



# THE UGANDA REPORT OF HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, 2020

With contributions from

Health and Rights Initiative;

HOPE Mbale;

Human Rights and Economic Empowerment Development (HUREED);

Freedom and Roam Uganda;

Mbarara Rise Foundation and

Tranz Network Uganda

With support from





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JUNE 2021

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## **ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM**

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Human Rights Awareness and Promotion Forum (HRAPF) is a voluntary, independent, non-partisan non-governmental organisation that works towards the protection and promotion of the rights of marginalised communities in Uganda. HRAPF does this through the direct provision of legal aid services, legislative advocacy, human rights awareness, research and community capacity enhancement. HRAPF operates a specialised legal aid clinic for marginalised persons and Most at Risk Populations (MARPS) in Uganda.

## **ABOUT THE PARTNER ORGANISATIONS**

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### **Freedom and Roam Uganda (FARUG)**

Freedom and Roam Uganda is one of the oldest organisations in Uganda, working on issues of sexual orientation and gender identity/expression through lobbying, dialogue, visibility and voice. It was established specifically to provide support services and conduct advocacy on the issues that affect lesbian, bisexual and queer women and transgender persons, and has over the years continued to provide services geared towards improving access to physical, mental and sexual and reproductive health and wellbeing of LBQ/T persons in Uganda. FARUG currently hosts a specialised legal aid desk for LBQ women that is operated in partnership with HRAPF.

### **Health and Rights Initiative (HRI)**

Health and Rights Initiative (HRI) is an organisation working with LGBTI persons, sex workers and PWUIDs in the Northern and West Nile regions of Uganda. The vision of the organisation is a society that provides equal opportunities and justice for all, and they work to advocate for justice and equal opportunities for marginalised persons through social and economic empowerment, advocacy and research on issues affecting KPs in the rural areas. HRI is committed to improving the livelihoods of KPs in the region and is also currently the host of HRAPF's regional legal aid centre in the Northern Region.

### **HOPE Mbale**

HOPE Mbale is a non-profit organisation that promotes and advocates for human rights observance, quality health service provision and equal opportunities for all persons, particularly KPs, and is based in the Eastern Region of Uganda. The organisation offers health and legal support services to the LGBTQ community and sex workers in the area, and is currently the host of HRAPF's regional legal aid centre in the Eastern Region.

## HUREED Initiative (Human Rights and Economic Empowerment Development)

Human Rights and Economic Empowerment Development (HUREED) is a Uganda based nonprofit, non-governmental organisation established in 2017. HUREED seeks to promote the highest standard of health and economic well-being for all LGBTI persons through providing support, information, tackling violence, stigma and discrimination and advocating for equitable access to health, legal justice and social inclusion for LGBTI persons in Uganda. HUREED's overarching goal is to represent and advocate for the rights, needs and best interests of all LGBT persons and sex workers in Uganda as well as empowering the communities to recognise and work towards resolving LGBTI Persons' issues and challenges in Uganda. Throughout 2020, HUREED Initiative hosted HRAPF's legal aid centre dedicated to provision of legal aid services to LGBT persons, sex workers and PWUIDs in the rural central region.

## Mbarara Rise Foundation

Mbarara Rise Foundation (MRF) was founded in 2016 by a group of social activists and educators to advocate for high quality health services and the fundamental human rights of the LGBTQ community in western Uganda. The organisation is based in Mbarara and is the host of HRAPF's legal aid centre in the Western Region. The work of MRF focuses on improving access to health services, social justice and economic empowerment for KPs in the Western Region of Uganda.

## Tranz Network Uganda

Tranz Network Uganda (TNU) is an indigenous not for profit umbrella organisation that brings together transgender and gender non-conforming persons and organisations in Uganda. TNU was established in July 2014 with the aim of supporting, coordinating and fostering collaboration among transgender and gender non-conforming persons' organisations, and focuses on advocacy for an improved legal and policy regime for the full realisation of the rights and dignity of TGNCs. Presently, TNU hosts a specialised legal aid desk for transgender and gender non-conforming persons that is operated in partnership with HRAPF.

# PREFACE

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The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity, 2020 is the eighth edition of the report. It presents cases of protection and violations of the rights of LGBT persons in Uganda based on real or presumed Sexual Orientation and Gender Identity reported in 2020.

Unlike earlier reports, this report contains only cases reported to HRAPF and its partner organisations that either host regional legal aid centres or legal aid desks, and those handled by HRAPF trained paralegals and reported to HRAPF. This is because HRAPF has now been able to establish a countrywide network of legal aid service provision with regional centres in each of the four major regions of the country, specialised legal aid desks hosted by different organisations and the network of HRAPF trained community paralegals. Throughout 2020, the central regional centre was hosted by HUREED Initiative in Lugazi (Buikwe District), serving the rural central region. The Eastern Region Legal Aid Centre is hosted by HOPE Mbale, the Northern Region legal Aid Centre is hosted by Health and Rights Initiative (HRI), while the Western legal aid centre is hosted by Mbarara Rise Foundation. The two specialised legal aid desks – one for LBQ women and the other for transgender persons - are currently hosted by Freedom and Roam Uganda (FARUG) and Tranz Network Uganda (TNU) respectively. The main office at HRAPF serves the entire country and provides support and oversight to HRAPF's wider legal aid network.

The year 2020 was a unique year: the entire country was largely on lockdown for most of the year due to the COVID-19 pandemic; new laws and policies that dramatically changed the lives and lifestyles LGBT persons were passed, and unprecedented restrictions were imposed on human rights and freedoms. Over the last three years, there had been a demonstrated positive change in the interactions between law enforcers and LGBT persons, with human rights violations based on sexual orientation and gender identity perpetrated by members of the Uganda Police Force reducing between 2017 and 2018. However, this dynamic was tested by the COVID-19 restrictions and the enforcement of those measures. The most vulnerable and marginalised persons in society were constantly in conflict with the law and therefore in contact with the law enforcers under their various agencies, and numerous arbitrary arrests underlined by homophobia were made under the guise of enforcing the COVID-19 directives. The pandemic also made LGBT persons more 'visible' as they were forced to stay home, thus exposing them to hostility from the general public. This report, in addition to profiling human rights violations based on real or presumed sexual orientation and gender identity, also specifically tracks and analyses the extra layers of vulnerability created for LGBT people by the COVID-19 pandemic and the measures instituted by the state to curb its spread.

The report tracks human rights violations perpetrated by both state and non-state actors, as is the case with previous reports in the series. It is based on properly documented cases of human rights violations based on real or presumed SOGIE and is intended as a tool for evidence-based advocacy efforts towards positive change in the legal and policy framework in favour of LGBT persons in Uganda. It is also intended to serve as a tool for sensitising both state and non state actors on the discrimination and degradation which

LGBT persons continue to face on a daily basis, despite the state's constitutional obligation to ensure that the rights of all persons in Uganda are respected, upheld and promoted without discrimination.

All the cases in this report have been independently verified through reference to case files, documentary evidence and interviews with the victims, lawyers and/ or paralegals that handled the cases.

We hope that this report contributes to the record of human rights violations based on real or presumed sexual orientation and gender identity in Uganda, particularly during the COVID-19 pandemic.

**Dr. Adrian Jjuuko**

Executive Director

# PROJECT TEAM

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# GLOSSARY

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|                     |   |
|---------------------|---|
| Bisexual:           | A person romantically and/ or sexually attracted to both men and women, though not necessarily at the same time   |
| Case:               | A separate set of facts involving the violation of a law or a right and which is included in one file. A single case can involve multiple persons and multiple violations arising from the same set of facts        |
| Gay:                | A man romantically and/or sexually attracted to men   |
| Gender identity:    | A person's conception of self as male or female or both or neither  |
| Homosexual:         | A person attracted to persons of the same sex   |
| Intersex:           | A condition in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male   |
| Key Populations:    | Groups of people considered to be at a higher risk of contracting HIV and who often have less access to essential health services due to various socio-legal factors related to their identities/behaviour patterns |
| Lesbian:            | A woman romantically and/or sexually attracted to women   |
| Outing:             | The act of disclosing a lesbian, gay, bisexual or transgender person's sexual orientation or gender identity without that person's consent  |
| Perpetrator:        | The person or institution responsible for causing a human rights violation or violations of human dignity   |
| Sex:                | The physical distinction between male and female (genitalia)  |
| Sex worker:         | An adult person who consensually offers sexual gratification in exchange for money or other material gain as a way of gainful employment  |
| Sexual minorities:  | A group of persons whose sexual orientation, gender identity, and/ or sex practice differs from the majority of the surrounding community   |
| Sexual orientation: | A person's emotional, physical and sexual attraction and the expression of that attraction with other individuals   |
| Transgender:        | Someone whose deeply held sense of gender is different from their biological sex assigned at birth  |
| Trans-man:          | A transgender person who was assigned the female sex at birth but identifies as male  |
| Trans-woman:        | A transgender person who was assigned the male sex at birth but identifies as female  |
| Violation:          | An act that contravenes a law that guarantees a right   |

# LIST OF ACRONYMS

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|         |  |
|---------|--|
| AG:     | Attorney General   |
| DPP:    | Directorate of Public Prosecutions                           |
| EOC:    | Equal Opportunities Commission                               |
| HIV:    | Human Immuno-deficiency Virus                                |
| HRI:    | Health and Rights Initiative                                 |
| HRAPF:  | Human Rights Awareness and Promotion Forum                   |
| HUREED: | Human Rights and Economic Empowerment Development Initiative |
| FARUG:  | Freedom and Roam Uganda                                      |
| LGBT:   | Lesbian, Gay, Bisexual and Transgender                       |
| LBQ:    | Lesbian, Bisexual and Queer                                  |
| MRF:    | Mbarara Rise Foundation                                      |
| MSM:    | Men who have Sex with Men                                    |
| RDC:    | Resident District Commissioner                               |
| SOGIE:  | Sexual Orientation and Gender Identity/ Expression           |
| TGNC:   | Transgender and Gender Non-Conforming persons                |
| TNU:    | Tranz Network Uganda   |
| UHRC:   | Uganda Human Rights Commission                               |
| UPF:    | Uganda Police Force  |

# EXECUTIVE SUMMARY

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The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity, 2020, explores the events of the year 2020 with a focus on cases and experiences involving the violation of the human rights of LGBT persons based on real or presumed sexual orientation/gender identity or expression. This report explores the events of 2020 in as far as they affected the human rights of LGBT persons guaranteed both by the Constitution of Uganda and regional and international human rights law. The focus of the report is exclusively on human rights violations that are wholly, partially, or primarily based on the real or presumed sexual orientation or gender identity or expression of the victims.

The report categorises human rights violations based on the nature of the perpetrators, and then the specific rights violated. Outstanding and glaring incidents of violations are specifically pointed out to enable the reader appreciate the context in which violations of human rights based on Sexual Orientation and Gender Identity/Expression (SOGIE) occurred in the year 2020, the changes that the COVID-19 pandemic brought to this dynamic and the circumstances under which violations of the rights of LGBT persons occurred during the year.

The data for this report was collected through review and independent verification of cases involving LGBT people handled by HRAPF through the main HRAPF legal aid clinic, the regional legal aid centres and specialised legal aid desks hosted at partner organisations and the network of HRAPF trained community paralegals. The report however does not include all documented cases of violations against LGBT persons, but only those violations which could be independently verified by the research team.

The report also exposes the traditional, institutional and systemic factors that influence violations of the rights of LGBT persons in Uganda, and makes recommendations necessary for creating a more human rights affirming environment for LGBT persons in Uganda.

## Key Findings

1. There were a few instances of protection of the rights of LGBT persons, with the police protecting a gay man from violence by members of the general population in one case, and the judiciary upholding the rights of LGBT persons through providing redress to 20 youths who had been denied access to their lawyers by prison authorities on the pretext of COVID-19.
2. A total of 398 human rights violations were committed by state actors against LGBT persons based on sexual orientation and gender identity during the year 2020, arising from a total of 96 cases.
3. Out of these, 247 (62%) were human rights violations directly committed by state actors arising from 40 separate cases while 151 (38%) were violations committed through the state's failure to provide effective remedies in cases of abuse of human rights by non state actors arising from 56 different cases.

4. The Uganda Police Force committed the most violations against LGBT Persons being responsible for 89 out of the total 398 violations. This was 22.4% of the 398 violations and 35.9% of all violations by state actors. The general public committed the highest number of abuses of the human rights of LGBT persons being responsible for 90 abuses which is 22.6 of all violations and 59.2% of all abuses by non state actors.
5. The most violated right was the right to equality and freedom from discrimination, with a total of 138 violations (34.7% of all violations). This was mostly violated by members of the general public without effective redress from the state, who committed 58 abuses out of the 138 violations and abuses of the right (42%).

## Key Recommendations

### To the President of the Republic of Uganda

1. Publicly condemn wanton acts of violence and discrimination against vulnerable minorities, including LGBT persons, by both state and non-state actors, and call on the responsible authorities to ensure that all such incidents are fully investigated and the perpetrators penalised.
2. Reject all proposed legislation that perpetrates discrimination on basis of sexual orientation and gender identity.
3. Ensure that issues of non-discrimination and the protection of vulnerable persons, including LGBT persons, are included in Uganda's response to major public crises, such as the COVID-19 pandemic.
4. Discourage hate speech and desist from making inflammatory public statements that fuel homophobic hate and violence.

### To Parliament

1. Repeal section 145 and 146 of the Penal Code which criminalise 'having carnal knowledge against the order of nature' in as far as they apply to consensual same-sex relations as these provisions are used to persecute LGBT persons and strip them of equal protection of the law.
2. Repeal sections of the Penal Code Act that create broad and vague petty offences such as being a common nuisance and being a rogue and vagabond, which have been used to arbitrarily arrest and punish persons who are generally considered "socially undesirable", including LGBT persons.
3. Ensure that the government fulfils its international and regional human rights obligations to all without any discrimination through enacting laws that affirm the inherent dignity and humanity of all persons in line with these obligations.

### To the Uganda Law Reform Commission

1. Develop proposals based on internationally recognised human rights standards for constitutionally compliant alternatives to laws creating petty offences that protect the rights of all persons.

2. Make proposals for the amendment of the Penal Code Act to repeal the sections that criminalise consensual same-sex relations in line with international human rights standards.
3. Develop proposals for laws that appropriately define and penalise hate speech against marginalised persons.

### **To the Uganda Police Force**

1. Conclusively investigate all cases of violence against LGBT persons by members of the force and the public and take appropriate action to offer redress to the victims.
2. Continue to partner with human rights organisations to train Police officers on marginalisation as well as the limits of the laws which they are mandated to enforce.
3. Strengthen mechanisms that exist to redress human rights violations committed by members of the UPF. In particular, improve the effectiveness of the Police Professional Standards Unit in handling matters of violations committed by Police Officers.

### **To the Uganda Human Rights Commission**

1. Demand action and accountability from the state for all human rights violations reported, especially those that are tacitly condoned or otherwise unaddressed by state authorities.
2. Hear and dispose of cases involving violations of the rights of LGBT persons that are pending before the Commission's Complaints and Investigations Directorate.
3. Develop proposals to amend laws that are discriminatory and which do not align with the Constitution of the Republic of Uganda and its international obligations.
4. Include cases of discrimination based on sexual orientation and gender identity in the Annual Reports to Parliament.
5. Ensure the implementation of Resolution 275 of the African Commission on Human and Peoples' Rights on Prevention of Violence against Persons based on their Real or Presumed Sexual Orientation and Gender Identity.

### **To the Equal Opportunities Commission**

1. Document and investigate systemic and institutionalised discrimination based on sexual orientation and gender identity, and make recommendations for the elimination of such discrimination.
2. Continue to train EOC staff to build their capacity in the documentation and handling of matters of discrimination and marginalisation based on sexual orientation and gender identity.
3. Include cases of discrimination based on sexual orientation and gender identity in the Annual State of Equal Opportunities Reports to Parliament.

## To Civil Society Organisations

1. Make use of the Human Rights (Enforcement) Act 2019 by supporting LGBT persons who have suffered human rights violations to institute cases to hold perpetrators of these violations liable.
2. Sustain Civil Society Organisations' partnerships developed for the monitoring and documentation of LGBT rights violations to support further advocacy.
3. Intensify advocacy efforts towards the decriminalisation of petty offences as an avenue of addressing legal barriers to human rights protection for LGBT persons in Uganda.
4. Support the Uganda Human Rights Commission in monitoring and documenting reports of violence, abuse, and discrimination based on sexual orientation and gender identity.

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# 1. INTRODUCTION

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The Uganda Report of Human rights violations based on Sexual Orientation and Gender Identity is published on an annual basis by HRAPF and its partner organisations. This report examines the human rights protections enjoyed and violations suffered by LGBT persons in Uganda for a particular year, giving an overview of the human rights situation for LGBT persons in Uganda. The report highlights the linkage between existing legal and policy regimes in the country and the emerging trends of protection and/ or violation of the rights of LGBT persons.

The human rights violations suffered by LGBT persons are categorised and a clear distinction is drawn between violations committed by state actors and those committed by non-state actors. The report highlights some of the cases verified, thereby giving an insight into the determination of a human rights violation and the eventual impact of the human rights violations on the individual lives of the LGBT persons affected. It also further scrutinises the general human rights situation for LGBT persons in the year and advances recommendations to various duty bearers on what can be done to protect, respect and fulfil the rights of LGBT persons in Uganda.

The human rights situation in 2020 was greatly shaped and informed by the COVID-19 pandemic that ravaged the country as well as the entire world. There were several violations of the right to liberty, the right to equality and freedom from discrimination, and the right to dignity and freedom from torture and cruel, inhumane and degrading treatment and punishment perpetrated in the course of the enforcement of the restrictions put in place by the state to curb the spread of COVID-19. Still in the context of the COVID-19 pandemic, there was a marked increase in the violations of human dignity perpetrated by non-state actors, in particular the general communities where LGBT people reside.

The report does not include all cases of violations against LGBT persons in the year 2020, as it only focuses on cases documented by HRAPF and partner organisations within its legal aid network as well as community paralegals trained by HRAPF and reporting cases to HRAPF. The report is centred on documented human rights abuses and violations based on sexual orientation and gender identity or expression by HRAPF through its main legal aid clinic, regional legal aid centres, legal aid desks, and the network of trained Community Paralegals as well as contributing partner organisations. It also does not include all cases reported to HRAPF, and only focuses on those that have been independently verified by the research team.

This report is a tool for evidence-based advocacy for an improved human rights situation for LGBT persons. It provides evidence of the human violations suffered as well as the protections enjoyed by the LGBT community in the year under review.

## 1.1. Methodology

The cases forming part of this report were collected through the following process:

### a) Review of case files

All HRAPF case files concerning LGBT persons were reviewed and those containing incidents of human rights violations or violations of human dignity by non state actors were identified. These were further reviewed to ensure that only those cases in which the identified violations were based partially, primarily or wholly on the victims' real or presumed SOGIE were included.

### b) Review of documentary evidence

The next step was to independently verify the documents on the case files. In every case in which it could be demonstrated on the face of it that a human rights violation had been committed based on the SOGIE of an LGBT person, documentary or other evidence on file was also reviewed. This documentary evidence included photographic evidence, paralegal case reports and police bond forms, police medical examination forms for victims of violence and witness statements attesting to the facts of the alleged violations. A case is considered verified if there is valid documentation on the file which serves as evidence of the alleged violation. All original copies of the documents were sought and reviewed.

### c) Interviews with clients, witnesses and officers who handled the cases

Where violations could not be verified based on the documentation on file, or where facts or outcomes of the incident were unclear in any way, victims of the violations, Community Paralegals or officers who handled the case or who had knowledge about the case were contacted and interviewed. These interviews served to provide additional information, clarify facts and flow of events and corroborate the information on file.

## 1.2. Limitations

Several limitations were faced in developing this report:

While the report seeks to cover the human rights situation of LGBT persons at the national level, the information available in compiling the report is limited to the work of lawyers and paralegals attached to HRAPF and partner organisations. Fortunately, national coverage has improved as HRAPF has opened up regional legal aid centres in various areas of Uganda, and the LGBT social movement has grown to include several CSOs and CBOs across the country. Nevertheless, the report does not cover every case that has happened in Uganda, and therefore cannot give a complete picture of the state of human rights for LGBT persons in the country as the coverage remains relatively limited.

Additionally, the COVID-19 directives issued by the Government of Uganda meant that majority of the cases went unreported to both HRAPF and partner organisations because of challenges in traveling to centres where people could report the cases. There was also a general shift in focus to basic survival for most people during this period which limited the attention LGBT people could devote to identifying and reporting violations. As such, the entire human rights situation of LGBT persons in 2020 cannot be accurately represented by this report. The report does however present a general picture of the human rights situation for LGBT persons as far as the same can be ascertained.

## 2. THE SOCIAL, LEGAL AND POLITICAL DEVELOPMENTS THAT IMPACTED ON THE RIGHTS OF LGBT PERSONS DURING 2020

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In 2020, several events took place that impacted the human rights of LGBT persons in Uganda, particularly in the wake of the COVID-19 pandemic. Several changes and additions to the legal and policy framework of Uganda were made to address the COVID-19 pandemic. However, these became additional tools of oppression, targeting the LGBT community and clothing in pseudo-legality several high handed actions that violated the basic human rights of LGBT persons.

In addition, the political environment leading up to the general elections of January 2021 was trying for the LGBT community, especially with some politicians running on the anti-gay platform in deference to the homophobic sentiments of many Ugandans in a bid to win the popular vote.

On the legal front, there were a number of cases concerning LGBT persons' rights that were filed in 2020. These mainly arose out of the arrest of 23 LGBT youths in March 2020. The youths were arrested from an LGBT crisis shelter operated by Children of the Sun Foundation (COSF) in Kyengera for allegedly breaching COVID-19 directives. 20 of these were charged with doing a negligent act likely to spread infection of disease and remanded to Kitalya Mini Max Prison.<sup>1</sup> The prison authorities denied HRAPF lawyers access to the 20 due to an administrative instruction that had been issued by the Commissioner General of Prisons to ostensibly prevent COVID-19 from spreading into the prison population. HRAPF then filed a case challenging the decision by the prisons authorities in denying 19 of these youths access to their lawyers as a violation of their rights to a fair hearing and liberty.<sup>2</sup> The Court agreed with HRAPF and held that the denial of access to lawyers for the 19 persons was a violation of their right to a fair hearing guaranteed under Article 28 of the Constitution and Article 44 (c), which could not be derogated from even in the context of a pandemic, and the 19 were awarded Five Million Shillings each as damages for the violations. Another case was also filed challenging actions of torture, cruel and inhuman treatment meted on the 20 during their arrest and incarceration.<sup>3</sup> The case is still pending hearing. Another case was also filed as a private criminal prosecution against Hajji Abdul Kiyimba and PO Philemon Woniala under the Prevention and Prohibition of Torture Act<sup>4</sup> for actions of torture, inhuman and degrading treatment against the 20, although the case was dismissed by the court on jurisdictional grounds.<sup>5</sup> A communication was also filed before the UN Working Group on

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<sup>1</sup>Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext' Human Rights Watch 03 April, 2020 <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext> (accessed 18 March 2021).

<sup>2</sup> *Human Rights Awareness and Promotion Forum V Attorney General & Commissioner General of Prisons* Miscellaneous Cause No. 81 of 2020.

<sup>3</sup> *Mukiibi Henry & 20 Others v Hajji Abdul Kiyimba, Philemon Woniala and Attorney General*, High Court Civil Suit No. 179 of 2020.

<sup>4</sup> No.3 of 2012.

<sup>5</sup> *Mukiibi Henry and 6 Others Vs. Hajji Abdul Kiyimba and PO Philemon Woniala* Criminal Case No. 505 of 2020.

Arbitrary Detention concerning the detention of the 20, and this was pending by the end of the year, although the Working group has since rendered its opinion in favour of the applicants.<sup>6</sup>

Decisions and policies made in Uganda are influenced by developments in other African countries, especially our close East African neighbours. Over time, different jurisdictions in Africa have upheld LGBT rights and taken positive steps towards the decriminalisation of consensual same-sex relations and/ or protection of the rights of suspected LGBT persons in other ways. In 2020, the Senate of Gabon passed a bill to repeal the 2019 Penal Code law that criminalised same-sex relations with a maximum penalty of 6 months imprisonment and a fine of up to 5 million Central African Francs.<sup>7</sup>

Furthermore, in 2020, the civic space for the advocacy and promotion of the human rights of LGBT persons continued to shrink due to different decisions and pronouncements made by the President of Uganda. In November 2020, at the height of presidential campaigns for the 2021 general election, Robert Kyagulanyi, the leading opposition candidate, was arrested by security forces, which sparked off nationwide protests leading to the death of over 54 people.<sup>8</sup> In addressing these riots, the President reportedly stated that these riots had been sponsored 'by outsiders, homosexuals and others who don't like the stability and independence of Uganda.'<sup>9</sup> Such statements have the general effect of spurring homophobic attacks on LGBT persons and organisations that serve and defend LGBT persons.

In the same period, the state mounted a series of targeted attacks against CSOs, including freezing bank accounts of organisations working on issues of human rights and good governance, and in one case, arresting the Executive Director of Chapter Four, a human rights organisation known for their work with LGBT people, on allegations of money laundering. The arrest came at a time when the Executive Director was very vocal in criticising the government for the November riot killings and the continuous crackdown on and brutalisation of opposition presidential candidates.<sup>10</sup> These actions by security forces stifle the already limited civic space for Civil Society Organisations that serve, protect and defend LGBT persons.

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<sup>6</sup> *In the Matter of 19 Individuals v. Government of the Republic of Uganda*, submitted by Human Rights Awareness and Promotion Forum (HRAPF), Robert F. Kennedy Human Rights, Sexual Minorities Uganda (SMUG), May 14, 2020.

<sup>7</sup> Gabon senate votes in favour of pro-gay law, African news' African News 30 June 2020 <https://www.africanews.com/2020/06/30/gabon-mps-vote-to-decriminalise-homosexuality/> (accessed 18<sup>th</sup> March 2021).

<sup>8</sup> 'Bobi Wine protests: death toll rises in Uganda's worst unrest in years.' The Guardian 19 November 2020. Available at <https://www.theguardian.com/world/2020/nov/19/bobi-wine-protests-death-toll-rises-in-ugandas-worst-unrest-in-years> (accessed 18<sup>th</sup> March, 2021).

<sup>9</sup> The Guardian ( n 8 above).

<sup>10</sup> 'Uganda's top human rights lawyer Nicholas Opiyo was jailed ahead of elections.' RFI 23 December 2020. <https://www.rfi.fr/en/africa/20201223-uganda-s-top-human-rights-lawyer-nicholas-opiyo-jailed-ahead-of-elections-bobi-wine-yoweri-museveni>. (accessed 18<sup>th</sup> March 2021).

### **3. PROTECTION OF PERSONS AT RISK DUE TO THEIR REAL OR PRESUMED SEXUAL ORIENTATION OR GENDER IDENTITY IN 2020**

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Over the past eight years, there have been more reported incidents of the protection of the human rights of LGBT persons who have come into contact with the law and in previous years, HRAPF and partners have documented cases where the police performed its role to protect the rights of LGBT persons. In 2020, there was one particular incident in which the Police stepped in to help a gay man who was being lynched by a mob that suspected him of theft.<sup>11</sup> The Police rescued him from the angry mob, arrested and charged him with theft and he was later remanded to prison. Unfortunately, while on remand, he developed malaria. The Prisons Authorities attempted to ensure that he accessed health services by transferring him to another facility with better healthcare.<sup>12</sup> Unfortunately, he died while in prison.

Additionally, there have been encouraging developments in 2020 from the judiciary, which upheld the right to a fair hearing and the right to liberty in the context of COVID-19. The judiciary declared that the denial of arrested persons access to their lawyers was a violation of the right to fair hearing and the right to liberty.<sup>13</sup>

Furthermore, the Uganda Police Force has continued to make deliberate efforts to engage their officers on the protection of the rights of sexual and gender minorities. In 2020, the Uganda Police Force's Directorate of Human Rights and Legal Affairs partnered with HRAPF and the Uganda Human Rights Commission to conduct one training reaching out to 35 Regional Human Rights Officers in the UPF on the matter. The training was meant to equip human rights officers in the force with sufficient knowledge to engage with officers in their various regions on issues of human rights concern to LGBT persons and the general community.

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<sup>11</sup> HRAPF/G/16/06/20.

<sup>12</sup> Above.

<sup>13</sup> Human Rights Awareness and Promotion Forum v The Attorney General and Commissioner General of Prisons. Miscellaneous Cause 81 of 2020, n 3 above.

# 4. VIOLATIONS OF HUMAN RIGHTS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY DURING 2020 BY STATE ACTORS

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## 4.1 Introduction

The Constitution of the Republic of Uganda, 1995 under Article 20 establishes that human rights and freedoms are inherent and not granted by the state, and that they are to be protected, promoted, fulfilled and upheld by all organs and agencies of government and by all persons. The Constitution, therefore, places a positive duty on all persons and organs of the government not to violate the rights of others. The Constitution also places a positive obligation on the state to promote the human rights of all persons in the Country. These obligations are emphasised by international and regional human rights instruments to which Uganda is a party.<sup>14</sup> This chapter therefore discusses the different incidents in which these obligations were breached and violations of human rights against LGBT persons based on their real or presumed sexual orientation and gender identity or expression perpetrated by state actors in 2020.

## 4.2 Number and nature of violations

398 human rights violations were committed against LGBT persons based on their real or imputed sexual orientation or gender identity. 247 of these were committed directly by state actors, while 151 were committed by the state through their failure in their obligations to protect LGBT persons from abuses of their rights by non state actors. These arose from 96 different cases. In 40 of these cases, the violations were perpetrated directly by state actors, while in 56 cases, the violations were perpetrated by non-state actors. The number of violations is higher compared to the total number of violations committed against LGBT persons by state actors in 2019, which was 236.<sup>15</sup> The specific direct violations by state actors are discussed in this section.

### 4.2.1 Violation of the right to liberty

The right to liberty is guaranteed to all persons under Article 23 of the 1995 Constitution of Uganda. Article 23(1) sets out the circumstances under which the right to liberty may be limited through lawful arrest and/ or detention. There are also safeguards put in place for persons whose right to liberty may be restricted for purposes of bringing them before a competent court to answer for criminal charges, and these safeguards include: freedom

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<sup>14</sup> International Covenant on Civil and Political Rights (ICCPR), the preamble; United Nations Treaty Series No Vol. 999, The African Charter on Human and Peoples' Rights, the preamble; the Treaty for the Establishment of the East African Community, Article 6(d).

<sup>15</sup> Human Rights Awareness and Promotion Forum 'The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity' (2019).

from prolonged detention without a trial,<sup>16</sup> the right to legal counsel of one's choice,<sup>17</sup> the right against self-incrimination,<sup>18</sup> the right to be presumed innocent until proven guilty<sup>19</sup> and the right not to be tried for an offence that is not defined and a penalty prescribed by law.<sup>20</sup>

This right was violated in a total of 87 verified incidents in 2020, arising from 16 different cases. Arbitrary arrests and prolonged detentions of LGBTI persons arising from the militaristic enforcement of the measures instituted by the state to curb the spread of COVID-19 were common. The vaguely defined offences of 'doing a negligent act likely to spread infection of disease' and 'disobeying lawful orders' under sections 171 and 117 of the Penal Code Act respectively were used to arbitrarily arrest people en masse, even in circumstances that were quite innocuous, and the police authorities certainly took advantage of this vagueness to target LGBT people for arrests.

The different aspects of the right to liberty that were violated are as follows:

#### **a) Freedom from arbitrary arrest**

The Constitution of the Republic of Uganda sets out nine circumstances under which a person's right to liberty may be lawfully limited, and within the context of law enforcement, the Constitution permits arrest of a person reasonably suspected of having committed or of being about to commit a criminal offence for purposes of bringing that person to trial or preventing the commission of that criminal offence, with arrests in any circumstances where there are no reasonable grounds for such suspicion being deemed arbitrary.<sup>21</sup>

There were 55 incidents of arbitrary arrests of LGBT persons during 2020. These incidents took place when LGBT persons were arrested in the absence of reasonable suspicion that they had committed a crime, or were about to commit a crime; in circumstances where they were charged with crimes that do not exist in law; where they were arrested but not charged at all, as well as in cases where the arrest was based on something entirely different from the charges eventually preferred. Enforcement of the COVID-19 restrictions was used as a blanket justification for most arbitrary arrests.

The most outstanding example of this was the arrest of 23 persons from an LGBT shelter in Kyengera by a combination of the Police, the Local Defence Unit of the Uganda People's Defence Forces (UPDF) and local council authorities, including the Local Council III Chairperson of Kyengera Town Council, Hajj Abdul Kiyimba. The reason given for the arrest was that the 23 were engaged in homosexuality contrary to section 145 of the Penal Code Act.<sup>22</sup> However, they were charged with doing a negligent act likely to spread infection of disease, arraigned and remanded to Kitalya Min-Max Prisons.<sup>23</sup> The reason

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<sup>16</sup> Article 23(4), The Constitution of Uganda, 1995, Article 9(3) ICCPR.

<sup>17</sup> Article 23 (3) The Constitution of Uganda ,1995 , Article 14 (3) (d) ICCPR.

<sup>18</sup> Article 14(3)(g) ICCPR.

<sup>19</sup> Article 28 (3)(a) The Constitution of Uganda, 1995, Article 14(2) ICCPR.

<sup>20</sup> Article 28 (12) of the Constitution.

<sup>21</sup> The Constitution (n 16 above) Article 23 (1) (a) to 23 (1) (g).

<sup>22</sup> The Penal Code Act Cap 120 section 145.

<sup>23</sup> HRAPF/G&T/15/03/20.

for the arrest itself was purely homophobic as there was nothing to indicate that the suspects had been having or were about to have 'carnal knowledge against the order of nature,' and the arresting officers merely insisted that they had been informed that the suspects were homosexuals who were going to spoil their children, which is not an offence defined by law. Indeed, the UN Working Group on Arbitrary Detentions in September 2021 decided that this particular arrest was arbitrary as the arrest was done without an arrest warrant and was therefore a breach of article 9(1) of the International Covenant on Civil and Political Rights.<sup>24</sup>

In another incident, the police authorities raided a health outreach in Rakai organised by an LGBT organisation where three health workers, three staff members, and six clients of the organisation were arrested. The twelve were taken to Rakai Police Station where they were held for a few hours on charges of 'insulting the modesty of a woman', after which they were released on police bond, but their property and money were confiscated.<sup>25</sup>

Another case was recorded where a transgender man and a lesbian woman were arrested after community members complained that the transgender man was probably just a woman pretending to be a man, and they were a lesbian couple spreading homosexuality. They were detained from 14th to 16th January before being released on bond.<sup>26</sup>

In another case, a lesbian woman was arrested when her neighbour complained to police about her sexual orientation and stated that they suspected that she was also a drug addict. When the police came to her house, she demanded to know why they were in her home, and on this basis was arrested for 'being arrogant.'<sup>27</sup>

In another case, a transgender woman was arrested by the police at 6pm for allegedly violating the curfew directives, and then released the following day without charge.<sup>28</sup>

In addition, there have been cases where the police have arrested LGBT persons in cases where they were the victims of crime merely because the perpetrators informed the police about the sexual orientation of the victims. In one case, a gay man living in a shelter in Nansana went outside the gate to chase off four men that were hurling stones at the roof of their shelter, only to be met outside the gate by police officers who immediately arrested him for disobeying orders as to curfew time.<sup>29</sup> The police officers arrested him because they were aware that the shelter primarily housed LGBT persons, instead of arresting the four men that were clearly in violation of the curfew directive and trespassing on private property as well. In another case, two transgender women were attacked by revellers at a bar and beaten up for being transgender, but when the bar tender called the police, they were both arrested for causing malicious damage to property- despite the fact that both were bleeding at the time and their assailants were

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<sup>24</sup> UN Working Group on Arbitrary Detentions 'Opinion No. 20/2021 concerning Douglas, Tumuhimbise, Andrew Kibalama, Saddam Kateregga, Raj Jjuuko, Kelvin Kugonza, Denis Ssamula, Abbey Gwanvu, Henry Mukiibi, Kareem Yiga, Harris Tevin Kifuba, Jabel Tushabomwe, Ivan Kawooya, Ashiraf Walugembe, Jackson Mayanja, James Tendibwa, Mark Muhereza, Joel Oketch, Ronald Ssenyonga and Rodney Sheema (Uganda)' A/HRC/WGAD/2021/20, 9 July 2021.

<sup>25</sup> HRAPF/ORG/02/03/20.

<sup>26</sup> HRAPF/T&L/05/01/20.

<sup>27</sup> HRAPF/L/09/01/20.

<sup>28</sup> HRAPF/T/12/05/20. Public Health (Control of COVID - 19) (No.2) Rules, 2020. S.I No 55 of 2020. Rule 3 of the Rules clearly states that the curfew imposed would start at 1900 hrs (7 pm) to 0630hrs (6:30 am).

<sup>29</sup> HRAPF/G/03/11/20.

apparently unharmed.<sup>30</sup> The alleged damage was the broken glass from the bottles with which they had been hit.

## **b) The right to legal counsel of one's choice**

Article 23(5)(b) of the Constitution guarantees a person arrested on suspicion of committing an offence access to a lawyer. Access to legal counsel is important to enable a person that has come into contact with the criminal justice system to understand their rights and the nature of the charges against them as well as the legal precautions that they ought to take in the circumstances.

This right was violated in 20 incidents when 20 LGBTI youths were denied access to their lawyers by the prisons authorities for 46 days, citing measures put in place to combat COVID-19. The matter came before the High Court, which ordered that access be granted immediately and held that this was a violation of the right to right to liberty and a fair hearing.<sup>31</sup>

## **c) Freedom from prolonged detention**

The right to liberty is also violated when a person is detained beyond the constitutional period of 48 hours before arraignment.<sup>32</sup> Upon the expiry of the 48 hours, the person detained should be released or brought before a court of law. During 2020, there were 12 verified instances where LGBT persons were arrested for different reasons and kept in police custody beyond 48 hours without being released on police bond or being produced before courts of law.

In one instance, a gay man was detained at Central Police Station Kampala for 3 weeks before being brought to Court. He had been arrested because security guards at an apartment building from where he had been arrested were suspicious of him as they felt that a person that “looked like him” could only have been there for a criminal purpose; in other words, he was arrested for being at a place where he looked like he did not belong.<sup>33</sup>

In another case, a transgender woman was arrested on allegations of theft on the 9<sup>th</sup> of January 2020 and detained at the police station until the 14<sup>th</sup> of January, when she was arraigned before the court on charges of having carnal knowledge against the order of nature because, in the process of conducting a body search on her following her arrest, the police found that she was a biological male.<sup>34</sup> A gay man was also held for 6 days from 12<sup>th</sup> to 18<sup>th</sup> January after being arrested on suspicion of aggravated robbery before being released on police bond.<sup>35</sup>

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<sup>30</sup> HRAPF/T/05/12/20.

<sup>31</sup> n 3 above.

<sup>32</sup> Article 23(4) of the Constitution.

<sup>33</sup> HRAPF/G/03/12/20.

<sup>34</sup> HRAPF/T/07/01/20.

<sup>35</sup> HRAPF/G/06/01/20).

#### 4.2.2 Violation of the right to equality and freedom from discrimination

The right to equality and freedom from discrimination is guaranteed under Article 21 of the Constitution. This article guarantees the right of every individual to be treated equally under the law, and to be given equal protection under the law. However, due to the criminalisation of consensual same-sex relations in Uganda, this right is not always so readily realised by LGBT persons. It is worth noting that all violations of the rights of LGBT persons based on real or perceived SOGIE are in fact rooted in the inherent discrimination and marginalisation of LGBT persons in Uganda.

During 2020, there were 80 violations of the right to equality and freedom from discrimination by state actors, arising from 10 cases.

32 of these violations were committed by local council officials, 23 of which were together with the UPDF/ LDU, 27 by the the Uganda Police Force and 21 by the Uganda Prisons Service. These violations arose from cases of unlawful evictions, unlawful arrests, prolonged detention, and torture and cruel treatment. These violations were based on the perceived or actual SOGIE of the victims.

The case that particularly stood out in this regard was once again the raid and arrest of 23 LGBT youths from a homeless shelter where they were residing in Kyengera based on their perceived SOGIE.<sup>36</sup> The raid and arrest were discriminatory in the sense that no other persons staying in a shelter or home in the area were arrested on similar charges. Indeed, there was no restriction on the number of people who could stay in one house in the presidential directives at that time, merely a requirement that everyone stay at home. They were thus only arrested because of their perceived sexual orientation and gender identity.

In another incident, four LGBT persons received an eviction notice from the Local Council I Chairperson notifying them that their 'residence in the area had been terminated' on grounds that they were 'homosexuals'.<sup>37</sup>

LGBT persons are often denied equal protection of the law by the Uganda Police Force and are frustrated in their bid to access police services purely on grounds of their sexual orientation and/ or gender identity. In one case, a transgender man and a lesbian woman were arrested and detained by the police for two days after the neighbours complained that the transman was probably a woman pretending to be a man.<sup>38</sup> The Police are expected in such circumstances to offer assistance in the form of mediation or even forbidding the violation of the victims' rights, instead of arresting and detaining them on baseless charges. The arrest and detention were purely based on the perceived sexual orientation and or gender identity of the two, a violation of their right to freedom from discrimination based on their SOGIE. In another case, a transgender person was denied an introductory letter by the Local Council Chairperson to enable the transgender person to process their national identity card, a crucial document in the life of every Ugandan, merely because they were transgender.<sup>39</sup>

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<sup>36</sup> HRAPF/G/15/05/20.

<sup>37</sup> HRAPF/T/02/01/2020.

<sup>38</sup> n 26 above.

<sup>39</sup> HRAPF/T/07/11/20.

In one case two transgender persons had to leave their premises after their arrest and release, following numerous threats of re-arrest by the police officers in that area.<sup>40</sup> These threats of arrest without basis were meant to intimidate and harass them purely because of their gender identity, were discriminatory and therefore a violation of the right to equality and equal protection under the law.

#### 4.2.3 Violation of the right to freedom from cruel, inhuman or degrading treatment

Article 24 of the Constitution protects the right to freedom from cruel, inhuman or degrading treatment.<sup>41</sup> This is an absolute right from which there can be no derogation,<sup>42</sup> no matter the circumstances prevailing. Uganda enacted the Prevention and Prohibition of Torture Act,<sup>43</sup> a law that further expands and elaborates on the protection of this right and prohibits torture, which is defined as ‘any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person, whether a public official or other person acting in an official capacity, and cruel, inhuman and degrading treatment is defined as treatment that does not amount to torture but causes physical or mental pain and suffering for any one of the same reasons.’<sup>44</sup> The right is also protected under the International Covenant of Civil and Political Rights (ICCPR) and the Convention against Torture (CAT),<sup>45</sup> to which Uganda is a state party.

There were 50 violations of the right to freedom from degrading treatment of LGBT persons in 2020 arising from 22 cases. The most extreme case of such treatment in 2020 was the case where 20 LGBT persons were arrested and remanded to Kitalya Mini Max Prison where they were beaten and one of them burnt around the genitalia with a burning piece of wood by the Deputy Officer in Charge of the prison, allegedly to teach them not to be gay.<sup>46</sup>

Although all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity of the human person,<sup>47</sup> this is not always guaranteed for arrested persons once their sexuality or gender identity comes under suspicion. In one case, for instance, a transgender woman was arrested and during the police body search, it was discovered that she was a biological male, yet she had recently got married to a man in a fairly public ceremony. She was therefore immediately charged with having carnal knowledge against the order of nature, which had nothing to do with the initial reason for her arrest, and an anal examination performed on her.<sup>48</sup>

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<sup>40</sup> HRAPF/T/04/05/20.

<sup>41</sup>Article 24 & Article 7 ICCPR.

<sup>42</sup> Article 44(a) of the Constitution.

<sup>43</sup> No. 3 of 2012.

<sup>44</sup> The Prevention and Prohibition of Torture Act No.3 of 2012, sections 2 and 7.

<sup>45</sup> Article 7 ICCPR; UN Convention Against Torture and Other Cruel, Inhuman and degrading Treatment or Punishment United Nations Treaty series Vol.1465.

<sup>46</sup> HRAPF/G/15/05/20 & see n 3 above.

<sup>47</sup> Article 10 ICCPR.

<sup>48</sup> HRAPF/T/08/01/20.

In another case, a gay man was arrested on charges of having carnal knowledge against the order of nature and beaten during the arrest,<sup>49</sup> and in another, two transgender persons were arrested and beaten during the arrest and while in detention.<sup>50</sup>

#### 4.2.4 Violation of the right to a fair hearing

The Constitution in Article 28(3)(d) provides for the right of everyone charged with a criminal offence to access a lawyer of their choice.

This right was violated in 20 incidents arising out of the case of the 20 youths who were denied access to their lawyers by officials of the Uganda Prisons Service, citing COVID-19 restrictions. The High Court declared this to be a violation of the non-derogable right to a fair trial under Article 28(3)(d).<sup>51</sup>

#### 4.2.5 Violation of the right to privacy

All persons are protected against unlawful interference with or search of their person, home, correspondence or other property or unlawful entry by others on the premises of that person.<sup>52</sup> However, LGBT persons' right to privacy is often violated by a society that is curious about their lifestyle and personal affairs, and this is often sanctioned or even led by police and local authorities for curiosity's sake rather than genuine law enforcement reasons.

There were four (4) such violations in 2020. In one case, a Local Council Leader violated a gay man's right to privacy by raiding his home and purporting to arrest him and two friends that were found in the house, and then continuing to threaten and harass them even after their release from police custody.<sup>53</sup>

In another case, an Officer in Charge of a Police Post forcefully entered into a private residence from which an LGBT organisation had its operations, seeking to determine the kind of work that they do and asking about the sexuality of the residents.<sup>54</sup>

#### 4.2.6 Violation of the right to freedom of association

The right is provided for under article 29(1)(e) of Uganda's Constitution, yet LGBT persons habitually face interferences with their right to associate in organisations and carry on lawful activities without undue interference.

There were three collective violations of this right in 2020. These occurred in the incident when the Uganda People's Defence Forces and local council officials raided a shelter operated by the Children of the Sun Foundation (COSF) and practically stopped

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<sup>49</sup> HRAPF/G/01/04/20.

<sup>50</sup> HRAPF/T/02/05/20.

<sup>51</sup> HRAPF/G&T/15/03/20, *Human Rights Awareness and Promotion Forum v Attorney General and the Commissioner General of Prisons*. Miscellaneous Cause 81 Of 2020.

<sup>52</sup> Article 27 of the Constitution; Article 17 ICCPR.

<sup>53</sup> HRAPF/G/07/02/20.

<sup>54</sup> HRAPF/ORG/02/04/20.

its operations;<sup>55</sup> when the police raided a health outreach in Rakai and stopped it;<sup>56</sup> and when an organisation running an LGBT crisis shelter was continuously threatened by security personnel and community members, forcing it to relocate its shelter to a safer place.<sup>57</sup>

#### 4.2.7 Violation of the right to property

Article 26 of the Constitution protects the right to own property and provides conditions for the lawful deprivation of property. The article is clear that the deprivation of property can only be justified if the acquisition is necessary for the public benefit or public health, after full and adequate compensation to the victim and in accordance with the law authorising such acquisition.

However, LGBT persons who are arrested or forced to leave their areas of residence are often deprived of their property with no just cause and no compensation. In 2020, there were three instances of deprivation of property. In one case, a gay man was continuously extorted with the help of police officers to whom he paid over four million Ugandan shillings to avoid being outed.<sup>58</sup> In two other cases, LGBT persons were arrested and released by the police but their properties and/ or personal belongings were not returned to them upon release.<sup>59</sup>

### 4.3 Identity of perpetrators

Different state actors were involved in the above human rights violations. The state institutions that most violated the rights of LGBT persons in 2020 were the Uganda Police Force, the Uganda Prisons Service, the Local Council authorities and the Uganda People’s Defence Forces/ Local Defence Units as indicated in table 4 below.

**Table 4: State Perpetrators of human rights violations against LGBT persons in 2020**

| Perpetrator                                       | Number of violations occasioned                          |
|---|--|
| The Uganda Police Force                           | 89   |
| Uganda Prisons Service                            | 81   |
| Local Council officials                           | 77 (69 of these committed together with the UPDF/LDU)    |
| Uganda People’s Defence Forces/Local Defence Unit | 69 (all committed together with local council officials) |
| <b>TOTAL</b>                                      | <b>247</b>   |

<sup>55</sup> HRAPF/ORG/11/06/20, HRAPF/G/15/05/20.

<sup>56</sup> HRAPF/ORG/02/03/20.

<sup>57</sup> HRAPF/ORG/13/11/20.

<sup>58</sup> HRAPF/G/16/02/20.

<sup>59</sup> HRAPF/G/17/02/20 and HRAPF/ORG/02/03/20.

The Uganda Police Force remained the biggest state violator of the rights of LGBT persons based on sexual orientation and gender identity, accounting for 89 cases out of the 246 violations by state actors (35.9%). The Uganda Prisons Service came in second with 80 violations (31.9%) of state vioaltions. The Uganda Peoples Defence Forces/ Lcal Defence Unit participated in only one case and committed 69 violations (27.8%).

## 4.4 Conclusion

During 2020, there were 247 documented violations of LGBT person's human rights based on sexual orientationand gender identity that were directly perpetrated by state actors, arising from 40 cases. These vioaltions were mostly of the right to liberty, freedom from degrading treatment and the right to equality and freedom from discrimination, nearly all of them arising out of or otherwise committed under the guise of enforcement of the COVID-19 restrictions in force at that time.

## 5. CASES OF HUMAN RIGHTS ABUSES BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY DURING 2020 BY NON STATE ACTORS

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### 5.1 Introduction

This section sets out the abuses of human rights perpetrated by non-state actors against LGBT persons based on their sexual orientation and/ or gender identity and expression during 2020. Although the primary responsibility to respect, fulfil and protect human rights lies on the state, non state actors also can, and often do, abuse human rights, violating Article 20 of the Constitution which imposes the same duties to protect, promote, respect and fulfil the human rights guaranteed in chapter four of the Constitution on non-state actors as well. Where the state does not stop these violations or fully investigate and provide remedies in case of human rights abuses by non state actors, then the state also fails in its obligation to protect human rights and in this sense commits a violation of the same rights.

National, regional and international laws place a duty on the state to protect the human rights of all persons in the country.<sup>60</sup> As such, the state must ensure that there are effective laws to prevent non-state actors from infringing on the rights of others, and that there are avenues through which persons whose rights have been violated, whether by state or non-state actors, can obtain effective remedies.<sup>61</sup> This duty extends to the protection of LGBT persons as provided for under Resolution 275 of the African Commission on Human and People's Rights on the protection against violence and other human rights violations against people based on their real or imputed sexual orientation and gender identity.<sup>62</sup> The Commission has urged states parties to enact and effectively apply appropriate laws prohibiting and punishing all forms of violence, including violence targeting persons based on their real or imputed sexual orientation or gender identity.<sup>63</sup>

This section therefore considers incidences of human rights abuses suffered by LGBT persons based on their sexual orientation and gender identity/ expression. In some of the cases discussed in this section, LGBT persons received some form of redress, usually following a mediation in which perpetrators of the abuses provided monetary compensation and/ or apologies to the victims. However, in many cases, the victims were simply reluctant to pursue the matters further for fear of reprisal, further loss and/ or violation. On the whole, therefore, the abuses largely went without redress by the state

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<sup>60</sup> The preamble of the African Charter on Human and Peoples' Rights; Article 6 (d) of the Treaty for the Establishment of the East African Community; Preamble of the International Covenant on Civil and Political Rights (1996).

<sup>61</sup> Article 2(3)(a) ICCPR.

<sup>62</sup> African Commission on Human and Peoples' Rights Resolution 275 on the protection against violence and other human rights violations against persons based on their real or imputed sexual orientation or gender identity. Adopted at the 55<sup>th</sup> Ordinary Session of the African Commission.

<sup>63</sup> n 60 above.

and as such, the state is complicit in these abuses, having failed in its obligation to provide a remedy for acts of violence and violations of human dignity.<sup>64</sup>

The level of acceptance of LGBT persons is shaped by the society in which they live, and the political ideology, which informs how LGBT persons are treated in society.<sup>65</sup> LGBT persons in Uganda find themselves in a society that is largely homophobic, with political leaders who blame criminality and political dissidence on LGBT persons,<sup>66</sup> creating an unnecessarily hostile environment for LGBT persons and in extreme cases inadvertently encouraging homophobic hate and violence against LGBT persons.

## 5.2 Number of abuses of human rights based on sexual orientation and gender identity by non state actors

There were a total of 151 human rights violations based on sexual orientation and gender identity and expression by non-state actors recorded in 2020. This is a marked increase from the 46 violations recorded in 2019. These are as classified below:

### 5.2.1 Abuses of the right to equality and freedom from discrimination

This was the most abused right by non state actors – and one to which the state barely took any action to offer redress. There were 58 violations all arising from evictions and acts of segregation against LGBT persons in the areas where they reside. Upon the discovery of their SOGIE, LGBT persons time and again face exclusion and rejection from their families, friends, and neighbours.<sup>67</sup>

There were a total of 58 evictions based on sexual orientation and gender identity or expression recorded during 2020. At the height of the COVID-19 pandemic, a lockdown was instituted which required almost all people to stay home.<sup>68</sup> This unwittingly led to the outing of several LGBT persons to their immediate neighbours and landlords, who had far more time to observe them and note their differences than they did previously, when everyone was expected to go to work all day. The exposure caused the eviction of several LGBT persons from both their homes and their areas of residence.

Of the 58 evictions, 33 involved LGBT persons being forced to move from their areas of residence due to discrimination and threats. These relocated from their homes due to the discriminatory actions of the communities in which they lived. In one case, a transgender woman had a mob of neighbours form outside her residence, shouting and demanding that she leave the village immediately as they would not tolerate a homosexual,<sup>69</sup> forcing

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<sup>64</sup>Article 2 (3) (a) ICCPR.

<sup>65</sup>; 'The Global Divide on Homosexuality Persists' Pew Research Centre June 25 2020. (accessed on 15<sup>th</sup> March 2021).

<sup>66</sup> 'President Museveni Blames LGBT Community for Nation-Wide Protests'. Kuchu Times 20 November 2020.<https://www.kuchutimes.com/2020/11/president-museveni-blames-lgbt-community-for-nation-wide-protests/> (accessed 15<sup>th</sup> March 2021).

<sup>67</sup> HRAPF/VR/2019/40.

<sup>68</sup> The Public Health (Control of COVID - 19) Rules, 2020. SI No 52 of 2020.

<sup>69</sup> HRAPF/T/05/05/20.

the victim to seek relocation from her residence. In another incident, an organisation relocated its shelter premises after neighbours continuously threatened the occupants for being suspected homosexuals.<sup>70</sup> The Executive Director of the organisation was also forced to relocate after the neighbours threatened him following rumours that he was the head of homosexuals in the area.<sup>71</sup> In another case, a lesbian woman was forced to leave her home after threats were made against the person she used to stay with for harbouring a known homosexual. The two later moved to a friend's home, who also was forced to evict them after the landlord threatened to evict all three if 'the homosexual' stayed.<sup>72</sup>

There were 16 incidents where LGBT persons were thrown out of their homes by their family members based on sexual orientation and gender identity or expression. In one case, a lesbian woman was evicted from her family home by the parents after an ex-girlfriend outed her to her parents.<sup>73</sup> In another case, a gay man who was arrested during a raid on a popular gay bar in Kampala in 2019 was evicted from his family home by the stepmother, who discovered his sexual orientation at court during the arraignment and trial that followed as a result of that raid. The stepmother ordered him to leave the house, claiming that he would be a negative influence on her children.<sup>74</sup> In another incident, a gay man who was arrested and detained for nearly two months following a police raid on the COSF shelter was asked to never return to the family home upon his release because he had been outed as gay by the media at the point of arrest.<sup>75</sup> Similarly, another gay man arrested in the COSF raid and detained for two months was asked never to associate with the family, with the father threatening to cause his re-arrest if he refused to "stop being gay".<sup>76</sup> This was effectively an eviction from the family home. In another case, a young gay man that is still of school-going age and was at the time in Senior 5 was evicted from his parents' home upon them discovering his sexual orientation.<sup>77</sup> In another case, a lesbian woman was asked to leave the family home and never return after her sisters discovered messages from her girlfriend on her phone.<sup>78</sup> In one case, a bisexual man arrested and charged with the offence of having carnal knowledge against the order of nature was asked to leave the family home and not return.<sup>79</sup>

There are 9 cases in which the landlords of LGBT persons evicted them based on their SOGIE.<sup>80</sup> In one case, a bisexual man and his wife received an eviction notice from their landlord after several rumours had spread that he and some of the people he had been hosting in his home were homosexuals. In another case, a gay man went away on a field trip for a few days and while away, his friend brought a few people into his house whom

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<sup>70</sup> HRAPF/ORG/11/06/20.

<sup>71</sup> HRAPF/T/10/06/20.

<sup>72</sup> HRAPF/L/12/06/20.

<sup>73</sup> HRAPF/L/05/10/20.

<sup>74</sup> HRAPF/G/15/01/20.

<sup>75</sup> HRAPF/G/03/06/20.

<sup>76</sup> HRAPF/G/01/06/20.

<sup>77</sup> HRAPF/G/06/02/20.

<sup>78</sup> HRAPF/F/01/05/20.

<sup>79</sup> HRAPF/B/05/08/20.

<sup>80</sup> HRAPF/G/03/05/20, HRAPF/T/19/06/20, HRAPF/T/03/07/20, HRAPF/G/05/07/20, HRAPF/B/12/07/20, HRAPF/T/14/01/20, HRAPF/L/18/01/20, HRAPF/T/13/07/20, HRAPF/T/02/11/20.

the landlord discovered were gay. The landlord evicted him immediately and even called his brother to inform him about his sexuality, thus ensuring his exclusion from the family as well.

In a large number of evictions by family and landlords, the community were a key factor as they demanded that the victims be evicted, and in some cases the general public led the drive with threats of mob actions, forcing families and landlords to evict them for safety of lives and property. As such, the violations in this regard often overlapped, where community and landlords or community and families were jointly involved in the eviction, although such incidents were still counted as a single incident.

## 5.2.2 Violation of the right to freedom from inhuman and degrading treatment

There were 83 abuses of this right by non state actors. They can be classified as follows:

### a) Evictions

All the 58 incidents of evictions cited above also constituted abuses of the right to dignity and freedom from cruel, inhuman and degrading treatment against LGBT persons. In *Uganda v Salvatori Abuki*, the Supreme Court held that eviction of a person from their areas of residence violates the constitutional prohibition on cruel, inhuman or degrading treatment.<sup>81</sup>

### b) Violence

There were 25 acts and/or threats of violence recorded in 2020 against LGBT persons based on their SOGIE by non state actors without proper redress from the state. Some of the more outstanding incidents are discussed below:

In one case, a gay man was assaulted by a gang of youths on his way back home. He was berated with insults and informed that they (the assailants) would not tolerate homosexuals, and to safeguard himself, he went to a paralegal's home for refuge, only to discover a note outside the paralegal's house in the morning, threatening to burn them both.<sup>82</sup> In another similar incident, a transgender woman was constantly harassed by neighbours who threatened to kill her for being transgender, calling her a "walking corpse" in addition to several other insults.<sup>83</sup>

An incident also occurred where an organisation that runs a shelter for LGBT persons faced continued harassment of its staff and members from the neighbours simply because they were transgender.<sup>84</sup> In another incident, a gay man was asked to leave his home area or face lynching for being gay.<sup>85</sup> In both incidents, the neighbours forced them to leave their areas of residence and relocate to places that were safer because they

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<sup>81</sup> Attorney General v Salvatori Abuki, Constitutional Appeal No. 1 of 1998.

<sup>82</sup> HRAPF/G/06/07/20.

<sup>83</sup> HRAPF/T/06/09/20.

<sup>84</sup> HRAPF/ORG/13/11/20.

<sup>85</sup> HRAPF/G/03/01/20.

were unknown in the new areas. In another case, a gay man's dignity was violated by his neighbours, who created a mob at his house and started shouting, demanding that he leave the village immediately as they would not tolerate a homosexual.<sup>86</sup> Although they did not cause any physical harm to him, the possibility that harm could have come to him was high, and he was subjected to emotional pain, fear and anxiety as a result of the incident. In all these incidents, the neighbours forced these LGBT persons to leave their homes and relocate to other places.

In one case, a transgender woman was assaulted and severely beaten by her uncle, who claimed that she was a homosexual. She was admitted to the hospital but she chose not to pursue the case of assault, preferring to relocate to a safer place where her family would not be able to assault her.<sup>87</sup> This incident is indicative of LGBT persons' desire not to pursue the perpetrators of violence against them in order to avoid further conflict as well as due to the stigma and discrimination they would face if they were to approach the police.

### 5.2.3 Abuses of the right to privacy

There were nine cases of the violation of the right to privacy by private actors<sup>88</sup> in an alarming trend of general community members and some LGBT persons using other LGBT people's SOGIE as a tool of extortion or punishment.

In one case, a bisexual woman had a disagreement with her boyfriend, who reacted by defaming her through social media, outing her as bisexual and publishing her nude photos.<sup>89</sup> In another case, a transgender man was harassed and outed on Facebook after his father attacked Hon. Robert Kyagulanyi on social media for supporting homosexuals.<sup>90</sup> In another case, a transgender woman was outed and blackmailed by a traditional healer whom she had approached for assistance upon discovery of her sexuality.<sup>91</sup>

### 5.2.4 Abuses of the right to property

There was one verified violation of the right to property by non-state actors during this period. In this case, a gay man went on a field trip and allowed a friend to stay at his residence. The friend brought a few people into the house whom the landlord discovered were gay and evicted the gay man with immediate effect, and called the victim's brother to inform him he was gay as well, effectively outing him to the family. He was forced to stay with a friend and denied access to his property, all of which was taken by the

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<sup>86</sup> HRAPF/T/05/05/20.

<sup>87</sup> HRAPF/T/03/02/20.

<sup>88</sup> HRAPF/G/12/01/20, HRAPF/B/15/10/20, HRAPF/G/05/11/20, HRAPF/T/07/12/20, HRAPF/T/11/12/20, HRAPF/G/14/8/20, HRAPF/T/08/11/20, HRAPF/T/13/10/20.

<sup>89</sup> HRAPF/B/15/10/20.

<sup>90</sup> HRAPF/T/07/12/20.

<sup>91</sup> HRAPF/T/08/11/20.

brother.<sup>92</sup> This denial of access to his property without any justification or compensation is a violation of the right to property and a violation of human dignity.<sup>93</sup>

### 5.3 Identity of perpetrators

Table 5: Non state actors and their violations against LGBT persons based on Sexual Orientation and Gender Identity in 2020

| Perpetrator                   | Number of violations |
|-------------------------------|----------------------|
| Members of the general public | 90                   |
| Family members                | 37                   |
| Landlords                     | 19                   |
| Fellow LGBT persons           | 5                    |
| <b>TOTAL</b>                  | <b>151</b>           |

Members of the general population emerged as the biggest violators of the rights of LGBT persons based on sexual orientation and gender identity, being responsible for 91 out of 151 violations (60.3%) by non state actors.

### 5.4 Conclusion

There were a total of 151 violations of the human rights and dignity of LGBT persons based on sexual orientation and/ or gender identity or expression by non state actors in 2020, for which the state did not provide redress. This number has increased significantly from the previous year, largely because of the added pressures of the COVID-19 stay-at-home regulations and the tensions sparked by political leaders in the run up to the January 2021 general elections.

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<sup>92</sup> HRAPF/G/03/05/20.

<sup>93</sup> Article 26 and 24 of the Constitution.

## 6. GENERAL ANALYSIS OF REPORTED VIOLATIONS OF HUMAN RIGHTS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY DURING 2020

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### 6.1 Introduction

In 2020, the outbreak of the COVID-19 pandemic introduced a new dynamic that saw an increase in the human rights violations against LGBT persons perpetrated by both state and non-state actors. This is indicative of a deteriorating human rights situation for all Ugandans generally during that period, but more particularly for marginalised groups such as LGBT persons. The majority of violations in fact may have gone unreported during 2020 due to the COVID-19 preventive measures and directives that hindered access to justice for several LGBT persons. This section analyses the trends of 2021 in comparison with 2019.

### 6.2 Number of human rights violations

A total of 398 human rights violations were committed against LGBT persons based on their sexual orientation and gender identity or expression during 2020. This number is much higher than those recorded in 2019, which were 282.<sup>94</sup> This represents an increase of 117 violations (representing a 41.5% increase).

Direct Violations by state actors only increased slightly from 236 in 2019 to 247 in 2020 (4.2%), while those by non state actors more than tripled from 46 to 151 (a 228% increase). This state of affairs can only be explained by the COVID-19 pandemic, notification of which was first issued in Uganda in March 2020. Following this notification of COVID-19 as a matter of public health concern in Uganda, the state imposed measures that among others required all people not considered essential workers to stay at home. This exacerbated the repetitive cycle of homelessness for LGBT persons as many did not have places to call home, and even those who did were subjected to extra scrutiny by their neighbours, landlords and families, leading to various violations. This explains why the numbers of violations by non-state actors greatly increased.

Also to be noted is that the COVID-19 lockdown greatly affected the capacity of LGBT persons to report violations to HRAPF and other legal aid service providers and justice mechanisms. The lockdown meant that many had to either resolve conflicts in their own ways or simply let the violation go without seeking redress.<sup>95</sup> This therefore indicates that

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<sup>94</sup> Human Rights Awareness and Promotion Forum 'The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity' (2019). <https://www.hrpf.org/index.php/resources/violation-reports/172-sogi-violations-report-2019/file>. (accessed 25 June 2021).

<sup>95</sup> Human Rights Awareness and Promotion Forum (HRAPF) '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' 2021, 34 - 47 <https://www.hrpf.org/index.php/resources/research-reports/202-report-on-the-impact-of-covid-19-restrictions-on-access-to-justice-for-key-populations-in-uganda-a-case-study-of-lgbt-persons-and-sex>

the number of cases reported here might be much less than the actual number of violations that took place during this period.

## 6.3 Trends in nature of rights violations

The right that was most violated during this period is the right to equality and freedom from discrimination. This is the first time in the eight years of this report that this right has been the most violated, as the most violated right is usually the right to liberty. The right was violated 137 times – 79 of these incidents by state actors and 58 by non state actors. Among the state actors, the local council authorities violated this right in 32 instances while the police did so in 27 instances. Non-state actors violated the right 58 times, with the general public being responsible for 33 of these violations, 16 by family members and 9 by landlords. In 2019, there were 64 violations of this right, with 18 incidents occasioned by state actors and 46 by non-state actors. This is therefore a 114% increase in incidences of violations of the right to equality and freedom from discrimination. State actors occasioned more violations this year, mainly arising from the one case of arrest of 23 LGBT youths from a shelter.

The right to freedom from inhuman treatment came in second at 134 violations, just three less than the right to freedom from discrimination. State actors accounted for 50 violations while non state actors accounted for 84. Cases of evictions were more pronounced, with a total of 58 evictions. Cases of physical violence were also high, with 25 incidents recorded during the year. The practice of conducting anal examinations also continued, with 2 incidents recorded. In 2019, this right was violated 64 times, and thus there was a tremendous increase between the two years, and the increase can largely be attributed to the directives issued by the Government of Uganda to slow the spread of the COVID-19 pandemic. Governments world over did not adequately prepare for the way the new public health measures would create unprecedented challenges for vulnerable populations, and focus was placed on the fight against COVID-19 to the detriment of vulnerable persons. These measures in Uganda created significant room for human rights violations against LGBT persons by both state and non-state actors.

The heated political environment of 2020 also saw several inflammatory statements uttered by politicians in a bid to gain popularity ahead of the 2021 general elections.<sup>96</sup> Such statements spur on violators, who are led to believe they have the support of the political class and are being patriotic or somehow righteous in their actions, or at the very least immune to reprisals. The stay at home directives issued by the state also quickly morphed into a social economic crisis for the majority of Ugandans, and the frustrations brought about by these directives deepened vulnerabilities and inequalities, exposing LGBT persons to violations of their right to dignity and freedom from cruel, inhuman, and degrading treatment and punishment. Additionally, in a deeply religious society, it was not uncommon to hear members of the general public attributing the scourge of COVID-19 to declining moral standards, and in some cases, LGBT persons were individually blamed

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workers-in-kampala-and-wakiso-districts/file. (accessed 25th June 2021).

<sup>96</sup> 'President Museveni Blames LGBT Community for Nation-Wide Protests' Kuchu Times 20 November 2020. Available <https://www.kuchutimes.com/2020/11/president-museveni-blames-lgbt-community-for-nation-wide-protests/> (accessed 15th March 2021).

for this. For instance, in one case where a gay man was evicted from his home and threatened with physical violence, the neighbours repeatedly accused him “and his kind” of being responsible for the pandemic and other disasters because of their “sinful ways”.<sup>97</sup>

The increase in the violation of the right to dignity and freedom from cruel, inhuman, and degrading treatment and punishment is also attributable in part to the arbitrary targeted arrests of suspected LGBT persons disguised as COVID-19 enforcement. Any interaction with the criminal justice system for LGBT persons is always fraught with the possibility of gross human rights violations, and the COVID-19 pandemic made this possibility even more palpable. A case in point is the case of the raid at COSF shelter, where the prison authorities at Kitalya Mini Max prison took advantage of the COVID-19 directives to deny the arrested persons access to their lawyers and then tortured, beat and burnt one of them while they were in their custody.<sup>98</sup> This degree of violence was certainly a matter of grave concern, and remains a cause for concern as LGBT people are particularly vulnerable to abuse in such controlled and confined settings as prisons.

The right to liberty, which was the most violated right in 2019 with 163 incidents recorded, came in third this year, with 87 verified violations. This is a welcome development which indicated a reduced number of violations of this right by the Uganda Police Force, the lowest recorded number ever.

Freedom of association was violated three times, with three organisations affected – one whose shelter was raided, another whose staff were arrested and yet another that was forced to relocate. This shows that the civic space for the operation of LGBT organisations remains precarious, with activities of LGBT organisations generally looked upon by police authorities as promoting homosexuality.

**Table 6: Categories of rights most commonly violated in 2020 and 2019**

| Category of right                                     | 2020       | 2019       |
|---|------------|------------|
| Right to equality and freedom from discrimination     | 138        | 64         |
| Right to freedom from inhuman and degrading treatment | 133        | 18         |
| Right to liberty                                      | 87         | 163        |
| Right to a fair hearing                               | 20         | 0          |
| Right to privacy                                      | 13         | 1          |
| Right to property                                     | 4          | 0          |
| Freedom of association                                | 3          | 34         |
| Right to life   | 0          | 2          |
| <b>Total</b>  | <b>398</b> | <b>282</b> |

<sup>97</sup> HRAFP/G/10/03/20.

<sup>98</sup> HRAFP/T&G/15/03/20.

Table 7: Comparative overview of human rights violations based on SOGIE over five years

| Categories of Rights   | Number of violations per year |            |           |           |            |
|--|-------------------------------|------------|-----------|-----------|------------|
|  | 2020                          | 2019       | 2018      | 2017      | 2016       |
| Right to equality and freedom from discrimination            | 137                           | 64         | 13        | 22        | 60         |
| Right to freedom from cruel, inhuman and degrading treatment | 134                           | 18         | 12        | 15        | 65         |
| Right to liberty   | 87                            | 163        | 25        | 15        | 31         |
| Right to a fair hearing                                      | 20                            | 0          | 0         | 0         | 0          |
| Right to privacy   | 13                            | 1          | 10        | 16        | 10         |
| Freedom of expression, association and assembly              | 3                             | 34         | 5         | 5         | 4          |
| Right to property  | 4                             | 0          | 4         | 1         | 13         |
| Right to life  | 0                             | 2          | 0         | 0         | 0          |
| <b>Total</b>   | <b>398</b>                    | <b>282</b> | <b>69</b> | <b>74</b> | <b>183</b> |

There was a general decline in human rights violations based on sexual orientation and gender identity from 2016 to 2018. However, there has since been a steady increase in human rights violations from 2019 and 2020. 2019 saw a number of mass arrests that contributed to the increase in the human rights violations based on sexual orientation and gender identity, and the trend of mass arrests continued in 2020, with one single incident accounting for a large number of violations (the COSF-20 case), as was the case in 2016 where the raid of the Pride Pageant accounted for 53 separate verified violations,<sup>99</sup> and 2019 (the Ram Bar raid, accounting for 127 violations of the right to liberty in one night).<sup>100</sup>

There is also an increase in discriminatory behaviour from other state actors besides the police as shown by the increased number of violations of the right to equality and freedom from discrimination. Violent homophobia and transphobia are on the rise, with a corresponding increase in violations of the right to dignity and freedom from torture, inhuman and degrading treatment and punishment. In 2020, the COVID-19 pandemic and the resultant regulations added to a legal and policy framework that is geared toward

<sup>99</sup> Human Rights Awareness and Promotion Forum 'The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity 2018: Increasing protections and reducing state violations' (2018).

<sup>100</sup> Human Rights Awareness and Promotion Forum 'The Uganda Report of Human Rights Violations Based on Sexual Orientation and Gender Identity 2018: Increasing protections and reducing state violations' (2019).

punishing and suppressing the rights of LGBT persons, thus creating more opportunities for human rights violations to occur.

There is a need for continuous engagement with the community and state actors to sensitise them about LGBT rights and demystify sexuality and gender roles that do not conform to the expected heteronormative standard. The statistics are also indicative of the impact of the COVID-19 restrictions on the human rights of LGBTI persons. The restrictions made LGBTI persons more visible in their communities both to state actors and non state actors and therefore more vulnerable to violations. There is therefore need to further engage duty bearers on taking the human rights based approach in enacting laws to ensure that laws and policies enacted by the state are responsive to the rights of all, particularly the most vulnerable members of society, even in the midst of a public health crisis.

## 6.4 Trends in the nature of perpetrators

In consonance with changing trends due to COVID-19, members of the general public for perhaps the first time perpetrated the majority of abuses of human rights of against LGBTI persons in 2020. They were responsible for 90 (22.6%) of all violations and abuses reported, and 59.2% of the violations by non state actors. The Uganda Police Force came in first for human rights violations accounting for at least 90 violations out of the 398 violations by the state. It came in second overall, accounting for 22.6% of all the 398 verified violations in the year. This is a big decline in the number of violations by the police, who were the biggest violators in 2019, accounting for 234 out of 282 total violations (83%). Interestingly, 2019 was simply an exceptional year as for 2018 the police had only been responsible for 29 violations and only 26 in 2017. This implies, that besides 2019, the 90 violations were actually quite high for the Uganda Police Force and reflected the changed environment that was characterised by the militarised enforcement of COVID-19 regulations under which many people were arrested, including LGBTI persons.<sup>101</sup>

Whereas the Uganda Police Force deserves praise for the reducing violations, more so for not being party to the violations in the COSF case, the increase in violations by the general public is alarming. The number of violations perpetrated by members of the general public in 2019 were 22, and this was the same for 2018,<sup>102</sup> yet a dramatic spike was observed in 2020. This difference is almost entirely due to the COVID-19 regulations.

The Uganda Prisons Service also joined the fray, perpetrating 81 violations arising from one case which concerned 20 people. This is worrying as in previous year, the prisons authorities were not known for blatantly violating the rights of persons based on their SOGI.<sup>103</sup>

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<sup>101</sup> HRAPF, above.

<sup>102</sup> HRAPF, n 103 above.

<sup>103</sup> HRAPF report on prisons.

Local Council Leaders, the Uganda People's Defence Forces and the Local Defence Units are emerging as habitual human rights violators, with reported cases of human rights violations by local leaders consistently rising. In comparison with 2019 where Local Council Leaders were responsible for only 1 violation, in 2020 this number has gone up by 240%. The UPDF and its Local Defence Unit were engaged in enforcement of COVID-19 restrictions, resulting in the violation of the human rights of LGBT persons. This is a worrying trend as the role of the national army is not in law enforcement but rather the defence of the state and its citizens.<sup>104</sup>

## 6.5 Conclusion

2020 saw an increase in the number of human rights violations against LGBT persons based on their real or perceived sexual orientation and gender identity. It is refreshing to note that violations from the police are lower than they were in 2019. However, the increase in the number of violations by non state actors is worrying. The COVID-19 pandemic and the attendant restrictions put in place by the state greatly affected the trends of human rights violations based on SOGIE. The number of human rights violations clearly increased, but the trends also changed significantly, with the general public becoming the main violators of human rights.

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<sup>104</sup> The Constitution of Uganda, 1995, Articles 209 & 210.

# 7. CONCLUSIONS AND RECOMMENDATIONS

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## 7.1 General conclusion

The legal and policy regime witnessed a drastic change as a result of the COVID-19 pandemic and the directives that were issued by the state to manage its spread in 2020. There were decisions and actions from the Executive, the Judiciary, Parliament and several more localised directives from different administrative units and state MDAs which limited the rights of LGBT persons. There was also an increased level of hostility against LGBT persons from the general communities where they reside. The environment for LGBT people is as such steadily deteriorating, with homophobic bias and violence more pronounced in 2020. The level of hostility from the general community in 2020 was the highest that has been recorded in the past 5 years, and this state of affairs begs immediate and aggressive action to manage the negative change.

## 7.2 Recommendations

In light of the trends highlighted in this report as well as the general human rights situation for LGBT persons, HRAPF and partners make the following recommendations in order to ensure compliance with Uganda's obligations at international and regional level to protect all persons from violence and human rights violations based on real or presumed SOGIE:

### To the President of the Republic of Uganda

The Office of the President is key to the law-making process and the President has the authority to address laws that are not compliant with the Constitution, and initiate processes to have such laws amended. The President also has the power to issue Directives that are to be followed by all state and non-state actors within the country for the better protection of the rights of all citizens. It is therefore recommended that the President does the following:

1. Publicly condemn wanton acts of violence and discrimination against vulnerable minorities, including LGBT persons, by both state and non-state actors, and call on the responsible authorities to ensure that all such incidents are fully investigated and the perpetrators penalised.
2. Reject all proposed legislation that perpetrates discrimination on basis of sexual orientation and gender identity, and call on the Office of the Attorney General to make proposals for the review of existing criminal laws that are discriminatory to LGBT persons.
3. Ensure that issues of non-discrimination and the protection of vulnerable persons, including LGBT persons, is included in Uganda's response to major public crises, such as the COVID-19 pandemic.

4. Discourage hate speech and desist from making inflammatory public statements that fuel homophobic hate and violence, and call upon the Office of the Attorney General to make proposals for laws clearly defining and forbidding hate speech.

## To Parliament

The Parliament of Uganda is the chief legislative authority in the country and can as such greatly influence the protection of human rights or the violations experienced by LGBT persons in Uganda in their daily lives. The Members of Parliament are also influential in shaping public discourse about LGBT rights in Uganda. It is therefore recommended that they do the following:

1. Repeal section 145 and 146 of the Penal Code Act which criminalise ‘having carnal knowledge against the order of nature’ in as far as they apply to consensual same-sex relations as these provisions are used to persecute LGBT persons and strip them of equal protection of the law.
2. Repeal sections of the Penal Code Act that create broad and vague petty offences such as being a common nuisance and being a rogue and vagabond, which have been used to arbitrarily arrest and punish persons who are generally considered “socially undesirable”, including LGBT persons.
3. Ensure that the government fulfils its international and regional human rights obligations to all without any discrimination through enacting laws that affirm the inherent dignity and humanity of all persons in line with these obligations.

## To the Uganda Police Force

The Uganda Police is an essential actor in protecting and violating the rights of LGBT persons. While the law criminalises consensual same sex relations and is therefore often taken to imply criminalisation of LGBT people generally, the Police are the first point of contact between LGBT persons and the criminal justice system. Therefore, whether LGBT persons will receive protection of the law in cases of violations or face further violations when in contact with the criminal justice system depends largely on the police authorities, who will either protect and promote the rights of LGBT persons or equally abuse them. Additionally, the Police have the power to ensure that LGBT persons are not arbitrarily arrested or unnecessarily persecuted in the justice system. In this regard, the following recommendations are made to the Uganda Police Force:

1. Conclusively investigate all cases of violence against LGBT persons by members of the force and the public and take appropriate action to offer redress to the victims
2. Continue to partner with human rights organisations to train police officers on marginalisation as well as the limits of the laws which they are mandated to enforce.
3. Strengthen mechanisms that exist to redress human rights violations committed by members of the UPF. In particular, improve the effectiveness of the Police Professional Standards Unit in handling matters of violations committed by police officers.

## To the Uganda Law Reform Commission

The Uganda Law Reform Commission is mandated to advise the state on the needed reforms to the laws in order to bring them into conformity with the Constitution and the principles of good governance, human rights, and social justice. It is therefore recommended that the Uganda Law Reform Commission:

1. Develop proposals based on internationally recognised human rights standards for constitutionally compliant alternatives to laws creating petty offences that protect the rights of all persons.
2. Develop a proposal for the amendment of the Penal Code Act to repeal the sections that criminalise consensual same-sex relations in line with international human rights standards.
3. Develop proposals for laws that appropriately define and penalise hate speech against unpopular minorities.

## To the Uganda Human Rights Commission

The Uganda Human Rights Commission is mandated to ensure the preservation and protection of the basic human rights of all, both in law and in practice. In order to fulfil this mandate for LGBT persons, it is recommended that UHRC does the following:

1. Demand action and accountability from the state for all human rights violations reported, especially those that are tacitly condoned or otherwise unaddressed by state authorities.
2. Hear and dispose of cases involving violations of rights of LGBT persons that are pending before the Commission's Complaints and Investigations Directorate.
3. Develop proposals to amend laws that are discriminatory and which do not align with the Constitution of the Republic of Uganda and its international obligations.
4. Include cases of discrimination based on sexual orientation and gender identity in the Annual Reports to Parliament.
5. Ensure the implementation of Resolution 275 of the African Commission on Human and Peoples' Rights on Prevention of Violence against Persons based on their Real or Presumed Sexual Orientation and Gender Identity.

## To the Equal Opportunities Commission

The Equal Opportunities Commission is an institution mandated to address marginalisation and discrimination in Uganda. The EOC provides a platform for addressing violations suffered by marginalised persons, including LGBT persons. The Commission can therefore utilise its mandate to better the human rights situation of LGBT persons by doing the following:

1. Document and investigate systemic and institutionalised discrimination based on sexual orientation and gender identity, and make recommendations for the elimination of such systemic and institutionalised discrimination.
2. Continue to train EOC staff to build their capacity in the documentation and handling of matters of discrimination and marginalisation based on sexual orientation and gender identity.
3. Include cases of discrimination based on sexual orientation and gender identity in the Annual State of Equal Opportunities Reports to Parliament.

### To Civil Society Organisations

Organisations that exist to promote human rights, including the rights of LGBT persons, are equipped to raise awareness about the discrimination and challenges which LGBT persons face within the Ugandan society, as well as advocate for meaningful social change in favour of LGBT persons. It is therefore recommended that Civil Society does the following:

1. Make use of the Human Rights (Enforcement) Act 2019 by supporting LGBT persons who have suffered human rights violations to institute cases to hold perpetrators of these violations liable.
2. Sustain Civil Society Organisations' partnerships developed for the monitoring and documentation of LGBT rights violations to support further advocacy.
3. Intensify advocacy efforts towards the decriminalisation of petty offences as an avenue of addressing legal barriers to human rights protection for LGBT persons in Uganda.
4. Support the Uganda Human Rights Commission in monitoring and documenting reports of violence, abuse, and discrimination based on sexual orientation and gender identity.

# ABOUT HRAPF

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## Background

Human Rights Awareness and Promotion Forum is a voluntary, not for profit and non-partisan Non-Governmental Organisation. HRAPF works on the promotion, realisation, protection, and enforcement of the human rights of marginalised persons and most at risk populations through human rights awareness, research, advocacy and legal aid service provision. It was established in 2008 with a vision of improving the observance of human rights of marginalised persons in Uganda.

## Legal Status

HRAPF is incorporated under the laws of Uganda as a company limited by guarantee and is also licensed as a non-governmental organisation. HRAPF also operates a fully licensed specialised legal aid clinic for marginalised persons, including LGBT persons.

## Vision

A society where the human rights of all persons, including marginalised persons and Most at Risk Populations are valued, respected, and protected.

## Mission

To promote respect and protection of human rights of marginalised persons and Most at Risk Populations through access to justice, research and advocacy, legal and human rights awareness, capacity enhancement and strategic partnerships.

## HRAPF's Objectives

- To create awareness on the national, regional, and international human rights regime.
- To promote access to justice for marginalised persons and Most at Risk Population groups.
- To undertake research and legal advocacy for the rights of marginalised persons and Most Risk Population groups.
- To network and collaborate with key strategic partners, government, communities, and individuals at national, regional, and international levels.
- To enhance the capacity of marginalised groups, Most at Risk Populations and key stakeholders to participate effectively in the promotion and respect of the rights of marginalised persons.
- To maintain a strong and vibrant human rights organisation.

## Our target constituencies

- Lesbian, Gay Bisexual and Transgender (LGBT) persons
- Intersex Persons
- Sex workers
- Women, girls and service providers in conflict with abortion laws
- People who use and inject drugs (PWUIDs)
- People living with HIV and TB (PLHIV/TB)
- Poor women, children and the elderly with land justice issues.

## HRAPF Values

- Equality, justice and Non-discrimination
- Transparency, Integrity and Accountability
- Learning and Reflection
- Quality and Excellence
- Teamwork and Oneness
- Passion and drive
- Networking and Collaboration.

## Slogan

Taking Human Rights to all.

## Human Rights Awareness and Promotion Forum (HRAPF)

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