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Daniel Englander

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PROTECTING THE HUMAN RIGHTS OF LGBT PEOPLE IN UGANDA IN THE WAKE OF UGANDA'S "ANTI HOMOSEXUALITY BILL, 2009"

*"The [Anti-homosexuality Bill] is a bullet, and whether or not it's made law, it's already been fired."*¹

INTRODUCTION

A bill pending before the Ugandan Parliament from October 2009 to May 2011 sought to punish anyone who engages in "homosexuality" with life imprisonment and prescribed the death penalty for a variety of activities deemed "aggravated homosexuality."² Many commentators saw the "Anti Homosexuality Bill, 2009" ("Bill" or "Anti-homosexuality Bill") as the most pernicious legislative proposal aimed at gays and lesbians anywhere in the world³ and feared the death penalty provision could signal a "looming gay genocide" in Uganda.⁴ The Bill was popular among voters in Uganda⁵ and had "near-unanimous support in Parliament,"⁶ though the Bill expired when it did not come to a vote before the close of the Eighth Parliament in 2011.⁷ Ugandan

¹ Jeff Sharlet, *Dangerous Liaisons*, ADVOCATE, Sept. 2010, at 36 [hereinafter Sharlet, *Dangerous Liaisons*]; see also Jeff Sharlet, *Straight Man's Burden: The American Roots of Uganda's Anti-gay Persecutions*, HARPER'S, Sept. 2010, at 36 [hereinafter Sharlet, *Straight Man's Burden*].

² A Bill for an Act Entitled the Anti Homosexuality Act, 2009, Bill Supp. No. 13, CII Uganda Gazette No. 47 (Sept. 25, 2009) §§ 2(2), 3(2) [hereinafter Anti-homosexuality Bill].

³ See INT'L LESBIAN, GAY, BISEXUAL, TRANS & INTERSEX ASS'N, STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS PROHIBITING SAME SEX ACTIVITY BETWEEN CONSENTING ADULTS 7 (Daniel Ottosson ed., 2010) [hereinafter STATE-SPONSORED HOMOPHOBIA (2010)], available at http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2010.pdf; David W. Austin, Paul E. Johnson & Mark E. Wojcik, *Sexual Orientation and Gender Identity*, 44 INT'L LAW. 547, 553 (2010).

⁴ Because "aggravated homosexuality" is triggered when a person commits "homosexuality" more than once—as well as in certain other circumstances—allowing for the death penalty is tantamount to genocide because gay people, by definition, are likely to be "serial offenders" under Section 3(f) of the Bill and could thus be executed if the Bill becomes law. See Anti-homosexuality Bill § 3(f). For use of the term "looming gay genocide," see Rick Warren and Uganda's Looming Gay Genocide, ATLANTIC: DAILY DISH (Dec. 7, 2009, 8:29 AM), http://andrewsullivan.theatlantic.com/the_daily_dish/2009/12/rick-warren-and-ugandas-looming-gay-genocide.html.

⁵ Sharlet, *Straight Man's Burden*, *supra* note 1, at 40.

⁶ *Id.* at 36.

⁷ Lucas Grindley, "Kill the Gays" Bill Is Back and Moving Faster than Before, ADVOCATE, (July 29, 2011, 2:05 PM), http://www.advocate.com/News/Daily_News/2011/07/29/Kill_The_Gays_Bill_Is_Back_And_Moving_Faster_Than_Before.

legislators have vowed to reintroduce the Bill, or a similar version of it, in the Ninth Parliament.⁸

Though tabled, the effects of the Bill's introduction still linger. In seeking to imprison or execute the half-million lesbian, gay, bisexual, and transgendered ("LGBT") people in Uganda,⁹ the Bill sparked a nationwide flare of homophobia,¹⁰ where citizens, politicians, and the media have branded homosexuals as "un-African," as threats to children, and as less than human.¹¹ Since David Bahati introduced the Bill on October 14, 2009, violence against LGBT people has escalated, including "beatings, disappearances, 'corrective' rapes of lesbians, . . . vigilante squads and church crusades, [and] preachers calling out 'homos' in their own pews."¹² Furthermore, media in Uganda have published lists, including names and addresses, of suspected homosexuals.¹³ These people have been attacked, humiliated, and forced into hiding.¹⁴ In January 2011, David Kato, a prominent LGBT activist who had been outed as homosexual in a Ugandan tabloid, was bludgeoned to death in his own home—an incident that sparked international outrage.¹⁵ Many LGBT people, and those suspected of being LGBT, are trying to emigrate from "this deadly place."¹⁶

⁸ *Id.*

⁹ Adriaan Nel, *Enacting the Ugandan Anti-homosexuality Bill: Implications for the HIV & AIDS Crisis*, CONSULTANCY AFR. INTELLIGENCE, http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=356&Itemid=193 (last visited Oct. 7, 2011).

¹⁰ Godfrey Olukya & Jason Straziuso, *Gays in Uganda Say They're Living in Fear*, MSNBC.COM (last updated Oct. 19, 2010, 1:23 PM), http://www.msnbc.msn.com/id/39742685/ns/world_news-africa/ ("More than 20 homosexuals have been attacked over the last year in Uganda, and an additional 17 have been arrested and are in prison, said Frank Mugisha, the chairman of Sexual Minorities Uganda. Those numbers are up from the same period two years ago, when about 10 homosexuals were attacked, he said.").

¹¹ Dana Hughes, *Africa's Culture War: The Fight over Uganda's Anti-gay Bill*, ABC NEWS (Dec. 14, 2009, 4:34 PM), <http://blogs.abcnews.com/theworldnewser/2009/12/africas-culture-war-the-fight-over-ugandas-antigay-bill.html>; see also *Attacks Reported on Ugandans Newspaper 'Outed' as Gay*, BBC NEWS (Oct. 22, 2010, 11:48 PM), <http://www.bbc.co.uk/news/world-africa-11608241> [hereinafter BBC NEWS]; Xan Rice, *Uganda Considers Death Sentence for Gay Sex in Bill Before Parliament*, GUARDIAN (Nov. 29, 2009), <http://www.guardian.co.uk/world/2009/nov/29/uganda-death-sentence-gay-sex> (quoting James Nsaba Buturo, Uganda's minister for ethics and integrity, as saying, "We are talking about anal sex. Not even animals do that. . . . We believe there are limits to human rights.").

¹² Sharlet, *Straight Man's Burden*, *supra* note 1, at 36.

¹³ BBC NEWS, *supra* note 11.

¹⁴ *Id.*

¹⁵ Jeffrey Gettleman, *Ugandan Who Spoke Up for Gays Is Beaten to Death*, N.Y. TIMES, Jan. 27, 2011, at A4.

¹⁶ Jody May-Chang, *Gays Attacked in Uganda After Mag Publishes Info: American Evangelicals Complicit in the Anti-gay Atmosphere*, RELIGION DISPATCHES (Nov. 21, 2010), http://www.religiondispatches.org/archive/sexandgender/3748/gays_attacked_in_uganda_after_mag_publishes_info. Adding insult to injury regarding LGBT Ugandans' wishes to leave Uganda, the Bill would also criminalize homosexual acts of Ugandan citizens outside of Ugandan borders and provides for extradition of such people to face charges in

Under the permissive international legal system, no binding norms explicitly forbid criminalizing homosexuality—even to the extent imagined by the Bill. Indeed, international law has permitted Uganda to criminalize homosexuality for decades.¹⁷ Though this Comment argues the current Ugandan law and the proposed regime violate international instruments that authoritative bodies have interpreted as protecting the rights of sexual minorities,¹⁸ Uganda has rejected such post-ratification interpretations and cannot be bound by them.¹⁹ Further, protests by Uganda and other nations have successfully stalled the formation of a global custom decriminalizing homosexuality.²⁰ And finally, even if there were binding international law prohibiting such a *statute*, no binding international law prohibits the *proposal* of such legislation.²¹ Therefore, the sovereign state of Uganda has broad leeway to propose such discriminatory legislation and keep its current laws without being subject to formal punishments from the international community under binding international law.

This Comment seeks to begin the conversation on legal solutions to vindicate the rights of LGBT people in Uganda in the wake of the Anti-homosexuality Bill. Part I explains the provisions of the current Ugandan law

Uganda. Anti-homosexuality Bill §§ 16, 17. The extradition problem is discussed further in Parts III and IV, *infra*.

¹⁷ See Penal Code Act of 1950 (Uganda), ch. 120, §§ 145, 148 [hereinafter Ugandan Penal Code], available at http://www.ulii.org/ug/legis/consol_act/pca195087.

¹⁸ E.g. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976). For further discussion of those treaties, see Part II.C, *infra*. Others have argued that the Bill violates other instruments, like the United Nations (“UN”) Declaration on Human Rights and the African Charter, but authoritative bodies have not found any nondiscrimination provisions in those conventions that explicitly apply to sexual or gender minorities. This argument may be moot, however; if the Bill were to pass, it requires that Uganda revoke its treaty obligations that conflict with the goals of the Bill. Anti-homosexuality Bill § 18(1) (“Any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in this Act, are null and void to the extent of their inconsistency.”).

¹⁹ See Vienna Convention on the Law of Treaties art. 31, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331 (entered into force Jan. 27, 1980); UN Declaration on Sexual Orientation and Gender Identity: Response to SOGI Human Rights Statement, Read by Syria to the UN General Assembly, U.N. Doc. A/60/PV.73 (2008) [hereinafter Response to SOGI Human Rights Statement].

²⁰ Michael O’Flaherty & John Fisher, *Sexual Orientation, Gender Identity and International Human Rights Law: Contextualizing the Yogyakarta Principles*, 8 HUM. RTS. L. REV. 207, 227–28 (2008) (“Notwithstanding the extent to which applicable legal standards have been clarified and articulated, the response of States and intergovernmental organizations to human rights violations based on sexual orientation or gender identity has been equivocal and inconsistent.”).

²¹ Creating formal mechanisms in international law for removing legislative proposals would raise serious freedom of speech and political autonomy questions.

and the Bill itself. Part I also situates the Anti-homosexuality Bill in the context of recent developments in international and foreign human rights norms and laws regarding discrimination based on sexual orientation and gender identity. Part II further explores the background of the Bill's proposal by asking how the Ugandan, regional, and international legal systems have failed to protect the basic human rights of LGBT people in Uganda. Part II also explains how such a legislative proposal can survive within current human rights regimes.

Because Parts I and II identify a complex problem that has not received much scholarly attention, Part III proposes a framework for viewing the Ugandan problem by tapping into the lessons of history. Part III extracts lessons learned from decriminalization efforts in other countries as well as international human rights principles that can be employed to challenge anti-LGBT laws. Though criminal laws around the world have historically taken aim at many aspects of homosexuality—e.g., sodomy, gay marriage, and gay adoption—and the Bill has many such collateral provisions, the comparison in Part III focuses only on other countries' efforts to *decriminalize* homosexuality or homosexual sexual acts, leaving out other tangential LGBT rights issues. Part IV then applies those strategies and lessons learned to the Ugandan problem. This Comment concludes that repealing the current law, discouraging members of the Ugandan Parliament from proposing similar legislation, or dousing the inflamed anti-LGBT political rhetoric in Uganda are daunting challenges that require a multifaceted strategy emphasizing both urgent remedial reforms and long-term efforts, both within and outside of Uganda.

I. STATE-SANCTIONED HOMOPHOBIA

To understand the importance of the Anti-homosexuality Bill, it is necessary to discuss its origins, provisions, and effects, and to place the Bill in the context of other criminalization regimes throughout the world. Understanding the provisions and global context of the Bill establishes the urgency of the Ugandan problem and informs the discussion in Part IV regarding the strategies that must be put into play to block the progression of similar legislation.

A. *The Anti-homosexuality Bill: Origins, Provisions, and Effects*

1. *Current Law in Uganda*

The current Penal Code in Uganda—which the Anti-homosexuality Bill sought to amend—criminalizes homosexual conduct, with Section 145 prescribing a punishment of life imprisonment for the commission of “unnatural offences.”²² Section 146 also allows for a prison sentence of seven years for the “attempt to commit unnatural offences,”²³ and Section 148 prescribes seven years of imprisonment for the commission or attempted commission of “any act of gross indecency with another person.”²⁴ Though these provisions do not expressly mention homosexuality, they are commonly used as anti-homosexuality laws.²⁵ Section 145, which prohibits “carnal knowledge,” demands a higher standard of proof of homosexual conduct; it is generally understood to require penetration. By comparison, Section 148—prohibiting “gross indecency”—does not generally require penetration, and thus mandates a lower standard of proof. The “gross indecency” provision, despite having a less severe punishment, may be the more problematic of the two provisions, for several reasons. First, the lower standard of proof allows authorities to harass homosexuals or suspected homosexuals based on “prejudice or stereotypes of attire, manner, or association.”²⁶ Second, lesbians had generally been excluded from punishment under the “carnal knowledge”

²² Section 145 states:

Any person who—

(a) has carnal knowledge of any person against the order of nature;

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.

Ugandan Penal Code, *supra* note 7, § 145.

²³ *Id.* § 146 (“Any person who attempts to commit any of the offences specified in Section 145 commits a felony and is liable to imprisonment for seven years.”).

²⁴ Section 148 states:

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 in private, commits an offence and is liable to imprisonment for seven years.

Id. § 148.

²⁵ HUMAN RIGHTS WATCH, *THIS ALIEN LEGACY: THE ORIGINS OF “SODOMY” LAWS IN BRITISH COLONIALISM* 3–4, 24 (2008).

²⁶ *Id.* at 49.

provisions because they “do not possess a sexual organ with which to penetrate each other,” but they could be included under the later added “gross indecency” provision.²⁷ Finally, the expansive scope of “gross indecency” extends the criminal law to such a degree that the law criminalizes not just acts, but the basic identity of homosexual people as well.²⁸

2. *Origins of Anti-homosexuality Laws and Homophobia in Uganda*

Despite the Western view that criminalizing homosexuality constitutes a violation of human rights, the Ugandan Penal Code is not an outlier in Africa, where thirty-six countries criminalize homosexuality.²⁹ This is due in large part to Africa’s colonial history. Widespread homophobia and anti-homosexuality laws in Uganda are imports from British colonial law that local politicians have since championed after the country’s independence.³⁰

A common argument in favor of the discriminatory laws is that homosexuality is not only rare in Africa, but that it is a distinctly un-African phenomenon—an export from “decadent” Western cultures.³¹ History, however, calls this assertion into question: pre-colonialist homosexuality in Africa and specifically Uganda, has persisted and been accepted (albeit sometimes reluctantly) for “ages.”³² It appears, then, that “colonialists did not

²⁷ *Id.* at 49–50.

²⁸ *Id.* at 49.

²⁹ INT’L LESBIAN, GAY, BISEXUAL, TRANS & INTERSEX ASS’N, STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS CRIMINALIZING SAME-SEX ACTS BETWEEN CONSENTING ADULTS 7 (Eddie Bruce-Jones & Lucas Paoli Itaborahy eds., 2011) [hereinafter STATE-SPONSORED HOMOPHOBIA (2011)], available at http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2011.pdf.

³⁰ HUMAN RIGHTS WATCH, *supra* note 25, at 4–5.

³¹ *Preface* to BOY-WIVES AND FEMALE HUSBANDS: STUDIES OF AFRICAN HOMOSEXUALITIES, at xv (Stephen O. Murray & Will Rosco eds., 1998) [hereinafter AFRICAN HOMOSEXUALITIES]. The argument that homosexuality is a Western export, it turns out, is a favorite of political officials in many nations. *See, e.g.*, Scott Long, *Egypt Human Casualties of the Culture Wars*, 11.3 GAY & LESBIAN REV. (2004) (noting that Egyptian authorities sometimes insinuate that homosexuality amounts to espionage); Mageswary Ramakishran, ‘*Homosexuality Is a Crime Worse than Murder*,’ TIME (Sept. 26, 2000), <http://www.cnn.com/ASIANOW/time/features/interviews/2000/09/26/int.malay.gay2.html> (quoting a Malaysian official explaining that homosexuality comes from Western influence and is “a crime worse than murder”).

³² AUDRE LORDE, SISTER OUTSIDER 50 (1984) (noting that same-sex sexual activity “has existed for ages in most of the female compounds across the African continent”); *see also, e.g.*, JACK HERBERT DRIBERG, THE LANGO 210 (1923) (reporting that homosexuality was common among tribes in Uganda); JOHN FRANCIS FAUPEL, AFRICAN HOLOCAUST: THE STORY OF UGANDAN MARTYRS 301 (1962) (explaining that the Ugandan king Mwanga kept a harem of male pages whom he forced to have sex with him); KURT FALK, HOMOSEXUALITY AMONG THE NATIVES OF SOUTHWEST AFRICA (1925–26), *reprinted in* AFRICAN HOMOSEXUALITIES, *supra* note 31, at 196 (proffering that 3.5 percent of Africans studied over twelve years had homoerotic desires and ninety percent had bisexual tendencies).

introduce homosexuality to Africa but rather intolerance of it—and systems of surveillance and regulation for suppressing it.”³³

Indeed, Uganda did not have anti-LGBT criminal provisions before colonial rule; Uganda inherited the existing provisions criminalizing homosexuality from British colonial law, closely following the Indian Penal Code’s provisions.³⁴ Section 377 of the Indian Penal Code³⁵ criminalized “carnal intercourse against the order of nature with any man, woman, or animal”³⁶ and was “understood to criminalize consensual homosexual conduct.”³⁷ Later on, colonial officials in Uganda adopted a more expansive criminalization statute from the Queensland Penal Code, which reached further than the Indian Penal Code by including the broader concept of “unnatural offences” and a specific provision adding the “passive” sexual partner to the gambit of illegal activity.³⁸ The many African colonies that adopted the Queensland model did so without input from any native Africans.³⁹ Because a common argument against homosexuality is its alleged foreign origins, it is important to remember that criminalization of homosexuality is a foreign concept itself.

Africans’ secondary role in promoting or passing anti-homosexuality legislation appears to have long since disappeared. Homophobia in Uganda is now pervasive and it permeates political rhetoric in the country.⁴⁰ The physical violence and hateful speech directed at LGBT people in Uganda since the

³³ *Preface* to AFRICAN HOMOSEXUALITIES, *supra* note 31, at xvi.

³⁴ Section 377 of the Indian Penal Code—introduced in 1860—was “the first colonial ‘sodomy law’ integrated into a penal code.” HUMAN RIGHTS WATCH, *supra* note 25, at 1–5. Versions of this law were then introduced in Uganda and many other countries and colonies around the world, including: Australia, Bangladesh, Bhutan, Brunei, Botswana, Fiji, Gambia, Ghana, Hong Kong, India, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Mauritius, Marshall Islands, Myanmar (Burma), Nauru, New Zealand, Nigeria, Pakistan, Papua New Guinea, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Swaziland, Sudan, Tanzania, Tonga, Tuvalu, Western Samoa, Zambia, and Zimbabwe. *Id.*

³⁵ PEN. CODE § 377 (1860), *abrogated by* Naz Found. v. Gov’t of NCT of Delhi, WP(C) No. 7455/2001, 160 Delhi L. Times 277 (Del. High Ct. July 2, 2009), <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>.

³⁶ *Id.*

³⁷ HUMAN RIGHTS WATCH, *supra* note 25, at 1.

³⁸ *Penal Code 1901* (Qld) s 208 (Austl.), *reprinted in* HUMAN RIGHTS WATCH, *supra* note 25, at 22.

³⁹ HUMAN RIGHTS WATCH, *supra* note 25, at 10, 23.

⁴⁰ Sharlet, *Straight Man’s Burden*, *supra* note 1, at 41; Interview with Jeff Sharlet, NPR, Aug. 25, 2010, <http://www.npr.org/templates/transcript/transcript.php?storyId=129422524> [hereinafter Sharlet, NPR Interview]; Jeffrey Gettleman, *Americans’ Role Seen in Uganda Anti-gay Push*, N.Y. TIMES, Jan. 4, 2010, at A1; Rice, *supra* note 11.

proposal of the Bill⁴¹—and indeed, the widespread support for the Bill among citizens and elected officials alike⁴²—only underscore this point. Homophobic attitudes are such a part of the political culture in Uganda that Ugandan politicians have come to see that taking anti-gay stances is politically beneficial, and perhaps expected.⁴³ Indeed, members of Uganda’s Parliament view opposing the Anti-homosexuality Bill as “political suicide.”⁴⁴

The existence of homophobia is clearly evident in Uganda, but from where do these attitudes originate? Firstly, Uganda is a largely Christian nation⁴⁵ and the anti-gay reasoning used in support of the Bill draws its authority principally from religious ideas.⁴⁶ Today, foreign evangelical groups, particularly those based in the United States, fuel much of the religious fervor evident in Ugandan politics.⁴⁷ The most notable of these groups is called the Fellowship—also known as the Family.⁴⁸ The Fellowship is one of the most influential and well-connected Christian groups in the world,⁴⁹ and has had a particularly strong and long-lasting influence on Ugandan social policy development, beginning well before its current role helping to eradicate homosexuality from Uganda.⁵⁰ The Family’s involvement in shaping Ugandan AIDS policy, for example, illustrates this influence:

⁴¹ See, e.g., BBC NEWS, *supra* note 11; May-Chang, *supra* note 16; Olukya & Straziuso, *supra* note 10.

⁴² Sharlet, NPR Interview, *supra* note 40.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Gettleman, *supra* note 40 (“This is, after all, the land of proposed virginity scholarships, songs about Jesus playing in the airport, ‘Uganda is Blessed’ bumper stickers on Parliament office doors and a suggestion by the president’s wife that a virginity census could be a way to fight AIDS. During the Bush administration, American officials praised Uganda’s family-values policies and steered millions of dollars into abstinence programs.”). Eighty-four percent of Ugandans identify as Christian. Julie Bolcer, *Activists Want Justice for Kato*, ADVOCATE (Feb. 4, 2011), http://www.advocate.com/News/Daily_News/2011/02/04/Activists_Call_for_Justice_in_Kato_Murder.

⁴⁶ See, e.g., Sharlet, *Straight Man’s Burden*, *supra* note 1, at 44 (quoting David Bahati, the Bill’s sponsor, as saying, “All authority comes from God. . . . For example, I didn’t champion this issue, homosexuality, for the whole world. I did it for Uganda. That was me. But God! . . . God made it bigger.”).

⁴⁷ See Rice, *supra* note 11.

⁴⁸ See generally JEFF SHARLET, *THE FAMILY: THE SECRET FUNDAMENTALISM AT THE HEART OF AMERICAN POWER* 328 (2008) [hereinafter SHARLET, *THE FAMILY*].

⁴⁹ D. Michael Lindsay, a sociologist, noted “there is no other organization like the Fellowship, especially among religious groups, in terms of its access or clout among the country’s [U.S.] leadership.” D. MICHAEL LINDSAY, *FAITH IN THE HALLS OF POWER* 35 (2007). David Kuo, a former Special Assistant to President George W. Bush, stated that “[t]he Fellowship’s reach into governments around the world is almost impossible to overstate or even grasp.” DAVID KUO, *TEMPTING FAITH: AN INSIDE STORY OF POLITICAL SEDUCTION* 22 (2006) (explicitly mentioning Uganda as a country to which the Fellowship’s influence extends).

⁵⁰ SHARLET, *THE FAMILY*, *supra* note 48, at 328.

Following implementation of one of the continent's only successful anti-AIDS program [sic], President Yoweri Museveni, the Family's key man in Africa, came under pressure from the United States to emphasize abstinence instead of condoms. . . . This pressure achieved the desired result: an evangelical revival in Uganda, and a stigmatization of condoms and those who use them so severe that some college campuses held condom bonfires.⁵¹

Indeed, the Fellowship's presence in Uganda has been particularly influential over a long period of time. Uganda receives more money than any other country from the group:⁵²

For years, American fundamentalists have looked on Uganda as a laboratory for theocracy. . . . They sent not just money and missionaries but ideas, and if the money disappeared and the missionaries came and went, the ideas took hold. . . . Ugandan politicians attend prayer breakfasts in America and cut deals with American businessmen. American evangelicals, in turn, hold up Ugandan congregations as role models for their own It is a classic fundamentalist maneuver: move a fight you can't win in the center to the margins, then broadcast the results back home.⁵³

Most recently, the Fellowship played an important role in the lead-up to the Anti-homosexuality Bill's introduction.⁵⁴ The ideas for the Bill grew out of Bahati's relationship with the Fellowship; when asked if there was a connection between the Fellowship and the Bill, Bahati replied, "There is no 'connection.' They are the same thing. The [B]ill is the Fellowship."⁵⁵ Just a few days after having dinner with American and international members of the Fellowship, Bahati introduced the Bill in parliament.⁵⁶ He had understood the

⁵¹ *Id.*

⁵² Sharlet, *Straight Man's Burden*, *supra* note 1, at 37 ("In the past ten years, [the Fellowship] has poured millions into 'leadership development' [in Uganda], more than it has invested in any other foreign country, and billions in U.S. foreign aid have flowed in Ugandan coffers since a Family leader turned on the tap twenty-four years ago for President Yoweri Museveni, a dictator hailed by the West for his democratic rhetoric and by Christian conservatives for the evangelical zeal of his regime."); *see also* SHARLET, *THE FAMILY*, *supra* note 48, at 54 (identifying the "Family leader [who] turned on the tap" as Bob Hunter, a friend of the Fellowship's leader, Doug Coe, and a former Ford Administration official).

⁵³ Sharlet, *Dangerous Liaisons*, *supra* note 1, at 37; *see also* Sharlet, *Straight Man's Burden*, *supra* note 1, at 37.

⁵⁴ Sharlet, *Dangerous Liaisons*, *supra* note 1, at 36; *see also* Sharlet, *Straight Man's Burden*, *supra* note 1, at 36.

⁵⁵ Sharlet, *Dangerous Liaisons*, *supra* note 1, at 36; *see also* Sharlet, *Straight Man's Burden*, *supra* note 1, at 36.

⁵⁶ Sharlet, *Straight Man's Burden*, *supra* note 1, at 45.

meeting to be a “green light to pursue the biblical agenda he thought they shared.”⁵⁷

Secondly, other American Christian personalities have played important roles in the promulgation of the Anti-homosexuality Bill.⁵⁸ One month before Bahati introduced the Bill, three American evangelicals—Scott Lively, Caleb Lee Brundidge, and Don Schmierer—spoke at a conference in Kampala, which focused on the “threat homosexuals posed to Bible-based values and the traditional African family.”⁵⁹ Thousands of people attended the conference, where the Americans “discussed how to make gay people straight, how gay men often sodomized teenage boys and how ‘the gay movement is an evil institution’ whose goal is ‘to defeat the marriage-based society and replace it with a culture of sexual promiscuity.’”⁶⁰ The American evangelicals are widely thought to have fanned the flames of homophobia in Uganda, which allowed for the Bill’s proposal.⁶¹ Some, like Zambian pastor Kapya Kaoma, believe the Americans may have underestimated how influential their words would be:

They didn’t know that when you speak about destroying the family to Africans, the response is a genocide The moment you speak about the family, you speak about the tribe, you speak about the future. Africans will fight to the death. When you speak like that, you invite the wrath.⁶²

The conference participants and many important Christian figures in America, like megachurch pastor Rick Warren and U.S. Senator Jim Inhofe⁶³—both closely connected to the Fellowship⁶⁴—have offered only lukewarm renunciations of the Bill, often after much prodding from pro-equality groups.⁶⁵

On top of the anti-LGBT rhetoric coming from American religious figures, Ugandan religious leaders also have played a key role in the recent flare of homophobia in Uganda. Though often encouraged by foreign religious leaders,

⁵⁷ *Id.*

⁵⁸ Gettleman, *supra* note 40, at A1.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Jeffrey Gettleman, *Remembering David Kato, a Gay Ugandan and a Marked Man*, N.Y. TIMES, Jan. 30, 2011, at WK2.

⁶³ Sharlet, *Straight Man’s Burden*, *supra* note 1, at 37.

⁶⁴ *Id.*

⁶⁵ *Id.* Inhofe and Warren, for example, came out in “muted opposition” to the death penalty provision of the Bill, but “didn’t dispute the motive behind it: the eradication of homosexuality.” *Id.*

many Ugandan pastors have used homophobic rhetoric on their own to rally their congregations; such anti-gay jockeying has been dubbed the “Pastor Wars.”⁶⁶ The popularity of homophobic messages in Uganda is a prime way for a pastor to increase the size of his following.⁶⁷ Exemplifying the persisting nature of this problem, eight pastors recently were charged with “conspiracy to injure the reputation” of a fellow pastor by alleging that he engaged in sodomy.⁶⁸

Lastly, the media in Uganda has also played an important role in exacerbating the problem of homophobia in Uganda, especially since the introduction of the Bill in parliament.⁶⁹ In the most extreme example, *Rolling Stone*—a Ugandan tabloid with no relation to the eponymous American magazine—published a list of Uganda’s “Top Homos” with pictures and addresses of homosexuals and suspected homosexuals.⁷⁰ The headline on this article read, “Hang Them.”⁷¹ The people identified have been attacked and—in the case of prominent LGBT rights activist David Kato—murdered since the publication.⁷²

So far, this Part has analyzed the current laws criminalizing homosexuality in Uganda, explained the roots and special persisting influences on anti-LGBT sentiments in Uganda that led to the Bill’s introduction to Uganda’s parliament, and laid out the associated human rights concerns. These complex and overlapping issues explain why a multifaceted approach to blocking the Bill’s reintroduction and cultivating a more tolerant Uganda is required. The following Subpart addresses the provisions of the Bill itself.

3. *Provisions of the Anti-homosexuality Bill*

Because this Comment discusses potential solutions to the Ugandan problem, it is necessary to explain the Bill’s provisions in detail. This Comment focuses primarily on the provisions clarifying and describing the criminalization of homosexuality because the other peripheral provisions

⁶⁶ Jodi Jacobson, “Anti-gay” Pastors in Uganda Charged with Conspiracy To Slander Religious Leader, RH REALITY CHECK (Dec. 23, 2010, 1:01 PM), <http://www.rhrealitycheck.org/node/15161>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Gettleman, *supra* note 15.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

necessarily depend on the criminalization provision.⁷³ Also, limiting the focus to substantive criminalization provisions allows for a more coherent and appropriate comparison to other countries that have rejected similar provisions in the past—the subject of Part III. Nevertheless, this Comment briefly explains the other provisions because they have not yet received much scholarly attention.

The stated goals of the Anti-homosexuality Bill were, *inter alia*, to “strengthen the nation’s capacity to deal with emerging internal and external threats to the traditional heterosexual family,” to protect the legal and religious values of Ugandans, and to protect children from being raised by parents in homosexual relationships.⁷⁴ The Bill stated that it was meant to “complement and supplement” Section 145 of the existing Penal Code by explicitly criminalizing same-sex sexual acts and a variety of other acts linked to homosexuality.⁷⁵ For example, the Bill sought to place an affirmative duty on all Ugandans—gay, straight, or otherwise—to report homosexual conduct,⁷⁶ to clarify jurisdictional issues,⁷⁷ and to ban gay marriage.⁷⁸ The Bill also sought to criminalize “the procurement, promoti[on], [or] disseminati[on] [of] literature and other pantographic materials concerning the offences of homosexuality.”⁷⁹ The Bill also would have “prohibit[ed] ratification of any international treaties, conventions, protocols, agreements and declarations which are contrary or inconsistent with the provisions of this Act”⁸⁰ and would have banned “the licensing of organizations which promote homosexuality.”⁸¹

In defining the offense of “homosexuality” itself, Section 2 of the Bill provides a particularly detailed definition:

- (1) A person commits the offence of homosexuality if—
 - (a) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;

⁷³ The provision banning homosexual marriage does not merely disallow the practice, but defines it in terms of the crime of “homosexuality,” presumably as defined in Section 2, meaning that it comes with the punishment of life imprisonment as well. *See* Anti-homosexuality Bill, *supra* note 2, §§ 2, 12.

⁷⁴ *Memorandum*, Anti-homosexuality Bill, *supra* note 2, § 1.1.

⁷⁵ *Id.* § 2.1.

⁷⁶ Anti-homosexuality Bill, *supra* note 2, § 14. Many see this provision as particularly troubling because it makes all people in Uganda “potential criminals.” *See* Sharlet, *Straight Man’s Burden*, *supra* note 1, at 37.

⁷⁷ Anti-homosexuality Bill, *supra* note 2, § 15.

⁷⁸ *Id.* § 12.

⁷⁹ *Memorandum*, Anti-homosexuality Bill, *supra* note 2, § 2.1.

⁸⁰ *Id.* § 3.0(c).

⁸¹ *Id.* § 3.0(d).

- (b) he or she uses any object or sexual contraption to penetrate or stimulate sexual organ [sic] of a person of the same sex;
- (c) he or she touches another person with the intention of committing the act of homosexuality.⁸²

A person convicted of “homosexuality” under this section would be subject to imprisonment for life.⁸³

In addition, the Bill attempted to introduce a crime of “aggravated homosexuality,” which would impose the death penalty on those who engage in homosexuality when the offender has previously been convicted of homosexuality, uses drugs to enable him or her to have homosexual sexual intercourse, has HIV, or is a parent or guardian of or is in a “position of authority over the person against whom [homosexuality] is committed.”⁸⁴ The aggravated homosexuality offense would also be triggered when the “person against whom [homosexuality] is committed” is a minor or disabled.⁸⁵ This section would also mandate that people charged with “aggravated homosexuality” undergo a medical examination to determine their HIV status.⁸⁶

The Bill would introduce several inchoate crimes of homosexuality as well: attempt to commit homosexuality, aiding and abetting homosexuality, conspiracy to engage in homosexuality, and detention with intent to commit homosexuality.⁸⁷ With regard to attempt, the Bill would have clarified the delphic “attempt to commit unnatural offences” language of the current penal code by replacing the attempt provision with the more specific “attempt[] to commit the offence of homosexuality,” though the punishments are the same: up to seven years of imprisonment.⁸⁸ The Bill also sought to add a separate

⁸² Anti-homosexuality Bill, *supra* note 2, §§ 2(1)(a)–(c). Though Section 2(1)(a) uses the masculine pronoun “he,” the entire provision appears to encapsulate all homosexual activities, regardless of gender. Section 2(1)(c), for example, includes both masculine and feminine identifiers and would provide for life imprisonment for anyone who “touches another person with the intention of committing the act of homosexuality.” *Id.*

⁸³ *Id.* § 2(2). By providing a detailed description of the crime, the drafters have arguably limited its scope. Because the Bill is designed to “complement and supplement,” the existing penal code, Sections 145 and 148 would presumably still be used to capture a broad range of homosexual conduct that does not meet the highly detailed requirements of Section 2 of the Bill. *Id.* § 1.1.

⁸⁴ *Id.* § 3.

⁸⁵ *Id.* §§ 3(1)–(2).

⁸⁶ *Id.* § 3(3).

⁸⁷ *Id.* §§ 4, 7, 8, 10.

⁸⁸ *Id.* § 4(1); *see also* Ugandan Penal Code, *supra* note 17, § 146.

provision for attempt to commit “aggravated homosexuality.”⁸⁹ Offenders would be liable for life imprisonment if convicted of such an attempt.⁹⁰ Aiding and abetting homosexuality, conspiracy to commit homosexuality, and detention with intent to commit homosexuality would be separate offenses, each punishable with up to seven years of imprisonment.⁹¹

In addition to explicitly creating several crimes revolving around homosexuality and homosexual acts and ramping up criminal penalties, the Bill would also introduce monetary penalties in the case of nonconsensual homosexual activity.⁹² The Bill would allow a “victim of homosexuality”—an unwilling participant in homosexual acts⁹³—to collect monetary damages from offenders for “physical, sexual or psychological harm caused to the victim by the offence.”⁹⁴

4. *Social Effects of Criminalizing Homosexuality*

The Anti-homosexuality Bill clearly attempted to broaden and intensify criminal enforcement and penalties for homosexuality, but even non-enforcement of such statutes has deleterious human rights implications: the very existence of the statutes expresses society’s condemnation of homosexuality,⁹⁵ may lead to private law enforcement and violence, and eliminates legal protections for homosexuals.⁹⁶ Even when not enforced for particular acts, anti-homosexuality statutes have been used “as broad

⁸⁹ Anti-homosexuality Bill, *supra* note 2, § 4(2).

⁹⁰ *Id.*

⁹¹ *Id.* §§ 7, 8, 10.

⁹² *Id.* § 5(3).

⁹³ *Id.* § 1.

⁹⁴ *Id.* § 5(3). Victims would also be privy to a variety of confidentiality protections, including in camera proceedings, if appropriate. *Id.* § 6.

⁹⁵ The “expressive theory of punishment” says that criminal law and punishment have important effects on defining and shaping social norms. Dan M. Kahan, *The Secret Ambition of Deterrence*, 113 HARV. L. REV. 413, 420–21 (1999). For example, Professor Kahan writes that “[s]odomy laws, even when unenforced, express contempt for certain classes of citizens.” *Id.* at 421.

⁹⁶ See Terry S. Kogan, *Legislative Violence Against Lesbians and Gay Men*, 1994 UTAH L. REV. 209, 233; HUMAN RIGHTS WATCH, *supra* note 25, at 52 (“[Sodomy] statutes have multiple ‘micro-level’ effects. These impacts are independent of occasions when the law is actually enforced. To the contrary: even without direct enforcement, the laws’ malign presence on the books still announces inequality, increases vulnerability, and reinforces second-class status in all areas of life.”); *cf.* Toonen v. Australia, Commc’n No. 488/1992, U.N. Doc. No. CCPR/C/50/D/488/1992 (1994) ¶ 8.4 (“[T]he policy of the Department of Public Prosecutions not to initiate criminal proceedings in respect of private homosexual conduct does not amount to a guarantee that no actions will be brought against homosexuals in the future.”).

instruments of social control” as well as “terms of division and tools of power.”⁹⁷

These concerns do not exist merely in the abstract theory of criminal law. The mere fact that the Anti-homosexuality Bill has been proposed and received so much public attention raises human rights concerns, because it has already escalated homophobic rhetoric and violence in Uganda.⁹⁸ In addition to the hateful speech and physical violence directed toward LGBT people in Uganda, the criminalization of homosexuality also breeds other human rights violations, perhaps most notably those related to health:

Lesbian, gay, bisexual and transgender persons have been forcibly confined in medical institutions, and subject [sic] to ‘aversion therapy’, including electroshock treatment. Criminal sanctions against homosexuality have had the effect of suppressing HIV/AIDS education and prevention programmes designed for men who have sex with men or persons of diverse sexual orientations or gender identities. . . . Intersex people have been subjected to involuntary surgeries in an attempt to ‘correct’ their genitals.⁹⁹

Anti-LGBT laws, by denying LGBT people access to health services, have had deleterious effects on the function of HIV/AIDS programs. It should also be noted that the criminalization of homosexuality, despite numerous assertions to the contrary, has not worked to slow the spread of the disease itself.¹⁰⁰ In fact, infection rates in Uganda are rising.¹⁰¹

In Uganda, homosexuality has been criminalized for decades, and such state-sponsored inequality has therefore been institutionalized. The Bill, however, in seeking to increase punishments substantially—taking them all the way up to the death penalty—loudly announced a new level of intolerance toward homosexuality. If a criminal law can express and shape a nation’s communal morality merely by being written down, its influence must be multiplied when the law is actually enforced. And, indeed, Ugandan public officials appear ready to enforce the Bill to its fullest extent if it is ever

⁹⁷ HUMAN RIGHTS WATCH, *supra* note 25, at 53.

⁹⁸ See *supra* Introduction.

⁹⁹ O’Flaherty & Fisher, *supra* note 20, at 212–13 (citations omitted).

¹⁰⁰ *Toonen*, U.N. Doc. No. CCPR/C/50/D/488/1992, ¶ 8.5.

¹⁰¹ Memorandum from Jerry Lanier, U.S. Ambassador to Uganda (Oct. 19, 2009), <http://www.guardian.co.uk/world/us-embassy-cables-documents/230231> [hereinafter Lanier, Oct. 19, 2009] (confidential communication published by WikiLeaks).

passed.¹⁰² The human rights problems that the proposal has already created are likely just a preview of the suffering LGBT people would face if the Bill were to pass in a future parliamentary session because it would mean that all gay people could be imprisoned for life or executed.

B. Notable Similar Developments in Other States

Understanding the extent and nature of the current laws around the world that criminalize homosexuality shows simultaneously that statutes criminalizing homosexuality are quite common *and* that the Anti-homosexuality Bill stands out as an extreme example of anti-gay legislation. Globally, seventy-six countries criminalize homosexuality or homosexual behavior in some form.¹⁰³ Five countries—Iran, Mauritania, Saudi Arabia, Sudan, and Yemen—impose the death penalty for homosexual activity, as do parts of Nigeria and Somalia.¹⁰⁴ These death penalty provisions are based on Islamic Sharia law.¹⁰⁵ The continent of Africa is particularly noteworthy in its concentration of anti-homosexuality statutes.¹⁰⁶ Thirty-six African countries have laws criminalizing homosexuality; some of these states, as noted above, provide for the death penalty, and many others prescribe harsh jail sentences for homosexuality and homosexual activity.¹⁰⁷

¹⁰² See, e.g., Sharlet, NPR Interview, *supra* note 40 (reporting that Bahati's goal with the Bill is to "kill every last gay person").

¹⁰³ Gloria Careaga & Renato Sabbadini, *Foreword* to STATE-SPONSORED HOMOPHOBIA (2011), *supra* note 29, at 4.

¹⁰⁴ *Id.* at 10.

¹⁰⁵ See *id.* at 28 (Nigeria), 30 (Somalia), 38 (Iran), 42 (Saudi Arabia); Lloyd Duhaime, *Muslim Law in the Doldrums*, DUHAIM'S LAW MAG (Apr. 26, 2010, 9:17 AM), <http://www.duhaime.org/LawMag/LawArticle-1184/Muslim-Law-in-the-Doldrums.aspx> ("Saudi Arabia, Sudan, Nigeria, Iran and Mauritania, proudly trumpet a full or almost complete adherence to Muhammad's 652 A.D. Koran."). The law in Iraq remains unclear:

After the American invasion in 2003 the Penal Code of 1969 was reinstated in Iraq. This code does not prohibit same-sex relations. However, various reports have shown that self-proclaimed Sharia judges have sentenced people to death for committing homosexual acts and that militias frequently have kidnapped, threatened and killed LGBT people.

STATE-SPONSORED HOMOPHOBIA (2010), *supra* note 3, at 26 (citations omitted).

¹⁰⁶ Sharlet, *Dangerous Liaisons*, *supra* note 1, at 29 ("Perhaps nowhere on earth are gays persecuted more than in Africa.").

¹⁰⁷ Rowland Jide Macaulay & Linda RM Baumann, *Africa*, in STATE-SPONSORED HOMOPHOBIA (2011), *supra* note 29, at 18.

Despite this state of affairs, Uganda's Anti-homosexuality Bill stands out as an extreme example of anti-gay legislation¹⁰⁸ for three reasons. First, the general progression in municipal criminal laws around the world has shown a swift movement toward decriminalization.¹⁰⁹ Second, no country in recent memory has instituted a new provision to add the death penalty for homosexuals to its criminal code.¹¹⁰ Third, because Uganda is such a major recipient of foreign aid, the Bill came squarely at odds with increasing political momentum of pro-LGBT causes in the donor countries themselves.

II. HOW AND WHY UGANDA, THE AFRICAN UNION, AND THE INTERNATIONAL COMMUNITY HAVE FAILED TO PROTECT THE RIGHTS OF LGBT PEOPLE IN UGANDA

It is self-evident that LGBT people, who may be jailed for their sexual orientation, subjected to arbitrary enforcement of vaguely written statutes, and targeted by public officials, do not enjoy equal protection under the law of Uganda. Understanding how and why this has come to be true, by analyzing the structure and actions of Uganda, the African Union, and the international community, helps illustrate how the current Ugandan law and the Anti-homosexuality Bill can still exist under modern human rights regimes. Such a discussion informs the analysis in Part IV regarding how similar legislation and associated hostile sentiments in Uganda might successfully be challenged.

A. *Uganda*

The Constitution of Uganda guarantees freedom of expression, thought, conscience, and belief.¹¹¹ It provides for equal protection under the law and several other examples of broad grants of equality and rights based in democratic principles.¹¹² Constitutions that appear to grant fundamental human rights and ensure equality to all people are often seen as tools for oppressed minority populations to use to gain rights.¹¹³ Minority groups often look to the

¹⁰⁸ *Id.* (noting that hate crimes toward LGBT people are escalating and that many LGBT activists have moved abroad, complicating efforts for reform).

¹⁰⁹ *See id.* at 44–50.

¹¹⁰ *See id.* at 45 (listing the five countries with death penalty provisions on the books for homosexuality and noting that none of these was recently added).

¹¹¹ UGANDA CONST. ch. 4, arts. 29(1)(a)–(b) (1995).

¹¹² *Id.* ch. 4, arts. 20–24.

¹¹³ Daniel M. Brinks & Varun Gauri, *A New Policy Landscape: Legalizing Social and Economic Rights in the Developing World*, in *COURTING SOCIAL JUSTICE: JUDICIAL ENFORCEMENT OF SOCIAL AND ECONOMIC RIGHTS IN THE DEVELOPING WORLD* 303, 304 (Varun Gauri & Daniel M. Brinks eds., 2008).

constitution to “find some hook, some demand mechanism, to bring universal principles to bear on their own particular situation.”¹¹⁴ LGBT Ugandans, however, have been unsuccessful in advancing a constitutional argument for recognition of their entitlement to equal rights. Why is this so?

First, Uganda has a powerful executive figure in Museveni,¹¹⁵ who has earned a reputation of hostility toward the cause of LGBT equality during his presidency.¹¹⁶ James Nsaba Buturo, Museveni’s cabinet-level minister of state for ethics and integrity, vowed to pass the Bill “even if it meant withdrawing from international treaties and conventions such as the UN’s Universal Declaration on Human Rights, and foregoing donor funding.”¹¹⁷ Additionally, Museveni has proven successful in asserting his own will against other political forces in the country, in contrast to power-sharing structures typical in other functioning democracies. He has been widely criticized for extending his presidency past the two-term constitutional limit, jailing opposition politicians, and bribing members of parliament.¹¹⁸ A WikiLeaks cable recently revealed that the U.S. Ambassador to Uganda wrote in October 2009 that Museveni’s “autocratic tendencies, as well as Uganda’s pervasive corruption . . . have erod[ed] Uganda’s status as an African success story.”¹¹⁹ Though Museveni has certainly not advanced the rights of LGBT people, he is largely credited with stalling the Anti-homosexuality Bill from coming to a parliamentary vote after facing widespread international pressure from international organizations and foreign governments.¹²⁰ Due to his influence, Museveni will be an important player in shaping LGBT rights in Uganda, for better or worse.

¹¹⁴ *Id.* at 305.

¹¹⁵ SHARLET, *THE FAMILY*, *supra* note 48, at 54 (“Once heralded as a democratic reformer, Museveni rules Uganda to this day, having suspended term limits, intimidated the press, and installed . . . [a] corrupt and stable regime.”).

¹¹⁶ Rice, *supra* note 11 (“President Yoweri Museveni appeared to add his backing [to the Anti-homosexuality Bill] . . . warning youths in Kampala that he had heard that ‘European homosexuals are recruiting in Africa’, and saying gay relationships were against God’s will.”). It is difficult to tell whether Museveni personally holds anti-LGBT views or if he is just following the most politically favorable route—or both.

¹¹⁷ *Id.*

¹¹⁸ Larry Diamond, *The State of Democracy in Africa*, in *DEMOCRATIZATION IN AFRICA: WHAT PROGRESS TOWARD INSTITUTIONALIZATION?* 1, 3 (2008), available at http://www.dni.gov/nic/PDF_GIF_confreports/african_democ_2008.pdf.

¹¹⁹ Lanier, Oct. 19, 2009, *supra* note 101.

¹²⁰ *Uganda President Wary of Gay Bill*, BBC NEWS (Jan. 13, 2010, 12:58 PM), <http://news.bbc.co.uk/2/hi/8456624.stm> (“Ugandan President Yoweri Museveni has distanced himself from a bill proposing execution for some gay people. . . . Mr. Museveni told a meeting of ruling party members their handling of the bill ‘must take into account our foreign policy interests.’”).

Second, most members of the Ugandan Parliament, even if not influenced by Museveni's bribes, would be unwilling to support an expansion in LGBT rights.¹²¹ Indeed, the Anti-homosexuality Bill enjoyed "near-unanimous support in Parliament."¹²² Parliament therefore reflects the popular homophobia found throughout Uganda by proposing and vocally supporting such an extreme expansion of LGBT criminalization.

Third, despite certain signs that the Ugandan judiciary might be embracing a more independent role, there is little evidence to suggest that Museveni is really constrained by judicial decisions with which he disagrees.¹²³ The Ugandan judiciary has yet to establish itself as a truly co-equal branch of government,¹²⁴ and Museveni has rejected court rulings with which he disagrees.¹²⁵ In 2004, for example, Museveni refused to enforce a judgment by the Constitutional Court nullifying the Referendum Act.¹²⁶ In 2006, the military threatened the authority of the High Court, forcing the chief justice and his colleagues to evacuate their building during the trial of opposition leader Kizza Besigye—who was charged with treason, terrorism, and rape.¹²⁷ All hope of an independent judiciary is not lost in Uganda, however. Almost four years after the military besieged the High Court, the Constitutional Court held that the military's actions violated Besigye's human rights and found him not guilty of all charges.¹²⁸ This was considered a surprising show of judicial independence and is considered a landmark ruling by many commentators in that regard.¹²⁹ Allowing the judiciary to make independent rulings—as he did

¹²¹ Sharlet, NPR Interview, *supra* note 40.

¹²² Sharlet, *Straight Man's Burden*, *supra* note 1, at 36.

¹²³ Lanier, Oct. 19, 2009, *supra* note 101 (noting that the Ugandan judiciary is not "capable of restraining government excesses in either corruption or abuse of human rights").

¹²⁴ Ugandan courts are also perceived as ineffective and are prohibitively expensive for many Ugandans. African Comm'n on Human and Peoples' Rights, *Concluding Observations of the African Commission on the 3rd Periodic Report of the Republic of Uganda*, 45th Sess., May 13–27, 2009, ¶ 25, available at http://achpr.org/english/other/Con_Observations/uganda_3rd_rpt.pdf.

¹²⁵ Charles Kazooba & Asuman Bisiika, *Uganda: Judiciary Flexes Muscle with Besigye Ruling*, E. AFRICAN (Nairobi), Oct. 25, 2010, <http://allafrica.com/stories/201010261102.html>.

¹²⁶ *Id.*; see also Felix Osike & S. Candia, *Uganda: Museveni Defies Constitutional Court Ruling*, NORWEGIAN COUNCIL FOR AFR. (June 28, 2004), <http://www.afrika.no/Detailed/5616.html>. In this episode, the Constitutional Court declared invalid the Referendum Act—which allowed for the 2001 presidential, parliamentary, and local council elections. *Id.* Museveni responded with a forty-minute-long televised national address where he blasted the ruling as "totally unacceptable." *Id.*

¹²⁷ Ruth Bader Ginsburg, *Judicial Independence: The Situation of the U.S. Federal Judiciary*, 85 NEB. L. REV. 1, 1–2 (2006) (citing Joachim Buwembo, *When Generals and Judges Fall Out, Who Will Pass Sentence?*, E. AFRICAN (Nairobi), Feb. 14, 2006, <http://allafrica.com/stories/200602140683.html>).

¹²⁸ Kazooba & Bisiika, *supra* note 125.

¹²⁹ *Id.*

in this case—may benefit Museveni’s image as a legitimate ruler, but he is “capable of doing just about anything to stifle the free operation of the judiciary” when push comes to shove.¹³⁰

On the other hand, Museveni may be able to advance politically unpopular policies by deferring to decisions of the judiciary. Such deference is a potential way to advance the interests of LGBT people in Uganda. In that regard, certain signs indicate that the judiciary may be somewhat willing to act as a release valve for mounting homophobic pressure in Uganda. In November 2010, a Uganda High Court judge enjoined *Rolling Stone* from publishing “the identity of any person perceived by them to be gay, lesbian or homosexual.”¹³¹ Before the ruling, *Rolling Stone* had published the names and addresses of 100 suspected “homos” with a yellow banner stating, “Hang Them.”¹³² Museveni has not acted to quash or circumvent this ruling. Deferring to the judiciary on this issue allows Museveni to avoid the inevitable international backlash that would follow any show of support for the tabloids publishing such anti-gay messages.

The criminal justice system more generally has also provided examples of LGBT-friendly advances. Recently, eight people, including high-profile religious leaders, have been “charged with falsely accusing another leader of engaging in sodomy.”¹³³ Though the actions of these eight people only further illustrate the homophobia that is ubiquitous in Ugandan religious and political rhetoric,¹³⁴ the criminal justice system has displayed a new willingness to challenge such rhetoric by laying these charges. The effects these recent charges may have on the pervasiveness of homophobic political and religious rhetoric remain to be seen.

B. *The African Union*

The previous Subpart focused on Uganda because national legal systems still remain the most important forums for enforcing international human rights

¹³⁰ *Id.*

¹³¹ *Uganda Newspaper Outs ‘Gay’ Men*, AGENCE FRANCE-PRESSE (Nov. 1, 2010) (quoting High Court Judge Vincent Musoke-Kibuuka), available at <http://www.google.com/hostednews/afp/article/ALeqM5h2OusRUR4-gYr-oImonkH-smR9og>; Jacqueline v. Rolling Stone, Misc. Cause No. 163, (Dec. 30, 2010) (Uganda High Ct.), available at http://www.ugandans4rights.org/downloads/court_ruling.pdf.

¹³² Faith Karimi, *Uganda Newspaper Publishes ‘Gay List,’ Calls for Their Hanging*, CNN (Oct. 20, 2010, 6:53 PM), <http://edition.cnn.com/2010/WORLD/africa/10/20/uganda.gay.list>.

¹³³ Jacobson, *supra* note 66.

¹³⁴ *Id.*

aspirations.¹³⁵ Regional systems for codifying and enforcing human rights have played important roles, however, in many parts of the world (most notably in Europe¹³⁶ and Latin America¹³⁷), and have become increasingly important for protecting human rights on the African continent as well.¹³⁸ Regional systems in Africa, however, have been unable and unwilling to successfully broker solutions to many human rights problems¹³⁹ and have certainly failed to adequately address the concerns of LGBT discrimination.¹⁴⁰

Understanding the structure of the African Union (“AU”) sheds light on its failures to protect LGBT people in Uganda. The African regional system was first embodied in the Organization of African Unity, which was established in 1963, and became the AU in 2001.¹⁴¹ The Constitutive Act of the AU, which entered into force in 2001, elevated human rights to a regional priority.¹⁴² The AU, however, lacks the authority and enforcement mechanisms to change member states’ policies on a wide range of issues. The legislative arm of the AU, the Pan-African Parliament, has not attempted to address the rights of LGBT people. However, there is no indication that it could address those

¹³⁵ DAVID J. BEDERMAN, *INTERNATIONAL LAW FRAMEWORKS* 157 (3d ed. 2010).

¹³⁶ See, e.g., *Dudgeon Case*, 45 Eur. Ct. H.R. (ser. A) (1981) (holding that the criminalization of homosexuality was a violation of the right of privacy); *Da Silva Mouta v. Portugal*, 1999-IX Eur. Ct. H.R. 653 (holding that sexual orientation is protected under Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”) and that denying a gay father custody based on his sexual orientation was a violation of his right to privacy).

¹³⁷ See BEDERMAN, *supra* note 135, at 157.

¹³⁸ Christof Heyns & Magnus Killander, *The African Regional Human Rights System*, in *INTERNATIONAL PROTECTION OF HUMAN RIGHTS: ACHIEVEMENTS AND CHALLENGES* 510 (Felipe Gomez Isa & Koen de Feyere eds., 2006).

¹³⁹ See, e.g., Eric Reeves, *The Failure of the African Union in Darfur*, *SUDAN TRIBUNE* (Sept. 8, 2005), <http://www.sudantribune.com/The-Failure-of-the-African-Union,11547> (“[T]he African Union has failed to demonstrate either the military capacity or the political will necessary to protect Darfur’s acutely vulnerable civilian populations and critical humanitarian operations.”); Alistair Thomson, *Kenya Failure Bruises African Union Ambitions*, *REUTERS*, Jan. 11, 2008, available at <http://www.reuters.com/article/idUSL1171753120080111> (noting the failure of the African Union (“AU”) to mediate the 2007 contested presidential election in Kenya that led to widespread violence in the country).

¹⁴⁰ Benjamin Mensah, *Ghana Loses Out on Appointment to AU Human Rights Commission*, *GHANA NEWS AGENCY* (July 28, 2010), http://www.ghananewsagency.org/s_humaninterest/r_18627 (noting that many AU member states’ officials are “hardliners” against homosexuality). The commission also has not addressed the concern over the Bill, showing its unwillingness to defend LGBT rights.

¹⁴¹ Heyns & Killander, *supra* note 138, at 510–11. Uganda is a member of the AU. *Pan-African Parliament Members*, *PAN-AFRICAN PARLIAMENT*, http://www.pan-african-parliament.org/AboutPAP_PAPMemberCountries.aspx (last visited Mar. 3, 2011).

¹⁴² Heyns & Killander, *supra* note 138, at 511.

concerns even if it wanted; the Pan-African Parliament has no binding authority and serves merely “consultative and advisory” roles.¹⁴³

The judicial mechanisms of the African regional system similarly show little promise of advancing the rights of LGBT people on the continent. The African Court of Human and Peoples’ Rights, an organ of the AU charged with promoting human rights by interpreting the AU Charter on Human and Peoples’ Rights¹⁴⁴ and determining AU states’ compliance with the charter,¹⁴⁵ has issued only one judgment.¹⁴⁶ The court is folded under the African Commission on Human and Peoples’ Rights, which can hear complaints of human rights violations, though it receives only a small number of claims.¹⁴⁷ Individual complaints are more numerous than interstate complaints, but only 300 individual complaints have been brought since 1987.¹⁴⁸ Moreover, the commission is limited in its power to change human rights norms because “[a] wide divergence between the Commission’s interpretation of the Charter and the Charter itself could compromise legal certainty.”¹⁴⁹ Furthermore, Article 27(2) of the charter allows for limitations on the rights and freedoms of the African Charter based on “morality.”¹⁵⁰ Because the Anti-homosexuality Bill is explicitly rooted in moral grounds, it may be exempted from any potential enforcement from the commission or court.¹⁵¹ Even then, states held to be in

¹⁴³ *Id.* at 523.

¹⁴⁴ African Charter on Human and Peoples’ Rights, *adopted* June 27, 1981, 1520 U.N.T.S. 217 (entered into force Oct. 21, 1986). Uganda has ratified this charter. List of Countries Which Have Signed, Ratified/Accessed to the African Union Convention on African Charter of Human and People’s Rights (May 26, 2007), http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf.

¹⁴⁵ *Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights*, AFRICAN COMMISSION ON HUMAN & PEOPLES’ RIGHTS, http://www.achpr.org/english/_info/court_en.html (last visited Mar. 3, 2011).

¹⁴⁶ AFRICAN COURT ON HUMAN & PEOPLES’ RIGHTS: LATEST JUDGMENTS & ORDERS, <http://www.african-court.org/en/cases/latest-judgments> (last visited Jan. 17, 2010). For the decision, see *Yogogombaye v. Senegal*, App. No. 001/2008, Judgment (Afr. Ct. Hum. & Peoples’ Rts. Dec. 15, 2009), *available at* <http://www.unhcr.org/refworld/docid/4bab8bd02.html>.

¹⁴⁷ Heyns & Killander, *supra* note 138, at 526.

¹⁴⁸ *Id.* The commission also requires that individuals exhaust their local remedies, which makes it more difficult for them to bring claims to the commission. *Id.*

¹⁴⁹ *Id.* at 517.

¹⁵⁰ African Charter on Human and Peoples’ Rights, *supra* note 144, art. 27(2); Heyns & Killander, *supra* note 138, at 519–20.

¹⁵¹ *But see* Letter from Dimitrina Petrova, Exec. Dir., Equal Rights Trust, to President Yoweri Kaguta Museveni (Dec. 9, 2009), <http://www.equalrightstrust.org/ertdocumentbank/The%20Equal%20Rights%20Trust%20Uganda%20Anti%20Homosexuality%20Bill%20Opinion.pdf> (arguing that the adoption of the Bill appears to contravene Uganda’s obligations under the African Charter on Human and Peoples’ Rights).

violation of the African Charter comply with the commission's orders in only a small number of cases.¹⁵²

Furthermore, even if the AU had the capacity or the necessary structure to implement human rights reforms, the grievous nature of other human rights abuses throughout the continent—like genocide, child labor, and human trafficking—would likely be prioritized ahead of LGBT rights. The pervasiveness of homophobic social policy in its member states would pose a monumental challenge to the AU's emerging regional authority.

C. *The International Community*

In addition to Uganda's and the African regional system's failures, the international community has been unable and unwilling to create binding international norms prohibiting the criminalization of homosexuality. Efforts to create such norms are underway and have been adopted by certain countries around the globe, but they have not been widely recognized by municipal governments. Furthermore, many countries vehemently object to the establishment of such norms. In the absence of a global custom or treaty, ad hoc mechanisms for protecting LGBT rights have had notable—yet still limited—success in stopping particularly pernicious laws or enforcement actions from going forward. As Part IV argues, ad hoc mechanisms are therefore the most effective option for responding to urgent human rights concerns and crafting speedy remedial measures; these efforts, however, must be coupled with more long-term strategies to establish binding international norms prohibiting the criminalization of homosexuality. This Subpart delves into the expansion and enforcement of LGBT rights in the international arena; such efforts have a rather short history.

The expansion of rights for sexual minorities has advanced perhaps most significantly under the International Covenant on Civil and Political Rights (“ICCPR”),¹⁵³ which is thought to be the most promising international instrument for achieving decriminalization.¹⁵⁴ In 1994, in one of the earliest recognitions of LGBT rights as human rights, the United Nations Human Rights Committee, which hears petitions under the ICCPR,¹⁵⁵ found that laws

¹⁵² Heyns & Killander, *supra* note 138, at 526.

¹⁵³ O'Flaherty & Fisher, *supra* note 20, at 216.

¹⁵⁴ Pratima Narayan, Note, *Somewhere over the Rainbow . . . International Human Rights Protections for Sexual Minorities in the New Millenium*, 24 B.U. INT'L L.J. 313, 330 (2006).

¹⁵⁵ International Covenant on Civil and Political Rights, *supra* note 18, art. 41.

criminalizing homosexuality—and presumably by extension, harsh punishments including the death penalty—are in violation of international human rights law.¹⁵⁶ In *Toonen v. Australia*, an Australian man petitioned the committee, challenging two provisions of the Tasmanian Criminal Code¹⁵⁷ that criminalized homosexual acts between men.¹⁵⁸ By holding that the references to “sex” in the ICCPR (in Article 2, paragraph 1, and Article 26) were to include “sexual orientation,”¹⁵⁹ the committee reached a “clever and provocative”¹⁶⁰ result¹⁶¹ in finding the law to be a violation of the covenant.¹⁶²

Though the committee has since waffled on whether to include “sexual orientation” under the protections of “sex,”¹⁶³ it has nevertheless endeavored to protect sexual minorities under the ICCPR. Perhaps most notably, in its Universal Periodic Reviews (“UPR”),¹⁶⁴ the committee has chastised countries for criminalizing homosexual conduct and other policies discriminating against

¹⁵⁶ See *Toonen v. Australia*, Coome’n No. 488/1992, U.N. Doc. No. CCPR/C/50/D/488/1992 (1994).

¹⁵⁷ *Criminal Code Act 1924* (Tas) ss 122(a), 122(c), 123(c) (Austl.).

¹⁵⁸ *Toonen*, U.N. Doc. No. CCPR/C/50/D/488/1992.

¹⁵⁹ *Id.*

¹⁶⁰ Jack Donnelly, *Non-discrimination and Sexual Orientation: Making a Place for Sexual Minorities in the Global Human Rights Regime*, in *INNOVATION AND INSPIRATION: FIFTY YEARS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 108 (Peter Baehr et al. eds., 1999).

¹⁶¹ Indeed, other international tribunals have criticized the committee’s approach: “The apparent reliance on the ‘sex’ category has been criticized by the European Court of Justice, on the basis that matters of sexual orientation are substantially different from binary men/women issues which the category of ‘sex’ is often perceived to address.” O’Flaherty & Fisher, *supra* note 20, at 230 (citing Case C-249/96, *Grant v. Sw. Trains*, 1998 E.C.R. I-621).

¹⁶² In *Toonen*, Australia conceded many of the arguments made by the petitioner because it was not defending its own federal law (the Tasmanian state law was challenged). *Toonen*, U.N. Doc. No. CCPR/C/50/D/488/1992. The significance of these accessions is unclear, and it is unknown if the committee might defer more to a country that vigorously litigates its right to promulgate policies that discriminate against sexual minorities. It is also worth noting that *Toonen* makes the committee an attractive adjudicatory body for states that may want to decriminalize discriminatory policies that are too popular within their borders to repeal via the political process.

¹⁶³ O’Flaherty & Fisher, *supra* note 20, at 216–17.

¹⁶⁴ *Id.* at 218. The UN Office of the High Commissioner for Human Rights describes the UPR process:

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

LGBT people.¹⁶⁵ Uganda is scheduled for its first review under the committee's UPR program in 2011.¹⁶⁶ Because the committee regularly issues unfavorable reviews to countries that have laws similar to Uganda's current law, the committee is likely to also criticize Uganda in its 2011 review. The current law—and the proposed Anti-homosexuality Bill—is a clear violation of the ICCPR when considering the committee's interpretations of the ICCPR.¹⁶⁷ The adoption of the Bill would also contravene Uganda's obligations under the International Covenant on Economic, Social and Cultural Rights.¹⁶⁸ Even if authoritative bodies interpret Uganda's current or proposed law as violations of Uganda's commitments under international conventions, such interpretations would be post-ratification, and therefore Uganda cannot be bound by them.¹⁶⁹

In addition to claiming rights under the ICCPR and other existing instruments, LGBT activists have also sought to recognize LGBT rights through new UN resolutions.¹⁷⁰ In 2003, a number of mostly European countries petitioned, in a document known as the "Brazilian Resolution," the UN Human Rights Commission to formally codify the idea that LGBT rights are fundamental human rights.¹⁷¹ The resolution never passed, though;

¹⁶⁵ See, e.g., Human Rights Comm., Concluding Observations of the Human Rights Committee Regarding the United States of America, 87th Sess., July 28, 2006, ¶ 25, U.N. Doc. CCPR/C/USA/CO/3/Rev.1 (Dec. 18, 2006); Human Rights Comm., Concluding Observations of the Human Rights Committee Regarding Kenya, 83d Sess., Mar. 24, 2005, ¶ 27, U.N. Doc. CCPR/CO/83/KEN (Apr. 29, 2005); Human Rights Comm., Concluding Observations of the Human Rights Committee Regarding Egypt, 76th Sess., Oct. 31, 2002, ¶ 19 U.N. Doc. CCPR/CO/76/EGY (Nov. 28, 2002).

¹⁶⁶ *Human Rights Council Universal Periodic Review Calendar*, HUM. RTS. COUNCIL, <http://www.ohchr.org/EN/HRBodies/UPR/Documents/uprlist.pdf> (last visited Oct. 7, 2011). Uganda's sole reservation to the ICCPR is to Article 5. This reservation is with regard to a procedural requirement, not to the more general authority of the Human Rights Council: "The Republic of Uganda does not accept the competence of the Human Rights Committee to consider a communication under the provisions of article 5 paragraph 2 from an individual if the matter in question has already been considered under another procedure of international investigation or settlement." Optional Protocol to the International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

¹⁶⁷ Petrova, *supra* note 151.

¹⁶⁸ International Covenant on Economic, Social and Cultural Rights, *supra* note 18; see also Petrova, *supra* note 151.

¹⁶⁹ See Vienna Convention on the Law of Treaties, *supra* note 19, art. 31.

¹⁷⁰ Indeed, the fact that international agreements and the UN Human Rights Council's decisions do not grant LGBT rights in absolute terms means that protections for sexual minorities are not enforceable, or even applicable. See Narayan, *supra* note 154, at 322.

¹⁷¹ United Nations, Econ. & Soc. Council, Comm'n on Human Rights, Promotion and Protection of Human Rights: Human Rights and Sexual Orientation, U.N. Doc. E/CN.4/2003/L.92* (Apr. 17, 2003). The resolution was submitted on behalf of Austria, Belgium, Brazil, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Great Britain, and Northern Ireland. *Id.*

discussion was tabled in 2004 “after more than a year of amendments to the document’s language and great resistance by other nations.”¹⁷²

In 2005, New Zealand issued a joint statement on sexual orientation and human rights, calling on the committee to respond to state-sponsored discrimination.¹⁷³ This statement, however, was supported by only thirty-two nations.¹⁷⁴ A similar provision, championed by Norway, had greater support in 2006, with fifty-four states supporting it,¹⁷⁵ from four of the five UN regions.¹⁷⁶ The Norwegian statement, although it failed to pass for lack of votes, was significant in continuing to raise awareness among nations to this problem and as being the first UN statement to include the words “gender identity.”¹⁷⁷

UN resolutions—though they are merely non-binding evidence of international law rather than sources of binding commitments—are not used solely by proponents of LGBT rights. Countries opposed to granting LGBT rights also have influenced the international discussion around LGBT rights by proposing amendments to UN resolutions to strip away their international commitments to LGBT people. Every two years, the United Nations renews its condemnation of extrajudicial, summary, and arbitrary executions.¹⁷⁸ For the last decade, the various versions of this resolution included language specifically condemning such killings that were based on sexual orientation.¹⁷⁹ In November 2010, however, a coalition of African countries—including Uganda—stripped the sexual orientation language from the resolution via an

¹⁷² Narayan, *supra* note 154, at 319–20.

¹⁷³ N.Z. Representative, Statement Made by New Zealand on Behalf of 32 States Under Agenda Item 17: Promotion and Protection of Human Rights to Commission on Human Rights (Apr. 15, 2005).

¹⁷⁴ *Id.*

¹⁷⁵ Nor. Representative, Norwegian Joint Statement on Human Rights Violations Based on Sexual Orientation and Gender Identity to the Human Rights Council (Dec. 1, 2006), <http://www.norway-geneva.org/unitednations/humanrights/hrc011206>.

¹⁷⁶ O’Flaherty & Fisher, *supra* note 20, at 230.

¹⁷⁷ *Id.* The inclusion of the words “gender identity” is significant because it represents an attempt by the signatory countries to express that they seek to not only provide for equality for homosexuals, but transgendered and intersex people as well.

¹⁷⁸ Mindy Townsend, *How the United Nations Failed LGBT People This Week*, CHANGE.ORG (Nov. 18, 2010, 7:45 AM), http://gayrights.change.org/blog/view/how_the_united_nations_failed_lgbt_people_this_week; O’Flaherty & Fisher, *supra* note 20, at 230–31.

¹⁷⁹ C.H.R. Res. 2005/34, ¶ 5, U.N. ESCOR, 61st Sess., Supp. No. 3, U.N. Doc. E/CN.4/2005/135, at 132 (Apr. 19, 2005); C.H.R. Res. 2004/37, ¶ 6, U.N. ESCOR, 60th Sess. Supp. No. 3, U.N. Doc. E/CN.4/2004/127, 126 (Apr. 19, 2004); C.H.R. Res. 2002/36, ¶ 6, U.N. ESCOR, 58th Sess., Supp. No. 3, U.N. Doc. E/CN.4/2002/200 (Mar. 18–Apr. 26, 2002); C.H.R. Res. 2000/31, ¶ 6, U.N. ESCOR, 56th Sess., Supp. No. 3, U.N. Doc. E/CN.4/2000/167, at 163 (Apr. 20, 2000).

amendment.¹⁸⁰ More than seventy other countries joined Uganda in an effort to permit the extrajudicial killing of gay people.¹⁸¹ Such an amendment could have created a loophole in international law ensuring the legality of the Anti-homosexuality Bill.¹⁸² Following weeks of active lobbying by gay rights groups and the United States, the UN voted to reamend the resolution, adding “sexual orientation” back into the document.¹⁸³ The damage, however, had already been done: through this process, approximately half of all UN member states demonstrated sincere reluctance to recognize the most basic human right for LGBT people: protection from arbitrary killing. After this episode, any efforts to expand LGBT rights in international law will be a daunting challenge—and that is likely quite an understatement.

In addition to making formal objections to documents seeking to grant or expand basic rights to LGBT people, states also engage in substantial behind-the-scenes lobbying against such advancements. For example, the diplomats from multiple nations engaged in backdoor dealings at the Rome Convention to limit the scope of the term “gender” in the Statute of the International Criminal Court (“ICC”) with the purpose of preventing the statute’s nondiscrimination objectives from applying to sexual and gender minorities.¹⁸⁴

¹⁸⁰ Michael A. Jones, *Why Did South Africa Vote in Favor of Executing Gay People?*, CHANGE.ORG (Nov. 19, 2010, 10:00 AM), http://gayrights.change.org/blog/view/why_did_south_africa_vote_in_favor_of_executing_gay_people.

¹⁸¹ *Id.*

¹⁸² Stephanie Samuel, *Evangelical: Amended U.N. Resolution Creates Loophole for Anti-gay Bill*, CHRISTIAN POST (Nov. 24, 2010, 12:00 PM), <http://www.christianpost.com/article/20101124/evangelical-amended-un-resolution-creates-loophole-for-anti-gay-bill>.

¹⁸³ Julie Bolcer, *Gay Victory in U.N. Resolution Vote*, ADVOCATE (Dec. 22, 2010, 10:00 AM), http://www.advocate.com/News/Daily_News/2010/12/21/UN_to_Vote_on_Gay_Executions. The United States played a key role in restoring the language. *Id.* Secretary of State Hillary Clinton issued the following statement after the final vote:

Sadly, many people around the world continue to be targeted and killed because of their sexual orientation. These heinous crimes must be condemned and investigated wherever they occur. We look forward to continuing our work with others around the world to protect the human rights of those facing threats or discrimination on the basis of sexual orientation.

Id.

¹⁸⁴ Gina Erica Hill, *Gender in the International Criminal Court Negotiations* 91 n.416 (2001) (unpublished LL.M. thesis, University of Toronto) (noting that diplomats’ fears that “gender” could be stretched to include “sexual orientation” were the subject of frequent “corridor talks,” though this “was never mentioned in formal discussions”), available at <https://tspace.library.utoronto.ca/bitstream/1807/15396/1/MQ58689.pdf>; see also United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, It., June 15–17, 1998, *The Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court*, U.N. Doc. A/CONF.183/13 (Aug. 2002).

This not only effectively limits the ICC's jurisdiction to hear cases involving crimes against sexual and gender minorities, but it also supports the proposition that discrimination against homosexuals is not prohibited by customary international law.

Though some have proposed that an international consensus could be reached on a resolution to scale back state-sponsored criminalization of homosexuality simply by amending the language of already-failed or -tabled resolutions,¹⁸⁵ such a suggestion ignores the political realities. Too many states have populations that enthusiastically support criminalization, and supporting a resolution expanding LGBT rights, no matter the discrete alterations in word choice involved, is not a realistic option politically.

Outside of the UN, certain groups and publicists have attempted to codify an emerging custom regarding LGBT rights. The Yogyakarta Principles¹⁸⁶ were promulgated by human rights experts, but have not been widely accepted and their influence has yet to be seen.¹⁸⁷ The principles purport to codify an *existing* global custom regarding LGBT human rights, but most all of the twenty-nine principles are more properly understood as attempts by publicists to *accelerate* the formation of such a custom.¹⁸⁸ Nevertheless, the principles have persuasive weight with some jurists around the world, having made their way into important judicial opinions of municipal courts.¹⁸⁹ Overall, however, they are not yet binding or widely recognized.¹⁹⁰

¹⁸⁵ See, e.g., Narayan, *supra* note 154, at 316. Narayan argues that key failures of the Brazilian Resolution were that the sponsoring states did not offer other states advance warning of the proposal and that it included language regarding broader family and custody rights. This focus, however, ignores the simple fact that the most important failure is surely that the laws of seventy-six member states directly conflict with the resolution's sentiments. Narayan also suggests diluting the language of proposed resolutions by replacing "sexual orientation" with something like "other status" and then claiming sexual minority rights after the fact under the "other status" category. Such a proposal fails to acknowledge the fact that states opposing the expansion of LGBT rights are sophisticated actors that will be conscious of such an obvious maneuver.

¹⁸⁶ Conference of International Legal Scholars, Yogyakarta, Indon., Nov. 6–9, 2006, *Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (Mar. 2007), http://www.yogyakartaprinciples.org/principles_en.pdf [hereinafter *Yogyakarta Principles*].

¹⁸⁷ See O'Flaherty & Fisher, *supra* note 20 (surveying the principles for the first time); David Brown, Note, *Making Room for Sexual Orientation and Gender Identity in International Human Rights Law: An Introduction to the Yogyakarta Principles*, 31 MICH. J. INT'L L. 821 (2010); Response to SOGI Human Rights Statement, *supra* note 19.

¹⁸⁸ Brown, *supra* note 187, at 845–47.

¹⁸⁹ E.g., *Pant v. Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD) (Nepal); *Naz Found. v. Gov't of NCT of Delhi*, WP(C) No. 7455/2001, 160 Delhi L. Times 277 (Del. High Ct. July 2, 2009), <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>; see also INT'L GAY & LESBIAN HUMAN RIGHTS COMM'N, NEPAL SUPREME COURT CASE ON RELIEF FOR SEXUAL AND GENDER

Though no formal mechanisms exist in modern international law to protect the rights of LGBT people from municipal criminalization statutes, the ad hoc diplomatic solutions sought by governments and nongovernmental agencies in response to pressing issues of LGBT discrimination have worked to prevent or stall the promulgation of certain policies and enforcement actions. In fact, in the very case of Uganda's Anti-homosexuality Bill, international pressure has been successful in stalling the Bill's passage.¹⁹¹ In another widely reported episode, intense international focus narrowed in on Malawi after a man and transgendered woman were sentenced there to fourteen years in prison for announcing their plans to marry.¹⁹² As a result of this international pressure, Malawi's president, Bingu wa Mutharika, pardoned the couple.¹⁹³

From the perspective of LGBT people, however, these ad hoc responses are unpredictable in application and effect, requiring diplomats to play a dangerous game of "chicken" with ideological policymakers.¹⁹⁴ In addition to their unpredictability, such methods are also reactive rather than preventative. Though the international community has played an important role in stalling the Bill, the simple act of proposing the Bill has already created human rights concerns that the international community was powerless to prevent.

III. ANALYSIS: EXTRACTING LESSONS LEARNED FROM THE HISTORY OF DECRIMINALIZATION IN OTHER STATES

Uganda's Anti-homosexuality Bill exposed a "perfect storm" of circumstances creating a hostile environment for LGBT people in Uganda,¹⁹⁵ and any successful efforts to block the Bill's reintroduction, repeal the current

MINORITIES: OBSERVERS' REPORT 4–5 (2007), <http://www.iglhr.org/binary-data/ATTACHMENT/file/000/000/111-1.pdf> [hereinafter PANT V. NEPAL OBSERVERS' REPORT] (describing the Indian Supreme Court's consideration of the Yogyakarta Principles).

¹⁹⁰ See O'Flaherty & Fisher, *supra* note 20.

¹⁹¹ See Steve Weatherbe, *U Vic Prof Offers Insights on Ugandan Anti-gay Law*, CANADIAN CHRISTIANITY (Sept. 23, 2010), <http://www.canadianchristianity.com/nationalupdates/100923uganda.html>.

¹⁹² *Malawi Pardons Jailed Gay Couple*, BBC NEWS (May 29, 2010, 12:14 PM), <http://www.bbc.co.uk/news/10190653>.

¹⁹³ *Id.*

¹⁹⁴ It does not engender confidence in the diplomatic mechanism, for example, when a Ugandan cabinet-level minister states that he would pass the Bill "even if it meant withdrawing from international treaties and conventions such as the UN's Universal Declaration on Human Rights, and foregoing donor funding." Rice, *supra* note 11. The United States sends more than \$500 million per year in foreign aid to Uganda. Bolcer, *supra* note 45.

¹⁹⁵ Cindi Love, *How To Stop the Perfect Storm of Hate in Uganda*, HUFFINGTON POST (Dec. 29, 2010, 12:28 PM), http://www.huffingtonpost.com/rev-dr-cindi-love/a-perfect-storm-of-hate-i_b_798917.html.

law, or advance the equality of LGBT people more generally must be comprehensive and multifaceted. This Part delves into the history of decriminalizing homosexuality to parse out lessons learned. No two countries are exactly alike, and drawing on the history of decriminalization in other nations elicits some comparisons that are more helpful than others. This history is not meant to be exhaustive, and not every comparison can be directly applied to the Ugandan problem. This Part's purpose is to derive strategies that have been particularly helpful in other countries as a way to advance the discussion of how to successfully challenge this Bill—if reintroduced—and the current law in Uganda. Such strategies will include both practical political modes of action as well as legal arguments that appear to be most persuasive. Applying these lessons learned to the Ugandan problem is the subject of Part IV.

A. *Understanding LGBT Rights as an International Legal Problem*

Even though all countries cannot agree that “LGBT rights are human rights,”¹⁹⁶ and an international custom has not yet formed to protect the basic rights of LGBT people, successful efforts to decriminalize homosexuality in municipal systems usually rely substantially on an invocation of international or foreign laws granting LGBT rights. This reliance alone suggests that students and observers of international law should be increasingly interested in international legal developments of LGBT rights. Such developments will likely continue to influence the debate about LGBT rights in individual states. Several recent court cases and legislative enactments illustrate this point.

In the U.S. Supreme Court's landmark 2003 decision that struck down Texas' anti-sodomy statute, *Lawrence v. Texas*, the Court held the law violated the Fourteenth Amendment of the U.S. Constitution, offering a variety of reasons for the violation.¹⁹⁷ Most relevant to this discussion—and perhaps most controversial overall—Justice Anthony Kennedy, writing for the majority, invoked foreign law to bolster his arguments.¹⁹⁸ The Court explained that many countries “in our Western civilization” protected the intimate sexual

¹⁹⁶ Secretary of State Hillary Clinton famously used these words during a speech to the State Department in 2010. P.J. Aroon, *Clinton: 'Gay Rights Are Human Rights,'* FOREIGN POL'Y: MADAME SECRETARY (June 22, 2010, 8:03 PM), http://hillary.foreignpolicy.com/posts/2010/06/22/clinton_gay_rights_are_human_rights.

¹⁹⁷ The Court found, for example, that historical grounds for the sodomy statute at issue were unpersuasive and that emerging social understanding of liberty included a right to privacy regarding consensual sexual acts between adults. *Lawrence v. Texas*, 539 U.S. 558, 571–72 (2003).

¹⁹⁸ *Id.* at 578–79.

privacy of their citizens, and ruled the United States should do the same.¹⁹⁹ Kennedy's justification for the Court's holding is notable in U.S. Supreme Court jurisprudence, where citations to international and foreign law are often criticized.²⁰⁰

The 2010 Delhi High Court case decriminalizing homosexuality in India, *Naz Foundation v. Gov't of NCT of Delhi*,²⁰¹ also illustrates why the expansion of LGBT rights is properly understood by looking at international and foreign legal trends. In its decision, the court drew on foreign law as justification for decriminalizing homosexuality—even citing *Lawrence v. Texas*—further showcasing the important role of foreign influence in LGBT rights jurisprudence.²⁰² Also, because the court struck down a statute that originated in the Indian Penal Code, which had such broad significance on the development of criminal law around the world,²⁰³ the court's ruling invalidates the source of many of the world's laws criminalizing homosexuality. In the context of this Comment, *Naz Foundation* is notable for striking down what is arguably the most influential origin of the current Ugandan statutory scheme.

In addition to giving persuasive weight to *foreign* sources of law decriminalizing homosexuality, some municipal judiciaries—like Nepal's Supreme Court—have exhibited a willingness to cite an emerging custom in *international* law regarding LGBT rights as well.²⁰⁴ In *Pant v. Nepal*, Nepal's Supreme Court decriminalized homosexual activity, in part by drawing on the Yogyakarta Principles, an attempt by international law publicists to codify an emerging global custom of anti-discrimination toward LGBT people.²⁰⁵ By citing the principles, the Nepal Supreme Court not only gave credence to the

¹⁹⁹ *Id.* at 576–77 (“Other nations . . . have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. The right the petitioners seek in this case has been accepted as an integral part of human freedom in many other countries.”) (citation omitted). Kennedy also cited the landmark European Court of Human Rights case, *Dudgeon v. United Kingdom*, in striking down Texas' sodomy law. *Lawrence*, 539 U.S. at 576 (citing *Dudgeon Case*, 45 Eur. Ct. H.R. (ser. A) (1981)).

²⁰⁰ See generally Rex D. Glensy, *The Use of International Law in U.S. Constitutional Adjudication*, 25 EMORY INT'L L. REV. 197 (2011) (providing an overview of the issue).

²⁰¹ *Naz Found. v. Gov't of NCT of Delhi*, WP(C) No. 7455/2001, 160 Delhi L. Times 277 (Del. High Ct. July 2, 2009), <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>.

²⁰² *Id.* at 44–50. In addition to citing to foreign and international sources of law, the decision is also notable for drawing on broader themes of individual *equality*. *Id.* at 73–82.

²⁰³ *Id.* at 55.

²⁰⁴ PANT V. NEPAL OBSERVERS' REPORT, *supra* note 189, at 2, 4–5.

²⁰⁵ *Pant v. Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD) (Nepal); see also PANT V. NEPAL OBSERVERS' REPORT, *supra* note 189, at 4–5 (describing the court's consideration of the Yogyakarta Principles). For further discussion of the Yogyakarta Principles, see *Yogyakarta Principles*, *supra* note 186, and see generally O'Flaherty & Fisher, *supra* note 20.

principles themselves, but also contributed to the establishment of a true international global custom on this issue.

Further, though the UN has mostly failed to protect the rights of LGBT people in a formal way, its attempts to address these issues and the minor victory in retaining “sexual orientation” in its December 2010 resolution prohibiting extrajudicial killings are significant events. The willingness of countries to continue to propose resolutions containing provisions expanding the rights of sexual and gender minorities is noteworthy because it shows that countries seek to solve the problems of LGBT discrimination in UN member states by modifying the larger international regime. Such resolutions can accelerate the arrival of LGBT rights as a viable goal for the international community to pursue.

B. Religion as a Bulwark to Reform

The interplay between religion and human rights is complicated and persisting.²⁰⁶ Though religion can and does provide a framework and justifications for various human rights protections, “religions have been the main offenders in fomenting prejudice against sexual minorities.”²⁰⁷ Religious justifications for social policy are common and are often extremely difficult to successfully challenge.²⁰⁸ Take, for example, the states in which the death penalty may be imposed for homosexual activity; all of them employ a criminal code that is based, at least in part, on Islamic Sharia law, which prohibits homosexuality.²⁰⁹ These laws have remained on the books, and are even enforced, because they draw their authority from the ultimate source: religion.

²⁰⁶ John Witte, Jr. & Abdullahi Ahmed An-Na'im, *Introduction* to NATAN LERNER, RELIGION, BELIEFS, AND INTERNATIONAL HUMAN RIGHTS, at ix (2000) (“The relationship between religion and human rights is both problematic and unavoidable in all parts of the world. Religion, broadly defined to include various traditional, cultural, and customary institutions and practices, is unquestionably a formidable force for violence, repression, and chauvinism of untold dimensions. But religion is also a natural and necessary ally in the global struggle for human rights. . . . Religion invariably provides the sources and scales of dignity and responsibility, shame and respect, restitution and reconciliation that a human rights regime needs to survive and flourish.”).

²⁰⁷ Daniel C. Maguire, *Heterosexism, Not Homosexuality, Is the Problem*, in HETEROSEXISM IN CONTEMPORARY WORLD RELIGION: PROBLEM AND PROSPECT I (Marvin M. Ellison & Judith Plaskow eds., 2007).

²⁰⁸ See, e.g., Mary Ann Tetreault, *Civil Society in Kuwait: Protected Spaces and Women's Rights*, 47 MIDDLE E.J. 275, 278–79 (1993).

²⁰⁹ See *supra* note 105.

The religious bases of anti-homosexuality laws are not limited to Islamic Sharia law. Evangelical Christianity also plays an important role in creating and maintaining anti-homosexuality laws around the world, particularly in Africa.²¹⁰ Although the U.S. influence on religious-based social policy in Africa is well known, African religious leaders have also contributed significantly to the anti-LGBT political climate themselves. Nigeria's anti-gay laws, for example, have the support of Anglican Christians and Muslims.²¹¹ The Primate of All Nigeria Anglican Communion, Most Reverend Peter Akinola, has supported the current laws, saying, "Anglican orthodox members of this church are poised to do the mission of the church; and those who say that gay is their concern, woe unto them."²¹² Though LGBT activists have been unable to successfully challenge religious influences in Nigeria, lessons from other countries may be instructive regarding how those religious bases can be successfully challenged.

Two potential strategies could be used to challenge the influential religious bases of many anti-LGBT laws. First, activists could attempt to gain control over the religious debate, arguing that religions—whether they be Christianity, Islam, or otherwise—do not actually advocate the draconian laws that currently exist or are being proposed. Second, activists could argue that religion has no place in deciding the legal relevance of criminal statutes regarding homosexuality. Both strategies have been persuasive in decriminalization efforts in other countries.

On the first mode of argument, it is not unheard of for religions to change course on their teachings regarding specific social issues.²¹³ Religions have changed stances, for example, on the issues of slavery, the ordination of women, and remarriage after divorce, among other issues.²¹⁴ During the period of legal slavery in the United States, for example, American Episcopalians offered scripture-based defenses of the practice.²¹⁵ As the country's mores

²¹⁰ Kapyia Kaoma, *The U.S. Christian Right and the Attack on Gays in Africa*, HUFFINGTON POST (Dec. 10, 2009, 3:40 PM), http://www.huffingtonpost.com/rev-kapyia-kaoma/the-us-christian-right-an_b_387642.html.

²¹¹ See STATE-SPONSORED HOMOPHOBIA (2010), *supra* note 3 at 7, 17.

²¹² *Id.* at 7.

²¹³ Gene Robinson, *A Public Lecture: Why Religion Matters in the Civil Rights Debate for Gays and Lesbians*, 32 NOVA L. REV. 573, 581–82 (2008).

²¹⁴ *Id.*

²¹⁵ See, e.g., JOHN HENRY HOPKINS, *A SCRIPTURAL, ECCLESIASTICAL, AND HISTORICAL VIEW OF SLAVERY* (1861).

evolved and slavery became known as one of the nation's "original sins,"²¹⁶ Episcopal leaders continued to argue that slavery could not be considered a sin and that abolitionists were acting against the will of God.²¹⁷ This illustrates that many social issues can be argued for or against using religion and religious texts. LGBT rights are no exception; many religious leaders see religion as actually supporting the argument for expanding LGBT rights.²¹⁸

The Delhi High Court, in *Naz Foundation*, adopted the latter approach: rejecting religion-based arguments altogether. During oral arguments, Chief Justice Ajit Prakash Shah and Justice S. Muralidhar dismissed an argument regarding the relevance of religious influence on the law.²¹⁹ Chief Justice Shah stated "that the Court was interested in scientific opinions not the opinions of religious bodies. . . . [A] view of a religious body which viewed [lesbian, gay, and bisexual people] as sinners could not be taken notice of by the Court."²²⁰

C. Misinformation as a Special, Persisting Problem

Many politicians and citizens in countries that criminalize homosexuality hold beliefs about homosexuality that are not supported by proper historical or statistical facts. Correcting such misinformation can be crucial for changing minds to support decriminalization. One common false proposition is that homosexuality is a Western concept that has been exported around the world. The view of India's Ministry of Home Affairs before decriminalization of homosexuality, for example, was that Section 377 of the Indian Penal Code, when originally passed, "responded to the values and mores of the time in the Indian society."²²¹ This statute, however, was imposed on India

²¹⁶ Christine L. Jones, *Affirmative Action and Land-Grant Universities in the Millenium: When Will We Fulfill the Original Promise?*, 10 UDC/DCSL L. REV. 1, 5 (2007) (quoting U.S. Supreme Court Justice Thurgood Marshall).

²¹⁷ See, e.g., HOPKINS, *supra* note 215.

²¹⁸ See, e.g., Robinson, *supra* note 213, at 586–87 ("It's time that progressive religious people stop being ashamed of their faith and fearful that they will be identified with the Religious Right, and start preaching the Good News of the liberating Christ which includes ALL of God's children.").

²¹⁹ *Notes on the Final Arguments in Naz Foundation v Union of India*, ALTERNATIVE L.F., <http://www.altlawforum.org/gender-and-sexuality/the-377-campaign/Summary%20of%20final%20arguments%20for%20website.pdf> (last visited Sept. 1, 2011).

²²⁰ *Id.* at 26. This may explain why petitioners relied so heavily on a public health argument: that discriminating against LGBT people hampers efforts to combat HIV/AIDS. ALTERNATIVE LAW FORUM, THE RIGHT THAT DARES TO SPEAK ITS NAME: *NAZ FOUNDATION VS. UNION OF INDIA AND OTHERS* 12 (2009), available at <http://www.altlawforum.org/gender-and-sexuality/the-377-campaign/The%20right%20that%20Dares%20to%20Speak%20its%20Name.pdf>.

²²¹ HUMAN RIGHTS WATCH, *supra* note 25, at 1.

undemocratically and did not seek to encompass Indian values.²²² LGBT activists marched against the British colonial laws regarding homosexuality and demanded that the “abhorrent alien legacy . . . should have left our shores when the British did.”²²³ The Delhi High Court decriminalized homosexuality in that case, rejecting the old English law in favor of a “constitutional morality” based out of the Indian Constitution.²²⁴

Other unsupported beliefs can also fuel homophobia. Among them are that homosexuals are determined to “recruit” children into homosexuality and that homosexuals can be “cured.”²²⁵ Such myths have been proven false.²²⁶ Unfortunately, such misinformation can be a powerful political force. A famous example in the United States occurred when Anita Bryant, leader of a coalition called Save Our Children, campaigned against a Dade County, Florida, ordinance prohibiting housing and employment discrimination on the basis of sexual orientation.²²⁷ The main thrust of her successful campaign was to emphasize that homosexuals recruited children to homosexuality and molested children.²²⁸ Voters sided with Bryant in repealing the nondiscrimination provision sixty-nine to thirty-one percent.²²⁹ Such attitudes appear to have eroded in the United States, allowing for a large expansion in LGBT rights since the Bryant vote. The correction of such factual inaccuracies could help lay the groundwork for making decriminalization efforts easier.²³⁰

²²² *Id.*

²²³ *Id.* at 2.

²²⁴ ALTERNATIVE LAW FORUM, *supra* note 220, at 99.

²²⁵ Rice, *supra* note 11.

²²⁶ GEORGE E. HAGGERTY, *GAY HISTORIES AND CULTURES: AN ENCYCLOPEDIA 737* (2000); *Myths & Facts About GLBT People*, HUM. RTS. CAMPAIGN, <http://preview.hrc.org/issues/3337.htm> (last visited Mar. 3, 2011) (“No scientifically valid evidence exists that shows that people can change their sexual orientation The most reputable medical and psychotherapeutic groups say you should not try to change your sexual orientation as the process can actually be damaging.”).

²²⁷ Bob Kecskemeti, *Court Strikes Down Ban on Gay Adoption*, FLA. AGENDA (Sept. 23, 2010), <http://floridaagenda.com/2010/09/23/court-strikes-down-ban-on-gay-adoption>.

²²⁸ *Id.* During her campaign, she famously said, “As a mother, I know that homosexuals cannot biologically reproduce children; therefore, they must recruit our children.” Nellie Andreeva & Borys Kit, *HBO Eyes Biopic About Anti-gay Activist Bryant*, REUTERS, Feb. 1, 2010, available at <http://www.reuters.com/article/idUSTRE6110QZ20100202>.

²²⁹ *Days Without Sunshine: Anita Bryant's Anti-gay Crusade*, STONEWALL LIBR., <http://www.stonewall-library.org/anita/panel15.html> (last visited Oct. 8, 2011).

²³⁰ Though homosexuality is incorrectly alleged to be an export of Western cultures, “cultural exports” can be effective in changing minds on social and political issues. *Cf.* Nancy Perkins Spyke, *The Instrumental Value of Beauty in the Pursuit of Justice*, 40 U.S.F. L. REV. 451, 475 (2006) (explaining that the United States used cultural exports—movies, art, or television—to help erode the communist threat in Europe during the cold war). In that sense, Western nations could do well to export LGBT-friendly cultural components (as opposed to introducing homosexuality itself) to other nations with high levels of homophobia. *See Glee Heads*

The evolution in popular opinions may open political windows for reform, as Part III.G discusses.

D. Courts as the Most Historically Reliable Forums for Expanding LGBT Rights in Divided Societies

As Part III.A illustrates, courts are often important accelerants in the expansion of LGBT rights. In any legal system, minority groups that suffer under discriminatory laws rely on a healthy judiciary to protect their rights.²³¹ Though courts may not always be friendly to challenges of discriminatory laws,²³² they have nevertheless been important tools in advancing LGBT rights. Courts have also been able to reverse their prior decisions upholding anti-LGBT laws in certain circumstances.²³³

One of the earliest examples of courts' championing LGBT rights was *Dudgeon v. United Kingdom*, a 1981 case from the European Court of Human Rights.²³⁴ The court held that statutes criminalizing male homosexual acts in England, Wales, and Ireland violated the European Convention on Human Rights.²³⁵ The court held that criminalizing homosexuality was a violation of Article 8 of the convention, which states, "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society."²³⁶ This decision is significant for a variety of reasons. Most directly, the case prohibited any state in the Council of Europe from criminalizing male homosexual behavior between consenting adults.²³⁷ The holding itself is also notable for its creative approach; in finding a right to privacy under the ECHR,

to *Cuba*, ADVOCATE (Feb. 12, 2011), http://www.advocate.com/News/Daily_News/2011/02/12/Glee_Heads_to_Cuba (announcing that a state-sponsored television station in Cuba is showing episodes of the American television show, *Glee*, which portrays LGBT characters in a positive light).

²³¹ See generally Terrance Sandalow, *Judicial Protection of Minorities*, 75 MICH. L. REV. 1162 (1977).

²³² See, e.g., *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Banana v. State*, 8 B.H.R.C. 345 (Zim. 2000); *Kanane v. Botswana*, 1995 B.L.R. 94 (Bots.).

²³³ See, e.g., *Bowers*, 478 U.S. 186 (upholding the constitutionality of a Georgia law criminalizing oral and anal sex between consenting homosexuals), *overruled by* *Lawrence v. Texas*, 539 U.S. 558 (2003).

²³⁴ *Dudgeon Case*, 45 Eur. Ct. H.R. (ser. A) (1981).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ Suzanne Michelle Sable, *A Prohibition on Antisodomy Laws Through Regional Customary International Law*, 19 TUL. J.L. & SEXUALITY 95, 132 (2010). This prohibition on criminal penalties for homosexual activity was later extended to laws concerning females. *Norris v. Ireland*, 142 Eur. Ct. H.R. (ser. A) at 14 (1988).

the court provided an example to other courts on how they might decriminalize homosexuality. Many courts have since expanded LGBT rights via a right to privacy argument.²³⁸ Indeed, the case has been widely cited by courts around the world, including the U.S. Supreme Court in its *Lawrence v. Texas* decision.²³⁹

On the African continent, there are no examples of decriminalizing homosexuality through a court decision, but the modes of decriminalization are instructive nonetheless. Two countries have repealed statutes criminalizing homosexuality since the end of the colonial era: South Africa and Cape Verde.²⁴⁰ Post-apartheid South Africa adopted a new constitution in 1994 that explicitly prohibited discrimination based on sexual orientation.²⁴¹ At the time, South Africa was the only country with such a constitutional provision.²⁴² Though this was part of a broader governmental and cultural redefinition of South Africa, the Constitutional Court has since played an important role in protecting LGBT rights.²⁴³ In December 2005, the court ruled that a ban on same-sex marriage was unconstitutional and ordered the South African Parliament to pass legislation allowing same-sex unions.²⁴⁴

As the South African example illustrates, litigation is not the only successful strategy for achieving decriminalization. Cape Verde also decriminalized homosexuality via legislative decree.²⁴⁵ In fact, there are many examples around the world of this legislative mode of reform. Fiji, for example, adopted a new penal code in February 2010 that includes a repeal of

²³⁸ E.g., *Lawrence*, 539 U.S. 558 at 586; *Naz Found. v. Gov't of NCT of Delhi*, WP(C) No. 7455/2001, 160 Delhi L. Times 277 (Del. High Ct. July 2, 2009), <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>; *Toonen v. Australia*, Commc'n No. 488/1992, U.N. Doc. No. CCPR/C/50/D/488/1992, ¶ 8.5 (1994); *Sentencia No. C-098/96* (Corte Constitucional, 1996) (Colombia Constitutional Court), <http://www.corteconstitucional.gov.co/relatoria/1996/C-098-96.htm> (*unoff. trans.*); see also *Norris*, 142 Eur. Ct. H.R. (ser. A) at 14; *Modinos v. Cyprus*, 259 Eur. Ct. H.R. (ser. A) (1993).

²³⁹ *Lawrence*, 539 U.S. at 575.

²⁴⁰ *Africa: Sexual Orientation Under the African Charter on Human and Peoples' Rights*, ALL AFRICA (Nov. 25, 2010), <http://allafrica.com/stories/201011291563.html>.

²⁴¹ Ryan Goodman, *Beyond the Enforcement Principle: Sodomy Laws, Social Norms, and Social Panoptics*, 89 CAL. L. REV. 643, 647–48 (2001).

²⁴² *Id.*

²⁴³ *Nat'l Coal. for Gay & Lesbian Equality v. Minister of Justice* 1998 (12) BCLR 1517 (CC) (S. Afr.) (“Just as apartheid legislation rendered the lives of couples in different racial groups perpetually at risk, the sodomy offense builds insecurity and vulnerability into the daily lives of gay men.”).

²⁴⁴ *Minister of Home Affairs v. Fourie*, 2006 (3) BCLR 355 (CC) (S. Afr.).

²⁴⁵ *Africa: Sexual Orientation Under the African Charter on Human and Peoples' Rights*, *supra* note 240.

the nation's anti-sodomy law.²⁴⁶ In 1969, Canada passed an omnibus bill to overhaul Canada's criminal laws, which included a repeal of provisions criminalizing homosexual acts.²⁴⁷ The Scandinavian countries also decriminalized via legislative reform.²⁴⁸

Such a mode of action, however, requires a great deal of popular support, as legislators are unlikely to adopt a proposal if it is unsupported by their constituents. In Nepal, for example, the legislative repeal occurred as part of a larger reorganization of government and legislation leading up to the end of Nepal's monarchy;²⁴⁹ a similar reorganization occurred in South Africa.²⁵⁰

It is also worth briefly noting the major limitations of relying on court systems to achieve the decriminalization of homosexuality. Most notably, court decisions that overhaul social policy regimes can be extremely controversial and can result in political backlash.²⁵¹ For example, in the United States, the Massachusetts Supreme Judicial Court, in *Goodridge v. Dept. of Public Health*, granted gay couples the right to marry.²⁵² In the years following that decision, thirty states have adopted constitutional bans on same-sex marriage.²⁵³ Some have also argued that the popular backlash against the decision was instrumental in President George W. Bush's reelection campaign in 2004.²⁵⁴ Such backlash can also result in violence. In the most famous American example, the Supreme Court's decision declaring racial segregation unconstitutional, *Brown v. Board of Education*, "retarded racial progress in the

²⁴⁶ *Same Sex Law in Fiji Decriminalised*, UNAIDS (Feb. 26, 2010), http://www.unaids.org/fj/index.php?option=com_content&view=article&id=536:same-sex-law-in-fiji-decriminalised&catid=23:hiv-in-the-pacific&Itemid=68. Fiji is also notable for having a constitution that explicitly prohibits discrimination against sexual minorities. PANT V. NEPAL OBSERVERS' REPORT, *supra* note 189, at 3.

²⁴⁷ *Trudeau's Omnibus Bill: Challenging Canadian Taboos*, LES ARCHIVES DE RADIO-CANADA, http://archives.cbc.ca/politics/rights_freedoms/topics/538-2671 (last visited Sept. 8, 2011).

²⁴⁸ Jens Ryndström, *Introduction* to CRIMINALLY QUEER: HOMOSEXUALITY AND CRIMINAL LAW IN SCANDINAVIA 1842–1999, at 32–37 (Jens Ryndström & Kaiti Mustola eds., 2007).

²⁴⁹ PANT V. NEPAL OBSERVERS' REPORT, *supra* note 189, at 1; *Nepalese Celebrate Opening of New Era and End of Monarchy*, INT'L HERALD TRIBUNE, May 28, 2008, <http://www.nytimes.com/2008/05/28/world/asia/28iht-nepal.4.13283900.html>.

²⁵⁰ *Nat'l Coal. for Gay & Lesbian Equality v. Minister of Justice*, 1998 (12) BCLR 1517 (CC).

²⁵¹ Political backlash is not limited to court decisions decriminalizing homosexuality; after the first wave of legislative decriminalization of homosexuality in Scandinavia between 1933 and 1944, "[t]he 1950s were a decade of vehement homophobia." Ryndström, *supra* note 248, at 33.

²⁵² *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003).

²⁵³ *Controversial Court Decisions Sometimes Create Backlash, Klarman Says*, UNIV. VA. SCH. L. (Nov. 22, 2010), http://www.law.virginia.edu/html/news/2010_fall/klarman.htm.

²⁵⁴ *Id.* (explaining that Bush needed to win Ohio to win the election, Bush won Ohio by two percentage points, and a ballot measure on a constitutional ban on gay marriage passed that same day in Ohio by twenty-four percentage points).

South. It created an environment that was conducive to political extremism . . . [and] violence.”²⁵⁵

E. The Success of Cross-Border Collaboration

Another common feature of decriminalization efforts is cross-border collaboration among LGBT activists. The ability of LGBT activists to meet their counterparts in other countries provides not only social benefits, but also opportunities to share ideas and strategies for reform. Such effects bolster the notion that LGBT decriminalization is properly understood as an international problem.²⁵⁶

Nepal’s and Scandinavia’s decriminalization efforts exemplify the importance of cross-border collaboration to elicit both court-originated and legislative reform toward the decriminalization of homosexuality. Nepal’s history, for example, shows a willingness of LGBT activists to incorporate foreign input into their legal strategies. In preparation for the Nepal case, Nepalese LGBT activists networked with LGBT activists from neighboring countries to craft a strategy for decriminalization.²⁵⁷ These activists achieved decriminalization from a Supreme Court ruling.²⁵⁸ LGBT activists in the Scandinavian countries also aided one another in achieving decriminalization of homosexuality.²⁵⁹ The Danish LGBT rights group (Federation of 1948 or *Forbundet af 1948*), the Swedish group (National Federation for Sexual Equality or *Riksförbundet för Sexuellt Likaberättigande*), and the Norwegian

²⁵⁵ *Id.*

²⁵⁶ See *supra* Part III.A.

²⁵⁷ PANT V. NEPAL OBSERVERS’ REPORT, *supra* note 189, at 4–5.

²⁵⁸ Pant v. Nepal, Writ No. 917 of the Year 2064 BS (2007 AD) (Nepal); see also *Nepal Court Rules on Gay Rights*, BBC NEWS (Dec. 21, 2007, 6:03 PM), http://news.bbc.co.uk/2/hi/south_asia/7156577.stm. Such a ruling was a particularly notable victory for LGBT activists since the Nepal Supreme Court has the authority to direct the legislature to enact specific legislation. Cary Alan Johnson, Keynote Address at the Harvard Law School Conference: Diverse Sexualities/Disparate Laws: Sexual Minorities, the State and International Law (Apr. 3, 2010), <http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/iglhrcscommentaries/1110.html>. The court took advantage of this authority directing the legislature to institute anti-discrimination provisions:

[T]his directive order is hereby issued to the Government of Nepal to make necessary arrangements towards making appropriate law or amending existing law for ensuring the legal provisions which allow the people of different gender identity and sexual orientation in enjoying their rights as other people without any discrimination following the completion of necessary study in this regard.

Pant, Writ No. 917, 2064 BS.

²⁵⁹ Ryndström, *supra* note 248, at 33. (“The founding and growth of the homophile movement was very much a joint Scandinavian venture, which in turn was a part of a larger European movement.”).

group (The Norwegian Federation of 1948 or *Det Norske Forbundet av 1948*) “maintained close connections, and members and leaders frequently visited each other.”²⁶⁰ These activists achieved decriminalization via incremental legislation over several decades.²⁶¹

F. The Effectiveness of Informal Diplomacy

Informal diplomacy—backroom discussions, corridor meetings, off-the-record conversations, etc.—is an important tool for any lobbying campaign and the debate raging over LGBT rights worldwide is no exception. As noted earlier, it appears that diplomats from certain countries engage in off-the-record dealings at international conventions to prevent the expansion of rights for sexual minorities in international instruments.²⁶² Likewise, secretive discussions can be particularly helpful in moving policy discussions into pro-LGBT territory. Because LGBT people are often so vilified in certain countries, they may only be able to lobby in a clandestine manner.

This reality was demonstrated in Nordic countries’ efforts to decriminalize homosexuality. Prior to decriminalization there, no organized LGBT rights movement existed, and most LGBT people were closeted.²⁶³ Generally, policy makers changed their minds gradually though an evolution of societal norms that led to a more social democratic set of values. Additionally and more directly, closeted homosexuals exerted substantial influence on the opinions of decision-makers behind the scenes.²⁶⁴ Even though they were closeted, homosexuals were able to influence the discussion by being at the right place at the right time.

G. The Importance of Changing Political Winds Regarding Homosexuality

Often, decriminalization of homosexual activity follows a longer-term evolution of expanding social acceptance of LGBT people. In the United States, for example, an expanding understanding and acceptance of homosexuality in American culture predated decisions like *Lawrence* and *Goodridge*.²⁶⁵ Similarly, in the Scandinavian countries, decriminalization of

²⁶⁰ *Id.* at 33–34.

²⁶¹ *Id.* at 32–37.

²⁶² Samuel, *supra* note 182.

²⁶³ Ryndström, *supra* note 248, at 23.

²⁶⁴ *Id.*

²⁶⁵ *Lawrence v. Texas*, 539 U.S. 558, 559 (2003); *Goodridge v. Dept. of Public Health*, 798 N.E. 2d 941.

homosexuality coincided with the rise of the modern welfare state and the modernization of society.²⁶⁶

Because Ugandan socio-political norms regarding homosexuality appear to be ossifying rather than evolving, it is important to note that special circumstances may allow for drastic expansions in human rights for LGBT people. In Nepal, for example, the high court decision that called for decriminalization and the new penal code's repeal of the anti-sodomy laws came about during a time of political upheaval.²⁶⁷ Nepal provides a case study for the idea that the expansion of rights can be easier "when the basic social compact between the state and its people is being negotiated."²⁶⁸ This principle can also be seen in South Africa, where the end of apartheid brought broad changes to how citizens viewed social relationships and civil rights.²⁶⁹

H. The Reality of Incremental Reform in Homosexuality Discrimination

Without some major event or change in government, however, it is common for decriminalization of homosexuality to be achieved incrementally. In Denmark (1933), Iceland (1940), and Sweden (1944), for example, legislatures began repealing the anti-homosexuality laws, but continued to impose a higher age of consent for homosexual sex than for heterosexual sex.²⁷⁰ In Iceland, the ages of consent were equalized in 1992, whereas the laws in Denmark and Sweden were equalized in the late 1970s.²⁷¹ Similarly, in the United Kingdom, though *Dudgeon* decriminalized homosexuality generally, it took nearly sixteen years for the European Commission on Human Rights to condemn discriminatory ages of consent for consensual homosexual acts in *Sutherland v. United Kingdom*.²⁷²

²⁶⁶ See Ryndström, *supra* note 248, at 14.

²⁶⁷ PANT V. NEPAL OBSERVERS' REPORT, *supra* note 189, at 5.

²⁶⁸ *Id.*

²⁶⁹ See *Nat'l Coal. for Gay & Lesbian Equality v. Minister of Justice*, 1998 (12) BCLR 1517 (CC) at para. 28.

²⁷⁰ Ryndström, *supra* note 248, at 32–33. "These laws were the ultimate proof for homosexuals that they were seen as second-class citizens and a menace to society, and the struggle against such laws became an important matter of principle." *Id.* at 35.

²⁷¹ *Id.*

²⁷² Michele Grigolo, *Sexualities and the ECHR: Introducing the Universal Sexual Legal Subject*, 14 EURO. J. INT'L L. 1023, 1031 (2003); see also *Sutherland v. United Kingdom*, App. No. 25186/94, 22 Eur. H.R. Rep. CD22 (1997).

I. *Remedial Measures To Ameliorate Urgent Threats to Human Rights Prior to Decriminalization: Asylum and Extradition Reform and the United States' Use of the Alien Torts Statute*

Though the history of decriminalizing homosexuality in other countries helps students of international law understand how decriminalization might be achieved in Uganda, one must also consider that remedial solutions can be put into place to protect the human rights of LGBT people in Uganda before a permanent solution is achieved. Among the remedial solutions that appear readily applicable to the Ugandan problem are international pressure, reforms to asylum laws and extradition policies, and the United States' use of the Alien Torts Statute ("ATS").²⁷³ This Subpart addresses those measures in turn. Part IV applies them to the Ugandan problem.

1. *International Pressure*

Foreign governments and nongovernmental organizations have historically played significant roles in shaping LGBT policies around the world.²⁷⁴ Though advocates may disagree as to what the most effective emphases of this pressure should be, history proves that such international pressure tends to be successful in preventing anti-LGBT laws from becoming more extreme.²⁷⁵ In Nigeria, for example, a 2006 proposed law would have ramped up criminal penalties for LGBT people nationwide and prohibited same sex marriage.²⁷⁶ Predictably, the legislation garnered international condemnation. Partly as a result of this international pressure, the bill failed to pass.²⁷⁷ International pressure, therefore, can work as a remedial measure to block the passage of new legislation exacerbating the criminalization of homosexuality, even where strong domestic religious influences proved the basis for such legislation.

²⁷³ 28 U.S.C. § 1350 (2006).

²⁷⁴ See generally Emma Mittelstaedt, Note, *Safeguarding the Rights of Sexual Minorities: The Incremental and Legal Approaches to Enforcing International Human Rights Obligations*, 9 CHI. J. INT'L L. 353 (2008).

²⁷⁵ Nigeria's "Same-Sex Marriage (Prohibition) Act" failed to pass after the international community "implemented most of the tactics, short of economic sanctions, in the international law arsenal" to fight the legislation. *Id.* at 375. South Korea's "Anti-Discrimination Bill," which excluded sexual orientation from the protections of nondiscrimination, stalled in the legislature after the international community condemned the proposal. *Id.* at 377–82.

²⁷⁶ *Id.* at 371.

²⁷⁷ *Id.*

2. *Updating Extradition Policies*

When countries seek extradition of a criminal defendant from another country, the requesting state must seek such a transfer under the rules of international law.²⁷⁸ A country is not required to extradite in all circumstances, and may deny an extradition request if there is a probable risk that the fugitive's fundamental rights would not be protected in the receiving state.²⁷⁹ By denying extradition, a country may "export" its own human rights law into the other country because the denial of extradition prevents the receiving country from prosecuting the fugitive under a law with which the sending state disagrees.²⁸⁰ In this way, national courts may "participate in the progressive development of human rights law on the international plane."²⁸¹

3. *Reforming Asylum Laws*

In a similar way, a country's asylum laws announce that country's acceptance or rejection of human rights regimes in other states and can act as a remedial measure, allowing individuals to escape discriminatory laws and harsh punishments.²⁸² Courts have hesitated to embrace a liberalized asylum regime to remedy the problem of fielding numerous asylum petitions from LGBT people, and have voiced a concern over how to tell whether an asylum applicant is "really" LGBT or just faking it to get around traditional asylum requirements.²⁸³ Nevertheless, the option to liberalize these policies for gay people who are not U.S. citizens is still on the table as a remedial measure that would be effective for particular individuals seeking asylum and would allow these individuals to avoid the harsh punishments of many laws and hostile environments around the world.

²⁷⁸ See BEDERMAN, *supra* note 135, at 182.

²⁷⁹ See, e.g., *Soering v. United Kingdom*, 11 Eur. Ct. H.R. (ser. A) (1989) (holding that the extradition of a German citizen to the United States to face charges of capital murder violated his rights under Article 3 of the European Convention on Human Rights, which protects against inhumane and degrading treatment).

²⁸⁰ Richard B. Lillich, *Harmonizing Human Rights Law Nationally and Internationally: The Death Row Phenomenon as a Case Study*, 40 ST. LOUIS U. L.J. 699, 712–13 (1996).

²⁸¹ *Id.* at 713.

²⁸² Gay Saudis, as one example, have traditionally been granted asylum in Britain because Saudi Arabia prescribes the death penalty for LGBT people. "Gay" Saudi Prince Faces Death Penalty, *ADVOCATE* (Oct. 15, 2010), http://www.advocate.com/News/Daily_News/2010/10/15/Gay_Saudi_Prince_Faces_Death_Penalty.

²⁸³ *HIV-Positive Ugandan Fears Deportation*, *ADVOCATE* (Feb. 6, 2011), http://www.advocate.com/News/Daily_News/2011/02/06/HIV_Positive_Ugandan_Fears_Deportation; *Ugandan Lesbian Can Stay in U.K.*, *ADVOCATE* (Jan. 28, 2011), http://www.advocate.com/News/Daily_News/2011/01/28/Ugandan_Lesbian_Can_Stay_in_UK.

4. *The United States' Use of the Alien Tort Statute*

The ATS allows U.S. courts to entertain claims for damages for human rights abuses occurring abroad and has allowed the United States to become “the leading venue for private human rights litigation in the world.”²⁸⁴ Under the ATS, the United States provides a right of action to aliens who have been victims of an action that is prohibited by customary international law or a treaty of the United States.²⁸⁵ The standard for customary international law is high; the U.S. Supreme Court has held that a cause of action under that prong of the ATS must “violate[] definable, universal and obligatory norms.”²⁸⁶ Most of the successful cases involve an egregious violation of such norms as torture, murder, genocide, war crimes, crimes against humanity, summary execution, and prolonged arbitrary detention.²⁸⁷ In looking at the United States’ treaty obligations, actions under the ATS could potentially be brought against parties that engage in torture of or degrading treatment toward LGBT people abroad. The United States is a party to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,²⁸⁸ which aims to prevent torture around the world.²⁸⁹ The convention defines torture as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or *for any reason based on discrimination of any kind*, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²⁹⁰

The actions of individuals that engage in violence or threats of violence against LGBT people abroad, therefore, can presumably trigger U.S. jurisdiction under

²⁸⁴ See BEDERMAN, *supra* note 135, at 112.

²⁸⁵ 28 U.S.C. § 1350 (2006).

²⁸⁶ *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004) (quoting *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 781 (D.C. Cir. 1984)).

²⁸⁷ Beth Stephens, *Judicial Deference and the Unreasonable Views of the Bush Administration*, 33 BROOKLYN J. INT’L L. 773, 777 (2008); see also *Sosa*, 542 U.S. at 720.

²⁸⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

²⁸⁹ *Id.* art. 2.

²⁹⁰ *Id.* art. 1.1 (emphasis added).

the ATS. However, no federal cases have yet applied the ATS to LGBT-based violence abroad.

IV. ANALYSIS: APPLICATION OF LESSONS LEARNED TO UGANDA

LGBT activists and human rights defenders may be able to learn important lessons by studying the origins of the Ugandan problem and the scattered history of decriminalization efforts in other nations to determine how to move forward in Uganda. A successful effort will require a comprehensive approach, emphasizing remedial measures in the short term and recognizing the importance of laying the foundation for the establishment of binding international law to prohibit all criminalization of homosexuality.²⁹¹

A. A Comprehensive Approach: International Efforts

The human rights concerns raised by the Anti-homosexuality Bill create an international problem²⁹² that deserves an international solution. Though there are no formal international instruments that can bind Uganda to withdraw the Bill²⁹³—in fact, the Bill itself would require Uganda to revoke any international agreements that are inconsistent with the Bill²⁹⁴—there are still several strategies for implementing remedial measures to protect against the worst human rights violations and for encouraging the permanent withdrawal of the Bill and a repeal of the current penal code provisions criminalizing homosexuality. This Subpart analyzes potential modes of action that the

²⁹¹ It should also be noted that there may be fatal *procedural* problems with the Bill as currently written, such that it could not be properly enacted or would be struck down if enacted. In a cabinet report commissioned by President Museveni, the minister of local government, Adolf Mwesige, identified the following flaws in the Bill, among others: the Bill used words not defined in the Bill, rendering the Bill “irregular”; the new offense of “homosexuality” was already provided for in the existing penal code in Sections 120 and 145; the confidentiality provisions in clause 6 were already provided for in the constitution; various other instances where the Bill exhibits redundancies with existing criminal law in Uganda; and that the First Parliamentary Counsel was not consulted before the Bill was presented, in violation of Article 94 of the constitution. Letter from Adolf Mwesige, Uganda Minister of Local Government, to Nsaba Buturo (Mar. 15, 2010).

²⁹² See *supra* Part III.A.

²⁹³ Since legislative proposals are a necessary part of public debate in a society, and an opportunity for sovereign governments to reject unfavorable legislative ideas, disallowing certain kinds of proposals would create a dangerous slippery slope where freedom of speech and political autonomy could be substantially abraded. Though the Bill might be seen by some as an “incitement to commit genocide” under international law, prosecutions for incitement to genocide are rare in international tribunals and have been reserved for more serious and direct calls for violence by media and public officials. See, e.g., *Prosecutor v. Jean Paul Akayesu*, Case No. ICTR-96-4-T, Judgement, ¶ 556 (Int’l Crim. Trib. for Rwanda, Sept. 2, 1998).

²⁹⁴ Anti-homosexuality Bill, *supra* note 2, § 18(1).

international community can take, and the following Subpart focuses on actions that can be taken from within Uganda.

Remedial measures that need to be continued or implemented with all deliberate speed include (1) international pressure condemning the Bill and the current law, (2) expanded asylum protections for LGBT Ugandans in other countries, (3) announcement of more restrictive extradition policies with regard to Uganda, and (4) threatening litigation under the United States' Alien Tort Statute. In the longer term, the international community must (1) continue to pressure Uganda to reform or cease to apply its current law and prevent the introduction of legislation like the Anti-homosexuality Bill, (2) strengthen its institutional commitments to global LGBT equality, (3) consider divesting from or sanctioning Uganda for its anti-LGBT policies, and (4) engage the religious debate in Uganda to undermine the religious-based arguments that appear to so strongly influence public opinion in Uganda on this issue.

In terms of remedial measures already in place, many commentators have credited the strong international pressure against the Anti-homosexuality Bill with stalling it in parliamentary debate.²⁹⁵ President Barack Obama criticized the Bill at the February 2010 National Prayer Breakfast—a high-profile annual event organized by the Fellowship.²⁹⁶ Secretary of State Hillary Clinton has called the Bill “a very serious potential violation of human rights.”²⁹⁷ The European Parliament has twice condemned the Bill.²⁹⁸ Though it is unlikely that international pressure could convince Bahati to withdraw the Bill on his own, such pressure appears to be influential over Museveni, who has personally urged Bahati to be cautious with the Bill's introduction.²⁹⁹ Such international pressure should continue because members of Uganda's Parliament still threaten to pass a version of it.³⁰⁰ It should be noted, however,

²⁹⁵ *Anti-gay Fervor in Uganda Tied to Right-Wing US Evangelicals*, DEMOCRACY NOW (Oct. 21, 2010), http://www.democracynow.org/2010/10/21/anti_gay_fervor_in_uganda_tied (interview with Jeff Sharlet).

²⁹⁶ Barack Obama, Remarks at the National Prayer Breakfast (Feb. 4, 2010), <http://www.whitehouse.gov/the-press-office/remarks-president-national-prayer-breakfast> (“We may disagree about gay marriage, but surely we can agree that it is unconscionable to target gays and lesbians for who they are—whether it's here in the United States or . . . more extremely in odious laws that are being proposed most recently in Uganda.”).

²⁹⁷ Hillary Rodham Clinton, Sec'y of State, Remarks on the Human Rights Agenda for the 21st Century at Georgetown University (Dec. 14, 2009), <http://www.state.gov/secretary/rm/2009a/12/133544.htm>.

²⁹⁸ *European Parliament Repeats Firm Opposition to Uganda's 'Kill the Gays' Bill*, UK GAY NEWS (Dec. 17, 2010, 2:00 PM), <http://www.ukgaynews.org.uk/Archive/10/Dec/1701.htm>.

²⁹⁹ Julie Bolcer, *Uganda Opposition Leader Would Decriminalize Homosexuality*, ADVOCATE (Jan. 11, 2011), http://www.advocate.com/News/Daily_News/2011/01/11/Uganda_Opposition_Leader_Would_Decriminalize_Homosexuality.

³⁰⁰ Grindley, *supra* note 7.

that the scope and intensity of the international pressure must be carefully calculated; international rhetoric that advocates for immediate legal reform creates certain complicated concerns, which are discussed in Part IV.B.

In addition to exerting rhetorical force on Uganda as a remedial measure, the international community and foreign governments also should expand quickly the protections they are able to provide to LGBT Ugandans. First, states that do not criminalize homosexuality should expand their asylum protections for LGBT Ugandans. They should—at least temporarily—ignore the heterosexist frame of mind that only gay people that “act gay enough” are worthy of asylum, and should give greater deference to Ugandans’ claims of asylum for fear of persecution under the current and proposed criminal code.

Second, as a further remedial measure to protect the rights of individual LGBT Ugandans, countries should announce their unwillingness to extradite LGBT people to Uganda. The principle of “double criminality” would prevent any country that has legalized homosexuality from extraditing a person back to Uganda to be punished under the current or proposed Ugandan law. For homosexual Ugandans charged with other crimes, however, states should protect those defendants by refusing extradition. Though the Bill purports to allow extradition of LGBT individuals back to the country,³⁰¹ states can refuse this demand. The United States, which does not have an extradition agreement with Uganda,³⁰² would presumably not extradite to any country with which it does not have an extradition agreement.³⁰³ Other nations should revoke their agreements with Uganda or limit them such that LGBT people cannot be extradited until homosexuality is decriminalized and protections for homosexual defendants are put into place. Though this may encourage many Ugandans to request asylum, it is a necessary remedial measure to protect the rights of individuals facing extreme discrimination and violence, and may also be effective in sending Uganda and other nations a message regarding the importance pro-equality nations place on this issue.

Further, because the United States is a particularly important actor in enforcing human rights on the international plane,³⁰⁴ U.S. courts should allow

³⁰¹ Anti-homosexuality Bill, *supra* note 2, § 18(1) (“Any international legal instrument whose provisions are contradictory to the spirit and provisions enshrined in this Act, are null and void to the extent of their inconsistency.”).

³⁰² MICHAEL JOHN GARCIA & CHARLES DOYLE, CONG. RESEARCH SERV., EXTRADITION TO AND FROM THE UNITED STATES: OVERVIEW OF THE LAW AND RECENT TREATIES 43 (2010).

³⁰³ See *Valentine v. United States ex rel. Neidecker*, 299 U.S. 5, 9 (1936).

³⁰⁴ See BEDERMAN, *supra* note 135, at 111.

the use of the ATS to provide a cause of action for certain LGBT Ugandans in federal court. Because the international community cannot agree on whether criminalizing homosexuality is a violation of customary international law, such a criminalization provision would likely not trigger the ATS on its own. LGBT Ugandans, however, have arguably suffered violations of other, established customary international law principles. For example, the ATS should protect LGBT Ugandans, many of whom have been “tortured” under the definition in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which applies when “pain or suffering, whether physical or mental, is intentionally inflicted . . . for any reason based on discrimination of any kind.”³⁰⁵ Therefore, the fear and physical violence experienced by LGBT Ugandans would trigger the protections of this convention, and the ATS by extension. Furthermore, because the newspapers in Uganda have arguably committed the internationally recognized tort of incitement to violence,³⁰⁶ U.S. courts should allow plaintiffs to use the ATS against those publishers. Suits under the ATS should then logically be allowed against the people actually engaging in direct threats and acts of violence against LGBT people in Uganda as well. Allowing these suits—and announcing the United States’ intention of allowing the use of the statute—could be a powerful deterrent against violence and incitement to violence in Uganda.

In addition to these remedial measures, the international community must engage in longer-term strategies to ensure the basic human rights of LGBT people in Uganda. While international political leaders need to ramp up public rhetoric against the Anti-homosexuality Bill as a remedial measure, for example, they must make sure to continue to apply direct pressure to Museveni via private communications as well. Museveni’s working relationship with Western nations and religious leaders is perhaps a source of his authority and stability as a leader.³⁰⁷ If the United States were to deny Museveni an audience

³⁰⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, *supra* note 288, art. 1.1.

³⁰⁶ To find an incitement to violence under international law, “words [have] to call specifically for the type of violence later accomplished, and a direct link from the speech to the actions [has] to be established.” Alexander C. Dale, *Countering Hate Messages that Lead to Violence: The United Nations’ Chapter VII Authority To Use Radio Jamming To Halt Incendiary Broadcasts*, 11 DUKE J. COMP. & INT’L L. 109, 123 (2001); *accord* Prosecutor v. Jean Paul Akayesu, Case No. ICTR-96-4-T, Judgement, ¶ 557 (Int’l Crim. Trib. for Rwanda, Sept. 2, 1998).

³⁰⁷ See Jody May-Chang, *Exporting Homophobia: American Far-Right Conservative Churches Establish Influence on Anti-gay Policy in Africa*, BOISE WKLY. (Sept. 8, 2010), <http://www.boiseweekly.com/boise/>

with President Obama and his closest advisors, such a denial of access could be pressure enough to convince Museveni that proposals like the Anti-homosexuality Bill are disadvantageous both for Uganda and for Museveni's continued grip on power in Uganda. Having such access can be seen as prestigious and important for rulers' legitimacy around the world, and the threat of losing such an audience might persuade Museveni to flex his diplomatic muscle against Bahati's efforts to usher the Bill through parliament.³⁰⁸

In addition to rhetorical strategies, the United States should continue to expand its institutional commitments to helping fight for LGBT rights worldwide. Notable in the United States' efforts is the Foreign Relations Authorization Act for Fiscal Years 2010–2011 (“Act”), which requires the State Department to create an additional position within its Human Rights Bureau to “[track] violence, criminalization, and restrictions on the enjoyment of fundamental freedoms . . . based on actual or perceived sexual orientation.”³⁰⁹ The Act also instructs the State Department “to work through . . . United States diplomatic and consular missions to encourage the government of other countries to reform or repeal laws of such countries . . . criminalizing homosexuality” and instruct Foreign Service officers “in courses covering human rights reporting and advocacy work, on identifying violence or discrimination that affects the fundamental freedoms . . . of an individual that is based on actual or perceived sexual orientation.”³¹⁰ The Act also requires the State Department to include LGBT issues in human rights training courses for Foreign Service officers.³¹¹ These efforts to further institutionalize an American effort to protect the rights of LGBT people worldwide is helpful not only for solving particular challenges—like the Anti-homosexuality Bill—but also for announcing to the world the commitment that the United States has in this area and making it clear that the United States will strongly oppose similar legislation if proposed in the future.

exporting-homophobia-american-far-right-conservative-churches-establish-influence-on-anti-gay-policy-in-africa/Content?oid=1767227.

³⁰⁸ Cf. David Gardner, *Wikileaks: America Plays 'Let's Make a Deal' with Foreign Governments over Guantanamo Prisoners*, DAILY MAIL (Nov. 29, 2010, 9:16 AM), <http://www.dailymail.co.uk/news/article-1333937/WikiLeaks-US-plays-foreign-governments-Guantanamo-prisoners.html> (revealing a WikiLeaks cable describing that U.S. State Department officials told Slovenian officials that Slovenia would have to accept a Guantanamo Bay detainee in exchange for an audience with President Obama).

³⁰⁹ Foreign Relations Authorization Act 2010–2011, H.R. 2410, 111th Cong. § 333(a) (2009).

³¹⁰ *Id.* § 333(b).

³¹¹ *Id.* § 333(d).

The United States and other nations could also threaten to divest from Uganda or encourage boycotts of Ugandan industry. Though such a strategy has proven successful in remedying certain human rights abuses in Africa, such a solution comes at a great cost and risk.³¹² In South Africa, for example, the United States divested from South African companies during the period of apartheid.³¹³ Though such divestment was largely credited with helping to end the period of racial segregation, it “play[ed] havoc with [South Africa’s] economy.”³¹⁴ Furthermore, in Uganda, cabinet-level ministers appear ready to implement the Anti-homosexuality Bill—if it is ever enacted—even if it means losing out on international investment and foreign aid.³¹⁵ And in a country where half of the government budget comes from foreign aid,³¹⁶ withholding foreign money could have dire consequences for the entire population of Uganda.

Though states, especially the United States, have important roles to play in creating solutions to the Ugandan problem, non-state religious groups also have a special role in this debate. Because of the influential role of religion—via Christian groups like the Fellowship, certain sectors of the Episcopal Church, and Islamic Sharia law—countries around the globe have justified their discriminatory criminal laws stigmatizing LGBT people. But history proves that, though religion is a powerful justification for social policies, religion is often subject to interpretation. There remains a debate as to whether there is a religious justification for a state to criminalize homosexuality—let alone put LGBT people to death. More liberal religious groups have a duty to enter the Ugandan debate and attempt to influence the discussion toward a more compassionate view of homosexuality.

Further, though the moral arguments of religion are often talked about as the main influence on the law, religion is perhaps more influential on Uganda’s statutory scheme from an economic perspective. Christian lobbyists are able to promise billions of dollars in aid to Uganda, and such funding has been a main reason that Museveni has sought their involvement in his government.³¹⁷ If

³¹² See *Saudi Courts—Women’s Rights—General Court of Qatif Sentences Gang-Rape Victim to Prison and Lashings for Violating “Illegal Mingling” Law*, 121 HARV. L. REV. 2254, 2260–61 (2008).

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ See Rice, *supra* note 11.

³¹⁶ Andrew Mwenda, *Foreign Aid and the Weakening of Democratic Accountability in Uganda*, CATO INST.: FOREIGN POL’Y BRIEFING, July 12, 2006, at 1, 1, available at <http://www.cato.org/pubs/fpbriefs/fpb88.pdf>.

³¹⁷ See May-Chang, *supra* note 307.

liberal, secular lobbyists were also able to promise the same or more commitment to developing Uganda, the religion-based legislative fervor may not dominate the national political discussion so completely.

B. A Comprehensive Approach: Efforts Within Uganda

The international community is not the only relevant set of actors in the efforts to vindicate the human rights of LGBT people in Uganda; Ugandans themselves play a critical role as well in shaping their own social policy. The Ugandan Parliament, courts, executive branch, administrative agencies, media, religious leaders, and citizenry can all shape the outcome of this battle over LGBT rights.

Though some have advocated for a legal solution to bring about rapid change to the current law,³¹⁸ any successful effort from within Uganda to change the current law or block the proposed Bill must be part of a comprehensive effort that will likely bring change slowly. If a radical change in the penal code regarding LGBT people in Uganda came about, public backlash would likely result, potentially including large-scale protesting and violent resistance.³¹⁹ In the end, though, a legal solution is necessary, as LGBT people in Uganda deserve equal protection under the law. Therefore, in discussing the potential strategies for achieving a legal solution below, it is important to emphasize that though some remedial measures are urgently needed, such solutions need to be complemented by efforts to influence public opinion in support of LGBT rights (i.e., public legislative advocacy, education campaigns, and grassroots organizing).³²⁰

The most promising path toward decriminalizing homosexuality within the Ugandan system is through the courts.³²¹ By holding that the *Rolling Stone*'s publishing the names of perceived homosexuals constituted a violation of those

³¹⁸ See STATE-SPONSORED HOMOPHOBIA (2011), *supra* note 29, at 19; cf. J D van der Vyver, *The Function of Legislation as an Instrument for Social Reform*, 93 S. AFR. L.J. 56, 60 (1976) (acknowledging that some might think that the "obvious answer" in reforming race relations during apartheid would be to "repeal the laws which sanction discrimination and enact others which will secure justice in race relations," but noting that public opposition made this legislative solution untenable).

³¹⁹ See van der Vyver, *supra* note 318, at 60.

³²⁰ Cf. Scott L. Cummings & Douglas NeJaime, *Lawyering for Marriage Equality*, 57 UCLA L. REV. 1235, 1329 (2010).

³²¹ Though an individual petitioner could potentially get a favorable judgment from the UN Human Rights Committee under the ICCPR, see, for example, *Toonen v. Australia*, Commc'n No. 488/1992, U.N. Doc. No. CCPR/C/50/D/488/1992 (1994), such a petitioner would have to exhaust judicial remedies in Ugandan courts. International Covenant on Civil and Political Rights, *supra* note 18, art. 41(1)(c).

individuals' right to privacy, the judiciary has evoked a similar line of reason as courts in nations around the world that have used the "right to privacy" as way to expand the rights of LGBT people.³²² If a right to privacy regarding sexual relations has indeed been established as a permanent feature of Ugandan constitutional law, then a challenge to the current law—or the Bill, if enacted—would likely be successful. Criminalizing same-sex sexual relations has often been declared a violation of the right to privacy in municipal judiciaries once that right has been established,³²³ and, as Part III.A illustrated, courts are often willing to draw on the growing body of foreign jurisprudence regarding LGBT rights.

As noted above, Museveni appears to still have the power to nullify or ignore judicial decisions given his broad power over the country, but his interference on an issue as high profile as the country's anti-homosexuality laws would likely attract considerable international attention. He would face intense international pressure to accept the ruling. Indeed, deferring to the judiciary may be a way for Museveni to bow to the international pressure on this issue without appearing to support the ruling directly—a point that appears to be important to the largely homophobic Ugandan electorate.

Due to the well-known anti-homosexuality stance of Museveni and members of parliament, solutions to this problem are unlikely to come from the executive or legislative branches of Uganda unless there is a substantial shift in the political climate or social understanding of homosexuality. For example, if Museveni loses his grip on power in Uganda—or dies—the transition to a new leader would likely result in considerable controversy.³²⁴ The transitions of executive power in Uganda have been notoriously bloody, and accusations of corruption in Ugandan politics are common. Ironically, such a transition could end up helping the cause of LGBT rights: the main opposition leader in Uganda, Besigye Kizza, supports decriminalization of homosexuality.³²⁵ If he

³²² *E.g.* *Lawrence v. Texas*, 539 U.S. 558, 586 (2003); *Naz Found. v. Gov't of NCT of Delhi*, WP(C) No. 7455/2001, 160 Delhi L. Times 277 (Del. High Ct. July 2, 2009), <http://lobis.nic.in/dhc/APS/judgement/02-07-2009/APS02072009CW74552001.pdf>; *Toonen*, U.N. Doc. No. CCPR/C/50/D/488/1992, ¶ 8.6; *Sentencia No. C-098/96* (Corte Constitucional, 1996) (Colombia Constitutional Court), <http://www.corteconstitucional.gov.co/relatoria/1996/C-098-96.htm> (*unoff. trans.*); *see also* *Norris v. Ireland*, 142 Eur. Ct. H.R. (ser. A) at 14 (1988); *Modinos v. Cyprus*, 259 Eur. Ct. H.R. (ser. A) (1993); *Sable*, *supra* note 237, at 95 (noting that "many states' antisodomy laws were repealed through nations' right to privacy laws").

³²³ *See, e.g., Lawrence*, 539 U.S. at 578–79; *Naz Found.*, 160 Delhi L. Times 277; *see also Sable*, *supra* note 237, at 95.

³²⁴ Lanier, Oct. 19, 2009, *supra* note 101.

³²⁵ Bolcer, *supra* note 299.

were to succeed Museveni, LGBT Ugandans could see a dramatic expansion in their legal rights.

In addition to influencing the religious debate, Ugandans also have a duty to attempt to influence the general political discourse regarding homosexuality and to correct the rampant misinformation that fuels the incendiary rhetoric aimed at LGBT people. Due to the public outrage against LGBT people currently persisting in Uganda, such activism may be difficult. But, case studies of other nations reveal that many decriminalization efforts throughout history succeeded even without the formal presence of LGBT advocacy groups. The closeted LGBT people in Scandinavia, for example, engaged in influential lobbying that led to the eventual decriminalization of homosexuality.³²⁶ Decriminalization in Uganda, therefore, may very well depend on the bravery and persistence of LGBT people and allies that are willing to engage in the political discussion and take an extremely politically unpopular stance.³²⁷ As revealed by studying the history of decriminalization in other countries, backdoor diplomacy, due to the taboo nature of discussions of homosexuality, may be a particularly useful strategy for LGBT activists in Uganda.

CONCLUSION

Even if international pressure, a Uganda court opinion, or some kind of political upheaval opens up a policy window for changing the current law or blocking legislation expanding criminal penalties for homosexuality, the criminalization of homosexuality will still have to face the court of public opinion. For this reason alone, efforts to decriminalize homosexuality will likely be slow and fraught with challenges. But international legal regimes and the history of decriminalization worldwide give hope to activists that repeal is not impossible and provide valuable guidance for how to not only prevent a “looming gay genocide” but to work for an expansion of broader rights as well. To that end, the international community must focus first on remedial measures to prevent the Bill’s passage and provide options for LGBT Ugandans to seek asylum, resist extradition, and gain access to U.S. courts to

³²⁶ Ryndström, *supra* note 248, at 23.

³²⁷ See Shamara Riley, *Homophobia in Africa Raises Serious Questions About Foreign Aid*, GRIO (Mar. 3, 2010, 8:25 AM), <http://www.thegrio.com/opinion/homophobia-in-africa-raises-questions-about-foreign-aid.php> (arguing that the foreign policy of foreign states is stifling the initiative and sense of responsibility required for Uganda to alter itself from within, and noting that gays and their supporters in African countries “must want it so much that they will put their bodies on the line for it, and take initiative to make it happen”).

seek redress for the human rights abuses they may have suffered. In the longer term, the international community must continue the rhetorical pressure it has already placed on Ugandan officials to withdraw the Bill, strengthen its institutional commitments to blocking anti-LGBT laws worldwide, and consider more extreme actions like sanctions or divestment. Within Uganda, the emerging independence of the Ugandan judiciary should offer some hope to LGBT activists, and the courts should be watched closely to see if they expand their support of LGBT rights. Throughout this process, the international community and Ugandans must engage in the underlying religious debate that has fueled this homophobic environment in Uganda and seek to steer the political discourse to a place where LGBT people can be accepted and thrive openly in Ugandan society.

DANIEL ENGLANDER*

* Editor-in-Chief, *Emory International Law Review*; J.D. Candidate, Emory University School of Law (2012); A.B., Duke University (2008). The Author would like to thank Professor Johan D. van der Vyver, I.T. Cohen Professor of International Law and Human Rights, and the staff of the *Emory International Law Review* for their tireless efforts to maintain the high standards of *EILR*, and for their assistance in preparing this Comment for publication.