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Retrogressive anti-gay law in Uganda has ties to the US

Adoption of international norms on LGBT rights critical to ending discrimination

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by [Lauren Carasik](#) @LCarasik

Last month, after an international firestorm opposing its proposed anti-homosexuality law known as the kill-the-gays bill, which would have imposed the death penalty for acts of “aggravated homosexuality,” the [Ugandan Parliament approved](#) a less severe version of the law, with the penalty for such conduct set at life in prison. “Aggravated homosexuality” includes sex with minors or disabled individuals, sex when one individual is HIV positive and repeated sex between consenting adults of the same gender.

The revised law, which awaits President Yoweri Museveni’s signature, also criminalizes those who fail to report homosexual conduct and imposes a seven-year prison term for those who perform same-sex marriages. The law reverberates in the U.S. both for the outrage it caused and its potential impact on a lawsuit currently before the federal district court in Springfield, Mass. The suit was filed in March 2012 by the New York–based Center for Constitutional Rights on behalf of Sexual Minorities Uganda (SMUG), a coalition of Ugandan lesbian, gay, bisexual, transgender and intersex (LGBTI) advocacy groups.

Ugandan lawmakers say the legislation [is necessary](#) to protect families from Western gays who attempt to recruit their children. That purported threat was aggressively promoted by American evangelicals. The anti-gay bill was introduced in 2009 only months after a conference in Uganda titled Seminar on Exposing the Homosexual Agenda.

Several prominent evangelical pastors, including Scott Lively, a minister and self-proclaimed expert on the gay movement from Springfield, spoke out vehemently against the dangers posed by gays. Lively's how-to book "Redeeming the Rainbow" advises opponents of gay rights to counteract sympathy for gays by highlighting instances of rape and child recruitment. This strategy is now at work in Uganda.

In *SMUG v. Lively*, the plaintiffs allege that Lively was engaged in a persistent pattern of collaborating with Ugandan officials and leaders to foment repression by helping craft oppressive legislation like the anti-homosexuality bill and for inflaming societal hostility toward LGBTI individuals. Last August, by [declining to dismiss the case](#) against Lively, U.S. federal Judge Michael Ponsor provided additional support for LGBTI rights. Ponsor held that persecution on the basis of sexual orientation and gender identity is in violation of international norms and that it amounted to a crime against humanity.

Progress in enshrining LGBTI rights and protecting members of that community from violence has been uneven across the globe. Significant advances in gay rights in Western Europe and the Americas have been balanced by notable setbacks elsewhere. For example, in June, Russia passed an anti-gay law banning "propaganda" that equalizes straight and gay relationships and the distribution of gay-rights literature. In December the Indian Supreme Court issued a ruling recriminalizing homosexual acts. There are renewed efforts to pass retrograde legislation across Africa, though few are as extreme as Uganda's death-penalty bill.

Gay rights in Africa

The etiology of African resistance to LGBTI rights is complicated. Many African countries still criminalize consensual, same-sex relationships, and de facto discrimination against and criminalization of LGBTI people is prevalent in countries without explicit bans. Cultural opposition to homosexuality runs deep in the continent. Last year the Pew Global Attitudes Project [found over 90](#)

percent disapproval for gay rights in five of the six African countries surveyed and a widespread belief that homosexuality is “un-African.”

While Africa is not culturally, religiously or geopolitically monolithic, various observers attribute the broad agreement on anti-gay sentiment to several overlapping factors. First, many of the laws in Africa against homosexuality are rooted in British statutes, embedded in moral codes or indecency laws that are vestiges of the continent’s colonial legacy. Second, conservative religious branches of Christianity and Islam foment antipathy to LGBTI rights, and the influence of foreign evangelism fuels virulent homophobia. As religious leaders from abroad travel to Africa with the express goal of propagating intolerance, evangelical homophobia inspires increased Western gay activism, leading to further backlash against the perceived imposition of Western values.

Third, domestic politics plays a role, as some local leaders demonize gays to deflect attention from intractable socioeconomic ills. Human Rights Watch and other rights groups have accused African leaders, including [Zimbabwe’s Robert Mugabe](#), for making scapegoats of gays for his country’s economic and social woes. He condemns Western efforts to condition aid on the recipient country’s acceptance of gay rights. Other African leaders who are reluctant to resist complying with international norms despite homophobic national attitudes may fear a backlash from voters and traditional religious leaders. For instance, last October when Malawian cleric and scholar Sheikh Mdala Ali Tambuli [spoke out in support](#) of gay rights, prominent members of the country’s Muslim leadership immediately denounced his statement.

Finally, opposition to gay rights is sometimes cast as a [nationalistic rejection](#) of Western values and the forces of globalization. The push-back forced Barack Obama’s administration to tread carefully in implementing the 2011 [presidential memorandum](#) that directs federal agencies to promote and protect gay rights overseas, balancing LGBTI advocacy with an understanding of the counterproductive anti-Western resentment that the U.S. policy might generate. The complex cultural and historical context of homophobia in Africa demands a

nanced, sensitive and carefully planned international response that considers the potentially adverse local impact of advocacy efforts intended to dismantle it.

I would refuse to go to a homophobic heaven ... I mean I would much rather go to the other place.

Archbishop Desmond Tutu

In some parts of Africa, the struggle against persecution and the criminalization of gay behavior is a matter of life and death. In January 2011, prominent and outspoken Ugandan gay-rights activist David Kato was [bludgeoned to death](#) in his home. In July 2013, Eric Ohena Lembembe, a gay-rights activist in Cameroon, was murdered, his neck and legs broken and his body bearing burns. In June and July of that year, Kenyan activists reported a wave of hate crimes and violence against gay men.

The U.S. federal court ruling contributes to the international jurisprudence supporting the universality of LGBTI rights, covered by panoply of protections, including free association, free expression, free assembly, privacy, family life, nondiscrimination, liberty and security of the person and the right to life.

In the wake of pervasive discrimination and violence, in June 2011 the United Nations Human Rights Council [affirmed the rights of LGBTI](#) people in a groundbreaking resolution supporting equal rights for all people, irrespective of sexual orientation. The resolution commissioned a formal U.N. study to document discriminatory laws, practices and violence against sexual orientation and gender identity and to explore the use of international human-rights law to end violence and other human-rights violations on the basis of sexual orientation and gender identity.

Yet protection of gay rights remains bitterly divisive. The U.N. Human Rights Council's resolution passed only narrowly: Of the council's 47 members, 23 countries voted yes, 19 voted no and three countries abstained. The polarized politics prompted proponents of the U.N. resolution to urge South Africa, the first country to codify gay rights in Africa, to introduce the resolution in an effort to

soften resistance to the perceived influence of Western constructs and priorities. However, despite strong support from countries such as Brazil and Colombia, a number of African nations and others decried the resolution. Even after approval by the Human Rights Council, only 85 countries — fewer than half the 193 U.N. member states — signed the resolution.

In July 2013, alarmed by escalating rhetoric and violence against gay men and lesbians, the U.N. reinforced its resolution by launching a global education initiative called [Free & Equal](#), designed to build consensus around LGBTI rights. The Free & Equal campaign was announced in South Africa for symbolic and strategic reasons.

LGBTI rights enjoy popular support from prominent members of South African clergy, including Archbishop Desmond Tutu, who recently affirmed the depth of his backing by stating, “I would refuse to go to a homophobic heaven ... I mean I would much rather go to the other place.” Many years earlier, South African anti-apartheid hero Nelson Mandela, who died in December, added moral gravitas to the concept of equal rights as an African value. His postapartheid administration oversaw the inclusion of these rights in the progressive South African constitution. Even with favorable attitudes and a progressive constitution that enshrines the protection of LGBTI rights, anti-gay violence and corrective rape are [prevalent across South Africa](#).

The road ahead

Creating effective social-change strategies to eliminate oppression and equalize rights and protections is not an exact or predictable science. Progress is rarely fast, easy, linear or uncontested.

While there have been tremendous advances, LGBTI communities are not monolithic in the strategies and priorities they espouse to advance their rights. In Western countries, LGBTI advocacy tends to prioritize marriage equality, alienating poor and transgender LGBTI members as well as communities of color. Critics argue that the focus on gay-marriage activism is driven by the goals

of wealthier, white and more privileged gays at the expense of complex oppressions and deeply contextualized struggles of marginalized communities. But all agree that the trend toward further LGBTI criminalization is alarming and demands global action.

Developing an international consensus about the universality of LGBTI rights presents greater political and cultural challenges. The complicated dynamics of a postcolonial world stands the risk of generating an unintentional backlash. But given the stakes in Uganda and, more broadly, in sub-Saharan Africa, Russia, India and elsewhere, the international community must unite to develop norms that protect LGBTI individuals from discrimination and persecution.

As the punitive Ugandan anti-homosexuality bill advances toward enactment, local activists fear increasing violence, making the establishment of rights and protections for the LGBTI community increasingly urgent. Holding anti-gay activists like Lively accountable for his deliberate and carefully orchestrated campaign to institutionalize hatred and persecution in Uganda would be a small but important step in the right direction.

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