

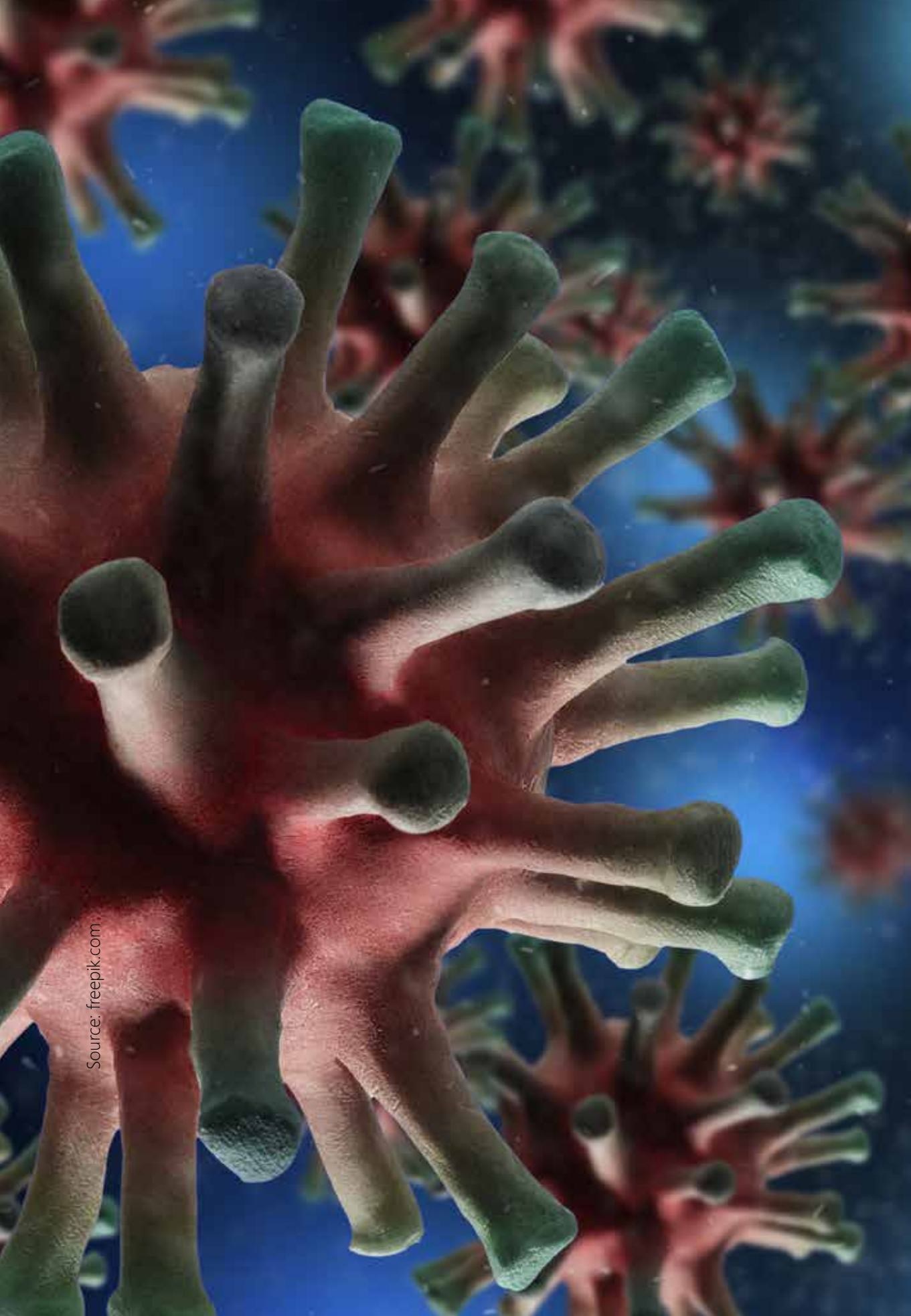


# **THE IMPACT OF COVID-19 RELATED RESTRICTIONS ON ACCESS TO JUSTICE FOR KEY POPULATIONS IN UGANDA:**

**A Case Study of LGBT Persons and Sex  
Workers in Kampala and Wakiso Districts**

**June 2021**





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# **THE IMPACT OF COVID-19 RELATED RESTRICTIONS ON ACCESS TO JUSTICE FOR KEY POPULATIONS IN UGANDA:**

## **A Case Study of LGBT Persons and Sex Workers in Kampala and Wakiso Districts**

**June 2021**

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# TABLE OF CONTENTS

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ACKNOWLEDGEMENTS	iv
PROJECT TEAM	v
TABLE OF CONTENTS	vi
LIST OF ABBREVIATIONS	ix

## 1. EXECUTIVE SUMMARY 1

## 2. INTRODUCTION AND BACKGROUND TO THE STUDY 5

2.1 Introduction	5
2.2 Background	5
2.3 Rationale	7
2.4 Existing Knowledge	7
2.5 Theoretical Framework	10
2.6 Objectives	10
2.7 Research Questions	11
2.8 Methodology	11
2.9 Ethical Considerations	13

## 3. UGANDA'S LEGAL RESPONSE TO THE COVID-19 PANDEMIC 14

3.1 Introduction	14
3.2 Measures contained in public health instruments	14
3.2.1 Measures before the outbreak of COVID-19 in Uganda	14
3.2.2 Measures immediately upon confirmation of the first cases of COVID-19 in Uganda	16
3.2.3 Imposition of total lock down	17
3.2.4 Measures which are still in place	18
3.3 Response by the selected access to justice institutions	18
3.3.1 Access to courts of law	18
3.3.2 Access to prisons	18
3.3.3 The Office of the Director of Public Prosecutions	19
3.4 Enforcement of the COVID-19 measures	19
3.5 Conclusion	22

<b>4. HUMAN RIGHTS VIOLATIONS AGAINST LGBT PERSONS AND SEX WORKERS IN KAMPALA AND WAKISO DISTRICTS DURING THE COVID-19 LOCKDOWN THAT REQUIRED IMMEDIATE ACCESS TO JUSTICE</b>	<b>23</b>
4.1 Introduction	23
4.2 Arbitrary arrests for breach of COVID-19 regulations and excessive use of force	23
4.2.1 Arbitrary arrests and excessive use of force against LGBT persons	24
4.2.2 Arbitrary arrests against sex workers	24
4.3 Physical and sexual violence	26
4.3.1 Physical and sexual violence against LGBT persons	26
4.3.2 Physical and sexual violence against sex workers	28
4.4 Discrimination	29
4.4.1 Discrimination against LGBT persons	29
4.4.2 Discrimination against sex workers	30
4.5 Violations in access to health services	31
4.5.1 Impact on access to health for LGBT persons	31
4.5.2 Violations related to access to health for sex workers	32
4.5.3 Mental Health for LGBT persons and sex workers during the COVID-19 pandemic	33
4.6 CONCLUSION	34
 <b>5. IMPACT OF COVID-19 REGULATIONS ON ACCESS TO JUSTICE FOR LGBT PERSONS AND SEX WORKERS</b>	 <b>35</b>
5.1 INTRODUCTION	35
5.2 OPPORTUNITIES IN ACCESSING JUSTICE BROUGHT ABOUT BY THE COVID-19 RESTRICTIONS	35
5.2.1 Quicker access to justice for plea taking and urgent matters	35
5.2.2 Release of petty offenders to reduce on congestion in prisons	35
5.2.3 Declaration of lawyers among essential service providers	36
5.2.4 Increased attention on Uganda and human rights violations during this period	36
5.2.5 Prioritisation of sexual and gender-based violence cases	36
5.2.6 Use of e-justice mechanisms	37
5.3 LIMITATIONS OF ACCESS TO JUSTICE RIGHTS BROUGHT ABOUT BY THE COVID-19 RESTRICTIONS	38
5.3.1 Partial suspension of court services	38



5.3.2 Limited access to prisons	40
5.3.3 Closure of organisations working on LGBT and sex workers issues, legal aid service providers and law firms	42
5.3.4 Non-classification of lawyers as essential service providers	43
5.3.5 Discrimination in accessing justice	43
5.3.6 Fear of contracting COVID-19 by legal aid providers and by persons reporting	44
5.3.7 Focus on basic survival	44
5.3.8 General lack of awareness about alternative justice mechanisms: the case of Uganda Human Rights Commission and the Equal Opportunities Commission	44
5.3.9 Further delay of cases pending before the courts	47
5.4 STRATEGIES ADOPTED BY LGBT AND SEX WORKERS AND THEIR ORGANISATIONS AND PARTNERS TO ACCESS JUSTICE	48
5.4.1 Filing strategic cases of violations as urgent and access quicker justice	48
5.4.2 Political, diplomatic and judicial players engagements	48
5.4.3 Filing urgent cases in different courts of law	48
5.4.4 Using unconventional means of transport that could fit within the rules	49
5.4.5 Focusing energies on access to justice	50
5.4.6 Use of Community Paralegals	50
5.4.7 Intra-Community Informal Mechanisms	50
5.5 CONCLUSION	51
<b>6. CONCLUSIONS AND RECOMMENDATIONS</b>	<b>52</b>
6.1 CONCLUSION	52
6.2 RECOMMENDATIONS	52
6.2.1 To the President and the COVID-19 Task Force	52
6.2.2 To the Minister of Health	53
6.2.3 To the Uganda Police Force and the Uganda Peoples' Defence Forces	53
6.2.4 Judiciary	53
6.2.5 To the Parliament of Uganda	53
6.2.6 Civil Society organisations working on LGBT and sex worker issues	54
6.2.7 The Uganda Human Rights Commission and the Equal Opportunities Commission	54
<b>REFERENCES</b>	<b>55</b>



# LIST OF ABBREVIATIONS

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>AMWA</b>	Akina Mama Wa Afrika
<b>ART</b>	Anti-Retroviral Therapy
<b>AWAC</b>	Alliance of Women Advocating for Change
<b>CEDAW</b>	United Nations Convention on the Elimination of all Forms of Discrimination Against Women
<b>CEHURD</b>	Centre for Health, Human Rights and Development
<b>COSF</b>	Children of the Sun Foundation
<b>CSO</b>	Civil Society Organisation
<b>COVID-19</b>	Coronavirus Disease 2019
<b>EOC</b>	Equal Opportunities Commission
<b>FGD</b>	Focus Group Discussion
<b>FSWs</b>	Female Sex Workers
<b>GBV</b>	Gender Based Violence
<b>HiIL</b>	Hague Institute for Innovation of Law
<b>HRAPF</b>	Human Rights Awareness and Promotion Forum
<b>HRCU</b>	Human Rights Centre Uganda
<b>HRDs</b>	Human Rights Defenders
<b>IDI</b>	In-Depth Interview
<b>JLOS</b>	Justice, Law and Order Sector
<b>KII</b>	Key Informant Interview
<b>LMEC</b>	Lady Mermaids Empowerment Centre
<b>LASPNET</b>	Legal Aid Service Providers Network
<b>LBQ</b>	Lesbian, Bisexual and Queer

<b>LDU</b>	Local Defence Unit
<b>LGBT</b>	Lesbian, Gay, Bisexual and Transgender
<b>MGLSD</b>	Ministry of Gender, Labour and Social Development
<b>MoH</b>	Ministry of Health
<b>MONU</b>	Men of the Night Uganda
<b>OC</b>	Officer in Charge (of a Police Station/ Post or Prison)
<b>PrEP</b>	Pre-exposure prophylaxis
<b>SI</b>	Statutory Instrument
<b>SMUG</b>	Sexual Minorities Uganda
<b>TASO</b>	The AIDS Support Organisation
<b>DHR</b>	Universal Declaration of Human Rights
<b>UGANET</b>	Uganda Network on Law, Ethics and HIV/AIDS
<b>UHRC</b>	Uganda Human Rights Commission
<b>UKPC</b>	Uganda Key Populations Consortium
<b>ULS</b>	Uganda Law Society
<b>UN</b>	United Nations
<b>UNAIDS</b>	The Joint United Nations Programme on HIV/AIDS
<b>UNDP</b>	United Nations Development Programme
<b>UPDF</b>	Uganda Peoples Defence Forces
<b>UPF</b>	Uganda Police Force
<b>UNESO</b>	Uganda Network of Sex Worker-led Organisations
<b>WHO</b>	World Health Organisation
<b>WONETHA</b>	Women's Organisation Network for Human Rights Advocacy
<b>WPI</b>	Women's Pro Bono Initiative

# 1. EXECUTIVE SUMMARY

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This study sought to examine the impact of COVID-19 regulations on access to justice for Key Populations (KPs), with a specific focus on LGBT people and sex workers in Kampala and Wakiso districts. The study employed qualitative methods of data collection targeting respondents through six Focus Group Discussions (FGDs), 20 In-depth Interviews, and 35 Key Informant Interviews (KIIs).

The study focused on the period of March – June 2020, during which the country was in a total lockdown. During this period, the government imposed some of the most dramatic and unprecedented restrictions on human rights mainly through presidential directives, which were subsequently incorporated in legally enforceable statutory instruments under the provisions of sections 10, 11, 36 and part IV of the Public Health Act Cap 281. Some of the measures included: closure of all borders, ban on all public gatherings, prohibition of public and private transport, imposition of a night curfew from 7:00pm to 6:30am, closure of all places of leisure and entertainment such as hotels, bars, night clubs, among others, as well as closure of markets, shops and all commercial establishments.

In addition to the measures instituted by the President and the Minister of Health through statutory instruments, other government agencies, and of particular concern those in the administration of justice, adopted their own restrictions, which severely affected access to justice. Referencing the presidential speeches, the Chief Justice issued Circular no CJ/C7 Circular of 19 March 2020 which substantively closed all courts except for matters certified as urgent and bail applications in criminal proceedings. The Commissioner General of Prisons issued Administrative Instruction No 4 of 2020 suspending all access to prisons by visitors, including lawyers. The Directorate of Public Prosecutions (DPP) on the other hand required officers to keep their stations open, continue to report and work to attend to court proceedings.

## Methodology

This was a cross-sectional study designed to explore and describe the impact of COVID-19 restrictions on access to justice for Key Populations, specifically LGBT persons and sex workers. Qualitative, primary and secondary research were conducted to accomplish the study objectives. The study had two research sites that is Kampala and Wakiso.

Focus Group Discussions (FGDs) and In Depth interviews (IDIs)/Key Informant Interviews (KIIs) were the main methods used to collect primary data. The FGD guides were pre-tested on a group of eight sex workers while the IDIs were tested on four different individuals.

There were 20 IDIs of about 45-60 minutes held with LGBT persons and sex workers, 10 for each group, who were randomly selected from LGBT persons and sex workers who approached HRAPF for legal services during the period from 18<sup>th</sup> March 2020 until 21<sup>st</sup> July 2020.

Six FGDs of about 60-90 minutes were held, three with LGBT persons (1 with gay and bisexual men, 1 with Lesbian, Bisexual and Queer (LBQ) women and 1 with transgender persons) and three with sex workers (2 with Female sex workers and 1 with male and transgender sex workers). Each FGD had 6-8 participants.

35 Key Informant Interviews of about 30 - 45 minutes were held with different stakeholders, such as the Uganda Prisons Services, the Uganda Human Rights Commission, the Uganda Law Society, and the Legal Aid Service Providers Network.

Secondary data was collected through the review of existing literature on access to justice needs for LGBT persons and sex workers as well as the general access to justice situation in Uganda for the study period.

## Findings

1. The COVID-19 regulations were mainly enforced through a militarised approach, with the Uganda People's Defence Forces (UPDF) and the Local Defence Units (LDUs), augmented by the Uganda Police, taking the leading role in enforcing the regulations.
2. Whereas new regulations were passed creating criminal offences, law enforcement agencies mainly relied on existing criminal law provisions, namely sections 117 and 171 of the Penal Code, which prohibit disobeying lawful orders and doing a negligent act likely to spread infection of disease respectively, to carry out mass arrests and incarceration of people in police units and Kitaleya Min Max Prison in Wakiso district and other designated prisons and isolation centres.
3. The highlighted measures had a profound impact on access to justice for Key Populations – specifically LGBT persons and sex workers in the following ways:
  - a) During the period March to June 2020, there was widespread violence against Key Populations. Sex workers reported being raped and sexually violated at will by security operatives and being subjected to extortion, ridicule, shaming, arbitrary arrests and physical violence. LGBT persons also suffered arbitrary arrests and the case that stood out the most was the arrest of 23 youths from a shelter run by the Children of the Sun Foundation (COSF) in Kyengera and who endured torture, abuse and imprisonment for over 50 days.
  - b) The partial closure of courts of law left persons who had been arrested or violated with limited access to courts of law. Inmates could not be brought physically to the courts, and yet video link facilities were limited.
  - c) The banning of all visitations to Uganda Prisons facilities led to persons arrested being unable to access their lawyers, personal doctors or family members. This effectively cut them off from legal advice and representation, condemning them to prolonged periods of detention.
  - d) Legal aid service providers faced more challenges reaching LGBT persons and sex workers with access to justice needs owing to transport restrictions and the closure of all offices and businesses, including legal aid organisations and law firms. Many had to adopt unusual methods of reaching out to their clients including using cargo trucks, bicycles and motorcycles to access their clients.
  - e) The Uganda Human Rights Commission and the Equal Opportunities Commission were not utilised by LGBT and sex work participants as much due to fear of discrimination, marginalisation and humiliation. Other respondents were simply not aware of the existence of the two institutions as justice mechanisms.

4. Whereas many of the respondents reported feeling resigned to their fate with no hope of seeking, let alone accessing, justice for the violations suffered, others adopted unorthodox and unprecedented measures to seek and obtain justice. Internal self-help measures like sex workers associations were relied upon to ensure access to justice.
5. However, the lockdown restrictions also presented opportunities for access to justice for LGBT people and sex workers. Matters which were certified as urgent were heard and disposed of within a short period of time. The President pardoned 382 convicted minor offenders following lobbying and pressures from civil society. The Judiciary responded by conducting special sessions to hear cases involving Sexual and Gender Based Violence (SGBV), and the use of technology to deliver fast e-justice took root, while international attention was once again drawn to the human rights violations faced by LGBT people and sex workers in Uganda.

## Recommendations

The study recommends, among others, the following:

### A) To the President and the National COVID-19 Task Force

1. To issue directives that respect the human rights of all persons, particularly those most vulnerable to COVID-19, HIV/AIDs and other pandemics/ epidemics.
2. Pardon more petty offenders and persons arrested for violating COVID-19 Regulations so as to decongest prisons during the COVID-19 period.
3. Move cabinet to develop proposals to decriminalise consensual same-sex relations and sex work as criminalisation puts the vulnerable and key populations at risk of COVID-19 and HIV/AIDs.

### B) To the Minister of Health

1. Design human rights-centred measures to control COVID-19 and other epidemics.
2. Adopt non-custodial sentences such as instant fines, cautions and community service for COVID-19 regulation offenders.
3. Highlight the link between rigid enforcement of COVID-19 restrictions and the limited access to HIV drugs and treatment during the COVID-19 lockdown.

### C) To the Uganda Police Force and the Uganda Peoples' Defence Forces

1. Implement the COVID-19 regulations in a manner which respects the human rights of all people, including key populations and apply the human rights based approach to policing.
2. Investigate all the crimes and human rights violations which were committed by security officials during the period under study and beyond and bring those responsible to book.

## **D) To the Judiciary**

1. Roll out video link facilities to all major courts, including all High Court circuits and Chief Magistrates Courts across the country if the benefits of video link trials are to be realised during the COVID-19 pandemic.
2. Keep courts open to handle criminal matters during pandemics while observing Standard Operating Procedures in order to avoid overcrowding of prisons and the violation of people's right to a fair and speedy hearing.

## **E) To the Parliament of Uganda**

1. Repeal laws that criminalise same-sex relations and sex work to reduce on the violations against LGBT persons and sex workers that arise because of these laws.
2. Continue playing the oversight role over the enforcement of COVID-19 measures to ensure that the enforcement system is human rights compliant.

## **F) To Civil Society Organisations working on issues concerning LGBT persons and sex workers**

1. Conduct sensitisation training for the Uganda Police, the UPDF, the Judiciary, and Uganda Prisons Service on access to justice rights for LGBT persons and sex workers and human rights generally.
2. Train more paralegals to provide legal first aid for LGBT people and sex workers as they play an important role during crises like the COVID-19 lockdown.
3. Encourage other legal aid clinics to extend services to LGBT people and sex workers so as to enhance access to justice for Key Populations.

## **G. To the Uganda Human Rights Commission and the Equal Opportunities Commission**

1. Undertake deliberate initiatives to promote accessibility for LGBT persons and sex workers to the two institutions such as outreaches, the establishment of special programs that respond to the unique needs of LGBT persons and sex workers in order to make them utilise your services more.
2. The UHRC and EOC should investigate all human rights violations and instances of marginalisation respectively which were committed during and in the process of enforcement of the COVID-19 regulations including key populations and prepare a comprehensive report and recommend appropriate action.

## 2. INTRODUCTION AND BACKGROUND TO THE STUDY

### 2.1 Introduction

In response to the outbreak of the COVID-19 pandemic, the Government of Uganda instituted measures aimed at controlling the spread of the pandemic. Incorporated in Presidential Directives, statutory instruments made by the Minister of Health under the Public Health Act Cap 281 and other administrative initiatives by state organs such as the Judiciary, the Police and Uganda Prisons, the measures severely restricted various rights and freedoms guaranteed under the Constitution of the Republic of Uganda and International Law. Whereas the restrictions were directed at the general public without exception, of specific concern to this study is the impact of such restrictions on access to justice for Key Populations (KPs), specifically sex workers and Lesbian, Gay, Bisexual and Transgender (LGBT) people. This is because sex workers and LGBT people are some of the most vulnerable people and groups who have often suffered exclusion from the enjoyment of basic rights and freedoms, often rationalised by reference to the fact that sex work and carnal knowledge against the order of nature are criminalised under the Penal Code Act Cap 120.

This study sought to find out how the enforcement of the COVID-19 restrictions affected the enjoyment of access to justice for Key Populations, specifically LGBT persons and sex workers. It examined the availability and accessibility of formal and informal institutions and processes for seeking remedies, the effectiveness of obtained remedies as well as the intervening opportunities and barriers. The study covered the period from March 2020 when the measures were first instituted to June 2020 when the strict lockdown was lifted, with a minimal return to normalcy.

### 2.2 Background

Access to justice, as an integral part of human rights, involves the processes by which individuals, groups and communities are able to claim and obtain justice remedies through formal or informal institutions of justice, and in conformity with human rights standards.<sup>1</sup> It has evolved to a point of gaining recognition as a human right entailing contact, entry and use of the justice delivery system.<sup>2</sup> Like other rights, access to justice has been impacted by the COVID-19 pandemic through the various restrictive measures put in place by the government of Uganda to control the spread of the pandemic, particularly affecting the courts and other tribunals.

Uganda responded to COVID-19 by developing the COVID-19 Preparedness and Response Plan (March 2020 – June 2021),<sup>3</sup> which aimed at combating the virus through prevention

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<sup>1</sup> Legal Aid Service Providers Network (LASPNET), 'Access to Justice for poor, marginalised and vulnerable people of Uganda', 2015, <https://namati.org/wp-content/uploads/2015/12/Access-to-Justice-for-the-Poor-Marginalised-and-Vulnerable-People-of-Uganda.pdf> (accessed 14<sup>th</sup> December 2020).

<sup>2</sup> LASPNET (as above).

<sup>3</sup> Ministry of Health, 'COVID-19 preparedness and response plan (March 2020 – June 2021)' 2020 [https://covid19.gou.go.ug/uploads/document\\_repository/authors/ministry\\_of\\_health/document/COVID19\\_PreparednessResponse\\_Plan\\_Signed\\_Vers\\_July20201.pdf](https://covid19.gou.go.ug/uploads/document_repository/authors/ministry_of_health/document/COVID19_PreparednessResponse_Plan_Signed_Vers_July20201.pdf) (accessed 14<sup>th</sup> December 2020).



and, failing that, through management. The Plan was followed by a number of restrictions incorporated in Regulations made under the Public Health Act, presidential directives, and guidelines and operational standards by different state organs, including key justice institutions like the Judiciary, the Uganda Police and the Uganda Prisons Service. Some of the notable restrictions included suspension of public and private transport, the closing of Uganda's borders, closure of schools and bars, banning of social events with more than ten persons, completely banning the sale of non-food items in markets, closure of places of worship, and the imposition of a 7pm to 6.30am curfew. These Regulations had far-reaching implications as effectively between March 2020 and 11<sup>th</sup> June 2020, the country was under an almost total lockdown, which greatly affected the economic, social, and even psychological wellbeing of citizens, while the state resorted to military force to enforce the lockdown measures.<sup>4</sup> The police continued to arrest many people, thus further congesting police cells, and eventually prisons, while in the meantime, the courts were only working on urgent matters, particularly plea taking and bail applications.<sup>5</sup> The prisons authorities' could not bring any suspects to court nor allow lawyers to visit citing guidance issued by the Commissioner General of Prisons.<sup>6</sup>

Among those disproportionately affected were LGBT persons and sex workers. The Global Commission on HIV and the Law found a link between access to justice and vulnerability to HIV/AIDS.<sup>7</sup> UNAIDS has pointed out that states must be cognisant of the fact that the measures they put in place to curb the spread of COVID-19 will have a disproportionate effect on vulnerable communities, including key populations, and as such, they ought to take affirmative action to protect them from all forms of injustices during the pandemic.<sup>8</sup> A case that stood out was the arrest of 25 youth from a homeless persons shelter for LGBT persons in Kyengera Town Council. The arrest was based on their perceived sexual orientation and/or gender identity although the group was eventually charged with 'doing a negligent act likely to spread infection of disease'. 20 of these were remanded to prison, denied access to their lawyers, and subjected to inhuman and degrading treatment. The decision to deny the 20 youth access to lawyers was challenged and the High Court found that the denial of access to lawyers was a violation of the right to liberty and the right to a fair hearing.<sup>9</sup> For sex workers, the curfew affected their usual hours of work which fell within the curfew hours of 7 pm and 6:30 am and were victims of brutal arbitrary arrests.

.....  
<sup>4</sup> LASPNET (n 1 above).

<sup>5</sup> The Judiciary 'Administrative and contingency measures to prevent and mitigate the spread of corona virus (COVID-19)' 20 March 2020. [http://judiciary.go.ug/data/news/821/5359/Administrative%20and%20Contingency%20Measures%20to%20Prevent%20and%20Mitigate%20the%20Spread%20of%20Corona%20Virus%20\(Covid-19\)%20by%20The%20Judiciary.html](http://judiciary.go.ug/data/news/821/5359/Administrative%20and%20Contingency%20Measures%20to%20Prevent%20and%20Mitigate%20the%20Spread%20of%20Corona%20Virus%20(Covid-19)%20by%20The%20Judiciary.html) (accessed 12<sup>th</sup> December 2020).

<sup>6</sup> Uganda Prisons Service 'Administrative Instruction No.4/2020 Corona Virus Disease (COVID- 19) Control Measures' 25 March 2020 <https://www.prisons.go.ug/media/administrative-instruction-no42020-corona-virus-disease-covid-19-control-measures> (accessed 12th December 2020).

<sup>7</sup> The Global Commission on Law on HIV and the Law 'HIV and the Law: Risks, rights & health' 2012, 7.

<sup>8</sup> The Joint United Nations Programme on HIV/AIDS (UNAIDS), 'Rights in the time of COVID-19: Lessons from HIV for an effective community-led response' 2020. [https://www.unaids.org/sites/default/files/media\\_asset/human-rights-and-covid-19\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf) (Accessed 11<sup>th</sup> January 2021).

<sup>9</sup> *Human Rights Awareness and Promotion Forum (HRAPF) vs. Attorney General and Another* High Court Miscellaneous Application No 188 of 2020.

The COVID-19 pandemic created a new form of vulnerability for LGBT persons and sex workers adding to the already existing marginalisation and discrimination, which are largely fuelled by criminalisation. Consensual same-sex relations are criminalised under section 145 of the Penal Code Act while sex work is criminalised under section 138 and 139 of the Penal Code as prostitution. Criminalisation ‘makes it acceptable for society at large to discriminate against LGBTI persons and sex workers and to violate their rights’.<sup>10</sup> As regards sex workers, criminalisation exacerbates stigma, and discrimination.<sup>11</sup>

Significantly, some of the fundamental aspirations of the Constitution of Uganda 1995 include promotion of justice, rule of law and protection of the enjoyment of fundamental rights and freedoms for all people. Indeed, articles 28 and 44 (c) entrench the right to a fair hearing as a non-derogable right. Uganda is also party to and has ratified key international and regional human rights instruments which protect the right to access justice including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the African Charter on Human and People’s Rights (ACHPR), among others.

The study thus sought to establish how access to justice rights for sex workers and LGBT people were impacted by the COVID-19 restrictions. It focussed on examining the availability and accessibility of formal and informal institutions and processes for seeking remedies, the effectiveness of obtained remedies as well as the intervening opportunities and barriers.

## 2.3 Rationale

The study sought to show how the COVID-19 restrictions impacted on the access to justice rights for Key Populations, particularly LGBT persons and sex workers, and suggests ways of promoting access to justice for such vulnerable people during the pandemic. Whereas there is considerable literature on access to justice for vulnerable persons and groups in Uganda, the COVID-19 pandemic ushered in a new reality which stretched the existing justice system and institutions to the limit. It is in this novel context that this study was conceived to examine the availability and accessibility of formal and informal justice institutions and processes, remedies, opportunities and barriers for Key Populations, specifically LGBT persons and sex workers, in their quest for justice.

It is also expected that the study will contribute to the formulation of policies and guidelines promoting access to justice for marginalised and vulnerable persons in light of measures to control the spread of the COVID-19 pandemic.

## 2.4 Existing Knowledge

Access to justice for vulnerable people and communities in Uganda has been a regular subject of interest to researchers. The LASPNET (2015) study addressed access to justice challenges in the context of poverty and marginalisation and highlighted barriers such as

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<sup>10</sup> Human Rights Awareness and Promotion Forum (HRAPF), ‘A quick scan of the laws and policies affecting the HIV response among Men who have sex with Men in Uganda’ 2017:9-10.

<sup>11</sup> See for example Global Network of Sex Workers Projects ‘The impact of criminalisation on sex workers’ vulnerability to hiv and violence’ Policy Brief [https://www.nswp.org/sites/nswp.org/files/impact\\_of\\_criminalisation\\_pb\\_prf01.pdf](https://www.nswp.org/sites/nswp.org/files/impact_of_criminalisation_pb_prf01.pdf) (accessed 25th January 2021).

long physical distances to courts, unaffordable legal fees, lack of confidence in the justice system, illiteracy, the adversarial nature of Uganda's justice system, et al.<sup>12</sup> On the other hand, the study recognised and applauded initiatives adopted by the Government of Uganda, including the state brief scheme which provides government-sponsored legal representation for persons charged with capital offences, the establishment of Justice Centers Uganda, which runs government-sponsored legal aid clinics in a number of magistrates courts across the country and the pro bono scheme by the Uganda Law Society (ULS).<sup>13</sup>

The barriers and challenges highlighted in the LASPNET study were echoed by the 2017 family justice study by HiiL, which criticised Uganda's justice system for being too complex to navigate, expensive and generally not capable of producing fair outcomes that reflect the needs of the citizens it is meant to serve. The study listed the most common justice problems as land, family matters and crime, including specific issues such as high occurrences of disputes with neighbours over boundaries, rights of way or access to property, theft/robbery and domestic violence.<sup>14</sup>

As far as access to justice for LGBT persons is concerned, HRAFP pioneered with a 2019 baseline study which dealt with access to justice for rural LGBT persons in Uganda. The study identified corruption and extortion in courts of law and police stations as some of the major barriers to access to justice for rural LGBT people.

However, none of the studies highlighted was conducted in the context of a public health crisis such as the COVID-19 pandemic, which posed unprecedented legal and public health challenges.

The World Health Organisation (WHO) requires that the implementation of any health emergency measures should fully respect the dignity, human rights and fundamental freedoms of persons and that measures taken pursuant to the regulations should be initiated in a non-discriminatory manner.<sup>15</sup> However, generally, in response to the COVID-19 pandemic, the interests of public health heavily outweighed the protection of individual rights and freedoms. In the European Union, Hannah found that the COVID-19 pandemic rose to the level of a security risk and as such interventions started to resemble security interventions with no regard for human rights or access to justice.<sup>16</sup>

In Uganda, the situation was not much different, with military approaches taken to respond to the pandemic. Nkuubi highlighted the militarised approach which depended on deploying military personnel on the streets to enforce the curfew and ensure that people stay home, which led to increased violence.<sup>17</sup> Similarly, the National Association of

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<sup>12</sup> LASPNET (n 1 above).

<sup>13</sup> Above.

<sup>14</sup> Hague Institute for Innovation in Law (HiiL), 'Justice needs in Uganda, legal problems in daily life' (2016) available at <https://www.hiil.org/wp-content/uploads/2018/07/Uganda-JNST-Data-Report2016.pdf> (accessed on 25th January 2021).

<sup>15</sup> World Health Organisation, 'International health regulations' 2005 3<sup>rd</sup> Edition <https://apps.who.int/iris/bitstream/handle/10665/246107/9789241580496-eng.pdf;jsessionid=1FD446DFBDAC5C7E37C780DE387C0574?sequence=1> (accessed 25th January 2021).

<sup>16</sup> H van Kolschooten, 'COVID-19 and privacy in the European Union: A legal perspective on contact tracing' 2020. Amsterdam Centre for European Law and Governance Research Paper No. 2020-04 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3606163](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3606163) (accessed 25th January 2021).

<sup>17</sup> J Nkuubi, 'When guns govern public health: Examining the implications of the militarised COVID-19 pandemic response for democratisation and human rights in Uganda' (2020) 20 *African Human Rights Law Journal* 607-639.

Professional Environmentalists found that the enforcement of the COVID-19 Regulations led to the violation of a myriad of human rights, including the right to freedom from torture, inhuman and degrading treatment, the right to health, the right to privacy, and access to justice.<sup>18</sup> Generally, human rights as well as constitutionalism and the rule of law have been victims of this approach, not only in Uganda but also across the East African region.<sup>19</sup>

Regarding the right to access to justice, the Chief Justice suspended all court hearings and appearances for a period of 32 days starting on 20<sup>th</sup> March 2020, with the exception of certificates of urgency, taking pleas for serious cases and bail applications, with prisoners and remandees being presented via video link where possible.<sup>20</sup> Similarly, the Commissioner General of Prisons issued instructions that required Prison officials to 'suspend all prison visitations and restrict movement of prisoners as well as staff and their relatives outside the barracks.'<sup>21</sup>

Among the groups most affected by these restrictions were LGBT persons and sex workers. The United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity noted in their report to the UN General Assembly that the COVID-19 pandemic *'has a disproportionate impact on LGBT persons; that, with few exceptions, the response to the pandemic reproduces and exacerbates ... patterns of social exclusion and violence...'*<sup>22</sup> Human Rights Awareness and Promotion Forum (HRAPF) reported 20 incidences of LGBT inmates being denied access to their lawyers as prisons authorities refused entry to lawyers, citing the need to control COVID-19.<sup>23</sup> For sex workers, many continued to be arrested without any regard to due process. Sexual Minorities Uganda (SMUG) reported that LGBT persons rarely sought remedies for violations during the COVID-19 period.<sup>24</sup>

For sex workers, the Global Fund to Fight AIDS, Tuberculosis and Malaria highlighted that sex workers in Africa are more vulnerable during COVID-19.<sup>25</sup> UNAIDS noted that 'sex workers

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<sup>18</sup> National Association of Professional Environmentalists (NAPE) 'A snapshot of human rights abuses amidst the COVID-19 pandemic in Uganda' Volume 1, March –July 2020. [www.nape.or.ug/publications/other-publications/100-a-snapshot-of-human-rights-abuses-amidst-the-covid-19-pandemic-in-uganda/file](http://www.nape.or.ug/publications/other-publications/100-a-snapshot-of-human-rights-abuses-amidst-the-covid-19-pandemic-in-uganda/file) (accessed 12th December 2020).

<sup>19</sup> International Institute for Democracy and Electoral Assistance 'The Impact of the COVID-19 pandemic on constitutionalism and the rule of law in East Africa' Analytical Report, Webinar, 11 June 2020 <https://doi.org/10.31752/idea.2020.45> (accessed 17th January 2021)

<sup>20</sup> The Judiciary, 'Administrative and Contingency measures to prevent and mitigate the spread of corona virus (COVID-19) by the Judiciary' CJ/C7 Circular, 19 March 2020 [https://ulii.org/system/files/chief%2520Justice%2520Circular%2520on%2520COVID-19\\_recognized.pdf](https://ulii.org/system/files/chief%2520Justice%2520Circular%2520on%2520COVID-19_recognized.pdf) (accessed on 15<sup>th</sup> December 2020).

<sup>21</sup> Uganda Prisons Service 'Administrative Instruction No.4/2020 Corona Virus Disease (COVID-19) Control Measures on 25<sup>th</sup> March 2020' <https://www.prisons.go.ug/media/administrative-instruction-no42020-corona-virus-disease-covid-19-control-measures> (accessed 15th December 2020).

<sup>22</sup> United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity 'The impact of the COVID-19 pandemic on the human rights of LGBT persons' <https://undocs.org/A/75/258> (accessed 17 January 2020).

<sup>23</sup> Human Rights Awareness and Promotion Forum 'Report of human rights violations against Key Populations in Uganda' January – June, 2020, 16-17.

<sup>24</sup> Sexual Minorities Uganda (SMUG) 'Safety and security of the LGBTIQ+ community in Uganda: a pre-COVID-19 to post-COVID-19 situational analysis' 24.

<sup>25</sup> The Global Fund to Fight AIDS, Tuberculosis and Malaria 'Sex workers in africa are more vulnerable during COVID-19' 04 June 2020 <https://www.theglobalfund.org/en/blog/2020-06-04-sex-workers-in-africa-are-more-vulnerable-during-covid-19/> (accessed 19 August 2020).

and their clients self-isolate, sex workers are finding themselves unprotected, increasingly vulnerable and unable to provide for themselves and their families.<sup>26</sup> In Uganda, the COVID-19 response has paid no heed to sex workers, and where it does, it is in the context of arresting them and harassing them.<sup>27</sup>

There are limited studies that focus on the impact of COVID-19 restrictions on access to justice for LGBT persons and sex workers, and this is the gap that this study seeks to fill.

## 2.5 Theoretical Framework

This study was underpinned by the human rights-based approach to development, which emphasises participation of rights holders, equality and non-discrimination, and puts internationally recognised human rights standards at the centre of the development process. This approach recognises that people are key actors in their own development, rather than passive recipients of commodities and services, and recognises the need to focus on marginalised and excluded groups.<sup>28</sup> Therefore, with respect to access to justice for LGBT and sex workers as marginalised persons, the approach requires that the state put the interests of marginalised groups into consideration when developing programmes and responses, including access to justice during a pandemic.

## 2.6 Objectives

The overall objective of the study was to assess the impact of the COVID-19 restrictions on the enjoyment of access to justice rights for LGBT persons and sex workers in Uganda.

The specific objectives were:

1. To examine the COVID-19 restrictions and how they address issues of access to justice for LGBT persons and sex workers
2. To assess how the implementation of the COVID-19 restrictions affected access to justice rights for LGBT persons and sex workers
3. To examine the strategies that have been employed by different actors to mitigate the impact of the COVID-19 restrictions on the access to justice rights of LGBT persons and sex workers
4. To make appropriate recommendations to enhance access to justice for LGBT persons and sex workers during the COVID-19 pandemic and beyond.

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<sup>26</sup> UNAIDS 'COVID-19 responses must uphold and protect the human rights of sex workers' 24 April 2020 [https://www.unaids.org/en/resources/presscentre/featurestories/2020/april/20200424\\_sex-work](https://www.unaids.org/en/resources/presscentre/featurestories/2020/april/20200424_sex-work) (accessed 19 August 2020).

<sup>27</sup> Alliance of Women Advocating for Change (AWAC) 'Uganda's COVID-19 response is terrorizing women with arbitrary detention, blackmail, and violence' 30 April 2020 <https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/> (accessed 19 August 2020).

<sup>28</sup> United Nations Population Fund (UNFPA), The Human Rights Based Approach, <https://www.unfpa.org/human-rights-based-approach> (accessed 27th January 2021).

## 2.7 Research Questions

The general research question was: What is the impact of the COVID-19 restrictions on access to justice for Key Populations, specifically LGBTI persons and sex workers in Uganda?

The specific research questions were:

1. How did the measures put in place to control the spread of the COVID-19 pandemic in Uganda address access to justice concerns for LGBT persons and sex workers?
2. How did the implementation of the COVID-19 restrictions affect access to justice for LGBTI persons and sex workers?
3. What did LGBTI persons and sex workers and/ or their groups do to mitigate the adverse effects of the COVID-19 directives on access to justice?
4. What measures can be taken to enhance access to justice for LGBT persons and sex workers during the COVID-19 pandemic?

## 2.8 Methodology

This was a cross-sectional study employing a case study technique. It was designed to explore and describe the impact of COVID-19 restrictions on access to justice for Key Populations, specifically LGBT persons and sex workers.

The main qualitative component of the study was carried out in the two districts of Kampala and Wakiso. Kampala and Wakiso were chosen because they are the two most populated districts in Uganda, and also the centre of LGBT and sex work organising, as well as having a concentration of the various government agencies concerned with access to justice.

Primary data was collected through Focus Group Discussions, In-Depth Interviews (IDIs) and Key Informant Interviews (KIs) in Kampala and Wakiso districts.

FGD and IDI guides were used to collect primary data for the study. The tools were pre-tested at HRAPF on 21st February 2021. The pre-testing for FGD tools was conducted on a group of eight sex workers, simulating an action FGD while the interview guides for IDIs and KIs were pre-tested respectively on three sex worker participants and one gay man.

There were 20 IDIs of about 45-60 minutes held with LGBT persons and sex workers, 10 for each group, who were randomly selected from among LGBT persons and sex workers who approached HRAPF for legal services during the period 18<sup>th</sup> March 2020 until 21<sup>st</sup> July 2020.

Six FGDs of about 60-90 minutes were held - three with LGBT persons and three with sex workers. LGBT groups were classified into three: gay and bisexual men; transgender persons; and lesbian, bisexual and queer women. Sex workers were classified into two; female sex workers and male and transgender sex workers. Two FGDs were held with female sex workers and one with male and transgender sex workers. Each FGD had 6-8 participants.

KIs were 35 and lasted for about 30 - 45 minutes and were held with different stakeholders, who were specifically selected because of their various roles in the justice system/ in supporting sex workers and LGBT persons to access justice during the study period. These were as follows:

- a) Five leaders of organisations working on LGBT issues: Freedom and Roam Uganda (FARUG) for Lesbians, Bisexual and Queer women; Children of the Sun Foundation (COSF) for gay men; GALA Initiative for Bisexuals; Tranz Network Uganda for transgender persons; and the umbrella Uganda Key Populations Consortium (UKPC).

- b) Five leaders of sex worker organisations: 4 female sex workers organisations – Lady Mermaid’s Empowerment Centre (LMEC); Women’s Organisation Network for Human Rights Advocacy (WONETHA); Alliance of Women Advocating for Change (AWAC); and Uganda Network of Sex Worker Organisations (UNESO); and one male sex worker organisation – Men of the Night Uganda (MONU).
- c) Five lawyers working with legal aid service providers including those that provide services to LGBT persons and sex workers. These were the Legal Aid Project of the Uganda Law Society, Chapter Four, LASPNET and HRAPF.
- d) Four paralegals, two serving LGBT persons and two serving sex workers purposively selected from HRAPF’s pool of community paralegals.
- e) Four state officials who spoke for their institutions: specifically representatives of the Judiciary, Uganda Prisons Service, the Uganda Human Rights Commission, and the Equal Opportunities Commission were also targeted.

However, due to the escalating COVID-19 situation in the country, some of the scheduled physical interviews were replaced with telephone interviews and e-mail interviews.

Although the number of potential participants was pre-set, more participants were recruited until saturation was achieved.

Participants for IDIs and FGDs were selected from HRAPF’s own records of arrests and persons seeking legal aid services during the period. A pool of all persons who sought HRAPF’s legal aid services during the period 18<sup>th</sup> March 2020 to 31<sup>st</sup> July 2020 were included for selection in IDIs and FGDs and out of these the required numbers were selected using simple random sampling. Snowball and purposive sampling were used to select the additional participants.

The inclusion criteria for LGBT and sex worker participants was:

1. Self-identifies as LGBT or sex worker
2. Over the age of 18.

The exclusion criteria was:

Exhibiting any particular personal risk which is likely to be exacerbated by participation in a research study.

All interviews and FGDs were recorded with the permission of the respondents. All audio files were transcribed by a professional transcription service provider that HRAPF has worked with on past occasions. In order to ensure data quality, more than one method of documentation was employed. Apart from the audio recordings, members of the research team took notes to ensure that all responses and views were accurately captured. Data collected was reviewed continuously by the Principal Investigator to ensure that data collection tools were applied uniformly by various members of the research team. Data collected was kept on computers that are protected by passwords and are only accessed by the research team. The names and positions of FGD participants were retained, but are not published in the study, in which pseudonyms comprised of numbers and figures are used. A similar approach is adopted for some KII and IDI respondents who requested non-disclosure of their identities. NVivo software was used to simplify data management.

The data was digitalised and stored in encrypted form and the paper files kept under lock and key. The paper files will be shredded after five years in keeping with the right of the study



participants to be forgotten. Audio recordings will be stored on a secure computer system for further reference.

## 2.9 Ethical Considerations

Scientific and ethical approval and registration was obtained from The AIDS Support Organisation (TASO)'s Research Ethics Committee (REC).

Prior to participation in the study, all participants were required to give their informed consent. Potential participants were informed of the potential risks, benefits, and purposes of the study. Where participants were not fluent in English, they were interviewed by a research assistant who was fluent in a language they were comfortable with. Informed consent was given in writing or verbally and recorded on the audio recorders. The interviews and group discussions were held in private, convenient locations selected with the help of representatives of Organisations that work with LGBTI persons and sex workers in Kampala and Wakiso. No details of participants are published in this report, except for those who specifically consented to the use of their names due to the official positions that they occupy.

There was a significant risk that participants may experience psychological discomfort or pain during the interviews when asked questions that relate to traumatic experiences suffered during the COVID-19 period. The first safeguard against this risk was seeking consent using a form where the aims of the study and the nature of the questions were explained to the participant. It was made very clear to the participants that they had the right to withdraw their consent at any point or to not answer questions that they did not feel comfortable with. An option was available for participants who faced extreme discomfort to be referred for psychosocial support by the research team.

For participants who feared for their safety by participating in the study since same-sex conduct and sex work are criminalised, the risk was mitigated by keeping confidential all data that could lead to the identification of participants.

In order to further protect the participants, interviews and FGDs took place behind closed doors in locations where the privacy of the participants was assured and where the participants felt comfortable. The locations for the interviews and FGDs were furthermore selected with the help of representatives of organisations that work with LGBT persons and sex workers in the study districts.

There was risk of participants and researchers contracting COVID-19 during the course of the study. This was mitigated through strictly following the Ministry of Health standard operating procedures on COVID-19. Face masks were provided by the researcher to all study participants, and hand sanitiser were availed for all participants. FGDs did not exceed 10 people including the researchers and were conducted in big well-ventilated rooms or outdoors with participants observing at least 2 meters social distance.

## 3. UGANDA'S LEGAL RESPONSE TO THE COVID-19 PANDEMIC

### 3.1 Introduction

Uganda's legal response to combating the spread of COVID-19 took the form of Presidential Directives announced during the President's periodic speeches. The Directives were subsequently incorporated in Statutory Instruments (SIs) issued by the Minister of Health under the Public Health Act Cap 281.

In addition, Justice, Law and Order Sector (JLOS) institutions which are at the forefront of administration of justice, including the Judiciary, the Uganda Prisons Service and the Directorate of Public Prosecutions (DPP), issued guidelines and internal circulars suspending or severely restricting public access and greatly reducing working hours.

The Ministry of Health also issued a number of guidelines regulating different aspects of social interactions, including social distancing, wearing masks, and public gatherings, among others.<sup>29</sup>

This chapter introduces and analyses such measures which were in effect during the period under study, March to June 2020.

### 3.2 Measures contained in public health instruments

From March to June 2020 several Presidential speeches were incorporated and published in Statutory Instruments by the Ministry of Health under of the Public Health Act Cap 281. The speeches and subsequent statutory instruments introduced varying levels of restrictions on public gatherings, movement, transportation, commerce, cross border travel and access to public spaces, among others.

#### 3.2.1 Measures before the outbreak of COVID-19 in Uganda

Even before a single COVID-19 case was confirmed in Uganda, on 17<sup>th</sup> March 2020 the Minister of Health published in the Uganda Gazette the Public Health (Notification of COVID-19) Order, 2020,<sup>30</sup> and the Public Health (Prevention of COVID-19) (Requirements and Conditions of Entry into Uganda) Order, 2020.<sup>31</sup>

By SI No. 45 of 2020 made under section 10 of the Public Health Act, the Minister of Health declared COVID-19 a notifiable disease to which the provisions of section 11, Part IV and section 36 of the Public Health Act would apply. Section 11 of the Public Health Act confers on the Minister of Health wide powers, in the event of a notifiable disease, to make rules defining the duties of medical practitioners, heads of families, parents and people taking care of the sick, owners and occupiers of land, employers, people in charge of schools,

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<sup>29</sup> Many of these can be accessed from the Ministry of Health website at <https://www.health.go.ug/covid/category/iec-materials/> (Accessed, 30<sup>th</sup> April 2021).

<sup>30</sup> SI No. 45 of 2020.

<sup>31</sup> SI No. 46 of 2020.

religious institutions and orphanages, local authorities, registrars of birth and deaths, among others. The provision also creates a criminal offence for anyone who contravenes rules made under it.<sup>32</sup>

Part IV of the Public Health Act, titled prevention and suppression of infectious diseases, provides a robust framework for managing the spread of infectious diseases. It empowers a medical officer to inspect premises and examine persons for purposes of ascertaining an infection with an infectious disease.<sup>33</sup> The Medical Officer may also require the owner or occupier of premises to disinfect or cleanse a building or articles in a building to prevent the spread of an infectious disease.<sup>34</sup> Further, a local authority is empowered to destroy buildings, beddings, clothing and any other items which are infected or have been exposed to infection from an infectious disease.<sup>35</sup> However, the owner of such properties is entitled to compensation.<sup>36</sup>

Other provisions include empowering local authorities to move infected people to hospitals or designated places,<sup>37</sup> penalties for failure to prevent spreading of the infection,<sup>38</sup> and failure to provide for disinfection of public vehicles<sup>39</sup> and letting infected premises.<sup>40</sup> Provisions relating to death impose a duty on an occupier of premises to report every death from an infectious disease to a local authority,<sup>41</sup> and also provides for removal and handling of bodies of people who have died of infectious diseases.<sup>42</sup>

Part IV of the Public Health Act concludes with section 27 which empowers the Minister of Health to make rules authorising the closure of schools and places of public entertainment, defining the duties of parents and guardians of children who have been infected with or exposed to an infectious disease, providing for the establishment, maintenance and inspection of isolation hospitals and convalescent homes, imposing and enforcement of quarantine and medical observation and surveillance for persons suffering or suspected to be suffering from an infectious disease, among others.<sup>43</sup>

Under section 36, the Minister of Health has the power to make a statutory order regulating, restricting or prohibiting entry into Uganda of any specified group of people for purposes of preventing introduction into Uganda of an infectious disease.<sup>44</sup> Still, by statutory order, the Minister can impose requirements or conditions for medical examination, detention, quarantine, disinfection, vaccination, isolation or medical surveillance of persons entering Uganda. Indeed SI No. 46 of 2020 was made under section 36, and by it, the Minister imposed conditions of entry into Uganda at the time. These included mandatory examination of all

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<sup>32</sup> The Public Health Act, section 11(2).

<sup>33</sup> Above, section 12.

<sup>34</sup> Above, section 13.

<sup>35</sup> Above, section 14(1).

<sup>36</sup> Above, section 14(2).

<sup>37</sup> Above, section 19.

<sup>38</sup> Above, section 20.

<sup>39</sup> Above, section 21.

<sup>40</sup> Above, section 22.

<sup>41</sup> Above, section 24.

<sup>42</sup> Above, sections 24 and 25.

<sup>43</sup> Above, section 27(a) – (e).

<sup>44</sup> Above, section 36(1)(a).

persons entering Uganda for COVID-19 and mandatory isolation at a designated place of persons found to be suffering from the COVID-19. It also provided for categorisation of all persons entering into Uganda based on their countries of departure and transit as Category 1, 2, and 3 with different conditions imposed upon each category ranging from quarantine for a minimum of 14 days for category 1, observation by a medical officer for category 2 and medical advice for category 3.

On the whole, the Public Health Act Cap 281, even though an old legislation of 1935,<sup>45</sup> already had in place a comprehensive legal framework for the management of a public health crisis such as the one presented by COVID-19.

It was further buttressed by the provisions of Article 23(1) (d) of the Constitution of Uganda, 1995 which permits limitation of the right to liberty in order to contain the spread of an infectious disease.

### 3.2.2 Measures immediately upon confirmation of the first cases of COVID-19 in Uganda

Following initial reports of confirmed COVID-19 cases in Uganda in March 2020<sup>46</sup>, the Government issued two Statutory Instruments: the Public Health (Control of COVID-19) Rules, 2020<sup>47</sup> and the Public Health (Prohibition of Entry into Uganda) Order, 2020 SI No. 53 of 2020.<sup>48</sup>

SI No. 53 of 2020 prohibited entry into Uganda of any person or animal through the border posts in Uganda except for employees of any United Nations Organisation and any humanitarian organisation as well as vehicles and aircrafts used in the conveyance of cargo. SI No. 53 of 2020 which was published in the Uganda Gazette on 24<sup>th</sup> March 2020 had its application backdated to 21<sup>st</sup> March 2020. It effectively banned all forms of travel in and out of Uganda with very limited exceptions. It was subsequently amended by SI No. 56 of 2020 which was published on 6<sup>th</sup> April 2020, SI No. 65 of 2020 published on 6<sup>th</sup> May 2020 and SI No. 69 of 2020 published on 20<sup>th</sup> May 2020. The subsequent amendment provided for the number of people allowed on vehicles and aircraft into Uganda and powers of medical officers to examine, isolate and quarantine travellers. The 3<sup>rd</sup> amendment incorporated in SI No. 69 of 2020 extended the duration of the travel prohibitions up to 6<sup>th</sup> June 2020.

SI 52 of 2020 introduced some of the most drastic measures to combat the spread of COVID-19. It imposed an obligation on occupiers of premises, employers and heads of households to notify a medical officer or medical practitioner upon becoming aware that any person residing or occupying premises, or employee is suffering from COVID-19.<sup>49</sup> Medical officers were empowered to visit and inspect premises housing contacts of people infected with COVID-19 and to require them to stay confined in their premises or be removed and transferred to a regional hospital or a designated place for quarantine.<sup>50</sup>

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<sup>45</sup> The Act commenced on 15<sup>th</sup> October 1935.

<sup>46</sup> The first case was confirmed on 21<sup>st</sup> March 2020, according to a Press Statement issued by the Minister of Health Dr Ruth Achieng issued on 2<sup>nd</sup> April 2020, <https://www.health.go.ug/covid/2020/04/02/update-on-the-covid-19-response-in-uganda/> (accessed 27<sup>th</sup> January 2021).

<sup>47</sup> SI No.52 of 2020.

<sup>48</sup> SI No.53 of 2020.

<sup>49</sup> SI No. 52 of 2020, Rule 3.

<sup>50</sup> Above, Rule 5.

It further empowered medical officers and health inspectors or people acting on their instructions to enter upon any premises to search for any case of COVID-19 or to make inquiries into whether there is or has been on any COVID-19 case on the premises.<sup>51</sup>

The most drastic measures which fundamentally altered public life included the banning of all public activities such as meetings, gatherings, sporting events, trade in live animals, weddings, vigils, funerals, cultural ceremonies, music concerts, political rallies and campaigns<sup>52</sup> The instrument also closed schools, bars, cinemas and places of worship.<sup>53</sup> The burial of COVID-19 victims was required to be done in strict conformity with the directions of medical officers of health. Spitting in public buildings and public places was also banned.<sup>54</sup> It should be noted that the initial prohibitions were for periods ranging from two to three weeks but were subsequently extended for further periods by presidential pronouncements and enabling amendments to the instrument. Further, events like funerals and weddings were restricted to a maximum of 10 people in attendance. Escaping from quarantine or an isolation centre was criminalised punishable by two months imprisonment.

SI No. 52 of 2020 was amended several times by SI No. 57 of 2020 published in the Uganda Gazette on 9<sup>th</sup> April 2020, SI No. 63 of 2020 published on 8<sup>th</sup> May 2020 and SI No. 67 of 2020 published on 20<sup>th</sup> May 2020. The amendments generally simply extended the timelines for the ban on the different activities.

It was finally revoked and replaced by the Public Health (Control of COVID-19) Rules 2020, SI No. 83 of 2020 which was published on 23<sup>rd</sup> June 2020.

### 3.2.3 Imposition of total lock down

On 31<sup>st</sup> March 2020 the Minister published in the Uganda Gazette another set of rules providing for the implementation of a new wave of presidential directives contained in the Presidential speech of 29 March, 2020. Titled the Public Health (Control of COVID-19) (No.2) Rules 2020,<sup>55</sup> it introduced the most stringent and dramatic restrictions yet and effectively placed life in the whole country under a “*total lockdown*.” A nationwide curfew between 7:00pm and 6:30pm banning movement on all roads throughout the country was imposed.<sup>56</sup> Selling of all non-food stuffs was prohibited throughout the country with the exception of pharmaceuticals, agricultural chemicals and seeds, veterinary drugs and detergents.<sup>57</sup> All shops, supermarkets, salons, gyms, hotels, lodges, shopping malls, arcades, motor vehicle repair garages were declared closed for a period of two weeks.<sup>58</sup> The rules also banned driving all forms of motor vehicles, public or private, effective 10:00pm on 30<sup>th</sup> March 2020. An exception was made for cargo trucks. Other exceptions were made for military and other security agencies, selected government vehicles, utility service providers, security companies, delivery vans, banking services, diplomatic vehicles, cleaning and garbage collection services,

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<sup>51</sup> Above, Rule 6.

<sup>52</sup> Above, Rule 9.

<sup>53</sup> Above, Rule 9.

<sup>54</sup> Above, Rule 10.

<sup>55</sup> SI No. 55 of 2020.

<sup>56</sup> Above, Rule 3.

<sup>57</sup> Above, Rule 4.

<sup>58</sup> Above, Rule 5.

banking, the media, among others.<sup>59</sup> The government introduced a system of identification stickers that had to be displayed at all times on the exempted motor vehicle.

Failure to comply with the restrictions was a criminal offence and upon conviction, the offender was liable to imprisonment for a maximum of three months.<sup>60</sup>

SI No. 55 of 2020 was amended by SI No. 58 of 2020 published on 9<sup>th</sup> April 2020 and subsequently revoked and replaced along with SI No. 52 of 2020 by SI No. 83 of 2020.

### 3.2.4 Measures which are still in place

SI No 83 of 2020 lifts most of the restrictions which had been imposed under the previous rules but maintained among others: the curfew from 9:00pm to 5:30am; public transport was re-introduced at 50% occupancy rate; private motor vehicles were only permitted to carry four people including the driver; and bars remained closed. SI No. 94 of 2020 dated 24<sup>th</sup> July 2020 introduced further easing of restrictions but the rules on curfews, motor vehicles and bars remained unchanged up to date of publication of this report (June 2021).

## 3.3 Response by the selected access to justice institutions

### 3.3.1 Access to courts of law

The Judiciary was among the very first institutions to issue guidelines aimed at curbing the spread of COVID-19. On 19 March 2020, the Chief Justice Bart M. Katureebe, referencing Presidential Directives, issued guidelines suspending court hearings for 32 days effective 20 March 2020.<sup>61</sup> Courts were to continue hearing only matters of certificates of urgency and taking pleas for serious cases and bail applications. Appearance in court was only restricted to the party and their lawyer, and in the case of bail applications with sureties. Prisoners and remandees were not to be presented in courts and hearings could be conducted via video link wherever this was available. Judgments and rulings were to be issued to the parties online or by e-mail.

### 3.3.2 Access to prisons

On 25<sup>th</sup> March 2020, the Commissioner General of Uganda Prisons Dr Johnson Byabashaija issued to all prison heads across the country Administrative Instruction No. 04/2020 Coronavirus Disease (COVID-19) Control Measures. In addition to other measures such as the establishment of COVID-19 taskforces, the Instruction directed the suspension of all prison visitation and restriction of movement of prisoners as well as staff and their relatives outside the barracks.<sup>62</sup> This document would become the basis of the prohibition of all forms of access to prison inmates including access by lawyers to their clients. Inevitably, prisoners were held up in detention without access to courts or legal advice.

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<sup>59</sup> Above, Rule 8.

<sup>60</sup> Above, Rule 9.

<sup>61</sup> The Judiciary, n 20, above.

<sup>62</sup> Uganda Prisons Service, n 21 above.

### 3.3.3 The Office of the Director of Public Prosecutions

Like the other government agencies, on 20<sup>th</sup> March 2020 the Office of the Director of Public Prosecutions (ODPP) issued an administrative memo outlining the measures to be implemented by the Office of the Director of Public Prosecutions (ODPP) to control the spread of COVID-19.<sup>63</sup> However, instead of deeply scaling down, the ODPP called for keeping all of the ODPP's offices countrywide open and required officers to continue to report to work. Staff based at courts with video link facilities were required to continue working while bail applications, pleading taking and information of charges especially in serious cases posing a threat to public order and harmony were to continue. Processing of minor offences was to be handled within 48 hours.<sup>64</sup> However, complaints with the ODPP could only be filed in written form and all follow ups had to be made by way of phone calls. Stations were required to display contact phone numbers.<sup>65</sup>

### 3.4 Enforcement of the COVID-19 measures

If the various restrictions and measures introduced by the government to control the spread of COVID-19 were by their very nature drastic and extreme, their application and enforcement was considered even more extreme. One criticism which was loudly levied, was the government's approach of handling enforcement of the measures as a military operation which resulted in general disregard for human rights and the rule of law. From the very start, measures to manage and control the spread of the pandemic were couched in military language such as declaring it a "war", "fighting an enemy" etc.<sup>66</sup> The military, that is the Uganda Peoples Defence Forces (UPDF) and its Local Defence Units (LDUs), with the support of the Uganda Police Force (UPF), took over the enforcement and implementation of almost all COVID-19 related regulations and other procedures.<sup>67</sup>

The consequence was that the country witnessed high levels of violence by security forces, and violation of human rights. There were cases of public flogging, extortion and confiscation of property, arbitrary arrests and detention and in some cases extra judicial executions, all at the hand of the military and in the name of preventing the spread of COVID-19.<sup>68</sup> In a major irony, by 24<sup>th</sup> July 2020, approximately 12 people had reportedly been killed by the security forces compared to only one person who had been reported to have died of COVID-19.<sup>69</sup>

Brutality and excessive use of force was also a major concern, with many cases of torture and inhuman and degrading treatment.<sup>70</sup>

.....  
<sup>63</sup> The Justice Law and Order Sector (JLOS), 'COVID-19: Information on JLOS interventions and guidelines' <https://www.jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/covid-19> accessed on 31st May 2021.

<sup>64</sup> JLOS as above.

<sup>65</sup> Above.

<sup>66</sup> Nkuubi, n 17 above.

<sup>67</sup> As above

<sup>68</sup> Above.

<sup>69</sup> Above.

<sup>70</sup> See for example Uganda Human Rights Commission (UHRC) 'Statement on human rights concerns in dealing with COVID-19' <https://drive.google.com/file/d/1ZBu30xZQit1y4H0EpiVzy3Z5q4ehi6bsW/view> (accessed 29th May 2021).



The overzealous security personnel often swung into action immediately the presidential pronouncements were made. Masses of people were arrested and charged with disobeying lawful orders contrary to section 117 of the Penal Code Act Cap 120. Others were charged with the offence of 'doing a negligent act likely to spread the infection of disease' under section 171 of the Penal Code Act. The offences under sections 117 and 171 are punishable by imprisonment for two years and seven years respectively. It did not help that often there was gap of days between the pronouncement of new directives by the President and the refining and publication of such directives into statutory instruments by the Minister of Health. The presidential speeches were prone to containing confusing and contradictory directives some of which never made it to the statutory instruments.<sup>71</sup>

The Government designated several prisons across the country as isolation centres for the detention of the COVID-19 regulations offenders.<sup>72</sup> Kitalya Mini Max Prison in Wakiso district, approximately 55 kms<sup>73</sup> outside of Kampala, along with others like Kasangati and Kigo Women's Prison, were the commonly used detention facilities for the people arrested on COVID-19 related charges around the Kampala metropolitan area.<sup>74</sup>

In addition to violence by security forces, implementation of the COVID-19 preventive measures was also held responsible for escalating cases of domestic violence, discrimination based on social class and other forms of social ills.<sup>75</sup> The increase in domestic violence was attributed to the implementation of the COVID-19 preventive measures resulting in citizens spending more time in their respective homesteads, communities, or neighbourhoods.<sup>76</sup>

Women were particularly hard hit. The Ministry of Gender, Labour and Social Development (MGLSD) reported that between 30<sup>th</sup> March and 28<sup>th</sup> April 2021, a total of 3,280 cases of Gender, Based Violence (GBV) were registered by police.<sup>77</sup> A comparison of sources of violence showed that security forces perpetrated more than one third of all violence during the lockdown accounting for 35.3% of the investigated cases of violence and discrimination.<sup>78</sup>

The total lockdown posed a significant set of challenges for access to justice as it also prohibited movement for lawyers. Many people who were arrested during the enforcement of COVID-19 regulations were imprisoned but denied access to their lawyers, which was a violation of the non-derogable right to a fair hearing guaranteed under articles 28 and 44(c) of the Constitution of Uganda, 1995. The High Court was faced with this situation in *Human*

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<sup>71</sup> P Karugaba et al, 'An assessment of Uganda's legal response to coronavirus (COVID-19)' <https://www.mondaq.com/litigation-contracts-and-force-majeure/926268/an-assessment-of-uganda39s-legal-response-to-the-coronavirus-covid-19>

<sup>72</sup> Interview with Commissioner Frank Baine, in charge of Corporate Affairs of the Uganda Prisons Service held at Kampala on 31 May 2021.

<sup>73</sup> Justice Law and Order Sector (JLOS), 'Kitalya Mini Max Prison: A game-changer in the making' <https://www.jlos.go.ug/index.php/about-jlos/projects/legal-aid/item/641-kitalya-mini-max-prison-a-game-changer-in-the-making> (accessed 29th May 2020).

<sup>74</sup> Interview with Commissioner Frank Baine (n 72 above.)

<sup>75</sup> Katana E, et al, 'Violence and discrimination among Uganda residents during the COVID-19 lockdown', (2021) 467 *BMC Public Health* 21, <https://doi.org/10.1186/s12889-021-10532-2>. (accessed on 29th May 2020).

<sup>76</sup> Above.

<sup>77</sup> Minister of Gender, Labour and Social Development (MGLSD) ' Press statement on the effects of COVID-19 on employment & gender relations' 8th April, 2020. <https://www.icpau.co.ug/sites/default/files/Resources/PRESS%20STATEMENT%20by%20MGLSD%2028%20April%202020.docx> (accessed (accessed 29th May 2021).

<sup>78</sup> Above.

*Rights Awareness and Promotion Forum (HRAPF) vs. Attorney General and Commissioner General of Prisons*<sup>79</sup> challenging the government's actions of denying 20 youths access to their lawyers when they were arrested and detained at Kitalya prison for more than 44 days. Holding that denial of access to counsel was a violation of the non-derogable right to a fair hearing enshrined in Article 28(3)(c) of the Constitution. Justice Michael Elubu made the following compelling observation:

'Therefore the most generous and purposive interpretation of the cited provisions (of the Constitution) is that the framers aimed to ensure that the freedoms enshrined in article 44 are inalienable whatever the circumstances. Fair trial rights remain inviolable'

The learned judge went on to conclude;

'Therefore when the accused persons in this case were held for about a month and ten days and access to counsel denied, it was a violation of their rights as guaranteed in article 28(3) (c ) and (d ) and article 44'.

In the same matter, detention without access to a lawyer was held to be a violation of the right to personal liberty guaranteed under article 23 of the Constitution.

Earlier in *Turyamusiima v Attorney General and Another*,<sup>80</sup> the High Court had, while recognising that there was a worldwide pandemic of doomsday proportions necessitating the imposed restrictions, ordered the government to put in place mechanisms to enable advocates to access their clients to guarantee and protect the right to a fair hearing and the right to *habeas corpus*.

The Chief Justice's decision to significantly reduce the operations of courts could in itself be a violation of the right to a fair hearing as it effectively amounted to shutting the doors of justice to a vast majority of the public. At the time when the limited exemptions to the total ban on public and private transport were granted to a few government and private service providers who were deemed essential, it was felt that the legal fraternity's and judiciary's calls for inclusion on the essential service providers list were undermined by the fact that by suspending the operations of courts, the Judiciary had already deemed itself not indispensable. In addition, the fact that the right to a fair hearing and the right to apply for a writ of *habeas corpus* are two of only four non-derogable rights entrenched in article 44 of the Constitution made the decision to suspend court operations even more questionable.

### 3.5 Conclusion

The government has been commended for acting swiftly to put in place legal measures to control the spread of COVID-19. Most of such measures were enabled by the existence of the Public Health Act which, though it is pre-independence legislation, provides a sufficient legal framework to enable an emergency legal response to a public health crisis. Additional measures such as the closure of courts and prisons had their own merits. All in all, however, the conclusion that such measures ultimately resulted in human rights violations for LGBT people and sex workers which went without a remedy is well supported as demonstrated.

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<sup>79</sup> Miscellaneous Cause No. 81 of 2020 (unreported).

<sup>80</sup> *Turyamusiima vs. Attorney General and Another* High Court (Civil Division) Miscellaneous Cause No. 64 of 2020 (unreported).

## 4. HUMAN RIGHTS VIOLATIONS AGAINST LGBT PERSONS AND SEX WORKERS IN KAMPALA AND WAKISO DISTRICTS DURING THE COVID-19 LOCKDOWN THAT REQUIRED IMMEDIATE ACCESS TO JUSTICE

### 4.1 Introduction

The enforcement of COVID-19 preventive measures caused unprecedented levels of hardships to people all over the country, more so in areas in and around Uganda's principal urban centres of Kampala and Wakiso. Because of their pre-existing status of marginalisation, discrimination and criminalisation, Key Populations, specifically LGBT persons and sex workers, suffered some of the harshest brunt of enforcement of the COVID-19 regulations. A number of the measures put in place such as the curfew, the ban on transportation and movement, and partial shutdown of courts of law directly impeded means of accessing justice for all Ugandan residents, particularly KPs. This chapter discusses the main human rights violations that required immediate access to justice for Key Populations, specifically LGBT persons and sex workers during the March - June 2020 lockdown.

### 4.2 Arbitrary arrests for breach of COVID-19 regulations and excessive use of force

Article 23(1) of the Constitution provides for the circumstances under which a person may be lawfully detained against their will, and these include for the purpose of bringing a person before courts of law after reasonable suspicion that they have committed a criminal offence or are about to commit an offence.<sup>81</sup> Section 23 (1) of the Police Act and Section 10 of the Criminal Procedure Code Act grant a police officer power to arrest without a warrant if they have reasonable cause to suspect that the person has committed or is about to commit an arrestable offence. Under the COVID-19 regulations, breaching the regulations was a criminal offence. As such, the legal regime allowed for the arresting of persons for violating regulations put in place to control the spread of COVID-19, and such arrests were therefore not inherently arbitrary, except when carried out in circumstances where there was no reasonable suspicion that someone was committing an offence under the regulations.

The law also requires that such arrests should be conducted with minimal force. Section 2(1) of the Criminal Procedure Code Act provides that, in making an arrest, the police officer or other person making it shall touch or confine the body of the person to be arrested only if the person does not submit to the detention/ custody by word or action. Under section 2(2), a police officer may use force if someone is resisting or evading arrest but, under section 2(3), this force must not be 'greater force than [is] reasonable in the particular circumstances in which it [is] employed or [is] necessary for the apprehension of the offender.' As such, the use of more force than absolutely necessary in effecting an arrest amounts to a violation of the right to liberty.

.....  
<sup>81</sup> Article 23(1)(c).

Unfortunately, during the COVID-19 period, both arbitrary arrests and excessive use of force were experienced by LGBT persons and sex workers. Imposition of the night curfew requiring people to stay at home from 7:00pm to 6:30am initially, with a latter revision of the same from 9:00pm to 5:30am, was one of the most infamous of the COVID-19 control measures.

Closure of bars, lodges and all other entertainment places paralysed sex workers' livelihoods because their places of work, as well as the places where their clients generally find them, were closed.<sup>82</sup> Since there were almost no alternatives left for LGBT persons and sex workers, many of whom rely on daily income, to access the necessities of life, many resorted to beating the curfew, staying at shelters or lodges and sometimes moving on boda bodas despite the restrictions, all of which increased their vulnerability to arrests.

#### 4.2.1 Arbitrary arrests and excessive use of force against LGBT persons

LGBT persons were subjected to arbitrary arrests and excessive use of force on several occasions in the enforcement of the COVID-19 regulations. A clear example is the arrest of 23 LGBT youth from an LGBT shelter in Kyengera on 29<sup>th</sup> March 2021, the day before the strict lockdown was instituted, for 'homosexual behaviour'. A group of UPDF soldiers and LDUs together with local council authorities led by the LC III Chairperson of Kyengera Town Council, Hajji Abdul Kiyimba, raided the shelter with members of the public and journalists. The occupants of the house were told they were being arrested because they were homosexuals. They were beaten with sticks, tied with ropes in a single file and marched to the police station, all the while being constantly taunted and questioned about their sexuality and whether they are paid to promote and spread homosexuality. During the recording of statements, the police officers constantly pressed them to admit that they were homosexuals. They were however formally charged with doing a negligent act likely to spread infection of disease contrary to section 171 of the Penal Code Act.<sup>83</sup> This was a classic case of using COVID-19 restrictions to arrest persons for their sexual orientation/gender identity, and the force used during the arrest could not be considered reasonable by any standard.

#### 4.2.2 Arbitrary arrests against sex workers

For sex workers, the police used to target brothels and arrest occupants even if they were not violating any of the COVID-19 regulations.<sup>84</sup> Such arrests were also arbitrary as they were simply based on their status as sex workers and not because of any justifiable cause.<sup>85</sup> A number of respondents reported that enforcement of the curfew used to start several minutes, or even hours, before the official curfew time, and sex workers ended up suffering from arrests, beatings, sexual abuse and other abuses and violations even without actually breaching the curfew rules.

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<sup>82</sup> FGD held at Men of the Night (MONU) at 19 February 2021; Interview with Winnie Nabukeera, HRAFP lawyer, Kampala on 14<sup>th</sup> April 2021.

<sup>83</sup> Human Rights Awareness and Promotion Forum (HRAFP) 'Statement on the raid of the Children of the Sun Foundation Shelter for LGBT Youths in Uganda' 31st March 2020. <https://www.hrapf.org/index.php/resources/other-publications/131-20-03-31-hrapf-statement-on-the-arrests-at-the-cosf-lgbt-shelter-2-copy> (accessed 24<sup>th</sup> May 2021).

<sup>84</sup> FGD 002 with female sex workers, AWAC Secretariat, 25<sup>th</sup> February 2021; FGD 001 with FSW, AWAC Secretariat, 3<sup>rd</sup> February 2021.

<sup>85</sup> As above.

‘Sometimes they raid us before curfew starts and chase us while beating us, people fall in the trenches.’<sup>86</sup>

One key feature of such arrests was the use of extortion by the police who would cause the arrested individuals to buy their freedom through payment of money or offering sexual favours.<sup>87</sup> This indicates that the arrests were instigated by the need to extort rather than prosecute.

‘He asks you what time it is and you tell him you were heading home. And if he knows that that is where you work, he will tell you in order to let you go you have to first sleep with him and he won’t pay you a single coin and he doesn’t use a condom.’<sup>88</sup>

Alliance for Women Acting for change (AWAC) recorded several incidences of extortion which support the information gathered during the FGDs. A brief excerpt of their findings is set out below:

‘The sex workers arrested in Masaka-Nyendo also paid [UGX] 100,000/= to police for their release. 14 FSWs (Female Sex Workers) were arrested at Hanny’s Pub, Rubaga Road, flogged and Police extorted [UGX] 50,000/per head for their release. 2 female sex workers in Mbuya-Kinawataka shared that they were arrested by Local Defense Forces as they approached [their] residence on their way from buying chips and Kikomando, locked up in a filthy and congested jail room where they could not observe social distancing the whole night. They were released after paying Ugx 40, 000 per head.’

‘One sex worker in Kireka who was in police detention after flouting the presidential directive on curfew sold her table at [UGX] 40,000 to secure her release from police custody. Another sex workers’ peer leader in Kasensero had put her mattress on sale after failing to raise the [UGX] 20,000 on her way to a health facility to collect ART refills for her peers, then on second thought contacted AWAC members’ platform for rescue. By good luck, the [UGX] 20,000/= was raised at the greatest hour of need and given to the boda boda guy who was almost getting physically violent with her.’<sup>89</sup>

For these sex workers in such circumstances, seeking justice was not an option because as soon as they bought their way out of the hands of the security forces, they never looked back. Some of those who faced similar predicaments and sought justice explained that they did not expect to get justice at the hands of the very institutions which tormented them.<sup>90</sup>

### 4.3 Physical and sexual violence

Article 24 of the Constitution protects the right of everyone to freedom from torture, inhuman and degrading treatment or punishment, and violence from agents of the state is a violation of this right. Unfortunately, both physical and sexual violence cases related to enforcement

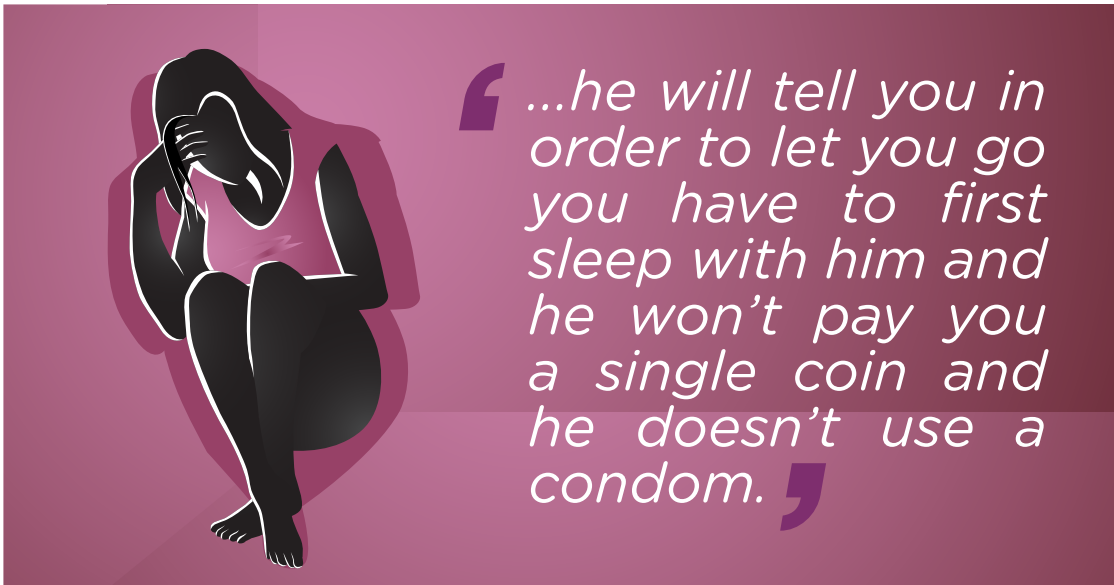
.....  
<sup>86</sup> FGD 001 with Female Sex Workers (FSW), AWAC Secretariat, 3<sup>rd</sup> February 2021.

<sup>87</sup> Above.

<sup>88</sup> Above.

<sup>89</sup> Alliance of Women Advocating for Change ‘Rapid assessment on the impact of COVID-19 among FSWS, AGYW and women living with HIV & AIDS in Uganda, June 2020, Kampala; 25.

<sup>90</sup> FGDs with female sex workers (n 86 above).



of the COVID-19 regulations were reported during the period against LGBT persons and sex workers. Enforcement of the ban on transport and movement inspired some of the most horrific assaults on LGBT persons and sex workers. In addition to the marginalisation and discrimination faced by LGBT persons and sex workers, the hardships they faced during this time were enormous.

#### 4.3.1 Physical and sexual violence against LGBT persons

LGBT persons suffered cases of violence from many fronts, from both the law enforcement agencies and community members where they reside. During this period, cases were often reported of law enforcement officers treating LGBT people violently merely for the sake of it, without even the excuse of conducting an arrest. Transgender people were more often affected by this due to their appearance.<sup>91</sup> Lydia Mukisa, a paralegal at HRAPF's legal Aid Desk based at Tranz Network Uganda recalled encountering a classic case of violence against a transgender person.

'I worked on a case of a transgender woman who was on [the] way to [a] shelter but she was assaulted because of her identity as they asked "are you a man or a woman."<sup>92</sup>

Further, the lockdown kept a lot of people at home and with a lot of time on their hands which resulted in neighbours keenly observing suspected LGBT people and scrutinising behavioural patterns that did not conform to the heteronormative standard, which escalated abuse and discrimination of LGBT people.<sup>93</sup>

'I was just talking about women and my neighbor came to know. I used to stay near a boda boda stage so she went and told them about it. Whenever I would pass by they would begin pointing fingers at me and wanted to beat me. I said this place is insecure

<sup>91</sup> FGD with transgender persons held at Tranz Network Uganda on 15<sup>th</sup> February 2021.

<sup>92</sup> KII with Lydia Mukisa at HRAPF secretariat. Interview with TM1 and TM 2 held at Kampala on 29<sup>th</sup> April, 2021.

<sup>93</sup> Interview with TM1 and TM 2 held at Kampala on 29<sup>th</sup> April, 2021.

so I had to look for another place.’<sup>94</sup>

‘As you know how people behave, we had gays, MSM, bisexuals and transgender. So the way they behaved made the people in the community to question them, what are these people doing here and you mean they are all one family. So they were there questioning to the extent that they brought the DPC, OC Wakiso, then chairman LC1, LC3, and the defense [secretary].’<sup>95</sup>

A number of LGBT persons also experienced physical and sexual violence at home – both from intimate sexual partners and from family members. Evictions from rented premises were common due to the financial hardships brought about by the lockdown. Many KPs could not afford rent in the absence of work, and found themselves unable to afford rent and utilities.<sup>96</sup> Although the President directed landlords not to evict tenants, this was largely not honoured by private property owners, and evictions were commonplace.<sup>97</sup> Evictions meant that people had to find places where they could stay, and some of them had to go back to their families. Many of the homes were sites of violence from which LGBT people had previously run, but during the lockdown, several people had no option but to return. One study participant expressed this conundrum thus:

‘This is a place which is not even safe for you or even they had chased you before but because you have no choice you decide to go back home - you have nowhere else to go. So you are going to find those who can’t afford rent - those who are feeling unsafe they end up going back to their homes. So we had issues where some lesbian women actually ended up being violated sexually at home ...aspects like corrective rape. Because now they are home the parents now use that advantage to see how they can correct them to stop them from being lesbians.’<sup>98</sup>

One transgender man’s story highlights the predicament most KPs faced:

‘I was evicted from where I was staying and I had to go back home where I was being pressured to get married.’<sup>99</sup>

The incidence of corrective rape experienced by LGBT persons, particularly LBQ women and transgender men, also increased during this period, as shared by Joan Amek, a Director at the Rella Women’s Foundation, who recalls rescuing and housing LBQ women who had experienced such violence.

‘There are two girls that their parents had set marriages for them to go get married or to leave the house. ... one the mum told her point blank that ‘may be you are doing this because you have never tried dating men. So I have got you a man so you can try and stop being foolish.’<sup>100</sup>

The frustrations within this period resulted into a general increase in domestic violence across the country, as well as intimate partner violence amongst LGBT persons– and there was no

.....  
<sup>94</sup> FGD with transgender persons held at Tranz Network Uganda on 15<sup>th</sup> February 2021.

<sup>95</sup> FGD with Gay and bisexual men held at Kampus Liberty secretariat on 18<sup>th</sup> February 2021.

<sup>96</sup> FGD with transgender persons (n 91 above).

<sup>97</sup> Above.

<sup>98</sup> FGD with LBQ women held at Rella Women’s Foundation Initiative in Kampala on 18<sup>th</sup> February 2021.

<sup>99</sup> Interview with TM1, TM2 and TM3 held in Kampala on 29<sup>th</sup> April 2021.

<sup>100</sup> Interview with Joan Amek, held at the Rella Women’s Foundation Secretariat.



way out. The lockdown forced several people to remain in violent/ abusive relationships merely as a way to afford food and a home.

‘Intimate partner violence increased gradually so much but then unfortunately again they could not report, why? Such cases are looked at as weird in police, if you go and report you are all going to just go in. But there were so many cases of GBV amongst LBQ women relationships. For example when it comes to just the most vulnerable ones the ones that are LBQ/T and at the same time they are sex workers and then the same time they have partners. So this time around partners didn’t have any other thing to focus on than ‘[I] can’t believe you’re sleeping with men yet you say you’re a lesbian’.<sup>101</sup>

### 4.3.2 Physical and sexual violence against sex workers

Sex workers were some of the people most greatly affected due to the very nature of their work, which is predominantly carried out at night and away from one’s home and involves sexual relations. An absolute night curfew from 7 pm to 6:30 am effectively meant sex workers could not work at all – both because they could not be able to move at that time but also because clients were not allowed to move at those times. This meant that for sex workers to survive, they had to adopt measures to beat the curfew and access clients in different but certainly more dangerous ways. This perpetuated massive violations on those sex workers found working during the curfew by law enforcement officers, while others faced violence at the hands of clients as they were essentially at the mercy of such clients due to the clandestine meetings, the need to stay overnight, and such other demands dictated upon them by the times. These particular experiences are recalled by Sanyu Hajara Batte, the Executive Director of the Lady Mermaids Empowerment Centre:

‘Actually, that time was so violent. As soon as it clocked 7:00 [pm], they would begin beating up people. Even if they find you cooking they would ask ... ‘What are you doing outside?’ and then they beat you up.’<sup>102</sup>

‘We registered cases of rape as well, rape was also among the key issues which were there. Sometimes the sex worker can be called by a client to go and give services to a client. When they reach there they rape them.’<sup>103</sup>

Physical violence from law enforcement officials was common. Mass arrests and road blockades were the order of the day.<sup>104</sup> It was reported in some areas that the police used to release attack dogs to hunt down people breaching the curfew.

‘They order the dogs to run after us and even if you fall in the trench the dogs pull you out by your cloth then the officers come and arrest you. So as soon as you see the dogs you should run because if you don’t you will see what happens next.’<sup>105</sup>

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<sup>101</sup> Above.

<sup>102</sup> FGD with Transgender persons (n 91 above).

<sup>103</sup> Interview with Sanyu Hajara Batte held at the Lady Mermaids Empowerment Centre secretariat on 15<sup>th</sup> March 2021.

<sup>104</sup> FGD 001 with female sex workers, n 86 above.

<sup>105</sup> Above.

Bribery and extortion also escalated as the arrested and brutalised individuals sought to purchase their freedom, which was the only way.

‘They disturb our clients a lot. They arrest them and request them for money in order to release them, some of them fall down while being chased, some are beaten up.’<sup>106</sup>

A number of the respondents reported having to deal with sexual violence from the soldiers and police officers, including rape and unprotected sex.<sup>107</sup>

‘The police and soldiers saw the curfew as an opportunity to have free sex from sex workers’.<sup>108</sup>

One of the sex worker respondents in the Kampala area narrated her ordeal as follows:

‘I again met two of the officers in front and they gave me a lift, after a short distance they parked somewhere and raped me. I even recall the face of one of them as you know if someone does something bad to you, it’s hard to forget them. I was raped so badly and even got injured. Remember there was no transport during that time so I had to treat myself. I even feared moving again ... Up to now I have never gotten proper treatment for my private parts.’<sup>109</sup>

## 4.4 Discrimination

Article 21 of the Constitution of the Republic of Uganda protects the right to equality and freedom from discrimination, and among the grounds against which discrimination is barred are sex and social status. Although the discrimination of LGBT persons and sex workers in Uganda is ubiquitous and almost entirely normalised, during the period under study, this discrimination peaked to unprecedented levels. It was manifested in all aspects of daily life, from the way they were treated by the public and law enforcement agencies alike to being specifically and arbitrarily excluded from official government social support programs.

### 4.4.1 Discrimination against LGBT persons

Many LGBT respondents, reported being excluded by their local leaders from being the beneficiaries of government relief services like food and masks, as they were being accused of being deviants. The stereotypical heteronormative understanding of a family was also used to arbitrarily exclude LGBT persons from food aid, as vividly recalled below:

‘About the government restrictions on the food relief ... [they could] give only to a family - actually a vulnerable family, whereby a family is a father and a mother with some two kids. So whereby you are two transgender [persons], they couldn’t give you just because you are not a family and you are there one or two persons. So they would jump you and then they would go to other people.’<sup>110</sup>

.....  
<sup>106</sup> FGD with FSW, n 86 above.

<sup>107</sup> Above

<sup>108</sup> Above

<sup>109</sup> IDI 003 with a female sex worker, LMEC, 19<sup>th</sup> March 2021.

<sup>110</sup> FGD with transgender persons held at Tranz Network Uganda on 15<sup>th</sup> February 2021.

‘It is not a family so if you are a man and man, no we can’t give you food.’<sup>111</sup>

Cases of evictions from rented premises, expulsion from homes and redundancy at the workplace became commonplace during the pandemic. As soon as COVID-19 set in, some LGBT people were terminated from their workplaces under the COVID-19 pretext, including those whose sexuality had been an issue at the work place before COVID-19.<sup>112</sup>

The arrest of the 23 LGBT youths from Kyengera was borne of discrimination rather than an actual need to enforce the COVID-19 restrictions. 20 of them were remanded to Kitalya Prison,<sup>113</sup> where they continued to suffer blatant discrimination from the prison warders and the officers in charge of the prison, including verbal abuse, beatings and torture. In one extreme instance, one of the inmates was burnt by a senior prisons officer with a hot piece of firewood.<sup>114</sup>

When asked about the treatment of LGBT persons and sex workers in prison settings, Uganda’s Commissioner of Prisons in charge of Corporate Affairs insisted that prisoners are not labelled on arrival, and that therefore, all prisoners are treated equally. He also further emphasised that, given that homosexuality and sex work are both criminal in Uganda, the Uganda Prisons Service could hardly be expected to make special accommodations for them as that would amount to sanctioning criminality, at least until such time as the laws may be revised.<sup>115</sup>

Whereas this position might appear reasonable on the face of it, it is a well-known fact that the marginalisation of LGBT persons and sex workers often exposes them to discrimination and abuse even in apparently neutral systems unless specific effort is expended to prevent this.

The foregoing paragraphs highlight the rampant discrimination to which the LGBT persons and sex workers were subjected during the enforcement of the COVID-19 regulations, and yet it is safe to assume that this grim account by no means tells the full story.

#### 4.4.2 Discrimination against sex workers

Law enforcement personnel took the view, which was also shared by most of the public, that sex workers were major vectors for the spread of the coronavirus due to their ‘reckless’ lives and especially as a result of their business dealings with truck drivers from Kenya and other countries.<sup>116</sup>

Indeed, the government ran a series of adverts on several TV stations by a socialite Shanitah Namuyimbwa, popularly known as Bad Black, urging sex workers to prevent the spread of coronavirus by not having sexual relations with truck drivers.<sup>117</sup> On the one hand, the use of a self-confessed sex worker in the public sensitisation against COVID-19 may be lauded as

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<sup>111</sup> Interview with Peter Magelah, Programs Director, Chapter Four Uganda on 11<sup>th</sup> March 2021.

<sup>112</sup> FGD with LBQ women, n 98 above.

<sup>113</sup> Above.

<sup>114</sup> Above.

<sup>115</sup> Interview with CP Frank Baine, n 72 above.

<sup>116</sup> FGD 001 with FSW, n 86 above.

<sup>117</sup> To see the information developed by the Ministry of Health on COVID-19, see <https://www.health.go.ug/covid/general-public-materials/> (accessed 14<sup>th</sup> December 2020). For these materials, see <https://www.health.go.ug/covid/family-planning-materials/> (accessed 14<sup>th</sup> December 2020).

a positive step by the government to incorporate the voice of sex workers in its response strategy. On the other hand, however, it can be postulated that it sent the wrong message that sex workers were the leading spreaders of the pandemic because of their association with truck drivers. This was well articulated by Sanyu Hajara Batte, the Executive Director of the Lady Mermaids Empowerment Centre:

‘But you can even see themselves they [the government] had to use Bad Black to do an advert for sex workers why not other populations? But it was directly to sex workers because they were directly targeting the long distance truck drivers.’<sup>118</sup>

Certainly, the government did not stop at such sensitisation campaigns but also routinely carried out some of the most vicious crackdowns against sex workers both as groups and individuals. In one of such crackdowns carried out in April 2020, a total of 71 sex workers were rounded up by a combination of police officers, LDUs and UPDF soldiers.<sup>119</sup>

There were also instances of sex workers being accused of attracting God’s wrath in the form of coronavirus to punish the world for their sinful practises.

‘Some community members used to say that “you guys are sinners and you do things that God doesn’t accept it’s the reason to why we have COVID-19 because God is angry with you and we are all suffering because of you.”<sup>120</sup>

## 4.5 Violations in access to health services

The right to health is a fundamental human right now adequately recognised in Uganda. Under Objective XIV, of the National Objectives and Directive principles of State Policy, the government has to ensure that all Ugandans enjoy access to, among others, health services. Objective XX enjoins the state to ‘take all practical measures to ensure the provision of basic medical services to the population.’ This is buttressed by Article 8A, which makes the right to health a constitutionally protected right, as was recently held by the Constitutional Court in *Centre for Health Human Rights and Development (CEHURD) & 3 others v Attorney General*.<sup>121</sup>

### 4.5.1 Impact on access to health for LGBT persons

Sexual minorities Uganda (SMUG) reported that one of the major impacts of the lockdown was limiting access to health care.<sup>122</sup> Up to 71.43% of LGBT persons reported facing challenges in access to healthcare generally, with 23.81% reporting that this was to a greater extent.

‘I had started PReP because I remember I started it some time back then I went home now I had to restart it right about that time and I needed a refill. But I couldn’t get

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<sup>118</sup> Interview with Sanyu Hajara Batte, n 103 above.

<sup>119</sup> Health Gap, ‘Uganda’s COVID-19 Response is terrorizing women with arbitrary detention, blackmail, and violence’ 30 April 2020 <https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/> (accessed

<sup>120</sup> Interview with Sanyu Hajara Batte (n 103 above)

<sup>121</sup> Constitutional Petition No. 16 of 2011.

<sup>122</sup> Sexual Minorities Uganda (SMUG) ‘The impact of COVID-19 on the LGBTIQ community in Uganda’ August 2020, 4-5.

any access to them because we were staying very far and the facilities around I wasn't comfortable going to the facilities around ... because I [might] find someone who knows me there.'<sup>123</sup>

The closure of certain organisations or the scaling down of their activities made accessing healthcare services for LGBT persons who depend on these organisations difficult.

'But again we distributed medicine for our members but we reached an extent that even executive directors and other community peer leaders were calling us so that we can support other organisations. We were overwhelmed by the demand from the community which wasn't easy for us to be able to reach every one of them.'<sup>124</sup>

#### 4.5.2 Violations related to access to health for sex workers

The ban on transport meant people could not move, which grossly affected those in need of access to healthcare, especially those living with HIV/AIDS and other ailments whose life relied on regular or emergency medical attention.<sup>125</sup> They had to move long distances and a number of times they were arrested due to breaking curfew rules.<sup>126</sup>

S7, a sex worker, also narrated her ordeal thus:

'When I was going to hospital to get ARVs, I was severely beaten with a baton and the boda boda man I was with was also severely beaten.'<sup>127</sup>

The situation was even more dire for sex workers that moved away to distant places and had no means of accessing their medication:

'There are those who were in villages like Mbarara, Masaka, Rukungiri so coming to hospital to pick it was a problem. And remember they were used to X (*not real name*) delivering it to them. So when they couldn't access the medicine ... they died.'<sup>128</sup>

According to participants in FGD with sex workers, one of the sex workers who is known to them was beaten by police and her kidney damaged.<sup>129</sup>

This situation exposed people to life-threatening realities, in some cases even resulting in death.<sup>130</sup> Participants in one FGD alone reported the death of no less than eight sex workers due to starvation and lack of medical care.<sup>131</sup>

A survey by AWAC confirmed this reality, finding that 80% of the Respondents interviewed had failed to access their ART/ PrEP refills or clinical appointments due to the lockdown and

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<sup>123</sup> FGD with Gay and Bisexual men, n 95 above.

<sup>124</sup> Interview with Sanyu Hajara Batte, n 103 above.

<sup>125</sup> FGD with transgender persons, n 91 above.

<sup>126</sup> FGD 003 held at Men of the Night in Kampala on 17<sup>th</sup> February 2021.

<sup>127</sup> FGD 002 with sex workers held at AWAC in Kampala, 25<sup>th</sup> February 2021.

<sup>128</sup> FGD 001 with female sex workers, n 86 above.

<sup>129</sup> Above.

<sup>130</sup> Above.

<sup>131</sup> FGD 002 with female sex workers, n 127 above.

travel restrictions, and 20% were no longer adhering to ART/PrEP due to lack of food.<sup>132</sup>

To address the alarming situation, CSOs stepped in to provide home delivery services, braving the restrictions to deliver ARVs and other medical supplies to LGBT persons and sex workers. However, even such efforts were limited and mostly focused on members of specific organisations.<sup>133</sup>

#### 4.5.3 Mental Health for LGBT persons and sex workers during the COVID-19 pandemic

Whereas the study focuses on access to justice, the aspect of mental health cannot be ignored. In this regard the definition of mental health as adopted by the World Health Organisation is informative.<sup>134</sup> The WHO defines mental health as a state of well-being in which the individual realises their own abilities, can cope with the normal stresses of life, can work productively and fruitfully and is able to make a contribution to their community. Due to the discrimination and marginalisation faced by LGBT persons and sex workers, their mental health is often affected and must be given due regard. The COVID-19 pandemic and the attendant restrictions and regulations aggravated the situation affecting the mental health and wellbeing of LGBT persons and sex workers.

Due to social, cultural and religious misconceptions and the limited knowledge among members of the public, LGBT persons and sex workers have been blamed for the COVID-19 pandemic, an opinion that causes emotional pain to LGBT people and sex workers and has been a catalyst for violence against them.

LGBT persons in particular cope and access services through continuous contact with their communities. The ability to cope with their realities and stresses brought about by the marginalisation and discrimination is largely tied to close continuous physical contact with a community that is understanding and accepting of them. This was brought to a halt by the COVID-19 pandemic and the attendant regulations and restrictions that forced the majority to return to homophobic and unsafe homes adversely affecting their mental health.

‘Of course it affected me negatively like any other person. But again I broke down then at the beginning of COVID-19 --- I was mentally disabled. But after that I was on medication. The good thing they told you we interact so much with other organisations. So different organisations came through I got help. Akina Mama [Akina Mama Wa Afrika (AMWA)] put me on a therapist.’<sup>135</sup>

LGBT people are at a heightened risk of facing mental health challenges due to their experiences of stigma, discrimination, abuse, violence, isolation and exclusion. The expectation and fear that these experiences may happen at any time creates a hostile and stressful social environment that impacts on mental well-being.<sup>136</sup> There is evidence that such experiences,

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<sup>132</sup> AWAC, ‘Rapid assessment on the impact of covid-19 among FSWS, AGYW and women living with HIV & AIDS in Uganda, 2020, accessed on 28<sup>th</sup> May 2021.

<sup>133</sup> AWAC (above).

<sup>134</sup> World Health Organisation, ‘Promoting mental health: Concepts, emerging evidence, practice: summary report’ 2004 [https://scholar.google.com/scholar\\_lookup?title=promoting+mental+health:+concepts,+emerging+evidence,+practice+\(summary+report\)&publication\\_year=2004](https://scholar.google.com/scholar_lookup?title=promoting+mental+health:+concepts,+emerging+evidence,+practice+(summary+report)&publication_year=2004)

<sup>135</sup> FGD with LBQ women. n 98 above.

<sup>136</sup> EH Ayesiga, ‘Invisible scars: A focus on the mental health of queer people in Uganda’ 2019.



*‘When I was going to hospital to get ARVs, I was severely beaten with a baton and the boda boda man I was with was also severely beaten’.*

in conjunction with existing predisposing risk factors, result in a heightened vulnerability to various mental health issues, specifically depression and anxiety, as well as an elevated risk for suicidal ideation and behaviours.<sup>137</sup> The COVID-19 restrictions added another layer of uncertainty, further increasing the vulnerability of LGBT persons with worry about sources of income and personal safety.

‘Like I said those verbal violations of, “look at him why doesn’t he have a wife? Why is he at home?” All those insults just demotivated me already I had this mental trauma of I have come back home I am not working. And then I have all these people saying all these things, it would break me.’<sup>138</sup>

The COVID-19 pandemic and its attendant restrictions created a mental health crisis for sex workers and LGBT persons that has not been adequately addressed nor catered for in the COVID-19 health interventions by the Government.

## 4.6 CONCLUSION

The Uganda Government’s enforcement of the COVID-19 control measures has been justifiably criticised for being high-handed and militaristic, occasioning unprecedented levels of violations. Some of the measures such as the ban on transport, the night curfew and the partial closure of courts and legal aid clinics were particularly damaging to LGBT people and sex workers as they not only led to violations of their human rights but unfortunately shut down the door for access to justice. The measures were also enforced in a manner that perpetrated institutional and personal discrimination of LGBT people. The COVID-19 restrictions affected LGBT persons and sex workers a lot more than the general community due to already existing vulnerabilities and marginalisation. These many violations gave rise to the need to access justice and redress mechanisms to be fully functional during this period, and yet it is the period during which these access to justice mechanisms were most unavailable to the marginalised.

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<sup>137</sup> EH Ayesiga (above).

<sup>138</sup> FGD with gay and bisexual men, n 95 above.



# 5 IMPACT OF COVID-19 REGULATIONS ON ACCESS TO JUSTICE FOR LGBT PERSONS AND SEX WORKERS

## 5.1 INTRODUCTION

The COVID-19 restrictions led to a myriad of violations as seen from the last section, and these certainly necessitated redress in order for the victims to be able to access justice. Some redress measures had to be immediate, including reporting cases to police and other institutions, and gathering evidence of violations, etc. There were also cases pending before courts of law that had to be handled during this time, and these too were affected. In this section, we discuss how LGBT persons and sex workers were able to access justice during this period, the factors and issues that enabled or inhibited this as well as the solutions that some were able to find amidst these difficulties.

## 5.2 OPPORTUNITIES IN ACCESSING JUSTICE BROUGHT ABOUT BY THE COVID-19 RESTRICTIONS

Not all was gloom during this period as the COVID-19 framework provided some limited opportunities that could be exploited for quicker access to justice for LGBT persons and sex workers during this period. These are:

### 5.2.1 Quicker access to justice for plea taking and urgent matters

The Chief Justice's Circular mentioned that the judiciary would focus on plea taking and bail applications as well as hearing certificates of urgency. This meant that most cases would be kept away from the courts and only those classified as urgent could be heard. This helped to clear the courts of the usual case backlog and it meant that well-deserving cases that satisfied the criteria could be filed and quickly taken out of the court system. A number of LGBT cases and sex worker cases fit the criteria since they concerned human rights violations, arraignments, plea taking and bail applications. Judicial officers on duty were also less busy, and this meant that cases could be disposed of faster.

### 5.2.2 Release of petty offenders to reduce on congestion in prisons

After much lobbying and advocacy by the Coalition to Decriminalise and Declassify petty offences hosted by HRAPF as well as actors like Chapter 4 Uganda, Legal Aid Service Providers Network (LASPNET) among others, 832 prisoners were released from prisons, most of whom were petty offenders<sup>139</sup> following a general presidential pardon.<sup>140</sup> This was an opportunity for persons in prisons for petty offences, including doing a negligent act

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<sup>139</sup> Phone interview with Patricia Kimera, HRAPF Program Director, Access to Justice, held in Kampala on 31<sup>st</sup> May 2021.

<sup>140</sup> Interview with CP Frank Baine, (n 72 above) Uganda Prisons Service '833 PRISONERS PARDONED BY PRESIDENT'S PREROGATIVE OF MERCY' <https://www.prisons.go.ug/media/833-prisoners-pardoned-president%E2%80%99s-prerogative-mercy> (accessed 30th May 2021).

likely to spread infection of disease, to be released, and these included LGBT persons and sex workers arrested during this period. This was done to decongest prisons, and it was extended to inmates who were convicted of minor offences and had served at least three quarters of their sentences, were terminally ill, or were of advanced age, that is 65 years and above.<sup>141</sup>

In July 2020, an additional 4,000 inmates were released from various prison facilities around the country. The scheme targeted mainly people who had been arrested and placed in prisons for violating the COVID-19 regulations.<sup>142</sup>

### 5.2.3 Declaration of lawyers among essential service providers

Although initially lawyers were not among persons declared as essential workers, these were eventually included following the *Turyamusiiima* case, when the President announced that 30 lawyers would be allowed to move per day.<sup>143</sup> HRAPF used this opportunity to obtain stickers to enable them move, which was an opportunity to ensure better access to justice.

### 5.2.4 Increased attention on Uganda and human rights violations during this period

The excessive militarisation of the COVID-19 response and the resultant violations brought Uganda to the attention of the international community. The arrest of the 23 LGBT persons from a crisis shelter on 29<sup>th</sup> March 2020 and their subsequent treatment brought the LGBT aspects to the fore. This meant that the treatment of LGBT persons became a matter of international concern,<sup>144</sup> which greatly enhanced lobbying efforts by HRAPF and partners. These efforts were supported by the diplomatic corps as well as the UN Independent Expert on SOGI and other UN special mechanisms. Diplomats played an active role in this providing direct support for access to justice work during this period.<sup>145</sup> Due to the increased scrutiny brought to this case, the RFK Centre, SMUG and HRAPF filed a complaint before the UN Working Group on Arbitrary Detentions concerning the 20 COSF people, all further focusing media attention on Uganda.<sup>146</sup> All these efforts contributed to the release of the 20.

The increased attention also saw increased funding with regards to supporting access to justice for LGBT persons and sex workers, which helped to enhance access to justice.

### 5.2.5 Prioritisation of sexual and gender-based violence cases

Due to the prevalence of Sexual and Gender Based Violence (SGBV) cases during the lockdown, the Judiciary decided to conduct special sessions to hear and dispose of SGBV cases. At the time of the study, sessions were being held or had been planned at the Criminal

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<sup>141</sup> Above.

<sup>142</sup> Above.

<sup>143</sup> Phone interview with Patrick Kimera, n 139 above.

<sup>144</sup> As above.

<sup>145</sup> As above.

<sup>146</sup> In the Matter of 19 Individuals, Citizens of the Republic of Uganda v. Government of the Republic of Uganda, and Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7 submitted by Human Rights Awareness and Promotion Forum (HRAPF), Robert F. Kennedy Human Rights and Sexual Minorities Uganda (SMUG), 14th May 2020.

Division of the High Court and the Chief Magistrates' Court at Buganda Road, both in Kampala, as well as the High Court circuits and Chief Magistrates Courts in Soroti, Tororo, Gulu and Fort Portal.<sup>147</sup> After the initial phase, there were plans to roll out the scheme throughout the country.<sup>148</sup> It took the difficulties posed by the COVID-19 regulations for such an initiative to be conceived in order to address a problem that had always been prevalent across the country.

### 5.2.6 Use of e-justice mechanisms

In 2016, the judiciary adopted the Judicature (Visual-Audio Link) Rules 2016 to enable courts to take evidence from witnesses and hear lawyers who could not appear physically in courts.<sup>149</sup> The rules covered instances such as trials relating to sexual offences, witnesses outside Uganda, safety of witnesses, security reasons, health reasons, infirmity and any other reason for which Court deems it necessary to use the technology.<sup>150</sup> Since their adoption, the Rules had been used sporadically to conduct hearings primarily from Luzira Prison.<sup>151</sup> It was during the COVID-19 lockdown that the use of the audio-visual facilities came to the forefront of the administration of justice.<sup>152</sup> The use of the technology saves court users from unnecessary travel expenses and risks, providing another avenue to access justice conveniently.<sup>153</sup> These technologies have been extended to prison facilities to limit the movement of inmates and, although limited, these facilities are present in at least 10 prisons in the country.<sup>154</sup> Other measures such as hearings via Zoom and the delivery of judgments and rulings by e-mail have continued even after the lockdown was lifted.<sup>155</sup>

Digital innovations received the strong backing of the stakeholders in the JLOS sector as a means to improve access to justice. At a stakeholder dialogue organised by the United Nations Development Programme (UNDP) in May 2020, there was consensus among stakeholders from government, legal aid service providers, the United Nations system, information and communications technology experts, development partners, academia, private sector and civil society calling for the expanded use of e-justice as a means to deepen access and accelerate dispensation of justice in Uganda in the wake of the COVID-19 pandemic.<sup>156</sup>

E-justice and the use of technology have become a key part of the judiciary's strategy to improve access to justice.<sup>157</sup> Video conferencing facilities have been installed in Luzira Upper Prison to serve the male prison population and Luzira Women's Prison for the female

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<sup>147</sup> Phone interview with Solomon Muyita, the Principal Communications Officer of the Judiciary held on 31st May 2021

<sup>148</sup> Above.

<sup>149</sup> The Judicature (Visual-Audio Link) Rules 2016, Statutory Instrument No. 26 of 2016 <https://judiciary.go.ug/files/downloads/judicature-visual-audio-link-rules-si-no-26-of-2016a.pdf> (Accessed 29 May 2021).

<sup>150</sup> Above, Rule 5.

<sup>151</sup> Phone interview with Solomon Muyita, n 147 above.

<sup>152</sup> Above.

<sup>153</sup> Above.

<sup>154</sup> Interview with Frank Baine n 72 above.

<sup>155</sup> Phone interview with Solomon Muyita (n 147 above)

<sup>156</sup> 'UNDP, Post COVID-19 and the future of e-justice, lessons, opportunities and strategic direction,' UNDP, <https://www.ug.undp.org/content/uganda/en/home/presscenter/pressreleases/2020/stakeholders-call-for-use-of-e-justice-during-covid-19-and-beyon.html> (accessed on 30th May 2021).

<sup>157</sup> Phone interview with Solomon Muyita, n 147 above.

prisoners with a connection to Buganda Road Chief Magistrates Courts, and two Court Rooms at the Criminal Division of the High Court in Kampala.<sup>158</sup> Other prisons which have been connected to such systems include Kitalya Min-Max Prison, Masaka, and Kigo Prisons, and there are plans to extend the service to Arua, Gulu and Lira Main Prisons.<sup>159</sup> The judiciary has also adopted the use of Zoom to conduct hearings in courts and prisons where video conferencing facilities have not yet been installed.<sup>160</sup>

The use of these technological innovations is expected to speed up the delivery of justice and promote effectiveness and efficiency.<sup>161</sup>

## 5.3 LIMITATIONS OF ACCESS TO JUSTICE RIGHTS BROUGHT ABOUT BY THE COVID-19 RESTRICTIONS

### 5.3.1 Partial suspension of court services

The suspension of the operations of courts of law by the circular of 19 March 2020 had far-reaching consequences for those seeking to access justice. Hearing of all cases was suspended unless it was an application for bail or a matter that was certified as urgent. According to Peter Gwayaka Magelah, the Program Manager, Chapter Four Uganda, this created two levels of justice: *'justice for the urgent and justice for the rest.'*<sup>162</sup> Since getting a matter certified as urgent was a strenuous process, many cases involving LGBT people and sex workers were left unattended to. This resulted in long periods of incarceration without access to courts. Even where a certificate of urgency could be obtained, other restrictions such as on transport and movement still resulted in delays in accessing courts of law.

The dramatic impact of closure of courts on access to justice was acutely demonstrated by the case of the COSF 20, which is described in this report. Mukiibi Henry, one of those arrested and also the Executive Director of Children of the Sun Foundation, the organisation operating the shelter in Nkokonjeru LC I in Kyengera Town Council where 23 youths were brutally arrested and 20 of them charged with doing a negligent act likely to spread infection of disease under section 171 of the Penal Code Act Cap 120, narrated how the lack of access to lawyers left them stranded in jail for over 50 days uncertain about their fate:

'We were taken to court on a [sand tipper] truck which parked in the scorching sun for over two hours as we waited for the Magistrate. When she came she stood on the verandah and read the charges to us while we remained on the truck as we could not be allowed in court. We told the Magistrate that our lawyers were coming to apply for bail but she said "even if they come, there is nothing I can do. I have to remand you up to 28<sup>th</sup> April". She then immediately closed the court'. On 28<sup>th</sup> April, the day we were supposed to appear in court nothing happened. We were kept in jail and told the court was closed. We stayed in jail until one morning when we were told that the charges against us had been dropped'.<sup>163</sup>

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<sup>158</sup> Above.

<sup>159</sup> Above.

<sup>160</sup> Above.

<sup>161</sup> Above.

<sup>162</sup> Interview with Peter Gwayaka Magelah, n 111 above.

<sup>163</sup> Interview with Mukiibi Henry, Executive Director, Children of the Sun Foundation held in Kampala on 10<sup>th</sup> May 2021.

The High Court granted a certificate of urgency in an application for access to legal counsel made on behalf of the 20 remandees in this case on 28th April 2020 and heard the application a week later and the detainees were released about a week later, although this was after spending a total of 51 days in detention.<sup>164</sup> The release was after the Director of Public Prosecutions (DPP) withdrew the charges against the accused people acting on a petition to the DPP by the accused's lawyers from HRAPF.

The circumstances of the COSF 20 case were quite unique, and the same cannot be said of all the other sex workers and LGBT people seeking justice during this period.

Generally, closure of courts left many LGBT persons and sex workers who had been arrested to stay in jail without hope of release. Most of the LGBT people and sex workers who faced violations accepted their fate with resignation and never seriously thought to access justice as one had to know a lawyer, and the lawyer had to have means to access the client and courts. Peter Gwayaka Magelah notes that:

'LGBTI people tend to access particular lawyers who they are comfortable with. So that even reduced the number of how LGBTI people could easily access justice. Because you needed to look for that particular lawyer and that particular lawyer needed to have maybe a sticker or some special access'.<sup>165</sup>

Also, means of transport to the other institutions such as the police, courts, and others was difficult. Joan Amek of Rella Foundation put it succinctly thus: 'We chose to keep quiet with our problems'.<sup>166</sup>

Even urgent matters such as bail applications were supposed to be heard on video link, but only a few courts had video link and these were overwhelmed. For example, the Nsangi Court where the COSF-20 matter was to be heard did not have video link and, although the lawyers through the Chief Registrar of Courts and the trail magistrate tried to book a courtroom with the facilities at Buganda Road Chief Magistrates Court, this was only secured at a much later date.<sup>167</sup> Luckily, the matter was dismissed at Nsangi Court in the absence of the accused after the DPP withdrew charges.

*“We chose to keep quiet with our problems.”*

For most of the lockdown period, judicial officers worked only on specified days and selected courts and only on matters certified agent. For criminal justice, this left many suspects waiting in police cells and prisons with no access to courts.

### 5.3.2 Limited access to prisons

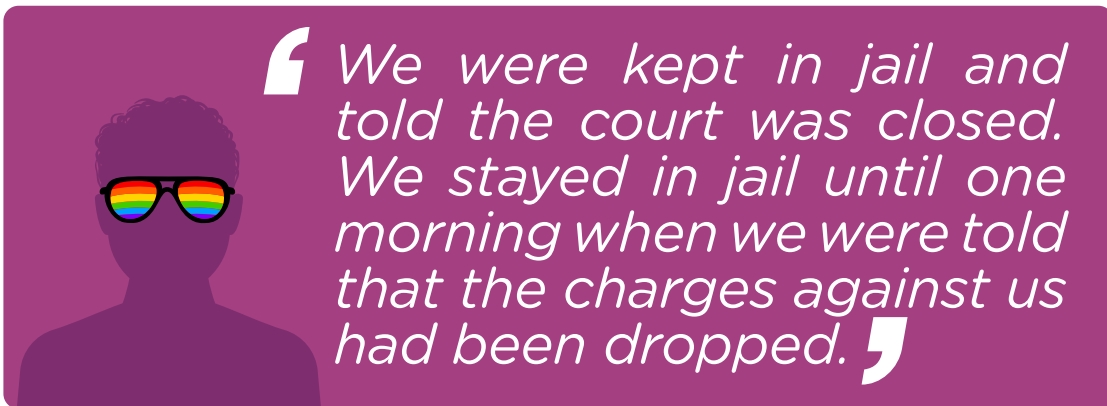
The Administrative Instruction by the Commissioner General of Prisons prohibited all forms

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<sup>164</sup> Above

<sup>165</sup> Interview with Peter Gwayaka Magelah (n 111 above).

<sup>166</sup> Interview with Joan Amek (n 100 above).

<sup>167</sup> Phone interview with Patricia Kimera, n 139 above.



of access to prisons, including lawyers.

According to the then-Spokesperson of the Uganda Prisons Service, CP Frank Baine the decision to suspend prison visitation was taken pursuant to the Presidential Directives and the Ministry of Health Guidelines, which were very strict.<sup>168</sup> As a result, no exceptions were created, even for lawyers.<sup>169</sup> Inmates were only permitted to access their lawyers through telephone facilities which had been installed in some prisons while court attendance was by way of video conferencing, which was only available at Kitalya Min Max Prison and Luzira Prisons.<sup>170</sup> Zoom was also used in some prisons.<sup>171</sup>

HRAPF lawyers were denied access to the prisons in the case of the COSF-20.<sup>172</sup> Access was only obtained after a court order was issued.<sup>173</sup> Even then, the prisons authorities only acted on the case where the order was issued and treated other cases as if the declaration did not apply to them.<sup>174</sup> This meant that many of the LGBT persons and sex workers who were arrested during this period were not able to access their lawyers, further curtailing access to justice.

The irony is that whereas lawyers and members of the public were not allowed to access prison facilities apparently to prevent the spread of COVID-19, mass arrests were carried out by security forces and the people so arrested were dumped in overcrowded prison facilities. The Uganda Human Rights Commission (UHCR) estimated that by 24<sup>th</sup> April 2020, 1,099 persons had been charged with offences relating to disobeying lawful orders, of whom 116 had been convicted and 983 remanded.<sup>175</sup> Indeed, during the period from March-August 2020, the prison population was reported to have increased by 10%.<sup>176</sup>

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<sup>168</sup> Interview with CP Frank Baine, n 72 above.

<sup>169</sup> As above.

<sup>170</sup> As above.

<sup>171</sup> As above.

<sup>172</sup> Phone interview with Patricia Kimera, n 139 above.

<sup>173</sup> Above.

<sup>174</sup> Above.

<sup>175</sup> UHCR, 'Statement on the State of Human Rights and the Fight Against COVID-19 in Uganda' available at [https://covid19.gou.go.ug/uploads/document\\_repository/authors/uhrc/document/Uganda\\_Human\\_Rights\\_Commission\\_Statement\\_on\\_state\\_of\\_human\\_rights\\_and\\_the\\_fight\\_against\\_covid19\\_in\\_Uganda\\_24042020.pdf](https://covid19.gou.go.ug/uploads/document_repository/authors/uhrc/document/Uganda_Human_Rights_Commission_Statement_on_state_of_human_rights_and_the_fight_against_covid19_in_Uganda_24042020.pdf) (Accessed 29th May 2021).

<sup>176</sup> E Biryabarema, 'Uganda's prisoner population surges, raising fears of COVID-19 outbreak' <https://www.reuters.com/article/us-health-coronavirus-uganda-prisons-idUSKCN2531KA> (Accessed 29th May 2021).

Kitalya Prison had video link to court but the schedules were not well coordinated. For instance, Henry Mukiibi reported that they spent the whole day in the video link room waiting for the court session, and yet the court session was happening in Nsangi Court, which had no video link.<sup>177</sup> As already noted, there was only one functional video-link facility at Buganda Road Chief Magistrates Court serving all the Magistrates Courts in Kampala, Wakiso and the surrounding areas. The facility faced high demand and had to be booked in advance by a judicial officer, and arrangements had to be made for the judicial officer and in case of criminal matters, the state attorney, to move there and hold court proceedings.<sup>178</sup>

Indeed at the time, only the Chief Magistrates Court at Buganda Road and the Criminal Division of the High Court, both in Kampala, were set up on the video conferencing system.<sup>179</sup>

The suspension of access to prison facilities inevitably contributed to slowing down of court operations, further hampering access to justice. A similar observation was reportedly made by the Magistrate Grade One of Nateete, who bemoaned the fact that in spite of extraordinary measures put in place by the Judiciary to keep the criminal justice system operational, court business had literally ground to a halt in respect of access to justice for accused persons who were on remand.<sup>180</sup> Indeed, he encouraged Uganda Prisons to develop measures to enable inmates on remand to attend court proceedings, reasoning that the absence from the courtroom of the accused person seriously undermines their ability to participate in criminal justice proceedings effectively, and the exercise of the rights of the defence.<sup>181</sup>

On its part, the Uganda Human Rights Commission had this to say about the restricted access to inmates, especially by lawyers;

'While the numbers of the people defying lawful orders keeps increasing, the Commission notes that a number of lawyers have raised concerns over their inability to have access to their clients who are in detention. While the Commission recognizes the need for limiting access to inmates by people from outside prison in order to stop the spread of the corona virus in prisons, nevertheless it is important that the rights of the inmates should be observed as much as possible. Therefore, consideration should be made to the possibility of using communication technologies that can facilitate contact between inmates and their lawyers but without breaching the measures put in place to prevent the spread of corona virus to prisons'.<sup>182</sup>

All in all, the suspension of visitations by Uganda prisons led to thousands of prisoners stranded in jail without access to courts of law or even their lawyers.

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<sup>177</sup> Interview with Henry Mukiibi, n163 above.

<sup>178</sup> Phone Interview with Patricia Kimera, n 139 above.

<sup>179</sup> Phone interview with Solomon Muyita, n 147 above.

<sup>180</sup> T Lumunye, 'Access to Justice and COVID-19, inmates on remand worst hit' 24 March 2020 <https://www.jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/press-and-media/latest-news/item/783-opinion-access-to-justice-and-covid-19-inmates-on-remand-worst-hit> (accessed 26 May 2021).

<sup>181</sup> As above.

<sup>182</sup> UHRC, 'Statement on the state of human rights and the fight against COVID-19 in Uganda' [https://covid19.gou.go.ug/uploads/document\\_repository/authors/uhrc/document/Uganda\\_Human\\_Rights\\_Commission\\_Statement\\_on\\_state\\_of\\_human\\_rights\\_and\\_the\\_fight\\_against\\_covid19\\_in\\_Uganda\\_24042020.pdf](https://covid19.gou.go.ug/uploads/document_repository/authors/uhrc/document/Uganda_Human_Rights_Commission_Statement_on_state_of_human_rights_and_the_fight_against_covid19_in_Uganda_24042020.pdf) accessed on 29th May 2021.



### 5.3.3 Closure of organisations working on LGBT and sex workers issues, legal aid service providers and law firms

Legal aid clinics and law firms were not among the services which were exempted during the total lockdown. The Human Rights Centre noted that for the most part, legal aid service providers and other lawyers were as helpless as their clients.<sup>183</sup> In one surreal incident, a legal aid lawyer working with the Uganda Network on Law, Ethics and HIV/AIDS (UGANET) reported seeing suffering women on TV and being unable to offer assistance as UGANET had no means of transportation to reach them.<sup>184</sup> The Human Rights Centre Uganda (HRCU) also reported that most Human Rights Defenders (HRDs) whom it had contacted had reported staying home and abiding by the directives.<sup>185</sup>

Naturally, this created a legal services crisis as it was the period of mass arrests and violations of human rights under the guise of enforcing the COVID-19 regulations. With legal aid services and law firms closed, most LGBT people and sex workers who faced human rights violations were forced to rely on their own limited means, or no means at all, in their pursuit of justice. Prior to the lockdown, LGBT people and sex workers also reported cases and sought legal and paralegal assistance from organisations such as HRAPF, AWAC, Women's Pro Bono Initiative (WPI), Defenders Protection Initiative (DPI), Sexual Minorities Uganda (SMUG), Chapter Four and UNESO, but these organisations could not be accessed during the lockdown. Transgender people also reported having difficulties accessing legal aid clinics like HRAPF which were assumed to be closed.<sup>186</sup> As Yiga Peter, the Executive Director of Gala Initiative, put it 'the closure of transport made offering legal aid impossible at the time when it was needed most'.<sup>187</sup>

In Nakulabye, sex workers formed an association that provides assistance when one is arrested.<sup>188</sup> It was a self-help solution to the problem of prevalent arrests by police. Although it was largely curtailed after the lockdown, it remains an important tool in supporting its members to seek justice when facing injustices.

All in all, accessing lawyers was extremely hard for every member of the public but much harder for LGBT persons and sex workers given the fact that they were already marginalised. Enforcement of the COVID-19 restrictions blew the prejudices out of proportion.

### 5.3.4 Non-classification of lawyers as essential service providers

The non-classification of lawyers as essential service providers meant that legal aid service providers, law firms as well as individual lawyers could not provide services as they could not move freely. The court's declaration in the *Turyamusiiima* case led to 30 lawyers being allowed to move but this came a little too late.

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<sup>183</sup> The Human Rights Centre, The Human Rights Centre Uganda (HRCU), 'Human rights issues arising out of the measures taken in Uganda to prevent the spread of the COVID-19 pandemic noted by the HRCU', 1 May 2020, <http://www.hrcug.org/publications/file/HUMAN%20RIGHTS%20ISSUES%20ARISING%20OUT%20OF%20MEASURES%20TO%20PREVENT%20SPREAD%20OF%20THE%20COVID-19.pdf> (Accessed 29th April 2020).

<sup>184</sup> As above.

<sup>185</sup> As above.

<sup>186</sup> FGD with Trans gender men (n 91 above).

<sup>187</sup> Interview with Yiga Peter held in Kampala on 11<sup>th</sup> March, 2021.

<sup>188</sup> FGD 002 with female sex workers (n 84 above) .

### 5.3.5 Discrimination in accessing justice

Such remained the trend through the COVID-19 lockdown. Transgender people reported being singled out for brutality and ridicule during the enforcement of the COVID-19 rules.<sup>189</sup> T4, one of the participants in the FGD at Tranz Network, narrated that when she went to police to seek justice for some of her colleagues who had been arrested, she was told by a police officer:

‘Nandikuyambye kuba ekizibu nkitegedde naye gwe omuntu sikutegedde’, which may be translated as ‘I would have helped you because I have understood your problem but I have not understood you the person.’<sup>190</sup>

Not only was this a thinly veiled dig at T4’s gender identity, it was a declaration by a police officer of their unwillingness to attend to a transgender person. On another occasion, she was ordered by a police officer to ‘*keep [my] transgenerness in the pocket if I need help*’,<sup>191</sup> and in another instance, T4 was arrested and charged with impersonating a woman.<sup>192</sup> Such treatment both prior to and the during COVID-19 period ensured that transgender people did not bother to seek justice from state agencies. TM2, a transgender person, further affirmed this view:

‘I could not seek a lot from the justice system like the police because I have been assaulted before due to my identity’.<sup>193</sup>

Cases of domestic violence escalated but the affected people could not report to police for fear of ridicule, discrimination and incarceration.

‘And they ask you, you go to the police you know what, I have been raped. You have been raped what do you mean by being raped? You are a man. They say that you are a man and you couldn’t address your issue that I am a transwoman and I have been raped’.<sup>194</sup>

‘Before COVID-19, whenever we got a legal problem we would call Madam Batte (Executive Director, Lady Mermaids Empowerment Centre) and she used to come running to our rescue. But during COVID it was difficult for her to move and we did not get assistance’.<sup>195</sup>

Upon evictions whether for non-payment of rent or merely on personal objections to a person’s sexuality or occupation, the landlords simply took property belonging to the tenants. Again, the affected persons hardly sought justice from the formal justice institutions for fear that they would not be heard.<sup>196</sup>

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<sup>189</sup> FGD with Transgender persons held on 15<sup>th</sup> February 2021.

<sup>190</sup> Above.

<sup>191</sup> As above.

<sup>192</sup> As above.

<sup>193</sup> Interview with TM2 held at Kampala on 29<sup>th</sup> April 2021.

<sup>194</sup> FGD with transgender persons, (n 91 above).

<sup>195</sup> FGDs 001 & 002 with female sex workers (n 84 & 86 above) and IDI 3 with a sex worker (n 109 above).

<sup>196</sup> FGDs with Transgender persons and LBQ women (n 91 and 98 above) and sex workers (n 84 & 86 above).



*I could not seek a lot from the justice system like the police because I have been assaulted before due to my identity.*

### 5.3.6 Fear of contracting COVID-19 by legal aid providers and by persons reporting

At the time, the fear of COVID-19 was so high that it reached hysterical levels. Everyone feared to venture out. Police stations were known to be congested and thus hotspots for COVID-19. As such, even legal aid service providers, community paralegals and LGBT persons and sex workers who could move would not do so freely for fear of contracting COVID-19, and persons who wanted to report cases feared that doing so would expose them to COVID-19.

### 5.3.7 Focus on basic survival

The COVID-19 period was one where all efforts were focused on basic survival due to food shortages, exclusion of LGBT persons and sex workers from food distribution efforts and focus on accessing health care. Access to justice came in as one of the least important needs. As such, very few bothered to fight for justice while they focused on more urgent needs like food and shelter.

### 5.3.8 General lack of awareness about alternative justice mechanisms: the case of Uganda Human Rights Commission and the Equal Opportunities Commission

The key human rights institutions which this study focused on are the Uganda Human Rights Commission (UHRC) and the Equal Opportunities Commission (EOC). As the enforcement of the COVID-19 regulations saw the most dramatic spike in human rights violations in general and access to justice rights specifically, UHRC and the EOC were expected to play a significant role, more so in respect of marginalised people such as the LGBT persons and sex workers.

#### i. The Uganda Human Rights Commission

The Uganda Human Rights Commission is established by Articles 51 and 52 of the Constitution as the government's chief human rights watchdog with powers to investigate human rights complaints, visit detention facilities, promote human rights and education and training among others.<sup>197</sup> It was operationalised by the Uganda Human Rights Commission Act Cap

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<sup>197</sup> The Constitution of Uganda, 1995 Article 51 and 52.

24. Where the UHRC finds that there is a human rights violation, it has powers to order the release of prisoners, award compensation, and order any other remedies.<sup>198</sup>

As part of its response, UHRC undertook a number of activities aimed at highlighting the need to integrate human rights in the country's response.

The UHRC reported receiving several complaints through its toll-free lines, social media platforms and e-mails. The complaints concerned among others, brutality by law enforcement and security officials whilst enforcing the Presidential directives of lockdown and curfew, lack of access to food during the lockdown period, lack of access to medical care and domestic violence, among others. Some of the complaints were referred to the National Task Force on COVID-19 for appropriate management. The UHRC also made interventions with regard to arrests and detentions around the country and especially intervened to ensure that suspects on petty offences were released on police bond to avoid overcrowding in cells.<sup>199</sup>

On 25 March 2020, the UHRC issued a press statement expressing its deep concern about the effect of COVID-19 on the enjoyment of all fundamental human rights and freedoms including civil, political, economic, social, cultural and solidarity rights.<sup>200</sup> In its statement, the UHRC largely praised the government for its response to COVID-19 and explained that the restrictive measures were permitted by law under articles 23(1) and 43 of the Constitution of Uganda and article 19 of the ICCPR.<sup>201</sup> The statement also lauded 'the good work done so far by security agencies in enforcing the important guidelines issued by His Excellency, the President to prevent the spread of COVID-19', but urged the security forces to ensure the methods employed respect human rights.<sup>202</sup> Although largely skewed towards defending and justifying the government restrictions and their enforcement, the UHRC statement did call upon all security agents to respect human rights as they enforce the Government guidelines on preventive measures in line with Article 21 of the Constitution.

In the statement, the UHRC were also alive to the plight of vulnerable communities, recommending that the government pays special attention to the protection of the rights of the most vulnerable persons in all the measures taken with the aim of addressing the challenges associated with COVID-19 by implementing a human rights-based approach.<sup>203</sup> The statement however does not specify the nature of the vulnerable people UHRC referred to, and neither does it make reference to the human rights and access to justice concerns of the LGBT persons and sex workers.<sup>204</sup> In a later statement, the UHRC listed the categories of vulnerable people to include Persons with Disabilities (PWDs), the elderly, the refugees,

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<sup>198</sup> Above, Article 53 (2)

<sup>199</sup> The Justice, Law and Order Sector (JLOS) 'COVID-19 Interventions by the Uganda Human Rights Commission' <https://www.jlos.go.ug/index.php/com-rsform-manage-directory-submissions/services-and-information/press-and-media/latest-news/item/744-covid-19-interventions-by-the-uganda-human-rights-commission> (Accessed 29 May 2021).

<sup>200</sup> UHRC 'Statement on human rights concerns in dealing with COVID-19' <https://drive.google.com/file/d/1ZBu30xZQ1y4H0EpivZy3Z5q4ehi6bsW/view> (Accessed 29th May 2021).

<sup>201</sup> As above.

<sup>202</sup> As above.

<sup>203</sup> As above.

<sup>204</sup> As above.

women, children, and sick people in detention.<sup>205</sup> LGBT people and sex workers were not included. According to Ms. Ruth Ssekindi, the Director of Monitoring and Inspections at the UHRC, the UHRC is fully committed to promoting access to justice for LGBT persons and sex workers, and their omission from such press statements is strategic and meant to protect them from the homophobic public.<sup>206</sup>

The UHRC also reported that it continued receiving and handling complaints, and between 25<sup>th</sup> March 2020 and 24<sup>th</sup> April 2020, it received 128 complaints, including 60 concerning violation of the right to freedom from torture, 39 on the right to personal liberty, 14 on child maintenance, 10 on domestic violence, 2 on the right to life, and 3 on the right to property.<sup>207</sup>

However, the UHRC Tribunal could not hear the complaints received as it was not fully constituted owing to the death of the Chairperson Mr. Meddie Kaggwa in November 2019.<sup>208</sup> Instead, the UHRC has been using other mechanisms such as mediation and reconciliation to resolve the complaints and disputes received.<sup>209</sup>

Besides the complaints, Ms. Ruth Ssekindi, reported that UHRC provided assistance to human rights organisations working on LGBT and sex workers issues such as HRAPF as they handled cases during the lockdown.<sup>210</sup> Such assistance included offering advice, sharing key contacts, and building partnerships.<sup>211</sup>

Sadly, the study found that the existence of the UHRC and its roles are generally unknown among the LGBT and sex worker communities. Even among those who know about them, especially the paralegals and organisations leaders, there was a general perception that the UHRC is not fully receptive to LGBT and sex work human rights issues.<sup>212</sup> It was further emphasised that the UHRC have not meaningfully engaged LGBT and sex worker organisations to create the necessary confidence in their capacity. Sanyu Hajara Batte, the Executive Director Lady Mermaids Empowerment Centre notes:

‘It’s hard even at the level where I am it’s hard to say let me go to Equal Opportunities or to Human Rights Commission and report a case because they don’t engage us. For us we believe that we have to be meaningfully engaged in everything they do.’<sup>213</sup>

Others do not consider it safe to report human rights violations suffered to government

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<sup>205</sup> Uganda Human Rights Commission ‘Statement on highlights of uhrc’s current human rights concerns and its recent interventions during the COVID-19 partial lockdown’ 22 August 2020. [https://www.uhrc.ug/statement-on-highlights-of-uhrcs-current-human-rights-concerns-and-its-recent-interventions-during-the-covid-19-partial-lockdown/UHRC Statement/](https://www.uhrc.ug/statement-on-highlights-of-uhrcs-current-human-rights-concerns-and-its-recent-interventions-during-the-covid-19-partial-lockdown/UHRC%20Statement/) (accessed 29<sup>th</sup> May 2021).

<sup>206</sup> Interview with Ruth Ssekindi, Director Monitoring and Inspections, Uganda Human Rights Commission, Kampala on 31 May 2021.

<sup>207</sup> UHRC, ‘Statement on the state of human rights and the fight against COVID-19 in Uganda’ [https://covid19.gou.go.ug/uploads/document\\_repository/authors/uhrc/document/Uganda\\_Human\\_Rights\\_Commission\\_Statement\\_on\\_state\\_of\\_human\\_rights\\_and\\_the\\_fight\\_against\\_covid19\\_in\\_Uganda\\_24042020.pdf](https://covid19.gou.go.ug/uploads/document_repository/authors/uhrc/document/Uganda_Human_Rights_Commission_Statement_on_state_of_human_rights_and_the_fight_against_covid19_in_Uganda_24042020.pdf) (Accessed 29<sup>th</sup> May 2021)

<sup>208</sup> Interview with Ruth Ssekindi (n 206 above).

<sup>209</sup> As above.

<sup>210</sup> Above.

<sup>211</sup> Above.

<sup>212</sup> General outlook from the KIs and FGDs conducted with leaders of organisations and sex workers and LGBT persons respectively.

<sup>213</sup> Interview with Sanyu Hajara Batte, n 103 above.

agencies including the UHRC.<sup>214</sup> Consequently, none of the participants in the study has attempted or knew someone who had attempted to file a complaint of human rights violations with the UHRC during the period under study.

## ii. The Equal Opportunities Commission

The Equal Opportunities Commission (EOC) was established by the Equal Opportunities Act 2007 in accordance with article 32 of the Constitution. It is mandated to eliminate discrimination and take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom for the purpose of redressing imbalances that exist against them. The EOC is central in the promotion of access to marginalised and vulnerable people as reflected in the objective of the EOC Act.

The Equal Opportunities makes provision for the continued operation and reception of complaints through several forums including the online complaints lodging portal.<sup>215</sup> It could not be determined how many complaints they received if at all or indeed if they handled any LGBT and sex worker complaints. It was also not possible to determine whether they were able to continue operating during the COVID-19 lockdown and if they took any initiatives to enhance access to justice for LGBT persons and sex workers.

As is the case with the UHRC, the study found that the EOC remained anonymous among the LGBT and sex worker communities. None of the participants in the study had reported any complaints to the EOC or sought its intervention in any way. Most of them perceived the EOC as another government agency that is not receptive to LGBT and sex workers' issues and complaints.

### 5.3.9 Further delay of cases pending before the courts

Another key issue was the further delay in accessing justice in cases earlier filed. The Chief Justice's circular created a hierarchy of cases that made plea taking and bail urgent matters as well as others classified as urgent. This largely applied to new cases, and cases that had already been filed were left without being heard. Thus, HRAPF's earlier filed cases on LGBT rights such as the SMUG Registration Appeal,<sup>216</sup> etc. were not heard and have not been heard up to this day. The COVID-19 court shutdown affected access to justice in cases earlier filed.

The judiciary recognised the case delays occasioned by the COVID-19 lockdown and explained that they have put in place special arrangements to handle such cases. The arrangements included organising special sessions to handle cases involving Sexual and Gender Based Violence, promotion of the plea-bargaining scheme, case weeding out exercise and the use of technology to deliver e-justice.

Plea bargaining is being promoted by the Judiciary in collaboration with the DPP and the other justice institutions to encourage inmates to take lighter sentences instead of enduring

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<sup>214</sup> Interview with TM1, TM2 and TM3, n 99 above.

<sup>215</sup> Available at <https://www.eoc.go.ug/complaints/lodge-complaint-form>

<sup>216</sup> *Frank Mugisha & Others V Uganda Registration of Services Bureau* Civil Appeal 338 of 2018

full trials.<sup>217</sup> The case weeding out exercise on the other hand, involves removing from court records cases that are not being prosecuted diligently by the litigants.<sup>218</sup>

## 5.4 STRATEGIES ADOPTED BY LGBT AND SEX WORKERS AND THEIR ORGANISATIONS AND PARTNERS TO ACCESS JUSTICE

Despite the hardships, LGBT and sex worker organisations as well as their partners took advantage of the situation and also changed approaches during this period. The following were done:

### 5.4.1 Filing strategic cases of violations as urgent and access quicker justice

The possibility of a case being certified as urgent and thus being heard quickly was utilised by legal aid service providers to ensure quicker justice. HRAPF applied for a certificate of urgency in the COSF-20 case and obtained it. This paved way for the substantive case to be heard and for the first time, an LGBTI matter was finalised by the High Court within one month – which was a new record. As such, quick precedents were made on access to lawyers which before would have taken years to make.

### 5.4.2 Political, diplomatic and judicial players engagements

The period also saw the use of political and other judicial channels to ensure access to justice. HRAPF directly engaged the Attorney General, the Minister of Justice and Constitutional Affairs, the Director of Public Prosecutions, and the Chief Registrar of Courts to ensure that the court hearing for the COSF 19 case happened.<sup>219</sup> This was not something that needed to be done before. These efforts were rewarded when the Director of Public Prosecutions (DPP) withdrew the charges which had been levied against the COSF 20 leading to their release from Kitalya Min Max Prison.<sup>220</sup> It is through similar efforts that HRAPF was able to obtain three car stickers to provide legal aid to the COSF 20 and other LGBT persons and sex workers in need of justice.<sup>221</sup>

### 5.4.3 Filing urgent cases in different courts of law

Since these were desperate times, desperate measures had to be taken. HRAPF filed the bail application for the COSF 20 in 3 different courts – the Chief magistrates Court of Mpigi at Nsangi, the Chief Magistrates Court of Mpigi and the High Court of Uganda.<sup>222</sup> Since all had jurisdiction, this was an attempt to ensure that one of the courts hears the matter urgently. Fortunately, the matter did not come to the level of a bail hearing.

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<sup>217</sup> Phone interview with Solomon Muyita, n 147 above.

<sup>218</sup> As above.

<sup>219</sup> Phone Interview with Patricia Kimera, n 139 above.

<sup>220</sup> Above.

<sup>221</sup> Above.

<sup>222</sup> Above.



#### 5.4.4 Using unconventional means of transport that could fit within the rules

Different actors used different means to ensure access to justice for their clients. Even during the total lockdown, lawyers from HRAPF always made efforts to provide legal aid by use of alternative but acceptable means of transportation such as bicycles, walking on foot, motorcycles and trucks.<sup>223</sup> This was how they managed to provide legal aid to other clients including LGBT people and sex workers.

Similarly, unconventional approaches were used by Chapter Four Uganda, a human rights organisation, as explained by Peter Magelah Gwayaka, the Program Manager;

'Whereas everyone else could not access lawyers, LGBT people tend to use specific lawyers who they comfortable with. Accessing lawyers for difficult for everyone but much harder for LGBT people. On the part of Chapter Four, to access our LGBT clients, Chapter Four lawyers had to use a lorry, buy charcoal and pretend to carry cargo'.<sup>224</sup>

Also highlighted was the work of the Women's Organisation Network for Human Rights Advocacy (WONETHA) in providing legal support to its members who faced arrests. One major limitation with WONETHA's intervention was the fact that its services were restricted to its members, leaving out the other sex workers.<sup>225</sup>

The Legal Aid Clinic of the Uganda Law Society (ULS) is also one of the legal aid clinics which made efforts to continue operating during the lockdown period of March – June 2020.<sup>226</sup> Some of the innovative ways employed were the use of toll-free phone lines which clients regularly called and were offered legal advice.<sup>227</sup> They also mediated and resolved conflicts over the telephone.<sup>228</sup> Other innovative methods were the use of video conferencing facilities to interview prisoners on video as well as sensitisation of prisoners on their rights through video and telephone calls.<sup>229</sup> In one of their key achievements during the lockdown, they obtained police bond for victims of COVID-19 rules enforcement at Manyangwa Police station, Gayaza, in Wakiso district.<sup>230</sup>

It was reported that during this period, the ULS legal aid clinic received increased cases of violence, theft, defilement, and violation of human rights. On the other hand, there were increased use of the plea bargain system as people with lighter charges were given lighter sentences such as community service.<sup>231</sup>

The ULS legal aid clinic, however, does not specifically target LGBT and sex worker clients, and as such could not share their experience handling LGBT and sex workers' cases.<sup>232</sup>

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<sup>223</sup> Interview with Winnie Nabukeera, n 82 above.

<sup>224</sup> Interview with Peter Gwayaka Magelah, n 111 above..

<sup>225</sup> FGDs 001 & 002 with sex workers (n 84 & 86 above)

<sup>226</sup> Interview with KI-001, Legal Aid, Uganda Law Society held in Kampala 18<sup>th</sup> March 2021

<sup>227</sup> As above.

<sup>228</sup> As above

<sup>229</sup> As above

<sup>230</sup> As above

<sup>231</sup> As above.

<sup>232</sup> As above.

### 5.4.5 Focusing energies on access to justice

Due to the ban on public meetings, some organisations focused all efforts on access to justice. HRAPF reported that all non-legal staff were sent home during this period while all lawyers remained on call.<sup>233</sup> This meant that the lawyers could be available to respond to different cases wherever this was possible.

### 5.4.6 Use of Community Paralegals

Community paralegals gained more prominence and played an active role during this period. Over the years, HRAPF has been working with various LGBT and sex worker-led organisations to train paralegals to assist LGBT and sex worker communities with handling legal issues. Community paralegals generally handle police bond applications, referrals to legal aid clinics, documenting human rights violations, mediation of disputes, assisting with preliminary processes in bail applications such as identification of sureties and payment of bond fees, among others.<sup>234</sup> Mediation of disputes by paralegals, especially the most senior paralegals, has become an important justice centre for LGBT people and sex workers.<sup>235</sup> The disputes which are handled at this level are usually intra-community in nature and concern such issues as child custody, minor thefts and quarrels, among others.<sup>236</sup> Mediation became an important mechanism for dispute resolution during COVID-19 restrictions as access to the formal dispute resolution mechanisms became highly restricted.

Sarah Mutiga, a HRAPF trained community paralegal, extolled the effectiveness of mediation in some cases:

‘I mediated some cases successfully because of these cases are between community members and are easy to deal with’.<sup>237</sup>

However, during the pandemic, the community paralegals were stretched and unreachable to most of the LGBT and sex workers who needed their intervention due to transport limitations and the limited numbers of paralegals themselves.<sup>238</sup>

### 5.4.7 Intra-Community Informal Mechanisms

In Nakulabye, sex workers formed an association that provides assistance when one is arrested.<sup>239</sup> It was a self-help solution to the problem of prevalent arrests by police. Although it was largely curtailed during the COVID-19, it remains an important tool in supporting its members seek justice when facing violations.<sup>240</sup>

It also handles and resolves some disputes and conflicts among sex workers themselves and those between sex workers and their clients. Sex worker-client disputes usually centre

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<sup>233</sup> Interview with Winnie Nabukeera, n 82 above.

<sup>234</sup> As Above.

<sup>235</sup> As above.

<sup>236</sup> As above.

<sup>237</sup> Interview with Sarah Mutiiga held at Kampala on 9<sup>th</sup> March 2021

<sup>238</sup> Interview with Sarah Mutiiga as above

<sup>239</sup> FGD 002 with sex workers (n 86 above)

<sup>240</sup> As above.

on non-payment of the agreed fees, demands for unprotected sex, abuse and some forms of sexual violence.<sup>241</sup> During the COVID-19 lockdown when access to the formal justice institutions was impeded, the association played a key role even though its operations were greatly limited by the restrictions.

In other areas with no similar associations, brothel managers performed similar functions, especially of protecting sex workers from exploitation and non-payment by their clients. However, with the brothels closed, this layer of protection also disappeared.

Other mechanisms such as counselling and psychosocial support offered virtually by organisations such as Echoes Uganda were employed. Similar online platforms were created by other organisations.<sup>242</sup>

What is clear is that informal mechanisms played a key role in resolving disputes and administering justice to LGBT people and sex workers. They are effective in their own way as they understand and relate with the issues which affect the communities they work with and are generally manned by people who are part of those communities. However, such mechanisms were equally affected by the lockdown in a manner that greatly limited their performance, which left most LGBT persons and sex workers in a justice limbo.

## 5.5 CONCLUSION

The period of the COVID-19 strict lockdown was full of challenges for everyone. Access to justice was very much affected in different ways. However, it is also an indication of the resilience of the various groups that they rose up and were able to actively respond to ensure that at least some people got access to justice. What is clear is that only prominent cases got attention at this time, and so many other cases went unreported and without redress as all systems were overwhelmed. Again, very few sex workers or LGBT persons sought justice, beyond those who were arrested. The avenues were generally closed and people feared accessing the different mechanisms as they have never been friendly or available to them even before then.

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<sup>241</sup> As above.

<sup>242</sup> Interview with TM1 and TM 2 held at Kampala on 29<sup>th</sup> April, 2021.

## 6. CONCLUSIONS AND RECOMMENDATIONS

### 6.1 CONCLUSION

In response to the COVID-19 pandemic, the government of Uganda relied on the provisions of the Public Health Act to enact into enforceable regulations the numerous guidelines and directives pronounced by His Excellency the President in his speeches. Within these were some of the most dramatic and unprecedented rules, including the closure of borders, banning of all forms of public gatherings, imposition of a night curfew, prohibition of public and private means of transport, closure of all forms of businesses, among others. The central government measures were augmented by internal restrictions by the Judiciary which partially closed courts of law and the Uganda Prisons which banned all forms of visitations to prison facilities including access by lawyers.

Whereas the measures by themselves could be queried for non-compliance with human rights standards, it's their enforcement and implementation which sparked some of the most widespread human rights violations. The militarised approach led by the UPDF and the LDUs assisted by the Uganda Police Force saw widespread incidences of torture, mass arrests, deaths and myriad forms of sexual and gender-based violence. With LGBT people and sex workers already facing marginalisation and discrimination, enforcement of the COVID-19 regulations disproportionately affected them as demonstrated. The closure of courts and prisons meant that people facing such violations could hardly access justice.

Other government justice institutions like the UHRC endeavoured to keep attending to complaints, and in the case of the UHRC made several public pronouncements to guide government and security forces on enforcing the COVID-19 regulations in a manner which respects human rights. However, neither the UHRC nor the EOC were utilised by LGBT people and sex workers, most of whom were not aware of their existence or simply were apprehensive of them and doubted they would offer remedies.

The COVID-19 restrictions however also presented some opportunities for LGBT persons and sex workers to access justice, such as the expedited hearings for matters certified as urgent, use of visual-audio technologies, the release of petty offenders and enhanced attention to the human rights plight of LGBT and sex workers in Uganda.

### 6.2 RECOMMENDATIONS

The study makes the following recommendations to the different stakeholders and actors in the justice sector:

#### 6.2.1 To the President and the COVID-19 Task Force

- i) To issue directives that respect the human rights of all persons, particularly those most vulnerable to COVID-19, HIV/AIDS and other pandemics/ epidemics.
- ii) Pardon more petty offenders so as to decongest prisons during the COVID-19 period.

- iii) Move cabinet to develop proposals to decriminalise consensual same-sex relations and sex work as criminalisation puts vulnerable populations at risk of COVID-19 and HIV/AIDS

### 6.2.2 To the Minister of Health

- i) Design human rights-centred measures to control COVID-19 and other epidemics.
- ii) Adopt non-custodial sentences such as instant fines, cautions and community service for COVID-19 regulation offenders.
- iii) Highlight the link between rigid enforcement of COVID-19 restrictions and the limited access to HIV drugs and treatment during the COVID-19 lockdown.

### 6.2.3 To the Uganda Police Force and the Uganda Peoples' Defence Forces

- i) The Uganda Police Force and the Uganda Peoples' Defence Forces (UPDF) should investigate all the human rights violations which were committed by their respective officers during the COVID-19 lockdown and beyond and bring those responsible to book.
- ii) Human rights training should be conducted for police and UPDF officers to sensitise them about human rights and especially access to justice for LGBT people and the sex workers

### 6.2.4 Judiciary

- i) Roll out video link facilities to all major courts, including all High Court circuits and Chief Magistrates Courts across the country if the benefits of video link trials are to be realised during the COVID-19 pandemic.
- ii) Keep courts open to handle criminal matters during pandemics while observing Standard Operating Procedures in order to avoid overcrowding of prisons and the violation of people's right to a fair and speedy hearing.

### 6.2.5 To the Parliament of Uganda

- i) Repeal laws that criminalise same-sex relations and sex work to reduce on the violations against LGBT persons and sex workers that arise because of these laws.
- ii) Continue playing the oversight role over the enforcement of COVID-19 measures to ensure that the enforcement system is human rights compliant.

### 6.2.6 Civil Society organisations working on LGBT and sex worker issues

- i) Conduct sensitisation training for the Uganda Police, the UPDF, the Judiciary, and Uganda Prisons Service on access to justice rights for LGBT persons and sex workers and human rights generally.
- ii) Train more paralegals to provide legal first aid for LGBT people and sex workers as they play an important role during crises like the COVID-19 lockdown.
- iii) Encourage other legal aid clinics to extend services to LGBT people and sex workers so as to enhance access to justice for Key Populations.

### 6.2.7 The Uganda Human Rights Commission and the Equal Opportunities Commission

- i) The UHRC and the EOC should undertake deliberate initiatives to promote accessibility for LGBT persons and sex workers such as outreaches, the establishment of special desks to receive and handle LGBT and sex worker matters and working with legal aid service providers to promote access to justice for LGBT persons and sex workers.
- ii) The UHRC and EOC should investigate all human rights violations and instances of marginalisation respectively which were committed during and in the process of enforcement of the COVID-19 regulations, including against Key Populations and prepare comprehensive reports to Parliament and recommend appropriate action.

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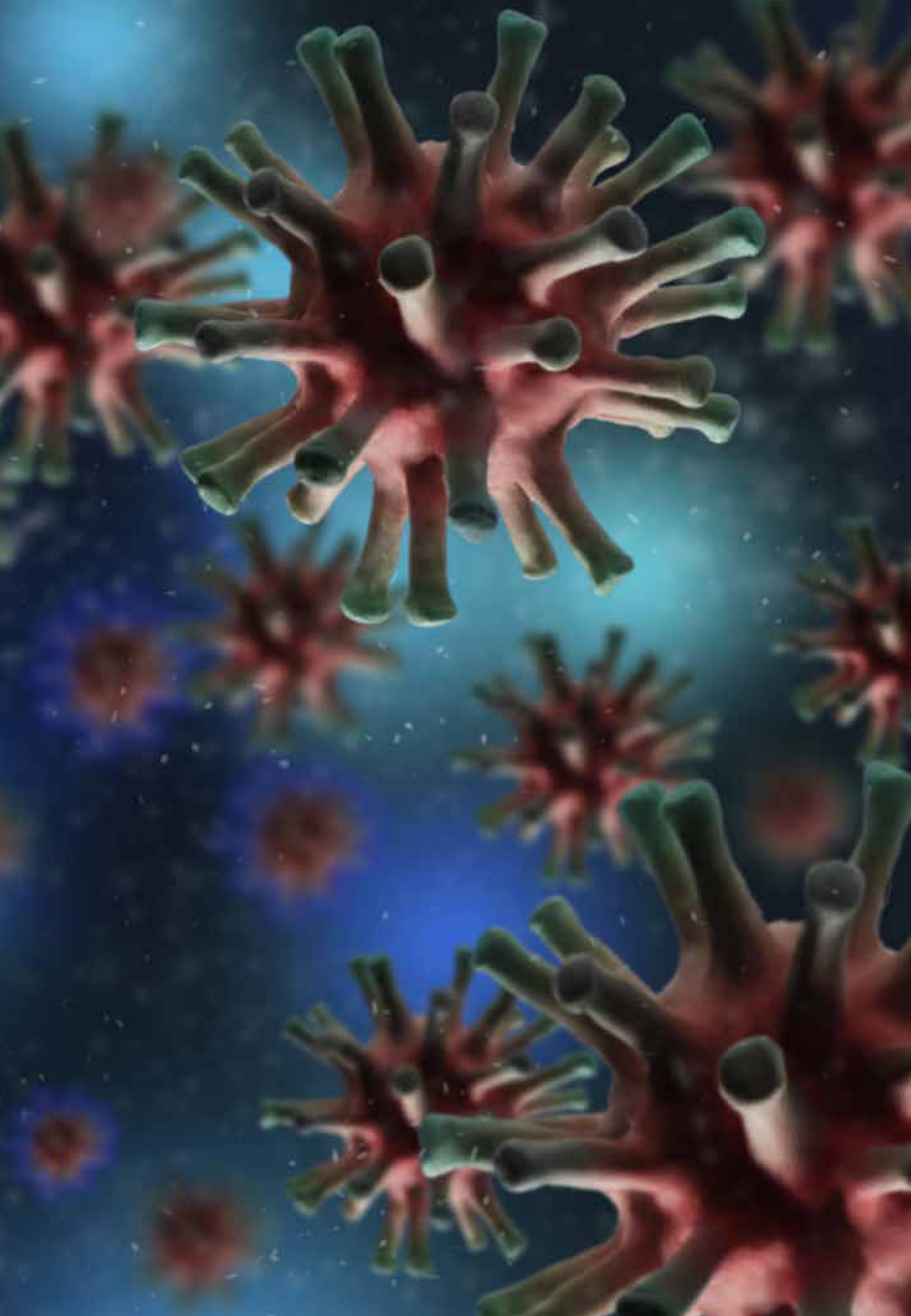
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