



REPORT OF HUMAN RIGHTS VIOLATIONS AGAINST KEY POPULATIONS IN UGANDA

JANUARY – JUNE 2020

August 2020

With Thanks From





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Empowered At Dusk Women's Association (EADWA); Golden Centre for Women's Rights Uganda (GCWR); Health and Rights Initiative (HRI); Human Rights and Economic Empowerment Development (HUREED); Holistic Organisation to Promote Equality Mbale (HOPE Mbale); Mbarara Rise Foundation; Tranz Network Uganda (TNU); and Uganda Harm Reduction Network (UHRN)

With support from



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, and research and community capacity enhancement. HRAPF operates the only specialised legal aid clinic for marginalised persons and Most at Risk Populations (MARPS) in Uganda.

ABOUT THE CONTRIBUTING ORGANISATIONS

Organisations working with MSM and transgender persons

Health and Rights Initiative (HRI)

Health and Rights Initiative (HRI) is an organisation legally registered as a company limited by guarantee (2014) operating in the Northern and West Nile regions of Uganda. The vision of the organisation is a society with equal opportunities and justice for all and a mission to advocate for justice and equal opportunities for the marginalised groups through social and economic empowerment, advocacy and research in the rural areas. The core values of the organisation include integrity, commitment, teamwork and innovation. HRI serves the key populations, i.e. female sex workers (FSW), men who have sex with men (MSM), lesbians, bisexuals, trans-gender persons, intersex persons and People who Inject Drugs in Northern Uganda in the following areas: Lango sub-region: Lira, Dokolo, Apac, Kole, Oyam, Alebtong, Otuke, Amolatar and Kwania; Acholi sub-region: Gulu, Pader, Kitgum, Nwoya, Amuru, Omoro and Lamwo; West Nile: Nebbi, Pakwach, Paidha, Zombo, Arua, Koboko, Adjumani and Yumbe.

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. The organisation offers services to the LGBTQ community and sex workers. It currently operates in the 7 districts of Mbale, Manafwa, Sironko, Bulambuli, Tororo, Busia and Serere in Eastern Uganda.

Human Rights and Economic Empowerment Development (HUREED)

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 rights to 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. Our overarching goal is to represent and advocate for the rights, needs and best interests of all transgender and sex workers issues in Uganda as well as empowering their community to recognize and work towards resolving LGBTI Persons' issues and challenges in Uganda.

Organisations working with sex workers

Empowered at Dusk Women's Association (EADWA)

EADWA was established in 2008 as a community-based organisation by female sex workers who survived sexual and physical violence. EADWA is committed to serve the general population of female sex workers that are striving to access health services by advocating for an enabling environment, favourable laws and policies, increased access to friendly health services, increased demand for HIV/AIDS services and Sexual Reproductive Health services and related rights.

Golden Centre for Women's Rights – Uganda (GCWR)

GCWR-Uganda is a registered feminist group founded by and for women sex workers in 2018. GCWR strives to challenge and change the cultural, social, political and economic oppressions imposed on women sex workers because of their gender, nationality, class and nature of work. GCWR seeks to engage, empower and enhance capacity of GCWR members to participate in health, political, economic and social activities and to ensure access to cost effective, affordable, accessible and friendly health services for women nationals and migrant sex workers in rural and peri-urban areas.

Organisations working with People Who Use and Inject Drugs

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 seems 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; and Northern Region.

PREFACE

This report is the third to be published by HRAPF consolidating the human rights violations suffered by selected Key Population (KP) groups. The first and second reports recorded violations committed against selected KPs in 2018 and 2019 respectively. This report provides information on verified human rights violations committed against Men who have Sex with Men (MSM), transgender persons, sex workers and People Who Use and Inject Drugs (PWUIDs) during the first half of 2020.

All the different KP groups face criminalisation based on either their sexual orientation, gender identity or their behavior. MSM are criminalised under the 'carnal knowledge against the order of nature' provision in under the Penal Code; sex workers are criminalised under the prohibition of prostitution in the Penal Code and PWUIDs are directly affected by the criminalisation of individual possession and use of narcotic drugs under the Narcotic Drugs and Psychotropic Substances Control Act, 2016. Transgender persons are strictly not directly criminalised under any provisions of the law, however, they are denied legal recognition of their lived gender which can cause considerable difficulties in everyday life since their physical appearance would not necessarily reflect the same gender as their identification documents.¹ Transgender persons are also often taken to be 'homosexuals' and therefore run the risk of being arrested under section 145 of the Penal Code Act on the basis of their appearance.² Provisions criminalising 'personation' in the Penal Code are also misapplied to arrest and charge transgender persons.³

2020 came in with new dynamics brought about by the COVID-19 pandemic. Uganda reacted by aggressively trying to keep the disease out of Uganda, and later to control local infections. This approach was enforced through a heavy increase in policing, which made KPs more vulnerable than before. As such this report also covers a period where the COVID-19 restrictions were most strict.

HRAPF has been publishing the annual Uganda Report of Violations based on Sexual Orientation and Gender Identity since 2014, which reflects the violations of human rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons that were recorded and verified in a particular year. HRAPF has also

1 Human Rights Awareness and Promotion Forum *A guide to the normative legal framework on the human rights of LGBTI persons in Uganda* (2019) 23.

2 Human Rights Awareness and Promotion Forum *The impact of the legal and policy framework on access to justice for transgender persons in Uganda* (2019) 15.

3 See n 1 above.

been publishing the Annual Report on the Protection and Violation of the Human Rights of Sex Workers in Uganda since 2016. From 2018 onwards, HRAPF has also been publishing an annual report on human rights violations committed against PWUIDs. This report, recording and considering violations committed against various KPs in a single report, bears many similarities to HRAPF's three other annual violations reports. However, unlike the other reports, due to the many violations that have uniquely arisen as a result of the COVID-19 restrictions, this report only covers one half of the year, January to June 2020. A complete Annual Report will be released in 2021.

MSM, transgender persons, sex workers and PWUIDs are the selected focus groups 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. MSM, transgender persons, sex workers and PWUIDs are considered to be KPs due to the fact that they face frequent and systemic human rights violations which exacerbate their vulnerability to HIV and AIDS.

The report sets out the various violations suffered by MSM, transgender persons, sex workers and PWUIDs for the period of January to June 2020, as recorded by HRAPF's legal aid clinic and by partner organisations. HRAPF offers legal aid to LGBT persons, sex workers and 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 organisations 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/or 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 KPs, then considers the number, nature and perpetrators of violations as well as trends in violations as compared to previous years. The report also has a section which discusses violations of human dignity committed against the selected KP groups by non-state actors. Instances where rights of KPs have been protected are highlighted since this shows progress towards full recognition of these groups. 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 as an evidence-base of the number, extent and severity of violations which KPs face due to their social status, societal prejudice and stigma as well as on the basis of their real or perceived sexual orientation and/or

gender identity. 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 KPs. Finally, the report is intended to serve as a tool for sensitising both state and non-state actors on the discrimination and violence which the selected KPs considered in this report face on a daily basis.

The report has been published as a result of concerted efforts by HRAPF and its partners working on the rights of Key Populations. These documented different violations that have been recorded in this report. The partner organisations are: Empowered At Dusk Women’s Association (EADWA); Golden Centre for Women’s Rights Uganda (GCWR); Health and Rights Initiative (HRI); Human Rights and Economic Empowerment Development (HUREED); Holistic Organisation to Promote Equality Mbale (HOPE Mbale); Mbarara Rise Foundation; Tranz Network Uganda (TNU); and Uganda Harm Reduction Network (UHRN). We thank them for their collaboration on this important project.

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

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GLOSSARY

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 violation of a law or a right and which is included in one file. A single case can involve multiple persons and multiple violations.

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

Harm reduction:

Measures to reduce the negative consequences of drug use

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 Population:

Group experiencing increased impact from HIV as well as decreased services due to stigma and discrimination; violence and harassment; restrictive laws and policies and the criminalisation of behavior

Lesbian:

A woman romantically and / or sexually attracted to women

Lodge:

A house or dwelling where sex workers engage in sexual activity with their clients

Outing:

The act of disclosing a lesbian, gay, bisexual, 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 (genitals)

Sex worker:

An adult person who consensually offers sexual services 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 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

Site:

An area where sex work is done on a large scale

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 gender at birth but identifies as male

Trans-woman:

A transgender person who was assigned the male gender at birth but identifies as female

Violation:

An act that contravenes a law which guarantees a right. There may be multiple violations in a single case

TABLE OF CONTENTS

ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM.....	I
ABOUT THE CONTRIBUTING ORGANISATIONS.....	II
PREFACE	IV
PROJECT TEAM	VII
GLOSSARY.....	VIII
LIST OF FIGURES.....	XII
LIST OF ACRONYMS.....	XIII
EXECUTIVE SUMMARY.....	1
1. INTRODUCTION	6
1.1 Introduction.....	6
1.2 Methodology.....	7
2. PROTECTION OF THE RIGHTS OF KEY POPULATIONS IN 2019	10
2.1 Introduction.....	10
2.2 Protection of the rights of KPs during January to June 2020.....	11
2.3 Conclusion.....	12
3. VIOLATIONS OF THE HUMAN RIGHTS OF KEY POPULATIONS DURING THE FIRST HALF OF 2020	13
3.1 Introduction.....	13
3.2 Number and nature of violations committed against KPs during the first six months of 2020.....	13
Figure 1: Number of human rights violations of KPs during the first half of 2020	14
3.2.1 Violation of the right to liberty.....	14
3.2.2 Violation of the right to a fair hearing.....	19
3.2.3 Violation of the right to freedom from torture and cruel, inhuman and degrading treatment or punishment.....	19
3.2.4 Violation of the right to life.....	22
3.2.5 Violation of the right to freedom of assembly and association.....	22
3.2.6 Violation of the right to privacy.....	23
3.2.7 Violation of the right to equality and freedom from discrimination.....	23
3.3 Conclusion.....	25

4. VIOLATIONS OF HUMAN DIGNITY COMMITTED AGAINST KPs DURING THE FIRST HALF OF 2020	26
4.1 Introduction.....	26
4.2 Violations of human dignity suffered by KPs at the hand of non-state actors during the first half of 2020	26
4.2.1 Acts of threats of violence	26
4.2.2 Evictions	28
4.2.3 Denial of employment.....	30
4.3 Conclusion.....	30
5. ANALYSIS OF TRENDS IN HUMAN RIGHTS VIOLATIONS AND VIOLATIONS OF DIGNITY OF KPs	31
5.1 Introduction.....	31
5.2 Cases of protection.....	31
5.3 Number of violations	32
5.4 Perpetrators of violations.....	34
Figure 2: Table of perpetrators of human rights violations during first half of 2020	34
5.4.1 Local authorities (Local council officials, Resident Districts Commissioners (RDCs) and members of the Uganda Peoples’ Defence Forces (UPDF) and the Local Defence Unit (LDU)	35
5.4.2 The Uganda Prisons Service	35
5.4.3 The Uganda Police Force.....	35
5.5 Trends in violations of human dignity.....	36
Figure 3: Table of violations of human dignity suffered by KPs during the first half of 2020	36
Figure 4: Table of perpetrators of violations of human dignity suffered by KPs during the first half of 2020.	36
5.6 COVID-19 and violations against KPs	37
6. CONCLUSION AND RECOMMENDATIONS	38
6.1 General conclusion	38
6.2 Recommendations	39
ABOUT HRAPF	45

LIST OF FIGURES

Figure 1: Table of nature of rights violations of KPs during the first half of 2020	14
Figure 2: Table of violations of human dignity suffered by KPs during the first half of 2020	34
Figure 3: Table of violations of human dignity suffered by KPs during the first half of 2020	36
Figure 4: Table of perpetrators of violations of human dignity suffered by KPs during the first half of 2020	36

LIST OF ACRONYMS

AG:	Attorney General
DPP:	Directorate of Public Prosecutions
EADWA:	Empowered At Dusk Women’s Association
EOC:	Equal Opportunities Commission
GCWR:	Golden Centre for Women’s Rights – Uganda
HIV:	Human Immuno-deficiency Virus
HOPE Mbale:	Holistic Organisation Promoting Equality Mbale
HRAPF:	Human Rights Awareness and Promotion Forum
HRI:	Health and Rights Initiative
HUREED:	Human Rights and Economic Empowerment Development
LGBT:	Lesbian, Gay, Bisexual and Transgender
MSM:	Men who have Sex with Men
MARPI:	Most at Risk Populations Initiative
NDPSCA:	Narcotic Drugs and Psychotropic Substances Control Act, 2016
PEP:	Post Exposure Prophylaxis
PWUID:	Person Who Uses and Injects Drugs
PWUIDs:	People Who Use and Inject Drugs
RDC:	Resident District Commissioner
SOGI:	Sexual Orientation and Gender Identity
UAC:	Uganda AIDS Commission
UHRC:	Uganda Human Rights Commission
UNAIDS:	Joint United Nations Programme on HIV/AIDS
UNODC:	United Nations Office on Drugs and Crime
UPF:	Uganda Police Force
WHO:	World Health Organization

EXECUTIVE SUMMARY

1. Introduction

The report on Consolidated Human Rights Violations against Key Populations in Uganda, January – June 2020, analyses cases involving human rights violations committed against MSM, transgender persons, sex workers and PWUIDs, which are the selected Key Populations for purposes of this report. The report considers the human rights violations committed against these groups during the course of the first six months of 2020.

It classifies the categories of human rights violations suffered by KPs and distinguishes between human rights violations committed by state actors and violations of human dignity committed by non-state actors. 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 KP groups 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 KPs in Uganda by providing a record of violations of the rights of these selected groups.

The basis of the report is cases of human rights abuses and violations suffered by KPs that have been documented by HRAPF as well as by partner organisations working with the various groups. These are rigorously reviewed, verified and analysed in order to produce a quality record of violations. The report does not include all the documented violations committed against these KP groups but only those violations which could be verified independently.

Key Findings

1. There were only 3 instances when the police stepped in to protect the rights of KPs. However this was usually done in the context of saving KPs from violence by non state actors through arrests, which eventually led to unfounded charges, or insufficient compensation without criminal prosecution of the perpetrators.
2. During the first half of 2020, a total of 244 verified violations were committed against KPs in Uganda. Out of these violations, 216 were human rights violations committed by state actors while 28 were violations of human dignity committed by non-state actors.
3. MSM suffered a total of 133 individual violations, 116 of which were human rights violations and 17 violations of human dignity. The level of hostility against MSM has increased starkly in comparison to the number of violations recorded in previous years.

4. A total of 78 violations were recorded against transgender persons: 72 human rights violations and 6 violations of human dignity.
5. Sex workers suffered a total of 17 violations: 12 human rights violations and 5 violations of human dignity.
6. There were 16 recorded and verified human rights violations committed against PWUID and no violations of human dignity.
7. The most commonly violated right was the right to liberty, which was violated a total 75 times, (34.7% of all human rights violations). The right to freedom from torture, inhuman and degrading treatment came second with which 54 violations (25% of all incidents).
8. Local Council authorities emerged as the single biggest violators of human rights of Key Populations – accounting for 103 out of the total 216 cases - 47.6% of all cases. This however mainly arose from one case- the raid on the LGBT shelter in Kyengera which accounted for 100 violations. The Uganda Prisons Service emerged second with 61 separate incidents (28.2% of all violations). The Uganda Police Force came in third at 52 incidents (24% of all violations), however, with an overwhelming number of cases. Regarding human dignity, family members were the biggest violators with 12 instances,
9. The trend of mass arrests continued in this half year, and controlling the spread of COVID-19 was used as a justification for mass arrests, especially for MSM and transgender persons. The arrest of 25 persons: 14 MSM and 11 transgender persons stood out during the half year, with multiple violations, catapulting local authorities to the number 1 violator position and the Uganda Prisons Service to the second position, despite the relatively few cases they were involved in compared to the Uganda Police Force.
10. The COVID-19 pandemic and the restrictions put in place to fight it have changed the dynamics for most KPs, as some cases were clearly persecution against KPs, particularly MSM and transgender persons, using enforcement of the COVID-19 restrictions as the excuse for the violations.

Key Recommendations

To the President of the Republic of Uganda

1. Make clear statements that acts of violence and discrimination against KP groups, including MSM, transgender persons, sex workers and PWUIDs, will not go unpunished.
2. Revise the directive on stopping arrests under the 'idle and disorderly' provision to expressly include the offences of 'being a rogue and vagabond' and other petty offences.

To Parliament

Repeal laws are used to justify denying Key Populations equal protection of the law, such as section 145 of the Penal Code criminalising carnal knowledge against the order of nature, sections criminalising sex worker such as sections 138 and 139 of the Penal Code Act, provisions of the Narcotic Drugs and Psychotropic Substances Control Act, 2019 that criminalise individual drug use as opposed to a trafficker, and provisions creating petty offences such as being rogue and vagabond and being a common nuisance.

To the Uganda Police Force

1. 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.
2. Thoroughly and conclusively investigate cases of violence against KPs by members of the public.

To the Uganda Prisons Service (UPS)

1. Protect the rights of all persons, including MSM and transgender persons when they are in prison.
2. Properly investigate and punish the violations against the 12 MSM and 8 transgender persons whose rights were violated at the instigation of a senior Prisons officer in order to set an example to the others and to do justice.
3. Desist from violating the right to a fair hearing despite the COVID-19 pandemic, since this right cannot be derogated from. Alternative ways

of ensuring that lawyers get access to their clients have to be devised in light of COVID-19, including remote access.

To the Minister of Local Government

1. Offer guidance to all local council authorities to protect the rights of every one including members of Key Populations.
2. To desist from beating, shaming and displaying suspects to the media during arrests which actions are all contrary to human rights.

To the Ministry of Health

1. Take a stand against discriminatory laws, such as Section 145 of the Penal Code Act which criminalises consensual same-sex sexual conduct; Sections 138 and 139 of the Penal Code Act which criminalise sex work in order to enable the fight against HIV/AIDS among KPs.
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 Human Rights Commission

1. Hear and dispose of cases involving violations of rights of KPs 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. Specifically include KPs' 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 KPs.

To the Equal Opportunities Commission

1. Investigate systemic discrimination of individuals based on their sexual orientation and gender identity as well as 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 KPs.
3. Compile reports on discrimination and marginalisation of KPs and make the necessary recommendations to the relevant stakeholders on how to combat such discrimination and marginalisation.
4. Include KP issues in the annual reports to Parliament.

To the Uganda AIDS Commission

1. Emphasise violations committed against KPs as an obstacle to the implementation of HIV prevention and control policies and programmes.
2. Take a stand against discriminatory laws, such as Section 145 of the Penal Code Act which criminalises consensual same-sex sexual conduct, and Sections 138 and 139 of the Penal Code Act in order to enable the fight against HIV and AIDS among KPs.
3. 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. Continue raising awareness about the implications of criminalisation of same sex relations, non-recognition of gender changes, criminalisation of sex work, and drug use on HIV/AIDS.
2. Institute cases under the recently enacted Human Rights Enforcement Act, 2019 in order to hold state actors who have committed human rights violations against KPs accountable.

1. INTRODUCTION

1.1 Introduction

The report on Consolidated Human Rights Violations against Key Populations in Uganda, January to June 2020 is the third report of this kind to be published by HRAPF. The report analyses violations committed against MSM, transgender persons, sex workers and PWUIDs as KPs from a human rights perspective.

HRAPF has published the Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity on an annual basis since 2014 in order to provide a documented account of the situation of LGBT persons in Uganda within a particular year. This report differs from that annual publication in that it does not focus on all of the subgroups typically covered under the LGBT ‘umbrella’, but is limited to Men who have Sex with Men and transgender persons, and then sex workers and PWUIDs. The reason for focusing on these two subgroups alone is based on the fact that they are the ones recognised as KPs within the HIV response.⁴ HRAPF has also been publishing reports on human rights violations suffered by sex workers from 2016 and by PWUIDs from 2018. This report considers violations committed against all four of these groups and compares the number and nature of violations committed against the various groups.

Key Populations’ in terms of HIV are those particular groups which are the most vulnerable to HIV, while at the same time often lacking access to adequate HIV services.⁵ The KPs currently considered to be the main focus of the global HIV response are gay men and other MSM; sex workers; transgender people; People Who Inject Drugs and prisoners and other incarcerated people.⁶ Globally, more than half of new HIV infections occur among members of these KPs and their sexual partners.⁷

The report classifies the various categories of human rights violations suffered by MSM, transgender persons, sex workers and PWUIDs and distinguishes between violations committed by state actors and those committed by non-state actors. The report also highlights some of the cases and aims to provide

4 UNAIDS ‘Key Populations’ available at <https://www.unaids.org/en/topic/key-populations> (Accessed on 13th December 2019).

5 n 4 above.

6 n 4 above.

7 As above.

insight into the impact of human rights violations on the individual lives of the KPs concerned.

This report is intended to be used as a tool for advocacy on the rights of KPs in Uganda through providing evidence of widespread violations committed against them. The report is based on documentation of human rights abuses and violations based on gender identity and sexual orientation, violations against sex workers and against PWUIDs by HRAPF through its legal aid clinic, as well as contributing partner organisations. All the documented cases of violations committed against these KP groups 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 KPs in Uganda. Vulnerability to human rights violations inhibit the access of these groups to HIV services and continue to render them vulnerable to HIV infection.

1.2 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 first six months of 2020. Qualitative data was collected by considering the cases of MSM, transgender persons, sex workers and 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 all the contributing organisations. The review of case files provided data on the number and nature of violations committed against MSM, transgender persons, sex workers and PWUIDs during the first half of 2020. All the case files were physically reviewed in order to ensure that only cases in which human rights violations had been committed against MSM, transgender persons, sex workers and 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 was valid documentation which serves as evidence of the violation on file.

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

Where violations could not be verified on the basis of the documentation on file, the cases were instead verified by re-interviewing the clients or victims of human rights violations or the community paralegals or case officers who handled the cases. These additional interviews helped to clarify facts and provided additional information on the basis of which the alleged violation could be verified.

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 KPs in Uganda as a whole, it is limited to the work of lawyers and paralegals attached to HRAPF in areas beyond 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 KPs in the country.

In the second place, uniform and comprehensive documentation remains a challenge for the majority of organisations working on MSM, transgender, sex worker and drug user issues in Uganda. 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 led to underreporting of the number and extent of violations committed against KPs. There remains a need for ongoing in-depth training of paralegals and leaders of organisations working with KPs 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 KPs do not necessarily frame their cases in the language of rights. In many instances, violations which occurred on the basis of the sexual orientation and/or gender

identity of the victim, or due to their social identity as sex workers or PWUIDs, 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 KPs on the content, framing and recognition of human rights violations. Overall, the KP 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 KEY POPULATIONS JANUARY TO JUNE 2020

2.1 Introduction

Uganda as a state has a duty to protect the human rights of all individuals and groups in the country, arising from the domestic, regional and international legal framework. The state is obligated to respect, protect and uphold human rights and freedoms.⁸ 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.⁹ The obligation to protect requires of the state to protect rights-holders from violations by other persons through enacting legislation and by providing effective remedies where their rights have been violated.¹⁰ 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.'¹¹ The obligation to fulfill relates to the duty to promote and requires of the state to actively gear its systems and processes toward the realisation of rights.¹² 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.¹³ Finally, the obligation to protect entails that states would create an 'atmosphere' in which all rights-holders are able to freely exercise their rights through legislative measures and other regulations.¹⁴

The government of Uganda and all its organs and agencies have an obligation to respect, protect, promote and fulfill the rights of all individuals in the country, including KPs. 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.¹⁵

8 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.

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

10 As above at par. 46.

11 As above.

12 As above at par. 47.

13 As above.

14 As above.

15 Art 212 of the Constitution.

HRAPF has documented instances of improvement of the levels of protection of human rights of LGBT persons, including MSM and transgender persons, since 2014 as well as improvement in the levels of protection available to sex workers since 2016 and protection of PWUIDs since 2018. Cases have been recorded every year in which the Police stepped in to protect the rights of these groups.

2.2 Protection of the rights of KPs during January to June 2020

The state was recorded to protect the rights of KPs in three incidents during the first half of 2020. These were as follows:

a) MSM

During the first half of 2020, there were two cases where the Police assisted MSM in order to keep them safe from violations. This exhibited a presence of goodwill by the Police towards MSM.

In one of these cases, two MSM were taken into 'protective custody' by the Police after community members said they would lynch them if they were not arrested.¹⁶ This protected them from violence and further attack by the mob. However, the Police later proceeded and subjected them to a mandatory anal examination to determine if they had engaged in sexual relations. The house occupied by the clients was also searched by the Police during arrest though no incriminating evidence was found.

In the second case, an MSM was chased away from his place of abode in Kawempe by the landlord once he became aware of his sexual orientation. He was also threatened by the community members who wanted to lynch him.¹⁷ The Police decided to take him into protective custody. Unfortunately, the Police proceeded to charge him with 'unnatural offences' before releasing him two days later.

While it is commendable that the Police fulfilled their protective mandate in removing MSM from situations in which they could have suffered violence at the hands of community members, the positive impact of their actions have been nullified by the fact that the Police themselves then proceeded to violate the rights of the MSM who were depending on their protection.

16 HRAPF/VR/LGBT/2020/039.

17 HRAPF/VR/LGBT/2020/025.

b) Sex workers

In the first half of 2020, the state protected the rights of sex workers in one case. In this case, a sex worker was assaulted by a client and she reported the matter to the Police.¹⁸ The Police arrested the client and mediated the matter, which resulted in compensation being paid to the sex worker.

There was another case in which the state had an opportunity to uphold sex workers' rights but instead violated them. The sex worker was assaulted by a Police officer when she had gone to report a case concerning a client who had threatened her with a knife when she advised him to wear a condom.¹⁹ This case shows that the Police was presented with opportunity to protect a sex worker's rights but they refused to do so, and instead violated her rights even further. This violation proves that there is still more effort required to sensitise Police officers about the need to uphold sex workers' rights.

2.3 Conclusion

These three cases in which Police officers fulfilled their obligations toward KPs, protected their rights and ensured remedies for the violations which they had suffered are commendable. These instances affirmed the status of KPs as equal citizens and rights-holders. However, in both LGBT cases arrests were made and charges preferred, while in the sex worker case, the compensation paid was little and ended up replacing criminal liability.

18 HRAPF/VR/SW/2020/016.

19 HRAPF/VR/SW/2020/006.

3. VIOLATIONS OF THE HUMAN RIGHTS OF KEY POPULATIONS DURING THE FIRST HALF OF 2020

3.1 Introduction

During the first six months of 2020, human rights violations were committed against KPs on the basis of their real or presumed sexual orientation and gender identity and /or expression or due to their real or presumed involvement in sex work and drug use. This report categorises violations against KPs on the basis of the rights violated and the perpetrators of these violations.

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 are to be respected, upheld and promoted by all organs and agencies of government and by all persons. 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.²⁰

3.2 Number and nature of violations committed against KPs during the first six months of 2020

During the first half of 2020, a total of 216 human rights violations were committed against the various KPs by state actors which form part of this report. Out of these human rights violations, 116 were committed against MSM; 72 were committed against transgender persons; 12 were committed against sex workers and 16 were committed against PWUIDs.

²⁰ 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.

Figure 1: Number of human rights violations of KPs during the first half of 2020

Nature of human right	MSM	Transgender persons	Sex workers	PWUIDs	Total
The right to liberty	35	19	6	15	75
The right to a fair hearing	12	8	-	-	20
The right to freedom from torture and cruel, inhuman and degrading treatment or punishment	29	20	4	1	54
The right to life	-	-	1	-	1
The right to freedom of assembly and association	10	-	-	-	10
The right to privacy	14	12	-	-	26
The right to equality and freedom from discrimination	16	13	1	-	30
Total:	116	72	12	16	216

3.2.1 Violation of the right to liberty

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.²¹ 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;²² the right to be supported by a lawyer of your choice;²³ the right not to incriminate oneself;²⁴ the right to be presumed innocent;²⁵ and the right not to be tried for an offence which is not defined by law.²⁶ The right to liberty for KPs was violated 75 times during the first half of 2020.

21 See also Art 9(1) of the ICCPR.

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

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

24 Art 14(3) (g) of the ICCPR.

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

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

a) MSM

The right to liberty of MSM was violated 35 times in 6 cases during the first half of 2020.

i) *Freedom from arbitrary arrest*

There were 21 violations of the right to liberty through arbitrary arrest during the first half of 2020. These violations arose out of 4 cases.

In one case, three MSM were arrested on allegations of being homosexuals. These allegations were made by the Local Council (LC) 1 chairman and the community members. They were found in a salon which also doubled as their living space. Two were in the salon area while one was in the second room which was used as his bedroom. The two at the front were brothers and one of them was in charge of handling the business while the owner was away. There was no evidence of them engaging in unlawful 'carnal knowledge against the order of nature' and yet they were arrested.²⁷

The Police exhibited a willingness to arrest MSM on insubstantial grounds, which violate their right to liberty since there is no real reason to believe that a crime has been committed or is about to be committed and no real intention to bring the arrested person before a court of law. This trend was witnessed in two cases where the presidential directives put in place to prevent the spread of COVID-19 were used as a justification for the arbitrary arrest of MSM. In the first case, two MSM were arrested from the home of one of them in Namasuba and were charged with unnatural offences.

They obtained police bond two days later. However, further communication with the Officer in Charge, Criminal Investigations Department (OC CID) revealed that despite the clients having been charged with committing unnatural offences, the rest of the documents on the file disclosed that they were arrested for disobeying the presidential directive. There was no evidence on file that the MSM had either engaged in unnatural offences or that they had disobeyed any presidential directive intended to prevent the spread of COVID-19, which means that the arrest was arbitrary and a violation of the right to liberty of the two MSM involved.²⁸ The second case concerns the arrest of 14 MSM who were part of a group of 25 LGBT persons arrested from a homeless shelter for LGBT youths in Kyengera, Wakiso District.²⁹ They were charged with 'doing a negligent act likely to spread infection of disease'

27 HRAPF/VR/LGBT/2020/010.

28 HRAPF/VR/LGBT/2020/037.

29 HRAPF/VR/LGBT/2020/040.

contrary to section 171 of the Penal Code Act. The arrest led by the mayor of Nsangi Municipality, was arbitrary since the 25 arrestees were not in reality transgressing any part of the presidential directives by staying indoors at their temporary home.

ii) Denial of access to lawyers while detained

There were 12 violations of this right for MSM. This was in the case where 14 MSM were arrested at a shelter in Kyengera for allegedly doing a negligent act likely to spread infection of disease. 12 of them were remanded to Kitalya Prison where they awaited their criminal trial. During their remand, prison authorities denied the arrestees' access to their lawyers, which violated another aspect of their right to liberty: Article 23(5) (b) of the Constitution provides that where a person is restricted or detained, the next-of-kin, lawyer and personal doctor of that person shall be allowed reasonable access to that person. The action of the Prison Authorities in denying the 12 MSM access to lawyers as they were awaiting their criminal trial also violated their right to a fair hearing, as protected under article 28 of the Constitution. This was confirmed by the High Court of Uganda, which decided so in the case of *Human Rights Awareness and Promotion Forum v Attorney General and Commissioner General of Prisons*.³⁰

iii) Freedom from prolonged detention

There were two incidents where MSM were arrested for various reasons and kept in Police custody beyond 48 hours without being brought before a court. The right to liberty is violated if a person is detained beyond the time period of 48 hours without being produced before a court.³¹

In one case, an MSM was arrested and kept in detention for more than 48 hours. The client was arrested and charged with theft and at Makindye Police station.³² After two days, he was transferred to Katwe Police Station where he was detained for another four days without appearing before a magistrate.³³

In another case, an MSM was arrested for engaging in sex with another man. The man was kept under arrest for a period of five days as investigations were carried out.³⁴

30 High Court Miscellaneous Cause No. 81 of 2020.

31 Art 23(3).

32 HRAPF/VR/LGBT/2020/022.

33 As above.

34 HRAPF/VR/LGBT/2020/027.

b) Transgender Persons

The right to liberty for transgender persons was violated 19 times as follows:

i) Arbitrary arrest

There were 11 cases of violation of the right to liberty of transgender persons recorded in the first half of 2018 and all these concerned the 25 LGBT persons arrested at a homeless shelter in Kyengera, 11 of whom were trans women.³⁵ The arrest was baseless as already discussed above.

ii) Denial of access to lawyers while detained

This right was also denied for the 8 transgender persons who were among the 25 persons arrested at a homeless shelter in Kyengera for allegedly doing a negligent act likely to spread infection of disease. During their remand, prison authorities denied the remandees access to their lawyers, which violated their right to be accessed by their lawyers.

a) Sex workers

The right to liberty of sex workers was violated 6 times during the period under review, all of these violations arose out of prolonged Police detention.

i) Freedom from prolonged detention

In the first case, a sex worker was arrested and charged with aggravated robbery at Nansana Police station.³⁶ She was kept in police custody for 4 days before appearing before a Magistrate or getting police bond.³⁷

In the second case, a sex worker was arrested as he was walking in a market. He was taken to Nansana Police Station and detained for three days before being released.³⁸

In the third case, the right to liberty of four sex workers was violated since they were held in detention beyond 48 hours.³⁹ The four sex workers were arrested from their places of work in Nyendo, Masaka and were released from Police custody three days later without being charged.

³⁵ n 30 above.

³⁶ HRAPF/VR/SW/2020/008.

³⁷ HRAPF/F/20/03/20

³⁸ HRAPF/VR/SW/2020/013.

³⁹ HRAPF/VR/SW/2020/015.

a) PWUIDs

During the first half of 2020, there were 15 violations of the right to liberty of PWUIDs arising out of 7 cases.

i) *Freedom from arbitrary arrest*

There were a total of 8 violations of the right to liberty of PWUIDs due to arbitrary arrests arising out of one case. An arrest is arbitrary if it is based on grounds that are not recognised in law.

In the case, 8 PWUIDs were arrested on suspicion that they participated in the malicious damage of fence poles of a community member.⁴⁰ There was no reasonable ground to suspect the 8 PWUIDs of damaging the property and the arrest was purely based on the fact that they were known drug users, which renders the arrest arbitrary.

ii) *Freedom from prolonged detention*

There were 7 violations of the right to liberty of PWUIDs due to prolonged detention arising out of 6 cases.

In the first case, a PWUID was arrested by a LDU member from his workplace.⁴¹ He was found with marijuana in his pocket and was taken to Kabalagala Police Station where he was detained for 3 days. In the second case, a PWUID was arrested and charged with defilement. He was taken to Kira Police station and kept in custody for twelve days despite the parents of the victim withdrawing their complaint.⁴² In the third case, a PWUID was arrested after being found with five sticks of marijuana while he was travelling home from work.⁴³

He was kept in police custody for four days after which he was granted Police bond. In the fourth case, a PWUID was arrested from his hostel after being found smoking marijuana.⁴⁴ He was taken to Kabalagala Police station where he was detained for 3 days. In the fifth case, two PWUIDs were arrested and taken to Kabalagala Police station where they were held for four days before being granted bond.⁴⁵ In the sixth case, a PWUID was arrested from the hostel where he was staying as he was found smoking marijuana.⁴⁶ He was taken to Kabalagala Police station where he was detained for five days before he was

40 HRAPF/VR/DU/2020/004.

41 HRAPF/VR/DU/2020/003.

42 HRAPF/VR/DU/2020/010.

43 HRAPF/VR/DU/2020/011.

44 HRAPF/VR/DU/2020/020.

45 See n 2 above.

46 HRAPF/VR/DU/2020/030.

released on Police bond.

These cases indicate 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.

3.2.2 *Violation of the right to a fair hearing*

Article 28 of the Constitution provides that a person who is charged with a criminal offence shall be presumed innocent until proved guilty, shall be given adequate time and facilities to prepare their defence and shall be permitted to be presented in court by a lawyer of their choice. According to Article 44(c), the right to fair hearing is furthermore a non-derogable right which means that this right may not be violated under any circumstances. The right to a fair hearing was violated 20 times for all the different KP groups.

a) MSM

In the case of the 15 MSM arrested from a shelter in Kyengera, 12 MSM were remanded to Kitalya Prison where they awaited their criminal trial on charges of ‘doing a negligent act likely to spread infection of disease.’⁴⁷ During their remand, prison authorities denied the arrestees’ access to their lawyers, which violated their right to a fair hearing. The team of lawyers wrote to the Commissioner General of Prisons about this refusal of access to their clients and were advised that this was due to the COVID pandemic lockdown and that they simply had to be patient until the situation improved. However, this right is to be upheld at all at all times irrespective of the circumstance and as such, should not be violated on basis of COVID-19 restrictions.

b) Transgender persons

The right to a fair hearing was also denied to the eight transwomen who were among the 25 LGBT persons arrested from the shelter in Kyengera.⁴⁸

3.2.3 *Violation of the right to freedom from torture and cruel, inhuman and degrading treatment or punishment*

The right to freedom from torture and cruel, inhuman and degrading treatment or punishment is protected under Article 24 of the Constitution.⁴⁹ This right cannot be derogated from under any circumstances.⁵⁰ Uganda has adopted a

47 n 29 above.

48 n 29 above.

49 Art 24.

50 Art 44(a) of the 1995 Constitution of the Republic of Uganda.

law which expands 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’.⁵¹ This right was violated 54 times for all the different KP groups:

a) MSM

There were 29 violations of the right to freedom from torture and cruel, inhuman and degrading treatment and punishment of MSM during the first half of the year arising out of two cases. In the one case, two MSM were arrested and assaulted by Police officers during and after the arrest.⁵² The MSM were arrested on account of their sexual orientation by the Police after community members said they would lynch them if they were not arrested. After the arrest, they were subjected to a mandatory anal examination to determine if they had engaged in sexual relations.⁵³ Such an examination is a humiliating and degrading form of treatment which violated the rights of the persons involved.

In the case where 14 MSM were arrested at a shelter in Kyengeru for allegedly doing a negligent act likely to spread infection of disease, they were remanded to Kitalya Prison where they awaited their criminal trial. During their arrest, all the 25 arrestees including the 14 MSM were subjected to humiliating treatment as they were made to sit in the sun for over two hours, and then tied together with ropes and forced to march to the police post amid threats and insults. They were also exposed to media attention and their photographs forcibly taken. Violations against 12 MSM continued in prison where they were all subjected to various forms of torture and degrading treatment by prison authorities who acted violently against them, beating them, and in one instance burning one of them between his legs with a smoldering piece of firewood.⁵⁴ These violent actions, which amount to torture, inhuman and degrading treatment were carried out on the basis of the sexual orientation of the detainees.

b) Transgender persons

There were 20 incidents of violation to freedom from torture, inhuman and degrading treatment during this period. This was the case where 25 LGBT persons were arrested, paraded before the media, and marched to the police

51 The Prevention and Prohibition of Torture Act No. 3 of 2012.

52 HRAFP/VR/LGBT/2020/025.

53 As above.

54 n 29 above.

post. Eleven of these were transgender persons.⁵⁵ Eight continued to be subjected to further beatings and insults while in prison, and one of them was subjected to an anal examination by a fellow prisoner on the orders of a prisoner warder.

a) Sex workers

In the first half of 2020, four violations of Article 24 were documented arising out of three cases.

In the first case, a sex worker was assaulted by a Police officer while she was trying to report a case concerning a client who had threatened her with a knife when she advised him to wear a condom.⁵⁶ The assault by the Police officer amounted to both physical and mental torture of the victim. The second violation of the right to freedom from torture and cruel, inhuman and degrading treatment and punishment arises from the fact that the sex worker was attacked with a knife and the Police refused to fulfill their duty to provide her with an effective remedy. This refusal renders the Police responsible for the violation which the sex worker had suffered at the hands of a non-state actor.

In the second case, a sex worker was assaulted by another woman while she was dancing in a bar.⁵⁷ The matter was reported to the Police at Kawempe Police Station, however, the Police did not take any steps to vindicate her rights which rendered them responsible for this violation.

In the third, a sex worker was attacked by another sex worker with whom she had frequent quarrels. At first, the client had verbally attacked the other sex worker who had reported the case to the Police. The Police, however, sent them to the chairperson to sort out their issues. Three days later, the client was attacked by the other sex worker with a piece of wood that damaged her eye.⁵⁸ The failure of the Police to come to the aid of the sex workers renders them liable for the violation of her right to freedom from cruel and inhuman treatment.

a) PWUIDs

There was one incident involving a violation of this right arising from one case. In this case, a PWUID was sitting on the verandah of his house after curfew hours where he was found by an officer from Kabalagala Police Station.⁵⁹ The Police officer hit him repeatedly on his leg, which caused him to suffer wounds

55 Above.

56 HRAPF/VR/SW/2020/009.

57 HRAPF/VR/SW/2020/007.

58 See n 2 above.

59 HRAPF/VR/DU/2020/013.

that have become septic. This case illustrates the misuse of restrictions put in place in order to curb the spread of COVID-19 for the sake of arbitrarily 'punishing' PWUIDs for their conduct.

3.2.4 Violation of the right to life

The right to life is protected under Article 22 of the Constitution. There was 1 violation of this right involving a sex worker. A sex worker was murdered in a lodge from where she was working in Bugembe, Jinja. She was strangled probably to take from her money which she had obtained from a savings group earlier on. Although the Police made a few initial arrests and took some steps to investigate the matter, they soon lost interest and the case has remained unresolved. The failure of the Police to properly investigate and resolve this case renders them responsible for a violation of the right to life.

3.2.5 Violation of the right to freedom of assembly and association

This right is protected under Article 29 of the Constitution. There were ten violations of this right involving two LGBT organisations.

In the first case, 12 persons including 9 MSM representing an organisation were arrested while conducting an HIV/AIDS outreach in Rakai. The outreach was addressing HIV/AIDS needs of LGBT people in Masaka. The Police confiscated money and other property that they had with them like banners, receipt books and attendance forms. They were charged with insulting the modesty of persons.⁶⁰ The case is classified as a violation of rights under Article 29 of the Constitution since the representatives of the organisation were prevented from assembling without any valid reason.

In the second case, an organisation that provides shelter to LGBT persons was continually threatened by both the Police and community for a period of time. The leaders of the organisation grew apprehensive and decided to relocate the occupants to different shelters.⁶¹ This action of the Police violated the residents' right to freely associate with others.

3.2.6 Violation of the right to privacy

Article 27 of the Constitution provides that no person shall be subjected to an unlawful search of their person, home or other property or unlawful entry by others of the premises of that person. The article also provides that no person shall be subjected to interference with the privacy of their home,

60 HRAPF/VR/LGBT/2020/019.

61 HRAPF/VR/LGBT/2020/003.

correspondence, communication or other property. There were 27 instances of violations of this right for KPs arising out of 2 cases.

a) MSM

There were 14 instances arising from one recorded case. This is the where 25 LGBT persons including 14 MSM were arrested from a homeless persons shelter in Kyengera. The local authorities, including the Mayor as well as soldiers entered upon the residence and went to all rooms without a warrant thus violating the right to privacy of the occupants.

b) Transgender persons

There were 12 violations of this right arising from one case. All the 11 transgender persons found in the house in Kyengera had their right to privacy violated by the forceful entry of the local authorities, and the army onto the compound and house where they were residing.

One of the nine transwomen arrested from the shelter in Kyengera was subjected to an anal examination by a fellow prisoner while in Kitalya prison on order of a prison warder,⁶² and this was a violation of the right to privacy.

3.2.7 Violation of the right to equality and freedom from discrimination

Article 21 of the Constitution protects the right of every person to equality before and under the law as well as equal protection of the law. The fact that same-sex sexual conduct remains criminalised in Uganda makes it near impossible for this right to be fulfilled for LGBT persons living in Uganda. There were 30 instances involving violation of this right arising from 4 cases.

a) MSM

There were 16 instances of discrimination arising out of three cases. In one case, the occupants of an organisation serving MSM were threatened by the Police and community over a period of time. The organisation's management eventually grew apprehensive and decided to relocate the occupants to different shelters for their safety.⁶³ In yet another case, a police officer entered upon the premises of an organisation which serves MSM without permission and casually inspected the premises. She stated that she was carrying out the inspection following reports by the general community about homosexuals residing in the area.⁶⁴ No other houses were targeted.

⁶² n 29 above.

⁶³ HRAPF/VR/LGBT/2020/003.

⁶⁴ HRAPF/VR/LGBT/2020/034.

Targeting the residence of the 25 LGBT youths including 14 MSM was an act of discrimination since no other house was searched on the same day by the same group to establish how many people were staying in the house. The raid was purely done on the grounds of the occupants' sexual orientation.

a) Transgender persons

There were thirteen incidents arising out of two cases. In one case, two transgender persons faced discrimination on the basis of their gender identity from the Local Council (LC) 1 chairperson of Takajunge Zone in Wakiso district where they were living.⁶⁵ The LC1 reached out to the landlords of these two persons and asked him to evict the transgender tenants because, in the view of the LC, the transgender persons were a negative influence on the children in the village and were therefore not welcome. This eviction amounts to a violation of the right to equality and discrimination on the basis of gender identity.⁶⁶

The second case is the one involving 11 transgender persons who were part of the 25 whose residence was raided due to their sexual orientation and gender identity.

b) Sex workers

There was one incident involving a violation of this right for sex workers arising from one case. In this case, the Hoima District COVID-19 task force made food available for People Living with HIV. A sex worker within the community started distributing the food supplies to sex workers who were on Anti Retroviral Treatment (ART), some of whom were living with HIV, in her community. When word got out that she was distributing to sex workers as well, the Resident District Commissioner (RDC) started harassing her and threatened her with arrest to explain where she got government food.⁶⁷ These actions are a clear violation of the right to equality of sex workers: the RDC was discriminating against sex workers on the basis of their social and economic status and occupation.

3.3 Conclusion

During the first half of 2020, there were a total of 156 human rights violations committed against KPs arising out of 29 cases. Out of these violations, 82 were committed against MSM arising out 12 cases; 46 human rights violations were

65 HRAPF/VR/LGBT/2020/016.

66 HRAPF/VR/LGBT/2020/016.

67 HRAPF/VR/SW/2020/002.

committed against transgender persons, arising out of two cases; 12 human rights violations were committed against sex workers arising out of 8 cases and 16 human rights violations were committed against PWUIDs arising out of 8 cases. The greatest majority of these violations were a violation of the right to liberty. The Uganda Prisons Service was the greatest violator of human rights of KPs for the period with the Uganda Police Force following closely.

4. VIOLATIONS OF HUMAN DIGNITY COMMITTED AGAINST KPs DURING THE FIRST HALF OF 2020

4.1 Introduction

Members of KPs suffered a total of 28 violations of human dignity arising out of 26 cases during the first half of 2020. The violations of human dignity were committed by non-state actors. MSM suffered a total of 17 of these violations arising out of 16 cases, while transgender persons suffered 6 violations arising out of 5 cases and sex workers 5 violations of human dignity arising out of 5 cases during the half year. The violations of human dignity that had been committed can be classified as acts or threats of violence, evictions and loss of employment.

4.2 Violations of human dignity suffered by KPs at the hand of non-state actors during the first half of 2020

KPs suffered violations of their human dignity at the hands of non-state actors during the first half of 2020. The violations of human dignity can be classified as acts or threats of violence; evictions and denial of employment.

4.2.1 Acts of threats of violence

a) MSM

Six acts or threats of violence against MSM on the basis of their sexual orientation and/or gender identity were recorded in six cases. These cases are discussed below.

In the first case, an organisation based in Kasengejje, Wakiso faced ongoing threats and harassment from the community who were of the view that the organisation was a bad influence on children.⁶⁸ The organisation was eventually evicted from its premises by the LC 1 chairperson. In a similar case, another organisation that provides shelter to MSM persons was threatened by both the Police and community over time. They grew apprehensive and decided to relocate the occupants to different shelters.⁶⁹

68 HRAPF/VR/LGBT/2020/004.

69 HRAPF/VR/LGBT/2020/003.

In another case, an MSM was part of the people that had been arrested following a police raid on the LGBT friendly Ram Bar in 2019. He served his sentence and when he returned to his home he received multiple threats from neighbours. One night while he was asleep, community members started shouting and throwing stones at his house insisting that he comes out while also threatening to burn down his house.⁷⁰

In another case, after an MSM's imprisonment and release following the Ram Bar raid, he started receiving threats from his neighbors and community members on account of his sexuality. They placed threatening notes on his doorstep and have also influenced the landlord to evict him from this premises.⁷¹

Another case involved an MSM who reported that he had been harassed and threatened by a boda boda rider who was calling him 'gay' every time he passed by. This had the effect of getting other boda men to do the same and other community members also started discriminating against him. They denied him access to basic services in the area.⁷²

In yet another case, an MSM suffered harassment and threats from a group of unknown people in his community. These people would state that he was a homosexual and that they would burn him in his house.⁷³

In another case, an MSM was threatened by the community members who wanted to lynch him on the basis of his sexual orientation.⁷⁴ He was consequently taken into protective custody by the Police.

b) Transgender persons

In one case, a 19-year old transwoman was beaten by the uncle who was in-charge of her welfare after he had found out about her gender identity.⁷⁵

In the second case, a transwoman's sister accessed her emails containing information about her sexual orientation and gender identity and disclosed this to their mother.⁷⁶ The transwoman's sister also threatened to kill her.

c) Sex workers

During the half year, sex workers suffered 5 acts or threats of violence at the

70 HRAPF/VR/LGBT/2020/006.

71 HRAPF/VR/LGBT/2020/028.

72 HRAPF/VR/LGBT/2020/011.

73 HRAPF/VR/LGBT/2020/024.

74 HRAPF/VR/LGBT/2020/025.

75 HRAPF/VR/LGBT/2020/013.

76 HRAPF/VR/LGBT/2020/007.

hands of non-state actors. The Police failed to address the majority of these violations.

The first case, a sex worker and her client agreed upon UGX 20,000 as payment for her services. After the transaction, the man refused to pay the entire sum and only paid UGX 10,000. He then instructed the sex worker to go and speak to the cashier. The sex worker refused and insisted that she must be paid by the man. He got angry and hit her on the mouth which caused her to lose some of her teeth.⁷⁷

In the second case, a sex worker was assaulted by another woman while she was dancing in a bar.⁷⁸ The matter was reported to the Police at Kawempe Police Station, however, the Police did not take any steps to vindicate her rights.

In another case, a sex worker was assaulted by a client and she reported the matter to the Police.⁷⁹ The Police arrested the client and mediated the matter, which resulted in compensation being paid to the sex worker.

The most severe act of violence committed against a sex worker was a murder case.⁸⁰ A sex worker working in Bugembe, Jinja was murdered in a lodge from where she was working. She was strangled to death.

In another case, a sex worker's client refused to pay for her services.⁸¹ This action is classified as an act of violence since it violated the terms of their agreement and nullified the sex worker's consent to engage in sex with the client. The matter was mediated by a Community Paralegal after which the sex workers did receive the agreed amount from the client.

4.2.2 Evictions

A total of 10 evictions on the basis of sexual orientation and gender identity, arising out of 6 cases were recorded during the second half of 2020, which actions violated the dignity of the KPs involved.

a) MSM

A total of 10 evictions of MSM on the basis of sexual orientation took place during the first half of 2020.

77 HRAPF/VR/SW/2020/001.

78 See n 8 above.

79 HRAPF/VR/SW/2020/016.

80 See n 9 above.

81 HRAPF/VR/SW/2020/014.

In one case, an MSM was part of the people arrested during the Ram bar raid. When he was released, he tried to go back home but the family chased him away since they had found out that he was gay. He started living with his sister who shortly after told him to leave her home since he was on the news as a gay person and people had recognised him which made her uncomfortable.⁸² In another case, an MSM was released from Luzira prison after the Ram bar incident and his family had found out about his sexuality. He was consequently chased away from home by his mother.⁸³

In another case, an MSM was also part of the people who were arrested and imprisoned during the Ram bar incident. Upon his release, he was thrown out by his landlord who had found out he was gay and his parents also abandoned him.⁸⁴ The Ram bar case also had ramifications resulting in evictions for four other MSM: three MSM were thrown out of their family homes after they released from Luzira⁸⁵ while another MSM's stepmother forced him to leave the family home after his release to prevent him from negatively influencing her other children.⁸⁶

In another case, a MSM was chased away from his family home by his father after his siblings discovered messages on his phone from other young men which revealed his sexual orientation to them.⁸⁷

An MSM was living with his stepmother. When the mother and the rest of the family found out about his sexual orientation they threw him out of the house. They also told him not to return to the family business in the market.⁸⁸

In one other case, an MSM rented a house in Bulenga, Kampala district for a period of 9 months. He went on a field trip to Masaka as part of his work. While away, he had left a friend in his house. Some of his friends came to visit and the landlord called the client and informed him that his guest had brought homosexuals to his house which would not be tolerated. Thereafter, the landlord called the brother to the client to collect his property.⁸⁹

b) Transgender persons

A total of four transgender persons suffered the violation of their right to dignity through evictions which were based on their gender identity.

82 HRAPF/VR/LGBT/2020/002.

83 HRAPF/VR/LGBT/2020/015.

84 HRAPF/VR/LGBT/2020/005.

85 HRAPF/VR/LGBT/2020/012; HRAPF/VR/LGBT/2020/018; HRAPF/VR/LGBT/2020/030.

86 HRAPF/VR/LGBT/2020/038.

87 HRAPF/VR/LGBT/2020/021.

88 HRAPF/VR/LGBT/2020/036.

89 HRAPF/VR/LGBT/2020/017.

Two transgender women were arrested on allegations that they had attempted to have sex with a minor. They were detained for two days at a Police post before they were released on bond. Following the arrest, they were evicted from the place they were staying.⁹⁰

In another case, a young transwoman was evicted from the family home by the uncle who after he had found out about her gender identity.⁹¹

In the third case, a transwoman was using her mother's computer to chat with her friends on Facebook. She left the computer on and went to ease herself. When she returned, she found that her mother had read through her chats and listened to the voice messages. She informed the father when he returned and together they inquired from the client about her sexual orientation. When she confirmed that she was a transwoman, her parents chased her away from home.⁹²

4.2.3 Denial of employment

There was one case in which an MSM lost his employment merely on the basis of his sexual orientation. The man was arrested in the Ram bar incident and spent almost three weeks in Luzira prison. Upon his release, he was informed by his employer that his contract had been terminated.⁹³ The fact that his employment was ended merely on the basis of his rumoured sexual orientation amounted to a violation of his dignity.

4.3 Conclusion

During the first quarter of 2020, there were 28 violations of dignity of KPs, which can be classified as acts or threats of violence; evictions and loss of employment. This section illustrates the way that mass violations by a state actor can have long term and wide-ranging effects on LGBT persons: after the mass arrest of LGBT persons at Ram bar in 2019, the individual LGBT persons associated with the arrest faced rejection from their communities, eviction from their homes and even loss of employment.

90 HRAPF/VR/LGBT/2020/028.

91 HRAPF/VR/LGBT/2020/013.

92 HRAPF/VR/LGBT/2020/007.

93 HRAPF/VR/LGBT/2020/021.

5. ANALYSIS OF TRENDS IN HUMAN RIGHTS VIOLATIONS AND VIOLATIONS OF DIGNITY OF KPs

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 KPs during the first half of 2020 as discussed in the previous section in order to identify trends and consider underlying reasons for the findings. There shall also be a comparison between violations perpetrated against key populations in the first half of this year to violations in previous years.

5.2 Cases of protection

In the first half of 2020, there were 3 instances of protection of human rights of KPs. In previous years from 2014 onward, HRAPF registered cases of protection of human rights of MSM and transgender persons. In 2017 one such case was recorded and in 2016 there were 6 cases of protection.⁹⁴ In 2018, however, no cases of Police protection to MSM and transgender persons were registered although a Local Council leader did prevent Police from arresting a group of MSM who were holding an awareness session.⁹⁵ In 2019 there was one case where the Police did provide protection to a group of MSM, the same Police officers proceeded to arrest the group on arbitrary grounds immediately after the protection offered.⁹⁶

In the first half of 2020, there were two cases where the police attempted to protect the rights of MSM before it violated them. In one case, two MSM were arrested on account of their sexual orientation by the Police after community members said they would lynch them if they were not arrested.⁹⁷ They were however, subsequently subjected to physical and bodily search without authorisation. In the second case, an MSM was chased away from his place of abode in Kawempe by the landlord once the latter became aware of his

94 HRAPF *The Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity 2018: Increasing protections and reducing state violations* (2018) 8; HRAPF *The Uganda Report of Violations based on Sexual Orientation and Gender Identity 2017* (2017) 26.

95 HRAPF *Consolidated Human Rights Violations Against Key Populations in Uganda, 2018* (2019) 6.

96 HRAPF/VR/2-19/041.

97 HRAPF (n 16 above) 25

sexual orientation. He was also threatened by the community members who wanted to lynch him.⁹⁸ The Police decided to take him into protective custody. Unfortunately, the Police proceeded to charge him with ‘unnatural offences’ before releasing him two days later. An analysis of these isolated incidents shows that the police does not aim to protect the rights of MSM persons. The relationship between the Police and MSM communities appears to be on a downward spiral, despite the gains that have been made in previous years.

In respect of cases of protection of rights of sex workers, during 2016 there were five cases of protection.⁹⁹ In 2017, there were four cases of protection and in 2018 there were a total of six cases of protection of sex workers verified.¹⁰⁰ In 2019, eight cases were recorded in which the Police either offered protection of the rights of sex workers or made sure that they were afforded an effective remedy after their rights had been violated. In the first half of 2020, there was one case of protection.¹⁰¹ There was also one other case where the police had an opportunity to protect the rights of a sex worker but instead looked the other way.¹⁰² In as much as the relationship between sex workers and police was on an upward trend, it seems that in the first half of 2020 there was a decline. This could be due to the COVID-19 pandemic which interfered with the usual business of sex workers and also the reporting of cases at HRAPF.

No case was recorded in either 2018, 2019 or the first half of 2020 in which the Police stepped in to protect the rights of PWUIDs. This may be due to the fact that during this time frame, no violations of human dignity 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 first half of 2020, a total of 244 individual violations were committed against the various KPs that form this report. Out of these violations, 216 were human rights violations committed by state actors, while 28 were violations of human dignity committed by non-state actors. These arose out of 29 cases.

98 HRAPF (n 17 above) 25.

99 HRAPF *Protection and violation of the rights of female sex workers in Uganda in 2016* (2017) 9.

100 HRAPF *2017 Report on protection and violation of the human rights of sex workers in Uganda* (2018) 10.

101 HRAPF (n 18 above) 25

102 HRAPF (n 19 above) 26

This number is only lower than the numbers registered in 2019 and 2018, because the data are only for half a year. Otherwise, 2020 promises to have more incidents than the other years. In the year 2019, a total of 450 violations were committed against the various KPs. Out of these violations, 388 were human rights violations committed by state actors, while 62 were violations of human dignity committed by non-state actors. These arose out of 77 cases. This number is higher than the 242 violations verified for all three KP groups in 2018.¹⁰³ However, the violations for the only first half of 2020 is higher than those recorded in the full year 2018.

Out of the human rights violations, 116 were against MSM arising out of 12 cases; 72 were against transgender persons arising out of 2 cases; 12 were against sex workers arising out of 8 cases; and 16 were against PWUIDs arising out of 8 cases. MSM had the greatest number of cases of the four groups. This implies a greater vulnerability to violations within the Ugandan society than transgender persons, PWUIDs and sex workers. Efforts need to be made to address violations against all KP groups and especially MSM who are most vulnerable

The right which was most violated, overall for all KPs as well as for each of the individual KP groups, is the right to liberty. It was violated a total of 75 times, amounting to 34.7% of all human rights violations. This high number of violations of the right to liberty can be attributed to the fact that same-sex sexual conduct, sex work and individual drug use and possession remain criminalised in Uganda. The existence of broad and vague petty offences, such as the offence of being a rogue and vagabond, facilitates the arbitrary arrest of criminalised groups such as these even in the absence of evidence that they have committed the prohibited conduct of engaging in same-sex sexual relations, sex work or drug use.¹⁰⁴

In respect of MSM, PWUIDs and sex workers in particular, the frequency of violation of the right to liberty has increased since 2017¹⁰⁵ all through to 2020. There were a number of mass arrests of MSM, transgender persons and sex workers on arbitrary grounds which explains the high number of violations of this right. Three of the KP groups as aforementioned were arrested in

103 HRAPF (n 94 above) 37.

104 Human Rights Awareness and Promotion Forum (HRAPF) The implications of the enforcement of 'idle and disorderly' laws in Uganda (2016) available at <http://hrapf.org/mdocs-posts/hrapf-report-on-the-implementation-of-idle-and-disorderly-laws-in-uganda/> (accessed 15th July 2019).

105 The number of violations of the right to liberty of MSM and transgender persons has increased from 15 in 2017 to 25 in 2018. See Human Rights Awareness and Promotion Forum *The Uganda Report on Human Rights Violations based on sexual orientation and gender identity, 2018: Increasing protections and reducing state violations* (2018) 24.

circumstances which could not have constituted reasonable suspicion that the person has or is about to commit a crime, which amounts to arbitrary deprivation of liberty. 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. The first half of 2020 had its share of mass arrests in the arrests of the 25 MSM and transgender persons from the shelter in Kyengera.

The right to freedom from from torture, inhuman and degrading treatment came second with which 54 instances (25%). The high number of torture cases mainly arose from only one case – the raid on the homeless shelter for LGBT persons in Kyengera netting 25 LGBT persons. Almost half of the violations were committed by the local council authorities of Kyengera and the other half by the Uganda Prisons Service. This was at the beginning of the COVID-19 lockdown and presidential directives on COVID-19 were used to justify these arrests. The violators clearly targeted the victims for their sexual orientation and gender identity.

5.4 Perpetrators of violations

Figure 2: Table of perpetrators of human rights violations during first half of 2020

Nature of human right	Police	Prison authorities	Local leaders (LCs, mayors, RDC, UPDF/Local Defence Unit)	Total
The right to liberty	29	20	26	75
The right to a fair hearing	-	20	-	20
The right to freedom from torture and cruel, inhuman and degrading treatment and punishment	9	20	25	54
The right to life	1	-	-	1
The right to freedom of expression, association and assembly	10	-	-	10
The right to privacy	1	-	25	26
The right to equality and freedom from discrimination	2	-	28	30
Total:	52	60	104	216

5.4.1 Local authorities (Local council officials, Resident Districts Commissioners (RDCs) and members of the Uganda Peoples' Defence Forces (UPDF) and the Local Defence Unit (LDU)

Local authorities for the first time have emerged as the major violators of human rights – at least for the first half of 2020. They account for 103 individual human rights violations (47.6%). This however mainly arose from one case- the raid on the LGBT shelter in Kyengera. which accounted for 100 violations. The local council authorities led by the Mayor of Kyengera Town Council and the LC 1 officials led to violations of the right to liberty, the the right to freedom from torture, inhuman and degrading treatment and the right to freedom from discrimination through their actions. The number of individuals involved makes the number of violations to be high. Also the Local authorities usually involved other authorities- in this case the UPDF/Local Defence Unit who enforced the orders of the local authorities, and in others the Police whom they tipped off.

5.4.2 The Uganda Prisons Service

The Uganda Prisons Service emerged the second biggest violator of human rights, accounting for 60 separate incidents (27.7%). However, all their violations arose from one case which had multiple violations - the one involving persons arrested during the raid on the LGBT shelter in Kyengera. The Uganda Prisons Service accounted for 61 individual violations mainly of the right to liberty – by denying the 20 persons access to their lawyers, and freedom from torture, inhuman and degrading treatment due to the violence that the 20 suffered at the hands of prison warders at Kitalya Mini Maxi Prison. They also violated the right to privacy of one of the 20 on whom an anal examination was done by another prisoner on the orders of a prisons officer. However, it should be noted that this is more of a one off than routine, as it only occurred in one case that happened during the COVID-19 lockdown, and it only affected MSM and transgender person.

5.4.3 The Uganda Police Force

The Police came an unusual third with 52 violations (24%). Although the police comes out as the least violator in terms of number of incidents, they still account for the majority of individual cases of violations. Of the 28 cases verified in this report, the police is responsible for 25, watering down the fewer violations. Usually the police arrests many people in a single case leading to multiple violations, which was not the case in this instance, as the police largely kept clear of the case involving the raid on a homeless shelter for LGBT persons.

It still remains to be seen how the trends in terms of violators will reflect at the end of the year and how this will compare with the earlier years.

5.5 Trends in violations of human dignity

Violations of human dignity also continued to rise during this period. These were mainly as follows:

Figure 3: Table of violations of human dignity suffered by KPs during the first half of 2020

Categories of human dignity violations	MSM	Transgender persons	Sex workers	PWUIDs
Acts or threats of violence	6	2	5	-
Evictions	10	4	-	-
Denial of employment	1	-	-	-
Total:	17	6	5	-

Figure 4: Table of perpetrators of violations of human dignity suffered by KPs during the first half of 2020.

Perpetrators of violations of human dignity	Number of violations perpetrated
Members of the general community	8
Family members	12
Clients of sex workers	3
Local leaders	4
Employers	1
Total:	28

Family members were responsible for the greatest number of violations of human dignity committed against KPs during the first half of the year 2020. These violations were often violent and characterised by evictions and discrimination. Trends in violations of human dignity by members of the general community and local leaders have remained constant. 2019 was the first year in which a case of violation by teachers committed against a student suspected to be gay was recorded. Clients of sex workers as well as members of the general public often commit violent crimes against sex workers with impunity. This trend was confirmed in 2019's record of violations and the cases of the first half of 2020 discussed above.

5.6 COVID-19 and violations against KPs

COVID-19 and the restrictions put in place to fight it have changed the dynamics for most KPs. The case of the raid on the LGBT shelter on the pre-text of enforcing COVID-19 Regulations illustrates how KPs are at risk during such periods. The local authorities and the Mayor had clearly been seeking for an opportunity to arrest shelter residents and then COVID-19 came as a godsend, and they promptly carried out the raid soon after the lockdown started.

The charge sheet clearly reflected 'doing a negligence act likely to spread infection of disease' as the charge but the motivation for the arrest was clearly homophobia. 20 of the 22 ended up spending over 60 days in prison before charges were withdrawn by the Director of Public Prosecutions. The 20 were also denied access to their lawyers during this period, prompting a court decision in favour of them being granted access. Sex workers in Hoima were denied food aid, until HRAPF intervened. Therefore, the COVID-19 restrictions played a disproportionate role in the violations recorded for the first half of 2020.

6. CONCLUSION AND RECOMMENDATIONS

6.1 General conclusion

As earlier stated, this report covers the period January to June 2020. As such all the information reflected therein and the analyses made are for half the year. Additionally, the data collected was strongly affected by the pandemic which resulted into imposition of a lockdown that greatly affected reporting of violations by Key Population persons.

In the first half of 2020, a total of 244 verified violations were committed against KPs in Uganda. Out of these violations, 216 were human rights violations committed by state actors while 28 were violations of human dignity committed by non-state actors.

MSM suffered 116 verified human rights violations and 17 violations of human dignity. The level of hostility against MSM has increased starkly in comparison to the number of violations recorded in previous years. A total of 72 human rights violations and 6 violations of human dignity against transgender persons were recorded. There is need for increased engagement of both state and non-state actors in order to raise awareness and address the persistent homophobia, biphobia and transphobia in the country.

Sex workers suffered a total of 17 violations including 12 human rights violations and 5 violations of human dignity. Even though Section 138 and 139 of the Penal Code which criminalise sex work have not been applied to charge a sex worker in a single recorded case in this period, the existence of these provisions encourage stigma against sex workers and are used to justify the violation of their rights.

There were 16 recorded and verified human rights violations committed against PWUIDs. All of these violations were committed by state actors. No violations of human dignity committed by non-state actors against PWUIDs were recorded for the period under review.

The continued criminalisation of the KP groups covered in this report results in a situation where they 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.

Mass arrests of KPs especially LGBT persons continues to be a trend and it is worrying, as it leads to multiple violations. A single such case changes the dynamics of violations, the same way that the arrest of 25 LGBT persons from a homeless persons' shelter in Kyengera changed the dynamics of this report. COVID-19 has generally worsened the situation, with COVID-19 Regulations being used by the authorities to justify violations against KPs.

6.2 Recommendations

To the President of the Republic of Uganda

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. Publicly reject proposed legislation which discriminates on the basis of sexual orientation and gender identity or which promotes discrimination and violence against individual drug users or against women because of their involvement in sex work.
2. Make clear statements that acts of violence and discrimination against KP groups, including MSM, transgender persons, sex workers and 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

The Parliament of Uganda has the authority to legislate and thereby influence the levels of protection or violation experienced by KPs in Uganda. Legislation intended to further criminalise a particular KP group may have dire consequences for that group. Parliament is recommended to do the following:

1. Repeal laws which create the offence of 'having carnal knowledge against the order of nature', which is interpreted to criminalise MSM and transgender persons and are used to justify denying them equal protection of the law.
2. Repeal laws that are obsolete and which fuel violence against sex workers, in particular Sections 138 and 139 of the Penal Code Act.

3. 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.
4. 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 KPs.

To the Uganda Police Force

The Uganda Police Force is a critical actor in terms of protecting and violating the rights of KPs. The Police can either protect the rights of KPs 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 KPs will be arrested and prosecuted on the basis of their real or presumed sexual orientation and/or gender identity, their suspected involvement in sex work or drug use. In this regard, the following recommendations are made to the Police:

1. Continue training police officers on the human rights of MSM and transgender persons, sex workers and 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.
3. Thoroughly and conclusively investigate cases of violence against KPs by members of the public.

To the Uganda Prisons Service (UPS)

The UPS has for almost the first time been pointed out as a violator of the rights of KPs, particularly arising from one case where 20 people were remanded to prison and due to the COVID-19 lockdown, denied access to their lawyers and subjected to beatings and in one incident, burning. Nevertheless, discrimination and abuse of MSM and transgender persons in prisons may become a trend if not checked, and as such the prisons authorities need to:

1. Protect the rights of all persons, including MSM and transgender persons when they are in prison.

2. Properly investigate and punish the violations against the 12 MSM and 8 transgender persons whose rights were violated at the instigation of a senior Prisons officer in order to set an example to the others and to do justice.
3. Desist from violating the right to a fair hearing despite the COVID-19 pandemic, since this right cannot be derogated from. Alternative ways of ensuring that lawyers get access to their clients have to be devised in light of COVID-19, including remote access.

To the Minister of Local Government

The Minister of Local Government can guide local authorities on how to conduct their affairs. Since local authorities emerged as the biggest violators of the rights of KPs in the first half of the year, this should be a wake up call, and the Minister should:

1. Offer guidance to all local council authorities to protect the rights of every one including members of Key Populations.
2. To desist from beating, shaming and displaying suspects to the media during arrests which actions are all contrary to human rights.

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 KPs as a barrier in the fight against HIV and AIDS in policies and public communication.
2. Take a stand against discriminatory laws, such as Section 145 of the Penal Code Act which criminalises consensual same-sex sexual conduct; Sections 138 and 139 of the Penal Code Act which criminalise sex work in order to enable the fight against HIV and AIDS among KPs.
3. 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.

4. 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

The Uganda Law Reform Commission is mandated to make recommendations to 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 Uganda 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. Develop a proposal for the amendment of the Penal Code Act to repeal the sections that criminalise consensual sexual relations between persons of the same sex.
3. Develop a proposal to Parliament to repeal provisions in the Penal Code Act that criminalise sex work and related activities which are not being used by law enforcers yet promote prejudice and discrimination against sex workers. These include Sections 136, 137, 138 and 139 of the Penal Code Act.
4. Make recommendations for the amendment of the Narcotic Drugs and Psychotropic Substances Control Act, 2016 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 promotion 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. Hear and dispose of cases involving violations of rights of KPs 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 KPs' 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 KPs.

To the Equal Opportunities Commission

The Equal Opportunities Commission is 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. We recommend that the Commission uses its mandate to do the following:

1. Investigate systemic discrimination of individuals based on their sexual orientation and gender identity as well as 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 KPs.
3. Compile reports on discrimination and marginalisation of KPs and make the necessary recommendations to the relevant stakeholders on how to combat such discrimination and marginalisation.
4. Include KP issues in the annual reports to Parliament.

To the Uganda AIDS Commission

The Uganda AIDS Commission (UAC) 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 KPs as an obstacle to the implementation of HIV prevention and control policies and programmes.
2. Take a stand against discriminatory laws, such as Section 145 of the Penal Code Act which criminalises consensual same-sex sexual conduct, and Sections 138 and 139 of the Penal Code Act in order to enable the fight against HIV and AIDS among KPs.
3. 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 KPs face within the Ugandan society. These organisations 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 KPs. It is recommended that civil society does the following:

1. Raise awareness about the implications of criminalisation of same sex relations, non-recognition of gender changes, criminalisation of sex work, and drug use on HIV/AIDS.
2. Hold awareness sessions with members of the general community to demystify MSM and transgender persons, sex workers and PWUIDs and help the community understand that they are part of their community.
3. Develop the capacity of staff to document violations committed against KPs. This could include adopting uniform guidelines for recording information on cases and violations.
4. Institute cases under the recently enacted Human Rights Enforcement Act, 2019 in order to hold state actors who have committed human rights violations against KPs accountable.
5. Strengthen reporting systems, methods of evidence collection and data storage in order to facilitate the verification of violations against KPs.
6. Support the Uganda Human Rights Commission to monitor and document reports of violence, abuse, and discrimination committed against KPs.
7. Establish further partnerships with organisations for the monitoring and documentation of rights of KPs.

ABOUT HRAPF

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

Human Rights Awareness and Promotion Forum (HRAPF)

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