Systems of Exclusion in Uganda: The Problem of Enforcing and Expanding LGBT Human Rights

By: Russell Hathaway
Undergraduate: University of Chicago ‘16
hathawayrs@uchicago.edu
Introduction

Enshrined in the Universal Declaration of Human Rights, the International Covenant on Civic and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights is a universal guarantee of non-discrimination in the enjoyment of all rights. Despite the assertion that human rights apply to all individuals based on their humanity alone, powerful systems of exclusion have denied rights to individuals and populations on the basis of gender, race, religion, socioeconomic status, and other factors. Since its inception, the United Nations has worked to chip away at these systems of exclusion, with the support and cooperation of sovereign nations and human rights NGOs. Many consider the progressive realization of non-discrimination in the provision of human rights a success story. UN legislation, international cooperation, and the fieldwork and advocacy of NGOs have considerably expanded the rights of women, racial minorities, the poor, and other excluded groups since the Universal Declaration of Human rights was adopted.

Undoubtedly, the story of human rights is one of uneven but overall progress. It is essential to realize, however, that powerful systems of exclusion still exist, denying human rights to individuals and groups of people, stymying UN efforts to support these rights, and impeding the work of human rights defenders in areas of exclusion. One particularly powerful system of exclusion pertains to lesbian, gay, bisexual, and transgender (LGBT) individuals. This paper discusses the problem of discrimination in human rights provision and protection on the basis of
sexual orientation and gender identity, and the human rights violations against LGBT individuals committed by state actors as a result.

LGBT individuals in the 21st century find themselves victims of a system of exclusion similar to those which systematically denied (and in many cases continue to deny) human rights to racial minorities, religious minorities, women, the stateless, and others. The case of human rights for sexual minorities is interesting because it is only in the last twenty years that sexual orientation and gender identity has been considered a legitimate ground for discrimination by sovereign states. When the Universal Declaration of Human Rights was conceived, and when following international covenants giving force to its provisions were adopted, prohibitions of discrimination on the basis of sexual orientation and gender identity were not explicitly stated.

The framers of international human rights law anticipated discrimination in the protection and provision of human rights; accordingly, the language of the Universal Declaration and related covenants prohibits discrimination on certain explicit grounds. Sexual orientation and gender identity are not among them. This omission reflects the prevailing attitudes of the time this legislation was passed rather than a deliberate attempt to exclude sexual minorities from the protections of human rights. UN legislators today acknowledge that the list of prohibitions on discrimination in the enjoyment of human rights—“race, color, sex, language, political or other opinion, national or social origin, property, birth, or other status”—is not exhaustive (Universal Declaration of Human Rights). The Declaration prohibits distinction of any kind. History demonstrates, however, that there is great disparity between the directives of international human rights law and its efficacy in practice.

This frames the question: why, despite considerable progress in the application of human rights to those systematically excluded, are the human rights of LGBT individuals consistently
violated by states? How can the United Nations and NGOs, limited by state sovereignty and the
*implicit* nature of the prohibition of discrimination on the basis of sexual orientation and gender
identity, assure that LGBT individuals are afforded the same protections that, women, religious
minorities, ethnic minorities, and other excluded groups have worked so hard to achieve? The
violations referred to here are not prohibitions on gay marriage or adoption, but violations of the
right to liberty and security of person; freedom of assembly, association, and expression; the
right to privacy; freedom from torture or cruel, inhumane, and degrading treatment; the right to
the highest achievable standard of health; the right to due process; and the right to life itself
(Uiversal Declaration of Human Rights). Discrimination against LGBT individuals and
selective applicability of human rights legislation regarding LGBT populations is codified in the
national laws of sovereign states, despite the incompatibility of these laws with international
human rights obligations (Amnesty International 2010).

In this paper, I aim to show why the human rights and protections of LGBT individuals
are violated in Uganda. “Traditional” values, a climate of fear and misunderstanding prompted
by Western religious fundamentalism, state sovereignty opposed to international obligations, and
the lack of explicit prohibition of discrimination against LGBT individuals in human rights
legislation all foster human rights violations committed by the state against Uganda’s gay and
transgender community. Furthermore, these factors contribute to a climate of impunity in which
hate crimes and rights violations against LGBT individuals are neither punished nor socially
sanctioned. The problem of addressing human rights violations against LGBT individuals is
further complicated by the question: should human rights legislation be redefined or expanded to
explicitly include LGBT individuals under its protection, concomitantly reinforcing the idea of
the homosexual or transgender individual as the “other?” Or should LGBT human rights
advocacy be conducted in the context of existing human rights legislation, reinforcing the idea that discrimination on the basis of sexual orientation and gender identity is unequivocally, albeit implicitly, prohibited under human rights law? A comparison of the developing field of LGBT human rights with the historical trajectory of the women’s human rights movement—a movement which redefined and expanded human rights to explicitly include and protect women— informs my answer to this question.

I find that efforts to translate human rights across indigenous communities in local environments and appeals to the universality of human rights in international law are both ineffective tactics in the context of Uganda. An expansion of human rights to explicitly include LGBT individuals, combined with pressure from sovereign nations and NGOs, is necessary to address the plight of LGBT individuals in repressive autocracies like Uganda, even if such an expansion reinforces the negative implications of existing discrimination against LGBT populations and dilutes the power of universal human rights. A comprehensive analysis of Uganda sheds some light on the greater problem of LGBT human rights provision and protection worldwide.

**Evidence of LGBT Human Rights Violations From Uganda**

The issue of LGBT human rights is empirically rooted in existing literature on human rights violations against LGBT individuals in Uganda, a country whose violent homophobic legislation parallels anti-LGBT discrimination across sovereign states in Sub-Saharan Africa. While the problem of LGBT human rights in Uganda (and its proposed solution) are not necessarily generalizable to the greater issue, addressing the problem in Uganda is a starting point for
analyzing the larger crisis of LGBT human rights worldwide, especially considering parallel reproductive trends of homophobia and discrimination in the region.¹

On October 14, 2009, Ugandan Member of Parliament David Bahati introduced a draconian bill to Ugandan legislators designed to combat what the government perceived as increased practice, importation, and acceptance of homosexuality within the country (Amnesty International 2010). Prior to 2009, Uganda already had some of the harshest legislative measures in place against homosexuality of any country in Sub-Saharan Africa. Article 31 of the Uganda’s constitution explicitly prohibits same-sex marriage, one of the only constitutional provisions of any country to do so (The Constitution of Uganda 1995). The penal code of Uganda lists homosexual acts among other punishable “unnatural offenses,” making no distinction between homosexual acts in general and acts of pedophilia and homosexual rape (Amnesty International 2009). The government imposes strict regulations and limitations on freedom of expression and assembly for NGOs who provide resources to LGBT individuals and vocally advocate for their rights. Because the public attitude mirrors the government’s prejudice against homosexuals, these NGOs are the only sources of support and resources for many LGBT individuals in the country (Human Rights Watch 2009).

Concerned that the government had hitherto implemented no explicit act to prohibit and stamp out homosexuality within the country, the Ugandan parliament convened in 2009 to establish a definitive Anti-Homosexuality bill to eradicate the “offense” from Uganda. A transcript of the parliamentary debate on the Anti-Homosexuality bill provides insight into the legal and ideological grounding for the legislation. Said the Ugandan Minister of State in 2009:

¹ Uganda does not in fact have the most violent laws in place against homosexuality, but the primary countries with stricter anti-LGBT laws practice Shari’ah law, which confounds the issue of anti-LGBT discrimination and human rights legislation with that of discriminatory religious law in conflict with international human rights obligations.
This country has of late been besieged and is under attack from homosexual advocates and people who do unnatural things to each other…Those practices out there have come in the past two or three years and become so pronounced that our children, and I am a father of several boys, are in danger…we should have a law that expressly states no homosexuality will be permitted in this country (Ugandan Parliament 2009).

The language of the Anti-Homosexuality bill was framed in light of national interests, emphasizing the need to stamp out homosexuality to protect of vulnerable groups, specifically children. This emphasis is rooted in a common tactical maneuver to build popular support for legislation: framing such legislation in light of the greater interest by portraying vulnerable groups as victims of the targeted “offense.” The words and actions of the Uganda parliament also evidence an all-too-common conflation of homosexuality with homosexual rape, pedophilia, and forced “recruitment” into homosexuality (Karimi 2010; Rice 2009). For the Ugandan Members of Parliament and a vast majority of Ugandan’s citizenry, homosexuality is indistinct from the fundamentally separate practices of rape, coercion, and sexual violence that are often used as a deceptive rationale for the prohibition of all same-sex sexuality. Furthermore, the Anti-Homosexuality bill was designed to extend punishment to those who aided, abetted, and advocated for the rights of homosexuals. In the transcript of the bill deliberation, an MP stated:

It [the Anti-Homosexuality bill] is not about criminalizing homosexuality but an anti-homosexual one, which is different even from criminalizing, which is already done. “Anti” means that we are going to provide for how we can campaign against it, what we must do with those who promote it, et cetera (Ugandan Parliament 2009).

The co-author of the bill, David Bahati, concluded initial deliberation, explaining:

There has been propaganda…[saying] that to be a homo or a lesbian is okay…this propaganda is against God’s natural law and the law of the land. Whereas there is an argument that people…naturally get attracted to people of their sex, there is abundant evidence to suggest that there is no scientific evidence to validate this argument…we have so many rights in this country but I do not think the right to homosexuality is one of them (Ugandan Parliament 2009).
As evidenced by the transcript of the parliamentary deliberation on the Anti-Homosexuality bill, homophobia in Uganda is rooted in a cultural and national prejudice against homosexuals, a fallacious conflation of rape, sexual violence, and coercion with homosexuality in general, and the fundamental belief that homosexuality is not a right. The original provisions of the bill reflect these prevailing attitudes.

Specifically, the 2009 Anti-Homosexuality bill included measures to punish anybody who supports the activities of known homosexuals, life imprisonment for anybody found guilty of “the offense of homosexuality” (which includes any homosexual acts and the more nebulous intent to commit homosexual acts), and the death penalty for the crime of “aggravated homosexuality.” Aggravated homosexuality is defined as engaging in sexual conduct with someone of the same sex three times, having homosexual relations with a minor, or engaging in same sex conduct while HIV positive (Amnesty International 2010). Those who fail to report known homosexual acts within one day would be subject to fines and imprisonment of up to seven years. The original bill would have banned 38 LGBT-friendly NGOs from operating in Uganda, cutting off the only avenue for LGBT individuals to seek resources, services, and support. Legislation like the Anti-Homosexuality bill makes it virtually impossible for HIV positive LGBT individuals to seek appropriate medical care, as they face denial of treatment if doctors find out their sexual orientation or gender identity (Human Rights First 2012). Furthermore, invasive medical practices to “determine” homosexuality, like forced anal examinations and “correctional” rape, amount to conditions of torture, humiliation, and other inhumane treatment. Stigma against HIV-individuals and a fear of the disease compounds discrimination against LGBT individuals, who are falsely believed to comprise the largest
population afflicted with HIV in Uganda, when in fact the heterosexual population is more afflicted with HIV in percentage and number (Amnesty International 2009, 2010).

Gay rights activist Asma Jahanghir describes that the bill also enhances omnipresent discrimination in the public and private spheres against homosexuals, creating a “climate of impunity” in which crimes against homosexuals are neither punished nor socially sanctioned (Amnesty International 2010). The laws prohibiting aiding or abetting homosexuals fundamentally deny LGBT individuals right to due process and redress for hate crimes, silencing the voices of activists and allies alike. In 2011, Uganda’s most prominent LGBT rights activist, David Kato, was featured alongside other gay rights activists in a popular magazine article. In the body of the article, David’s name and contact information were published along with his sexual orientation. Similar details for many of his associates and fellow activists were listed as well. The banner above the article, designed to incite violence against Uganda’s gay community, read: “Hang Them” (Karimi 2010). David successfully sued the magazine with a number of other gay rights activists. Several weeks after his victory, however, he was found bludgeoned to death in his home. He was not the only gay rights activist in Uganda to suffer a violent death after the article was published (Gettleman 2011).

This personal example illuminates the hate crimes and human rights violations capacitated by Uganda’s climate of impunity. It also brings to light a key distinction. The murder of David Kato by another civilian, and by extension the civilian murder of any LGBT individual, is not in itself a human rights violation, even if it is motivated by discrimination or hatred. Human rights violations are manifest in the failure of the Ugandan state to provide for the security of the LGBT individual, uphold his or her right to due process, and foster a climate in which vicious crimes against the LGBT community are unacceptable and punishable. In fact, the
Ugandan government transgresses further, generating a climate of hostility and fear toward homosexuals. By normalizing and nationalizing hatred against homosexuals—branding homosexual activity an “unnatural” practice opposed to traditional values—the state not only fails to protect the rights of LGBT individuals but actively denies them rights as well.

According to Amnesty International, the Anti-Homosexuality bill violates international human rights law, specifically the principles of “non-discrimination, freedom of expression; freedom of thought, conscience and religion; freedom of peaceful assembly; freedom of association, liberty, and security of the person; privacy; the highest attainable standard of health; and life” (Universal Declaration of Human Rights, Amnesty International 2010). Human Rights Watch indicates that Uganda’s anti-homosexual legislation is in opposition to its international obligations under the International Covenant on Civil and Political Rights, the International Covenant on Social and Economic Rights, the African Charter, and its own constitution, which states: “All persons are equal before and under the law in all spheres of political, economic, social, and cultural life and in every other respect and shall enjoy equal protection of the law” (The Constitution of Uganda 1995). Article 3 of the African Charter, to which Uganda is a signatory, states that every individual is entitled to his rights under the law and the equal protection of the law, without distinction as to “race, color, ethnic group, sex…” (African Charter on Human and People’s Rights 1986). Amnesty International, the International Gay and Lesbian Human Rights Commission, Human Rights Watch, and Human Rights First have all documented human rights violations against LGBT individuals in Uganda, arguing that the government has shirked its international responsibilities through its discriminatory anti-LGBT laws.
In their defense, Ugandan MPs and prominent social-religious figures cite the country’s traditional values as a basis for the Anti-Homosexuality bill and other legislation targeting homosexuals. This idea of traditional, “African” values provides a final key insight into anti-LGBT discrimination in Uganda. In 2009, Uganda was visited by a host of American evangelicals, who, lacking an audience for their diatribes against LGBT individuals in the United States, exported this homophobia to developing countries. Chief among them were pastors Rick Warren, Scott Lively, and Martin Ssempa, a prominent, Western-educated Christian leader in Uganda (Gettleman 2010, Throckmorton 2009). These visitors painted homosexuality as a scourge imported to Africa from the West, fundamentally opposed to African values of morality and tradition. When faced with antipathy from the UN community for legislation like the proposed Anti-Homosexuality bill, Ssempa “strongly suggested” to the UN that it “refrain from attempting to interfere in the internal affairs of other countries.” In a rebuttal to the United Nations, one of many written by Mr. Ssempa, he cited the international community’s “unacceptable lack of respect for Uganda’s cultural values.” He concluded with the statement: “I know from my own experience that homosexuality is not innate and immutable” (Ssempa 2007).²

Human rights practitioners and NGOs oftentimes take an activist approach when describing LGBT human rights, invoking Toonen vs. Australia, a case in which a country’s sodomy laws were overturned by the United Nations Human Rights Committee as a violation of the right to privacy guaranteed in ICCPR. This decision and following rulings by UNHRC affirm that sexual orientation and gender identity are legitimate grounds for discrimination by

---
² Discrimination against LGBT individuals is driven in part by the belief that homosexuality is not biological but rather a choice, and a necessarily immoral one. It is easier to deny human rights to individuals whose “aberrant” behaviors are perceived as products of immoral choices rather than biological factors over which they have no control. Valid or not, this mindset fuels the climate of impunity for discrimination against homosexuals.
sovereign states and anti-LGBT discrimination is prohibited under human rights law (Amnesty International 2009). Yet sovereign nations, Uganda chief among them, cite traditional values and state sovereignty as a rationale for their discriminatory laws. Pastors like Ssempe manipulate cultural relativism, arguing that the West seeks to import normative, pro-gay values to Uganda, usurping its core beliefs and practices. Interestingly, historical and anthropological studies of Uganda indicate that homophobia is both a vestige of Uganda’s prior colonial rule and a worldview exported to the country by Western evangelical ministers. There is a body of evidence showing that Uganda’s first anti-homosexual laws, restrictions on sodomy, were drafted by British colonial rulers as a measure of control over the indigenous population. Before colonial rule, there was little regulation of or antipathy toward homosexual behavior by local communities in the region (Murray 2005). Nonetheless, the current Ugandan government and visiting evangelicals purport to represent “traditional” Ugandan values opposed to homosexuality. I argue that in fact the actual importation of foreign ideology to the country has been the violent and discriminatory agenda advanced by exporters of homophobia, exacerbated by the AIDS pandemic (Amnesty International 2010).

This discussion frames the key problem of LGBT human rights. Sovereign nations, invoking traditional values and state sovereignty, deny and violate the human rights of LGBT individuals, reneging on their obligations under international human rights law. These violations are grounded in the importation of homophobia from the West, a fallacious conflation of homosexuality with homosexual rape and sexual violence, a fear of homosexuality compounded by the HIV/AIDS pandemic, and a belief that homosexuality is an immoral choice opposed to traditional values. In the final section I will discuss how to address these human rights violations
and create a climate in which LGBT human rights are recognized as indistinct from the fundamental human rights afforded to each individual on the basis of his or her humanity alone.

**How to Address LGBT Human Rights Violations in Uganda**

In her discussion of transnational human rights, Sally Engle Merry describes an anthropological debate that characterized the 1990s: that between universalism and cultural relativism in human rights provision and protection. She distills the debate into two competing worldviews:

Universalists claimed that human rights are powerful because of their universality and should be adopted in all cultural contexts despite differences from local normative systems, whereas relativists argued that human rights ideas should not be imposed on societies with different value systems (Merry 2006).

This debate is not grounded in the nature of rights themselves but how best to advance human rights across cultural contexts. Appealing to universals in human rights provision is often ineffective because in certain cultural contexts universal human rights are viewed as a normative, Western construction and an imposition on local communities that have their own practices, belief systems, and conceptions of “right.” This profoundly applies to the dynamic of LGBT human rights. How can human rights translators advance the rights of LGBT individuals in countries that have homophobia embedded in national law and omnipresent in local communities?

Many human rights defenders and translators argue that advancement of human rights across different cultural contexts is most effective when these rights are “adapted to local cultural contexts and systems of law” (Merry 2006). The human rights translator must take care to embed progressive or radical human rights ideals within the framework of local practices and systems of meaning. The discourse on how best to advance human rights transnationally is concerned less with the debate about whether human rights are actually universal or not than it is with the efficacy of different modes of advancement. In the case of Uganda, I argue that both the
universal and relativistic modes of human rights advocacy, provision, and protection are unfit to the problem.

In her discussion of *vernacularization* and women’s human rights, Merry discusses replication and hybridization, two means of translating human rights across local communities while maintaining sensitivity to the autonomy and cultural differences of these communities. Replication derives most of its power from the original idea, which is translated across local communities by utilizing connections between indigenous concepts and values and the aspects of the translated idea. Hybridity refers to the dominance of the local practices and traditions in shaping human rights in local communities—sometimes human rights change and evolve when guided and reshaped by local ideas and indigenous practices. Both methods were instrumental to the progressive adoption of women’s human rights; translators were able to frame battering, marital rape, and male aggression in light of individual cultural contexts, and by doing so preempt pushback from communities hostile to what they perceive as an alien importation of rights (Merry 2006).

However, there is a key difference between the historical women’s human rights movement and the LGBT human rights movement in countries like Uganda. Women comprise a large constituency in local and statewide communities, which capacitates slow but steady realization of women’s human rights as these rights are gradually translated into local systems. The magnitude of this constituency is enough to effectively criticize, combat, and eventually change state practices that violate these newly established rights. Accordingly, the women’s rights movement converged to eventual change. In Uganda and similar countries with homophobic legislation, not only is the LGBT constituency small compared to the greater population (there are only 500,000 Ugandan LGBT individuals in a population of 36 million),
but local communities and state actors are both fundamentally opposed to the idea of LGBT human rights (Amnesty International 2010). This omnipresent hostility makes it difficult to translate LGBT human rights through local contexts and ideas, because local communities are already conditioned against homosexuals through Western importation of homophobia coupled with a misguided (and somewhat counterfactual) notion of “African values.” There are simply no local concepts, ideas, or semiotic systems in which translators can enmesh LGBT human rights and subtly advance them using local language. Hostility toward gays is too ingrained in the Ugandan legislation and its citizenry for translation to effect a substantive change. This is why most LGBT-oriented NGOs in Uganda focus entirely on service and resource provision and not on changing the minds of locals or lobbying the Ugandan parliament to curb its anti-LGBT legislation.

The universalist approach is just as ineffective. While Uganda trumpets its progress toward civic and political rights realization in the realm of freedom from torture and freedom of expression, it is adamantly opposed to providing any sort of human rights to LGBT individuals and holds the international community’s demands that it do so in contempt (as do many other countries with homophobic legislation). Invoking the universal nature of human rights simply prompts Uganda to cite its own sovereignty and traditional values as a rationale for discrimination and human rights violations against its gay community, despite the affirmations of equality before the law for all individuals embodied in its own national legislation. In essence, Uganda employs “selective applicability of human rights,” a practice criticized by Dr. Basile Ndjio in the Amnesty International Report on LGBT rights in Uganda. Ndjio is clear: “…under international human rights law, Uganda cannot use religion or traditional African values as a justification to restrict people’s human rights” (Amnesty International 2010). Yet the Ugandan
government continues to do so with impunity. This testifies to the problem of enforceability of human rights: state sovereignty limits the power of the UN to intervene when countries shirk their duty under the human rights treaties to which they are signatories, and a lack of local, indigenous avenues for human rights replication and hybridization obstructs efforts to translate human rights across local communities.

There is a third, multifaceted approach to LGBT human rights in Uganda, and although it is fraught with its own problems (which I will conclude by explaining), in my belief it is the best method to achieve LGBT human rights provision and protection within the country. The Anti-Homosexuality bill sat in congressional limbo for approximately four years despite strong support from individual legislators. It was finally ratified by the Ugandan legislature on 20 December 2013 without the death penalty provision and without the stipulation that those who know of homosexuals in Uganda must report them within 24 hours or face prison time (Cowell 2013).\(^3\) Why is this so? Multiple attempts to reintroduce it have brought upon Uganda the antipathy of the international community. While touting the universality of human rights to the Ugandan parliament has accomplished little, accompanying threats from the United States and countries in the European Union to cut off development aid unless Uganda curb its anti-LGBT legislation have had palpable effects. One of them was the removal of the death penalty provision from the bill, mirroring the gradual transition of the international community toward a moratorium on the death penalty (Ojambo 2009).

The fact that threats to withdraw aid, essentially a means of coercion, have hitherto been the only effective way to moderate Uganda’s homophobic legislation is troubling. Its most

---

\(^3\) I have not discussed the passage of the law in great depth because the bill was only signed by the president several months ago, and it is difficult to ascertain its effects with confidence at this time. Some LGBT activists in Uganda argue that the bill has simply codified discrimination that has basically existed in the same form in Uganda for the past ten years.
deleterious effect is to deny an underserved population food and development aid (the virtue of which is outside the realm of this paper). Furthermore, applying international pressure on Uganda to respect universal human rights reinforces the very idea that the arrogant West pressures indigenous communities and sovereign states to conform to normative conceptions of human rights, usurping their autonomy in the process. This has been shown to condition sovereign states and local communities against human rights, making the local efforts of translators all the more difficult by breeding hostility in the local citizenry and state legislators alike. Perhaps, however, there is a way to supplement these ultimatums and offset some of the externalities they generate.

Again, the women’s human rights movement provides insight into LGBT human rights. In addition to local level translation and tactical advocacy, the women’s rights movement achieved a major victory after decades of planning, pressuring the world conference in Vienna in 1993 to acknowledge that women’s rights are human rights. Following this affirmation were two important policy documents, The Platform for Action and The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which gave legislative force to the movement (Merry 2006). The United Nations now has a relatively young organization, UN Women, which seeks to advance women’s human rights worldwide as inseparable from human rights. While there is much progress to be made in the women’s human rights movement, it fundamentally expanded and redefined human rights to include the rights of women, generating a more explicit basis for the protection and provision of women’s rights under international human rights law.

What does this mean for the LGBT rights movement in Uganda? Should the international community rely solely on coercive pressure to remove the most radical components
of Uganda’s anti-LGBT legislation? If replication, hybridization, and appeals to universality do not work, what are the objections to a fundamental redefinition and expansion of human rights to include the rights of LGBT individuals, giving coercive pressure on Uganda a stronger legislative basis? Perhaps what is needed is a covenant on the rights of the LGBT individual.

I concede that this approach is the most desirable in light of the barriers facing the LGBT human rights movement. I will conclude, however, with two objections that shed light on the enormity of the problems facing LGBT rights and a problem of human rights advocacy in general. My first objection is that a redefinition and expansion of human rights to explicitly include LGBT individuals “reinforces the negative implications” of existing discrimination against homosexuals. This idea is borrowed from Linda Nochlin, a critic who has written extensively on feminism and art (Nochlin 1998). Essentially, expanding human rights in the present to explicitly include LGBT individuals under its provisions reinforces the idea that discrimination against LGBT individuals in the past was justified and permissible. I am hesitant to redefine human rights through new, LGBT-specific legislation because I think that a coercive assertion that the rights of LGBT individuals should be protected on the basis of their humanity alone is far more powerful than expanding human rights legislation to explicitly state what is already implied through the universality of human rights. This reduces to a simple wish that universality be the only necessary and sufficient condition to protect people’s human rights. Unfortunately, it is not, and perhaps the reinforcement of negative implications is in itself a necessary consequence of effective human rights protection and provision. The women’s movement certainly would not have advanced as far as it has today if it had not lobbied the world conference in Vienna to redefine and expand human rights. I worry though that this expansion, manifest in terms like women’s human rights, or LGBT human rights, fundamentally marks these
groups as the “other,” subtly reinforcing the all-too-prevalent “us and them” dichotomy: a serious problem when the beneficiaries of human rights comprise a small constituency.

My second objection parallels some of the objections Aryeh Neier has to the idea of economic and social rights as rights. He worries, among other things, that viewing these rights as human rights will dilute the power of civic and political rights, which to him are the most fundamental and inalienable (Neier 2011). In the same way, I worry that continuously expanding and redefining human rights to explicitly include certain marginalized groups will have a diluting effect on universal human rights overall. This concern varies directly as the constituent groups of these expanded human rights grow smaller and smaller. Introducing a covenant on the right of LGBT individuals, while it provides a stronger legislative rationale for coercive pressure and explicitly defines human rights as applying to homosexuals, could contribute to a trend of redefining human rights for smaller and smaller groups, effectively diminishing the universality of these rights, which is what I think fundamentally defines them and gives them their power. While I admit the idea of continuous redefinition of human rights for smaller and smaller groups is fanciful and somewhat rhetorical, the dilution of universality in human rights is a real problem and a distinct possibility.

I am led to conclude, however, that the best way to advance, protect, and provide for the human rights of LGBT individuals is to couple pressure from the international community with a redefinition and expansion of LGBT human rights similar to the achievements of the women’s human rights movement. It is the most desirable choice among alternatives—appeals to universality, replication in human rights translation, and hybridity in human rights translation—that have proven ineffective. The dilution of universality and the reinforcement of the LGBT individual as the “other” may be necessary consequences of this course of action.
This paper was originally composed on 26 November 2013 by Russell Hathaway at the University of Chicago. Since it was written, a truncated version of the 2009 Anti-Homosexuality Bill was passed in the Ugandan Parliament. The paper has been modified to reflect this information.
Bibliography


