WHY IS IT AN EMERGING ISSUE?
Homosexuality is illegal in at least 78 countries worldwide - among them 36 African countries. The laws are often a colonial legacy. Recently a trend has emerged where laws are introduced that not only criminalize same-sex relations but also include far-reaching provisions that undermine the basic rights and freedoms that Lesbians, Gays, Bisexuals and Transgender persons (LGBT) are entitled to enjoy.

ANTI-HOMOSEXUAL LEGISLATION

Recent anti-homosexual laws are generating increased persecution of members of marginalized LGBT communities threatening their health, means of existence and their life.

By Steven L. B. Jensen

The proposed laws are being used to mobilize harassment, persecution, torture and killings towards these populations. This trend reveals new societal conflicts that present risks to individuals and marginalized communities. It also challenges wider national development efforts and international collaboration because of its politically divisive nature. It has already had a direct impact on health programs at the country level.

THE UGANDA CASE
The Ugandan Anti-Homosexuality Bill introduced in 2009 was the starting point. The country subsequently became a battleground for a larger global debate and struggle. The Bill caused international controversy because of its harsh provisions, which included the death penalty, severe curtailment of freedom of speech, freedom of association and freedom of assembly. While the bill had popular and
media support many international donors voiced strong criticism and threatened withholding aid.

The controversy sparked international polarization resulting in mobilization against the bill. In 2012, the Human Rights Council held the first formal intergovernmental debate on sexual orientation and gender identity at the United Nations on the initiative of Brazil and South Africa. (1) The repercussions of homophobia for LGBT persons all over the world continue to emerge.

**LAWS AND VIOLENCE**

LGBT persons have often been marginalized, persecuted and criminalized because of their sexual orientation or gender identity. The 78 countries where homosexuality is illegal include numerous countries where stiff prison sentences are mandated and five countries where homosexuality is punishable by death (Iran, Saudi Arabia, Yemen, Sudan, Mauritania plus in some parts of Nigeria and Somalia).

Homophobic and transphobic violence occur in all regions of the world. Between 2008 and 2011 there were 680 reported murders of transgender persons (data from 50 countries) (2). From November 2012 to November 2013 data from 26 countries reveal that 238 transgender persons were murdered with the highest reported numbers occurring in Latin American countries. (3) The killings represent a form of gender-based violence targeted at persons who defy gender norms.

Heavy emotional and economic burdens are placed on the LGBT communities - even in countries where the legislation is not enforced. This has a negative effect on LGBT persons in terms of their personal security, health as well as their education and employment opportunities. They are often forced to live in secrecy or hiding and some have been
forced to flee their home country to seek asylum elsewhere on the grounds of persecution due to their sexual orientation.

CRIMINALIZATION NECESSARILY IMPACTS HEALTH

The global response to HIV and AIDS has over the years shed significant light on the realities faced by LGBT. HIV prevalence is often many times higher among men who have sex with men (MSM) than among the general population (HIV prevalence among MSM has e.g. been reported to be 25% in Ghana and 43% in coastal Kenya). (4)

While LGBT are presented as a unified category each group faces specific challenges and has unique needs. In general, however, it is evident that LGBT persons are severely underserved in terms of access to health services because their needs are ignored or because they themselves fear discrimination or other mistreatment.

They lack trust in health-care providers and have fears about maintaining confidentiality. They risk their own health and well-being in order not to risk having their sexual orientation widely disclosed. Where health services have been available the new anti-homosexual laws appear to scare LGBT persons away from accessing much needed care (e.g. up to 90% in Nigeria) (5).

The implications of the forced/induced secrecy, stigma and fear are numerous. The inability of men who have sex with men to address sexual health issues with health-care providers has been connected to “misdiagnosis, delayed diagnosis and delayed treatment leading to poor health prognosis and higher risk of HIV and STI transmission to sexual partners” (6). It has been reported that LGBT persons have expressed the preference “to die in the comfort of their beds” instead of risking arrest or mob justice by seeking health care that would involve making their sexual orientation more apparent. (7)
Distinct and widespread HIV prevention and treatment gaps for LGBT persons have repeatedly been documented. Criminalization of same-sex behavior leads to such outcomes and undermine the effectiveness of national HIV responses. Both from a public health and a human rights perspective it has for a long time been obvious that LGBT - and other key populations - deserve far greater resources and efforts in terms of prevention, treatment and human rights protection directed towards them.

From a statistical perspective, gathering data to better serve these groups is a challenging task. Better data on health needs (e.g. prevention, treatment, etc.) would promote better understanding of how to serve these populations, but the stigma that surrounds disclosure of basic information perpetuates this unhelpful cycle.

WHEN LAW UNDERMINES DEMOCRATIC RULE

Countries where parliamentary law-making processes involve multi-party systems are normally regarded as a positive step away from authoritarian rule. International development aid has supported programs focusing on good governance, democracy and the rule of law e.g. by strengthening the functioning of parliaments. The anti-homosexual legislation reveals that these processes can easily fall victim to legal populism.

Instead of upholding the Constitution and the country’s human rights obligations, the parliamentary institution intentionally undermines and stigmatizes vulnerable communities.

The political mobilization of populist and religious sentiments against a stigmatized group places significant pressures on public institutions that provide social services or the legal system tasked with upholding the Constitution and the rights of citizens. It becomes a national stress test of the status of the rule of law in a given country due to the elaborate and oppressive nature of the new wave of anti-homosexual laws.
CHALLENGES TO DEVELOPMENT
Development partnerships with international donors cannot ignore that anti-homosexual legislation violates international agreements as well as national constitutions. The systemic and institutionalized discrimination that the anti-homosexual legislation promotes can and does undermine the ethical and technical soundness of development programmes.

When the Ugandan Anti-Homosexuality Bill, after a protracted process, entered into force in February 2014 Western donors felt obliged to withdraw aid or redirect funds away from government towards civil society.

The World Bank's increased focus on the economic cost of discrimination, including homophobia, resulted in the Bank’s announcement in March that its planned support to the Ugandan Health Sector - equaling 90 million US Dollars - was postponed indefinitely. It was a direct consequence of the Bill and its far-reaching effects include the entire Ugandan health sector as well as the population at large.

GLOBAL CASES (8)
In 2013, Russia’s Parliament passed an anti-homosexual law. The law, passed with the votes 436-0, severely curtails the democratic rights of LGBT persons. It has stimulated further violent attacks on members of this community.

In the United States, the polarizing nature of these debates has been evident as the rights of LGBT persons have gained increasing acceptance in some parts of the country as well as a priority in US foreign policy, while anti-homosexual laws have been presented before state legislatures in other parts. The anti-homosexual laws in states such as Alabama, Louisiana, South Carolina, Texas, Utah and more – including new proposals recently put forward - have clear similarities with provisions being introduced around the world. (9)
Also in 2013, India’s Supreme Court re-criminalized homosexuality. The Supreme Court overruled a 2009 verdict by the Delhi High Court that had decriminalized homosexuality by overturning a 150-year old legal colonial provision. The Delhi High Court accepted the argument put forward by the Indian Health Ministry that the law undermined national HIV prevention efforts. Interestingly, the Court also based its ruling on the notion of inclusion as a fundamental value in the founding of India. The Government was divided as the conservative Ministry of Family Welfare opposed decriminalization. The case subsequently went before the Supreme Court leading to the strongly criticized ruling on re-criminalization. (10)

AFRICAN RESPONSES

The Uganda Bill inspired other African states. In January 2014, the Nigerian President signed into force the Same Sex Marriage Prohibition Act meaning that membership in an LGBT organization would entail 10 years’ imprisonment. In a country where 3.4 million are HIV positive this law endangers health programmes for the LGBT community. In September 2014, Gambia looks to pass similar legislation.

The debates continue across Africa - also with some encouraging signs indicating that change is possible. Local NGOs, legal experts and human rights defenders have mobilized to try cases before the national courts (Kenya, Zambia, Zimbabwe and Malawi).

In several cases judges have protected the rights of LGBT persons e.g. citing Constitutional provisions banning...
discrimination. Most notably, the Ugandan Constitutional Court in August 2014 declared the Anti-Homosexual Bill null and void due to a procedural problem with the parliamentary process. The case was brought before the Court by members of civil society.

The Ugandan Bill, that sparked the international mobilization around the rights of LGBT persons, now has an uncertain status. It may soon be re-introduced in Parliament but these developments illustrate that local responses and legal processes related to protecting the rights of LGBT are evolving - and more significantly - are needed. There is a growing sense of local stewardship to act against the discriminatory laws that violate human rights placing lives at risk.

**CONCLUSION**

The tug of war that combines the issues of sexual orientation and gender identity, international development, health, human rights and the rule of law looks set to continue.

LGBT persons still face persecution and this is essential to address. However, the ongoing global debate will also shape the future of global health, international human rights, national democratic practice around the world as well as the international community’s ability and willingness to overcome divisions and address the wider challenges that it faces.

One significant effect is already noticeable. Sexual orientation and gender identity have since 2009 become a foreign policy issue. It looks to remain that for the foreseeable future. The new wave of anti-homosexual legislation paved the way for this development. It may continue to be divisive but it may also lead to much needed social and political change and better health care for marginalized communities.
KEY REFERENCES


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