

RESPONDING TO BLACKMAIL AND EXTORTION AS HUMAN RIGHTS VIOLATIONS

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The preceding chapters vividly illustrate how severely blackmail and extortion affect the lives of LGBT people in sub-Saharan Africa. As a result of criminal laws and social stigma, these populations are routinely victimized by those who take advantage of this precarious position for their own material gain. The impact on victims, who suffer financial ruin and physical, emotional, and psychological trauma at the hands of their blackmailers, is devastating.

Although blackmail and extortion are two of the most common ways in which LGBT people are victimized in sub-Saharan Africa, they have proven difficult to deal with and have gone largely unaddressed within a human rights framework. The research presented in this volume has consistently shown how the illegality and stigma surrounding same-sex activity have empowered perpetrators and made interventions to deter or address blackmail and extortion difficult or impossible.

The authors in this volume identify a number of practical approaches for addressing the victimization that LGBT people regularly experience. In this chapter, I look at steps that might be taken to address blackmail and extortion directly, both to curb the factors that encourage perpetrators and to deliver justice to victims who find themselves at risk. I also consider what might be done, domestically and internationally, to encourage states to address blackmail and extortion as human rights violations.

PRACTICAL STRATEGIES TO COMBAT BLACKMAIL AND EXTORTION

For victims of blackmail and extortion, these crimes often seem impossible to deal with – indeed, targets are often victimized precisely because they have a great deal to lose and feel they are unable to draw on networks of support. As Matyszak so powerfully illustrates, it requires a great deal of time, effort, and skill to carefully extricate a victim from a blackmail situation. The stories in this volume suggest that the only effective way to deal with blackmail and extortion is to target the root causes of illegality and stigma that allow perpetrators to commit them. While there are some steps that individuals can take, these fundamentally require changes in policy and attitudes by state and non-state actors alike.

One of the threads that runs prominently throughout this volume is the fact that sodomy laws encourage criminality by implicitly placing LGBT

people outside the scope of the law's protection. They serve as license to perpetrators to commit not only blackmail, but theft, assault, rape, and even murder with impunity. They discourage victims from coming forward, and foster corruption in the justice system. So long as these provisions remain in place, unscrupulous individuals are likely to take the law into their own hands, making life intolerable for LGBT people and weakening the rule of law.

While it is important to educate LGBT individuals about laws regarding blackmail and extortion and to ensure that these are appropriately enforced, laws alone are not enough. Homosexuality receives a disproportionate amount of negative attention and disapprobation in the media and broader society. As Chibwezo suggests, many victims of blackmail and extortion may overestimate the likely punishment for criminal charges related to homosexuality and underestimate the severity of that likely to be levied for blackmail and extortion. Unfortunately, these fears are often well-founded, with police and other officials themselves being either unaware of blackmail and extortion laws or purposely ignoring them and allowing blackmailers to operate with impunity to unfairly target LGBT people who come forward as victims. As Cobbinah, Chibwezo, and Matyszak point out, police in Ghana, Malawi, and Zimbabwe have all pursued simultaneous prosecutions under sodomy laws when LGBT people approach the legal system for protection. This not only denies justice to those facing threats of libel, slander, theft, rape, and murder, but deters them from reporting these crimes.

The narratives in this volume suggest that transparency and accountability in the police and the judiciary are an important step. Police need to be trained to understand laws on blackmail and extortion, sensitized to the magnitude of the problem for LGBT people, and taught to protect the interests of victims. There should also be accessible and transparent mechanisms in place to report abuses of power and to obtain redress.

A further, albeit partial, measure that might be undertaken immediately is for blackmail and extortion laws to be strengthened through limiting the opportunities for blackmailers. A number of jurisdictions specify that the veracity of the blackmailer's allegations is immaterial to the prosecution of the blackmailer. Ideally, all jurisdictions should specify that a person reporting a case of blackmail cannot be investigated consensual and non-violent crimes – such as same-sex activity, recreational drug use, or sex work – based solely on their blackmailer's allegations of these crimes. Unfortunately, any solutions that do not involve full decriminalization are

likely to fall short, as laws against same-sex activity will give corrupt officers a tool to pressure, intimidate and even blackmail victims who seek legal redress for blackmail and extortion.

Of course, as both Phillips and Azuah emphasize, so long as homophobic stigma exists, decriminalization will not eradicate instances of blackmail and extortion. Blackmail still occurs in countries that have decriminalized or never specifically criminalized homosexuality, but where the consequences of disclosure may still be painfully real.

Among the challenges that this volume illuminates is the lack of information about blackmail and extortion that keep these issues from being addressed in LGBT communities. Many of the interviewees testify to the fact that they did not know whether the blackmail and extortion they were experiencing was illegal, or whether they would be charged if the perpetrator turned them into the police for homosexuality. Even those who realized that they were being blackmailed or extorted – especially those without the means to seek legal or professional assistance – were frequently at a loss about how they should respond to the threats, and what the potential risks and benefits might be.

NGOs, specifically human rights groups and community-based LGBT organisations, have a role to play in combating blackmail and extortion. Chibwezo found that 65% of respondents in Malawi felt that it was important to sensitize the LGBT community if blackmail and extortion were to be dealt with effectively. A critical strategy for civil society, then, might be to raise awareness of what the country's laws on blackmail, extortion, and homosexuality actually say, to devise and disseminate tips and strategies to minimize the risk of blackmail and extortion, and to make it clear where victims can find guidance from sympathetic groups, lawyers, and officials who might assist them if they find themselves being threatened. Both blackmail and extortion fundamentally depend on the shame and secrecy of victimization. NGO staff and community leaders can be a powerful force in raising awareness and encouraging victims to bring their cases forward.

Human rights groups can also make inroads against blackmail and extortion by continuing and institutionalizing the kinds of research and documentation that went into the production of this volume. While each instance of blackmail and extortion differs and should be handled on an individual basis, there is a need to build reporting and response networks that can consistently deal with cases of blackmail and extortion as they

occur. What this might look like will vary from jurisdiction to jurisdiction and country to country, depending on domestic laws, relationships with government and the police, and the visibility and capacity of the local and national LGBT organisations to document, analyze, and assist with cases as they arise.

Many groups are already doing this important work. Matyszak describes how GALZ has offered advice to its members to reduce their vulnerability to blackmail attempts, which has proven remarkably effective in reducing the incidence of blackmail. By warning LGBT people, for example, not to take strangers to their homes, not to share personal details that might be later used against them, and not to offer any preliminary payments to blackmailers, GALZ has made their members safer, stronger, and less vulnerable. Other innovative and effective models are emerging as groups across Africa are tackling problems of blackmail and extortion head-on. In Ghana, the LGBT community has launched a website called *Fakers2Go*, which posts the photos and tactics used by well-known blackmailers – particularly those who entrap their victims on popular dating websites – and equips the community to recognize and avoid serial perpetrators.¹ While this model may not be the solution for every LGBT community and may itself not be invulnerable to abuse, the development of community-based responses is a promising avenue for deterring and responding to victimization.

LGBT organisations are tasked with addressing a wide variety of community needs including advocacy, service provision, and community mobilization. Thinly-stretched groups may have limited capacity to grapple with a problem that requires so much careful attention. Nonetheless, the extent of blackmail and extortion and the toll it takes on victimized individuals, their families, and their communities merits urgent attention. It is therefore important for funders and other civil society and human rights groups to find ways to meaningfully support these projects as they are launched – for example, to provide groups with legal counsel who can assist those who are being threatened, to supply the tools that are necessary to document incidents, or to incorporate these issues into other efforts to sensitize law enforcement and improve the rule of law.

1 See Haiku, Haute, “Africa: Preventing Blackmail and Extortion Against Gays,” *Global Voices*, 7 September 2009, <http://globalvoicesonline.org/2009/09/07/africa-blackmail-and-extortion-against-gays-in-africa/>, accessed 20 August 2010; and *Fakers2Go*, “Gay Dating Scams in Ghana,” at <http://fakers2go.wordpress.com/>, accessed 25 August 2010.

CREATING A CLIMATE FOR ACCOUNTABILITY AND JUSTICE: STRATEGIES FOR HUMAN RIGHTS ADVOCACY

While it is crucial that governments and civil society take concrete steps to address blackmail and extortion, it is also important for human rights defenders at the regional and international levels to create a climate where these interventions are encouraged and supported. In Africa and elsewhere, human rights defenders have a role to play in highlighting how blackmail and extortion rob victims of dignity and freedom and undermine accountability and justice wherever they occur. Below, I lay out three potential legal and diplomatic strategies that human rights defenders might pursue in addressing blackmail and extortion.

The unacceptability of blackmail and extortion has been affirmed repeatedly in the international legal and policy sphere.² Addressing blackmail and extortion within a human rights framework can be practically difficult, however, and few organisations have attempted to do so. Both blackmail and extortion thrive on secrecy – particularly where allegations of same-sex activity are concerned – and the facts in these cases are often complex and messy. As Phillips so insightfully points out, reporting is made especially difficult insofar as those threatened because of sexual transgressions often lose the “innocence” that wins sympathy from human rights defenders – including, at times, LGBT defenders. The applicability of human rights law has been further limited by the prevalence of blackmail in the so-called private sphere, where neighbors, families, or other non-state actors are the perpetrators of abuse. Research showing that a government is complicit in blackmail and extortion – either through its direct involvement or its failure to bring justice to those who

2 Multiple treaty bodies have condemned or expressed concern about the use of extortion, including the Committee on the Rights of the Child (CRC/C/15/Add.257, 13 April 2005; CRC/C/PAK/CO/3-4, 15 October 2009), the Committee Against Torture (CAT/C/ZAF/CO/1, 7 December 2006), the Committee on the Elimination of Racism (CERD/C/ZAF/CO/3, 19 October 2006), the Committee on Economic, Social, and Cultural Rights (E/C.12/HUN/CO/3, 16 January 2008), the Committee on Migrant Workers (CMW/C/MEX/CO/1, 20 December 2006), and the Human Rights Committee (CCPR/CO/79/GNQ, 13 August 2004). The topic has also been referenced by a number of Special Procedures. Incidents targeting people on the basis of sexual orientation and gender identity are referenced in the reports of the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (E/CN.4/2004/56/Add.1, 23 March 2004 and E/CN.4/2005/62/Add.1, 30 March 2005). The importance of offering redress without criminalizing the victims of extortion is emphasized in the Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea (A/HRC/4/15, 7 February 2007).

are victimized – is crucial in demonstrating the culpability of the state and applicability of the human rights framework.

Nonetheless, the stories in this volume vividly illustrate a variety of ways that blackmailers and extortionists do specifically prevent LGBT people from enjoying their rights. Extortion is straightforwardly criminal, and takes advantage of the marginal position of LGBT people to psychologically, physically, and sexually threaten them. While a blackmailer may not directly violate their victim in this way, they nonetheless prevent them from exercising their full range of rights. Both blackmailers and extortionists force victims to surrender their material possessions and unjustly deprive them of the food, property, shelter, and social security to which they may be entitled. They prevent victims from exercising their right to education and their right to work. Victims are also manipulated in such a way that they are effectively prevented from participating in public life and accessing the police, the judiciary, and other mechanisms designed to promote justice and the rule of law. Typically, blackmailers and extortionists force their victims to give up their autonomy as well as their resources – both of which limit their enjoyment of the most basic human rights.

Specific Violations of Dignity, Privacy, and Autonomy

It is evident from the stories in this volume that blackmailers and extortionists not only put their victims in an untenable position, but also directly limit the dignity, privacy, and autonomy to which they are entitled under human rights law. The preambles of both the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR) root their guarantees in “the inherent dignity of the human person,” noting that the ideals of the human rights project can only be realized when conditions are such that the dignity, freedom, and rights of the individual are respected.³ Similarly, the African Charter on Human and Peoples’ Rights (African Charter) reiterates that, as per the Charter of the Organisation of African Unity, “freedom, equality, justice and dignity are essential objectives for the achievement of the

3 For references to the ICCPR and ICESCR, see: Office of the United Nations High Commissioner for Human Rights, International Covenant on Civil and Political Rights, 16 December 1966, at <http://www2.ohchr.org/english/law/pdf/ccpr.pdf>, accessed 16 September 2010; Office of the United Nations High Commissioner for Human Rights, International Covenant on Economic, Social, and Cultural Rights, 16 December 1966, at <http://www2.ohchr.org/english/law/pdf/cescr.pdf>, accessed 16 September 2010.

legitimate aspirations of the African peoples.”⁴ As this volume suggests, the dignity of LGBT people is routinely undermined when they are subject to blackmail and extortion, as victims are humiliated, exposed, and manipulated by perpetrators. States further compound this and neglect basic human rights provisions when they fail to hold accountable perpetrators who target LGBT people.

The ICCPR contains a number of Articles protecting the autonomy of the individual from coercion by others. Article 17(1-2) offers the strongest condemnation of blackmail in the ICCPR, stating: “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

These instruments do not only condemn forms of blackmail and extortion that interfere with the victim’s life by forcing them to buy their privacy for a price. They also condemn those threats that limit the victim’s autonomy by holding them hostage to the whims and demands of their blackmailer or extortionist. Indeed, Article 5 of the African Charter broadly prohibits “all forms of exploitation and degradation... particularly slavery, slave trade, torture, [and] cruel, inhuman or degrading punishment and treatment.” Perpetrators who use the vulnerability of LGBT people to force them into compliance flagrantly ignore the prohibition of servitude and forced or compulsory labour in Article 8 of the ICCPR. The forced surrender of goods and possessions, whether in blackmail or extortion, further violates Article 14 of the African Charter, which states that, “the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” Depending on the venue and extant case law, defining blackmail and extortion in terms of the unjust demands it makes of the individual – for their autonomy, labour, or property – may offer novel routes for victims to pursue redress.

The unique intimacy and invasiveness of these crimes make it impossible for LGBT people to exercise their most basic rights and freedoms. In both blackmail and extortion, perpetrators directly interfere with the dignity, privacy, and autonomy of their victims. In many of the

4 For references to the African Charter, see: African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights, June 1981, at http://www.achpr.org/english/_info/charter_en.html, accessed 16 September 2010.

cases in this volume, the police and other agents of the state were directly responsible for these violations. In others, the state's responsibility is more systemic and less visible, as it effectively allows blackmailers and extortionists to operate with impunity and then denies their victims equality under the law.

Violation of Impunity

The theme of impunity for blackmailers and extortionists is one that emerges in every chapter – impunity that is aided by the negligence and sometimes the direct complicity of agents of the state. In fact, the level of impunity enjoyed by perpetrators of blackmail and extortion targeted against LGBT people is staggering. The state is culpable for its failure to respond to a pattern of human rights abuses and instruments of international and regional law make it patently clear that the state has an obligation to investigate human rights violations and hold perpetrators accountable. The ICCPR states in Article 2(3) that states must “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.” Similarly, Article 7 of the African Charter guarantees that, “Every individual shall have the right to have his cause heard. This comprises: the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; the right to be presumed innocent until proved guilty by a competent court or tribunal; the right to defence, including the right to be defended by counsel of his choice; [and] the right to be tried within a reasonable time by an impartial court or tribunal.” All four of these guarantees are systematically denied to LGBT victims of blackmail and extortion. Like other marginalized groups, the recourse they have to the judicial system is heavily circumscribed by prejudice, stigma, and discrimination. In the rare event that these victims feel comfortable bringing their case forward to police or the justice system, they are regularly presumed to be guilty of whatever their blackmailer alleges they have done, and often find themselves at the mercy of an unsympathetic justice system.

As documentation of the problem becomes readily available, through this report and other means, states have even less of an excuse to avoid their obligation to ensure that blackmailers and extortionists are brought to justice in a manner that does not further violate the rights of their victims.

Violation of Equality

What is particularly worrying about the impunity in these cases is that it is so closely tied to the fact that the victim is actually or allegedly LGBT rather than some aversion to the prosecution of these crimes in general. States have aggressively prosecuted alleged blackmailers and extortionists in a number of jurisdictions, especially those who are accused of targeting the ruling party and agents of the state. When blackmailers and extortionists target LGBT people and other marginalized groups, however, they are rarely if ever prosecuted to the full extent of the law.

States have an obligation to ensure that all people are equal before the law and have access to the justice system. Article 2(2) of the ICESCR obliges states to guarantee that rights will be “exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,” which the Committee on Economic, Social, and Cultural Rights has interpreted to include sexual orientation.⁵ Article 2 of the African Charter, too, states that: “Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status.”

The principle of non-discrimination also extends to access to courts and equality before the law, rights seldom enjoyed by LGBT victims. Article 26 of the ICCPR states that “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” This guarantee is extended regionally in Article 3 of the African Charter, which unequivocally provides that: “Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law.” That protection is rarely forthcoming, however, for LGBT people who are presumptively and regularly denied justice when they are victimized.

5 The Committee has reiterated this interpretation multiple times. See General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4, August 11, 2000: “Special Topics of Broad Application”; General Comment No. 15: The Right to Water (arts. 11 and 12), E/C.12/2002/11, January 20, 2002; General Comment No. 18: The Right to Work (Art. 6), E/C.12/GC/18, February 6, 2006.

As the surveys from Ghana, Cameroon, Nigeria, and Malawi suggest, blackmail and extortion also violate the promise of equality and non-discrimination, as LGBT people find themselves unfairly barred from the justice system on the basis of their sexual orientation, gender identity or expression, or sexuality. Often, accusations of criminalized same-sex behaviors – whether actual or merely alleged – are used to deny victims recourse to the most basic protections of the rule of law. Whether or not the state is directly responsible for the blackmail and extortion of LGBT people, it consistently allows their persecutors to commit crimes with impunity, and frequently bars them from the justice system on the basis of their real or presumed sexuality and presumptive criminality under the law.

CONCLUSION

Although blackmail and extortion are among the most common problems facing LGBT Africans, they are notoriously difficult to deal with. Recognizing the scope of the problem renders this challenge more daunting and urgent. Shockingly, LGBT people are often victimized by the people closest to them – coworkers, friends, or even lovers – who use the threat of disclosure to manipulate their victims. The intimacy, secrecy, and shame that so often accompany the crime make it difficult to hold perpetrators accountable in any kind of systematic way.

The difficulty of coping with blackmail and extortion makes it that much more important to address the root causes which allow it to occur. The research in this volume overwhelmingly identifies illegality and stigma surrounding same-sex sexuality as the two factors that consistently enable blackmailers and extortionists to target LGBT people. Together, illegality and stigma foreclose the options available to victims by stripping them of their rights and disabling the support networks to which they might normally turn for assistance. So long as victims find that they lack recourse both in law and society, they will be profoundly vulnerable to those who would take advantage of their position for their own gain.

The scope of blackmail and extortion is staggering, both in the lives of individuals who have to cope with the terror of entrapment and the fear or exposure, and for a wider society that has to deal with the broken relationships, the family disruption, the official corruption, and the rampant criminality that those crimes foster. The corrosive effect of the crimes on the social fabric should compel states to take swift action to address the root causes of blackmail and extortion. States can combat

illegality by decriminalizing same-sex activity, strengthening laws that protect victims from the crimes, and training police and officials in the judiciary to deal swiftly and impartially with cases that are presented to them. States as well as NGOs can make conscious efforts to curb stigma by raising awareness around blackmail and extortion and creating reporting and response mechanisms to cope with incidents as they occur. Taken together, these measures not only neutralize the threats that blackmailers might make, but make it clear that they run a considerable risk of prosecution if they proceed in doing so.

While human rights mechanisms offer little in the way of concrete solutions to assist victims of blackmail and extortion, they can usefully illuminate where states are failing in their obligations to LGBT people. In the end, blackmail and extortion of LGBT people merit swift and substantive intervention from the state. As this volume itself suggests, however, it is tremendously important to highlight patterns of persecution that are going unchecked, and to use that knowledge to identify remedies and pressure key actors to implement them. The human rights framework can be helpful in showing how rights to dignity, privacy, and autonomy are routinely violated, how perpetrators are allowed to target their victims with impunity, and how discrimination and inequality deny victims of blackmail and extortion access to legal redress. By refusing to ignore these patterns, civil society and human rights defenders will be indispensable in inducing states to act, providing assistance when necessary, and monitoring their progress – and continuing to do so until LGBT people are empowered and equipped to bring perpetrators to justice.