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RECONCILING THREE COUNTRIES' CURRENT LAWS WITH HUMAN RIGHTS IN THE FACE OF INTERNATIONAL LAW

STACEY ALICIA MAALEJ RUSNAK*

OVERVIEW

The United Nations High Commissioner for Refugees [UNHCR] has published a landmark treatise to serve as a guide for adjudication of refugee claims made by LGBTI¹ individuals. This treatise, known as *Guidelines on International Protection No. 9*, states that sexual orientation or identity is a protected category and that persecution based on those factors is grounds for refugee status and protection. This article discusses current violations of this protection in three countries: Uganda, Russia, and Nigeria. I shall first examine the relevant international law, and then review the history and current laws of each country. Finally, there is a comparative discussion of religion's role in creating each country's law, as well as within an international context. The discussion considers what these laws portend for the future and looks at the basis for the creation of these laws, which many see as protecting their religious values.

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1. LGBTI stands for "Lesbian, Gay, Bisexual, Transgender, Intersex." See Guidelines No. 9, *infra* note 23, at ¶ 10.

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I. INTERNATIONAL LAW PROTECTING LGBTI RIGHTS

A. UNIVERSAL DECLARATION OF HUMAN RIGHTS AND THE 1951 CONVENTION

Human rights are those to which all human beings are entitled, “simply because she or he is a human being.”² Most scholars agree that this modern concept of human rights did not exist until after the Holocaust.³ What is now customary protection of the rights of all human beings, began with the Universal Declaration of Human Rights [UDHR], adopted by the United Nations in 1948.⁴ Shortly thereafter, in 1954, the member countries of the United Nations signed the 1951 Convention Relating to the Status of Refugees, followed in 1967 by a Protocol to the Convention which removed geographical and temporal restrictions.⁵

Under the 1951 Convention, States are responsible for protecting the fundamental human rights of their citizens.⁶ These rights are to be universally applied, “without discrimination as to race, religion or country of origin . . . sex, age, disability, sexuality, or other prohibited grounds of discrimination.”⁷ However, these protections are limited; they still do not apply to those who have committed crimes against humanity.⁸ Some critics argue that the Convention and Protocol are outdated, especially in the face of new protections provided in the realms

2. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at Art. 1 (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr/index.shtml>; see also MAGDALENA SEPÚLVEDA, ET AL., HUMAN RIGHTS REFERENCE HANDBOOK 3 (3rd rev. ed. 2004). “All human beings are born free and equal in dignity and rights.”

3. MICHAEL FREEMAN, HUMAN RIGHTS: AN INTERDISCIPLINARY APPROACH 15-17 (Polity Press, 2002). See also UNHCR, THE 1951 RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL (Sept. 2011), <http://www.unhcr.org/4ec262df9.html> [hereinafter UNHCR 2011].

4. *The Universal Declaration of Human Rights: History of the Document*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/history.shtml> (last visited Feb. 4, 2014) [hereinafter UDHR]. Because all Member States of the United Nations were party to this convention, every Member State is obliged to follow the requirements of the 1951 Convention. Many of the standards of the 1951 Convention were based on customary international law, which is the long-standing established practice of civilized States. UNHCR 2011, *supra* note 3, at 1.

5. See United Nations High Commissioner for Refugees, *The Legislation that Underpins Our Work*, UNHCR THE UN REFUGEE AGENCY, <http://www.unhcr.org/pages/49da0e466.html> (last visited Feb. 4, 2014). The original Convention was based on protecting European refugees after WWII, and the Protocol removed those restrictions.

6. UNHCR, CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 3 (Dec. 2010), <http://www.unhcr.org/3b66c2aa10.html> (*combined text of* Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267; 19 U.S.T. 6223; G.A. Res. 2198 (XXI), U.N. GAOR, 21st Sess., Supp. No. 11A, UN. Doc. A/RES/21/2198 (Dec. 16, 1966)). [hereinafter 1951 Convention].

7. 1951 Convention, *supra* note 6, at 3.

8. 1951 Convention, *supra* note 6, at 4. This includes crimes against humanity, serious non-political crimes, and other acts which are “contrary to the purposes and principles of the United Nations.”

of ethnic violence and gender-based persecution.⁹ Today, the refugee law of most countries is governed by this 1951 Convention which sets the standard for modern day asylum and refugee claims.¹⁰

The countries discussed in this article are Uganda, Russia, and Nigeria; each has been a signatory or acceded to some or all of these agreements.¹¹ Uganda acceded to the 1951 Convention and Protocol on September 27, 1976, as well as to the International Covenant on Civil and Political Rights on June 21, 1995. Russia was not a signatory, but eventually acceded to the 1951 Convention on February 2, 1993, and was a signatory to the International Covenant on Civil and Political Rights on March 18, 1968. Nigeria was not a signatory, but acceded to the 1951 Convention on October 23, 1967, as well as the Protocol in 1968; the nation was not a signatory to the International Covenant on Civil and Political Rights, but eventually acceded on July 29, 1993.

B. THE DEFINITION OF A “REFUGEE”

The 1951 Convention defines a refugee as any person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country.”¹² To be eligible for refugee status, and thus resettlement to a safe country, the claimant must be able to show each element of this definition: 1) they were or have a well-founded fear that they will be persecuted; 2) because of one of the protected categories (of which, sexual orientation is now recognized);¹³ 3) they are outside the country of

9. “Introductory Note,” *Audiovisual Library of International Law*, UNITED NATIONS <http://legal.un.org/avl/ha/prsr/prsr.html> (last visited April 5, 2015).

10. UNHCR 2011, *supra* note 3, at 2. Although each State writes its own laws, because the 1951 Convention is a requisite of all Member States of the United Nations, their national laws must meet at least the same standard as the 1951 Convention. For the definition of a refugee *see infra* note 12, and accompanying text.

11. All of the information in this paragraph comes from: Human Rights Library, *Ratification of International Human Rights Treaties*, UNIVERSITY OF MINNESOTA (last updated 2008), <http://www1.umn.edu/humanrts/research/ratification-index.html>. “Accession” is an act by which a State signifies its agreement to be legally bound by the terms of a particular treaty. It has the same legal effect as ratification, but is not preceded by an act of signature.” United Nations Treaty Collection, *Glossary of terms relating to Treaty actions* ¶ 3, available at https://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#accession (last visited Feb. 7, 2014) (citing Vienna Convention on the Law of Treaties 1969, Arts.2 (1) (b) and 15).

12. 1951 Convention, *supra* note 6, at Art. 1.

13. LGBTI persons were formally recognized as a “social group” with Guidelines No. 9, *infra* note 23, and accompanying text. All States which were party to the original 1951 Convention are bound by this.

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their nationality; and 4) they are unable to receive protection in their home country.

C. THE YOGYAKARTA PRINCIPLES

The first time that the human rights of LGBTI persons were directly brought to the forefront in the context of international law was in 2007. *The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (Yogyakarta Principles) was authored by a group of LGBTI experts “in response to well-known examples of abuse.”¹⁴ Although the Yogyakarta Principles are not binding international law, they were utilized in the creation of Guidelines No. 9 by the United Nations, which forms the basis for the creation of much binding international law.¹⁵ The Yogyakarta Principles are “a universal guide to human rights which affirm binding international legal standards with which all States must comply”¹⁶ with regard to violations of international human rights law experienced by lesbians, gay men, bisexual and transgender people to ensure the universal reach of human rights protections.¹⁷ The Yogyakarta Principles state that:

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse. Many advances have been made toward ensuring that people of all sexual orientations and gender identities can live with the equal dignity and respect to which all persons are entitled . . . Nevertheless, human rights violations targeted toward persons because of their actual or received sexual orientation or gender identity constitute a global and entrenched pattern of serious concern . . . [these Principles developed] a set of international legal principles on the application of international law to human rights violations based

14. THE YOGYAKARTA PRINCIPLES, *available in six languages at* <http://www.yogyakartaprinciples.org/> (last visited Feb. 6, 2014). The text of the YOGYAKARTA PRINCIPLES is *available at* http://www.yogyakartaprinciples.org/principles_en.pdf. “The Principles were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others.” *About the Yogyakarta Principles*, *available at* http://www.yogyakartaprinciples.org/principles_en.htm (last visited Feb. 7, 2014).

15. See Guidelines No. 9, *infra* note 23, and accompanying text.

16. YOGYAKARTA PRINCIPLES, *supra* note 14.

17. Amnesty International, *About LGBTI Human Rights*, <http://www.amnestyusa.org/our-work/issues/LGBTI-rights/about-LGBTI-human-rights> (last visited Feb. 6, 2014).

on sexual orientation and gender identity to bring greater clarity and coherence to states' human rights obligations . . . The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. The Principles affirm the primary obligation of states to implement human rights. Each Principle is accompanied by detailed recommendations to States.¹⁸

In the exact words of the Yogyakarta Principles, "human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern."¹⁹ Some of the basic human rights that many LGBTI persons have been denied include the following: equality and non-discrimination, right to life, right to privacy, right to freedom from arbitrary detention, freedom from torture or inhumane treatment, access to medical care, adequate housing, and education.²⁰ Many of these are rights that most people take for granted and assume they have irrespective of their sexual orientation. Yet in many places in the world, as noted below, these rights are being systematically denied, and people are being punished for innate characteristics, based on their sexual orientation. Some of the rationale for these laws is discussed below.

In laying out States' obligations to protect their citizens from discrimination and violation of their basic human rights based on their sexual orientation and/or gender identity, the Yogyakarta Principles brought to light the plight faced by many LGBTI persons in the world. Further, by putting those violations into an international law setting, which was later used by the UNHCR,²¹ the Yogyakarta Principles clearly discussed and explained international jurists' views regarding States' responsibilities to protect their citizens and not to create laws that further discriminate or harm their citizens predicated on an individual's basic human characteristics.

D. GUIDELINES ON INTERNATIONAL PROTECTION No. 9

1. Social Group

In 1979, the United Nations published the *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, which has since

18. YOGYAKARTA PRINCIPLES, *supra* note 14, at 6-7.

19. YOGYAKARTA PRINCIPLES, *supra* note 14, at 6.

20. YOGYAKARTA PRINCIPLES, *supra* note 14, at 5.

21. See Guidelines No. 9, *infra* note 23, and accompanying text.

served as a guide to status determination for all practitioners and legal systems working with refugees.²² In 2012, the United Nations issued the *Guidelines on International Protection No. 9* (Guidelines No. 9); which was the ninth in a series of guidelines for application of the original Handbook²³ and was done partially in response to the Yogyakarta Principles.²⁴ All Guidelines published by the United Nations are intended to act as continuing “legal interpretative guidance for governments, legal practitioners, decision makers and the judiciary, as well as UNHCR staff carrying out refugee status determination under its mandate.”²⁵ This includes Guidelines No. 9 on the protection of sexual orientation and gender identity as a protected social group under the Refugee Convention and Protocol.

Guidelines No. 9 specifically addressed the growing concern and officially recognized sexual orientation as a “social group,”²⁶ thus making a person who is a part of that group, or has been part of that group, or fears persecution because of that association, eligible for refugee status. In Guidelines No. 9, the UNHCR explicitly addresses the ongoing verbal and physical abuse that LGBTI persons suffer in many regions of the world.²⁷ The Guidelines also recognize that there are many competing factors which make “verifying” the validity of an LGBTI refugee seeker’s claim difficult.²⁸ The UNHCR goes on to state that, “[a]ll people, including LGBTI individuals, are entitled to enjoy the protection provided for by international human rights law on the basis of equality and non-discrimination.”²⁹ These Guidelines also reiterate what

22. The Handbook was updated in 1992, and more recently in 2011. See U.N. HCR, HANDBOOK ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, HCR/IP/4/Eng/REV.1, Reedited, Geneva, January 1992, U.N. HCR 1979. 1992 edits available at <http://www.refworld.org/docid/3ae6b3314.html>; 2011 edits and compilation, HCR/IP/4/ENG/REV. 3, available at <http://www.refworld.org/docid/4f33c8d92.html>.

23. U.N. High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (Oct. 23, 2012), HCR/GIP/12/01, available at <http://www.unhcr.org/509136ca9.html> [hereinafter Guidelines No. 9].

24. See YOGYAKARTA PRINCIPLES, *supra* note 14, and accompanying text.

25. Guidelines No. 9, *supra* note 23, at Introduction.

26. Guidelines No. 9, *supra* note 23, at ¶ 46.

27. *Id.* at ¶ 2.

28. *Id.* at ¶¶ 3-4.

29. *Id.* at ¶ 5 (citing U.N. Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on Discriminatory Laws and Practices and Acts of Violence against Individuals based on their Sexual Orientation and Gender Identity*, U.N. Doc. A/HRC/19/41 (Nov. 17, 2011), available at <http://www.unhcr.org/refworld/docid/4ef092022.html>).

the UNHRC stated earlier in regard to the International Covenant of Civil and Political Rights:³⁰

‘discrimination’ . . . should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.³¹

The Guidelines go on to explain the restrictions on their basic human rights which LGBTI persons may face because of their sexual orientation and/or gender identity;³² this includes inability to find a home, refusal of their family to recognize them, and failure to find stable employment.³³

In reference to the 1951 Convention standard for a refugee, the Guidelines explicitly state, “Individuals may be subject to persecution due to their actual or perceived sexual orientation or gender identity.”³⁴ Further, one’s sexual orientation and/or gender identity are “innate and immutable characteristics or as characteristics so fundamental to human dignity that the person should not be compelled to forsake them.”³⁵ Therefore, in Guidelines No. 9, the UNHCR recognizes sexual orientation as a protected category, thus giving LGBTI persons who face or fear persecution based on their sexual orientation, a potential path to escape that persecution.

2. Laws Criminalizing Certain Acts Based on Sexual Orientation

Although not widely known, according to ILGA³⁶ nearly 40% of United Nations members, still criminalize, in some form, same-sex activities.³⁷

30. International Covenant on Civil and Political Rights [ICCPR], Dec. 16, 1966, 999 U.N.T.S. 171, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

31. Guidelines No. 9, *supra* note 23, at ¶ 6, fn 10 (citing U.N. HRC, *C.C.P.R. General Comment No. 18: Non-Discrimination*, ¶ 7, Nov. 10, 1989, available at <http://www.unhcr.org/refworld/docid/453883fa8.html>).

32. Guidelines No. 9, *supra* note 23, at ¶¶ 23-25.

33. *Id.*

34. Guidelines No. 9, *supra* note 23, at ¶ 41.

35. Guidelines No. 9, *supra* note 23, at ¶ 47.

36. ILGA is the International Lesbian, Gay, Bisexual, Trans and Intersex Association. ILGA is an “international network of activists that could efficiently respond to homophobic attacks, and to act as an international platform to collectively campaign against the discrimination, and at times persecution, faced by LGBTI people around the world.” See <http://ilga.org/ilga/en/article/mwRtYJs1tv>.

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As of 2012, “homosexual acts” were illegal in seventy-eight countries.³⁸ Moreover, five countries punished homosexual acts with the death penalty.³⁹ In Africa alone, 36 countries had laws that criminalized homosexuality.⁴⁰

As to these laws criminalizing same-sex relations, Guidelines No. 9 states that, “the criminalization of same-sex relations can create or contribute to an oppressive atmosphere of intolerance and generate a threat of prosecution for having such relations.”⁴¹ Even where an applicant’s country conditions reports do not prove that such laws are being enforced, “a pervading and generalized climate of homophobia in the country of origin could be evidence indicative that LGBTI persons are nevertheless being persecuted.”⁴² The UNHCR thereby recognizes the potential for human rights violations due to such laws. In doing so, the UNHCR deems these laws as potential “persecution,” and thus, a violation of an LGBTI individual’s human rights.⁴³

II. UGANDA

A. HISTORY

With the visit of the first British explorer to Uganda in the late 1800s,⁴⁴ the English and Christianity began to unite the previously unconnected tribes across the country.⁴⁵ Uganda remained part of the British Commonwealth until its independence in 1962.⁴⁶ In 1971, Idi Amin began a streak of human rights abuses that ravaged the country until 1986, when the National Resistance Army rebels took power and declared Yoweri Museveni President.⁴⁷ Museveni proceeded to reinstate

37. INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION, STATE-SPONSORED HOMOPHOBIA: A WORLD SURVEY OF LAWS CRIMINALISING SAME-SEX SEXUAL ACTS BETWEEN CONSENTING ADULTS 25 (ILGA, May 2012), available at <http://www.refworld.org/docid/50ae380e2.html> [hereinafter ILGA 2012].

38. ILGA 2012, *supra* note 37, at 12.

39. ILGA 2012, *supra* note 37, at 13.

40. ILGA 2012, *supra* note 37, at 22.

41. Guidelines No. 9, *supra* note 23, at ¶ 27.

42. Guidelines No. 9, *supra* note 23, at ¶ 28.

43. Guidelines No. 9, *supra* note 23, at ¶ 29.

44. *Uganda Profile*, BBC NEWS (last updated Dec. 21, 2013), <http://www.bbc.co.uk/news/world-africa-14112446>.

45. UGANDA, ENCYCLOPEDIA BRITANNICA (last updated Nov. 26, 2013), available at <http://www.britannica.com/EBchecked/topic/612597/Uganda>.

46. *Id.*

47. Alistair Boddy-Evans, *Biography: Idi Amin Dada*, ABOUT AFRICAN HISTORY (Jul. 24, 2003), http://africanhistory.about.com/od/biography/a/bio_amin.htm. See also *Uganda Profile*, *supra* note 44.

traditional ethnic kings, created a new constitution, and took the lead against rebels in neighboring countries.⁴⁸

During that time, Museveni also faced internal armed resistance from the Lord's Resistance Army and its leader, Joseph Kony.⁴⁹ This battle led to internal displacement and the death of what is estimated to be hundreds of thousands of children, many of whom had been abducted to be child soldiers or sex slaves.⁵⁰ This battle is ongoing, despite the surrender in late 2013 of nineteen LRA leaders in Uganda.⁵¹

B. CURRENT LAWS AND THE ANTI-HOMOSEXUALITY BILL

In the midst of this internal struggle and the death of many of the country's youth, the Ugandan government has taken strides to further criminalize homosexuality within its jurisdiction. Already in existence at the time President Museveni took power, Sections 145 through 148 of the Ugandan Penal Code Act of 1950 criminalize same-sex sexual conduct, including consensual acts.⁵² Section 145 prohibits "unnatural offences," which are then defined as "carnal knowledge of another person against the order of nature."⁵³ An offender faces life in prison.⁵⁴ Section 146 punishes any attempt to commit an "unnatural offense" with a punishment of seven years in prison.⁵⁵ A person also faces seven years imprisonment for any "act of gross indecency" or "attempt to procure" such an act, whether conducted in public or in private.⁵⁶ Although there have been challenges to these sections of the penal code,⁵⁷ no court in Uganda has ever questioned their validity. In addition, there is no record

48. *Uganda Profile*, *supra* note 44.

49. See *Uganda and the LRA*, VILLAGE OF HOPE: UGANDA, <http://villageofhopeuganda.com/uganda-and-the-lra/> (last visited Feb. 4, 2014).

50. *Id.* See also Will Storr, *Tragedy in Uganda: Joseph Kony massacre survivors tell their stories*, THE OBSERVER (Jan. 11, 2014), <http://www.theguardian.com/world/2014/jan/12/joseph-kony-uganda-massacres-survivors-stories>.

51. *Ugandan LRA rebels surrender*, BBC NEWS AFRICA (Dec. 11, 2013), <http://www.bbc.co.uk/news/world-africa-25333345>.

52. Penal Code Act of 1950, *as amended*, §§ 145-48 (Uganda); LAWS OF UGANDA Cap. 120 (Rev. ed. 2000) [hereinafter Uganda Penal Code], available at <http://www.ulii.org/ug/legislation/consolidated-act/120>.

53. Uganda Penal Code, *supra* note 52, at §145.

54. Uganda Penal Code, *supra* note 52, at §145.

55. Uganda Penal Code, *supra* note 52, at §146.

56. Uganda Penal Code, *supra* note 52, at §148.

57. See e.g., *Kato et. al v. Rolling Stone*, Cause No. 163/2010, (2011) (UgHC), available at [http://www1.chr.up.ac.za/images/files/documents/smr/cases/SMR-Jacqueline%20Kasha%20&%20Others%20v.%20Rolling%20Stone%20Ltd%20\(2010\).PDF](http://www1.chr.up.ac.za/images/files/documents/smr/cases/SMR-Jacqueline%20Kasha%20&%20Others%20v.%20Rolling%20Stone%20Ltd%20(2010).PDF) (last visited Feb. 4, 2014); *Mukasa & Oyo v. Attorney General*, Misc. Cause No. 24/2006, (2008) A.H.R.L.R. 248 (UgHC), available at <http://www.chr.up.ac.za/index.php/browse-by-subject/490-uganda-mukasa-and-another-v-attorney-general-2008-ahrlr-ughc-2008-.pdf> (last visited Feb. 4, 2014).

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of these laws being enforced;⁵⁸ nonetheless, according to the UNHCR that does not mean the laws do not constitute persecution against LGBTI persons.⁵⁹ Further, activists have noted that LGBTI people in Uganda have been “treated as criminals” by society, despite the lack of enforcement of these laws.⁶⁰

In 2006, the Parliament in Uganda amended the Ugandan Constitution to proscribe that, “Marriage between persons of the same-sex is prohibited (not allowed).”⁶¹ Despite blatantly violating same-sex couples’ rights to freedom of association, this amendment ironically falls within the category “Fundamental and Other Human Rights and Freedoms.”⁶²

In 2009, the Parliament introduced what has come to be known as the “Anti-Homosexuality Bill,” Bill No. 18 [Bill].⁶³ Leading up to the introduction of the Bill, the Ugandan government hosted a conference discussing the “need” and possibility of this new law.⁶⁴ Mainly right-wing Christian evangelists from the United States led this conference.⁶⁵ The American Family Association publicly stated its support of the Ugandan law, and further urged other countries to make similar laws because “homosexuality [is] contrary to public policy.”⁶⁶ The Bill was introduced only after members of the public signed a petition after this conference urging the government to take action to further prohibit same-

58. UNITED STATES DEPARTMENT OF STATE BUREAU OF DEMOCRACY, UGANDA 2012 HUMAN RIGHTS REPORT, <http://www.state.gov/documents/organization/204390.pdf>.

59. See *supra* note 42, and accompanying text.

60. ORGANIZATION FOR REFUGE, ASYLUM & MIGRATION (ORAM), BLIND ALLEYS: THE UNSEEN STRUGGLES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX URBAN REFUGEES IN MEXICO, UGANDA AND SOUTH AFRICA - PART II: COUNTRY FINDINGS: UGANDA (Feb. 2013), available at <http://www.refworld.org/docid/524d45e84.html>.

61. THE CONSTITUTION (AMENDMENT) (NO. 2) ACT OF 2005, Art. 31, available at http://constitution.co.ug/protection_and_Promotion_of_fundamental_and_other_human_rights.php. See also THE CONSTITUTION (AMENDMENT) ACT, 2005 (Uganda), available at http://www.parliament.go.ug/new/images/stories/constitution/Constitutional_Amendment_Act_2005.pdf.

62. *Id.*

63. The 2009 version of Bill No. 18 can be found at <http://www.publiceye.org/publications/globalizing-the-culture-wars/pdf/uganda-bill-september-09.pdf> (last visited April 1, 2014).

64. Xan Rice, *Uganda considers death sentence for gay sex in bill before parliament*, THE GUARDIAN (Nov. 92, 2009), <http://www.theguardian.com/world/2009/nov/29/uganda-death-sentence-gay-sex>.

65. *Id.* The main leaders were: “Scott Lively, Don Schmierer and Caleb Lee Brundidge. Lively is a noted anti-gay activist and president of Defend the Family International, a conservative Christian association, while Schmierer is an author who works with “homosexual recovery groups.” Brundidge is a “sexual reorientation coach” at the International Healing Foundation.” A new film titled *God Loves Uganda* follows a group of missionaries from Kansas (a state of the United States) as they travel throughout Uganda “in the persecution of gay Africans.” <http://www.godlovesuganda.com/>.

66. Rafter, *infra* note 92. Lively and his cohorts were also behind the new law in Russia. See *supra* note 225, and accompanying text.

sex actions or discussion.⁶⁷ At the time, President Museveni publicly expressed his support of the Bill.

President Museveni's support is even stronger today.⁶⁸ As part of the original Bill, any discussion, "promotion," or aiding and abetting of a homosexual lifestyle was seen as a threat to "traditional family lifestyle" and thus must be quashed.⁶⁹ Further, even acts that violate the Bill, but that are committed by a Ugandan while outside of Uganda could be prosecuted upon return to the country.⁷⁰ The original Bill also included a section on "compensation to victims of homosexuality."⁷¹ At one point the Bill contained language to indicate the punishment would be death.⁷²

Although the Bill appears to have undergone revisions, the current version has not yet been publicly released. However, at the end of 2013, the Parliament passed the Bill which is known to at least increase the punishment⁷³ for same-sex acts.⁷⁴ In its public announcement, the Ugandan Parliament stated that any person who violated any part of the Bill faced a "fourteen year jail term for one convicted for the offence of homosexuality; and imprisonment for life for the offence of aggravated homosexuality."⁷⁵

In January 2014, President Museveni blocked Bill No. 18, not because it violates human rights of LGBTI persons, but rather because it was not passed by a quorum and thus was improperly passed.⁷⁶ In the same announcement, President Museveni publicly stated his belief that gays and lesbians are "sick people who need help," which indicates that he does support the purpose of the Bill – despite this minor legal setback.⁷⁷ Conversely, only a week later, Museveni explained to the Parliament that

67. *Id.*

68. See Museveni's comments in Karimi, *infra* note 76.

69. Anti Homosexuality Bill of 2009, Bill No. 18 (Uganda), 102 UGANDA GAZETTE 74, Bill Supplement No. 13 §1.1 (Sep. 25, 2009), available at <http://www.asylumlaw.org/docs/sexualminorities/UgandaBillNo18AntiHomosexualityBill092509.pdf> [hereinafter Bill No. 18].

70. Bill No. 18, *supra* note 69, at ¶ 16.

71. Bill No. 18, *supra* note 69, at ¶ 5.

72. Alan Cowell, *Ugandan Lawmakers Pass Measure Imposing Harsh Penalties on Gays*, NY TIMES (Dec. 20, 2013), http://www.nytimes.com/2013/12/21/world/africa/ugandan-parliament-approves-antigay-law.html?_r=0.

73. See *supra* notes 52-56, and accompanying text.

74. *Ugandan MPs pass life in jail anti-homosexual law*, BBC NEWS AFRICA (Dec. 20, 2013), <http://www.bbc.co.uk/news/world-africa-25463942>.

75. Parliament outlaws homosexuality, PARLIAMENT OF UGANDA, <http://www.parliament.go.ug/new/index.php/about-parliament/parliamentary-news/326-parliament-outlaws-homosexuality> (last visited Feb. 4, 2014).

76. Faith Karimi, *Gays and lesbians 'sick,' Ugandan President says in blocking anti-gay bill*, CNN INTERNATIONAL (Jan. 17, 2014), <http://www.cnn.com/2014/01/17/world/africa/uganda-anti-gay-bill-rejected/>.

77. *Id.*

he had recently met with gay rights activists who told him that people were born gay which made him demand “conclusive scientific proof” that homosexuality is not genetic before he will sign the Bill.⁷⁸ Yet, government doctors at the meeting asserted that, “homosexuality is a behavioral diversion from the social phenomenon which must be fought.”⁷⁹ At that meeting the Parliament claimed that, per the Ugandan Constitution, they could not undo their passage of the Bill, and Museveni stated he would not approve the Bill without medical evidence.⁸⁰ Within a week, the government scientists had produced a report evidencing that homosexuality is “socially acquired” and “curable.”⁸¹ However, the credibility of these “scientists” is highly doubted outside of Uganda.⁸²

After reviewing findings from Ugandan scientists, in early February 2014 Museveni decided that he would sign the bill and enact it as soon as he received a written report from the Ugandan scientists.⁸³ Museveni’s reasoning was, “since the medical authorities, the department of genetics of the Medical School from Makerere, say there is no proof yet that people are homosexual by genetics, I told those scientists to put it in writing and they are going to do so. Then I will sign the bill.”⁸⁴ On February 24, 2014, on news media around the world, Museveni was seen signing the bill into law.⁸⁵ At this signing, the President stated that “[t]his law was provoked by arrogant and careless Western-based [LGBTI rights] groups that are fond of coming into our schools to recruit

78. Maureen McCarty, *Uganda President Demands Scientific Proof Homosexuality is a Choice*, HUMAN RIGHTS CAMPAIGN (Jan. 28, 2014), <http://www.hrc.org/blog/entry/uganda-president-demands-scientific-proof-homosexuality-is-a-choice> (citing Sadab Kitatta Kaaya, *Museveni sets terms for signing gay bill*, THE OBSERVER (Uganda) (Jan. 26, 2014), http://www.observer.ug/index.php?option=com_content&view=article&id=29839:museveni-sets-terms-for-signing-gay-bill&catid=34:news&Itemid=114).

79. Sadab Kitatta Kaaya, *supra* note 78.

80. *Id.*

81. Sunnive Drydum, *Ugandan ‘Scientist’ Claim Gays Are ‘Made, Not Born’*, ADVOCATE (Feb. 6, 2014), <http://www.advocate.com/news/world-news/2014/02/06/ugandan-scientists-claim-gays-are-made-not-born>.

82. *Id.* (Drydum) See also Warren Throckmorton, *Report of Homosexuality by Uganda’s Ministry of Health*, PATHEOS (Feb. 15, 2014), <http://www.patheos.com/blogs/warrenthrockmorton/2014/02/15/report-on-homosexuality-by-ugandas-ministry-of-health/> (in which Throckmorton reviewed the actual report by the Ministry).

83. *Uganda: Making Sense of Museveni’s Decision to Sign the Anti-Homosexual Bill*, THE INDEPENDENT (Feb. 16, 2014), <http://allafrica.com/stories/201402160057.html>. See also Rodney Muhumuza, *Officials: Uganda’s Leader to Sign Anti-Gay Bill*, ASSOCIATED PRESS (Feb. 14, 2014), <http://bigstory.ap.org/article/official-ugandan-leader-sign-anti-gay-bill>.

84. *Id.*

85. Nicholas Bariyo, *Uganda President Signs Antigay Bill into Law*, THE WALL STREET JOURNAL (Feb. 24, 2014), <http://online.wsj.com/news/articles/SB10001424052702303880604579402592016260478?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702303880604579402592016260478.html>.

our young children” into becoming homosexuals, because it is not a “natural” state.⁸⁶

C. UGANDA’S LAWS IN THE FACE OF INTERNATIONAL HUMAN RIGHTS LAWS

Human rights activists around the globe have fought against Bill No. 18 since it was first introduced in 2009.⁸⁷ In 2010, prior to passage of Bill No. 18 in Uganda, the UN High Commissioner for Human Rights, Navi Pillay, “urged the Ugandan government to shelve a ‘draconian’ draft bill . . . saying it would bring the country into a direct collision with established international human rights standards.”⁸⁸ After the Legislature passed the law, the United Nations Office of the High Commissioner for Human Rights issued a public statement pleading that President Museveni not approve the Bill, stating that, “[t]he Government has a legal obligation to prevent discrimination and cannot withhold basic rights from certain individuals because the majority disapproves of them.”⁸⁹ As the United Nations has specified, this new law in Uganda violates numerous international human rights, including the right to privacy, family life, and freedom of association.⁹⁰ There were also protests by human rights activists in neighboring Kenya outside the Uganda High Commission Offices in an attempt to pressure Museveni to not pass the Bill.⁹¹

After President Museveni publicly stated he would sign the bill into enactment, Human Rights Campaign stated, “[u]nless this bill is stopped from becoming law, lives will be destroyed, and countless people will be

86. *Id.*

87. U.K. Home Office Border Agency Country of Origin Information Service, Uganda COI Report § 19.10 (Apr. 20, 2011), available at <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/Uganda/report-04-2011.pdf?view=Binary>. See also Amnesty International, *Uganda: President Should Reject Anti-Homosexuality Bill* (Dec. 20, 2013), <http://www.hrw.org/news/2013/12/20/uganda-president-should-reject-anti-homosexuality-bill>.

88. U.N. High Commissioner for Human Rights, *UN human rights chief urges Uganda to shelve “draconian” law on homosexuality* (Jan. 15, 2010), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9722&LangID=E>.

89. *UN human rights office urges Uganda to scrap anti-homosexuality bill*, UN NEWS CENTRE (Dec. 27, 2013), <http://www.un.org/apps/news/story.asp?NewsID=46839&Cr=homosexual&Cr1=#.UvRDckJdVEA>.

90. *Uganda: Anti-Homosexuality Bill Must Be Scrapped*, ALL AFRICA (Dec. 20 2013), <http://allafrica.com/stories/201312210424.html>.

91. Jason Straziuso & Rodney Muhumuza, *Gay people protest in Kenya against Ugandan anti-homosexuality bill*, BUSINESS DAILY (South Africa) (Feb. 10, 2014), <http://www.bdlive.co.za/africa/africanews/2014/02/10/gay-people-protest-in-kenya-against-ugandan-anti-homosexuality-bill>; Maureen Abwao, *Gays protest Uganda’s ‘Kill the gays bill’ in Nairobi, ask Uhuru to talk to Museveni*, THE STANDARD (Kenya) (Feb. 10, 2014), http://www.standardmedia.co.ke/?articleID=2000104362&story_title=gays-protest-uganda-s-kill-the-gays-bill-in-nairobi-asks-uhuru-to-talk-to-museveni.

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punished for an immutable characteristic.”⁹² The Human Rights Commissioner made a statement after Museveni’s announcement, proclaiming that “[h]uman rights are indivisible. All people have the right, anchored in law, to be protected from discrimination, persecution and violence irrespective of their sexual orientation and gender identity.”⁹³ The organization “Human Rights First” also called on United States President Obama to condemn the law because of its violation of human rights protections.⁹⁴ Once again, public international law and its advocates and enforcers have stated that the Ugandan law violates international law human rights protections. Yet, the government of Uganda ignores these international organizations and their pleadings that the country meets standards of international human rights law and thus, continues to violate the basic human rights of LGBTI persons.

III. RUSSIA

A. HISTORY

Under Stalin, Article 121 of the Criminal Code of 1933 stated, “sexual relations between men are punishable by prison terms of up to five years.”⁹⁵ During his regime, it is believed that nearly 1,000 men were convicted of “criminal” behavior under this law.⁹⁶ Some say that Stalin’s anti-gay laws were an attempt to build a better relationship with the Eastern Orthodox Church.⁹⁷ However, this law, and its enforcement, continued under Stalin’s successor, Khrushchev. A public manual on sex warned against the “tricks” that homosexual persons use, and during that

92. Dan Rafer, *Ugandan President Planning to Sign Horrific Anti-Gay Bill into Law*, HUMAN RIGHTS CAMPAIGN (Feb. 14, 2014), <http://www.hrc.org/blog/entry/ugandan-president-planning-to-sign-horrific-anti-gay-bill-into-law>. See also International Gay & Lesbian Human Rights Commission, *Human Rights Defenders Call on Uganda to Repeal Discriminatory Anti-LGBTI Rights Legislation* (Feb. 24, 2014), <http://iglhrc.org/content/human-rights-defenders-call-uganda-repeal-discriminatory-anti-lgbti-rights-legislation>.

93. *Human Rights Commissioner on the Anti Homosexuality Bill in Uganda*, AUSWARTIGES AMT (Germany) (Feb. 17, 2014), http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2014/140217-MRHH_Uganda.html.

94. Human Rights First, *Ugandan President to Sign Anti-Homosexuality Bill* (Feb. 14, 2014), <http://www.humanrightsfirst.org/press-release/ugandan-president-sign-anti-homosexuality-bill>.

95. Christopher Plummer, *Russian Orthodox Church Calls for Re-Criminalization of Homosexuality*, HUMAN RIGHTS FIRST (Jan. 14, 2014), <http://www.humanrightsfirst.org/2014/01/14/russian-orthodox-church-calls-for-re-criminalization-of-homosexuality/>.

96. It is of note that it was only men, because women-women sexual acts were not criminalized, only male-male. See *Resource Information Center: Russia*, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, available at <http://www.uscis.gov/tools/asylum-resources/resource-information-center-79> (last visited Feb. 5, 2014).

97. MARTIN B. DUBERMAN, et al., *HIDDEN FROM HISTORY: RECLAIMING THE GAY AND LESBIAN PAST*, 362 (Duberman et al., eds., 1989). For a brief history of homosexuality in Russia by an instructor of Russian Studies, see Stephanie Pappas, *Why Russia Is So Anti-Gay*, LIVE SCIENCE (Feb. 11, 2014), <http://www.livescience.com/43273-why-russia-is-anti-gay.html>.

period the K.G.B. ended the careers of many famous Russian artists and directors, who happened to be homosexual.⁹⁸ In fact, the government even had a “gay list” which it used to seek out men they believed to be homosexual so that they could be prosecuted for violation of Article 121.⁹⁹

Soon after the Soviet Union was dismantled in 1991, homosexuality was decriminalized in Russia.¹⁰⁰ However, that decision was believed to mainly be a reaction to pressure from the Council of Europe which Russia had recently joined.¹⁰¹ Reports of abuse or anti-homosexual sentiment were scarce until 2004. The United States Department of State’s Human Rights Report on Russia that year indicated that Russian society discriminated against male homosexuals;¹⁰² e.g., medical services and employment were denied to them, and they were often the target of “skinhead aggression,” from which the police refused them protection.

In 2009, the homosexual community experienced more aggressive forms of violence, including support from the Mayor of Moscow at the time, who deemed homosexuality “satanic,” and announced on television that “the morals of society” do not accept gay persons.¹⁰³ The year 2010 marked the fifth consecutive year that the government banned the gay pride parade in Moscow.¹⁰⁴ The following year the People’s Catholic Movement held an anti-gay rally demanding that the State prohibit “propaganda of sexual perversion.”¹⁰⁵ This protest was permitted by the city council, yet they prohibited a gay rights rally the next week.¹⁰⁶

98. Jill J. Barshay, *Russia’s Gay Men Step Out of Soviet-Era Shadows*, NY TIMES (Feb. 10, 1993), <http://www.nytimes.com/1993/02/10/world/russia-s-gay-men-step-out-of-soviet-era-shadows.html>.

99. *Id.*

100. Resource Information Center, *supra* note 96. See also Immigration and Refugee Board of Canada, *Russia: Update to RUS13194 of 16 February 1993 on the treatment of homosexuals*, RUS33940.E (Feb. 29, 2000), <http://www.refworld.org/docid/3ae6ad788c.html>.

101. *Id.*

102. United States Department of State Bureau of Democracy, Human Rights, and Labor, *2004 Human Rights Report: Russia* (Feb. 28, 2005), <http://www.state.gov/j/drl/rls/hrrpt/2004/41704.htm>.

103. United States Department of State Bureau of Democracy, Human Rights, and Labor, *2009 Human Rights Report: Russia* (Mar. 11, 2010), <http://www.state.gov/j/drl/rls/hrrpt/2009/eur/136054.htm>.

104. United States Department of State Bureau of Democracy, Human Rights, and Labor, *2010 Human Rights Report: Russia* (Apr. 8, 2011), <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154447.htm>.

105. UNITED STATES DEPARTMENT OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: RUSSIA 54, *available at* <http://www.state.gov/documents/organization/186609.pdf> (last visited Feb. 5, 2014). The group did not define “propaganda” and as you see in the current law itself, what constitutes “propaganda” remains unspecified. However, see *infra* note 108, and accompanying text.

106. *Id.*

Starting in 2006, regions around the country began making “propaganda of homosexuality” illegal.¹⁰⁷ Per the Constitutional Court of the Russian Federation, “homosexual propaganda [is] ‘information that might be harmful for moral, spiritual, and physical development, including forming a distorted perception of traditional and non-traditional marital relationships of equal social value.’”¹⁰⁸ Moscow once again forbade the gay pride parade,¹⁰⁹ despite a 2010 ruling from the European Court of Human Rights, which stated that Moscow’s actions were a violation of freedom of assembly.¹¹⁰ As a result of the regional laws, Russia saw a significant increase in arrests of people exercising their right to free speech, as well as “an upsurge in homophobic vigilantism” which even led to deaths.¹¹¹ The head of the Russian LGBTI Network described the state-specific laws as “legali[zing] violence against LGBTI people” because the perpetrators could justify their violent actions under the new propaganda laws.¹¹²

As early as 2009, international human rights organizations expressed their concern with the significant increase in acts of violence in Russia, based solely on the victims’ sexual orientation.¹¹³ A report on Russia by the United Nations Human Rights Commission expressly stated that they had found “systemic discrimination against individuals on the basis of their sexual orientation” in Russia, including actions by public officials,

107. UNITED STATES DEPARTMENT OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2012: RUSSIA 25, available at <http://www.state.gov/documents/organization/204543.pdf> (last visited Feb. 5, 2014). See also Russian LGBTI Network, *To the UN Committee on the Rights of the Child*, CRC/C/RUS/4-5, p. 2, available at http://www2.ohchr.org/english/bodies/crc/docs/ngos/Russia_Russian%20LGBTI%20Network_CRC%20ReportCRCWg65.pdf (last visited Feb. 7, 2014). These regional laws were allegedly aimed at “protection of morals of children.”

108. Russian LGBTI Network, *supra* note 107, at 2.

109. *Id.* at 48. (DOS 2012).

110. *Alekseyev v. Russia*, App. Nos. 4916/07, 25924/08, & 14599/09, Eur. Ct. H.R. (Oct. 21, 2010), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-101257>. See also *Russia: European Court Rules Gay Pride Ban Unlawful*, HUMAN RIGHTS WATCH (Oct. 21, 2010), <http://www.hrw.org/news/2010/10/21/russia-european-court-rules-gay-pride-ban-unlawful>.

111. Alec Luhn, *Russian Anti-Gay Law Prompts Rise in Homophobic Violence*, THE GUARDIAN (Sept. 1, 2013), <http://www.theguardian.com/world/2013/sep/01/russia-rise-homophobic-violence>. See also Steve Gutterman, *Gay Man Killed in Russia's Second Suspected Hate Crime in Weeks*, REUTERS (June 3, 2013), <http://www.reuters.com/article/2013/06/03/us-russia-killing-gay-idUSBRE95209Z20130603>. The police publicly stated that a man was stabbed and trampled to death because he was gay and the men who killed him wanted to stop his propaganda. This was the second reported homophobic murder in less than a month. See also Associated Press, *2 arrested for brutal homophobic killing in Russia*, CBS NEWS (May 13, 2013), <http://www.cbsnews.com/news/2-arrested-for-brutal-homophobic-killing-in-russia/>. In this case, the victim suffered “severe injuries” to his genitals.

112. *Id.* (Luhn).

113. See e.g., Human Rights Comm., 97th Sess., *Concluding Observations of the Human Rights Committee: Russian Federation*, U.N. Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009), available at <http://www.refworld.org/docid/4b2603442.html>.

religious leaders, and the media.¹¹⁴ These acts of violence and discrimination were happening in Russia due to lack of legislation¹¹⁵ to protect the rights of LGBTI persons and existed even before the passage of the new anti-propaganda laws.¹¹⁶

Russia's anti-gay propaganda movement was led in part by the Russian Orthodox Church which vehemently opposed equal protection under the law for people identified as homosexual.¹¹⁷ In fact, Kirill I, the Primate¹¹⁸ of the Russian Orthodox Church, stated that Western countries allowing same-sex marriages is an "apocalyptic symptom" and "harbinger of impending doom."¹¹⁹ The Russian Orthodox faith has long been central to the average Russian's identity.¹²⁰ Even under the allegedly anti-religious communist era, government leaders used religious icons to propound their ideology and even dubbed "the creed of Marx, Engels, and Lenin as the Socialist Holy Trinity."¹²¹ Today, 90% of Russians identify as Orthodox, and the religion remains a strong part of Russian identity and life.¹²² Russian President Putin has been strengthening his alliance with the Russian Orthodox Church, in support of these anti-gay sentiments, and to further his anti-homosexual propaganda legislation.¹²³

B. CURRENT LAWS

Regional laws throughout Russia, enacted beginning in 2011, against "propaganda of homosexuality" led to the federal government's law currently in effect nationwide.¹²⁴ In January 2013, the federal bill passed

114. *Id.* at ¶ 27.

115. *Id.*

116. This legislation is discussed below, *infra* notes 125-144, and accompanying text.

117. See e.g., Jamie Manson, *The Orthodox Church's role in Russia's anti-gay laws*, NATIONAL CATHOLIC REPORTER (Aug. 14, 2013), <http://ncronline.org/blogs/grace-margins/orthodox-church-s-role-russia-s-anti-gay-laws>.

118. The Primate of the Russian Orthodox Church is the head of the Church, and acts as an advisor to the government. For more information see *Official site of the Russian Orthodox Church*, <http://www.patriarchia.ru/> (available only in Russian). See also Amy Liedy, "The Orthodox Church and Russian Politics", *Kennan Institute*, WILSON CENTER, available at <http://www.wilsoncenter.org/publication/the-orthodox-church-and-russian-politics> (last visited Apr. 12, 2014).

119. *Id.*

120. Peter Pomerantsev, *Putin's God Squad: The Orthodox Church and Russian Politics*, NEWSWEEK (Sept. 10, 2012), <http://www.newsweek.com/putins-god-squad-orthodox-church-and-russian-politics-64649>.

121. *Id.*

122. *Id.*

123. Manson, *supra* note 117. This legislation is discussed below, *infra* notes 125-144, and accompanying text.

124. HUMAN RIGHTS FIRST, CONVENIENT TARGETS: THE ANTI-"PROPAGANDA" LAW AND THE THREAT TO LGBTI RIGHTS IN RUSSIA 6, 10 (2013), available at <http://www.humanrightsfirst.org/uploads/pdfs/HRF-russias-anti-gay-ban-SG.pdf> (citing The State Duma, ZAKONOPROEKT [Bill] No. 367150-3).

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its first Duma vote and criminalized any discussion of homosexuality as “propaganda” which needed to be eliminated.¹²⁵ After further revisions, the modified bill was passed a second and then a third time by the Duma on the same day, June 26, 2013.¹²⁶ This bill was signed by the President on June 29, 2013¹²⁷ and is now Article 6.21 of the Code of the Russian Federation on Administrative Offenses.¹²⁸

Specifically, Article 6.21 “allows the government to fine individuals accused of the propaganda of nontraditional sexual relations amongst minors.”¹²⁹ Further, it prohibits “the act of distributing information among minors that 1) is aimed at the creating of nontraditional sexual attitudes, 2) makes nontraditional sexual relations attractive, 3) equates the social value of traditional and nontraditional sexual relations, or 4) creates an interest in nontraditional sexual relations.”¹³⁰ However, the law leaves the definitions of “propaganda” and “nontraditional sexual relations” up to interpretation by the police and courts which creates great room for abuse of power.¹³¹ As for punishment, Russians are apt to incur large fines, and non-citizens face deportation.¹³²

The law itself does not specifically state that “homosexual” or “gay,” activists around the world have criticized Russia for this law, calling it “blatantly discriminatory”¹³³ and “absolutely shameful.”¹³⁴ But, Amnesty International has stated that this new law is an “affront to human rights,” because it further stigmatizes LGBTI persons from Russian society, and denies young people the right to accurate and safe sex education.¹³⁵

125. *Russian anti-gay bill passes, protesters detained*, CBS NEWS (June 11, 2013), <http://www.cbsnews.com/news/russian-anti-gay-bill-passes-protesters-detained/>.

126. HUMAN RIGHTS FIRST, *supra* note 124, at 10.

127. *Id.*

128. Innokenty (Kes) Grekov, *Russia's Anti-Gay Law, Spelled Out in Plain English*, POLICY MIC (Aug. 8, 2013), <http://www.policymic.com/articles/58649/russia-s-anti-gay-law-spelled-out-in-plain-english>.

129. *Id.*

130. *Id.*

131. HUMAN RIGHTS FIRST, *supra* note 124, at 10.

132. HUMAN RIGHTS FIRST, *CONVENIENT TARGETS: THE ANTI-“PROPAGANDA” LAW AND THE THREAT TO LGBTI RIGHTS IN RUSSIA* (2013), available at <http://www.humanrightsfirst.org/uploads/pdfs/HRF-russias-anti-gay-ban-SG.pdf> (citing The State Duma, ZAKONOPROEKT [Bill] No. 367150-3).

133. Amnesty International Media Briefing, *Behind the Smokescreen of Olympic Celebrations: Key Human Rights Concerns in the Russian Federation UPDATE* (Jan. 9, 2014), EUR 46/001/2014, available at <http://www.amnesty.org/en/library/asset/EUR46/001/2014/en/b8bbbfb-bbaa-4e95-aa9b-da276ea002f8/eur460012014en.pdf>.

134. International Federation for Human Rights, *Anti-Propaganda Law Voted in Russia's Duma 'in Contradiction with the European Convention on Human Rights' says HR/VP Ashton* (June 25, 2013), available at http://www.fidh.org/IMG/article_PDF/article_a13547.pdf.

135. *Russia: New Laws an Affront to Basic Human Rights*, AMNESTY INTERNATIONAL NEWS, (July 1, 2013), <http://www.amnesty.org/en/news/russia-new-laws-affront-basic-human-rights-2013-07-01>.

ARTICLE 19, a London-based human rights organization, stated that the law “violates the rights of all people to free expression, and discriminates against lesbian, gay, bisexual and transgender [LGBTI] people.”¹³⁶

In June 2013, when a group attempted to protest in Moscow on the day the new law was passed, they were attacked by a group of Russian Orthodox members chanting religious hymns.¹³⁷ Further, once the police had dispersed the two groups, only the anti-propaganda group was held for questioning and detention.¹³⁸ Under the anti-propaganda laws, people had also been arrested for simply holding a rainbow flag.¹³⁹

In addition to Article 6.21, the Russian government considered an amendment to the Family Code of the Russia Federation, Draft Law No. 338749-6, which would give authorities the ability to take custody of children if one or both of their parents were gay.¹⁴⁰ By the fall of 2013, this draft law had been withdrawn, yet the government stated that it was still “interested in passing the bill,” pending a re-writing with more clear and explicit language.¹⁴¹

Notwithstanding the violence, this new nationwide ban on “propaganda” has caused against LGBTI persons, the head of the Russian Orthodox Church has called for complete criminalization of homosexual activity.¹⁴² To explain his stance, the cleric explained that it was a call from the public because “the most widespread position [regarding LGBTI persons] was to treat such relations as a crime.”¹⁴³ Further, according the Russian Orthodox Church, the anti-propaganda law is not enough to combat the threats homosexuals pose to Russian society.¹⁴⁴ Once again,

136. ARTICLE 19, *Russia: Ban on “Propaganda of Non-Traditional Sexual Relationships” Violates International Law* (June 11, 2013), available at <http://www.refworld.org/docid/51b97f674.html>.

137. Manson, *supra* note 117.

138. *Russian anti-gay bill passes, protesters detained*, *supra* note 125.

139. U.N. HRC 22nd Sess., *Written Statement Submitted by the International Commission of Jurists, a Non-Governmental Organization in Special Consultative Status*, U.N. Doc. A/HRC/22/NGO/11 (Feb. 11, 2013), available at http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2013/02/A.HRC_22.NGO_11.pdf.

140. Draft law No. 338740-6: On Amendments to Article 69 of the Family Code of the Russian Federation (introduced Sept. 5, 2013), available in Russian at [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=338740-6&02](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=338740-6&02).

141. RAPS1 & RIA Novosti, *The Life and Times of a Russian Lawmaker*, THE RUSSIAN READER: STATE DUMA (Nov. 30, 2013), <http://therussianreader.wordpress.com/tag/state-duma/>.

142. *Top Russian cleric seeks nationwide referendum on criminalizing male homosexuality*, RUSSIA TODAY (Jan. 10, 2014), <http://rt.com/politics/russia-gay-crime-referendum-401/>.

143. *Id.*

144. Trudy Ring, *Russian Church Leader Proposed Criminalizing Homosexuality*, ADVOCATE (Jan. 10, 2014), <http://www.advocate.com/news/world-news/2014/01/10/russian-church-leader-proposes-criminalizing-homosexuality>.

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the Church is playing a large role in the proposal and encouragement of laws aimed at violating the rights of LGBTI persons in Russia.

In early 2014 – in the midst of the Olympics being held in Sochi, Russia – Russian Prime Minister Dmitry Medvedev signed a decree which forbids same-sex couples and even single people from those countries which allow same-sex marriage, to adopt any children from Russia.¹⁴⁵ The decree was published publicly a few days after the Prime Minister signed it, and is now in effect.¹⁴⁶

C. RUSSIA'S LAWS IN THE FACE OF INTERNATIONAL HUMAN RIGHTS LAW

Going back to 2010, the United Nations Human Rights Committee [HRC] addressed violations of LGBTI persons' rights under the ICCPR¹⁴⁷ by Russia in the case of *Fedotova v. Russia*.¹⁴⁸ The HRC determined that the regional law against "homosexual propaganda" breached the protections provided by the International Covenant on Civil and Political Rights on the grounds of freedom of expression and freedom from discrimination.¹⁴⁹ Fedotova, a Russian national, was an openly lesbian woman and activist for LGBTI rights in Russia.¹⁵⁰ In 2009, Fedotova displayed a poster professing that she was "proud of her sexuality"¹⁵¹ which the police quickly took down and then arrested her for violation of the region's anti-propaganda law.¹⁵² She appealed the decision through all levels of courts in Russia, and then filed with the HRC.¹⁵³ In its 2010 decision and report, the HRC stated that, "[t]he State party is also under an obligation to prevent similar violations in the future and should ensure that the relevant provisions of the domestic law are made compatible with articles 19 and 26 of the Covenant [ICCPR]" because Russia subjected itself to the jurisdiction of the HRC to make a decision on the matter and had acceded to the ICCPR.¹⁵⁴ Despite the HRC ruling that the anti-propaganda law violates international law, namely the ICCPR, the Russian federal government went forward and

145. Phil Black & Alla Eschenko, *Russia enacts anti-gay adoption ban*, CNN (Feb. 14, 2014), <http://www.cnn.com/2014/02/13/world/europe/russia-same-sex-marriage-adoption-ban/>.

146. *Id.*

147. See ICCPR, *supra* note 30.

148. U.N. HRC, *Irinia Fedotova v. Russian Federation*, U.N. Doc CCPR.C/106/D/1932/2010 (Feb. 10, 2010), available at <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.106.D.1932.2010.doc>.

149. *Id.* at §§ 10.3-11.

150. *Id.* at § 2.1.

151. *Id.* at § 2.2.

152. *Id.* at § 2.3.

153. *Id.* at § 2.7.

154. Fedotova, *supra* note 148, at §§ 12-13.

enacted Article 6.21 – in clear violation of its rights to Russian LGBTI citizens.

The following year, in 2011, Russia voted against a United Nations resolution that would request the Human Rights Council [HRC] to conduct a study of discriminatory laws already existing in Russia, including acts of violence against people based on their sexual orientation.¹⁵⁵ This is another example of Russia's refusal to recognize the human rights violations going on in its own country, persuaded instead by the push of the powerful Russian Orthodox Church and continuing down the path of anti-homosexual laws. Russia continues to proclaim that it is not discriminating against LGBTI persons, but merely protecting "traditional values" which most critics worldwide find implausible.¹⁵⁶

Regarding the newly enacted federal anti-propaganda law, Article 6.21, Human Rights First has called on Russia to clarify those terms used in the law that are ambiguous and misleading¹⁵⁷ and has urged other nations to step in and protest Russia's anti-propaganda law.¹⁵⁸ The Human Rights Council has urged Russia to repeal the law and to introduce legislation that prohibits discrimination based on sexual orientation;¹⁵⁹ Russia quickly rejected both of these proposals.¹⁶⁰ And yet, the world remains silent; in fact no nation, let alone any international organization, has taken any clear steps regarding this Russian law which blatantly violates LGBTI persons' right to freedom of speech and association. It was unclear what steps should be taken, and in the light of the Olympics being held in Sochi, Russia in 2014,¹⁶¹ it was unlikely that any State or organization would take any action, such as an embargo against Russia.

155. U.N. HRC 17th Sess., *Human Rights, Sexual Orientation and Gender Identity*, U.N. Doc. A/HRC/RES/17/19, 1-2 (July 14, 2011), available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=512f0bd22&skip=0&query=A/HRC/RES/17/19>.

156. See *Poll Reveals Widespread Intolerance for Gays in Russia*, RIA NOVOSTI (Russia) (Feb. 15, 2014), <http://en.ria.ru/russia/20140215/187539107/Poll-Reveals-Widespread-Intolerance-for-Gays-in-Russia.html>.

157. See *supra* note 131, and accompanying text.

158. HUMAN RIGHTS FIRST, *supra* note 124, at 12.

159. U.N. HRC 24th Sess., *Report of the Working Group on the Universal Periodic Review, Russian Federation, Addendum, Views on Conclusions and/or Recommendations, Voluntary Commitments and Replies Presented by the State Under Review*, U.N. Doc. A/HRC/24/14/Add.1, ¶ 18 (Sept. 2, 2013), available at http://www.un.org/ga/search/view_doc.asp?symbol=A%2FHRC%2F24%2F14%2FAdd.1&Submit=Search&Lang=E.

160. *Id.*

161. See 2014 Sochi Olympics, <http://www.sochi2014.com/en> (last visited Apr. 20, 2014).

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IV. NIGERIA

A. HISTORY

Homosexual acts are entirely illegal in Nigeria.¹⁶² The history of this law precedes the current legal system, going back to colonial times, but was not codified until 1990.¹⁶³ Nigeria's Criminal Code Act Chapter 77 includes a section titled "Offenses against Morality."¹⁶⁴ Section 214 of this Chapter states, "Any person who - (1) has carnal knowledge of any person against the order of nature; or (2) has carnal knowledge of an animal; or (3) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for fourteen years."¹⁶⁵ Section 217 describes "Indecent practices between males,"¹⁶⁶ and criminalizes "any act of gross indecency" between males done in public or private with three years' imprisonment.¹⁶⁷ Further, many of the northern states in Nigeria, with mostly Muslim populations, have adopted Shari'a law. The penalty in many of these regions for same-sex acts between women is whipping and/or imprisonment; for same-sex acts between men, the penalty is death.¹⁶⁸ Judges in those regions consider themselves "lenient" when they do not impose death by stoning and only whip someone who is convicted under Shari'a law.¹⁶⁹ Yet prior to the national law, persecution and conviction under the regional laws was not frequent.¹⁷⁰ Many scholars equate this long-standing history of the criminalization of homosexuality to religious leaders, both Muslim and Catholic.¹⁷¹

162. ILGA 2012, *supra* note 37, at 12.

163. Criminal Code Act (1990) Cap. (77) (Nigeria), available at <http://www.nigeria-law.org/Criminal%20Code%20Act-Tables.htm> [hereinafter Nigeria Criminal Code]. See also Alok Gupta, *This Alien Legacy – The Origins of "Sodomy" Laws in British Colonialism*, New York: Human Rights Watch 2008 (available at www.hrw.org/en/reports/2008/12/17/alien-legacy-0, p. 60-61).

164. Nigeria Criminal Code, *supra* note 164, at Ch. 21.

165. ILGA 2012, *supra* note 37, at 33; Nigeria Criminal Code, *supra* note 164, at § 214.

166. Nigeria Criminal Code, *supra* note 164, at § 217.

167. ILGA 2012, *supra* note 37, at 33.

168. ILGA 2012, *supra* note 37, at 33 (citing PHILIP OSTIEN, SHARIA IMPLEMENTATION IN NORTHERN NIGERIA 1999-2006: A SOURCEBOOK' (Spectrum Books Ltd., 2007), available at <http://www.sharia-in-africa.net/pages/publications/sharia-implementation-in-northern-nigeria.php>).

169. Adam Nossiter, *Wielding Whip and a Hard New Law, Nigeria Tries to 'Sanitize' Itself of Gays*, NY TIMES (Feb. 8, 2014), <http://mobile.nytimes.com/2014/02/09/world/africa/nigeria-uses-law-and-whip-to-sanitize-gays.html?referrer=>.

170. *Id.*

171. See e.g., ILGA 2012, *supra* note 37, at 23.

B. CURRENT LAW

A proposed bill entitled “Same Sex Marriage (Prohibition) Act” was first introduced into the Nigerian Legislature in 2006 [Act].¹⁷² The Act received its first approval by the House of Representatives in 2009.¹⁷³ The Act went through several revisions, and was reintroduced again in 2011, when it passed the Senate; it was then approved by the House in 2013.¹⁷⁴ As the final step in the process, the Act then awaited approval by the President. Approval by President Goodluck Jonathan came in January 2014.¹⁷⁵

The Act contains eight sections.¹⁷⁶ Same-sex marriage and civil unions were made illegal, with a punishment of fourteen years in prison.¹⁷⁷ Any person who oversees a same-sex union in the name of any place of worship, church or mosque, faces ten years imprisonment.¹⁷⁸ Section Three specifically states that only marriage between a man and a woman will be recognized by law in Nigeria.¹⁷⁹ Section 4 limits freedom of association, by forbidding the registration or meeting of gay organizations, as well as any “public show of same sex amorous relationship.”¹⁸⁰ President Jonathan’s spokesperson explained his support of the Act by saying that the law is “in line with the people’s cultural and religious inclination.”¹⁸¹ It is of note that the Nigerian National Agency

172. ILGA 2012, *supra* note 37, at 34 (citing Kees Waaldijk, *Legal recognition of homosexual orientation in the countries of the world* (The Williams Institute, 2009), available at <http://hdl.handle.net/1887/14543>.)

173. *Id.*

174. Same Sex Marriage (Prohibition) Act (2013) (Nigeria). A final version of the Bill adopted by the Nigerian Senate available at [http://www.equalrightstrust.org/ertdocumentbank/Same%20Sex%20Marriage%20\(Prohibition\)%20Bill.pdf](http://www.equalrightstrust.org/ertdocumentbank/Same%20Sex%20Marriage%20(Prohibition)%20Bill.pdf). This is the last version of the Bill that was published publicly, and it is assumed this is the same version the President adopted.

175. *Nigeria’s President Signs Anti-Gay Law*, ALL AFRICA (Jan. 13, 2014), <http://allafrica.com/stories/201401140376.html>; Rick Gladstone, *Nigerian President Signs Ban on Same-Sex Relationships*, NY TIMES (Jan. 13, 2014), http://www.nytimes.com/2014/01/14/world/africa/nigerian-president-signs-ban-on-same-sex-relationships.html?_r=0.

176. Same Sex Marriage (Prohibition) Act, *supra* note 174. See also Femi Aborisade, *Same Sex (Prohibition) Act: A Critical Analysis*, DAILY INDEPENDENT (Nigeria), <http://dailyindependentnig.com/2014/01/same-sex-prohibition-act-a-critical-analysis-2/> (last visited Feb. 7, 2014).

177. *Nigeria’s President signs anti-gay law*, DEUTSCHE WELLE (Jan. 13, 2014), <http://dw.de/p/1Apwv>; Same Sex Marriage (Prohibition) Act, *supra* note 174, § 5(1).

178. Same Sex Marriage (Prohibition) Act, *supra* note 174, §§ 2, 5(3); see also Aborisade, *supra* note 176.

179. Same Sex Marriage (Prohibition) Act, *supra* note 174, § 3.

180. Same Sex Marriage (Prohibition) Act, *supra* note 174, § 4.

181. The Conservative LGBT Group, *Nigeria’s Same Sex Marriage Prohibition Law*, LGBTlory (Jan. 14, 2014), <http://www.LGBTlory.co.uk/news/nigeria%E2%80%99s-same-sex-marriage-prohibition-law>. Some political commentators also note that Jonathan’s support of anti-homosexual laws such as those in the Muslim regions of Nigeria, where he has historically been unpopular, timely comes just as he faces a potential loss in those areas in an upcoming election. Editorial Board, *Nigeria’s anti-gay law demands a response from the West*, WASHINGTON POST

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for the Control of AIDS made a public statement that the Act does not contain language that will restrict access to medical services; yet the person seeking medical attention cannot mention that they are not heterosexual.¹⁸²

President Jonathan's approval immediately met harsh criticism from governments and human rights organizations around the world. United States Secretary of State John Kerry avowed that the U.S. "is deeply concerned" by the Act because it "dangerously restricts freedom of assembly, association, and expression" of all Nigerian citizens.¹⁸³ Further, Kerry stated that the Act is "inconsistent with Nigeria's international legal obligations" and he requested that Nigeria uphold the basic human rights of its citizens.¹⁸⁴ Amnesty International made a public request that Nigeria "halt [the] homophobic witch hunt" furthered by the Act.¹⁸⁵ There have even been reports that the United Nations AIDS taskforce will sue Nigeria over these continued human rights abuses.¹⁸⁶

Within days there were arrests and torture throughout Nigeria in the name of "enforcing" the new Act.¹⁸⁷ Human rights activists explained that the "roundups" had begun even before the passing of the Act, and that they fear for the safety of all Nigerians.¹⁸⁸ Much of this persecution and torture has been led by Nigerian religious leaders.¹⁸⁹ Reverend Musa

(Feb. 10, 2014), http://www.washingtonpost.com/opinions/nigerias-anti-gay-law-demands-a-response-from-the-west/2014/02/10/23b19570-9276-11e3-b227-12a45d109e03_story.html.

182. National Agency for the Control of AIDS (NACA), *Statement on Same Sex Marriage (Prohibition) Act 2013*, NACA (Nigeria), <http://www.naca.gov.ng/article/statement-same-sex-marriage-prohibition-act-2013> (last visited Feb. 6, 2014).

183. John Kerry Secretary of State, *Deep Concern with Nigeria's Enactment of the Same Sex Marriage Prohibition Act*, U.S. DEPT. OF STATE (Jan. 13, 2014), <http://www.state.gov/secretary/remarks/2014/01/219587.htm>.

184. *Id.*

185. Amnesty International, *Nigeria: Halt homophobic witch hunt under oppressive new law* (Jan. 15, 2014), <http://www.amnesty.org/en/news/nigeria-halt-homophobic-witch-hunt-under-oppressive-new-law-2014-01-15>.

186. Katherine Weber, *United Nations to Sue African Country Over Anti-Gay Laws*, THE CHRISTIAN POST (Jan. 22, 2014), <http://www.christianpost.com/news/united-nations-to-sue-african-country-over-anti-gay-laws-113116/>.

187. Interview by Melissa Block of Michelle Faul, Chief Africa Correspondent with the Associated Press, *Reports of Arrests and Torture Under Nigeria's Anti-Gay Law*, NATIONAL PUBLIC RADIO (Jan. 15, 2014), <http://www.npr.org/2014/01/15/262788915/reports-of-arrests-and-torture-under-nigerias-anti-gay-law>.

188. Michelle Faul, *Nigeria's new anti-gay law resulting in torture: activists*, THE ASSOCIATED PRESS (Jan. 14, 2014), available at <http://www.ctvnews.ca/world/nigeria-s-new-anti-gay-law-resulting-in-torture-activists-1.1638380>.

189. Fredrick Nzwili, *Nigeria's religious leaders welcome controversial anti-gay law*, THE WASHINGTON POST (Jan. 16, 2014), http://www.washingtonpost.com/national/religion/nigerias-religious-leaders-welcome-controversial-anti-gay-law/2014/01/16/12485d88-7ef7-11e3-97d3-b9925ce2c57b_story.html.

Asake, general secretary of the Christian Association of Nigeria, explained that this was the “right thing” because now Nigeria does not “have to drift into a situation where we don’t have moral values.”¹⁹⁰ Nigeria’s Catholic bishops issued a statement in support of the Act soon after the President’s approval.¹⁹¹ Chairman of the Bauchi state Shari’a Commission publicly stated, “We are on the hunt for others [LGBTI persons].”¹⁹² Before the Act passed, Islamic courts already vehemently prosecuted gay people in the Islamic states, and efforts have only increased following support of the national Act.¹⁹³ Human rights activists explain that the beliefs of religious leaders are the key to changing public opinion of homosexuality, but that their current public voice is strictly anti-homosexual.¹⁹⁴

C. NIGERIA’S LAWS IN THE FACE OF INTERNATIONAL HUMAN RIGHTS LAW

As early as 2009, Amnesty International strongly opposed the Act. Amnesty stated that the Act “would violate the rights to freedom from discrimination, freedom of private and family life, freedom of religion or belief, and freedom of association, guaranteed in the Nigerian constitution and by human rights treaties.”¹⁹⁵ While President Jonathan was considering approval of the Act, Amnesty renewed its plea that the President refuse to approve the Bill.¹⁹⁶ The organization explained, “it would make Nigeria one of the least tolerant societies in the world and have catastrophic consequences for the country’s LGBTI community and human rights organisations.”¹⁹⁷ The human rights organization Equal Rights Trust also wrote to the President pleading with him to reject the Bill, stating that “these provisions represent a clear violation of the rights to be free from degrading treatment, as well as to freedom of expression,

190. *Id.*

191. Ellen Teague, *Anti-gay legislation divides bishops in Africa*, THE TABLET: THE INTERNATIONAL CATHOLIC NEWS WEEKLY (Feb. 7, 2014), <http://www.thetablet.co.uk/news/412/0/anti-gay-legislation-divides-bishops-in-africa>.

192. Faul, *supra* note 188.

193. *Nigeria Islamic court tries gay suspects in Bauchi*, BBC NEWS AFRICA (Jan. 15, 2014), <http://www.bbc.co.uk/news/world-africa-25749308>.

Fatima Hassan, *Nigerian Muslims hail the same-sex marriage prohibition act*, VOICE OF NIGERIA (Jan. 23, 2014), <http://www.voiceofnigeria.org/Nigeria/Muslims-hail-same-sex-prohibition-act.html>.

194. Nzwili, *supra* note 189.

195. Amnesty International, *Nigeria's proposed ban on same-sex partnerships an assault on human rights* (Jan. 28, 2009), <http://www.amnesty.org/en/news-and-updates/news/nigerias-proposed-ban-same-sex-partnerships-assault-human-rights-20090128>.

196. Amnesty International, *Nigerian President must reject harsh bill on same-sex unions* (Dec. 20, 2013), AI Index: PRE01/672/2013, available at <http://www.amnesty.org/en/for-media/press-releases/nigerian-president-must-reject-harsh-bill-same-sex-unions-2013-12-20>.

197. *Id.*

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assembly and association, as protected by international treaties.”¹⁹⁸ Moreover, Equal Rights Trust explained that, “The Act violates the right to non-discrimination, as provided by Articles 2(1) and 26 of the International Covenant on Civil and Political Rights.”¹⁹⁹ The Community of Democracies, an international NGO, has warned Nigeria that it will not be allowed to take a leadership position on the board next year due to the enactment of the new law, which it sees as Nigeria reneging on its human rights obligations and shows a lack of dedication to a democratic state.²⁰⁰ Despite these pleas from international human rights organization and clear violations of international human rights law, Nigeria’s President Jonathan signed the Act and the law is now in effect in Nigeria.

After the Act passed in 2014, despite the reactions from the United States²⁰¹ and Amnesty International²⁰² discussed earlier, the United Nations Secretary General himself spoke out against Nigeria’s Same Sex Marriage (Prohibition) Act. In his public statement, Secretary General Ban Ki-moon stated:

The Secretary-General shares the deep concern expressed yesterday by the High Commissioner for Human Rights, Navi Pillay, following the recent signing into law of the Same-Sex Marriage (Prohibition) Act in Nigeria. The law introduces a wide range of offences, in breach of fundamental human rights . . . The Secretary-General fears that the law may fuel prejudice and violence, and notes with alarm reports that police in northern Nigeria have arrested individuals believed by the authorities to be homosexuals, and may even have tortured them . . . The Secretary-General reiterates that everyone is entitled to enjoy the same basic rights and live a life of worth and dignity without discrimination. This fundamental principle is embedded in the United Nations Charter and the Universal Declaration of Human Rights.²⁰³

198. Equal Rights Trust, *Nigeria Becomes the Latest Country to Pass Dangerous Anti-Gay Legislation* (Jan. 15, 2014), <http://www.equalrightstrust.org/newsstory150114/index.htm>. The full letter written to the President available at [http://www.equalrightstrust.org/ertdocumentbank/140109%20ERT%20Letter%20to%20President%20Goodluck%20Jonathan%20on%20the%20Same%20Sex%20Marriage%20\(Prohibition\)%20Bill%202013.pdf](http://www.equalrightstrust.org/ertdocumentbank/140109%20ERT%20Letter%20to%20President%20Goodluck%20Jonathan%20on%20the%20Same%20Sex%20Marriage%20(Prohibition)%20Bill%202013.pdf).

199. *Id.*

200. *Community of Democracies to strip Nigeria of chairmanship over anti-gay law*, NIGERIAN WATCH (Feb. 8, 2014), <http://www.nigerianwatch.com/news/3856-community-of-democracies-to-strip-nigeria-of-chairmanship-over-anti-gay-law>.

201. See *supra* note 183, and accompanying text.

202. See *supra* note 185, and accompanying text.

203. United Nations Secretary General, *Fearing Same-Sex Marriage Ban May Fuel Prejudice, Violence in Nigeria, ‘Strongly Hopes’ for Review of New Law’s Constitutionality*, U.N. Doc

Just as in the case of Uganda, despite pleadings from international human rights organizations, Nigeria continues to enact laws and take actions which are in flagrant violation of international human rights standards.

V. SUMMARY: THE FUTURE OF RELIGION AND HUMAN RIGHTS LAW

In a recent poll by Univision, 30% of Catholics worldwide stated that they support same-sex marriage; while 99% of Catholics in Africa oppose same-sex marriage.²⁰⁴ On a more local level, a 2013 Pew Center Report determined that in all three of the countries in this article, the vast majority of the population polled believes that homosexuality should not be accepted by society, let alone legalized as it has been in many countries in recent years.²⁰⁵ The report showed that 96% of the surveyed population in Uganda, 74% in Russia, and 98% in Nigeria shared this opinion.²⁰⁶ Further, the Pew Report explained that there is significantly less tolerance for homosexuality in more religious countries, especially in Muslim countries and throughout Africa.²⁰⁷ These statistics show that many strong religious believers still fear homosexuality. This fear has led their countries to criminalize homosexual acts in an attempt at protecting traditional religious values.

Although there have been no recent polls in either Uganda, Russia or Nigeria specifically to determine citizens' views about those LGBTI individuals who exist in their societies, the enactment the past year of the laws previously cited criminalizing even discussion of homosexuality, demonstrates the current views of each country. In countries with strong religious backgrounds, and where the Legislature and President all

SG/SM/15582, U.N. Doc. AFR/2795 (Jan. 15, 2014), available at <http://www.un.org/News/Press/docs/2014/sgsm15582.doc.htm>.

204. Univision Poll, *Voice of the People* (2014), available at <http://www.univision.com/interactivos/openpage/2014-02-06/la-voz-del-pueblo-matriz-1> (last visited Feb. 9, 2014). 54% of the Catholic population in the United States supports same sex marriage; 38% of the Catholic population in Europe supports same sex marriage.

205. 17 countries worldwide now have laws allowing same sex marriage nationwide: Netherlands, Belgium, Spain, Canada, South Africa, Norway, Sweden, Portugal, Iceland, Argentina, Denmark, France, Brazil, Uruguay, New Zealand, Britain, and as of February 4, 2014 Scotland. *The Freedom to Marry Internationally*, FREEDOM TO MARRY (last updated Jan. 2014), <http://www.freedomtomarry.org/landscape/entry/c/international>. In other countries, notably the United States, it remains a local/state issue. For detailed information on the U.S., see *Where State Law Stands*, FREEDOM TO MARRY, <http://www.freedomtomarry.org/pages/where-state-laws-stand> (last visited Feb. 9, 2014). See also PewResearch Religion & Public Life Project, *Gay Marriage Around the World*, PEW FORUM (last updated Feb. 5, 2014), <http://www.pewforum.org/2013/12/19/gay-marriage-around-the-world-2013/#some>.

206. PEW RESEARCH GLOBAL ATTITUDES PROJECT, THE GLOBAL DIVIDE ON HOMOSEXUALITY I (PewResearch Center, Jun 4, 2014), <http://www.pewglobal.org/files/2013/06/Pew-Global-Attitudes-Homosexuality-Report-FINAL-JUNE-4-2013.pdf>.

207. *Id.* at 3-4.

support these new laws, the question remains: can religion be reconciled with the protection of the human rights of LGBTI persons worldwide?

In Uganda, 86.7% of the population is Christian, 11.5% is Muslim and the remainder is mixed between Hindu, Judaism and other Folk religions.²⁰⁸ In Nigeria, 49.3% of the population is Christian, 48.8% is Muslim, 1.4% is Folk Religions, and the remainder is mixed between Judaism, Hindu and unaffiliated.²⁰⁹ In Russia, 73.3% is Christian, 10% is Muslim, 16.2% is unaffiliated, .2% is Jewish, and the small remainder is mixed among Hindus, Buddhists and others.²¹⁰ These numbers show the importance and place of religion in each society. Nonetheless, the recent Univision Poll also demonstrates that not all individuals worldwide who deem themselves to be religious are unsupportive of LGBTI persons and their basic human rights.²¹¹

In fact, religion is not necessarily mutually exclusive concerning acceptance of LGBTI persons and protection of their human rights. For example, the largest Muslim organization in the United States, the Islamic Society of North America [ISNA], publicly stated its support of a bill in the U.S. to stop discrimination based on sexual orientation.²¹² The Director of the Human Rights Campaign's Religion and Faith Program stated, "LGBTI Muslims both in the U.S. and abroad need to hear from organizations like ISNA that their experiences as Muslims are recognized in the spirit of Islam's emphasis on compassion and respect for all humanity."²¹³ In addition, Nigerian-born LGBTI activist, minister, and Christian counselor in the United States, Dr. Rizi Timane, appealed to Nigeria that they respect international human rights.²¹⁴ He even called on U.S. President Obama to "to intervene in this breach of human and civil rights."²¹⁵

208. THE PEW FORUM ON RELIGION & PUBLIC LIFE, THE GLOBAL RELIGIOUS LANDSCAPE (PewResearch Center, Dec. 2012), <http://www.pewforum.org/files/2014/01/global-religion-full.pdf>. See Table: Religious Composition by Country, *id.* at 50.

209. *Id.* at 48.

210. *Id.* at 49.

211. See *supra* note 204.

212. Michael Toumayan, *Largest U.S. Muslim Organization Supports LGBTI Anti-Discrimination Bill*, HUMAN RIGHTS CAMPAIGN (Nov. 11, 2013), <http://www.hrc.org/blog/entry/largest-u.s.-muslim-organization-supports-LGBTI-anti-discrimination-bill>.

213. *Id.*

214. Rizi Timane, *Spiritual leader Dr. Rizi Timane makes plea for human rights following Nigeria's 'Same-Sex Marriage Prohibition Act'*, LGBTI WEEKLY (Jan. 21, 2014), <http://LGBTIweekly.com/2014/01/21/spiritual-leader-dr-rizi-timane-makes-plea-for-human-rights-following-nigerias-same-sex-marriage-prohibition-act/>.

215. *Id.*

In the United Kingdom, however, soon after voting in favor of a bill to legalize gay marriage, Muslim members of Parliament (MPs) received death threats from citizens, clerics, and Muslim extremists.²¹⁶ A poll on same-sex marriage conducted after the bill was passed in Britain, found that over half of all Anglican and Catholics in the U.K. are in favor of allowing same-sex marriage.²¹⁷ From the polls in the U.S. and U.K., along with the actions of the British Muslim MPs and ISNA in the U.S., it is clear that not all religious people are unaccepting of LGBTI persons or aim to refuse protection of LGBTI peoples' human rights.

Even within Uganda, the leader of the largest LGBTI rights organization, Sexual Minorities Uganda,²¹⁸ is a devout Roman Catholic.²¹⁹ That leader, Frank Mugisha, has been in a same sex relationship for the past seven years; nevertheless, he is now afraid to return to his home country for fear of being persecuted.²²⁰ Further, not all religious institutions see homosexuality the way that Uganda, Russia and Nigeria do. The former Archbishop of South Africa, Desmond Tutu, opposed Museveni's scientific reasoning²²¹ stating, "[t]here is no scientific justification for prejudice and discrimination, ever. And nor is there any moral justification."²²² Tutu likened Uganda's current laws and Museveni's role to Nazi Germany and the actions of Hitler because of the gross violations of human rights that will ensue.²²³

216. Murtaza Ali Shah, *UK Muslim MPs scared after voting for gay marriage bill*, THE NEWS (Feb. 17, 2013), <http://www.thenews.com.pk/Todays-News-13-21033-UK-Muslim-MPs-scared-after-voting-for-gay-marriage-bill>. It is of note that these threats came from radical extremists, and not the majority Muslim population in the United Kingdom. Yet radicals such as these often stir up publicity and action from a small minority of the population.

217. Press Release – 'Do Christians Really Oppose Gay Marriage?', RELIGION & SOCIETY (Apr. 18, 2013), http://www.religionandsociety.org.uk/events/programme_events/show/press_release_do_christians_really_oppose_gay_marriage. There is also a support group specifically for LGBTI Muslims in the United Kingdom. See Imaan, *Islam & Sexuality*, <http://www.imaan.org.uk/> (last visited Feb. 9, 2014).

218. Information on Sexual Minorities Uganda [SM-UG] can be found at <http://www.smug.4t.com/> (last visited Feb. 10, 2014).

219. Sarah Morrison, *Uganda is set to become the world's least gay-friendly country*, THE INDEPENDENT (United Kingdom) (Feb. 9, 2014), <http://www.independent.co.uk/news/people/profiles/frank-mugisha-homophobia-is-not-african-its-imported-9117077.html>. Mugisha is currently in talks with LGBTI activists in Russia to travel to the United States to garner support against the new laws in the two countries; and has filed a lawsuit against the US pastor, Scott Lively, who instigated the passage of the law in Uganda.

220. *Id.*

221. See *infra* note 83, and accompanying text.

222. Antonia Molloy, *Desmond Tutu compares Uganda's anti-gay bill with Hitler's behavior in Nazi Germany*, THE INDEPENDENT (United Kingdom) (Feb. 26, 2014), <http://www.independent.co.uk/news/world/africa/desmond-tutu-urges-ugandas-yoweri-museveni-not-to-sign-antihomosexuality-bill-9147562.html>.

223. *Id.*

Perhaps the legal issues need to be addressed from an anthropological standpoint. What is innate in these societies that is so predisposing them to homophobia that they violate international human rights laws to assuage that fear? Mr. Mugisha explains that the current anti-homosexual views in his country are “totally not Ugandan.”²²⁴ He also emphasizes that it was not until after a United States evangelical pastor, Scott Lively,²²⁵ led a conference to Uganda in 2009 that there was any significant anti-homosexual sentiment in that country.²²⁶ Not only was Mr. Lively involved with the passage of the law in Uganda, but he also toured Russia in 2006, and publicly demanded that Russia “criminalise the public advocacy of homosexuality.”²²⁷

Significantly, much support of anti-LGBTI legislation, both in Russia and Uganda, originated in the West and was touted particularly by evangelical parties in the United States. In early 2014, after Museveni enacted the law in Uganda, Scott Lively and other rightwing anti-gay activists founded a new group called Coalition for Family Values, which will “spread Russian-style anti-gay legislation throughout the world.”²²⁸ The belief of Lively and those who similarly oppose homosexuality, is that homosexuality is “abnormal, wrong, harmful and perverse” and a “personality disorder.”²²⁹ Lively’s tactics are based in conservative religious views and have created a strong following worldwide.²³⁰ Opponents of homosexual rights also believe that protection of rights such as marriage will destroy family and religious values.²³¹ However, it

224. Morrison, *supra* note 219.

225. See *infra* note 65, and accompanying text. The suit against Lively is ongoing, and falls within the Alien Tort Statute, which allows a foreign victim of human rights abuses and breaches of international law or a treaty to which the United States is party, by a U.S. party to seek reparation in U.S. courts. See Morrison, *supra* note 219; Alien Tort Statute, 28 § U.S.C. 1350 (1789), available at <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title28/pdf/USCODE-2009-title28-partIV-chap85-sec1350.pdf>.

226. Morrison, *supra* note 219. Mr. Mugisha spoke publicly on how Western Evangelical leaders have propagated fear of homosexuality in Uganda on a recent trip in the United States. Mr. Mugisha was speaking at the Charles H. Wright Museum of African-American History in Detroit Thursday at an event sponsored by Freedom House. Gus Burns, *LGBTI activist Frank Mugisha visits Detroit, denounces Uganda’s urge to imprison gays*, All Michigan (Feb. 21, 2014), http://www.mlive.com/news/detroit/index.ssf/2014/02/LGBTI_activist_frank_mugisha_vi.html.

227. Morrison, *supra* note 219. Human Rights Watch believes that Mr. Lively’s tour of Russia actually gave rise to the current anti-homosexual propaganda legislation there.

228. Mariah Blake, *WATCH: Anti-Gay Evangelical Calls Protesters “Homo-Fascists”*, MOTHER JONES (Feb. 21, 2014), <http://www.motherjones.com/politics/2014/02/anti-gay-scott-lively-homo-fascists>.

229. “Scott Lively,” *Intelligence Files*, SOUTHERN POVERTY LAW CENTER, <http://www.splcenter.org/get-informed/intelligence-files/profiles/scott-lively> (last visited Apr. 1, 2014).

230. *Id.*

231. See e.g. California’s Prop 8, which opposed gay marriage in the U.S. state of California, <http://www.scribd.com/doc/35374462/California-Prop-8-Ruling-August-2010>. This Prop was struck down by the United States Supreme Court in June 2013. See Michael Doyle, *Prop. 8 dismissed*,

must be noted that most supporters of gay rights do not advocate for churches to conduct the marriage of same-sex couples; instead they seek only to have the legal right to be married and maintain respect and reverence for the opponent's religious beliefs.²³² These supporters also point out that religious freedom, in the United States in any case, protects the rights to all people in their beliefs or non-beliefs – and that those rights should not be infringed upon.²³³ There is an immense difference between not wanting someone to be in your religious group, and taking actions against them to criminalize that person's beliefs and behavior when those are different from your own.

Within Uganda, Mr. Mugisha is fighting to change the long-existing notion in the country that homosexuality is an import from the West and something not innately African.²³⁴ Until there is substantial, publically expressed support for a more liberal view – more in line with international human rights standards – it will be hard to change perceptions.

Similarly, a native Nigerian, Dr. Rizi Timane, publicly issued a very moving and honest statement following the enactment of the Nigerian law which stated, “I hate to say it, but my homeland is not a safe place for any member of the LGBTI community. It has not been for a long time . . . The issue now, however, is that this inhuman treatment has been written into law.”²³⁵ Dr. Timane also points out that, while many of those in support of the law are strictly Christian and claim that homosexuality violates the Bible, they have no problem with adultery.²³⁶ Further, a few years ago Nigeria passed a law allowing Nigerian men to marry underage

defense of Marriage Act struck down, CAPITOL ALERT (June 26, 2013), <http://blogs.sacbee.com/capitolalertlates/2013/06/supreme-court-overturns-prop-8.html>. See also Brady McCombs, *Mormon Leader Outlines Opposition to Gay Marriage*, ASSOCIATED PRESS (Apr. 5, 2014), <http://abcnews.go.com/US/wireStory/mormon-leader-outlines-opposition-gay-marriage-23207572>.

232. See McCombs, *supra* note 231.

233. David Edgar, *Christians have a right to oppose gay marriage, but not to act against it*, THE GUARDIAN (Apr. 3, 2014), <http://www.theguardian.com/commentisfree/2014/apr/03/christians-oppose-gay-marriage-freedom-church-right>.

234. Morrison, *supra* note 219. This concept of homosexuality being un-African can also be seen in public statements from President Mugabe of Zimbabwe, who even refused to allow the Archbishop of Canterbury to visit Zimbabwe, claiming that Williams was coming to “represent neo-colonialism” and “lobby for homosexuality.” Aarti Divani, *Is Homosexuality “Un-African”?*, THINK AFRICA PRESS (Oct. 12, 2011), <http://thinkafricapress.com/gender/homosexuality-un-african-colonialism>.

235. Timane, *supra* note 214.

236. *Id.*

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girls – yet that received no comment or protest from these supposedly religious folks.²³⁷

One scholar points out that the anti-homosexual sentiment and criminalization of homosexuality in Africa actually stems from the colonial period.²³⁸ It is important to note that it is the anti-homosexual attitude, not the creation of homosexuality in Africa, which scholars believe was brought there by the West.²³⁹ Evidence of homosexuality in Africa dates back centuries²⁴⁰ – it is the fear that is relatively recent.²⁴¹ Dr. Timane specifically equates part of the anti-homosexual sentiment in Nigeria to the colonial era, with many Nigerians claiming that homosexuality was brought to Africa from the West.²⁴² Yet the colonial powers which brought those laws to Africa now have de-criminalized homosexuality and, in fact, many allow same-sex marriage, no longer falling back on religious reasons for such fear.²⁴³ Moreover, homosexuality has existed since prehistoric times – even in Africa.²⁴⁴ So the question remains: why do the laws and fear remain in Africa or how can those attitudes be changed?

As for Russia, the anti-homosexual attitudes existed centuries ago and while persecution lessened for a period, the sentiment has come roaring back strongly. Russian pundits wonder why “modern-day Europe has been so easily giving up its Christian roots?”²⁴⁵ These commentators also claim that the support is not real, and is mainly politically motivated; and sparked by anti-Christian movements currently spreading in Europe.²⁴⁶ Russian experts are “certain” that same-sex marriage and acceptance “has no future” and that Europe “will return to its originally Christian roots and traditional values.”²⁴⁷ This type of public commentary partially explains the current attitudes in Russia: they believe that the human rights of LGBTI persons, protected by the United Nations and

237. *Id.*

238. Divani, *supra* note 234.

239. Michael Mumisa, *It is homophobia, not homosexuality, that is alien to traditional African culture*, THE GUARDIAN (Feb. 19, 2014), <http://www.theguardian.com/commentisfree/2014/feb/19/homophobia-homosexuality-traditional-african-culture>.

240. BOY-WIVES AND FEMALE HUSBANDS: STUDIES IN AFRICAN HOMOSEXUALITIES (Will Roscoe & Stephen O. Murray eds., Palgrave Macmillan ed. 2001); *see also* E.E. Evans-Pritchard, *Sexual Inversion among the Azande*, 72 AM. ANTHRO. 1428, 1428-1434 (1970).

241. Mumisa, *supra* note 239.

242. Timane, *supra* note 214.

243. *See supra* note 205.

244. Timane, *supra* note 214.

245. *EU and gay marriages: Old World giving up Christian roots?*, THE VOICE OF RUSSIA (Feb. 8, 2014), http://voiceofrussia.com/2014_02_08/EU-and-gay-marriages-Old-World-giving-up-Christian-roots-9257/.

246. *Id.*

247. *Id.*

international law, are simply a phase which will pass when people return to “traditional” ways. One scholar of Russian Studies explains that many Russians conflate pedophilia and rape with homosexuality.²⁴⁸ Multiple times, church leaders in Russia have made this connection²⁴⁹ which only perpetuates the public’s misconception. Perhaps this is how the Russians justify the gross violations of these human rights. The strength and power of the government historically in Russia is perhaps another reason for the strong support there: under the Russian Empire a person could be killed for disobeying the government, or worse the Church,²⁵⁰ and that fear likely still exists today.

Once again, we turn once again to the basic question: how might we help to overcome existing fears and homophobia in these countries and discourage them from violating international human rights laws? One suggestion has been that Western countries could voice their disapproval of domestic laws that ignore international humanitarian law by limiting current financial aid and other support to those nations that violate the international law.²⁵¹ It is unclear, however, whether a limiting or even a complete withholding of aid would do enough to overcome pre-existing social fears and traditional ties to religion, which appear to be the base of the homophobic laws in Uganda, Russia, and Nigeria. Not until there is an equitable discussion between both sides – the religious radicals who claim homosexuality is a sin and those who tie their view on the matter to international human rights law – can there be a change. Only by each accepting the other and attempting to reconcile the views of both sides can religion truly co-exist with the protection of international human rights of LGBTI persons around the world.

248. See Pappas, *supra* note 97.

249. *Id.*

250. See BARON VON HAXTHAUSEN, *THE RUSSIAN EMPIRE: ITS PEOPLE, INSTITUTIONS AND RESOURCES* 293 (Routledge, 1968). “A mere suspicion of treachery . . . was punished with torture and death.”

251. WASHINGTON POST, *supra* note 181. Some countries have already placed economic sanctions on Uganda. See *Ugandan president signs anti-gay law*, AL JAZEERA (Feb. 24, 2014), <http://www.aljazeera.com/news/africa/2014/02/ugandan-president-sign-anti-gay-bill-20142245119120579.html>; Nicholas Bariyo, *Europeans Stop Uganda Aid After Antigay Law*, THE WALL STREET JOURNAL (Feb. 25, 2014), [http://online.wsj.com/news/articles/SB10001424052702304834704579404943830788778.html](http://online.wsj.com/news/articles/SB10001424052702304834704579404943830788778?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052702304834704579404943830788778.html). President Obama has also stated that the law in Uganda is contrary to human rights laws, in addition to public proclaiming it will affect U.S.-Uganda relations. Associated Press, *Ugandan anti-gay law is huge step backwards, says Barack Obama*, THE GUARDIAN (United Kingdom) (Feb. 16, 2014), <http://www.theguardian.com/world/2014/feb/16/uganda-anti-gay-law-barack-obama>.