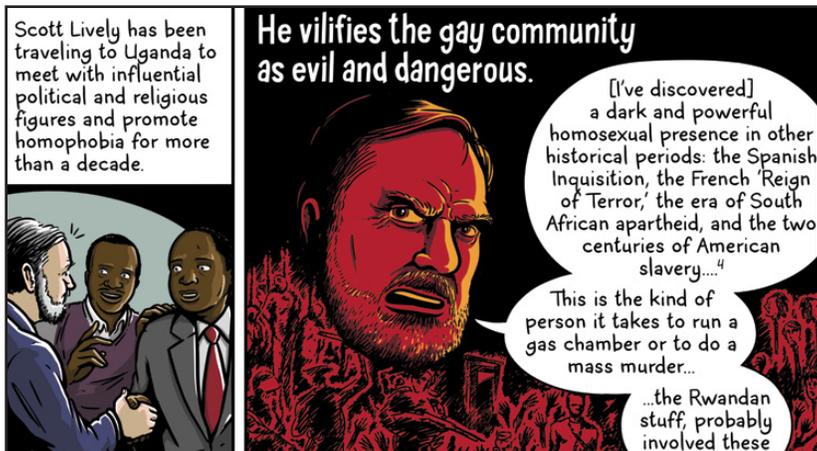


# LGBTQI Uganda Fights Back: The Case Against Scott Lively



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#### The Case Against Scott Lively citations

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1. Scott Lively address to 2009 anti-gay conference in Uganda entitled "Seminar on Exposing the Homosexual Agenda."
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6. Scott Lively, Report from Uganda: Comments about March 3-9 Pro-Family Mission to Uganda, Mar. 17, 2009, available at <http://www.defendthefamily.com/pfrc/archives.php?id=2345952> ["Lively Report from Uganda"].
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11. Scott Lively, *My Analysis of the SMUG Lawsuit*, April 25, 2012.
12. Frank Mugisha, *Gay and Vilified in Uganda*, Op-ed, New York Times, Dec. 22, 2011.
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# The Case against SCOTT LIVELY

Produced for the Center for Constitutional Rights by Andy Warner

In 2009, radical U.S. evangelical minister, Scott Lively headlined an anti-gay conference in Uganda.



Lively discussed legislation to target the LGBTI community with Ugandan politicians, and planned ways to drum up public support for it.

An effective strategy is to emphasize the issue of homosexual recruitment of children.<sup>2</sup>



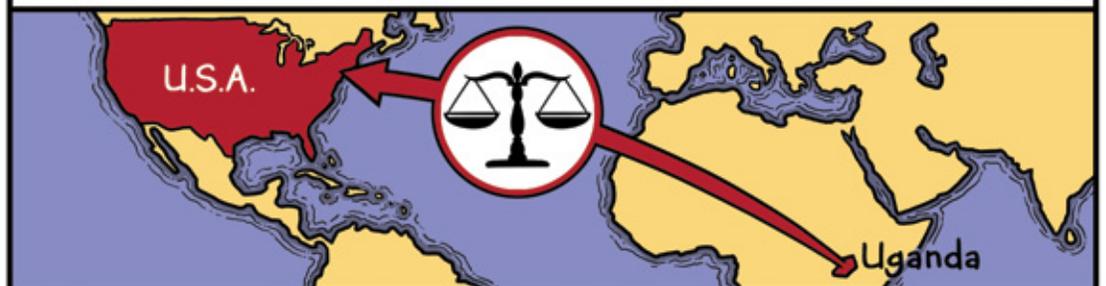
Ugandan MP David Bahati then introduced a harsh anti-gay law, which would ban LGBTI groups and force families to report gay relatives.



After that, the atmosphere for the gay community in Uganda got worse and worse.



But now an umbrella organization of Ugandan LGBTI groups called Sexual Minorities Uganda (SMUG) has brought the fight back to its source - all the way back to the man who laid out a clear battleplan for their oppression.



**SMUG is suing Lively in U.S. courts for persecution.**

Scott Lively has been traveling to Uganda to meet with influential political and religious figures and promote homophobia for more than a decade.



## He vilifies the gay community as evil and dangerous.



[I've discovered] a dark and powerful homosexual presence in other historical periods: the Spanish Inquisition, the French 'Reign of Terror,' the era of South African apartheid, and the two centuries of American slavery....<sup>4</sup>

This is the kind of person it takes to run a gas chamber or to do a mass murder...

...the Rwandan stuff, probably involved these guys.<sup>5</sup>

Lively's actions have been likened by a Ugandan commentator to a "a nuclear bomb against the 'gay agenda' in Uganda."<sup>6</sup>



I'm proud of that...

...and I hope the nuclear bomb spreads across the whole world, against the gay movement.<sup>7</sup>

## His goal is brutally simple.



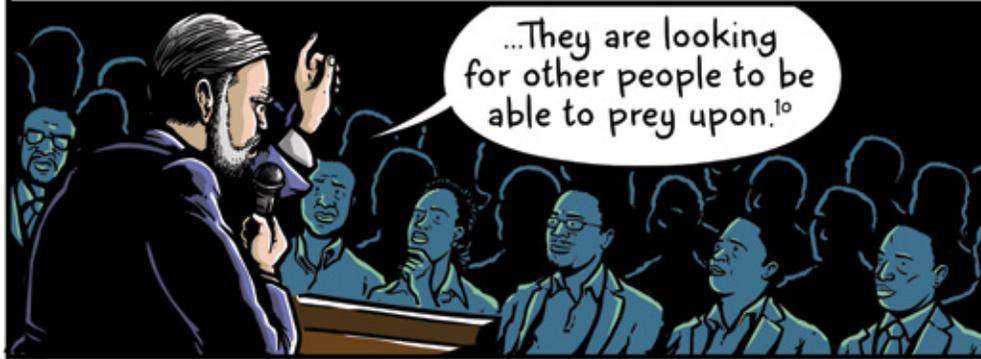
[C]riminalize the public advocacy of homosexuality....<sup>8</sup>

**This is illegal.** Everyone - no matter their sexual orientation - has fundamental rights. Conspiring to and systematically denying these rights is a serious violation of international law.



# There wasn't this climate of hate in Uganda 10 years ago.

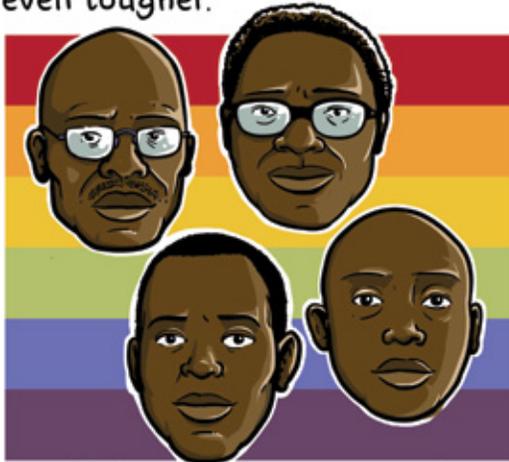
Lively first came to Uganda in early 2002, where, as the keynote speaker at another anti-gay conference, he stirred up a moral panic - linking homosexuality with pedophilia and pornography and exhorted Ugandan officials to use their "power of censorship" to stop LGBTI rights advocacy.<sup>9</sup>



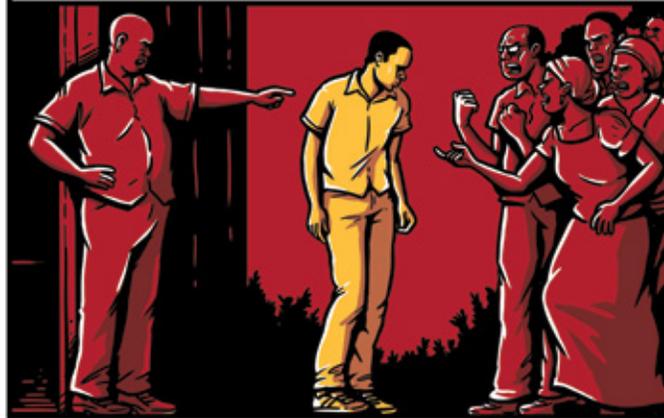
Lively returned to Uganda later that same year to further the campaign to demonize and silence the LGBTI community there.



Being gay in Uganda is tough. Being a gay rights activist is even tougher.



They have experienced death threats, public harassment, refusal of service in stores, and even evictions.



Their homes have been raided by the police.



In 2010, a Ugandan tabloid newspaper called Rolling Stone, followed a trend of tabloid "outings" of LGBTI people and published pictures, names and locations of local activists. The tagline that followed was chilling... **HANG THEM.**



After the Rolling Stone article, SMUG members received phone calls and text messages accusing them of infecting children with HIV.



Even in an environment this hostile, the Ugandan LGBTI community stays strong.



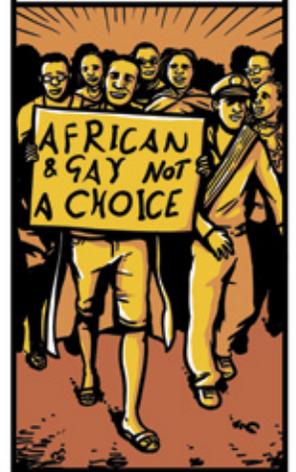
Ugandan courts have ruled that LGBTI persons are entitled to the basic protections of law.



SMUG sued the Rolling Stone tabloid for defamation and won their case.



In 2012, SMUG organized Uganda's first Gay Pride March ever.



To this day, SMUG is still engaged in other legal battles in Uganda against the people there who continue to persecute their community.



**But the fight to protect basic human rights can't stop with Uganda's borders. So, on March 14th 2012, SMUG brought suit against Scott Lively in the state of Massachusetts using the Alien Tort Statute.**

The Alien Tort Statute is a legal tool that allows foreign victims of human rights abuse to seek civil remedies in U.S. courts.



When the case was filed, local activists held a silent SMUG solidarity march in Springfield, MA, where Scott Lively lives.



**There's already been a lot of misinformation about the suit.**

Most of it comes from Scott Lively himself.

They want to silence me!!



# Here's what the case against Scott Lively is *really* about:

## 1. It's not about Lively's speech.

Lively says the case is an attack on his free speech. The court disagreed, stating that his actions "have fallen well outside the protections of the First Amendment."



## 2. It's not about his religious beliefs.

Lively says this is about his religious beliefs. But the court stated that the case makes "plausible claims to hold defendant liable for his role in systematic persecution, rather than merely for opinions that Plaintiff finds abhorrent."



## 3. It *IS* about persecution.

Persecution committed on a widespread or systematic basis is a crime against humanity, which is among the most serious violations of international law.



There's a sad irony to the fact that, even as he claims his rights are under attack, Lively *himself* is trying to take free speech rights away from LGBTI Ugandans.

Belief is one thing, but actively trying to harm and deprive other people of their rights is the definition of persecution.

Pam Spees, CCR's lead attorney on the Scott Lively case



Most importantly, Lively's campaign to silence, demonize and criminalize the Ugandan LGBTI community would be illegal here in the US, too.

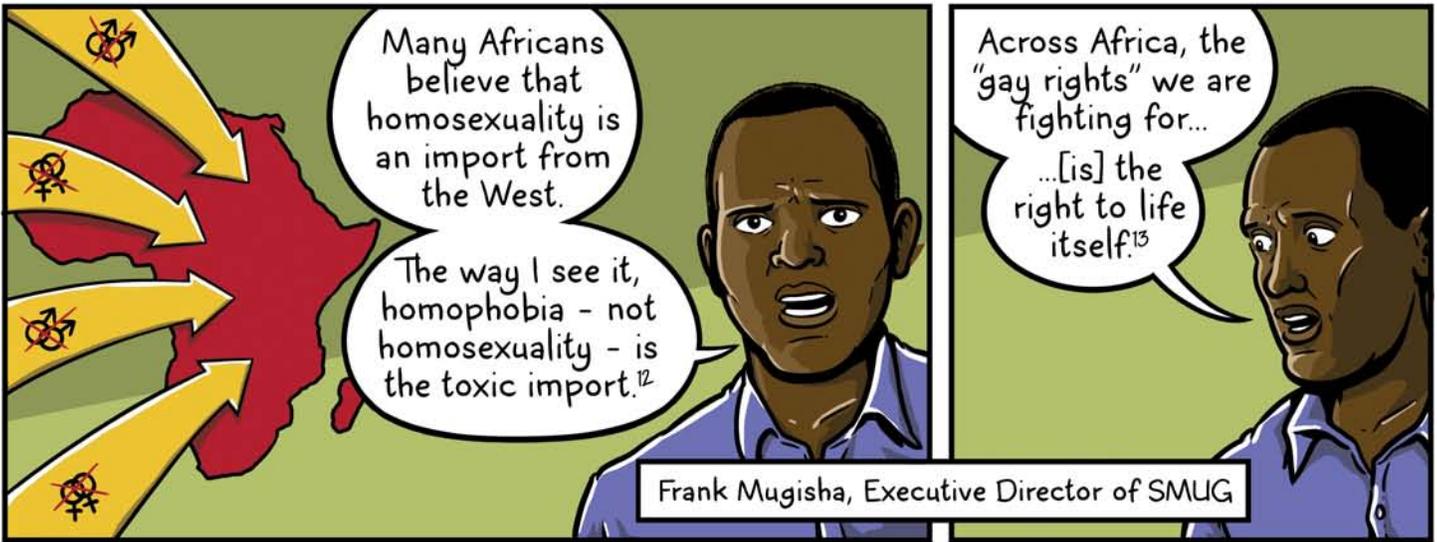


And taking part in illegal activity that harms others is not protected religious activity. You can't steal or violate basic rights, because you think your faith tells you to.

No, it's fine!  
Freedom of religion!



**This lawsuit has one goal, and one goal only: to stop US based fundamentalists from stripping basic rights away from other people.**



**But Scott Lively's anti-gay agenda doesn't stop with Uganda.**

Lively has traveled to many other countries, including Moldova, Lithuania, Latvia, and Russia to push his extremist views.



In 2007, Lively wrote a "Letter to the Russian People," in which he laid out a plan to target LGBTI rights groups:



Russia has now done exactly that. Lively referred to this as one of his "proudest achievements."<sup>15</sup>



Lively has also co-founded an anti-gay group in Latvia and boasted about being key to defeating anti-discrimination legislation in Moldova.



Political Research Associates has described this growing phenomenon as

**"GLOBALIZING THE U.S. CULTURE WARS."**

# SMUG's case against Scott Lively is about LGBTI rights in Uganda, but it's also about a whole lot more.



The suit has taken on a powerful new urgency now that Uganda's parliament has renewed its pursuit of a harsh anti-gay law that Scott Lively worked to bring about.



On August 14, 2013 the judge on the suit ruled that SMUG's case can move forward over Lively's request to dismiss.



**This is a historic decision.** It's the first time that a federal judge has recognized that, "widespread, systematic persecution of LGBTI people constitutes a crime against humanity that unquestionably violates international norms."



LGBTI rights organizers from around the world have expressed hope upon hearing of the court's decision. They have been targeted by campaigns coordinated by U.S. anti-gay evangelicals in their own countries, too.



**It's an important step towards guaranteeing basic rights to LGBTI communities around the world.**

# The Case against Scott Lively: Frequently Asked Questions



Pepe Onziema of SMUG speaks at press conference outside federal court in Springfield, MA. Photo: Camilo Ramirez

## What is the case about?

Beginning at least as far back as 2002, Scott Lively, an anti-gay extremist, has worked with Stephen Langa and Martin Ssempe – and later James Buturo and David Bahati – on a plan to strip rights away from and suppress Uganda’s lesbian, gay, bisexual, transgender, and intersex (LGBTI) community. Lively put forth and helped implement the “blueprint” that is now being used in Uganda to severely discriminate against the LGBTI community there. For example, Lively has explicitly called for the silencing and criminalization of advocacy and for codifying discrimination against LGBTI people and LGBTI people and advocates in Uganda have been deprived of basic rights as a result. Sexual Minorities Uganda (SMUG) and the Center for Constitutional Rights (CCR) brought a lawsuit against Scott Lively. The case, *SMUG v. Lively*, is for persecution, which is defined as the intentional and severe deprivation of fundamental rights based on a group’s identity. We have seen that the very existence of SMUG and its member organizations have been criminalized and its members’ physical safety has been threatened. This amounts to persecution because it is the deprivation of the fundamental rights of LGBTI people – and those who advocate on their behalf – to expression, assembly and association and to be free from arbitrary arrest and detention and cruel, inhuman and degrading treatment.

## Why is this case in the United States and not in Uganda?

Scott Lively lives in and is a citizen of the United States, therefore CCR and SMUG are suing him not in Uganda but in a U.S. court (in his hometown of Springfield, Massachusetts). SMUG and other LGBTI advocates are fighting separate legal battles in Uganda against people there who are also working to further the program of persecution. But because Scott Lively is not now present in Uganda, no Ugandan court could exercise jurisdiction over him. This case does not seek to impose U.S. law on Ugandan actors who may be held liable by Uganda’s court system, as the High Court of Uganda has already found that LGBTI persons enjoy basic protections of the law. Rather, this case seeks to hold liable that person who has instigated and pursued this severe repression in Uganda while based in the U.S.: Scott Lively.

## But how is it possible for Ugandans to sue a U.S. citizen in U.S. courts?

The Alien Tort Statute, part of U.S. law since 1789, allows foreign citizens to bring legal claims for severe human rights violations in U.S. Courts. The law reads, “The district courts shall have original jurisdiction of any civil action by

an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” It is not uncommon for foreign nationals to sue U.S. citizens and corporations in U.S. courts for every day civil suits like personal injury cases, also known as tort suits. The ATS simply gives federal courts the power to hear civil cases about severe human rights violations.

### What is the Anti-Homosexuality Bill in Uganda and how is Scott Lively connected to it? Hasn't he distanced himself from the bill?

The Anti-Homosexuality Bill enumerates degrees of homosexuality and imposes punishments, including life imprisonment for certain cases of consensual sex between consenting adults. The bill also includes lengthy prison sentences for advocating about LGBTI rights and issues, bans any organizations that advocate on behalf of LGBTI rights, and would require families, associates and even medical professionals to report people suspected of being gay.

Lively has freely admitted that he went to Uganda to help his partners there prepare the groundwork for the bill and consulted on its contents. We hope through this case we can determine exactly what his role was in the development of the bill and other efforts to strip away basic rights from the LGBTI community.

Lively has not distanced himself from the bill. He suggested the death penalty be removed but still called the bill with the death penalty the “lesser of two evils.” He has never distanced himself from other problematic aspects of the bill such as the criminalization of speech and advocacy, and



Silent march in Springfield, MA to commemorate violence against LGBTI community in Uganda and mark filing of lawsuit against Scott Lively. Photo: CCR

banning of organizations.

It is important to point out that this case is not just about Lively's involvement in the legislation. Separate from the bill, LGBTI organizations, advocates and individuals have suffered severe and widespread violations of basic rights – including raids of meetings and arrests of staff – due to Lively's efforts to bring about the repression of the LGBTI community in Uganda.

## Separating Fact from Fiction: Responding to Scott Lively's claims about the case

Q: Lively says that CCR and SMUG are trying to punish him for things he is saying that are protected under the First Amendment of the U.S. Constitution. **Is this true?**

**FALSE**

This is false. This is not a hate speech or incitement case.

CCR and SMUG could have and would have still brought this case if Lively had never said *anything* publicly in Uganda. Any of Lively's speech

highlighted in the context of this case is simply evidence of his involvement and even leadership in the effort to repress the LGBTI community in Uganda and of his specific intention to bring about the suppression of the LGBTI community. We know he intends to deny rights to expression, assembly and association of LGBTI people and organizations because he says so.

As the court noted in a historic decision rendered in August 2013, the case sets out “plausible claims to hold defendant liable for his role in system-

atic persecution, rather than merely for opinions that Plaintiff finds abhorrent” and actions that “have fallen well outside the protections of the First Amendment.” The court noted that the allegations are that Lively, “along with others in Uganda, devised and carried out a program of persecution aimed at Plaintiff’s organization and its members based on their sexual orientation and gender identity” and that Lively “helped coordinate, implement, and justify ‘strategies to dehumanize, demonize, silence, and further criminalize the LGBTI community.’”



Pepe Onziema of SMUG and Holly Richardson of OutNow outside federal court in Springfield, MA. Photo: Laura Raymond.

It is in fact Lively who is trying to stop SMUG and its members from speaking. Lively has been very specific and explicit that gay advocates must be silenced and their advocacy must be criminalized to effectively erase their existence from political life. He has also tried to silence and repress the LGBTI community in other parts of the world, for example in Russia where he advised lawmakers to “criminalize the public advocacy of homosexuality” because, “[t]he easiest way to discourage ‘gay pride’ parades and other homosexual advocacy is to make such activity illegal.”

Recently, in 2013, Russia passed a series of measures outlawing a broad definition of “propaganda about non-traditional sexual relations,” and banning adoptions by gay people or from any country where marriage equality exists. Lively again acknowledged that he influenced the Russian laws that have led to the Russian LGBTIQ community’s rights being stripped away and claimed it’s one of the “proudest achievements” of his career.

**Q: Lively says that the group that is being persecuted here is Christians, not LGBTI Ugandans, because SMUG and its lawyers are coming after them for their religious beliefs. Is this true?**

**FALSE** This is false. Nothing about this lawsuit seeks to strip any rights away from Lively or other anti-gay US evangelicals. It is not trying to stop them from practicing their version of their religion. The lawsuit is only seeking to stop their persecution of others. Persecution is not a right. It is a crime.

Moreover, Scott Lively’s rabidly anti-gay version of his religion has been rejected by the overwhelming majority of those in the faith-based community. Christian ministers around the world have come out in support of this lawsuit against Scott Lively. In fact, in July 2012, 46 American Christian leaders put out a statement that referenced extremist evangelicals such as Lively

who spread hate in Uganda: “As American Christians we recognize that groups and leaders within our own country have been implicated in efforts to spread prejudice and discrimination in Uganda. We urge our Christian brothers and sisters in Uganda to resist the false arguments, debunked long ago, that LGBT people pose an inherent threat to our children and our societies...”

**Q: Lively has said that discrimination against LGBTI persons cannot violate international law because many countries around the world still criminalize sodomy or otherwise discriminate against LGBTI people. Is this true?**

**FALSE** This is false. As Judge Michael Ponsor, the judge in this case, explained when rejecting Lively’s arguments to dismiss this case: “Widespread, systematic persecution of LGBTI people constitutes a crime against humanity that unquestionably violates international norms. The history and current existence of discrimination against LGBTI people is precisely what qualifies them as a distinct targeted group eligible for protection under international law. The fact that a group continues to be vulnerable to widespread, systematic persecution in some parts of the world simply cannot shield one who commits a crime against humanity from liability.”

**Q: Lively has said that his conduct abroad would be legal if it were undertaken in the United States. Is this true?**

**FALSE** This is false. Lively’s actions and conduct abroad would not be legal if he were doing the same thing in the United States. Imagine if there were LGBTIQ groups in your community whose meetings were raided and shut down by police and government

officials and whose staff was arrested when they tried to legally demonstrate and raise awareness about the issues they're concerned about, and if their offices were raided and equipment seized and they faced criminal penalties for speaking out publicly. If Lively were working in the same way to strip basic rights away from LGBTI advocates – for example preventing pro-gay speech, including parades and other forms of advocacy, and banning LGBTI organizations – those whose rights were deprived would have claims against him under the Ku Klux Klan Act, specifically 42 U.S.C. § 1985(3), which allows civil actions against private actors for conspiracies to violate civil rights when motivated by group-based animus.

**Q: Lively is saying that the Alien Tort Statute was "stripped of its power to hold Americans accountable for their conduct in foreign countries by the United States Supreme Court in the *Kiobel* case." Is this true?**

**FALSE** This is false. The *Kiobel* case that the Supreme Court ruled on in April 2013 was a case where Nigerian plaintiffs sued a British corporation for conduct that took place in Nigeria. After this Supreme Court ruling, Scott Lively asked for *SMUG v. Lively* to be dismissed, arguing that because the Nigerian plaintiffs in *Kiobel* could not sue a British corporation in U.S. courts Ugandans could not sue a U.S. citizen. However, in a victory for human rights, Judge Michael Ponsor ruled in August 2013 that the Supreme Court ruling in *Kiobel* did not impact SMUG's ability to bring the case. He wrote, "Two facts alleged in this case distinguish it



Scott Lively enters court in Springfield, MA. Photo: Joe Oliverio

*from Kiobel. First, unlike the British and Dutch corporations, [Scott Lively] is an American citizen residing within the venue of this court in Springfield, Massachusetts. Second, read fairly, the Amended Complaint alleges that the tortious acts committed by [Lively] took place to a substantial degree within the United States, over many years, with only infrequent actual visits to Uganda. The fact that the impact of [Lively's] conduct was felt in Uganda cannot deprive [SMUG] of a claim. [Lively's] alleged actions in planning and managing a campaign of repression in Uganda from the United States are analogous to a terrorist designing and manufacturing a bomb in this country, which he then mails to Uganda with the intent that it explode there."*

**Q: Lively claims that "homosexuality" is a western import and is being imposed on Uganda and other countries through a global gay movement. Is this true?**

**FALSE** This is false. In Uganda, as with everywhere around the world, there have always been people with different sexual orientations and gender identities. The criminalization of "homosexuality" is the western import as during the process of colonization, colonial powers brought with them laws which criminalized and attitudes which shamed LGBTI people and communities. This is true in Uganda, which was colonized by Great Britain as well as the United States, India and other former colonies of the British Empire.

# What is Persecution?

**Persecution is a crime that is defined as severe discrimination that results in the denial or infringement of fundamental rights.**

The “fundamental rights” referred to in the definition of persecution are generally understood to be those found in the **Universal Declaration of Human Rights** and the **International Covenant on Civil and Political Rights** including the rights to life, liberty, security of person, equality and non-discrimination, freedom of expression and assembly and religion and to be free from arbitrary arrest, detention and cruel, inhuman and degrading treatment.

**When persecution is committed on a widespread or systematic basis it is a crime against humanity.**

**Crimes against humanity** are a set of crimes that are considered to be among the most serious violations in international law, along with genocide and certain war crimes. In addition to persecution, acts like murder, enslavement, deportation or forcible transfer of populations, imprisonment in violation of basic rules of international law, torture, sexual violence, and other inhumane acts are crimes against humanity when committed on a widespread or systematic basis. They are not isolated or sporadic acts but are part of a larger policy or practice of targeting. As the international law scholar Antonio Cassese explains, crimes against humanity are treated this way because they “offend against and injure a transcendent good, the value of the human being in the moral code, a value that cannot be compromised.”

**A brief history of persecution under international law:**

**The Nuremberg Charter was written to establish laws and procedures for the trials against high-level officials of Germany's Nazi regime after World War II.** It established that crimes against humanity encompassed “persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.” In addition to the unprecedented violence unleashed against Jews after the start of the war, the **Nuremberg Tribunal** also viewed as forms of persecution laws which stipulated, for example, that all Jews should be treated as foreigners, banned from holding public office, denied further immigration into Germany and prohibited from publishing German newspapers.

Since the trials at Nuremberg, other international bodies set up to administer criminal justice after massive atrocities, for example regarding the genocides in Rwanda and the former Yugoslavia, have found that discrimination intended to and resulting in an impairment of an individual's fundamental rights constitutes persecution, and when committed in a widespread or systematic manner, constitutes a crime against humanity. **For example, the International Criminal Tribunal for the Former Yugoslavia, a United Nations court which oversees trials of war crimes committed in the Balkans during the 1990's,** observed that the prohibition of persecution is intended to prevent the intentional “exclusion of a person from society on discriminatory grounds” and encompasses: acts of varying severity, “from killing to a limitation on the type of professions open to the targeted group”; and “not only bodily and mental harm and infringement upon individual freedom but acts which appear less serious such, as those targeting property.”

## Similar protections under U.S. law:

- Some of the legal victories won by the civil rights movement, such as the **Civil Rights Act**, continue to protect the rights to equality and non-discrimination set out in the U.S. Constitution, similar to how international law protects against persecution. The Act includes a provision which allows civil suits against private actors involved in conspiracies to violate civil rights.
- U.S. recognition of the harms committed by such conspiracies dates back to the 19th century. The **1860s** witnessed the Ku Klux Klan and other white supremacist groups often acting in concert with state and local governments to terrorize and murder newly freed slaves and those who supported them. The original purpose of the **Ku Klux Klan Act** was to protect newly emancipated slaves from attacks by white supremacist groups.
- The modern version of the Ku Klux Klan Act is found in **Section 3 of 42 U.S.C. § 1985**, entitled “**Conspiracy to interfere with civil rights.**” It provides that it is unlawful “in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States.” If an individual violates this section, “the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.”
- The **civil rights era** witnessed several cases brought against persecutors under Section 1985(3). In the landmark decision in **Griffin v. Breckenridge in 1971**, a group of white men terrorized and attacked the occupants of a car they believed to include a civil rights worker belonging to a group known as Civil Rights for Negroes. Holding that 1985(3) covered purely private conspiracies (in addition to conspiracies involving public officials), the Supreme Court affirmed the validity of Mr. Griffin’s claim under section 1985(3), alleging a conspiracy to deprive the vehicle’s occupants of equal protection of the law and the privileges and immunities of citizenship, as well as the right to be free of the “badges and incidents of slavery”, the right to life and liberty, and the right to travel public highways.

U.S. extremist Scott Lively has worked closely with church and government leaders around the world to persecute LGBT people and strip away their fundamental human rights.

Scott Lively in Russia, 2006-2007:

"[H]omosexuality is destructive to individuals and to society and it should never [be] publicly promoted. The easiest way to discourage 'gay pride' parades and other homosexual advocacy is to make such activity illegal..."

2006: Russia begins criminalizing gay rights advocacy, gay pride celebrations are banned and met with violence and police repression.



Scott Lively in Uganda, 2009:

"...our campaign was like a nuclear bomb against the 'gay' agenda in Uganda" "I'm proud of that, and I hope the nuclear bomb spreads across the whole world..."

Later that year, Uganda's infamous "kill the gays" bill was introduced to Parliament, which initially proposed punishing homosexuality with death, and advocacy with prison sentences.



2012: CCR and Sexual Minorities of Uganda file a federal lawsuit against Scott Lively for persecution.

THEY'RE TRYING TO TAKE AWAY MY RIGHT TO TAKE AWAY PEOPLE'S RIGHTS!!!



by Jesse Harold

# LGBTQI Rights are Human Rights

## International Treaties, Bodies, and Declarations

- **The United Nations Human Rights Committee**, established to monitor countries' compliance with the International Covenant on Civil and Political Rights, held that laws discriminating on the basis of sexual orientation and criminalizing same-sex conduct violates the Covenant.
- **The U.N. Committee on Economic, Social and Cultural Rights** held that discrimination on the basis of sexual orientation and gender identity is prohibited under the International Covenant on Economic, Social and Cultural Rights.
- **The U.N. Committee on the Rights of the Child**, established to oversee compliance with the Convention on the Rights of the Child, identified discrimination based on sexual orientation as a concern with respect to access to healthcare related to prevention and treatment of HIV/AIDS, and held that countries have the obligation to ensure that all children enjoy all the rights set forth in the Convention without discrimination based on sexual orientation.
- **The U.N. Committee Against Torture**, established to oversee compliance with the Convention Against Torture, has held that countries must ensure that their laws prohibiting torture are in practice applied to all persons, regardless of their sexual orientation.
- The **U.N. Committee on the Elimination of Discrimination Against Women**, established to monitor compliance with the Convention on the Elimination of All Forms of Discrimination Against Women, has included sexual orientation within its understanding of discrimination.
- In 2008, the **U.N. General Assembly** adopted the "Declaration on Human Rights, Sexual Orientation, and Gender Identity," affirming that the principle of nondiscrimination requires that human rights apply equally to every human being, regardless of sexual orientation or gender identity.
- In 2011, the **U.N. Human Rights Council** passed a resolution entitled "Human Rights, Sexual Orientation and Gender Identity," which condemns violence and discrimination on the basis of sexual orientation and gender identity.
- The **U.N. High Commission for Refugees** has advised since 1991 that "persons facing attack, inhuman treatment, or serious discrimination because of their homosexuality, and whose governments are unable or unwilling to protect them, should be recognized as refugees."

**U.N. Human Rights experts** have similarly condemned discrimination and other human rights violations on the basis of sexual orientation and gender identity in the context of violence against women, torture, extrajudicial executions, minorities, migrants, terrorism, freedom of religion or belief, housing, education, the independence of lawyers and judges, racism, human rights defenders, and health.

## Regional Treaties, Bodies, and Declarations

### THE AMERICAS

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Each year since 2008, the General Assembly of the Organization of American States has passed resolutions condemning discrimination against persons on the basis of their sexual orientation and gender identity and urging member countries to prevent, sanction and eradicate such discrimination. The Inter-American Court of Human Rights held that discrimination on the basis of sexual orientation and gender identity constitutes a violation of the American Convention on Human Rights, and the Inter-American Commission on Human Rights has undertaken country visits to investigate issues relating to discrimination and violence against LGBTI people.

### AFRICA

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The African Commission on Human and Peoples' Rights has held that the prohibition of discrimination under the African Charter on Human and People's Rights includes discrimination based on sexual orientation. The Commission has also questioned individual African countries on the status of LGBTI persons under their national laws. During a country review of Cameroon in 2006, one member of the Commission stated that the criminalization of consensual same sex practice under Cameroon's penal code was not compatible with the African Charter.

### EUROPE

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The European Court of Human has repeatedly found laws discriminating against persons on the basis of sexual orientation to be a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Treaty of Amsterdam, which amended the founding treaties of the European Union, effected a specific amendment to make the prohibition of discrimination on the basis of sexual orientation explicit. In 2000, the Council of the European Union adopted a binding council directive establishing a general framework for equal treatment in employment which explicitly prohibits direct and indirect discrimination the basis of sexual orientation. The Charter of Fundamental Rights of the European Union also prohibits "any discrimination on any ground such as [...] sexual orientation." In 1995, the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (to which the United States and Canada belong) passed a declaration calling on Member States to provide equal protection against discrimination for all and specifically included sexual orientation.

### CONSENSUS AMONG COUNTRIES WORLDWIDE

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Recognizing the discriminatory nature of laws criminalizing same-sex conduct, nearly two-thirds, or 113, of the world's countries have moved to repeal such laws. 52 countries prohibit discrimination based on sexual orientation in employment, 19 countries prohibit discrimination in employment based on gender identity, and 6 countries have explicit constitutional prohibitions against discrimination based on sexual orientation. Incitement to hatred based on sexual orientation is prohibited in 24 countries. National courts in Canada, Hong Kong, South Africa, and elsewhere, have struck down laws prohibiting same-sex intercourse.