

## Mild Financial Fallout From Uganda Anti-Homosexuality Act

*Law360, New York (July 17, 2014, 4:04 PM ET) --*

With the passing of Uganda's Anti-Homosexuality Act on Feb. 24, 2014, the Ugandan government provoked sanctions and strong disapproval from Western donors who view the AHA as an affront to human rights. The AHA's stringent provisions are negatively impacting Uganda's foreign aid and health care sector, and are jeopardizing the physical safety of lesbian, gay, bisexual and transgender (LGBT) Ugandans. However, despite the withholding of funds by many Western donors and initial suspicions that foreign investors might boycott Uganda in response to the AHA, the broader economic implications of the act appear to be less significant. These relatively mild financial repercussions reflect the decreasing importance of foreign aid in emerging African economies like Uganda, as well as investors' hesitation to become embroiled in sociopolitical controversies concerning Africa's increasingly visible LGBT communities.



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### International Responses and Economic Implications

The AHA imposes a life sentence for certain homosexual conduct and criminalizes the "promotion," "aiding" and "abetting" of homosexuality; it stops short of endorsing previously proposed measures to criminalize individuals' failure to report AHA violations, and to impose the death penalty for "serial offenders" who engage in homosexual conduct. Many Western states, international organizations and human rights activists passionately oppose the AHA, and some Western donors are backing their criticism with sanctions in the hopes of pressuring the Ugandan government to reconsider the AHA's provisions. Most recently, the United States issued retaliatory aid, police, travel and military sanctions against Uganda. The sanctions:

- 1) Prohibit Ugandan individuals involved in serious human rights abuses — including abuses against lesbian, gay, bisexual and transgender persons — from entering the United States;
- 2) Transfer funds from Uganda's Ministry of Health to other nongovernmental organizations;
- 3) Relocate a planned public health institute from Uganda and U.S. \$3 million in corresponding funds to South Africa;

- 4) Terminate a U.S. \$2.4 million initiative in support of Uganda's community policing program; and
- 5) Terminate a United States Africa Command (AFRICOM) military aviation exercise.

Prior to the June 19 announcement of these measures, Western donors including Denmark, the Netherlands, Norway, Sweden and the World Bank withheld or diverted over US\$118 million in assistance to Uganda in protest against the AHA's provisions. In March, the White House responded to the AHA by shifting funds from Ugandan partners whose public stance on homosexuality counters human rights, cancelling a Center for Disease Control survey of HIV at-risk populations in Uganda, and redirecting approximately US\$3 million in funding for Ugandan tourism and biodiversity towards NGO programming. The U.S. administration also froze approximately US\$4 million in support of Uganda's health care sector.

Uganda's response to retaliatory aid reductions reveals the country's increasing discomfort with the acceptance of Western support, which some politicians view as an obstacle to Uganda's sovereignty. Foreign assistance comprises approximately 20 percent of Uganda's national budget, and as Uganda's largest donor, the United States provides US\$400 million in annual assistance. Western sanctions inadvertently inspired heightened support for the AHA by Uganda's most impassioned anti-gay politicians, who view the act as an exercise of Ugandan sovereignty, a reflection of Ugandan values, and an opportunity to demonstrate Uganda's growing self-sufficiency. David Bahati, the AHA's author and a member of the Ugandan Parliament, has been especially vocal in insisting that the reduction in donor funds is a small price to pay for Uganda's ability to self-govern through the passing of the AHA. Uganda is generally becoming less dependent on foreign aid, and an increase in foreign direct investment is expected to occur over the next decade — in large part due to the anticipated production of oil.

In light of the strong global opposition to the AHA since the legislation's introduction in 2009, the absence of substantial economic repercussions signals foreign investors' unwillingness to engage in the controversial affairs of African governments. Initial forecasts that investors and donor countries might abandon Uganda in response to the AHA appear to be inaccurate — the broader financial implications of the AHA have had little impact on the Uganda's \$20 billion economy. Uganda's shilling currency fell 2.9 percent in the week following the AHA's enactment, but its currency recovered. After the Anti-Homosexuality Bill was approved in 2013, Richard Branson, head of Virgin Group Ltd., called on companies and tourists to boycott Ugandan business and declared that he would not be investing in Uganda because of the bill, but few companies accepted this call to action. Lenders including Barclays PLC. and Standard Bank Group Ltd. stated that they were reviewing the legislation after the AHA's passing, yet Uganda's bustling emerging economy continues to flourish without significant interference. In practice, the private sector's lack of a united response to the AHA may also be rooted in the difficulty of creating a consistent, proportionate reaction to anti-gay laws in a continent where 37 of 54 Sub-Saharan states criminalize homosexual conduct, and where local economies with tremendous potential are in desperate need of private sector investment. In many African countries, sodomy laws were first introduced during colonial times; while relatively recent LGBT rights movements are certainly growing in strength and visibility, African activists have yet to experience significant success.

Interestingly, many African LGBT organizations also expressed concerns that Western sanctions are an inappropriate response to anti-LGBT legislation. After the British government threatened to cut aid to African countries that did not respect LGBT rights in 2011, over 50 Africa-based LGBT rights organizations issued an open letter stating that retaliatory cuts in aid would create a backlash against LGBT Africans, reinforce unequal power dynamics between African and donor states, create perceptions that LGBT issues are inherently Western, and falsely elevate LGBT rights above other social justice issues in a region "where health and food security are not guaranteed for anyone."

## **Law Enforcement and the Ugandan Health Care Sector**

While the AHA's impact on Uganda's finances has been minimal, it has a profound impact on the daily lives of LGBT Ugandans, and on the country's health care sector. LGBT persons have reportedly been subject to arrests and police brutality due to allegations of homosexual conduct. According to human rights advocates, landlords are responding to AHA provisions prohibiting the "aiding" and "abetting" of homosexual conduct by evicting LGBT persons, rendering them homeless and especially vulnerable to mob violence and other hate crimes. An increasing number of LGBT Ugandans are reportedly seeking asylum in other countries out of fear for their physical safety.

Uganda's ability to meet the health care needs of LGBT persons has also been affected. Sanctions target government health care programming, including the World Bank's marked suspension of a US\$90 million loan to Uganda's health care system that would have addressed maternal health, newborn care and family planning. The Ugandan Health Minister reassured the public that health professionals will maintain patients' confidentiality and provide services as usual, but human rights activists say that many LGBT individuals are choosing not to seek medical care out of fear that health professionals might report their sexual orientation to authorities due to the AHA. Correspondingly, health care workers have reportedly expressed anxiety about providing HIV/AIDS-related services to Uganda's gay community, as these actions may be interpreted as "promoting," "aiding" or "abetting" homosexuality, AHA violations that can result in up to seven years imprisonment. The White House attributed its termination of support for Uganda's community policing program to the April 3 police raid of a U.S.-funded HIV/AIDS research, care and treatment program in Kampala, during which police accused employees of "promoting homosexuality." Such incidents pose serious challenges in providing comprehensive HIV/AIDS services in a country with an adult HIV/AIDS rate of approximately 7.2 percent.

## **U.S.-Uganda Relations**

Ugandan human rights activists and politicians filed a petition before the Constitutional Court requesting the AHA's annulment, but the act is unlikely to be overturned in the foreseeable future. Despite many countries' strong opposition to the act, Uganda remains a valuable U.S. partner in the fight against the Lord's Resistance Army, efforts to oppose Islamic militancy in Somalia, and key U.S.-Africa initiatives such as the President's Emergency Plan for AIDS Relief (PEPFAR), the Young African Leaders Initiative (YALI), and the African Growth and Opportunity Act (AGOA). The U.S. sanctions are not expected to deter Uganda's president, Yoweri Museveni, from attending the upcoming U.S.-Africa Leaders Summit in Washington, D.C., nor have Western donors indicated a willingness to impose sanctions against countries like Nigeria, whose anti-gay laws have also generated international disdain.

—By Dr. Witney Schneidman and Stephanie Keene, Covington & Burling LLP

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