

PERSPECTIVE

Pushing Back: Civil Society Strategies to Address Punitive Anti-LGBTQI Laws in Uganda, Ghana, and Kenya

NINA SUN, MEGAN MCLEMORE, AND JOSEPH J. AMON

Introduction

Since 1990, 54 countries have decriminalized private same-sex sexual acts between adults.¹ However, in 61 countries, such acts remain criminalized. Penalties can be severe, including capital punishment, life sentences, forced labor, and corporal punishment, such as flogging. Even where same-sex relations are not explicitly criminalized within a country's legal framework, laws pertaining to public morality can serve as tools for authorities to prosecute, persecute, and intimidate LGBTQI individuals.

The criminalization of same-sex sexual relations infringes on a wide range of human rights, including the rights to privacy, nondiscrimination, and equal protection under the law.² The criminalization of same-sex sexual relations has also long been recognized as interfering with other rights, such as the rights to security of the person, to housing, to work, to education, and to health.³

In the last five years, progress toward achieving the United Nations Sustainable Development Goal of ending AIDS by 2030 has slowed rather than accelerated.⁴ While there have been notable reductions in new HIV infections in Sub-Saharan Africa, incidence in some regions, such as in Eastern Europe and Central Asia and in the Middle East and North Africa, has continued to rise.⁵ This increase is disproportionately borne by key populations, such as sex workers, gay men and other men who have sex with men (MSM), people who inject drugs, and the sexual partners of individuals in these groups.⁶

The criminalization of same-sex sexual relations, sex work, drug possession and use, and HIV exposure, non-disclosure, and transmission has been shown to impede access to HIV services and increase

NINA SUN, JD, is the founder and principal of Article XII Consulting, United States.

MEGAN MCLEMORE, JD, LL.M., is a health and human rights consultant, United States.

JOSEPH J. AMON, PhD, MSPH, is a distinguished professor of the practice, Department of Epidemiology, Johns Hopkins University Bloomberg School of Public Health, Baltimore, United States.

Please address correspondence to Joseph Amon. Email: joe.amon@jhu.edu.

Competing interests: None declared.

Copyright © 2024 Sun, McLemore, and Amon. This is an open access article distributed under the terms of the Creative Commons Attribution-Noncommercial License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits unrestricted noncommercial use, distribution, and reproduction in any medium, provided the original author and source are credited.

HIV risk.⁷ Countries that criminalize key populations have been found to lag in progress toward HIV testing and treatment targets, while greater advances have been made by countries that provide legal protections against discrimination and gender-based violence.⁸

Despite acknowledgment that the criminalization of sexual identity and expression is not only a rights violation but also detrimental to public health, new anti-LGBTQI laws—including laws that punish same-sex relations, gender diversity, and freedom of expression—have been proposed in recent years across a range of national settings. In 2022, for example, Hungary passed a law prohibiting the dissemination of content that “promotes” homosexuality and gender change.⁹ In Pakistan, in May 2023, a court struck down sections of the 2018 Transgender Persons Act, deeming sections related to gender identity “un-Islamic.”¹⁰ Indonesia’s newly revised Criminal Code prohibits all consensual sexual relations outside of marriage, effectively criminalizing homosexuality.¹¹

In Uganda, Ghana, and Kenya, repressive criminal laws targeting the LGBTQI community have been introduced, and political and cultural hostility against this community has intensified.¹² Making matters worse, the introduction of these laws is occurring in an environment where funding for the HIV response, especially for key populations and civil society organizations, is decreasing and—with a new US administration coming to power in 2025—likely to decrease further.

Since 2017, the Global Fund has been financing programs to remove human rights-related barriers to access HIV, tuberculosis, and malaria services through the Breaking Down Barriers initiative. This funding supports evidence-based, rights-focused interventions, including ones that promote nondiscriminatory, people-centered care, reduce stigma and discrimination, enhance legal literacy, and increase access to justice.¹³

In 2022–2023, the Global Fund commissioned evaluations of programs addressing rights-related barriers in 20 countries.¹⁴ As a part of the evaluation, key informant interviews with government officials and civil society implementing partners

examined the impact of the introduction of anti-LGBTQI bills and laws. Follow-up interviews in 2024 further explored the strategies used by stakeholders to challenge anti-LGBTQI legislation, focusing on three countries—Uganda, Ghana, and Kenya—that offer a comparison of the challenges faced and the responses implemented in the context of newly proposed laws and policies impacting LGBTQI+ communities.

Uganda

Background

In May 2023, Uganda’s Anti-Homosexuality Act (AHA) went into force, becoming one of the most draconian and restrictive anti-LGBTQI laws globally.¹⁵ The AHA was passed by the Ugandan Parliament despite laws on the books that already penalized consensual same-sex sexual relations.¹⁶ Specifically, the AHA introduced life sentences for acts of homosexuality, and the death penalty for “aggravated homosexuality.” The law prohibits “promoting” homosexuality, which includes operating an organization “which promotes or encourages homosexuality” or the “observance or normalization” of it. This includes providing financial support for such organizations, a provision that could limit bi- and multilateral aid for the HIV response. The law also includes other provisions, including a duty to report persons for the “offense” of homosexuality and prohibitions against renting spaces to LGBTQI persons. The 2023 AHA comes after years of threats to strengthen penalties for consensual same-sex sexual relations in Uganda, and pushback from Ugandan human rights activists, journalists, religious leaders, academics, and lawyers; international human rights organizations; and donor countries to Uganda such as the United States.¹⁷

Impact and civil society response

The Uganda Breaking Down Barriers progress assessment found that the passage of the AHA significantly impacted program implementers working with LGBTQI communities, who now faced legal threats and security concerns.¹⁸ In

response, donors and implementing organizations worked together to design and deliver a range of measures to improve safety and security for LGBTQI organizations and individuals. The assessment also found that access to justice activities, such as the implementation of paralegal and legal aid programs, were critical to addressing risks and barriers to the uptake of HIV services. Peer paralegals were found to play an important role in supporting community needs, though the assessment found that resourcing and staffing support for these interventions were inadequate. Moreover, while these services have scaled up geographically since 2021, demand for legal aid and mediation has exceeded supply. For example, the Human Rights Awareness and Promotion Forum, a Ugandan human rights advocacy organization, saw its caseload triple after the passage of the AHA, with increased cases of police abuse, eviction, and harassment. The organization also reported major disruptions of its operations, with security concerns limiting the ability of peer paralegals to work outside of urban areas. Lawyers are now having to travel to those areas in place of paralegals because they face less risk of arrest and harassment. The combination of increased demand and greater security risk puts a strain on already limited resources.

After the law's passage, civil society, government ministries, and United Nations agencies worked together to protect and promote access to HIV services for LGBTQI populations. For example, a coalition was formed that included civil society, government entities (including the Ministry of Health and the Ugandan AIDS Commission), and UNAIDS and other technical partners and donors. As part of this coalition, the AIDS Support Organization and other civil society implementers of HIV and human rights programs developed an "adaptation plan" with the goal of mitigating harm from the AHA and maintaining continuity of HIV services for the LGBTQI community.

Designed to operate at national, district, and local levels, key features of the adaptation plan included enhanced safety and security measures for drop-in centers that provide HIV prevention and treatment services to key populations. The coalition

also proactively sought out and met with national, district, and local law enforcement officials to emphasize the importance of protecting access to HIV prevention and treatment to ensure that HIV-related public health objectives could be met. In some cases, implementers sought to relocate drop-in centers to locations with a lower visibility or where security was greater.

Ugandan civil society also challenged the law in the Ugandan court system. In December 2023, human rights lawyers, LGBTQI activists, and members of Parliament filed a case before the Ugandan Constitutional Court to challenge the law's constitutionality. In April 2024, the Constitutional Court invalidated sections of the law that it deemed inconsistent with the right to health and privacy, including the prohibition against renting to LGBTQI persons and the creation of a duty to report; however, it largely upheld the main components of the law.¹⁹ In response, the coalition conducted outreach to staff at HIV clinics to explain the ruling and address concerns among providers concerned about running afoul of the law. The case was appealed to Uganda's Supreme Court in July 2024.²⁰

More broadly, Ugandan civil society organizations continue to face significant challenges. Nonprofit registration in Uganda remains on precarious grounds, with the government deregistering groups that either work or have a history of working on human rights issues.²¹ Within this environment, the government has further targeted nonprofits working on key population issues by creating obstacles to the renewal or maintenance of their nonprofit status, a challenge that remains ongoing.

Ghana

Background

On February 28, 2024, the Ghanaian Parliament passed an anti-LGBTQI bill entitled the Human Sexual Rights and Family Values Act.²² The bill was originally introduced in 2021, even though the country already had a law—section 104(1)(a) of the Ghanaian Penal Code—that criminalized consensual same-sex sexual relations, as part of its legacy

of British colonialism.²³ According to the preexisting law, violations are misdemeanors punishable with up to three years' imprisonment. However, the new bill takes this further, targeting individuals for openly identifying as LGBTQI, and prohibiting the promotion, advocacy, and funding of LGBTQI-related activities. In the new bill, the punishment for engaging in "promotion" or "advocacy" activities is between five to ten years of imprisonment. Organizing a group, association, or society that works on LGBTQI issues is also illegal, with a sentence of three to five years. The bill prohibits same-sex marriage, prohibits the adoption and fostering of children by LGBTQI individuals, and includes a duty to report persons who violate any of the prohibited provisions to authorities.

Impact and civil society response

Even before the bill was passed by Parliament, its introduction increased stigma and discrimination and violence against LGBTQI individuals. The human rights group Rightify Ghana noted that the introduction of the bill worsened the climate for LGBTQI persons, including increases in harassment and violence against LGBTQI people.²⁴ Program implementers serving LGBTQI communities also reported that Parliament's passage of the law created a hostile environment for HIV prevention and outreach, with some organizations having to close offices due to safety issues. In addition, these organizations reported an increase in fear and apprehension on the part of MSM and other gender-nonconforming community members, with arrests and incidents of cyber bullying, and fear of engaging on e-platforms and social media.

In response to these threats, program implementers have had to adapt their programs by, for example, limiting meetings with LGBTQI communities to smaller groups and frequently changing locations. Program implementers reported shifting to virtual and digital outreach instead of in-person meetings and providing trainings to LGBTQI community members and organizations on how to identify and respond to threats and how to reduce vulnerability to extortion, harassment, and arrest. In this environment, infrastructure for legal literacy

and peer paralegal programs already in place under the Breaking Down Barriers initiative was helpful to efforts to develop an effective response. For example, LGBTQI individuals noted the importance of relying on paralegals to disseminate "know your rights" information and to make referrals to legal resources. LGBTQI individuals also recognized the role of peer educators in referring them to safe locations for HIV and other health services. Partnerships with legal service providers such as pro bono lawyers, the Ghana Legal Aid Commission, and the Ghanaian Commission on Human Rights and Administrative Justice have also facilitated legal support, where needed, in cases of harassment, arrest, and violence against members of the LGBTQI community.

Ghanaian advocates have also been using the courts to challenge and delay the enactment of the bill. Three separate lawsuits have been filed disputing the constitutionality of the bill—one prior to its passage and two after. In July 2024, the Ghanaian Supreme Court dismissed one of the legal challenges, but as of October 2024, the two other legal challenges remained before the Supreme Court.²⁵ President Nana Akufo-Addo has thus far refused to sign the bill into law, citing constitutional challenges.

Kenya

Background

In April 2023, the Family Protection Bill was submitted by a member of the Kenyan Parliament to the National Assembly. Although Kenya's Penal Code already criminalizes same-sex sexual relations, the bill increased criminal penalties, including a provision for the death sentence in cases of "aggravated homosexuality." The bill also included provisions on "aiding and abetting" homosexuality and "conspiring" to commit homosexuality. A provision prohibiting the "promotion" of homosexuality penalized providing financial support for activities that "normalize" the prohibited conduct and operating an organization that "promotes" homosexuality.²⁶

Impact and civil society response

The submission of the Family Protection Bill significantly heightened stigma and discrimination toward LGBTQI individuals, including in health centers.²⁷ Since the tabling of the bill, there has been an increase in attacks against LGBTQI individuals, incidents of gender-based violence, and evictions of individuals believed to be LGBTQI. In Mombasa and Kilifi Counties, drop-in centers had to close temporarily due to safety and security issues. Even prior to submission of the Family Protection Bill, individuals who identified as a part of LGBTQI communities reported that they faced harassment and discrimination resulting from backlash to a Supreme Court ruling that permitted the registration of the National Gay and Lesbian Human Rights Commission.

In response to the introduction of the bill, civil society and community-led advocates engaged in a campaign of public and private “shadow” diplomacy to encourage its rejection by lawmakers. MSM and transgender community leaders advocated for the legislature to drop the bill, pointing out the potential for negative consequences not only in the context of health but also in other key areas such as the economy and trade.²⁸

Kenyan activists reported that interventions that sought to create an enabling environment for HIV-related activities, particularly legal support and access to justice programming, provided an important foundation for efforts to mobilize and respond to the Family Protection Bill. For example, activists cited the partnership formed by the Key Populations Consortium, the Gay and Lesbian Coalition of Kenya, and the National Gay and Lesbian Human Rights Commission as an important means of ensuring a more rapid response to incidents where community members experienced human rights violations.

As in Uganda and Ghana, safety and security were key concerns in Kenya, as was the need to address and respond to increased, and often intense, stigma and discrimination. Though the 2023 bill is currently shelved, program implementers felt that it was important to strengthen internal safety and security measures, including the protection of cli-

ent data and the physical security of organizational offices.

Conclusion

Several key strategies in response to the introduction of repressive anti-LGBTQI legislation were seen across Uganda, Ghana, and Kenya, including (1) the creation of coalitions of civil society organizations, government, United Nations agencies, and donors to support vulnerable LGBTQI individuals and coordinate strategies for pushing back against repressive laws and their enforcement; (2) efforts to obtain increased funding for the safety and security of LGBTQI-led organizations and for the provision of legal support to community members and civil society organizations (as well as for legal challenges); and (3) the development of new approaches to reach vulnerable individuals, including through more targeted and smaller-scale outreach and the expansion of online resources. Based on our interviews with key stakeholders, the success of these strategies was variable and dependent on social and political contexts, such as election cycles and interparty politics. Strategies that may be effective in one country may be less so in another.

Investment by the Global Fund’s Breaking Down Barriers initiative and others in the integration of access to justice programs into HIV service delivery has contributed to the training and availability of lawyers, peer paralegals, and legal literacy campaigns that has strengthened the ability of many vulnerable communities to respond to threatening legislation and to mitigate its impact and maintain access to health services for those most vulnerable.

However, much work remains to be done, and donors will need to continue to support LGBTQI organizations and individuals in addressing often rapidly changing conditions on the ground related to safety and security. This requires funding mechanisms, both core and project based, that are flexible and efficient in design and that allow implementers to repurpose existing funds, and access additional funding, where necessary. Sufficient emergency funds should be available to support people who

may need relocation to safe housing and resources for food, clothing, and basic necessities. Investment in peer-to-peer learning among individuals facing similar circumstances may also be strategic to facilitate learning and the sharing of experiences among activists and advocates.

In addition, programmatic measures of success must adapt to reflect the reality of quickly changing local conditions. For example, reporting indicators should take into account that the achievement of target outputs and the expansion or scale-up of programs may not be possible as the legal environment shifts and funds are needed to address urgent security concerns.

Funding for responses to punitive laws and policies should be sustained for the long term. This includes ensuring that community and civil society organizations receive sufficient funding to develop their capacity to quickly respond and adapt to threats; and ensuring their ability to continue reducing barriers to health services. These are integral aspects to the core mandate of promoting the dignity and human rights of LGBTQI individuals.

Acknowledgments

We would like to thank the program implementers in Uganda, Ghana, and Kenya who provided insights and reflections on their work and who demonstrated their dedication to their programs and beneficiaries.

References

1. ILGA World Database, "Legal Frameworks: Criminalization of Consensual Same-Sex Sexual Acts," <https://database.ilga.org/criminalisation-consensual-same-sex-sexual-acts>.
2. Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007); Yogyakarta Principles Plus 10 (2017).
3. Yogyakarta Principles (2007, see note 2).
4. UNAIDS, *In Danger: UNAIDS Global AIDS Update 2022* (UNAIDS, 2022).
5. UNAIDS, *The Path That Ends AIDS: Global AIDS Update 2023* (UNAIDS, 2024).
6. UNAIDS, *New HIV Infections Data Among Key Populations: Proportions in 2010 and 2022* (UNAIDS, 2024).
7. J. Stannah, E. Dale, J. Elmes, et al., "HIV Testing and Engagement with the HIV Treatment Cascade Among Men Who Have Sex with Men in Africa: A Systematic Review and Meta-Analysis," *Lancet HIV* 6/11 (2019); S. R. Schwartz, R. G. Nowak, I. Orazulike, et al., "The Immediate Effect of the Same-Sex Marriage Prohibition Act on Stigma, Discrimination, and Engagement on HIV Prevention and Treatment Services in Men Who Have Sex with Men in Nigeria: Analysis of Prospective Data from the TRUST Cohort," *Lancet HIV* 2/7 (2019); P. Semugoma, C. Beyrer, and S. Baral, "Assessing the Effects of Anti-Homosexuality Legislation in Uganda on HIV Prevention, Treatment, and Care Services," *SAHARA-J* 9/3 (2012).
8. M. Kavanaugh, S. Agbla, M. Pillinger, et al., "Law, Criminalization and HIV in the World: Have Countries That Criminalised Achieved More or Less Successful AIDS Pandemic Response?," O'Neill Institute Pre-Pre-Print White Paper (2021).
9. "Hungary's Parliament Passes Anti-Gay Law Ahead of 2022 Election," *CNN World* (June 15, 2021) <https://www.cnn.com/2021/06/15/europe/hungary-protests-lgbtq-law-intl/index.html>.
10. Amnesty International, "Pakistan: Revocation of Rights of Transgender and Gender-Diverse People Must Stop" (May 19, 2023), <https://www.amnesty.org/en/latest/news/2023/05/pakistan-revocation-of-rights-of-transgender-and-gender-diverse-people-must-be-stopped/>; M. Riaz and M. Awan, "Transgender Rights in Pakistan: Implications of Federal Shariat Court Ruling," *Lancet Psychiatry* 10/8 (2023).
11. Indonesia, Law No. 1 of 2023.
12. Uganda, The Anti-Homosexuality Act of 2023; Ghana, Promotion of Human Sexual Rights and Family Bill of 2024; Kenya, The Family Protection Bill of 2023; K. Cullinan, "Sharp Rise in Homophobia in East Africa Sparks Fears of Violence," *Health Policy Watch* (March 2, 2023), <https://healthpolicy-watch.news/sharp-rise-in-homophobia-in-east-africa/>.
13. Global Fund, "Breaking Down Barriers" (December 21, 2023), <https://www.theglobalfund.org/en/human-rights/breaking-down-barriers/>.
14. Global Fund and Drexel University, *Summary Report on Progress to Reduce Human Rights-Related Barriers to HIV, TB and Malaria Services: Breaking Down Barriers Initiative* (Global Fund and Drexel University, 2024).
15. Ghana, Promotion of Human Sexual Rights and Family Bill of 2024.
16. ILGA World Database (see note 1).
17. Human Rights Watch, "Uganda: Anti-Homosexuality Act's Heavy Toll" (May 14, 2014), <https://www.hrw.org/news/2014/05/14/uganda-anti-homosexuality-acts-heavy-toll>; Human Rights Watch, "Ugandans Challenge Anti-Homosexuality Act" (December 11, 2023),

<https://www.hrw.org/news/2023/12/11/ugandans-challenge-anti-homosexuality-act>; White House, “Fact Sheet: The United States Response to Uganda’s Anti-Homosexuality Act and Persistent Human Rights Abuses” (December 11, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/11/fact-sheet-the-united-states-response-to-ugandas-anti-homosexuality-act-and-persistent-human-rights-abuses/>; USAID, “US Urges Uganda to Reconsider Law Targeting LGBTQI+ That Jeopardizes Assistance” (May 30, 2023), <https://www.usaid.gov/news-information/press-releases/may-30-2023-us-urges-uganda-reconsider-dangerous-law-targeting-lgbtqi-jeopardizes-assistance>.

18. Global Fund, *Uganda Progress Assessment: Global Fund Breaking Down Barriers Initiative* (Global Fund, 2023).

19. “Uganda’s Constitutional Court Rejects Petition Against Anti-Gay Law,” *Al Jazeera* (April 3, 2024), <https://www.aljazeera.com/news/2024/4/3/ugandas-constitutional-court-rejects-petition-against-anti-gay-law>.

20. “Petitioners Challenge Uganda Anti-Gay Law in Highest Court,” *Voice of America News* (July 11, 2024), <https://www.voanews.com/a/petitioners-challenge-uganda-anti-gay-law-in-highest-court-/7695013.html>.

21. Human Rights Watch, “Uganda: Harassment of Civil Society Groups” (August 27, 2021), <https://www.hrw.org/news/2021/08/27/uganda-harassment-civil-society-groups>.

22. Ghana, Promotion of Human Sexual Rights and Family Bill of 2024.

23. ILGA World, *State-Sponsored Homophobia: Global Legislation Overview Update* (ILGA World, 2020); on legacy of colonialism, see Human Rights Watch, “This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism” (December 17, 2008), <https://www.hrw.org/report/2008/12/17/alien-legacy/origins-sodomy-laws-british-colonialism>.

24. Rightify Ghana, “Abuse Cases Against LGBTQ Persons Surge in Bono and Ahafo Regions, Paralegals Tell Rightify Ghana” (May 29, 2022), <https://rightifyghana.org/2022/05/28/abuse-cases-against-lgbtq-persons-surge-in-bono-and-ahafo-regions-paralegals-tell-rightify-ghana/>.

25. M. Adombila and C. Akorlie, “Ghana Supreme Court Rejects Bid to Block Anti-LGBTQ Bill,” *Reuters* (July 29 2023), <https://www.reuters.com/world/africa/ghana-supreme-court-rejects-bid-block-anti-lgbtq-bill-2023-07-19/>; “Ghana’s Top Court Upholds Law Criminalising Gay Sex,” *Reuters* (July 24, 2024), <https://www.reuters.com/world/africa/ghanas-top-court-upholds-law-criminalising-gay-sex-2024-07-24/>.

26. Kenya, The Family Protection Bill of 2023.

27. Global Fund, *Kenya Progress Assessment: Global Fund Breaking Down Barriers Initiative* (Global Fund, 2023).

28. S. Joseph, “Kenya Could Lose Billions If Harsh Anti-LGBTQ Law Comes into Force,” *Pink News* (Novem-

ber 7, 2023), <https://www.thepinknews.com/2023/11/07/kenya-could-lose-billions-if-harsh-anti-lgbtq-law-comes-into-force/>; “Kenya on the Verge of Tabling Anti-LGBTQ Bill in Parliament,” *Africa News* (July 18, 2023), <https://www.africanews.com/2023/07/18/kenya-on-the-verge-of-tabling-anti-lgbtq-bill-in-parliament/>.

