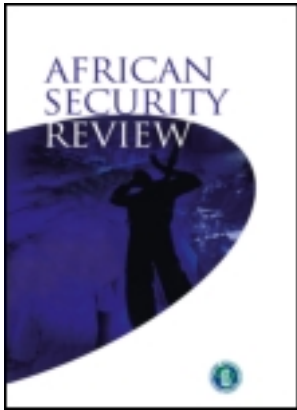


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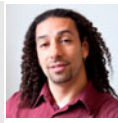
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Homophobic legislation and its impact on human security

Keletso Makofane, Jack Beck, Micah Lubensky and George Ayala

Despite sustained opposition, legislation criminalising homosexuality persists and threatens human security in Africa in numerous ways. This paper explores the circumstances around the enactment of new anti-homosexual legislation in Nigeria and Uganda, examining five categories of insecurity faced by lesbian, gay, bisexual, and transgender (LGBT) people in the context of these laws: physical violence; extortion and blackmail; arbitrary arrest and detention; displacement from home; and loss of work.

Keywords LGBT, security, Uganda, Nigeria, homosexuality, criminalisation

Introduction

Across the world, 76 countries have criminal laws that penalise same-sex sexuality.¹ Of these countries, almost half are in Africa. Opposition to these laws has taken different forms. International human rights advocates have drawn attention to human rights commitments.² Public health practitioners have drawn attention to the health-related consequences of homophobic legislation.³ Western governments have focused on lesbian, gay, bisexual, and transgender (LGBT) rights as a pillar of their diplomacy.⁴ Within countries that criminalise homosexuality, community-based advocates and organisations have implemented a diverse array of strategies to work against oppressive laws in their respective contexts.

Despite this sustained opposition, criminal laws persist and threaten human security in Africa in numerous ways. This paper examines the circumstances around the enactment of new anti-homosexual legislation in Nigeria and Uganda, examining five categories of insecurity⁵ faced by LGBT people in the context of these laws: physical violence; extortion and blackmail; arbitrary arrest and detention; displacement from home; and loss of work. We discuss reported incidents of each type of insecurity which occurred before each law's enactment, during initial public discussion, and after promulgation.⁶

The colonial legacy of anti-homosexuality laws

Much of the legislation that criminalises same-sex sexuality in Africa was inherited from colonial law. Though other colonial powers introduced similar laws to their colonies in Africa, the British Empire had the most substantial impact. Between 1897 and 1902, half of the 36 African countries that currently criminalise same-sex sexuality adopted some version of Section 377, which was an anti-sodomy law first promulgated through the Indian Penal Code under British rule and then extended to other colonies of Britain.⁷

Since African states have gained independence, few have repealed inherited laws that criminalise same-sex sexuality. In fact, more countries have strengthened or introduced new anti-gay laws than have dismantled them. While South Africa prohibited discrimination on the basis of sexual orientation in the 1996 constitution,⁸ Cape Verde decriminalised homosexuality in 2004,⁹ and homosexual acts appear to have been legal in Lesotho since the introduction of the Penal Code Act in March of 2012,¹⁰ countries that have strengthened existing laws or introduced new laws include Burundi, Nigeria, Sudan, Uganda, Zambia, and Zimbabwe.¹¹

Despite the colonial origins of laws that criminalise same-sex sexuality, and the long history of diverse sexualities in Africa,¹² political and religious leaders who advocate for criminalisation of same-sex sexuality often position themselves as defenders of 'African culture' against the onslaught of 'Western values'. Ironically, as noted by the advocacy organisation Human Rights Watch,

[t]he anti-sodomy provisions that contemporary politicians defend as part of indigenous values never drew on local customary law, nor were they drafted through a deliberative process. Colonial officers devised and imposed them. They saw the sex laws as necessary precisely because they viewed local cultures as lax, a haven for 'unnatural offenses'.¹³

Uganda: discussions imperil LGBT people

The Anti-Homosexuality Bill: introduction to enactment (2009–2014)

First introduced by Member of Parliament (MP) David Bahati in 2009, the Anti-Homosexuality Bill underwent five years of intermittent debate before it was ultimately enacted in February 2014. The final version of the bill, passed as the Uganda Anti-Homosexuality Act of 2014, stiffens the penalty for homosexual conduct in Uganda, prohibiting sexual relationships between persons of the same sex, and interpreting 'relationships' broadly to include any form of touching or even intention to commit a homosexual act. Those found guilty of 'aggravated' homosexuality can be sentenced to life imprisonment, and participating in a gay-related organisation can incur up to seven years' incarceration.

Over the five-year period between the bill's introduction and enactment, there were long periods where there was no discussion of the bill in parliament at all. Revival of the bill seemed to coincide with other important and controversial political events. The bill was reintroduced for public hearings in May 2011, just days after the opposition leader Colonel Kizza Besigye was arrested for participating in demonstrations on the rising cost of living in Uganda.¹⁴ It was reintroduced in February 2012, only three days after the president entered

into an agreement with a company named Tullow Oil despite a parliamentary moratorium on new oil production-sharing agreements.¹⁵ It was scheduled for discussion again in November 2012, immediately after parliament was to discuss two controversial bills to ‘regulate the exploration, development and production [of oil], and to regulate its refining, storage and transportation’,¹⁶ which were both seen to open the door to government corruption during a time when several European countries had recently suspended aid to Uganda over newly uncovered corruption in the Prime Minister’s office.¹⁷ In each instance, the discussion of the Anti-Homosexuality Bill provided a valuable distraction from issues that heightened citizen scrutiny of the Ugandan state.

As parliament repeatedly resurrected the Anti-Homosexuality Bill over this five-year period, discussion of the bill among the public and in the press contributed to the increased vulnerability of LGBT people. The period between the bill’s introduction and its passage saw numerous security violations, including arbitrary arrest and detention; physical violence; blackmail and extortion; and loss of work and stable housing.

Arbitrary arrest and detention

Numerous media outlets documented high levels of police harassment, intimidation and detention during this period. On 8 April 2009, less than a month after Parliament passed a resolution allowing MP Bahati to submit the first version of his bill, two men were arrested and held in Mbale police station on allegations of public immorality and homosexuality. They had been followed by fellow residents from a bar and were caught kissing and cuddling in the privacy of their home.¹⁸ News outlets reported another two men arrested in December 2010, ostensibly for their own protection, after an attempted lynching at the hands of their neighbours.¹⁹

Throughout 2012, the police raided numerous gatherings, arresting or attempting to arrest participants and activists in attendance. In February 2012, just days after the bill was reintroduced in parliament, a Ugandan cabinet minister raided a workshop in Entebbe, attempting to arrest high-profile activist Kasha Jacqueline Nabagesera.²⁰ In August, a police raid of the Uganda Beach Pride Parade resulted in the arrest of at least six activists, including Ms Nabagesera and several of her colleagues, who were later released without being charged.²¹ Several more legal gatherings were raided and individuals arrested throughout 2012 and 2013; in many cases no charges were ever brought.²²

Physical violence

As discussion of the bill reverberated through the public sphere, sensational media reporting led to a rash of physical violence against LGBT people in Uganda. In October 2010, the tabloid *Rolling Stone* published the photos, names, and other identifying information of 100 LGBT citizens under a headline tagged with ‘Hang Them!’.²³ Within two weeks of this publication, at least four people included in the article had been attacked, and others were in hiding.²⁴ In January 2011, just four months later, LGBT advocate David Kato Kisule was found bludgeoned to death with a hammer in his home in Kampala after his face and identifying information appeared in *Rolling Stone*.²⁵ In a public statement, *Rolling Stone* Managing Editor Giles Muhame defended the publication, describing the individuals featured in the article as ‘self-confessed criminals’ and stating that ‘hanging is done after the due

process of the law has been followed', referencing the Anti-Homosexuality Bill that was still under consideration at the time and included a death penalty clause.²⁶

Blackmail and extortion

The threat of social exclusion, violence and incarceration heightened vulnerability to extortion and blackmail. Former LGBT activist George Oundo is reported to have demanded money from Ugandan gay men in return for not revealing their sexual orientation.²⁷ Ugandan blogger and LGBT activist Dr Paul Semugoma²⁸ published a letter from a member of the Uganda National Pastors Task Force Against Homosexuality threatening to reveal the recipient's sexual orientation to family, neighbours, and employers.²⁹ In return for his silence, the Uganda National Pastors Task Force demanded that the recipient 'provide us with a list of all the homosexuals you know who are within Kampala and Jinja districts whom you have come into contact with ...' and to 'write a letter denouncing homosexuality just as one of your colleagues (George Oundo) recently did ...'.³⁰

Accusing someone of homosexuality has also been used as a potent weapon against political adversaries. Ironically, the best-documented example was of a public proponent of the bill, Pastor Martin Ssempe,³¹ who was charged and convicted of conspiring to tarnish the reputation of a rival pastor by accusing him of sodomy.³²

Loss of housing and employment

During this period, many LGBT people lost their homes and their jobs. In a 2010 report on the state of human rights for LGBT people in East Africa, the East African Sexual Health and Rights Initiative (UHAI) wrote that many Ugandan informants

described being forced out of their homes due to their sexual orientation or gender identity and others because of their involvement in LGBTI work. The Bahati Bill which threatened landlords with up to seven years in prison or a heavy fine if found guilty of housing homosexuals only made a bad situation worse. In its wake, landlords began to evict suspected homosexuals out of fear for their own safety and those of their houses.³³

In addition to eviction, at least one LGBT activist lost his home when it was set on fire while he was still inside.³⁴

For Ugandans not involved in LGBT work, exposure could mean a loss of employment, as it did for a young baker named Auf who was outed by a tabloid called *Red Pepper*. He lost his job as well as his home, and was ultimately forced to flee to France.³⁵ Doctors who had previously served LGBT people began to refuse service to LGBT patients for fear of losing their own jobs.³⁶

After enactment

Since the enactment of the bill in 2014, LGBT people in Uganda have reported heightened threats of violence and the loss of jobs.³⁷ There have been documented cases of LGBT people being displaced from their homes, either through eviction by landlords or being chased out by community members.³⁸ At least two men have been arrested, one HIV clinic that serves men who have sex with men has been raided,³⁹ and a tabloid has published 200 more names of LGBT people in Uganda.⁴⁰ At least 17 LGBT people have attempted suicide since the bill was

passed, including a 17-year-old boy named Mikhail who, at the time of writing, remains comatose after swallowing rat poison.⁴¹

Nigeria: enactment sparks extreme violence

Nigeria's Same Sex Marriage (Prohibition) Act was enacted on 7 January 2014 after different versions had been discussed intermittently for nearly eight years.⁴² The final version of the bill that was passed into law includes a 14-year prison term for anyone who enters into a same-sex union, and up to 10 years in prison for anyone who 'supports the registration, operation and sustenance of gay clubs, societies, organizations, processions or meetings in Nigeria'.⁴³

Like Uganda's Anti-Homosexuality Bill, it has been argued that the Same Sex Marriage (Prohibition) Act serves to distract Nigerian citizens from deeper political problems, including the failure of the state to deliver the dividends of Nigeria's new democracy: improved health care, education, and infrastructure development.⁴⁴ 'At no time in the history of Nigeria is the unity of the country more threatened than in the present', Nigerian activist Damian Ugwu wrote in 2012. 'For now, it seems that the only thing these leaders can agree on ... is their love of football and their hatred of homosexuality'.⁴⁵ In 2013 and early 2014, Nigeria continued to grapple with severe domestic challenges, including serious security concerns of sectarian violence,⁴⁶ violence by the militant Islamist group Boko Haram,⁴⁷ and the attendant displacement of people in the wake of such violence.

Arbitrary arrest and detention

In the immediate aftermath of the passage of the act, there were reports of arbitrary arrests of individuals suspected of being gay. By 15 January 2014, only seven days after the enactment of the legislation, more than 10 people from across Nigeria had already been arrested based on their real or perceived sexual orientation and gender identity, according to Amnesty International.⁴⁸ The International Center for Reproductive and Sexual Rights – an advocacy organisation based in Abuja – reported that 38 people had been arrested in Bauchi State by 15 January 2014. The disparity across agencies highlights the difficulty in recording and documenting these cases. The police in Bauchi state admitted that they were compiling a list of suspected LGBT people as part of their 'profiling of criminals'. It was reported that this list included 167 LGBTI people, though the police did not confirm this number.⁴⁹

People suspected of being gay also experienced physical violence and humiliation leading to arrest through collaboration between state and non-state actors. A total of 12 men were apprehended by residents of Bauchi City and handed over to the police to be arrested and prosecuted. Some of these men were beaten and tortured. Because Bauchi State uses both Sharia and secular law, 11 of the 12 men who were Muslim would be tried under Sharia law, which punishes homosexuality with death by stoning.⁵⁰

Extreme violence, displacement from home, and loss of work

More extreme forms of physical violence were seen in another state of Nigeria. On 12 February 2014, in the neighbourhood of Gichiri in Abuja, a mob of 50 people attacked 14 men who were thought to be gay. The mob beat these men with nail-studded clubs and whips, nearly killing one of them. The 14 men were handed over to the police, who

subsequently beat and arrested them.⁵¹ Each of these men was displaced from their homes. After the attacks, members of the mob spray-painted homophobic slogans on the homes of the men who were attacked, including 'Homosexuals, pack and leave'.⁵² Witnesses reported that during the attack, members of the mob shouted that they were 'cleansing the community of gays' and were 'working for Jonathan', referring to Nigerian President Goodluck Jonathan. After their employers discovered their sexuality, 4 of these 14 men lost their jobs.⁵³

Anti-homosexuality law and the human cost of spectacle

The mere tabling of anti-homosexual laws can threaten security, whether the laws are enacted or not. In Uganda, the combination of newly proposed legislation and incendiary reporting created conditions of vulnerability for LGBT people and for people baselessly accused of being gay. Security is especially compromised when legislation has been newly enacted, and citizens perceive themselves to act on behalf of the state.

The different types of insecurity are interlinked and sometimes mutually reinforcing. In Nigeria, when people were targeted for violence on the basis of their appearance and their presumed sexual behaviour, it was with the implicit consent of the police who were enabled by the law to arbitrarily arrest suspected LGBT people. In both Nigeria and Uganda, fellow community members have been intimately involved in the physical violence against (presumed) LGBT people. This has rendered the homes of known LGBT people unsafe, and in some cases caused displacement from home. Economic insecurity has been caused by displacement from home but also by employers who dismiss employees who are thought to be gay. Finally, the fear of physical violence at the hands of fellow citizens and at the hands of the state has made LGBT people even more vulnerable to blackmail and extortion, and has made it possible to use the accusation of homosexuality as a weapon against adversaries.

In Uganda and Nigeria, the extended public debate around these laws was characterised by an alternating pattern of silence and explosive public discussion. The discussion was a spectacle, and one of the ways these debates should be understood is as a powerful (if costly) political distraction. In both Nigeria and Uganda, discussions of anti-homosexuality legislation have been used to divert attention away from government failure. Perhaps to this end, new anti-homosexuality legislation has aimed to suppress the dissent of civil society. In the cases of both Uganda and Nigeria, new legislation explicitly criminalises the formation of groups of homosexual people and explicitly curbs free speech as it relates to sexual orientation and gender identity. In Uganda, this can be seen as part of a broader campaign to reduce the ability of civil society to hold the government accountable on controversial issues, including sexual orientation and gender identity.⁵⁴

The suppression of civil society has important implications not just for democracy and human rights, but also for access to health and social services for LGBT people. Civil society plays an important role in the delivery of these services in settings where homophobia prevents LGBT people from accessing services through mainstream providers.⁵⁵ In particular, the suppression of civil society threatens HIV programming for men who have sex with men and transgender women,⁵⁶ two groups that shoulder a disproportionate burden of HIV.⁵⁷

The impact of passing anti-homosexuality legislation crosses borders. Legislators in Ghana,⁵⁸ the Democratic Republic of Congo,⁵⁹ Kenya,⁶⁰ and Tanzania⁶¹ have raised the issue in their respective Parliaments since Nigeria and Uganda passed their bills.

Understanding the multiple ways in which anti-homosexuality legislation creates vulnerability for LGBT people can lead to better short-term and long-term human-rights-based responses to this kind of legislation and the security threats it creates. It is necessary to broaden the political analysis of anti-homosexuality law to include an analysis of the interests of politicians who propose and advocate for these laws. Anti-homosexuality legislation is not only an assault against the human rights of LGBT people but it is a spectacle deployed to distract citizens from contentious political issues. This understanding creates the possibility of broader coalitions to oppose anti-homosexuality law while opposing the clampdown of civil society.

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