



The Council for Global Equality

Advancing an American Foreign Policy
Inclusive of Sexual Orientation and Gender Identity

June 30, 2023

William Shpiece
Chair of the Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Written Comments of The Council for Global Equality on Uganda's Eligibility for Benefits under the African Growth and Opportunity Act

Dear Mr. Shpiece:

On behalf of the Council for Global Equality (CGE), please 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, chaired by the Office of the U.S. Trade Representative, in connection with the review of the eligibility of Sub-Saharan African countries to receive AGOA benefits.

I. Background on The Council for Global Equality

CGE is a Washington-based advocacy coalition that brings together international human rights and intersex activists, foreign policy experts, philanthropists, and corporate officials to encourage a clearer and stronger American voice on human rights concerns impacting lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) communities around the world.

CGE's member organizations support and amplify our advocacy agenda in Washington and globally. CGE's institutional members include many of the most prominent organizations working to promote human rights and LGBTQI+ equality in the United States and overseas. Among its missions, CGE seeks to increase support for foreign LGBTQI+ organizations as vital contributors to U.S. national interest through the development of free and vibrant civil societies abroad.

These comments were prepared with the assistance of CGE's pro bono counsel for international trade matters, Zachary Simmons and Chris Forsgren of Steptoe & Johnson LLP.

II. LGBTQI+ Rights in Uganda

In May of this year, Ugandan President Yoweri Museveni signed into law the most draconian 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 imprisonment¹ and establishes a new charge of “aggravated homosexuality” which, in certain circumstances, is punishable by the death penalty.² The law criminalizes the “promotion of homosexuality,” covering activities such as leasing any house or building to anyone who is LGBTQI+ or who may be discussing LGBTQI+ rights, distributing information on homosexuality (even in the context of HIV/AIDS), or providing financial support to activities that “encourage homosexuality or the observance or normalization of” LGBTQI+ issues.³ In short, the law constitutes an all-out assault on LGBTQ+ and allied individuals in Uganda and creates the legal architecture for mass atrocities against such individuals. 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

¹ 2023 Anti-Homosexuality Act, Part II.2.

² *Id.*, Part II.3.

³ *Id.* Part III.11.

“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 being implemented on the ground by both state and non-state actors. The Human Rights Awareness and Promotion Forum, a leading human rights organization in the country, notes that “{t}he 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.”⁴

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 conduct, 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,⁵ which covered conditions on the ground prior to the enactment of the 2023 Anti-Homosexuality Act, 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.

⁴ Human Rights Awareness and Promotion Forum, “Increasing Violence and Violations: The First 21 Days of the Anti-Homosexuality Act, 2023” (June 21, 2023). http://globalequality.org/storage/documents/23_06_21_HRAPF_Report.pdf

⁵ 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

- 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 responses⁶ to Uganda's 2023 Anti-Homosexuality Act have been swift and forceful. In responding to the 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."⁷ 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)."⁸ Similarly, Senate Finance Committee Chairman Ron Wyden, remarked⁹:

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.

⁶ 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

⁷ 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/>

⁸ *Id.*

⁹ Wyden Statement on Uganda Anti-LGBTQI+ Law (May 30, 2023), <https://www.finance.senate.gov/chairmans-news/wyden-statement-on-uganda-anti-lgbtqi-law>

The international response has been similarly pointed. 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.¹⁰ 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.”¹¹

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.¹² 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.¹³ 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 discrimination¹⁴, of equality and equal protection under the law¹⁵, and rights to be protected against arbitrary detention and unreasonable interference with privacy¹⁶. By applying the death penalty to such conduct, Uganda additionally violates individuals’ right to life.¹⁷

¹⁰ 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>

¹¹ *Id.*

¹² 19 U.S.C. § 3703.

¹³ Universal Declaration of Human Rights (UDHR), Article 1.

¹⁴ UDHR, Article 2; International Covenant on Civil and Political Rights (ICCPR), Articles 2(1), 26.

¹⁵ UDHR, Articles 2, 7; ICCPR, Articles 2(1), 26.

¹⁶ UDHR, Articles 2, 9, 12; ICCPR, Articles 2(1), 9, 17.

¹⁷ UDHR, Articles 2, 3; ICCPR, Articles 2(1), 6(1)-(2).

- 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.¹⁸
- 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.¹⁹

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 do not hesitate to contact the undersigned.

Respectfully submitted,



Mark Bromley
Council Co-Chair



Julie Dorf
Council Co-Chair

¹⁸ UDHR, Articles 3, 14(1); ICCPR, Articles 6, 9.

¹⁹ UDHR, Articles 19, 20(1); ICCPR, Articles 19(2), 21, 22(1).