

THE IMPACT OF THE LEGAL
AND POLICY FRAMEWORK
ON ACCESS TO JUSTICE FOR
TRANSGENDER
PERSONS IN
UGANDA



DECEMBER 2019



In collaboration with:





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ACKNOWLEDGEMENTS

HRAPF acknowledges the contribution of every individual who participated in this study. Without this participation we would not have been able to interrogate the lived experiences of transgender persons in accessing justice under the current legal and policy regime. HRAPF appreciates the collaboration of our partner, Tranz Network Uganda (TNU), who connected the research team to transgender persons in all four regions of the country and contributed their institutional knowledge and experience to the study.

HRAPF acknowledges the role of Dr. Muhangi who took lead on data collection and analysis for the study.

HRAPF would also like to thank Frontline AIDS whose funding and support made this study possible.



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ACRONYMS

CSO	Civil Society Organisation
FGD	Focus Group Discussion
HRAPF	Human Rights Awareness and Promotion Forum
HTS	HIV testing services
JLOS	Justice, Law and Order Sector
KII	Key Informant Interview
KPs	Key Populations (affected by HIV and AIDS)
LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex
MARPI	Most at Risk Populations Initiative
MARPS	Most at Risk Populations
MOH	Ministry of Health
MSM	Men who have Sex with Men
NGO	Non-Governmental Organisation
NSP	National Strategic Plan
PEP	Post-Exposure Prophylaxis
PrEP	Pre-Exposure Prophylaxis
SRHR	Sexual and Reproductive Health and Rights
STIs	Sexually Transmitted Infections
TEU	Trans Equality Uganda
TNU	Tranz Network Uganda
UAC	Uganda AIDS Commission
UHRN	Uganda Harm Reduction Network
UNAIDS	The Joint United Nations Programme on HIV and AIDS
UTT	Universal Test and Treat
WHO	World Health Organization

DEFINITION OF TERMS

Term	Meaning
Bisexual	A person who has a romantic or sexual attraction to both men and women.
‘Corrective’ rape (homophobic rape)	Rape of someone because they are, or are perceived to be, lesbian or gay. It is part of a wider pattern of sexual violence. Attacks of this kind commonly combine a fundamental lack of respect for women, often amounting to misogyny, with deeply entrenched homophobia.
Gay	A man who has romantic or sexual attraction to other men.
Gender identity	Refers to a person’s deeply felt feeling of their own gender (being male, female, transgender, both, neither, gender non-conforming), which may or may not correspond with the sex assigned at birth.
Gender variance/ Gender non-conforming	This is behaviour or gender expression by an individual that does not match masculine and feminine gender norms. In others words one does not identify themselves as either being male or female. Intersex people may exhibit gender variance.
Heterosexual	A person who has a romantic or sexual attraction to a person of the opposite sex e.g. a man who is attracted to women or a woman who is attracted to men.
Homophobia	The fear or rejection of (or aversion to) homosexuals and/or homosexuality. This often takes the form of stigmatising attitudes or discriminatory behaviour against homosexuals.
Homosexual	A person who has a romantic or sexual attraction to persons of the same sex.
Hormone Replacement Therapy (HRT)	Also referred to as Cross-Sex Hormone Therapy. A medical procedure in which sex hormones and other hormonal medications are administered to transgender or gender variant individuals for the purpose of more closely aligning their secondary sexual characteristics with their gender identity.

Term	Meaning
Intersex	A general term used for a variety of conditions 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.
Lesbian	A woman who has romantic or sexual attraction to other women.
Sexual orientation	Refers to each person’s capacity for profound emotional, affectional and sexual attraction to (and intimate and sexual relations with) individuals of any sex. Sexual orientation falls on a spectrum from homosexual (gay/lesbian), bisexual to heterosexual.
Transgender	An umbrella term for people whose gender identity and expression is different from their sex assigned at birth. While some transgender persons may undergo treatment in order to cause their bodies to correspond with their gender identity, others may not seek such treatment.
Transition	This refers to actions a transgender person takes in order for the external world to better recognise and reflect their internal gender. This may include changing names, dress code, and re-assignment surgery.
Transman	An individual whose assigned sex at birth is female but who identifies as male.
Transphobia	This refers to the fear or hatred of transgender people or gender non-conforming behaviour.
Transwoman	An individual whose assigned sex at birth is male but identifies as female.

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EXECUTIVE SUMMARY

This report presents the results of a study conducted by Human Rights Awareness and Promotion Forum (HRAPF) to examine how the legal and policy environment affects access to justice for transgender persons in Uganda. The study was conducted during the period of June to December 2019 in Kampala in Central region, Kasese in Western region, Lira in Northern region, and Mbale in Eastern region. Study participants consisted of transgender persons, policymakers, law enforcement officials, staff of civil society organisations working with transgender persons, and representatives of organisations providing access to justice services. 30 Key Informant Interviews were held with stakeholders, together with 10 in-depth interviews with transgender persons, and 5 focus group discussions (FGDs) with transgender persons. Secondary data were collected through review of secondary documents. Data was analysed manually using a thematic procedure. A validation meeting with stakeholders was held in Kampala before production of the final report.

Key Findings

1. Ugandan laws and policies on access to justice are generally silent on transgender persons' access to justice: International standards on access to justice require that every person is treated equally without discrimination and generous interpretations have been made of international human rights documents that clearly include transgender persons among those protected. This is both at the international level and the African regional human rights level. Legal aid too is an accepted right as it is important for the poor and marginalised to access justice. Transgender people are usually both poor and marginalised. Unfortunately, the domestic legal framework is much less protective. The Constitution clearly protects the rights of everyone, establishes different avenues for access to justice without discrimination and establishes positive provisions for all persons. Similarly, various laws creating different avenues to access justice including the Police Act, the Uganda Human Rights Commission Act, the Equal Opportunities Commission Act and the Judicature Act all do not discriminate and include every person, and this would cover transgender persons. The main challenge however is that these positive laws do not expressly recognise transgender persons, and as such they can be conveniently forgotten. Laws providing for legal aid service provision cover marginalisation but do not mention transgender people specifically. The laws create a situation of legal invisibility for such persons, and yet other laws prohibit conduct and actions that directly affect transgender persons. The Penal Code's criminalisation of personation, consensual same-sex relations, being rogue and vagabond and common nuisance gives the police perfect tools to use against transgender persons and the High Court's extension of the reach of section 145 of the Penal Code Act which criminalises

carnal knowledge against the order of nature means that transgender groups may not organise meetings or have their organisations registered. This puts transgender people at the risk of not utilising the access to justice channels as they are not guaranteed protection. As regards the policy framework, none include transgender persons. The National Legal Aid Policy is yet to be passed and so there is almost no policy framework on access to justice, let alone one covering transgender persons. HIV related policies emphasise issues of access, equity, non-discrimination, and service integration, including for vulnerable groups, however they do not explicitly mention transgender persons as a key population group to be targeted. There is also little recognition of access to justice as a critical enabler of HIV and AIDS programmes. This adds to the legal invisibility.

2. Transgender persons have access to justice needs that arise specifically because of their gender identity:

Transgender persons suffer violations of their rights as well as discrimination at the family, community and institutional levels specifically based on their gender identity. At the family level, they are usually excluded, discriminated and thrown out of home, which leads them to leave education and to lack family support. At the community level, they are usually evicted from rented premises, face violence and sometimes murder, as well threats of rape. Local council authorities who are supposed to help them to access justice usually join in these violations. They may not buy products and services from the local shops, use local taxis or boda bodas. Their visibility as being different exacerbates this problem as does ignorance. Many people regard them as gay and therefore add homophobia to transphobia. They are often accused of recruiting and spoiling children, being outcasts and devil worshippers. They are subjected to abuse and harassment and sometimes mob justice. At the institutional level, they are harassed and bullied at school, denied employment, or lose their jobs, discriminated when accessing health care and HIV services and denied services by persons registering or by the police.

3. The legal and policy framework helps to create a situation of stigma and transphobia which makes the usual access to justice avenues hostile and largely inaccessible to transgender persons:

The law puts in place a number of avenues for accessing justice for all persons and this should ideally cover transgender persons. In reality however, since the laws do not make specific mention of transgender persons and other laws positively allow discrimination and marginalisation, in such an environment, transgender people face real challenges when trying to access justice, and these have made many of them to resort to coping mechanisms rather than trying to seek redress. The following challenges are faced at the different avenues:

- i) **Local Council officials:** The law gives local council courts powers to make decisions within particular contexts. These courts are at village level and with less formal procedures and therefore very accessible. Unfortunately, these very advantages turn into disadvantages for transgender persons as the Local Council officials are the first point of call for those who want to ‘punish’ them. Local Council officials are complicit in unlawful evictions of transgender

persons from rented premises as well as banishment from villages, and thus cannot be considered a viable source of accessing justice for such people.

- ii) *The Uganda Police Force*: The Police which usually is the first point of call for persons facing violations or violence is largely out of the question because the police usually focuses on one's gender identity rather than the crime one has come to report. This usually results in arbitrary arrests, which quickly degenerate to accusations of homosexuality and sometimes non-consensual anal examinations. While in police cells, they are subjected to harassment by inmates and also groped by police officers. Therefore reporting to the police is a terrifying experience and the few who have been able to do so, have done so with the help of HRAPF lawyers. One has to think twice before reporting to the police. It is also unclear where one is to report to if it is the police itself committing the violations, and the Police's Professional Standards Unit has not been very useful.
- iii) *State attorneys*: A number of criminal cases involving transgender persons are referred by the state to the State Attorneys under the office of the Director of Public Prosecutions. Usually, these are sanctioned and therefore the cases go to court. In many cases, charges like having 'carnal knowledge against the order of nature' are sanctioned against transgender persons, even though there is no evidence that such acts were committed as the police simply rely on the appearance of the person. Sanctioning files without evidence goes contrary to the Professional Standards and Guidelines that govern prosecutors.
- iv) *The Courts of law*: There are only three civil cases concerning human rights violations brought by a single transgender person (along with other applicants) before Uganda's courts and even then, these were not specifically on transgender matters. This indicates how little transgender persons make use of the formal courts. Their main interaction with the courts is in criminal cases, where if a case goes to court, then they have no option but to come to court, charged with one vague offence or another. Magistrates barely understand what being transgender is about and have on many occasions spoken rudely to the suspects, sometimes even 'preaching' to them. Most of the cases end in dismissal for want of prosecution as the state usually has no evidence.
- v) *Prisons*: For some of the cases that go up to court, sometimes the accused transgender people may be remanded to prisons, creating a further set of challenges in prisons mostly due to the absence of specific cells for transgender persons, and so they have to be placed in cells for either females or males, which sometimes leads to sexual violence by other inmates or exclusion.
- vi) *The Uganda Human Rights Commission*: Despite its clear mandate on investigating human rights violations, the Commission has barely been engaged in handling cases concerning transgender persons. Only two cases concerning transgender persons have so far been filed at the Commission, but they have not been concluded in over three years.

vii) *The Equal Opportunities Commission*: Despite its mandate, on providing redress for marginalisation, this Commission has also rarely been accessed by transgender persons, and only a few know of its existence. No report on transgender issues has ever been made, and the Commission does not do specific outreaches targeting transgender persons.

4. In a country with limited access to legal aid, transgender persons have much less access to legal aid services: Uganda has no national legal aid scheme and so the Uganda Law Society and the Law Council try to fill the gap through the pro bono scheme. These however reach out to only a handful of persons, and as such transgender persons are not prioritised. There are very few lawyers who are willing and available to support transgender people when they face access to justice challenges. Among legal aid service providers, only Human Rights Awareness and Promotion Forum (HRAPF) operates a specialised legal aid clinic for LGBT groups. It has legal aid centres in Mbale, Lira and Kasese. However, its reach is limited and many of those who are upcountry cannot readily access the services. Many also reported not being aware of the services, and apathy towards the justice system generally keeps many transgender persons away from seeking legal services. Many other legal aid service providers do not reach out to transgender persons in particular and as such do not receive cases concerning them, or if they do, they are not aware. With no legal aid, many transgender people may as well forget about access to justice.

5. Transgender persons have adopted extra-legal coping mechanisms to deal with violations: since there is limited access to justice, transgender people have resorted to ways of coping with the violations, discrimination and marginalisation. Many try to fit within society by appearing to be like everyone else, others move away from areas where they are known and yet others face the challenges openly and head-on. This certainly affects them psychologically, and makes it more problematic to live a life of dignity.

6. Lack of effective access to justice impacts on the fight against HIV/AIDS: Uganda's legal and policy framework has a huge negative implication on access to justice for transgender persons. This in turn has a huge implication on the fight against HIV, as people who are discriminated and legally invisible and yet persecuted cannot seek services or use them correctly. Transgender persons cannot easily access HIV services and health services in general due to stigma and discrimination at service points. This stigma and discrimination is both from other clients seeking services and from health workers. Transgender persons cannot easily seek/utilise HIV services from mainstream health facilities unless they hide their preferred identity. Transgender persons may get demotivated to seek services altogether, while others resort to self-medication, and other poor healthcare seeking behaviours. Overall, it is noted that lack of access to justice inextricably affects HIV prevention among transgender persons, and as they are a Key Population, also affects the general population.

Recommendations

The study makes the following recommendations to the following entities:

To Parliament of Uganda

- Amend the Penal Code to remove section 145 of the Penal Code Act, which criminalises consensual same-sex conduct between adults, and also remove sections 160, 167, 168, and 381 of the Penal Code Act which criminalise ‘being a common nuisance,’ ‘being idle and disorderly,’ ‘being a rogue and vagabond’ and personation respectively, which offences are used to arbitrarily arrest transgender persons on the basis of their appearance.
- Amend the laws to remove sections of the HIV Prevention and Control Act (2014) that criminalise HIV transmission.
- Amend the Registration of Persons Acts to provide a procedure for changing sex for adult persons.

To Ministry of Health (MOH)

- Specifically include transgender persons in policies concerning HIV prevention and control.
- Ensure the availability of all services in the minimum package of services for KPs and the additional services tailored to the specific needs of transgender persons e.g. Pre-Exposure Prophylaxis (PrEP), Safe Male Circumcision (SMC) and Universal Testing & Treatment (UTT).
- Train more health workers to provide KP-friendly services, paying special attention to the different needs of transgender persons.
- Extend and sustain the MARPI model in different parts of the country.

The Ministry of Gender, Labour and Social Development

- Include transgender persons in policies that concern gender issues.

To Ministry of Internal Affairs – National Identification and Registration Authority (NIRA)/Uganda Police Force/Uganda Prisons

- Introduce rules/guidelines easing the process of change of gender markers for transgender persons.
- Police stations and prisons should have separate cells for people who do not conform to the binary genders of male/female.

- Organise sensitisations for NIRA officials, police officers and prisons officials on transgender issues.

The Uganda Law Reform Commission

- Make recommendations for amendment of the Penal Code to remove provisions criminalising same-sex relations and those creating petty offences such as common nuisance, idle and disorderly, rogue and vagabond and personation.

To organisations working on transgender issues

- Create awareness about transgender persons, and their needs.
- Sensitise transgender persons about their rights and about the available access to justice mechanisms.
- Undertake dialogues with various stakeholders (policy makers, law enforcement authorities, civil society, parliament, community leaders, and the media) to create understanding of the situation of transgender people and the issues affecting them. Such dialogues should include local leaders such as Local Council leaders, councillors, cultural leaders, religious leaders and clan leaders.
- Train more community paralegals from among transgender persons in order to assist in linking transgender persons in conflict with the law to professional legal services, strengthen provision of legal advice and referral.
- Train peers who are located within health facilities to be able to better link transgender people to the health workers and facilitate the reception and interaction with health workers.
- Strengthen provision of legal aid services and representation to transgender persons accused of various offences.

To Health Service Providers (CSOs, Health Facilities)

- Integrate in HIV programmes, components for support to victims of intimate partner violence, rights violations, and mental health support.
- Use innovative KP-friendly strategies such as outreach and peer-based models to reach transgender persons with HIV-tailored services.
- Ensure HIV programmes have linkages to legal literacy and legal aid services.

SECTION I:



INTRODUCTION

1.1 Introduction and background

Transgender persons are persons ‘whose appearance and characteristics are perceived as gender atypical – including transsexual people, cross-dressers ... and people who identify as third gender.’¹ Unlike most bisexual, lesbian or gay persons, transgender persons cannot easily hide their non-conforming gender identity. This visibility makes them the ‘face’ of the Lesbian, Gay, Bisexual, Intersex and Transgender (LGBTI) community. Ignorance and lack of awareness makes it difficult for people to draw distinctions between transgender persons and other sub-groups within the LGBTI spectrum, thus subjecting them to the same prejudices and marginalisation as all other groups. Transgender persons are therefore usually targeted for arrest under various Penal Code provisions that criminalise same-sex relations as well under petty offences.²

Also on the face of it, Uganda’s laws and policies generally do not make provision for transgender persons,³ and this creates a situation of legal invisibility. The lack of legal recognition coupled with the criminalisation of consensual same-sex relations and ambiguous provisions creating petty offences creates a situation where transgender people face violations of their rights with limited access to justice. Access to justice can be defined as the process according to which people claim and obtain justice remedies through both formal or informal structures and fora, in line with internationally recognised human rights standards.⁴ Access to justice entails both the enforcement of substantive law and the quality of justice that is obtained through the justice delivery system.⁵ Limited access to justice in turn has implications on the HIV response for transgender persons, as they are further pushed underground where the cycle continues: they suffer more violations and they cannot seek redress, thus getting further exposed to HIV, without being able to access proper treatment.

This study seeks to understand how the legal regime affects access to justice for transgender persons, and how this in turn puts transgender persons at higher risk of contracting HIV and therefore in turn affecting the general population.

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¹ UN Free and Equal ‘Definitions: Transgender/Trans’ available online at <https://www.unfe.org/definitions/> (Accessed 23rd August 2019).

² HRAPF & CSCHRCL *Protecting “morals” by dehumanising suspected LGBTI persons? A critique of the enforcement of the laws criminalising same sex conduct in Uganda* (2013) 43.

³ HRAPF *A guide to the normative legal framework on the human rights of LGBTI persons in Uganda* (2015) 30.

⁴ United Nations Development Programme ‘Programming for Justice: Access for All – A practitioner’s guide to a human rights-based approach to access to justice’ (2005) 4.

⁵ Legal Aid Service Providers Network (LAPSNET) *Access to justice for the poor, marginalized and vulnerable people in Uganda* (2015) 18.

1.2 Objectives of the Study

1. To establish how the legal and policy framework creates access to justice needs for transgender persons
2. To establish the link between the legal and policy framework and transgender persons' access to justice
3. To determine the link between access to justice for transgender persons and the fight against HIV/AIDS
4. To make recommendations on how access to justice for transgender persons can be improved in order to enable access to justice for transgender persons and manage the HIV prevalence rates

1.3 Rationale for the study

Little connection has been made between the legal and policy framework and access to justice in Uganda within the context of transgender persons. Uganda's legal and policy regime is largely silent about transgender persons, and this creates a situation of legal invisibility. Unfortunately, this legal invisibility is followed by application of criminal provisions that were not intended for transgender persons, creating a situation of persecution in an environment where little redress can be obtained from the law. How this legal invisibility, and persecution affects transgender persons' access to HIV services needs to be understood, so as to enable the designing of relevant responses.

1.4 Literature review

Whereas a linkage has been created between the legal and policy framework and access to HIV services by transgender persons in Uganda, little has been done on the link between limited access to justice and the HIV response.

Human Rights Awareness and Promotion Forum (HRAPF) surveyed the laws and policies which impact upon transgender persons' access to sexual and reproductive health and HIV treatment and prevention services in Uganda in 2017.⁶ The study established that the law negatively impacts on access to health services for transgender persons in Uganda. The study however did not explore the link between these laws and access to justice.

The Legal Aid Service Providers Network (LASPNET) assessed the level of access to justice of various marginalised groups in Uganda in 2015.⁷ The specified justice

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⁶ HRAPF A quick scan of the laws and policies affecting the HIV response among transgender persons in Uganda (2017).

⁷ LASPNET Access to justice for the poor, marginalized and vulnerable people in Uganda (2015).

needs and access of various marginalised groups, including refugees, women, youth and people living with HIV/AIDS are explored. Trans-sexuals and other sexual minorities are mentioned in brief as a group which can be considered as marginalised and vulnerable. However, the study does not address in any depth the first-hand experiences and needs of this group when it comes to accessing justice.

The Hague Institute for the Internationalisation of Law also published a study in 2016 which analyses nation-wide justice needs and satisfaction in Uganda.⁸ The study details the main justice needs of the general population as well as the various mechanisms used to address these needs. The study does not place any particular focus on the needs and experiences of transgender persons in Uganda.

This leaves a gap in terms of research that makes the link between transgender persons' access to justice and the HIV response.

1.5 Methodology

1.5.1 Overall Study Design

This study was explorative and descriptive. As such it employed a qualitative research design that utilised primary and secondary sources of data.

1.5.2 Study Sites and Geographical Scope

The study was conducted in four study sites, each selected from a different region of Uganda. The sites were Kampala in Central region, Kasese in Western region, Lira in Northern region, and Mbale in Eastern region. These study sites were selected based on the location of HRAPF's legal aid clinics within the Central region, which is Kampala, as well as the location of its three regional centres in Eastern, Northern and Western regions respectively. Research around the four sites was considered to be of strategic importance to inform HRAPF's further planning and design of interventions that link into the legal aid clinics.

Given that much previous research on marginalised populations has concentrated in Kampala and the surrounding districts, the inclusion of Lira, Mbale and Kasese added value to the knowledge base by bringing in evidence from locations outside Kampala capital city.

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⁸ HiiL Innovating Justice *Justice needs in Uganda 2016: Legal problems in daily life* (2016).

1.5.3 Study Participants, sample size and selection

Study participants consisted of transgender persons, both transmen and transwomen; and a wide range of key informants who included policymakers, law enforcement officials, staff of civil society organisations working with transgender persons, and representatives of organisations providing access to justice services. Key informants, namely, government representatives and CSO staff, were purposively selected, based on their positions and presumed understanding of the subject under study. Transgender persons were selected through snowball sampling where the suggestions of partner organisations and persons that were spoken to were used to select participants from this group.

The study was based on qualitative samples which were determined based on the estimation of how many interviews and group discussions were necessary to generate adequate data that reflects the depth and diversity needed to reach sound conclusions. A total of 76 persons were involved in the study as respondents - 26 through Key Informant Interviews (KIIs), 10 through In Depth Interviews (IDIs) and 40 through Focus Groups Discussions. The sample sizes were distributed across the four sites disproportionately, with more study participants covered in Kampala. This was because there are bigger numbers of transgender persons in Kampala compared to the other sites. The policymakers and CSOs working with transgender persons are also mainly based in Kampala.

1.5.4 Data Collection Methods and Tools

The study utilised three main methods of data collection, namely: a desk review of relevant laws and policies, in-depth interviews with key informants and individual transgender persons, and FGDs with groups of transgender persons.

In-depth interviews with key informants were held at each key informant's office or another convenient location. Detailed interview guides were designed and used to guide data collection from key informants. A total of 26 KIIs were held, including with the Uganda Registration Services Bureau and the Minister of Ethics and Integrity. Five different organisations providing legal aid services in various parts of the country were interviewed in Kampala. Four organisations offering services to transgender persons were also interviewed: 2 in Kampala, 1 in Lira and 1 in Kasese. Across the four regions, a total of 3 magistrates, 5 police officers, 4 prison officials and 3 local leaders were interviewed.

In-depth interviews with individual transgender persons sought to collect detailed personal experiences in accessing justice from transgender persons. They were used to collect more personalised information compared to FGDs. Each interview took between 45 minutes and 1 hour to complete. Interviewees were identified through transgender support organisations. A total of 10 IDIs were held with transgender persons. In Kampala, 2 transmen and 2 transwomen were interviewed. In each of the three other districts, one transman and 1 transwoman were interviewed.

Focus Group Discussions were conducted with the members of the transgender community. FGDs helped to gather data on experiences in accessing justice and HIV services. FGD participants were mobilised through transgender support organisations in the respective locations. Each FGD was facilitated by two persons from the study team and lasted between 1.5 and 2 hours. An FGD guide was designed and used for this purpose. A total of 5 Focus Group Discussions were held with transgender persons: one FGD was held with transgender men and one with transgender women in Kampala, one FGD was held with a mixed group of transgender persons in Kasese, Lira and Mbale respectively.

All interviews and FGDs were audio recorded with consent from the study participants. A validation meeting was held in Kampala where the draft report was presented and feedback received from key stakeholders.

1.5.5 Data Processing and Analysis

Following completion of each interview or group discussion, all audio files were transcribed verbatim by experienced transcribers. Data was analysed manually using document analysis and thematic procedures. Matrices and other relevant formats were used to organise the data and sort emerging responses along themes aligned to the study objectives. Relevant quotations were also identified and are used in the report to demonstrate study participants' views and bring out their voice. Data from different sources were triangulated for validity and complementarity.

1.6 Ethical considerations

Ethical clearance for this study was obtained from the Uganda National Council for Science and Technology, after review by The AIDS Support Organisation (TASO) Research Ethics Committee (REC). Participants from the transgender community were identified and mobilised through transgender support organisations that are familiar with them and understand their values and expectations. This helped to minimise exposure of transgender individuals, and successfully navigating the risks that transgender individuals face in their communities. The study team members observed all applicable ethical principles relating to the study of vulnerable and minority groups. These included informed consent, voluntary participation, privacy, confidentiality, anonymity and doing no harm. Consent was obtained from the study participants using consent forms, and using the local language of the participants. Where potential participants did not share a common language with a member of the study team, local interpreters drawn from the transgender support organisations were used. Potential participants were informed that their participation in the study was voluntary. They were also informed that they had the right to withdraw from the study at any time during the time of data collection, if they so wished, without having to give a reason and without affecting their access to services or any of their rights.

Data from the study participants was handled with utmost confidentiality. Information obtained was not shared with other people apart from those working directly on the study. All personal information relating to the participants from the transgender community such as their names and age, and other identifying information were removed to limit the possibility of identification by non-authorized persons. All collected data was securely kept in lockable drawers. All interviews with transgender persons were conducted in privacy and in places suggested by them.

1.7 Limitations

This study was conducted in only four sites and therefore its results relating to the experiences of transgender persons cannot be claimed to be fully representative of the situation of all transgender persons in Uganda. Moreover, the recruitment of study participants from the transgender community relied on the knowledge and contacts of the staff from transgender support organisations in the study districts. This means that transgender persons who were not known to these contact persons had no chance of being included in the study. Nevertheless, the results of this study draw on diverse experiences of transgender persons and key informants. They also draw from national laws and policies which are clearly representative of the national legal and policy regime in Uganda. The results therefore remain a credible source of evidence and insight into the impact of the legal and policy regime on transgender persons' access to justice and HIV services in Uganda.

SECTION II:

THE LAWS AND POLICIES AFFECTING ACCESS TO JUSTICE FOR TRANSGENDER PERSONS IN UGANDA

2.1 Introduction

This section sets out the laws and policies which affect transgender persons' access to justice in Uganda. The laws and policies create the context within which transgender persons are to seek relief if they have been the victims of a crime or suffered a violation of their rights. It also creates the laws under which transgender persons may come into conflict with the criminal justice system. The policy framework guiding the provision of HIV prevention and treatment services were furthermore perused to consider whether they recognise access to justice to transgender persons as a 'critical enabler' of HIV and AIDS programming.

2.2 Laws that affect transgender persons' access to justice

2.2.1 International law and access to justice

Uganda is a signatory to a number of international human rights instruments that do recognise access to justice for all persons including marginalised persons.

At the international level

The Universal Declaration of Human Rights, in article 7 recognises that all persons are equal before the law and are entitled without any discrimination to equal protection of the law.⁹ Article 8 goes on to provide that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 10 provides for the right to a free and fair hearing before an impartial tribunal.

The International Covenant on Civil and Political Rights, guarantees the rights protected therein to all persons 'without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'¹⁰ Article 14(1) protects the right to a free and fair hearing by a competent, independent and impartial tribunal established by law.

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⁹ Universal Declaration of Human Rights, article 7.

¹⁰ ICCPR, article 2.

Article 16 provides for recognition of everyone as a person before the law. Article 26 provides for the equality of everyone before and under the law and lists protected grounds upon which a person cannot be discriminated against. These include ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’. Although transgender persons are not specifically mentioned, the Human Rights Committee in *Toonen v Australia* Communication¹¹ stated that grounds analogous to those listed may be covered under other status, and in that case that ‘sexual orientation’ could fall under sex. The most outstanding of these is the Human Rights Committee, which has interpreted the inclusion of ‘sex’ in article 26 of the International Covenant on Civil and Political Rights as including ‘sexual orientation’.¹² Indeed, many times the Human Rights Committee has recommended to states parties to recognise the rights of transgender persons.¹³

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) calls upon states to embody principles of equality of men and women in their national laws and to take all measures to prohibit discrimination as well as to abolish existing laws that constitute discrimination against women.¹⁴ Transgender women thus deserve to be protected by the states.

The Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity,¹⁵ together with the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles,¹⁶ which codify international law principles applicable to sexual orientation and gender identity, provide that everyone is ‘entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity’.¹⁷ It requires states to explicitly prohibit such discrimination, repeal laws exacerbating such inequality including those prohibiting ‘consensual sexual activity among people of the same sex who are over the age of consent’. They also require states to adopt measures to prohibit discrimination on the basis of sexual orientation and gender identity in the public and private sphere. Principle 3 requires all persons to be treated equal before and under the law and in particular no-one shall be required to conceal their sexual orientation or gender identity. Principle 28 requires that every victim of a

¹¹ Communication No.488/1992.

¹² *Toonen v Australia* Communication No. 488/1992.

¹³ See, for example, Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Russian Federation*, 24 November 2009, UN Doc CCPR/C/RUS/CO/6; Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Colombia*, 4 August 2010, UN Doc CCPR/C/CO/6.

¹⁴ CEDAW, article 2.

¹⁵ Yogyakarta Principles: <http://www.yogyakartaprinciples.org/> (accessed 2 December 2019),

¹⁶ The Yogyakarta Principles plus 10 (YP+10)) <http://yogyakartaprinciples.org/principles-en/yp10/> (accessed 2 December 2019).

¹⁷ Principle 2.

human rights violation, including of a violation based on sexual orientation or gender identity, shall be entitled to ‘effective, adequate and appropriate remedies’. It provides that measures taken to advance diverse sexual orientations and gender are all part of the right to effective remedies and redress. Principle 29 requires that those responsible for violations whether state officials or private individuals are held accountable for their actions.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012,¹⁸ emphasises that legal aid is a right,¹⁹ and that it should be available to vulnerable groups.²⁰ Principle 6 calls for non-discrimination in the provision of legal aid services with regard to ‘age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status’. Using the same language as the ICCPR, the principles therefore emphasise that analogous grounds such as gender identity can be considered as part of the protected grounds. Guideline 1 on the provision of legal aid provides that those who may exceed the means required by the means test but nevertheless need legal aid should not be excluded. This would cover some transgender persons who may not be poor, but who nevertheless cannot get access to lawyers to represent them.

At the regional level

Under the African system on human and Peoples’ Rights, the African Charter on Human and Peoples’ Rights provides that every individual is entitled to the enjoyment of the rights protected ‘without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status’. It is thus an open list that can accommodate analogous grounds. Article 3 provides for equality before the law for all individuals. Article 5 protects the right to dignity of all persons. Article 7 provides for the right to be heard, including to be tried by an impartial tribunal. The African Commission which interprets the African Charter has passed a resolution protecting against violence based on sexual orientation and gender identity,²¹ recognising that the Charter provisions apply to all persons including transgender persons. It also passed the Resolution on the Right to Fair Trial and Legal Aid in Africa (Dakar Declaration) in 1999 which provides for the right to legal aid.²²

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) in Article 2 calls for elimination of discrimination against women. Article 3 protects the right to dignity of women.

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¹⁸ E/CN.15/2012/L.14/Rev.1

¹⁹ Principle 1.

²⁰ Principle 3.

²¹ Resolution 275.

²² ACHPR Res 41 (XXVI) 99.

Article 8 recognises the right of access to justice and equal protection before the law noting that women and men are equal before the law and shall have the right to equal protection and benefit of the law. It provides for effective access to remedies, including legal aid.

The African Youth Charter provides for non-discrimination in article 2 and this is irrespective of ‘race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.’ Again the use of other status shows that the grounds are not closed. Under article 18, those who shall be found guilty of infringing laws shall be treated with dignity, and are entitled to a lawyer.²³

Generally, although international and regional law does not specifically protect transgender persons, it has guarantees that are applicable to transgender persons, and prohibits laws that would criminalise their actions and curtail the enjoyment of their rights. The Yogyakarta principles show how the rights recognised in these instruments apply in the context of sexual orientation and gender identity. International law thus enables access to justice rather than to inhibit it.

2.2.2 The Constitution of the Republic of Uganda, 1995

The Constitution is the supreme law of Uganda. The Constitution protects the rights of all persons. It contains a Bill of Rights that protects the right to equality and non-discrimination.²⁴ While ‘gender identity’ or ‘gender expression’ are not expressly included as grounds on which discrimination is prohibited, article 21 is broad enough to include all different attributes analogous to those listed. All the listed grounds in article 21, apart from ‘socio economic standing’, relate to natural attributes and gender identity is thus analogous to them, particularly sex.²⁵ The Constitution in article 28 protects the right to a fair trial, which entitles everyone to ‘a fair, speedy and public hearing before an independent and impartial court or tribunal established by law’. It puts in place a number of guarantees including the presumption of innocence, and being informed of the offence the person is charged with, as well as facilities for the preparation of their defence. This implies that transgender persons arrested under the law have to be treated in the same way as others and afforded the same guarantees of the right to a fair hearing. In addition, the Constitution protects the right to liberty and provides guarantees for persons arrested. The Constitution also provides for affirmative action in favour of marginalised groups and prohibits ‘laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group’.²⁶ The whole spectrum in the Bill of Rights protects the rights of all persons, which certainly includes transgender persons.²⁷

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²³ Article 18.

²⁴ Constitution, article 21.

²⁵ HRAPF *A guide to the normative legal framework on the human rights of LGBTI persons in Uganda* Second Edition (2019) 7.

²⁶ Article 32.

²⁷ See HRAPF, n 25 above.

Most importantly, the Constitution provides avenues for seeking justice in case of violation of a person's rights. The Constitution establishes the courts of judicature from the Supreme Court down to magistrate's courts, and other courts subordinate to the High Court.²⁸ Under article 126, one of the principles for the administration of justice in Uganda is that 'justice shall be done to all irrespective of their social or economic status.' This certainly includes transgender persons. In terms of vindicating rights, article 50(1) of the Constitution allows any person who claims a violation or threatened violation of a right under the Constitution to bring an action for enforcement. Article 50(2) allows any person or organisation to bring an action for the enforcement of the rights of another person.²⁹ Another avenue is article 137(3) which allows anyone who claims that any law or act is in contravention of, or inconsistent with, the Constitution to petition the Constitutional Court for interpretation.³⁰ The Supreme Court emphasised that any person could go to the Constitutional Court for interpretation of the Constitution and not just the person affected.³¹ Indeed LGBT persons including transgender persons have used these avenues to enforce their rights. This has been done in cases including those involving LGBT rights. The Constitution also creates the Uganda Human Rights Commission, which can investigate cases of violations of human rights,³² and the Equal Opportunities Commission, which investigates cases of discrimination.³³

The Constitution thus lays down both the normative and the institutional framework for access to justice for all persons in Uganda, including transgender persons.

2.2.3 Laws creating avenues of access to justice

A number of laws affect access to justice for transgender persons. Some of the laws provide for legal aid, while others create avenues for accessing justice.

The Judicature Act Cap 13

The Act provides for the courts that dispense justice in Uganda, as well as their jurisdiction. The courts are accessible to all.

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²⁸ The Constitution, Chapter 8.

²⁹ *British American Tobacco Uganda Ltd v The Environmental Action Network* Constitutional Petition No. 46 of 2016.

³⁰ For a general discussion of the law on public interest litigation in Uganda see P Karugaba 'Public interest litigation in Uganda: Practice and procedure: Shipwrecks and seamarks' Paper presented at the Judicial Symposium on Environmental Law for the Judges of the Supreme Court and the Court of Appeal, Imperial Botanical Beach Hotel, Entebbe, 11-13 September 2005.

³¹ *Ismail Serugo v Kampala City Council & Attorney General* Constitutional Appeal No. 2 of 1998.

³² Constitution, article 51 and 52.

³³ Above, article 32(3).

The Magistrates Courts Act Cap 16

This provides for Magistrates Courts, their powers and jurisdiction. The Magistrates Courts can be accessed by all persons. They are the courts in which most of the criminal cases against LGBT persons are brought, as they handle all criminal cases, except those punishable by death.

The Uganda Human Rights Commission Act

This provides for the powers and functions of the Uganda Human Rights Commission. The Commission has a tribunal with the powers of the High Court. It handles all matters concerning human rights violations. Indeed, two cases have been brought by transgender persons before the Commission, even though it has not yet decided them.³⁴

The Equal Opportunities Commission Act

The Act is aimed at eliminating discrimination and inequalities against any group of persons on grounds such as sex, age, tribe or health status and to take affirmative action in favour of such groups. It establishes the Equal Opportunities Commission (EOC) which has power to investigate complaints of plans, policies or actions which seemingly amount to discrimination and to examine laws and policies which are likely to have the effect of preventing equal opportunities,³⁵ to investigate complaints brought before it concerning discrimination and marginalisation,³⁶ and to monitor state entities to ensure that they all conform to non-discrimination principles and equal opportunities. The Act initially had section 15(6)(d) which prohibited handling of issues that were considered immoral and socially unacceptable by the majority of cultural groupings in Uganda. This provision was specifically included in the law for purposes of preventing ‘homosexuals and the like’ from claiming protection under the Act.³⁷ The Constitutional Court nullified this provision in the case of *Jjuuko Adrian v Attorney General*,³⁸ and held that all persons should have access to the Commission. The Court observed that the right to a fair hearing was at the heart of the Equal Opportunities Commission, since this body was established to redress imbalances and ensure equal opportunities for all persons.³⁹ The Court furthermore held:

³⁴ *Mukasa Jackson & Mukisa Kim v Attorney General* UHRC No. CTR/24 of 2016 and *Shawn Mugisha and 6 Others v Attorney General and the District Police Commander (DPC), Kabalagala Police Station*, UHRC No. CTR/06/2017.

³⁵ Section 14(2).

³⁶ Section 15.

³⁷ See Parliament of Uganda ‘Hansard, December 12 2016’. Also see S Tamale ‘Giving with one hand, Taking away with the other: The Uganda Equal Opportunities Commission Act, 2007’ in Human Rights Awareness and Promotion Forum (HRAPF) *Still Nowhere to Run: Exposing the deception of minority rights under the Equal Opportunities Commission of Uganda* (2010) 19-22. <http://hrapf.org/?mdocs-file=1604&mdocs-url=false> (accessed 6 April 2018).

³⁸ Constitutional petition No. 1 of 2009

³⁹ As above, line 215-264.

[a] law that precludes a group of people from adjudication on violation of their rights and does not create an alternative forum to hear them out breaches the right to a fair hearing.⁴⁰

The decision thus opened the way for transgender persons to access justice from the Equal Opportunities Commission.

The Local Council Courts Act, 2006

This creates local council courts. Local council courts are established at different local council levels, with a Local Council 1 court at the village level, a Local Council II court at the Parish Level, and a Local Council III court at the Town, Division, or Sub-County level. These courts hear civil matters arising out of daily activities in their areas and criminal cases arising from breach of a byelaw. Transgender persons are likely to come across these courts when charged by local authorities for breach of byelaws but they can also use them to report cases.

The Police Act Cap 303

The police has the duty to, among other things, protect the life, property and other rights of the individual, maintain security within Uganda, enforce the laws of Uganda, ensure public safety and order; and prevent and detect crime in the society.⁴¹ This places the police as an avenue where transgender people can report cases of violence or discrimination. Indeed the police is duty bound not to arrest, detain or bring criminal proceedings against any persons except as provided for under the law.⁴² Under the Police Code of Conduct, a police officer is supposed to treat all persons without discrimination.⁴³

The laws creating avenues for justice for all persons are generic and apply to all persons. None of them addresses transgender persons specifically, and neither do they mention marginalisation. However, the avenues created are for all persons to access and there is no express exclusion of any group from accessing these avenues. The only express exclusion was in the Equal Opportunities Commission Act which was nullified by the Constitutional Court.

2.2.4 Laws providing for legal support for marginalised persons

A number of laws make provision for poor and/or marginalised persons to access justice. These laws are:

The Magistrates Courts Act Cap 16 and the Trial on Indictments Act Cap 23

Section 158 of the Magistrates Courts Act and section 55 of the Trial on Indictments Act provides that every person appearing before a Magistrate's Court or the High Court respectively may as of right be represented by an advocate. These provisions

⁴⁰ Adrian Jjuuko case (n 38 above) line 286-289.

⁴¹ The Police Act Cap 303 section 4(1).

⁴² Above, section 4(3).

⁴³ Schedule to the Police Act Cap 303.

thus cover transgender persons, however, by not providing for legal aid, they do not put the poverty and marginalisation of transgender people into consideration. Thus they provide for a right without providing the means for its realisation.

The Advocates Act Cap 267 and the Advocates (Legal Aid to Indigent Persons) Regulations

Under section 15A of the Advocates Act, and the Pro-bono (Services to Indigent Persons) Regulations,⁴⁴ every advocate has to commit 40 hours every year to pro bono service provision or make payment in lieu. Human rights and criminal law are some of the areas under which legal aid can be given.⁴⁵ The regulation also establish the pro bono scheme which shall administer pro bono services. This scheme can potentially support transgender persons. There are also the Advocates (Legal Aid to Indigent Persons) Regulations made under section 77(1)(g) of the Advocates Act as amended in 2002. At present, these Regulations are the only guidance provided to legal aid service providers since the National Legal Aid Bill is still under consideration.⁴⁶ The Regulations have the objective of regulating and monitoring the quality of legal aid service delivery and to ensure that legal aid and advice are provided in a most effective and efficient manner. The Regulations are also aimed at ensuring that Legal Aid Service Providers in Uganda have the basic facilities and qualified personnel to provide legal aid in a manner which is professional and ethical. The Regulations provide wide grounds for admission of a client to legal aid particularly basing on means but also if ‘the applicant is in need and would benefit from the legal aid’.⁴⁷ It also recognises human rights abuses among matters to be given priority.⁴⁸ These Regulations are significant in that they enable persons who do not have the means to obtain professional legal services, including transgender persons, to make use of legal aid service providers.

The Poor Persons Defence Act 8 of 1998

This Act makes it possible to have advocates assigned to provide legal aid to persons accused of committing criminal offenses in the preparation and conduct of their defence before the High Court where the person has insufficient means to obtain such aid. This Act is applicable to transgender persons who have been accused of committing criminal offences and that have been committed to trial before the High Court. However, instances where transgender persons are prosecuted under the ‘idle and disorderly’ provisions would usually end at Magistrates Court level and thus the Act has little impact for transgender persons in reality.

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⁴⁴ SI No. 39 of 2009

⁴⁵ Above, Regulation 3.

⁴⁶ Parliament of Uganda ‘Attorney General promises law on legal aid’ 28th September 2018, available at <https://www.parliament.go.ug/news/2788/attorney-general-promises-law-legal-aid> (Accessed 21st September 2019).

⁴⁷ The Advocates (Legal Aid to Indigent Persons) Regulations, Regulation 23(1)(d).

⁴⁸ Above, Regulation 25(b).

The laws providing for legal aid for poor and marginalised persons are not adequate and many thus still cannot access legal aid services. A draft Bill which would require the government to establish a National Legal Aid Scheme to help the poor and marginalised to access legal aid services is yet to be tabled before parliament, largely due to the financial implications which such a Bill is envisioned to have.⁴⁹

2.2.5 Laws negatively impacting on access to justice for transgender persons

Besides the laws that directly affect access to justice for transgender persons, there are other laws that do not concern access to justice directly, but which indirectly affect transgender persons' access to justice. These are:

The Penal Code Act, Cap 120

The Penal Code creates different criminal offences that, although they do not specifically target transgender persons, are used to persecute them, and thus affect their access to justice. These are:

a. Unnatural offences

Section 145 of the Penal Code Act criminalises the act of 'having carnal knowledge against the order of nature', which is understood to refer to consensual same-sex conduct. In Uganda, transgender persons can easily be suspected of engaging in same-sex conduct on the basis of their gender expression. This provision fuels homophobia as well as transphobia in Uganda, even though it does not necessarily cover transgender persons in a technical sense. Transgender persons could be viewed as transgressing this provision if they are to relate to persons of the opposite gender but the same sex depending on what appears on their identification documents.⁵⁰ This section 'justifies' the arbitrary arrest of persons on the basis of their real or perceived sexual orientation and gender expression.⁵¹ The High Court in the case of *Jacqueline Kasha Nabagesera & 2 Others v Rolling Stone Ltd. & Giles Muhame* (the *Rolling Stone* case)⁵² held that that section 145 of the Penal Code is about specific acts and not generally about 'being gay,' noting that it is '... narrower than gayism (sic) generally. Despite this decision, subsequent High Court decisions have used the provision to justify refusal to register organisations working on among other issues, transgender issues,⁵³ and to stop meetings organised for among others, transgender persons.⁵⁴ These cases have effectively put a stop to registration of organisations on transgender issues, including those working on access to justice issues, as well as stopping challenges

49 'Law society assures Ugandans of free legal aid services' *New Vision* 7th October 2019 available at https://www.newvision.co.ug/new_vision/news/1508177/law-society-assures-ugandans-free-legal-aid-services (accessed 11 December 2019).

50 HRAPF (n 25 above) 12.

51 HRAPF (n 25 above) 13.

52 Miscellaneous Cause No. 163 of 2010 (High Court of Uganda).

53 *Frank Mugisha, Dennis Wamala & Ssenfuka Warry Joanita v Uganda Registration Services Bureau (URSB)* Miscellaneous Cause No. 67 of 2016.

54 *Kasha Jacqueline Nabagesera & 3 Others v Attorney General & Rev. Fr. Simon Lokodo* Civil Appeal No. 195 of 2014.

to closure of meetings, which have become rampant since the decision.⁵⁵

b. Criminalisation of sex work

Section 136 to 139 of the Penal Code Act criminalise different aspects of sex work in Uganda. This criminalisation is troubling for transgender persons since sex work is a common source of income and often a very last resort. Since sex work is criminalised, sex workers generally face arbitrary arrest and mistreatment by the police.⁵⁶ Transgender sex workers are often the victims of the worst of these human rights abuses.⁵⁷ Overall, the criminalisation of sex work increases the stigma and discrimination which transgender persons already face and isolates them from legal aid services and public complaints mechanisms which they otherwise would have been able to access.

c. Idle and disorderly laws

Section 167 and 168 of the Penal Code Act create the offences of ‘being an idle and disorderly person’ and ‘being a rogue and a vagabond’. These provisions are overbroad and vague and they criminalise a very broad range of actions such as ‘being found wandering’ in a public place at such a time and under such circumstances which would ‘lead to the conclusion that such person is there for an illegal and disorderly purpose’.⁵⁸ These provisions affect persons in Uganda who are poor or who are considered ‘undesirable’ and who do not conform to the gender norms of society. Transgender persons are arrested under these provisions where police officers suspect that they engage in ‘unnatural offences’, mainly on the basis of their appearance, but do not have the necessary evidence to secure a conviction under section 145 of the Penal Code Act.⁵⁹ These provisions which are used to unfairly discriminate against transgender persons and other minorities, has the effect that they are pushed away from accessing various justice mechanisms and services, while at the same time being in greater need of access to justice due to being vulnerable to arbitrary arrest. A subsection of section 168 is currently the subject of a legal challenge before the Constitutional Court of Uganda, on the basis that it is textually unconstitutional and is also used to unfairly discriminate against vulnerable groups in Uganda.⁶⁰



⁵⁵ For a detailed discussion of meetings that have been stopped, and the impact of this provision generally see HRAPF & CSCHRCL, n 2 above, and A Jjuuko ‘Beyond Court Victories: Using strategic litigation to stimulate social change in favour of lesbian, gay and bisexual persons in Common Law Africa’ LLD Thesis, Centre for Human Rights, University of Pretoria, 2018, 190-192.

⁵⁶ Human Rights Awareness and Promotion Forum *Legal regulation of sex work in Uganda: Exploring the current trends and their impact on human rights of sex workers* (2016) 43-45.

⁵⁷ As above at 44.

⁵⁸ Sec 168(1)(d).

⁵⁹ Human Rights Awareness and Promotion Forum *The Narcotic Drugs and Psychotropic Substances (Control) Act 2016 and the Legal Regulation of Drug Use in Uganda: Analysing the tension between criminal law, public health and human rights* (2016) 51-52.

⁶⁰ Francis Tumwesigye Ateenyi v Attorney General Constitutional Petition No. 36 of 2018.

d. Personation

Section 381 of the Penal Code Act creates the offence of personation which means that a person falsely represents himself or herself with the intent of defrauding another. Even though transgender persons who express their gender identity are not trying to represent themselves *as another person*, they are nevertheless arrested and prosecuted under this provision in some cases.⁶¹ The way in which this provision is being applied has the effect of further marginalising transgender persons and alienating them from justice mechanisms and services.

e. Common nuisance

Section 160 creates the offence of ‘common nuisance’. This offences criminalises

Any person who does an act not authorised by law or omits to discharge a legal duty and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights...

It is punishable by one year’s imprisonment. Like the idle and disorderly offences, it is vague and overly broad.

The Penal Code provisions criminalise being transgender by making provision for wide-sweeping offences that can be applied in almost all situations, as well as offences that criminalise consensual same-sex relations. These offences are used to target transgender persons even though the police may be aware that they would not apply to transgender persons specifically.

The Registration of Persons Act, 2015

This Act governs the recognition and registration of persons in Uganda. It has provisions that affect the enjoyment of rights by transgender persons. The Act allows both adults and children to change their names.⁶² This is an important provision for transgender persons who would like to change their names in order to reflect their gender identity. The Act also makes specific provision for intersex children to change their particulars in the births register from male to female or female to male, provided that they had undergone surgery to change their sex characteristics.⁶³ The limitation of this provision is that it does not extend to adults, nor does it specifically include transgender persons, which creates a major barrier to their legal recognition within Uganda. Where a person’s gender identity and gender expression does not accord with the particulars in their identification documents, this causes a barrier to accessing a variety of services and opportunities that are available to others, and is a basis for discrimination. The provision can be easily interpreted by officials doing registration to refuse to change the gender markers of transgender persons, thus further marginalising them and opening them up to denials of service on the basis that their documents do not align with

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⁶¹ HRAPF (n 25 above) 28.

⁶² Sections 36 & 37.

⁶³ Section 38.

their preferred gender.

The Non-governmental Organisation Act, 2016

The Non-Governmental Organisations Act came into force in March 2016. The Act contains two provisions which pose a threat to the future existence and operation of organisations which provide services to transgender persons. Section 44(d) and (f) imposes special obligations on organisations and prohibit them from engaging in activities that are prejudicial to the ‘security and laws of Uganda’, and to the ‘interests of Uganda and to dignity of Ugandans’. Section 30(1)(a) allows the NGO Bureau to refuse to register an organisation whose objectives are regarded as being in contravention of the laws of Uganda. The provision of services to a group that is considered to engage in criminal conduct by supposedly committing ‘unnatural offences’, can be interpreted as being contrary to the laws of Uganda and the interests of Ugandans. This means that the NGO Act could have the effect of halting the operation of organisations which provide legal aid services to transgender persons as well as organisations formed to advocate for the rights of this group and to empower its members to claim their own rights and seek redress where this is needed.⁶⁴ This would further reduce opportunities available for transgender persons to know about the avenues of accessing justice and how to use them.

The Companies Act, 2012

Section 32 of the Companies Act, 2012 gives the Registrar powers to refuse to reserve the name of a company if the name is seen as ‘undesirable’. What is ‘undesirable’ is left to the discretion of the Registrar. The High Court has upheld the Registrar’s use of their powers to deny registration to an organisation working on the protection of the rights LGBTI persons on the basis that same-sex relations are criminalised under section 145 of the Penal Code Act.⁶⁵ This again reduces the avenues available for transgender people to know about access to justice options.

The HIV Prevention and Control Act, 2014

The HIV Prevention and Control Act is to provide for the ‘protection, counselling, testing and care of persons living with and affected by HIV and AIDS’ in order to prevent HIV and AIDS. The Act has a number of aspects which enhances access to HIV prevention and care for all, including transgender persons. The Act requires of all health units to always provide pre- and post-test counselling which ensures that the testing is indeed voluntary and assists the patient in handling the outcome of an HIV test.⁶⁶ The Act makes it clear that the State has a duty to provide ‘universal HIV treatment to all persons on a non-discriminatory basis’.⁶⁷ The State is also required to promote the awareness of rights of persons living with HIV and to

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⁶⁴ HRAPF (n 25 above) 16.

⁶⁵ *Frank Mugisha case*, n 53 above.

⁶⁶ Section 3(1).

⁶⁷ Section 24(1)(b).

ensure their participation in government programmes.⁶⁸ The Act requires of health service providers to make available free of charge Post Exposure Prophylaxis (PEP) to persons who had been exposed to HIV.⁶⁹ The Act requires of the State to ‘give priority to most at risk populations’ which it defines as ‘fishing communities, prisons, migrant populations or other areas as may be determined by the Minister from time to time’.⁷⁰ The Act does not explicitly mention transgender persons or other controversial Key Population groups. The Act also contains a number of other provisions which are discriminatory toward transgender persons and tend to limit their rights. The Act provides that consent to testing may be dispensed with where it is ‘unreasonably withheld’.⁷¹ There is no definition or description, which explains the circumstances under which it could be deemed ‘unreasonable’ to withhold consent for HIV testing. The reasonableness of the refusal is judged only by the discretion of the health care worker involved. The fear of being subjected to an HIV test against one’s will discourages treatment-seeking behavior, especially for groups that face discrimination in healthcare settings on other grounds as well. One section of the Act which is particularly troubling to transgender persons and their access to justice is section 12, which provides that a person who has been ‘apprehended’ for a sexual offence *shall* be subjected to an HIV test in order to serve criminal investigations and proceedings.⁷² Transgender persons are often arrested under the provisions of the Penal Code Act creating ‘unnatural offences’ because their gender expressions tend to identify them as gender non-conforming during arrest. If a transgender person is subjected to an involuntary HIV test while under arrest, this violates their right to liberty and dignity. There are a number of provisions which criminalise actual as well as attempted intentional transmission of HIV;⁷³ the failure to treat knowledge of a person’s HIV status with confidentiality;⁷⁴ breach of confidentiality by healthcare providers⁷⁵ and the failure to use protective measures during sexual intercourse.⁷⁶ All of these provisions exemplify a criminal law approach to what is essentially a public health and human rights issue. Such an approach uses the criminal law to attempt to control people’s behaviour in order to minimise the spread of HIV. Judging by the way that other criminal offences such as ‘personation’ and the ‘idle and disorderly’ laws are used to clamp down on transgender persons, the criminal provisions under this Act can also be used to ‘punish’ sexual behaviour of transgender persons by a disapproving society. Transgender persons subjected to such violations may have no recourse as these actions are allowed by the law.

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⁶⁸ Section 24(1)(e) & (f).

⁶⁹ Section 32(3)(b).

⁷⁰ Sections 24(1)(k) & 24(2).

⁷¹ Sections 11(a).

⁷² Section 12.

⁷³ Sections 41 & 43.

⁷⁴ Section 19.

⁷⁵ Section 42.

⁷⁶ Section 2.

There are thus laws in Uganda which do not concern access to justice but which nevertheless indirectly affect transgender persons' access to justice. These mainly justify the violation of the rights of transgender persons, as they give a cloak of legality to things that constitute violation of the rights of transgender persons.

2.3 Policies that affect access to justice to transgender persons in Uganda

No specific policies directly focus on access to justice for poor or marginalised persons or transgender persons in particular. The National Legal Aid Policy is yet to be passed despite consultations having taken place.⁷⁷

Similarly, none of the policies in the country specifically addresses the needs of transgender persons, and thus they continue the culture of legal invisibility for this particular group.

The National HIV and AIDS Strategic Plan (NSP) 2015/16 – 2019/20 was developed to guide the implementation of the national response to HIV and 'to align key HIV and AIDS interventions to the key drivers of the epidemic'.⁷⁸ The NSP advocates for measures to reduce vulnerability to HIV and AIDS and to mitigate its impact by increasing efforts to address stigma and discrimination.⁷⁹ It also envisions the institution and strengthening of anti-stigma and discrimination programmes aimed at Key Populations.⁸⁰ The NSP also has the strategic objectives of implementing a comprehensive package of social support and protection interventions for people living with HIV/AIDS and other vulnerable groups and Key Populations as well as mainstreaming their needs into other development programs.⁸¹ It includes Men who have Sex with Men among Key Populations,⁸² but not transgender persons, increasing the invisibility for this group in HIV service provision. This implies that they may not be prioritised in HIV service provision, and their rights may be violated without recourse as they are 'invisible'.

Similarly, the National HIV testing services policy and implementation guidelines for Uganda (2016) has one of its guidelines as 'promoting equality for priority populations', which recognises the vulnerable position of key populations (among others) and the social impact which HIV/AIDS has on them.⁸³ The Guidelines make explicit provision for HIV testing services for Key Population groups, including Men who have Sex with Men.⁸⁴ Transgender persons are, however, not explicitly included.

⁷⁷ See *New Vision*, n 49 above.

⁷⁸ Uganda AIDS Commission *National HIV and AIDS Strategic Plan 2015/16 – 2019/20* at 1.

⁷⁹ As above at viii.

⁸⁰ As above at 28.

⁸¹ As above at 23.

⁸² Above, 5, 10.

⁸³ Ministry of Health *National HIV testing services policy and implementation guidelines Uganda* (2016) 11.

⁸⁴ As above, 24.

The National Action Plan on Women, Girls, Gender Equality and HIV & AIDS 2016/17 – 2020/21, which was developed in pursuit of the UNAIDS Global Agenda for Accelerated Country Action for Women, Girls, Gender Equality and HIV and AIDS has its purpose as to guide all stakeholders in addressing the specific needs of women and girls in the national HIV and AIDS response. The plan recognises the significance of access to justice in prevention of HIV infection. The Plan decries the weak enforcement of laws and policies which address gender inequality and gender-based violence which, in turn, undermine women and girls’ access to justice. A lack of access to justice is recognised as a factor which leads to hopelessness and uncertainty and which makes young women and adolescents more vulnerable to HIV infection.⁸⁵ The Plan sets out the action point of increasing community awareness on individual and collective rights and on the role of informal justice mechanisms in dispute resolution.⁸⁶ However, it does not consider transgender persons, thus maintaining the culture of invisibility.

The Policy framework on access to justice for marginalised persons is almost non-existent. However some of the policies concerning HIV have nominal provisions only recognising MSM among the Key Populations but not transgender persons. This shows that transgender persons are invisible not only in the legal framework but also in the policy framework. This invisibility ensures that violations against these groups go unaddressed, and that no specific services are directed towards this group. Above all, the violations arising out of this invisibility cannot be addressed as there is no framework within which to act.

2.4 Conclusion

The above analysis shows that Uganda’s legal and policy framework on access to justice is very weak and that it does not recognise transgender persons as a group that deserves special protection in laws and policies. The lawyers providing for access to justice do so without making provision for access by poor and marginalised persons, in which category transgender persons fall. Those that do provide for such support, provide a minimal package that looks at more numerous and acceptable minorities such as women and children as priorities. This legal invisibility is ironically reversed when it comes to laws that enhance the violation of the rights of transgender persons. Those who implement the criminal laws extend them to transgender persons even when they remain silent. These laws thus further push transgender persons underground as they justify violations, which cannot then be reported and justice sought because they are justified under the law. The absence of a national legal aid scheme or policy puts the most marginalised groups such as transgender persons at the most risk, as they would rarely be considered in an environment of very many poor and marginalised people chasing a few resources. Uganda’s legal regime is not in line with international law and the obligation it imposes with respect to protection of transgender persons and ensuring their access to justice.

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⁸⁵ Ministry of Labour and Social Development *National Action Plan on Women, Girls, Gender Equality and HIV & AIDS 2016/17 – 2020/21* (2017) 8.

⁸⁶ As above at 24.

SECTION III:

THE EXPERIENCES OF TRANSGENDER PERSONS IN ACCESSING JUSTICE IN UGANDA

3.1 Introduction

Transgender persons face unique access to justice challenges which arise out of legal invisibility as well as prohibitive criminal and other laws coupled with stigma and transphobia. This results into a situation of persecution by the family, community and by state institutions, and yet the people violated have no recourse to access justice as they may not be listened to or even get access to a lawyer. This section highlights the common access to justice issues among transgender persons and the challenges they face in trying to access justice.

3.2 The main issues that require access to justice for transgender persons

Transgender persons generally live a life of discrimination and marginalisation, which arises out of their gender identity, which may not align with society's expectations. Transgender persons have to struggle to find/establish and assert their identity in a society whose dominant traditional norms and beliefs have no room for transgender persons.⁸⁷ The majority of people know male and female and expect males to look like and behave like males, and the same for females. If one is born male, society expects him to grow up and behave according to their expectations of a man, marry a woman, and have children. One person noted that:

Living in Uganda as a transgender person it is really not easy because first of all sometimes you cannot fully identify as what you feel you are. And also you cannot express yourself fully like you want. You will not be accepted the way you are or the way you feel, socially you are not free even economically because you are not empowered economically to be what you are or to be who you are [IDI, Transgender person, Kasese].

In the view of another:

... there are so many complexities about being a transgender because one, you first fight with yourself, trying to ... that inner battle of 'am I male, am I female?' Then you battle with family, you battle with religion, you battle with

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⁸⁷ KII, TGO, Kampala, 14th May 2019; IDI, Kasese, 18th June 2019.

your culture and then just when you think the fight is over, then you are in prison ... And just when you think that battle is over, you still have to grapple with the fact, okay, we are now in the meeting, who is around? The parliamentarian. Can I say I am trans, can I say I am male or female? How will they look at me? Will I say anything of substance in this meeting, will it be taken seriously? So they battle with so many issues on a daily basis [KII, Human Rights Organization, Kampala].

The above voices highlight the plight of a transgender person in Uganda. They point to the lack of space for transgender persons to express themselves and be who they want to be due to various social expectations. They also highlight lack of economic empowerment, and yet a transgender person may not maintain dependency on their families due to family disagreement or discomfort about their identity and behaviours as will be further explored later in this report. These voices also highlight the battles that transgender persons have to grapple with almost on a daily basis at the level of self, family, and wider societal levels.

Many transgender persons have no support to go through these challenges. Right from childhood, nobody tells them about transgender issues: not their family members, not their teachers at school, nobody.⁸⁸ Societal expectations based on gendered lenses are at the heart of the difficulties that transgender persons face in their day to day lives. It was reported that transgender people are often accused of going against established norms and ‘pretending to be what they are not’.

People say that you’re pretending to be what you’re not like maybe impersonating or something, that you’re a boy pretending to be a girl... [FGD-2, Transgender persons, Kampala].

As was discussed earlier, the interpretation of transgender expression as ‘pretence’ takes on a legal implication when it is construed as personation, which is an offence under Ugandan laws. The challenges that they face which requires access to effective remedies are going to be discussed at the family, community, and state institution levels.

3.2.1 Violations that arise in family settings

The major challenge at family level is exclusion and being thrown out of home, and denied inheritance rights. All the transgender persons who participated in this study and most key informants pointed to lack of acceptance of transgender persons within their families. Parents, siblings and extended family members usually do not tolerate the ‘unusual’ expressions of the transgender family member. Most transgender persons testified how they had received disapproval

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⁸⁸ KII, TGO, Kampala, 23rd May 2019.

from family members.⁸⁹ Instead, transgender people initially face pressure from their families to conform to societal norms and expectations by, for instance, telling them to ‘leave those things [of homosexuality]’ and get married and have children. If the transgender person does not yield to family pressure, the result is family disappointment, losing hope and giving up on the transgender person, as one study participant explains below:

In my experience, it was really something very hard for me, because in the family they under-look you, they see as if you have no future, because the way you dress, the way you talk to them, and the company you have because me my friends are boys and I always ... I really feel like yes, that is where I belong. ... though people from home are not okay with it. [Transman, FGD Participant, Lira District]

The above quotation highlights the devaluation and loss of hope by family members in a person who turns out to be transgender. The family concludes that the person is cursed or bewitched.

As the family negotiates its stand vis-à-vis the transgender family member, they will receive ridicule from the rest of the community members. The community stigma may be extended from the transgender person to their whole family. The transgender person becomes a disgrace to the family in the eyes of the community, leading the family to shun the person.⁹⁰ Tired of the community critique of the transgender person’s conduct, the family often decides to reject or disown him/her. Indeed, family rejection and disowning of transgender persons was found to be a common response by the family. One transgender person expressed his experience as follows:

My dad disowned me completely. He does not greet me, I do not greet him, and he never allows me to go to his place ... He even refused to pay for my education after knowing what I am, so I stopped halfway. [IDI, Transman, Mbale].

Another transgender person also describes the situation as follows:

It [disowning] is common because there is no friend I have that still has family support. All of them were disowned [IDI, Transgender person, Kampala].

This points to the reality and extent of being banished by one’s family. As pointed out in the first quotation above, being rejected or disowned by one’s family has further ramifications. For instance, it means that if one has been in school, most

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⁸⁹ FGD, Lira, 11th June 2019; FGD-1, Kampala, 24th May 2019; FGD-2, Kampala, 27th May 2019; FGD, Mbale, 12th June 2019.

⁹⁰ IDI, Mbale, 12th June 2019; IDI-1, Kampala, 27th May 2019.

likely they will stop attending school because the parents who were paying the school fees are no longer willing to pay school fees. Being disowned by one's family and losing friends leaves a transgender person isolated and lonely. Some reported how they feel insecure because they have no-one to rely on. Even when they make new friends – who may be transgender like them – they feel the gap left by a family that has deserted them cannot be filled.

In some cases, the decision to disown or banish a transgender person is taken at clan level as was reported by FGD participants in Mbale and Lira. If the family head reports the matter to the clan head or the elders, they convene a meeting and administer a form of traditional justice regarding the matter. Some transgender participants from Mbale reported how they were beaten up in clan and village meetings, specifically to drive the 'crazy' behaviour out of them. If they did not change, then they were expelled from the clan. A key informant in Lira also reported that if a transgender person is summoned to a clan meeting, he/she is subjected to 150 strokes of a cane and then chased away from the clan. In such cases, it is clear that the traditional justice system is deployed, not to provide a fair hearing to transgender persons, but to authenticate and give force to the negative sentiments held by family and clan members, and thereby administer injustice rather than justice to transgender persons.

But other transgender persons reported that they ran away from their families on their own after realising that they cannot cope with the day to day realities and hide their identity anymore.⁹¹

Only a few transgender persons reported acceptance and understanding from their family members. One particular participant in Mbale reported acceptance and understanding from her mother, because the mother noticed the transgender behaviours right from childhood – that though born a boy, 'he was acting like a girl - and therefore she accepted the situation as it is.

These challenges would in many cases require court action, or mediation to force the parents to take care of the children below 18 years, and to stop the violations and violence. However, the system would be so much against them that they cannot utilise it to achieve this.

3.2.2 Experiences at community level

The differential treatment of transgender persons is not just in the family but also extends to both the immediate and wider community in which the transgender persons live in the following respects:

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⁹¹ FGD-1, Kampala, 24th May 2019.

a) **Discrimination in public spaces and labeling**

Transgender persons are excluded from basic things that other persons participate in, such as shopping, boarding a taxi or eating at a restaurant. Others reported how they have been thrown out of public places such as bars and restaurants, while others have several times been forced out of taxis and other public transport.⁹² As a result, transgender persons reported that there are public places where they cannot go. Others reported that they are no longer able to use public transport such as commuter taxis, and instead have to resort to boda bodas (motorcycle taxis) which are more expensive. As explained by an FGD participant:

For example most of the trans women use boda bodas and these are expensive because you can't use public transport. You can reach in a taxi and they start pulling you, they start abusing you and you feel like out of the place. And the only option you have is maybe to use a boda or to use a car or to use any special taxi and yet those things are all expensive. [FGD-2, Transgender persons, Kampala].

Another transgender person expressed their experience as follows:

... there are some places you cannot go to. You cannot go down town maybe to buy a cheap clothes. You have to go in these shops on Kampala road where people cannot give you much attention. So you have to go to the places where you can't cause more attention yet those places are expensive. Even in our hanging out places there are some places you cannot go to [FGD-2, Transgender persons, Kampala].

A similar experience was expressed by an FGD participant from Mbale:

Living in Uganda as a transgender person is really hard, reason being as a transgender person, there are very many challenges. First of all, even buying something at a shop at times ... they refuse. Even if you wanted like change from a shop, they will never give you. [FGD, Transgender persons, Mbale District].

Other FGD participants in Mbale reported similar discriminations, for instance whereby saloon operators refuse to plait their hair and how sometimes boda boda cyclists refuse to take them because they are considered to be homosexuals.

Transgender people are also labeled as *illuminati*, as non-human, as homosexuals, and several other descriptions.⁹³ These labels serve to fuel stigma and discrimination against transgender persons, with the consequence that they may be denied

⁹² FGD-2, Kampala, 27th May 2019; FGD, Mbale, 12th June 2019.

⁹³ FGD-1, Kampala, 24th May 2019; FGD, Mbale, 12th June 2019.

access to justice and services that they are otherwise entitled to. Derogatory words are used to refer to transgender people, such as when they are called ‘*kyakula sajja*’ or ‘*musaja mukazzi*’ both Luganda terminologies.⁹⁴ One transgender person reflected on these common insults and labels placed on transgender persons as follows:

Why? Because they have these perceptions about us that we are illuminati, meaning ghosts, devil-worshippers, non-human ... So as a transgender person it is too, too, too hard [FGD, Transgender persons, Mbale District].

Another transgender person shared their experience with name-calling:

The Bagisu, they call us to be ‘Abadinga’ and this means an abnormal person. [FGD, Transgender persons, Mbale District].

As reported above, the discrimination of transgender people pervade almost all spheres of life. These aspects of discrimination and injustice against transgender people come with cost implications. Transgender people are denied access to services that would be cheap, and have to resort to alternatives that are more costly. At the same time, they cannot easily access justice.

b) Character assassination and defamation

Transgender people often have to deal with attacks on their character and reputations. Some participants talked of how community members accuse them of ‘spoiling’ their children by bringing homosexual tendencies into the community. One transwoman in Kampala narrated how she was taken to police on accusations of being likely to spoil other children in the village where she lived.

Others accuse transgender persons of spoiling the local culture or even the African culture. Transgender is equated to homosexuality and this unwanted practice is believed to be brought by whites who influence and recruit Ugandan boys and girls and thereby distort the Ugandan and African culture. As expressed by an FGD participant in Mbale:

... sometimes they blame us a lot that, ‘these children, because ... of these whites or bazungu, these are what they’re trying to do what, to involve in’. So, they see you as ruining their culture, they say, ‘you’re spoiling the culture of Africa’...” [FGD, Transgender persons, Mbale District].

From the above, a number of observations can be made. First, there is an assumption that a transgender person is a homosexual. Secondly, there is an

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⁹⁴ IDI, Kampala, 28th May 2019.

assumption that homosexuals are recruited and groomed and therefore the so-called homosexual has potential to influence children in the community. Thirdly, there is an assumption that being a homosexual is an offence, for which one has to be taken to police – even if they are not caught in the act and there is no evidence as to the allegation. These findings are illustrative of widespread homophobia and transphobia, but unfortunately, one cannot successfully sue for such defamation, or even if they could, they are afraid of doing so.

c) **Murder and physical violence**

Transgender persons frequently get attacked and abused. HRAPF has documented one case of murder of a transgender person in 2019 by a mob.⁹⁵

d) **Threats of beating, rape and other forms of violence**

Some participants, particularly the transmen interviewed, report having been threatened with rape. In other cases transpeople have been threatened with death through poisoning and other ways. One transman in Mbale reported such threats:

This one is spoiling our children, I am going to hire people to rape, beat and throw her in the sewage to die from there ... ”. Where I was fetching water, a man told me face to face, that “now you, you call yourself a man but information reached here that you’re a woman, you waste our time here while calling you Ivan, Ivan [not real name],... I’m assuring you and saying this when the people are here, I’m going to rape you, I leave you in the forest when I have tied you there... ”. Another said, “the good thing this one is my neighbour, while you are cooking food, I’m going to put poison [Transman, FGD Participant, Mbale].

e) **Insults**

Transgender persons reported being insulted and humiliated. They also narrated how transgender persons may lose friends who used to hang around or walk with them. Because of the open humiliation that they face, the friends may not be ready to hang around them or walk with them again. They also talked of psychological torture and distress that may result from such attacks.

... most times you fear to walk because of the situation. You may be walking, they attack you and abuse you, sometimes they undress you because of what you feel like you are [FGD, Transgender persons, Mbale District].

The above findings indicate that physical attacks on transgender persons may be

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⁹⁵ Interview with HRAPF Legal Officer, 12th August 2019.

based purely on their looks. As if dressing or plaiting their hair in a particular way is an offence, transgender persons are subjected to attacks when they have committed no offence. The resulting distress may lead to self-stigma which affects the transgender person's confidence to seek services and seek justice when needed.

f) Eviction from rented accommodation

Transgender persons are often evicted from rented accommodation because of their gender identity. The following narrative from a transgender person in Kampala is telling:

Recently ... the landlady called me and told me 'I always hear words that you are homosexual but I was not sure but now I am sure therefore I cannot allow you to stay in my house... That means even my children you will homosexualise them. I no longer want your money ... but I have given you two weeks to leave'. [FGD-1, Transgender persons, Kampala].

The above narration reveals how a transgender person can be harassed out of their housing based solely on hearsay and perception that one is a homosexual. But it also tells the underlying fears of the community and the landlord, that the 'homosexual' is likely to influence their children into homosexuality. Even when the transgender person seeks for justice from a local leader, there is no justice received. The difficulties in accessing justice such as revealed above will be discussed in more detail later in this report.

In other cases, even if they are not evicted, transgender persons will have to move from their accommodation after facing multiple incidents of harassment and maltreatment from their neighbours and landlords. As a result of harassment by neighbours where they rent, or outright eviction, transgender persons have to keep moving house. One participant in an in-depth interview, a transman in Kampala, reported that he had moved house about four times in one year. In other cases, those who cannot afford to pay rent cope by living with other transgender persons, often several of them sharing one premises as was reported by transgender participants in FGDs in Kampala and one IDI participant in Mbale. The tendency to share accommodation puts them at escalated risk because it raises suspicions that they homosexuals who deliberately live together in order to engage in illicit sexual practices.

g) Rural - urban differences

Study participants believed that the experiences of transgender persons at community level varies across geographical locations (urban – rural); and specifically that there seems to be more tolerance and liberal thinking in urban settings, compared to rural areas where people are still strongly tied to certain cultural norms and beliefs. Rural areas have elders who believe they have a responsibility to instill discipline in young people and to preserve their cultural values, and they will therefore hold a meeting to discuss, discipline or outcast anybody digressing from the expected gender norms.⁹⁶ Moreover, in the rural areas, everybody knows almost everybody else within a radius of maybe ten kilometres, and so they are preoccupied about what is happening to everybody, and how everybody is behaving. On the other hand, there is much anonymity in urban areas and people will not care so much about somebody they do not know.⁹⁷

In urban areas, people have been more exposed to what is happening around them and elsewhere, and are more likely to be accepting of different sexual identities including transgender. For instance urban people are more likely to watch transgender people on TV or read about it in the media, and so they have an idea that transpeople exist.⁹⁸ In urban areas, ‘people tend to mind their own business’.⁹⁹ Rural settings tend to have one dominant culture, whereas urban settings have a multiplicity of cultures co-existing, hence more likely to be accepting and respecting of persons with unique characteristics such as transgender persons.¹⁰⁰ Others, however, argue that it also depends on the specific spaces in which the transgender people are operating at a particular time. In urban areas, there are audiences which understand transgender people and are likely to accept them and respect their rights. Such spaces and platforms are more limited in rural areas.¹⁰¹

In Mbale, FGD participants argued it was better for transgender persons to live in urban areas because then they easily find each other and can form their own gangs or buddies, unlike in the rural areas where one might remain isolated. They reported that in urban areas, linking up with other transgender persons enable them to get courage and social support from each other.¹⁰²

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⁹⁶ KII, Luzira Prison 24th June 2019; KII, Mubuku Prison (Kasese), 19th June 2019; KII, Manager, Legal Aid Clinic (Kampala), 20th May 2019.

⁹⁷ KII, Luzira Prison, 24th June 2019; KII, TGO, Kasese, 18th June 2019; KII, Manager, Legal Aid Clinic (Kampala), 20th May 2019, FGD, Mbale 12th June 2019; FGD, Kasese, 18th June 2019.

⁹⁸ KII, TGO, Kampala 14th May 2019; KII, Luzira Prison, 24th June 2019.

⁹⁹ KII, Manager, Legal Aid Clinic (Kampala), 20th May 2019; FGD, Mbale, 12th June 2019; FGD, Kasese, 18th June 2019.

¹⁰⁰ KII, Luzira Prison, 24th June 2019.

¹⁰¹ KII, TGO, Kampala, 14th May 2019.

¹⁰² FGD, Mbale, 12th June 2019; FGD Kasese, 18th June 2019.

However, others cautioned that though the stigma may be higher in rural areas, the risk of being physically harassed is also higher in urban areas. They argued that in urban areas, any slight argument may spark off mob violence against a transgender person. So in urban areas, transgender persons are more vulnerable to mob violence.¹⁰³

In urban areas, there is much work by CSOs including human rights and SRHR organisations working on LGBTI issues and this has created substantial enlightenment about transgender issues. This kind of enlightenment is still missing in rural areas. It was reported by key informants from transgender organisations that in rural areas, transgender persons themselves are still struggling to understand who they are due to lack of information and support.¹⁰⁴ As a result, it was argued that many transgender persons in rural area are still living in the ‘closet’ and cannot dare come out to express their gender identity of choice.

h) Gender differences in experiences

Some argued that the experiences and challenges for transmen are the same as for trans-women. Others however thought that it is worse for transwomen:

It is quite lenient to transmen as compared to transwomen. Because here a transman in society they try to understand him as in most cases they brand us as ballers or that one is a boxer or that one is-- To some it is normal to see a woman who is muscular but it hurts to see a man who is feminine. [FGD-1, Transgender persons, Kampala].

Another FGD participant agreed with this view:

With the transmen in most cases like he said we are taken like sportsmen ... look sporty because of our bodies and ... the way we move. So they were like they will take it that maybe it's because of the game that he is playing that is why he looks the way he looks [FGD-1, Transgender persons, Kampala].

Transwomen are likely to be arrested for personation and the allegation that they pretend to be women in order to ‘detooth’ (defraud or fleece) men of money.

Police officers confirmed that if a man claims to be a woman, they treat that as a case of impersonation which is an offence chargeable in a court of law. The officer also clarified why they arrest impersonators:

Impersonation is done for a purpose, these impersonators they are on survival.

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¹⁰³ FGD, Mbale, 12th June 2019.

¹⁰⁴ KII, TGO, Kampala, 23rd May 2019.

People impersonate to be a lawyer for a purpose, people pretend I am from a big office for a purpose. But now this person who said I want to be a man when you are a woman so they have also maybe something [KII, Police Officer, Kasese].

It was however also reported that because transgender persons are believed to be homosexuals, and because it is believed there is a whole funded industry behind the recruitment and grooming of homosexuals in the country, the police also sometimes arrest transgender persons with the aim of extorting money from them. It was for instance reported in the Mbale FGD that police sometimes asks the arrested transgender persons to bring money from the *bazungu* (whites).

On the other hand, the transmen also have their vulnerabilities:

Even when they imprison them remember me they will take me to a female cell you will become a boss no one will touch you. Me the days I spent in a police cell no-one disturbed me when I reached they gave me a leadership position. But the other one is going to reach there and they beat him they rape him” [FGD-1, Transgender persons, Kampala].

Transmen are also a target for ‘corrective’ rape. Men want to prove to transmen that they are ‘wrong’ about their own gender identity and that they are women not men, so they rape them. A HRAPF staff member who was interviewed also reported that she was aware of a transman who was subjected to a forced marriage by her family, as a means of correcting her ‘transgressions’.

It was also noted that difficulties are more for those who are transgender but they have not physically transitioned, and therefore the conflict between their identity and their physical body is evident. On the other hand, those who manage to change their physical appearance through use of hormones and wearing binders can easily go in public unnoticed.

3.2.3 Experiences at institutional level

At the level of state and non-state institutions, frequent discrimination and violations happen against transgender people that may require accessing justice. The state and non-state institutions where discrimination is experienced include schools, places of employment and health facilities. Each of them is discussed in turn below.

a) **Discrimination and stigma in schools**

Transgender persons who are lucky to be in school face similar difficulties that are faced in society at large, but in a different kind of setting. As some narrated, these challenges range from lack of space to express oneself, having to put up with strict regulations that clearly separate do’s and don’t’s for boys and girls, to outright bullying by fellow students:

Right now I'm in my final year of school. But being trans and in school it is a different narrative in the sense that you cannot really express out your gender identity. ... how can you report to school presenting your preferred gender knowing that maybe it is among the school regulations that those are grounds of expelling you [from school]? For example if one time I decided to go to school wearing a dress or a skirt it is like I have to face the disciplinary committee. Or if you wanted to use your preferred toilets because sometimes even using those male toilets there are people [who] give you this look [saying] 'why are you coming in these ones?' like they are scared of you [FGD-2, Transgender persons, Kampala].

From the above quotation, it is evident what the effect of school rules and regulations is. Unlike community settings where the rules are unwritten, in schools the rules and regulations governing the conduct of students are often written and codified, leaving no room for negotiation.

FGD participants also talked about how it is very difficult to be treated justly if you are a transgender person in school.

They will chase you from school. Most of the schools will chase you if they find out you are transgender [FGD, Transgender persons, Lira District].

Study participants also expressed concerns that schools do not have any policies that protect people who identify as transgender. Instead, school rules and policies are out to punish and expel transgender persons.

... most times the policies do not even protect us, like in case you are bullied and stuff, how do you even go to report that, it's like you are not protected. Most of them when they find out that you are trans they will expel you. They will be like this child is not conforming to the strict school rules and regulations. They will even organise the PTA meeting ... most of us are forced to drop out of school [FGD-2, Transgender persons, Kampala].

As the voices above illustrate, transgender students face the risk of either being expelled from school or dropping out on their own because of the stigma, discrimination, bullying and lack of protection from school authorities. Schools are supposed to be places that cater for the needs of people with different needs, personalities, challenges and interests. Apparently, that is not the case. The strict school rules and regulations provide a basis for institutional stigma and discrimination against people who do not conform to the expected divide between male and female.

Still, there is little opportunity for these violations to be addressed or resolved.

b) Discrimination in employment

Transgender persons reported that they find it difficult to find employment both because of low levels of education but most importantly, because they are transgender. Being transgender often means that they dress and look different from what employers expect, leading to unfavourable treatment at job interview panels.¹⁰⁵ As transgender persons in Lira reported, if the mere looks of a transgender person do not fit in the expectations of the potential employers, then the chances of getting a job are diminished.

I am a friend to the teacher who won't get a job because of the way she dresses, long hair, so no school will really employ her. It's very difficult because for an example, when you go for a job interview, let me say, like they want a female but then you like my appearance they might think yes, I am a female, but then reaching there, the way I'm dressed doesn't match what they really want and the way I present myself it is not what they want. So by the end of the day, I will end up losing the job just because the way I dress and the way I present myself [FGD, Transgender persons, Lira District].

What the above means is that Ugandan employers are more likely to focus on the physical looks and physical presentation of the job seeker than on the skills and capabilities of the person.

Similarly, several transgender people reported that they had lost the jobs they had due to the difficulties at work and the discomfort expressed by the employers. One transgender person who participated in an FGD in Mbale narrated how he had been recruited by a male proprietor of a restaurant to work as a waiter, but was terminated after a few days when the wife to the proprietor expressed discomfort with the way the transgender person dressed and looked.

c) Stigma and Discrimination when accessing services

Study participants reported about the widespread stigma and discrimination against transgender persons when they are seeking services such as health care, and in particular HIV and AIDS services. But they also face stigma and discrimination in equal measure when they go seek services from other public offices such as those that handle matters of immigration and passport control, land matters, driving permits, trade licences, and others. Given that all such offices are usually crowded by clients waiting to be served, the first source of stigma is the other clients. They will gossip, point fingers, talk about and ask questions to the transgender person to the point that he/she becomes too uncomfortable to stay at this service point. If the transgender person is patient enough to wait and see a health worker, this will be the second source of stigma and discrimination. One

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¹⁰⁵ FGD, Lira, 11th June 2019; FGD-2, Kampala, 27th May 2019; FGD, Mbale, 12th June 2019.

transgender person narrates what a typical encounter between a transgender person and a health worker is like:

First of all before you even enter the facility, these health workers, when they are seated, or when one sees you, they begin calling another ‘you come, do you know about these people? You come and see the way they look’ just like that. By the time you go to the reception or the counselling room, at times you may not find there anyone. You sit for a long time but whoever comes looks at you, so at the end of the day you just move away without accessing the service [IDI, Transman, Mbale].

Another transman in Kampala narrated his story, see Box 1.



Box 1: Denied health care because of my looks - I don't do hospitals because of the way they will handle you. It is why I get a bias I would rather go to a pharmacy or a funny clinic - a simple clinic. It was around I think 2017, I had typhoid, I had malaria and then we now walked to [where] we were looking for a referral and that was Kiruddu, Salaama Road. So there's a woman health officer we do get to and then you tell them how you are ... and the woman looked at me. 'So are you a boy or you are a girl?' Then I was just there, like 'I am a boy'. Then she says 'Okay if I were to run some tests and you have to undress are you sure that is what I am going to see? I am supposed to test your urine are you going to stand or? And immediately my moods shifted and I was like, 'what am I even doing here?' She just told us 'first be sure of your sex' and then we said we were sure. She was like 'there's no way I can write male on your documentation so first go and be sure of your sex and then you can come back' [Transman, Kampala].



The above stories from transgender people highlight their plight and that of their colleagues in their endeavour to access healthcare services. These stories reveal unethical conduct by health workers who gossip, ridicule and make fun of clients, and do not give them quick attention. The second case reveals outright denial of services to a person, based just on their looks, contrary to the provisions of the Ugandan Constitution and the Ugandan health care policies that espouse the principles of non-discrimination.

Transgender people reported a number of consequences of such stigma and discrimination. They for instance reported that if two of them are in a relationship, they cannot go for HIV counseling and testing as a couple because the health workers will be asking them too many questions and probably toss them back and forth. The experiences faced at health facilities also have the effect of demotivating transgender persons to return to the same place to seek care in the future. As a result, transgender persons resort to self-medication, and other poor healthcare seeking behaviours.¹⁰⁶

Other transgender persons reported how they had given up trying to get national identification documents such as a passport and a national ID due to the stigma and discrimination they faced in government offices.¹⁰⁷ Some reported challenges when registering phone simcards. Others reported that they had to spend money paying someone else to help them acquire identification documents because they could not succeed getting them on their own.¹⁰⁸ Most of those with national identity documents reported that these documents do not bear their gender of choice. Similarly, the names on their documents are the original names they were given as children and do not express their current gender identity.¹⁰⁹ It was argued that it would get complicated if they tried to get IDs that reflect their gender identity of choice because they would be asked many questions or even refused altogether.

A few who had passports reported how they get delayed at the airport as airline and immigration officials ask them dozens of questions, some not relevant to the planned travel.¹¹⁰ These disturbances are particularly experienced if the gender stated in their passport does not match the physical looks and dressing of the passport holder. One participant reported how he had missed a flight due the delays caused by the questioning of their identity.

It is important to point out that most of these injustices and rights violations that happen at family and community level go unreported and unpunished. As a result, the transgender persons affected do not get any justice.

3.3 Available avenues for accessing justice for transgender persons

The above violations and abuses would require redress. Indeed the state machinery on access to justice is potentially available to transgender persons as it serves everyone. However in reality, the judiciary, police and local council authorities that

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¹⁰⁶ FGD, Mbale, 12th June 2019; FGD-1, Kampala, 24th May 2019; IDI, Mbale, 12th June 2019.
¹⁰⁷ FGD, Kasese, 18th June 2019.
¹⁰⁸ FGD, Kasese, 18th June 2019.
¹⁰⁹ FGD, Kasese, 18th June 2019; FGD-1, Kampala, 24th May 2019.
¹¹⁰ FGD-2, Kampala, 27th May 2019.

other people would often find easier to access are not that readily available for transgender people. This sub-section addresses the available options and how easy it is to access them.

3.3.1 The local council courts

These are usually the avenues of first resort for any persons in a village setting as they start at village level. However, as already seen, most local council officials are complicit in violations of the rights of transgender persons. The advantage that these courts have of being based at the village level and thus delivering justice that everyone understands becomes a disadvantage when it comes to transgender persons as the LC authorities would know them by ‘reputation’ and would most likely side with the parents or community. Local council officials also usually exceed their powers and evict people from their rented premises or banish them from the community. HRAPF documented 43 cases of eviction of LGBT persons from their homes or offices in the years 2014 to 2018.¹¹¹ While not all of these evictions were carried out by the LCs themselves, they were mostly condoned and supported by these local authorities. They are thus virtually a no-go area for transgender people seeking justice.

One transgender person narrated how they went to the LC for protection from a landlady that wanted to evict them:

I tried to go to the LC. I - wanted her [the landlady] to at least give me a period of like three months to look for where to go. But when I reached at the LC ... they told me even that two weeks period she has given you a lot of time. So I ... I ended up leaving her house ... [FGD-1, Transgender persons, Kampala].

3.3.2 The Police

One of the other common avenues for accessing justice is to report cases to the police station. The police is present in almost all different areas of the country, and often both civil and criminal matters are brought before them. However, transgender people do report that the police mistreat them whether they report a case, or a case is reported against them.

For the issues or incidents which transgender persons think should be reported to police, the transgender persons have many reasons for not going there. Some, based on their previous experience, believe that reporting to police is not helpful. Most likely the police will not attend to their matter, or sometimes the case may

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¹¹¹ See Human Rights Awareness and Promotion Forum Uganda report on the protection and violation of rights on the basis of sexual orientation and gender identity (2018) 23; (2017) 37; (2016) 41; (2015) 41 and (2014) 32. All these Violations Reports are available at <https://hrapf.org/index.php/resources/violation-reports> (Accessed on 15th December 2019).

instead be twisted to turn against the transgender person that has reported.

Indeed, some expressed hesitation or fears of going to police to report, fearing that they may instead get arrested if they appear at police even though they are the ones aggrieved. In the view of a transwoman interviewed in Kampala:

You first evaluate, before going to police, they may arrest her instead, the one they call the homosexual, they may jail her instead of the one she came to report. ... You may want to go and report a case and then it ends up when they have turned back on you, that, “you, you are a homosexual; you deserve to be behind bars”. [IDI-2, Transwoman, Kampala].

Another transwoman expressed the dilemma as follows:

Now you wonder how you even put that case like an example how can I go and report that my parents beat me because they found me with the LGBT content? Do you see how you are handing yourself over to police? You just keep quiet because you may reach and things turn around and they get you [FGD-2, Transwomen, Kampala].

For those who choose to report, they usually do so through the lawyers at HRAPF’s legal aid clinic.

It is not easy because it is not easy to report that you’re a transwoman unless you call HRAPF and it is not easy to report a case. Maybe when you go and report that you are a male but when you say that you are a transwoman you cannot report. If you are a transwoman and then you are beaten there is nowhere you can report ... So it is not easy at all [FGD-2, Transwomen, Kampala].

However, some noted that the ease with which one can report injustices may also depend on the nature of the case. For instance, it is a little easier to report cases of discrimination at work, or damage to property, than cases involving sexual offences.¹¹² Others reported that the police can only be helpful if one has money to give them a bribe. One transman in Mbale mentioned that he reported a certain incident to police. Other participants in the FGD were sceptical about the usefulness of reporting, asking how much money he had to pay to the police to do anything about the matter. Others said they experience similar threats but they do not bother to report to the police or to the paralegals because it is useless.¹¹³ These responses indicate lack of trust in the police system. Another transgender person who reported a case of attempted murder to police was threatened into

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¹¹² FGD, Mbale, 12th June 2019.

¹¹³ FGD-2, Kampala, 27th May 2019; FGD, Mbale, 12th June 2019.

withdrawing/abandoning the case.¹¹⁴

The police also arrest transgender persons arbitrarily without any justifiable reasons. As already noted in previous sections, transgender persons are often arrested from the streets, public places and even their residences merely based on their looks or their dress or because of the company they have. During an interview with the Legal Officer at HRAPF who is responsible for Key Populations, it was reported how a group of transgender persons who live together in Katwe, one of the Kampala suburbs, are arrested by the police in collaboration with the LC leaders almost every month. She interprets the monthly arrests as a way of getting the transgender people, perceived as homosexuals, to get out of that community. Indeed, many of these arrests are based on the suspicion that they are homosexuals. Thus to begin with, the reasons for arrest are usually unjust and arbitrary.

Even where the police is called in to rescue transgender persons from attacks, they instead arrests them. HRAPF has documented a number of cases involving arbitrary arrests of transgender persons by police. One such a case is reproduced below.¹¹⁵



Box 2: Beaten by a mob and then arrested - In one incident reported to HRAPF, a transwoman was severely beaten by a mob and badly injured on 2nd April 2016, but on 4th April 2016, when the police supposedly came to rescue her, they instead arrested her for ‘homosexual tendencies’ and ‘being a boy dressed as a girl’. This was at Kikajjo police post. The transwoman was not officially charged with any offence at the police station and was released without charge, although she reported suffered harassment at the hands of police officers. *Source: Case No. 0-12/2016, HRAPF Records.*



This incident exemplifies the many cases of arbitrary arrest conducted by members of the Uganda Police Force targeting transgender persons. These acts not only constitute a violation of the right to freedom from arbitrary arrest and detention

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¹¹⁴ FGD, Mbale, 12th June 2019.

¹¹⁵ Human Rights Awareness and Promotion Forum. *Uganda Report of Violations Based on Sexual Orientation and Gender Identity 2017 (2017)*. Human Rights Awareness and Promotion Forum. Kampala.

as enshrined in Uganda’s Constitution, but also a violation of the right to liberty. The case also demonstrates a miscarriage of justice given that the police who were supposed to protect the victim from mob violence, instead arrested her.

Transgender persons also reported that during the process of arrest, they are often beaten, tortured, abused and mistreated in all sorts of ways. If they are transported on a police vehicle, they are bundled up and forced to lie down under the seats as the quotations below illustrate. Sometimes police officers fondle their chests and private parts to feel if they have male or female organs.¹¹⁶

... they picked me because of my hair and the way I was dressed. They picked me first, I was– they told everyone to sit down, I sat down but they pointed at me first then were like: ‘enter the car’. I entered. I entered with slaps [Transgender person, Mbale].

... he arrested me and said that I have already known that you are not a lady you are a male I have already known and he sloped me to the police station that was near there. They hit me, they kicked me everywhere, they kicked me too much... [Transgender person, Kampala].

They squeezed us in the police vehicle, under the seats, you go inside, you go inside like thieves [Transgender person, Mbale].

It is evident that the rights of transgender people are not respected during arrests. Some of the treatment they receive equates to sexual assault and some of it subjects them to the risk of sexual abuse. Transgender participants in FGDs reported that when arrested, police usually puts them in either male or female cells depending on whether they physically look male or female.¹¹⁷ Some transgender persons reported being tortured in police cells.¹¹⁸ Key informants who work with transgender and human rights organisations reported how they have sometimes rescued transgender persons from police cells after they have been physically tortured during the process of arrest and detention. Some come out with open wounds resulting from the torture.¹¹⁹ It was also reported that some police officers tell other inmates to undress transgender persons to confirm their biological sex.¹²⁰ All the above indicates mistreatment of suspects whose rights ought to be respected while in police hands.

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¹¹⁶ FGD-2, Kampala, 27th May 2019.

¹¹⁷ FGD-2, Kampala, 27th May 2019; FGD, Mbale, 12th June 2019.

¹¹⁸ FGD-2, Kampala, 27th May 2019.

¹¹⁹ KII, TGO, Kampala, 11th May 2019.

¹²⁰ IDI, Mbale, 12th June 2019; FGD, Mbale, 12th June 2019; FGD-1, Kampala, 24th May 2019.

Asked if the treatment they get from police as transgender people is worse than that received by other people, the transgender persons thought that it is definitely worse, and one FGD participant explained:

Being a transgender ... it is more difficult, reason being for them [police] they do not see you as a human being. First of all they put all names on you. Whichever bad thing, they even put there false cases. All cases, every bad name you hear in this world, they put them on you. [FGD, Transgender persons, Mbale District].

Police officers reported that in the spirit of gender sensitivity, male suspects are arrested by male officers while female suspects are arrested by female officers. The male and female officers often move together to make arrests but one of the same sex as the suspect takes an upper hand in the physical handling of the suspect.¹²¹ The police reported a challenge in handling transgender suspects because first of all they are not sure if they are male or female and what the suspects say they are often contradicts their physical appearance; and secondly because the police force has no known transgender personnel that can be deployed to handle transgender suspects. The same challenge arises when police has to confirm the sex of the suspect by undressing them. Ideally, a male officer should undertake such a role on a male suspect, while a female officer should handle a female suspect. It was found that in cases where there is uncertainty as to the sex of the suspect, sometimes female officers end up undressing suspects with male organs and vice versa.

Other transgender persons reported that during their arrest, the police threatened to call the media, and then used this threat to extort money from them. One transgender person in Kampala reported that the media was actually called to film him at the police cells after he was undressed. HRAPF has also documented more than one incident in which police has called in the media and sometimes forced the suspects to look into the cameras of media people. See the story in Box 3.¹²²

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¹²¹ KII, Police Officer, Lira 12th June 2019; KII, Prisons Official, Luzira, 24th June 2019.

¹²² Human Rights Awareness and Promotion Forum. *The Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity, 2018* (2018). Human Rights Awareness and Promotion Forum. Kampala.



Box 3: Arrested for nothing, subjected to media coverage - A transwoman who had been arrested simply for walking past Ndeeba Police Station dressed as a female was quizzed on whether she was really male or female. When she admitted that she was transgender, they took her into the station and forced her to stay there, even though at that point they kept insisting that she was not under arrest, for purposes of satisfying their curiosity as to her gender identity. The police eventually arrested her and subjected her to unnecessary media scrutiny when they invited journalists from a popular Luganda TV station, Bukedde TV, to capture her story, telling them that she had been dressing as a woman to fleece fellow men. The police officers forced her to speak to the journalists and submit to having herself photographed/filmed, and the story later aired on the station's popular bulletin, 'Agataliiko Nguufu'. Original Source: HRAPF/VR-18/013, HRAPF Records.



In the above case, the police which is supposed to protect people's rights actively facilitated and engaged in the violation of the suspect's right to privacy and liberty. The police also violated the transwoman's right to free movement as provided for under Article 29(2)(a) of Uganda's Constitution.

Anal examinations have also been done on transgender persons arrested. This arises from the police not distinguishing between homosexual and transgender persons, and so in a haste to get evidence for 'carnal knowledge against the order of nature', they subjected the arrested trans persons to anal examinations.¹²³

... you are going to be subjected to all those kind of insults like forced anal examination [KII, Transgender Organization, Kampala].

This explains why many transgender persons would not want to access the police for fear of being arrested arbitrarily and mistreated.

Transgender persons who had dealt with police reported bad experiences with the police handling their matters. When asked if they knew where they could report a police officer who has harassed or mistreated them, transgender persons reported that it is very difficult to report a police officer, and one can only do that

¹²³ Telephone interview with Programmes Director, A Hand for Rescue, Kampala, 15th December 2019.

if well connected to higher authorities in government. They reported that even if one reported to higher authorities in police, they will gang up to protect their own staff. Some in Kampala said they would report to the District Police Commander (DPC), arguing that the senior police officers are more understanding than the juniors. HRAPF reported that cases where the police officers abuse transgender persons are reported to the Professional Standards Unit of the Police, the process has not proven very helpful.¹²⁴ Despite the existence of the mechanism, clear and deliberate steps have not been taken against the errant police officers where such complaints have been made.

Transgender persons who participated in the FGDs in Lira, Mbale and even Kampala had never heard about the Equal Opportunities Commission. They also did not know about the Police Standards Agency. Asked about where he could report if he was offended by police, one transman in Kampala responded:

I actually do not know, is there another place they report to not the police itself? [IDI, Transgender person, Kampala].

These findings mean that the police can abuse the rights of transgender persons and get away with it since the transgender persons do not know where they would report them or do not find such mechanisms effective.

3.3.3 Courts of law

The courts of judicature is where persons who have legal claims have to report or persons charged with criminal offences are supposed to appear. However, very few transgender people have brought cases before the courts. Indeed, in all the 11 cases involving LGBT issues brought before Uganda courts, only four had transgender persons as petitioners. Pepe Julian Onziema, a leading transgender activist in Uganda was a petitioner in three of the cases.¹²⁵ It is thus rare for transgender people to bring cases to the courts challenging discrimination. More importantly, these cases were more concerned with sexual orientation than gender identity, and so no specific case on transgender issues has been brought before the courts.

In some instances, however, they are dragged to the magistrates' courts when they are the accused in criminal proceedings. This is however rare, as most cases end at the police station. Transgender persons who participated in this study

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¹²⁴ Interview with HRAPF Legal Officer, n 95 above.

¹²⁵ *Kasha Jacqueline, David Kato Kisule and Onziema Patience v Rolling Stone Ltd. and Another* Miscellaneous Cause No. 163 of 2010; *Prof J. Oloka Onyango, Hon Fox Odoi-Owyelewo, Prof Morris Ogenga-Latigo, Andrew M. Mwenda, Dr Paul Ssemugooma, Jacqueline Kasha Nabagesera, Julian Pepe Onziema, Frank Mugisha, Human Rights Awareness and Promotion Forum and the Centre for Health, Human Rights and Development v Attorney General* Constitutional Petition No. 008 of 2014 and the *Lokodo* case, n 54 above.

reported that though many of them had been arrested at different times, they had never been taken to court regarding the alleged offences for which they were arrested. None of them knew another transgender person that has ever been produced in court following arrest.¹²⁶ This was attributed to the fact that for almost all the offences that transgender persons are arrested for or accused of, there is usually no evidence. It was found though that some cases have gone to court, although there are few convictions.¹²⁷ Usually, the cases end in dismissals for want of prosecution as there is usually no evidence. Key informants working with transgender organisations reported how the few cases of transgender persons that go to court end up being prolonged and mishandled because the magistrates or judges do not understand the transgender status and how to handle issues around it. In such cases therefore, the magistrates may keep adjourning the case and sending back the suspect to remand without proceeding with a proper hearing.

If I give an example of a case I really know of some transwoman who was arrested and she stayed in prison for some time. But the reason why she stayed in prison for a long time is because the court failed to understand that difference, failed to understand the trans bit. So they kept sending her back to prison every time she was at the court hearing they kept sending her back to prison [KII, Transgender Organisation, Kampala].

It was also noted that if the magistrate/judge does not understand what it means to be a transgender person, they will most likely treat any case involving a transgender person as a homosexuality case.

... if a judge does not understand that case completely – does not understand trans or does not want to understand trans, or they come from a set up that is very religious and cultural and do not want to accept that notion, they are going to treat you as a homosexual in that court. And you are going to be subjected to all those kind of insults like forced anal examination [KII, Transgender Organisation, Kampala].

It has also been noted that particular magistrates tend to be vocal about their disapproval of LGBT persons in open court. These magistrates would ridicule transgender persons and would even go as far as calling them mentally unstable.¹²⁸

However, HRAPF's Legal Officer reported that transgender persons nevertheless have a more positive experience with courts compared to the police. She argued that court processes tend to be more professional, legal and logical, compared to

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¹²⁶ FGD-2, Kampala, 27th May 2019; FGD, Mbale, 12th June 2019; FGD, Lira, 11th June 2019; IDI-1 Kampala, 27th May 2019; IDI, Mbale, 12th June 2019.

¹²⁷ Interview with Legal Officer, HRAPF, n 95 above.

¹²⁸ Follow-up interview with HRAPF Legal Officer, 15th December 2019.

police where matters are handled in a murkier manner. At police, a lot depends on the whims of individual police officers. In situations where they are trying to extract some money from the suspect, they deliberately create a back and forth process that delays justice and frustrates the suspect and those trying to support him/her.

3.3.4 Prisons

Transgender persons who get arrested and taken to court may be remanded to prison. Just like in police detention, they have to be placed in either male or female cells exposing them to sexual violence from fellow prisoners.¹²⁹ Key informants confirmed that they are aware of physical and sexual abuses that some transgender persons have encountered in prisons cells.¹³⁰ Other inmates also tease transgender people about their looks and asked them many sarcastic questions.

Prisons officials confirmed that prison cells are only designated as male and female. If a prisoner is biologically male, he definitely goes to the male wing and vice versa.

Prison is a restricted community. It is not a free environment and there are rules and regulations. This is a male prison and we have a female prison. Male and female are not kept together by law and there is no prison which was built for transgender so our prisons are for either male or female inmates. There is no mid line of transgender [KII, Prisons Official, Luzira, Kampala].

Custody in prisons was reported to be based on certain principles, high-ranking among them being the safety of the prisoners.

We treat our prisoners with the same principles. If we assess that you are not a man that you are a woman or you are more of a woman than a man with the anatomy and others then you go to the female room. But if we say you are a man and your safety is assured and will not cause harm to others then we put you with the others it is all about the safety of the prisoner. If we assess that there will be a problem then we take you where you are supposed to be. But when we assess you are a man whom we just need to tell the others how to deal with you and handle you, not to harm you then we do that as long as we are sure you will be safe... Our rules are not about feelings they are about the physical. They check you, if the doctors say 'Mr. Officer in Charge this one is a man', we treat you as a man not what you feel it is what you are physically [KII, Prisons Official, Luzira, Kampala].

Prisons officials reported that it would be good to have separate prison wings for transgender persons because they are often tortured or bullied by other inmates because of the way they talk, look and present themselves.

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¹²⁹ FGD-1, Kampala, 24th May 2019; FGD, Mbale, 12th June 2019.

¹³⁰ KII, TGO, Kampala, 23rd May 2019; KII, TGO, Mbale, 12th June 2019.

3.3.5 Directorate of Public Prosecutions

The question of accessing justice also comes into play when transgender persons find themselves at various levels within the criminal justice system. The charges preferred by the police upon arrest of transgender persons are to be sanctioned by the Director of Public Prosecutions (DPP) before the accused person is brought before court.¹³¹

In considering the experiences of transgender persons in interacting with State Attorneys in the office of the DPP, it was found that these State Attorneys often express curiosity and disbelief at lawyers who are willing to defend the rights of transgender persons and other sexual minority groups.¹³² State Attorneys also tend to sanction charges of ‘having carnal knowledge against the order of nature’ against transgender persons, even where these charges cannot be sustained.¹³³ Crime suspects ought to be charged only if there are facts available on file to support the preferred charge. The DPP is guided by performance standards and guidelines which provide that the decision on whether or not to prosecute should be strictly guided by the sufficiency of evidence, the public interest and the absence of abuse of the due process.¹³⁴ The guidelines furthermore provide:¹³⁵

Care should be taken to ensure that the charge adequately and appropriately reflects the seriousness of the criminal conduct for which there is evidence and will provide courts with an appropriate basis for sentence.

In reality, transgender persons are often charged under section 145 of the Penal Code Act, supposedly for ‘having carnal knowledge against the order of nature’, yet these charges cannot be sustained in court since there would hardly ever be sufficient evidence to prove that a person had engaged in sex with a person of the same sex as them.¹³⁶

3.3.6 The Uganda Human Rights Commission and the Equal Opportunities Commission

A few participants in FGDs, especially in Kampala and Mbale, knew about the Uganda Human Rights Commission and the Equal Opportunities Commission. These also knew that these are places where one could report a complaint if their rights are violated. None of the participants had reported any complaints with

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¹³¹ HRAPF & CSHRCL (n 2 above) 45.

¹³² Follow-up interview with HRAPF Legal Officer, 15th December 2019.

¹³³ As above.

¹³⁴ Uganda Directorate of Public Prosecutions *Prosecution performance standards and guidelines* (2014) 6.

¹³⁵ As above at 7.

¹³⁶ HRAPF & CSHRCL (n 2 above) 45; Follow-up interview with HRAPF Legal Officer, 15th December 2019.

these entities. It was found that transgender persons do not approach organisations like the Uganda Human Rights Commission because of self-stigma, but also because they feel they do not know anybody there, do not have any contact, or do not have an entry point.¹³⁷

The utility of these institutions to provide remedies for human rights violations against transgender persons is also questionable. A case involving transgender persons had been brought before the UHRC in 2016.¹³⁸ The case arose after Police stopped a beauty pageant that was held as part of Pride celebrations. The case challenges the actions of the District Police Commander of Kabalagala Police Station in raiding the club where the beauty pageant was held, arresting some of the organisers and activists present with unneeded force, detaining all of the attendees at the venue and harassing transgender persons in particular by forcing them to undress. Furthermore, the Police did not protect the transgender arrestees from violent and degrading treatment inflicted by the other persons in detention. The case is still pending before the Commission, more than three years after it had been instituted, due to the case backlog which the Commission has.¹³⁹

3.4 Other options of dealing with Stigma and Discrimination at Family, School and Community Levels besides seeking redress

Since few transgender persons use the mainstream justice systems, they reported different ways of dealing with stigma and discrimination at the different levels. These strategies mainly focus around coping and avoidance rather than on seeking justice and redress. They include: ignoring other people's comments and views and focusing on their own actions and continuing to express their preferred identity; hiding their preferred identity; minimising interactions with family members; moving house; dressing up in disguising ways, such as wearing chest binders; and for those who can afford, they undertake hormonal stimulation and reassignment surgery to make their bodies align with their preferred gender identity. Resorting to the formal justice mechanisms is only done in rare circumstances.

Hiding their preferred identity was reported to be used especially when they are in settings that have many people such as schools or when they are trying to access essential services such as registering for IDs and passports or to attend job interviews.¹⁴⁰ When they revert to their preferred identity thereafter, some call it living a 'double life'. Some who are still on good terms with their parents reported

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¹³⁷ FGD, Lira, 11th June 2019.

¹³⁸ *Shawn Mugisha and 6 Others v Attorney General and the District Police Commander (DPC), Kabalagala Police Station CTR/06/2017.*

¹³⁹ HRAPF (n 3 above) 18.

¹⁴⁰ FGD, Kasese, 18th June 2019; FGD, Lira, 11th June 2019.

that they hide their preferred identity when they are going to meet their parents. So, for instance transwomen who have been dressing like women, revert to male clothes when going to meet parents. Some, however, argued that hiding one's real identity is also not easy, so they sometimes try but fail.

Others have learnt over time the do's and don't's. They know where to pass and which places they should not pass: which streets are safe to use and which ones are not.¹⁴¹

Other transgender persons talked about the evolving experience they have gone through; for instance how it was difficult for them to cope at the beginning but how they have eventually come to terms with themselves, and this has made it a lot easier to live in this society.¹⁴²

I would say at first it used to be difficult for me. I would say when I started to realise truly who I am it was really difficult for me to come out in public though some friends of mine, and other people in the neighborhood would see me, talk a lot about me, some were good, some were bad. It was very difficult for me ... until I learned to be on my own and I decided not to ... actually I decided to be me and to do what pleases me. So as I talk now, I don't feel anything bad and I really want to encourage my friends who are like me ... but I see them they're just like me previously. [Transperson, FGD participant, Lira District].

The above testimony implies that the experiences of a transgender person do not just depend on how they are accepted or rejected by others, but also how they feel within themselves and how they respond to the treatment they receive from others. The transperson who testified above said he encourages transgender persons to overcome their own internalised stigma if they are to positively cope with their status.

3.5 Access to legal aid for transgender persons

Although legal aid is generally limited for everyone in the country, it is much more limited for transgender persons. No state legal aid scheme expressly covers transgender persons. The pro bono scheme does not emphasise transgender people and very few lawyers would indeed choose to work on such issues. The Pro Bono Project of the Uganda Law Society as well as Justice Centres both recognise transgender persons as members of vulnerable groups to whom their services ought to extend.¹⁴³ Interviews with both these entities revealed that if either legal aid provider had ever provided services to a transgender person, it was without

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¹⁴¹ FGD, Mbale, 11th May 2019; FGD-1, Kampala, 24th May 2019.

¹⁴² FGD-1, Kampala, 24th May 2019; IDI-1, Kampala, 27th May 2019.

¹⁴³ Interview with Manager of Pro Bono Project, Uganda Law Society, 22nd May 2019; interview with National Coordinator of Justice Centres Uganda, 20th May 2019.

their knowledge and the transgender persons involved would have hidden their gender identity from the officers handling their case.¹⁴⁴

Among non-state legal aid providers, only HRAPF operates a legal aid clinic that specifically caters for transgender persons. The clinic is registered with the Law Council and licenced. They have been providing services for the past ten years. They have regional legal aid centres in Lira in Northern Uganda, Kasese in Western Uganda and Mbale in Eastern Uganda. However, this is not enough as all parts of the country are not served. Other legal aid service providers such as Foundation for Human Rights Initiative reported that they had not provided services to clients who specifically identified as being transgender. It is possible that these organisations have during the course of their work served transgender persons, but there is no way of knowing if the clients did not disclose this information as the clinic does not specifically reach out to this group or seek such information.

3.6 Conclusion

The above analysis shows that there are many violations against transgender people as well as discrimination at the family, community and institutional level. Unfortunately, the usual justice mechanisms are not available for transgender persons because of stigma and discrimination and because none of them specifically looks out for them. Rather than protecting them, the police violates their rights, and bodies like the Uganda Human Rights Commission and the Equal Opportunities Commission are not well known among transgender people, but even when cases are filed before them, they remain unheard and pending for years as the Commissions work through their backlog. Uganda has no meaningful legal aid scheme, and even the available avenues do not reach out to transgender people. Only HRAPF operates a specialised legal aid clinic that covers transgender people and does reach out to them, but this is not enough to cover the nationwide need.

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¹⁴⁴ As above.

SECTION IV:

THE IMPLICATIONS OF LIMITED ACCESS TO JUSTICE ON TRANSGENDER PERSONS AND THE FIGHT AGAINST HIV/AIDS

4.1 Introduction

Access to justice for transgender persons is a matter that has implications for not only transgender persons, but also for the whole population at large. This section focuses on these implications starting with those affecting transgender persons directly, and then those that affect the fight against HIV within the transgender community and the general community.

4.2 HIV Risks of Transgender people

Transgender people cannot effectively access and utilise HIV services without having their access to justice needs met.¹⁴⁵

Available evidence,¹⁴⁶ and data from this study shows that transgender persons are at a high risk of contracting HIV due to the nature of sexual practices as well as a number of other predisposing factors. The UNAIDS Gap Report 2014 for instance shows that 19% of all transgender women globally are living with HIV.¹⁴⁷ In Eastern and Southern Africa, an estimated 28,4% of transgender persons are living with HIV.¹⁴⁸ The Crane Survey of 2017 determines an HIV prevalence of 20% among transgender women in Uganda.¹⁴⁹

First, many transgender persons have anal sex, which carries more risk of HIV transmission compared to vaginal sex if it is not protected and lubricated.¹⁵⁰ This means that such transgender persons have a high risk of getting HIV and other sexually transmitted infections. Given the difficulties in access to protective tools such as lubricants, it is highly likely that many sexual acts among transgender persons



¹⁴⁵ UNAIDS Key Programmes to reduce stigma and discrimination and increase access to justice in national HIV responses. (2012) 5-6. Geneva.

¹⁴⁶ UNAIDS Gap Report: Transgender persons (2014) 2.

¹⁴⁷ As above at 3.

¹⁴⁸ UNAIDS UNAIDS Data 2019 (2019) 23.

¹⁴⁹ Makerere University School of Public Health Crane Survey Report Bio-behavioural surveys among groups at increased risk of HIV in Kampala, Uganda (2017) 61.

¹⁵⁰ UNAIDS (n 146 above) 2.

go unprotected.¹⁵¹ Sex between transgender men and their female partners also risk HIV transmission, even though such sexual interaction often go unprotected.¹⁵² During interviews and FGDs with transgender persons in this study, some of them acknowledged these risks:

... the kind of sex we do might make you too exposed compared to the straight people. I would say the oral sex, because with us like us there is no penetration so really the oral sex is widely used and that is risky itself. And then there is anal sex, apparently there's been a scarcity of lubricants ... even the health facilities they've actually testified to it [IDI, Transgender person, Kampala].

Yet this awareness of risks may not exist among all transgender persons.

Secondly, many transgender persons are involved in high risk sex. They are engaged in sex work¹⁵³ and therefore have multiple sexual partners, which increases their risk of exposure to HIV and other STIs. During sex work, they may also opt for unprotected sex if it pays more.¹⁵⁴ There are also transgender persons who have sexual relations with high risk men, such as MSM, as well as high risk women such as sex workers, thus heightening their risk of exposure to HIV. Some of the transgender persons who participated in this study explained some of these risks:

Yes, like in that a high percentage are sex workers, they are more vulnerable because a person may come and then tells her, 'sex without condom I give you a better price'. One comes and tells her, 'Me I do not want, do not like condoms'. Another tells her, 'I do not want condoms. Condoms itch me, what, what...' but you want the money. You end up risking your life because of the money because you have to pay your bills. [IDI-2, Transwoman, Kampala].

The above quotation shows that transgender persons involved in sex work are likely to have unprotected sex with multiple partners, a practice that carries an undebatable high-risk of exposure to HIV.

Third, transgender persons are often taken advantage of and are targets for 'corrective' rape, and rape within police and prison custody as reported elsewhere in this report.¹⁵⁵ Bringing these risks to an end requires extensive awareness about transgender issues and rights, as well as a clean-up of the rot in police and prisons that

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¹⁵¹ IDI-2, Kampala, 27th May 2019; Human Rights Awareness and Promotion Forum *Baseline analysis on the policy environment for access to sexual and reproductive health and rights and HIV and AIDS services for LGBT persons in Uganda* (2018) 34-35.

¹⁵² Women's Institute at Gay Men's Health Crisis 'HIV risks for lesbians, bisexuals and other women who have sex with women' (2009) 3.

¹⁵³ KII, TGO, Kampala, 23rd May 2019; FGD-2, Kampala, 27th May 2019; IDI-2, Kampala, 27th May 2019; UNAIDS (n 146 above) 3.

¹⁵⁴ IDI-2, Kampala, 27th May 2019; Swahn MH et al 'Prevalence of HIV and associated risks of sex work among youths in the slums of Kampala' *AIDS Research and Treatment* (2016) 2.

¹⁵⁵ FGD-1, Kampala, 24th May 2019.

allows staff and inmates to prey on suspects or look on as abuse is raged on them.

Given that many transgender persons are chased from their homes by their family members and are often evicted from rented accommodation, they also face risks of sexual assault and rape as they live in temporary or improvised accommodation or are forced to seek temporary / relief accommodation from friends, some of whom they have not known for a long time.¹⁵⁶ If the housing issues of transgender persons are not resolved, it means they continue to be exposed to the risk of HIV transmission that comes with unstable housing.

As indicated in this report, transgender persons are also at risk of or are actually experiencing intimate partner violence, including sexual violence.¹⁵⁷ Sexual violence in general and intimate sexual violence in particular is known to be highly associated with the risk of HIV transmission.¹⁵⁸ This issue also has strong implications for the link between HIV risk and access to justice. As long as transgender persons who face intimate partner violence, and specifically sexual violence, are not able to report and to seek help, they remain exposed to a continuing risk of contracting HIV from their abusive sexual partners.

The various risks of getting infected with HIV among transgender persons are also heightened against a background of limited comprehensive knowledge about HIV transmission and prevention.¹⁵⁹ Given the low levels of education, the low participation in public events, and limited access to formal information sources, most transgender people are likely to be less informed about HIV prevention measures appropriate for them.¹⁶⁰ This limited knowledge may then be exacerbated by limited access to preventive measures and poor uptake of HIV testing.¹⁶¹ These are crowned by failure or inability to enroll into treatment programmes for those who are already HIV positive, and poor adherence to HIV treatment as further discussed in the next subsection.

4.3 How limited access to justice exacerbates the HIV situation for transgender persons

There are a number of challenges and barriers that constrain transgender persons' access to and utilisation of services. These include those from their own side as potential clients (demand side) as well as those from the service side (supply side). These violations continue because there are no effective access to justice avenues, and so transgender persons may have nowhere to report.

¹⁵⁶ Interview with Legal Officer, HRAPF, n 95 above.

¹⁵⁷ FGD-2, Kampala, 27th May 2019.

¹⁵⁸ M Meskele et al 'Mapping the evidence of intimate partner violence among women living with HIV/AIDS in Africa: a scoping review protocol' 9:8 *BMJ Open* (2019).

¹⁵⁹ See generally R King et al 'HIV and transgender women in Kampala, Uganda – Double jeopardy' 21:6 *Culture, Health & Sexuality* (2019) 727-740.

¹⁶⁰ KII, TGO, Kampala, 23rd May 2019.

¹⁶¹ HRAPF (n 151 above) 34-35.

A key barrier to transgender persons' access to and utilisation of HIV services is the limited availability of friendly health services in general and HIV services in particular. First, there is a lack of tailored services for transgender people.¹⁶² This is rooted in the lack of targeted programming for transgender persons.¹⁶³ The little programming targeting KPs which has taken place in Uganda mainly focuses on sex workers, uniformed personnel and MSM, and is not specifically tailored to the unique needs of transgender people. Recent shifts in HIV programming to include KP issues has focused more on MSM, with the apparent assumption that transgender persons are the same as MSM or are covered under MSM programming.¹⁶⁴ It was also noted that some policy makers and high level programme developers mistakenly think that transmen have no high risk of getting HIV.¹⁶⁵ They for instance fail to appreciate that a transman can also have sex with other people, including high-risk heterosexual people.

Even if transgender people were to some extent benefit from the KP-friendly services that have been established in recent years, these services are mainly concentrated in Kampala, and recently in major towns hosting regional referral hospitals, not reaching most rural areas. Limited access to needed services can be conceived as a justice issue because it touches on the right to an adequate level of health care as enshrined in international treaties. Failure by government to provide appropriate HIV services to transgender persons is therefore a failure to enable them realise their right to health.

Related to the above, there is lack of transgender-appropriate HIV preventive tools such as dental dams, finger condoms and lubricants in mainstream government health facilities.¹⁶⁶ Services such as PrEP are still limited to Health Centre IVs and do not reach Health Centre IIIs.¹⁶⁷ The availability of these preventive measures in non-government facilities is also sometimes intermittent.

As transmen we do not have dental dams, we do not have those finger condoms, we just hear about them but we have not been able to access them. So basically those are the challenges that put us at risk [IDI, Transgender person, Kasese].

The recent suspension of the procurement of lubricants by the Ministry of Health is likely to further worsen access to these critical preventive measures.¹⁶⁸ There have been shortages of ARVs sometimes, putting the lives of people living with HIV at risk.¹⁶⁹ Key informants argued that though not specific to transgender persons, the government's failure to guarantee availability of HIV services such as ARVs to all in

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¹⁶² FGD-2, Kampala, 27th May 2019.

¹⁶³ HRAPF (n 151 above) 19-22.

¹⁶⁴ KII, TGO, Kampala, 23rd May 2019.

¹⁶⁵ As above.

¹⁶⁶ IDI, Transgender person, Kasese, 18th June 2019.

¹⁶⁷ KII, TGO. Kampala, 23rd May 2019.

¹⁶⁸ HRAPF (n 151 above) 35.

¹⁶⁹ HRAPF (n 151 above) 34-35.

need at all time is a denial of their right.¹⁷⁰ The risks to HIV infection created by gaps in the availability of essential HIV prevention commodities also contributes to undermining transgender persons' realisation of the right to health.

Lack of knowledge about available services is also a key barrier to transgender person's access to HIV services.¹⁷¹ This mainly affects transgender persons in rural areas who are far away from information sources and from the service outlets that offer KP-friendly services. It is also common with those that have not been in contact with LGBTI organisations. Such transgender persons might be aware of the availability of general health services such as those available in health centre IIIs, but they may not be aware of the more responsive services established at regional referral hospitals.¹⁷² It was argued that others may be aware of conventional HIV prevention measures but some are not informed about key preventive measures such as use of lubricants and PrEP:

Some are even so green about the HIV prevention and procedures because you will find a person and you ask him/her do you take PrEP? And he/she will ask you, 'what is PrEP?' and knows nothing about it. You will ask, if you are going to have sex with a person, do you use lubricant, that, 'what is lubricant? For me I know baby oil' [IDI-2, Transwoman, Kampala].

Lack of knowledge is also partly influenced by the extent and nature of information campaigns about HIV prevention and the extent to which they target or reach people like the transgender persons.¹⁷³ It was reported by key informants in this study that much of the existing HIV prevention information campaigns are mainly tailored for the heterosexual population.¹⁷⁴ They are more likely to talk about condoms rather than things like lubricants and PrEP.

Unfavourable health worker attitudes and prejudices, and broadly, stigma and discrimination while seeking HIV services emerged as one of the barriers to transgender people's access to and utilisation of HIV services.¹⁷⁵ The stigma is both from other service users waiting at the service points as well as from the health workers.

Discrimination of any person seeking health care services is an infringement of their rights to freedom from discrimination and the right to health. The conduct of some health workers are alluded to above, therefore clearly is a justice issue that demands redress as one key informant emphasises:

There is a link between right to health and access to justice because if your right to health is violated, you are entitled to access justice, you're entitled to legal

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¹⁷⁰ KII, TGO, Kampala, 23rd May 2019.

¹⁷¹ IDI-2, Kampala, 27th May 2019; HRAPF (n 151 above) 35-36.

¹⁷² KII, TGO, Kasese, 18th June 2019.

¹⁷³ HRAPF (n 151 above) 35-36.

¹⁷⁴ KII, TGO, Kampala, 23rd May 2019.

¹⁷⁵ FGD-1, Kampala, 24th May 2019; FGD-2, Kampala, 27th May 2019; IDI, Mbale, 12th June 2019.

representation, ... because you're a human being at the end of the day and I do not think being a trans should outweigh being a human being because we are all human beings first and then our different gender orientations come in [KII Human Rights Organisation, Kampala].

But there is also the issue of self-stigma. Many transgender persons may not seek services due to the feelings of fear, lack of confidence or discomfort going to health facilities.¹⁷⁶ Self-stigma may be a result of previous unpleasant experiences of discrimination, stories heard from friends, or just a result of presumed difficulties they are likely to face at the service outlet.¹⁷⁷

Another key challenge in accessing HIV services that was reported by transgender participants in this study is that for those who are in regular or long-term relationships, or intend to go into such relationships, they cannot easily go to test for HIV as couples.¹⁷⁸ The main reason they cannot easily do that is that health workers will ask them many questions about their gender, their relationship, and whether they are gay or not.¹⁷⁹ It is also feared that health workers may ask them to wait or refuse to attend to them upon suspecting or discovering that they are transgender or in a same-sex relationship.¹⁸⁰ As a result, the transgender persons who are in relationships will end up going individually as opposed to couples, if they go at all. Going individually means that they may tell lies about their HIV test results to their partners. Others will not go for such services at all in fear of being questioned or scrutinised.¹⁸¹

... sometimes you would really want to go test with your partner so that you both know but sometimes it is not possible because now when you go with your partner they will start looking at you and asking you a lot of questions, who is the man who is the woman. How come you have a female name and you are the man? So you find that you just opt for testing alone. Each one tests individually and someone [your partner] can decide to give you fake results. So you find difficulties ... [IDI, Transgender person, Kasese].

And also sometimes you find that your partner is sick and they cannot tell you and you also can't go to a doctor to ask how you can live with them as a discordant couple because now it would be hard for them to even explain to you because they don't know that that is your sexuality. So basically those are the challenges that put us at risk [IDI, Transgender person, Kasese].

The above voices show that even where transgender persons are aware of recommended practices such as couple testing and the need for discordant couples to seek advice from a health worker, they are not able to seek services as a couple

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¹⁷⁶ FGD, Kasese, 18th June 2019.

¹⁷⁷ HRAPF (n 151 above) 31-33.

¹⁷⁸ HRAPF (n 151 above) 33.

¹⁷⁹ As above.

¹⁸⁰ IDI, Kasese, 18th June 2019. HRAPF (n 151 above) 31-33.

¹⁸¹ HRAPF (n 151 above) 31-33.

due to the fears and stigma surrounding their transgender status. Yet testing for HIV as couples is one of the recommended best practices in HCT services, because it enhances transparency, communication between partners and adherence to treatment in case both or one of the partners is HIV positive.¹⁸²

FGD participants in Kasese when asked whether it was easy for transgender persons to access HIV services like for anybody else reported that they can only access services if they hide their preferred identity. Otherwise they would be a subject of scrutiny, ridicule and discrimination.

You can get those services if you go in a different identity but not using your preferred sexual orientation. Getting services is not easy because ... if you say that let me show who I am they can say you first sit there, people first surround you and they ask you questions there it will be very hard. [FGD, Transgender persons, Kasese District].

With the anticipated stigma as expressed in the above quotation, it is unlikely that transgender persons will go for HIV services.

In relation to the above issue about couple testing, the whole issue of client disclosure to a health worker that one is transgender presents a ‘double edged sword’. It is feared that disclosure to a health worker that one is transgender may attract stigma and thereby constrain access to services or the quality of services provided; on the other hand, failure by the transgender person to reveal their transgender status to the health worker may mean that their unique needs are not identified and services provided are not tailored to meet those needs.¹⁸³

Other factors such as lack of stable housing accommodation, lack of employment and incarceration by police also certainly affect access and utilisation of HIV services by transgender persons. The criminalisation of transgender persons as discussed in the previous sections of this report is itself a strong barrier that keeps away transgender persons from seeking and utilising HIV services.¹⁸⁴ Transgender persons grappling with these issues are unlikely to prioritise seeking of HIV services. They may also be unable to keep appointments or to maintain adherence to treatment if they are already enrolled into services.¹⁸⁵ Given the large number of transgender persons that are facing these challenges, it can be estimated that the effect on access to and utilisation of HIV services is huge. According to the Crane Survey, 70.7% of transgender women expressed that they can access treatment services for STDs but only 43.9% reported being able to access legal and human rights services. Makerere University School of Public Health (n 149 above) 65. Yet these issues are justice-related. If they cannot be resolved, transgender person’s options for improving their health-seeking

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¹⁸² V Nannozi et al ‘Motivators of couple HIV counselling and testing (CHCT) uptake in a rural setting in Uganda’ 17:104 *BMC Public Health* (2017) 1.

¹⁸³ HRAPF (n 151 above) 32-33.

¹⁸⁴ KII, TGO, Kampala, 14th May 2019.

¹⁸⁵ HRAPF (n 151 above) 44.

behaviour are limited.

Overall, the above discussion shows that transgender persons face multiple barriers to accessing and utilising HIV services. Some of the barriers are from the demand side, but most of them are from the supply side. This calls for interventions that integrate HIV services and justice services. It is clear that there is a link between these barriers and access to justice. One of the ways through which systems change and address needs of rights holders is through being held accountable. Without effective access to justice mechanisms, which are as a result of the law not addressing stigma, transgender person cannot be able to seek redress when their rights are violated.

4.4 The impact of failure to address access to justice concerns on HIV prevalence rates among the population

There is a close link between failure to address HIV among transgender people and the high HIV prevalence rates among the general population. Stigma, discrimination and the laws combine to ensure that transgender persons do not access HIV services. This increases the HIV prevalence rate among this particular sub-group. The HIV prevalence rate among transgender women in Uganda is a high 20%. See Makerere University School of Public Health, n 149 above. However, still the same stigma and discrimination makes transgender people to cope by hiding their identity and through doing sex work. This implies that they enter into sexual relationships with men and women who do not identify as transgender, who in turn also have sexual relationships with others in the general population, thus raising the prevalence rate generally.¹⁸⁶ Therefore not addressing the access to justice needs of transgender people, and not addressing the barriers that they face puts everyone at a high risk of HIV.

4.5 Conclusion

There is a direct link between limited access to justice for transgender persons and the increased HIV prevalence rate among transgender persons and in the general population. Transgender persons are a Key Population in as far as HIV is concerned and as such there is need to address the barriers that they face. Legal and access to justice barriers are key among these barriers as this study has shown. Transgender persons do not form an exclusive group that does not interact sexually with the rest of the population, and as such not addressing HIV barriers among them implies a failure to address the high HIV prevalence rate. Enabling access to justice for all is thus an important way of ensuring that the HIV prevalence rate is kept low.

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¹⁸⁶ W Wu et al 'Potential HIV transmission risk among spouses: marriage intention and expected extramarital male-to-male sex among single men who have sex with men in Hunan, China' Forthcoming in *Sexually Transmitted Infections BMJ Journal*.

SECTION V:

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

This study establishes that the legal and policy framework greatly affects how transgender persons access justice in Uganda. International standards on access to justice require that every person is treated equally without discrimination and generous interpretations have been made of international human rights documents that clearly includes transgender persons among those protected. This is both at the international level and the African regional human rights level. Legal aid too is an accepted right as it is important for the poor and marginalised to access justice. Transgender people are usually both poor and marginalised. Unfortunately, the domestic legal framework is much more confusing. The Constitution clearly protects the rights of everyone, establishes different avenues for access to justice without discrimination and establishes positive provisions for all persons including transgender persons. Similarly, various laws creating different avenues to access justice including the Police Act, the Uganda Human Rights Commission Act, the Equal Opportunities Commission Act and the Judicature Act all do not discriminate and include every person, and this would cover transgender persons. The main challenge however is that these positive laws do not expressly recognise transgender persons, and as such they can be conveniently forgotten. Laws providing for legal aid service provision cover marginalisation but do not mention transgender people specifically. The laws create a situation of legal invisibility for such persons, and yet other laws prohibit conduct and actions that directly affect transgender persons. The Penal Code's criminalisation of consensual same-sex relations, being rogue and vagabond and common nuisance gives the police perfect tools to use against transgender persons and the High Court's extension of the reach of section 145 of the Penal Code Act which criminalises carnal knowledge against the order of nature means that transgender groups may not organise meetings or have their organisations registered. This puts transgender people at the risk of not utilising the access to justice channels as they are not guaranteed protection.

Similar to the laws, the policies governing legal aid service provision are also silent about transgender persons. It is only a few concerning HIV/AIDs that mention Men who have Sex with Men, some of whom may identify as transgender, and these too do not cover access to justice. The National Legal Aid Policy is yet to be passed and so there is almost no policy framework on access to justice, let alone one covering transgender persons. This continues the challenge of legal invisibility.

Whereas the legal and policy framework on access to justice is generally weak, and almost entirely excludes transgender persons, stigma and marginalisation makes them persons in great need of effective means of accessing justice. Transgender

persons suffer violations of their rights as well as discrimination at the family, community and institutional levels. At the family level, they are usually excluded, discriminated and thrown out of home, which leads them to leave education and to lack family support. At the community level, they are usually evicted from rented premises, face violence and sometimes murder, as well threats of rape. Local council authorities who are supposed to help them to access justice usually join in these violations. They may not buy products and services from the local shops, use local taxis or boda bodas. Their visibility as being different exacerbates this problem as does ignorance. Many people regard them as gay and therefore add homophobia to transphobia. They are often accused of recruiting and spoiling children, being outcasts and devil worshippers. They are subjected to abuse and harassment and sometimes mob justice. All this is without recourse to the justice system. At the institutional level, they are harassed and bullied at school, denied employment, or lose their jobs, discriminated when accessing health care and HIV services and denied services by persons registering or by the police.

In such an environment, transgender people face real challenges when trying to access justice, and these have made many of them to resort to coping mechanisms rather than trying to seek redress. They rarely report their challenges to the authorities. The Police which usually is the first point of call for persons facing violations or violence is largely out of the question because the police usually focuses on one's gender identity rather than the crime one has come to report. This usually results in arbitrary arrests, which quickly degenerate to accusations of homosexuality and sometimes non-consensual anal examinations. While in police cells, they are subjected to harassment by inmates and also groped by police officers. Therefore reporting to the police is a terrifying experience and the few who have been able to do so, have done so with the help of HRAPF lawyers. One has to think twice before reporting to the police. It is also unclear where one is to report to if it is the Police itself doing the violations, and the Police's Professional Standards Unit has not been very useful. Sometimes a case may go up to court, and then people may be remanded, creating a further set of challenges in prisons mostly due to the absence of specific cells for transgender persons, and so they have to be placed in cells for either females or males, which sometimes leads to sexual violence by other inmates or exclusion. The courts of law do not usually understand transgender issues and they are thus treated as homosexuals. Sometimes, they face verbal abuse from magistrates. Very few cases have been brought in the courts by transgender persons. The three cases which had a transgender applicant were all brought by the same person and they barely concern transgender issues. The Uganda Human Rights Commission has been engaged in two cases concerning transgender persons, but they are slow in investigating. The Equal Opportunities Commission is yet to be utilised. Therefore transgender people barely access the available avenues for access to justice, and when they do, it is usually as suspects. There is a direct relation between this lack of access and the laws that criminalise that impact on access to justice and those that prohibit activities that affect transgender persons.

Access to legal aid services is another challenge. There is no national legal aid scheme and so the Uganda Law Society and the Law Council try to fill in the gap through the pro bono scheme. These however reach out to only a handful of persons, and as such transgender persons are not prioritised. Among civil society organisations offering legal aid, only HRAPF offers specialised services and reaches out to transgender persons. It has legal aid centres in Mbale, Lira and Kasese but these are not enough. Other legal aid service providers do not reach out to this group in particular and as such do not receive cases concerning them, or if they do, they are not aware. With no legal aid, many transgender people may as well forget about access to justice.

Finally, since there is limited access to justice, transgender people have resorted to ways of coping with the violations, discrimination and marginalisation. Many try to fit within society by appearing to be like everyone else, others move away from areas where they are known and yet others face the challenges openly and head-on. This certainly affects them psychologically, and makes it more problematic to live a life of dignity.

Therefore, Uganda’s legal and policy framework has a huge negative implication on access to justice for transgender persons. This in turn has a huge implication on the fight against HIV, as people who are discriminated and legally invisible and yet persecuted cannot seek services or use them correctly. Transgender persons cannot easily access HIV services and health services in general due to stigma and discrimination at service points. This stigma and discrimination is both from other clients seeking services and from health workers. Transgender persons cannot easily seek/utilise HIV services from mainstream health facilities unless they hide their preferred identity. The legal framework needs to be addressed and laws curtailing transgender persons’ rights as well those limiting access to justice amended or repealed, and positive laws should be put in place. The Constitutional requirements for equality as well as the international obligations have to be respected as transgender persons are human beings like others.

5.2 Recommendations

The study makes the following recommendations to the following entities:

To Parliament of Uganda

- Amend the Penal Code to remove section 145 of the Penal Code Act, which criminalises consensual same-sex conduct between adults, and also remove sections 160, 167, 168, and 381 of the Penal Code Act which criminalise ‘being a common nuisance,’ ‘being idle and disorderly,’ ‘being a rogue and vagabond’ and personation respectively, which offences are used to arbitrarily arrest transgender persons on the basis of their appearance.

- Amend the laws to remove sections of the HIV Prevention and Control Act (2014) that criminalise HIV transmission.
- Amend the Registration of Persons Acts to provide a procedure for changing sex for adult persons.

To Ministry of Health (MOH)

- Specifically include transgender persons in policies concerning HIV prevention and control.
- Ensure the availability of all services in the minimum package of services for KPs and the additional services tailored to the specific needs of transgender persons e.g. PrEP, SMC and Universal Testing & Treatment (UTT).
- Train more health workers to provide KP-friendly services, paying special attention to the different needs of transgender persons.
- Extend and sustain the MARPI model in different parts of the country.

The Ministry of Gender, Labour and Social Development

- Include transgender persons in policies that concern gender issues.

To Ministry of Internal Affairs – NIRA/Uganda Police Force/Uganda Prisons

- Introduce Rules/Guidelines easing the process of change of gender markers for transgender persons.
- Police stations and prisons should have separate cells for people do not conform to the binary genders of male/female – even if it is a small room.
- Organise sensitisations for NIRA officials, police officers and prisons officials on transgender issues.

The Uganda Law Reform Commission

- Make recommendations for amendment of the Penal Code to remove provisions criminalising same-sex relations and those creating petty offences such as common nuisance, idle and disorderly, rogue and vagabond and personation.

To organisations working on transgender issues

- Create awareness about transgender persons, and their needs.
- Sensitise transgender persons about their rights and about the available access to justice mechanisms.
- Undertake dialogues with various stakeholders (policy makers, law enforcement authorities, civil society, parliament, community leaders, and the media) to create understanding of the situation of transgender people and the issues affecting them. Such dialogues should include local leaders such as Local Council leaders, councillors, cultural leaders, religious leaders and clan leaders.
- Train more community paralegals from among transgender persons in order to assist in linking transgender persons in conflict with the law to professional legal services, strengthen provision of legal advice and referral.
- Train peers who are located within health facilities to be able to better link transgender people to the health workers and facilitate the reception and interaction with health workers.
- Strengthen provision of legal aid services and representation to transgender persons accused of various offences.

To Health Service Providers (CSOs, Health Facilities)

- Integrate in HIV programmes, components for support to victims of intimate partner violence, rights violations, and mental health support.
- Use innovative KP-friendly strategies such as outreach and peer-based models to reach transgender persons with HIV-tailored services.
- Ensure HIV programmes have linkages to legal literacy and legal aid services.



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The Partnership to Inspire, Transform and Connect the HIV response (PITCH) enables people most affected by HIV to gain full and equal access to HIV and sexual and reproductive health services.

The partnership works to uphold the sexual and reproductive health and rights of lesbian, gay, bisexual, and transgender people, sex workers, people who use drugs and adolescent girls and young women. It does this by strengthening the capacity of community-based organisations to engage in effective advocacy, generate robust evidence and develop meaningful policy solutions.

PITCH focuses on the HIV response in Indonesia, Kenya, Mozambique, Myanmar, Nigeria, Uganda, Ukraine, Vietnam and Zimbabwe. Partners in these countries also share evidence from communities to influence regional and global policies that affect vulnerable populations.

PITCH is a strategic partnership between Aidsfonds, the International HIV/AIDS Alliance and the Dutch Ministry of Foreign Affairs.



