

June 30, 2023

On Health GAP, kindly accept these comments in response to the May 11, 2023 request for public comments by the African Growth and Opportunity Act (AGOA) Implementation Subcommittee of the Trade Policy Staff Committee.

I. Background on Health GAP

Health Global Access Project (GAP) is an organization dedicated to ensuring that all people with HIV have access to affordable, life-saving medicines. We collaborate with people living with HIV around the world, including in Uganda.

Health GAP is a member of the Council for Global Equality and developed these comments in collaboration with their team.

II. LGBTQI+ Rights in Uganda

In May, Ugandan President Yoweri Museveni signed into law the harshest piece of legislation targeting LGBTQI+ individuals anywhere in the world. The law (the 2023 Anti-Homosexuality Act), increases criminal penalties for LGBTQI+ individuals by increasing the sentence for consensual same-sex acts to life imprisonmentⁱ and establishes a new charge of “aggravated homosexuality” which, in certain circumstances, is punishable by the death penalty.ⁱⁱ The law criminalizes the “promotion of homosexuality,” including activities such as leasing any house to someone who is LGBTQI+ or who may be discussing LGBTQI+ rights, distributing information on homosexuality, , or providing financial support to activities that “encourage homosexuality or the observance or normalization of” LGBTQI+ issues.ⁱⁱⁱ This law renders HIV treatment and prevention programs illegal, threatening the tremendous progress that Uganda has accomplished toward ending AIDS. Among the most concerning provisions of the law are:

- Part II.2 (The Offense of Homosexuality): consensual same-sex acts are punishable by life in prison without the possibility of release. Attempting “the offense of homosexuality” is punishable by 10 years of imprisonment.
- Part II.3 (Aggravated Homosexuality): in certain circumstances (where, for example, one of the individuals participating in consensual same-sex acts is HIV+), consensual same-sex acts are punishable by death. Attempting “aggravated homosexuality” is punishable by 14 years of imprisonment.
- Part III.9 (Premises): an individual who allows any premises to be used “for purposes of homosexuality” may be sentenced to 7 years of imprisonment. This provision can be interpreted to criminalize providing housing to LGBTQI+ individuals.

- Part III.10 (Prohibition of Marriage Between Persons of the Same Sex): participating in any way or attending a same-sex marriage is punishable by 10 years of imprisonment.
- Part III.11 (Promotion of Homosexuality): the “promotion of homosexuality” is broadly defined to include advocacy of LGBTQI+ rights and the provision of financial support or other forms of engagement with individuals or organizations who support LGBTQI+ rights. Individuals may be sentenced to up to 20 years in prison. Organizations could have licenses suspended for up to 10 years or terminated.
- Part IV.14 (Duty to Report Acts of Homosexuality): this provision requires individuals with a “reasonable suspicion” that an individual has committed or intends to commit the “offense of homosexuality” to report the individual to the police for “appropriate action.”
- Part IV.16 (Rehabilitation of Homosexual): courts may order those convicted of the “offense of homosexuality” to undergo rehabilitation, potentially including harmful conversion therapy programs.

The 2023 Anti-Homosexuality Act is the latest and most severe attack against LGBTQI+ individuals in a country that has a long legacy of criminalizing consensual same-sex activities, condoning violence against LGBTQI+ individuals, marginalizing LGBTQI+ individuals in society, and restricting the activities of LGBTQI+ organizations. According to the 2022 Country Report on Human Rights Practices by the U.S. Department of State,^{iv} Uganda:

- used its colonial era law criminalizing consensual same-sex conduct “indirectly to restrict the rights of LGBTQI+ persons.”
- did not adequately respond to instances of non-state actor violence against LGBTQI+ individuals and organizations and used such instances to target LGBTQI+ victims. Such instances included gender-based violence and rape against lesbians and transgender women, “allegedly aimed at changing their sexuality.” On September 10, 2022, for instance, it was reported that a transgender woman was lured out of her home and beat and raped by a mob. Additionally, employees of LGBTQI+ rights organizations have been charged with criminal offenses when reporting acts of violence against their organizations to the authorities. For instance, on June 8, 2022, employees of the LGBTQI+ advocacy organization Sexual Minorities Uganda (SMUG) were charged with assault when reporting that an individual had vandalized their office.
- did not recognize LGBTQI+ individuals, couples, or families and condoned widespread discrimination against LGBTQI+ individuals with respect to accessing healthcare, employment, housing, and other social services.
- restricted LGBTQI+ organizations’ ability to legally register and operate. For example, on August 3, 2022, SMUG was instructed by the NGO Bureau to halt operations. Numerous other LGBTQI+ organizations have also reported that their registration applications have been declined.

Against this context, the U.S. and international responses^v to Uganda's 2023 Anti-Homosexuality Act have been swift and forceful. Referring to this law, President Joe Biden referred to the 2023 Anti-Homosexuality Act as "a tragic violation of universal human rights—one that is not worthy of the Ugandan people, and one that jeopardizes the prospects of critical economic growth for the entire country."^{vi} In the same statement, President Biden committed that the "Administration will ... incorporate the impacts of the law into {its} ... review of Uganda's eligibility for the African Growth and Opportunity Act (AGOA)."^{vii} Similarly, Senate Finance Committee Chairman Ron Wyden, remarked^{viii}:

The United States must not extend trade benefits to countries that violate human rights by sanctioning violence and discrimination on the basis of sexual orientation or gender identity. I call on President Biden to immediately suspend Uganda's AGOA benefits, and work with our allies to remove similar benefits, until Uganda repeals its cruel anti-LGBTQI+ law and improves its record on human rights, corruption and rule of law.

The international community has also rebuked the new policy in Uganda. For example, United Nations Secretary General António Guterres called on Uganda to fully respect its international human rights obligations, "in particular the principle of non-discrimination and the respect for personal privacy," irrespective of sexual orientation and gender identity.^{ix} As characterized by UN High Commissioner for Human Rights Volker Türk, the 2023 Anti-Homosexuality Act "render{s} lesbian, gay and bisexual people in Uganda criminals simply for existing, for being who they are. It could provide a carte blanche for the systematic violation of nearly all of their human rights and serve to incite people against each other."^x

The leaders of the three major global programs to end AIDS put out a statement calling attention to the law's harmful impact on Uganda's HIV response. The Global Fund to Fight AIDS, Tuberculosis and Malaria (the Global Fund), the Joint United Nations Programme on HIV/AIDS (UNAIDS), and the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) all signed a notice condemning the law.^{xi}

Both state and non-state actors are implementing the law on the ground. The Human Rights Awareness and Promotion Forum, a leading human rights organization in the country, notes that "The statistics . . . clearly indicate that the three weeks period within which the Anti-Homosexuality Act, 2023 has been in force have been characterised by an increase in cases of violence and abuses of human rights of LGBTQ persons on the basis of their real or presumed SOGIE. This continues the trend since the Anti-Homosexuality Bill, 2023 was passed by parliament on 21st March 2023."^{xii}

III. AGOA Eligibility

Section 104 of the AGOA defines several eligibility criteria that Sub-Saharan African countries must meet in order to receive trade preferences.^{xiii} Among such criteria, a country may "not engage in gross violations of internationally recognized human rights." Because Uganda's 2023 Anti-Homosexuality Act is a gross violation of internationally recognized human rights against LGBTQI+ individuals, the President should terminate Uganda's designation as a beneficiary Sub-Saharan African country under the AGOA.

International human rights law is guided by the fundamental principles of universality, equality, and non-discrimination.^{xiv} Uganda's 2023 Anti-Homosexuality Act violates these fundamental principles and the instruments that enshrine them through criminalizing consensual same-sex conduct, perpetuating violence against and marginalizing LGBTQI+ individuals, and denying LGBTQI+ individuals and organizations the freedom of association and expression. In particular:

- by criminalizing consensual same-sex conduct, Uganda violates individuals' rights to be free from discrimination^{xv}, of equality and equal protection under the law^{xvi}, and rights to be protected against arbitrary detention and unreasonable interference with privacy^{xvii}. By applying the death penalty to such conduct, Uganda additionally violates individuals' right to life.^{xviii}
- by perpetuating violence against LGBTQI+ individuals, including by failing to investigate and punish this form of violence, Uganda fails to protect individuals' rights to life, liberty, and security of person.^{xix}
- by denying LGBTQI+ individuals and organizations the freedom of association and expression, Uganda violates the rights to freedom of expression, association, and peaceful assembly, without discrimination.^{xx}

IV. **Conclusion**

For the reasons set forth above, the President should terminate Uganda's designation as a beneficiary Sub-Saharan African country under the AGOA. If you have any questions or would like additional information, please contact the undersigned.

Respectfully submitted,

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ⁱ 2023 Anti-Homosexuality Act, Part II.2.

ⁱⁱ *Id.*, Part II.3.

ⁱⁱⁱ *Id.* Part III.11.

^{iv} U.S. Department of State, "2022 Country Report on Human Rights Practices: Uganda," https://www.state.gov/wp-content/uploads/2023/03/415610_UGANDA-2022-HUMAN-RIGHTS-REPORT.pdf

^v Canada: "Canada is deeply concerned by Uganda's assent of the 2023 Anti-Homosexuality Act and firmly condemns its legislation. This Act is a blatant violation of the human rights and fundamental freedoms of LGBTQ+ Ugandans. It exposes them to systematic persecution, oppression, violence, including the possibility of life terms in prison and the death penalty." <https://www.canada.ca/en/global-affairs/news/2023/05/statement-on-ugandas-anti-homosexuality-act.html>

United Kingdom: “The UK government is appalled that the Government of Uganda has signed the deeply discriminatory Anti-Homosexuality Bill 2023 into law.” “As outlined in the Universal Declaration of Human Rights, everyone is entitled to human rights and freedoms, without distinction of any kind...”

<https://www.gov.uk/government/news/minister-mitchell-responds-to-ugandas-anti-homosexuality-act>

European Union: “The European Union regrets the signing into law of the Anti-Homosexuality Act by the Ugandan President Yoweri Museveni. The law introduces severe punishments, including the death penalty to which the EU is opposed in all circumstances. This law is contrary to international human rights law and to Uganda’s obligations under the African Charter on Human and People’s Rights, including commitments on dignity and non-discrimination, and the prohibition of cruel, inhuman or degrading punishment. The Ugandan government has an obligation to protect all of its citizens and uphold their basic rights. Failure to do so will undermine relationships with international partners.” https://www.eeas.europa.eu/eeas/uganda-statement-high-representative-josep-borrell-promulgation-anti-homosexuality-bill_en?s=127

^{vi} Statement from President Joe Biden on the Enactment of Uganda’s Anti-Homosexuality Act (May 29, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/29/statement-from-president-joe-biden-on-the-enactment-of-ugandas-anti-homosexuality-act/>

^{vii} *Id.*

^{viii} Wyden Statement on Uganda Anti-LGBTQI+ Law (May 30, 2023), <https://www.finance.senate.gov/chairmans-news/wyden-statement-on-uganda-anti-lgbtqi-law>

^{ix} United Nations, “Uganda: Guterres voices deep concern as Anti-Homosexuality Act signed into law” (May 31, 2023), <https://news.un.org/en/story/2023/05/1137197>

^x *Id.*

^{xi} The Global Fund, “Joint Statement by the Leaders of the Global Fund, UNAIDS, and PEPFAR on the Anti-Homosexuality Act of 2023

(May 29, 2023), <https://www.theglobalfund.org/en/news/2023/2023-05-29-joint-statement-by-the-leaders-global-fund-unaid-pepfar-uganda-anti-homosexuality-act-2023/>

^{xii} [Human Rights Awareness and Promotion Forum, Increasing Violence and Violations: The First 21 Days of the Anti-Homosexuality Act, 2023.](#)

^{xiii} 19 U.S.C. § 3703.

^{xiv} Universal Declaration of Human Rights (UDHR), Article 1.

^{xv} UDHR, Article 2; International Covenant on Civil and Political Rights (ICCPR), Articles 2(1), 26.

^{xvi} UDHR, Articles 2, 7; ICCPR, Articles 2(1), 26.

^{xvii} UDHR, Articles 2, 9, 12; ICCPR, Articles 2(1), 9, 17.

^{xviii} UDHR, Articles 2, 3; ICCPR, Articles 2(1), 6(1)-(2).

^{xix} UDHR, Articles 3, 14(1); ICCPR, Articles 6, 9.

^{xx} UDHR, Articles 19, 20(1); ICCPR, Articles 19(2), 21, 22(1).