Congressional Briefing

Mark Bromley

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State Department Report

Based on a 1974 amendment to the Foreign Assistance Act, the U.S. Congress requires the State Department to report annually on human rights conditions in all countries (except the United States). The very first **1975 Human Rights Report**, covering events throughout the year of 1975, was delivered to Congress in February 1976.

In 1993, the instructions on reporting were modified to require all U.S. embassies to include information on patterns of abuse directed at specific minority groups including those based on ethnicity, religion, trade union activity, sexual orientation or other factors. Embassies were also instructed to report on incitement to violence directed against these groups, whether instigated by the government or by other elements of society.

The 2007 report on human rights ***reveals a continued crisis in human rights violations based on sexual orientation and gender identity***.

In the **Human Rights Report** released on March 11, 2008, the State Department once again lists human rights concerns relating to sexual orientation and gender identity in approximately **118 countries**. (A summary version of all references is available upon request.)

- The reported violations this year range from extreme police violence, arrests of individuals based only on their sexual orientation or gender identity, state-sponsored harassment, extortion, and abuse in detention, and the denial of health care, housing, education and other social services. Reports of violence directed at transvestite and transgender activists in Latin America are increasing. And the reports point once again to the failure of the police to protect gay pride marchers in several Eastern European countries.

- Not only are such abuses documented in countries with strained relations with the U.S. (Iran, Cuba), but also in countries considered close friends and allies (Jamaica, Poland), and in places where the Bush Administration has put forward a clear strategic interest in fostering genuine democracy (Egypt, Iraq, Russia).

- Most of these violations involve clear evidence of harassment by non-state actors which is treated with impunity or actively encouraged by the state.

- In many cases there is also evidence of government refusal to provide legal remedies in the country's court system. This creates an unacceptably hostile public climate that makes it nearly impossible for lesbian, gay, bisexual, or transgender people to assert their legitimate human rights.

Promoting Democracy and Human Rights – 2008 Report

As a supplement to its annual Country Reports on Human Rights Practices, the State Department's Bureau of Democracy, Human Rights and Labor is also required by Congress to report annually on the actions taken by the U.S. government to promote human rights and democracy in countries with troubling human rights records. The State Department's most recent report on its human rights promotion efforts, entitled "Advancing Freedom and Democracy," was released on May 27, 2008.

Unfortunately this parallel report demonstrates that the United States is failing to respond to many of the serious human rights concerns highlighted in the Country Reports on Human Rights Practices. The human rights country reports were released in March. The Advancing Freedom and Democracy report, detailing official responses to the abuses cited by State Department officials in the earlier March report, merely demonstrates the State Department's ideological failure to respond to various categories of serious human rights abuses, including well documented patterns of state-sponsored violence and discrimination directed at lesbian, gay, bisexual and transgender (LGBT) human rights defenders in countries around the world. While many of us are appropriately focused on fighting to secure full equality and human rights for LGBT Americans, it is important to take a moment to demand that our diplomatic representatives promote an agenda of respect and human rights for those fighting even more difficult battles for equality in hostile legal and political landscapes around the world.

As explained on the State Department's web site, the Advancing Freedom and Democracy Report "complements the annual Country Reports on Human Rights Practices." And as last year's report further clarified, this addendum "takes the next step, moving from highlighting abuses to publicizing the actions and programs the United States has employed to end those abuses."

While the Country Reports on Human Rights Practices reported this year on lesbian, gay, bisexual and transgender human rights abuses in more than 110 countries, the Advancing Freedom and Democracy Report generally ignores those violations, citing LGBT human rights concerns in only five countries: Armenia, Bosnia and Herzegovina, Cuba, Ecuador and Iran. And in none of those countries does it highlight any specific steps taken by the U.S. government to raise diplomatic concerns over LGBT human rights issues or to support LGBT human rights defenders.

This is a glaring omission, considering the broad range of LGBT human rights concerns cited in the Country Reports on Human Rights Practices this year. But this total lack of diplomatic response is merely a repeat of last year. Last year's human rights promotion report was entitled "Supporting Human Rights and Democracy: The U.S. Record", and it noted LGBT human rights concerns in 9 countries: Cameroon, Eritrea, Armenia, Kosovo, Iran, Ecuador, Jamaica, Guatemala, and Honduras. Predictably, last year's report also failed to identify any initiatives by the U.S. government to promote the human rights of lesbian, gay, bisexual or transgender communities in any country, not even in the nine countries where the report itself lists LGBT issues as significant human rights concerns.

MOVE FROM A "REPORTING AGENDA" TO A "PROTECTION AGENDA"

- The State Department has been reporting on the growing crisis in abuses against LGBT individuals and their communities worldwide since 1990. But the State Department's response often ends there. Today, eighteen years later, it is time for the State Department to move

beyond a reporting agenda to an affirmative "protection agenda" that recognizes that ***LGBT rights are human rights.***

- The United States must join European and Latin American countries (many of whom have now surpassed the U.S.) in their commitment to ending violence and discrimination against LGBT communities.
- The United States' reporting on, and action against, violations based on sexual orientation and gender identity must be based upon the clear standards in international human rights law that prohibit discrimination and abuse.
- A new protection agenda will require a careful examination of how U.S. embassies, funding missions and diplomatic interactions at the United Nations and elsewhere reflect the human rights concerns of LGBT people and communities.
- At minimum, the State Department should:
    - Highlight sexual orientation and gender identity as important components within a broad U.S. commitment to renewing and restoring its human rights credibility worldwide;
    - Appoint a liaison within the Bureau of Democracy, Human Rights and Labor to follow LGBT concerns raised in this year's report and coordinate next year's reporting on LGBT issues;
    - Host a roundtable of human rights-focused U.S. diplomats (including those abroad) and human rights NGOs to solicit feedback on how to move from a reporting agenda to a protection agenda in response to documented patterns of LGBT human rights violations;
    - Develop more specific instructions and training for all embassies to assist their reporting on LGBT human rights concerns in future reports, including more focused reporting on lesbian and transgender abuses, and distribute to all human rights reporting officers copies of the influential "Yogyakarta Principles" (see Appendix A), which provide guidance on the application of international human rights law in relation to sexual orientation and gender identity;
    - Develop appropriate mechanisms and opportunities to increase U.S. government funding through USAID, the State Department or other institutions, for rights-focused LGBT organizations internationally.
    - Foster greater diversity within the State Department by ending employment-related disparities in overseas posting benefits and other employment benefits that limit the career options of LGBT employees with spouses or domestic partners.

UK Guidance Note to all Embassies

Clarifies policy and law, answers common questions, provides guidance to all posts.

"In December 2007, the FCO agreed a programme for promoting the human rights of lesbian, gay, bisexual and transgender (LGBT) people. That includes providing this guidance note to Posts on how they can implement the Programme in their work with host governments."

"What practical steps can a Post take?"

Support efforts of civil society to change laws and social attitudes by –

- Providing messages of support when requested;
- Providing public information on the situation of laws and practices regarding LGBT people in the UK;
- Encouraging The British Council to include LGBT information in its public information centres;
- Hosting occasional debates and seminars on relevant issues and including LGBT aspects and speakers;
- Ensuring that the LGBT aspects are included in local activities promoting British cultural life;
- Using Post funds to support civil society work for LGBT rights

Use international mechanisms

Suggest that visiting UN special rapporteurs, EU Special Representatives and equivalent figures from the Council of Europe, the OSCE and other regional human rights bodies, meet local NGOs that support LGBT equality and non-discrimination. Encourage local groups to include information on the situation of LGBT people in their alternative reports to regional human rights mechanisms as well as the UN bodies. Include such information in material for use in the Universal Periodic Review mechanism of the UN Human Rights Council.

Briefing to visiting UK dignitaries

Include information on the situation of LGBT people in briefing materials for visiting dignitaries and encourage them to raise the issue with local counterparts.

Use political dialogue to raise LGBT rights

Raise more general issues of equality and non-discrimination in the domestic implementation of human rights standards during regular political dialogue, including under the EU's Partnership and Co-operation Agreements, and the Cotonou Agreement.

What are US Ambassadors and Embassies Doing to Respond to the Crisis?

At the end of May, the Council for Global Equality sent letters to thirteen U.S. ambassadors in countries where the State Department's Human Rights Report this year noted concerning trends in abuses directed at LGBT communities, or where past gay pride marches had ended in violence or police harassment in previous years. The countries included: **Albania, Cameroon, Croatia, Estonia, Gambia, India, Jamaica, Nigeria, Poland, Russia, Saudi Arabia, Serbia and Romania**.

The letters outlined the specific LGBT concerns raised in the Human Rights Report this year and pointedly asked what the Ambassador was doing, either personally or in coordination with those serving under the Ambassador's leadership, to protest such actions. The letters also asked whether any U.S. government assistance programs in the country were targeted to address human rights abuses in a manner deliberately inclusive of lesbian, gay and transgender individuals and associations.

To date, we have heard back from embassies in Croatia, India, Nepal, Nigeria, Jamaica and Poland. In all cases, the responses have noted the embassy's attention to LGBT human rights concerns and pointed to efforts the embassy was taking to specifically address those concerns. The Council will follow up later this month with those U.S. embassies that have not yet responded to seek future commitments for action.

Preparing New U.S. Ambassadors to Raise LGBT Human Rights Concerns

Ambassadorial confirmation hearings in the U.S. Senate offer unique venues for raising LGBT related issues with future U.S. ambassadors. Senator Dodd and Senator Feingold, two leading members of the Senate Foreign Relations Committee, agreed this spring to pose specific LGBT questions to nominees who had been appointed to serve in countries where the State Department's own human rights report pointed to a troubling landscape for local LGBT communities. These questions have triggered official commitments – to two influential U.S. Senators – that these newly confirmed U.S. ambassadors will raise LGBT human rights issues as matters of pressing U.S. concern. Through these exchanges, the Council for Global Equality has emphasized to U.S. Senate offices and to U.S. ambassadors that state-sanctioned LGBT abuses are altogether unjustified in any country governed by the rule of law. Nor are they in keeping with fundamental American values, which ambassadors are charged with upholding and promoting under Secretary Rice's call for "transformational diplomacy." We will of course follow up and encourage U.S. Senate offices to check in on these ambassadors while at post.

U.S. Ambassadors Pledging to Support LGBT Human Rights in their Confirmations

- **Ambassador Hugo Llorens**, ***U.S. Ambassador to Honduras***: "Respect of human rights is central to any thriving democracy. If confirmed, very early on in my tenure, I will seek a meeting with members of the LGBT community in Honduras to develop a strong working relationship and to discuss the findings. Consolidating democracy and strengthening adherence to the rule of law is crucial for human rights. There are no discriminatory laws based on sexual orientation, but in practice, there is widespread social discrimination against persons based on sexual orientation in Honduras. I intend to include the findings of human rights violations in the LGBT community as integral to our overall effort to improve the human rights situation in Honduras, and convey the importance of this issue to senior officials of the Government of Honduras."

- **Marcia Stephens Bloom Bernicat, *U.S. Ambassador to Senegal*:** "The arrest of two gay men as a result of the publishing of photos of their marriage in a local magazine and the ensuing street demonstrations against homosexuals underscore widespread concerns about the state of human

rights in Senegal. If confirmed, I would address these incidents as human rights issues in concert with local human rights NGOs such as Raddho (African Rally for Human Rights), the local chapter of Amnesty International, the National Human Rights Organization (ONDH), and the International Federation for Human Rights (FDIH).

I believe our role should consist of the continued use of embassy-sponsored programs and other educational tools to underline the *universality* of human rights, as defined in the UN Declaration of Human Rights and other key international covenants. In addition, there should be a U.S. role in decreasing this stigma through support for the activities of indigenous institutions and groups. All of the previously mentioned local NGOs played a role in the release of the two men who were arrested, and all of these groups have the potential to have an impact on Senegal's tolerance for lesbian, gay, bisexual and transgender individuals. "

Senegal's traditionally tolerant society is changing as its traditional mores confront western ones and is at a cross-roads in accepting homosexuality in its society. Islamic traditionalists see homosexuality as contrary to the precepts of their religion. However, Senegal is a moderate country with a constitution that guarantees individual freedom. There are extremists who would like to see homosexuality treated as a criminal offense subject to severe sentencing and are trying to encourage Islamic leaders to lead the charge. Senegal's influential Sufi brotherhoods have so far elected not to press for criminalization of homosexuality. The manner in which the U.S. approaches the subject, and in which we engage and cooperate with local religious institutions, will require sustained effort as well as sensitivity to evolving local culture."

- **Donald Gene Teitelbaum, *U.S. Ambassador to Ghana*: "**If confirmed as U.S. Ambassador, I would meet with Ghanaian government officials as well as some of the leaders of the LGBT human rights community in Ghana to discuss the findings in reports by the U.S. government and by numerous U.S. and international human rights organizations. I believe it is important for U.S. Embassies to seek and maintain a broad range of contacts. I also believe that the words and actions of U.S. Embassies must reflect the core values of America, particularly the rights to life, liberty, and the pursuit of happiness."

When these career Ambassadors return, and are eventually re-nominated for new postings in other countries, their record on LGBT issues can be reviewed again in the Senate. And already we see that the State Department is beginning to prepare ambassador nominees for LGBT questions as part of their regular confirmation preparations. So whether U.S. Senators actually pose our suggested questions or not, the mere fact that we are beginning to encourage ambassador designates to do some "LGBT homework" is an early indicator of progress.