

The background of the cover is a close-up photograph of a person's hands. The person is holding two syringes: one with a yellow plunger and the other with a white plunger. A red awareness ribbon is wrapped around the person's right wrist. The background is a soft, light blue gradient.

THE UGANDA REPORT OF HUMAN RIGHTS VIOLATIONS AGAINST PEOPLE WHO USE AND INJECT DRUGS, 2018

December 2019

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ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM

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

ABOUT CONTRIBUTING ORGANISATION



Uganda Harm Reduction Network (UHRN), is National Coordinating entity for people who use drugs in Uganda established in 2008 and registered under No.80010004154686 to respond to the drug use crisis in Uganda. The network works to advocate for practical interventions aimed at supporting and addressing issues of people who use and inject drugs in Uganda. The network also seeks to provide a national platform for human rights, health and policy programs that promote good practices and advocate for a supportive environment for the adoption, inclusion, implementation and expansion of harm reduction programs.

PREFACE

This report is the first of its kind to be published by HRAPF. The report provides a record of the human rights violations suffered by People Who Use and Inject Drugs (PWUIDs) during 2018.

This report focuses on PWUIDs in light of the fact that this group is a Key Population in terms of their vulnerability to HIV infection coupled with the structural challenges they face in obtaining HIV services. Human rights violations committed against PWUIDs are considered and investigated as factors which cause them to be classified as a Key Population.

The report sets out the various violations suffered by PWUIDs for the period of January to December 2018, as recorded by HRAPF's legal aid clinic. HRAPF offers legal aid to People Who Use Drugs across Uganda and reaches beyond Kampala, where the Secretariat is based, by training and supporting Community Paralegals who are based in various districts in the country. All the cases handled by the main legal aid clinic in Kampala and the HRAPF-trained Community Paralegals were considered in compiling this report.

The report considers the trends in human rights violations committed against PWUIDs in light of the legal framework which regulates drug use and possession in Kampala. The recognition of PWUIDs as a Key Population and measures adopted to reduce the harm caused through the use of drugs as well the criminalisation of drug use are considered.

All the cases in this report have been independently verified through reference to case files and interviews with the victims of the violations and the lawyers and paralegals that handled the cases.

This report serves as an evidence-base of the number, extent and severity of violations which PWUIDs face due to their social status and the stigma meted out against them in society. The report provides a basis for advocating for continued and strengthened intervention from the state, civil society and development partners to put an end to these violations. This report is also intended to support advocacy efforts toward positive changes in the legal and policy environment as it relates to PWUIDs, including in their capacity as KPs. Finally, the report is intended to serve as a tool in sensitising both state and non-state actors on the discrimination and violence which PWUIDs face in their everyday lives.

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GLOSSARY

Case:	A particular situation that calls for investigation or action.
Harm reduction:	Measure to limit the negative consequences of drug use, without eliminating legal or illegal drug use.
Key Population:	Group experiencing increased impact from HIV as well as decreased services due to stigma and discrimination; violence and harassment; restrictive laws and policies and the criminalisation of behavior.
Perpetrator:	The person or institution responsible for causing a human rights violation.
Violation:	An act that contravenes a law which guarantees a right. There may be multiple violations in a single case.

LIST OF ACRONYMS

EOC	Equal Opportunities Commission
HIV	Human Immuno-deficiency Virus
HRAPF	Human Rights Awareness and Promotion Forum
MARPI	Most At Risk Populations Initiative
NDPAA	National Drug Policy and Authority Act, Cap. 206
NDPSCA	Narcotic Drugs and Psychotropic Substances Control Act, 2016
PWUID	Person Who Uses and Injects Drugs
PWUIDs	People Who Use and Inject Drugs
UHRC	Uganda Human Rights Commission
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNODC	United Nations Office on Drugs and Crime
UPF	Uganda Police Force
VCT	Voluntary Counselling and Testing
WHO	World Health Organization

EXECUTIVE SUMMARY

1. Introduction

The Uganda Report of Human Rights Violations against People Who Use and Inject Drugs, 2018, analyses cases of complaints and incidents involving this Key Population group from a human rights perspective. The report discusses the human rights violations committed against PWUIDs in 2018 and classifies the various categories of human rights violations suffered by this group. The report also distinguishes between violations committed by state actors and those committed by non-state actors. It details some of the violations against this group in order to enable the reader to understand the context and brutality of rights violations that would otherwise appear as mere figures.

This report is intended to be used as a tool for advocacy on the rights of PWUIDs in Uganda through providing evidence of systemic and contextual factors influencing the violation of the rights of this KP group.

The report is based on documentation of human rights abuses and violations against PWUIDs by HRAPF through its central legal aid clinic and affiliated Community Paralegals as well as by our partner, Uganda Harm Reduction Network. The report, however, does not include all the documented cases of violations committed against this KP group.

2. Key Findings

1. A total of 91 violations arising out of 15 verified cases were recorded during 2018.
2. State actors, and in particular the Uganda Police Force, perpetrated all 91 of these violations.
3. ~~While other Key Population groups, such as transgender persons and sex workers, face violations of their dignity from non-state actors such as their neighbors, intimate partners and the community in general, no such violations were recorded against PWUIDs. This may be due to the fact that HRAPF only started to provide legal aid services to PWUIDs in 2017 and by 2018, HRAPF lawyers and paralegals would only be approached for assistance where a PWUID had been arrested. There is need to ensure that PWUIDs are aware that HRAPF's services are available to them even in cases where they face violations at the hands of private individuals.~~

Key Recommendations

To Parliament

- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to decriminalise individual drug use or to allow for more lenient sentences where a person is an individual drug user as opposed to a trafficker.
- Ensure that government fulfils its international and regional human rights obligations to all without discrimination.

To the Uganda Police Force

- Working through the Directorate of Legal and Human Rights, continue training Police officers on the human rights of PWUIDs as well as the limits of the laws which they are mandated to enforce.
- Strengthen mechanisms which exist to redress human rights violations committed by members of the UPF. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.

To the Ministry of Health

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

To the Equal Opportunities Commission

- Monitor and investigate violations against PWUIDs, including when these arise within the criminal justice system.
- Include PWUIDs' issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train Police officers on the NDPSCA.

To the Uganda Human Rights Commission

- Investigate and monitor human rights abuses committed against PWUIDs.
- Include PWUIDs' issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and Police officers on the NDPSCA.

The Uganda AIDS Commission

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

To civil society organisations

- Raise awareness about the limits of the law in terms of criminalising drug use and possession and undertake public education campaigns to bring across strongly the message that PWUIDs in themselves are not criminalised.
- Develop the capacity of staff to document violations against PWUIDs. This could include adopting uniform guidelines for recording information on cases and violations.
- Strengthen reporting systems, methods of evidence collection and data storage in order to facilitate the verification of violations against PWUIDs.
- Support the Uganda Human Rights Commission to monitor and document reports of violence, abuse, and discrimination against PWUIDs
- Establish further partnerships with organisations for the monitoring and documentation of rights of Key Populations.

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1. INTRODUCTION

The Uganda Report of Human Rights Violations against People Who Use and Inject Drugs, 2018 is the first report of its kind to be published by HRAPF. The report analyses cases of violations of human rights of PWUIDs, as recorded by HRAPF during 2018. The report considers the impact of these violation on PWUIDs as a Key Population group in terms of HIV.

Worldwide, more than half of new HIV infections occur among members of Key Populations and their sexual partners.¹ Key Populations in terms of HIV are those groups which are particularly vulnerable to HIV, while at the same time often lacking access to adequate HIV services.² The KPs currently considered to be the main focus of the international HIV response are gay men and other MSM; sex workers; transgender people; PWUIDs and prisoners and other incarcerated people.³ PWUIDs are particularly vulnerable considering and worldwide, 1 in every 8 PWUIDs lives

with HIV.⁴ In Uganda, an estimated 17% of drug users are HIV positive.⁵

This report responds to the need for comprehensive documentation of the human rights violations suffered by PWUIDs as a KP group, which violations further inhibit their access to HIV services and feeds into the cycle of vulnerability to HIV infection.

There is agreement at a global level that harm reduction measures should be employed in order to prevent the spread of HIV among PWUIDs.⁶ Where states focus on the public health aspects of drug use, instead of approaching drug use from a purely criminal justice perspective, there has been a decrease in drug dependence and the spread of HIV among PWUIDs has been largely reduced.⁷ Uganda, however, regards drug use primarily as a criminal justice issue and has adopted the Narcotic Drugs and Psychotropic Substances Control Act, 2016 (NDPSCA)

¹ UNAIDS 'Key Populations' available at <https://www.unaids.org/en/topic/key-populations> (Accessed on 13th December 2019).

² As above.

³ n 1 above.

⁴ United National Office on Drugs and Crime (2019) *World drug report: executive summary* 1

⁵ Makerere School of Public Health *Crane Survey Report Bio-behavioural survey among groups at increased risk of HIV in Kampala, Uganda* (2017) 56.

⁶ H Belani et al 'Integrated prevention services for HIV infection, viral hepatitis, sexually transmitted diseases, and tuberculosis for persons who use drugs illicitly: summary guidance from CDC and the U.S. Department of Health and Human Services' (2012) 61(5) *Morbidity and Mortality Weekly Report: Recommendations and Reports* 7-19.

⁷ n 4 above.

in an attempt to curb the use, trafficking and possession of drugs.⁸ This Act, while containing a few provisions on the rehabilitation of drug users, has as its main focus to penalise those who possess, use and traffic in drugs with heavy fines and prison sentences.⁹

In Uganda, this criminalisation of individual drug use and possession is misused to punish, blackmail and extort PWUIDs.¹⁰ HRAPF has been handling cases of drug users since 2017 and has become aware of the fact that this group suffer violations within the criminal justice system.¹¹ Such violations suffered by drug users within the criminal justice system are sure to increase their vulnerability to HIV infection as it drives them further away from needed HIV prevention and treatment services and support.¹²

This report classifies the various categories of human rights violations against PWUIDs and distinguishes between violations committed by state actors and those committed by non-state actors. The report also highlights some of the cases and give some insight into the impact of human rights violations on the individual lives of the PWUIDs concerned.

⁸ Human Rights Awareness and Promotion Forum *The Narcotic Drugs and Psychotropic Substances (Control) Act, 2015 and the legal regulation of drug use in Uganda* (2016) 17.

⁹ As above.

¹⁰ Human Rights Awareness and Promotion Forum *The treatment of People Who Use and Inject Drugs within the criminal justice system in Uganda* (2019) 14.

¹¹ As above.

¹² As above.

This report is intended to be used as a tool for advocacy on the rights of PWUIDs in Uganda through providing evidence of violations of the rights of this KP group.

The report is based on human rights abuses and violations committed against PWUIDs as documented by HRAPF through its central legal aid clinic and affiliated Community Paralegals who operate in all four regions of the country as well as the documentation of cases by Uganda Harm Reduction Network. All the documented violations committed against this KP group are not included in the report, however, since every violation could not be verified.

During 2018, the state, and particularly the Uganda Police Force, emerged as the greatest and only perpetrator of human rights violations against PWUIDs. ~~Two recognised~~ human rights of PWUIDs were violated namely the right to liberty as well as the right to freedom from torture and cruel, inhuman and degrading treatment and punishment.

The report makes recommendations to various duty-bearers on what can be done to protect, respect and fulfil the rights of PWUIDs as a KP group in Uganda.

1.1 Methodology

This report was developed by making use of both quantitative and qualitative methods. Quantitative data was collected by determining the number of verified violations reported to HRAPF and partners during the period of January to December 2018. Qualitative

data was collected by considering the cases of drug users reported to HRAPF and partners during the period under review in respect of the nature of the violations and factors surrounding the violations such as the perpetrators, the motivation behind the commission of the violations, and steps taken by both state and non-state actors to address reported violations. Every human rights violation noted was subjected to an independent verification exercise and only those cases involving human rights violations that could be verified independently form part of this report.

a) Review of case files and documentary evidence

Data was collected by reviewing the case files handled by HRAPF's secretariat and Community Paralegals across the country who receive ongoing training and support from HRAPF. The review of case files provided data on the number and nature of violations committed against PWUIDs during 2018. All the case files were physically reviewed in order to ensure that only verifiable cases in which human rights violations had been committed against PWUIDs were included in the report.

b) Documentary evidence

For every case in which it could be established on the face of it that a human rights violation had been committed against PWUIDs, documentary or other evidence on file were also reviewed. This documentary evidence usually takes the form of photographic evidence, Police Bond forms, Police

medical examination forms for victims of violence (Police Form 3) and witness statements attesting to the facts of the alleged violation. A case would usually be considered verified if there is valid documentation which serves as evidence of the violation on file.

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

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

1.2 Limitations

There are a number of limitations to consider which affect the accuracy of this report.

The first limitation relates to coverage. While the report seeks to cover the human rights situation of PWUIDs at a national level, it is limited to the work of lawyers and paralegals attached to HRAPF and its partners. The report does not include all violations which have taken place all over Uganda, and therefore does not give a complete picture of the state of human rights of PWUIDs in Uganda.

The second limitation relates to the documentation capacity of the various actors which handle cases of PWUIDs.

In the compilation of this report, a number of instances were noted where neither the case nor the human rights violation that had resulted from the case could be verified due to insufficient information available on file. There remains a need for in-depth and continued training of Community Paralegals on the documentation of human rights violations. Consistent, uniform and thorough documentation is a necessity for human rights violations to be recorded and taken into consideration by governing authorities and law enforcers.

A third limitation in the development of this report is the fact that those handling cases involving human rights violations of PWUIDs do not necessarily ~~have the capacity to~~ frame their cases in the language of rights. In some cases, routine procedures and practices carried out by the Police and other law enforcers are wrongly captured as human rights violations, while blatant human rights violations are not captured as such. There remains a need for training and orientation of persons responsible for responding to cases of PWUIDs on the recognition and framing of human rights violations.

2. VIOLATIONS OF HUMAN RIGHTS OF PEOPLE WHO USE AND INJECT DRUGS, 2018

During the course of 2018, human rights violations were committed against PWUIDs by state actors. This report categorises violations against PWUIDs on the basis of the rights violated and the perpetrators of these violations.

Chapter 4 of the Constitution of the Republic of Uganda of 1995 (as amended) sets out the rights and freedoms to be enjoyed by individuals and groups in Uganda. Article 20(2) of the Constitution provides that the rights and freedoms set out in that chapter is to be respected, upheld and promoted by all organs and agencies of government as well as by all persons. The Constitution places a duty on all persons and on all organs of government not to violate the rights of others. The Constitution also places a positive duty on the state to promote the human rights of all persons in the country. This obligation on the state to promote human rights of all persons is also created by the regional and international human rights instruments to which Uganda is a party.¹³

~~The state and private individuals are both capable of violating human rights and both have a duty not to prevent~~

¹³ See for example: Preamble of the African Charter on Human and Peoples' Rights; Article 6(d) of the Treaty for the Establishment of the East African Community; Preamble of the International Covenant on Civil and Political Rights.

~~the lawful exercise of rights by others. At present, the state seems to be the greatest, and according to this report the only, violator of human rights of PWUIDs.~~

2.1 Violations by state actors

During 2018, one state actor, namely the Uganda Police Force, was responsible for all verified violations against PWUIDs. A total of 91 violations, arising out of 15 verified cases, were committed against PWUIDs.

2.1.1 The Uganda Police Force

During 2018, the Police were responsible for committing 91 violations against PWUIDs. Of the 91 violations, 56 were violations of the right to liberty, 26 were a violation of the right to equality and freedom from discrimination and 9 were the violation of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment.

a) Violation of the right to liberty

There were 56 verified violations of the right to liberty of PWUIDs by the Police during 2018. Article 23 of the Constitution of the Republic of Uganda guarantees the right to liberty, and

protects against arbitrary arrest and prolonged detention. Article 23(1) sets out the circumstances under which a person's liberty may be limited through a lawful arrest or detention.¹⁴ The Constitution sets out safeguards for persons arrested or detained for the purposes of bringing them before a court of law or in pursuit of a court order including protection from prolonged detention without appearing in court;¹⁵ the right to be informed of the reason for the arrest or detention;¹⁶ and the right to medical attention while in detention.¹⁷

i) Arbitrary arrest and detention

The Constitution, under Article 23(1), sets out nine circumstances under which a person may be lawfully deprived of their liberty. Unless arrest and detention can be justified under one of these nine grounds, it will be considered arbitrary.¹⁸ Deprivation of liberty is justified 'in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of the care or treatment of that persons or the protection of the community'.¹⁹ A person can also be deprived of their liberty 'for the purpose of bringing that person before a court in execution of the order of a court or

upon reasonable suspicion that that person has committed or about to commit a criminal offence'.

During 2018, there were 26 violations of the right to liberty of PWUIDs where arrests were carried out in the absence of a reasonable suspicion that the PWUID has or is about to commit a crime.

In one case, 19 PWUIDs were arrested near a supermarket in town while they were having breakfast.²⁰ The arrest took place in the morning and the arrestees were released without charge. In another case, a PWUID was arrested during a raid in Kisenyi along with other persons.²¹ The PWUID was released without charge after the intervention of a Community Paralegal. The fact that PWUIDs are arrested and then released without charge indicate that there is no real basis for the arrest, but that the PWUIDs who are arrested are simply known to be drug users and therefore vulnerable to arrest even in circumstances when they are unlikely to be using or possessing illegal substances.

In another case, 6 PWUIDs who were employed at a supermarket in Mbale were arrested in the evening as they were leaving their workplace.²² The 6 PWUIDs were all charged with possession of opium. This arrest, which took place in an unusual setting, was most likely based on the PWUIDs' reputation within the town as being drug users and not because the Police

¹⁴ See also Article 9(1) of the ICCPR.

¹⁵ Article 23(4)(b).

¹⁶ Article 23(3).

¹⁷ Article 23(5)(c).

¹⁸ See Article 23(1)(a) to 23(1)(g) of the Constitution.

¹⁹ Article 23(1)(f) of the Constitution.

²⁰ HRAPF/DUVR-18/033.

²¹ HRAPF/DUVR-18/072.

²² HRAPF/DUVR-18/092.

had reason to believe that they had or were about to commit a crime. The purpose behind such arbitrary arrests is to keep known PWUIDs ‘off the streets’, at least temporarily.²³

ii) Detention not exceeding 48 hours

During 2018, there were 8 violations of the right to liberty of PWUIDs because they were detained beyond 48 hours without being brought before a court. The Constitution provides that a person arrested on suspicion of having committed or being about to commit a crime should be brought to court not later than 48 hours from the time of the arrest, unless they are released.²⁴

In five verified cases, involving 8 PWUIDs who were arrested for various reasons, the arrestees were detained beyond 48 hours without being brought before a court. In three of the cases, the arrestee were detained for four days.²⁵ In another case, the PWUID was detained for three days after arrest²⁶ and in yet another case, the 4 arrestees were detained for 6 days.²⁷

b) Violation of the right to equality and freedom from discrimination

There were 26 violations of the right to equality and freedom from discrimination of PWUIDs during 2018. Article 21 of the Constitution protects the right of every person to equality before and under the law as well as equal protection of the law.

This right was violated during 2018 in cases where PWUIDs were arrested on the basis their appearance or on the basis of their reputation as drug users, rather than on the basis of a sincere belief that they have or are about to commit a crime. The three ~~2018~~ cases, in which a total of 26 violations of the right to equality and freedom from discrimination were committed, are also ~~classified as~~ cases of arbitrary arrest.

In one case, 19 PWUIDs were arrested near a supermarket in ~~town~~ while they were having breakfast.²⁸ ~~The arrest took place in the morning and the~~ arrestees were released without charge. In another case, a PWUID was arrested during a raid in Kisenyi along with other persons.²⁹ The PWUID was released without charge after the intervention of a Community Paralegal. The fact that PWUIDs are arrested and then released without charge indicate that there is no real basis for the arrest, but that the

²³ HRAPF (n 14 above) 50.

²⁴ Article 23(4).

²⁵ HRAPF/DUVR-18/037; HRAPF/DUVR-18/039 and HRAPF/DUVR-18/093.

²⁶ HRAPF/DUVR-18/100.

²⁷ HRAPF/DUVR-18/052.

²⁸ HRAPF/DUVR-18/033.

²⁹ HRAPF/DUVR-18/072.

PWUIDs who are arrested are simply known to be drug users or appear to be dressed as 'typical' drug users.

~~In another case, 6 PWUIDs who were employed at a supermarket in Mbale were arrested in the evening as they were leaving their workplace.³⁰ The 6 PWUIDs were all charged with possession of opium. This arrest, which took place in an unusual setting, was most likely based on the PWUIDs' reputation within the town as being drug users and not because the Police had reason to believe that they had or were about to commit a crime.~~

These cases amount to discrimination on the basis of social and economic standing.

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

There were 9 violations of the right to dignity and freedom from degrading treatment of PWUIDs during 2018.

The right to dignity and freedom from torture and cruel, inhumane and degrading treatment or punishment is protected under Article 24 of the Constitution.³¹ This right cannot be derogated under any circumstances.³²

³⁰ HRAPF/DUVR-18/092.

³¹ Article 24.

³² Article 44(a) of the Constitution.

³³ The Prevention and Prohibition of Torture Act No. 3 of 2012.

³⁴ HRAPF/DUVR-18/065.

³⁵ HRAPF/DUVR-18/008.

Uganda has adopted a law which expands on the protection of this right and prohibits torture which is defined as 'any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person, whether a public official or other person acting in an official capacity'.³³

The Uganda Police Force was responsible for violating the right to ~~dignity and~~ freedom from degrading treatment in two cases involving 9 PWUIDs during 2018. In one case, 8 PWUIDs who are also sex workers were arrested and beaten by the police during the course of the arrest.³⁴ Another PWUID was also beaten by a crime preventer as he intervened in an arrest of another PWUID.³⁵ These cases amount to degrading treatment: PWUIDs need not be subjected to physical violence during the course of arrest.

d) Violation of the right to a fair trial

There were 22 violations of the right to a fair trial of PWUIDs during 2018.

The right to a fair trial is guaranteed under Article 28 of the Constitution. Article 28(7) of the Constitution in particular provides that '[n]o person shall be charged with or convicted of

a criminal offence which is founded on an act or omission that did not at the time it took place constitute a criminal offence'. The provisions under the National Drug Policy and Authority Act Cap 206 (NDPAA), which created the offences of 'smoking opium' and 'frequenting a place for smoking opium' have been repealed and replaced by the NDPSCA from 2016 onwards.³⁶

During 2018 9 PWUIDs were charged with the offence of 'frequenting a place used for smoking opium' while 13 PWUIDs were charged for 'possession of opium'. Considering that these offences no longer existed in 2018, the right to a fair trial of the arrestees had been violated.

2.2 Violations perpetrated by non-state actors

PWUIDs face ~~severe~~ stigma and discrimination within society.³⁷ It can therefore be expected that non-state actors, as well as state actors, would be responsible for committing violations against PWUIDs. During 2018, however, no case of a violation committed against a PWUID by a private individual or other non-state actor was recorded. This may be due to the fact that HRAPF's legal aid clinic has only been handling cases of PWUIDs from 2017 onwards. It may take time for PWUIDs within the community to trust HRAPF and Community Paralegals to intervene when they face violations at the family and community

level. All cases handled during 2018 involved intervention at Police level after PWUIDs had been arrested.

2.3 Conclusion

During 2018, 91 verified violations were committed against PWUIDs, all of which were perpetrated by the Police. These violations mostly infringed on PWUIDs' right to liberty, their right to equality, right to a fair trial and their right to dignity and to be free from torture and cruel, inhuman and degrading treatment and punishment.

³⁶ Section 47 and 48 of the NDPAA have been replaced by sections 4 and 5 of the NDPSCA.

³⁷ HRAPF (n 14 above) 12.

3. ANALYSIS OF VIOLATIONS OF HUMAN RIGHTS OF PWUIDs DURING 2018

This report is the first to be published by HRAPF which documents the human rights violations committed against PWUIDs for a particular period. The report indicates that the state and particularly the Police is the primary violator of human rights of PWUIDs.

3.1 Analysis of violations committed during 2018

During the period of January to December 2018, 15 cases revealing 91 violations of the right of PWUIDs were documented and verified. All the cases handled by HRAPF's secretariat and affiliated Community Paralegals were considered in the compilation of this report as well as cases handled by partners. The human rights violations were committed by state actors **only**. Four constitutionally guaranteed human rights were violated, namely: the right to liberty, the right to a fair trial, the right to dignity and freedom from torture and cruel, inhumane and degrading treatment or punishment and the right to equality and freedom from discrimination. This section analyses and summarises the violations committed against PWUIDs over the course of 2018.

a) Nature of perpetrators

During 2018, a total of 91 human rights violations were committed against PWUIDs. State actors, and in particular the Uganda Police Force, **was** responsible for all of these violations. This figure of human rights violations perpetrated by the Police indicates stigma and prejudice toward PWUIDs on the part of law enforcement authorities. It also indicates a misuse of state power and the laws which criminalise drug use and possession.

The Uganda Police Force is tasked with preventing and detecting crime and preserving law and order.³⁸ It is therefore a travesty that the **agents** **which** are tasked with protecting all civilians, including PWUIDs, are also responsible for committing all of the verified violations against this group. The Police Professional Standards Unit exists so that complaints can be lodge where Police officers commit violations and offences and deviant Police officers can be investigated and punished. This mechanism, however, is rarely used and is viewed as ineffective in addressing the complaints against the Police by vulnerable minorities.³⁹

³⁸ Art 212 of the Constitution.

³⁹ Interview with Legal Officer, Human Rights Awareness and Promotion Forum, 15th December 2019.

Another mechanism for the enforcement of human rights is the newly enacted Human Rights (Enforcement) Act of 2019. This Act makes it possible to hold violators responsible for the acts which they committed. In cases where a state actor was the perpetrator, the Act allows for such a perpetrator to be sued in their personal capacity.⁴⁰ An individual violator can therefore be held to account and ordered to pay compensation to correct the wrongs committed. This Act paves the way for holding individual Police officers to account for violations committed against PWUIDs.

Furthermore, the Uganda Human Rights Commission has the authority to investigate instances of human rights violations, either in response to a complaint or on its own initiative.⁴¹ The EOC has a similar authority to inquire into ‘any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute discrimination, marginalization or to otherwise undermine equal opportunities’.⁴² During 2018, none of the violations committed by state actors were investigated by the UHRC or the EOC on their own initiative. Furthermore, the UHRC’s mechanism for investigating complaints has a significant backlog and even where cases of human rights violations are lodged with the Commission, the cases are only investigated years after the incident had taken place.

b) Categories of rights violated

The right to liberty is recorded as the most violated right of PWUIDs in 2018, followed by the right to equality and freedom from discrimination and the right to a fair trial.

Table 1: Categories of rights of PWUIDs violated in 2018

Category of right	Number of violations committed during 2018
Right to liberty	34
Right to equality and freedom from discrimination	26
Right to a fair trial	22
Right to dignity and freedom from torture	9
TOTAL	91

The violations all occurred during and after the arrest of real or presumed PWUIDs. PWUIDs suffered arbitrary arrest and the violation of their right to equality and freedom from discrimination in cases where they were arrested in the absence of a reasonable suspicion that they have or are about to commit a crime. In some cases,

⁴⁰ Section 10.

⁴¹ Art 52(1)(a) of the Constitution.

⁴² Sec 14(2) of the Equal Opportunities Commission Act, 2007.

arrests were coupled with physical violence which amounts to the violation of the right to be free from degrading treatment. The right to a fair trial was violated in that PWUIDs were charged with repealed offences which existed under the NDPAA prior to the adoption of the NDPSCA.

c) Effect of violations on HIV prevalence and vulnerability among PWUIDs

The fact that 91 verified violations had been committed against PWUIDs by state actors during 2018 indicates that PWUIDs face a challenge of widespread Police brutality which stifles their freedom and security. Considering that PWUIDs are viewed as a criminalised group, vulnerable to suffer arrest on the basis of their appearance and identity, their access to HIV prevention and treatment services could also be inhibited. The criminalisation of drug use, along with the common occurrence of violations committed against PWUIDs by the Police, pushes PWUIDs away from the few harm reducing measures which may be available to them.⁴³

In light of the fact that PWUIDs are a Key Population, with an HIV prevalence of 17% in Uganda, there is need to address the rate and severity of violations committed against PWUIDs in order to make gains in the fight against HIV and AIDS in Uganda.

⁴³ G Atwiine 'The impact of restrictive drug laws on HIV prevention and treatment in Uganda' *The Human Rights Advocate Magazine* Issue 6 (2019) 26.

4. CONCLUSIONS AND RECOMMENDATIONS

4.1 General conclusion

During 2018, there were 91 recorded and verified human rights violations committed against PWUIDs, arising out of 15 cases. All of these violations were committed by the Uganda Police Force, which is a state actor, during or after the arrest of real or presumed PWUIDs. The fact that the criminal law renders PWUIDs vulnerable to human rights violations at the hands of the Police is a matter of great concern in respect of the HIV response in Uganda. If PWUIDs are primarily treated as a criminalised group and ‘punished’ for their crimes even beyond the bounds of the law, their severe vulnerability to HIV infection and transmission cannot be effectively addressed.

4.2 Recommendations

To Parliament

The Parliament of Uganda has the authority to legislate and thereby influence the levels of protection or violation experienced by PWUIDs in Uganda. ~~The Members of Parliament are also influential in international fora.~~ They are recommended to do the following:

- Amend the Narcotic Drugs and Psychotropic Substances Control Act, 2019 to decriminalise individual drug use or to allow for more lenient sentences where a person is an

individual drug user as opposed to a trafficker.

- Ensure that government fulfils its international and regional human rights obligations to all without discrimination.

To the Uganda Police Force

The Uganda Police Force is a critical actor in terms of protecting and violating the rights of PWUIDs. The Police determine whether or not PWUIDs will be arrested and prosecuted, or punished arbitrarily within the criminal justice system, on the basis of their real or presumed identity as drug users. In this regard, the following recommendations are made to the Police:

- Working through the Directorate of Legal and Human Rights, continue training Police officers on the human rights of PWUIDs as well as the limits of the laws which they are mandated to enforce.
- Strengthen mechanisms which exist to redress human rights violations committed by members of the UPF. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.

To the Ministry of Health

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

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

To the Uganda Human Rights Commission

The Uganda Human Rights Commission is mandated to ensure the preservation and protection of the basic human rights of all, both in law and in practice. It is recommended that the UHRC does the following:

- Investigate and monitor human rights abuses committed against PWUIDs.
- Include PWUIDs' issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train magistrates and Police officers on the NDPSCA.

To the Equal Opportunities Commission

The Equal Opportunities Commission is an institution mandated to address marginalisation and discrimination in Uganda. The EOC provides a platform for addressing violations suffered by marginalised persons, including PWUIDs who suffer discrimination on the basis of their social and economic standing. The Commission is recommended to use its mandate to do the following:

- Monitor and investigate violations against PWUIDs, including when these arise within the criminal justice system.
- Include PWUIDs' issues in the annual reports to Parliament.
- Work with CSOs and government ministries to train Police officers on the NDPSCA.

The Uganda AIDS Commission

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

activities throughout Uganda. The UAC is urged to do the following:

- Emphasise violations committed against PWUIDs as a Key Populations as an obstacle to the implementation of HIV prevention and control policies and programmes.
- Take a stand against laws which impose harsh sentences on PWUIDs for individual drug use and possession, which inhibit rehabilitation and treatment of PWUIDs as well as access to HIV prevention and treatment services.
- Strengthen reporting systems, methods of evidence collection and data storage in order to facilitate the verification of violations against PWUIDs.
- Support the Uganda Human Rights Commission to monitor and document reports of violence, abuse, and discrimination against PWUIDs
- Establish further partnerships with organisations for the monitoring and documentation of rights of Key Populations.

To civil society organisations

Organisations which exist to promote human rights, including the rights of PWUIDs, are equipped to raise awareness about the discrimination and challenges which KPs face within the Ugandan society. These organisation can advocate for an improved legal and policy environment, as well as the curbing of violations, through various means. It is recommended that civil society does the following:

- Raise awareness about the limits of the law in terms of criminalising drug use and possession and undertake public education campaigns to bring across strongly the message that PWUIDs in themselves are not criminalised.
- Develop the capacity of staff to document violations against PWUIDs. This could include adopting uniform guidelines for recording information on cases and violations.

ABOUT HRAPF

Background

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

Legal Status

HRAPF is incorporated under the laws of Uganda as a company limited by guarantee.

Vision

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

Mission

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

HRAPF's Objectives

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

Our target constituencies

1. Lesbian, Gay, Bisexual and Transgender (LGBT) persons
2. Intersex Persons
3. Sex Workers
4. Women, girls and service providers in conflict with abortion laws
5. People who use drugs

6. People Living with HIV and TB (PLHIV/ TB)
7. Poor women, children and the elderly with land justice issues

HRAPF Values

- Equality, Justice and Non-Discrimination
- Transparency, Integrity and Accountability
- Learning and Reflection
- Quality and Excellence
- Teamwork and Oneness
- Passion and Drive
- Networking and Collaboration

Slogan

Taking Human Rights to all

**Human Rights Awareness and Promotion Forum - Uganda
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