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ARE THREATS TO IMPOSE FINANCIAL SANCTIONS AN EFFECTIVE APPROACH FOR THE UNITED STATES TO PROTECT LGBTQ RIGHTS IN AFRICA?

Ryan J. McElhose*

“If LGBT people are perceived as pushing for sanctions, it can increase the risk of stigmatization; the media could say donors are going to cut aid because of gay people.”

Cheikh Traore¹

There are 71 countries around the world that criminalize same-sex sexual activity and persecute the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community.² Most of these countries are in the Middle East, Asia, and Africa.³ As of 2020, same-sex sexual activity was still criminalized in 32 of the 54 countries in Africa.⁴ One of the most recent examples of discrimination and persecution includes a bill that has been introduced to the Ghanaian parliament titled the “Proper Human Sexual Rights and Ghanaian Family Value Bill,” which has been labeled the “worst anti-LGBTQ bill ever” by international and Ghanaian critics.⁵ The bill would provide prison sentences of three to five years for same-sex sexual activity and for advocacy on behalf of the LGBTQ community.⁶ This atrocity is an example of a human rights violation.

According to the United Nations, human rights are rights which belong to all human beings irrespective of age, color, disability, *gender identity*, health status,

* J.D. Candidate at the University of Tennessee College of Law (2023) I would like to thank Professor Valorie Vojdik for serving as my direct supervisor for this paper and the UT College of Law librarians for their support. I also want to thank my supportive partner Jermal D. Brown for listening to my ideas and buying me books. This paper is dedicated to a community fighting for themselves and those that will come after. You all are closest to my heart.

¹ Kelli Rogers, *One Step Forward, Two Steps Back? The Gaps Between LGBTI Policy and Practice in Foreign Aid*, DEVEX (Feb. 11, 2014), <https://www.devex.com/news/one-step-forward-two-steps-back-the-gaps-between-lgbti-policy-and-practice-in-foreign-aid-82832>.

² Lars Kramer, *Criminalization of Homosexual Relations in Africa*, STATISTA (Feb. 1, 2022), <https://www.statista.com/statistics/1269999/criminalization-of-same-sex-relations-in-africa/>.

³ *Id.*

⁴ *Id.*

⁵ Colin Stewart, *Thousand Petition Ghana Parliament to Block ‘Worst Anti-LGBTQ Bill Ever*, ERASING 76 CRIMES (Aug. 2, 2021, 1:36 PM), <https://76crimes.com/2021/08/02/thousands-petition-ghana-parliament-to-block-worst-anti-lgbtq-bill-ever/>.

⁶ *Id.*

national or ethnic origin, nationality, place of residence, sex, or *sexual orientation*.⁷ Being that all 54 African nations are members of the United Nations, what is the disconnect between LGBTQ rights in Africa and international human rights standards?⁸ According to a study led by Andrea Kämpf titled *Just Head Banging Won't Work: How State Donors Can Further Human Rights of LGBTI in Development Cooperation and What LGBTI Think About It*, generally, African perception of human rights is “foreign discourse.”⁹

While these countries' laws do not align with the United Nations, African academics, activists, and lawyers are responding with strategic litigation and varying calls for international support. In the United States, although the Obama Administration and Biden Administration vowed to protect LGBTQ rights abroad, their approach has involved threatening to impose financial sanctions on countries that do not expand human rights to the LGBTQ community. When the United States threatens to impose sanctions on African countries that do not support LGBTQ rights, research concludes that the United States does not follow through with their threats to impose sanctions—the United States maintains or, in some cases, increases funding. Even the mere threat of imposing financial sanctions impacts the people that the United States is purporting to protect. As a result, Part I of this paper will establish that LGBTQ rights are human rights. Part II of this paper will elaborate on the cultural and legal landscape of LGBTQ rights in Africa. Part III of this paper will lay the foundation of the history of U.S. foreign assistance and LGBTQ rights. Part IV of this paper will analyze the rationale, effectiveness, and disadvantages of threatening or imposing financial sanctions. Part V of this paper will establish a case study of Botswana (a country that is actively upholding and promulgating LGBTQ rights). Part VI of this paper will provide recommendations to the Biden Administration.

⁷ INTERNATIONAL HUMAN RIGHTS LAW AND SEXUAL ORIENTATION & GENDER IDENTITY, UNITED NATIONS FREE & EQUAL (May 2017), <https://www.unfe.org/wp-content/uploads/2017/05/International-Human-Rights-Law.pdf>. (*emphasis added*) [hereinafter UNITED NATIONS FREE & EQUAL].

⁸ *How Many African Countries Are Members of the United Nations?*, UNITED NATIONS DAG HAMMARSKJOLD LIBR. (last visited Apr. 20, 2022), <https://ask.un.org/faq/22882>.

⁹ Andrea Kämpf, *Just Hang Banging Won't Work: How State Donors Can Further Human Rights of LGBTI in Development Cooperation and What LGBTI Think About It*, GERMAN INST. FOR HUM. RTS. (2015), https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Studie/DIMR_Study_How_state_donors_can_further_human_rights_of_LGBTI_in_development_cooperation_and_what_LGBTI_think_about_it.pdf (Sponsored by The German Institute for Human Rights).

I. LGBTQ RIGHTS ARE HUMAN RIGHTS

The United Nations developed and articulated human rights following World War II in the Universal Declaration of Human Rights (1948).¹⁰ Oftentimes, human rights are expressed and guaranteed through customary international law, general principles, and treaties.¹¹ The United Nations provides obligations that countries are bound to respect through international human rights law.¹² As all 54 African nations are part of the United Nations, all the countries should be undertaking domestic measures and legislation which is compatible with the United Nations treaty obligations and duties.

Further, the United Nations declares that it is never legal for nations to discriminate against the LGBTQ community.¹³ There is no exemption clause nor fine print in any of the United Nations human rights treaties which would allow a nation to guarantee full rights to some but not others on the basis of sexual orientation or gender identity.¹⁴ In fact, in 2016, the United Nations Human Rights Council appointed an independent expert to investigate global issues related to sexual orientation and gender identity to which the expert concluded that gender identity, sex characteristics, and sexual orientation must be included as protected grounds in laws on hate crimes and incitements to violence.¹⁵ Lastly, the independent expert concluded that laws that criminalize the LGBTQ community must be repealed; relevant comprehensive legislation and policies must be enacted; and safeguards must be established for freedom of expression, peaceful assembly, and association for the LGBTQ community.¹⁶

II. WHAT IS THE CULTURAL AND LEGAL LANDSCAPE OF LGBTQ RIGHTS IN AFRICA?

There are varying cultural viewpoints and legal positions of LGBTQ rights in Africa. There are 32 countries that criminalize “homosexuality,” while only 22 countries do not.¹⁷ Presently, South Africa is the only African country and the first country in the world to provide constitutional protections for the

¹⁰ UNITED NATIONS FREE & EQUAL, *supra* note 8.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ U.N. High Commissioner for Human Rights, Born Free and Equal: Sexual Orientation, Gender Identity and Sex Characteristics in International Human Rights Law, HR/PUB/12/06/Rev.1 (last visited Apr. 20, 2022), https://www.ohchr.org/sites/default/files/Documents/Publications/Born_Free_and_Equal_WEB.pdf.

¹⁶ *Id.*

¹⁷ Kramer, *supra* note 3.

LGBTQ community.¹⁸ Further, South Africa remains as the only African country that legalizes “homosexuality” while also legalizing same-sex marriage.¹⁹ According to Aloy Ojilere, Nigerian legal academic and author of *The Diplomacy of Homocapitalism Against Africa*, the “aggregate belief” in Africa is that “homosexuality” is “ungodly, un-African, homonegative, unnatural, and unacceptable.”²⁰ According to Ojilere, the most notable countries which publicly reject LGBTQ rights include Gambia, Nigeria, Uganda, and Zimbabwe.²¹ Ojilere concludes that these countries view the pressure from the West for the legislation of LGBTQ rights in Africa as a “[d]eliberate. . . attempt to debase and ruin cherished African cultural and religious sanctity.”²²

Is this sentiment towards the LGBTQ community merely a generational divide? Unfortunately, according to an Afrobarometer survey that was released in 2020, only 21% of Africans aged 18-25 would not mind having a gay neighbor, compared with 17% of those aged 66 or older.²³ Young Africans make up half the continent’s population at under 20 years old.²⁴ Furthermore, the African Youth Survey, published by the Ichikowitz Family Foundation, reported in 2020 that while 64% of survey respondents agreed that “sexual harassment is a problem in my country,” 69% of survey respondents disagreed with the statement, “My country should do more to protect the rights of LGBTQ people.”²⁵

On the other hand, there are a growing amount of African activists and scholars who publicly disagree with the assertion that being a part of the LGBTQ community is “un-African and unnatural.”²⁶ Oyeniyi O Abe and A Aadedapo Aekunle, Nigerian legal scholars, posit that legislation to expand LGBTQ rights in Nigeria and all of Africa is best practice to “appreciate the inherent right of human beings to engage in a union that is best for them.”²⁷ Furthermore, according to an interviewee in the Kämpf study, in response to the notion that “homosexuality is un-African,” the interviewee asserted:

¹⁸ *Id.* at 155.

¹⁹ *Id.*

²⁰ Aloy Ojilere, *The Diplomacy of Homocapitalism Against Africa: Same-Sex Marriage and The West’s Promotion of Homosexuality*, 22 *WORLD AFF.: J. INT’L ISSUES* 152-63.

²¹ *Id.* at 157.

²² *Id.*

²³ *On Gay Rights, Young Africans Share the Intolerance of Their Elders*, *THE ECONOMIST* (Mar. 6, 2021), <https://www.economist.com/middle-east-and-africa/2021/03/06/on-gay-rights-young-africans-share-the-intolerance-of-their-elders>.

²⁴ *Id.*

²⁵ ICHIKOWITZ FAMILY FOUNDATION, *AFRICAN YOUTH SURVEY 2020 – THE RISE OF AFRO-OPTIMISM* 45.

²⁶ Ojilere, *supra* note 21, at 158.

²⁷ *Id.*

We do not have a defined culture. We haven't agreed what culture we want ourselves to be. So, there is no 'culture'. But we use culture as a scapegoat to persecute sexual minorities. Because the way I live in where I come from is different from where someone lives in a certain region. But at the same time, which culture are we saying are we protecting, because the food we eat right now is European. Because some people are saying 'our' culture and these are putting on a suit, trippy suit. So, I mean culture can't remain the same, culture has to move on.²⁸

Ultimately, Ojilere argues that the aggregate belief has pitched most of Africa against the United States, as he asserts that the United States uses both financial and political pressure to promote human dignity and equal rights for the LGBTQ community.²⁹

III. HISTORY OF U.S. FOREIGN ASSISTANCE (1961–PRESENT)

According to Rahul Rao, Senior Lecturer in Politics at SOAS University of London and author of *Global Homocapitalism*, the term *homocapitalism* means “the practice of a global capital conspiracy whereby Western and international aid and monetary donors withdraw, refuse, or deny aid to countries that refuse to officially condone homosexuality or legaliz[e] same-sex marriage.”³⁰ History shows that, during the Obama Administration, many African nations did not respond well to his administration's push to allocate foreign aid to LGBTQ rights or threats to impose financial sanctions if the countries did not comply.

A. *What is Foreign Aid?*

U.S. foreign aid comprises money, commodities, and technical assistance that the United States gives to other countries in support of the common interests that the United States has with the receiving country—to a government entity or communities in the country.³¹ Each fiscal year the relative proportions vary; however, humanitarian assistance roughly accounts for one-third of the foreign aid budget.³² Less than one percent of the U.S. federal budget is allocated to foreign aid.³³ As one of the world's wealthiest nations, the United States

²⁸ Kämpf, *supra* note 10, at 34.

²⁹ Ojilere, *supra* note 21, at 151.

³⁰ *Id.* at 155.

³¹ George Ingram, *What Every American Should Know About US Foreign Aid*, BROOKINGS INST. (Oct. 15, 2019), <https://www.brookings.edu/policy2020/votervital/what-every-american-should-know-about-us-foreign-aid/>.

³² *Id.*

³³ *Id.*

provides more foreign aid than any other country.³⁴ U.S. foreign aid benefits both the country receiving assistance as well as the United States.

B. *History of U.S. Foreign Aid and LGBTQ Rights*

Historically, the United States has included human rights as one aspect in allocating foreign assistance. The Foreign Assistance Act (FAA) of 1961 was created by Congress under the Kennedy Administration.³⁵ In 1974, the FAA was updated during the Ford Administration, but President Ford himself was opposed to the human rights restrictions in the FAA.³⁶ LGBTQ rights were not generally accepted as part of a domestic or global human rights campaign, as it is reported to not have entered U.S. public policy discussion.³⁷

The Carter Administration made a conscious effort to re-center foreign policy within human rights issues.³⁸ However, the Carter Administration's concept of human rights did not include LGBTQ rights.³⁹ The scope of international human rights was generally limited to civil rights, political rights, and freedom from torture.⁴⁰ Accordingly, neither domestic nor international human rights law explicitly named LGBTQ rights as a human rights issue.⁴¹ According to the Brookings Institute, some of the most rapid increases in foreign aid have come during Republican presidencies, such as the first terms of Ronald Reagan and George W. Bush.⁴² Since the creation in the early 2000s of President Bush's notable signature programs—the Millennium Challenge Corporation, the President's Emergency Plan for AIDS Relief (PEPFAR), and the President's Malaria Initiative—U.S. foreign aid spending greatly increased.⁴³

The Obama Administration became the first administration to publicly support global LGBTQ rights by linking LGBTQ rights to foreign aid and interpreting LGBTQ rights as human rights.⁴⁴ In December 2011, President Obama publicly outlined the importance of LGBTQ rights and the several ways

³⁴ *Id.*

³⁵ Katelyn Mendez, *Important US Foreign Aid Facts*, BORGENT PROJECT (last visited Apr. 20, 2022), <https://borgenproject.org/tag/foreign-assistance-act/>.

³⁶ Audrey L. Comstock, *Gay Rights and U.S. Foreign Aid: A Look at Nigeria and Uganda*, 2 J. INT'L REL., PEACE STUD., & DEVELOP., 2016, Iss. 1, Art. 2.

³⁷ *Id.*

³⁸ *Id.* at 5.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Ingram, *supra* note 32.

⁴³ *Id.*

⁴⁴ Comstock, *supra* note 37, at 6.

in which the United States could promote LGBTQ rights globally. His memorandum “Presidential Memorandum – International Initiatives to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender Persons,” among many other things, directed U.S. agencies to alter the existing policies of foreign aid allocation.⁴⁵ That same year, then-Secretary of State Hillary Clinton, declared LGBTQ rights a priority and the Obama administration established a “Global Equality Fund” to give money to LGBTQ activists who combat restrictions.⁴⁶ President Obama also reportedly threatened to cut off foreign aid to Nigeria if the country passed anti-LGBTQ laws.⁴⁷

In 2019, then-presidential candidate Joe Biden was among eight democratic presidential runners on the debate stage when he declared that he would withhold foreign aid from countries that persecute the LGBTQ community.⁴⁸ On February 4, 2021, shortly after his inauguration, President Joe Biden issued the “Memorandum on Advancing the Human Rights of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World,” where he “directed heads of US executive departments and agencies to invoke a range of punitive diplomatic actions, including *financial sanctions* and visa restrictions, on countries that ‘abuse’ the rights of LGBTQI+ people.”⁴⁹ Specifically, Biden directed “swift and meaningful United States responses to human rights abuses of LGBTQI+ persons abroad.”⁵⁰ Biden ordered that existing efforts to combat the criminalization by foreign governments on LGBTQ status or conduct should be strengthened with special attention on checking discrimination, homophobia, intolerance, and transphobia.⁵¹ Biden also directed the United States Department of State to report on human rights abuses experienced by the LGBTQ community, pursuant to Sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961.⁵²

⁴⁵ *Id.*

⁴⁶ Wendy Wright, *Obama’s Foreign Policy Legacy: Chaos and LGBT*, CTR. FAM. & HUM. RTS. (May 5, 2016), https://c-fam.org/friday_fax/obamas-foreign-policy-legacy-chaos-lgbt/.

⁴⁷ Mfonobong Nsehe, *Obama Fights Nigerian Anti-Gay Bill, Threatens to Cut Off Aid*, FORBES, <https://www.forbes.com/sites/mfonobongnsehe/2011/12/09/obama-fights-nigerian-anti-gay-bill-threatens-to-cut-off-aid/?sh=3db050854f7b>.

⁴⁸ Joseph Ax, *Biden Says He Would Withhold Foreign Aid If Countries Discriminate Against LGBTQ People*, REUTERS, (October 10, 2019 at 9:52 AM), <https://www.reuters.com/article/us-usa-election-lgbt/biden-says-he-would-withhold-foreign-aid-if-countries-discriminate-against-lgbtq-people-idUSKBN1WP20A>.

⁴⁹ Ihuoma Chiedozie, *Nigeria Risks Sanctions as Biden Issues Foreign Policy Memorandum on Gay Rights*, INT’L CTR. INVESTIGATIVE REP., (Feb. 9, 2021), <https://www.icirnigeria.org/nigeria-risks-sanctions-as-biden-issues-foreign-policy-memorandum-on-gay-rights/> (*emphasis added*).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*; Foreign Assistance Act of 1961, 22 U.S.C. §§ 2151n(d), 2304(b).

Another key aspect of the memo is the directive that the U.S. agencies involved in foreign aid and assistance should consider the impact of their programs on LGBTQ rights when making funding decisions.⁵³ As a result, Nigeria is one of the African countries that may lose aid if the United States agencies feel that funds which are provided have no positive impact on the rights of LGBTQ people.⁵⁴

IV. WHAT IS THE RATIONALE, EFFECTIVENESS, AND DISADVANTAGES OF THREATENING TO IMPOSE FINANCIAL SANCTIONS?

According to Kämpf's study sponsored by the German Institute for Human Rights, even though donors are reacting to human rights violations related to sexual orientation and gender identity, these proclamations are often intended to appeal to the domestic audience and their respective parliamentarians; however, the action is not supported by the LGBTQ community in Africa, nor largely the Global South.⁵⁵ As a result, this section of the paper explores the rationale, effectiveness, and disadvantages of threatening or imposing financial sanctions.

A. *Rationale*

According to Gary Hufbauer, nonresident Senior Fellow of the Peterson Institute for International Economics,⁵⁶ the political effect of sanctions depends significantly on of the nature of the target country.⁵⁷ For example, if the target country is small or mid-size and has a fair amount of conflict or political turmoil within the country, Hufbauer reported that sanctions have often produced regime changes.⁵⁸ He asserted that many small African, Asian, and Latin American countries would be vulnerable to regime changes as a result of imposed sanctions. Furthermore, Hufbauer notes that if the target country is "kind of a friend or even an ally to the country, it's more likely to have an impact."⁵⁹

⁵³ Chiedozie, *supra* note 50.

⁵⁴ *Id.*

⁵⁵ Kämpf, *supra* note 10, at 36.

⁵⁶ Gary Clyde Hufbauer, INSTITUT MONTAIGNE, (last visited Apr. 20, 2022), <https://www.institutmontaigne.org/en/experts/gary-clyde-hufbauer>.

⁵⁷ Murat Sofuoglu et al., *Have U.S. Imposed Sanctions Ever Worked?*, TRT WORLD, (Sept. 24, 2018), <https://www.trtworld.com/magazine/have-us-imposed-sanctions-ever-worked-20428>.

⁵⁸ *Id.*

⁵⁹ *Id.*

B. Effectiveness

Audrey L. Comstock, author of *Gay Rights and U.S. Foreign Aid: A Look at Nigeria and Uganda*, explores the relationship between “gay rights and U.S. foreign aid allocation” from two of the countries with the harshest laws against LGBTQ people: Nigeria and Uganda.⁶⁰ She used the 2011 U.S. policy change under the Obama Administration as a focal point to analyze “gay rights conditions and foreign aid allocation leading up to and following the policy change.”⁶¹

With Nigeria, Comstock noted that Nigerian officials made no effort to improve LGBTQ rights following the threats from the Obama Administration and other nations to cut off aid.⁶² Rather, the parliament passed the Same Sex Marriage Ban in 2011 and the then-President Goodluck Ebele Jonathan signed the Ban into law in 2014.⁶³ Due to the harsh penalties and widespread reach of the Ban, it has been dubbed the “Jail the Gays” law by activists in Nigeria.⁶⁴ Despite increased hostility through legislation and physical violence of the LGBTQ community in Nigeria, Comstock reported that the United States not only did not follow through to cut off foreign aid but actually, in some cases, the United States increased both spent and allocated aid.⁶⁵ Comstock analyzed that it is difficult to ascertain whether cutting off aid would prompt Nigeria to improve respect for LGBTQ rights; however, the United States did not follow through with its 2011 policy to link foreign aid to LGBTQ rights.⁶⁶ Comstock concluded that, in Nigeria, whether aid stayed the same or increased, conditions for the LGBTQ population worsened.⁶⁷

Regarding Uganda, in 2011, the Ugandan’s Parliamentary Affairs Committee recommended passage of the Anti-Homosexuality Bill, which called for harsh penalties for “[h]omosexual acts,” which includes a 14-year prison term for first time offenders.⁶⁸ In 2014, President Yoweri Museveni signed the Anti-Homosexuality bill into law, which both reinforced and expanded upon existing anti-LGBTQ policy.⁶⁹ Similar to Nigeria, Comstock reported that even

⁶⁰ Comstock, *supra* note 37, at 7.

⁶¹ *Id.* at 8.

⁶² *Id.* at 9.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* at 10.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 12.

⁶⁹ *Id.*

though the United States specifically vocalized their disappointment in Uganda's anti-LGBTQ laws, foreign aid continued to Uganda unabated.⁷⁰ Uganda continued its discriminatory laws in the post-2011 time period and even expanded anti-LGBT practices both domestically through laws, policies, and intimidation and internationally through its votes and actions at the United Nations.⁷¹ In both Uganda and Nigeria, foreign aid levels largely remained the same during this time while LGBTQ rights practices generally worsened.⁷²

In 2016, Princeton N. Lyman, former Senior Advisor to the President at the United States Institute of Peace, testified before the Senate Foreign Relations Subcommittee on Africa and Global Health Policy.⁷³ During his testimony, he noted that sanctions have increasingly targeted individuals for gross human rights violations rather than broad-based financial sanctions that have had a negative impact on the populations of affected countries.⁷⁴ He testified to three viewpoints on the state of U.S. imposed sanctions in Africa:

1. They are a tool, not a policy. Without a larger strategic framework and set of supporting activities, they are not likely to achieve their objectives.
2. Sanctions work best when they are supported by the international community. Individual country sanctions, by the U.S. for example, can be effective where the U.S. has particular advantages, but by and large targeted regimes or individuals will find ways around them if they are not more widely enforced.
3. Sanctions have worked best when aimed at a specific outcome, such as a peace agreement, or ending one country's support for war in a neighboring country as with Rwanda's support for rebels in the Democratic Republic of Congo (DRC). But sanctions, especially by themselves, have least effect if the objective is to pressure dictatorial regimes to give up power, or in their eyes, to commit political suicide. Only in combination with engagement and organized and effective domestic democratic pressure can sanctions help lead to transitions to democracy.⁷⁵

⁷⁰ *Id.* at 13.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Princeton N. Lyman, *U.S. Sanctions Policy in Sub-Saharan Africa: Testimony Before the Senate Foreign Relations Subcommittee on Africa and Global Health Policy*, U.S. INST. PEACE, (June 8, 2016), <https://www.usip.org/publications/2016/06/us-sanctions-policy-sub-saharan-africa>.

⁷⁴ *Id.*

⁷⁵ *Id.*

How would the scholars' analyses likely fare with the United States threat to impose sanction on Nigeria in 2021? Nigeria was one of the African countries that may lose U.S. aid due to their position on LGBTQ rights. Recalling from Hufbauer, if the target country is small or mid-size (mainly in Africa, Asia, or Latin America) and has a fair amount of conflict within the country or political turmoil within the country, sanctions have often resulted in regime changes.⁷⁶ Here, although Nigeria is indeed an African country, it is one of Africa's traditional great powers.⁷⁷ Also, aligning with Lyman's congressional testimony, President Biden is not acting alongside the "international community," rather as an individual, albeit influential, country.⁷⁸ Next, is there "political turmoil" in the country? Recently, the Chief of Defense Staff, Lucky Irabor, has assured Nigerians that 2022 will see peace returning to all "troubled parts" of the country.⁷⁹ At the same time, approximately 7,000 members of the Islamic State West Africa Province (ISWAP) and Boko Haram have surrendered in northeast Nigeria.⁸⁰ Nigeria may not be one of the smaller African countries in political turmoil that the United States can change their political structure as a result of imposed sanctions, as it relates to LGBTQ rights.

Hufbauer also noted that if the target country is "kind of a friend or even an ally to the country, it's more likely to have an impact than adversaries."⁸¹ Is Nigeria an ally or an adversary to the United States? According to the U.S. Embassy & Consulate in Nigeria, since independence from the United Kingdom in 1960, the United States established diplomatic relations with Nigeria.⁸² Today, according to the U.S. Department of State, Nigeria is "home to Africa's largest population, democracy, and economy . . . Nigeria's stability and prosperity are inseparable from that of the region."⁸³ Although this finding may suggest that Nigeria and the United States are allies, Chris Olaoluwa Ogunmodede, an associate editor with *World Politics Review*, opined that Nigeria and the United States can mutually benefit each other but there have

⁷⁶ Sofuoglu et al., *supra* note 58.

⁷⁷ *African Countries That Are More Powerful Than They Appear*, WORLD GEOSTRATEGIC INSIGHTS, (Oct. 30, 2018), <https://wgi.world/african-countries-that-are-more-powerful-than-they-appear/>.

⁷⁸ Lyman, *supra* note 74.

⁷⁹ Agency Report, *Peace Returning to Troubled Parts of Nigere – Defence Chief*, PREMIUM TIMES, (Mar. 5, 2022), <https://www.premiumtimesng.com/news/top-news/515398-peace-returning-to-troubled-parts-of-nigeria-defence-chief.html>.

⁸⁰ *Nigeria: 7,000 Boko Haram, Other Fighters Surrender in a Week*, ALJAZEERA (Mar. 24, 2022), <https://www.aljazeera.com/news/2022/3/24/nigeria-7000-boko-haram-other-terrorists-surrender-in-a-week>.

⁸¹ Sofuoglu et al., *supra* note 58.

⁸² U.S. EMBASSY & CONSULATE IN NIGERIA, (last visited Apr. 20, 2022), <https://ng.usembassy.gov/our-relationship/>.

⁸³ Office of the Spokesperson, *The United States and Nigeria: Strategic Partners*, U.S. DEPT. OF STATE, (last visited Apr. 20, 2022), <https://www.state.gov/the-united-states-and-nigeria-strategic-partners-2/>.

been gaps in the two countries' relationship that pre-date the Trump Administration, who did not visit the country during his one term in Office.⁸⁴ Olaoluwa Ogunmodede asserted that multiple U.S. presidential administrations from decades in the past have not taken U.S.-Nigerian relationships seriously.⁸⁵

Also, the United States is reliant on their relationship with Nigeria. According to the Department of State, through U.S. foreign assistance, the United States is supporting Nigeria's efforts to strengthen democratic institutions which protects Americans from terrorism and disease.⁸⁶ Nigeria and the United States have a bilateral economic relationship, security relationship, and share a membership to many international organizations.⁸⁷ Therefore, although Nigeria and the United States have formed a diplomatic relationship since 1960, it seems that the two countries are repairing a dynamic in their diplomatic relationship where the United States has not taken the bilateral relationship seriously.

So, although Nigeria may feel the impact of imposing financial sanctions, it is possible that the United States would also feel the impact of imposing financial sanctions due to their bilateral relationship. Lastly, referencing Lyman, sanctions have worked best when aimed at a specific outcome.⁸⁸ Unlike in Ghana, where the country is in the middle of passing a bill that has been labeled the "worst anti-LGBTQ bill ever,"⁸⁹ threatening or imposing sanctions without a specific outcome may not have a desired effect and creates risk of hurting people that the United States is intending to protect.

C. Disadvantages

According to Richard Hanania, author of *Ineffective, Immoral, Politically Convenient: America's Overreliance on Economic Sanctions and What to Do About It*, there is a humanitarian cost to the United States imposing financial sanctions.⁹⁰ Hanania posited that U.S. policymakers present sanctions as policies that are specifically aimed at the leaders of a regime which can be devastating

⁸⁴ Chris Olaoluwa Ogunmodede, *Biden's 'Low Bar' for Improving Ties with Nigeria*, WORLD POL. REV. (Jan. 26, 2021), <https://www.worldpoliticsreview.com/articles/29377/biden-s-low-bar-for-improving-nigeria-us-relations>.

⁸⁵ *Id.*

⁸⁶ Office of the Spokesperson, *supra* note 84.

⁸⁷ *Id.*

⁸⁸ Lyman, *supra* note 74.

⁸⁹ Stewart, *supra* note 6.

⁹⁰ Richard Hanania, *Ineffective, Immoral, Politically Convenient: America's Overreliance on Economic Sanctions and What To Do About It*, CATO INST., (Feb. 18, 2020), <https://www.cato.org/policy-analysis/ineffective-immoral-politically-convenient-americas-overreliance-economic-sanctions>.

to the population of the targeted state.⁹¹ He reported in his policy analysis that most sanctions would harm the living standards of those living in the targeted state, including hindering access to food or medicine.⁹² Countries that suffer from poor economic performance see worse health and nutritional outcomes, even when sanctions have “humanitarian exceptions” to their imposed financial sanctions.⁹³

More specifically, how are LGBTQ people affected when the United States threatens to impose sanctions? Nigerian human rights lawyer, Abubakar Marshall, reported that Biden’s foreign policy on LGBTQ rights will still be resisted because of the country’s historical norms, values, and laws in the books.⁹⁴ He noted, “Nigeria has at all time opposed homosexuality and same sex has for long been a criminal offence that attracts capital punishment in northern states that have promulgated the shariah penal code law.”⁹⁵ Furthermore, he stated that although the issue of LGBTQ rights was captured in international law, the mention of LGBTQ rights in Nigeria’s law puts the community in great danger.⁹⁶ Years prior, Cheikh Traore, a binational Mauritanian and Nigerian consultant,⁹⁷ warned, “If LGBT people are perceived as pushing for sanctions, it can increase the risk of stigmatization; the media could say donors are going to cut aid because of gay people.”⁹⁸ Comstock also reported that, in 2011, as legislative discrimination continued in Nigeria, so did violence and other discrimination against the LGBTQ community.⁹⁹

According to Kämpf, activists throughout Africa made several statements that support the argument that the mere threat to cut off aid due to human rights violations related to sexual orientation and gender identity adversely affects the LGBTQ community.¹⁰⁰ The effects include alienation from civil society, negative impacts on health and education-related organizations (similar to Hanania’s argument), and receiving blame from the government about the lack of funding.¹⁰¹ Lastly, Kämpf reported that cuts in foreign aid resulting from the

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Wondrous Nnaemeka, *How Biden’s Plan to Promote LGBTQ Rights Will Affect Nigeria*, THE WHISTLER, (Feb. 20, 2021), <https://thewhistler.ng/how-bidens-plan-to-promote-lgbtq-rights-will-affect-nigeria/>.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Cheikh Eteka Traore, LINKEDIN, <https://www.linkedin.com/in/cheikh-eteka-traore-6b216252/?originalSubdomain=gn>.

⁹⁸ Rogers, *supra* note 2.

⁹⁹ Comstock, *supra* note 37.

¹⁰⁰ Kämpf, *supra* note 10, at 37.

¹⁰¹ *Id.*

lack of support of LGBTQ rights furthers the narrative that human rights relating to sexual orientation and gender identity is a Western imposition about “special rights”¹⁰²—ergo homocapitalism.

A specific example of a country where LGBTQ people felt the impact of the threats to impose financial sanctions from the United States is Liberia. In December 2011, following then-Secretary of State Hillary R. Clinton’s landmark speech at the United Nations Human Rights Council that “gay rights are human rights” and that the United States would “vow to ensure that our foreign assistance promotes the protection of LGBT rights,”¹⁰³ newspapers in Liberia were condemning the policy and “homosexuality” in general.¹⁰⁴ On January 19, 2012, three days after Clinton attended the second-term inauguration of then-Liberian President Ellen Johnson Sirleaf, her press secretary announced that she would veto any legislation allowing same-sex marriage or legalizing “homosexuality.”¹⁰⁵ In the next month, a Liberian lawmaker introduced legislation banning same-sex marriage as a first-degree felony, with a prison sentence of up to 10 years.¹⁰⁶ That same month, another legislator introduced a bill that would make “same-sex sexual practices” a second-degree felony, carrying up to five years in prison.¹⁰⁷ The bill would make it a crime to “purposefully engage in acts that arouses or tend to arouse another person of the same gender to have sexual intercourse.”¹⁰⁸

Liberia’s backlash was remarkable as Liberia is known to be a close ally to the United States that rarely disagrees, but also because unprecedented local attention was brought to the issue of LGBTQ rights which resulted in the responses in Liberia.¹⁰⁹ Even though Liberia has a law restricting same-sex sexual activity, at the time, voluntary sodomy was a misdemeanor punishable by up to one year in prison.¹¹⁰ However, the State Department Human Rights Report noted that “no convictions under the law occurred in recent years,” and that, in 2010, there were “no reported instances of violence based on sexual

¹⁰² *Id.* at 28.

¹⁰³ Robert Corey-Boulet, *The Obama Administration’s Bold But Risky Plan to Make Africa Gay-Friendly*, *The Atlantic*, (Mar. 7, 2012), <https://www.theatlantic.com/international/archive/2012/03/the-obama-administrations-bold-but-risky-plan-to-make-africa-gay-friendly/254086/>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

orientation.”¹¹¹ According to members of the LGBTQ community in Liberia, for the most part, LGBTQ people were able to live in peace—although unaccepted—unbothered and underground.¹¹² Not anymore. According to a 26-year-old Liberian gay man:

[A]t first, people were so free with everything, but now people are holding back on their dress code. . . . Say there’s five people, and everybody wants to go out. Someone will decide that we can’t go together, because there’s a huge possibility that one of us among the group is well known to be a gay. Everybody will carry their own burden. Because some people walk in a feminine way, some people dress in a feminine way. So, we say, “Oh, we can’t go together, we’ll spread out.”¹¹³

Today, Liberian law still criminalizes same-sex sexual relations for both men and women, pursuant to Article 14.74.¹¹⁴ The offense is punishable with up to one year imprisonment.¹¹⁵ Graeme Reid, South African scholar and activist who is the director of the LGBT Rights Program at Human Rights Watch,¹¹⁶ also suggested that misplaced fears about cuts to foreign assistance could harm the effort to promote LGBTQ rights.¹¹⁷ Reid noted:

It’s a very fraught issue, because of course cutting general development aid on the basis of a vulnerable and unpopular minority can have consequences for that minority. . . . They can be made more stigmatized and more vulnerable because suddenly it seems like they’re bringing even more difficulty to the lives of the citizens of their country by being the cause of a cut in aid.¹¹⁸

V. CASE STUDY: BOTSWANA

A. *Recent Development of LGBTQ Rights in Africa*

This case study will focus on Botswana because the country has recently decriminalized “homosexuality,” maintained the courts holding on appeal, is welcoming a new presidential administration which actively aims to protect the

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Liberia*, HUM. DIGNITY TRUST, (last visited Apr. 20, 2022), <https://www.humandignitytrust.org/country-profile/liberia/>.

¹¹⁵ *Id.*

¹¹⁶ *Graeme Reid*, HUM. RTS. WATCH, (last visited Apr. 20, 2022), <https://www.hrw.org/about/people/grae-me-reid#>.

¹¹⁷ Corey-Boulet, *supra* note 104.

¹¹⁸ *Id.*

rights of the LGBTQ community, and the United States did not threaten to impose financial sanctions on the country. In fact, the United States used diplomatic efforts to engage with key stakeholders.

B. History of LGBTQ Rights in Botswana

Before gaining independence in 1966, Botswana was a part of a British protectorate called Bechuanaland, which had a legacy of applying anti-LGBTQ laws due to British imperialism.¹¹⁹ In particular, Article 164 of the penal code punished “carnal knowledge against the order of nature” with up to seven years in prison,¹²⁰ and Article 176 punished “indecent practices between persons” with an unspecified sentence.¹²¹ In 2003, the Court of Appeal upheld a 1995 conviction under Article 164.¹²² However, in 2014, the High Court ruled that the registrar of nongovernmental organizations had erred in 2012 in refusing to register the group Lesbians, Gays, Bisexuals of Botswana (LEGABIBO).¹²³ Two years later, the Court of Appeal upheld the ruling stating that “fundamental freedoms are to be enjoyed by every member of every class of society.”¹²⁴ That same year, Botswana deported an American pastor who had stated that gay people should be “stoned to death.”¹²⁵ The High Court ruled in 2017 that a transgender man had the right to change his name and gender marker on his official documents, noting that failure to do so would violate his right to privacy.¹²⁶

How did Botswana progress regarding LGBTQ rights? In 2011, three years after he left office, former President Festus Mogae began speaking out in support of decriminalizing of same-sex sexual activity.¹²⁷ Mogae was interviewed by *Africa Renewal*, a newsletter published by the Africa Section of the United Nations Department of Public Information, in 2016. When asked to respond to the former Zimbabwean President, Robert Mugabe, and his negative convictions about the LGBTQ community during his 2015 UN address, Mogae responded:

¹¹⁹ *Botswana: High Court Strikes Down Sodomy Laws*, HUM. RTS. WATCH, (June 11, 2019), <https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws>.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Michael Lavers, *Former Botswana President Speaks in Support of LGBT Rights*, WASHINGTON BLAZE, (Jan. 21, 2016), <https://www.washingtonblade.com/2016/01/21/former-botswana-president-speaks-in-support-of-lgbt-rights/>.

While I admit that the West often push their agendas on Africa, which we must be wary of, I also believe that we must, as Africans, admit that the world is changing and we must move with the times. This means often abandoning some of our long-held convictions about life, if the need arises. In my long interaction with LGBT groups and extensive research, I have come to the realisation that we are limited in our knowledge and must be open to new discoveries. I have been converted; I used to hold the same beliefs as my counterparts. President Mugabe has said that he hates homosexuals and is on record as saying they are worse than pigs and dogs. That is still his position. Leadership is not always about you, it is about people and often circumstances. I call upon African leaders to open up to second generation rights.¹²⁸

C. Decriminalization in Botswana

On June 11, 2019, the High Court in Botswana held that laws criminalizing same-sex sexual relations are unconstitutional in a unanimous decision in *Letsweletse Motshidiemang v. State*.¹²⁹ Letsweletse Motshidiemang, a gay Batswanan man, challenged the provisions in the Botswana Penal Code which criminalized sodomy.¹³⁰ Motshidiemang argued that the provisions meant he was “prohibited from expressing the greatest emotion of love, through the act of enjoying sexual intercourse with another consenting adult male.”¹³¹ Moshidiemang challenged sections 164, 165 and 167 of the Penal Code.¹³² Section 164 stated:

Any person who— (a) has carnal knowledge of any person against the order of nature; (b) [not relevant] or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.¹³³

Section 165 stated: “Any person who attempts to commit any of the offences specified in section 164 is guilty of an offence and is liable to imprisonment term not exceeding five years.”¹³⁴ Section 167 stated:

¹²⁸ Tefo Pheage, *Good Leadership Is About People*, UNITED NATIONS AFRICAN RENEWAL J. (last visited Apr. 20, 2022), <https://www.un.org/africarenewal/web-features/good-leadership-about-people—festus-mogae>.

¹²⁹ *Motshidiemang v. Attorney General*, GLOB. FREEDOM OF EXPRESSION, (last visited Feb. 27, 2023), <https://globalfreedomofexpression.columbia.edu/cases/motshidiemang-v-attorney-general/>.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

Any person who, whether in public or private, commits any act of gross indecency with another person, or procures another person to commit any act of gross indecency with him or her, or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or private, is guilty of an offence.¹³⁵

Motshidiemang argued that the provisions violated his rights to liberty, dignity, and privacy and the right to be free from discrimination, as protected by the Constitution of Botswana.¹³⁶

The High Court held that Botswana's "sodomy laws" violated privacy, liberty, and dignity; were discriminatory, and served no public interest."¹³⁷ In *Motshidiemang*, while the State argued that "the law should reflect on the values of society," petitioners countered that these laws limit access to social services, infringe upon human dignity, and constitute an unjustified violation of non-discrimination principles.¹³⁸ In 2021, Botswana's Court of Appeal upheld the 2019 ruling of the High Court.¹³⁹ Here, the State argued that the penal code outlawed gay sex and there was no evidence that people's attitude towards homosexuality had changed.¹⁴⁰ Reading the unanimous decision by five judges, Court of Appeal Judge President Ian Kirby held that the criminalization of same-sex sexual activities of the LGBTQ community violated their constitutional rights to dignity, liberty, privacy, and equality.¹⁴¹ The same year that the High Court ruled on *Motshidiemang*, Botswana elected its fifth president, Mokgweetsi Masisi.¹⁴² In 2022, President Masisi met with representatives from LEGABIBO, a prominent LGBTQ rights group based in Botswana.¹⁴³ During the meeting, Masisi admitted that his appeal of the court ruling that overturned Botswana's "anti-homosexuality law" was motivated by political concerns rather than

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Botswana: High Court Strikes Down Sodomy Laws*, *supra* note 120.

¹³⁸ *Id.*

¹³⁹ Brian Benza, *Botswana Appeals Court Upholds Ruling That Decriminalised Gay Sex*, REUTERS (Nov. 29, 2021), <https://www.reuters.com/world/africa/botswana-appeals-court-upholds-ruling-that-decriminalised-gay-sex-2021-11-29/>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Brian Benza, *Botswana's Masisi Retains Presidency as BDP Wins Elections*, REUTERS (Oct. 25, 2019 at 2:17 AM), <https://www.reuters.com/article/us-botswana-election/botswanas-masisi-retains-presidency-as-bdp-wins-election-idUSKBN1X40KS>.

¹⁴³ Colin Stewart, *Botswana's President Meets LGBT Activists, Supports Their Work*, ERASING 76 CRIMES, (Jan. 29, 2022 at 8:20 AM), <https://76crimes.com/2022/01/29/botswanas-president-meets-lgbt-activists-supports-their-work/>.

personal animosity.¹⁴⁴ At the conclusion of the meeting, he vowed to protect LGBTQ rights and to fully implement the 2019 ruling.¹⁴⁵

D. Analysis

The United States did not have a central role in the decriminalization of “homosexuality” in Botswana, nor did the United States threaten to impose financial sanctions against Botswana. However, in 2016, the U.S. Special Envoy for the Human Rights of Lesbians, Gays, Bisexual, Transgender, and Intersex (LGBTI) Persons visited local grassroots organizations, which shows that the Global North can and should work to support activists and communities behind the scenes and let local grassroots communities lead the way towards the advancement of their rights.

In Botswana, in 2016, the United States Embassy in Gaborone stated that it “was pleased to welcome the Special Envoy for the Human Rights of Lesbians, Gays, Bisexual, Transgender, and Intersex (LGBTI) Persons Randy Berry to Botswana January 21 and 22 [2016].”¹⁴⁶ During the visit, the Embassy posted on its website that “during his visit he interacted with civil society representatives, government leaders, and members of the media to better understand the legal and social context for LGBTI individuals in Botswana.”¹⁴⁷ Although Botswana’s Ministry of Foreign Affairs and International Cooperation spokesperson shared “that the Ministry [was] not aware of the visit by U.S. Special Envoy for the Human Rights of Lesbians, Gays, Bisexual, Transgender, and Intersex (LGBTI) Persons Botswana is open to receive visitors with open arms regardless of their position on any issue.”¹⁴⁸

The United States’ involvement did not involve direct confrontation with the nation’s leader, as the administration noted that the Botswana Government is waiting for the courts to apply and uphold the law before making comment on LGBTQ issues. This analysis is not to suggest that the engagement of the United States played a central role in the holdings of this case; however, the point is to highlight the approach of U.S. diplomacy coupled with local activism in Botswana through the LEGABIBO organization is more on the side of activists

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Plot Thickens in Botswana-America Diplomatic Relations Over Gay Rights*, SUNDAY STANDARD (Jan. 24, 2016), <https://www.sundaystandard.info/plot-thickens-in-botswana-america-diplomatic-relations-over-gay-rights/>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

in the country leading the charge with U.S. diplomatic efforts supporting the grassroots activism.

VI. RECOMMENDATIONS

In the United States, although the Obama Administration became the first administration to publicly connect LGBTQ rights to foreign aid,¹⁴⁹ it did so, in part, through threatening to impose sanctions on African nations that do not promote LGBTQ rights. Comstock's research concluded that the United States does not follow through with their threats to impose sanctions—the United States actually maintains, or in some cases, increases funding.¹⁵⁰ Even the mere threat of cutting of foreign aid impacts the people that they are purporting to protect. As a result, this paper suggests the steps laid out below.

A. *The Future of United States Imposing LGBTQ-Related Sanctions*

Recalling Hufbauer's analysis, the Biden Administration should consider the size of the country and the status of the diplomatic relationship between United States and that country before planning to threaten or impose financial sanctions.¹⁵¹ As Comstock concluded in her study, *Gay Rights and U.S. Foreign Aid: A Look at Nigeria and Uganda*, foreign aid levels largely remained the same during the time period while LGBTQ rights practices generally worsened.¹⁵² Comstock reasons that foreign aid allocation has little to no correlation with human rights practices.¹⁵³ She considered that part of the difficulty in assessing the relationship between U.S. foreign assistance and human rights has been the disconnect between presidential rhetoric on human rights and actual foreign aid allocation. Just like during the Obama Administration, in 2021, President Biden faced resistance from Nigerians upon the release of his memorandum and its position with foreign assistance.¹⁵⁴ How the United States engages in rhetoric about LGBTQ rights, particularly via threatening or imposing financial sanctions, is important for the Administration to consider.

Additionally, if the Biden Administration finds it appropriate to threaten or impose financial sanctions, how should the administration go about it without

¹⁴⁹ Comstock, *supra* note 37.

¹⁵⁰ *Id.* at 1.

¹⁵¹ Sofuoglu et al., *supra* note 58.

¹⁵² Comstock, *supra* note 37, at 1.

¹⁵³ *Id.* at 2.

¹⁵⁴ Nick Duffy, *Joe Biden Invited To Nigeria To 'Marry A Man As His Second Wife' By Raging Homophobic Bishop*, PINK NEWS (Feb. 13, 2021), <https://www.pinknews.co.uk/2021/02/13/jode-biden-nigeria-gay-marriage-bishop-emmah-isong-homophobia-lgbt-memo/>.

great risk of hurting the people the administration vows to protect? The Uganda Civil Society Organization coalition asks that nations justify aid cuts by referring to the full range of human violations in Uganda; not just violations as it relates to sexual orientation and gender identity.¹⁵⁵ The civil society organization also recommends that the donor country or entity exercises their pressure behind closed doors so that the public response in Uganda is not outrage at the “Western imposition.”¹⁵⁶

B. Invest in Meaningful, Localized Relationships

The Biden Administration should work closely with grassroots organizations and supporting political leaders who are planning to implement change. For example, Dorathy Aken’ova is a presidential aspirant in Nigeria in 2023.¹⁵⁷ She is the first presidential aspirant in Nigeria to speak positively about the human rights protections of the LGBTQ country in Nigeria, since the implementation of The Same-Sex Marriage (Prohibition) Act in 2014.¹⁵⁸ The United States should ethically support her platform so that LGBTQ rights can be possible through the elected leadership.

The Biden Administration should also support Botswana and the country could be influential to other African nations in its journey towards LGBTQ rights. Botswana was never a colony with almost no white settlement allowed; the country is widely respected throughout the continent.¹⁵⁹ The Biden Administration should take lead from the Botswana Government and LGBTQ organizations such as LEGABIBO. It is a useful signal that President Masisi is outwardly supporting and meeting with LGBTQ rights organizations already.

The Biden Administration can invest in meaningful, localized relationships by “establish[ing] and maintain[ing] communication channels with activists in partner countries.”¹⁶⁰ However, this relationship needs to be treated with discretion and care because oftentimes prominent LGBTQ leaders are under threat of assault or must go into hiding.¹⁶¹ Also, LGBTQ activists will naturally have competing ideas on the issue of how to strategically support LGBTQ rights

¹⁵⁵ Kämpf, *supra* note 10, at 37.

¹⁵⁶ *Id.*

¹⁵⁷ Mike Daemon, *It’s Time to Review Nigeria’s Anti-Gay, Presidential Hopeful Says*, ERASING 76 CRIMES (Feb. 3, 2022 at 2:39 PM), <https://76crimes.com/2022/02/03/its-time-to-review-nigerias-anti-gay-laws-presidential-hopeful-says/>.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Kämpf, *supra* note 10, at 37.

¹⁶¹ *Id.*

in their country.¹⁶² For example, in late 2021, President Joe Biden hosted the same Kenyan President Kenyatta at the White House from the Obama visit in 2015.¹⁶³ Even though some activists may not suggest that President Biden bring up LGBTQ issues during their first meeting at the White House, other activists may feel otherwise. For instance, prominent LGBTQ rights activist, Dennis Nzioka, posted on his Facebook account that President Biden should “[a]sk [President Kenyatta] about the [LGBTQ community].”¹⁶⁴ Conversely, activist, George Barasa, noted on the same matter that “[y]ou’d need Kenyan gays in diaspora to push for that.”¹⁶⁵

Investing in meaningful relationships consistently could be helpful when the United States may need direction from local activists following legislation of anti-LGBTQ laws in African nations. For example, in Ghana, where same-sex sexual conduct is already a crime, a leaked version of the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill seeks to criminalize the LGBTQ community, including allies.¹⁶⁶ On the ground, LGBT+ Rights Ghana, an organization formed on July 13, 2018, is an active social platform consisting of LGBTQ and allied activists that uses social media to create awareness on LGBTQ issues in Ghana.¹⁶⁷ The Biden Administration, if it is not already, should be building relationships with local LGBTQ activists and organizations that can guide his administration on how to effectively respond to human rights violations in their country or, more pointedly, whether it is safe and effective to threaten or impose financial sanctions.¹⁶⁸

C. *Propose to Raise the Budget on Foreign Assistance*

Less than one percent of the U.S. federal budget is allocated to foreign aid.¹⁶⁹ Legislating to increase the foreign assistance budget can be a tangible, indirect, and effective measure of assisting LGBTQ organizations in Africa and reach bipartisan support. During the Trump administration, Congress demonstrated

¹⁶² *Id.*

¹⁶³ Kikonyogo Kivumbi, *Activists Want Gay Rights on the Agenda as Biden Meets Kenya’s President*, ERASING 76 CRIMES (Oct. 13, 2021 at 3:48 PM), <https://76crimes.com/2021/10/13/activists-want-gay-rights-on-agenda-as-biden-meets-kenyas-president/>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Dan Avery, *Ghana Poised Vote ‘Worst Anti-LGBTQ Bill Ever’ Advocates Warn*, NBC NEWS (Jul. 29, 2021 at 12:04 PM), <https://www.nbcnews.com/nbc-out/out-news/ghana-poised-vote-worst-anti-lgbtq-bill-ever-advocates-warn-rcna1545>.

¹⁶⁷ *Our Work*, LGBT RIGHTS GHANA, (last visited Apr. 20, 2022), <https://www.lgbtrightsgh.org/our-work/>.

¹⁶⁸ If interested in donating to LGBT+ Rights Ghana, please consider viewing their website at: <https://www.lgbtrightsgh.org/donate/>.

¹⁶⁹ Ingram, *supra* note 32.

bipartisan support to reject the Trump Administration’s proposal to cut the U.S. international affairs budget by one-third.¹⁷⁰ Increasing the budget is possible as foreign assistance seems to have bipartisan support.¹⁷¹

Does the foreign assistance need to be expressly tied to the advancement of LGBTQ rights in a particular African country? According to Kämpf, the strategy of the Global Fund, an international financing and partnership organization that invests \$4 billion USD annually to defeat HIV, TB and malaria,¹⁷² is to heavily fund HIV/AIDS programs because LGBTQ people use those resources for health and education, and the funding of these programs does not necessarily amount to human rights promotions that would receive pushback from a country’s Parliament.¹⁷³ However, in doing so, Kämpf warns that donor countries or entities have not been as integrated in strategic funding and support efforts for transgender people or women who have sex with women.¹⁷⁴

Also, men who have sex with men are not necessarily protected through health service programs that are internationally funded. According to the authors of *Anti-homosexual legislation and HIV-related stigma in African nations: what has been the role of PEPFAR?*, widely held negative beliefs about gay men and men who have sex with men in Africa, even among the healthcare workers and academic associated with HIV care and research, have restricted the depths of prevention, treatment, and care for African men who have sex with men.¹⁷⁵ In fact, in 2021, undercover reporters shared that staff at U.S.- and internationally-funded healthcare clinics in Kenya, Tanzania, and Uganda were offering secret “conversion therapy” sessions which attempt to “cure” LGBTQ people by turning them straight.¹⁷⁶ These clinics include: LVCT Health, an HIV and AIDS care organization in Nairobi, Kenya, which reportedly has an \$8,000,000 grant from PEPFAR; Dar es Salaam, a healthcare clinic in Mwenge, Tanzania; an HIV clinic at Kampala’s Mulago Hospital, Uganda’s largest public hospital, received a \$420,000 USAID grants in 2019; and three hospitals in the Uganda Catholic Medical Bureau, which reportedly received more than \$1,000,000 from USAID

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² THE GLOBAL FUND (last visited Apr. 20, 2022), <https://www.theglobalfund.org/en/>.

¹⁷³ Kämpf, *supra* note 10, at 49.

¹⁷⁴ *Id.* at 40.

¹⁷⁵ Amy Hagopian et al., *Anti-Homosexual Legislation and HIV-Related Stigma in African Nations: What Has Been The Role of PEPFAR?*, GLOB. HEALTH ACTION 2017, 10 (1), 1306391, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5496073/>.

¹⁷⁶ Kikonyogo Kivumbi, *U.S. Funded African Clinics Offer Secret Anti-Gay ‘Conversion Therapy’*, ERASING 76 CRIMES (Jun. 30, 2021 at 10:27 AM), <https://76crimes.com/2021/06/30/u-s-funded-african-clinics-offer-secret-anti-gay-conversion-therapy/>.

beginning in 2019.¹⁷⁷ The authors of *Anti-homosexual legislation and HIV-related stigma in African nations: what has been the role of PEPFAR?* concluded that decriminalization is the only mid-term goal in the public health agenda; the focus must also highlight the need to eliminate discrimination of the LGBTQ community in employment, housing, and other social determinants of health.¹⁷⁸ It is important to note that many of these programs are funded by the United States.

CONCLUSION

According to Kämpf's study sponsored by The German Institute for Human Rights, financial sanctions are "not per se unsuitable for effecting change. But they certainly are not panacea either."¹⁷⁹ Cuts in foreign aid generally reinforces the power asymmetries between the donor country and the country receiving foreign assistance.¹⁸⁰ On one hand, activists do not unequivocally rule out imposing financial sanctions as one activist reported that his government will not reform his country's laws without some form of pressure.¹⁸¹ On the other hand, if threatening or imposing financial sanctions, activists largely request that the donor countries or entities respect the agency of the country and consult with the grassroots activists before taking on decisions to threaten to impose financial sanctions in order to scale effectiveness.

In the meantime, a *supplemental* solution to promote LGBTQ rights abroad could be to expand LGBTQ asylum in the United States. According to the Williams Institute, 17.9% of asylum seekers undergoing a credible/reasonable fear interview by the United States Citizenship and Immigration Services from 2007-2017 were from Africa.¹⁸² Yet, according to the American Bar Association Journal, African LGBTQ immigrants face unique challenges while navigating the asylum process in the United States.¹⁸³ In particular, approximately 3,000 African LGBTQ immigrations have created a tent city in Tapachula, a city that borders Guatemala and Mexico, while they wait for visas to proceed north to the

¹⁷⁷ *Id.*

¹⁷⁸ Hagopian et al., *supra* note 176.

¹⁷⁹ Kämpf, *supra* note 10, at 36.

¹⁸⁰ *Id.* at 37.

¹⁸¹ *Id.*

¹⁸² Ari Shaw et. al, *LGBT Asylum Claims in the United States*, WILLIAMS INST., March 2021, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Asylum-LGBT-Claims-Mar-2021.pdf>.

¹⁸³ Cassie Chew, *Persecuted and Marginalized: Black LGBTQ Immigrants Face Unique Challenges*, AM. BAR ASS'N J. (December 9, 2020 at 10:15 AM), <https://www.abajournal.com/web/article/persecuted-and-marginalized-Black-LGBTQ-migrants-face-unique-challenges>.

U.S.-Mexico border.¹⁸⁴ As it stands, immigrants from North and South America are issuing enough visas to reduce their backlogs of applicants, while immigrants from Africa have seen the largest decline at a reduction rate of thirty-three percent from Fiscal Year 2019 to Fiscal Year 2022.¹⁸⁵ With all things considered, it is crucial not to leave out local members of the LGBTQ community when planning for foreign assistance allocation; establishing meaningful, localized relationships; expanding asylum practices and policies; and, to the theme of this paper, when determining whether threatening to impose financial sanctions is an effective response from the United States in the interest of protecting the lives of the LGBTQ community in Africa.

¹⁸⁴ *Id.*

¹⁸⁵ David Bier, *Africans Face Steepest Decline in Immigrant Visas Under Biden*, CATO INST. (Apr. 5, 2022 at 12:10 PM), <https://www.cato.org/blog/africans-face-steepest-decline-immigrant-visas-under-biden>.