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**The Global Politics of Gay Rights:  
The Straining Relations between the West and Africa**

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## **Abstract**

This article analyses the contemporary global politics of gay rights as it relates to the straining relations between the Western powers and many African states that oppose sexual minorities' rights. While the West (with emphasis on the United States, EU, and Britain) advocates for the protection of gay rights in the world, Africa provides the largest concentration of states opposed to them. Therefore, there has been rising tension between both regions. This became more apparent after Nigeria and Uganda, respectively, signed their anti-gay bills into law in January and February 2014. In response to this, the Western powers decided to take some punitive measures, especially imposition of sanctions, against the countries to pressurise them to repeal their laws. In an unusual manner, the African states are radically determined to go ahead with their anti-gay laws in open defiance to the demands of the Western powers. This development, which is informed by a number of factors, shows a rather new pattern of behaviour by African states in global politics.

**Keywords:** Homosexuality, Gay, Anti-gay states, Africa, the West

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## The Global Politics of Gay Rights: The Straining Relations between The West and Africa

### Introduction

*We will fight these vermins called homosexuals or gays the same way we are fighting malaria-causing mosquitoes, if not more aggressively....We will therefore not accept any friendship, aid or any other gesture that is conditional on accepting homosexuals or LGBT as they are now baptised by the powers that promote them (Yahya Jammeh, 17 February 2014).<sup>1</sup>*

The President of Gambia, Yahya Jammeh, is obviously not alone in his radical and daring position against same-sex relationships in Africa. Many other African leaders also share his views. In November 2011, Robert Mugabe of Zimbabwe was similarly quoted as saying that homosexuals are “worse than pigs and dogs....It becomes worse and satanic when you get a prime minister like Cameron saying countries that want British aid should accept homosexuality”.<sup>2</sup> It was in the midst of this increasing negative attitude towards homosexuality by the African elite that Nigeria and Uganda, in January and February 2014 respectively, attracted world attention after they introduced strict laws outlawing homosexuality in their states. Although these two countries were in the spotlight after their anti-gay laws were formalised,<sup>3</sup> the Amnesty International in its 2013 report indicated that homosexuality is still considered illegal in 38 African countries, making Africa the region with the largest number of anti-gay states in the world.<sup>4</sup>

The growing drive towards anti-homosexuality – via the introduction of strict anti-gay laws or outright refusal to adopt gay rights – by many African states is clearly in open defiance to condemnations and threats outside Africa especially by the Western states and international institutions. The condemnations are obviously against the backdrop of the contemporary global environment that increasingly recognises not only special sexual orientations and gender identities but also favours the protection of the rights of the sexual minorities. Against this background, this paper seeks to demonstrate the current relations between the Western powers and Africa in light of the contemporary politics of gay rights. This paper demonstrates the radical position of African states against the heightened pressures and threat of sanctions by the Western powers on adopting liberal laws on the sexual minorities. It is argued in the paper that a number of factors influence Africa’s adamant position on the matter, which include Africa’s alternative non-Western aid (which are unconditional), the increasing politics around African resources and market, as well as domestic and continental supports for the anti-gay laws.

The arguments of the paper are built around the norms diffusion theory in the international relation literature. It is argued that the altercation between the Western powers and the anti-gay African states on gay rights resonates the processes of norm diffusion and its resistance in the global arena. In this regard, this paper offers analysis of one of the issues of undisputed importance, although under-researched, in the contemporary international politics as the problem of the study is related to the global politics of the norm of gay rights and Africa-West relations in the modern era.

### Note on Methodology

This study has a qualitative orientation as it provides a detailed illustration of the state of relations between the Western powers and African states as regards the norm of gay rights. The study further offers qualitative explanation of the factors that shape the actions of both regions. The researchers interpreted qualitative data sourced from existing official documents in the public domain, credible newspaper and magazine reports, as well as previous studies related to the topic such as journal articles and books. Most especially, the documents used extensively for this study were sourced from reliable institutions and state departments from their websites. Notable amongst them are the International Lesbian and Gay Association (ILGA), European Parliament's Intergroup on LGBT Rights, Human Rights Watch, Amnesty International, United Nations, U.S. Department of State, and the U.S. Agency for International Development (USAID).

It is important to mention that Africa in the context of this study is used primarily for the majority states in the continent that declare homosexuality illegal in their territories and who are also opposed to it at international levels. In addition, the use of the term "gay" is one that could stimulate some controversy. This is because there is an ongoing controversy about the proper terminology to be used to identify the community of the sexual minorities.<sup>5</sup> However, the term "LGBTI" – Lesbian, Gay, Bi-Sexual, Transgender, and Intersexual has gained more acceptance as an umbrella concept to describe the large community of the sexual minorities. In this study, we adopt the term "gay" only because in the African context the gay concept is used generally for the community of sexual minorities. Besides, the literature accepts that the term gay is used for the "LGBTI community as a whole, or as an individual identity label for anyone who does not identify as heterosexual".<sup>6</sup>

### Norms Diffusion Theory of International Relations: A Theoretical Framework

The gay rights issue, on the one hand, reflects the growing relevance of the thesis suggesting the salience of ideas, norms and values, and their rapid diffusion, in the contemporary global system. On the other hand, the relations between the Western states and the anti-gay African states also demonstrate the limits and resistance to norms diffusion in the global system. The idea of norms, usefully defined as "standard of appropriate behaviour for actors with a given identity",<sup>7</sup> is emphasised as one of the major elements of modern international relations by the Constructivist theorists. This comes against the backdrop of their critique that the predominant Realist and Liberal theories of international relations lack the capacity to sufficiently explain the influential roles ideas, norms, and values play in shaping the identities and interests of global actors. In their argument, therefore, state's actions in the international arena cannot be limited to power and material factors only. Norms, in this context, serve the functions of regulative, constitutive, or enabling roles as regards states' actions. Regulative functions typify norms that "prescribe, proscribe, and order" behaviour of actors in the international arena. The constitutive functions indicate a phenomenon when norms become creator of new actors, interests and actions. Enabling function centres around norms that allow some actions that would not have been taken.<sup>8</sup>

In their seminal work, Finnemore and Sikkink show the processes of norms evolution or the "life cycle" of global norms, which is useful to our study.<sup>9</sup> According to them, norms influence in contemporary global system undergoes three major stages: norm emergence, norm cascade and internalisation. The first stage, the emergence of norms, is explained by the persuasion of "norm entrepreneurs" – state and non-state actors who set the agenda on an expected behaviour for other actors to accept. In the subsequent section, we show the influence of rights movement on the spread of gay rights in the contemporary global system, which explains this stage in the life cycle process. The second stage is the process by which other actors are socialised into accepting the norms introduced. As Checkel puts it, this is the "transfer or transmission objects, processes, ideas and information from one population or region to another"<sup>10</sup>, which is undertaken through different processes including the coercion,



competition, learning or pressures. In this research, we argue that the threat of the use of sanctions by Western states against anti-gay African states mark an example of how the powerful states often use the means of coercion to institutionalise norms in the global system. The last stage occurs as a result of the success of the diffusion of the norms to such extent that norms becomes a “taken-for-granted” behaviour which every actor have to accept as a normal way to act.

Although the theory gives a mechanical account of the process of transformation of norms, there are frequent instances where actors vehemently reject norms for various reasons, especially a perception of neo-imperialism. This accounts for some criticisms of the existing state of work on the theory of norms diffusion. According to Alan Bloomfield, three problems appear in the theory. First, the theory is silent on the contestation to the dominant normative framework, thereby over-simplifying the dynamics of norms in the global arena. Second, the theory is “liberal bias” because it focuses more on West-generated liberal ideas, thus assuming that “enlightened Western norm entrepreneurs ‘guided’ ‘unenlightened’ non-Western norm followers.” Third, there is little recognition of those actors who are resistant to the norms diffusion process and their strategies to frustrate their successful diffusion.<sup>11</sup> Hence, Bloomfield usefully introduced the concept of “norms antipreneuer” (opponents of the norms entrepreneur) who are the “implacable resisters” to changes in the global norms.<sup>12</sup>

In light of Bloomfield’s contribution, we suggest that Africa’s strong resistance qualifies as an example of the role and strategies of norms antipreneuer. While the entrepreneurship of the gay rights norm has its origins in the West, the anti-gay African states seemingly appear as the gay rights antipreneuer. Therefore, the moves to impose gay rights norms as a dimension of global human rights on African states by the western powers, and the manner in which they are rejected by the former, are central to this study.

### **The Globalisation of Gay Rights: The Emergence and Diffusion of the Norm**

Although understudied in the field of international relations, gay rights issue has become one of the salient issues of global politics in present times. It is irrefutable that the emergence and development of the gay rights norm at the global (and state) level greatly owes its success to a vast array of pro-gay movements that have existed over time. A close reading of historical researches on gay movements and homosexuality suggests that there have been three waves of gay movements in history whose activities were considerably shaped by the political climates around them.

The first wave of the movements reigned between the 1890s and 1930s, which was spearheaded by the Scientific-Humanitarian Committee founded in Germany by Magnus Hirschfeld, Max Spohr, and Eric Oberg in 1897. The activities of this movement were two-fold. One, the Scientific-Humanitarian Committee engaged in scientific researches to disprove the then existing anti-homosexual theories, and in the process, positively educate the research community and public about homosexuality. Two, the committee sought a legal reform to abolish legal penalties for homosexual people in Germany. The landmark achievements of this movement were the establishment of the Institute for Sex Research in 1919 and the World League for Sexual Reform in 1921. The institute eventually became ‘an internationally respected centre for the documentation of sexuality’, while the league was able to attract about 130,000 members across the world. At the peak of the movement, especially when it was about realising its objectives and making moves into other countries, it was crushed alongside other activist groups by the Nazi state in Germany in the 1930s. This brought an end to the first wave of the pro-gay social movements which occurred in 1933.<sup>13</sup>

The second wave surfaced and reigned in the 1950s and 1960s after the Second World War. The objectives of the movement in this wave were quite similar to those of the first wave. The aims were mainly to promote the homosexual identity and equal rights for the gay people. Liberation for gay people later became another central objective following the radical change in political activism in the West occasioned by the New Left phenomenon in the



1960s, championing the cause of equality and liberation for minority groups.<sup>14</sup> The most popular groups in this wave were the Netherland Association for the Integration of Homosexuality founded in 1946, the National Danish Organization founded in 1948, the Mattachine Society founded in 1951 (Los Angeles), the Daughters of Bilitis formed in 1955 (San Francisco), and the Association for Social Knowledge formed in 1964 (Vancouver).<sup>15</sup> Given the growing ideological tension between the East and the West at the post-war period, gay movements experienced increased repression in the 1950s in the West as homosexuality was then classified as part of the “un-American” way alongside communism by the reigning conservative governments in power. Thus, the most practical option for the movements in that climate was to adopt a low-profile and non-confrontational approach in advancing their cause.<sup>16</sup>

The phenomenal rise of the New Left movement in the United States and United Kingdom in the 1960s became a watershed moment for the activities of the gay movement at the period. The revolutionary struggle of the period did not only radicalise the approach of the gay movements but also dramatically increased the number of organisations in support of gay rights. As a result, liberation for gay people became the major slogan for the organisations. In this regard, The Stonewall Riots by gay liberation movements in New York against police raids in June 1969 eventually became the most remarkable event that informed gay liberation in not only the United States but other parts of the world.<sup>17</sup>

Clearly, the above became a major impetus for the emergence of a third wave, which began in the 1970s. Indeed, this wave, representing the current activities of the movement, is marked by the globalisation of gay movements and proper development of the gay rights norm in the context of human rights. No doubt, this was facilitated by an increasingly globalising world occasioned by the incredible power of information technology. It was followed by the establishment of a global gay movement, the International Lesbian and Gay Association (ILGA) in 1978, which would later serve as an umbrella organisation for national sexual minorities’ movements in the world (it should be noted that the success recorded in popularising gay rights later encouraged the articulation of the rights of the others – bisexual and transgender people).<sup>18</sup> In the late 1980s and early 1990s, the movement began defining gay rights in terms of “human rights”, hence a new pattern of advocacy at local and international levels emphasising the inclusion of ‘sexual orientation’ in human rights.<sup>19</sup>

It is argued that this new approach was aimed “to provide legal recourse for people denied employment or shelter because of their homosexuality”.<sup>20</sup> Moreover, it was a period that “provided the opportunity for a proliferation of rights claim” being a major feature of the post-Cold War international system.<sup>21</sup> It is against this backdrop that the International Gay and Lesbian Human Rights Commission (IGLHRC) was established in 1990 by the gay movements based in Russia and the United States.<sup>22</sup> The activity of the movement was further boosted by the mainstream international human rights organizations (especially the Amnesty International and the Human Rights Watch) following their inclusion of sexual orientation and gender identity in their human rights work.

The success of this wave can certainly be measured by the dramatic rise in the number of states and international organizations that now speak the language of gay human rights and incorporate it in different dimensions in their legal systems as well as the level of global mobilisation around the human rights of gay people. Today, ILGA has a record of 1005 member-organisations spread across 117 countries.<sup>23</sup> In light of this, the Lesbian, Gay, Bisexual, and Transgender (LGBT) community in 2006 held its “largest ever international conference” in Montreal which produced the Declaration of Montreal.<sup>24</sup> At the conference attended by 1500 people from over 100 countries, the community declared its members’ human rights on “protection against state and private violence”; “freedom of expression, assembly, and association”; and “freedom to engage in (private, consensual, adult) same-sex sexual activity.” Thus, they called on not only national governments to protect the rights of



the LGBT people but also the international community to expressly include their rights in the international human rights agenda.<sup>25</sup> Yet another significant gathering for the advancement of the cause of the gay community and others alike took place in 2006 in Yogyakarta in Indonesia, particularly in response to perceived abuses and violations of the rights of peoples of the sexual minority community. The outcome of that gathering of mainly human rights expert was the popular “Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.” The principles emphasised the protection of the rights of the sexual minority communities with the ultimate aim of creating a framework for international human rights standards for peoples of special sexual orientations and gender identities.<sup>26</sup>

Apparently, the above efforts and declarations have significantly influenced states’ decisions on norms concerning sexual orientation and gender identity in present times. In addition to a handful of European states that decriminalised homosexual acts after the 1957 Wolfendon Report (which recommended decriminalisation of homosexual acts between consenting adult male of 21 years of age in the United Kingdom) in the 1960s, many countries and selected parts of some other countries (especially in the United States) have increasingly adopted various legal measures to recognise and support same-sex relationships. A 2013 global survey of LGBT legislation produced by ILGA shows that majority of the United Nations-recognised states (114/193) presently have legal systems that legalise homosexual practices. Furthermore, fourteen countries have now reformed their legal systems to permit same-sex marriage in their states.

At the international level, the European Union (EU) marks a perfect example of the inter-governmental organizations that have not only designed clear-cut policy frameworks in support of the rights of the gay people and others, but has also been a major promoter of their rights at the international level. At the point of formulating a human rights regime for the EU in the 1990s, ostensibly in response to issues of racism in Europe, the topic of sexual orientation was given special attention. Thus, the 1997 Treaty of Amsterdam of Article 19 provided that the EU shall have the power to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.<sup>27</sup> Furthermore, the EU adopted the European Directive in 2000 obliging states to introduce legal systems that would prohibit all forms of discrimination including those relating to sexual orientation in employment.<sup>28</sup> Yet another policy was adopted in 2006, the Gender Recast Directive, with the main objective of “consolidating the existing provisions on the implementation of the principle of equal treatment between men and women and providing a simplified legal framework on the area of sex discrimination.”<sup>29</sup> Another notable event occurred in June 2013 when the EU foreign affairs ministers adopted what is regarded as a “ground-breaking policy” on gay rights. This policy, labelled as the LGBTI Guidelines, is designed as a framework for all EU diplomats to ensure the promotion of the rights of the LGBT people across the globe in their foreign policy decisions.<sup>30</sup>

Unlike the EU, the issue of gay rights has not enjoyed a smooth ride at the United Nations (UN) for obvious reasons. The issue of homosexuality fundamentally affects religion and culture while the UN is a conglomeration of countries of various religious and cultural backgrounds. Indeed, the gay rights issue rekindles the contentious subject of the universality of human rights at the UN. The politics around the issue has produced two major opposing blocs – “the Catholic-Muslim-Evangelical Alliance” versus “the Western Alliance” – in the UN. The former represents the group of states who on religious grounds are strongly in opposition to issues concerning sexual orientation and gender identity; while the latter, because of their liberal principles, represents the countries at the fore-front of the advocacy for equal rights based on sexual orientation and gender identity. The conflict between the two groups manifest in the areas of including sexual orientation and gender identity in the UN’s definition of human rights; the granting of “consultative status” to LGBT non-



governmental organisations (NGOs); and sponsoring of specialised projects to address the concerns of the sexual minority community.<sup>31</sup>

Despite the conflicts at the UN, respect for sexual orientation and gender identity has substantially gained some acceptance in the organisation since the 1990s. For example, a case concerning gay rights, *Toonen vs. Australia*, decided by the Human Rights Committee in 1994 clearly favoured sexual orientation in human rights. Also, ten LGBT NGOs (the Danish National Association for Gays and Lesbians; ILGA-Europe; International Workers Order of Lesbian, Gay, Bisexual and Transgender Workers; Coalition of Activist Lesbians; Lesbian and Gay Federation; The gay and Lesbian Coalition of Québec; Swedish Federation for Lesbian, Gay, Bisexual, and Transgender Rights; COC-Netherlands; Federation of Lesbians, Gays, Transsexual and Bisexuals of Spain; International Gay and Lesbian Human Rights Commission (IGLHRC)) presently have consultative status at the UN after a series of controversies over their applications.<sup>32</sup> In June 2011, the LGBT community further experienced a great moment with 'the first UN resolution ever to bring specific focus to human rights violations based on sexual orientation and gender identity'.<sup>33</sup> The resolution passed by a vote of twenty-three states in favour, nineteen against, and three abstentions, principally raised 'grave concerns' about violence and discrimination on the basis of sexual orientation and gender identity. This led to the 2011 report by the UN High Commissioner for Human Rights, Navanethem Pillay, on the present condition of LGBT people in the world.<sup>34</sup> In the following year, the Third Committee of the UN General Assembly passed a resolution to condemn "extrajudicial killings, summary or arbitrary executions" of people because of discriminatory reasons including their sexual orientation and gender identity.<sup>35</sup>

#### Anti-gay African States and Traditional Normative Status Quo

It is useful to recall that African countries constitute 50% (38/76) of the total number of anti-gay states in the world. Going by this statistics, it is clear that 76% (38/54) of the total African states prohibit homosexual activities. Following this, some gay activists, referring to Africa, lamented that: "By far, it's the continent with the worst laws on the books when it comes to homosexuality and other sexual minorities."<sup>36</sup> Certainly, Africa's rejection of homosexuality derives its foundation from religious and cultural factors. As regards religion, it is noteworthy that Islam and Christianity largely shape the opinions and decisions of Africans given their strong influence on the peoples of the continent. Islam which has clear principles against homosexuality is not only old in the African history but has significant dominance in many parts of the continent especially in the north, west, and the eastern parts of Africa. It is estimated that Muslims in sub-Saharan Africa contribute significantly to the global Muslim population with 30.04% in a 2010 Pew Research report.<sup>37</sup> In addition, almost 50% of the whole African states (26/54) are members of the Organisation of Islamic Cooperation (OIC). In the case of Christianity, recent findings show that Catholicism, which has been a foremost Christian group against homosexuality, has seen "the biggest growth" in Africa more than any other parts of the world.<sup>38</sup> It is estimated that Africa presently has a population of 176 million Catholics.<sup>39</sup>

Culturally, many Africans believe that homosexuality is not only external to their traditional beliefs but also antithetical to them. For them, homosexuality is a Western practice which finds its way into Africa through colonialism and the modern age of cultural globalisation. Besides, it is argued that homosexuality is essentially against the principles of procreation and sustainability of the family system in Africa. For example, David Bahati who has been a foremost advocate of anti-gay rights in the Ugandan parliament argued that homosexuality "is un-African because it is inconsistent with African values of procreation and of the belief of family and clan."<sup>40</sup> This popular claim has, however, been a subject of increasing controversy in the literature on sexualities in the African studies as there has since emerged a perspective arguing that patterns of homosexuality have been in existence in Africa prior to colonialism.<sup>41</sup>

For analytical illustration of Africa's anti-homosexuality policy frameworks, a systematic categorisation of anti-gay states on the continent on the basis of their degree of penalties for



same-sex relationships is provided. This categorisation draws on the 2013 report of ILGA on the global survey of legalisation for LGBT. It goes as follows: (i) unclear legislation but prohibition of homosexuality; (ii) imprisonment but no indication of length; (iii) imprisonment up to 14-years; (iv) imprisonment of 14-years and life imprisonment; and (v) death penalty.

*Unclear legislation but prohibition of homosexuality:* In the analysis of ILGA, these countries do not have explicit legislations against homosexuality but the act is apparently not permissible in the state. As such, some other criminal laws are occasionally invoked to criminalise same-sex activity. Libya and Egypt are two countries identified in this category. Further research indicates that Libya under Muammar Gaddafi had some 'purification laws' based on the Islamic legal system which empowered the courts to institute punishments, including flogging and amputation, for people that engaged in acts considered immoral in Islam including homosexuality. Furthermore, Libya's criminal code prohibits all sexual activity outside lawful marriage.<sup>42</sup> In fact, Gaddafi in his disdain for homosexuality had declared in 2003 that 'only homosexuals can contract HIV/AIDS.'<sup>43</sup> Furthermore, the new government in Libya appears to favour an Islamic perspective on homosexuality following the statement of the Libyan delegate at the UN Human Rights Council in February 2012 that gay rights "affect religion and the continuation and reproduction of the human race".<sup>44</sup>

The case of Egypt is much similar to that of Libya. Although Egypt seemingly has unclear legislations against homosexuality, but the activities of its leadership show unhidden opposition to gay people, most especially for religious reasons. Some other criminal laws, particularly the Public Order & Public Morals Code, have been used against homosexuals in the state.<sup>45</sup> Under Hosni Mubarak, many raids and arrests were conducted on the gay community. For example in 2001, it was widely reported that some fifty-two gay men (later known as the "Cairo 52") were arrested for 'offending religion and practicing debauchery' after a raid on their party on the Queen Boat in Cairo.<sup>46</sup> Recent report further shows that there have been increased raids on the gay community after Mubarak and Morsi's regimes. The gay community in Egypt reported nine raids across the state between October 2013 and April 2014.<sup>47</sup> With these developments, there is compelling reason to assume that a legal process that would inform stiffer penalties for gay people may be on the way in Egypt.

*Imprisonment but no indication of length:* In Namibia and Swaziland under this category, homosexuality is criminalised under sodomy laws but with no clear stipulation of the length of imprisonment for the act. Both states derive their sodomy law from the Roman-Dutch common law of the South African colonial government. The criminal law focuses mainly on sexual relationship between men and not explicit on the act between women. By this, it is often believed that lesbianism is allowed in the countries.<sup>48</sup> While there have not been cases of successful prosecution of gay men given the controversy surrounding the law especially for its silence on the penalty for the act, the leadership of the state has shown open opposition to homosexuality in the state. In Namibia, for example, its former president, Sam Nujoma, at different occasions openly displayed his outright contempt for gay people. At a function at the University of Namibia in 2001, he declared that: "The Republic of Namibia does not allow homosexuality [or] lesbianism here. Police are ordered to arrest you and deport you and imprison you".<sup>49</sup> Furthermore, the incumbent Commissioner of Refugees in Namibia when interviewed on the possibility of granting refugee status to Ugandan gays following the anti-gay laws in Uganda quickly responded that: "Not at all. Our domestic refugee law does not have provision granting refugee for being gay. And will never do that".<sup>50</sup> In the case of Swaziland, the government began a process in 2005 to include homosexuality (in the case both male and female) in the states existing Sexual Offences Law.<sup>51</sup>

*Imprisonment up to 14-years and life imprisonment:* This category contains the largest population of the anti-gay states in Africa where homosexuality is criminalised. They have a penalty mostly involving 14-years imprisonment and life imprisonment in some cases (Uganda, Tanzania, and Sierra Leone) for homosexuality. They include: Algeria (1966 Penal Code), Angola (1886, as amended 1956 Penal Code), Botswana (1998 Penal Code), Cameroon

(1965/1967 Penal Code, amended in 1972), Comoros (not stated), Eritrea (1957 Penal Code), Ethiopia (2004 Criminal Code), Gambia (1965 Criminal Code, amended 2005), Ghana (1960 Criminal Code, amended in 2003), Guinea (1998 Penal Code), Kenya (amended 2003 Penal Code), Liberia (1978 Penal Law), Malawi (amended 2010 Penal Code), Mauritius (1838 Criminal Code), Morocco (1962 Penal Code), Mozambique (1886 Penal Code, amended 1954), Nigeria (1990 Criminal Code/2014 Criminal Law), Sao Tome and Principe (1886 Penal Code, amended in 1954), Senegal (1965 Penal Code), Seychelles (1955 Criminal Code), Somalia (Penal Code 1962), South Sudan (2008 Penal Code), Togo (1980 Penal Code), Tunisia (1913 Penal Code), Uganda (1950 Penal Code Act/2014 Criminal Law), Zambia (amended 2005 Penal Code Act), and Zimbabwe (2006 Criminal Law).<sup>52</sup>

*Death penalty:* This category of countries being Muslim-dominated has Islamic-oriented legal systems; hence a death penalty is declared for homosexuality. The countries include Mauritania, Sudan and the twelve Nigeria's northern states that adopted the Sharia legal system in the 2000s (Bauchi, Borno, Gombe, Yobe, Kano, Katsina, Niger, Sokoto, Zamfara, Gombe, Kaduna, and Jigawa). However, there has not been any record of execution for homosexual acts in any of these countries.

### The Reaction of Western Powers: Socialisation Attempts

By the West, the focus of this paper is on the United States, Britain, and the EU given their more proactive roles in the protection of gay rights in the world,<sup>53</sup> which explains their leading voices against the position of the many anti-gay states in Africa. Indeed, they have clearly defined the protection of gay rights as a key objective of their foreign policies. In the case of the United States, it is indicated in a 2011 foreign policy document of the Department of State that it is much interested in pursuing a "comprehensive human rights agenda", which incorporates the rights of the LGBT people.<sup>54</sup> This has been a principal goal of the administration of President Barack Obama since 2009, which experienced a more rigorous pursuit after the president himself dramatically changed his negative attitude to same-sex marriages. With this policy, the ultimate objective of Washington is the "elimination of violence and discrimination against LGBT people worldwide, especially those forced to flee their homes or countries".<sup>55</sup> The state pursues this interest using the following strategies: (i) engagement at bilateral and regional levels on the promotion of gay rights; (ii) the promotion of LGBT human rights at multilateral forums; (iii) the protection of LGBT refugees, asylum seekers, and migrants; (iv) partnering with LGBT civil society groups on the promotion of LGBT human rights; (v) championing human rights (including LGBT people's rights) through public diplomacy; and (vi) the strengthening of the state's personnel and consular policies giving room for the extension of equal employment opportunity to the LGBT people at the State Department and simplifying the process of obtaining passports by same-sex couples.<sup>56</sup>

Similarly, within the framework of promoting the norm of human rights, Britain has a robust and multi-pronged approach towards the promotion of gay rights in the world. Since 2008, the British government had designed a "LGBT Toolkit" as a framework for its 261 foreign missions across the world in the light of promoting the human rights of the LGBT people. Through the document, the British government emphasises the principle of equal rights for the LGBT people and was clear on the need for it to be promoted in the world. The following are outlined as the state's priorities on its gay rights policy: equality and non-discrimination in applying human rights on peoples; support for LGBT defenders; and sexual health, reproductive rights and health education. Some of the strategies advanced to address the aforementioned included bilateral engagements with countries, partnering with LGBT civil society groups, and increased advocacy for human rights at multilateral institutions.<sup>57</sup> In light of this, Britain indeed became the first country to introduce the conditionality of LGBT human rights as a condition to grant foreign aid to its aid recipient countries in October 2011.<sup>58</sup>

As noted earlier about the EU which is notably at the forefront of promoting gay rights in the world, the institution prioritises the following in its diplomacy: (i) 'eliminating discriminatory



laws and policies, decriminalisation, and ending the death penalty for same-sex relations'; (ii) 'promoting equality and non-discrimination at work, in healthcare and in education'; (iii) 'combating violence by the state or by individuals against LGBTI persons'; and (iv) 'supporting and protecting human rights defenders'.<sup>59</sup> Towards this end, the Council of the European Union adopted in 2010 a "Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender (LGBT) People", which provides the policy framework for EU member-states to advance foreign policies for the promotion of the rights of the sexual minorities.<sup>60</sup>

Indeed, the above gives a clear picture of the reason behind the West's increased focus on the situation of gay rights in Africa. Before Nigeria and Uganda adopted the newly stricter laws on homosexuality in the early months of 2014, the approach of the Western powers on gay rights in Africa was rather persuasive and less confrontational. In fact, America appeared most cautious in its quest for better treatment of the gay people in Africa. This was seen as a pragmatic way to deal with a culturally conservative continent and avoid "a backlash that could endanger local [gay] activists".<sup>61</sup> For instance, the U.S. ambassador to Ivory Coast in June 2013 remarked that: "Given that African societies tend to be very conservative, it's a difficult issue....The question for us is, how do we advocate effectively and advance human rights agenda for the LGBT community, or any other community that is in a difficult position? And sometimes the headlong assault isn't the way to do it".<sup>62</sup> This approach is also noticeable in the actions of the American president himself during his trip to Africa in June 2013 given that the promotion of gay rights only featured once in his comments on the continent made in Dakar-Senegal.

Even the EU and Britain were for many years relatively silent on the situation in Africa; a development which is interpreted as hypocrisy by some analysts after Europe became more vocal on the recent developments in Uganda and Nigeria (and in Ethiopia following its new anti-gay law in March 2014). Notwithstanding the conditionality of gay rights introduced in its foreign aid policy in October 2011, which led to the cutting of aid to Malawi by £19 million in the same year (following the sentencing of two gay men to fourteen years imprisonment with hard labour in that country), Britain paid less attention to the many anti-gay states across the continent when many of them were indeed stepping up their campaigns against the homosexuality.<sup>63</sup> In the EU's case, an analyst wondered why the EU suddenly became interested on gay rights in Africa after it had for many years ignored the issue. Faten Aggard-Clerx – the Africa program manager at the European Center for Development Policy Management – remarked that:

*In Ethiopia the [anti-gay] law was voted on by parliament in 2004 and implemented in 2005. Ethiopia has now simply said that those convicted cannot be pardoned. But in the last 10 years, we haven't heard the EU criticise Ethiopia on the issue – it even increased its aid – so my question is why now?<sup>64</sup>*

In the wake of the new legislations in Nigeria and Uganda, which increasingly gained global attention, there was apparently a drastic change in the approach of the West to the anti-gay states in Africa. The cases of the two countries were seen as the best moment to voice their strong opposition to the dominant institutional anti-gay practices in Africa. At different platforms both countries were roundly condemned for their laws to send a clear message to the others. The aid-withdrawal policy has been mostly flashed by the Western powers at both states. Although Nigeria and Uganda were at the centre of their oppositions, their approach to opposing the anti-gay legislations in both countries apparently varied. Arguably, this owes to the clear difference in the economic and political capacities of Nigeria and Uganda, as well as the level of relationships they maintain with each of the Western states. Given that Uganda is weaker economically and does not possess the kind of political clout Nigeria commands at the regional level, it was more criticised and punished for its anti-gay law. The aid-withdrawal policy was immediately implemented against Uganda despite the fact that



Nigeria signed its own law a month earlier. Uganda could easily be punished through this policy because it is a state that largely survives on foreign aid. The Overseas Development Institute indicates that Uganda is the world's 20th largest aid recipient in 2011.<sup>65</sup> Some reports also indicate that 30% of the total aid received by Uganda is used to service its national budget especially in the areas of health, education and defence.<sup>66</sup>

Thus, it is conceived by some Western states that cutting aid to Uganda would be an effective way to punish the government for its anti-gay policy and possibly to repeal its law. Three EU member-states – Sweden (US\$ 1 million), Norway (US\$ 8million) and Denmark (US\$ 8.64) – withdrew their aid to Uganda.<sup>67</sup> The EU as a body also suspended its budget payments to Uganda (EU allocates € 460 million annually to Uganda).<sup>68</sup> Although Britain had in November 2012 suspended its aid to the state over corruption cases, it decided not to follow the popular European approach as the government announced that it would still give £ 97.9 million allocated to the state through 'alternative routes' because 'the UK remains committed to supporting the people of Uganda'.<sup>69</sup>

The United States on its own seemed interested in maintaining its cordial relations with Uganda despite its stern warning to President Yoweri Museveni after he signed the anti-gay bill that "enacting this legislation will complicate our valued relationship".<sup>70</sup> It should be noted that Uganda is highly strategic to the interest of the United States in East Africa as it is seen by the state as a "critical force for regional stability" in the sub-region.<sup>71</sup> Following this, America has been the largest donor to Uganda and played a central role in combating the terrorism of Joseph Kony's Lord Resistance Army (LRA) in the state. Reports show that Uganda received a total of US\$ 1.7 billion from the United States between 2006 and 2010.<sup>72</sup> Although some reports suggest that U.S. has suspended some undisclosed amount of aid to the health sector in Uganda and the organisations that lobbied for the anti-gay law, Washington still announced in March 2014 that it was sending more military forces and aircraft to assist Museveni to hunt down Joseph Kony.<sup>73</sup> This has indeed generated a lot of questions in the circles of the gay activists who see this step as a contradiction to the state's stance on the anti-gay law. The response of Washington to criticisms is simply that: "ensuring justice and accountability for human rights violators like the L.R.A. and protecting L.G.B.T rights aren't mutually exclusive".<sup>74</sup>

Nigeria did not experience any substantial sanctions except for a series of threats by the West. The only serious decision made on the Nigerian case was the resolution made by the majority in the European parliament on 13 March 2014 that Nigeria and Uganda had violated the Cotonou Accord on human rights, democratic principles with their anti-gay laws. Thus, the Members of the European Parliament (MEPs) decided on sanctions including travel and visa bans, against 'the key individuals responsible for drafting and adopting' and a review of EU's "development aid strategy with Uganda and Nigeria, with a view to redirecting aid to civil society and other organisations rather than suspending it" which would be implemented only after there have been "very frank discussions with the two countries".<sup>75</sup> Rather, Nigeria has been a major source of global assistance, spearheaded by United States, Britain, China and France, to address its increasing security challenges generated by the activities of the Boko Haram insurgents in the northern part of the country.

### **Africa's Anti-gay States and their Position: Resistance to Socialisation**

Indeed, the gay rights issue mark a very rare moment in the history of Africa's international relations. The dispositions of the elites in the anti-gay states clearly show an uncommon audacity by Africa to stand-up to the Western powers indicating that they are prepared to withstand the consequences of the sanctions and prove that the sovereignty of their states is non-negotiable. Since 2011, when Britain introduced the policy of gay rights conditionality for aid to recipient countries targeting Africa, African leaders have been more vocal in their statements against the position of the Britain and the West on the issue. For example, (late) President John Atta Mills of Ghana was quick to inform David Cameron that he does not



possess the right to “direct other sovereign nations as to what they should do.” Mills further declared that “I, as president, will never initiate or support any attempt to legalise homosexuality in Ghana”.<sup>76</sup> At the same time, the Ugandan presidential adviser John Nagenda accused Cameron of displaying a “bullying mentality” while “Ugandans would not tolerate being treated like ‘children’”. Nagenda concluded that: “if they must take their money [aid], so be it”.<sup>77</sup> This informs the statements made by Presidents Mugabe and Jammeh quoted in the introduction of this paper.

Furthermore, the African leaders have shown growing dispositions to aggressive defence of their legislation at international forums immediately after the Nigerian and Ugandan cases, often leading to bitter altercations between them and their Western counterparts. Indeed, this occurred at the fourth EU-Africa Summit held in April 2014 in Brussels. While the European Parliament President, Martin Schulz, would see the anti-gay laws as “a disgrace” and “an unacceptable violation of the basic rights of individuals”, African parliamentarians at the summit were angered by the fact that Europe has been hypocritical about its acclaimed concerns for the plight of Africans by neglecting the real issues of humanitarian concern such as poor treatment of African migrants by the Europeans. Africans at the summit also accused EU of being too hard on Africa on the gay rights issues while neglecting cultural specificities and state sovereignties.<sup>78</sup>

Given the above, the question to be asked should border on what drives Africa’s insistence on challenging the Western powers on the gay rights issue.

#### *Non-Western Foreign Aid*

Clearly, foreign aid is the major instrument advanced by the West to pressurise the anti-gay African states to review their laws and adopt gay rights. However, the efficacy of this policy is quite doubtful considering increasing alternative sources of aid for Africa. In this regard, the growing Chinese foreign aid is most significant and a notable factor that could motivate the African states to stick to their policies and defy the supposed sanctions by the Western powers. This is most especially on the backdrop of the principle of non-interference that guides the foreign aid policy of China. It is indeed no news that Africa, in recent times, is at the center of China’s foreign policy for mostly economic reasons. As such, Africa has been a major recipient of China’s aid since the early 2000s. Reports indicate that Africa was the second largest recipient of China’s aid, after Latin America, between 2001 and 2011. The estimate of Chinese aid (pledged assistance) to 49 countries on the continent in that period totalled US\$ 175 billion.<sup>79</sup> The aid came in the forms of debt relief, humanitarian aid, natural resource programmes and infrastructural development.<sup>80</sup> In March 2013, Chinese President Xi Jinping during his trip to Africa also promised to increase his state’s long-term loans to African states by 100% (from US\$ 10 billion in 2012 to US\$ 20 billion from 2013 to 2015).<sup>81</sup>

It is instructive to note that a sizeable number of the major recipients of China’s aid in Africa fall into the category of the anti-gay states including Nigeria, Uganda, and Ethiopia. Nigeria, for example, was the largest recipient of China’s aid between 2001 and 2011 given the vast resources and market in Nigeria. Unofficial estimates put the figure of China’s aid to Nigeria at US\$ 220 million between 2000 and 2008.<sup>82</sup> China has been actively involved in the development of different sectors of Nigeria. For example, China, Nigeria and the Food and Agricultural Organisation (FAO) signed an agreement in 2002 whereby 500 Chinese agricultural experts would be sent to Nigeria to assist with food production and water management. China also provided funding to 300 schools in rural Nigeria and provided scholarships to many Nigerians to study in China.<sup>83</sup> Similarly, Uganda is another country with growing relations with China, which of course has influenced more aid to Uganda from China. For example, the Chinese government signed a US\$ 8.7 million interest-free loan agreement with Uganda for development programmes in 2012.<sup>84</sup> China also secured US\$ 90,000 for the construction of a Chinese school in Uganda in 2012.<sup>85</sup> China was also involved with a number of infrastructural development projects in Uganda including the building of the Ministry of

Foreign Affairs complex, the President's Office, Naguru Hospital, the Mandela National Stadium, and the Wakawaka Fish landing site.<sup>86</sup>

### *The Scramble for Africa*

African leaders are much aware of the on-going struggle among the world's powers to have access to their resources and market. Clearly, this can be used as an instrument to negotiate their way against the insistence of the Western powers on gay rights particularly in consideration of the increasing presence and popularity of China in Africa. With growing penetration of China into Africa (with trade estimated at US\$ 200 billion in a year and anticipated increase to US\$ 325 billion)<sup>87</sup>, it is commonly believed that China is fast overcoming the West in Africa. African leaders and peoples have also been indicating more preference for China than the West given the Chinese diplomatic approach. For example, former President Abdoulaye Wade of Senegal remarked that: "China's approach to our needs is simply better adapted than the slow and sometimes patronising post-colonial approach of European investors, donor organisations and non-governmental organisations".<sup>88</sup> A 2007 Pew Research report also found that "China's influence is almost universally viewed as having a more beneficial impact on African countries than does that of the United States".<sup>89</sup> Expectedly, this has generated a serious concern for the West who has been the dominant trading partners with Africa. In 2012, Hillary Clinton (then Secretary of State of the United States) during her visit to Africa stated that: "The days of having outsiders come and extract the wealth of Africa for themselves, leaving nothing or very little behind, should be over..."<sup>90</sup>

It is useful to note that many of the states benefitting from China's increased trade and investment are also in the group of the anti-gay states. These include Nigeria, South Sudan, Algeria, Kenya, Angola, Ethiopia, Ghana, Zimbabwe and Uganda. Given this, it is reasonable that the West would be more cautious and pragmatic in its dealing with the anti-gay states in order to protect its economic interests. It is, therefore, not surprising that Nigeria, for instance, was not sanctioned for its legislation. Nigeria is officially defined by the United States as its 'most important trading partner in sub-Saharan Africa, largely due to the large volume of petroleum imports from Nigeria which satisfy 8 per cent of U.S. crude oil import requirements'.<sup>91</sup> In the case of Uganda, some analysts were of the view that Uganda would refuse pressures from the West on gay rights because "Uganda has been gradually shifting its attention to China, which is by far, Uganda's main investment partner".<sup>92</sup> This follows China's increasing investment in the Ugandan oil and mining sectors.

### *Domestic Support*

Another salient factor that strengthens Africa's insistence on its anti-gay legislation is the popularity of the law amongst the citizens. The anti-gay law is not only a product of the elite's attitude towards homosexuality but a clear reflection of the popular attitudes of African peoples on homosexuality. A 2013 Pew Research on attitudes towards homosexuality shows that the peoples of Africa and Muslim countries recorded the least places accepting homosexuality. In sub-Saharan Africa, it was discovered that Nigerians (98%), Senegalese (96%), Ghanaians (96%), Ugandans (96%) and Kenyans (90%) disagree that homosexuality should be given societal acceptance. Surprisingly, even in South Africa where homosexuality has some constitutional legitimacy, it was discovered that 61% of the public rejected homosexuality.<sup>93</sup> These findings certainly explain why President Museveni of Uganda could not decline signing the anti-gay bill despite his early reluctance given the Western pressures. In the Nigerian case, the presidential spokesperson – Reuben Abati – in his official statement announcing the new law stated that 'more than 90 per cent of Nigerians are opposed to same-sex marriage. So, the law is in line with our cultural and religious beliefs as a people'.<sup>94</sup> Therefore, the gay rights issue represents a rare case of convergence between the elites and masses in Africa, which strengthens the actions of the African leaders. Clearly, this contrast with other issues relating to authoritarianism, democratisation, corruption and poor governance, which there is apparent divergence between the elites and the masses, which



have indeed necessitated occasional policy re-directions and adjustments because of Western pressures.

#### *Continental Support*

The anti-gay African states do not only enjoy domestic support for their actions, they are also firmly backed by their fellow states on the continent. For instance, it shocked the West and the gay rights activists that South Africa (an Africa's major power), which does not only have one of the most accommodating constitutions for gay people in the world but also a major promoter of gay rights at the global level, refuses to condemn the other countries' anti-gay legislations. This reflects in the statement of President Jacob Zuma, when asked about the issue of anti-gay legislations in other countries, that: "South Africa respects the sovereign rights of other countries to adopt their own legislation".<sup>95</sup> In another development, the African, Caribbean and Pacific Parliament (ACP) threatened in March 2014, following increasing threats by the EU on Uganda and Nigeria, that they would "discourage African Heads of State and Government from attending the Euro-Africa Summit scheduled for May should Western nations impose sanctions on Uganda and Nigeria over anti-gay laws".<sup>96</sup> The possibility that gay rights would be given a favourable consideration at the African Union (AU) is also most unlikely. Indeed, it was reported in 2010 that the nomination of a Ghanaian nominee for the AU's Commission on Human and People's Rights (ACHPR) was rejected on given her record of defending gay rights in Ghana.<sup>97</sup>

#### **Conclusion**

This aim of this paper was to analyse the contemporary politics of gay rights in the global system and its implications for relations between Africa and the West. The paper demonstrates that gay rights has become another example of the global spread of values in the contemporary global system, which is significantly driven by the gay rights entrepreneur in the West. In light of this, the protection of gay rights in the world has become important in the foreign policies of the West using the instruments of sanctions and persuasion on non-accepting states with a huge number in Africa. Given their religious and cultural values, many African states are, on the contrary, radically unreceptive to gay rights. Because of this, their anti-gay laws are generating rising tension between them and the Western powers. While the Western powers are prepared to impose sanctions on the anti-gay African states for their strict laws, the states have indicated their plans to assert their position on gay rights, with clear disregard for the consequences of the sanctions.

Indeed, the decision of the African states on the norm of gay rights shows a new pattern of behaviour of Africa in the global arena which supports the growing debate of an increasingly assertive Africa in global politics. This is more encouraged by the changing nature of the international system being gradually characterised by a multiplicity of powerful actors, especially in the Global South, challenging the pre-existing order defined by the monopoly of Western leadership. Furthermore, the African leaders seem more prepared to make effective use of their resources and markets, which has become a source of increasing competition among the world powers, as an instrument for asserting themselves in international politics. In addition, the spirit of Pan-Africanism facilitating growing unity in the continent and projection of the African identity in the world is giving a new definition for the international relations of Africa in the modern world.



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