

# Love Crimes: Criminalization of Same-Sex Sexualities in Three African Countries<sup>1</sup>

Tara McKay<sup>2</sup> and Nicole Angotti<sup>3</sup>

## Abstract (150)

Political leaders in several African countries have recently spoken out against homosexuality and considered legislation to expand the criminalization of same-sex sex. Much of the research on efforts to expand criminalization of same-sex sexualities in Africa has focused on individual country cases, neglecting the role of national and transnational sociopolitical contexts and economic flows. Drawing on an original news media dataset from Uganda, Nigeria and Malawi, three countries that have recently increased penalties for same-sex sex and that have substantial linkages to state and nonstate actors in the West, we examine 1) how transnationally-circulating discourses on same-sex sexualities inform the development of local discourses around criminalization and 2) how LGBT issues, including sexual health, intersect with other sociopolitical and economic issues in countries pursuing regressive policies. Preliminary data suggest that struggles around homosexuality are enmeshed in larger conflicts over social change, political instability and resource distribution, and global status hierarchies.

## Introduction

Social scientists have observed a strong trend toward the decriminalization and protection of sexual minorities in the second half of the twentieth century, interpreting it as evidence of a global shift in the meanings of sex, rights, and privacy (Frank and McEneaney 1999; Frank,

---

<sup>1</sup> Paper submission to the Population Association of America Annual Meetings, April 30-May 2 2015, San Diego, CA. While conducting this research, McKay was supported by the Robert Wood Johnson Foundation Health Policy Research Scholars program. We thank Victor Arredondo and Jennifer Ng for their assistance with data collection.

<sup>2</sup> Scholar in Health Policy Research, Robert Wood Johnson Foundation, University of California, Berkeley. Email: tmckay@berkeley.edu

<sup>3</sup> Assistant Professor, Department of Sociology, Center on Health, Risk and Society. Email: angotti@american.edu

Camp, and Boutcher 2010). Counter to this trend, however, political leaders in several African countries have spoken out against same-sex sexualities and rejected demands from Western countries to decriminalize same-sex sex. From Angola to Zimbabwe, African political leaders have spoken out against same-sex sexualities and rejected demands from Western countries to decriminalize same-sex sex. African gay rights activists have been beaten, jailed, and murdered in Cameroon, Uganda, and Zimbabwe (Goddard 2004). New laws penalizing same-sex sexual practices have been pursued in several countries, including Ghana, Kenya, Liberia, Malawi, Nigeria, and Uganda.

Although this is as much a regional and global phenomenon as a national one, much of the research attempting to understand hostility towards same-sex sexualities has primarily focused on the national context and highlighted cultural and religious differences from the West, neglecting the role of transnational sociopolitical contexts and economic flows (Murray 2009; Weiss and Bosia 2013). Consistent with a broader shift in sexualities scholarship, which has looked increasingly towards transnational and global processes (Gamson and Moon 2004), and extending recent, interdisciplinary efforts to understand when and why state and other social actors deploy homophobia (Boellstorff 2004; Currier 2010; Hoad 2007; Murray 2009; Puar 2007; Puri 2012; Weiss and Bosia 2013), we provide an account for this upsurge of political homophobia in three African countries—Malawi, Nigeria, and Uganda—focusing on 1) how transnationally-circulating discourses on same-sex sexualities inform the development of local discourses around criminalization and; 2) how LGBT issues, including LGBT sexual health issues, intersect with other sociopolitical and economic issues in countries pursuing regressive policies. Our analysis draws primarily on evidence from an original database of news media in each country since 2000, supplemented with additional archival materials from Parliamentary

debates, legal proceedings in cases of alleged sodomy, and statements by government officials and international organizations. Preliminary findings suggest that struggles around homosexuality in Malawi, Nigeria, and Uganda are not merely reflections of religious and cultural differences from the West, but rather are enmeshed in larger conflicts over social change, political instability and resource distribution, and global status hierarchies.

### **Data and Methods**

To examine the linkages among discourses, actors, and contexts, we built an original, longitudinal dataset comprised of fourteen years of news media articles from independent and government print dailies with high circulation in Uganda, Nigeria and Malawi. The news presses include, in Nigeria: *The Daily Trust*, *The Guardian*, *The Independent*, *This Day* and *The Vanguard*; in Uganda: *The Observer*<sup>4</sup>, *New Vision*, *The Independent*<sup>5</sup> and *The Monitor*<sup>6</sup>; and in Malawi: *The Nation* and *The Daily Times*. News media data are supplemented with government and organizational documents that provide context for the news media articles. This includes the Parliamentary *Hansards* for Nigeria and Uganda pertaining to regulation of homosexuality and transcripts of legal proceedings in a case of alleged sodomy in Malawi.

### **Data Collection**

For all countries, inclusion in the dataset was limited to articles published between January 1, 2000<sup>7</sup> and June 30, 2014 in English and which contained the words "homosexual," "gay," "lesbian," "same-sex," "sexual orientation," "men who have sex with men," or the exact title of proposed or current legislation related to criminalization of same-sex sex.<sup>8</sup>

---

<sup>4</sup> *The Observer* was founded in 2007.

<sup>5</sup> *The Independent* was founded in 2007.

<sup>6</sup> *The Monitor* was renamed *The Daily Monitor* in 2012.

<sup>7</sup> Or the founding of the paper if after January 1, 2000.

<sup>8</sup> For example, in Uganda, *The Anti-Gay Bill* and in Nigeria, *The Same-Sex Marriage Prohibition Act*.

For Nigeria and Uganda, we obtained a majority of news media articles referencing homosexuality from searches of the allAfrica database (allAfrica 2014). For several papers, availability in the allAfrica database ended before June 30, 2014. Thus, we conducted separate searches of each newspaper's online archive to extend the range of the data set through June 30, 2014. For the Ugandan paper, *New Vision*, we were only able to collect articles through March 31, 2014 due to embargoes on digital availability of print material. The total number of articles meeting our search criteria for Uganda across the four papers was 1,357. The total number of articles meeting our search criteria for Nigeria across the four papers was 604.

For Malawi, neither of the two high-circulation print dailies was available through the allAfrica database. Therefore, we obtained articles dated 2000 to 2010 from microfilm provided by the Cooperative Africana Materials Project (CAMP) at the Center for Research Libraries (2014). As with Nigeria and Uganda, we supplemented these efforts by conducting separate searches of each newspaper's online archive to extend the range of the data set through June 30, 2014. The total number of articles meeting our search criteria for Malawi across the two papers is 485.<sup>9</sup> Figure 1 presents a graphical representation of similarities and differences in quarterly article volume across the three countries over time.

### ***Sampling***

Within each country, we selected a random sample of approximately 200 articles per country. The probability that an article was included in the sample differed across countries, newspapers, and year because we oversampled Nigeria and Malawi, papers with fewer articles, and earlier years in the time series to ensure that the widest range of perspectives was captured in the dataset. For each paper, we also included a 20% oversample based on experience from our pilot

---

<sup>9</sup> Data collection for *The Nation* is ongoing as of September, 2014.

exercise to ensure adequate sample size once inappropriate articles had been excluded.<sup>10</sup> The final analytic sample includes 263 total articles from Uganda, 202 from Nigeria, and 200 from Malawi. Table 1 presents the distribution of articles collected, sampled, and excluded by country and newspaper.

### *Analysis*

All data were managed in NVivo 10, an electronic database package designed for qualitative analysis (QSR International 2014). A subset of the news media data was first coded by both authors using open-coding techniques to identify emerging inferences from the data (Corbin and Strauss 2008) and to determine inter-rater reliability. Following Timmermans and Tavory (2007) who advance a modified grounded theory and analytical-induction approach, we then conducted open-coding alongside a close reading of salient themes in the literatures on sexualities, HIV/AIDS, NGOs, and development in African and other nonwestern contexts. Throughout the initial coding process, we drafted memos to capture our evolving thinking about themes and developed a conceptual model relating homosexuality to arguments about human rights, AIDS, state sovereignty, religious and cultural beliefs, national political instability and economic insecurity among distinct actors. We attended primarily to five kinds of actors: national political elites, religious elites, civil society organizations,<sup>11</sup> civilians, and international actors. These actors were selected to reflect the diversity of positions, power and legitimacy at both the international and national levels. As our model developed, we engaged in selective-coding of

---

<sup>10</sup> Based on pilot coding, roughly 1 in 5 articles included the word homosexuality in passing but did not advance a positional argument, rendering it not relevant to the study. Consistent with our expectation, we have excluded 18% of articles that have been coded as of September, 2014.

<sup>11</sup> Civil society organizations are customarily nongovernment organizations (NGOs) and include community-based organizations, trade unions, religious organizations, advocacy groups, policy research institutions, private business institutions, and social movement organizations.

themes in all data to further elaborate and refine this model, linking particular arguments to emerging political and economic contexts.

## **Results**

Preliminary findings reveal active public discourse around homosexuality over the last decade in all three countries, with an escalation in the volume of discourse since 2008 in Uganda, the end of 2009 in Malawi, and 2011 in Nigeria (see Fig 1). The timing of the escalation of debates corresponds roughly to, but generally precedes, proposals to expand regulation of same-sex sex (Uganda, 2009; Malawi, 2011; Nigeria, 2011<sup>12</sup>). In all three countries, we also find a variety of arguments around the nature of homosexuality and how citizens and government officials should respond to the issue. Focusing on the last five years, where we observe large increases in the volume of debates, positions, and stakeholders, we find that debates around the regulation of homosexuality are enmeshed in larger conflicts over social change, political instability and resource distribution, and global status hierarchies.

### ***Social Change***

Across the African continent, countries are grappling with increasing social inequality and demographic transformation (Hunter 2010) alongside the growing presence and access to Western goods and media (Vorholter 2012) and, in the case of Nigeria and Uganda, ongoing, low-level armed conflicts with breakaway groups. For ordinary Malawians, Nigerians, and Ugandans these are decidedly "unsettled times" (Swidler 1986). Local and national discourses on same-sex sexualities strongly reflect tensions around social change and feelings of social instability. For many social actors, homosexuality reflects the prioritization of individual desires

---

<sup>12</sup> Nigeria's 2011 *Same-Sex Marriage Prohibition Act* is not a new proposal. It has been sent to the floor of the National Assembly twice before under the title *Same Gender Marriage (Prohibition) Bill*; it was initially proposed in 2006, but the measure failed when the term of the National Assembly ended in April 2007. It was proposed again in 2007 but failed again when it expired with the end of the term of the National Assembly in April 2011.

over engagement with the broader community and family. In discussions about the nature of homosexual behavior, commentators frequently disregard arguments that sexual orientation is innate, arguing instead that same-sex sex is merely “frenzied mating with the nearest available partner” (Uganda *Monitor* 20011014). Consequently, homosexuality, as a prioritization of individual desires, is presented by various actors as an apocalyptic threat to the traditional family and, in the long run, the country. As an official representing the Church of Nigeria intoned at a public hearing attended by human rights organizations and other activists fighting to overturn the country’s ban on same sex marriage:

*Same sex marriage is out to foist on the world a false sense of the family which will bring disastrous consequences to mankind...It is a perversion, a deviation and an aberration that is capable of engendering moral and social holocaust in this country. Outlawing it is to ensure the continued existence of this nation.* (Nigeria *Independent* 20090312)

Such claims are advanced by religious and political elites alike, often alongside commentary about the moral costs of development in the West epitomized by “materialism, secularism, moral permissiveness and a widespread breakdown of marriage and family relationships” in the United States (Nigeria *This Day* 20020805), and criticisms of the promotion of women’s and children’s rights which have sent both “on a vain and narcissistic ego trip” (Nigeria *Vanguard* 20050216).

### ***Political Instability and Resource Distribution***

Across Malawi, Nigeria, and Uganda, debates about same-sex sex are closely tied to political and economic issues. As a “convenient tool for the affirmation of rule,” (Weiss and Bosia 2013:32) the use of homophobic rhetoric by political elites is often strategic. In Namibia (Currier 2010) and Zimbabwe (Phillips 1997), political elites have drawn attention to homosexuality to distract citizens from other political issues or misdeeds. In our analysis, we find that debates around homosexuality frequently occur among political elites alongside inter-party and cross-party disputes. In Uganda, debate around *The Anti-Gay Bill*, which included provisions to penalize any

individual who did not report someone known to be engaging in homosexual behavior, included speculation that the Bill was, in fact, “a Machiavellian scheme to kill the political aspirations of at least one presidential hopeful who is sympathetic to gays” with serious potential to be “a disruptive force going forward” driving “attention away from the real issues and onto a politician's sexual orientation” (Uganda *Monitor* 20100104). For Dr. Kizza Besigye, a Ugandan politician opposing the incumbent President Museveni for the third time in the 2011 elections, the potential for political abuse of provisions in *The Anti-Gay Bill* was substantial. “President Museveni, through his orchestrated media campaign, has always labelled us, members of opposition, as enemies, useless people who are not desirable,” he said in a campaign speech. “I have already been charged with rape,” he added, “and I hope they do not charge me with not revealing homosexuals in this country.” This explicit use of laws regulating homosexuality to limit political opposition is not unique to Uganda. In Malawi, as protestors demonstrated against President Bingu wa Mutharika’s abuse of power in June, 2011, Mutharika portrayed the protests as clamoring for the legalization of same-sex marriage, a strategy clearly intended to delegitimize critics and discourage citizens’ participation in the protests.

In contrast, opponents of the status quo deemphasize the need for regulation of homosexuality, instead drawing attention to ongoing issues of inequitable resource distribution, abuses of power, and corruption. Here, civilian commentators point to the “low relative priority” of regulating homosexuality *vis-à-vis* more pressing concerns that the countries face, such as unemployment, poor health infrastructure and political corruption. In an opinion piece from Uganda, a writer comments on the “misguided” *Anti-Homosexuality Bill* proposed by MP David Bahati:



*In a country where murderers and corrupt men roam the streets, where public officials steal from the sick and the dead, Mr. Bahati's law is absurd at worst and misguided at best. (Uganda Monitor 20100104)*

Others explicitly connected the timing of The Anti-Gay Bill with other policies intended to weaken and criminalize dissent by the government.

*The passing of the Anti-Homosexuality Act cannot be viewed in a vacuum, but must be seen alongside a series of restrictive measures in the past year. An early draft of the Non-Governmental Organisation Registration (Amendment) Bill currently under discussion, for example, would allow the NGO Board to dissolve any organisation for any reason "necessary for the public interest". Last year NGOs were accused of sabotaging Uganda's oil sector and warned that they risked closure. The Public Order Management Act (2013) gives the police wide powers to issue orders to disperse public meetings. Black Monday activists challenging corruption have been arrested while distributing leaflets. In May 2013, the police raid on the Daily Monitor and other media houses, and the subsequent crackdown on the demonstrations protesting the 'media siege', were clearly part of this same narrative. (Uganda Independent 20140310)*

Similar arguments that the regulation of homosexuality is linked to the expansion of antidemocratic policies generally are advanced by individuals and civil society organizations in Nigeria and Malawi.

### ***Global and Local Status Hierarchies***

Finally, we find that debates around the regulation of homosexuality reflect a series of nested concerns around whose rights matter in local, national, and transnational interactions. In all three countries, civil society organizations advocating for the decriminalization of same-sex sex and recognition of rights on the basis of sexual orientation have emerged primarily within two areas: human rights promotion and HIV/AIDS prevention. Importantly, both of these areas are characterized by strong ties to international donors, and the arguments employed by local civil society organizations closely mirror those advanced at the international level. These strong ties are a double-edged sword for local civil society groups who gain funding and much needed

political support from their international allies but are easily attacked as stand-ins for Western governments in national and local debates.

In the process, civil society advocates find themselves at odds with broader claims to the rights of all citizens to basic public goods, such as education and healthcare. In these debates, various local and national actors have condemned international donors for prioritizing the rights of homosexuals over the rights of all citizens to "water and sanitation, food security, health, environment, good governance" (Malawi *Nation* 20070124). Moreover, in political contexts like Uganda where corruption and abuses of power have left citizens with few champions to turn to, the narrow focus of the West on penal code revisions is experienced on the ground not as deep concern for human rights but as apathy and insensitivity:

*the people, we would have turned to [Western nations] to exert pressure on [Museveni's] government to give its citizens their right to a decent life. [However] the western nations are in a phase in their social and cultural history in which they are obsessed with the dignity of homosexuality but indifferent to the dignity of the vast non-homosexual majority. (Uganda Monitor 20120220)*

Civil society advocates claims to minority rights also compete with a coherent, transnational discourse that has emerged around claims to states' rights of self-determination among the political elite despite large differences across states in dependence on foreign aid and investments. In a typical example, Nigerian Senate President David Mark rejected Western demands to withdraw the *The Same-Sex Marriage Prohibition Bill*, claiming that the proposed law reflected the values of Nigerians. These values, he continued, would not be swayed by aid conditionalities because "our values are our values... If there is any country that does not want to give us aid or assistance just because we want to hold on to our values, that country can keep her aid and assistance" (Nigeria *Daily Trust* 20111201). One political commentator felt so strongly that if the United Nations was going to use its power to pursue the protection of sexual

minorities, then “it was time Nigeria pulled out of that organisation” (Nigeria *Vanguard* 20110629). Similar claims to states’ rights have emerged in Malawi and Nigeria. Addressing Parliament in January, 2010, Malawian MP Kondwani Nankhumwa responded to demands from international human rights organizations that Malawi release two men arrested for sodomy in late December, 2009, stating that “this country has its own values and Malawi is not for sale” (Malawi *Nation* 20100130). Taken together, these competing claims for rights evoke homosexuality as a way to assert whose rights matter in global and local interactions and are remarkably similar across national contexts despite variation in levels of dependency.

### **Discussion**

Drawing on an original database of news media from Malawi, Nigeria, and Uganda, we find active public discourse around homosexuality in all three countries that has escalated in recent years. In all three countries, we also find substantial debate around the nature of homosexuality and how citizens and government officials should respond to the issue. We argue LGBT issues, including LGBT sexual health issues, intersect with larger conflicts over social change, political instability and resource distribution, and global status hierarchies. We conclude with discussion of the implications for understandings of the global diffusion of homophobic discourses as well as the implications for international policy interests in the sexual health of LGBT populations in Africa.

## References

- allAfrica. 2014. "allAfrica." Retrieved Sep 15, 2014 ([www.allAfrica.com](http://www.allAfrica.com)).
- Boellstorff, Tom. 2004. "The Emergence of Political Homophobia in Indonesia: Masculinity and National Belonging." *Ethnos* 69(4):465-486.
- Center for Research Libraries. 2014. "CAMP." Center for Research Libraries. Retrieved Sep 15, 2014 (<http://www.crl.edu/area-studies/camp>).
- Currier, Ashley. 2010. "Political Homophobia in Postcolonial Namibia." *Gender & Society* 24(1):110-129.
- Frank, David J., Bayliss J. Camp, and Steven A. Boutcher. 2010. "Worldwide Trends in the Criminal Regulation of Sex, 1945-2005." *American Journal of Sociology* 75(6):867-893.
- Frank, David J. and Elizabeth H. McEneaney. 1999. "The Individualization of Society and the Liberalization of State Policies on Same-Sex Sexual Relations, 1984-1995." *Social Forces* 77(3):911-944.
- Gamson, Joshua and Dawne Moon. 2004. "The Sociology of Sexualities: Queer and Beyond." *Annual Review of Sociology* 30:47-64.
- Hoad, Neville. 2007. *African Intimacies: Race, Homosexuality, and Globalization*. Minneapolis: University of Minnesota Press.
- Hunter, Mark. 2010. *Love in the Time of AIDS: Inequality, Gender, and Rights in South Africa*. Bloomington, IN: Indiana University Press.
- Murray, David A. B., ed. 2009. *Homophobias: Lust and Loathing across Time and Space*. Durham: Duke University Press.
- Phillips, Oliver. 1997. "Zimbabwean Law and the Production of a White Man's Disease." *Social & Legal Studies* 6:471-491.
- Puar, Jasbir K. 2007. *Terrorist Assemblages: Homonationalism in Queer Times*. Durham, NC: Duke University Press.
- Puri, Jyoti 2012. "Sexualizing the State: Sodomy, Civil Liberties, and the Indian Penal Code." in *Contesting Nation: Gendered Violence in South Asia. Notes on the Post Colonial Present*, edited by Angana Chatterji and Lubna Chowdhury. New Dheli: Zuuban.
- QSR International. 2014. "NVivo 10." QSR International. Retrieved Sep 15, 2014 ([http://www.qsrinternational.com/products\\_nvivo.aspx](http://www.qsrinternational.com/products_nvivo.aspx)).
- Swidler, Ann. 1986. "Culture in Action: Symbols and Strategies." *American Sociological Review* 51:273-286.

Vorholter, Julia. 2012. "Negotiating Social Change: Ugandan Discourses on Westernization and Neo-colonialism as Forms of Social Critique." *Journal of Modern African Studies* 50(2):283-307.

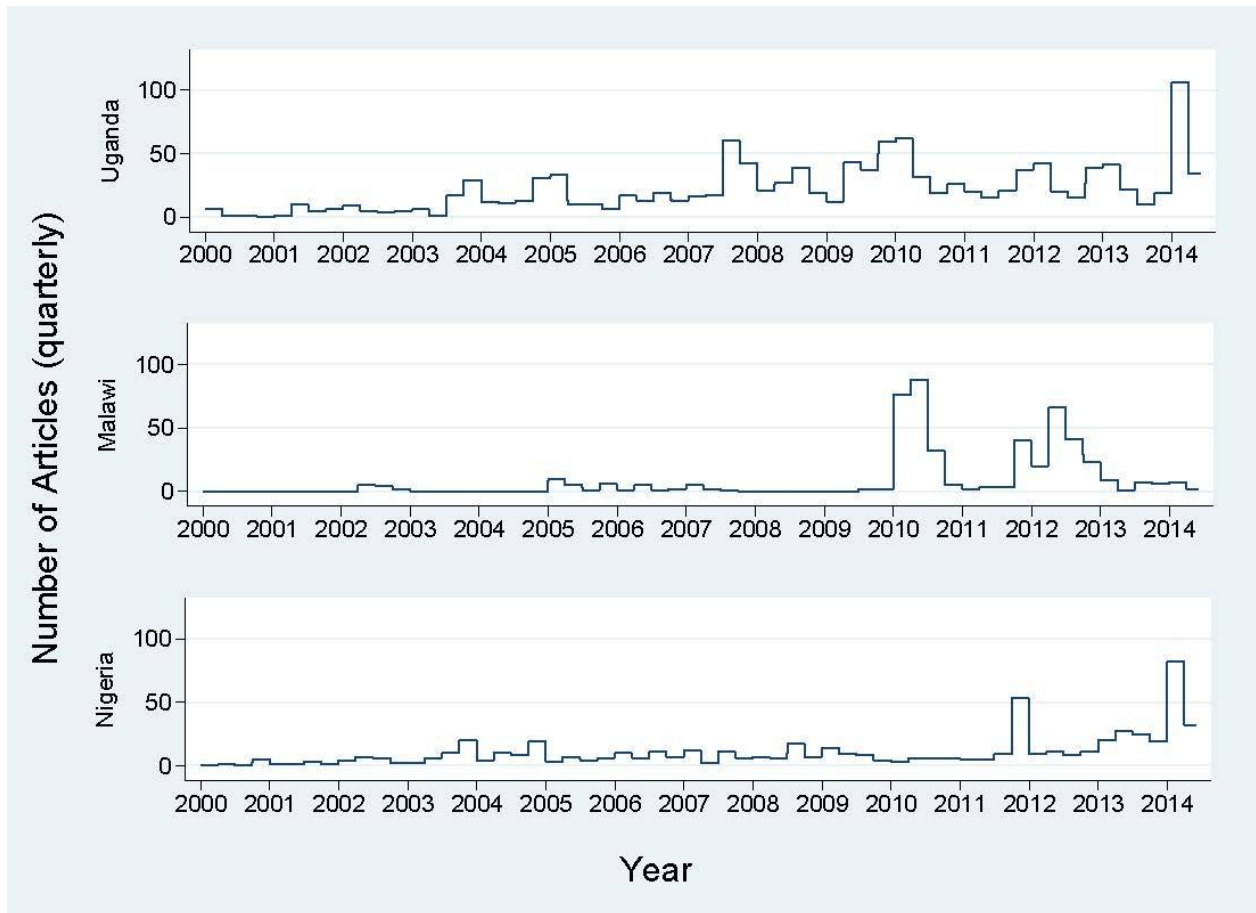
Weiss, Meredith L. and Michael J. Bosia, eds. 2013. *Global Homophobia: States, Movements, and the Politics of Opression*. Urbana: University of Illinois Press.

Table 1. Distribution of Newspapers and Articles, by country and year

Newspaper	Start date	End date	Articles		
			Collected	Sampled	Excluded
<b>Malawi</b>			<b>485</b>	<b>200</b>	
<i>The Daily Times</i>	Jan 1, 2005	Jun 30, 2014	226	89	TBD
<i>The Nation</i>	Jan 1, 2002	Jun 30, 2014	259	TBD	TBD
<b>Nigeria</b>			<b>604</b>	<b>202</b>	
<i>The Daily Trust</i>	Jan 1, 2000	Jun 30, 2014	148	47	TBD
<i>The Independent</i>	Jan 1, 2008	Jun 30, 2014	28	21	TBD
<i>The Guardian</i>	Jan 1, 2014	Jun 30, 2014	14	5	TBD
<i>This Day</i>	Jan 1, 2000	Jun 30, 2014	203	67	TBD
<i>The Vanguard</i>	Jan 1, 2000	Jun 30, 2014	211	62	TBD
<b>Uganda</b>			<b>1357</b>	<b>263</b>	
<i>The Independent</i>	Jan 1, 2007	Jun 30, 2014	112	17	TBD
<i>The Monitor</i>	Jan 1, 2000	Jun 30, 2014	471	93	TBD
<i>The New Vision</i>	Jan 1, 2000	Mar 31, 2014	535	118	TBD
<i>The Observer</i>	Jan 1, 2007	Jun 30, 2014	239	35	TBD

Note: Coding and data collection for Malawi Nation is ongoing as of September, 2014.

Figure 1. Quarterly distribution of articles, by country



Note: Data collection for Malawi is ongoing as of September, 2014.