



REPORT ON VIOLATIONS AGAINST PERSONS WHO USE AND INJECT DRUGS IN UGANDA, 2019

With contributions from Uganda Harm Reduction Network (UHRN)



July 2020

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ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM

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

ABOUT THE CONTRIBUTING ORGANISATION

UGANDA HARM REDUCTION NETWORK (UHRN)

UHRN is a youth led drug user initiative established in 2008 to respond to the drug use crisis in Uganda. The network works to advocate for practical interventions aimed at supporting and addressing issues of men and women who use and inject drugs. The network also seeks to provide a national platform for health and policy programs that promote good practices and advocate for a supportive environment for the adoption, implementation and expansion of harm reduction programs for People Who Use and Injects Drugs (PWUIDs) in Uganda. Currently UHRN's geographical focus includes the following regions: Central Region; Eastern Region; Western Region; Northern Region.

PREFACE

This report details the experiences of People Who Use and Inject Drugs (PWUIDs) as a result of criminalisation of individual use and possession of narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Control Act, 2016.

PWUIDs are the selected focus group of this report due to the fact that they are extremely vulnerable to HIV infection and also face structural barriers in accessing HIV prevention and treatment services. PWUIDs are partly considered to be Key Populations due to the fact that they face frequent and systemic human rights violations.

The report sets out the various human rights violations suffered by PWUIDs for the period of January to December 2019, as recorded by HRAPF's legal aid clinic and by Uganda Harm Reduction Network (UHRN). HRAPF offers legal aid to People Who Use and Inject Drugs across Uganda and reaches beyond Kampala, where the Secretariat is based, through its six regional centres and through HRAPF-trained and supported Community Paralegals who are based in various districts in the country. All the cases handled by HRAPF and the contributing partner organisation were considered in compiling this report. All the cases in this report have been independently verified through reference to case files and interviews with the victims of the violations and the lawyers and paralegals that handled the cases.

The report has the same lay-out as has become usual for HRAPF's violations reports: it starts with incidences of protection of the rights of PWUIDs, then considers the number, nature and perpetrators of violations as well as trends in violations as compared to previous years. Instances where rights of PWUIDs have been protected should be highlighted since this shows progress towards full recognition of this group. It is equally important to report on violations in order to ensure that the lived realities of these groups are known to government and society at large.

This report serves an evidence-base of the number, extent and severity of violations which PWUIDs face due to their social status, societal prejudice and stigma. The report highlights the need for continued and strengthened intervention from the state, civil society and development partners to put an end to these violations. This report is also intended to support advocacy efforts towards positive changes in the legal and policy environment as it relates to PWUIDs. Finally, the report is intended to serve as a tool for sensitising both state and non-state actors on the discrimination and violence which PWUIDs considered in this report face on a daily basis.

The report is a result of concerted efforts by HRAPF and its partner organisation Uganda Harm Reduction Network (UHRN).

We hope that persons seeking information in the area of PWUIDs' rights will find this report useful.

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GLOSSARY

- Case: A separate set of facts involving violation of a law or a right and which is included in one file. A single case can involve multiple persons and multiple violations.
- Harm reduction: Measures to reduce the negative consequences of drug use.
- Perpetrator: The person or institution responsible for causing a human rights violation.
- Violation: An act that contravenes a law which guarantees a right. There may be multiple violations in a single case.

LIST OF ACRONYMS

AG:	Attorney General
ARVs:	Anti-retroviral Drugs
DPP:	Directorate of Public Prosecutions
HRAPF:	Human Rights Awareness and Promotion Forum
NDPAA:	National Drug Policy and Authority Act, Cap. 206
NDPSCA:	Narcotic Drugs and Psychotropic Substances Control Act, 2016
PWUID:	Person Who Uses and Injects Drugs
PWUIDs:	People Who Use and Inject Drugs
UHRC:	Uganda Human Rights Commission
UPF:	Uganda Police Force
WHO:	World Health Organization
KPs:	Key population(s)

EXECUTIVE SUMMARY

The Report of Human Rights Violations against PWUIDs analyses cases of violations committed against PWUIDs from a human rights-based perspective on an annual basis. This report considers the human rights violations committed against PWUIDs during the course of 2019. The report classifies the categories of human rights violations suffered by PWUIDs. The violations against this group are committed by state actors as they implement the provisions of the National Drug Policy and Authority Act, Cap. 206 and the Narcotic Drugs and Psychotropic Substances Control Act, 2016. The report also provides detail and context to a number of the violations in order to enable the reader to gain an understanding of the lived realities of PWUIDs and the dynamics of the violations that they face on a regular basis. This report is intended to be used as a tool for advocacy on the rights of PWUIDs in Uganda by providing a record of violations of their rights.

The basis of the report is cases of human rights abuses and violations suffered by PWUIDs that have been documented by HRAPF as well as UHRN. The report, however, does not include all the documented violations committed against PWUIDs but only those violations which could be verified independently.

Key Findings

1. During the year 2019, there were no recorded instances of the state protecting the rights of PWUIDs.
2. A total of 68 human rights violations were perpetrated against PWUIDs arising out of 26 cases.
3. The Uganda Police Force is the single biggest violator of human rights of PWUIDs for the year 2019 as it was responsible for 66 of the 68 violations. The 2 remaining violations were committed by members of the Local Defence Unit.
4. The right most commonly violated is the right to liberty. A total of 48 violations of this right was recorded and verified during 2019.
5. No instances of violence or violations of human dignity by non-state actors were recorded during this period.

Key Recommendations

To the President of the Republic of Uganda

1. Speak out against violence against PWUIDs.
2. Make clear statements that acts of violence and discrimination against PWUIDs will not go unpunished.
3. Revise the directive on stopping arrests under the 'idle and disorderly' provision to include the offence of 'being a rogue and vagabond' and other petty offences.

To Parliament

1. Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2016 to decriminalise individual drug use or to allow for more lenient sentences where a person is an individual drug user as opposed to a trafficker.
2. Repeal sections of the Penal Code Act which create broad and vague petty offences such as ‘being a common nuisance’, which are used to arbitrarily arrest and punish persons who are poor and undesirable, including PWUIDs.

To the Uganda Police Force

1. Continue training Police officers on the human rights of PWUIDs as well as the limits of the laws which they are mandated to enforce.
2. Strengthen mechanisms which exist to redress human rights violations committed by members of the UPF. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.

To the Ministry of Health

1. Emphasise violations committed against PWUIDs as a barrier in the fight against HIV and AIDS in policies and public communication.
2. Take a stand against laws which impose harsh sentences on PWUIDs for individual drug use and possession, which inhibit rehabilitation and treatment of PWUIDs as well as access to HIV prevention and treatment services.
3. Adopt a harm reduction policy which can guide future legislation, programmes, and the establishment of rehabilitation centres and treatment of PWUIDs in Uganda, in recognition of the fact that this group is a KP.

To the Uganda Law Reform Commission

1. Develop a proposal for constitutionally compliant alternatives to laws creating petty offences that will protect the rights of all while ensuring order in society.
2. Make recommendations for the amendment of the NDPSCA to remove provisions which impose harsh sentences on PWUIDs for individual drug use and possession.

To the Uganda Human Rights Commission

1. Hear and dispose of cases involving violations of rights of PWUIDs that are pending before the Commission’s Complaints and Investigations Directorate.
2. Develop proposals to amend laws that are discriminatory and which do not align with the Constitution of the Republic of Uganda.
3. Include PWUIDs’ issues in the annual reports to Parliament.
4. Continue to work with CSOs and government ministries to train magistrates and Police officers on the NDPSCA and other laws affecting PWUIDs.

To the Equal Opportunities Commission

1. Investigate systemic discrimination of individuals based on their social and economic status within society.
2. Continue to train the staff of the EOC in order to build their capacity in handling matters of discrimination and marginalisation which involve PWUIDs.
3. Compile reports on discrimination and marginalisation of PWUIDs and make the necessary recommendations to the relevant stakeholders on how to combat such discrimination and marginalisation.
4. Include PWUIDs issues in the annual reports to Parliament.

To the Uganda AIDS Commission

1. Emphasise violations committed against PWUIDs as an obstacle to the implementation of HIV prevention and control policies and programmes.
2. Take a stand against laws which impose harsh sentences on PWUIDs for individual drug use and possession, which inhibit rehabilitation and treatment of PWUIDs as well as access to HIV prevention and treatment services.

To civil society organisations

1. Hold awareness sessions with members of the general community to demystify PWUIDs and help the community understand that they are part of their community.
2. Develop the capacity of staff to document violations committed against PWUIDs. This could include adopting uniform guidelines for recording information on cases and violations.
3. Institute cases under the new Human Rights Enforcement Act, 2019 in order to hold state actors who have committed human rights violations against PWUIDs accountable.
4. Strengthen reporting systems, methods of evidence collection and data storage in order to facilitate the verification of violations against PWUIDs.
5. Support the Uganda Human Rights Commission to monitor and document reports of violence, abuse, and discrimination committed against PWUIDs.
6. Establish further partnerships with organisations for the monitoring and documentation of rights of PWUIDs.

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I. INTRODUCTION AND METHODOLOGY

I.1 Introduction

The Report on Human Rights Violations against PWUIDs, 2019 is the second report of its kind to be published by HRAPF. The report analyses violations committed against PWUIDs from a human rights perspective.

This report documents the human rights violations suffered by PWUIDs in Uganda during the year as recorded by HRAPF and UHRN. Vulnerability to human rights violations inhibit the access of these groups to HIV services and continue to render them vulnerable to HIV infection.

The report classifies the various categories of human rights violations suffered by PWUIDs at the hands of state actors. The report also highlights some of the cases and aims to provide insight into the impact of human rights violations on the individual lives of the PWUIDs.

This report is intended to be used as a tool for advocacy on the rights of PWUIDs in Uganda through providing evidence of widespread violations committed against them. The report is based on documentation of human rights abuses and violations against PWUIDs by HRAPF through its legal aid clinic, as well as UHRN. All the documented cases of violations committed against PWUIDs are not included in the report, however, since every reported case and violation could not be independently verified. This report makes recommendations to various duty-bearers on what can be done to protect, respect and fulfil the rights of PWUIDs in Uganda.

I.2 Methodology

This report was compiled by making use of both quantitative and qualitative methods. Quantitative data was collected by determining the number of verified violations reported to HRAPF and its partners during the course of the year 2019. Qualitative data was collected by considering the cases of PWUIDs reported to HRAPF and partners during the period under review in respect of the nature of the violations and factors surrounding the violations such as the perpetrators, the motivation behind the commission of the violations, and steps taken by both state and non-state actors to address reported violations. Every human rights violation noted was subjected to an independent verification exercise and only those cases involving human rights violations that could be verified independently form part of this report.

a) Review of case files

Data was collected by reviewing the case files of HRAPF and UHRN. The review of case files provided data on the number and nature of violations committed against PWUIDs during 2019. All the case files were physically reviewed in order to ensure that only cases in which human rights violations had been committed against PWUIDs were included in the final data set.

b) Review of documentary evidence

For every case in which it could be established on the face of it that a human rights violation had been committed, documentary or other evidence on file were also reviewed. This documentary evidence includes photographic evidence, Police Bond forms, Police medical examination forms for victims of violence (Police Form 3) and witness statements attesting to the facts of the alleged violation. A case would usually be considered verified if there is valid documentation which serves as evidence of the violation on file.

1.3 Limitations

A number of limitations were encountered in compiling this report.

In the first place, while the report does seek to cover the human rights situation of PWUIDs in Uganda as a whole, it is limited to the work of lawyers and paralegals attached to HRAPF and UHRN in Kampala and a few areas outside Kampala. National coverage has gradually improved over the past few years as HRAPF has opened up regional legal aid centres in various areas of Uganda and has continued to train paralegals operating in various parts of the country. The report, however, does not cover all cases that have happened all over Uganda, and therefore does not give a complete picture of the state of human rights of PWUIDs in the country.

In the second place, uniform and comprehensive documentation of drug user issues in Uganda remains a challenge. In the compilation of this report, a number of instances were noted where neither the case nor the human rights violation that had resulted from the case could be verified due to insufficient information available on file, which effectively leads to underreporting of the number and extent of violations committed against PWUIDs. There remains a need for continually training paralegals and leaders of organisations working with PWUIDs in Uganda on the documentation of human rights violations. Consistent, uniform and comprehensive documentation is a necessity for human rights violations to be recorded and taken into consideration by governing authorities and law enforcers.

A third limitation that was encountered in the compilation of this report is the fact that those handling cases involving human rights violations of PWUIDs do not necessarily have the capacity to frame their cases in the language of rights. In many instances, violations which occurred on the basis of social identity as a PWUID would not be recognised as such. On the other hand, routine procedures and practices carried out by the Police and other law enforcers are sometimes viewed and recorded as human rights violations in error. There remains a need for ongoing training and orientation of persons responsible for responding to complaints lodged by PWUIDs on the content, framing and recognition of human rights violations. Overall, the PWUID movement in Uganda will greatly benefit from in-depth and ongoing training on human rights monitoring, documentation and reporting.

2. PROTECTION OF THE RIGHTS OF PWUIDs IN 2019

The domestic and international legal framework in Uganda places a duty on the state to protect the human rights of all individuals and groups in the country. Regional as well as international human rights instruments to which Uganda is party requires of the state to respect, protect and uphold human rights and freedoms.¹ This duty is also reiterated in Article 20 of the 1995 Constitution of the Republic of Uganda.

The obligation to respect requires the state and its agencies not to interfere with the enjoyment of fundamental rights and freedoms.² The obligation to protect requires the state to protect rights-holders from violation of their rights through enacting legislation and by providing effective remedies where their rights have been violated.³ The African Commission on Human and Peoples' Rights has held that the obligation to protect 'requires of the state to take measures to protect beneficiaries of the protected rights against political, economic and social interferences.'⁴ The obligation to fulfil relates to the duty to promote and requires of the state to actively gear its systems and processes toward the realisation of rights.⁵ The obligation to promote requires of the state to take steps to ensure that individuals are able to exercise their rights and freedoms by, for example, promoting tolerance and raising awareness.⁶ Finally, the obligation to protect entails that state would create an 'atmosphere' in which all rights-holders are able to freely exercise their rights through legislative measures and other regulations.⁷

The government of Uganda and all its organs and agencies have an obligation to respect, protect, promote and fulfil the rights of all individuals in the country, including PWUIDs. The Constitution gives the Uganda Police Force the mandate to protect life and property; to preserve law and order and to prevent and detect crime.⁸ Individual drug use and possession is criminalised under Sections 4 and 5 of the Narcotic Drugs and Psychotropic Substances Control Act, 2016. The Police nevertheless has the duty to protect the rights of PWUIDs as bearers of all fundamental rights and freedoms, while also preventing and detecting crime. The state's duty to protect rights-holders by providing effective remedies for rights violations also depends on the Police as the first point of contact. Regrettably, in the process – and sometimes under the guise – of preventing crime, the Police is the main violator of human rights of PWUIDs.

HRAPF seeks to document instances of improvement of the levels of recognition and protection of human rights of PWUIDs. During 2019, however, there were no recorded cases where the Police stepped in to protect the rights of this group.

¹ See 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.

² *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2001) AHLR 60 (ACHPR 2001) par. 45.

³ As above at par. 46.

⁴ As above.

⁵ As above at par. 47.

⁶ As above.

⁷ As above.

⁸ Art 212 of the Constitution.

3. VIOLATIONS OF THE HUMAN RIGHTS OF PWUIDs DURING 2019

3.1 Introduction

This section sets out the number and nature of violations committed against PWUIDs during 2019.

3.2 Number of violations committed against PWUIDs during 2019

During the year 2019, a total of 67 violations were committed against PWUIDs. These violations arose out of a total of 26 verified cases.

3.3 Nature of violations committed against PWUIDs during 2019

A total of 67 human rights violations were committed against PWUIDs during 2019. The nature of rights which were violated were: the right to liberty; the right to equality; the right to dignity (freedom from torture and cruel, inhuman, and degrading treatment or punishment), the right to a fair trial and the right to property. Instances of violation of each of these rights are discussed in more detail in this section.

3.3.1 Violation of the right to liberty

The right to liberty was the most commonly violated right for PWUIDs during 2019 with a total of 49 violations.

The right to liberty is guaranteed in Article 23 of the Constitution of the Republic of Uganda. Article 23(1) sets out the specific, limited circumstances under which a person's liberty may be limited through lawful arrest or detention.⁹ Safeguards are also put in place for persons arrested or detained for the purposes of bringing them before a court of law or in pursuit of a court order. These safeguards include: freedom from prolonged detention without a trial;¹⁰ the right to be supported by a lawyer of your choice;¹¹ the right not to incriminate oneself;¹² the right to be presumed innocent;¹³ and the right not to be tried for an offence which is not defined by law.¹⁴

PWUIDs are often subjected to arbitrary arrest and prolonged periods in Police detention before being brought before a court or released.

During 2019, there were 49 violations of the right to liberty of PWUIDs, all of which were perpetrated by the Uganda Police Force.

⁹ See also Art 9(1) of the ICCPR.

¹⁰ Art 23(4)(b) of the Constitution; Art 9(3) of the ICCPR.

¹¹ Art 23(3) of the Constitution and Art 14(3)(d) of the ICCPR.

¹² Art 14(3)(g) of the ICCPR.

¹³ Art 28(3)(a) of the Constitution; Art 14(2) of the ICCPR.

¹⁴ Art 28(12) of the Constitution sets out the principle of legality.

a) Freedom from arbitrary arrest

There were a total of 21 violations of the right to liberty of PWUIDs due to arbitrary arrests arising out of eight cases.

An arrest is arbitrary if it is based on grounds that are not recognised in law. In one 2019 case, four PWUIDS were arrested after complaints were laid by their neighbours with the Police. The four were charged with ‘smoking opium’ – a crime which no longer exists under the law.¹⁵ Two other PWUIDs were arrested behind a bank in Entebbe Town and charged with ‘frequenting a place used for smoking opium’.¹⁶ Another PWUID arrested at Bulenga trading centre was also charged for ‘frequenting a place used for smoking opium’.¹⁷ Six PWUIDs were arrested in Katwe during a Police operation and charged with ‘smoking opium’.¹⁸ Another PWUID arrested in a slum nicknamed ‘Germany ghetto’ was also charged for ‘smoking opium’. In another case, a PWUID was arrested in a public area near a fish factory.¹⁹ At the time of the arrest, the Police claimed that he was arrested for ‘being idle and disorderly’, however the Police station he was charged with ‘smoking opium’. Two PWUIDs were arrested in Kabalagala and charged with ‘possession of opium’.²⁰ All of these arrests amounted to a violation of the right to liberty since the crimes of ‘smoking opium’, ‘possession of opium’ and ‘frequenting a place used for smoking opium’ no longer exist in law and have all been repealed by Section 4 and Section 5 of the NDPSCA.²¹

b) Freedom from prolonged detention

There were 28 violations of the right to liberty of PWUIDs due to prolonged detention arising out of 17 cases. This high number indicates a trend of punishing and even attempting to ‘rehabilitate’ PWUIDs by detaining them in Police cells for a prolonged period, which is unlawful and a clear violation of the right to liberty.

One PWUID was arrested from his house and charged with theft, he was only released from Police custody after 6 days.²² Four PWUIDs who were accused of theft by one of their friends were also arrested and held in Police custody for four days before being released.²³ A PWUID who was arrested by an LDU after being found with a stick of marijuana in his pocket was detained for four days. Five PWUIDs were arrested for ‘smoking opium’ following complaints by their neighbours and were detained for six days.²⁴ In another case, a PWUID was arrested by members of the Local

¹⁵ HRAPF/DUVR/2019-2/016.

¹⁶ HRAPF/DUVR/2019-2/028.

¹⁷ HRAPF/DUVR/2019-2/041.

¹⁸ HRAPF/DUVR/2019-2/042.

¹⁹ HRAPF/DUVR/2019-2/066.

²⁰ HRAPF/DUVR/2019-2/055.

²¹ These offences were previously created under Section 47 and Section 48 of the National Drug Authority and Policy Act Cap 206.

²² HRAPF/DUVR/2019-2/002.

²³ HRAPF/DUVR/2019-2/003.

²⁴ HRAPF/DUVR/2019-2/016.

Defense Unit (LDU) and held in Police detention for eight days.²⁵ A PWUID suspected of selling drugs was arrested and detained for 12 days.²⁶ In another case, two PWUIDs were arrested by LDUs and local leaders and were beaten and badly wounded in the process. They were kept in Police custody for four days.²⁷

There were 10 other cases similar to these in which PWUIDs were arrested and detained in Police custody for longer than 24 hours.²⁸

3.3.2 Violation of the right to equality and freedom from discrimination

During 2019, there was only one recorded violation of the right to equality and freedom from discrimination of PWUIDs.

Article 21 of the Constitution of the Republic of Uganda as amended protects the right of every person to equality before and under the law as well as equal protection of the law. The criminalisation of individual drug use and possession creates barriers for the exercise of the right to equality for PWUIDs.

A PWUID reported the theft of the side mirror of his vehicle to the Police and obtained a Police reference number. The client located the guide who had stolen the mirror and called the Police to arrest him. The guide, in turn, called his supervisor who came and asserted that the complainant is a drug user. The Police then arrested the PWUID on account of being a PWUID and they let the guide go.²⁹ This case constitutes a clear violation of the right the equality and freedom from discrimination on the basis of social status since the PWUID was arrested on no other ground apart from rumours and accusations that he is a drug use. At the same time, the PWUID was denied equal protection of the law since he was denied the protection of the Police on the basis of his perceived identity as a drug user.

²⁵ HRAPF/DUVR/2019-2/032.

²⁶ HRAPF/DUVR/2019-2/080.

²⁷ HRAPF/DUVR/2019-2/061.

²⁸ HRAPF/DUVR/2019-2/004 arrestees were detained at Kabalagala Police Station for 4 days; HRAPF/DUVR/2019-2/014 arrestee was detained at Kabalagala Police Station for 4 days; HRAPF/DUVR/2019-2/026 arrestee was detained at Entebbe Central Police Station for 7 days; HRAPF/DUVR/2019-2/034 arrestee was detained for a total of 4 days first at Naalya Police Post and later at Kiira Division; HRAPF/DUVR/2019-2/046 arrestee was detained at Kabalagala Police Station for 3 days; HRAPF/DUVR/2019-2/053 arrestee was detained at Kabalagala Police Station for 8 days; HRAPF/DUVR/2019-2/075 arrestees were detained at Kabalagala Police Station for 4 days; HRAPF/DUVR/2019-2/079 arrestee was held at Abaita Babiri Police Post for 4 days; HRAPF/DUVR/2019-2/087 arrestee was detained at Abaita Babiri Police Post for 9 days; HRAPF/DUVR/2019-2/092 arrestee was detained at Kabalagala Police Station for 4 days.

²⁹ HRAPF/DUVR/2019-2/082.

3.3.3 Violation of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment and punishment

There were 14 violations of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment against PWUIDs.

Article 24 of the Constitution provides that no person shall be subjected to any form of torture, cruel, inhuman and degrading treatment or punishment. This right is inalienable, and can under no circumstances be infringed upon or restricted.³⁰

The Prevention and Prohibition of Torture Act defines torture, similar to the United Nations Convention Against Torture (UNCAT), as any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person or at the instigation or with the consent or acquiescence of any person, whether a public official or private individual, for such purposes as: obtaining information from the person or any other person; punishing the person for an act he or she or any other person has committed or is suspected of having committed or planning to commit; or intimidating or coercing the person or any other person to do or refrain from doing any act. Cruel and inhuman treatment on the other hand is defined by the UNCAT as any ill-treatment that does not fit within the definition of torture and consists of acts causing physical or mental pain that may not be perpetrated by or with the permission or acquiescence of a state official; or which are not as severe or done for the same reasons as those amounting to torture.³¹ Degrading treatment constitutes acts that cause a person humiliation and loss of self-respect.³²

There were 14 violations of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment and punishment of PWUIDs during 2019.

In one case, three PWUIDs were arrested at Magala market after being trailed by Police for some time. The PWUIDs were badly beaten during the arrest and were released on bond in order to allow them to recover.³³

A PWUID was arrested by six LDUs in Kabalagala, who severely beat him during the course of the arrest. The PWUID bled profusely from his head and back but was nevertheless kept in Police detention without receiving medical attention.³⁴

In another case, a PWUID was arrested while he was asleep in his house in Mpala. The arresting officers alleged that the client had drugs and slapped him in the process of arresting him.³⁵ Another PWUID was arrested at Bulega trading centre and was beaten by Police officers until he collapsed.³⁶ There was also a case in which a PWUID was made to remove his clothes and shoes in the process of arrest and was beaten as he was made to walk to the Police station.³⁷

³⁰ Art 44(a) of the Constitution of the Republic of Uganda as amended.

³¹ Art 16 of UNCAT; *Wainwright v United Kingdom* Application No.12350/04 (2007) 44 E.H.R.R 40.

³² As above.

³³ HRAPF/DUVR/2019-2/029.

³⁴ HRAPF/DUVR/2019-2/033.

³⁵ HRAPF/DUVR/2019-2/069.

³⁶ HRAPF/DUVR/2019-2/041.

³⁷ HRAPF/DUVR/2019-2/081.

Two PWUIDs were arrested by LDUs in Bunamwaya and were beaten in the process.³⁸ Two other PWUIDs were beaten and badly wounded by LDUs and local leaders. They were detained for four days without receiving medical treatment.³⁹ In another case a PWUID was arrested in Kabalagala and beaten by the arresting LDU before he spent four days in Police custody.⁴⁰

3.3.4 Violation of the right to property

During 2019, there was one violation of the right to property in respect of PWUIDs.

Article 26 of the Constitution protects the right to own property and provides conditions for the lawful deprivation of property. The Article makes it clear that deprivation of property can only be justified if the acquisition is necessary for the public benefit or public health or if there is a law which makes compulsory the taking of possession of property.

A PWUID was arrested in October 2018 on a case of theft. He was charged and remanded to prison. The case was dismissed in March 2019 and the PWUID returned to the Police station where he had been charged initially in order to recover his phone which was taken from him. The phone was not returned to him and he was told to return the following day. He kept returning to the Police station but his phone was not returned to him.⁴¹

3.3.5 Violation of the right to a fair trial

There were 3 violations of the right to a fair trial against PWUIDs during 2019.

The right to a fair trial is guaranteed under Article 28 of the Constitution. This right is undermined when evidence is planted on suspects by the Police during and after their arrest. This right is not limited to matters during trial but also applies to pre-trial matters as held in *Oyet Ojera v Uganda Telecom Limited*.⁴² Article 28(3) of the Constitution provides that an accused person is innocent until proven guilty. It follows that where a Police officer deliberately plants evidence on an accused to ensure his guilt, it amounts to tampering with the system which defeats the intention of fairness in proceedings against an accused as was envisaged by the Constitution and the Evidence Act Cap.6.

In one case, a PWUID was arrested by six LDU members and taken to Kabalagala Police Station.⁴³ He did not have any drugs on him at the time of arrest, however 10 sticks of marijuana were displayed as being found on him at the Police station. In another case, two PWUIDs were arrested and Police planted sacks filled with drugs on them and said that they were found with them.⁴⁴ This amounted to violation of the right to a fair trial.

³⁸ HRAPF/DUVR/2019-2/083.

³⁹ See n 27 above.

⁴⁰ HRAPF/DUVR/2019-2/092.

⁴¹ HRAPF/DUVR/2019-2/019.

⁴² *Oyet Ojera v Uganda Telecom Limited* (Civil Suit No. 161 of 2010).

⁴³ HRAPF/DUVR/2019-2/033.

⁴⁴ HRAPF/DUVR/2019-2/058.

3.4 Conclusion

During 2019, PWUIDs suffered the violation of various rights, particularly the right to liberty, the right to equality and freedom from discrimination; the right to dignity and freedom from cruel, inhuman and degrading treatment or punishment; the rights to a fair trial and the right to property.

4. PERPETRATORS OF VIOLATIONS COMMITTED AGAINST PWUIDs DURING 2019

4.1 Introduction

During the course of 2019, all human rights violations recorded to have been committed against PWUIDs were perpetrated by state actors.

The Constitution of the Republic of Uganda of 1995 (as amended) in its chapter 4 sets out the rights and freedoms to be enjoyed by individuals and groups in Uganda. Article 20(2) of the Constitution provides that the rights and freedoms set out in that chapter is to be respected, upheld and promoted by all organs and agencies of government and by all persons. The Constitution therefore places a duty on all persons as well as all organs of government not to violate the rights of others. The Constitution also places a positive duty on the state to promote the human rights of all persons in the country. This obligation on the state to promote human rights of all persons is also created by the regional and international human rights instruments to which Uganda is a party.⁴⁵

4.2 Violations by state actors

All human rights violations recorded for 2019 were committed by state actors, and specifically, the Uganda Police Force and members of the Local Defense Unit. A total of 68 human rights violations were visited upon PWUIDs arising from 26 cases.

4.2.1 Violations by the Uganda Police Force

There were 21 violations of the right to liberty of PWUIDs due to arbitrary arrests and 28 violations of the right to liberty due to prolonged detention. One violation of the right to equality was committed by the Police when a PWUID reported a crime that was committed against him to the Police, yet the Police arrested the PWUID after the person who committed the crime against him accused him of being a drug user.⁴⁶ The Police committed 12 violations of the right to freedom from torture and cruel, inhuman and degrading treatment and punishment against PWUIDs by beating and humiliating them during and after arrest. One violation of the right to property was committed when the Police did not return a phone to a PWUID who had been arrested and spent five months on remand.⁴⁷ Three violations of the right to a fair trial was committed by planting evidence on arrestees.⁴⁸

⁴⁵ 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.

⁴⁶ HRAPF/DUVR/2019-2/082.

⁴⁷ See n 41 above.

⁴⁸ HRAPF/DUVR/2019-2/033; see n 44 above.

4.2.2 Violations by members of the Local Defence Unit

There were two violations of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment and punishment by members of the Local Defence Unit. These violations were committed in a single case where two PWUIDs were arrested by members of the Local Defence Unit (LDUs) and were badly beaten in the process.⁴⁹

4.3 Conclusion

During 2019, there were a series of violations of the rights of PWUIDs perpetrated by state actors only. These violations mostly infringed on PWUIDs' right to liberty, their right to equality and their right to dignity and to be free from torture and cruel, inhuman and degrading treatment and punishment. Almost all violations were perpetrated by the Uganda Police Force.

⁴⁹ See n 27 above.

5. ANALYSIS OF HUMAN RIGHTS VIOLATIONS COMMITTED AGAINST PWUIDs DURING 2019

5.1 Introduction

This section of the report analyses the cases of protection, the number and nature of violations as well as the perpetrators of violations committed against PWUIDs during 2019 as discussed in the previous section in order to identify trends and consider underlying reasons for the findings. The violations against PWUIDS recorded during 2019 are compared to those recorded during 2018.

5.2 Cases of protection

No case was recorded in either 2018 or 2019 in which the Police stepped in to protect the rights of PWUIDs. This may be due to the fact that in both 2018 and 2019, no violations were committed against PWUIDs by non-state actors, which cases would typically need the intervention of the Police. It may also indicate a need for sensitisation and awareness raising among law enforcers about the vulnerabilities and rights of PWUIDs.

5.3 Number of violations

During the year 2019, a total of 68 violations were perpetrated against PWUIDs. This number is lower than the 91 violations recorded during 2018. In 2018, however, all violations arose out of only 15 cases, while the 2019 violations arose out of a total of 26 cases.

5.4 Nature of violations

During 2019, five categories of rights of PWUIDs were violated, namely the right to liberty, the right to dignity and freedom from torture and cruel, the right to a fair trial, inhuman and degrading treatment and punishment, the right to equality and freedom from discrimination and the right to property.

TABLE I: Categories of rights of PWUIDs violated during 2019

Category of rights violated	Number of violations verified during 2019
The right to liberty	49
The right to equality	1
The right to dignity and freedom from torture	14
The right to a fair trial	3
The right to property	1
TOTAL	68

The right which was most violated for PWUIDs is the right to liberty. This right was violated a total of 49 times. This high number of violations of the right to liberty can be attributed to the fact that individual drug use and possession remain criminalised in Uganda. The number of cases of prolonged detention also remained high, particularly for PWUIDs who are seemingly arbitrarily punished by law enforcers by being held in Police custody for prolonged periods.

During 2019, there were frequent violations of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment and punishment. PWUIDs faced the violation of their right to dignity and freedom from torture and cruel, inhuman and degrading treatment when they were arrested by the Police and members of LDUs and suffered physical violence in the process.

TABLE 2: Categories of rights of PWUIDs violated during 2019 compared to 2018

Category of rights violated	Number of violations verified during 2019	Number of violations verified during 2018
The right to liberty	49	34
The right to equality	1	9
The right to dignity and freedom from torture	14	26
The right to a fair trial	3	22
The right to property	1	0
TOTAL	68	91

The total number of violations committed against PWUIDs were lower in 2019 than in 2018. Similar to 2018, the most violated right in 2019 was also the right to liberty, although the number of these violations were lower in 2018. During 2018, there were a higher number of violations of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment or punishment and a significant number of violations of the right to a fair trial as well. Overall, the lower number of violations recorded in 2019 is not encouraging since the total number of violations arose out of 26 cases while there were only 15 cases constituting violations recorded during 2018.

5.5 Perpetrators of violations against PWUIDs.

During 2019, 68 violations were committed against PWUIDs. This number is lower than the 91 violations recorded in 2018. The first year in which HRAPF recorded violations against PWUIDs was 2018, and therefore comparison with earlier years is not possible.

TABLE 2: Perpetrators of human rights violations committed against PWUIDs

Perpetrator	Number of violations occasioned in 2019	Number of violations occasioned in 2018
The Uganda Police Force	66	91
Members of LDUs	2	0
TOTAL	68	91

During 2019, Police were responsible for committing 66 violations against PWUIDs. This figure is considerably lower than the 91 violations committed by the Police in 2018 and it is hoped that efforts to train and sensitise Police officers on the rights and personhood of PWUIDs is bearing fruit. Unfortunately, the Police remains the single biggest violator of rights of PWUIDs, even though the number of violation have decreased from 2018.

5.6 Addressing violations against PWUIDs

The Uganda Police Force is tasked with preventing and detecting crime and preserving law and order.⁵⁰ It is therefore ironic that the agents who are tasked with protecting all civilians, including PWUIDs, are also responsible for committing the majority of verified violations against this group. The Police Professional Standards Unit exists so that complaints can be lodged where Police officers commit violations and offences and deviant Police officers can be investigated and punished. This mechanism, however, is rarely used and is viewed as ineffective in addressing the complaints against the Police by vulnerable minorities.⁵¹

Another mechanism for the enforcement of human rights is the newly enacted Human Rights (Enforcement) Act of 2019. This Act makes it possible to hold violators responsible for the acts which they committed. In cases where a state actor was the perpetrator, the Act allows for such a perpetrator to be sued in their personal capacity.⁵² An individual violator can therefore be held to account and ordered to pay compensation to correct the wrongs committed. This Act paves the way for holding individual Police officers to account for violations committed against PWUIDs and would hopefully also lead to a reduction in the number of violations committed against these groups.

Furthermore, the Uganda Human Rights Commission has the authority to investigate instances of human rights violations, either in response to a complaint or on its own initiative.⁵³ The Equal Opportunities Commission (EOC) has a similar authority to inquire into ‘any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute

⁵⁰ Art 212 of the Constitution.

⁵¹ Interview with Legal Officer, Human Rights Awareness and Promotion Forum, 15th December 2019.

⁵² Sec 10.

⁵³ Art 52(1)(a) of the Constitution.

discrimination, marginalization or to otherwise undermine equal opportunities'.⁵⁴ During 2019, none of the violations committed by state actors were investigated by the UHRC or the EOC on their own initiative. Furthermore, the UHRC's mechanism for investigating complaints has a significant backlog and even where cases of human rights violations are lodged with the Commission, the cases are only investigated years after the incident had taken place.

5.7 Conclusion

There were 68 recorded and verified human rights violations committed against PWUIDs during 2019, which is a lower number than the 91 cases verified in 2018, but arising from a higher number of cases. The rights violations were primarily the right to liberty, followed by the right to freedom from torture and cruel, inhuman and degrading treatment and punishment, the right to equality, the right to a fair trial and the right to property. All of these violations were committed by state actors, namely Police officers and LDU members, during or after the arrest of PWUIDs.

⁵⁴ Sec 14(2) of the Equal Opportunities Commission Act, 2007.

6. CONCLUSION AND RECOMMENDATIONS

6.1 General conclusion

There were 68 recorded and verified human rights violations committed against PWUIDs, which is a much lower number than the 91 cases verified in 2018. All of these violations were committed by state actors, namely Police officers and LDU members, during or after the arrest of PWUIDs.

The continued criminalisation of individual drug use and possession results in a situation where PWUIDs are 'punished' for their crimes even beyond the bounds of the law. This increases their vulnerability to human rights violations, which in turn, renders them more vulnerable to HIV infection.

6.2 Recommendations

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. It is recommended that the President does the following:

1. Make clear statements that acts of violence and discrimination against PWUIDs will not go unpunished.
2. Ensure that issues of non-discrimination and the protection of PWUIDs are discussed as priorities within Cabinet and the Executive.
3. Demand conclusive investigations of cases involving violations of the rights of PWUIDs.
4. Revise Directive on stopping arrests under the 'idle and disorderly' provision to include the offence of 'being a rogue and vagabond' and other petty offences.

To Parliament

The Parliament of Uganda has the authority to legislate and thereby influence the levels of protection or violation experienced by PWUIDs in Uganda. The Members of Parliament are also influential in both national and international spaces because their mere pronouncements of legislation intended to further criminalise a particular KP group may have dire consequences for that group. Parliament is recommended to do the following:

1. Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to decriminalise individual drug use or to allow for more lenient sentences where a person is an individual drug user as opposed to a trafficker.

2. Repeal sections of the Penal Code Act which create broad and vague petty offences such as 'being a common nuisance', which are used to arbitrarily arrest and punish persons who are poor and undesirable, including PWUIDs.
3. Ensure that government fulfils its international and regional human rights obligations to all without discrimination.

To the Uganda Police Force

The Uganda Police Force is a critical actor in terms of protecting and violating the rights of PWUIDs. The Police can either protect the rights of PWUIDs when they face abuse and discrimination from the general public or condone and thereby exacerbate such hateful behaviour. The Police also determine whether or not PWUIDs will be arrested and prosecuted on the basis of their real or presumed drug use. In this regard, the following recommendations are made to the Police:

1. Working through the Directorate of Legal and Human Rights and alongside civil society, the Uganda Police Force should continue training Police officers on the human rights of PWUIDs as well as the limits of the laws which they are mandated to enforce. The role of the UPF as a protector of the rights of PWUIDs as a vulnerable group should be strengthened.
2. Strengthen mechanisms which exist to redress human rights violations committed by members of the UPF. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.

To the Ministry of Health

The Ministry of Health is tasked to steward and lead the health sector. The Ministry is responsible for policy review and development, supervision of health sector activities, formulation and dialogue with health development partners, strategic planning, advising other ministries, departments and agencies on health-related matters and ensuring health equity. The Ministry of Health is recommended to do the following:

1. Emphasise violations committed against PWUIDs as a barrier in the fight against HIV and AIDS in policies and public communication.
2. Take a stand against laws which impose harsh sentences on PWUIDs for individual drug use and possession, which inhibit rehabilitation and treatment of PWUIDs as well as access to HIV prevention and treatment services.
3. Adopt a harm reduction policy which can guide future legislation, programmes, the establishment of rehabilitation centres and treatment of PWUIDs in Uganda, in recognition of the fact that this group is a KP.

To the Uganda Law Reform Commission

The Uganda Law Reform Commission is authorised to advise the state on needed reforms to the law in order to bring them in line with the Constitution and principles of good governance, human rights and social justice. It is recommended that the Law Reform Commission does the following:

1. Develop a proposal for constitutionally compliant alternatives to laws creating petty offences that will protect the rights of all while ensuring order in society.
2. Make recommendations for the amendment of the NDPSCA to remove provisions which impose harsh sentences on PWUIDs for individual drug use and possession.

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. It is recommended that the UHRC does the following:

1. Demand accountability from the state for all human rights violations reported, especially those that go unaddressed.
2. Hear and dispose of cases involving violations of rights of PWUIDs 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.
4. Include PWUIDs' issues in the annual reports to Parliament.
5. Continue to work with CSOs and government ministries to train magistrates and Police officers on the NDPSCA and other laws affecting PWUIDs.

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 KPs who suffer discrimination on the grounds of sexual orientation and gender identity, their social status or social identity. The Commission is recommended to use its mandate to do the following:

1. Investigate systemic discrimination of individuals based on their social and economic status within society.
2. Continue to train the staff of the EOC in order to build their capacity in handling matters of discrimination and marginalisation which involve PWUIDs.
3. Compile reports on discrimination and marginalisation of PWUIDs and make the necessary recommendations to the relevant stakeholders on how to combat such discrimination and marginalisation.

4. Include PWUIDs issues in the annual reports to Parliament.

To the Uganda AIDS Commission

The Uganda AIDS Commission (UAC) is established under the Office of the President and is responsible for ensuring a focused and harmonised national response to HIV/AIDS throughout the country. The UAC oversees, plans and coordinates HIV prevention and control activities throughout Uganda. The UAC is urged to do the following:

1. Emphasise violations committed against PWUIDs as an obstacle to the implementation of HIV prevention and control policies and programmes.
2. Take a stand against laws which impose harsh sentences on PWUIDs for individual drug use and possession, which inhibit rehabilitation and treatment of PWUIDs as well as access to HIV prevention and treatment services.

To civil society organisations

Organisations which exist to promote human rights are equipped to raise awareness about the discrimination and challenges which PWUIDs face within the Ugandan society. These organisation can advocate for an improved legal and policy environment through various means and can also make use of available mechanisms to seek redress for violations committed against PWUIDs. It is recommended that civil society does the following:

1. Raise awareness about the limits of the law in terms of criminalising drug use and possession and undertake public education campaigns to bring across strongly the message that PWUIDs in themselves are not criminalised.
2. Hold awareness sessions with members of the general community to demystify PWUIDs and help the community understand that they are part of their community.
3. Develop the capacity of staff to document violations committed against PWUIDs. This could include adopting uniform guidelines for recording information on cases and violations.
4. Institute cases under the new Human Rights Enforcement Act, 2019 in order to hold state actors who have committed human rights violations against PWUIDs accountable.
5. Strengthen reporting systems, methods of evidence collection and data storage in order to facilitate the verification of violations against PWUIDs.
6. Support the Uganda Human Rights Commission to monitor and document reports of violence, abuse, and discrimination committed against PWUIDs.
7. Establish further partnerships with organisations for the monitoring and documentation of rights of PWUIDs.

Background

Human Rights Awareness and Promotion Forum is a voluntary, not for profit, and non-partisan Non-Governmental Organisation. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, research, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. 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.

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 enhanced access to justice, research and advocacy, legal and human rights awareness, capacity enhancement and strategic partnerships.

HRAPF's Objectives

1. To create awareness on the national, regional and international human rights regime.
2. To promote access to justice for marginalised persons and Most at Risk Population groups.
3. To undertake research and legal advocacy for the rights of marginalised persons and Most at Risk Population groups.
4. To network and collaborate with key strategic partners, government, communities and individuals at national, regional and international level.
5. 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.

6. To maintain a strong and vibrant human rights organisation.

Our target constituencies

1. Lesbian, Gay, Bisexual and Transgender (LGBT) persons
2. Intersex Persons
3. Sex Workers
4. Women, girls and service providers in conflict with abortion laws
5. People who use drugs
6. People Living with HIV and TB (PLHIV/TB)
7. Poor women, children and the elderly with land justice issues
8. Refugees

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



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