

UNIVERSAL PERIODIC REVIEW OF UGANDA

JOINT SUBMISSION BY CIVIL SOCIETY ORGANISATIONS UNDER THE SEXUAL MINORTIES CLUSTER

TO: THE NATIONAL UPR STAKE HOLDERS FORUM SECRETARIAT

List of Contributing Organisations	
1. Coalition for Human Rights Education	2. Uganda Network for Sex-Work Led Organisations (UNESO)
3. Freedom and Roam Uganda	4. Come Out Positive Test Club
5. Health and Rights Initiative	6. Queer Women Leaders Uganda
7. Holistic Organisation to Promote Equality	8. The Robust Initiative For Promoting Human Rights
9. Human Rights Awareness and Promotion Forum	10. Sexual Minorities Uganda
11. Ice-Breakers Uganda	12. Resilience Uganda
13. Initiative for Rescue Uganda	14. Hope Focus Uganda
15. Kampus Liberty Uganda	16. Rwizi Network
17. Lady Mermaids Empowerment Centre	18. Alliance of Women Advocating for change
19. Let's Walk Uganda	20. Rella Women's Foundation
21. Lived Realities Uganda	22. Water Mellon (H2O Mellon)
23. Mbarara Rise Foundation	24. Eastern Region Women's Empowerment Organisation
25. Organisation for Gender Empowerment and Rights Advocacy	26. Men Of the Night Uganda
27. Serving Lives Under Marginalisation	28. Youth on Rock Foundation
29. The Taala Foundation	30. Golden Centre for Women's Rights
31. Trans Youth Initiative Uganda	32. Rainbow Shadows Uganda
33. Vijana Na Children Foundation Uganda (VINACEF)	34. Children Of The Sun Foundation (COSF)
35. VOICE Uganda	36. Community Empowerment Initiative Network
37. Youth Fraternity For Change	38. Blessed Rwenzori Uganda
39. Malukhu Women's Association to Prevent HIV/AIDS	40. Harm Reduction and Reproductive Health Initiative Mbarara
41. Sista Mbarara	42. Mbarara Rise Foundation

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1. Introduction

This report is a joint submission of organisations working on the rights of Lesbian, Gay, Bisexual, Transgender and Intersex persons (LGBTI) and sex workers in Uganda, submitted under the auspices of the Sexual Minorities Cluster that is jointly convened by Human Rights Awareness and Promotion Forum (HRAPF) and Sexual Minorities Uganda. HRAPF has for the last 13 years worked towards the protection and promotion of the rights of marginalised persons in Uganda. HRAPF has also documented violations of human rights based on sexual orientation and gender identity over the past 8 years, publishing the annual Uganda Report(s) of Human Rights Violations based on Sexual Orientation and Gender Identity, as well as those of the rights of sex workers, published annually in the Protection and Violation of the Human Rights of Sex Workers Report(s). HRAPF also runs a fully licensed legal aid clinic dedicated to serving marginalised communities, including sex workers and LGBTI persons.

Sexual Minorities Uganda, the co-convenor, is a network of LGBTI organisations operating in Uganda, focusing on conducting advocacy for the protection and recognition of the rights of LGBTI persons, providing security support to individual LGBTI persons and organisations facing challenges because of their work and/ or sexuality and conducting research and documentation on issues of human rights concern for LGBTI persons in Uganda, among others.

2. Executive Summary

During Uganda's review in the previous cycle of the UPR (2011-2016), Uganda did not accept any of the recommendations on sexual orientation and gender identity, and there were no recommendations made on sex workers' rights. However Uganda committed in the first review in 2011 to take immediate concrete steps to stop discrimination and assaults against LGBTI persons and investigate thoroughly and sanction accordingly violence against LGBTI persons, including human rights activists; to investigate and prosecute, through the Uganda Human Rights Commission, human rights violations, including attacks on LGBTI persons, and make findings public; to increase education and awareness on all sets of human rights; strengthen human rights and democratic institutions, including the Uganda Human Rights Commission; protect human rights defenders from harassment and intimidation; and train security forces to respect freedom of assembly and expression.¹

In respect to those commitments, there have been instances where the state has fulfilled its obligations. For instance, the court awarded damages to 19 LGBT community members arbitrarily arrested and charged with 'doing a negligent act likely to spread infection of disease', and denied access to their lawyers while in prison. The High Court held that the action of denying them access to lawyers under the guise of enforcing COVID-19 regulations in prisons violated their right to liberty as well as the inalienable right to a fair hearing. The Uganda Police Force has also worked together with HRAPF and other partners to train over 500 police officers

¹ Office of the United Nations High Commissioner for Human Rights http://www.uprinfo.org/database/index.php?limit=0&f_SUR=182&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

on issues of marginalisation and the treatment of LGBT persons while in police custody, and Uganda also enacted the Human Enforcement Act, 2019 to provide efficient and speedy mechanisms for providing redress to victims of human rights abuses.

Even with the above efforts, however, the LGBT and sex worker communities in Uganda have continued to face discrimination and marginalisation, primarily influenced by the penal laws of Uganda which criminalise consensual same-sex sexual relations and sex work. These colonial laws have continued to exist on the books (with various efforts over the years to augment punishments, further criminalise identities, etc.)² because of the social, religious, and cultural attitudes in the country. These laws are used as justification for this continued discrimination and human rights violations of the rights of people non-conforming to traditional gender identity and sexual orientation as well as the choice of occupation.

The Anti-Money Laundering Act, 2013, and the Financial Intelligence Authority created thereunder have also become a tool of oppression, with targeted attacks on Civil Society Organisations and human rights activists engaged in the protection and promotion of human rights and good governance.³ This is in stark contrast with Uganda's commitments to ensure that civil society organisations and human rights defenders operate in a safe environment and all allegations of intimidation, harassment and violence are fully investigated.⁴ Despite Uganda's commitments, the operating environment for civil society organisations merely continued to deteriorate, especially in the run up to the 2021 general elections.⁵

Despite the enactment of progressive laws such as the Human Rights (Enforcement) Act, 2019, the incidences of human rights violations are on the rise particularly in the face of the COVID-19 pandemic and the measures instituted by the state to curb its spread. The realities of LGBT persons and sex workers in the face of COVID-19 and the attendant regulations and directives only served to exacerbate the already deteriorating human rights situation. There have been several incidents of raids on LGBT shelters and places of entertainment/ social hang-outs in the last few months as a result of the changing socio-legal environment.⁶ Despite the fact that no recommendations on SOGIE issues were accepted by Uganda in the last cycle, Uganda did

² In 2014, Uganda passed the Anti-Homosexuality Act, 2014 (declared null and void by the Constitutional Court less than 6 months later), a law which sought to create the offences of homosexuality and aggravated homosexuality and provide immunity for perpetrators of violence against LGBT persons by providing that it would be a valid defense to any assault charge for a person to prove that they did it to protect themselves from homosexual practices.

³; 'Government freezes accounts of 4 NGOs doing poll work' The Monitor Uganda 2 December 2020 <https://www.monitor.co.ug/uganda/special-reports/elections/govt-freezes-accounts-of-4-ngos-doing-poll-work-3216360> (accessed 28 January 2021).

⁴ Human Rights Council Working Group 'Report of the Working Group on the Universal Periodic Review* Uganda', (2016) A/HRC/34/10 <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UGindex.aspx> accessed on 28th January 2021.

⁵ 'City lawyer Nicholas Opiyo held over money laundering-Police' [The Independent](https://www.independent.co.ug/city-lawyer-nicholas-opiyo-held-over-money-laundering-police/) 23 December 2020 <https://www.independent.co.ug/city-lawyer-nicholas-opiyo-held-over-money-laundering-police/>

⁶ Human Rights Watch 'Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext' 3 April 2020. <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretex> and Police raids 'gay-friendly' Ram Bar, arrests 120 The Observer 12 November 2019 <https://observer.ug/news/headlines/62595-police-raids-gay-friendly-ram-bar-arrests-120>

make commitments to, among other things, continue to harmonise its domestic legislation with all international human rights instruments that Uganda is a party to, ensure that the country's laws are in compliance with international human rights standards and to further ratify and incorporate all the ratified international legal instruments into domestic law.⁷ These international instruments provide protection for the rights of LGBTI persons and sex workers, yet LGBTI persons and sex workers in Uganda continue to face severe marginalisation on the basis of real or presumed sexual orientation or gender identity, or choice of work.

Furthermore, Uganda committed to ensuring that civil society organisations and human rights defenders operate in a safe environment. To this end, Uganda committed to fully investigate all allegations of intimidation, harassment, and violence, to thoroughly investigate threats against human rights defenders and civil society organisations and bring those responsible to justice and guarantee reparations to the victims. In this, Uganda is still heavily lacking, as multiple CSOs and their leaders have recently come under targeted attack. Particularly during the 2021 election cycle, CSOs and human rights defenders that serve sexual minorities have been referred to as funders of instability by the head of state,⁸ a statement that was later echoed by the Minister for Security. This is in stark contrast with Uganda's commitment to explicitly recognise the legitimacy of the work carried out by human rights defenders and to publicly support their work and provide protection for them.⁹

In relation to health, Uganda committed to increase its health budget allocation and ensure the extension of health care to all persons without distinction based on gender, and to this end, the government of Uganda has supported initiatives to provide friendly health services to key populations, including sexual minorities, through the Most at Risk Populations Initiative. Nevertheless, sexual minorities have continued to face discrimination in health service delivery, with the MARPI model having very few centres (about 35 across the entire country), and providing primarily HIV/ STI treatment and care services, not the entire range of SRHR services and other health services needed by sexual minorities.

3. Methodology

Information for this report was gathered through extensive consultation with members of the communities of sex workers and LGBTI persons across the country. These consultations were conducted through four meetings held in the four main regions of Uganda, reaching out to 82 persons associating under 43 different CSOs working with sex workers and LGBT persons. The meetings were conducted in the Eastern Region (in Mbale City), the Northern Region (in Gulu City), the Western Region (in Mbarara City) and the Central Region (in Kampala City) between February and April 2021. The information provided by the individuals and organisations consulted was then cross-referenced with available data from research studies on LGBTI and

⁷ n 5 above

⁸ Kuchu Times 'President Museveni Blames LGBT Community For Nation-Wide Protests' [20 November 2020](https://www.kuchutimes.com/2020/11/president-museveni-blames-lgbt-community-for-nation-wide-protests/)

⁹ n 5 above accepted recommendation 115.110

sex workers rights, and only that information that was verifiable through cross-referencing with available evidence-based research data was included in this report.

In addition, reference was made to secondary information such as media reports and reports by civil society organisations on the human rights situation for LGBTI persons and sex workers during the period from 2016 to 2021, and national, regional and international human rights instruments were also analysed to inform the discussion on Uganda's human rights obligations to sexual minorities. Reference is also made to the outcome report from Uganda's previous UPR reviews to ascertain the commitments made therein in order to effectively make comment on the progress thus far achieved in meeting these commitments.

PART II

4. Legal and Constitutional framework affecting LGBT and sex workers' rights in Uganda

Despite Uganda's demonstrated reluctance to recognise LGBT and sex worker rights, Uganda has committed to revise and harmonise its laws to meet international human rights instruments and ensure that they comply with international human rights standards while ensuring that the enforcement and implementation of laws are in line with the state's obligation to protect and promote the human rights of all. Just as important, Uganda's Constitution guarantees human rights for all persons without discrimination, and imposes upon all persons and all organs of the state to protect, promote and fulfil human rights.¹⁰

4.1. LGBT and Sex Workers' rights under International Law

LGBTI rights

Uganda has ratified and is a party to several key international instruments that provide for equality and protection of all persons in the enjoyment of their human rights under international human rights law and this includes LGBT persons and sex workers. Key among the rights is the right to security of the person and privacy, the right to be free from torture, freedom from arbitrary arrest and detention, the right to be free from discrimination, the right to the highest attainable standard of health and the right to freedom of expression, association and peaceful assembly.

While both Ugandan and international law explicitly bar discrimination based on, among other grounds, sex, they do not particularly recognise discrimination based on sexual orientation or gender identity. However, the UN Human Rights Committee has interpreted 'sex' as used in

¹⁰ Article 20(1) of the 1995 Constitution of the Republic of Uganda

the International Covenant on Civil and Political Rights to include sexual orientation,¹¹ and the term “other status “ as used in clauses on non-discrimination has also been interpreted by the Committee on Economic, Social, and Cultural Rights in its General Comment 20, to include sexual orientation.¹²

Sex Workers Rights

Sex workers' rights are not expressly provided for under international human rights instruments ratified by Uganda. However, Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to work, which includes the right to an opportunity to earn a living by work which one freely chooses or accepts, without limitation as to the type of work. The right to work under Article 6 of the ICESCR encompasses all forms of work, whether independent work or dependent wage-paid work.¹³ In addition, provisions against discrimination of persons apply to sex workers as well, protecting sex workers against discrimination based on economic, social or other status.¹⁴

Furthermore, the International guidelines on HIV/AIDS and Human Rights 2006¹⁵ recognises adult sex work that involves no victimisation, and urges that criminal laws should be reviewed with the aim to decriminalise, then legally regulate occupational health and safety conditions to protect sex workers and their clients, including support for safe sex during sex work in order to ensure that criminal law does not impede the provision of HIV/AIDS prevention and care services to sex workers and their clients.

4.2. LGBT and Sex Worker Rights under national law

Article 21 of the 1995 Constitution of Uganda provides for equality and freedom from discrimination, and specifically states that no person shall be discriminated against on the grounds of ‘sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability’. However, penal provisions criminalising sex work and consensual same-sex sexual relations continue to exist in the Penal Code Act, and they are used to justify human rights violations against LGBTI persons and sex workers.

¹¹ Communication 488/1992, *Toonen v. Australia*, Human Rights Committee U.N. Doc CCPR/C/50/D/488/1992 (1994). <http://hrlibrary.umn.edu/undocs/html/vws488.htm> (accessed on 25th January 2021); United Nations High Commissioner for Human Rights ‘Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity’. https://www.ohchr.org/documents%2Fissues%2Fdiscrimination%2Fa.hrc.19.41_english.pdf (accessed 29 April 2021).

¹² UN Committee on Economic, Social and Cultural Rights General (CESCR), ‘Comment 20 Non-discrimination in economic, social and cultural rights’ (2 July 2009), available at: <https://www.refworld.org/docid/4a60961f2.html> (accessed 29 April 2021)

¹³ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, available at: <https://www.refworld.org/docid/4415453b4.html> (accessed 29 April 2021)

¹⁴ n 13 above

¹⁵ Office of the High Commissioner for Human Rights ‘International Guidelines on HIV/AIDS and Human Rights’ 2006 <https://www.ohchr.org%2Fdocuments%2Fpublications%2Fhivaidsguidelinesen.pdf> . (accessed on 29 April 2021)

Section 145 of the Penal Code Act criminalises having carnal knowledge against the order of nature. Whereas this does not particularly refer to LGBT persons,¹⁶ the same is interpreted to criminalise consensual same sex relations, and is therefore discriminatory in nature. Furthermore, vagrancy laws under sections 167 and 168 of the Penal Code Act have been used to arrest and harass LGBTI persons and sex workers, even though the offences are difficult to prosecute because, without a confession from the suspect, it is usually nearly impossible to find proof of the commission of such offences. Nevertheless, the law as is informs the misguided use of anal examinations to try and gather a semblance of evidence,¹⁷ violating the right to privacy and bodily integrity and freedom from cruel inhumane treatment guaranteed under Articles 27 and 24 of the Constitution respectively.

Section 139 of the Penal Code Act prohibits prostitution, which is defined under section 138 as the habitual holding of oneself as available for sexual intercourse or other sexual gratification for monetary or other material gains. This criminalises sex work and limits the right to work for persons engaged in sex work. This section has been used to violate the rights of sex workers, mostly by law enforcers.¹⁸ A vivid case was the arrest of 87 sex workers on allegations that they were in possession of narcotics despite having none in their possession, the arrest followed a documentary aired on 16th September 2019 on NBS TV titled 'NBS INVESTIGATES : Brothel Owners Making A Killing Off Sex Trade' The arrest was purely a cosmetic one to portray an image of the Police being operational.¹⁹

Since March 2020, the police has also been actively arresting sex workers and LGBT people en masse for the offences of "disobeying lawful orders" and "doing a negligent act likely to spread infection of disease (sections 117 and 171 of the Penal Code Act) as a tool to enforce the restrictions imposed by the state to curb the spread of COVID-19. Despite the understandable rationale of trying to enforce the COVID-19 directives, this enforcement has intentionally or unintentionally targeted the vulnerable, particularly sex workers that earn a living by moving from one point to another.²⁰ In relation to LGBT persons, the targeted use of section 171 to harass unpopular minorities was first witnessed on March 29th 2020 with the arrest of 23 youths from a homeless person's shelter for LGBT persons in Kyengera Town Council. Although all indications are that the arrest was based purely on their perceived sexual orientation and/or gender identity, they were later charged with 'doing a negligent act likely to spread infection of disease.' 20 of these youth were eventually remanded to prison, denied access to their lawyers,

¹⁶ Adrian Jjuuko, 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' (2013) <https://sas-space.sas.ac.uk/4815/1/14Jjuuko.pdf> (accessed 29 April 2021)

¹⁷ Human Rights Watch 'Uganda: Stop Police Harassment of LGBT People' 17 November 2019 <https://www.hrw.org/news/2019/11/17/uganda-stop-police-harassment-lgbt-people> (accessed 29 April 2021)

¹⁸ Human Rights Awareness Promotion Forum 'Report of Human Rights Violations against Key Populations in Uganda' 2020.

¹⁹ Human Rights Awareness and Promotion Forum 'Report on the Protection and Violation of the Human Rights of sex workers in Uganda, 2019' April 2020.

²⁰Alliance for Women Advocating for Change 'Rapid assessment on the impact of covid-19 among FSWS, AGYW and women living with HIV & AIDS in Uganda' 2020 <https://www.google.com/url/SSEMAKULASbb0a7a2ea4d90543400023042d1aa7fca2177e6a.pdf>

and subjected to inhuman and degrading treatment. The High Court later ruled that the denial of access to lawyers to 19 of these was a violation of the right to liberty and the right to a fair hearing.²¹

4.3. Legislative reform

The Human Rights (Enforcement) Act, 2019

Parliament enacted the Human Rights (Enforcement) Act 2019 in a bid to improve the enforcement of human rights and bring the consequences of human rights violations down to the individual perpetrator. This Act is intended to simplify and expedite justice for victims of human rights violations. It is a positive step in Uganda's efforts to ensure a progressive realisation of a society governed by the rule of law and based on human rights. The Act further empowers courts to administer justice without undue regard to technicalities, and the courts are further empowered to ensure that human rights violations are addressed.

The Judiciary as an avenue for legislative reform

LGBTI rights activists have continued to use the courts of law as an avenue for securing legal reform in favour of LGBTI persons during the last five years, and the courts have on several occasions upheld the rights of LGBTI persons. The Constitutional Court of Uganda in November of 2016 delivered its decision in the case of *Adrian Jjuuko v Attorney General*²² declaring section 15(6)(d) of the Equal Opportunities Act 2007, which prohibited the Equal Opportunities Commission from investigating and hearing matters considered socially unacceptable by a majority of social and cultural groupings in Uganda, to be inconsistent with the constitutional provisions on freedom from discrimination and the right to a fair hearing, and therefore null and void. Despite the case having taken over 7 years before judgment, it makes a firm statement against discrimination of sexual minorities in Uganda and ensuring equality of all persons under the law.²³

However, the Judiciary has also set bad precedents in deciding matters that concern sexual minorities. The High Court has held that a government official did not violate the rights of LGBT persons when he closed down a skills training workshop, citing section 145 of the Penal Code Act as justification.²⁴ This case is on appeal in the Court of Appeal but is yet to be heard 5

²¹ *Human Rights Awareness and Promotion Forum (HRAPE) vs. Attorney General and Another* (High Court Miscellaneous Cause No 81 of 2020).

²² Constitutional Petition No.001 of 2009

²³ Human Rights Watch 'A Step Towards Better Addressing Discrimination in Uganda: Court Ruling Allows Equal Opportunities Commission to Hear Broader Range of Cases'. 11 November 2016 <https://www.hrw.org/news/2016/11/11/step-towards-better-addressing-discrimination-uganda> (accessed 29 April 2021.)

²⁴ *Jacqueline Kasha Nabagesera & 3ors v AG & Anor Misc. Cause No 33 of 2012*

years on.²⁵ Similarly, in 2018, the High Court upheld the decision of the Uganda Registration Services Bureau to refuse to reserve and register the name “Sexual Minorities Uganda” on the grounds that it was undesirable, and that, as the organisation’s objectives included promoting the rights of LGBTI persons, its registration would amount to aiding and abetting the offence of having carnal knowledge against the order of nature in section 145 of the Penal Code Act.²⁶ The appeal that was filed in this case in 2018 is still pending hearing before the Court of Appeal.²⁷

The Sexual Offences Bill

In addition to the already existing laws criminalising sex work and same-sex sexual relations, the government of Uganda is in the process of enacting the Sexual Offences Bill, which shall widen criminalisation for both sex workers and LGBTI persons. This Bill, passed by Parliament on 3rd May 2021 is currently awaiting presidential assent. If it becomes law in the state in which it is currently, the will in effect criminalise as “carnal knowledge against the order of nature” all sexual contact between persons of the same gender, the use of sex toys, some aspects of oral sex and, in the same section, sex with animals, as well as engaging in sex work, having sexual contact of any kind with a sex worker and operating a brothel.²⁸ If signed into law by the president, this Bill will expand criminalisation for both sex workers and LGBTI persons and greatly undermine efforts towards full recognition of the rights of LGBTI persons and sex workers.²⁹

4.3. The institutionalisation of discrimination against LGBT persons and sex workers

Despite the provision of Article 21 that bars any form of discrimination against anyone on the basis of sex, discrimination against LGBT persons and sex workers continues to abound, tacitly sanctioned by government institutions, and this institutionalisation of discrimination has contributed greatly to the continued marginalisation of sexual minorities and the rising cases of human rights abuse.

The Non-Governmental Organisations Act 2016 (NGO Act) imposes special obligations on organisations not to engage in acts that are ‘prejudicial to the interests of Uganda and the

²⁵ Jacqueline Kasha Nabagesera & 3ors v AG & Anor Civil Appeal No 195 of 2014

²⁶ High Court Miscellaneous Cause No. 96 of 2016

²⁷ Civil Appeal No. 233 of 2018

²⁸ Although an authoritative text for this Bill has not yet been availed by the Office of the Clerk to Parliament, the presumptive section 13 defines “unnatural offences”, section 14 criminalises operation of brothels, section 15 criminalises prostitution and section 16 criminalises “sexual acts with a prostitute” as per the Report of the Sectoral Committee on Legal and Parliamentary Affairs on the Sexual Offences Bill, 2019, which the parliament based on in passing this Bill

²⁹ Human Rights Awareness and Promotion Forum (HRAPF) ‘Analysis of the Sexual Offences Act, 2021 and its implications on the human rights of criminalised minorities’

<https://www.hrapf.org/index.php/resources/legal-policy-analyses/190-hrapf-legal-analysis-of-the-sexual-offences-act-2021/file> (accessed 15th May 2021).

dignity of the people of Uganda.³⁰ This provision has forced significant self-censorship among civil society organisations as its vagueness can be used to target CSOs focusing on unpopular issues, such as the rights of sexual minorities. At present, less than 10 organisations working on sexual minorities rights in Uganda have been able to secure full registration by the NGO Board. In addition, state institutions in health service delivery, law enforcement, civil society regulation and even the courts of law tend to exhibit an inherent bias against serving LGBTI persons and sex workers, often targeting them for arrest and prosecution for petty offences, denying them access to essential health services and restricting them to certain “friendly” facilities and community drop-in-centres, which generally focus only on HIV and STI prevention and management.

These legal and policy environment is not only repressive but also contravenes Uganda’s obligations under various international instruments that Uganda has ratified. They reinforce stigma and social misconceptions against LGBT persons and sex workers and are a justification for the violation of their rights.

4.4. Recommendations

1. Repeal all discriminatory laws inconsistent with Ugandan’s international obligations and enact laws to ratify and operationalise international human rights instruments that Uganda is a state party to. In particular, repeal sections 139 and 145 of the Penal Code Act and sections 44 (d) (f) of the NGO Act and review the Sexual Offences Bill prior Presidential assent to remove the further criminalisation of consensual same-sex sexual relations and sex work.
2. Strengthen the Judicial systems to better offer redress to victims of violations and intensify efforts to clear case backlog through the scheduling, hearing, and determining cases filed for the protection of the human rights of marginalised persons.

5. Part III

5.1. The right to liberty, security and freedom from arbitrary arrest and detention

At the UN level, this right is guaranteed under Article 9 of the ICCPR, at the regional level is guaranteed under Article 6 of the ACHPR, and is codified in Uganda under Article 23 of the 1995 Constitution of Uganda. This right guarantees that a person shall not be deprived of their right to liberty except as provided for under the law. Article 10 of the ICCPR further emphasises the right to be treated with dignity and humanity once the right to liberty has been curtailed.

With the enforcement of the COVID-19 regulations, arbitrary arrests and detentions have continued to spike, with several incidences of targeted arrests and arbitrary detentions of LGBT

³⁰ Non-Governmental Organisations Act, 2016 sections 30 and 44.

persons and sex workers under the guise of enforcing these regulations being reported as already discussed in 4.2 above.³¹

Owing to the difficulty of proving ‘prostitution’ and ‘carnal knowledge against the order of nature’, the Police often resort to charging LGBT persons and sex workers with petty offences such as ‘idle and disorderly’,³² ‘rogue and vagabond’,³³ ‘common nuisance’³⁴ and, in recent times, ‘disobeying lawful orders’³⁵ and ‘doing a negligent act likely to spread infection of disease’³⁶ for allegedly flouting presidential directives on the prevention of the spread of COVID-19.

In addition to the arbitrary deprivation of the right to liberty, LGBT persons and sex workers are subjected to undignified treatment, including beatings, verbal abuse and, in some cases, rape at the hands of Police officers and members of the general community, which violations often go unaddressed.³⁷

5.2. The Right to freedom from torture or cruel, inhuman, and degrading treatment

Article 7 and 10 of the ICCPR provide for the right to freedom from torture, cruel, inhumane and degrading treatment, and this same right is guaranteed at the regional level under Article 5 of the African Charter on Human and Peoples Rights and it is codified in the laws of Uganda under Article 24 of the 1995 Constitution of Uganda. Cruel, inhumane and degrading treatment against LGBT persons and sex workers in Uganda manifests in several forms, including public parading of LGBT persons and sex workers whenever they are arrested, exposing them to public ridicule,³⁸ non-consensual anal examinations for LGBTI persons in a bid to establish evidence of having had ‘carnal knowledge against the order of nature’, rape of sex workers by police officers when they are arrested, physical violence against LGBTI persons and sex workers by arresting and detaining officers in both police stations and prisons (in one extreme case, this

³¹ Health Gap ‘Uganda’s COVID-19 Response is Terrorizing Women with Arbitrary Detention, Blackmail, and Violence.’ 30 April 2020 <https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/> (accessed 29 April 2021).

³² Section 167 of the Penal Code Act, Cap 120, Laws of Uganda

³³ Section 168 of the PCA

³⁴ Section 160 of the PCA. See for instance Buganda Road Court Criminal cases KLA-00-CR-CO-1263/2019 (Uganda vs Asuman Sserubiri and Others), KLA-00-CR-CO-1262/2019 (Uganda vs Ntale Farida and Others), KLA-00-CR-CO-1266/2019 (Uganda vs Male Marvin and others), KLA-00-CR-CO-1264/2019 (Uganda vs Ssematimba Titus and Others) and KLA-00-CR-CO-1265/2019 (Uganda vs Katongole Ibrahim and Others), in which 67 out of 125 people arrested at a gay bar in Kampala in a targeted swoop were arraigned before courts on charges of being a common nuisance.

³⁵ Section 117 of the Penal Code Act

³⁶ Section 171 of the Penal Code Act

³⁷ Information from consultative meetings held with LGBT persons and sex workers in the Eastern Region on 18 February 2021 at the Shine on Hotel Mbale and the Western Region on 6 April 2021

³⁸ See for instance ‘Shock as Kayunga imam discovers his newlywed wife is a man’ The Daily Monitor <https://www.monitor.co.ug/uganda/news/national/shock-as-kayunga-imam-discovers-his-newlywed-wife-is-a-man-1868920> (accessed 29 April 2021); ‘Police burst Kireka ‘sex party’, 21 suspects arrested’ The Observer 11 October 2020 <https://observer.ug/news/headlines/66929-police-burst-sex-party-21-suspects-arrested> (accessed 30 April 2021).

violence culminated in a Deputy Officer in charge of a prison burning a transgender woman between the thighs with a smouldering log to “teach her a lesson”).

Additionally, the media in Uganda has become the podium for hate speech mostly peddled by politicians, whose misinformed utterances serve to inflame homophobia.³⁹ Particularly during the run up to the 2021 general elections, politicians have used homophobia to win the support of voters and distract citizens from other issues, creating a hostile environment for LGBT persons.⁴⁰ These utterances have at times been used by both the ordinary citizens and law enforcers to further justify the discrimination faced by LGBT persons and sex workers. Furthermore, the negative portrayal of LGBT persons and sex workers by the media and politicians reinforces harmful stereotypes, thereby sanctioning hate crimes against them. The media has as well exposed sex workers to arbitrary arrests and cruel treatment at the hands of Police through unprofessional coverage of stories and documentaries.⁴¹

Additionally, politicians in Uganda have used the threat of re-tabling of the Anti-Homosexuality Act 2014 to keep LGBT persons in perpetual fear, and the talks about this law have contributed to increasing homophobic attacks against LGBT persons.⁴² These statements are designed to gain popularity with the public and are readily aired by the media to appease both the ruling elite and the masses. This is cruel and degrading to LGBT persons, who are forced to live in perpetual fear of such a threat being realised, a fear that has since increased after parliament enacting the Sexual Offences Bill, 2019.⁴³ The Police often respond to such utterances by brutally arresting, parading and exposing perceived homosexuals before the media⁴⁴ to be seen as doing something about homosexuality in the country, subjecting LGBT people to indignity and danger and violating privacy of LGBT persons and sex workers, a right guaranteed under Article 17 of the ICCPR and Article 27 of the 1995 Constitution of Uganda.

Forced anal examinations, conducted purportedly to find “evidence” of homosexual conduct, is usually done by the medical personnel forcibly inserting their fingers or other objects into the anus of the suspect of. Victims have described the exams as painful and degrading, explaining that they are always conducted in the presence of a police officer, and the victims are often forced to endure prolonged visual examination by both health workers and police personnel; some also experienced them as a form of sexual violence, while others have reported use of

³⁹ ‘Anti-gay rhetoric ramps up fear among LGBT+ Ugandans ahead of polls’ Nita Bhalla, Reuters 6 January 2021 <https://www.reuters.com/article/us-uganda-lgbt-election-idUSKBN29B22W> . (accessed 30 April 2021)

⁴⁰ ‘Museveni attacks homosexuals, foreign groups, says they are sponsoring opposition protests.’ Nile Post 20 November 2020; <https://nilepost.co.ug/2020/11/20/museveni-attacks-homosexuals-foreign-groups-says-they-are-sponsoring-opposition-protests/>

⁴¹ See HRAPF (n 20 above)

⁴² ‘Amid ‘Kill the Gays’ bill uproar, Ugandan LGBTQ activist is killed’ NBC News 16 October 2019 <https://www.nbcnews.com/feature/nbc-out/amid-kill-gays-bill-uproar-ugandan-lgbtq-activist-killed-n1067336>.

⁴³ See n 28 above

⁴⁴ Open Democracy ‘I’ve defended hundreds of LGBTI people arrested in Uganda. Our laws must change – but we need public acceptance too.’ 23 January 2020 <https://www.opendemocracy.net/en/5050/ive-defended-hundreds-of-lgbti-people-arrested-in-uganda-our-laws-must-change-but-we-need-public-acceptance-too/>

violence by both health workers and police personnel in order to secure their cooperation in the exercise, all despite the fact that anal exams have no evidentiary value, and their findings are usually not regarded as probative in a court of law. The Independent Forensic Expert Group (IFEG) identified fifteen medical conditions, ranging from simple constipation to Parkinson's disease that could produce the same "symptoms" doctors look for when conducting forced anal exams in cases of consensual same-sex conduct.⁴⁵ This makes the evidence thus acquired almost entirely useless in the context of criminal trials, but the practice is nevertheless practiced with gusto in Uganda, with a recent example of a group of 44 persons, charged with doing a negligent act likely to spread infection of disease, reporting anal examinations on at least 17 of them, merely because the police suspected that they were gay.⁴⁶

5.3. The right to life

Article 6 of the ICCPR, Article 4 of the ACHPR and Article 22 of the 1995 Constitution of Uganda guarantee the right to life, which goes beyond the mere aspect of living and breathing but concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.⁴⁷ Therefore, all the acts of indignity, cruel, inhuman, and degrading treatment are all an affront to the right to life. Thus, the criminalisation, media exposure and the political smear campaigns subject LGBT persons and sex workers to undignified lives as they remain unable to access the basics of life such as gainful employment, food and health services.

5.4. The right to health

Article 12 of the ICESCR and Article 16 of the ACHPR provide for the right to health. The Constitution of Uganda does not explicitly provide for the right to health but recognises the right of every Uganda to access to medical care without discrimination under Article 8A read together with Objective 20 of the National Objectives and Directive Principles of State Policy. The right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as availability, accessibility, acceptability and quality.⁴⁸ Unfortunately, the right to health for LGBT persons and sex workers is often denied due to the social and cultural misconceptions and exclusions that LGBT persons and sex workers experience based on their sexual orientation and gender identity or choice of occupation. This is reflected in the budget allocations that do not include sexual reproductive health services for LGBT persons⁴⁹ and male sex workers.

⁴⁵ Independent Forensic Expert Group 'Statement on anal examinations in cases of alleged homosexuality', January 2016, DOI: 10.7146/torture.v26i2.108205.

⁴⁶ *Uganda v Ssembajjwe Jonathan & 41 others*, Nansana Magistrates Court, 518-21.

⁴⁷ UN Human Rights Committee 'General comment no. 36, Article 6 (Right to Life)', 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html> (accessed 30 April 2021)

⁴⁸ Committee on ESCR 'General Comment 14: The right to the highest standard of physical and mental health'. HRI/GEN/1/Rev 9 (Vol1) (2000) para 11.

⁴⁹ Human Rights Awareness and Promotion Forum (HRAPF) 'Trends analysis of programming and budget allocation to srhr commodities and services for LGBT persons in uganda trends analysis of programming and budget allocation to SRHR commodities and services for 2016/2017 - 2021/2021' (2020) <https://www.hrpf.org/index.php/resources/legal-policy-analyses>

LGBT persons and sex workers encounter discrimination, stigmatisation and hostility in accessing the health care system in Uganda, and this discrimination is based on the criminalisation of same sex sexual conduct and prostitution under the Penal Code Act. This also informs the negative attitudes of health workers to LGBTI persons and sex workers,⁵⁰ despite the fact that they remain classified as key populations and as groups most at risk of acquiring HIV.⁵¹ There is no robust system to track universal healthcare coverage is in place in relation to HIV services for LGBT persons and sex workers.

Additionally, there are no specialised healthcare services tailored towards the specific needs of LGBT persons and sex workers.⁵² Services unique to LGBT persons and sex workers are usually not readily available at healthcare facilities,⁵³ and there is documented evidence of healthcare service providers refusing to serve LGBT persons and sex workers on the basis of their fear of supporting them in their “imported behaviours,” whereas others claim not to have the requisite skills.⁵⁴

Non-Governmental Organisations such as the Most at Risk Populations Initiative and community drop-in-centres operated by LGBTI and sex worker-led organisations are the primary source of health care services for LGBTI persons and sex worker.⁵⁵ The SRHR needs of LGBT persons are generally not considered, and government efforts to raise awareness on SRHR issues as well as the minimum SRHR packages available are all tailored towards heterosexual persons, such as the Ministry of Health’s long-standing campaign on the use of contraception, which exclusively targets heterosexual couples.

5.5. Freedom of expression, association and assembly

Article 19 of the ICCPR and Article 21 of the Constitution of Uganda, 1995 guarantee the right of all persons to freedom of expression, conscience, religion, association and assembly, as well as the right to freedom of movement, which are fundamental to the creation of vibrant and effective civil society movements. However, Civil Society Organisations that serve sexual minorities in Uganda continue to face interference with this right without justification by the state. One such incidence for LGBT persons was the raid on a known gay bar in Kampala on 10th November 2019, in which 125 LGBT persons were arrested and charged with being a common nuisance.⁵⁶

⁵⁰ n 40 above and information from consultative meetings with LGBT persons and sex workers

⁵¹HRAPF ‘How laws that promote human rights impact on access to HIV and TB services for Key Populations in Uganda.’ 2020 <https://www.hrapf.org/index.php/resources/>

⁵² Human Rights Awareness and Promotion Forum ‘Sexual And Reproductive Health (SRH) Needs for LGBTI persons and Quality of available services to LGBTI persons’ 2021 <https://www.hrapf.org/index.php/resources/research-reports>

⁵³ n 42 above

⁵⁴ Joseph. K. B.Matovu et al ‘Health providers’ experiences, perceptions and readiness to provide HIV services to men who have sex with men and female sex workers in Uganda - a qualitative study’. (2019) 19 *BMC Infectious Diseases* , 214 <https://bmcinfectdis.biomedcentral.com/articles/10.1186/s12879-019-3713-0> and n 42 above

⁵⁵ n 40 & n 42 above

⁵⁶Police raids 'gay-friendly' Ram Bar, arrests 120'. The Observer 12 November 2019 <https://observer.ug/news/headlines/62595-police-raids-gay-friendly-ram-bar-arrests-120> (accessed 30 April 2021.)

Furthermore, there have been concerted efforts by the Government to shrink the space for association under Non-Governmental Organisations with the use of repressive laws such as the Anti-Money Laundering Act 2013, the Public Order Management Act 2013 and institutions such as the Financial Intelligence Authority. Civil Society Organisations that focus on governance and issues of sexual minorities have garnered the illegal and undue attention of the Authority, and have had their accounts and activities frozen.⁵⁷ These attacks are not limited to the Organisations but extend to human rights defenders who are vocal over Governments' overreach and failures.⁵⁸ The Government has also targeted donor funding in a bid to frustrate the operation of the Civil Society Organisations.⁵⁹ These limitations are unjustifiable as they are aimed at silencing genuine concerns raised over the human rights situation in Uganda and have the effect of unduly and unlawfully limiting the freedom of association, assembly and association for LGBTI persons and sex workers in Uganda.

6. Conclusion

International human rights instruments and national law protect all persons equally without distinction as to race, social standing or sexual orientation and gender identity or expression. The human rights of LGBT people and sex workers are inherent, based on their humanity and grounded in the human rights framework. The LGBT and sex worker communities therefore call upon the Government of Uganda to respect its obligations under the international, regional and national human rights law to treat all persons equally regardless of sexual orientation and gender identity or expression.

7. Recommendations

1. Enact regulations to govern the humane and dignified treatment of all suspects, particularly LGBTI persons and sex workers, upon arrest and while in detention based on internationally acceptable standards of respect for basic human rights.
2. Investigate and prosecute state actors and individuals perpetrating violence against LGBTI persons and sex workers
3. Respect, protect and promote the human rights of all persons without discrimination on any grounds, including sexual orientation, gender identity or choice of sex work as an occupation
4. Strengthen the health policy framework to better serve the unique health needs of LGBTI persons and sex workers, and strengthen human rights training for health workers on the issues that concern marginalised persons within the healthcare system.

⁵⁷'Government freezes accounts of 4 NGOs doing poll work' The Monitor Uganda 02 December 2020 <https://www.monitor.co.ug/uganda/special-reports/elections/govt-freezes-accounts-of-4-ngos-doing-poll-work-3216360> (accessed 30 April 2021.)

⁵⁸'Activists Demand Police Release Prominent Ugandan Human Rights Lawyer.' VOA News 23 December 2020 <https://www.voanews.com/africa/activists-demand-police-release-prominent-ugandan-human-rights-lawyer> (accessed 30 April 2021.)

⁵⁹'DGF suspension cripples NGO activities' The Daily Monitor 15 March 2021 <https://www.monitor.co.ug/uganda/news/national/dgf-suspension-cripples-ngo-activities>

5. Increase funding for the health sector in line with the Abuja Declaration, with specific provision of funds to meet the unique SRHR needs of sex workers and LGBTI persons, and strengthen universal health coverage for HIV services for LGBT persons and sex workers.
6. Ensure that any form of hate speech against LGBTI persons and sex workers is strongly sanctioned, and hold politicians and all state actors accountable for inciting violence against LGBT persons. Further classify hate speech and other acts against LGBTI persons and sex workers as hate crimes with the appropriate sanctions.
7. Pass a directive to all health workers to stop conducting anal examinations on persons suspected of having had carnal knowledge against the order of nature
8. Repeal all repressive and discriminatory laws that are used to unjustifiably limit the human rights of LGBT persons and sex workers and limit the civic space for civil society organisations working with sexual minorities.