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BRIEFING PAPER

UGANDA

Title: Updates on anti-LGBTQ+ legislation and impact on LGBTQ+ health and rights in Uganda

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ISSUE: In May 2023, the Parliament of Uganda passed the Anti-Homosexuality Act (AHA), deemed one of the harshest anti-lesbian, gay, bisexual, transgender, queer (LGBTQ+) laws in the world.^{1,2} The bill extends the reach and weight of existing penalties under the Uganda Penal Code Act and adds new crimes and penalties, such as life imprisonment for same-sex sexual conduct, up to 10 years in prison for attempted same-sex sexual acts, and the death penalty for “aggravated homosexuality.”^{1,3} “Aggravated homosexuality” includes same-sex conduct with minors, the elderly, disabled people, and with people who transmit “terminal illness” during the sex act, the latter clearly invoking criminalization of people living with HIV.^{1,3} The AHA goes further to criminalize “promotion of homosexuality” -- and, in effect, LGBTQ-supportive advocates, service providers, and human rights lawyers, whether Ugandans or outsiders -- punishable by 20-year prison sentences and fines.^{1,3}

The AHA also imposes a burden on Ugandan members of society at-large to inform on one another, i.e. a “duty to report” those engaged in, or intending to engage in, same-sex acts, based on “reasonable suspicion.”¹ The 2023 AHA aims to build on the 2014 Anti-Homosexuality Act, which the Constitutional Court of Uganda invalidated on procedural grounds.⁴ The new law is already serving as a blueprint for anti-LGBTQ+ legislative campaigns in other countries in the region, namely Kenya, Tanzania, and Ghana.⁴⁻⁶

Ugandan civil society organizations (CSOs) and LGBTQ+ and human rights activists and lawyers have denounced the law and called for its nullification. “In Uganda, the movement tide of equality is regressing, and the momentum instead moving towards intolerance, violence and further criminalization through draconian state sponsored laws and policies,” state lawyers and activists with Convening for Equality (CFE) who are leading the CSO and legal response to the AHA there.³

As of mid-September, three petitions challenging the legality of the AHA on substantive, technical and procedural grounds had been filed before the Ugandan Constitutional Court. The court was scheduled to hear the constitutional challenge to the AHA in October 2023.³ A reference had also been filed before the East African Court of Justice, which challenges the enactment of the law as a violation of the East African Treaty.³

“We hope the court will see all the ways the law blatantly violates our Constitution and nullify the law,” stated CFE lawyers.³

BACKGROUND: The AHA 2023 was first passed on March 31, 2023, and subsequently revised based on President Yoweri Museveni’s request for amendments by Parliament to better align it with Uganda’s constitution. Uganda's parliament passed the AHA on May 2, 2023 with minimal amendments.⁴

The numerous harms of anti-LGBTQ+ laws on the health, rights, and social and economic well-being of LGBTQ+ people in Africa are well established. Studies show that LGBTQ+ people experience more stigma and discrimination in criminalized versus non-criminalized countries, including verbal abuse, denial of care, and violation of confidentiality – e.g. being outed as LGBTQ+ -- by health providers.⁷ They also suffer physical and sexual violence, arbitrary arrest, unlawful detention, and extortion by police; denial of housing and job loss; and other human rights violations by state and non-state actors targeting their real or presumed sexual orientation and/or gender identity.⁸⁻¹¹ These experiences damage LGBTQ+ individuals’ physical and mental health directly, as well as indirectly by impeding their access to and use of HIV and other health services.^{7,9,11-16}

Anti-LGBTQ+ legislation also leads to fear of caring for LGBTQ+ people among providers and the exclusion of Key Populations (KP) -- groups vulnerable to HIV, including men who have sex with men (MSM), transgender individuals, and sex workers¹⁷ -- from programmatic and funding allocation decision-making, which reduce available LGBTQ+-friendly services.¹⁸ LGBTQ+ individuals are then left with the option of government health services where providers may be ill-informed or insensitive to LGBTQ+ health needs and more hostile, further obstructing healthcare use.^{9,11,14,18} These deleterious influences of anti-LGBTQ+ laws and policies shape epidemics: for example, HIV prevalence rates are higher among MSM in criminalized settings compared to non-criminalized settings.^{15,19}

The AHA’s threat to civil society broadly is an additional consequence of this law. Homophobic legislation undermines the ability of LGBTQ+ individuals to associate with one another and build community social cohesion -- a critical source of resilience against stigma and discrimination – and their ability to organize for policy change.^{5,20,21} By punishing members of society at-large who aid, or fail to report, LGBTQ+ people, the law also hampers political activities of groups who support the rights of LGBTQ+ people.⁵ The result? Obstruction of key political mechanisms for rolling back the law and achieving social progress on LGBT+ and human rights issues.⁵

GLOBAL RESPONSES: The AHA 2023 has received condemnation from multilateral organizations, national governments, corporations, and civil society organizations across the globe due to its discrimination against vulnerable groups, attack on nonprofit, corporate, and humanitarian sector work in solidarity with LGBTQ+ Ugandans, and its potential to derail and Uganda’s progress towards ending its HIV epidemic.^{2,22}

The World Bank announced its decision to suspend future loans to Uganda in light of its Environmental and Social Framework prohibition on supporting programs that discriminate against vulnerable groups on August 8, 2023. The announcement came after Ugandan advocates and 170 CSOs requested that the Bank halt current and future lending until the law is struck down by the Constitutional Court.²³ The Bank has stated that the suspension of future

lending will continue until the government can demonstrate that its programs do not discriminate.²⁴

In the United States, President Biden called the AHA, “a tragic violation of universal human rights” on the day of its passage, and the State Department issued an official warning to the LGBTQ+ community to avoid travel to Uganda, urging all Americans to “reconsider travel” due to “crime, terrorism, and anti-LGBTQ+ legislation,” on June 12, 2023.²⁵ On September 13, 2023, President Museveni revealed that several U.S. companies had ceased purchase of textiles from Uganda under the Africa Growth Opportunity Act (AGOA), citing the enactment of the AHA.²⁶

A Joint Statement by 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) on May 29, 2023 declared Uganda’s progress on its HIV response to be “now in grave jeopardy” due to the AHA. It pointed to the country’s previous success in tackling the HIV epidemic with non-discriminatory HIV services across the care continuum, characterizing it as “well on track to achieve the UNAIDS HIV treatment targets if progress can be maintained.”²²

Despite these and other actions, global responses have been inadequate, according to Ugandan civil society activists. “We need greater solidarity from around the world from civic actors and countries committed to non-discrimination to condemn this law and speak up about the ongoing, devastating toll this law is having on so many Ugandans,” state CFE’s leaders.ⁱ On September 8, 2023, they criticized the European Union’s decision to maintain its current funding to Uganda despite the law, which misses “a critical opportunity to take more strategic action to protect the fundamental principle of non-discrimination.”²⁷ CFE does not advocate for the EU’s full disengagement from Uganda, but rather for “an effective response...that fine-tunes and reallocates EU assistance to Uganda in ways that ensure that those who spout hatred and catalyze violence and discrimination against LGBTIQ people -- including Ugandan government officials -- won’t benefit from EU taxpayers’ money.”²⁷

CURRENT SITUATION

Impacts on violence and human rights abuses: LGBTQ+ Ugandans are living in fear, fleeing the country, and suffering increased violence at the hands of police, landlords, and employers triggered by the AHA.²⁷⁻³¹ In June 2023, the Kampala-based Human Rights Awareness and Proposition Forum (HRAPF) handled a total of 65 cases across its legal aid network, of which 71% (50/65) involved actions that specifically targeted people based on their real or presumed sexual orientation and/or gender identity. 46% (23/50) of these were cases of violence or threats of violence, 38% (19/50) were evictions from rented property affecting 20 individuals; and 8% (4/50) were arrests on sexuality-related cases, affecting 7 persons.³² In the same period during 2022, HRAPF recorded substantially fewer cases (36), with a smaller proportion targeting LGBTQ+ individuals (42%; 15/36).³²

In April 2023, Amnesty International reported that six young educators working for healthcare organizations were arrested and charged with “forming part of a criminal sexual network.” The Uganda Police Force confirmed that it conducted forced anal exams and HIV tests on the individuals. They were denied bail by a court in Jinja, in eastern Uganda.²⁹

Impacts on HIV services for key populations: President Museveni and the Uganda Ministry of Health (MOH) reassured the world that the AHA would not affect HIV services and has “nothing to do with health,” in the words of MOH Director of Public Health Dr. Daniel Kyabayinze.^{33,34} But service delivery data suggest otherwise. The number of facilities offering services to MSM fell by over 50% (from 9 to 4) in the third quarter of 2023, based on preliminary findings from a rapid assessment of 10 PEPFAR implementing partners and CSOs implementing KP programs and drop-in centers (DICs) in Uganda.³⁵

Implementation of community outreach, HIV testing, and pre-exposure prophylaxis (PrEP) services for MSM and transgender people also decreased dramatically, and KP programs such as community dialogues, meetings with district leadership, and peer outreach delivery of lubricants have been suspended altogether in multiple regions.³⁵ Providers at these facilities attributed the decrease in service provision to their fear of arrest and refusal to deliver services to MSM stemming from discussion about the AHA before and after its passage.³⁵

In July, the head of PEPFAR programs in Uganda, Dr. Vamsi Vasireddy of the Walter Reed Army Institute of Research, similarly reported temporary closure of PEPFAR-supported DICs that provide HIV services for KP clients, reduced community outreach by facility staff, and a marked reduction in client flow.³¹ His team’s analysis of service data found that the steady decrease in KP client visits to local DICs correlated with the increase in discourse around the AHA in the Ugandan media, starting in January 2023. The lowest number of client visits occurred in March, when the first version of AHA was debated and approved in Parliament.³⁶

CALL TO ACTION AIMED AT UN AND UNGA: Ugandan activists point to the “Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity,” adopted by the African Commission on Human and Peoples’ Rights in 2014, in calling for greater and urgent global solidarity with their efforts to nullify the AHA and protect Uganda’s imperiled LGBTQ+ communities.^{3,37} That Resolution mandates African countries to take action towards stopping violence and other human rights violations against persons based on their real or imputed sexual orientation or gender identity whether committed by state and non-state actors.³

CFE’s leadership has issued this solidarity call to human rights duty bearers attending the 78th UN General Assembly in New York:

“We ask that you join us. Call on your own governments to condemn Uganda’s Anti-Homosexuality Act. Call on your governments to do the hard work of revisiting their donor support to Uganda and ensure that any funding that could be used in furtherance of this terrible law is reallocated to those who are committed to non-discrimination. Call on corporations to condemn this law and take a stand in support of inclusive economies.”³

References

1. The Parliament of Uganda. The Anti-Homosexuality Act. In: Republic of Uganda; 2023.
2. Outright International. Support LGBTQ People in Uganda. <https://outrightinternational.org/Uganda-fund>. Published 2023. Accessed September 13, 2023.
3. Convening for Equality (CFE). *Convening For Equality (CFE) Position Brief on the Anti-Homosexuality Law 2023. United Nations General Assembly 2023*. Kampala: CFE; September 10 2023.
4. Nakkazi E. The threat of the Anti-Homosexuality Act in Uganda. *Lancet Infect Dis*. 2023;23(6):662.
5. Kretz A. From "Kill the Gays" to "Kill the Gay Rights Movement": The Future of Homosexuality Legislation in Africa. *Nw J Hum Rts*. 2013;11(207).
6. Seco R. LGBTQI+ repression in East Africa: 'They say that Westerners are turning us gay'. *El País*. May 17, 2023, 2023.
7. Arreola S, Santos GM, Beck J, et al. Sexual stigma, criminalization, investment, and access to HIV services among men who have sex with men worldwide. *AIDS and behavior*. 2015;19(2):227-234.
8. Giwa SAO, Logie CH, Karki KK, Makanjuola OF, Obiagwu CE. Police violence targeting LGBTIQ+ people in Nigeria: Advancing solutions for a 21st century challenge. *Greenwich Social Work Review*. 2020;1(1):36-49.
9. Devi S. Uganda takes "another step backward" with HIV bill. *Lancet*. 2014;383(9933):1960.
10. Beyrer C. Pushback: The Current Wave of Anti-Homosexuality Laws and Impacts on Health. *PLOS Medicine*. 2014;11(6):e1001658.
11. King R, Sebyala Z, Ogwal M, et al. How men who have sex with men experience HIV health services in Kampala, Uganda. *BMJ Global Health*. 2020;5(4):e001901.
12. Balogun A, Bissell P, Saddiq M. Negotiating access to the Nigerian healthcare system: The experiences of HIV-positive men who have sex with men. *Culture, health & sexuality*. 2020;22(2):233-246.
13. Schwartz SR, Nowak RG, Orazulike I, et al. The immediate effect of the Same-Sex Marriage Prohibition Act on stigma, discrimination, and engagement on HIV prevention and treatment services in men who have sex with men in Nigeria: analysis of prospective data from the TRUST cohort. *The Lancet HIV*. 2015;2(7):e299-e306.
14. Poteat T, Diouf D, Drame FM, et al. HIV risk among MSM in Senegal: a qualitative rapid assessment of the impact of enforcing laws that criminalize same sex practices. *PLoS One*. 2011;6(12):e28760.
15. Hladik W, Barker J, Ssenkusu JM, et al. HIV infection among men who have sex with men in Kampala, Uganda--a respondent driven sampling survey. *PLoS One*. 2012;7(5):e38143.
16. Muranda T, Mugo K, Antonites C. HIV is not for me: a study of African women who have sex with women's perceptions of HIV/AIDS and sexual health: focus: sexual and reproductive health rights and the African Women's Protocol. *African Human Rights Law Journal*. 2014;14(2):757-786.
17. UNAIDS. Key populations. UNAIDS. <https://www.unaids.org/en/topic/key-populations>. Published 2023. Accessed September 13, 2023.
18. Duvall S, Irani L, Compaoré C, et al. Assessment of policy and access to HIV prevention, care, and treatment services for men who have sex with men and for sex workers in Burkina Faso and Togo. *J Acquir Immune Defic Syndr*. 2015;68 Suppl 2:S189-197.
19. Lyons CE, Twahirwa Rwema JO, Makofane K, et al. Associations between punitive policies and legal barriers to consensual same-sex sexual acts and HIV among gay men and other men who have sex with men in sub-Saharan Africa: a multicountry, respondent-driven sampling survey. *The Lancet HIV*. 2023;10(3):e186-e194.

20. Mbede C, Ogendo A, Lando R, et al. Healthcare-related stigma among men who have sex with men and transgender women in sub-Saharan Africa participating in HIV Prevention Trials Network (HPTN) 075 study. *AIDS Care*. 2020;32(8):1052-1060.
21. Kerrigan D, Kennedy CE, Morgan-Thomas R, et al. A community empowerment approach to the HIV response among sex workers: effectiveness, challenges, and considerations for implementation and scale-up. *Lancet*. 2015;385(9963):172-185.
22. Joint Statement by the Leaders of the Global Fund, UNAIDS and PEPFAR on Uganda's Anti-Homosexuality Act 2023 [press release]. Geneva: UNAIDS, May 29 2023.
23. Joint Statement: World Bank Letter from Global Civil Society Groups [press release]. New York: Outright International 2023.
24. Outright International Welcomes World Bank Statement on Uganda's Anti-Homosexuality Act [press release]. New York: Outright International, August 18 2023.
25. Hansford A. US officially warns LGBTQ+ people against travel to Uganda. *The Pink News*. 2023-06-14, 2023.
26. MONITOR. US firms under Agoa stop Uganda imports over anti-LGBTQ law. *The EastAfrican*. <https://www.theeastafrican.co.ke/tea/business/us-firms-stop-uganda-imports-over-anti-gay-law-4367436>. Published September 13, 2023. Accessed September 13, 2023.
27. Reuters. Ugandan activists criticise EU inaction over LGBTQ law. Reuters. <https://www.reuters.com/world/africa/ugandan-activists-criticise-eu-inaction-over-lgbtq-law-2023-09-08/>. Published September 8, 2023. Accessed.
28. Latif Dahir A. 'We Will Hunt You': Ugandans Flee Ahead of Harsh Anti-Gay Law. *The New York Times*. 2023-04-20, 2023.
29. Amnesty International. Uganda: President Museveni must urgently veto draconian Anti-Homosexuality Bill. Amnesty International. <https://www.amnesty.org/en/latest/news/2023/04/president-museveni-must-veto-anti-homosexuality-bill/>. Published April 20, 2023. Accessed September 13, 2023.
30. Reuters. LGBTQ Ugandans live in fear as new law looms. Reuters. <https://www.reuters.com/world/africa/lgbtq-ugandans-live-fear-new-law-looms-2023-04-24/>. Published April 4, 2023. Accessed September 13, 2023.
31. Magak E. What's happened to services for key populations in Uganda following the Anti-Homosexuality Act? *aidsmap*. <https://www.aidsmap.com/news/aug-2023/whats-happened-services-key-populations-uganda-following-anti-homosexuality-act>. Published August 1, 2023. Accessed September 13, 2023.
32. Human Rights Awareness and Promotion Forum. *One month after: Increasing cases of violence and violations based on real or presumed sexual orientation an gender identity in the first month of the enforcement of the Anti-Homosexuality Act, 2023*. Kampala, Uganda: Human Rights Awareness and Promotion Forum; July 14 2023.
33. Reuters. President Museveni defends Uganda anti-LGBTQ law. *The EastAfrican*. <https://www.theeastafrican.co.ke/tea/news/east-africa/president-museveni-defends-uganda-anti-lgbtq-law-4254402>. Published June 1, 2023. Accessed September 13, 2023.
34. Abet T. Medics say no to UN, US claims on gay AIDS. *Daily Monitor*. 2023-05-30, 2023.
35. Community Led Monitoring Consortium. *Impact of the AHA on access to and utilization of HIV/TB Services in Uganda*. Uganda 2023.
36. Vasireddy V, Brown NE, Shah, N. Using client-centered models to sustain HIV service delivery to key populations in Uganda. Oral Abstract OALBD06 presented at 12th International AIDS Society Conference on HIV Science (IAS 2023); July 23-26, 2023; Brisbane, Australia.

37. The African Commission on Human and Peoples' Rights (the African Commission). Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity. In. Vol ACHPR/Res.275(LV)2014. Luanda, Angola: African Union; 2014.

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