



Uganda Report of Violations Based on Sexual Orientation and Gender Identity 2016

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Uganda Report of Violations Based on Sexual Orientation and Gender Identity 2016

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Human Rights Awareness and Promotion Forum (HRAPF); Freedom and Roam Uganda; Sexual Minorities Uganda; Ice Breakers Uganda; and the Uganda National LGBTI Security Committee

Under the auspices of the Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation

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About the contributing organisations

1. Human Rights Awareness and Promotion Forum (HRAPF)

Human Rights Awareness and Promotion Forum (HRAPF) is a human rights advocacy and legal aid service provision organisation with a particular focus on the rights of marginalised groups. It operates the only specialised legal aid clinic for LGBTI persons in Uganda. It also engages in strategic litigation for LGBTI rights and was instrumental in the case that saw the nullification of the Anti-Homosexuality Act, 2014. It also engages the Police, the judiciary, the Uganda Human Rights Commission and the Equal Opportunities Commission on protection of the rights of LGBTI persons, as well as engaging in research and publications on LGBTI rights. HRAPF currently coordinates the Consortium.

2. Sexual Minorities Uganda (SMUG)

Sexual Minorities Uganda is an umbrella Non-Governmental Organisation based in Kampala, Uganda. It was established in 2004 to bring together all LGBTI organisations in Uganda that work for the improved lives and observance of rights of LGBTI persons. The organisation advocates for the protection and promotion of the human rights of LGBTI Ugandans through human rights advocacy, research, service provision, awareness creation and networks and partnerships.

3. Freedom and Roam Uganda (FARUG)

Freedom And Roam Uganda is a

Lesbian, Bisexual and Transgender organisation. It was established in 2003 by a group of lesbians who were constantly being harassed, insulted and discriminated against by a misinformed society, and who were touched by the plight of their sisters and brothers of the same sexual orientation. It is one of the oldest organisations in Uganda that work on issues of sexual orientation and gender identity/expression through lobbying, dialogue, visibility and voice.

4. Ice Breakers Uganda (IBU)

Ice Breakers Uganda is an LGBTI care and support organisation that was formed in 2004. It caters for LGBTI Ugandans above 18 years of age. Its vision is a Uganda of total justice devoid of discrimination based on sexual orientation and free of HIV/AIDS and its disastrous effects. Its mission is to support and raise awareness within the LGBTI community about their human rights, issues in health, and advocate for change in attitude towards LGBTI persons thereby reducing stigma on grounds of sexual orientation.

5. The Uganda National LGBTI Security Committee

The National Security Committee was established by LGBTI activists in 2008 but started actively working in 2010 after the murder of LGBTI rights activist, David Kato. It is a committee of 7 members chosen from 7 different LGBTI led organisations in Uganda. The committee provides emergency support to the Most at Risk Ugandans who are threatened and attacked due to their actual or perceived sexual

orientation and gender identities. This emergency support is provided through rapid response, referrals to legal and medical service providers, safe housing and basic upkeep. The committee coordinates closely with LGBTI led organisations within Uganda and also extends its services to community members who are not affiliated to organisations.

About the Consortium on Monitoring violations based on Sexual Orientation and Gender Identity

The Consortium on Monitoring violations based on Sexual Orientation and Gender Identity (The Consortium) was formerly known as the Consortium on Monitoring Violations based on Sex Development, Gender Identity and Sexual Orientation. It is a loose network of organisations that are engaged in documenting violations based on gender identity and sexual orientation in Uganda. The Consortium aims at producing regular, accurate, and harmonised data on violations based on the two parameters above. This is aimed at steering evidence-based advocacy strategies for the rights of LGBTI persons. Its overall goal is to establish an evidentiary record and to create a high quality and sustainable monitoring system of violations based on gender identity and sexual orientation to support advocacy to create positive social and political change. The Consortium seeks to support community organisations to do successful advocacy against these violations and to build the capacity of members to carry out quality documentation of human rights violations through training in documentation and fact finding. It was established in 2014.

Organisations voluntarily contribute data of violations they have handled and these are compiled together to form

this report. The data is analysed and the report developed by the coordinating organisation, Human Rights Awareness and Promotion Forum (HRAPF). The contributing organisations are: Human Rights Awareness and Promotion Forum (HRAPF); Freedom and Roam Uganda; Sexual Minorities Uganda; Ice Breakers Uganda; and the Uganda National LGBTI Security Committee. The Consortium uses Martus software developed by Benetech which also provides technical support. The Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) plays an observatory role to the Consortium.

The Consortium has so far produced two annual violations reports, the first one being in 2014 and the second one in 2015. This is the third consecutive report.

Glossary

Bisexual: A person romantically and/or sexually attracted to men and women.

Gay: A man romantically and/or sexually attracted to men.

Gender Identity: A person's conception of oneself as male or female or both or neither.

Homosexual: A person attracted to persons of the same sex.

Intersex: A condition in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male, or a person who may be born with genitals that seem to be in between male and female.

Lesbian: A woman romantically and/or sexually attracted to women.

LGBTI Community: Self-identified LGBTI individuals who participate in social and professional activities with other self-identified LGBTI individuals and LGBTI allies. These individuals do not have to be but are often members of one or multiple LGBTI organisations.

Outing: The act of disclosing a lesbian, gay, bisexual, transgender, and/or intersex person's true sexual orientation or gender identity without that person's consent.

Perpetrator: The person or institution responsible for causing the violation.

Sex: The genitals: the physical distinction between male and female.

Sex Determination: The way by which the sex of an individual is determined. It may be based on the person's gametes or sex chromosomes.

Sexual Minorities: A group whose sexual identity, orientation and/or practice differs from the majority of the surrounding society.

Sexual Orientation: A person's emotional, physical and sexual attraction and the expression of that attraction with other individuals.

Transgender: Someone whose deeply held sense of gender is different from their biological sex assigned at birth.

Transgender man: A transgender person who was assigned the female sex at birth but has a male gender identity.

Transgender woman: A transgender person who was assigned the male sex at birth but has a female gender identity.

List of Acronyms

AG:	Attorney General
ATRI:	Action for Transgender Rights Initiative
CSCHRCL:	Civil Society Coalition on Human Rights and Constitutional Law
FARUG:	Freedom And Roam Uganda
GEF:	General Inquiry File
HRAPF:	Human Rights Awareness and Promotion Forum
IBU:	Ice Breakers Uganda
LGBTI:	Lesbian, Gay, Bisexual, Transgender, Intersex
MARPI:	Most At Risk Populations Initiative
NSSF:	National Social Security Fund
PEP:	Post-Exposure Prophylaxis
RHF:	Rainbow Health Foundation
SIPD:	Support Initiative for People with Congenital Disorders
SOGI:	Sexual Orientation and Gender Identity
SMUG:	Sexual Minorities Uganda
URSB:	Uganda Registration Services Bureau

Executive Summary

Introduction

The 2016 Uganda SOGI Violations Report is a collection of verified violations against persons on the basis of actual or perceived sexual orientation and gender identity, documented in 2015. The report is intended to act as an evidence based advocacy tool in bringing to the fore the marginalisation suffered by persons in Uganda that are perceived to be or actually identify as LGBTI. It shows violations as perpetrated by the state actors and non-state actors. The report uses facts of some of the documented incidents to illustrate the violations. It also has various recommendations to different stakeholders, which recommendations are intended to improve the observance of the rights of LGBTI persons in Uganda.

Key findings

1. There were 171 verified violations of the human rights of LGBTI persons in 2015 based on sexual orientation and gender identity. These violations arose out of 91 different cases.
2. Of the 171 violations documented and verified for the report, 78 violations (45.6%) were perpetrated by state actors, while 93 violations (54.4%) were perpetrated by non-state actors. This is unlike previous reports where state actors perpetrated more violations.
3. Although non-state actors perpetrated most of the violations, the Uganda Police Force remains the top individual perpetrator of violations against LGBTI persons with 64 violations out of the 171 violations (37%). Property owners follow with 40 violations (23.3%).
4. A new violator for this year is the Uganda Registration Services Bureau which denied registration to three organisations simply on the basis of their names which it found 'undesirable.'
5. Private individuals continue to violate rights of LGBTI persons with impunity as in most cases these actions are implicitly condoned by law enforcement authorities, as the Police usually does very little to investigate the cases, and in some cases even condones them. The state therefore remains liable under international human rights laws for failure to protect the rights of LGBTI persons from violations by third parties.
6. Most of the violations against LGBTI persons are fuelled by the prevalent homophobia in Uganda, which continues to make LGBTI persons misunderstood.
7. The nullification of the Anti-Homosexuality Act did not do much to reduce the violations of the rights of LGBTI persons.

Perhaps the main change is that non state actors committed more violations than state actors.

Key recommendations

To the Uganda Police Force

- The Directorate of Human Rights and Legal Services should endeavor to train police officers in matters of human rights, particularly the rights of LGBTI persons in Uganda. This should be intended to reduce human rights violations based on sexual orientation and gender identity like unnecessary arrests and parades before the media.
- The police should afford LGBTI persons equal protection by ensuring that violations perpetrated against LGBTI persons are properly investigated and dealt with accordingly. This should include violations perpetrated by police officers.
- The Directorate of Human Rights and Legal Services should issue guidelines to police officers on how to deal with cases involving LGBTI persons.

To the Uganda Human Rights Commission

- Investigate and document reports of violence and abuse against individuals based on sexual orientation, sex determination, and gender identity or expression, and

include such violations in annual reports to Parliament, accompanied by recommendations for policy changes.

- Encourage various state institutions to incorporate the Human Rights Based Approach into the fulfillment of their respective mandates.
- Include violations of LGBTI persons' rights in the Annual Report to Parliament as a specific category.

To Members of Parliament

- Enact laws that do not discriminate on the basis of sexual orientation and gender identity. Parliament should also amend the existing laws that discriminate on those grounds and avoid enacting laws that further criminalise LGBTI persons.
- Condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity or expression.
- Parliament should enact laws that protect the rights of LGBTI persons.

To the Equal Opportunities Commission

- Investigate, on its own accord, systematic stigmatisation and discrimination of individuals based on their sexual orientation or gender identity.

- Open up space and opportunity to partner substantively with organisations and other persons that work for the promotion of the rights of LGBTI persons.

To the Judiciary

- The judiciary should hasten the hearing of cases brought before them involving human rights violations as inordinate delays affect the protection of human rights.
- The Constitutional court should urgently give judgment in the case of *Adrian Jjuuko v AG* in order to clarify the jurisdiction of the Equal Opportunities Commission tribunal regarding LGBTI persons.

To the Uganda Law Reform Commission

- Issue formal recommendations to Parliament that the Penal Code sections that explicitly discriminate on the basis of sexual orientation or gender identity be repealed, including Section 145 on carnal knowledge against the order of nature.
- Provide guidance on Penal Code sections that provide for vagrancy offences. Such guidance should be in the form of written guidelines that are circulated to all police posts in Uganda.

To the Ministry of Health

The Department of Community Health should institute training for healthcare

service providers on sexual orientation and gender identity to enable provision of discrimination free health services for everyone including LGBTI persons.

- The Clinical Services Department should issue proper guidelines for providing medical care to all people without discrimination even on the basis of sexual orientation or gender identity.

To the international community

- Call on the government of Uganda to live up to its international human rights standards by protecting the rights of all persons including LGBTI persons.

To national human rights organisations and LGBTI organisations

- Build capacity of staff in documentation of violations based on gender identity and sexual orientation. And this documentation should be actively used for advocacy.
- Strengthen reporting systems, evidence collection and data storage to facilitate easy verification of violations against people based on their sexual orientation and gender identity or expression.

To the Media

- Treat all people with respect and dignity, regardless of gender identity, or sexual orientation.
- Learn about, monitor, and

report on abuses of human rights and dignity that LGBTI Ugandans face.

To the Uganda registration Services Bureau

- Objectively evaluate applications for reservation of organization names and apply the same principles for all organisations including LGBTI organisations. Section 145 of the Penal criminalises same sex conduct and not the formation of organisations intended to protect human rights of persons regardless of their sexual orientation.

To the Uganda Prisons Service

- Protect all prisoners including LGBTI prisoners from violence perpetrated by fellow prisoners or prison wardens.

- Carry out trainings of prison officials on rights of LGBTI persons.

To the President of the Republic of Uganda

- Veto legislation that is discriminatory on the basis of sexual orientation or gender identity and call upon the police and all intelligence agencies to investigate violations and abuse of the rights of persons based on their gender identity and sexual orientation.
- Ensure that issues of non discrimination are prioritised within the Cabinet and the executive generally.

SECTION I

INTRODUCTION

1.1 Introduction

The 2016 Uganda SOGI Violations Report is a collection of verified violations against persons on the basis of actual or perceived sexual orientation and gender identity, documented in 2015. The report is intended to act as an evidence based advocacy tool in bringing to the fore the marginalisation suffered by persons in Uganda that are perceived to be or actually identify as LGBTI. It shows violations as perpetrated by the state actors and non-state actors. The report uses facts of some of the documented incidents to illustrate the violations. It also has various recommendations to different stakeholders, which recommendations are intended to improve the observance of the rights of LGBTI persons in Uganda.

This is the third annual report of violations based on Gender Identity and Sexual orientation covering the year 2015. Such reports are published annually documenting human rights violations suffered by LGBTI persons in Uganda. The first of such reports was published in 2014, showing violations documented in the year 2013 and before. The second one was published in 2015 for the year 2014.

The violations constituting this report were documented by different organisations working with LGBTI persons in Uganda and have been fully verified under parameters established by the Consortium.

Just like the two reports before it, this

report is intended to provide evidence of violations of human rights based on gender identity and sexual orientation in Uganda. It is a rather common suggestion made mainly by state officials that there is in fact no violation of the rights of LGBTI persons based on their gender identity or sexual orientation. That LGBTI persons in Uganda are treated just like any other Ugandan and there is no evidence of violations beyond what other people or groups suffer. The continuous publication of these reports puts such allegations to rest as they provide concrete evidence proving the existence of these violations, and the need for relevant action to address them. The reports are intended to be used as advocacy tools to various stakeholders and as pointers to what the problems are and what the necessary actions should be, as the report includes targeted recommendations to various stakeholders and duty bearers.

1.2 Methodology

Following the methodology adopted by the Consortium right at inception, both quantitative and qualitative methods were used to collect and verify data for this report. Quantitative methods were used in terms of collecting numbers of cases from the different organisations while qualitative methods were employed in understanding violations in these cases and analysing the violations further.

All the contributing organisations do in different ways and capacities handle cases of violations against

LGBTI persons. HRAPF provides legal aid services, while the others process security concerns and also document complaints. As such it is quite frequent that one case is handled by different organisations on different aspects: legal aid, security, and documentation. Data collection was done following the mandates and methodologies of the organisation collecting the data and care was taken to ensure that cases handled by multiple people were classified as one case.

276 cases in total were collected with HRAPF contributing 133; the National Security Committee 117; Ice Breakers Uganda 13; Sexual Minorities Uganda 8; and Freedom and Roam Uganda 5. Of the 276 cases, only 91 had verifiable violations and are what made it to this report. Due to the fact that some cases have multiple violations, the 91 verified cases had a total of 171 violations that were analysed for this report.

Pursuant to the need to have a clear and verifiable record of violations against LGBTI persons in Uganda based on sexual orientation and gender identity, it was imperative to ensure that the data published in these reports can be relied on by the different stakeholders. To this end, there are strict verification guidelines that have to be followed for a violation to be included in this report. Not all documented violations are included in this report because during the verification process, some of them fail to make the cut for lack of proper documentary evidence and adequate witness corroboration.

The verification process is entirely based on primary evidence. As such only documentary evidence and witness statements/corroboration are accepted. For cases where documents

should be available, documentary evidence was relied on more. The documents required were those that could adequately prove that what was being alleged actually happened. The main documents used were: eviction letters to prove evictions; medical forms to prove medical examinations; charge sheets to prove charges; police statements to show that the police took down statements; newspaper clippings to prove that a case was reported in the media or that outings happened; police bond forms to show when a person was released on police bond; judgments of courts to prove that a case was decided and records of interviews to prove that certain conversations took place.

The second method of victim/witness corroboration was only used in instances where the documentary evidence was not sufficient to prove the existence of a violation. In most cases this was due to the lack of proper documenting guidelines where some organisations were not keen on securing the necessary documents to prove certain claims, and also the fact that violations, actions or allegations cannot be proved by documents. In such cases, victims/witnesses were contacted to give an account of the event as they witnessed them. Only those who suffered or who saw others suffering the violations could have their evidence used as verifying evidence. Care was taken to have more than one witness where possible to be able to fully corroborate the case story.

All cases that were not adequately proved using both methods were not considered for this report. This is not in a way to say they never happened, but rather to re-enforce the reliability of these reports. It is important that the

target persons and institutions are able to fully rely on these reports by trusting that all the cases that are published here are done so after a rigorous verification process and can therefore be relied upon. In a way, this process also sets high quality standards which encourage better documentation of LGBTI cases.

1.3 Challenges

The biggest challenge encountered during verification was the lack of a standardised form of documentation for the contributing organisations. While all these organisations receive and handle complaints/cases concerning LGBTI persons, they all have different documentation mechanisms due to their mandates. They thus handle cases for different reasons and therefore prioritise information based on what they need. This sometimes excludes documentation of information or evidence that they might not need, but which proves the occurrence of a violation. There is therefore need for organisations that handle LGBTI cases to not only solve a case but also ensure that every case or complaint is properly documented and verified.

There were also various instances of lost information from the contributing organisations. This loss was majorly as a result of attacks on these organisations and theft. Computers and hard drives on which cases had been documented were lost and all that information lost along with them. This left out many documented violations which ended up giving a skewed picture of the violations in Uganda. Complete loss of data creates incurable gaps that affect our use of data/evidence based advocacy.

There is still a biased concentration of cases arising from Kampala. This may not

be because more violations happen in Kampala, but rather because of the high concentration of LGBTI organisations in Kampala and its metropolitan areas compared to rural and up-country areas. This can be explained by several socio-economic factors, however it makes it hard to understand and document the occurrence and trends of violations in those areas. This is worsened by the fact that even the few organisations in these up-country areas lack the capacity to properly document their cases and therefore even the few cases documented in those areas rarely pass the strict verification criterion. This biases the results which continue to under and/or misrepresent the lived realities of these communities in those areas. There is thus need for empowering rural LGBTI communities to organise and in addition or in the alternative, provide capacity building to the existing organisations to properly document the violations that occur so as to be able to publish credible representative data.

Overall, there is still a prominent lack of capacity to properly document cases among organisations working with LGBTI persons, as well as the need to more effectively document cases from upcountry. This report therefore does not purport to give a complete picture of violations but rather focuses on what the verified violations show. As time goes on and the capacity of organisations develops more, there is hope for more accurate and comprehensive reports. There is a great need for organisations to understand that the documentation they do serves an even greater purpose beyond the clients they serve, and that hence there is need to do it with that in mind. There is an urgent need to develop the capacities of all these organisations as poor documentation

excludes many cases from being published and considered and does not give a proper and true picture of the lived realities of LGBTI persons in Uganda, who continue to face these violations.

I.4 Structure of the Report

Section I:

Introduction

Section II:

Overview of the key events in 2015 that influenced the SOGI violations in the report

Section III:

Violations against LGBTI persons in 2015 based on their sexual orientation and gender identity

Section IV:

Analysis of the trends of violations

Section V:

Conclusion and Recommendations

SECTION II

KEY DEVELOPMENTS INFLUENCING THE TRENDS OF SOGI VIOLATIONS IN 2015

2.1 An overview of key events influencing trends on SOGI violations in 2015

2015 started five months after the nullification of Uganda's Anti-Homosexuality Act, 2014 by the Constitutional Court.¹ 2014 had been a year of ups and lows for the LGBTI community in Uganda with the Anti-Homosexuality Bill passed by Parliament in December 2013, signed by the President in February 2014, coming into force in March 2014, and being nullified in August 2014. The passing of the law saw organisations that were providing services to LGBTI persons threatened, with a raid on Makerere University Walter Reed Project, and the suspension of the services of the Refugee Law Project, key allies of the LGBTI community. This created tension and fear among the community of service providers, which may have affected the level of support services available to LGBTI persons.

Throughout the whole year, there were concerns that a new law would be introduced in Parliament to replace the annulled Act, and although this never materialised, its halo hung over the lives of LGBTI persons and persons working with them for the whole year. There were statements continuously made by

public officials on this issue.² This kind of environment created self-censorship within the LGBTI community and its allies as there was uncertainty as to the future of the criminalisation of homosexuality in Uganda. This situation of uncertainty was further perpetuated by concerns that a new bill, the Prohibition of the Promotion of Unnatural Sexual Offences Bill,³ which targeted service provision for the LGBTI community was to be introduced. The Attorney General had also filed a notice of intention to appeal the decision of the Constitutional Court.⁴

In the meantime, the Anti-Homosexuality Act continued to be challenged at the East African Court of Justice in the case of *Human Rights Awareness and Promotion Forum (HRAPF) v Attorney General of the*

2 For example the original mover of the Anti-Homosexuality Bill, Hon. David Bahati, Hon. Benson Obua Ogwal and the Imam of Parliament Hon. Latif Ssebaga. Also see 'MPs start process to retable gay bill' *The Daily Monitor* 3 September 2014; 'Anti-Homosexuality Bill will be retabled, MPs' Parliament of Uganda <http://www.parliament.go.ug/index.php/about-parliament/parliamentary-news/442-anti-homosexuality-bill-will-be-retabled-mps>

3 There was a leaked copy of this bill, which however was never tabled in Parliament and it was not officially acknowledged or owned up to by anybody.

1 This was on 1st August 2014 in the case of *Prof J. Oloka Onyango & 9 Others v Attorney General*, Constitutional Petition No. 8 of 2014.

Republic of Uganda.⁵In the reference, the applicant argued that the passing of the Anti-Homosexuality Act and some of its provisions contravened Articles 6(d), 7(2) and 8(1)(c) of the Treaty for the Establishment of the East African Community that enjoins partner states to abide by the principles of the rule of law, social justice and the maintenance of universally accepted standards of human rights. That the Anti-Homosexuality Act provisions on the immunity of 'victims' of homosexuality from being tried for any offence committed when 'protecting' themselves against homosexuality; promotion of homosexuality; and abetting homosexuality were a violation of the principles of good governance set out in the treaty which are democracy, the rule of law and the recognition, promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights. By the end of 2015, the case had not been heard on its merits, but court had heard four applications from different stakeholders in the region seeking to be amici in the case. These applications were filed by Health and Development Initiative (HDI)- Rwanda, UHAI- The East African Sexual Health and Rights Initiative (EASHRI)-Kenya, Dr. Ally Possi (Tanzania) together with the Centre for Human Rights, University of Pretoria (South Africa) and the Joint Secretariat of the United Nations on HIV/AIDS (UNAIDS). The first three applications were rejected⁶ and only

that of the UNAIDS accepted.⁷By the date of publication, the case had been heard pending judgment. The case is very instrumental as it is the first case filed in an international court in Africa concerning LGBTI rights.

In the midst of the talk about the Anti-Homosexuality Act being re-introduced, the Non Governmental Organisations Bill (NGO Bill) emerged. The bill was passed on 27th November 2015 by the Parliament of Uganda. While the NGO Bill, later passed into the NGO Act, did not have particular provisions on LGBTI organisations, many of its provisions would have negatively affected LGBTI organisations as discussed by HRAPF in its first analysis of the Bill.⁸ While some of the troubling clauses in the bill were left out of the Act, some are still part of the law, like the provision that prohibits organizations from engaging in activities that are prejudicial to the

No. 20 & 21 of 2014, *Dr. Ally Possi & Centre for Human Rights, University of Pretoria v Human Rights Awareness and Promotion Forum (HRAPF) & The Attorney General of the Republic of Uganda*, Application No. 1 of 2015.

7 *Secretariat of the Joint United Nations Programme on HIV/AIDS v Human Rights Awareness and Promotion Forum (HRAPF) & Attorney General of Uganda*, Application No. 3 of 2015.

8 These had been identified by HRAPF in its first analysis of the Bill. See *Human Rights Awareness and Promotion Forum The NGO Bill 2015 and its Practical and Human Rights Implications on Organisations Working on the Rights of Marginalised Persons* (2015) <<http://hrapf.org/?mdocs-file=1584&mdocs-url=false>> (accessed 8 August 2016).

5 *Human Rights Awareness and Promotion Forum v Attorney General*, Reference No. 6 of 2014

6 *UHAI EASHRI & Health Development Initiative- Rwanda v Human Rights Awareness and Promotion Forum (HRAPF) & Attorney General of Uganda*, Applications

security⁹ and dignity¹⁰ of Ugandans. HRAPF has pointed out the challenges that these provisions present to LGBTI organisations.¹¹ They could easily achieve the purpose of the 'promotion of homosexuality' provisions in the Anti Homosexuality Act.

Besides the NGO Act, the Sexual Offences Bill was introduced towards the end of 2015 and seeks to be the codified penal law on sexual offences in Uganda. The Bill retains the Penal Code sections that criminalise same sex sexual conduct and as a matter of fact, expands the criminalisation to also include women¹², who are currently excluded under the Penal Code Act. HRAPF has done an analysis of how this Bill would affect LGBTI persons.¹³

There were two highly publicised court cases that further led to public condemnation of homosexuality as they were highly discussed by the media in terms that conflated consensual same sex relations with non-consensual same sex relations. These were the cases of *Uganda v Shabbaz Muhammed*¹⁴ in

which the complainant alleged that the accused person invited him for a job offer and instructed that they meet in the accused's house to discuss the fine details of his employment contract. That when the complainant went to the house, the accused offered him drugged water to drink upon which he lost consciousness and woke up abandoned at a farm, with pain and bleeding from his anus. He went for medical checkup and was informed that he had been sodomised. The Magistrate convicted the accused on the medical evidence and other circumstantial evidence like the presence of the complainant's shoes at the accused's residence. He was sentenced to 10 years imprisonment. The second case was the case of *Uganda v Christopher Mubiru Kisingiri*.¹⁵ In this case, there were two complainants who both alleged that the accused had sodomised them. One of the complainants alleged that he had gone for a party at the accused's place, but found that the party had ended. He says that he was then drugged by the accused and raped. The other complainant said that the accused 'sodomised' him after they both agreed that the complainant would be paid 500,000 Uganda shillings in exchange. The magistrate dismissed the latter complaint for reasons of unreliability in the evidence of the complainant and the accused was convicted on the first complaint on circumstantial evidence like the presence of certain drugs in his house. He was sentenced to 10 years imprisonment and payment of a fine of 50 million Uganda Shillings.

Both cases did not therefore concern consensual same sex relations but

9 Non-Governmental Organisations (Registration) Act, 2006 Sec 44(d)

10 n 9 above Sec 30(1)(a)

11 Human Rights Awareness and Promotion Forum Position Paper on the Non-Governmental Organisations Act, 2016 (March 2016). <<http://hrapf.org/?mdocs-file=1669&mdocs-url=false>> (accessed 8 August 2016).

12 Sexual Offences Bill 2015 Clause 16

13 See Human Rights Awareness and Promotion Forum (HRAPF) *Legal Analysis of the Sexual Offences Bill and its implications on LGBTI persons, sex workers and persons living with HIV/AIDS* (2016) <http://hrapf.org/?mdocs-file=1679&mdocs-url=false> (accessed 8th August 2016).

14 *Uganda v Shabbaz Muhammed* Criminal Case No. 474/2013 (Chief Magistrates

Court of Mukono)

15 *Uganda v Christopher Mubiru Kisingiri* Criminal Case No 0005/2014 (Buganda Road Chief Magistrates Court)

rather forced sexual relations, but nevertheless they evoked public emotions and continued to propagate the widely held but flawed belief that LGBTI persons are paedophiles and abusers. Despite the negativity around the cases, they were instrumental in the interpretation of section 145 of the Penal Code, as they were the first documented convictions on the section. The cases took away all doubt that same sex sexual activities indeed form part of the conduct criminalised under the section as they laid down the ingredients of the offence. Most importantly, the *Christopher Mubiru* case watered down the relevance and utility of the use of anal examinations as evidence in cases of same sex sexual conduct. The magistrate noted that in cases of consensual sex, it would be hard to find signs of penetration and yet this is what anal exams look for. This is because in such cases, there is consent and use of agents like lubricants which ease penetration and reduce the likelihood of there being any bruising or marks. This is an important authority as it could potentially reduce the likelihood of anal exams, which are some of the common ways in which suspected LGBTI persons are humiliated and degraded.

The year also saw the development of a new trend targeting LGBTI organisations. Many of them were denied incorporation by the Uganda Registration Service Bureau (URSB) on grounds that they work with people that engage in criminalized behaviour. Initially, LGBTI organisations seeking incorporation as companies limited by guarantee were incorporated provided their objectives were not specific to LGBTI persons. However when Sexual Minorities Uganda (SMUG) sought incorporation, its name was found to

be 'undesirable.' The reason given by the Registrar of Companies was that the name could not be reserved or the organisation incorporated as it intended to work with LGBTI persons, which violates the laws of Uganda, particularly Section 145 of the Penal Code Act which criminalises unnatural offences. The rejection of SMUG saw the beginning of a worrying trend where the URSB started critically scrutinizing organisations taken for incorporation and as a result, rejected incorporation of two other organisations in 2015. These were Born This Way Uganda and Action for Transgender Rights Initiative (ATRI). All these rejections were solely based on the undesirability of the proposed names. This trend is making it hard for LGBTI organisations to organise and is hampering the service provision most of these organisations engage in. By the end of 2015, there were advanced plans to challenge this trend in the courts of law.

On a more positive note, 2015 saw closer cooperation between state institutions and the LGBTI community. The Directorate of Human Rights and Legal Services at the Uganda Police Force continued to engage with the LGBTI community. The Police cleared and even provided protection for the 2015 Pride events. The Uganda Human Rights Commission also actively engaged on LGBTI issues and even started doing workshops that were focused on human rights violations faced by LGBTI persons. The Equal Opportunities Commission also continued to receive updates on the situation of LGBTI persons.

Generally, 2015 was a mixed bag for LGBTI rights in Uganda. There was a lot of progress as far as protection of LGBTI rights by the state is concerned,

and at the same time, there were many other less positive developments that threatened LGBTI rights. All these developments had an impact on the trends of violations and protection of LGBTI rights in 2015 as reflected in this report.

2.2 Developments in the law in 2015 and how they affected the rights of LGBTI persons

The nullification of the Anti-homosexuality Act as well as other legal developments in 2015 left the question of whether there was a substantive change in the legal framework governing the rights of LGBTI persons in Uganda. For a very long period of time, the Penal Code Act, adopted in Uganda in 1950, was the only law that had provisions on same sex practices. This was in sections 145 and 146 which criminalised having carnal knowledge against the order of nature and attempting to have carnal knowledge against the order of nature respectively. These sections still exist in the Penal Code. Although the sections do not expressly mention LGBTI persons, it is taken as trite that those sections actually specifically target LGBTI persons. Various other provisions in the Penal Code Act have been continuously used against LGBTI persons like section 147 on indecent assaults on boys under eighteen and section 148 that creates the offence of indecent practices. Even then, the above sections do not criminalise the whole spectrum of being LGBTI as their primary focus are sexual acts.

In 2005, during the amendment of Uganda's Constitution by Parliament, an article was introduced that expressly prohibits marriage between same sex persons.¹⁶ This article is specific to

¹⁶ Constitution of the Republic of Uganda 1995, Article 31(2a)

marriage and therefore does not in a way expand the criminalization of homosexuality under the Penal Code.

In 2009, the Anti-Homosexuality Bill was introduced in Parliament and it was intended to be the codified law on homosexuality in Uganda. Unlike the Penal Code Act that merely criminalises sexual activity, the Bill sought to extend this criminalization to also include identifying as LGBTI and even providing services to LGBTI persons, which was termed as promotion of homosexuality. Under the Bill, all aspects of being LGBTI were criminalized, including criminalization of activities that were engaged in by persons that were not necessarily LGBTI persons. It was very extensive. The Bill was passed by Parliament in December 2013, signed into law by the president in February 2014, and came into force in March 2014. The law repealed the above mentioned sections of the Penal Code as it was comprehensive enough. It was however annulled by the Constitutional Court in August 2014 on grounds that it was passed by Parliament without the requisite quorum.¹⁷ For the time it was in force, it provided expansive criminalization of homosexuality, and many violations of the rights of LGBTI persons could be properly placed within the ambit of its implementation. With its annulment however, Uganda went back to relying on the sections of the Penal Code Act that criminalise sexual activity, and this remains the position to date.

The Penal Code besides section 145 and 146, has other provisions that are used against LGBTI persons. These are the offences of: indecent

¹⁷ Prof. Oloka Onyango (n 1 above)

practices,¹⁸ common nuisance,¹⁹ being idle and disorderly,²⁰ being rogue and vagabond²¹ and personation.²² Most of these offences are used as alternative offences to charge LGBTI persons since it is hard to successfully prosecute the offence of unnatural offences.

In addition to the Penal Code Act, there are also other laws that have provisions that affect LGBTI persons.²³ However, these laws do not have as much impact on the lived realities of LGBTI persons like the Penal Code section 145. Most of these are rarely implemented as most emphasis is placed on the criminalisation. This emphasis is what has subsequently caused the continued violations of LGBTI persons, under the blanket of criminalisation. That essentially leaves section 145 as the main provision used against LGBTI persons.

The two main criminal cases decided in 2015 on this section (The *Shabhaz Muhammed* the *Christopher Mubiru* case) shed some more light on the ingredients of the offence under section 145(a). In the *Chris Mubiru* case, the magistrate stated that the offence of unnatural offences has two ingredients: anal sexual act was performed against the victim and the accused participated in the act. These ingredients seem to have been formulated taking into consideration the particular circumstances of the case. The case can however be used as a guideline on how the section

is interpreted. In the *Shabhaz Mohammed* case, the magistrate also laid down ingredients of this offence which were: There has to be carnal knowledge, there has to be medical evidence to prove unnatural sex and it must be proved beyond reasonable doubt that the accused committed the crime. Unlike the previous case, this case does not even attempt to break down the offence. It just reproduces the section. The magistrate also includes the issue of evidence as part of the ingredients, implying that it is only medical evidence that can be used to prove this offence. Nevertheless, both cases, without any detailed justification or explanation took it as trite that the offence of unnatural offences applies to homosexual sex.²⁴

Although the ingredients of the offence were formulated basing on the facts of each case, they remained in line with what the High Court ruled in the *Rollingstone* case²⁵ that section 145 was limited to sexual practices.

From the section and above interpretations therefore, one should deduce that it is only same sex sexual activities that are criminalised under section 145, and not someone's sexual orientation or the work of organisations working on such issues. There is nevertheless a tendency to widen the scope of section 145. This was done in the 2014 decision in the case of *Nabagesera & 3 ors v Attorney General*

18 Penal Code Act, 1950, Cap 120 Sec 148

19 n 18 above, Section 160

20 n 18 above, Section 167

21 n 18 above, Section 168

22 n 18 above, Section 381

23 HRAPFA *guide to the normative legal framework on the human rights of LGBTI persons in Uganda* (2015)

24 HRAPF 'Summary and legal analysis of the *Chris Mubiru* judgment' (2015) p5

25 Kasha Jacqueline, Pepe Onziema & David Kato Vs Giles Muhame and The Rolling Stone Publication Limited High Court Miscellaneous Cause No. 163 of 2010.

&Anor.²⁶In that case, the applicants were suing the Attorney General and the Minister of Ethics and Integrity alleging that the latter's actions of closing down a skills training workshop for LGBTI persons was a violation of a host of rights including freedom of speech, freedom of assembly, the right to participate in peaceful activities to influence government policies, and the right to equal treatment. In his judgment, Judge Musota held that the minister was justified in closing down the workshop as holding such workshops for LGBTI persons is criminalised under the Penal Code in sections that criminalise incitement of someone to commit an offence,²⁷ conspiring with another to commit an offence²⁸ and conspiracy to effect any unlawful purpose e.g. promotion of an illegality.²⁹According to the judge, holding such workshops would amount to incitement to commit homosexual acts and conspiracy to effect an unlawful purpose which is unlawful. In addition to the above, the judge also held that the minister did not violate any rights of the applicants as they were limited in public interest, which was to protect the morals and values of Ugandans. In essence, the court in that case held that any activities done in the promotion of the rights of LGBTI persons are considered criminal as they are actions of conspiracy and incitement to LGBTI persons to engage in conduct prohibited under Section 145. This notwithstanding, it is important to note that this case did not widen the reach of section 145 of the Penal Code but rather used the provisions of the Penal Code on parties to an offence, and

the limitation clause in the constitution to reach its conclusion, and the case was decided on its own facts. The case was still on appeal by the time of publication.³⁰

Some state institutions have also adopted a widened interpretation of section 145 and key of these is the Uganda Registration Services Bureau (URSB). The Bureau has continued to deny the incorporation of organisations working with LGBTI persons, on grounds that doing so would amount to the promotion of an illegality. This interpretation has been challenged before the High Court.³¹

Nevertheless, the rights of LGBTI persons remain protected under the Constitution. One of the key characteristics of human rights is the fact that they accrue to all human beings by virtue of their being human. They are therefore not the exclusive dictate of the state to be given and taken away when it pleases.³² In Uganda, this characteristic is anchored in Article 20 of the Constitution which provides that;

- (1) *Fundamental rights and freedoms of the individual are inherent and not granted by the state.*
- (2) *The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all organs and agencies of Government and*

26 Misc cause No 033 of 2012

27 PeAnal Code (n 18 above) Sec 21

28 n 27 above, Sec 390

29 n 27 above, Sec 392(f)

30 *Frank Mugisha & Others v Attorney General*, Civil appeal 195 of 2014.

31 *Frank Mugisha, Dennis Wamala & Ssenfuka Warry Joanita v Uganda Registration Services Bureau* Miscellaneous Application No 96 of 2016.

32 HRAPF (n 23 above)15

by all persons.

In addition to the above article, the Constitution provides for different rights including the right to equality and freedom from discrimination,³³ the right to liberty,³⁴ the right to freedom from inhuman and degrading treatment,³⁵ the right to privacy,³⁶ the right to found a family,³⁷ the right to freedom of expression, thought, opinion and assembly,³⁸ affirmative action in favour of marginalised groups,³⁹ and the right to civic participation.⁴⁰ All these rights apply to LGBTI persons in as much as they apply to other persons.⁴¹

Therefore, the recent developments in the law do not divert from the basic premise that consensual same sex relations are criminalised in Uganda, but that the rights as protected in the Constitution apply to LGBTI persons too.

33 n 16 above, Art 21

34 n 16 above, Art 23

35 n 16 above, Article 24

36 n 16 above, Article 27

37 n 16 above, Article 31

38 n 16 above, Article 29

39 n 16 above, Article 32

40 n 16 above, Article 38

41 For a full discussion on how these rights apply to LGBTI persons, see HRAPF (n 23 above)

SECTION III

HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY DOCUMENTED FOR THE YEAR 2015

3.1 General Overview

Unlike in previous reports, most of the violations documented and analysed for this report were perpetrated by non-state actors. Of the 171 violations identified from the 91 verified cases, state actors directly perpetrated 78 (45.6%) while non-state actors perpetrated 93 of them (54.4%). Most state perpetrated violations were registered by the legal aid service provider-HRAPF-where the state perpetrated 62 of the 99 violations identified and documented by the HRAPF legal aid clinic. From the other contributing organisations, most of the violations identified from the cases they received were perpetrated by either community members or family members. This variation can be explained by the known different mandates of the different organisations as already discussed above.

3.2 Violations By State Actors

The state has the principal obligations to fulfill, respect, and protect the rights of its citizens. Different state institutions are established and given the mandate to carry out these duties. The above stated obligations are substantially anchored in different provisions of international human rights treaties and Uganda's laws. In the context of LGBTI persons in Uganda, various state institutions have actively been involved in the protection and promotion of the rights of LGBTI persons, and have also been a prominent contributing factor to the violations of the said rights. LGBTI persons, like all other Ugandans,

are entitled to the protection of the rights enshrined within international and domestic law.⁴² However, this is not the case in practice. More often than not, state institutions have directly been involved in the violation of the rights of LGBTI persons directly or implicitly. The violations perpetrated by state actors are described below.

3.2.1 Violations by the Uganda Police Force

The Uganda Police Force has the primary mandate to enforce laws in Uganda, and keep law and order.⁴³ In 2015, the Uganda Police in some respects fulfilled this mandate and in others, it stood out as the leading violator of the rights of LGBTI persons.

Protection of LGBTI rights by the Police

As the trend has been before, the authors of this report acknowledge the increased cooperation between the Police leadership and the LGBTI community. The Police's leadership and especially the Directorate of Human Rights and Legal Services continued to be actively engaged in the protection of LGBTI rights. The Director himself, Assistant Inspector General of Police Erasmus Twaruhukwa and his staff were always available throughout the year, and could be contacted at any time in case the Police were violating the rights of LGBTI persons. Activists and lawyers used this channel on many occasions and in all those cases there

⁴² HRAPF (n 23 above)

⁴³ Constitution (n 16 above), Art 212

was a positive outcome.

In a number of instances, the Police came out to protect the rights of LGBTI persons. Like in 2014, five separate incidents were verified in 2015 where police protected LGBTI persons. What should be of note is that in all but one of these cases of protection, there were violations being committed by the Police and this one instance simply stood out. The protection was done in various ways and they are the following:

Protection from mob violence

There were two cases in which the Police protected LGBTI persons from mob justice. In a case documented in January 2015⁴⁴, Kikajjo police post in Namasuba arrested a transgender man for theft and detained him with male inmates. There were no problems until day break when he was doing chores and the inmates saw that he had developed breasts. This was reported to the officer on duty who directed a female officer to check the inmate and ascertain his actual sex. The female officer checked the inmate and concluded that he was female. He was taken to a clinic which confirmed this. After ascertaining this, the officer on duty decided not to send the inmate back to the cells as he thought that keeping him with either male or female inmates would pose a grave danger to him. To protect him from any assault or attacks, police kept the inmate in one of the offices until he was released. Considering that one of the advocacy points for transgender persons regarding detention is establishment of separate cells for them, this was encouraging and showed that if properly engaged, detention authorities could understand the need to protect transgender persons by separately detaining them,

44 HRAPF/T/2/01/15

if not for human rights concerns, then for their safety. Such opportunities can be harnessed and used as progressive examples.

On 15 January 2015⁴⁵, Police arrested nine suspected gay men in Ntungamo district and detained them on charges of sodomy. HRAPF engaged police to try and release them but they were reluctant until HRAPF contacted the Directorate of the legal and Human Rights Affairs of the Uganda Police Force, which intervened and secured the release of the suspects. Such engagement creates a space that could be exploited to actively engage police on LGBTI rights. In that same case, when Police agreed to release the suspects, they set a condition that they could only release them if HRAPF found a secure place for them to stay. The reason they were being detained at police for long periods of time was to protect them from incensed mobs that wanted to attack them. These mobs had attacked the post at which they were first detained and police therefore took it upon themselves to protect them. HRAPF had to work with SMUG and the Security Committee to secure safe housing for them before they were released. Despite even the homophobic tendencies among the officers themselves, they were willing to protect the suspects and even insisted on it. This re-enforces the fact that regardless of one's perceived or actual sexual orientation or gender identity, they deserve as much protection as other people.

Assistance in accessing property

On 30 January 2015⁴⁶, a suspected gay man was forced out of his rented premises after his landlady accused him

45 HRAPF/G/7/01/15

46 HRAPF/G/17/01/15

of being gay and even opened up a police case against him. He sought to leave the house and as a result, wanted to access his property and take it. He was however denied access to the house and property by the landlady, together with the local council chairperson. When HRAPF contacted police, they wrote a letter instructing the landlady and the chairperson to allow HRAPF and its client access to his property and even offered to provide security. This also re-enforced the notion that all persons deserve protection regardless of one's sexual orientation or gender identity.

Release of suspect after declaration that cross-dressing is not an offence

In September 2015⁴⁷, a transgender woman was arrested and detained at Kyanjale Police post in Masaka district, for 'dressing like a woman'. She was however detained very briefly and released after police concluded that they did not really see a problem with cross dressing. The person was released without charge. Very many times transgender persons are arrested for cross dressing and accused of being frauds and criminals. However this was a very progressive action and deeper engagement with police can be used to end the arbitrary arrests that transgender persons are usually subjected to.

Violations by the Police

The above notwithstanding, there were numerous incidents in which police grossly violated the rights of LGBTI persons. It is important to note that same sex sexual activities are criminalised in Uganda.⁴⁸The Police have

47 HRAPF/T/4/09/15

48 Penal Code (n 18 above) Secs 145 and 146 of criminalise Unnatural offences and attempts to commit unnatural offences

the mandate and powers to apprehend anyone that is found breaking the law or anyone suspected of doing so. Even then, that mandate should be exercised within the ambit of the international and domestic human rights framework that Uganda is governed by. However, Police have continuously disregarded this and have used their mandate to continue violating the rights of LGBTI persons. As already mentioned, of the 78 violations perpetrated by state actors, the Police were responsible for 64 of these. The violations are going to be discussed below, categorised under the different rights that were violated.

In previous reports, the Police have been cited as the top most perpetrators of violations of rights of LGBTI persons.⁴⁹This trend has not changed even for this year as violations documented in this report also show that the Police remain the biggest perpetrators of violations of rights of LGBTI persons. Despite the fact that the non-state perpetrated violations are more than those perpetrated by the state, the Police are still responsible for single-handedly perpetrating most of the violations. Out of the 78 violations perpetrated by state actors, police are responsible for 64 of these, which translate into 82%of the state perpetrated violations.

Right to personal liberty

The Right to personal liberty is guaranteed under Article 23 of Uganda's Constitution. The Article clearly gives circumstances when a

respectively.

49 The Consortium on monitoring violations based on Sex Determination, Gender Identity and Sexual Orientation 'Uganda Report of Violations Based on Gender Identity and Sexual Orientation'(2015) p21.

person's liberty can be taken away,⁵⁰ where an arrested person should be detained,⁵¹ the right of an arrested or detained person to be informed of the reason for their arrest or detention in a language they understand and the right to a lawyer of their choice,⁵² the right of an arrested person to be released or produced in court not later than 48 hours from the time of arrest or detention,⁵³ the right of the arrested or detained person to inform their next of kin; the right of the arrested person's next of kin, lawyer and doctor to be allowed reasonable access to the arrested or detained person; the right of the arrested or detained person accessing medical treatment;⁵⁴ and the right to compensation for a person who is unlawfully arrested, restricted, or detained by any person or authority whether it is the State or an agency of the State or other person or authority.⁵⁵ It should however be noted that the right to liberty is not non-derogable and can therefore be limited under Article 43.⁵⁶ Even then, as will be discussed below, police have continued to grossly violate this right without any justifiable reasons.

a) Circumstances of arrest

50 n 16 above, Article 23(1)

51 n 16 above, Article 23(2)

52 n 16 above, Article 23(3)

53 n 16 above, Article 23(4)

54 n 16 above, Article 23(5)

55 n 16 above, Article 23(7)

56 The Article provides that some rights can be limited in the interest of the rights of others or the public interest. However, the limitation should not be beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution. The Article also clearly states that public interest shall not permit political persecution and detention without trial.

As noted above, the Constitution clearly provides for circumstances under which someone's personal liberty can be taken away. The circumstances are quite extensive and include execution of court orders or sentences, or upon suspicion that a person has committed a crime or is about to commit a crime. However, in six verified cases in 2015, the Police arrested LGBTI persons without any justifiable reason for such arrest and/or detention. For example on 30 January 2015, a gay man was arrested⁵⁷ when he was found walking at night with his friends. He did not have residential identification but had an employee identification card. He was arrested and detained at Mawanda Road Police post and was only released without charge after the intervention of HRAPF. His arrest was clearly not justified as he was not found in any circumstances that would suggest that he was about to commit a crime or that he had committed one.

In another instance,⁵⁸ on 27 September 2015, a gay man was found walking at 10:30pm by four police officers. He was asked where he was coming from and also asked to show what he was carrying in his bag. He informed them that he was coming from work and showed them what he was carrying in his bag, which were his working tools. They however went ahead to arrest

57 HRAPF/G/18/01/15

58 HRAPF/B/05/10/15

and detain him at Kira Police Station and charged him with being rogue and vagabond, after which the charge was changed to being idle and disorderly. These arrests are very unjustified and baseless as in such a circumstance; there was no reason for the arrest and subsequent detention and trial of the suspect because he complied with all that police asked him to do.

Police have also continuously arrested persons for cross-dressing. In 2015, four cases⁵⁹ were verified in which persons were arrested for dressing in a manner that does not necessarily reflect their natural sex. While it has been sparsely reported by police that people, especially men, dress like women to commit crime, there is nothing to show that this is common place. As a matter of fact, all cases that HRAPF has intervened in that involved arrest of persons for cross dressing show that these persons were never found committing crimes and there was nothing to suggest that they intended to commit crimes. This is because for most of them, this is always their lifestyle and the people that live and work with them always testify that they live with them in harmony, regardless of their cross dressing. Their arrests therefore are always unjustified and they end up being charged with vagrancy offences, like in

59 HRAPF/T/6/04/15, HRAPF/T/3/05/15, HRAPF/T/4/09/15, and HRAPF/T/04/11/15

one case at Katwe Police Station where a transgender woman was arrested for 'dressing like a woman' and charged with being a public nuisance.⁶⁰

Of all the above cases, one case resulted into a conviction and this was on a plea of guilt.⁶¹ Pleas of guilt in vagrancy trials are always made to avoid long pre-trial detention periods because such cases usually take long as there is no credible evidence that is adduced. These continued unjustified arrests and detention by police are a violation of Article 23 of the Constitution.

b) Places of detention

When a person is arrested, they are required to be detained in places authorised by law. In most cases, these are police cells before a person is taken to court and prisons if a person has been remanded. In 2015, one case⁶² was verified where a suspected gay man was arrested by plain clothed police officers and detained in Local Council offices for almost an hour before being transferred to the Police station. This illegal detention was not explained and was clearly unjustified considering that the suspect was arrested by police and was within the geographical jurisdiction of the arresting police station i.e. the suspect was arrested in Kazo, right

60 HRAPF/T/04/11/15

61 HRAPF/T/3/05/15, City Hall Court CRB: 343/2015

62 HRAPF/G/4/02/15, Kawempe Police Station OB No GEF: 004/15

within geographical jurisdiction of Kawempe Police Station.

In one other case,⁶³ the suspect was detained in one of the police offices but this was to protect the suspect from any attacks from fellow inmates. The suspect, a transgender man, had been detained with male inmates who later discovered that he had breasts. After being checked by a police officer and medical personnel and ascertaining that the suspect's sex was female, he was detained in an office to protect him from other inmates. This case however does not discount other cases where transgender persons are detained with persons of a different gender from them. Although this can be categorized as a violation, in the Ugandan context there is still a dilemma on how detention of transgender persons should be handled, considering the existing legal and policy framework and resource issues.

c) *Informing suspects of reason of arrest and right to a lawyer*

The Constitution requires that when a person is being arrested, they should be informed of the reason of their arrest. When arresting LGBTI persons, the Police normally accuse them of being homosexuals and as such, that that would constitute reason for arrest. It should be noted that homosexuality in Uganda is not a crime⁶⁴ and

should not constitute reason for arrest. Therefore, generally speaking, most cases involving arrests on the basis of sexual orientation or gender identity/ expression are arbitrary as police use a non-existent criminal offence as basis to arrest. However specifically, there are instances where police do not even inform the suspect that they are being arrested because they are suspected of being homosexuals or otherwise. This happened in all four verified cases where transgender women were arrested for cross-dressing.⁶⁵ All these women were taken from their places of work without being informed of why they were being arrested.

In another incident in February 2015⁶⁶, a suspected gay man was arrested and detained without being told that he was being arrested or being told why he was being arrested. He had been communicating with someone on social media after which they decided to meet somewhere. When he went to the meeting place, he was instead apprehended by plain clothed men who did not identify themselves, who beat him and took him to the offices of the Local Council Chairperson and detained him there for almost an hour before they took him to police. It turned out that the men that had arrested him were actually police officers.

63 HRAPF/T/2/01/15 (Kikajjo Police Post)

64 What is criminalized under Section 145 of the Penal Code is sexual activity and not orientation or identity

65 See n 59 above

66 HRAPF/G/4/02/15, Kawempe Police Station OB No GEF: 004/15

However all this time, he did not know who they were and why they had apprehended, beaten and detained him. He only got to know this when he was taken to the police station and asked to make a statement regarding reports that he was homosexual.

On the night of 30 January, a gay man was arrested after being found walking with his friends at night.⁶⁷ The Police asked for residential identification documents but he did not have any as he only had a work identification document. He was arrested and detained at Mawanda Road Police without informing him of why he was being arrested. He was released after a day without being charged and after the intervention of HRAPF lawyers.

On the night of 27 September 2015, a gay man was found walking at 10:30pm and asked to identify himself and show what he was carrying.⁶⁸ He complied and there was nothing incriminating. However the police officers told him to give them money or else they would arrest him. For fear of arrest, he gave the officers money but they still arrested him and detained him at Kira police station. He was never informed of the reason of arrest and was told that he was being charged with being idle and disorderly after getting to the police station.

67 See n 57 above

68 See n 58 above

Needless to say, in no case of arrest do the police inform the suspect of their right to a lawyer. The continued arbitrariness of the police arrests are a violation of the constitutionally guaranteed right to liberty.

d) Right to be released or produced in court not later than 48 hours

The Constitution requires that a when a person is lawfully arrested, they should be released or produced in court anytime not more than 48 hours after their detention. In 2015, five cases were verified in which LGBTI suspects were detained by police for more than the constitutionally required 48 hours before being released or produced in court.

In one case,⁶⁹ two gay men were reportedly found together in a guesthouse in Namuwongo. They were arrested and taken to Kisugu Police Station on 13 May 2015, after which they were transferred to Kabalagala Police Station and charged with gross indecency and unnatural offences. They were however only produced in Makindye court on 19 May 2015, past the 48 hours required which violated their right to liberty.

In another case,⁷⁰ an intersex man was arrested on allegations of murder. He was detained at Rukungiri Police Station

69 HRAPF/G/6/05/15, Kabalagala Police Station SD: 47/13/05/15, Makindye Court MAK/00/CR/498/15

70 HRAPF/I/9/09/15, Rukungiri Police Station CRB: 1688/2015, Rukungiri Court RUK-00-CR-CO-025/15

on 5 August 2015 and taken to court on 14 August 2015. Although the grant of police bond is discretionary and this was a capital offence, there was no evidence given by police to show that the refusal to grant bond fell within the ambit of the circumstances under which bond can be refused. This therefore violated the right to liberty.

In January 2015, three suspected gay men were arrested in Ntungamo on allegations of homosexuality. The suspects were held in police custody for five days where they were beaten by both police and inmates. They were later released without being produced in court to be prosecuted.⁷¹

e) Right to access lawyer/next of kin and medical treatment

Four cases⁷² were documented in which suspects were denied access to legal counsel or their next of kin. The common practice with Uganda Police is that suspects pay to contact their next of kin or legal counsel. This is usually because suspects are not detained with their phones. The money they pay is therefore usually supposed to facilitate the police officers' use of their phones to

contact people on the suspects' behalf. This in itself is a violation of the right guaranteed in the Constitution and should be discouraged but be that as it may, sometimes even after payment of this money, the suspects are not allowed to make any contact.

On the night of 27 September 2015, a group of four police officers arrested a gay man after they found him walking at night. When they got to the station, he requested to inform his next of kin that he had been arrested. The police officers initially refused but the day after, they accepted on condition that the suspect facilitates the call with 2000 Uganda Shillings. The suspect allowed and asked to access his belongings so that he could get the money which he gave the officers. However even then, they refused to allow him contact anyone. He was only able to do so after being given his belongings as he was being taken to court.⁷³

In another case where three suspected gay men were arrested in Ntungamo⁷⁴, they were detained at police for five days and during this time, they were denied access to any visitors merely because they were suspected homosexuals on charges of sodomy.

In other cases, lawyers were denied access to their clients. It should be noted that for most LGBTI clients, it is hard to get

71 SMUG 'And That's How I survived being killed: Testimonies of human rights abuses from Uganda's sexual and gender minorities' (2016) 2

72 HRAPF/G/4/02/15, HRAPF/G/10/08/15 (Mpala Police Station/Entebbe Police Station SDE: 03/14/8/15), HRAPF/B/05/10/15, SMUG (n 71 above)

73 See n 58 above

74 SMUG(n 71 above)

legal representation because of the existing stigma against them. Therefore the legal counsel they get is always in form of legal aid. Most of the lawyers are informed of such arrests by third parties and therefore by the time they go to police, the suspects do not even know that they have legal counsel. For LGBTI persons, whose lifestyle and identity are largely taken to be criminalised, coupled with a lack of proper understanding and appreciation of what could be incriminating for them and what could not, deserve urgent legal counsel. However, four cases were documented in which police refused counsel access to the suspects.

In one case, the suspect was arrested on allegations of homosexuality when he went to meet with a 'friend' he met on social media. A lawyer was informed of the arrest and proceeded to Kawempe Police Station to seek a remedy for the client. The lawyer was however denied access on grounds that the case was a case of 'public interest.' Not only is this not a ground on which legal counsel can be denied, it was also not substantiated by Police. The lawyer was only allowed access the following day after much insistence, and on condition that he met with the suspect in presence of other inmates and police officers.⁷⁵

In another case,⁷⁶ the lawyer was allowed access to the suspect but was also denied privacy. He therefore had to conduct the interview in the full presence of the people that had attacked and beaten the suspect and also caused his arrest. These people started threatening the lawyer and even started recording the interview with the client which went unabated by the present police officers until the lawyer opened up a case of threatening violence against at the police station.

In addition to guaranteeing access to legal counsel and the next of kin, the Constitution provides that any detained person shall be accorded access to medical treatment. However in two of the verified cases, police denied suspects access to medical care, even when the care was to be at their cost. In one case⁷⁷, a suspected gay man was arrested after being attacked by a mob at Nkumba University. This was after someone alleged that he had tried to sodomise him. He was brutally beaten and injured before being arrested and detained at Mpala Police Station. A lawyer was informed of the arrest and as part of the interventions, sought the release of the suspect to receive medical treatment. This was refused albeit the evident physical injuries the suspect

75 See n 66 above

76 HRAPF/G/10/08/15, Mpala Police Station/Entebbe Police Station SDE: 03/14/8/15
77As above

had suffered. While the suspect was detained on 14 August 2015, he was only released to receive medical treatment on 17 August 2015. This was after the suspect was transferred from Mpala Police Station to Entebbe Police Station.

Right to a fair trial

The Right to a fair trial is guaranteed under Article 28 of the Constitution. The right has different components and those most relevant to LGBTI persons regarding the police are: entitlement to a fair, speedy and public hearing before an independent and impartial court or tribunal⁷⁸; the presumption of innocence for anyone charged with a criminal offence⁷⁹; the right to be informed immediately of the nature of offence that one is being charged with⁸⁰; and the freedom from being charged with non-existent offences.⁸¹ The right to a fair hearing is one of the non-derogable rights under Article 44 of the Constitution.

a) Entitlement to a fair trial

While most components of a fair trial are about the actual court trial, they could be purposively interpreted to include actions done by the Police as they are responsible for the initial stages of criminal procedure, that give rise to trial. In 2015, seven instances were verified where police did not afford the suspects any tenet of a fair trial. In one instance, the suspect, a suspected gay man

⁷⁸ Constitution (n 16 above) Art 28(1)

⁷⁹ Constitution (n 16 above) Art 28(3)(a)

⁸⁰ Constitution (n 16 above) Art 28(3)(b)

⁸¹ Constitution (n 16 above) Art 28(7)

was arrested and detained on allegations of sodomy. However when legal counsel interacted with police, they informed them the client had not been arrested so he could be prosecuted through a judicial process, but rather so that he could reform. They then promised that if he agreed to reform and stop being homosexual, they would release him. This is against all tenets of justice as the suspect was arrested, and on grounds of no proven allegation, convicted by police and a punishment of reform imposed on him. It was after insistent engagement by lawyers that the suspect was released from custody.⁸² In that same case, police conducted a search of the suspect's house as part of their investigations. However the search was done in the absence of the suspect. As a result, it was found that the Police had planted evidence of five condoms at the suspect's house in order to record it as part of the evidence against him. This was in violation of the right to fair trial since it did not afford the suspect ample chance to understand the evidence against them.

In the case that involved the arrest of an intersex person on allegations of murder,⁸³ the suspect's statement was taken as part of police procedures. As required, the statement was recorded in English after being translated from the suspect's vernacular in which it was given. He was then asked to sign

⁸² See n 66 above

⁸³ See n 70 above

it without it being read back to him. This did not offer the suspect chance to understand the evidence being recorded against him.

Police have also exhibited a worrying trend of failing to investigate violations against LGBTI persons. In most cases, instead of assisting and investigating such cases, they instead arrest the LGBTI persons and prefer charges on them based on their sexual orientation and gender identity. In one case⁸⁴, a suspected gay man fought with his partner and was badly injured. He went to police to report a case of assault and after making his statement, he and his partner were instead arrested on charges of sodomy. While the offence of assault could not discount the presence of another offence, it was a violation of the right to fair trial when police completely disregarded the crime reported of assault and instead tried to pursue another.

In another case⁸⁵, on the night of 18 October 2015, two transgender men were involved in a bar brawl with fellow revelers. The male revelers attacked the transgender men and accused them of being lesbians who were taking away their women. When police

arrived at the scene, they only arrested the two transgender men and charged them with assault, leaving the men that attacked them.

In the case of the suspected gay attacked at Nkumba University,⁸⁶ police refused to apprehend the people that attacked, beat up and injured the suspect on suspicions of sodomy. This was despite the fact that they were present at the police station continuing to threaten the suspect and his lawyers. Such cases discourage LGBTI persons from reporting violations against them and are a violation of the right to fair trial as it discourages access to justice.

b) *The presumption of innocence*

The general principle as to the presumption of innocence is that a person is presumed innocent until they have been tried by a competent court and found guilty, or until such person pleads guilty to the offence. This is one of the cardinal principles of Uganda's criminal justice system. However, there are nine incidents documented and verified in 2015 in which police violated this right and principle. This was done through various means particularly media outings,⁸⁷ public

84Case reported by the Security Committee

85HRAPF/T/07/10/15, Jinja Road Police Station SD: 02/18/10/15

86 See n 76 above

87There are four verified incidents of media outings. In such incidents, police parades the suspects before media with information that they are criminals.

outings,⁸⁸ arresting suspects as a form of punishment,⁸⁹ and public statements 'convicting' suspects.⁹⁰

The most notorious of such statements was made by the Uganda Police Spokesperson Fred Enanga in May 2015. A transgender woman had been arrested from a local bar in Bukoto and detained at Kira Road Police Station. She was taken to the City Hall Court where she pleaded guilty to a vagrancy offence and was sentenced to one month's imprisonment. On commenting about the case, the police spokesperson accused transgender persons of being criminals and murderers who targeted foreigners.⁹¹ Such a statement from a high ranking police officer vindicates all transgender persons and strips them of the right to be presumed innocent. On

88 These involved cases where police paraded the arrested suspects before the public to see. For the two verified cases, the 12 suspects were walked through their villages by police, with the public being informed that the suspects were homosexuals that were being punished.

89 For example a case in Kawempe where a suspected gay man was arrested with no prospects of prosecution, but rather as an incentive to reform. In this case police made themselves the arbiter in the matter by imposing a reformatory sentence on the suspect as though he had already been convicted.

90 There were two verified cases where such statements were made, and these were both cases of transgender women.

91 Information on HRAPF file HRAPF/T/3/05/15

the face of it therefore, all transgender persons are considered criminals until they are proved otherwise which goes against the tenets of a fair trial.

c) *The freedom from being charged with non-existent offences*

It is a principle of criminal law that a person should only be charged with an offence that is prescribed under the law. This is to eradicate any injustice that would be caused by a lack of clarity on what conduct is criminalized and what is not, if people were to be charged with offences that are not prescribed under the law. It is rooted in the idea that people need fair warning on what conduct could attract criminal sanctions. Regarding LGBTI persons however, police have continuously arrested and charged suspected LGBTI persons with non-existent offences. In 2015, seven cases were verified where suspected LGBTI persons were arrested, detained and charged with offences that are not prescribed under the law. Such offences included homosexuality,⁹² sodomy,⁹³ and

92 HRAPF/G/3/01/15 (Salaama Road Police Station, SD REF: 21/06/01/15); HRAPF/T/8/02/15 (Katwe Police Station, SD REF: 16/23/2/15); HRAPF/G/7/07/15 (Ntinda Police Station, SED REF: 27/07/15)

93 HRAPF/G/7/01/15 (Ntungamo Police Station, SD REF: 15/15/01/2015); HRAPF/G/5/07/15 (Musajjaalumba Police Post, SD REF: 13/25/07/15); HRAPF/G/10/08/15 (Mpala Police Station, SD REF: 03/14/8/15)

attempted sodomy.⁹⁴ Needless to say, none of these cases ever went beyond the police stations for prosecution. Their continued use encourages arbitrary and baseless arrests of suspected LGBTI persons who are arrested as a form of punishment. This does not only constitute violation of rights, but is also a blatant abuse of the criminal justice system.

Freedom from torture, inhuman and degrading treatment or punishment

The right to respect for human dignity and protection from inhuman treatment is provided for under Article 24 of the Constitution. The Article simply provides that *'No person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.'* This right is non-derogable therefore it cannot be violated under any circumstances.⁹⁵ This notwithstanding, police have gone ahead to subject actual and perceived LGBTI persons to very degrading and inhuman treatment. The terms cruel, inhuman and degrading treatment have not been clearly defined under Ugandan law.⁹⁶ However, they have been generally defined to mean acts that inflict mental or physical suffering, anguish, humiliation, fear or debasement, but that fall short of

94 HRAPF/G/17/01/15 (Kasubi Police Post, SD REF: 13/30/01/2015)

95 Constitution (n 16 above) Art 44(a)

96 The Anti-Torture Act under Section 7 only defines them as conduct that does not amount to torture. The section provides that what amounts to cruel, inhuman and degrading shall be decided upon considering circumstances of each case.

torture.⁹⁷ Suspected LGBTI persons are habitually subjected to different acts that violate this right. They include the following:

a) Forced anal exams

For the year 2015, five cases were verified that included forced anal exams.⁹⁸ The anal exams are always conducted on suspected gay persons as a means of obtaining evidence of same sex sexual intercourse. This practice is not only highly invasive, inhuman, degrading and humiliating, it is also unnecessary. This is because the evidentiary purpose of anal exams has been ruled out by forensic experts.⁹⁹ According to the experts, there are 15 medical conditions ranging from constipation to Parkinson's disease that can cause indications similar to those that some doctors see as signs of homosexuality. In one of the cases documented in 2015,¹⁰⁰ the Magistrate discredited the anal exam evidence that the

97 http://ccnmtl.columbia.edu/projects/mmt/udhr/article_5/meaning.html

98 HRAPF/G/6/05/15 (Kabalagala Police Station, SD REF: 47/13/05/15); HRAPF/G/13/08/15 (Mukono Magistrates Court C.O 474/2013); HRAPF/11/09/15 (Buganda Road Chief Magistrates Court, Ug v Christopher Mubiru); HRAPF/G/7/01/15 (Ntungamo Police Station SD REF: 15/15/01/2015); SMUG (n 71 above)

99 Neela Ghoshal 'Anal exams that test for homosexuality amount to torture' <http://www.advocate.com/commentary/2016/7/27/anal-exams-test-homosexuality-amount-torture>

100 Christopher Mubiru case (n 15 above)

prosecution had adduced. In her judgment, the magistrate held that in cases of consensual sex, it is likely that lubricants are used to ease penetration and it would therefore be improbable that there would be any signs of injury or scars that are consistent with forced anal penetration. She also said that anal exams that are taken after a long period of time after the alleged intercourse cannot be relied on to prove a crime. All this goes to show that anal exams are unnecessary and yet they continue to be used by the Police which violates the suspects' rights to freedom from cruel, inhuman and degrading treatment contrary to the Constitution.

In addition to anal exams, there was a documented case in which two suspects' penises were checked to try and get evidence of engagement in homosexual sex.¹⁰¹ This, like the anal exams is very cruel, inhuman and degrading as it created feelings of humiliation within the suspects. Needless to say, such evidence is of no evidentiary value as it cannot be used to conclusively prove engagement in homosexual sex. As the judge noted in the *Christopher Mubiru case*, it is hard to use such tests as proof as it is unlikely that consensual same sex intercourse would leave any kind of bruises or marks and yet that is what the Police primarily looks for. This is so because like in the above

101 HRAPF/G/6/05/15 (Kabalagala Police Station SD REF: 47/13/05/15)

case, lubricants were used to ease penetration. These are therefore unnecessary and yet they continue to be done on suspects in a very degrading and inhuman manner.

b) Outings

Suspected LGBTI people are consistently outed to the public by the Police using very humiliating and degrading means. Eight cases were verified in 2015 in which police outed suspected LGBTI persons through media¹⁰² and through walking them through public places like markets and towns.¹⁰³ The parading of suspects before the media and walking them through public places like markets and towns on strict allegations by police that they are gay is very humiliating and inhuman. Considering the prevalent homophobia in Uganda, such actions expose the suspects to ridicule and contempt, which constitutes a violation of the suspects' right to freedom from cruel, inhuman and degrading treatment.

c) Use of excessive force during arrests

The police in some cases used excessive force in

102 These were six cases: HRAPF/T/2/01/15 (Bukedde TV); HRAPF/G/7/01/15 (Radio West and Radio Kigezi); HRAPF/T/20/01/15 (NBS TV); HRAPF/T/2/03/15 (Bukedde TV); HRAPF/T/6/04/15 (Bukedde TV); HRAPF/L/8/05/15 (Red Pepper)

103 These were two cases: HRAPF/G/7/01/15 (Rubaare Trading Centre); SMUG (n 71 above)

conducting arrests and in three documented cases, suspects were brutally beaten by police even when they did not resist the arrests. In one case,¹⁰⁴ the suspect, a bisexual man, was found walking at night at around 10:30pm and he was arrested and charged with being rogue and vagabond. During the arrest and before his detention, he was asked by the four officers to give them money in order to avoid being arrested. He gave them the money but they instead went ahead and took him to police. When they got to police and asked him to enter, he refused and demanded that the officers give him his money back since they went ahead and arrested him. He also asked to first speak to his relatives. This prompted the police officers to beat him up and force him into the cells, without giving him his money back.

In another case,¹⁰⁵ the suspect was tricked into meeting someone he met online but found out he was meeting police officers. The officers were plain clothed and when they arrested him, he sought to know why he was being arrested. He was badly beaten by the officers using batons and later detained at the LC's offices, before being taken to police. He had not resisted arrest and was simply inquiring about the arrest since the officers were not uniformed

and did not identify themselves.

In the third case,¹⁰⁶ the Police arrested three suspected gay men from their home and beat them up with accusations that they are homosexuals that are spreading the vice in the area. When they got to the Police and were detained, their fellow inmates also beat them up as police officers watched on and did not bother to stop the beating. This excessive force used by the Police is very cruel and unnecessary and a violation of rights of the suspects.

3.2.2 Local Government authorities

Local government authorities are established by the Local Governments Act¹⁰⁷ and within them is established administrative units/councils and committees¹⁰⁸ and leadership positions including County Chairperson and parish and village executive committee.¹⁰⁹ One of the functions of these leaders is to assist in the maintenance of law, order and security, and in some few cases they have done this but in the majority of cases, they have failed to do this.

Protection by local government authorities

In a few incidents, the local council authorities have been instrumental in protecting the rights of LGBTI persons. For the year 2015, two such incidents were verified.

Protection from mob violence

In one incident, nine men were arrested in Ntungamo on allegations

104 HRAPF/G/4/02/15 (Kira Police Station)

105 n 66 above

106 SMUG (n 71 above)

107 Cap 243 Laws of Uganda

108 n 107 above Section 45

109 n 107 above Section 47

of homosexuality¹¹⁰ and were detained at Rubare Police post. They had been made to walk through the village and the Police had told people that the suspects were promoting homosexuality in the area. After the residents knowing that they had been detained at the police post, they organised to go and attack the police post and lynch the suspects. The Local area chairperson got to know and informed police that the suspects were in danger and asked that they be transferred. They were then transferred and detained at the sub county offices after which they were taken to Ntungamo police station. The chairperson also refused to talk to media when two radio stations contacted him for information on the case. He declined and said that he could not comment on the case as it would possibly put the suspects in more trouble. Such conduct is commendable and appreciated as it was a way of protecting the suspects from further harm.

Protection from arrest through mediation

In another incident,¹¹¹ the family of a suspected gay man reported him to the Police and to local council authorities and asked that he be arrested for being a homosexual. When the area chairperson got to know about the allegations, he sought to mediate between the suspect and his family to avoid any adverse actions like arrest. Although none of the parties agreed to the mediation, the effort by the chairperson to mediate the family was very commendable as he tried to avoid the arrest of the suspect.

Violations by local council authorities

The above notwithstanding, there have

also been documented incidents in which local council authorities violated rights of LGBTI persons. It should be noted that in carrying out their functions under the Local Governments Act, these authorities are enjoined by the constitution to respect the fundamental human rights guarantees enshrined there in. However in six verified cases, the authorities violated rights. The actions engaged in by most of these authorities were evictions and banishments from villages on the basis of sexual orientation. This is a violation of the right to freedom from discrimination¹¹² and the right to freedom from cruel and inhuman treatment.¹¹³ However, other violations also took place.

The right to property

The right to property is protected under Article 26 of the Constitution which provides that every person has the right to own property either individually or in association with others. The article also prohibits the compulsory deprivation of one's property without satisfying the Constitutional conditions. These conditions include public morality which could be used to justify deprivation of property from actual or suspected LGBTI persons. However, if such a condition is to be used to justify the deprivation of one's property, it must be proved that such deprivation is demonstrably justifiable in a free and democratic society. In 2015, an incident of deprivation of property was verified for this report.

112 Constitution (n 16 above) Art 21

113 Banishment from villages has been held to violate that right by the Supreme Court in the case of *Salvatori Abuki and Another v Attorney General* Constitutional Court Case No. 2 of 1997.

110 n 45 above

111 HRAFF/G/3/01/15 (Salaama Road)

The case was in Kasubi,¹¹⁴ where a suspected gay man was blackmailed by his friend when he reported him to his landlady that he had tried to sodomise him. The landlady reported a case at police and also reported to the area chairperson. This forced the suspect to leave his rented house during which he left his property behind. HRAPF tried to access the suspect's property but access was denied by the local area chairperson working with the landlady. This was denying the suspect the right to access his property and access was only granted after police intervention.

Right to liberty

The right to liberty is guaranteed under article 23 of the constitution. The article provides the ingredients of the right, circumstances when one's liberty can be taken away among others. This is one of the most violated rights regarding LGBTI persons. Although it is usually violated by police, an incident was documented and verified in 2015 where local authorities participated in the violation of this right.

When a suspected gay man was being arrested by plain clothed police officers in Kawempe, he was beaten up and the area chairperson was among the people that set him up and beat him up.¹¹⁵ As a matter of fact, after the arrest of the suspect, he was detained in the chairperson's office before being taken to police. The use of excessive force by the chairperson together with the police was a gross violation of the suspect's rights.

Freedom from discrimination and inhuman and degrading treatment

The rights to freedom from discrimination and inhuman and

degrading treatment are provided for in articles 21 and 24 respectively. The right to freedom from discrimination prohibits discrimination on the grounds stated therein. Although sexual orientation and gender identity are not included in the grounds listed, the list is an open list not closed. Other grounds can therefore be interpreted into it. Freedom from inhuman and degrading treatment prohibits persons from being in ways that violate their dignity as human beings. Various actions fall within this ambit. These two have been combined to deal with evictions, as the manner in which evictions of LGBTI persons are carried out jointly violate these rights.

There were four cases of evictions of suspected LGBTI persons from their premises occasioned by local government authorities, and in all these cases, it was solely because of the sexual orientation and/or gender identity.

A suspected lesbian in Nabweru was evicted by the Local Council I Secretary of the area from her rented house and also banished from ever residing in that village again.¹¹⁶ In the eviction letter served on her, the secretary said that she was being evicted because she was a lesbian, which was against the cultural norms and beliefs of the people in that area. She lost her job since she worked in that area and had to look for shelter among friends.

Another suspected lesbian in Kyengera was evicted from her rented premises and also banished from the village by the area chairperson.¹¹⁷ In the eviction letter, the chairperson said that he was banishing her on grounds that she would influence other children to

114 HRAPF/G/17/01/15

115n 66 above

116HRAPF/T/3/03/15

117HRAPF/L/1/09/15

become lesbians. The case was also reported to police.

Other two cases were documented and verified by the security committee in which two suspected gay men were evicted by their area chairpersons after being published in a tabloid that they are homosexuals. It should be noted that in all these cases, especially those regarding evictions and banishments, multiple violations arise. This is because most of the victims work in the same areas they live in and this banishment affects their livelihood. They always end up homeless and with no means of sustenance. There is therefore need for the local council authorities to start fulfilling their respective mandates without violating the rights of persons in the process.

The Uganda Registration Services Bureau

The Uganda Registration Services Bureau is established by the Uganda Registration Services Bureau Act¹¹⁸ to, among other things, carry out all registrations required under the law. Among these registrations is the registration/incorporation of companies. Through this function, the URSB emerged as a violator of the rights of LGBTI persons:

The right to freedom of association

This right is covered under article 29(1)(e) and it includes the freedom to form and join associations including civic organisations. This includes LGBTI organisations. While this right is not absolute and can be limited in terms of article 43, the limitation has to be justified and demonstrably justifiable in a free and democratic society.

Various LGBTI organisations in Uganda

¹¹⁸ Cap 210 Laws of Uganda

are incorporated by the Bureau as companies limited by guarantee. However during 2015, the Bureau refused the incorporation of three LGBTI organisations on the grounds that homosexuality is criminalised in Uganda under section 145 of the Penal Code Act, thereby violating their right to freedom of association. This started with the incorporation of Sexual Minorities Uganda, an umbrella organisation bringing together 18 LGBTI organisations in Uganda. The Registrar General refused to reserve the name Sexual Minorities Uganda saying that it was undesirable.¹¹⁹ In his letter to HRAPF, the Registrar General cited section 145 of the Penal Code Act and concluded that incorporating an organisation to work with LGBTI persons would be 'aiding an illegality.'

This did not only stop with SMUG. Two other organisations were denied incorporation by the Bureau in 2015. These were Born This Way Uganda¹²⁰ and Action for Transgender Rights Initiative.¹²¹ The name Action for Transgender Rights Initiative was rejected on grounds that it was contrary to public policy and that it was immoral under the laws of Uganda. It should be noted that the section cited in the Penal Code only criminalises sexual activity and not advocacy or service provision. Using it to deny the organisations incorporation is therefore a violation of the freedoms of expression, association and equality and non-discrimination.

This trend is new and worrying as it might discourage the legal organising of LGBTI persons in Uganda and affect service provision to the community as most of these organizations engage in

¹¹⁹ Information on file at HRAPF

¹²⁰ HRAPF/ORG/4/09/14

¹²¹ HRAPF/ORG/10/01/15

advocacy and service provision.

The Minister of Ethics and Integrity

Freedom of expression

The freedom of expression is guaranteed under article 29(1)(a) and it contains freedom of speech, press and other media. This freedom can be limited in terms of article 43 of the Constitution however, such limitation has to be justiable. The freedom cannot be limited merely because what is being said is considered annoying by a certain section of society, or merely because such expression makes a section of society uncomfortable.

The Minister of Ethics and Integrity, Rev Fr Simon Lokodo, in January 2015 summoned LGBTI activist Kasha Jacqueline Nabagesera for a meeting and even threatened her with arrest.¹²²

This was in regards to a queer magazine called the *Bombastic Magazine* that is periodically produced with Kasha as the Chief Editor. The minister alleged that the distribution of the magazine in different places in Uganda amounted to promoting pornography and homosexuality, which were criminal and unacceptable in Uganda. Although the meeting never took place and Kasha was never arrested, the threat of arrest because of publication of the magazine discouraged freedom of expression and opinion.

3.3 VIOLATIONS BY NON-STATE ACTORS

As earlier noted, non-state actors were the majority perpetrators of the violations documented in this report. Of the 171 violations, they were responsible for 93 of these. Most of the perpetrated violations by non-state

122 HRAPF/L/12/01/15

actors were evictions of suspected LGBTI persons from their homes. Some of these were outright evictions while others were a result of insecurities arising from threats and attacks. This left many LGBTI persons homeless and without means of sustenance. The perpetrators responsible were property owners, families, community members and in a few instances, places of work. The violations below are categorised according to the perpetrators.

3.3.1 Property owners

Property owners are landlords and landladies that rent out premises that are used as residential premises by LGBTI persons. These property owners have continuously evicted suspected LGBTI persons, and in some cases refused to compensate them for money paid and not utilised. This is done mostly with the help of local council authorities.

The right to freedom from discrimination

Although the prohibited grounds of discrimination listed under article 21 do not include sexual orientation or gender identity, the list is open ended. Courts of law in Uganda have also held that LGBTI persons are entitled to the same rights as everybody else. The violations perpetrated by property owners involved evictions and these evictions were solely carried out on the basis of the victims' perceived or actual sexual orientation or gender identity. This constitutes discrimination. In 2015, 40 of such violations were verified as having been perpetrated by property owners.¹²³

123 3 were documented by HRAPF, 32 by the Security Committee, 1 by SMUG and 4 by Ice Breakers Uganda.

In one of the cases,¹²⁴ the suspected gay man had been arrested on allegations of homosexuality and detained at Kawempe police. After his release, his landlady based on his arrest to evict him from her premises, on grounds that he could not harbor homosexuals on her property. The suspect had paid rent for about three months in advance but the landlady refused to refund this money and yet insisted that he had to leave. In such cases, the person has no option but to leave as trying to stay at such premises forcefully might expose them to dangers like attacks and arrests.

An example is a case where a friend to a suspected gay man reported him that he had attempted to sodomise him.¹²⁵ The landlady asked the suspected gay man to leave her premises but she was not ready to compensate him for the months due. When he tried to stay, she reported a case of attempted sodomy against him which exposed him to arrests if he remained in the premises.

Most of these evictions are effected after someone is either arrested or appears in the press as a homosexual.¹²⁶ However some of them have occurred after various incidents like suspicious reports from neighbours,¹²⁷ after being found having homosexual sex,¹²⁸ being

a visible transgender person,¹²⁹ and after landlord finding out that the person is employed by an LGBTI organisation.¹³⁰ Only three of these evictions had a semblance of lawfulness where letters were written to the suspected LGBTI persons. Otherwise, they are always carried out arbitrarily and without notice and/or compensation. This increases the vulnerability of LGBTI persons as they are always left homeless.

124 n 66 above

125 n 114 above

126 Refer to cases documented by the security committee

127 In one of the cases documented by Ice Breakers Uganda, the neighbours reported to the landlord that the suspected gay man always only had male visitors and they were suspicious of his character. They demanded for his eviction which was effected by the landlord.

128 Case documented by Ice Breakers Uganda

129 Case documented by the Security Committee

130 As above

3.3.2 The media

The media is one of the documented perpetrators of violations against LGBTI persons. In the process of doing their work, the media violate the rights of LGBTI persons. This is done through publication and broadcasting of biased and damaging stories about actual or perceived LGBTI persons which consequentially violates rights to privacy, fair trial (presumption of innocence) and the freedom from cruel, inhuman and degrading treatment. In 2015, six media houses were documented as having perpetrated eight violations against LGBTI persons. These included two TV stations,¹³¹ two radio stations¹³² and two newspapers.¹³³

Rights to a fair trial, privacy and freedom, from inhuman and degrading treatment

The rights to a fair trial, privacy and freedom from inhuman and degrading treatment are guaranteed under articles 28, 27 and 24 of the Constitution respectively. The right to a fair trial has various tenets one of which is the presumption of innocence under article 28(3)(a). It is to the effect that all persons are presumed innocent until proved guilty, or until such person pleads guilty. Publication of damning stories about LGBTI persons in the media create bias and violate this right. Different media houses also publish information regarding people's perceived or actual sexual orientations or gender identities, and subject such persons to ridicule, hatred and humiliation considering the existing homophobia and societal prejudices, in violation of the rights to privacy and freedom from inhuman and degrading treatment respectively.

131 Bukedde TV and NBS TV

132 Radio West and Radio Kigezi

133 The Red Pepper and The Kampala Sun

The *Red Pepper* published two stories about a suspected lesbian on 11 May 2015 under the headline 'NSSF boss forces 20 juniors into homo sex' and on 25 May 2015 under the headline 'NSSF homo boss fired'. These stories were regarding a case of sexual allegations,¹³⁴ which case was being heard in court. Publishing such information about a person facing trial is very biasing, damaging and violates the presumption of innocence. In another case,¹³⁵

The Kampala Sun on 23 October 2015 published a story about a bar brawl that had taken place at a bar in Kampala involving two transgender men. The article claimed that one of the transgender men was promoting unbecoming behavior at the bar because of his dress code. These were allegations made in the middle of an investigation into the bar fight.

The television stations continuously run stories of especially transgender persons calling them impostors and frauds which violates the presumption of innocence and creates skewed opinions of transgender persons as criminals. As opinion leaders and shapers of discourse, the media need to be held accountable for the violations they perpetrate.

3.3.3 Family members

Homophobia is still very prevalent in Uganda and therefore there is a prevalent lack of acceptance of LGBTI persons, even by their families. Family members have therefore been documented to perpetrate violations against their actual or perceived LGBTI relatives.

134 HRAPF/L/8/05/15

135 HRAPF/T/08/10/15

Rights to privacy, equality and non-discrimination and freedom from cruel and inhuman treatment

These rights are provided for in articles 27, 21 and 24 of the Constitution respectively. As already discussed, the constitution implicitly protects LGBTI persons from discrimination. The freedom from inhuman and degrading treatment and the right to privacy protect the integrity and dignity of a person.

For 2015, seven violations were documented that were perpetrated by family members. In two cases, family members reported their suspected gay relatives to the Police and cases of homosexuality were opened up against them,¹³⁶ in three cases, the family members banished and/or evicted their suspected LGBTI relatives¹³⁷; in one case, the family members outed the suspected gay man to the police using a text message¹³⁸ and in another, the family disowned and rejected three suspected gay men after they had been arrested on allegations of homosexuality.¹³⁹ These actions not only violate the rights to privacy, equality and non-discrimination and freedom from cruel and inhuman treatment, they also increase the vulnerability of LGBTI persons hence entrenching their marginalization.

3.3.4 Employers

Employers violate the rights of LGBTI persons through dismissals and terminations based on their sexual

orientation and/or gender identity.

Right to work

There were four cases verified for this report in which suspected gay men lost their jobs because of their perceived sexual orientation.

In one of the cases, three suspected gay men were arrested in Ntungamo and detained for a week.¹⁴⁰ The arrests were made on allegations of homosexuality. During their arrests, police walked them through their village and announced to the public that the suspects were homosexuals and the public was entitled to know what they had done and what was happening. After their long detention, they were released only to find that their arrest had caused a lot of stigma and that their employers were no longer interested in continuing to employ them.

In another case, a suspected gay man was terminated from his job in February 2015 on suspicions that he is a homosexual.¹⁴¹ He received a termination letter from his employer informing him that despite his hard work and flexibility, he was being let go for reasons that could not be listed in the letter. This was after several of the suspect's workmates confronted their employer and complained about the suspect's sexual orientation. The suspect was left with no means of sustenance and could take no legal action for fear of exposing his sexual orientation.

A suspected gay man, who worked as a teacher and counselor at a school in Kampala was terminated from his employment on suspicions that he was

136 HRAPF/G/3/01/15 (Salaama Road police SD REF: 21/06/01/15); HRAPF/G/7/07/15 (Ntinda Police station SD REF: 27/07/15)

137 HRAPF/G/14/10/15, 2 cases documented by Ice Breakers Uganda

138 SMUG (n 71 above)

139 As above

140 SMUG (n 71 above)

141 SMUG (n 71 above) 26

gay.¹⁴² These suspicions arose when he befriended and counseled two students that had been suspended for smuggling phones into school and engaging in homosexuality. His close relationship with these boys was questioned and bred suspicion among his fellow teachers on what his motives were. On 24 January 2014, he was summoned by his boss, who told him that the Board of Directors had made a decision to terminate his contract and asked him to vacate the school residential premises.

In another case, a suspected gay man in Jinja was terminated from work after being arrested and outed by the police.¹⁴³ On the fateful day, the suspected gay man was summoned to his place of work, where he met with the Board of Directors and was asked to hand over his work materials. He was not given any reasons as to why he was asked to do so and in addition, he was told that he owed the company 5 million shillings. He had no idea how he came to owe the company such an amount of money and yet he was detained for two days. He was however released without charge but he still lost his job.

For these LGBTI persons that are unfairly terminated, there is not much recourse for them. This is because they are wary of taking legal actions for fear of issues of their sexual orientation and gender identity coming up, and also in most cases, there are no reasons expressly given. They are therefore left with no proper recourse and with no remedy to their violations.

3.3.5 The general community

Apart from the above specific groups of persons that perpetrate violations

142 SMUG (n 71 above) 28

143 SMUG (n 71 above) 29

against LGBTI persons, there are other violations that have been perpetrated by general community members, who may not necessarily be categorised.

Violation of the right to freedom from inhuman and degrading treatment, privacy and discrimination

The general community was responsible for 30 violations documented and verified in 2015. Of these cases, 19 were physical attacks, eight were cases of threatening violence, three were cases of blackmail, two were cases of banishment from villages, one was a case of gang rape and one was a case of eviction.

The cases of physical attacks were perpetrated sometimes by unknown mobs and sometimes by known persons. They were always targeted and intended to injure and intimidate suspected LGBTI persons.

On 21 October 2015,¹⁴⁴ a transgender woman was attacked in Kansanga, Luwafu as she went to visit a friend. She was attacked by around five people that kept saying that they should beat her and even remove her teeth. This was after her neighbors had threatened to beat her up and burn her and her friends, because they did not understand the kinds of friends she hosted at her home. This warning had been given to her on 18 October 2016 and she had relocated to a safer place to avoid any attacks. It is from there that she was going to visit her friend when she was attacked.

On 14 August 2015 at Nkumba University, a suspected gay man was attacked by a one John Shilimi who accused him of trying to sodomise

144 HRAPF/T/11/10/15

him.¹⁴⁵ He started beating the suspect and even called other people to help him. A mob joined in the beating and the suspect was dragged from Nkumba University to Mpala police station where he was detained. He was visibly injured at the time of detention and his attackers accompanied him to the police station but interestingly, none of them was charged with any offence.

During the 2015 pride week, a transgender man got a *bodabodaride* back home.¹⁴⁶ On the way home, the *bodaboda* cyclist stopped and robbed the transgender man. During the robbing, the cyclist realized that the transgender man was binding his breasts. The cyclist got curious, and wanted to check his private parts to ascertain whether he was a man or a woman. When the transgender man refused, the cyclist beat him up badly, before leaving him by the roadside.

In another incident on 18 February 2015, a suspected bisexual woman was attacked in Kizungu in Kasese district.¹⁴⁷ She was coming from conducting a community outreach session with LGBTI persons and sex workers in Kasese when she was attacked by unidentified men that brutally beat her and injured her. They accused her and her colleagues of promoting homosexuality in the area and putting their children in danger. The attack was after the suspect had been warned and threatened several times by the unidentified men in the Kizungu trading centre.

In all these and more cases, the perpetrators were never brought to book. In some cases, like the first case,

the victims were too wary of reporting the case to police for fear of issues of their sexual orientation coming up and causing their arrest. For others like in the second case, there were efforts to report the cases to police but the cases were never taken on. In that case for example, the attackers of the suspect were at the police station issuing threats to him and police never arrested them or registered the suspect's assault complaint. For other cases like the last one, police registered the complaint but no investigations were made and therefore the perpetrators were never brought to book. Almost all these attacks also included theft and robbery. Such violations go unpunished and are encouraged since police appear to condone them.

Many times, community members threaten suspected LGBTI persons with violence which creates an environment of apprehension that multiplies into different violations. In February 2015,¹⁴⁸ a suspected gay man kept receiving threats from his neighbors warning him that he was going to be beaten up and his house burnt for being homosexual. This forced the suspect to flee and relocate to a safer place.

In May 2015, a gay man reported a case of threatening violence in which a neighbor known to him regularly insulted him and threatened to kill him because he was suspected to be gay.¹⁴⁹ According to the perpetrator, they could not allow to stay near such a person as he would corrupt their morals and the morals of their children. The gay man was living in fear and had to seek a safer place to stay.

In one incident, residents of a village

¹⁴⁵ n 76 above

¹⁴⁶ Case documented by FARUG

¹⁴⁷ HRAPF/B/5/03/15

¹⁴⁸ HRAPF/G/2/02/15

¹⁴⁹ HRAPF/G/1/05/15

forced a mother to evict and disown her two transgender daughters.¹⁵⁰ This was after these residents made threats of attack to the mother, saying that they could not live with such people in their village. They told her if she could not let them go, she would be attacked and banished. She was therefore forced to evict her children.

One of the contributing organisations to this report, FARUG, continues to receive threats to the organisation, its members and its staff. The threats are usually made on the organisation's hotline, which is made available to community members to call in case they need assistance. The identities of the callers are never revealed. Sometimes they call and say that they are following a particular person—normally staff—and even go ahead to describe how such a person is dressed. FARUG staff say the threats increased when another LGBTI organisation, SMUG, established offices in almost the same area, which made local residents feel that their area is under siege by LGBTI persons. These continued threats continue to cause apprehension.

In another case, a suspected gay man was continuously threatened by a gang of men who accused him of being a homosexual. This gang took his property, extorted money from him, blackmailed him and treated him with a lot of indignity merely because he was suspected to be gay. He could not report the case to police as he feared backlash and possible arrest. For most of these cases of threatening violence, the victims fear reporting the treats to police for fear of riling up the community and risking arrest. They are therefore in most cases forced to look

for safer places to stay, which more often than not, leaves them homeless.

The LGBTI community faces a challenge of black mail. This is mostly done by friends of LGBTI persons and fellow members of the LGBTI community. For example in one case, a gay man hosted his friend at his home. When he stepped out to go to the shops to buy a few groceries, his friend stole his flat iron, computer and other personal property.¹⁵¹ When he called his friend to find out what had happened, the friend warned him not to try and report a case against him as this would force him to reveal details about his sexual orientation. He continued the blackmail and told the victim that he had reported a case of sodomy against him and that it would be wise not to follow up the case. It was never established that the case was actually reported but the threats caused him apprehension.

Another gay man hosted a friend, who asked him for money to buy him a phone.¹⁵² The gay man refused to give the money and the former then told him that if he did not give him the money, he would open up a case against him, claiming that he tried to sodomise him. When the money was not forthcoming, he reported the victim to his landlady alleging that he tried to sodomise him, after which a case of attempted sodomy was opened up against him at Kasubi police post and forced to leave his rented home. Blackmail is used to prey on the uncertain parameters of LGBTI criminalisation in Uganda and the existing homophobia. And in most cases, such incidents cannot be reported for fear of arrest.

A case of corrective rape was

150 Case documented by Ice Breakers Uganda

151 HRAPF/G/11/03/15
152 HRAPF/G/17/01/15

documented in the year.¹⁵³ A suspected lesbian was gang raped by four men at night as she walked home from a bar. The men kept telling her that they knew that she was lesbian and wanted to show her how natural sex should be. She reported the case to FARUG who took her to the MARPI clinic for PEP treatment and counseling. They advised her to report a case to police but she declined, fearing stigma and embarrassment. At the time of collecting this data, the victim was living in seclusion in an upcountry district. Such incidents of corrective rape are suffered especially by lesbians and transgender men but are never reported for fear of stigma.

Apart from local council leaders, ordinary community members have also banished suspected LGBTI persons from villages. In one incident, nine suspected gay men were arrested on 15 January and outed in Rubare village.¹⁵⁴ Residents threatened to lynch them and they had to be protected by police. After they were released, the residents warned them that if they stayed in the village, they would attack them and lynch them. They were told to leave Rubare and never come back as their behavior could not be tolerated.

In another incident in Katwe,¹⁵⁵ neighbors of a transgender woman forced her to leave her rented home as they could not understand her behavior. She took refuge in a shrine as she had nowhere else to go. However when the local residents heard this, they attacked the shrine and burnt it down saying they did not want her anywhere in their village. As already discussed, banishment is a

violation of various rights like equality and freedom from cruel, inhuman and degrading treatment and leaves LGBTI people homeless, vulnerable and at the mercy of a very homophobic society.

3.4 Conclusion

Although this report cannot exhaustively report on every case of human rights violations based on peoples sexual orientation or gender identity in Uganda, the foregoing discussion shows that there is a lot of human rights violations going on in Uganda. These violations further indicate that LGBTI people are increasingly finding it difficult to live a normal and dignified life in a country of their own. Both state and non-state actors are responsible for these violations and there is urgent need to address them.

¹⁵³ Case documented by FARUG

¹⁵⁴ HRAPF/G/7/01/15

¹⁵⁵ Case documented by Ice Breakers
Uganda

SECTION IV

ANALYSIS OF THE TRENDS

What stands out most in 2015 is the fact that there were more violations by non state actors than by state actors for the first time in the history of these reports. This is a worrying trend since it is much more difficult to bring individuals and non state actors to book than it is with state actors. Also the fact that there are many cases of mob justice is very worrying since mob justice is quite a common trend in Uganda and it usually results into deaths. The other thing to note about this trend is the state's obligation to protect. International human rights standards require that the state should protect persons from human rights violations by third parties. As such by doing nothing much to protect LGBTI persons from these attacks by non state actors, the state can be said to be in violation of its human rights obligations. This therefore requires the state to do more to protect the rights of LGBTI persons.

The change in trends may also reflect a feeling by the common people that they need to take the law in their hands in light of the nullification of the Anti-Homosexuality Act. The unfortunate part of the nullification is that many felt that the nullification of the law left a vacuum as there was no law under which same sex relations were punishable. This is of course not true since Article 32(A) of the Constitution prohibits same sex marriages and section 145 of the Penal Code punishes same sex relations with life imprisonment. This perception is a dangerous development and the state needs to be ready to protect LGBTI persons from further attacks.

The emergence of the URSB as one of the violators is also worrying. In 2015, we documented the first incident in which the URSB denied the incorporation of an LGBTI organisation, on grounds that the organisation works with persons that engage in conduct that is criminalised. This first incident involved Sexual Minorities Uganda however by the end of the year, two other incidents involving Action for Transgender Rights Initiative and Born This Way Uganda were documented. This is a worrying trend as it affects the rights to freedom of association, expression, and assembly of LGBTI persons.

For the first time, a report on violations showed that non-state actors perpetrated more violations than state actors. Of the 171 violations documented in this report, state actors perpetrated 93 of these which translate into 54.4% of the violations. This is a unique development, and it is hard to attribute it to anything in particular. It could be that there is more documentation of these violations or that the non-state actors have become more emboldened to carry out these violations. It should be noted that among the non-state actors, property owners ranked as the top most violators. It would not be so farfetched to presume that the property owners are increasingly violating rights of LGBTI persons because their actions feel justified and in most cases, they are condoned by duty bearers like the Police. Most of the violations perpetrated by property owners are forceful evictions. These

are rarely punished or addressed as in most cases, the property owners feel justified to evict actual or perceived LGBTI persons as most of these evictions are pursuant to complaints from the general community. The treating of LGBTI persons as outcasts is the accepted norm and this could be emboldening property owners and other non-state actors to violate rights of LGBTI persons.

Uganda is also party to various international human rights instruments including the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All forms of Discrimination Against Women, the Convention Against Torture, the Convention on the Rights of a Child, the African Charter on Human and Peoples' Rights, and the Treaty for the Establishment of the East African Community. All these instruments provide for different rights and in their implementation and interpretation, these rights have been held to apply equally to LGBTI persons, the same way they apply to all other persons.¹⁵⁶ Just like the Constitution, these instruments create obligations to respect, protect and fulfill the rights enshrined therein and these obligations are binding. The obligation to protect specifically enjoins states to protect persons from violations perpetrated by third parties. It is a positive obligation that requires the state to take action and this could include prosecution of perpetrators. The implicit condoning of the violations of the rights of LGBTI persons by non-state actors is therefore a violation of this obligation.

¹⁵⁶ For full discussion on how international instruments apply to LGBTI persons in Uganda, see HRAPF (n 23 above)

In addition to the above, this report shows that the Uganda Police Force still remains the top most violator of the rights of LGBTI persons. Of the 171 documented violations in the report, police perpetrated 47 of these, compared to the 40 perpetrated by property owners. Even with the annulment of the Anti-Homosexuality Act, police continue to carry out arbitrary arrests against LGBTI persons and along with them, various other violations. Even when the arrests continue, these cases are not fully prosecuted and are continuously used as an end in themselves. The Police leadership's engagement with the LGBTI community does not necessarily translate into their ensuring that police officers respect the rights of LGBTI persons. There is thus need for the Police to acknowledge that its officers violate the rights of LGBTI persons and thus issue guidelines or in any other way ensure that LGBTI persons are protected

The above trends show that violations against LGBTI persons based on their sexual orientation and gender identity still exist, and it is only trends that keep changing. The lack of implementation of the mandate of duty bearers like police has encouraged non-state actors to increasingly violate the rights of LGBTI persons, as they are implicitly condoned and feel justified. On the other hand, police and the general community still feel the need for the punishment of LGBTI persons but there is a lacuna in the law that does not expressly allow for this and so they continue to use arbitrary arrests and their associated violations as punishments against LGBTI persons. All these need to be looked out for going forward, including the expansion in the interpretation and implementation of existing laws, and the possible enactment of new laws.

SECTION V

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

Although the Anti-Homosexuality Act was annulled leaving homosexuality un-criminalised in Uganda, the continued existence of sections 145 and 146 of the Penal Code Act largely undermine the impact of the annulment. Albeit criminalizing only same sex sexual acts, the sections continue to be interpreted out of context and coupled with homophobia and societal prejudices, continue to be used as a basis for the violation of rights of LGBTI rights. The violations in 2015 also show an alarming increase in violations perpetrated non-state actors thus emphasising the need for the responsible state agencies to fulfill their obligation to protect third parties from violating rights of others, in addition to their obligation to respect these rights. The increased use of alternative laws to narrow space for LGBTI person also raises concern as it seems opportunistic. All the above notwithstanding, 2015 was a year of renewed and strengthened partnerships between stakeholders in the LGBTI community and government institutions. This is commendable and should be harnessed as one of the best opportunities to improve the observance of rights of LGBTI persons in Uganda.

5.2 Recommendations

To the Uganda Police Force

The Uganda Police has the original mandate to keep law and order. There has been commendable progress in the observance of rights of LGBTI persons by the police but they remain the top

most violators of the rights of LGBTI persons. There is therefore room for improvement and such improvement can be registered by doing the following;

- The Directorate of Human Rights and Legal Services should endeavor to train police officers in matters of human rights, particularly the rights of LGBTI persons in Uganda. This should be intended to reduce human rights violations based on sexual orientation and gender identity like unnecessary arrests and parades before the media.
- The police should afford LGBTI persons equal protection by ensuring that violations perpetrated against LGBTI persons are properly investigated and dealt with accordingly. This should include violations perpetrated police officers.
- The Directorate of Human Rights and Legal Services should provide continuing education and training to police officers to ensure that they are abreast with new legal developments to avoid unnecessary arrests.
- The Inspector General of Police should foster a conducive partnership environment in which different individuals and organizations working for the observance of the rights

of LGBTI persons can easily access police and engage them on matters regarding the rights of LGBTI persons.

- The Inspector General of Police should strengthen mechanisms to fight bribery and extortion by the police, including by: strengthening and further supporting the role of the Professional Standards Unit and lobbying for increased funding directed to increasing police salaries and improving police conditions in order to reduce incentives to arrest people for the purpose of extortion.
- The Inspector General of Police, working with the Directorate of Human Rights and Legal Services should engage relevant stakeholders to see that the police force introduces cells for transgender persons, to reduce the incidents of violence suffered by transgender persons that are detained in general cells.
- The Directorate of Human Rights and Legal Services should issue guidelines to police officers on how to deal with cases involving LGBTI persons.

To the Uganda Human Rights Commission

The Uganda Human Rights Commission is established by the Constitution with the primary mandate of investigating incidents of human rights violations and ensuring that different state organs observe the protection and promotion of human rights in carrying out their

functions. The commission has so far been progressive regarding LGBTI rights. It should therefore continue doing the following;

- Investigate and document reports of violence and abuse against individuals based on sexual orientation, sex determination, and gender identity or expression, and include such violations in annual reports to Parliament, accompanied by recommendations for policy changes;
- Continue working with civil society organisations to monitor, document, expose, and address incitement to violence, homophobia, violence, and abuse on the basis of sexual orientation, sex determination, and gender identity or expression and to popularize the commission among LGBTI persons;
- Advise parliament on laws and bills that may increase stigma and discrimination against LGBTI persons;
- Encourage various state institutions to incorporate the Human Rights Based Approach into the fulfillment of their respective mandates.
- Include violations of LGBTI persons' rights in the Annual Report to Parliament as a specific category.

To Members of Parliament

The Parliament of Uganda is the principal law making body, responsible

for debating and enacting laws that govern the country. Parliament also has powers to provide checks and balances to various state institutions.

- Enact laws that do not discriminate on the basis of sexual orientation and gender identity. Parliament should also amend the existing laws that discriminate on those grounds and avoid enacting laws that further criminalise LGBTI persons.
- Amend Uganda's Constitution to include a specific prohibition of discrimination based on sexual orientation, gender identity, and sex determination.
- Condemn attacks or incitement to violence against individuals or groups on the basis of sexual orientation and gender identity or expression.
- Call upon the Uganda Human Rights Commission to monitor violations affecting LGBTI Ugandans. Every year, the Uganda Human Rights Commission presents a report on the situation of human rights in Uganda to Parliament, Parliament through the Speaker should use this opportunity to urge the Commission to investigate and report on violations of rights of LGBTI people.
- Engage LGBTI persons and organizations in the formulating and discussing of laws especially through the Parliamentary committee

- Parliament should enact laws that protect the rights of LGBTI persons.

To the Equal Opportunities Commission

The Equal Opportunities Commission is the institution with the constitutional mandate to address marginalization and discrimination in Uganda. It provides the best platform for addressing the violations suffered by LGBTI persons on grounds of sexual orientation and gender identity. The commission therefore needs to do the following to be able to use its mandate to address these violations.

- Investigate, on its own accord, systematic stigmatisation and discrimination of individuals based on their sexual orientation or gender identity.
- Train the commission staff in matters of the rights of LGBTI persons in order to build their capacity in handling matters of discrimination and marginalization based on sexual orientation and gender identity. This is to ensure that when such complaints are filed with the commission tribunal, they are handled with the objectivity they deserve.
- Open up space and opportunity to partner substantively with organizations and other persons that work for the promotion of the rights of LGBTI persons.
- Join the Civil Society Coalition for Human Rights and Constitutional Law in demanding that the case of *Adrian Jjuuko v AG* that challenges a section of

the Equal Opportunities Act is disposed off urgently. This is to remove the barriers to sexual minorities filing complaints with the commission.

- Compile reports on discrimination and marginalization based on sexual orientation and gender identity. These reports can be used to make recommendations to various stakeholders on how to better reduce such marginalization and discrimination.
- Include LGBTI persons on the list of the officially recognized groups of vulnerable and marginalised persons in Uganda.

To the Judiciary

The Uganda Judiciary has the constitutional mandate to interpret and apply the laws of Uganda. To protect rights of LGBTI persons, the following should be done:

- The Court of Appeal should hasten the hearing of the appeal case of *Kasha Jacqueline & Ors v AG & Anor*. The judgment appealed from poses a danger to the observance of rights of LGBTI persons.
- The Constitutional court should urgently give judgment in the case of *Adrian Jjuuko v AG* in order to clarify the jurisdiction of the Equal Opportunities Commission tribunal regarding LGBTI persons.
- Judicial officers should be trained on rights of LGBTI persons to give them capacity

to handle cases on LGBTI rights objectively.

- The Judiciary should hasten the hearing of cases brought before them involving human rights violations as inordinate delays affect the protection of human rights.

To the Uganda Law Reform Commission

The Uganda Law Reform Commission is established by the Constitution under article 248. Its Constitutional mandate is to suggest areas of law reform, and it is now in the process of reviewing the Penal Code Act. This is the right time to end legal discrimination of people based on their sexual orientation or gender identity. The ULRC should therefore:

- Issue formal recommendations to Parliament that the Penal Code sections that explicitly discriminate on the basis of sexual orientation or gender identity be repealed, including Section 145 on carnal knowledge against the order of nature.
- Provide guidance on Penal Code sections including Section 160 (common nuisance), Section 167 (idle and disorderly), and Section 168 (rogue and vagabond) to ensure that they are not used by the police and private parties to harass people based on their sex determination, sexual orientation, and/or gender identity. Such guidance should be in the form of written guidelines that are circulated to all police posts in Uganda.

To the Ministry of Health

The Ministry of Health is responsible for proper and accessible health care in Uganda. It has been very progressive and has had various health policies that are inclusive of LGBTI persons, especially policies on HIV. There is however improvement needed in the provision of these inclusive services to LGBTI persons. To achieve this:

- The Department of Community Health should institute training for healthcare service providers on sexual orientation and gender identity to enable provision of discrimination free health services for everyone including LGBTI persons.
- The Clinical Services Department should issue proper guidelines for providing medical care to all people without discrimination even on the basis of sexual orientation or gender identity.

To the international community

The international community has leverage and considerable and can influence state institutions in Uganda to adopt policies and measures that ensure equal treatment of all persons regardless of their sexual orientation and gender identity. This however has to be done cautiously to avoid backlash. The community should therefore:

- Call on the government of Uganda to live up to its international human rights standards by protecting the rights of all persons including LGBTI persons.
- Use quiet diplomacy to sensitise Ugandan leaders on LGBTI

issues domestically and abroad and influence the adoption of non discriminatory legislation against LGBTI persons.

- Support initiatives aimed at creating public awareness on sexuality, sexual and health rights, and violence and discrimination and those aimed at influencing policy that ensures service provision to LGBTI persons in Uganda.

To national human rights organizations and LGBTI organizations

The existing CSOs in Uganda that work for the promotion of human rights in general and rights of LGBTI persons in particular have the onus to create a substantive conversation about the rights of LGBTI persons and the violations they suffer. They should therefore do the following:

- Build capacity of staff in documentation of violations based on gender identity and sexual orientation. And this document should be actively used for advocacy.
- Support public education and awareness-creation programs on sexuality, sexual and health rights, and violence and discrimination by targeting law enforcement agencies and health service provision institutions.
- Support the Uganda Human Rights Commission's mandate to monitor and document reports of violence, abuse, and discrimination based on sexual

orientation and gender identity or expression.

- Strengthen reporting systems, evidence collection and data storage to facilitate easy verification of violations against people based on their sexual orientation and gender identity or expression.
- Create information sharing systems so that reports of violations can be used simultaneously by multiple parties.
- Hold awareness sessions with staff members to sensitize them on issues affecting LGBTI Ugandans.
- Create partnerships with other organisations to monitor and document abuses of LGBTI rights.

To the Media

The media plays an important role of informing society and has power to control narratives, which must be used responsibly. Members of the media should:

- Treat all people with respect and dignity, regardless of gender identity, or sexual orientation.
- Learn about, monitor, and report on abuses of human rights and dignity that LGBTI Ugandans face.
- Protect the privacy of LGBTI individuals who may be threatened, assaulted, or even killed as a result of being

“outed” by the media.

To the Uganda Registration Services Bureau

The URSB has the mandate to incorporate organisations and thus give different entities legal status. In 2015 however, a worrying trend emerged where the Bureau refused to incorporate different LGBTI organisations on grounds on section 145 of the Penal Code Act. This hampers service provision to the LGBTI community and violates rights. The Bureau should do the following:

- Objectively evaluate applications for reservation of organization names and apply the same principles for all organisations including LGBTI organisations. Section 145 of the Penal criminalises same sex conduct and not the formation of organisations intended to protect human rights of persons regardless of their sexual orientation.

To the Uganda Prisons Service

The Uganda Prisons Service plays a great role in Uganda’s criminal justice system. Prisons have been centres of violation of rights of LGBTI persons before. There is therefore need to do the following:

- Establish separate areas for the detention of transgender people to avoid the violence that occurs to them as a result of being detained with people of a different gender.
- Protect all prisoners including LGBTI prisoners from violence perpetrated by fellow prisoners or prison warders.

- Carry out trainings of prison officials on rights of LGBTI persons.

To the President of the Republic of Uganda

The president has a constitutional mandate to assent to or reject laws passed by Parliament. The office of the president is therefore key to the law-making process and to ensuring that the laws enacted respect and observe the rights of all people without discrimination. The person of the President commands respect among the citizens and has a high capacity to influence the attitudes and perceptions of the public to tackle homophobia. The President should:

- Veto legislation that is discriminatory on the basis of sexual orientation or gender identity and call upon the police and all intelligence agencies to investigate violations and abuse of the rights of persons based on their gender identity and sexual orientation.
- Ensure that issues of non discrimination are prioritised within the Cabinet and the executive generally.

Human Rights Awareness and Promotion Forum (HRAPF)

Under the auspices of the Consortium on Monitoring Violations
Based on Sex Determination, Gender Identity and Sexual
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