; and Andrea Quesada et al., letter to the editor, "The World Bank: Why it should consider gay rights," *The Economist*, April 25, 2014, <http://www.economist.com/blogs/feastandfamine/2014/04/world-bank?fsrc=scn/tw/te/bl/whysouldconsidergayrights>.

Empower civil society: The United States should look for ways to strengthen African organizations working on LGBT issues, particularly in countries like Nigeria where these groups are weak and disorganized. This can be done with funding redirected from homophobic governments and organizations. Simultaneous efforts should be made to support civil society more broadly. For example, the United States could lend its support to Ugandan civil society as it looks for ways to challenge repressive legislation like the Public Order Management Act, which undermines the human rights of all Ugandans. Other civil society outreach might include facilitating knowledge sharing between LGBT groups in different African countries, as well as engaging with U.S.-based African diaspora groups, which have been quiet on the issue of homophobia.

Ensure the integrity of health programing: U.S. health investments worth billions of dollars are at risk in countries where homophobic legislation has been passed. The ability to come to grips with global epidemics like HIV/AIDS is being put in jeopardy by bigoted governments. The impact of these laws must be fully understood so that the right responses can be made. Anecdotal evidence suggests that vulnerable communities such as MSM are shunning health services as a result of homophobic laws in Uganda and Nigeria. More research—both qualitative and quantitative—is urgently needed in order to understand the impact. In addition, organizations like PEPFAR must conduct systematic reviews of their health programs to take account of the nonpermissive environments in which they now operate. New methods will be required to reach vulnerable populations like MSM who have been further isolated by state-sanctioned homophobia but who provide the key to eradicating epidemics like HIV/AIDS.

Pursue the bigots at home and abroad: The U.S. Agency for International Development (USAID) and other funders must conduct a systematic review of their recipients, to ensure their money is not used in discriminatory ways. Going forward, USAID and other grant-making organizations should include criteria for assessing an applicants' record on discrimination when evaluating funding proposals and ensuring that faith-based groups do not use aid funds to proselytize or otherwise condition access to services. The decision to move funding away from the Inter-Religious Council of Uganda was right. But more thought must be given to how programs funded by USAID and PEPFAR can operate effectively and in a nondiscriminatory manner, while mitigating the risks to staff on the ground who may find themselves in violation of the Anti-Homosexuality Act.

At home, the United States must take a closer look at the organizations spreading messages of hate against gay people in Africa. At the least, the government should publicly name and shame those who agitate for restrictions on the human rights of LGBT communities. Successive secretaries of state and President Obama have issued statements against homophobic laws in Africa but they have not spoken out against the U.S.-based religious extremists, like Scott Lively, who have worked to get them passed.

Protect the oppressed: The United States must be vigilant in tracking acts of predatory violence and abuses occurring under homophobic laws. It should invest money and personnel at the embassy level into monitoring mechanisms, speak out forcefully, identify and sanction perpetrators, and ramp up assistance to the victims.

This should include legal aid, medical assistance to the injured, and help for LGBT refugees.

Strengthen African legal systems: Initial challenges to both the Ugandan and Nigerian laws have already been lodged in domestic courts. However, these legal processes will be lengthy and the chances of success are moderate at best, given the lack of judicial independence in both countries. There are even risks that homophobic laws could be further entrenched if higher courts rule in their favor. Rather than supporting specific legal challenges, the United States would be better off engaging in broader, long-term efforts to strengthen judicial capacity and independence in the affected countries.

Conclusion

Right now, in scores of African countries, the human rights of LGBT citizens are being eroded rather than strengthened. Homophobia is being enshrined in law, placing already vulnerable communities in greater danger. The signs suggest the environment for gay Africans will likely get tougher before it gets any easier. Homophobes are buoyed by their successes and their cause is gaining momentum, backed by support from the fringes of the American evangelical movement. U.S. policymakers should acknowledge this reality, refuse to be downcast by it, and prepare for a long battle in support of LGBT rights. As they embark upon the journey, they can take solace from the fact that the picture across Africa is not unrelentingly gloomy. Countries like Mauritius, Cape Verde, the Seychelles, and São Tomé and Príncipe have recently decriminalized homosexual conduct or have committed to doing so. They show that the battle for LGBT rights in Africa is not hopeless. It is perhaps no coincidence that these nations are among the best performers in governance indices like the Mo Ibrahim index.²⁷ The link between good governance and human rights is mutually reinforcing.

For this reason, it is in the interest of Africans to push for human rights for all their citizens, and to view an attack on one community as an attack on them all. But one thing is clear: this is an argument Africans must be willing to make themselves. While the United States should not take the lead, neither can it be expected to stand on the sidelines. State-sanctioned homophobia challenges human rights interests the United States holds dear and harms multibillion-dollar investments in public health that are saving African lives. For these reasons, the United States should continue to challenge discrimination, in both public and private. By integrating this message into an inclusive, consistent dialogue on human rights and good governance, it may ultimately encourage all Africans, whether gay or straight, to hold their leaders to higher standards.

²⁷ In the 2013 Ibrahim Index of African Governance, Mauritius places 1st, Cape Verde 3rd, the Seychelles 4th, and São Tomé and Príncipe 11th. For more details, see <http://www.moibrahimfoundation.org/iiag/>.



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