

UNDER SIEGE: INDEPENDENT EXPERTS CONFIRM THE PRESENCE AND IMPACT OF PERSECUTION AGAINST LGBTI UGANDANS

EXECUTIVE SUMMARY OF THREE EXPERT REPORTS SUBMITTED IN THE U.S. LAWSUIT *SMUG v. LIVELY*

MAY 2016

In March 2012, Sexual Minorities Uganda (SMUG) filed a lawsuit against Scott Lively, a U.S.-based anti-gay extremist, for his role in the persecution of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community in Uganda. SMUG, represented by the Center for Constitutional Rights, is suing Scott Lively for his involvement in a conspiracy with Ugandan anti-gay leaders to systematically deprive the LGBTI community of their fundamental rights in violation of international law.

While the case was brought in the United States, in the state of Massachusetts where Lively resides, it is part of a broader effort to hold accountable those involved in the persecution of Uganda's LGBTI community. SMUG leaders, with the support of its member organizations and local allies, previously sued Ugandan authorities and a tabloid in local courts for violations against the LGBTI community and helped overturn the infamous Anti-Homosexuality Act in 2014. But to address the role that Lively played in expanding the criminalization of LGBTI Ugandans and seeking to erase them from political life, SMUG had to seek justice far beyond Uganda's borders.

As part of its case against Lively, SMUG produced three reports by independent experts in support of its claims. Independent experts are often used in U.S. litigation to provide a specialized level of knowledge or expertise on subjects relevant to the case.

Taken together, these independent findings confirm what the LGBTI community in Uganda has long known: the persecution of this community is happening, the harm is already being felt, and the persecution that is occurring constitutes a crime against humanity, one of the world's most universally condemned crimes.

1. Indicators Reveal Presence of Crimes Against Humanity, with Intense Stigmatization and Denial of Fundamental Rights for LGBTI Ugandans, and a Serious Risk of Escalation.

Dr. Jennifer Leaning, a public health expert and current Director of the Francois-Xavier Bagnoud Center for Health and Human Rights at Harvard University, analyzed the situation of the LGBTI community in Uganda using the United Nations' Framework Analysis for Atrocity Crimes. The

Framework Analysis is used by the United Nations Office of the Special Adviser on the Prevention of Genocide to identify and predict the occurrence of atrocity crimes – which include genocide, crimes against humanity (including persecution), and war crimes – with the aim of prevention.

Dr. Leaning found that the LGBTI population in Uganda suffers from intense stigmatization and the widespread and systematic denial of fundamental rights. **The indicators revealed ongoing atrocity crimes against the LGBTI community that, when combined with potential triggering events, could unleash even more widespread and severe violations and violence.**

To assess the vulnerability of a given community to atrocity crimes, the UN Framework Analysis considers motives or incentives to commit atrocities against certain groups, records of serious human rights violations, the inability of state structures to protect against such violations, and the capacity of such structures to commit atrocities, among other factors. Dr. Leaning found that the history of governmental policies excluding individuals from economic, social, and political life based on their group identity makes Uganda particularly vulnerable to atrocity crimes, in particular crimes against humanity.

“[T]hose who identify as LGBTI have become so stigmatized as unholy and immoral that they constitute a virtual fault line of their own. Religious and political leaders... have whipped up such hatred... that LGBTI Ugandans are facing severe discrimination, harassment and violence... Some have even fled Uganda in fear of their lives.”

-Dr. Jennifer Leaning, Harvard University

In studying the situation for LGBTI Ugandans in particular, Dr. Leaning found that political leaders in Uganda have mobilized the general population against the LGBTI community to divert attention from socioeconomic crises, such as acute poverty, mass unemployment, soaring inflation and rising inequality. Dr. Leaning further found that Ugandan religious leaders’ targeting of the LGBTI population “as threatening religious doctrine and belief, violating traditional African norms of family and child rearing, and destroying the health and decorum of a sound society... has created an inflamed atmosphere in which the expanding discrimination and restrictions or removal of legal rights is taking place.” As a result, “[p]ublic actors—including government officials and police officers—and ordinary people alike deliberately discriminate, harass and intentionally commit violence against this population by violent speech, acts and oppression.”

Dr. Leaning’s study identified trends of: physical and sexual violence against LGBTI individuals by government authorities and private individuals; denial of healthcare access, including sexual health services and HIV testing and treatment for LGBTI individuals; and increasing discrimination and violence against LGBTI individuals in employment, housing, and education. Triggering factors, such as the scapegoating of LGBTI Ugandans during politically sensitive times, may increase the risk of further escalation of atrocities.

Dr. Leaning observes that in Uganda, “[T]hose who identify as LGBTI have become so stigmatized as unholy and immoral that they constitute a virtual fault line of their own. Religious and political leaders...have whipped up such hatred of people in the LGBTI community that LGBTI Ugandans are facing severe discrimination, harassment and violence.... Some have even fled Uganda in fear of their lives.”

Disturbingly, Dr. Leaning notes that while the UN Framework Analysis restricts the assessment of risk of genocide to those groups identified in the UN Genocide Convention (national, ethnic, racial,

or religious groups), **an alarming number of indicators for genocide are also present for the LGBTI community in Uganda.**

2. Climate of Persecution and Stigma Has Negative Impact on Physical and Mental Health and Well-Being of LGBT Ugandans

Dr. Ilan H. Meyer, a distinguished scholar at the Williams Institute at the University of California, Los Angeles, School of Law, is an expert on “minority stress,” which describes the impact of discrimination and prejudice on the health of LGBT populations. Dr. Meyer’s expert report explains how stigma and persecution create a harmful state of fear and stress for LGBT people, legitimize their unequal treatment, and erect multiple barriers to health services and systems of support.

While stressful life events generally cause harm to all, Dr. Meyer’s research explains how “minority stress” specifically results from “social disadvantage related to structural stigma, prejudice, and discrimination” against a minority group. He identifies four specific minority stressors for LGBT people: (1) chronic and acute prejudice events and conditions, such as evictions, job loss, or physical attacks on the basis of one’s sexual or gender identity, (2) expectation of discrimination and violence and the vigilance required to protect against such events, (3) the perceived need for concealing or hiding of one’s sexual or gender identity, and (4) internalization of social stigma (internalized homophobia).

“Public raids, arrests of advocates, and closures of LGBT-friendly service organizations thus hinder access to support and increase the stress experienced by the community by instilling fear and uncertainty and contributing to a sense that there is nowhere to turn for support.”

-Dr. Ilan H. Meyer, UCLA School of Law

As a result of these stressors, Dr. Meyer explains, sexual minorities are exposed to a “unique risk for diseases that are caused by stress,” including “psychological distress, mental health problems, and lowered psychological and social well-being.”

These negative health outcomes are compounded by structural or institutional stigma – in the form of discriminatory laws, policies, and practices by government and private institutions – that restrict opportunities for sexual minorities to access health care and other psychosocial support and prevent them from meeting together to help each other cope with stigma-induced stress.

Significantly, Dr. Meyer notes that while laws can serve to “eradicate and dismantle stigma,” they can also serve as “perhaps the strongest of social structures that uphold and enforce stigma.” In analyzing the situation in Uganda, Dr. Meyer observes that with a backdrop characterized by homophobia and where same-sex acts were already illegal, “the Anti-Homosexuality Bill and later the AHA sent a clear message of rejection that dehumanized LGBT people by making their very identity as LGBT a ‘spoiled identity.’” Requiring LGBT people to hide their identity, Dr. Meyer explains, “is a social stressor for many reasons, including the psychological damage from not being able to express oneself genuinely, the cognitive burden on the person having to lie and conceal his or her identity, and the tangible limitations on affiliation and support.”

According to Dr. Meyer, “It is a particularly injurious aspect of Uganda’s social and political environment that not only are LGBT individuals targeted, but also their association and ability to access support is disturbed (and was explicitly criminalized by the Anti-Homosexuality Bill).” Such policies and practices, he reports, “can have devastating effects on the community as a whole as resources that are aimed at providing support become themselves associated with danger of exposure and violence.”

3. The Crime Against Humanity of Persecution – Including Persecution on the Basis of Sexual Orientation and Gender Identity – Is a Crime under International Law.

Leading expert on international criminal law Professor M. Cherif Bassiouni explains that “crimes against humanity,” which include persecution, constitute a well-established category of international crimes. He further explains that “the identification of human beings based on their sexual orientation and gender identity for discriminatory purposes with consequences of criminal prosecution and incarceration or other deprivations of fundamental rights, falls within the meaning of ‘persecution’ of that group...” According to Professor Bassiouni, “singling out [LGBTI people] and withdrawing legal rights and protections from them, subjecting them to criminal prosecution and imprisonment based on their status or identity constitutes physical and psychological harm brought upon them” and is prohibited by international law.

The reports can be read in full at ccrjustice.org/smug-experts
