

UNIVERSAL PERIODIC REVIEW OF UGANDA

**JOINT SUBMISSION BY CIVIL SOCIETY ORGANISATIONS WORKING WITH
LESBIANS, GAY , BISEXUAL, TRANSGENDERS AND INTERSEX PERSONS**

TO: THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

15TH JULY 2021

1. Blessed Rwenzori Uganda	2. Children Of The Sun Foundation (COSF)
3. Coalition for Human Rights Education	4. Come Out Positive Test Club
5. Freedom and Roam Uganda	6. Community Empowerment Initiative Network
7. Harm Reduction and Reproductive Health Initiative Mbarara	7. Health and Rights Initiative
8. Holistic Organisation to Promote Equality	9. Hope Focus Uganda
10. Human Rights Awareness and Promotion Forum	11. Ice Breakers Uganda
12. Initiative for Rescue Uganda	13. Kampus Liberty Uganda
14. Let's Walk Uganda	15. Lived Realities Uganda
16. Mbarara Rise Foundation	17. Queer Women Leaders Uganda
18. Rella Women's Foundation	19. Resilience Uganda
20. Rwizi Network	21. Sexual Minorities Uganda
22. The Robust Initiative For Promoting Human Rights	23. The Taala Foundation
24. Trans Youth Initiative Uganda	25. Vijana Na Children Foundation Uganda (VINACEF)
26. Rainbow Shadows Uganda	27. VOICE Uganda
28. Youth Fraternity For Change	29. Youth on Rock Foundation

Contents

UNIVERSAL PERIODIC REVIEW OF UGANDA.....	1
1. Introduction.....	2
2. Executive Summary.....	3
3. Legal and constitutional developments affecting the human rights of LGBT persons in Uganda between 2016 and 2020.....	5
4. Violations of the rights of LGBT persons between 2016 and 2020.....	8
A. The right to liberty, security and freedom from arbitrary arrest and detention.....	8
B. The Right to freedom from torture or cruel, inhuman, and degrading treatment.....	9
C. The right to health.....	12
D. Freedom of expression, association and assembly.....	13
5. Conclusion.....	14
6. Recommendations.....	14

1. Introduction

- 1.1. This report is a joint submission of organisations working on the rights of Lesbian, Gay, Bisexual, Transgender and Intersex persons (LGBTI) in Uganda, submitted under the auspices of the Sexual Minorities Cluster that is jointly convened by Human Rights Awareness and Promotion Forum (HRAPF) and Sexual Minorities Uganda (SMUG).
- 1.2. At the last Universal Periodic Review of Uganda for the 2011-2016 cycle, Uganda did not accept any of the recommendations on sexual orientation and gender identity. However Uganda committed in the first review in 2011 to take immediate concrete steps to stop discrimination and assaults against LGBTI persons and investigate thoroughly and sanction accordingly violence against LGBTI persons, including human rights activists; to investigate and prosecute, through the Uganda Human Rights Commission, human rights violations, including attacks on LBGTI persons, and make findings public; to increase education and awareness on all sets of human rights; strengthen human rights and democratic institutions, including the Uganda Human Rights Commission; protect human rights defenders from harassment and intimidation; and train security forces to respect freedom of assembly and expression.¹ Regardless of the commitments made at the UPR reviews, Uganda is still bound to respect, fulfil and protect all human rights enshrined in international instruments, including as regards LGBT persons. This

¹ Office of the United Nations High Commissioner for Human Rights http://www.uprinfo.org/database/index.php?limit=0&f_SUR=182&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

submission covers the incidences of protection of the rights of LGBT persons in Uganda since the last UPR review in 2016, as well as the incidences of violations as documented by the contributing organisations.

- 1.3. Information for this report was gathered through extensive consultation with members of the communities LGBTI persons across the country. These consultations were conducted through four meetings held in the four main regions of Uganda, reaching out to 51 persons associating under 29 different CSOs working with LGBT persons. The meetings were conducted in the Eastern Region (in Mbale City), the Northern Region (in Gulu City), the Western Region (in Mbarara City) and the Central Region (in Kampala City) between February and April 2021. The information provided by the individuals and organisations consulted was then cross-referenced with available data from research studies on LGBTI rights, and only that information that was verifiable through cross-referencing with available evidence-based research data was included in this report.
- 1.4. In addition, reference was made to secondary information such as media reports and reports by civil society organisations on the human rights situation for LGBTI persons during the period from 2016 to 2021, and national, regional and international human rights instruments were also analysed to inform the discussion on Uganda's human rights obligations to sexual minorities. Reference is also made to the outcome report from Uganda's previous UPR reviews to ascertain the commitments made therein in order to effectively make comment on the progress thus far achieved in meeting these commitments.
- 1.5. Besides HRAPF and SMUG, the report is contributed to by 27 other organisations working on issues of LGBT persons. It was validated at a meeting attended by over 20 organisations.

2. Executive Summary

- 2.1. There have been instances where the state has fulfilled its obligations as regards the human rights of LGBT persons. From the legislative perspective, Uganda enacted the Human Enforcement Act, 2019 which gives citizens the ability to hold individual public officers responsible for human rights violations. HRAPF and its partners have also recorded instances in the past four years where the state has come in to specifically protect LGBT persons from abuse. In 2019, the Uganda Police Force offered protection to 16 LGBT persons who were being threatened with mob justice; none in 2018, 5 instances in 2017; and 5 instances in 2016.
- 2.2. The courts of law have also been able to protect LGBT persons, with one case standing out where the High Court court awarded damages to 19 LGBT community members who were denied access to their lawyers while in prison. The Uganda Police Force has also worked together with HRAPF and other partners to train over 500 police officers on issues of marginalisation and the treatment of LGBT persons while in police custody.

- 2.3. Even with the above efforts, however, LGBT persons continue to face discrimination and marginalisation, primarily influenced by the penal laws of Uganda which criminalise consensual same-sex sexual relations. These colonial laws have continued to exist on the books (with various efforts over the years to augment punishments, further criminalise identities, etc.)² because of the social, religious, and cultural attitudes in the country. These laws are used as justification for the continued discrimination and violation of the rights of LGBTI people.
- 2.4. The Anti-Money Laundering Act, 2013, and the Financial Intelligence Authority created thereunder have also become a tool of oppression, with targeted attacks on Civil Society Organisations and human rights activists engaged in the protection and promotion of human rights and good governance. This is in stark contrast with Uganda's commitments to ensure that civil society organisations and human rights defenders operate in a safe environment and all allegations of intimidation, harassment and violence are fully investigated. Despite Uganda's commitments, the operating environment for civil society organisations merely continued to deteriorate, especially in the run up to the 2021 general elections.
- 2.5. Despite the enactment of progressive laws such as the Human Rights (Enforcement) Act, 2019, the incidence of human rights violations is on the rise particularly in the face of the COVID-19 pandemic and the measures instituted by the state to curb its spread. The realities of LGBT persons in the face of COVID-19 and the attendant regulations and directives only served to exacerbate the already deteriorating human rights situation. There have been several incidents of raids on LGBT shelters and places of entertainment/ social hang-outs in the last few months as a result of the changing socio-legal environment. HRAPF and partners have over the four-year period from 2016 to 2020 documented hundreds of incidences of human rights violations against LGBT persons. In 2019, there were a total of 282 violations of human rights based on real or presumed sexual orientation and gender identity, and out of these, 236 violations were committed by state actors while 46 were committed by non-state actors, which the state failed to redress. In 2018, there were 69 human rights violations committed LGBT persons, 39 of which were committed by state actors. In 2017, there were 74 violations, of which 45 were perpetrated by state actors. In 2016, there were 183 documented violations of which 94 were perpetrated by state actors and the others by non state actors without redress. These violations go against Uganda's international commitments to promote respect and observance of human rights for all without discrimination.

² In 2014, Uganda passed the Anti-Homosexuality Act, 2014 (declared null and void by the Constitutional Court less than 6 months later), a law which sought to create the offences of homosexuality and aggravated homosexuality and provide immunity for perpetrators of violence against LGBT persons by providing that it would be a valid defense to any assault charge for a person to prove that they did it to protect themselves from homosexual practices.

3. Legal and constitutional developments affecting the human rights of LGBT persons in Uganda between 2016 and 2020

- 3.1. While both Ugandan and international law explicitly bar discrimination based on, among other grounds, sex, they do not particularly recognise discrimination based on sexual orientation or gender identity. However, the UN Human Rights Committee has interpreted 'sex' as used in the International Covenant on Civil and Political Rights to include sexual orientation,³ and the term "other status" as used in clauses on non-discrimination has also been interpreted by the Committee on Economic, Social, and Cultural Rights in its General Comment 20 to include sexual orientation.⁴
- 3.2. Uganda has taken some positive steps towards ensuring the protection of the rights of LGBT persons. Article 21 of the 1995 Constitution of Uganda guarantees equality and freedom from discrimination for all persons, and specifically states that no person shall be discriminated against on the grounds of 'sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability'. However, penal provisions criminalising consensual same-sex sexual relations continue to exist in the Penal Code Act, and they are used to justify human rights violations against LGBTI persons.
- 3.3. Perhaps the most significant development in human rights law in Uganda during the period 2016-2020 is the enactment of the Human Rights (Enforcement) Act 2019 (HREA). The most important part of the Act is section 10 which provides for personal liability of state officials who violate human rights.⁵ The Act is yet to be used with respect to LGBT persons although a case is opening before the High Court of Uganda where two state officials in addition to the state are being pursued for violation of the rights of 20 LGBT persons who were arrested and subjected to torture, in human and degrading treatment

³ Communication 488/1992, *Toonen v. Australia*, Human Rights Committee U.N. Doc CCPR/C/50/D/488/1992 (1994). <http://hrlibrary.umn.edu/undocs/html/vws488.htm> (accessed on 25th January 2021); United Nations High Commissioner for Human Rights 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity'. https://www.ohchr.org/documents%2Fissues%2Fdiscrimination%2Fa.hrc.19.41_english.pdf (accessed 29 April 2021).

⁴ UN Committee on Economic, Social and Cultural Rights General (CESCR), 'Comment 20 Non-discrimination in economic, social and cultural rights' (2 July 2009), available at: <https://www.refworld.org/docid/4a60961f2.html> (accessed 29 April 2021)

⁵ For a detailed discussion of the Act, see Human Rights Awareness and Promotion Forum (HRAPF) 'The Human Rights (Enforcement) Act, 2019: A new dawn for the enforcement of human rights of marginalised groups in Uganda?' 2021 <https://www.hrapf.org/index.php/resources/human-rights-advocate-magazine/183-seventh-issue-of-the-human-rights-advocate/file> (accessed 27 June 2021 (accessed 27 June 2021).

while in prison.⁶

- 3.4. Section 145 of the Penal Code Act criminalises having carnal knowledge against the order of nature. Whereas this does not particularly refer to LGBT persons, the same is interpreted to criminalise consensual same sex relations, and is therefore discriminatory in nature.⁷ This provision is the basis for widespread discrimination and violence against LGBT persons, even though the offences are difficult to prosecute because, without a confession from the suspect, it is usually nearly impossible to find proof of the commission of such offences. Nevertheless, the law as is informs the misguided use of anal examinations to try and gather a semblance of evidence,⁸ violating the right to privacy and bodily integrity and freedom from cruel inhumane treatment guaranteed under Articles 27 and 24 of the Constitution respectively. Furthermore, vagrancy laws under sections 167 and 168 of the Penal Code Act have been used to arrest and harass LGBTI persons.
- 3.5. In addition to the already existing laws criminalising same-sex sexual relations, the government of Uganda is in the process of enacting the Sexual Offences Bill, which shall widen criminalisation for LGBTI persons. This Bill, passed by Parliament on 3rd May 2021, is currently awaiting presidential assent. If it becomes law in the state in which it is currently, it will in effect criminalise as “carnal knowledge against the order of nature” all sexual contact between persons of the same gender, the use of sex toys, anal sex, some aspects of oral sex and, in the same section, sex with animals.⁹ If signed into law by the president, this Bill will expand criminalisation for both LGBTI persons and greatly undermine efforts towards full recognition of the rights of LGBTI persons.¹⁰
- 3.6. The Non-Governmental Organisations Act 2016 (NGO Act) imposes special obligations on organisations not to engage in acts that are ‘prejudicial to the interests of Uganda and the dignity of the people of Uganda.’¹¹ This provision has forced significant self-censorship among civil society organisations as its vagueness can be used to target CSOs

⁶ *Mukiibi Henry and 20 Others v. Hajji Abdul Kiyimba and 3 Others*, High Court Miscellaneous Cause No.179 of 2020.

⁷ Adrian Jjuuko, ‘The incremental approach: Uganda’s struggle for the decriminalisation of homosexuality’ (2013) <https://sas-space.sas.ac.uk/4815/1/14/jjuuko.pdf> (accessed 29 April 2021)

⁸ Human Rights Watch ‘Uganda: Stop Police Harassment of LGBT People’ 17 November 2019 <https://www.hrw.org/news/2019/11/17/uganda-stop-police-harassment-lgbt-people> (accessed 29 April 2021)

⁹ Although an authoritative text for this Bill has not yet been availed by the Office of the Clerk to Parliament, the presumptive section 13 defines “unnatural offences” as per the Report of the Sectoral Committee on Legal and Parliamentary Affairs on the Sexual Offences Bill, 2019, which the parliament based on in passing this Bill.

¹⁰ Human Rights Awareness and Promotion Forum (HRAPF) ‘Analysis of the Sexual Offences Act, 2021 and its implications on the human rights of criminalised minorities’ <https://www.hrapf.org/index.php/resources/legal-policy-analyses/190-hrapf-legal-analysis-of-the-sexual-offences-act-2021/file> (accessed 15th May 2021).

¹¹ Non-Governmental Organisations Act, 2016 sections 30 and 44.

focusing on unpopular issues, such as the rights of sexual minorities. At present, less than 10 organisations working on sexual minorities rights in Uganda have been able to secure full registration by the NGO Board. In addition, state institutions in health service delivery, law enforcement, civil society regulation and even the courts of law tend to exhibit an inherent bias against serving LGBTI persons, often targeting them for arrest and prosecution for petty offences, denying them access to essential health services and restricting them to certain “friendly” facilities and community drop-in-centres, which generally focus only on HIV and STI prevention and management.

- 3.7. The judiciary has continued to uphold the rights of LGBT persons. The Constitutional Court of Uganda in November of 2016 delivered its decision in the case of *Adrian Jjuuko v Attorney General*¹² declaring section 15(6)(d) of the Equal Opportunities Act 2007, which prohibited the Equal Opportunities Commission from investigating and hearing matters considered socially unacceptable by a majority of social and cultural groupings in Uganda, to be inconsistent with the constitutional provisions on freedom from discrimination and the right to a fair hearing, and therefore null and void. This case makes a firm statement against discrimination of sexual minorities in Uganda and ensuring equality of all persons under the law.¹³
- 3.8. However, the Judiciary has also set bad precedents in deciding matters that concern sexual minorities. In 2018, the High Court upheld the decision of the Uganda Registration Services Bureau to refuse to reserve and register the name ‘Sexual Minorities Uganda’ on the grounds that it was undesirable, and that, as the organisation’s objectives included promoting the rights of LGBTI persons, its registration would amount to aiding and abetting the offence of having carnal knowledge against the order of nature in section 145 of the Penal Code Act.¹⁴ The appeal that was filed in this case in 2018 is still pending hearing before the Court of Appeal.¹⁵
- 3.9. The legal and policy environment is thus not only repressive but also contravenes Uganda’s obligations under various international instruments that Uganda has ratified. It reinforces stigma and social misconceptions against LGBT persons, thus providing a superficial justification for the violation of their rights.

¹² Constitutional Petition No.001 of 2009

¹³ Human Rights Watch ‘A Step Towards Better Addressing Discrimination in Uganda: Court Ruling Allows Equal Opportunities Commission to Hear Broader Range of Cases’. 11 November 2016 <https://www.hrw.org/news/2016/11/11/step-towards-better-addressing-discrimination-uganda> (accessed 29 April 2021.)

¹⁴ High Court Miscellaneous Cause No. 96 of 2016

¹⁵ Civil Appeal No. 233 of 2018

4. Violations of the rights of LGBT persons between 2016 and 2020

4.1. The unfriendly legal environment combined with homophobia and negative social and cultural attitudes towards same sex relations has contributed to further violations against LGBT persons. HRAPF and partners have documented cases of violations of human rights based on sexual orientation and gender identity. In 2019, there were a total of 282 violations were committed against LGBT persons.¹⁶ Out of these, 236 violations were committed by state actors while 46 were committed by non-state actors, which the state failed to redress. In 2018, there were 69 human rights violations committed LGBT persons, 39 of which were committed by state actors.¹⁷ In 2017, there were 74 violations, of which 45 were perpetrated by state actors.¹⁸ In 2016, there were 183 documented violations of which 94 were perpetrated by state actors and the others by non state actors without redress.¹⁹

A. The right to liberty, security and freedom from arbitrary arrest and detention

- 4.2. At the UN level, this right is guaranteed under Article 9 of the ICCPR, while at the regional level it is guaranteed under Article 6 of the ACHPR. This right guarantees that a person shall not be deprived of their liberty except as provided for under the law. Article 10 of the ICCPR further emphasises the right to be treated with dignity and humanity once the right to liberty has been curtailed.
- 4.3. In 2019, HRAPF and partners recorded a total of 163 violations of this right. Of these 161 were cases of arbitrary arrests, and 2 were cases of detention beyond 48 hours.²⁰ In 2018, there were 33 incidences involving the violation of the right to liberty.²¹ In 2017, there were 15 instances of violation of the right to liberty,²² while in 2016, there were 31

¹⁶ Human Rights Awareness and Promotion Forum 'The Uganda report of human rights violations on the basis of sexual orientation and gender identity, 2019' <https://www.hrapf.org/index.php/resources/violation-reports/172-sogi-violations-report-2019/file> (accessed 27th June 2021).

¹⁸ Human Rights Awareness and Promotion Forum 'The Uganda report of human rights violations based onsexual orientation and gender identity, 2018' 2019, <https://www.hrapf.org/index.php/resources/violation-reports/118-the-uganda-report-on-human-rights-violations-based-on-sogi-2018/file> (accessed 27th June 2021).

¹⁹ Human Rights Awareness and Promotion Forum 'Uganda Report of Violations Based on Sexual Orientation and Gender Identity 2018' <https://www.hrapf.org/index.php/resources/violation-reports/100-report-of-violations-based-on-sexual-orientation-and-gender-identity-2018/file> (accessed 27th June 2021).

²⁰ Human Rights Awareness and Promotion Forum 'Uganda Report of Violations Based on Sexual Orientation and Gender Identity 2017' <https://www.hrapf.org/index.php/resources/violation-reports/104-lgbt-violations-report-2017/file> (accessed 27th June 2021).

²¹ n 43 above.

²² n 44 above.

incidents of arbitrary arrests of LGBT persons.²³

- 4.4. The most common feature of the violation of this right are mass arrests, which have become rather ubiquitous of late. In May 2021, 45 people were arrested from Nansana on suspicions that they were homosexuals, and 42 were charged with doing a negligent act likely to spread infection of disease, but are currently out on bail.²⁴ In November 2019, 127 persons were arrested from a bar which was known to be a popular place of socialisation for LGBT persons and although they were first charged with possession of narcotics under the Narcotic Drugs and Psychotropic Substances Control Act (NDPSCA), this was later changed to 'being a common nuisance' under the Penal Code Act, an offence defined in section 160 of the Penal Code Act to literally mean behaving in a public place in such a way as to be annoying to a part of the public.
- 4.5. With the enforcement of the COVID-19 regulations, arbitrary arrests and detentions have continued to spike, with several incidences of targeted arrests and arbitrary detentions of LGBT persons under the guise of enforcing these regulations.²⁵
- 4.6. Owing to the difficulty of proving the offence of 'having carnal knowledge against the order of nature', the Police often resort to charging LGBT persons with petty offences such as 'being idle and disorderly',²⁶ 'being a rogue and vagabond',²⁷ 'being a common nuisance'²⁸ and, in recent times, 'disobeying lawful orders'²⁹ and 'doing a negligent act likely to spread infection of disease'³⁰ for allegedly flouting presidential directives on the prevention of the spread of COVID-19.

B. The Right to freedom from torture or cruel, inhuman, and degrading treatment

- 4.7. Article 7 and 10 of the ICCPR provide for the right to freedom from torture, cruel, inhumane and degrading treatment, and this same right is guaranteed at the regional level under Article 5 of the African Charter on Human and Peoples Rights and it is codified in the laws of Uganda under Article 24 of the 1995 Constitution of Uganda.

sexual orientation and gender identity, 2018* ' 2019,

<https://www.hrapf.org/index.php/resources/violation-reports/118-the-uganda-report-on-human-rights-violations-based-on-sogi-2018/file> (accessed 27th June 2021).

²⁴ Human Rights Awareness and Promotion Forum '2017 report on the protection and violation of the human

rights of sex workers in Uganda' 2018 .<https://www.hrapf.org/index.php/resources/violation-reports/101-report-the-protection-and-violation-of-the-human-rights-of-sex-workers-in-uganda-2018-final/file> (accessed 27th June 2021).

²⁶ Human Rights Awareness and Promotion Forum 'The protection and violation of the human rights of sex workers in Uganda in 2016' 2017 <https://www.hrapf.org/index.php/resources/violation-reports/103-protection-and-violation-of-the-rights-of-female-sex-workers-in-uganda-2016/file> (accessed 27th June 2021).

²⁸ *Uganda v Ssembajjwe Jonathan & 41 others*, Nansana Magistrates Court, 518-21.

²⁹ Health Gap 'Uganda's COVID-19 Response is Terrorizing Women with Arbitrary Detention, Blackmail, and Violence.' 30 April 2020 <https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/> (accessed 29 April 2021).

³⁰ Section 167 of the Penal Code Act, Cap 120, Laws of Uganda

Cruel, inhumane and degrading treatment against LGBT persons in Uganda manifests in several forms, including public parading of LGBT persons whenever they are arrested, exposing them to public ridicule,³¹ non-consensual anal examinations for LGBTI persons in a bid to establish evidence of having had ‘carnal knowledge against the order of nature’ by police officers when they are arrested and physical violence against LGBTI persons by arresting and detaining officers in both police stations and prisons.

- 4.8. HRAPF and partners have documented cases of violations of this right over the years. In 2019, HRAPF and partners recorded a total of 18 violations of this right.³² In 2018, there were 10,³³ in 2017, there were 15,³⁴ while in 2016, there were 25 incidents.³⁵
- 4.9. Law enforcement officials usually mete out torture against LGBT persons. The case of the 20 LGBT persons who were arrested at the height of the COVID-19 lockdown in March 2020 illustrates this. The 20 were subjected to beatings during arrest as well as taunts led by the Mayor Of Kyengera Town Council, Hajj Abudul Kiyimba. While in prison, they were subjected to further beatings and in one extreme case, this violence culminated in a Deputy Officer in charge of the prison burning a transgender woman between the thighs with a smouldering log to “teach her a lesson.”³⁶
- 4.10. Forced anal examinations, conducted purportedly to find evidence of homosexual conduct, is usually done by the medical personnel forcibly inserting their fingers or other objects into the anus of the suspect. Victims have described the exams as painful and degrading, explaining that they are always conducted in the presence of a police officer, and the victims are often forced to endure prolonged visual examination by both health workers and police personnel; some also experienced them as a form of sexual violence, while others have reported use of violence by both health workers and police personnel in order to secure their cooperation in the exercise, all despite the fact that anal exams have no evidentiary value, and their findings are usually not regarded as probative in courts of law. The Independent Forensic Expert Group (IFEG) identified

³¹ Section 168 of the PCA

³² Section 160 of the PCA. See for instance Buganda Road Court Criminal cases KLA-00-CR-CO-1263/2019 (Uganda vs Asuman Sserubiri and Others), KLA-00-CR-CO-1262/2019 (Uganda vs Ntale Farida and Others), KLA-00-CR-CO-1266/2019 (Uganda vs Male Marvin and others), KLA-00-CR-CO-1264/2019 (Uganda vs Ssematimba Titus and Others) and KLA-00-CR-CO-1265/2019 (Uganda vs Katongole Ibrahim and Others), in which 67 out of 125 people arrested at a gay bar in Kampala in a targeted swoop were arraigned before courts on charges of being a common nuisance.

³³ Section 117 of the Penal Code Act

³⁴ Section 171 of the Penal Code Act

³⁵ See for instance ‘Shock as Kayunga imam discovers his newlywed wife is a man’ The Daily Monitor <https://www.monitor.co.ug/uganda/news/national/shock-as-kayunga-imam-discovers-his-newlywed-wife-is-a-man-1868920> (accessed 29 April 2021); ‘Police burst Kireka ‘sex party’, 21 suspects arrested’ The Observer 11 October 2020 <https://observer.ug/news/headlines/66929-police-burst-sex-party-21-suspects-arrested> (accessed 30 April 2021).

³⁶ n 43 above.

fifteen medical conditions, ranging from simple constipation to Parkinson's disease, that could produce the same "symptoms" doctors look for when conducting forced anal exams in cases of consensual same-sex conduct.³⁷ This makes the evidence thus acquired almost entirely useless in the context of criminal trials, but the practice is nevertheless practiced with gusto in Uganda, with a recent example of a group of 42 persons, charged with doing a negligent act likely to spread infection of disease, reporting anal examinations on at least 17 of them, merely because the police suspected that they were gay.³⁸

- 4.11. The media in Uganda has become the podium for hate speech mostly peddled by politicians, whose misinformed utterances serve to inflame homophobia.³⁹ Particularly during the run up to the 2021 general elections, politicians have used homophobia to win the support of voters and distract citizens from other issues, creating a hostile environment for LGBT persons.⁴⁰ These utterances have at times been used by both the ordinary citizens and law enforcers to further justify the discrimination faced by LGBT persons. Furthermore, the negative portrayal of LGBT persons by the media and politicians reinforces harmful stereotypes, thereby sanctioning hate crimes against them. The media has also exposed LGBTI persons to arbitrary arrests and cruel treatment at the hands of Police through unprofessional coverage of stories and documentaries.⁴¹
- 4.12. Additionally, politicians in Uganda have used the threat of re-tabling the Anti-Homosexuality Act 2014 to keep LGBT persons in perpetual fear, and the talks about this law have contributed to increasing homophobic attacks against LGBT persons.⁴² These statements are designed to gain popularity with the public and are readily aired by the media to appease both the ruling elite and the masses. This is cruel and degrading to LGBT persons, who are forced to live in perpetual fear of such a threat being realised, a fear that has since increased after parliament enacting the Sexual Offences Bill, 2019.⁴³

³⁷ n 44 above.

sexual orientation and gender identity, 2018* ' 2019, <https://www.hrapf.org/index.php/resources/violation-reports/118-the-uganda-report-on-human-rights-violations-based-on-sogi-2018/file> (accessed 27th June 2021).

³⁹ Human Rights Awareness and Promotion Forum '2017 report on the protection and violation of the human rights of sex workers in Uganda' 2018 .<https://www.hrapf.org/index.php/resources/violation-reports/101-report-the-protection-and-violation-of-the-human-rights-of-sex-workers-in-uganda-2018-final/file> (accessed 27th June 2021).

⁴¹ Human Rights Awareness and Promotion Forum 'The protection and violation of the human rights of sex workers in Uganda in 2016' 2017 <https://www.hrapf.org/index.php/resources/violation-reports/103-protection-and-violation-of-the-rights-of-female-sex-workers-in-uganda-2016/file> (accessed 27th June 2021).

⁴³ This matter is currently pending adjudication before the courts both as a civil claim for damages for torture (Mukiibi Henry and 20 others versus Haji Abdul Kiyimba and 3 others, High Court Miscellaneous Cause No. 179 of 2020) and as a criminal case filed against the errant prisons officer (Mukiibi Henry and 6 others vs Hajji Abdul Kiyimba and PO Philemon Woniala, Wakiso Chief Magistrates Court Criminal Case No. 505 of 2020).

The Police often respond to such utterances by brutally arresting, parading and exposing perceived homosexuals before the media⁴⁴ to be seen as doing something about homosexuality in the country, subjecting LGBT people to indignity and danger and violating their privacy, a right guaranteed under Article 17 of the ICCPR and Article 27 of the 1995 Constitution of Uganda.

C. The right to health

- 4.13. Article 12 of the ICESCR and Article 16 of the ACHPR provide for the right to health. The Constitution of Uganda does not explicitly provide for the right to health but recognises the right of every Ugandan to access to medical care without discrimination under Article 8A read together with Objective 20 of the National Objectives and Directive Principles of State Policy. The right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as availability, accessibility, acceptability and quality.⁴⁵ Unfortunately, the right to health for LGBT persons is often denied due to the social and cultural misconceptions and exclusions that LGBT persons experience based on their sexual orientation and gender identity. This is reflected in the budget allocations that do not include sexual reproductive health services for LGBT persons⁴⁶ beyond donor funded HIV and STI prevention and treatment initiatives.
- 4.14. LGBT persons encounter discrimination, stigmatisation and hostility in accessing the health care system in Uganda, and this discrimination is based on the criminalisation of same sex sexual conduct under the Penal Code Act. This also informs the negative attitudes of health workers to LGBTI persons,⁴⁷ despite the fact that they remain classified as key populations and as groups most at risk of acquiring HIV.⁴⁸ There is no robust system to track universal healthcare coverage even in relation to HIV services for LGBT persons.
- 4.15. Additionally, there are no specialised healthcare services tailored towards the specific needs of LGBT persons.⁴⁹ Services unique to LGBT persons are usually not readily available at healthcare facilities,⁵⁰ and there is documented evidence of healthcare

⁴⁴ Independent Forensic Expert Group 'Statement on anal examinations in cases of alleged homosexuality', January 2016, DOI: 10.7146/torture.v26i2.108205.

⁴⁵ *Uganda v Sembajje Jonathan & 41 others*, Nansana Magistrates Court, 518-21.

⁴⁶ 'Anti-gay rhetoric ramps up fear among LGBT+ Ugandans ahead of polls' Nita Bhalla, Reuters 6 January 2021 <https://www.reuters.com/article/us-uganda-lgbt-election-idUSKBN29B22W> . (accessed 30 April 2021)

⁴⁷ 'Museveni attacks homosexuals, foreign groups, says they are sponsoring opposition protests.' Nile Post 20 November 2020; <https://nilepost.co.ug/2020/11/20/museveni-attacks-homosexuals-foreign-groups-says-they-are-sponsoring-opposition-protests/>

⁴⁸ See HRAPF (n 20 above)

⁴⁹ 'Amid 'Kill the Gays' bill uproar, Ugandan LGBTQ activist is killed' NBC News 16 October 2019 <https://www.nbcnews.com/feature/nbc-out/amid-kill-gays-bill-uproar-ugandan-lgbtq-activist-killed-n1067336>.

⁵⁰ See n 28 above

service providers refusing to serve LGBT persons on the basis of their fear of supporting them in their “imported behaviours,” whereas others claim not to have the requisite skills.⁵¹

- 4.16. Non-Governmental Organisations such as the Most at Risk Populations Initiative and community drop-in-centres operated by LGBTI led organisations are the primary source of health care services for LGBTI persons.⁵² The SRHR needs of LGBT persons are generally not considered, and government efforts to raise awareness on SRHR issues as well as the minimum SRHR packages available are all tailored towards heterosexual persons, such as the Ministry of Health’s long-standing campaign on the use of contraception, which exclusively targets heterosexual couples.

D. Freedom of expression, association and assembly

- 4.17. Article 19 of the ICCPR and Article 21 of the Constitution of Uganda, 1995 guarantee the right of all persons to freedom of expression, conscience, religion, association and assembly, as well as the right to freedom of movement, which are fundamental to the creation of vibrant and effective civil society movements.
- 4.18. HRAPF and partners have documented cases of violation of this right. There were 34 violations of the right to freedom of conscience, expression, movement, religion, assembly and association of LGBT persons during 2019. In 2018, there was one case.⁵³ In 2017, there were 4 instances of violation of the right to liberty,⁵⁴ while in 2016, there were 3 incidents.⁵⁵
- 4.19. Civil Society Organisations that focus on governance and issues of sexual minorities have garnered the illegal and undue attention of the Financial Intelligence Authority, and have had their accounts and activities frozen.⁵⁶ These attacks are not limited to the Organisations but extend to human rights defenders who are vocal over Governments’ overreach and failures.⁵⁷ The Government has also targeted donor funding in a bid to

⁵¹Open Democracy ‘I’ve defended hundreds of LGBTI people arrested in Uganda. Our laws must change – but we need public acceptance too.’ 23 January 2020

<https://www.opendemocracy.net/en/5050/ive-defended-hundreds-of-lgbti-people-arrested-in-uganda-our-laws-must-change-but-we-need-public-acceptance-too/>

⁵³ Committee on ESCR ‘General Comment 14: The right to the highest standard of physical and mental health’. HRI/GEN/1/Rev 9 (Vol1) (2000) para 11.

⁵⁴ Human Rights Awareness and Promotion Forum (HRAPF) ‘Trends analysis of programming and budget allocation to srhr commodities and services for LGBT persons in uganda trends analysis of programming and budget allocation to SRHR commodities and services for 2016/2017 - 2021/2021’ (2020) <https://www.hrapf.org/index.php/resources/legal-policy-analyses>

⁵⁵ n 40 above and information from consultative meetings with LGBT persons and

⁵⁶HRAPF ‘How laws that promote human rights impact on access to HIV and TB services for Key Populations in Uganda.’ 2020 <https://www.hrapf.org/index.php/resources/>

⁵⁷ Human Rights Awareness and Promotion Forum ‘Sexual And Reproductive Health (SRH) Needs for LGBTI persons and Quality of available services to LGBTI persons’ 2021 <https://www.hrapf.org/index.php/resources/research-reports>

frustrate the operation of the Civil Society Organisations.⁵⁸ These limitations are unjustifiable as they are aimed at silencing genuine concerns raised over the human rights situation in Uganda and have the effect of unduly and unlawfully limiting the freedom of expression, association and assembly for LGBTI persons and in Uganda.

5. Conclusion

5.1. International human rights instruments and national law protect all persons equally without distinction as to race, social standing or sexual orientation and gender identity or expression. The human rights of LGBT people are inherent, based on their humanity and grounded in the human rights framework. The LGBT community therefore calls upon the Government of Uganda to respect its obligations under the international, regional and national human rights law to treat all persons equally regardless of sexual orientation and gender identity or expression.

6. Recommendations

Uganda should:

1. Repeal all discriminatory laws inconsistent with Ugandan's international obligations and enact laws to ratify and operationalise international human rights instruments that Uganda is a state party to. In particular, repeal section 145 of the Penal Code Act and sections 44 (d) (f) of the NGO Act and review the Sexual Offences Bill prior to presidential assent to remove the further criminalisation of consensual same-sex sexual relations.
2. Strengthen the Judicial system to better offer redress to victims of violations and intensify efforts to clear case backlog through scheduling, hearing and determining cases filed for the protection of the human rights of marginalised persons.
3. Enact regulations to govern the humane and dignified treatment of all suspects, particularly LGBTI persons, upon arrest and while in detention based on internationally acceptable standards of respect for basic human rights.
4. Investigate and prosecute state actors and individuals perpetrating violence against LGBTI persons
5. Respect, protect and promote the human rights of all persons without discrimination on any grounds, including sexual orientation and gender identity.
6. Strengthen the health policy framework to better serve the unique health needs of LGBTI persons, and strengthen human rights training for health workers on the issues

⁵⁸ n 42 above

that concern marginalised persons within the healthcare system.

7. Increase funding for the health sector in line with the Abuja Declaration, with specific provision of funds to meet the unique SRHR needs of LGBTI persons, and strengthen universal health coverage for HIV services for LGBT persons.
8. Ensure that any form of hate speech against LGBTI persons is strongly sanctioned, and hold politicians and all state actors accountable for inciting violence against LGBT persons. Furthermore, classify hate speech and other acts of homophobia as hate crimes with the appropriate sanctions.
9. Pass a directive to all health workers to stop conducting anal examinations on persons suspected of having had carnal knowledge against the order of nature
10. Repeal all repressive and discriminatory laws that are used to unjustifiably limit the human rights of LGBT persons and limit the civic space for civil society organisations working with sexual minorities.