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**Uganda's Compliance with the International Convention on Civil and Political Rights:
LGBTIQ+ Rights**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

**for the 138th Session of the Human Rights Committee
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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. A growing number of victims fleeing persecution based on their sexual orientation or gender identity in Uganda have requested legal assistance from The Advocates in applying for asylum in the United States.

EXECUTIVE SUMMARY

1. This report addresses Uganda's compliance with its human rights obligations with regard to the rights of lesbian, gay, bisexual, transgender, intersex, queer, and other sexual and gender minorities (LGBTIQ+) individuals.
2. Actual or perceived LGBTIQ+ individuals in Uganda live in a hostile, and sometimes deadly, environment, facing constant threats of physical and emotional violence, persecution, and discrimination from Ugandan officials, police, and private individuals.
3. The Government of Uganda systematically fails to prevent human rights violations against individuals based on their real or perceived sexual orientation, gender identity, gender expression, and/or sex characteristics (SOGIESC). The criminalization of consensual same-sex sexual relations between adults leaves them at serious risk of harm. Further, Uganda is one of the few countries that criminalizes consensual same-sex sexual relations between both women and men. LGBTIQ+ persons in Uganda report experiencing discrimination, violence, lack of protection by law enforcement and government officials, and limited access to public services.
4. This report provides an overview of human rights developments related to sexual orientation, gender identity, gender expression, and sex characteristics since the Committee prepared Uganda's List of Issues in 2022. We previously submitted a Suggested List of Issues¹ on May 2, 2022, that addressed SOGIESC issues prior to 2022.
5. Information for this report includes direct information from The Advocates' Ugandan LGBTIQ+ asylum clients and from individual LGBTIQ+ persons in Uganda. All first-hand information is used with permission. This report also includes information provided by NGOs in Uganda that work on LGBTIQ+ issues.

Uganda fails to uphold its obligations under the International Covenant on Civil and Political Rights (ICCPR)

I. Anti-discrimination legislation (List of Issues paragraph 5)

6. In its 2022 List of Issues (LOI), the Human Rights Committee ("Committee") requested that Uganda indicate what legislative and other measures have been taken to combat "direct, indirect, and multiple discrimination in all spheres, including in the private sphere," based on sexual orientation and gender identity, and what remedies have been provided in judicial and administrative proceedings for victims of discrimination.² The Committee also asked the Ugandan government to include information about steps taken to develop comprehensive anti-discrimination legislation.³

¹ The Advocates for Human Rights, *Uganda's Compliance with the International Covenant on Civil and Political Rights: Suggested List of Issues Relating to LGBTI Rights*, (Minneapolis: The Advocates for Human rights, May 2022).

² Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 5.

³ Ibid.

7. In its reply to the List of Issues, the Government of Uganda noted that it has “comprehensive anti-discrimination legislation that facilitates meaningful realization of the rights of freedom from discrimination.”⁴
8. Although Uganda has taken some positive steps towards implementing and adopting a general anti-discrimination law, that initiative does not include specific actions to protect against discrimination on the basis of sexual orientation, gender identity or expression, or sex characteristics. Uganda’s reply to the LOI mentions that the Government enacted the Equal Opportunities Commission to give effect to the State’s constitutional mandate to eliminate discrimination and inequality amongst any individual or group of persons on several grounds including any other reason created by history, tradition, or custom for the purpose of redressing imbalances.⁵ The response focuses on women’s rights and gender equity initiatives undertaken by the Ugandan government. These actions, however, do not address discrimination on the basis of SOGIESC.
9. The Ugandan government has not taken concrete steps to create inclusive laws that specifically protect individuals from violence and discrimination based on their SOGIESC status. The State Party report describes legislation of general application that does not specifically protect LGBTIQ+ individuals from violence, discrimination, or harassment.⁶
10. Rather than protecting LGBTIQ+ individuals, the Ugandan government has pursued legislation that would suggest that it does not intend to fulfill its obligations under Articles 2 and 26 of the ICCPR to provide protection from discrimination for all people, regardless of their sexual orientation, gender identity, gender expression, or sex characteristics. On March 21, 2023, the Parliament of Uganda passed the Anti-Homosexuality Bill of 2023 (the “2023 Bill”). On April 20, 2023, President Yoweri Kaguta Museveni met the ruling party caucus in Parliament and the caucus issued a resolution to have the president send the 2023 Bill back to Parliament for reconsideration so as to remove provisions that appeared to punish individuals who later came out to renounce homosexuality.⁷ The 2023 Bill, with the president’s proposed revisions, was again passed by Parliament and is currently awaiting the president’s signature.
11. If enacted, the 2023 Bill would do the following: (1) criminalize consensual same-sex relations as “homosexuality” under penalty of life imprisonment, which is defined as imprisonment without the possibility of release;⁸ allow courts to issue death sentences for “aggravated homosexuality,” which includes repeat convictions for “homosexuality,” “homosexuality” with an individual over the age of seventy-five, and many other offenses;⁹ criminalize “promotion of homosexuality” – which is defined widely to include activities that seek to “normalize” homosexuality – with punishment of 20 years’ imprisonment;¹⁰ impose reporting obligations on anyone who knows or reasonably suspects someone to be engaged in or about

⁴ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 26.

⁵ *Id.*, ¶ 23.

⁶ Human Rights Committee, *Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008*, (Nov. 2020), U.N. Doc. CCPR/C/UGA/2, ¶¶ 27, 34.

⁷ Stephanie Busari, Chris Liakos, and Catherine Nicholls, *Uganda’s President Museveni to return anti-LGBTQ+ bill to parliament*, CNN, Apr. 20, 2023, <https://www.cnn.com/2023/04/20/africa/museveni-uganda-lgbtw-intl/index.html>

⁸ The Anti-Homosexuality Bill, 2023, Bill No. 3 (Mar. 3, 2023), Part II, Article 2. Available online at <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>.

⁹ *Id.*, Part II, Article 3.

¹⁰ *Id.*, Part II, Article 11.

to commit “homosexuality,” and waives confidentiality requirements for professionals who report “homosexuality.”¹¹ Only “advocates” are excluded from the reporting obligation, but it applies to all other professionals, including medical doctors and religious leaders, and failure to report can result in imprisonment. Parents would also be required to report their children.

12. As explained in further detail below, the 2023 Bill has incentivized discrimination against members of the LGBTIQ+ community in Uganda, intensifying the need for anti-discrimination legislation protecting LGBTIQ+ individuals.

II. Criminalization of sexual relations between consenting adults of the same sex (List of Issues paragraph 6)

13. In the 2022 LOI, the Committee asked Uganda to report “on the number of arrests, prosecutions, convictions, and sanctions imposed for same-sex sexual relations in the past five years” and whether Uganda “intends to repeal the criminalization of consensual same-sex relationships between adults.”¹²
14. The State Party did not address the Committee’s request for information in its reply to the LOI.¹³
15. Uganda Penal Code Section 145 contains a colonial law criminalizing sexual relations between consenting adults of the same sex, as “carnal knowledge ... against the order of nature.”¹⁴
16. Since the 2022 LOI, the Ugandan Government has taken further steps to criminalize consensual adult same-sex sexual relations. The text of the 2023 Bill criminalizing same-sex relations states that its purpose is to create a “comprehensive provision” for anti-homosexuality, by penalizing “the procurement, promoting, disseminating [of] literature” and to “enhance offences relating to homosexuality.”¹⁵
17. While the 2023 Bill is not yet law, several of its proposed provisions are vague and would lead to violations of LGBTIQ+ Ugandans’ human rights. For example, the Bill allows for substantial police and government discretion in the interpretation and enforcement of incarcerable offenses such as the “promotion of homosexuality.”¹⁶ Even renting to LGBTIQ+ individuals could expose landlords to criminal penalties.¹⁷

¹¹ *Id.*, Part II, Article 14.

¹² Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 6.

¹³ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2.

¹⁴ The Penal Code Act of 1950, § 145 (1950).

¹⁵ Human Rights Awareness and Promotion Forum (HRAPF), “The Anti-Homosexuality Bill, 2023,” Kampala: HRAPF, 2023 (Unpublished memorandum compiled by HRAPF of the text of the Anti-Homosexuality Bill passed by Parliament for the second time), Article 2.

¹⁶ The Anti-Homosexuality Bill, 2023, Bill No. 3 (Mar. 3, 2023), Part III, Article 11. Available online at <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>; interview with Ugandan human rights defender, Uganda, May 18, 2023.

¹⁷ The Anti-Homosexuality Bill, 2023, Bill No. 3 (Mar. 3, 2023), Part III, Article 9, 11(2)(d). Available online at <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>.

18. Interviewees allege the Bill's reporting requirement would also subject members of the LGBTIQ+ community to pervasive discrimination and harassment.¹⁸
19. Since Parliament passed the 2023 Bill, the country appears to have become even more dangerous and violent for LGBTIQ+ people. A report from the Human Rights Awareness and Promotion Forum (HRAPF) concluded that the 2023 Bill "even in the absence of presidential assent" has become "a tool of further oppression and abuse against LGBTQ [sic] people."¹⁹ The report found that violence and crimes against LGBTIQ+ people has increased exponentially since the same period in 2022, and that there is a belief among the general population that the government wants individuals (non-State actors) to violently fight against homosexuality.²⁰ Clients of The Advocates and individual LGBTIQ+ Ugandans interviewed for this report confirmed this growing hostility.

III. Failure to protect LGBTIQ+ individuals from acts of violence, harassment, abuse, and discrimination based on sexual orientation or gender identity (List of Issues paragraph 6)

20. In the 2022 LOI, the Committee asked Uganda to "respond to reports of discrimination, stigmatization, harassment and violence, including while in police custody, on the basis of sexual orientation or gender identity, and provide information on the measures taken to prevent and combat such acts, and the impact of such measures."²¹
21. The Government's response addresses actions while in police custody, claiming that "there is no targeted or deliberate action by institution to discriminate, stigmatize and harass or met out violence against people in custody based on their sexual orientation or gender identity."²² The response further provides that "Uganda does not arrest or prosecute any persons on the basis of their sexual orientation."²³
22. The Government's response also notes the Uganda Police Force's (UPF) Police Human Rights Policy that "ensure[s] a human rights-based approach in policing."²⁴ The UPF also established a "Professional Standards Unit" to monitor officers for human rights transgressions, and established special trainings to sensitize officers to pay attention "to various gender issues when handling suspects."²⁵ Although these programs are important additions to human rights policy, the State lists no specific programs to educate police officers about discrimination against LGBTIQ+ individuals, nor to combat police violence against LGBTIQ+ Ugandans.

¹⁸ Interview with Ugandan human rights defender, Uganda, May 18, 2023; interview with client of The Advocates, United States, May 9, 2023.

¹⁹ Human Rights Awareness and Promotion Forum (HRAPF), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda's Anti-Homosexuality Bill, 2023*, (Kampala, 2023), 8. Available online at <https://hrapf.org/?mdocs-file=11275>.

²⁰ Ibid.

²¹ Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 6.

²² Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 28.

²³ *Id.*, ¶ 27.

²⁴ *Id.*, ¶ 29.

²⁵ Ibid.

Further, there are no studies on the impact of existing sensitization programs on stigma and discrimination.

23. In light of the 2023 Bill, the actions cited by Uganda in their response to the Committee's LOI may no longer reflect a positive development. One of the LGBTIQ+ individuals interviewed for this report noted that, prior to the 2023 Bill, there had been progress in Uganda regarding training police officers on how to treat members of the LGBTIQ+ community.²⁶ Once the Bill passed Parliament, however, that progress was wiped away.²⁷
24. An interviewee in Uganda, who works as a paralegal, noted that before the 2023 Bill, they were frequently contacted by police to assist and claim detained clients who were members of the LGBTIQ+ community.²⁸ But after passage of the 2023 Bill, the interviewee can no longer visit clients who have been detained by police, as the police have become more aggressive in questioning the paralegal's assistance of detained LGBTIQ+ individuals, with the implication being that the paralegal themselves is a member of the LGBTIQ+ community or is promoting homosexuality by assisting their clients.²⁹
25. LGBTIQ+ individuals in Uganda experience widespread violations of their right to life, liberty, and security of person, in violation of ICCPR Articles 6 and 9. Further, the Ugandan government fails to protect LGBTIQ+ individuals from human rights violations by members of their communities.
26. Further evidence of the severity of the situation, it was difficult to find individuals willing to be interviewed for this report, likely due to their credible fear that they would be tracked down by police, beaten, and imprisoned. LGBTIQ+ individuals in Uganda fear for their lives, and are unwilling to share their experiences, less they risk exposing their identities.
27. Since Parliament passed the 2023 Bill, LGBTIQ+ individuals have been arrested due to their presumed or actual sexuality, gender identity, gender expression, and/or sex characteristics.³⁰ In one instance, police arrested a man after a local journalist in his neighborhood found gay pornography in which one of the actors looked like the man.³¹ In another instance, police arrested a group of six people after a local official saw a video from a gay pornography website in which one of the actors looked like one of the six.³² Police arrested all six because they were found at an LGBTIQ+ support organization, which had lubricants, condoms, and HIV prevention materials on hand. Police categorized this as evidence of criminal "homosexuality."³³
28. Human Rights Awareness and Promotion Forum (HRAPF), a Ugandan non-governmental organization (NGO) that works on the human rights of marginalized Ugandans, reported that in the first month following Parliament's passage of the 2023 Bill, a mob arrested, stripped, and forced an athlete they suspected to be a transgender woman to march naked through the

²⁶ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

²⁷ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

²⁸ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

²⁹ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

³⁰ Human Rights Awareness and Promotion Forum (HRAPF), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda's Anti-Homosexuality Bill, 2023*, (Kampala, 2023), 3. Available online at <https://hrapf.org/?mdocs-file=11275>.

³¹ Ibid.

³² Ibid.

³³ Ibid.

streets. Passersby heckled, photographed, and sexually assaulted her. Police ultimately held her at a police station for two days before she appeared in court. The court denied her bail for lack of sureties because none of her friends would appear on her behalf for fear of becoming targets themselves.³⁴

29. HRAFP reports that neighbors beat at least one man because they thought he was gay.³⁵
30. Mobs have also engaged in violent assaults of individuals for operating organizations that support the LGBTIQ+ community.³⁶ In one case, village leadership threatened to lynch the leader of an organization supporting LGBTIQ+ people, forcing him to flee his home. This occurred after security forces had arrested and held him incommunicado for nearly a month because he was a “promoter of homosexuality.”³⁷
31. LGBTIQ+ Ugandans reported that they distrust law enforcement officials, in part because of law enforcement has targeted them with arrests and prosecution.³⁸ The LGBTIQ+ individuals interviewed expressed their inability to report criminal cases to the police and government agencies because it would affect them negatively. In some instances, respondents who were victims of crimes and human rights violations did not seek assistance because the violation arose because of their sexual orientation and they feared reporting the violation because of possible further victimization by state officials.³⁹ In other instances, victims did report assaults and threats to police, but nothing was done, as the police had no interest in identifying or prosecuting the assailants.⁴⁰ This situation has only exacerbated since passage of the 2023 Bill.⁴¹
32. Interviewees expressed fear that if the 2023 Bill is signed into law, it will aggravate an already grave situation. They expect that there will be increased violence from police and vigilante groups toward LGBTIQ+ individuals and the human rights defenders (HRDs) who work on LGBTIQ+ issues. Further, they do not expect there to be recourse should such violations occur.⁴²
33. LGBTIQ+ individuals in Uganda face daily discrimination because of their SOGIESC status. Although constitutional provisions ensure equality for every person under the law, neither

³⁴ *Id.*, 4.

³⁵ *Id.*, 6.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

³⁹ Human Rights Awareness and Promotion Forum (HRAFP), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda’s Anti-Homosexuality Bill, 2023*, (Kampala, 2023), 7. Available online at <https://hrapf.org/?mdocs-file=11275>.

⁴⁰ *Ibid.*

⁴¹ Interview with Ugandan human rights defender, Uganda, May 18, 2023; Human Rights Awareness and Promotion Forum (HRAFP), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda’s Anti-Homosexuality Bill, 2023*, 7. Available online at <https://hrapf.org/?mdocs-file=11275>.

⁴² Interview with Ugandan human rights defender, Uganda, May 18, 2023; Human Rights Awareness and Promotion Forum (HRAFP), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda’s Anti-Homosexuality Bill, 2023*, 7. Available online at <https://hrapf.org/?mdocs-file=11275>.

sexual orientation, gender identity, gender expression, nor sex characteristics are explicitly protected identities.⁴³

34. LGBTIQ+ individuals face discrimination in all spheres, including housing and healthcare, in violation of Article 26 of the ICCPR.
35. Despite the fact that the 2023 Bill is not law, healthcare professionals have begun to discriminate against LGBTIQ+ patients or potential patients, so as to comply with the Bill's language. Healthcare professionals deny real or suspected LGBTIQ+ patients access to lubricants and condoms.⁴⁴ Because the 2023 Bill criminalizes the "promotion of homosexuality," healthcare professionals that provide lubricants, condoms, hormone therapy, or HIV preventative medication to LGBTI individuals could face prison time for "promoting homosexuality" should the Bill become law.⁴⁵
36. Interviewees and Ugandan NGOs have reported that since Parliament passed the 2023 Bill, landlords have begun discriminating against LGBTIQ+ individuals in the area of housing. Landlords have begun evicting LGBTIQ+ tenants because they fear being arrested should the Bill become law or that mobs would vandalize their property if neighbors believe they are allowing LGBTIQ+ individuals to remain on the premises.⁴⁶
37. For example, a landlord evicted a community paralegal from their housing because the landlord believed that too many LGBTIQ+ clients were visiting the paralegal's house.⁴⁷
38. An LGBTQ⁴⁸ human rights organization was evicted from their office space after the area's leadership wrote to its landlord demanding he evict the organization. When the landlord failed to do so, the area's leadership wrote directly to the LGBTQ organization, demanding they leave the village within three days or "face the consequences." It is unknown if the landlord began the eviction or if the organization left because it feared retaliation from area leadership.⁴⁹

IV. Death Penalty (List of Issues para. 10)

39. In the 2022 LOI, the Committee asked Uganda to "provide information on [the] steps taken to revise the current legislation to ensure that the death penalty is authorized only in the most exceptional cases and subject to the strictest limits, namely that it is applied only for the most serious crimes, understood to be crimes involving intentional killing."⁵⁰

⁴³ Art. 21, Const. Uganda; Art. 32, Const. Uganda.

⁴⁴ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

⁴⁵ The Anti-Homosexuality Bill, 2023, Bill No. 3 (Mar. 3, 2023), Part III, Article 11. Available online at <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>.

⁴⁶ Human Rights Awareness and Promotion Forum (HRAPF), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda's Anti-Homosexuality Bill, 2023*, (Kampala, 2023), 4-5. Available online at <https://hrapf.org/?mdocs-file=11275>.

⁴⁷ *Id.*, 5.

⁴⁸ Though we use LGBTIQ+ throughout this report, the organization identifies itself as LGBTQ.

⁴⁹ Human Rights Awareness and Promotion Forum (HRAPF), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda's Anti-Homosexuality Bill, 2023*, (Kampala, 2023), 5-6. Available online at <https://hrapf.org/?mdocs-file=11275>.

⁵⁰ Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 10.

40. The Government of Uganda noted that the 2019 Amendment to the Penalties in Criminal Matters “restricts the death penalty to the most serious crimes and in the most exceptional cases and under the strictest limits.”⁵¹
41. Unfortunately, despite these assurances, Uganda has failed to restrict the death penalty to the most serious crimes and is in the process of potentially expanding the use of the death penalty to a crime that does not meet the most-serious-crimes threshold. Should the 2023 Bill become law, courts could issue death sentences for individuals convicted of “aggravated homosexuality,” which includes “serial offenders” and whether the individual’s sexual partner contracts “a terminal illness as a result of the sexual act,” among other elements.⁵²

V. Excessive use of force (List of Issues paras. 11-12)

42. In the 2022 LOI, the Committee asked Uganda to provide information on police officers and security forces’ continued use of excessive force and firearms.⁵³ The Committee further asked for a report on the “number of complaints filed, investigations and prosecutions undertaken, and convictions handed down for excessive use of force...by law enforcement officers and security forces” for the last five years.⁵⁴
43. Uganda noted that the “use of reasonable force” is allowed, in part by its Police Human Rights Policy (see paragraph 22 above).⁵⁵ The Government notes that the UPF’s Human Rights and Legal Directorate will pursue civil or criminal charges against “every police officer accused of using excessive force towards civilians...if the available evidence establishes such facts.”⁵⁶ The Policy requires that all new recruits are trained on human rights in Police training schools and that police are also given refresher courses and trainings on human rights. The Government reports that approximately 22,000 officers have received these trainings.⁵⁷ The Government provided no specific information on the content of these trainings or, specifically, whether violations against LGBTIQ+ individuals are covered.
44. It is unclear whether special trainings have improved police sensitivity on issues regarding sexual orientation, gender identity or expression, or sex characteristics. There are continued reports of police subjecting LGBTIQ+ people in detention to invasive, unwanted, and degrading anal examinations and public undressing to “prove” homosexuality.⁵⁸

⁵¹ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 44.

⁵² The Anti-Homosexuality Bill, 2023, Bill No. 3 (Mar. 3, 2023), Part II, Article 3. Available online at <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>.

⁵³ Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 11.

⁵⁴ *Id.*, ¶ 12.

⁵⁵ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 52.

⁵⁶ *Ibid.*

⁵⁷ *Id.*, ¶ 56.

⁵⁸ Caroline Kimeu and Achola Rosario, *LGBTQ+ groups face crackdowns in Uganda as environment turns hostile*, The Guardian, March 14, 2023, <https://www.theguardian.com/global-development/2023/mar/14/lgbtq-crackdowns-uganda-environment-hostile>

VI. Liberty and security of the person (List of Issues para. 14)

45. In its 2022 LOI, the Committee asked Uganda to “respond to persistent reports of arbitrary detention – including incommunicado detention – by police and security forces, targeting...sex workers and members of the LGBTIQ+ [sic] community..., among others.”⁵⁹
46. The Government of Uganda replied, however, that “there is no arbitrary detention of persons irrespective of their profession or political affiliation.”⁶⁰ There is no clarification as to whether that response is inclusive of sex workers and members of the LGBTIQ+ community.
47. Since the Parliament passed the 2023 Bill, there have been increased reports of arrests based on real or presumed sexual orientation, gender identity, gender expression, and/or sex characteristics. Within one month of its passage, police arrested 20 LGBTIQ+ individuals because of their presumed sexual orientation, gender identity, gender expression, and/or sex characteristics.
48. As described in paragraph 26 above, police arrested six members of an LGBTIQ+ support organization based solely on an unsupported and false report that one of the members resembled an actor from a gay pornography website. Prosecutors charged the members with “having carnal knowledge against the order of nature” after the police searched their office and found lubricants, condoms, pre-exposure prophylaxis (PrEP) and other forms of HIV protection. The members were held for 12 days before they appeared in court.⁶¹
49. Police arrested another man initially on suspicion of narcotics possession. The police conducted a search of his house and did not find any narcotics but found lubricants so they continued to detain him for four days on the grounds of homosexuality. HRAFP reports that there are other cases of police arbitrarily arresting and detaining victims solely on basis of their real or presumed sexual orientation, gender identity, gender expression, and/or sex characteristics. Although the 2023 Bill has not been approved by the president, its passage in Parliament appears to have motivated a rapid increase in arbitrary arrests and detentions targeting members of the LGBTIQ+ community.⁶²

VII. Administration of justice (List of Issues para. 20)

50. In the 2022 LOI, the Committee expressed concern over reports that “lawyers[] are discouraged from visiting their clients, especially those representing the LGBTQ+ [sic] community...; often have to pay guards in order to obtain access to their clients; and face intimidation during such visits in the form of threats from police officers.”⁶³ The Committee also asked Uganda to “respond to allegations of frequent arbitrary detention, intimidation and harassment of lawyers, particularly those working on human rights cases, including cases

⁵⁹ Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 14.

⁶⁰ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 63.

⁶¹ Human Rights Awareness and Promotion Forum (HRAFP), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda’s Anti-Homosexuality Bill, 2023*, (Kampala, 2023), 3-4. Available online at <https://hrapf.org/?mdocs-file=11275>.

⁶² *Ibid.*

⁶³ Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 20.

involving lesbian, gay, bisexual, transgender and intersex persons.”⁶⁴ The Committee further requested that Uganda “respond to allegations of the reportedly regular occurrence of targeted break-ins at lawyers’ place of work in order to steal confidential case-related information, and the alleged failure by police to investigate such break-ins.”⁶⁵

51. The Government’s reply alleged that “[t]here is no arbitrary detention, intimidation and harassment of lawyers including those working on human rights cases. Many of the alleged cases of break-ins were never reported to police. For those that were reported, investigations were conducted but the suspects were never identified and evidence remained insufficient for meaningful prosecution and the cases remain open.”⁶⁶ The Government did not address claims that lawyers had to pay guards or that police threatened lawyers.
52. Since Parliament passed the 2023 Bill, police and members of the public have increased their harassment and stigmatization of lawyers and paralegals who provide services to members of the LGBTIQ+ community, accusing them of “promoting” LGBTIQ+ issues. They fear police will arrest them for assisting LGBTIQ+ individuals and, as a result, legal resources available to LGBTIQ+ individuals have dwindled.⁶⁷

VIII. Right to privacy (List of Issues para. 22)

53. In its 2022 LOI, the Committee asked for further information on the compatibility of a provision in the HIV/AIDS Prevention and Control Act of 2014 (the “HIV/AIDS Act”) that allows for “the disclosure of HIV status by medical professionals following compulsory testing for certain categories of people” with Article 17’s right to privacy⁶⁸ The Committee asked Uganda to “provide information on the safeguards in place to ensure the privacy of personal data collected.”⁶⁹
54. The Government alleged that the HIV/AIDS Act prohibits disclosure and release of HIV test results except in certain circumstances, which include when the medical practitioner or other qualified officer determines that contact “poses a clear and present danger of HIV transmission” to another person, or “any other person who may be authorized by court.”⁷⁰
55. In practice, however, we received reports that many LGBTIQ+ Ugandans fear that they will be arrested when they visit hospitals to receive treatment for HIV and AIDS due to increased stigma from healthcare providers. This causes LGBTIQ+ individuals to avoid seeking essential medical services for fear of harassment and arrest.⁷¹
56. Additionally, the current draft of the 2023 Bill includes a provision that a “person, who knows or has reasonable suspicion that a person has committed or intends to commit the offence of

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 89.

⁶⁷ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

⁶⁸ Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 22.

⁶⁹ Ibid.

⁷⁰ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 93.

⁷¹ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

homosexuality or any other offence under this Act, shall report the matter to police for appropriate action.”⁷² This provision would violate LGBTIQ+ individuals right to privacy.

IX. Freedom of expression (List of Issues para. 25)

57. The Committee asked Uganda in its 2022 LOI to “provide information on measures taken to ensure that...human rights defenders are effectively able to carry out their profession without constraints and provide information on measures taken to ensure that all rights violations perpetrated against...human rights defenders are thoroughly investigated and those responsible are brought to justice and adequately sanctioned.”⁷³
58. The Government of Uganda states that there are continuing efforts to “provide a conducive and enabling environment for Human Rights Defenders (HRDs),” and that a “Human Rights Defenders Protection Bill” from 2020 is “currently being processed,” but no concrete reforms were identified.⁷⁴
59. The Human Rights Defenders’ Protection Bill (HRDPB), which was first introduced on September 28, 2020, has not yet passed the First Reading stage in the Parliament. Though the HRDPB seeks to provide a framework for the protection of the work of HRDs, it fails to protect inalienable and important rights such as the freedom of expression, right to peaceful assembly, and freedom from defamation and stigmatization.⁷⁵
60. The current draft of the HRDPB places an unnecessary restriction on the expression rights of human rights defenders by requiring them to register with the Uganda Human Rights Commission (UHRC) in order to carry out their activities without facing consequences. Registration requires a fee and submission of documents, and it must be renewed every two years and can be revoked and suspended by the UHRC at any time. A human rights defender who carries out human rights activities without a valid certificate can be subject to imprisonment of up to three years.⁷⁶
61. Even before the introduction of the HRDPB, the requirement for human rights organizations to register was already being mandated by the Non-Governmental Organizations Act of 2016, which authorized the National Bureau for Non-Governmental Organizations (NGO Bureau) to “register, regulate, inspect, coordinate and monitor activities” of NGOs in Uganda. A recently leaked Ministry of Internal Affairs report (dated January 2023) revealed that the NGO Bureau placed under investigation 26 NGOs “suspected to be involved in the promotion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) activities in the country.”⁷⁷

⁷² The Anti-Homosexuality Bill, 2023, Bill No. 3 (Mar. 3, 2023), Part IV, Article 14. Available online at <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>.

⁷³ Human Rights Committee, *List of Issues in Relation to the second periodic report of Uganda*, (July 2022), U.N. Doc. CCPR/C/UGA/Q/2, ¶ 25.

⁷⁴ Human Rights Committee, *Replies of Uganda to the list of issues in relation to its second periodic report*, (January 31, 2023), U.N. Doc. CCPR/C/UGA/RQ/2, ¶ 103.

⁷⁵ Parliament Watch, “Human Rights Defenders’ Protection Bill,” accessed May 20, 2023, <https://parliamentwatch.ug/bills/human-rights-defenders-protection-bill-2020/>.

⁷⁶ The Human Rights Defender’s Protection Bill of 2022, Memorandum, Part V.

⁷⁷ Ministry of Internal Affairs, National Bureau for NGOs, *Status report on NGOs suspected to be involved in the promotion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) activities in the country* (January 2023), 2.

62. The report stated that the organizations “alleged to be involved in promoting LGBTIQ activities in the country coin and disguise their objectives under the promotion of human rights; advocating for gender diversity; providing legal aid; access to justice to marginalized groups and sexual minorities; and prevention of HIV/AIDS among others in order to hoodwink the NGO Bureau and obtain registration whereas they conduct different activities on the ground.”⁷⁸ The report went on to recommend that the “NGO Bureau should be availed more resources to intensify the monitoring and inspection of NGOs to be able to identify and weed out those that are involved in activities that are prejudicial to the interests of the people of Uganda” and that “the individuals already identified and linked to organizations involved in promoting LGBTIQ activities should be profiled and mechanisms put in place to prevent them from forming other organizations for a similar purpose.”⁷⁹ According to the report, the NGO Bureau rejected and suspended the registration of four organizations (Sexual Minorities Uganda, The Robust Initiative for Promoting Human Rights, Tranz Network Uganda and Ubuntu Law and Justice Centre) for reasons related to their involvement in LGBTIQ+ issues.⁸⁰
63. The current draft of the 2023 Bill would criminalize the “promotion of homosexuality.” A person will be deemed to “promote” homosexuality if the person “knowingly advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcasting or distribution by any means, including the use of a computer, information system or the internet, or any material promoting or encouraging homosexuality or the commission of an offence under the Act; provides financial support, whether in kind or cash, to facilitate activities that encourage homosexuality or the observance or normalization of conduct that is prohibited under th[e] Act; knowingly leases or subleases, uses or allows another person to use any house, building or establishment for the purpose of undertaking activities that encourage homosexuality or any other offence under th[e] Act; or operates an organisation which promotes or encourages homosexuality or the observance or normalization of conduct that is prohibited under th[e] Act.”⁸¹ The broad and vague language of this provision creates uncertainty and fear human rights defenders who work on LGBTIQ+ human rights or with the LGBTI+ community because the government could potentially classify their work as promoting homosexuality. If an entity is found to have promoted homosexuality, the court may cancel or suspend the license for 10 years.⁸²
64. Though the 2023 Bill has not been approved by the president, the passage of the bill by the Parliament has already led to the revocation of human rights defenders’ licenses for working on LGBTIQ+ issues.⁸³ If the bill becomes law, it will likely lead to the criminalization of a

⁷⁸ Ministry of Internal Affairs, National Bureau for NGOs, *Status report on NGOs suspected to be involved in the promotion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) activities in the country* (January 2023), 9.

⁷⁹ Ministry of Internal Affairs, National Bureau for NGOs, *Status report on NGOs suspected to be involved in the promotion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) activities in the country* (January 2023), 11.

⁸⁰ Ministry of Internal Affairs, National Bureau for NGOs, *Status report on NGOs suspected to be involved in the promotion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) activities in the country* (January 2023), 2-7.

⁸¹ The Anti-Homosexuality Bill, 2023, Bill No. 3 (Mar. 3, 2023), Part III, Article 11. Available online at <https://www.jurist.org/news/wp-content/uploads/sites/4/2023/03/Anti-Homosexuality-Bill-2023.pdf>.

⁸² *Ibid.*

⁸³ Interview with Ugandan human rights defender, Uganda, May 18, 2023.

large number of human rights defenders (and their organizations) supporting the LGBTIQ+ community.

X. Suggested recommendations for the Government of Uganda

65. The authors suggest the following recommendations for the Government of Uganda:

- Reject the Anti-Homosexuality Bill of 2023 in its entirety.
- Revise the Anti-Homosexuality Bill of 2023 to eliminate the death penalty as a possible punishment for the crime of “aggravated homosexuality,” and reserve the death penalty for only crimes involving an intentional killing.
- Decriminalize sexual relations between consenting adults of the same sex currently criminalized under Sections 145-147 of the Penal Code.
- Enact specific legislation preventing discrimination against individuals based on sexual orientation, gender identity, gender expression, and sex characteristics in line with Article 21 and 32 of the Constitution.
- Adopt measures to combat public misinformation about and stigmatization towards the LGBTIQ+ community by conducting public education campaigns in collaboration with civil society organizations that work on LGBTIQ+ human rights.
- Include units on gender and sexuality in university and medical school curriculum, specifically on LGBTIQ+ social, legal, political, and medical concerns.
- Mandate training for government officials, educators, healthcare providers, and law enforcement with respect to LGBTIQ+ issues.
- Immediately cease the arbitrary arrest of individuals based on their sexual orientation, gender identity, gender expression, and sex characteristics.
- Conduct immediate, impartial investigations into all claims of human rights violations perpetrated by State and non-State actors against individuals because of their real or perceived sexual orientation, gender identity, gender expression, and sex characteristics.
- End impunity and hold both State and non-State perpetrators accountable for violations against LGBTIQ+ individuals.
- Provide fair and adequate financial compensation to LGBTIQ+ victims of human rights violations by State actors.
- Ensure that all new and existing police officers receive regular trainings on excessive force and preventing human rights violations against people in detention conditions. Include units of the particular vulnerabilities LGBTIQ+ individuals have while in detention.
- Immediately cease the use of forced anal examinations and other humiliating and degrading treatment of people in detention as a method to “prove” homosexuality.
- Ensure full compliance with laws regarding arrest procedures and investigate and prosecute all cases of arbitrary arrests and detention by state actors.

- Enact laws to specifically protect legal professionals – including those that work with the LGBTIQ+ community – from harassment, intimidation, and detention.
- Immediately and impartially investigate and prosecute all cases of intimidation and harassment of lawyers representing the LGBTIQ+ community.
- Revise the HIV and AIDS Prevention and Control Act of 2014 to prohibit any and all disclosure of HIV status by medical professionals.
- Revise the proposed Anti-Homosexuality Bill of 2023 to remove all provisions imposing a duty to report known or suspected acts of “homosexuality.”
- Amend the Human Rights Defenders’ Protection Bill to include protection of fundamental rights such as freedom of expression and remove the requirement for human rights defenders to register with the UHRC. Expedite the passing of the amended Human Rights Defenders’ Protection Bill.
- Reinstate the statuses of NGOs whose registration has been rejected or revoked by reason of involvement in LGBTIQ+ issues and prevent further unfair and targeted regulation of organizations promoting LGBTIQ+ rights.
- Revise the Anti-Homosexuality Bill of 2023 to remove all provisions that criminalizes the “promotion of homosexuality.”
- Develop mechanisms allowing relevant government bodies to promptly and independently investigate allegations of violations of human rights defenders’ human rights.

66. The authors include the following documents as annexed materials:

- Human Rights Awareness and Promotion Forum (HRAPF), *Arrests, Evictions and Violence: Report of Violations Against LGBTQ Persons for the First Month Following the Passing of Uganda’s Anti-Homosexuality Bill, 2023*, (Kampala, 2023).
- Human Rights Awareness and Promotion Forum (HRAPF), *A Legal and Human Rights Analysis of the Amendments to the Anti-Homosexuality Bill, 2023*, (Kampala, 2023).
- Human Rights Awareness and Promotion Forum (HRAPF), “The Anti-Homosexuality Bill, 2023,” Kampala: HRAPF, 2023 (Unpublished memorandum compiled by HRAPF of the text of the Anti-Homosexuality Bill passed by Parliament for the second time).



ARRESTS, EVICTIONS AND VIOLENCE: REPORT OF VIOLATIONS AGAINST LGBTQ PERSONS FOR THE FRIST MONTH FOLLOWING THE PASSING OF UGANDA'S ANTI-HOMOSEXUALITY BILL, 2023

Kampala, 21st April 2023

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1. Introduction

Thursday, 20th April 2023 marked the 30th day after Uganda's Parliament passed the Anti-Homosexuality Bill, 2023 on Tuesday 21st March 2023. As a legal aid service provider, HRAPF documents cases that are reported to it by LGBTQ persons, critically reviewing these cases for evidence of violations based on sexual orientation and gender identity, and accordingly reports on these trends. The current report covers the period from 21st March, 2023 when the Bill was passed by Parliament to 20th April, 2023, which marks one month since the Bill was enacted. The report discusses the number, nature and trends of violations during this period, and compares

them with the same period in 2022. The report shows a drastic increase in the number of violations during this period, as well as a big difference in the nature of the cases being recorded.

2. Background

On 20th April 2023, President Museveni met the ruling party caucus in Parliament and the caucus issued a resolution to have the President send the Bill back to Parliament to be reconsidered. The main reason given for this was that the Bill also seeks to punish those who come out to renounce homosexuality.¹

The Bill in its current format seeks to, among others, criminalise consensual same-sex relations as 'homosexuality' and provide for the penalty of life imprisonment – which is defined as imprisonment without possibility of release – for the offence of 'homosexuality'. It also provides for the death penalty for what is called 'aggravated homosexuality', which is 'homosexuality' with a child or a repeat conviction for 'homosexuality' or 'homosexuality' by a relative, among others. It also seeks to punish 'promotion of homosexuality', which is defined widely to include activities that seek to 'normalise' homosexuality, and this is sought to be punishable by 20 years' imprisonment and, for organisations, a fine of up to one billion Uganda shillings (about USD 267,500) as well as revocation of license. It also seeks to impose reporting obligations on anyone who knows or reasonably suspects someone to be engaged in or about to commit 'homosexuality', and waives professional requirements for confidentiality for professionals who report homosexuals. Only 'advocates' are excluded from this obligation, and so it applies to all other professionals, including medical doctors and religious leaders, as well as parents and any person. Failure to report attracts six months' imprisonment.

The President seems to only be interested in protecting those who come out as gay and seek rehabilitation. The vague language around 'normalisation of homosexuality' under the provision on promotion of homosexuality is not mentioned at all, but the President seems not to mind the idea that funding and activities of civil society organizations regarded as promoting homosexuality will be criminalised.²

If Parliament acts only on these recommendations, it would leave many of the dangerous and unconstitutional provisions of the Bill still standing. Since it is clear that there is another opportunity to engage Parliament, HRAPF has issued this report in order to highlight the drastic impact that the Bill has already had on the rights of LGBTQ persons in the first 30 days of its passing – even if it is technically not yet law.

3. Methodology

This report is essentially compiled from cases handled by HRAPF's network of lawyers and community paralegals spread across the country. It only covers cases that were reported to and handled by HRAPF through its legal aid network. This includes cases handled by lawyers at the Kampala offices, and those handled by community paralegals across the country as well as

¹ State House Presidential Press Unit 'H.E Museveni to return the Anti-Homosexuality Bill to Parliament for changes before its signed into law' Thursday 20th April 2023.

² Above.

those handled through the different regional centres and legal aid desks that HRAPF operates in partnership with partner organisations.

Both quantitative and qualitative data was collected, with quantitative data focusing on the number of cases handled and violations documented. Qualitative data focused on the facts of each individual case in order to determine the circumstances under which the different violations occurred and, by understanding these circumstances, provide certainty on whether or not these violations were based entirely or primarily on the victims' SOGIE. Case files were reviewed and documentary evidence on the files noted and, where documentary evidence was not enough, interviews were held with victims, eye witnesses and HRAPF staff or community paralegals who responded to the cases.

This report has a number of limitations. The first one is that it is not a comprehensive consideration of all cases that happened during this period. The only cases that are reported are those handled by HRAPF under its legal aid network, and not any other. There are other cases that may not have been reported at all, or that may have been reported to other entities. Another limitation is that it is issued before the end of the month, which implies that not all community paralegals have reported the cases that they have handled, which presents the risk of underreporting.

4. Number of cases handled between 21st March and 20th April 2023

Between 21st March 2023, when the Bill was enacted by Parliament, and 20th April 2023, HRAPF received and handled 59 cases involving LGBTQ or suspected LGBTQ persons. Of these, 40 cases (67.8%) involved violence and violations targeting the victims purely on the basis of their presumed sexuality, and affected a total of 85 persons. 11 cases were cases of arrests of people based on their sexual orientation and gender identity, 14 were crimes against persons on basis of their sexuality, and 15 were cases of evictions from rented property.

a) Arrests based on presumed sexual orientation and gender identity

There have been 11 arrests of LGBTQ people on grounds of their presumed sexuality and/or gender identity. These arrests involved a total of 20 persons. Of the 11 cases, 7 cases did not proceed to court while in 4 cases, the cases proceeded to court.

In one of these cases, a group of six people were arrested and charged with having carnal knowledge against the order of nature because the area local chairperson saw a video from a gay porn site in which one of the actors looked like one of the victims. Even if this was later found to be untrue, the entire group was still charged only because the place where they were arrested from was searched and the police found lubricants, condoms, PrEP medication and other HIV prevention commodities, as it was the office of an LGBTQ support organisation. The entire group was held for 12 days before they appeared in court. A similar thing happened to a man in Lyantonde who was arrested and held for three days because a journalist living in his neighbourhood found a gay porn video in which one of the actors looked like the victim.

In another case, a gay man was arrested and charged with 'attempting to have carnal knowledge against the order of nature' after an individual he found on Grindr, a popular dating/ sex app, turned on him at their meeting point, demanding money, and when he refused to be extorted, this person had him arrested and later produced in court for allegedly

attempting to sodomise him. He was detained for 7 days before he was taken to court. Two other persons were arrested under similar circumstances but their cases did not proceed court.

In another case, a man was arrested, initially charged with possession of narcotics and a search conducted at his house. No narcotics were found, but once the police found lubricants, they then informed him that they had heard from his neighbours that he was a homosexual and they just wanted proof, which they had found. He was detained for 4 days. In another incident, a gay man was arrested and detained for 4 days upon suspicion that he was a homosexual and assaulted some students at a college where he was studying, although this was later found to be false. In another case, three women were arrested at a landing site in Buikwe district and held for 6 days, and they were specifically informed that under the new law, it was also illegal for women to have sex. They were never produced in court, however, and were later released without charge.

In the most recent case, an athlete who was suspected to be a transgender woman was arrested by a mob, forcefully undressed and then forced to march through the streets naked while the crowd heckled her, threw objects at her, took her photos/ videos and even fondled her. She was held at the police station for two days before she was produced in court, where she was denied bail on grounds that she had no sureties, because all her friends in the area were afraid they would be targeted for appearing to stand with her.

In all these cases, the victims have had their liberty arbitrarily restricted purely on the basis of their presumed sexuality, and in some of the cases, it has become increasingly clear that the police personnel are at least in part motivated by what they perceive to be their duty under the new Bill, even before it becomes law. The Bill is also emboldening other violations from the general population, with violations of privacy for purposes of finding proof of homosexuality appearing to become more common. In addition, in nearly all these cases, the police has made a deliberate effort to publicise these arrests, naming the victims and often even displaying their faces, which makes it difficult for them to return to their homes (or even find rental accommodation elsewhere) after their release from prison. In some cases, the police does this by simply announcing the arrest to the neighbours, involving the landlord and local area leadership and thus making it impossible for one to return to the village safely after their release.

b) Evictions from property

Evictions from rented premises were the most common form of violence during this period, with 15 incidents recorded, affecting 49 persons. The evictions seem to be fueled by the fear of prosecution in case the AHB becomes law, and the general environment of fear and politicization caused by the Bill.

i) Evictions by landlords

Landlords were directly responsible for the majority of the evictions – nine out of 15, involving 9 individuals and one organisation. In six of these cases, the reason given by the landlord for the eviction is that they are afraid of being arrested when the Bill becomes law, so they essentially see themselves as taking protective action.

In one case, an LGBTQ organisation that had resided at the same address for almost five years was evicted by the landlady, who sent a screenshot of clauses 9 and 11(2)(d) of the Bill to the organisation's executive director and asserted that they did not wish to be arrested, nor to risk the villagers burning down their property.

Similar sentiments were recorded in the five other cases. In one case, a lesbian woman was evicted because her landlord heard a rumour that the reason why she is unmarried is because she prefers women; another person was evicted for exhibiting what the landlord called 'homosexual behaviors'; in another, two friends that were living together were evicted because one, who was transitioning, started to grow breasts and look more feminine this year, which transition unfortunately coincided with the passing of the Bill. A community paralegal was also served notice by their landlord to vacate the house on the grounds that they seem to have a lot of homosexuals who come to look for them at the house, and a lesbian woman was evicted from her home after her neighbour told the landlord that she was a homosexual and the landlord and all neighbours would be arrested for harboring her and not reporting to the police.

Therefore, even persons who were not bothered by the sexual orientation of their tenants before are now throwing them out of rented premises.

ii) Evictions by local authorities

Local leaders orchestrated five of the evictions, involving 30 individuals and two organisations. The latest case involves a group of 28 LGBTQ refugees living in a refugee settlement who have been constructively evicted by local authorities. The entire group is currently living in hiding as the police authorities have repeatedly sent them messages, demanding that they present themselves for arrest for their activities promoting homosexuality in the camp. The group has previously been subjected to violent attacks by their neighbours and defence personnel for which they are unable to access justice for fear of being arrested by the police, which is actively hunting for them.

In another case, a transgender woman was evicted by the area local council during a full council meeting, to which the HRAPF lawyer was invited but his advice was ignored. In the meeting, the victim was informed that the leadership had come to learn that she was a homosexual and that if she did not leave their area immediately, they would 'not be responsible is anything happened to her.' She had to leave. In another case, a radio station in called on the leaders to get rid of a homosexual pastor in their area who they said was recruiting their children, and in response the area chairperson, defence secretary and district security officer all stormed his home, demanding that he pay them exorbitant amounts of money for the case to go away or face arrest and imprisonment for being a homosexual. He refused to pay but was still forced to leave his home, which he fully owned, and his family, and temporarily seek refuge in a different village a bit removed from his home, church and family. In yet another case in which state authorities have abused their power, an LGBTQ organisation was evicted after the area leadership wrote to the landlord demanding that he evict the homosexuals and, when he failed to do so, the chairperson wrote directly to the

client organisation, demanding that they leave the village within three days or ‘face the consequences’.

iii) Evictions by neighbours/community

In one case the eviction was done by neighbours/ the community. In this case, a gay man hosted his partner for Easter celebrations. Unfortunately, two of the neighbours’ children came in to play with him as they often do and found him kissing his partner, upon which they run out screaming for their parents to come and see ‘*abasiyazi*’. The two were forced to sit in varying stages of undress in the compound for several minutes while the neighbours called the police. They were however able to escape when the person watching them got distracted, but they received a formal notice from their landlord not to return.

These and many other similar incidents continue to haunt the everyday lives of LGBTQ people, with very little support available to enable them make such transitions as and when they are required to do so. It is worth noting that while one could simply hold one’s ground and refuse to leave a village, especially where the eviction is mediated by state authorities, the fact is that by the time it gets to that point, one has already been outed and has very little choice but to leave anyway, for their own safety. These violations are a violation of the freedom of movement, freedom from discrimination and in many cases, the dignity and privacy of the victims.

c) Acts of violence and crimes against LGBTQ persons

As noted above, there have been 14 cases involving acts of assault and physical violence against LGBTQ persons, affecting 16 persons. There was actual physical violence in eight cases and threatened violence in six cases.

i) Cases of physical violence

These were eight cases of physical violence. In one of these cases, a leader of an organisation was forced to flee his home after the village leadership and other individuals he did not know threatened to lynch him. He had previously been arrested and held incommunicado for almost a month by security forces, and during that detention he had been told, before the area chairperson, who had also been arrested on allegations of terrorism, that he was a promoter of homosexuality. After the Bill passed, the neighbours and local area leaders then turned against him, threatening to cause him harm if he did not leave.

In another incident, a transgender woman reported being harassed by a journalist, who insisted on having a conversation with her about her life even if she repeatedly refused. Eventually, she agreed to have a casual chat with a different journalist, who she thought was friendly to her, but the following morning, their conversation was played on the local radio station. She has since faced threats from her neighbours and family because during the recorded conversation, she admitted to dressing as a female because she identified as a transgender woman.

In one case, a man was assaulted once by people in the neighbourhood who regarded him as gay.

There have also been three reported incidents of mob violence during the period, one reported by a man who operates a community drop-in-centre who was cornered by a large group of people on his way home and brutally beaten before they were scared off by a passerby and ran away.

In another incident, two gay men were attacked by a mob shortly after the Muslim community protested against them and other two suspected LGBTQ people, and the two were nearly lynched but managed to escape. In a similar incident, a transgender woman who is a community paralegal and leader in the movement was returning from visiting some people who had been arrested at a nearby station on charges of 'sodomy' when she was set upon by a group of over 5 men and viciously beaten. In another incident, a transgender woman was beaten brutally by a man who approached her on Grindr and offered to pay her for sex, then led her to a place where he had her beaten up by his friends before leaving her by the side of the road.

ii) Other forms of violence

In six cases, there were other forms of violence. A lesbian woman and her partner were attacked by a group of men who accosted them as they were leaving their business premises, and promised to find them and rape them in order to 'teach them the right way to behave.'

In one case, a gay man and community leader was forced to flee after repeatedly receiving calls and messages from someone who initially requested a meeting and, when he was unable to secure one, informed the victim that he would find him anyway and shoot him, and proceeded to describe in detail how to get to the client's rented home. A similar thing also happened to an activist, who was first contacted by her abuser through her Twitter account and later on her personal number and started to harass and threaten her.

Such incidents violate not only the basic human dignity of the victims but also the privacy of their bodies and their bodily autonomy, and are often unaddressed as the police forces simply have no interest in identifying or prosecuting the assailants in such cases. In all these cases, the assaults and threats have been reported to the authorities but without tangible results.

5. Comparison with the period 21st March 2022 to 20th April 2022

In contrast, this same exact period in 2022 was a period of relative peace for LGBTQ persons in Uganda: 72 cases were handled by HRAPF involving LGBTQ people during this time, and of these, only 26 involved actions that targeted LGBTQ people for differential (negative) treatment purely on the basis of their sexuality. Of these 25 cases, 14 were crimes against LGBTQ people (assaults and three cases of blackmail), 6 were civil disputes and 6 were arrests based primarily on the victims' sexuality.

It is clear that there has been a major change in the trends because, although there has been an overall reduction in the total number of cases involving LGBTQ persons from March 21, 2023 to April 20, 2023 as opposed to March 21, 2022 and April 20, 2022 (59 cases vis-à-vis 72 cases), there is a definite increase in targeted violence based on SOGIE, from 25 cases affecting 27 people in 2022 to 40 cases affecting 85 persons in 2023.

6. Conclusion

In light of the foregoing discussion, it is HRAPF's position that the AHB has already, even in the absence of presidential assent, become a tool of further oppression and abuse against LGBTQ people. This report presents a sneak peak view of the situation of LGBTQ persons across the country. The following conclusions can be drawn from it:

- i) LGBTQ persons are being targeted for arrest by the police based on their real or presumed sexual orientation or gender identity. The majority of these arrests are purely for political rather than genuine law enforcement reasons, which not only deprive victims of their liberty arbitrarily but also in the end deprive them of shelter and livelihood by forcing them to uproot their lives and move away from their ordinary residences/ businesses/ sources of income.
- ii) The Anti-Homosexuality Bill, 2023 is forcing landlords who have been tolerating LGBTQ persons to evict such persons from their premises for fear of repercussions if the Bill becomes law. The problem of LGBTQ homelessness is eventually going to become endemic as no feasible solution can be found in light of the current circumstances, and homelessness tends to carry with it numerous well-documented risks. It also is likely to worsen the refugee problem as people seek to leave the country due to increased violations.
- iii) Violence, violations, abuses and crimes against LGBTI persons have increased exponentially from what it was during the same period in 2022. This is partly driven by the politicisation of LGBTQ issues in the country. There is a belief that this is what the government wants people to do in order to fight homosexuality, a dangerous proposition that can have immense and wide-sweeping impact.

7. Recommendations

HRAPF calls upon the President of the Republic of Uganda to reject the Anti-Homosexuality Bill, 2023 not to sign the Anti-Homosexuality Bill and instead ask the legislature to consider a non-discriminatory law that protects children from sexual abuse.

Now that Parliament has another chance to reconsider the law, it should do so comprehensively and come up with a law that does not promote persecution of people solely based on their sexual orientation and gender identity.

Finally, HRAPF wishes to recognise the incredible resilience and strength so far exhibited by leaders in the LGBTQ community in Uganda, despite drastic odds and crippling uncertainty, and thus calls upon all leaders within the LGBTQ movement, civil society organisations working with and headed by LGBTQ persons, allies and partners to remain steadfast and continue to lobby the state for a positive change in law, as well as maintaining advocacy strategies that counter the disinformation that has fueled the current wave of homophobia.



A LEGAL AND HUMAN RIGHTS ANALYSIS OF THE AMENDMENTS TO THE ANTI-HOMOSEXUALITY BILL, 2023

Kampala,

3rd May 2023

1. Introduction	1
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1. Introduction

On 25th April 2023, President Yoweri Museveni sent the Anti-Homosexuality Bill, 2023 back to Parliament with a request that they reconsider several clauses of the Bill. The Bill was referred to the Committee on Legal and Parliamentary Affairs to consider the President's suggestion. On 2nd May 2023, the Committee tabled its report and Parliament passed the Bill again with amendments to the clauses identified by the President and some more. HRAPF had prior to this change analysed the Bill as enacted on 21st March, 2023, and this legal and human rights analysis focuses only on the amendments made to the Bill by Parliament.

2. Clause by clause discussion of the amendments

Five clauses were amended by Parliament, that is, clause 2, 3, 9, 14 and 17. The specific amendments are as follows:

2.1 Clauses 2 and 3 – distinguishing between being a homosexual and actually engaging in 'acts of homosexuality'

These were amended by adding clause 2(5) and 3(5) which both read as follows:

For the avoidance of doubt, a person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offence of homosexuality under this section.

The amendment to clauses 2 and 3 does not add much to the Bill except as it proclaims – to avoid doubt. There was nothing confusing about this, apart from the apparent conflation of sexual orientation and sex practices. From the President’s letter to Parliament, it does appear that his criticism referred more to the use of the word ‘homosexuality’, traditionally understood more as an orientation than an action, to denote the prohibited act. In the first version of the Bill that was tabled before Parliament, self-identifying as LGBTQ was made an offence under the definition of homosexuality, which added another layer of confusion, but this was removed when the Bill was passed the first time. By not addressing either one of these two aspects, the amendment did not add any clarity on the elements of the provision.

There was however never any doubt that the clauses do not apply to persons who are ‘alleged or suspected of being homosexual.’ Clause 2(1) provides that ‘A person commits the offence of homosexuality if the person performs a sexual act on another person of the same sex or allows a person of the same sex to perform a sexual act on him or her.’ This is clear enough – that one only commits the offence if they perform a sexual act on a person of the same sex or allow someone to perform a sexual act on them by a person of the same sex.

The clarity is welcome, but it is also not important. From HRAPF’s research and observations as a legal aid service provider to LGBTQ persons for over thirteen years, LGBTQ persons are usually not arrested for specific sexual acts but rather based on how they are perceived by the police or the public, as deduced from how they appear, act or who they relate with.¹ In situations of consensual same-sex relations, it is almost impossible to get evidence of the sexual act as there is no complainant. This explains why many arrested persons are taken for demeaning and dehumanising anal examinations, which are of no evidential value, in the hope of finding some evidence of the sexual act. This will not stop just because clauses 2(5) and 3(5) make a clear distinction between the sexual act and being suspected of being a homosexual. In this respect, the amendment serves no practical purpose. Referring to the offence as ‘homosexuality’ will also continue to create the impression that the orientation of being a homosexual is criminalised in Uganda.

2.2 Clause 9 – Premises

Clause 9 was amended by amalgamating sub clauses 1 and 2 into one clause that now reads

A person who knowingly allows any premises to be used by any person for purposes of homosexuality or to commit an offence under this Act, commits an offence and is liable on conviction to imprisonment for a period not exceeding seven years.

¹ See generally, Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) & Human Rights Awareness and Promotion Forum (HRAPF) ‘Protecting morals by dehumanising suspected LGBTI persons, a critique of the enforcement of laws criminalising same sex conduct in Uganda’ March 2013.

Parliament made this clearer as the offence is ‘knowingly’ allowing premises to be used for purposes of homosexuality or to commit an offence under the Act. The lower punishment under the provision of seven years was preferred to the one of ten years that was initially provided for under clause 9(1).

Despite this, the provision remains wide enough to still have the same undesirable impact as before, as it certainly would criminalise hotels providing space for LGBTQ people’s workshops or landlords renting space to organization that work on LGBTQ issues, since ‘promotion of homosexuality’ is maintained as an offence under the Act. The effect of this will be denying space to LGBTQ persons to associate or to do any work on protection of the rights of LGBTQ persons. Combined with the provision on promotion of homosexuality, this provision remains deadly to LGBTQ rights in Uganda. It also still affects the right to property for landlords/ property owners, who will have the onerous burden of investigating every tenant, every event and every customer to ensure that they are not ‘promoting’ or ‘normalising’ homosexuality, as per the rather ambiguous standards set in the Bill.

Restricting the use of premises by landlords has already created negative implications for LGBTQ persons even before the Bill becomes law. During the one-month period between 21st March 2023 when the Bill was first passed and 20th April 2023, HRAPF’s legal aid network documented a total of 54 cases involving LGBTQ persons, 40 of which were purely based on the real or presumed sexuality and/or gender identity of the victims. Of these, 15 were cases of evictions from rented property on the basis of real or presumed sexual orientation or gender identity.² There was only one such case in the equivalent period in 2022.

2.3 Clause 14 - Duty to report acts of homosexuality

Clause 14 was amended in subclause (3) to read as follows:

A person who, knowing or having reason to believe that a person has committed or intends to commit an offence against a child or vulnerable person, and does not report the matter to police, commits an offence and is liable, on conviction, to a fine not exceeding five thousand currency points or imprisonment for a period not exceeding five years.

Clause 14(1) as amended still imposes a duty on everyone ‘who knows or has reasonable suspicion that a person has committed or intends to commit the offence of homosexuality or any other offence under this Act’ to report to the Police. However, the amendment to clause 14 only provides a punishment for those who do not report such offences against a child or vulnerable person. The duty to report for all the other categories does not carry any penalty.

² Human Rights Awareness and Promotion Forum ‘Arrests, evictions and violence: Report of violations against LGBTQ Persons for the first month following the passing of Uganda’s Anti-Homosexuality Bill, 2023’ 21st April 2023 <https://hrapf.org/violation-reports/> (accessed 2nd May 2023).

The punishment has been enhanced from six months' imprisonment to five years' imprisonment.

The Committee in their report seem to have intended to delete clause 14(1) or amend it to apply to only children and vulnerable persons, and this may be cured in the official draft to be presented to the President, but if it is not, then all persons who do not report people that they know or reasonably suspect to have committed an offence under the Act would have committed an offence, although there is no punishment provided for such an offence under the Act. The Penal Code Act in section 22 provides that where there is no punishment specially provided for any misdemeanour, it shall be punishable with imprisonment for a period not exceeding two years. However, that only applies to the Penal Code and there is no similar provision in the Bill, thus this current framing creates a gap in the law.

Unless this is clarified this change provides little relief as there will still be a legal obligation to report for all persons and for all offences under the Bill, which will affect counselors, medical doctors, lawyers who are not Advocates, parents and everyone else, something that would have a huge impact on demand and access to social services for LGBTQ persons. However, if clause 14(1) only applies to offences concerning children and vulnerable persons, then the impact of the provision would reduce in scope and would enable services to continue being provided to LGBTQ persons, subject of course to the applicability of clause 11 on promotion of homosexuality, which remains intact and would essentially also criminalise work done to 'normalise' homosexuality. There is a very real danger that health, legal or other service provision to LGBTQ people would qualify as 'normalisation' of prohibited conduct.

2.4 Clause 17 - repealing the penal code provisions

Parliament also voted to retain section 145(a) and (c) of the Penal Code which criminalise 'carnal knowledge against the order of nature.' These are the provisions under which consensual and nonconsensual same-sex relations are currently criminalised, and under which hundreds of real or suspected LGBTQ persons have been arrested before.³

Maintaining section 145 of the Penal code would amount to expanded criminalisation of consensual same-sex relations.⁴ This would go contrary to the stated motive behind the Bill which was to 'establish a comprehensive and enhanced legislation to protect the traditional family ...'⁵ The Bill was touted as a law consolidating all laws concerning homosexuality in Uganda, and retention of the criminalisation in the Penal Code Act clearly goes against this stated intention.

The Anti-Homosexuality Bill was intended to cure the defects in the Penal Code, one of which was the argument that the provision is vague. Vague provisions are dangerous in the

³ See HRAFP & CSCHRCL, n 1 above.

⁴ For a discussion of the concept of expanded criminalisation see, A Jjuuko & M Tabengwa 'Expanded criminalisation of consensual same sex relations in Africa: Contextualizing the recent developments' in N Nicol et al (eds) (2018) 'Envisioning global LGBT human rights: (Neo)colonialism, neoliberalism, resistance and hope' Institute of Commonwealth Studies, School of Advanced Study, University of London, 63.

⁵ See Memorandum to the Anti-Homosexuality Bill, 2023.

sense that one cannot be sure of what conduct is criminalised, and are to that extent unconstitutional. The existence of both laws at the same time means that whereas one can sufficiently know what to avoid under the Anti-Homosexuality Act, the vagueness of the Penal Code provision makes it difficult to be sure what is criminalised, and someone can still be arrested under the vague law.

HRAPF's experience with law enforcement shows that even if no single person has been convicted for consensual same-sex relations under the Penal Code in recent times, tens of persons are arrested every year under section 145 of the Penal Code simply based on their appearance.⁶ This amounts to persecution rather than prosecution.

Leaving section 145 in place creates the likely danger that the police will ignore clauses 2 and 3 of the Anti-Homosexuality Bill, which require evidence of the sexual act, and focus on persecuting LGBTQ persons under the vague section 145 of the Penal Code like they have always done.

Removing clause 17 shoots down the whole motivation behind the clarity recommended by the President for clauses 2 and 3, and which were adopted by Parliament to clearly show that persons who are suspected of being homosexual commit no offence unless they perform the sexual act. It is a classic case of 'giving with one hand and taking away with the other', presumably creating clarity and then returning a provision the Committee (and the mover of the Bill) have both criticised before for vagueness.

It is also important to note that the removal of clause 17 was never called for by the President. It was referred to by the committee as 'consequential amendment.' This implies that the Committee felt that clarifying the reach of clause 2 and 3 reduced the impact of clauses 2 and 3, rendering section 145 relevant once again. Section 145 is similar in import to clause 2 and 3 as it criminalises acts rather than identities, as was clearly held by Musoke Kibuuka J in the High Court case of *Kasha Jacqueline, Pepe Onziema & David Kato Vs Giles Muhame and The Rollingstone Publication Limited*.⁷ The repeal of section 145 should therefore have been the real consequence of the inclusion of clauses 2(e) and 3(e) in the Bill.

By considering clause 17, the Committee also went contrary to the rules of Procedure of Parliament. Rule 143(4) requires the Committee to restrict itself to the consideration of matters referred to by the President and not to re-open the entire Bill for reconsideration. Clause 17 was never referred to at all in the President's letter and should not have been interfered with.

3. Conclusion

The amendments made to the Anti-Homosexuality Bill, 2023 are not sufficient to cure the Bill of its unconstitutionality. The Bill remains in violation of Uganda's supreme law,

⁶ HRAPF, & CSCHRCL, n1 above.

⁷ High Court Miscellaneous Cause No. 163 of 2010.

international human rights instruments that are binding to Uganda, and will negatively impact on the fight against HIV/AIDs in Uganda.

4. Recommendations

HRAPF recommends that the President should send the Bill to Parliament advising them to drop the Bill or overhaul it in order to align with the Constitution. The Bill cannot be cured of its unconstitutionality as it is fundamentally discriminatory as it targets as specific group of people for sanctioning solely based on their sex, gender and/or sexual orientation. It can therefore only be saved by completely overhauling or shelving the Bill in favour of a more comprehensive law on protection of all persons from sexual exploitation, abuse and harassment, regardless of their sexuality.

THE ANTI-HOMOSEXUALITY BILL, 2023**MEMORANDUM****1. Principles of the Bill**

The object of the Bill is to establish a comprehensive and enhanced legislation to protect the traditional family by—

- (a) prohibiting any form of sexual relations between persons of the same sex and the promotion or recognition of sexual relations between persons of the same sex.
- (b) strengthening the nation's capacity to deal with emerging internal and external threats to the traditional, heterosexual family. This legislation further recognizes the fact that same sex attraction is not an innate and immutable characteristic.
- (c) protecting the cherished culture of the people of Uganda, legal, religious, and traditional family values of Ugandans against the acts of sexual rights activists seeking to impose their values of sexual promiscuity on the people of Uganda.
- (d) protecting children and youth who are made vulnerable to sexual abuse through homosexuality and related acts.

2. Defects in existing law

This proposed legislation is designed to address the gaps in the provisions of other laws in Uganda, for example the Penal Code Act, Cap. 120. The Penal Code Act, Cap. 120 has no comprehensive provision catering for anti-homosexuality. It focuses on unnatural offences under section 145 and lacks provisions for penalising the procurement, promoting, disseminating literature and other pornographic materials concerning the offences of homosexuality. As a result, there is need for a legislation to enhance offences relating to homosexuality and clear provisions for charging, investigating, prosecuting, convicting and sentencing of offenders.

This legislation seeks to supplement the provisions of the Constitution of the Republic of Uganda and the Penal Code Act, Cap. 120 by criminalizing same-sex sexual acts and related acts.

3. REMEDIES

The Bill seeks to:

- (a) prohibit marriage between persons of the same sex;
- (b) prohibit and penalize homosexual behavior and related practices;
- (c) prohibit the promotion of homosexuality; and
- (d) protect and provide assistance and payment of compensation to victims of homosexuality.

ASUMAN BASALIRWA, MP

Bugiri Municipality

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ARRANGEMENT OF CLAUSES

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PART II—PROHIBITION OF HOMOSEXUALITY

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14. Duty to report acts of homosexuality
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17. Regulations

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Schedule

Currency point.

A Bill for an Act
ENTITLED
THE ANTI-HOMOSEXUALITY BILL, 2023

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of sexual relations between persons of the same sex; and for related matters.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY

1. Interpretation

In this Act, unless the context otherwise requires—

"advanced age" means seventy-five years and above;

"child" means a person below the age of eighteen years;

"child care institution" includes an orphanage, children's home, open shelter, an institution of learning or any residential childcare institution, whether licensed or unlicensed, established for purposes of providing care and protection to children who need such services;

"computer" means an electronic, magnetic, optical, electrochemical or other data processing device or a group of such interconnected or related devices, performing logical, arithmetic or storage functions; and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or group of such interconnected or related devices;

"currency point" has the value assigned to it in the Schedule to this Act;

"disability" means a substantial limitation of daily life activities caused by physical, mental or sensory impairment and environment barriers resulting in limited participation;

"female person" means a person born with a female sexual organ;

"homosexual" means a person who engages in an act of homosexuality;

"homosexuality" means the performance of a sexual act by a person on another person of the same sex;

"Imprisonment for life" means imprisonment for the natural life of a person without the possibility of being released;

"information system services" includes a provision of connections, operation or facilities for information systems, the provision of access to information systems, the transmission or routing of data messages between or among points specified by a user and the processing and storage of data, at the individual request of the recipient of the service;

"intersex" means a person who is born with both male and female sexual organs or is born with ambiguous genitalia;

"male person" means a person born with a male sexual organ;

"Minister" means the Minister responsible for ethics and integrity;

"organisation" means a legally constituted non-governmental organisation registered under the Non-Governmental Organisations Act and includes a private voluntary grouping of individuals or associations established to provide voluntary services to the community or any part thereof, but not for profit or commercial purposes;

"person in authority" means a person who is charged with the duty or responsibility for the health, welfare or supervision of a person;

"serial offender" means a person who has previous convictions of the offence of homosexuality or related offences;

"sex contraption" means a device or object used to stimulate a sexual organ or simulate sexual intercourse between persons of the same sex;

"sexual act" means the stimulation or penetration, however slight,

- (a) of a person's anus or mouth by a sexual organ of another person of the same sex
- (b) of a person's anus, sexual organ or mouth by a sex contraption, by a person of the same sex; or
- (c) of a person's anus or sexual organ by any part of the body of a person of the same sex;

"sexual organ" means a vagina or penis;

"terminal illness" means a disease without scientific cure;

"victim of the offence" means –

- (a) a child against whom the offence of aggravated homosexuality has been committed,
- (b) a person suffering from mental illness or any other form of disability against whom the offence of aggravated homosexuality has been committed, or
- (c) any other person against whom the offence of homosexuality or aggravated homosexuality has been committed
 - i. by means of threats, force, fear of bodily harm, duress, undue influence, through misrepresentation as to the nature of the act or intimidation of any kind, or
 - ii. while unconscious or in an altered state of consciousness due to the influence of medicine, drugs, alcohol or any other substance that impaired his or her judgment;

"vulnerable person" means a person who is in need of protection because of age, gender, illness, physical or mental disability, social or personal status, or other status, including a refugee, an internally displaced person, a stateless person, an asylum seeker, a victim of gender-based violence, an illiterate person or an elderly person.

PART II – HOMOSEXUALITY AND RELATED PRACTICES

2. The offence of homosexuality

- (1) A person commits the offence of homosexuality if the person performs a sexual act on another person of the same sex or allows a person of the same sex to perform a sexual act on him or her.

(2) A person who commits the offence of homosexuality is liable, on conviction, to imprisonment for life.

(3) A person who attempts to perform a sexual act in circumstances referred to in subsection (1), commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years.

(4) For purposes of subsection (3), a person shall be deemed to attempt to commit an offence when the person, intending to commit an offence, begins to put his or her intention into execution by means adapted to its fulfilment, and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence.

(5) For the avoidance of doubt, a person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offence of homosexuality under this section.

3. Aggravated homosexuality

(1) A person who commits the offence of homosexuality in any of the circumstances specified in subsection (2) commits the offence of aggravated homosexuality and is liable, on conviction to suffer death.

(2) The circumstances referred to in subsection (1) are where-

- (a) the person against whom the offence is committed is a child;
- (b) the offender is a parent, guardian or relative of the person against whom the offence is committed;
- (c) the person against whom the offence is committed contracts a terminal illness as a result of the sexual act;
- (d) the offender is a serial offender;
- (e) the offender is a person in authority over the person against whom the offence is committed;
- (f) the person against whom the offence is committed is a person with disability or suffers a disability as a result of the sexual act;
- (g) the person against whom the offence is committed is a person with a mental illness or suffers a mental illness as a result of the sexual act;
- (h) the person against whom the offence is committed is of advanced age;
- (i) the offence was committed against a person by means of threats, force, fear of bodily harm, duress, undue influence, through misrepresentation as to the nature of the act or intimidation of any kind;

- (j) the person against whom the offence is committed was at the time the offence was committed, unconscious or in an altered state of consciousness due to the influence of medicine, drugs, alcohol or any other substance that impaired his or her judgment;

(3) A person who attempts to perform a sexual act in circumstances referred to in subsection (1), commits an offence and is liable, on conviction, to imprisonment for a period not exceeding fourteen years.

(4) For purposes of subsection (3), a person shall be deemed to attempt to commit an offence when the person, intending to commit an offence, begins to put his or her intention into execution by means adapted to its fulfilment, and manifests his intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence.

(5) For the avoidance of doubt, a person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offence of homosexuality under this section.

4. Punishment of child homosexuality

A child who is convicted of an offence under section 2 or 3 of this Act shall, instead of the punishments prescribed under the relevant section, be liable, on conviction, to imprisonment for a period not exceeding three years.

5. Protection, assistance and payment of compensation to victims of homosexuality

(1) A person involved in the investigation, prosecution or trial of offences under this Act shall assist the victim of the offence present his or her views and concerns at the appropriate stages of the criminal proceedings.

(2) Where a person is convicted of homosexuality or aggravated homosexuality under this Act, the court may, in addition to any punishment provided, order the person to pay compensation to the victim, of an amount which, in the opinion of the court is just, having regard to the physical, sexual or psychological harm suffered by the victim, the degree of force used, medical and other expenses incurred by the victim as a result of the offence.

(3) The order referred to in subsection 2 shall be deemed to be a decree under the Civil Procedure Act, and shall be executed in the manner provided under that Act.

6. Consent to sexual act is no defence

The consent of a person to commit a sexual act shall not constitute a defence to a charge under this Act.

7. Confidentiality

Any editor, publisher, reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer or director of a film in case of the movie industry, or any person utilising trimedia facilities or information technology who publishes or causes the publicity of the names and personal circumstances or any other information tending to establish the victim's identity without authority of the victim or court, commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points.

PART III – RELATED OFFENCES AND PENALTIES

8. Child grooming

(1) A person who -

- (a) recruits, transports, transfers, harbours or receives a child for the purpose of engaging the child in homosexuality or any other conduct prohibited under this Act,
- (b) displays, distributes or supplies, to a child, any material demonstrating, depicting or illustrating a sexual act between persons of the same sex or any other conduct that is prohibited under this Act,
- (c) shows or avails a child a picture, video or film showing, depicting or illustrating a sexual act between persons of the same sex or any other conduct that is prohibited under this Act, or
- (d) in the presence of a child, performs a sexual act with a person of the same sex or causes another person to engage in a sexual act with a person of the same sex,

commits an offence and is liable, on conviction to imprisonment for a period not exceeding twenty years.

- (i) in the case of contravention of paragraph (a), to imprisonment for life; or
- (ii) in the case of contravention of paragraphs (b), (c), and (d), to imprisonment for a period not exceeding twenty years.

- (2) The consent of a child or that of the child's parent, guardian, person in authority or any other person with parental responsibility over the child to the acts prescribed in subsection (1) shall not be a defence to a charge under this Act.

9. Keeping premises to facilitate homosexuality

A person who knowingly allows any premises to be used by any person for purposes of homosexuality or to commit an offence under this Act, commits an offence and is liable on conviction to imprisonment for a period not exceeding seven years.

Deleted: <#>A person who keeps a house, room, set of rooms or place of any kind for purposes of facilitating the commission of the offence of homosexuality commits an offence and is liable, on conviction, to imprisonment for seven years. ¶

¶ The owner, occupier or manager of premises who knowingly allows the premises to be used by any person for purposes of homosexuality or to commit an offence under this Act, commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years....

10. Prohibition of marriage between persons of the same sex

- (1) A person who-
- (a) purports to contract a marriage with a person of the same sex;
 - (b) presides over, conducts, witnesses or directs such a marriage ceremony between persons of the same sex; or
 - (c) knowingly attends or participates in the preparation of a marriage between persons of the same sex;

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years

- (2) In this section, marriage means the union, whether formal or informal, between persons of the same sex.

11. Promotion of homosexuality

- (1) A person who knowingly promotes homosexuality commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.
- (2) A person promotes homosexuality where the person-
- (a) encourages or persuades another person to perform a sexual act with another person of the same sex or to do any other act that constitutes an offence under this Act;
 - (b) knowingly advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcasting or distribution by any means, including the use of a computer, information system or the internet, or any material promoting or encouraging homosexuality or the commission of an offence under the Act;
 - (c) provides financial support, whether in kind or cash, to facilitate activities that encourage homosexuality or the observance or normalization of conduct that is prohibited under this Act;

- (d) knowingly leases or subleases, uses or allows another person to use any house, building or establishment for the purpose of undertaking activities that encourage homosexuality or any other offence under this Act; or
 - (e) operates an organisation which promotes or encourages homosexuality or the observance or normalization of conduct that is prohibited under this Act.
- (3) Where an offence prescribed under this section is committed by a legal entity, court may-
- (a) impose a penalty not exceeding fifty thousand currency points for breach of any of the provisions of this section;
 - (b) suspend the license of the entity for a period of 10 years;
 - or
 - (c) cancel the licence granted to the entity.

PART IV - MISCELLANEOUS

12. Disqualification from employment upon conviction

A person who is convicted of the offence of homosexuality or aggravated homosexuality shall be disqualified from employment in a child care institution or in any other institution which places him or her in a position of authority or care of a child or a vulnerable person until such a time as a probation, social or welfare officer determines that the person is fully rehabilitated or no longer poses a danger to a child or other vulnerable person.

13. Disclosure of sexual offences record

- (1) A person convicted of an offence under this Act shall disclose the conviction when applying for employment in a child care institution or any other institution which places him or her in a position of authority or care of a child or any other vulnerable person.
- (2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding two years' imprisonment, and the employment of that person shall terminate.

14. Duty to report acts of homosexuality

- (1) A person, who knows or has reasonable suspicion that a person has committed or intends to commit the offence of homosexuality or any other offence under this Act, shall report the matter to police for appropriate action.

(2) A person who is otherwise prevented by privilege from making a report under subsection (1) shall be immune from any action arising from the disclosure of information without the consent or waiver of privilege first having been obtained or had.

(3) A person who, knowing or having reason to believe that a person has committed or intends to commit an offence against a child or vulnerable person, and does not report the matter to police, commits an offence and is liable, on conviction, to a fine not exceeding five thousand currency points or imprisonment for a period not exceeding five years.

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(4) A person who makes a report referred to in this subsection shall be treated as a whistle-blower and shall be protected from victimization.

(5) This section shall not apply to an advocate.

15. False sexual allegations

(1) A person who intentionally makes false or misleading allegations against another person to the effect that the person has committed an offence under this Act commits an offence and is liable, on conviction, to imprisonment for one year.

(2) In this section, an allegation is false or misleading if at any stage of investigation or prosecution, it is proved that the alleged act did not take place or the information was reported maliciously.

16. Rehabilitation of homosexuals

(1) Court may, upon convicting a person for the offence of homosexuality, order the provision of social services for purposes of rehabilitating the convicted person.

(2) The services referred to in subsection (1) may be provided by the prison services or by a probation, social and welfare officer of the area where the convicted person is serving his or her sentence.

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<#>Repeals ¶

Section 145 (1)(a) and (c) are repealed. ¶

Part IV – Miscellaneous

17. Regulations

The Minister may, by statutory instrument, make regulations for better carrying out the provisions of this Act.

SCHEDULE 1

CURRENCY POINT

One currency point is equivalent to twenty thousand shillings.

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