

**Flygtningenævnets baggrundsmateriale**

|                                 |                                                                                                                                                                   |
|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Bilagsnr.:</b>               | <b>383</b>                                                                                                                                                        |
| Land:                           | Uganda                                                                                                                                                            |
| Kilde:                          | Human Rights Awareness and Promotion Forum (HRAPF)                                                                                                                |
| Titel:                          | Human Rights Abuses and Violations against Lesbian, Gay, Bisexual and Transgender (LGBT) Persons in Detention and Imprisonment in Uganda: A Case Study of Kampala |
| Udgivet:                        | 2. december 2019                                                                                                                                                  |
| Optaget på baggrundsmaterialet: | 21. maj 2021                                                                                                                                                      |

**Human rights abuses and violations against  
Lesbian, Gay, Bisexual and Transgender (LGBT)  
persons in detention and imprisonment in  
Uganda: A case study of Kampala**



**RIGHT HERE  
RIGHT NOW**

**December 2019**





# **Human rights abuses and violations against Lesbian, Gay, Bisexual and Transgender (LGBT) persons in detention and imprisonment in Uganda: A case study of Kampala**

December 2019



**RIGHT HERE  
RIGHT NOW**

# **Human rights abuses and violations against Lesbian, Gay, Bisexual and Transgender (LGBT) persons in detention and imprisonment in Uganda: A case study of Kampala**

December 2019

A publication of Human Rights Awareness and Promotion Forum (HRAPF)

Plot 390 Professor Apollo Nsibambi Road

P.O. Box 25603 Kampala

Tel: +256 414 530 683 and +256 312 530 683

Toll free line: 0800 130 683

Email: [info@hrapf.org](mailto:info@hrapf.org)

Website: [www.hrapf.org](http://www.hrapf.org)

Facebook: Human Rights Awareness and Promotion Forum - HRAPF - Uganda

Twitter: [@hrapf\\_uganda](https://twitter.com/hrapf_uganda)

© Human Rights Awareness and Promotion Forum, 2019

# ACKNOWLEDGEMENTS

---

HRAPF acknowledges the contribution of all persons who participated in this study. To all the respondents who shared with us their personal stories and their views, we appreciate.

We acknowledge the role of Francis Tumwesige Ateenyi who led the team that collected data and drafted the report.

HRAPF also acknowledges the support of the Right Here Right Now Consortium which provided funding for this study.

# PROJECT TEAM

---

Dr. Adrian Jjuuko

**Lead Researcher and Principal Investigator**

Mr. Francis Tumwesige Ateenyi

**Researcher**

Ms. Linette du Toit

**Researcher**

Mr. Edward Ssemambo

**Researcher**

# TABLE OF CONTENTS

---

|                   |     |
|-------------------|-----|
| ACKNOWLEDGEMENTS  | v   |
| PROJECT TEAM      | vi  |
| TABLE OF CONTENTS | vii |
| LIST OF ACRONYMS  | x   |

|                   |     |
|-------------------|-----|
| EXECUTIVE SUMMARY | xii |
|-------------------|-----|

## 1. INTRODUCTION 1

|                                            |    |
|--------------------------------------------|----|
| 1.1 Background to the study                | 1  |
| 1.2 Problem statement                      | 2  |
| 1.3 Objectives of the study                | 3  |
| 1.3.1 Main objective                       | 3  |
| 1.3.2 Specific objectives                  | 3  |
| 1.4. Research questions                    | 3  |
| 1.5 Study rationale / justification        | 4  |
| 1.6 Methodology                            | 4  |
| 1.6.1 Study design                         | 4  |
| 1.6.2 Time scope                           | 5  |
| 1.6.3 Study location                       | 5  |
| 1.6.4 Study population and data collection | 5  |
| 1.6.5 Sampling                             | 6  |
| 1.7 Research methods and tools             | 7  |
| 1.8 Literature Review                      | 8  |
| 1.9 Ethical considerations                 | 12 |
| 1.10 Challenges                            | 12 |

## 2. LEGAL, POLICY AND INSTITUTIONAL SAFEGUARDS FOR LGBT PERSONS IN DETENTION AND IMPRISONMENT IN UGANDA 13

|                                                                   |    |
|-------------------------------------------------------------------|----|
| 2.1 Introduction                                                  | 13 |
| 2.2 Legal safeguards under international and regional instruments | 13 |

|                                                                                                                       |           |
|-----------------------------------------------------------------------------------------------------------------------|-----------|
| 2.3 Domestic laws protection of LGBT persons in detention or prison                                                   | 19        |
| 2.3.1 Constitutional protections                                                                                      | 19        |
| 2.3.2 Legislative safeguards                                                                                          | 24        |
| 2.4 Institutional and policy initiatives aimed at improving human rights in detention and prison facilities in Uganda | 28        |
| 2.4.1 Human Rights initiatives by the Uganda Police Force                                                             | 28        |
| 2.4.2 Human Rights initiatives by Uganda Prisons                                                                      | 30        |
| 2.5 Conclusion                                                                                                        | 31        |
| <b>3. MANIFESTATIONS AND TRENDS OF HUMAN RIGHTS VIOLATIONS SUFFERED BY LGBT PERSONS IN DETENTION AND IMPRISONMENT</b> | <b>32</b> |
| 3.1 Introduction                                                                                                      | 32        |
| 3.2 Respect for human dignity and freedom from torture and cruel, inhuman and degrading treatment or punishment       | 32        |
| 3.2.1 Manner of arrest, treatment and transportation by Police                                                        | 32        |
| 3.2.2 Conditions in police detention                                                                                  | 35        |
| 3.2.3 Conditions and treatment at Luzira Prisons                                                                      | 36        |
| 3.2.4 Medical examinations                                                                                            | 37        |
| 3.3 The right to personal liberty                                                                                     | 38        |
| 3.3.1 Unlawful detention in Police custody beyond the constitutional 48 hours                                         | 38        |
| 3.3.2 Conditions for grant of police bond from police custody                                                         | 39        |
| 3.3.3 Conditions for grant of bail from Prisons custody                                                               | 40        |
| 3.3.4 Legal representation in Police custody                                                                          | 40        |
| 3.3.5 Legal representation in prisons                                                                                 | 41        |
| 3.3.6 Charges and the right to be informed of the reason for arrest                                                   | 41        |
| 3.4 Equality and non-discrimination                                                                                   | 42        |
| 3.4.1 Equality and discrimination in Police custody                                                                   | 42        |
| 3.4.2 Equality and discrimination in prisons                                                                          | 43        |
| 3.5 The right to property                                                                                             | 44        |
| 3.5.1 Loss of personal property in police custody                                                                     | 44        |
| 3.5.2 Loss of property in prisons                                                                                     | 45        |

|                                           |           |
|-------------------------------------------|-----------|
| 3.6 Conclusion                            | 46        |
| <b>4. CONCLUSIONS AND RECOMMENDATIONS</b> | <b>47</b> |
| 4.1 Introduction                          | 47        |
| 4.2 Trends analysis                       | 47        |
| 4.3 Conclusions                           | 48        |
| 4.4 Recommendations                       | 49        |
| <b>REFERENCES</b>                         | <b>53</b> |

# LIST OF ACRONYMS

|                |                                                                                                        |
|----------------|--------------------------------------------------------------------------------------------------------|
| <b>ACHPR</b>   | African Charter on Human and Peoples' Rights                                                           |
| <b>ACP</b>     | Assistant Commissioner of Police/ Assistant Commissioner of Prisons.                                   |
| <b>ACRWC</b>   | African Charter on the Rights and Welfare of the Child                                                 |
| <b>AHA</b>     | Anti-Homosexuality Act, 2014                                                                           |
| <b>AIDS</b>    | Acquired Immunodeficiency Syndrome                                                                     |
| <b>ASP</b>     | Assistant Superintendent of Police                                                                     |
| <b>BPTP</b>    | Basic Principles for the Treatment of Prisoners                                                        |
| <b>Cap</b>     | Chapter (in the Laws of Uganda 2000 Edition)                                                           |
| <b>CAT</b>     | UN Convention Against Torture, and other forms of Cruel, Inhuman and Degrading Treatment or Punishment |
| <b>CEDAW</b>   | UN Convention on the Elimination of All Forms of Discrimination Against Women                          |
| <b>CPS</b>     | Central Police Station                                                                                 |
| <b>CPCA</b>    | Criminal Procedure Code Act Cap 116                                                                    |
| <b>CSCHRCL</b> | Civil Society Coalition on Human Rights and Constitutional Law                                         |
| <b>CSO</b>     | Civil Society Organisation                                                                             |
| <b>CRC</b>     | UN Convention on the Rights of the Child                                                               |
| <b>DPC</b>     | District Police Commander                                                                              |
| <b>EOC</b>     | Equal Opportunities Commission                                                                         |
| <b>FARUG</b>   | Freedom and Roam Uganda                                                                                |
| <b>FGD</b>     | Focus Group Discussion                                                                                 |
| <b>FHRI</b>    | Foundation for Human Rights Initiative                                                                 |
| <b>HIV</b>     | Human Immunodeficiency Virus                                                                           |
| <b>HRAPF</b>   | Human Rights Awareness and Promotion Forum                                                             |
| <b>HRW</b>     | Human Rights Watch                                                                                     |
| <b>ICCPR</b>   | International Covenant on Civil and Political Rights                                                   |
| <b>ICESCR</b>  | International Covenant on Economic, Social and Cultural Rights                                         |
| <b>ID</b>      | Identity Card                                                                                          |
| <b>IGG</b>     | Inspector General of Police                                                                            |

|               |                                                                        |
|---------------|------------------------------------------------------------------------|
| <b>JLOS</b>   | Justice, Law and Order Sector                                          |
| <b>KIIs</b>   | Key Informant Interviews                                               |
| <b>LC</b>     | Local Council                                                          |
| <b>LGBT</b>   | Lesbian, Gay, Bisexual and Transgender                                 |
| <b>MCA</b>    | Magistrate Courts Act Cap 16                                           |
| <b>NGO</b>    | Non-Governmental Organisation                                          |
| <b>OC</b>     | Officer in Charge (Uganda Police or Uganda Prisons)                    |
| <b>OC CID</b> | Officer in Charge, Criminal Investigations Directorate (Uganda Police) |
| <b>OHCHR</b>  | UN Office of the High Commissioner for Human Rights                    |
| <b>PCA</b>    | Penal Code Act Cap 120                                                 |
| <b>PSU</b>    | Professional Standards Unit                                            |
| <b>RPC</b>    | Regional Police Commander/Regional Prisons Commander                   |
| <b>SI</b>     | Statutory Instrument                                                   |
| <b>SMR</b>    | Standard Minimum Rules for the Treatment of Prisoners                  |
| <b>SMUG</b>   | Sexual Minorities Uganda                                               |
| <b>SP</b>     | Superintendent of Police                                               |
| <b>TASO</b>   | The Aids Support Organisation                                          |
| <b>TIA</b>    | Trial on Indictments Act Cap 23                                        |
| <b>UDHR</b>   | Universal Declaration on Human Rights                                  |
| <b>UGX</b>    | Uganda Shillings                                                       |
| <b>UHRC</b>   | Uganda Human Rights Commission                                         |
| <b>ULRC</b>   | Uganda Law Reform Commission                                           |
| <b>ULS</b>    | Uganda Law Society                                                     |
| <b>UN</b>     | United Nations                                                         |
| <b>UNCST</b>  | Uganda National Council for Science and Technology                     |
| <b>UPDF</b>   | Uganda People's Defence Force                                          |
| <b>UPF</b>    | Uganda Police Force                                                    |
| <b>UPS</b>    | Uganda Prisons Service                                                 |
| <b>URSB</b>   | Uganda Registration Services Bureau                                    |
| <b>YRF</b>    | Youth on Rock Foundation                                               |

# EXECUTIVE SUMMARY

---

Although Uganda's Constitution incorporates extensive human rights guarantees and protections, section 145 of the Penal Code Act still maintains the colonial criminalisation of carnal knowledge against the order of nature. This provision, coupled with a 2005 Constitutional amendment which prohibits same-sex marriages, provides a justification for the legal and social persecution, marginalisation and discrimination of LGBT people. The existence of such contradictions in the law and practice has accounted for well documented human rights violations suffered by LGBT people at the hands of criminal justice institutions in Uganda. The objective of the study was to identify the human rights abuses and violations suffered by LGBT persons who are detained or imprisoned within the Ugandan criminal justice system.

The research, which used qualitative tools and methods, focused on Kampala as a case study. Existing literature was reviewed, and data collected through three Focus Group Discussions and 34 Key Informant Interviews (KIIs) involving LGBT people, police officers, civil society organisational leaders and lawyers both in private practise and the legal aid space.

The main findings of the study are:

- 1) *Uganda's laws and policies do not specifically protect LGBT persons against violations within the*

*criminal justice system:* Uganda has put in place legal, policy and institutional safeguards for the protection of human rights and freedoms of people in detention and imprisonment incorporated in the Constitution, national legislation and the international and regional treaties which it signed and ratified. In addition to the binding legal provisions and obligations, Justice Law and Order Sector (JLOS) institutions including the Uganda Police Force and the Uganda Prisons Service have adopted and are implementing administrative and structural initiatives aimed at promoting the respect for and observance of human rights in Uganda. The Uganda Police Force established the Human Rights Department and adopted the Human Rights Policy 2019. Uganda Prisons also established the Human Rights Division and created Human Rights Committees in every prison across the country. There are also regular human rights trainings for the staff of both the Uganda Prisons Service and Uganda Police Force. Although these protections arguably apply to LGBT persons as their language applies to all persons, this can no longer be taken for granted as the High Court has twice used the criminal laws prohibiting consensual same-sex relations to trump constitutional

protections of the rights of LGBT persons. Also, the non-expression of protections for LGBT persons has been used as a justification to exclude them from protection and to deny them recourse when they suffer violations in the criminal justice system.

- 2) *There is a trend towards human rights-based detention and imprisonment practices embraced by both the police and the prisons:* Both the Uganda Police Force and the Uganda Prisons Service UPS are working towards enforcing detention and imprisonment practices that respect human rights. This has contributed to the reduction of violations suffered by LGBT persons, but there is still a long way to go to realise full protection of LGBT people in police and prisons custody.
- 3) *LGBT persons in police detention suffer violations attributable mainly to their sexual orientation:* Human rights violations targeting LGBT persons are prevalent in police custody, and these are related to their sexual orientation and gender identity as the police regards persons arrested with a connection to homosexuality as 'serious offenders' and feel the need to show an example to others. Some of the commonly abused rights include the right to liberty with arrests characterised by violence and abuse, disregard of the 48-hour constitutional limit of detention in police cells, and inhuman conditions in police

cells. LGBT detainees suffered from discrimination based on their sexual orientation and gender identity. Taunts, ridicule, threats and occasional humiliation are regularly directed at LGBT inmates by both police and prison officials and other inmates. Such actions take the form of nicknames such as sodomy, sodomy tycoon, *abasiyazi*, among others. The right to property is another often violated one with property such as mobile phones, laptops and money getting confiscated at police. The Police Professional Standards Unit is no longer effective in handling complaints against police officers who violate the rights of LGBT persons and other detainees and prisoners with impunity.

- 4) *LGBT persons in prison face discrimination and abuse of their dignity:* Although the prisons system treats LGBT persons better than the police, serious concerns remain. Taunts, ridicule and humiliation are common by prisons officials, and by fellow prisoners. Transgender persons are placed in either male or female cells and this exposes them to sexual violence and abuse.

## Recommendations

### To the Uganda Police Force

- i) Avoid arbitrary arrests of LGBT persons simply on the basis of their suspected sexual orientation. Arrests should only be done where there is reasonable suspicion that an offence has been committed.
- ii) The Human Rights and Legal Directorate should spearhead the development of guidelines / standards that specifically guide on the treatment of LGBT persons in Police detention.
- iii) The Human Rights and Legal Services Directorate should ensure that the UPF Human Rights Policies and Organs are permeated within the Force all the way to the grassroot police stations and posts across the country.
- iv) The Police Professional Standards Unit should be revamped and fully staffed and facilitated to handle disciplinary complaints against Police Officers. Its decisions and sanctions should also be enforced by the Police Authority.
- v) The practice of revealing the sexual orientation or gender identity to other detainees should stop in the interest of protecting detainees from violence/sexual abuse by other detainees.
- vi) More attention should be paid to where transgender detainees are

held in custody in order to prevent violence or sexual abuse against them.

- vii) The Police should partner with organisations that work on LGBT issues/the Uganda Human Rights Commission in order to hold more human rights trainings and sensitisations on LGBT persons.

### To the Uganda Prisons Services

- i) Develop guidelines/standards on the treatment of imprisoned persons who identify as LGBT.
- ii) The practice of undressing and humiliating inmates should be prohibited and replaced with more humane search procedures.
- iii) Efforts should be made to provide specialised imprisonment facilities to transgender people so as to preserve their dignity and privacy.
- iv) The practice of revealing the sexual orientation or gender identity to inmates should stop in the interest of protecting detainees from violence/sexual abuse by other detainees.

### To Parliament

- i) Amend the Penal Code to repeal section 145 which criminalises same-sex sexual conduct, as well as sections 167 and 168 which prohibit vagrancy conduct, which form the basis for most arrests of LGBT persons.

- ii) Parliament should enact a law to prohibit all forms of violence and discrimination on any ground, including sexual orientation, against people in detention and imprisonment in Police, Prisons and any other authorised places of detention in Uganda.

### The President

- i) Issue a directive to the police to stop arresting people for being rogue and vagabond, as well as for carnal knowledge against the order of nature.
- ii) Direct the Police and Prisons to treat LGBT persons in their custody with the dignity appropriate to all human beings.

### The Minister of Justice and Constitutional Affairs/Attorney General

- i) Initiate a process to repeal the sections 145, 146, 167 and 168 of the Penal Code by presenting a white paper to cabinet and subsequently a bill to parliament.
- ii) Initiate a process to repeal Article 31(2a) of the Constitution which prohibits same-sex marriage as it fuels discrimination against LGBT people and provides a legal justification to the existing homophobia.

### The Ministry of Internal Affairs

The ministry should issue a policy directive prohibiting all forms of violence and discrimination against prisoners and detainees, and specifically LGBT detainees.

### The Uganda Human Rights Commission

- i) Prioritise the investigation of cases involving violations of LGBT persons as they are a minority and vulnerable group.
- ii) Continue training police officers and prisons officials on the treatment of LGBT persons in detention.
- iii) Raise issues of violation of the rights of LGBT persons in detention in their annual report to parliament.

### The Equal Opportunities Commission

- i) Investigate reports of discrimination against LGBT persons while in police detention or in prisons and produce reports.
- ii) Raise issues of violation of the rights of LGBT persons in detention in their annual report to Parliament.

## The Uganda Law Reform Commission

Make recommendations for the repeal of sections 145, 146, 167 and 168 of the Penal Code as they are the basis of violation of the rights of LGBT persons.

## To LGBT organisations

- i) Document violations against LGBT persons in detention and imprisonment and share these with the Uganda Police Force and the Uganda Prisons Services.
- ii) Partner with the Uganda Police Force and the Uganda Prisons Service to conduct trainings and sensitisations on the rights of LGBT persons, especially geared towards mid-level and lower level officials of UPS and UPF. It is the lower and mid-level officials who directly and regularly handle detainees and prisoners while the OCs, OC CIDs and DPCs are for the most part not involved in day-to-day lives of the inmates.
- iii) Partner with the Uganda Police Force and the Uganda Prisons Service to draft standards for the treatment of LGBT persons in the custody of UPF and UPS.

## To mainstream Civil Society

These should do the following:

- i) Make use of the provisions of the Human Rights (Enforcement) Act 2019, in particular section 3 which enables filing of a petition on behalf of another person whose human rights have been violated as well as in the public interest, and section 10 which provides for individual responsibility for violations of human rights as well as those in the Prohibition and Prevention of Torture Act which also creates individual responsibility in order to bring errant officers of the Uganda Police Force and/or the Uganda Prisons Service to book.
- ii) Support LGBT organisations to document violations against LGBT persons in detention/imprisonment.
- iii) Bring complains before the Professional Standards Unit of the Police and before the Uganda Prisons Service on violations against LGBT persons. They should also ensure proper follow up.
- iv) Extend legal support to LGBT persons

# 1. INTRODUCTION

---

## 1.1 Background to the study

LGBT people endure abuse and rights violations at the hands of criminal justice institutions including physical violence and humiliation, verbal abuse, arrest and detention without charge, extortion, denial of police bond, being charged with non-existing offences, detention beyond the 48-constitutional limit, among others.<sup>1</sup> These violations are well recorded by Human Rights Awareness and Promotion Forum (HRAPF) and the Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation in their violations reports for the years 2014, 2015, 2016, 2017 and 2018. The violations reports show a worrying trend of persistent violations of the rights of LGBT people at the hands of criminal justice institutions.

This state of affairs is a far cry from the guarantees of legal and constitutional protections provided for under the existing constitutional framework. Chapter 4 of the Constitution protects the fundamental rights and freedoms of

all persons including the right to equality, the right to liberty, the right to a fair trial, freedom from discrimination, freedom from torture, inhuman and degrading treatment or punishment, among others.<sup>2</sup> Despite this, a number of laws remain on the law books that discriminate against LGBT persons and make them susceptible to human rights violations. Key among them is section 145 of the Penal Code Act Cap 120 which criminalises what is described as ‘having carnal knowledge against the order of nature’ and article 31(2a) of the Constitution which prohibits same-sex marriages. Several other provisions in the Penal Code and other laws target LGBT people including sections 146 on attempt to commit unnatural offences, section 148 on indecent practices and sections 167 and 168 prohibiting idle and disorderly and vagrancy conduct. This has been interpreted to warrant and sanction all forms of abuses against LGBT persons. For instance, the High Court has upheld the stopping of skills training workshops for LGBT persons,<sup>3</sup> and refusal to register LGBT organisations

.....  
<sup>1</sup> The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation “Uganda Report of Violations Based on Gender Identity and Sexual Orientation” (2015) accessed on 21 July 2019 at <https://hrapf.org/index.php/resources/violation-reports/31-15-02-22-lgbt-violations-report-2015-final-2/file>.

<sup>2</sup> Chapter Four of the Constitution of Uganda.

<sup>3</sup> *Jacqueline Kasha and Others vs. Attorney General and Rev. Fr. Peter Lokodo (Lokodo case)*, High Court Civil Division Miscellaneous Cause No. 33 of 2012 accessed at <https://ulii.org/ug/judgment/high-court-civil-division/2014/85>.

on the grounds that such activities by LGBT people are illegal basing on section 145. Such acts and the fact that they are upheld by the High Court have normalised the violation of the rights of LGBT persons within the criminal justice system.

Unlike other groups of people, LGBT persons are affected by the criminal law and its extended interpretation of the prohibition of same-sex relations. This makes them more susceptible to being arrested and thus processed through the criminal justice system for offences related to their sexuality. They are usually arbitrarily arrested without any evidence to support the reason for their arrest, and they face various violations arising out of these arrests. They are also arrested for committing offences not related to their sexual orientation or gender identity. The next step after arrest is detention in police cells, and eventually depending on how the case proceeds, imprisonment on remand or upon conviction.

This study sought an in-depth understanding of the violations experienced by LGBT persons in both police detention and in prisons.

## 1.2 Problem statement

Uganda is legally and socially hostile to LGBT persons.<sup>4</sup> A 2013 Pew Research Centre survey found that 96% of the Ugandan population considered homosexuality as conduct which is unacceptable.<sup>5</sup> This may be attributable to both the hostile legal regime and social environment which are informed by conservative religious and cultural attitudes and practices. Although the country has a progressive constitution which guarantees the rights of all persons and groups, it sits atop a raft of regressive discriminatory penal and other legislations which are interpreted, applied and enforced against LGBT people.

With a largely conservative and moralistic public cheering on, actors in the criminal justice space including police officers and prisons staff often find extra motivation to 'save' society from such persons. This is often done by subjecting LGBT persons to illegal detention without charge, public humiliation, denial of basic rights such as access to legal services and deprivation of due process.<sup>6</sup> Their plight is exacerbated by

.....  
<sup>4</sup> A Jjuuko 'The incremental approach: Uganda's struggle for the decriminalization of homosexuality' In C Lennox & Waites (eds) *Human Rights, Sexual Orientation and Gender Identity the Commonwealth: Struggles for Decriminalization and Change*. Institute of Commonwealth Studies, School of Advanced Study, University of London, (2013) 381-408.

<sup>5</sup> Pew Research Centre 'The global divide on homosexuality: Greater acceptance in more secular and affluent countries' (2013) <http://www.pewglobal.org/files/2013/06/Pew-Global-Attitudes-Homosexuality-Report-FINAL-JUNE-4-2013.pdf> (accessed 28 March 2018).

<sup>6</sup> The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation; Uganda Report of Violations Based on Gender Identity and Sexual Orientation, (2015) accessed on 21st July 2019 at <https://hrapf.org/index.php/resources/violation-reports/31-15-02-22-lgbt-violations-report-2015-final-2/file>. Similar reports for 2014 and 2016 show the same trend.

institutional shortcomings in the justice sector such as corruption, over-crowded detention facilities, underfunding, ill-educated and ill-paid staff, and lack of basic social services. Moreover, LGBT people are particularly vulnerable to abuses and violations because of their non-heteronormative and non-traditional expressions of sexuality and gender.<sup>7</sup> The risks are even higher for transgender people who face specific challenges with placement within detention facilities.<sup>8</sup>

Thus, LGBT persons who are detained or imprisoned face violations that arise due to their sexual orientation and gender identity. The nature of these violations has however not been exhaustively explored and thus the need for a study that seeks to understand the nature of these violations in details.

## 1.3 Objectives of the study

### 1.3.1 Main Objective

To identify the human rights abuses and violations suffered by LGBT persons who are detained or imprisoned within the Ugandan criminal justice system.

### 1.3.2 Specific Objectives

1. To ascertain the legal safeguards for the protection of the human rights of LGBT people in detention and imprisonment in Uganda.
2. To examine the human rights abuses faced by LGBT persons in detention and imprisonment in Uganda.
3. To analyse the trends in human rights abuses suffered by LGBT persons in detention and imprisonment in Uganda.
4. To make recommendations on specific actions required to bring Uganda's criminal justice system on detention and imprisonment of LGBT persons in conformity with human rights standards.

## 1.4. Research questions

The study seeks answers to the following questions:

1. What are the legal safeguards for the protection of the human rights of LGBT people in detention and imprisonment in Uganda?
2. What is the nature of human rights violations and abuses suffered by LGBT persons who are detained and imprisoned

<sup>7</sup> African Commission on Human and Peoples Rights (ACHPR) "Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detentions in Africa to Uganda" (2002) available at [http://www.achpr.org/files/sessions/33rd/mission-reports/uganda/achpr33\\_misrep\\_specmec\\_priso\\_uganda\\_2001\\_eng.pdf](http://www.achpr.org/files/sessions/33rd/mission-reports/uganda/achpr33_misrep_specmec_priso_uganda_2001_eng.pdf), accessed on 21<sup>st</sup> July 2019.

<sup>8</sup> Association for the Prevention of Torture and Penal Reform International; LGBTI Persons deprived of their liberty, a framework for preventing monitoring (2015 Edition), [https://www.aprt.ch/content/files\\_res/thematic-paper-3\\_lgbti-persons-deprived-of-their-liberty-en.pdf](https://www.aprt.ch/content/files_res/thematic-paper-3_lgbti-persons-deprived-of-their-liberty-en.pdf).

within the criminal justice system in Uganda?

3. What are the trends of human rights violations and abuses suffered by LGBT persons who are detained and imprisoned in Uganda?
4. What are the specific actions required to bring Uganda's criminal justice system affecting LGBT persons in detention and imprisonment in conformity with human rights standards?

## 1.5 Study rationale/justification

There is an existing literature gap as far as the human rights plight of LGBT people in detention and imprisonment in Uganda is concerned. This study seeks to not only fill that void but also steer the attention of the public, policy makers, civil society and law enforcement agencies towards the issue of violations faced by LGBT people in detention and imprisonment. To this end, the findings of the study will inform and guide advocacy, sensitisation and legal and policy reform efforts among criminal justice institutions in Uganda.

The study also builds on earlier studies undertaken by HRAPF exploring the reality of LGBT people in relation to the law, human rights and access to justice. This study is intended to provide another in-depth dimension and understanding of the broader issue of sexual orientation and the law in the socio-political context of Uganda.

## 1.6 Methodology

### 1.6.1 Study design

The study sought to assess impact and trends through in-depth analysis of primary and secondary data. It is a qualitative study designed to explore and describe the human rights abuses and violations suffered by LGBT persons who are detained and imprisoned within the criminal justice system in Uganda. As such, the qualitative approach and methods were employed for the study. There were no pre-set theories and assumptions which guided the research, instead all conclusions were derived from analysis of the data collected. Both secondary and primary data was collected. Secondary data was collected from review of existing literature derived from publications, legislations, the international and regional human rights instruments and principles, policies, official reports, reports of other studies, and any other literature whether in soft or hard copies, while primary data was collected through focus group discussions and Key Informant Interviews (KIIs).

The study covered a total of 34 individual interviews with LGBT persons, leaders of LGBT focused civil society organisations, officers of the Uganda Police Force, officers of the Uganda Prisons Service, human rights lawyers and paralegals. Three Focus Groups Discussions (FGDs) consisting of 6-8 participants were conducted. A separate FGD was conducted for Lesbians and Bisexual

women, Gays and Bisexual men and Transgender people.

### 1.6.2 Time scope

The study covers the period of the last ten years, that is, 2009 to 2019.

### 1.6.3 Study location

The study adopted a case study approach focusing on Kampala as the selected case study. Kampala is the capital city of Uganda and by far the largest and most socially diverse city in Uganda. Kampala had a population of 1,507,080 according to the 2014 National Population and Housing Census.<sup>9</sup> It also has a significant LGBT presence with an active social life.<sup>10</sup> It has been and remains the epicenter of LGBT rights activity including persecution, prosecution, activism, litigation and research. The study covered all the five administrative divisions of Kampala: Central, Kawempe, Makindye, Lubaga and Nakawa, and collected both primary and secondary data covering all the five divisions. However, due to the close proximity with Wakiso district, which geographically encircles and shares an overlapping lifestyle with Kampala, some police stations and prisons located in Wakiso but serving Kampala were also included.

### 1.6.4 Study population and data collection

Data was collected through Focus Group Discussions and Key Informant Interviews (KIIs). The study population comprised of 34 individual respondents drawn from LGBT persons, LGBT organisational leaders, police officers, prison officers, lawyers both in private practice and legal aid service, and paralegals working with LGBT people.

1. **FGDs:** Three FGDs were held with persons who have been arrested and detained or imprisoned; one with Gay and Bisexual men, another with transgender persons, and the third with Lesbian and Bisexual women. Each FGD consisted of 6-8 participants. The organisation and selection of FGD participants was deliberate to ensure representation of the different communities within the LGBT movement.
2. **KIIs:** A total of 34 interviews were held with KIIs as follows:
  - a) Ten LGBT persons who have been arrested before, at least two who identify as lesbian, two as gay, two as bisexual, two as transgender women, two as transgender men.

.....  
<sup>9</sup> Uganda Bureau of Statistics, The national population and housing census 2014 – main report (2016) <sup>9</sup> [https://www.ubos.org/wp-content/uploads/publications/03\\_20182014\\_National\\_Census\\_Main\\_Report.pdf](https://www.ubos.org/wp-content/uploads/publications/03_20182014_National_Census_Main_Report.pdf).

<sup>10</sup> P Kajubi, MR Kamyia, H Fisher Raymond et al 'Correlates of unprotected receptive anal intercourse among gays and bisexual men in Kampala, Uganda' available at [https://www.researchgate.net/publication/26266262\\_Correlates\\_of\\_Unprotected\\_Receptive\\_Anal\\_Intercourse\\_Among\\_Gay\\_and\\_Bisexual\\_Men\\_Kampala\\_Uganda](https://www.researchgate.net/publication/26266262_Correlates_of_Unprotected_Receptive_Anal_Intercourse_Among_Gay_and_Bisexual_Men_Kampala_Uganda) accessed on 20th August 2019.

- b) Five leaders of civil society organisations working on issues of access to justice for LGBT persons.
- c) Five lawyers who work for organisations providing legal services. These were drawn from both organisations providing legal aid services to LGBT persons and mainstream legal aid service providers such as Justice Centres.
- d) Five community paralegals who have handled LGBTI cases.
- e) Four Police officers at the level of Officer in Charge, Criminal Investigations Department (OC CIID) from five major police stations in Kampala namely: Kawempe, Wandegaya, Kira Road, Kabalagala, Old Kampala and Katwe Police stations.
- f) The Head of the Human Rights Department of the Uganda Police Force
- g) The Head of the Human Rights Unit of the Uganda Prisons Service
- h) Three lawyers in private practise who have handled LGBTI cases.

### 1.6.5 Sampling

Participants in the study were chosen through purposive and snowball sampling methods. These were used to select specific institutions and respondents for inclusion in the study. The use of the purposive sampling was guided by the preliminary literature review and mapping which led to specific targeted organisations/institutions that are most relevant to the study. Further, the nature of this research which sought to deeply investigate and understand the impact and trends of human rights abuses and violations suffered by LGBT persons, justified the use of purposive sampling which is more suited for this kind of research.<sup>11</sup> Purposive sampling was used to select key informants among police, prisons, lawyers and LGBT organisational leaders.

On the other hand, snow-ball sampling was preferred to select LGBT respondents whereby initial respondents were asked to identify and nominate more who were eligible to participate in the study.

Both purposive and snowball sampling techniques were preferred due to the fact that the LGBT population is largely discreet due to social stigma and legal impediments and can only be accessed through penetrating their social circles.

.....  
<sup>11</sup> MN Marshall 'Sampling for Qualitative Research Practice' (1996) 13.

## 1.7 Research methods and tools

The study employed methods and tools which seek to investigate the context, system and legal and institutional framework as well as the impact and trends of human rights violations of LGBT people in detention and imprisonment in Uganda. Thus, the study was carried out in a participatory manner involving interviews with KILs and drawing analyses of existing literature, legislation, court records.

During the study, both secondary and primary data was collected and analysed using qualitative methods and tools of data collection.

Secondary data was collected using the desk-based approach by way of identifying, compiling, reviewing and critically analysing the relevant legislation and case law as well as publications such as international human rights instruments and principles, reports, literary journals and online materials. The search for secondary data was guided by the overall and specific objectives and sought to answer the specific questions posed.

Primary data was collected through face-to-face KILs and FGDs. The researcher also engaged beyond verbal responses and observed demeanor, attitude, physical features such as injuries, scars, etc, and other observable data sources. The gaps identified during the study shaped the basis for deeper interactions with key informants and other target respondents.

Interview guides were developed and used for interviews with key informants to facilitate consultative and interrogative discourses. For the same reason, interview guides, specially designed to facilitate a lively exchange of ideas and views, were used during FGDs. For each FGD, a prior agenda for the meeting was prepared to guide the meeting to achieve its specific objectives.

The research tools were pretested at the Chief Magistrate's Court at Mengo and at Lubaga Police Post.

The data collected was transcribed, coded and reviewed in accordance with the objectives of the study. Coding was done thematically following key themes which formed the premise for interpretation. The process of data analysis was done continuously throughout the fieldwork. At the end of each day, the notes taken were checked to ensure consistency and accuracy after which a thorough analysis of ideas, experiences and viewpoints was carried out. A more comprehensive analysis of the interview scripts and field notes was done through both inductions and deductions of the themes within the data.

To capture the feelings, emotions and attitudes of the respondents on the subject under investigation, in some instances direct quotations and statements were extracted and recorded. There were follow up inferences and questions to the interviewees to verify the data.

## 1.8 Literature Review

Prison conditions and treatment of prisoners and detainees have been studied before in Uganda. A 2017 study by the Foundation for Human Rights Initiative (FHRI) titled *Justice Delayed is Justice Denied; the Plight of Pre-Trial Detainees in Uganda*<sup>12</sup> represents one of the most comprehensive attempts to investigate the conditions of people in state detention in Uganda. Its findings show that 52% of the prison population constitute pre-trial detainees which is attributable to lengthy pre-trial detentions.<sup>13</sup> Of equal concern was the finding that Ugandan prisons are operating at 312% of their capacity.<sup>14</sup> Inevitably, the long periods on pre-trial detention in overcrowded cells, violate the accused's right to liberty and also makes them vulnerable to other human rights violations such as the right to freedom from torture and cruel, inhuman and degrading treatment or punishment, the right to health and the right to an adequate standard of living.

In 2011, Human Rights Watch (HRW) found that there were serious shortcomings in Ugandan prisons in

terms of nutrition, sanitation and overcrowding.<sup>15</sup> The study, which was carried out in 16 different prisons in Uganda, also found that thousands of prisoners are forced to engage in hard labor in ways that are contrary to the international standards on how prison labor may be used.<sup>16</sup> It highlighted the fact that prisoners are extremely vulnerable to abuse by wardens and other prisoners.<sup>17</sup> Male prisoners are denied condoms, even in the face of irrefutable evidence that male prisoners do have sex with one another and the fact that the HIV prevalence in prisons is almost 5% higher than within the general population yet HIV treatment is either denied or provided on an inconsistent basis, leading to deaths of prisoners due to AIDS.<sup>18</sup>

In 2007, Freedom House found that there were over 26,000 individuals behind bars in the country's 224 prisons, twice the official capacity of the prison system. The report highlighted that pretrial detainees constituted more than half of the prison population and more than 500 prisoners die annually as a result of poor diet, sanitation, and medical care.<sup>19</sup>

.....  
<sup>12</sup> Foundation for Human Rights Initiative (FHRI) *Justice delayed is justice denies; the plight of pre-trial detainees in Uganda* (2017).

<sup>13</sup> As above.

<sup>14</sup> As above.

<sup>15</sup> Human Rights Watch *Even dead bodies must work: Health, hard labor and abuse in Ugandan prisons* (2011) 14-21.

<sup>16</sup> As above.

<sup>17</sup> Above.

<sup>18</sup> Above.

<sup>19</sup> Freedom House *Freedom in the World 2009 Uganda* (16 July 2009).

In 2008, The Open Society Initiative exposed violations of human rights attributable to one's HIV/AIDS status.<sup>20</sup> LGBT persons were specifically identified as some of the most vulnerable due to a hostile legal environment. Provision of legal aid was highlighted as one of the effective mechanisms for addressing such violations.<sup>21</sup> This study is particularly significant for it underscored the contribution of laws and their implementation to violation of human rights of stigmatised communities such as LGBT persons and sex workers.

Findings of deteriorating detention conditions and violations of human rights are consistent with the report of Dr. Vera Mlanguzwa Chirwa, the Special Rapporteur on Prisons and Conditions of Detention in Africa, who visited Ugandan prisons in March 2001. She reported on the presence of torture and ill-treatment in Ugandan prisons and noted that remand of accused persons and overcrowding of prisons presented considerable challenges.<sup>22</sup> She recommended decriminalisation of petty offences, increased funding for prisons, human rights trainings for prison staff, combating of corruption, among others. But as already

highlighted by the foregoing studies and reports which were undertaken several years later, conditions remain almost as they were in 2001, if not worse. This state of affairs, especially the worsening human rights conditions and violations during pre-trial detention, has been attributed by Roselyn Karugonjo Segawa to weak implementation of the legal and procedural safeguards against violations.<sup>23</sup> She argues that Uganda's legal regime is largely compliant with the international human rights standards, yet most pre-trial detainees are victims of arbitrary arrests and suffer human rights violations such as torture and inhuman and degrading treatment, unlawful detention, abuse of the vulnerable such as children and women, lack of a fair trial, lack of proper nutrition, water and sanitation among others. She also places blame on administrative and governance issues such as inadequate police training, lack of capacity of criminal investigators, corruption, political interference and poverty.

Fewer studies have focused on conditions of LGBT persons in detention or imprisoned. In 2014 HRAPF and the Civil Society Coalition on Human Rights and

.....  
<sup>20</sup> S Mukasa & A Gathumbi "HIV/AIDS, Human Rights and Legal Services in Uganda, a country assessment" Open Society Initiative for East Africa (OSIEA) 2008.

<sup>21</sup> As above.

<sup>22</sup> African Commission on Human and Peoples Rights (ACHPR); Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detentions in Africa to Uganda, (2002) available at [http://www.achpr.org/files/sessions/33rd/mission-reports/uganda/achpr33\\_misrep\\_specmec\\_priso\\_uganda\\_2001\\_eng.pdf](http://www.achpr.org/files/sessions/33rd/mission-reports/uganda/achpr33_misrep_specmec_priso_uganda_2001_eng.pdf), accessed on 21<sup>st</sup> July 2019.

<sup>23</sup> R Karugonjo-Segawa, Pre-trial detention in Uganda, APCOF Policy Paper No. 4 of 2012, available at [https://www.researchgate.net/publication/272171799\\_Pre-trial\\_Detention\\_in\\_Uganda](https://www.researchgate.net/publication/272171799_Pre-trial_Detention_in_Uganda) accessed on 15th November 2019.

Constitutional Law (CSCHRCL) undertook a documentation of human rights violations and abuses suffered by LGBT people in Uganda.<sup>24</sup> A total of 153 reports of cases of human rights violations against the LGBTI community in Uganda were recorded of which 78 were verified. There were 26 LGBT people who had suffered unlawful arrest and illegal detention including detention without being produced in a court of law beyond the constitutional 48 hours, arbitrary arrest without charge and being held incommunicado in pre-trial detention.

Similar violations reports, which were published annually following the 2014 report, showed that the trend had not changed. The 2015 report covering the period in the year 2014 and relying on 89 documented and verified cases of violations, implicated the Uganda Police Force as not only active in violation of human rights of LGBT people but also that it condoned

violations by private actors.<sup>25</sup> Violations took the form of arbitrary arrests, anal examinations, detention beyond 48 hours and being denied access to counsel. Transgender persons were detained in cells of persons of the opposite gender identity which led to abuse of their dignity.<sup>26</sup> The passing of the Anti-homosexuality Act 2014 (AHA) was found to have further fueled and directly contributed to violations and abuses of rights of LGBT persons due to the wide-sweeping provisions that encouraged people and authorities to abuse the rights of LGBT persons.<sup>27</sup> The report however, clarified that with or without the AHA, violations based on gender identity would still have occurred as demonstrated by earlier reports. The reports released covering violations committed against LGBT persons in 2015, 2016, 2017 and 2018 time and again pointed to the Police as the single greatest violator of human rights.<sup>28</sup>

.....  
<sup>24</sup> Human Rights and Constitutional Law (HRAFP), Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL), Sexual Minorities Uganda (SMUG), Rainbow Health Foundation (RHF) and Support Initiative for Persons with Congenital Disorders (SIPD); Uganda Report of Violations Based on Gender Determination, Gender Identity and Sexual Orientation, (2014).

<sup>25</sup> The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation, n 6 above.

<sup>26</sup> Above.

<sup>27</sup> Above.

<sup>28</sup> The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation Uganda report of violations based on sexual orientation and gender identity (2016) 9; The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation Uganda Report of Violations Based on Gender Identity and Sexual Orientation (2017); Human Rights Awareness and Promotion Forum The Uganda Report on Human Rights Violations based on sexual orientation and gender identity, 2018: Increasing protections and reducing state violations (2018) 24; HRAFP The Uganda report of human rights violations based on sexual orientation and gender identity 2018\* (2019) 26.

The violations reports above provide a succinct account and of violations suffered by LGBT people for the stated periods. However, as stated, they cover the specific periods, that is 2013 – 2018. Significantly, the authors were not specifically focused on violations arising out of arrest and detention but rather sought to provide a go-to record of all forms of violations suffered by LGBTI persons.

Taking a different approach, HRAPF and the CSCHRCL compiled a critique of how the laws criminalising same-sex conduct are enforced in Uganda.<sup>29</sup> The study focused on sections of the Penal Code Act which criminalise carnal knowledge against the order of nature and other offences such as indecent practices, rogue and vagabond and idle and disorderly offences. The authors concluded that the Penal Code is used to persecute rather than prosecute people believed to be of LGBT orientation.<sup>30</sup> This took the form of arrests without investigation, subjecting arrested people to public humiliation and detention without charge.<sup>31</sup> Most telling, was the finding that over the period 2007-2011 there was no concluded trial involving an offence under section 145 of the Penal Code.<sup>32</sup> There was neither a single conviction nor an acquittal for consensual same-sex

conduct on file in any magistrate's court in Kampala.<sup>33</sup> Moreover, all cases that were filed in court during the period 2007-2011 in Kampala district ended in dismissal for want of prosecution.<sup>34</sup>

As the existing literature shows Uganda's criminal justice system is characterised by human rights violations from arrest through detention, imprisonment and even post-release. Whereas the violations are suffered by the general population, LGBT persons are at a higher risk of suffering violations due to their sexual orientation and gender identity.

Given the existing literature, the knowledge that is needed is a record of the nature and trends of human rights violations and abuses that are suffered by LGBT persons who are detained and imprisoned within the criminal justice system in Uganda. Also, the existing literature largely lacks information on how LGBT persons are treated while in prison. This research seeks to build on the current literature by placing concentrated focus on the human rights violations suffered by LGBT persons in detention and in prisons in Uganda.

.....  
<sup>29</sup> CSCHRCL & HRAPF *Protecting morals by dehumanising suspected LGBTI Persons, a critique of the enforcement of laws criminalising same sex conduct in Uganda* 2013.

<sup>30</sup> As above.

<sup>31</sup> As above.

<sup>32</sup> As above.

<sup>33</sup> As above.

<sup>34</sup> As above.

## 1.9 Ethical considerations

A high degree of ethical standards was maintained so as to protect the dignity, privacy and integrity of all research participants. In particular, respondents were informed of the following:

- i) The aims, methods, anticipated benefits and potential risks of the research;
- ii) Their right to abstain from participating in the research as well as their right to terminate participation at any point;
- iii) The confidentiality with which their responses were to be treated.

Prior to participation in the study, all participants were required to give their informed consent. Where participants were not fluent in English, they were interviewed in the language they were comfortable with, which was mainly Luganda. Informed consent was given verbally and recorded using audio recorders or in writing. Furthermore, the interviews and group discussions were held in private, convenient locations that were selected with the help of representatives of the concerned respondents and their organisations.

Ethical approval for the study was obtained from The Aids Support Organisation (TASO)'s Research Ethics Committee as well as ethical clearance from the Uganda National

Council for Science and Technology (UNCST).

## 1.10 Challenges

The study did not benefit from the views of individual prisons officers who could not comment on human rights issues. Similarly, most Police officers were generally evasive in their responses which deprived the study of their detailed input.

## 2. LEGAL, POLICY AND INSTITUTIONAL SAFEGUARDS FOR LGBT PERSONS IN DETENTION AND IMPRISONMENT IN UGANDA

---

### 2.1 Introduction

According to the United Nations Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment, 1988 (Principles on Detention or Imprisonment), 'detained persons' means any person deprived of personal liberty except as a result of conviction of a crime and 'imprisoned person' means any person deprived of personal liberty as a result of conviction of an offence. 'Detention' and 'imprisonment' and 'detainees' and 'prisoners' have corresponding meanings. People in detention and imprisonment in Uganda are entitled to legal safeguards and protection of their fundamental rights and freedoms in accordance with the Constitution, legislation and guidelines in force. Uganda is also a state party to a host of international and regional instruments which guarantee and protect the human rights of detained and imprisoned people. This Chapter explores both the domestic and international legal safeguards available to LGBT people in detention and imprisonment in Uganda to set the tone for the assessment of the detention and imprisonment conditions in the next chapters.

### 2.2 Legal safeguards under international and regional instruments

Uganda is a state party to and has ratified all of the core international human rights instruments including the Charter of the United Nations, the Universal Declaration on Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Convention Against Torture, and other forms of Cruel, Inhuman and Degrading Treatment or Punishment (CAT), the United Nations Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), among others. In addition, in the area of detention and imprisonment these instruments are supplemented by the UN Body of Principles on the Protection of All Persons Under any Form of Detention or Imprisonment 1988; the UN Standard Minimum Rules for the Treatment of Prisoners (SMR) also known as the Mandela Rules and the UN Basic Principles for the Treatment of Prisoners 1990 (BPTP).

At the African regional level, Uganda subscribes and is subject to the African Charter on Human and Peoples' Rights (ACHPRs), the Protocol to the African Charter on the Rights of Women in Africa, the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child (ACRWC), the Kampala Declaration on Prison Conditions in Africa 1996, which was adopted by Prison heads from 47 African Countries.

These instruments inform and direct the interpretation and application of human rights standards and safeguards in Uganda.

The key principles in these instruments are replicated in the national system.

Protection of the dignity and fundamental rights of all persons, including detainees and prisoners, is the primary concern of international and regional human rights instruments. Because prisoners and detainees are placed in a weaker and inferior position, left to the mercy of the police and prison officials, their treatment remains a major challenge in the quest for the respect of the human person.<sup>35</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR) has

described detainees and prisoners as 'people whose cries for help in moments of pain can be heard by nobody except fellow inmates'.<sup>36</sup> Almost all of the listed human rights instruments share this concern.

The instruments underline the significance of the freedom from torture and other cruel, inhuman and degrading treatment or punishment and emphasise the fact that it is non-derogable, that is, there are no exceptional circumstances under which torture may be justified.<sup>37</sup> This declaration in the CAT is framed as follows:

*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

Thus, under international law, torture is outlawed in all circumstances without any exceptions.

The guarantee of the right to liberty and personal security is another keystone of the major international instruments.<sup>38</sup> The ICCPR and the ACHPR aptly put it that no-one may be deprived of his freedom except for reasons and conditions previously laid down by law but also go on to specifically declare that no-one may

.....  
<sup>35</sup> OHCHR: International Legal Standards for the Protection of Persons Deprived of their Liberty, available at <https://www.ohchr.org/Documents/Publications/training9chapter8en.pdf> accessed on 15th November 2019.

<sup>36</sup> As above.

<sup>37</sup> ICCPR, articles 4(2) and 7, CAT, article 2(2), UDHR article 5 and ACHPR, article 5.

<sup>38</sup> UDHR, article, ICCPR, articles 9 and 10 and ACHPRs, article 6.

be arbitrarily arrested or detained.<sup>39</sup> Even where one's liberty is denied in accordance with the law, conditions of detention or imprisonment are stipulated under international human rights law. The ICCPR requires among others that the detained person must be informed of the charges; promptly presented before a judicial officer for trial; is entitled to be released pending trial subject to guarantees enabling him or her to attend trial, and be entitled to seek compensation in the event of wrongful detention.<sup>40</sup> Expounding on article 7 of the ICCPR, the Human Rights Committee has in its General Comment No. 20 explained:

*To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.*<sup>41</sup>

Conditions of detention and imprisonment are fully elaborated in the Principles on Detention or Imprisonment, the Mandela Rules (SMR) and the BPTP. Key among them are the requirements to afford prisoners and detainees an adequate standard of living with healthy food and safe drinking water; proper accommodation and bedding; an attainable standard of physical and mental health; safe prison conditions with limited use of fire arms, chains and irons; the right to communicate with the outside world especially family and friends without interference with the privacy of the communications,<sup>42</sup> equal treatment of all prisoners and detainees without discrimination, separation of women from men and care for pregnant female prisoners and detainees.<sup>43</sup>

The right to liberty is part of a bundle of rights which cannot be separated from one another such as the right to a fair trial, the right to property, freedom from discrimination, the right to privacy and the right to food and a healthy standard of living. These rights are well established in the international instruments.

.....  
<sup>39</sup> As above.

<sup>40</sup> ICCPR, Article 9.

<sup>41</sup> OHCHR: International Legal Standards for the Protection of Persons Deprived of their Liberty, available at <https://www.ohchr.org/Documents/Publications/training9chapter8en.pdf> accessed on 15th November 2019.

<sup>42</sup> UDHR, article 12; ICCPR, article 17; Principles on Detention or Imprisonment, principle 19; SMR, rules 37 and 79. SMR, rule 38. Principles on Detention or Imprisonment, principle 20.

<sup>43</sup> UDHR, article 2; ICCPR, article 3; CEDAW, articles 1, 2 and 3; Declaration on the Elimination of Violence against Women [hereinafter "Declaration on Violence against Women"], article 3; CEDAW, articles 1, 6 and 7; Declaration on Violence against Women, articles 2; Principles on Detention or Imprisonment, principle 5; SMR, rule 8 (a); SMR, rule 53; SMR, rule 23 (1); SMR, rule 23 (1); UDHR, article 1.

No international instrument specifically provides for LGBT persons in detention. However, the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, codify international law principles applicable to sexual orientation and gender identity.<sup>44</sup> The Yogyakarta Principles were adopted by a group of human rights experts in 2006 as an authoritative statement on the application and interpretation of human rights law to LGBT people. In 2017 they were supplemented by what is known as the Yogyakarta Principles Plus 10.

Principles 7 and 9 are of profound significance to the interpretation of human rights standards in relation to LGBT people in detention and imprisonment and are reproduced below in detail:

***Principle 7: The right to freedom from arbitrary deprivation of liberty***

*No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity,*

*are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.*

*States shall:*

*A. Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice;*

*B Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court*

.....  
<sup>44</sup> Yogyakarta Principles: <http://www.yogyakartaprinciples.org/> (accessed 2 December 2019), together with Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, adopted 10 November, 2017 (The Yogyakarta Principles plus 10 (YP+10)) <http://yogyakartaprinciples.org/principles-en/yp10/> (accessed 2 December 2019).

proceedings to determine the lawfulness of detention;

C. Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person's sexual orientation or gender identity;

D. Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.

### **Principle 9: The right to treatment with humanity while in detention**

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall:

A. Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting

them to risk of violence, ill treatment or physical, mental or sexual abuse;

B. Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;

C. Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;

D. Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;

E. Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners; and detainees, regardless of the gender of their partner;

*F. Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;*

*G. Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and nondiscrimination, including in relation to sexual orientation and gender identity.*

*H. Adopt and implement policies to combat violence, discrimination and other harm on grounds of sexual orientation, gender identity, gender expression or sex characteristics faced by persons who are deprived of their liberty, including with respect to such issues as placement, body or other searches, items to express gender, access to and continuation of gender affirming treatment and medical care, and “protective” solitary confinement;*

*I. Adopt and implement policies on placement and treatment of persons who are deprived of their liberty that reflect the needs and rights of persons of all sexual orientations, gender identities, gender expressions, and sex characteristics and ensure that persons are able to*

*participate in decisions regarding the facilities in which they are placed;*

*J. Provide for effective oversight of detention facilities, both with regard to public and private custodial care, with a view to ensuring the safety and security of all persons, and addressing the specific vulnerabilities associated with sexual orientation, gender identity, gender expression and sex characteristics.*

The additional safeguards in the 2017 Yogyakarta Principles Plus 10 include, among others; the right to state protection, the right to legal recognition, the right to bodily and mental integrity and the right to freedom from criminalisation and sanction, under Principles 30, 31, 32 and 33 respectively.

The right to state protection under Principle 30 mandates states to protect LGBT people from violence, discrimination and harm, including the exercise of due diligence in prevention, investigation, prosecution and remedies. Principle 31 calls for the legal recognition and issue of state documents such as national IDs, passports and birth certificates, without reference to, inquiring into or seeking disclosure of one's sex, gender, sexual orientation, gender identity and sexual characteristics. Principle 32 seeks to guarantee the right to bodily and mental autonomy and integrity without irrespective of sexual orientation, gender identity and

sexual expression. Lastly, but not least, Principle 33, declares the right to be free from direct or indirect criminalisation and sanctions including those based on religious, vagrancy, public decency and sodomy laws.

The Yogyakarta Principles do not create any new norms, but rather rely on existing norms, and this implies that under international law, states are bound to protect persons in detention or in prison from violence or discrimination based on their sexual orientation or gender identity. Not only that, states are also under obligation to decriminalise sexual orientation and gender identity and recognise LGBT people as enunciated in the Yogyakarta Principles Plus 10.

## 2.3 Domestic laws protection of LGBT persons in detention or prison

A number of laws are relevant to the protection of LGBT persons in detention and in prison in Uganda. These are:

### 2.3.1 Constitutional Protections

The Constitution of Uganda protects human rights for all persons, including LGBT persons.<sup>45</sup> Article 20

declares that fundamental human rights and freedoms are inherent and not granted by the state and enjoins all state organs and agencies to respect, uphold and promote the rights of the individual and groups.<sup>46</sup>

As such the Justice, Law and Order Sector (JLOS) institutions including the Uganda Police Force and the Uganda Prisons Service are bound by the Constitution. Article 21 guarantees equality of all persons before and under the law and prohibits discrimination on the basis of one's sex, race, colour, tribe, birth, religion, social or economic standing, political opinion or disability of any kind. However, this provision is closed ended and does not include sexual orientation and gender identity as grounds for discrimination. This omission is not accidental as it is reinforced by a 2005 constitutional amendment which introduced article 31(2a) prohibiting same-sex marriages. Thus, the right to equality and non-discrimination guaranteed under the Ugandan Constitution is currently restricted in its application and interpretation in relation to LGBT people, and this has laid the foundation for human rights violations and abuses suffered by LGBT people.

The right to personal liberty is embedded in article 23 which prescribes the conditions for arrest, detention and imprisonment. It

.....  
<sup>45</sup> See decision of the High Court in *Kasha Jacqueline Nabagesera, David Kato Kisuule & Pepe Julian Onziema v The Rollingstone Newspaper & Giles Muhame* (Rolling Stone case), Miscellaneous Cause No. 163 of 2010 (High Court of Uganda) 30 December 2010. For a detailed discussion on this see Human Rights Awareness and Promotion Forum 'A guide to the normative legal framework on the human rights of LGBTI persons in Uganda' Second Edition, February 2019, 6.

<sup>46</sup> Article 20 of the Uganda Constitution.

prohibits arrest of any person except for lawful reasons defined in the Constitution. These include: execution of a sentence or order of a court of law or tribunal passed upon conviction in criminal proceedings, punishment for contempt of court, an order made by a court to secure fulfillment of any obligation, for purposes of presenting a person to a court of law to answer to a criminal charge, to prevent spread of an infectious or contagious disease, for the education or welfare of a minor, and to protect the community from and for the treatment and care of persons of unsound mind and drug and alcohol addicts.<sup>47</sup> Others are: to enforce immigration laws on entry into and exit from Uganda, to enforce extradition of criminals and as authorised by any law.<sup>48</sup>

Any person arrested or detained must be kept in a detention facility authorised by law<sup>49</sup> and must be informed in a language they understand of the reasons for the arrest or detention.<sup>50</sup> Detention places which are authorised by law are: police stations and lock ups and army barracks only for persons arrested under the Uganda Peoples' Defence Forces (UPDF) Act. In both instances, the detained person must be released or produced in court within 48 hours. The other authorised detention facilities are prisons run by the Uganda Prisons Services for people on remand pending trial and convicts.

.....

<sup>47</sup> Article 23(1).

<sup>48</sup> As above.

<sup>49</sup> Article 23(2).

<sup>50</sup> Article 23(3).

The right to a lawyer of his/her choice must also be explained to an arrested or detained person.<sup>51</sup>

Under article 23(4), a suspect must be produced before a court of law within 48 hours from the time of arrest.

Further, an arrested person is entitled to have their next-of-kin informed about the arrest as soon as possible, and to have access to a lawyer of their choice and medical doctor.<sup>52</sup> Medical treatment must be availed by the state except where the person desires private medical treatment which they are entitled to access at their own cost.<sup>53</sup>

Clause 6 preserves an arrested person's right to apply to court to be released on bail on conditions which may be prescribed by court.<sup>54</sup> The Constitutional Court has clarified that grant of bail is not automatic but rather that the accused has the right to apply to court to be released on bail and the court has the discretion whether or not to grant bail.<sup>55</sup> However, the Constitution also provides for instances of mandatory release on bail where: a person is held on remand for sixty days before trial in respect of an offence triable by a magistrates

.....

<sup>51</sup> As above.

<sup>52</sup> Article 23(5).

<sup>53</sup> As above.

<sup>54</sup> Article 23(6)(a).

<sup>55</sup> See *Uganda (DPP) vs. Col (RTD) Dr. Kizza Besigye*, Constitution Reference No. 20 of 2005.

court<sup>56</sup> and, a person has been on remand for 180 days before he/she is committed to the High Court for trial.<sup>57</sup> In such cases, the court's discretion is limited to determining conditions of release on bail.

Clause 7 provides for payment of compensation to any person who is unlawfully arrested or detained whether by state or non-state actors. Any period spent in lawful custody by any person arrested in respect of a criminal offence before completion of their trial must be taken into account when determining the sentence to be imposed.<sup>58</sup> Lastly, the Constitution preserves the right to an order of *habeas corpus*<sup>59</sup> as inviolable and non-derogable.<sup>60</sup>

Almost the entire breadth of the rights and conditions set out in article 23 was considered and sufficiently elucidated by Justice Musa Ssekaana in *Issa Wazembe v Attorney General*.<sup>61</sup> The learned Judge of the High Court observed that the right to personal liberty is not absolute and could be restricted in accordance with article 23. The right could further be limited if such

limitations could be justified under article 43(1) of the Constitution. However, he added, that personal liberty is crucial in the Constitution and that any derogation from it has to be done as a matter of unavoidable necessity, while the Constitution ensures that such derogation is just temporary and not indefinite.<sup>62</sup> He went on to declare unconstitutional the conduct of the UPDF of among others: holding the plaintiff in military safe houses which were not lawful places of detention, failure to inform his next of kin of the detention, detaining him for 9 months without bringing him before a court of law, failure to inform him of the reasons why he was arrested and detained.

The right to freedom from torture, cruel, inhuman and degrading treatment and punishment is guaranteed under article 24 and entrenched as a non-derogable right by article 44(a). Mistreatment upon arrest and in detention and imprisonment constitutes one of the most common violations of this provision. *Issa Wazembe v Attorney General*<sup>63</sup> provides an erudite commentary of the phenomenon of

.....  
<sup>56</sup> Article 23(6)(b).

<sup>57</sup> Article 23(6)(c).

<sup>58</sup> Article 23(8).

<sup>59</sup> Habeas Corpus is a writ requiring a person under arrest to be brought before a judge or court, especially to secure the person's release unless lawful grounds are shown for their detention. It is an order used to obtain release of people who are detained unlawfully. See the Black Law Dictionary at <https://thelawdictionary.org/habeas-corpus/>

<sup>60</sup> Article 23(9) and Article 44(d).

<sup>61</sup> HCCS No. 154 of 2016 (High Court Civil Division) (unreported) available at <https://ulii.org/system/files/judgment/hc-civil-division-uganda/2019/181/hc-civil-division-uganda-2019-181.pdf>.

<sup>62</sup> As above.

<sup>63</sup> Wazembe case (n 61 above).

torture, cruel, inhuman and degrading treatment and punishment in detention conditions, in which the learned Judge opined that freedom from torture is absolutely guaranteed and cannot be justified under whatever circumstance.<sup>64</sup>

*Freedom from torture is one of the most universally recognized human rights. Torture is considered so barbaric and incompatible with civilized society that it cannot be tolerated. Torturers are seen as the 'enemy of mankind.'*

Article 26 provides for the right to own property either individually or jointly with others and such a property cannot be taken away by the state except for lawful reasons defined in the Constitution and others and subject to payment of fair, adequate and prompt compensation prior to take over. This right extends to one's possessions upon arrest and detention. Similarly, the right to privacy provided for in article 27 must be observed and respected during arrest and detention. The High Court in the case of *Victor Mukasa and Another v Attorney General*<sup>65</sup> examined the foregoing constitutional provisions relating to

humiliation, unlawful search, confiscation of documents and correspondence, undressing and unlawful arrest of an LGBT activist by members of the Uganda Police and the Local Council leadership of the area. Lady Justice Stella Amoko Arach concluded that such actions violated her fundamental human rights to equal treatment, privacy, personal property and freedom from torture, cruel, inhuman and degrading treatment and punishment.

The right to a fair hearing is enshrined in article 28 and its key tenets are elaborately set out. It entails a fair, speedy and public hearing before an independent and impartial court of law or tribunal.<sup>66</sup> One of its pillars is the presumption of innocence for any person charged with a criminal offence.<sup>67</sup> Other components of the right to a fair hearing include the prohibition of charging with a criminal offence which did not exist in law at the time of the impugned conduct,<sup>68</sup> double jeopardy (the prohibition on being tried more than once for the same offence),<sup>69</sup> charges of criminal offences which are not defined in law and punishment prescribed.<sup>70</sup> An accused person is also entitled to access to a lawyer

.....  
<sup>64</sup> Wazembe case (n 61 above).

<sup>65</sup> High Court Miscellaneous Cause Np. 247 of 2006 (Civil Division) (unreported) available at <https://www.icj.org/wp-content/uploads/2012/07/Mukasa-and-Oyo-v.-Attorney-General-High-Court-of-Uganda-at-Kampala.pdf>.

<sup>66</sup> Article 28(1).

<sup>67</sup> Article 28(3)(a).

<sup>68</sup> Article 28(7).

<sup>69</sup> Article 28(9) and (10).

<sup>70</sup> Article 28(12).

and to necessary assistance such as interpreters.<sup>71</sup> Except for persons facing trial for capital offences and offences carrying a maximum of life imprisonment, the person facing trial is also liable for their own legal costs.<sup>72</sup>

With the exception of the non-derogable rights prescribed in article 44, the Constitution provides for a general limitation on the enjoyment of the guaranteed rights and freedoms.<sup>73</sup> One of the grounds for the limitation is public interest but detention without trial is expressly excluded from the purview of public interest under the limitation.<sup>74</sup> Thus, under no circumstances is unlawful detention permitted under the Ugandan Constitution.

Article 47 provides for conditions of detention under a state of emergency. Under the provision, a person detained in a state of emergency must be informed of the reasons for the detention within 24 hours, their spouse must be notified within 72 hours and a notice of detention stating the grounds of the detention must be published in the Uganda Gazette within 30 days.<sup>75</sup>

Suffice to state that no state of emergency has been declared in Kampala in the last ten years (2009 – 2019), the study period.<sup>76</sup>

Whereas all the constitutional guarantees and protections enumerated in this section should be available to LGBT persons just like any other person in Uganda, this position has been plunged into doubt by the High Court. Relying on among others article 43 which creates a general limitation on the enjoyment of the constitutional rights and freedoms and section 145 of the PCA, the High Court has upheld as justified a stopping of an LGBT skills workshop by the Minister of Ethics and Integrity<sup>77</sup> and refusal by the Uganda Registration Services Bureau to reserve the name Sexual Minorities Uganda (SMUG) for registration as a company limited by guarantee.<sup>78</sup> Those two decisions reversed earlier progressive judgments in *Victor Mukasa and Another vs. Attorney General*<sup>79</sup> in which the High Court held that an unauthorised search, humiliation and arrest of an LGBTI person amounted to violation of the constitutionally guaranteed rights to

.....  
<sup>71</sup> Article 23(3).

<sup>72</sup> Article 28(3)(e).

<sup>73</sup> Article 43.

<sup>74</sup> Article 43(2)(b).

<sup>75</sup> Article 47(a)(b) and (c).

<sup>76</sup> The last state of emergency in Uganda was declared in flood-hit Northern Uganda pursued to the Constitution (Declaration of State of Emergency) Proclamation, 2007.

<sup>77</sup> High Court Civil Division Miscellaneous Cause No. 33 of 2012 accessed at <https://ulii.org/ug/judgment/high-court-civil-division/2014/85> on 10th December 2019.

<sup>78</sup> High Court Miscellaneous Cause No. 96 of 2016.

<sup>79</sup> High Court Miscellaneous Cause No. 247 of 2006.

privacy, dignity and personal liberty and *Jacqueline Kasha and Others vs. Rollingstone and Another*<sup>80</sup> where court held that publication of pictures and names of LGBTI persons violated their right to dignity, right to privacy and freedom from discrimination.

### 2.3.2 Legislative safeguards

Acts of Parliament provide further safeguards in the protection of the rights and freedoms of people facing arrest, detention and imprisonment and prescribe rules for treatment of detainees and imprisoned people. These include the Magistrates Courts Act cap 16 (MCA), the Trial on Indictments Act cap 16 (TIA), the Human Rights (Enforcement) Act 2019, the Penal Code Act cap 120 (PCA), the Criminal Procedure Code Act cap 116 (CPCA), the Police Act Cap 303, the Prisons Act 2006 and the Uganda People's Defence Forces Act 2006 (UPDF Act), among others.

The Magistrates Courts Act cap 16 and the Trial on Indictments Act cap 23 guide the trial processes, including criminal trials, before magistrates courts and the High Court respectively. Both Acts provide for conditions of bail in accordance with the right to personal liberty in article 23 of the Constitution which include among others, having

a permanent place of abode, substantial sureties and payment of a bail bond.<sup>81</sup> Both Acts also provide for issue and execution of summonses, search warrants and arrest warrants for purposes of enabling an accused person to be produced before court for trial.<sup>82</sup>

The Criminal Procedure Code Act which regulates administration of substantive criminal justice confers powers of arrest on police officers, judicial officers and private persons but requires a private person who exercises powers of arrest to deliver the arrested person to a police officer or the nearest police station without delay.<sup>83</sup> Although use of force to apprehend a person is permitted, the Act prohibits use of unnecessary restraint.<sup>84</sup> Section 17 provides for release on police bond of a person arrested and detained if the arrest is not in respect of murder, treason or rape. The grant of police bond to people in police detention is further amplified in sections 24 and 25 of the Police Act Cap 303. According to these provisions where an arrested person is not produced in a magistrates court within 48 hours, they are entitled to be released on police bond.

Section 38 of the Police Act declares that Police bond is free and no fee is payable to obtain release. Where an

.....  
<sup>80</sup> High Court Miscellaneous Cause No. 163 of 2010 available at <http://www.iglhrc.org/sites/default/files/2010%20Kasha%20Jacqueline%20v%20Rolling%20Stone.pdf> accessed on 10<sup>th</sup> December 2019.

<sup>81</sup> Sections 75, 76 and 77 of the MCA and Sections 14, 15 and 16 of the TIA.

<sup>82</sup> Sections 5 – 12 of the TIA and sections 69 to 74 of the MCA.

<sup>83</sup> Section 16 of the CPCA.

<sup>84</sup> Section 5 of the CPCA.

arrested person is being held in violation of sections 24 or 25 of the Police Act, an application may be made to a magistrate court for an order of release.<sup>85</sup> On the weight of these provisions in the CPCA and the Police Act, persons arrested for 'carnal knowledge against the order of nature, or such similar offences are entitled to be released on police bond, if not produced in court within 48 hours.

However, section 11 of the CPCA permits the arrest of vagabonds, described in the section as people with no ostensible means of subsistence or who cannot give a satisfactory account of themselves. This provision, along with the foundational provisions of section 167 and 168 of the PCA, have regularly been used to arrest and unlawfully detain LGBT people and other minorities in violations of their human rights and freedoms.<sup>86</sup> This may have constitutional implications and section 168(1)(c) and (d) of the PCA are subject of a constitutional challenge in the petition of *Francis Tumwesige Ateenyi v Attorney General*<sup>87</sup> which is pending in the Constitutional Court.

The framework for the implementation of the prohibition against torture and inhuman and degrading treatment in articles 24

and 44(a) of the Constitution is laid down in the Prevention and Prohibition of Torture Act 2012. The Act provides further safeguards especially for persons under arrest or in detention. It prohibits and criminalises torture and slaps a maximum sentence of 15 years upon conviction for torture and life imprisonment in instances of aggravated torture.<sup>88</sup> Specifically, on detention, the Act prohibits transfer or release of detainees and prisoners if there is a likelihood that they will be subjected to torture.

Also, section 25(4) of the Police Act, empowers a magistrate to investigate a complaint of torture of a person in police custody and order treatment of such a person while the responsible police officer may be charged.

Detention and imprisonment of people in prisons is under the ambit of the Prisons Act 2006. The Prisons Act provides for the general administration of prisons and handling of prisoners in line with effective and humane modern penal policy and universally accepted international standards.<sup>89</sup> The Act incorporates elaborate safeguards for prisoners' and detainees' human rights and welfare. Separation of male and female prisoners is mandatory and female prisoners

.....  
<sup>85</sup> Sections 24(4) and 25(3) of the Police Act.

<sup>86</sup> See HRAFP *The Enforcement of Idle and Disorderly Laws on the Human Rights of Marginalized Groups in Uganda* 2016, available at <https://hrapf.org/index.php/resources/research-reports/32-160929idleanddisorderlyresearchfinalreport/file>.

<sup>87</sup> Constitutional Petition no. 36 of 2018.

<sup>88</sup> Sections 3, 4 and 5 of the Prevention and Prohibition of Torture Act 2012.

<sup>89</sup> See long title to the Prisons Act 2006.

should be guarded by female prison officers.<sup>90</sup> There is however no such provision for transgender persons.

Section 57 lists the rights of prisoners in custody of the Uganda Prisons Service including being treated with the respect due to one's inherent dignity and value as a human being; not to be discriminated against on the basis of race, sex, language, colour, religion, political or other opinion, national or social origin, property, birth or other status. Reference to *other status* here is significant as the Prisons Act departs from the closed definition of the grounds for discrimination in the Constitution and leaves the door open for inclusion of sexual orientation and gender identity as analogous grounds.

Other listed rights in section 57 include the right to worship and take part in cultural and educational activities; access to health services; and the right to take up meaningful remunerated employment. All these rights are subject to the Constitution implying that all Constitutional rights apply to the extent possible.

Unconvicted prisoners must be presumed innocent and treated as such and must be held in separate custody from convicts.<sup>91</sup> Section 66 re-iterates the prisoner's right to apply to be released on bail by a Magistrates court or the High Court. Other important welfare provisions include: the requirement to provide

to prisoners food of adequate nutritional value and safe drinking water and to allow a prisoner who is not employed on outdoor work at least one hour per day of suitable exercise in open air.<sup>92</sup> A prisoner or detainee is also entitled to regulated access to the outside world especially to their lawyer, relatives and friends.<sup>93</sup>

Part Seven of the UPDF Act prescribes conditions and standards for arrests, searches and handling of detained members of the UPDF and civilians who are subject to military law such as those charged with possession of fire arms and other military offences. These conditions are generally in conformity with what has already been described in this section. In addition, there is requirement that a person arrested must be committed to civil prison or service custody within 24 hours.<sup>94</sup>

The Human Rights (Enforcement) Act 2019 was enacted by the Parliament at the beginning of 2019. The Act, which provides a legal framework for the enforcement of the rights and freedoms in Chapter Four of the Constitution, received Presidential assent on 31<sup>st</sup> March 2019. The Act provides for enforcement of human rights by the High Court and Magistrates Courts and generally regulates the filing and conduct of human rights suits. It also prescribes personal liability for human rights violations by public

<sup>90</sup> Sections 29, 59 and 60 of the Prisons Act.

<sup>91</sup> Section 64.

<sup>92</sup> Sections 69 and 70 of the Prisons Act.

<sup>93</sup> Section 78 of the Prisons Act.

<sup>94</sup> Section 188 of the UPDF Act.

officers,<sup>95</sup> loss of immunity from prosecution by persons who enjoy legal immunity if they participate in human rights violations,<sup>96</sup> and unconditional release of persons who are unreasonably detained.<sup>97</sup> For the first time in Ugandan history, failure by any person to obey an order for unconditional release is a criminal offence which attracts imprisonment of up to 10 years. Among other measures, the Act makes provision for a third party to seek redress on behalf of another person whose human rights have been violated<sup>98</sup> and also nullifies criminal proceedings in which the court finds that non-derogable rights of an accused person have been violated.<sup>99</sup>

There is no doubt that this is groundbreaking legislation. At the commencement of the Act, the Inspector General of Police Martins Okoth-Ochola issued a circular dated 3<sup>rd</sup> July 2019 to all police officers warning them that any form of human rights violations including torture and detention beyond 48 hours attracts personal liability under

the Human Rights (Enforcement) Act 2019.<sup>100</sup> The IGP also publicly warned members of UPF 'to ensure that the observation of human rights is adhered to without fail'.<sup>101</sup>

Given how elaborate the Constitution and the enabling legislation are, it is not surprising that it has been stated that on the whole Uganda's legal framework, especially the Constitution, complies with international human rights standards relating to arrest and detention.<sup>102</sup> What has been a matter of great concern however are challenges encountered in the implementation of the law and procedural safeguards, which have led to abuse of guaranteed and protected rights of prisoners and detainees.<sup>103</sup> However, with respect to LGBT persons, the main challenge is that there are no specific protections against discrimination on the basis of sexual orientation and/or gender identity. For a marginalised community, fighting against stigma and discrimination would require specific protections of marginalised groups and there ought

.....

<sup>95</sup> Section 10.

<sup>96</sup> Section 14.

<sup>97</sup> Section 15.

<sup>98</sup> Section 3(2).

<sup>99</sup> Section 11.

<sup>100</sup> Interview with Police Officer, Kampala, 3<sup>rd</sup> December 2019.

<sup>101</sup> 'IGP to cops: You will pay for errant actions' by Samuel Muhindo, The Observer, 10 July 2019, available online at <https://observer.ug/news/headlines/61306-igp-to-cops-you-will-pay-for-errant-actions> (accessed 2 December 2019).

<sup>102</sup> A Adula. Undated. A History of the Violation of the Right to Personal Liberty in Uganda: Are there any improvements? <http://ebookbrowse.com/a-history-of-the-violation-of-the-right-to-personal-liberty-in-uganda-doc-d107679647>, accessed 30 October 2012.

<sup>103</sup> Karugonjo, Above no. 24.

to be laws or guidelines prescribing the treatment of such groups.

## 2.4 Institutional and policy initiatives aimed at improving human rights in detention and prison facilities in Uganda

Besides the law, over the last ten years, both the Uganda Police Force and the Uganda Prisons Service have undertaken several initiatives aimed at improving human rights observance in detention cells and prisons.

### 2.4.1 Human rights initiatives by the Uganda Police Force

The Uganda Police established a Human Rights and Complaints Desk which was subsequently elevated to a fully-fledged Directorate of Human Rights and Legal Services.<sup>104</sup> Under the Directorate, there are three departments including the Human Rights Department which was created in 2013.<sup>105</sup> The functions of the Human Rights Department include: carrying out awareness programmes on human rights instruments and laws for the staff in UPF, promoting respect for the rule

of law and observance of human rights in the UPF and the community, liaising with the Legal Department on disciplinary matters and legal complaints pertaining to human rights issues, promoting collaboration linkages with national and international institutions for purposes of enhancing human rights and ethics in the UPF and promoting human rights education within the UPF.<sup>106</sup> The Department is currently headed by Assistant Commissioner of Police (ACP) Kusemererwa James who is assisted by seven other officers.<sup>107</sup> The Department receives complaints of human rights abuses against police officers and forwards them to the Police Professional Standards Unit (PSU) for investigation.<sup>108</sup>

Attempts have also been made to decentralise the Human Rights Department and 26 regional desks have been created managed by Legal Officers in all the 26 regions of UPF.<sup>109</sup>

.....  
<sup>104</sup> <https://www.upf.go.ug/directorate/>

<sup>105</sup> Interview with Police Officer, Kampala on 3<sup>rd</sup> December 2019.

<sup>106</sup> As above.

<sup>107</sup> As above.

<sup>108</sup> As above.

<sup>109</sup> As above.

The PSU was created in 2007 to receive and handle public complaints of misconduct against police officers. The PSU has powers to hear complaints and where a police officer is found guilty to impose sanctions ranging from half-pay, demotion in rank to dismissal from the Force.<sup>110</sup> Although it hit the ground running, reportedly recording over 900 complaints and hearing half of them in the first ten months of its existence, the PSU is lately lethargic and ineffective.<sup>111</sup>

The Police have also launched the Human Rights Policy 2019.<sup>112</sup> The Policy acknowledges several complaints of human rights violations levied against the UPF by UHRC and other national and international human rights bodies and is designed to provide guidance to police officers on how to enhance human rights observance in their operations.<sup>113</sup> It also underlines the UPF's commitment to the promotion and protection of human rights.<sup>114</sup> The Policy makes no reference to LGBT people or sexual orientation, and a police officer interviewed acknowledged that the Police does not give special attention to LGBT persons because of the social, political and logistical implications involved but police officers are

warned against arresting LGBT persons except upon commission of a verifiable offence.<sup>115</sup> The UPF Human Rights Policy, however, makes the following declaration regarding non-discrimination:

*The UPF will provide police service to all persons without any bias or prejudice. The UPF must serve all persons with utmost professionalism, competence, courtesy, and respect regardless of age, sex, race or ethnic origin, language, religion, political or other opinion, national or social origin, disability, property, birth, gender, social and economic status, or any other status.*<sup>116</sup>

This Policy follows the path of the Prisons Act to recognise, in the definition of non-discrimination, the existence of “any other status” which leaves open the possibility for inclusion of sexual orientation as a ground for non-discrimination.

According to the police officer who was interviewed efforts are underway to disseminate the Policy to all levels of the Police. Internal measures are further supplemented by publications and partnerships with UHRC and from civil society. Indeed paragraph 2.1 of the Policy

.....  
<sup>110</sup> <https://ugfacts.net/uganda-police-professional-standards-unit/>

<sup>111</sup> Interview with Legal Officer, Access to Justice, HRAPF during an interview held in Kampala on 20<sup>th</sup> November 2019.

<sup>112</sup> Interview with police officer in Kampala on 3<sup>rd</sup> December 2019.

<sup>113</sup> Chapter One, UPF Human Rights Policy 2019.

<sup>114</sup> Chapter Two, UPF Human Rights Policy 2019.

<sup>115</sup> Chapter Three, UPF Human Rights Policy 2019.

<sup>116</sup> Paragraph 2.3 of the UPF Human Rights Policy 2019.

encourages police collaboration with, among others, civil society and Non-Governmental Organisations.

#### 2.4.2 Human Rights initiatives by Uganda Prisons

The Uganda Prisons Services has taken similar steps to adopt measures to promote human rights in prisons. Not only has it established a human rights unit, UPS adopted a vision statement which demonstrates their commitment to human rights. It states *'To be a centre of excellence in providing human rights based correctional service in Africa'*.<sup>117</sup> Even their mission statement speaks the same language emphasising human rights; *'To provide safe, secure, and humane custody of offenders while placing human rights at the centre of their correctional programmes'*.

In 2009 UPS established the Human Rights Division headed by Assistant Commissioner of Prisons (ACP) Victor Aioka.<sup>118</sup> The Division receives human rights reports and complaints which are forwarded to the Commissioner General of Prisons for action. The Division has ensured that there are Human Rights Desks at all levels of the Prisons Service. The most significant of such desks are the Human Rights Committees. A prisons official interviewed

explained that there are two human rights committees at every prison in the country: one comprised of and responsible for human rights issues among the Police staff and, the second comprised of prisoners and detainees. The two committees compile and send to the Commissioner General quarterly reports highlighting human rights issues in their prisons.<sup>119</sup> Existence of such a committee at Luzira women's prisons was confirmed by R20 and R21, lesbian women, as one of the reasons violence against inmates had reduced.<sup>120</sup>

UPS has been at the forefront of improving prison conditions in Africa and spearheaded the Kampala Declaration on Prison Conditions in Africa to improve prison conditions and address issues of remand prisoners, prison staff and alternative sentencing.<sup>121</sup> They have also emphasised and invested in human rights trainings for prison staff. Between 2008 and 2014, UPS trained 1,118 prison staff in human rights with the trained staff expected to be ambassadors to champion the observance of human rights in prisons.<sup>122</sup>

Human rights trainings for UPF and UPS staff have also been undertaken

.....  
<sup>117</sup> See <https://www.prisons.go.ug/aboutups/vision-and-mission>.

<sup>118</sup> Interview with prisons official in Kampala on 29<sup>th</sup> November 2019.

<sup>119</sup> As above.

<sup>120</sup> As above.

<sup>121</sup> The Kampala Declaration was adopted on 21<sup>st</sup> September 1996 by 33 delegates from 47 countries.

<sup>122</sup> [https://humanrightsinitiative.org/publications/police/A\\_FORCE\\_FOR\\_GOOD\\_Improving\\_the\\_Police\\_in\\_Kenya\\_Tanzania\\_and\\_Uganda.pdf](https://humanrightsinitiative.org/publications/police/A_FORCE_FOR_GOOD_Improving_the_Police_in_Kenya_Tanzania_and_Uganda.pdf).

under the JLOS umbrella. According to the JLOS performance report 2017 – 2018, 480 UPS staff and 850 UPF staff were trained in observation of human rights.<sup>123</sup>

However, as is the case with the police, UPS' initiatives have no specific consideration for LGBT people. The prisons official interviewed insisted that homosexuality is illegal in Uganda and they cannot make special provision for illegality.<sup>124</sup> He also claimed ignorance of the existence of LGBT people in prisons, which should be unacceptable given his position as the overall overseer of human rights in the whole of UPS since 2009.<sup>125</sup>

## 2.5 Conclusion

Whereas it is clear that the international legal framework envisages the protection of LGBT persons in detention from violence or discrimination based on sexual orientation and gender identity as demonstrated in the Yogyakarta Principles, Ugandan law falls short. Uganda's Constitution and laws provide safeguards for persons in detention and those in prison, and steps have been taken to put in place guidelines that ensure that the legal framework is implemented. However, none of the laws, policies or guidelines expressly include LGBT

persons. Indeed even recognition of the right to equality and freedom from discrimination for person in detention excludes sexual orientation and gender identity, and the omission is not by accident since the Prisons Act is as recent as 2006 when issues of sexual orientation and gender identity had come to the fore, and after the Constitution had been amended to include a prohibition on same-sex marriages. The laws criminalising same-sex relations as well as cultural and religious practices that discriminate against LGBT persons all combine to create a situation where LGBT detainees will not be treated the same way as other detainees in the criminal justice system. As such, the legal and policy framework governing the protection of persons in detention in Uganda does not adequately recognise or cater for LGBT persons, and thus leaves a lot of room for violation of the rights of LGBT persons.

.....  
<sup>123</sup> <https://www.jlos.go.ug/index.php/document-centre/performance-reports/annual/418-annual-performance-report-2017-2018/file>.

<sup>124</sup> As above.

<sup>125</sup> As above.

# 3. MANIFESTATIONS AND TRENDS OF HUMAN RIGHTS VIOLATIONS SUFFERED BY LGBT PERSONS IN DETENTION AND IMPRISONMENT

---

## 3.1 Introduction

The gaps in the legal, policy and institutional safeguards identified in the foregoing Chapter fuel human rights violations against LGBT people in custody of Uganda's police and prisons. There are various violations that occur against LGBT persons who are in detention and imprisonment and these are the subject of this chapter. This chapter presents the findings of the study and analyses the demonstrated trends. The findings are organised according to the rights violated during detention and imprisonment in the custody of Police and Prisons.

## 3.2 Respect for Human dignity and Freedom from Torture, Cruel, Inhuman and Degrading Treatment or Punishment

Upholding the right to freedom from cruel, inhuman and degrading treatment or punishment in police

detention cells and prisons was found to be tenuous. Whereas there were no reported cases of outright torture as defined in the CAT and the Prevention and Prohibition of Torture Act 2012, numerous instances which violate human dignity and amount to cruel, inhuman and degrading treatment were recorded.

### 3.2.1 Manner of arrest, treatment and transportation by Police

Arrests of LGBT persons are usually characterised by violence, chaos and abuses unleashed on LGBT people by police officers. A recent example is the arrest of 125 persons from Ram Bar Kampala on 11<sup>th</sup> November 2019. Police officers raided the bar, a popular hang-out spot for the LGBT community in Kampala, and started arresting the partiers indiscriminately. In the ensuing chaos and stampede, many lost their property such as mobile phones while others were injured trying to escape.<sup>126</sup> Those who were arrested were bundled onto the trailers of Police pick-up vans without regard for their dignity or safety. Further injuries and suffering were sustained

.....

<sup>126</sup> FGD with Lesbian and Bisexual Women held at Kampala on 19<sup>th</sup> November 2019 and further confirmed by individual interviews with R19, R20, R21 and 23, which were held in Gayaza, Wakiso District on 27<sup>th</sup> November 2019.

on the van itself where several suspects were crowded onto the van past midnight in the cold.<sup>127</sup>

The Ram Bar arrest came at the back of another incident of violent arrest and detention of gay men who were sheltered at the premises of Let's Walk Uganda, an LGBT organisation (the Let's Walk arrests). On 20<sup>th</sup> October 2019 police officers from Kyegera Police station were called in to protect sheltered gay men from a village mob which had attacked them.<sup>128</sup> On arrival, the police rounded up 16 of the men in shelter and drove them to Nsangi Police Station under the guise of protecting them. At the police station, they were insulted, preached to, and slapped by a self-professed Christian District Police Commander (DPC).<sup>129</sup> As if that is not enough, two days later, all the 16 were loaded on police pick-up van and driven to Nsambya police Barracks for anal examinations.<sup>130</sup> At the barracks, they were kept in the van while it was raining as one by one they were taken in for anal examinations.

R24, a gay student, who was arrested during Ram Bar arrests described what happened in the following terms:

*Police stormed the bar and ordered everyone to sit down. Those who did not sit down were beaten while a few others managed to escape. It was my first time to mix with the LGBT community members and very few knew me. I tried to ask for reasons why I was being arrested but a police officer gave me a hot slap in the face instead. We were loaded on police vans and taken to CPS. I remained terrified as I did not want anyone in my circles including my family members to know about my status. The following day, I was forced to call my dad and when he arrived at CPS he was furious because he had seen me on TV. Police had conducted the arrest in the presence of the media which they had invited. The following day, we were remanded to Luzira Prisons, and by the time we arrived at 10pm, all the prisoners knew that there was a group of LGBT coming because of the police publishing the arrest.*

The arrests at Ram Bar and Let's Walk are reminiscent of the 2016 events at the LGBT Pride event at Club Venom in the Kampala suburb of Kabalagala. On 4<sup>th</sup> August 2016 during the third night of the LGBT Pride celebrations, police stormed the venue under the pretext of stopping the celebration of an

.....  
<sup>127</sup> KII interview with R21 held in Gayaza, Wakiso District on 27<sup>th</sup> November 2019.

<sup>128</sup> Interview with R25 and representative of Lets Walk Uganda held on 2<sup>nd</sup> December 2019.

<sup>129</sup> As above.

<sup>130</sup> As above.

unlawful “gay wedding”.<sup>131</sup> They locked all the club’s exits and violently arrested 16 LGBT people whom they assaulted, humiliated, and photographed with threats to publish their pictures. The most affected were transgender women and men who were specifically singled out for their appearance.<sup>132</sup> The arrested people were detained at Kabalagala Police Station but released without charge before dawn.<sup>133</sup> Narrating his experience during the arrest a transgender man explained: “When they originally picked us up they said a lot of homophobic things and told us we were immoral. One of the officers slapped me in the face and ordered for me to be cuffed.”<sup>134</sup>

The Ram Bar and the Let’s Walk arrests are examples of what happens during group arrests. But individual arrests are not any different as several accounts of LGBT people who were arrested individually pointed to the same treatment.

.....  
<sup>131</sup> “Uganda: Police attack LGBT Pride event; arrests, beatings, assaults on participants”, Human Rights Watch available at <https://www.hrw.org/news/2016/08/05/uganda-police-attack-lgbti-pride-event>. This account was also confirmed by the leader of an organisation which undertakes strategic litigation in an interview on 25<sup>th</sup> November 2019.

<sup>132</sup> As Above.

<sup>133</sup> As Above.

<sup>134</sup> “Uganda Police Storm Gay Pride Event, Arrest More than a Dozen People”, NBCNews, available at <https://www.nbcnews.com/feature/nbc-out/ugandan-police-storm-gay-pride-event-arrest-more-dozen-people-n623681> accessed on 3<sup>rd</sup> December 2019.

Transgender people suffer unique challenges. They are often forced to shave their hair and fondled in the chest, breasts and private parts to prove that they are either male or female.<sup>135</sup> When arrested at night, they are forced to spend nights at police receptions awaiting decisions on placement in male or female cells.<sup>136</sup> A paralegal offering legal support to LGBT people, referred to transgender people as ‘white chicken which cannot hide’ from the Police<sup>137</sup>. A representative of a transgender organisation observed that transgender people are generally the face of the LGBT community and the police arrests as they are seen as men behaving like women and women behaving like men.<sup>138</sup> He gave the following account of his own arrest in 2014:

*I was arrested in 2014 with a trans-man colleague and taken to Jinja Police Station. About 16 police officers abandoned their desks and surrounded us, ridiculing and poking fun at us. They stripped us naked while wondering if we were male or female. They kept us at the reception all night.*<sup>139</sup>

.....  
<sup>135</sup> Interview with representative of Tranz Network, held at Kampala on 27<sup>th</sup> November 2019.

<sup>136</sup> As above.

<sup>137</sup> Interview with SK, a Paralegal, held in Kampala on 27<sup>th</sup> November 2019.

<sup>138</sup> As above n 135.

<sup>139</sup> As above n 135.

All the humiliation, abuse and violation of transgender people is most times done by the police officers for fun as they seem to enjoy it.<sup>140</sup>

### 3.2.2 Conditions in police detention

Conditions in most police cells were described as inhuman.<sup>141</sup> Most police stations do not have facilities for detention of human beings in dignified conditions. This reality was borne out by the testimonies of some of the LGBT people who were arrested in the Ram Bar raid and detained at Kampala Central Police Station (CPS) on 11<sup>th</sup> November 2019.<sup>142</sup> According to the testimonies, for 2 days around 25 lesbian and female bisexual people were packed in a small corridor adjacent to toilets which still had the sign plates marked “TOILET” pinned on the doors.<sup>143</sup> The detention corridor was also adjacent to bathrooms and waste water flowing from the bathrooms flooded the corridor floor.<sup>144</sup> There was only one meal of posho and beans at 3pm of

each day and drinking water was only available at the water taps in the toilet sinks.<sup>145</sup> Girls could not access sanitary pads and sanitary towels until the following day at 7pm.

At some stations, LGBT suspects have been beaten and physically assaulted by Police officers. Two police stations which were prominently pointed out are Ndeeba Police Station and Nsangi Police Stations.<sup>146</sup> An unnamed officer at Ndeeba Police Station is known to beat suspects and have their hair shaved. At Nsangi police station, there is an officer known to pepper his slaps with shouting vulgarities such as *‘how can you a boy, allow to be fucked in the anus’*<sup>147</sup>.

The FGD with transgender people on 19<sup>th</sup> November 2019 confirmed poor conditions at Central Police Station in Kampala where several of them were detained after the Ram Bar arrest. They narrated that in one small cell there were over 200 detainees.<sup>148</sup> The cell was so packed that they could only stand with no space for sitting, squatting or even

.....  
<sup>140</sup> Above no, 136.

<sup>141</sup> Interview with Legal Aid Lawyer and Human Rights Expert, held at Garuga, Wakiso District on 25<sup>th</sup> November 2019.

<sup>142</sup> FGD with Lesbian and Bisexual women held at Kampala on 19<sup>th</sup> November 2019.

<sup>143</sup> FGD with Lesbian and Bisexual Women held at Kampala on 19<sup>th</sup> November 2019. Also repeated in FGDs with Gays and Bisexual Men and another FGD with transgender persons held on the same day.

<sup>144</sup> As above.

<sup>145</sup> As above.

<sup>146</sup> As above.

<sup>147</sup> Interview with Legal Officer, Access to Justice, HRAPF during an interview held in Kampala on 20<sup>th</sup> November 2019.

<sup>148</sup> FGD with transgender people held at Kampala on 19<sup>th</sup> November 2019.

sleeping. They had to spend all the two days standing and squeezed body to body, face to face and shoulder to shoulder with no breathing space.<sup>149</sup>

However, apart from the inhuman conditions, the detainees conceded that while at Kampala CPS, they were not particularly harassed or humiliated by the police officers. In one's detainee's view, the police officers 'let them be.'<sup>150</sup>

### 3.2.3 Conditions and treatment at Luzira Prisons

At Luzira Prisons, treatment was equally inhuman if only slightly better. On arrival, the prisoners were ordered to undress and remove all their clothes including underwear and shoes. This procedure, which would take around 5 minutes is known as search. Transgender people were subjected to longer searches as prison warders tried to prove if one is male or female.<sup>151</sup> In one cruel incident, a transgender female was forced to kneel down and the warders used a torch to check her private parts to confirm that she was female.<sup>152</sup> All the private clothing items were collected from them and they were each handed one set of the yellow prison uniform.<sup>153</sup> The prison uniforms

were not only dirty but also torn and recycled among prisoners. Since each prisoner had one set, it could only be washed during bathing and re-worn when still wet.<sup>154</sup> Prison wards were also reported to be overcrowded with over 180 prisoners packed in small wards which meant they could only sleep on one side with no space to turn or change position.<sup>155</sup>

Prisoners were also subjected to forced labour in the form of digging, peeling potatoes and cleaning toilets. Digging happens from 8am to 3pm either around the prison or in outside private farms.

The food provided in Luzira prisons is made of posho and beans. The food was said to be half cooked and contained weevils and there was only one meal per day served at 1:30pm. The maize flour was made from milling maize grains and entire maize cobs. Not only that, prisoners often miss meals especially those who are taken out to dig and are returned to prisons past 6pm. Unlike at Police where there is only one meal per day, at Luzira Prisons, inmates are served breakfast of porridge. All these conditions make the feeding conditions unsuitable for people with medical conditions such as ulcers and other stomach

.....  
<sup>149</sup> Above no. 144.

<sup>150</sup> R21 during an interview at Gayaza, Wakiso district, on 27<sup>th</sup> November 2019.

<sup>151</sup> As above.

<sup>152</sup> As above.

<sup>153</sup> Above no. 144 and 149.

<sup>154</sup> As above.

<sup>155</sup> Interview with R14, R18 and R17 held at Kampala on 19<sup>th</sup> November 2019.

complications and even those on ARV programs.<sup>156</sup> Like at Kampala CPS, drinking water was only available from sinks in toilet rooms.<sup>157</sup>

Prisons have been credited with taking strides to get rid of the bucket phenomenon where in-cell buckets are used as toilets by building toilets.<sup>158</sup> However, prisoners reported that there is no toilet paper and they are forced to use their hands to clean themselves.<sup>159</sup>

One practice which transcended both the police and prisons was officers alerting inmates that they had brought LGBT persons, tacitly encouraging the inmates to marginalise the new arrivals. That said, no major incidents of violence or mistreatment were reported inside cells and prison wards other than discrimination occasioned by taunting abuses such as *abasiyazi*, *sodomy*, among others. Moreso, it was reported that violence is forbidden among prisoners at Luzira and none of the respondents reported suffering any major violence. Only in one instance, a transwoman was reportedly raped by inmates.<sup>160</sup>

Dire as the conditions may be at prisons, the violations at police are much worse. Prisons seems to have made sufficient efforts to be

compliant with some basic human rights standards.<sup>161</sup> It was reported that prisoners at Luzira remand prison and women prison, or at least some of them, even have old mattresses and old blankets and the wards are equipped with television sets. There were proper bathing shelters and toilet facilities and violence among inmates is prohibited. With the exception of the occasional taunts and the challenges faced by transgender people, there were no major accounts of discrimination or marginalisation of LGBT people in Luzira prisons. The maltreatment such as overcrowded wards, forced undressing, availability of one set of uniform and forced labour, are not limited to LGBT prisoners but all inmates, which makes them part of the general structural and administrative challenges faced by prisons.

### 3.2.4 Medical examinations

Forced medical examinations were common in police cells. These included blood tests and anal examinations, both of which are done without the consent of the subject. Again, the suspects are dragged onto police vans and delivered to police friendly clinics where the tests are done. The respondents could not recall the

.....  
<sup>156</sup> Above no. 144 and 149.

<sup>157</sup> As above.

<sup>158</sup> As above.

<sup>159</sup> As above.

<sup>160</sup> Interview with R14, a transwoman in Kampala on 19<sup>th</sup> November 2019.

<sup>161</sup> Above no. 144, 149 and FGD with Gay and Bisexual men held at Kampala on 27<sup>th</sup> November 2019.

names of the clinics except for those involved in the Let's Walk arrests who cited being taken to Nsambya Police barracks for medical examinations. Moreover, after the tests the suspects are not granted access to the results. The majority of LGBT respondents had been subjected to some form of medical tests. Tests for Trans-people were often humiliating as examining doctors and nurses mused about the gender of the person being tested.

R25, a gay man, narrated his experience of being subjected to anal examinations after the Let's Walk arrests:

*On the fourth day in detention (at Nsangi Police Station), we were driven to Nsambya Police Counter Terrorism Unit. We were packed in a room. One gentleman addressed us as a father, police man and a doctor. He told us he was going to conduct medical examination one by one. The procedure was inhuman and humiliating. The Police officer categorically stated that he was doing something he hated because he equally hated the vice.*

*The Doctor would first interrogate each one of us and how they were recruited into homosexuality and by who. He would then require you to bend face down and order you to open your anus. He called for a nurse to bring and hold a torch on the buttocks. He would then*

*push two fingers in the anus. He would then say that he has done the anal examination and concluded that you had anal penetration and therefore you are gay. We were also subjected to HIV tests. The exercise went on until 1 o'clock in the night.*<sup>162</sup>

Thus, both the medical examinations themselves and the manner in which they are carried violate the rights to privacy, personal dignity and freedom from discrimination.

### 3.3 The right to personal liberty

Violations of the right to liberty featured prominently during the study. Violations took the form of unlawful arrests, unlawful detentions beyond the constitutional limit of 48 hours, harassment of lawyers and paralegals representing LGBT persons, unconscionable bail and bond terms, and demands for bribes.

#### 3.3.1 Unlawful detention in Police custody beyond the constitutional 48 hours

The constitutional requirement to release or produce in a court of law of any person in police custody is largely disregarded. Several of the respondents reported being detained at police for days or even weeks. During an FGD with lesbian and bisexual women who had been detained in the criminal justice system, it was revealed that R5 was

<sup>162</sup> R25 during an interview held in Kampala on 3<sup>rd</sup> December 2019.

detained at Kisugu Police Station for 3 weeks, those who were arrested at Ram Bar were detained at CPS for 3 days,<sup>163</sup> R4 spent 2 and a half days at Kyamula Police Station at Salaama Road, R6 spent a whole week at Lungujja Police, R14 was detained at Lungujja Police Station for 7 days, R4 spent two days at Katale Police in Kawempe, the Let's Walk detainees spent 3 days at Nsangi Police Station while another LGBT person was detained at Kabalaga Police station for 5 days.<sup>164</sup>

The highlighted accounts show that disregard of the 48-hour constitutional guarantee is a normalised practice in Police custody and it has become the rule not the exception. The IGP's circular of 3<sup>rd</sup> July 2019 cautioning all police officers against violation of the 48 – hour rule is testimony to the magnitude of the problem.

### 3.3.2 Conditions for grant of police bond from police custody

Conditions imposed on LGBT persons for the grant of police bond and court bail were explored. The findings show that police bond is generally for sale, in spite of it being expressly free under the Police Act.

Amounts payable range from as low as UGX20,000 to as high as UGX1,000,000 but the common average seems to be around the region of UGX100,000 – UGX200,000 with higher figures being paid in limited cases.<sup>165</sup> What is clear though is that it is difficult to obtain police bond without offering to pay money in return.<sup>166</sup> It is also important to note that payments of this nature are bribes to police officers. Although most times the police carry out arrests with the intention of obtaining money from these suspects, the suspects themselves always initiate giving the bribes because of the desire to keep away from the humiliation and torment from the cells and all other people that know them.<sup>167</sup> However, with the help of lawyers and paralegals, police bond was often obtained without payment of bribes. For example, the Let's Walk detainees did not pay bribes because they were represented by the HRAFP legal aid team.<sup>168</sup>

People released on police bond are usually required to report to police at regular intervals starting with bi-weekly, then weekly and monthly until the charges are cancelled with

.....  
<sup>163</sup> R6, R7, R8, R10, R11, R12, R13, R14, R15 and R16 during FGD with Lesbian and Bisexual women held at Kampala on 19<sup>th</sup> November 2019.

<sup>164</sup> Interview with AB, Paralegal, Kampala, 26<sup>th</sup> November 2019.

<sup>165</sup> FGD with Gay and Bisexual men held at Kampala on 27<sup>th</sup> November 2019.

<sup>166</sup> As above.

<sup>167</sup> Interview with AB, Paralegal, Kampala, 26<sup>th</sup> November 2019 and Interview with SK, a Paralegal, held in Kampala, 27<sup>th</sup> November 2019.

<sup>168</sup> Interview with representative of Executive Director of Let's Walk Uganda, held in Kampala on 27<sup>th</sup> November 2019.

no further action.<sup>169</sup> This regular reporting can go on for months. In one case it had gone on for 8 months. In another extreme case, a suspect who was granted bond at UGX500,000 was required to report to police after every two days for a month.<sup>170</sup> The practice of requiring a suspect to regularly report to police for months when there is no evidence to sustain a charge is a definite abuse of the right to liberty. The abuse is aggravated when one is required to report within a very short interval of two days as was the case in the above cited.

### 3.3.3 Conditions for grant of bail from Prisons custody

Interim release from Prisons custody may be obtained through an application for grant of bail to the High Court, as is in most cases, to a Magistrate's Court. Upon satisfaction of the conditions discussed in the foregoing paragraphs, bail may be granted.

According to narrations from the Respondents, Court bail would involve payment of the official bond fee of between UGX200,000 – UGX1,000,000. Although this fee is refundable upon the termination of the court proceedings, there was no report of the refunds being made. Other conditions for bail are: sureties with national IDs and recommendation letters from their Local Council I chairpersons, as well as surrender of the accused's national ID. A representative of

Youth on Rock Foundation, a gay organisation in Kampala which among others assists LGBT people to process LC recommendation letters, identify sureties and prepare production warrants, explained that LCs demand for payment to process the introduction letters. They paid between UGX10,000 and UGX20,000 for each letter. In addition, one has to provide transport for sureties, and where a production warrant is required, some money is paid to court officials to process it. Since at present courts retain national IDs of sureties, there is a reluctance among people to stand sureties. If an LGBT person is in prisons custody, there is need to process a production warrant, which is another costly process. These requirements are onerous and restrict the breadth of the right to personal liberty and the right to a fair trial as guaranteed under the Constitution and the various international and regional instruments.

### 3.3.4 Legal representation in Police custody

Access to legal representation was frequently cited as a challenge at police. Almost all the respondents interviewed stated that upon arrest and while in detention they were not informed of the right to legal representation. However, lawyers and paralegals from HRAFP and other legal aid organisations, and private lawyers, were often granted access to LGBT people in detention

<sup>169</sup> Above no. 144 and 149.

<sup>170</sup> Interview with R5, a gay man, held in Kampala on 19<sup>th</sup> November 2019.

and prisons. Indeed, all the lawyers who participated in the study confirmed that in spite of some minor challenges, they have always been granted access to their LGBT clients.<sup>171</sup>

It has not always been smooth sailing though. The Police was cited in a number of instances where they were hostile to paralegals and lawyers. Paralegals are ridiculed, harassed and chased away.<sup>172</sup> One of the worst cases saw the arrest of a paralegal who was detained at Kanyanya Police Station.<sup>173</sup> He was arrested and detained for one night and charged with obstructing justice when he insisted on talking to an LGBT client who was in detention.<sup>174</sup> In another incident, a HRAPF lawyer was arrested for a few hours at Mukono Police Station and charged with being a public nuisance.<sup>175</sup> She was released after HRAPF lawyers went to the station. During the Let's Walk arrest, the DPC of Nsangi Police Station was very hostile to lawyers and suspects alike while flaunting her Christianity.

**3.3.5 Legal representation in prisons**

Prisons on the other hand were reported to be more receptive and compliant compared to police stations and no major incidents were reported

at Prisons. Even treatment at police stations differed from station to station with extreme cases being exceptions.

**3.3.6 Charges and the right to be informed of the reason for arrest**

This is one of the most neglected aspects of the arrest and detention process. Most arrests involve the police apprehending someone, violently bundling them on a waiting police van and driving them to a police station all the while hurling commands and insults derived from the vocabulary used by the general public to ridicule LGBT people.<sup>176</sup> For example, when the Ram Bar arrestees asked to know why they had been arrested, the police officers' reply was 'you know what you did'. Arrested people only get to know of why they are arrested when they are formally charged at police or in some cases when charges are read out in court.<sup>177</sup> Currently, most common charges preferred relate to public nuisance, drug abuse and in a few cases unnatural offences.<sup>178</sup> Most of the respondents could not recall the exact charges which were levied against them.

.....  
<sup>171</sup> Interviewees included two lawyers in private practice and two lawyers who engage in public interest litigation.  
<sup>172</sup> Interview ECI, Paralegal at HRAPF held in Kampala 27<sup>th</sup> November 2019.  
<sup>173</sup> Above no. 112.  
<sup>174</sup> As above.  
<sup>175</sup> As above.

.....  
<sup>176</sup> As above.  
<sup>177</sup> Above no. 144, 149 and 171.  
<sup>178</sup> As above.

## 3.4 Equality and non-discrimination

### 3.4.1 Equality and discrimination in Police custody

Discrimination, marginalisation and stigmatisation of LGBT people are practiced openly in Uganda Police and Prisons facilities. In fact, it is as if this practice is institutionalised. One of the Police OC CIDs interviewed sounded helpless but truthful when he admitted that it was far-fetched for him to imagine police officers buying into the idea of respecting human rights in regard to LGBT people.<sup>179</sup> This is attributable to the fact that most police officers are homophobic at a personal level, and according to him there is nothing much that the police leadership can do about it. Asked why he did not reign in on the officers under his command, he lamented that if he became too hard on them he feared he could be branded gay and sidelined.<sup>180</sup>

Similar sentiments were echoed by HRAPF's legal officer that police officers do not really follow the law and narrated accounts of police officers who openly boast that there are no human rights in the police cells. They have even coined a mocking quip 'you are the human right, we are the human left' to celebrate their anti-human rights

stand. Kabalagala Police Station was pinpointed as the most abusive to LGBT people and its Officer in Charge of the Crime Investigations Department (OC CID) detains, abuses, tortures and humiliates LGBT persons in his custody with impunity. He has taken LGBT matters as a personal crusade to the extent that in one case before the Makindye Court, when the complainant disappeared, he volunteered to become the complainant.<sup>181</sup> In another incident, the Spokesperson for Kampala Metropolitan Police posted on his official Facebook account declaring in a celebratory mood that the police had arrested and detained homosexuals. The message was later taken down by the spokesperson following complaints from LGBT activists.<sup>182</sup>

Police officers often openly address LGBT persons in derogative terms as 'abasiyazi' or nickname them 'sodomy' or sodomy tycoon. They also openly encourage other detainees and prisoners to discriminate and abuse LGBT persons. Several respondents reported that when they were delivered to a police cell, the delivering official announced to the inmates that the new arrival was gay/lesbian. Inevitably, this would be interpreted by the inmates as an official invitation to mistreat the LGBT person.

.....  
<sup>179</sup> Interview with R27 held in Kampala on 18<sup>th</sup> November 2019.

<sup>180</sup> As above.

<sup>181</sup> Interview with Legal Officer, Access to Justice, HRAPF during an interview held in Kampala on 20<sup>th</sup> November 2019.

<sup>182</sup> As above.

Complaints to the Police Standards Unit (PSU) have not yielded anything in terms of sanctions let alone disciplinary action for the officers complained against. The HRAFP legal officer opined that the PSU is helpless and is no longer an effective tool of enforcing discipline in the UPF.<sup>183</sup> When a complaint against a police officer is reported, usually a desk officer at PSU makes a phone call to the concerned police station and asks for the release of the suspect in question and once the release is secured, no further steps are taken.<sup>184</sup> The inefficiency of the police disciplinary procedures has become a matter of deep public concern as highlighted by findings of a Saturday Monitor investigation which observed that police officers found guilty of misconduct and recommended for demotion had not only been maintained in the UPF but were also redeployed.<sup>185</sup>

Similarly, a 2018 PSU report showed that only 910 out of 2,383 complaints reported to PSU had been successfully investigated and completed posting a return of 38%.<sup>186</sup> Police was also identified as the leading government agency

responsible for human rights violations.<sup>187</sup> A legal aid lawyer who has dealt with JLOS institutions for long, believes that PSU is understaffed, under-funded and largely neglected within the Police hierarchy.<sup>188</sup>

### 3.4.2 Equality and discrimination in Prisons

The practice of referring to LGBT people as abasiyazi was also reported in Luzira prisons but it was not prevalent and was generally on the wane. Several respondents reported that when they were delivered to a police cell or prison ward, the delivering official announced to the inmates that the new arrival was gay/lesbian. Inevitably, this would be interpreted by the inmates as an official invitation to mistreat the LGBT person. It was reported however, that this practice is on the wane at Luzira prisons.

At Kigo Prison, a prison warder once suggested that LGBT inmates should be given special uniforms or identification tags or marks so that everyone can know.<sup>189</sup> However, there was nothing to suggest that this idea was ever implemented.

.....  
<sup>183</sup> As above.

<sup>184</sup> Above no. 112.

<sup>185</sup> Stephen Kafeero, "Loopholes in the arm, police justice system", *Sunday Monitor* 9<sup>th</sup> November 2019 available at <https://www.monitor.co.ug/News/National/Loopholes-army-police-justice-system/688334-5343030-gumcu7/index.html>

<sup>186</sup> "Police disciplinary unit performing badly, says report", *Saturday Vision* 23<sup>rd</sup> November 2019 at page 5.

<sup>187</sup> As above.

<sup>188</sup> Interview with a Legal Aid Lawyer and Human Rights Expert, held at Garuga, Wakiso District on 25<sup>th</sup> November 2019.

<sup>189</sup> Above no 112.

However, in spite of this state of affairs, a representative of an LGBT organisation believes that there has been a significant improvement in the way LGBT people are treated both at police stations and in prisons.<sup>190</sup> According to him, the only significant violations involve calling LGBT people derogatory names and encouraging other inmates to harass LGBT inmates.<sup>191</sup> This improvement is attributed to several years of national and international advocacy, strategic litigation and sensitisation and awareness building among government institutions.<sup>192</sup> He identified one of the challenges at police as the regular transfers of police officers which take away sensitised police officers and replace them with new ones.<sup>193</sup> A representative of Chapter Four Uganda and a Legal Aid lawyer, also acknowledges the contribution made by advocacy efforts to improve the general environment for LGBT people in Uganda.<sup>194</sup>

## 3.5 The right to property

### 3.5.1 Loss of personal property in police custody

The right to property is one of the most violated rights upon arrest and detention or imprisonment. Several respondents complained of losing their property such as mobile phones, laptop computers and especially cash to police officers.

At police stations, accounts of property deprivation are less friendly. The most affected belongings included laptops, mobile phones and money. Most commonly, these items are sometimes confiscated as exhibits but not returned upon the release of the suspect usually on police bond. Suspects released on police bond are required to continue reporting to police at regular intervals while 'investigations into the case' are still ongoing. But even when the regular reporting process has been terminated, the confiscated properties are retained and the owner has to keep following up until they get tired and stop, leaving the property with the Police.<sup>195</sup> R5, a gay man, explained that upon his arrest and detention at Kisugu Police Station in 2014, his three phones,

.....  
<sup>190</sup> KII Interview with representative of LGBT organisation held in Kampala on 21<sup>st</sup> November 2019.

<sup>191</sup> As above.

<sup>192</sup> As above.

<sup>193</sup> As above.

<sup>194</sup> Interview held in Kampala on 25<sup>th</sup> November 2019.

<sup>195</sup> Revealed during the FGD with members of the Transgender community held in Kampala on 19<sup>th</sup> November 2019. Also, confirmed by Legal Officer, Access to Justice, HRAPF during an interview held in Kampala on 20<sup>th</sup> November 2019.

one laptop computer and cash of UGX100,000 were confiscated but only the phones were returned to him. His efforts to recover the computer and the money failed.<sup>196</sup>

The study encountered a chilling account of an attempt, orchestrated by Police, to extort property from an LGBT person. R2, who was nicknamed 'sodomy tycoon' by Police officers and the media, was arrested with his friend from England and detained at Entebbe Police Station.<sup>197</sup> He was taken before a police officer and given an agreement to sign. According to him, the agreement stated that he was transferring his two plots of land, one in Entebbe town and another within the Kampala Metropolitan and his Lexus car to an unnamed person.<sup>198</sup> They also asked for the money on his bank accounts. When he refused to sign, he was threatened with being taken to court where he would be sentenced to 20 years imprisonment, within which time, he would lose the property anyway.<sup>199</sup> After completely refusing to sign the agreements, he was taken to a room where his face was photographed under the threat that the pictures would be used for his criminal record. With legal support from SMUG lawyers, he refused to yield to the

pressure and was produced before the Entebbe Magistrates Court where he was met by 'half of Entebbe town'.<sup>200</sup>

In another incident, R5 was forced to sign a document he was not allowed to read at Kisugu Police Station. Unlike R2, R5 signed the documents unaware of its contents. Whereas it cannot be said that by signing the documents he gave away his property rights, it should be noted that this the same respondent whose laptop and money worth UGX100,000 was taken were not returned.

### 3.5.2 Loss of property in prisons

Respondents reported encountering a practice at Luzira Remand Prison whereby upon arrival at the Prison, new prisoners were asked to deposit all their property including money and personal items such as mobile phones, watches, clothes, bags, among others, at the reception for custody.<sup>201</sup> Whereas there were no issues with the other property, money involved a peculiar practise whereby the officer receiving it for custody offered to record an amount less than what was deposited and then explained that the unrecorded

.....  
<sup>196</sup> FGD with Gay and Bisexual men held at Kampala on 19<sup>th</sup> November 2019.

<sup>197</sup> Account narrated by R2 during an interview and FGD with Gay and Bisexual men held in Kampala on 19<sup>th</sup> November 2019

<sup>198</sup> As above.

<sup>199</sup> As above.

<sup>200</sup> As above.

<sup>201</sup> Revealed during FGD with Lesbian and Bisexual women held in Kampala on 19<sup>th</sup> November 2019.

balance was theirs.<sup>202</sup> Upon release, it is the recorded amount which is returned to the owner. In one instance, an LGBT prisoner deposited UGX20,000 but UGX15,000 was recorded and eventually returned at release.<sup>203</sup> Apart from money, all of the other possessions are usually returned to prisoners upon release.

Suffice also to state that loss of money and property of the nature described here may not be limited to LGBT persons but deliberate extortions described here are clear manifestations of attempts to exploit the vulnerability of LGBT person.

### 3.6 Conclusion

The findings and personal accounts of LGBT people who have been detained or imprisoned show that wide ranging violations still occur in police and prisons custody in spite of the several legal, policy and institutional mechanisms to promote and safeguard human rights. The UPF is particularly responsible for the most violations while efforts by UPS have reduced the violations but still fall short.

.....  
<sup>202</sup> As above.

<sup>203</sup> Interview with R18 held in Kampala on 19<sup>th</sup> November 2019

## 4. CONCLUSIONS AND RECOMMENDATIONS

---

### 4.1 Introduction

This section presents observations derived from an analysis of the trends demonstrated in the findings. It also proffers conclusions and recommendations for the different stakeholders engaged in administration of justice.

### 4.2 Trends analysis

The last decade has seen an apparent commitment to put in place measures to promote human rights for people in police custody and prisons. The passing of laws such as the Prohibition and Prevention of Torture Act 2012 and the Human Rights (Enforcement) Act 2019 and the internal administrative initiatives by UPF and UPS to promote human rights are steps in the right direction. However, such measures have not incorporated guarantees for protection of LGBT people leaving the legal and administrative framework still insufficient to protect LGBT people. The trend instead has been to make laws and policies for the general protection of human rights of people in detention and imprisonment without mention of LGBT people or sexual orientation and gender identity as a ground for protection and non-discrimination.

The UN OHCHR defines the core legal obligations of states with respect to protecting the human rights of LGBT people to include: protecting individuals from homophobic and transphobic violence, preventing torture and cruel, inhuman and degrading treatment, repealing laws criminalising homosexuality and transgender people, prohibiting discrimination based on sexual orientation and gender identity and safeguarding freedom of expression, association and peaceful assembly for all LGBT people.<sup>204</sup> In spite of the several human rights based initiatives, there is little progress which has been made by Uganda to satisfy these obligations during the period under study 2009 – 2019.

The LGBT respondents and legal practitioners such as lawyers and paralegals acknowledged a reduction in the regularity and cruelty of human rights violations suffered by LGBT people at the hands of police and prisons. An activist interviewed cited the recent Ram Barand Let's Walk a rrests, which did not attract as much animation and frenzy from the police, public and media as previous mass arrests. This is attributed to continued advocacy efforts by national and international civil society. The contribution of several

.....  
<sup>204</sup> OHCHR, "Combating discrimination based on sexual orientation and gender identity" available <https://www.ohchr.org/EN/Issues/Discrimination/Pages/LGBT.aspx>

initiatives by both the UPS and UPF to this trend also deserve mention. However, discrimination of LGBT people in detention and imprisonment facilities remains rampant.

The general improvements recorded in the findings in this report are also reflected in the Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity, 2018 which examined reported incidents and complaints involving LGBT people for the year 2017.<sup>205</sup> The report recorded 69 human rights violations suffered by LGBT people in 2018 down from 74 which were recorded in the 2017 report. It further demonstrates decrease in state inspired violations which stood at 43.4% compared to non-state actors. The UPF accounted for 97% of the state share, emerging as the highest violator.<sup>206</sup> The first report published in 2014 showed 153 cases of violations, in 2015 the number of cases was 89 which increased to 183 in the 2016 report.<sup>207</sup> The peak was reported in the 2016 report, but the following two reports indicated a steady decline and acknowledged an improvement in the human rights environment for LGBT people.

## 4.3 Conclusions

Uganda has put in place legal, policy and institutional safeguards for the protection of human rights and freedoms of people in detention and imprisonment incorporated in the Constitution, national legislation and the international and regional treaties which it signed and ratified. In addition to the binding legal provisions and obligations, each of the JLOS institutions and other government agencies, including UPF and UPS has adopted and is implementing administrative and structural initiatives aimed at promoting the respect for and observance of human rights in Uganda. The legal instruments and initiatives by UPF and UPS highlighted in this report and relentless advocacy by civil society and the LGBT movement have been key in improving the conditions in prison and detention facilities and treatment of inmates.

However, there are still gaping shortcomings as far as LGBT people are concerned. Wide ranging human rights violations still occur to LGBT people in police and prisons custody fueled by the failure of the national legal, policy and institutional framework to recognise the right of LGBT people to enjoy the constitutional guaranteed freedoms.

.....  
<sup>205</sup> HRAPF et al, The Uganda Report of Human Rights Violations based on Sexual Orientation and gender Identify, 2018, increasing protections and reducing state violations, October 2018, available at <https://www.hrapf.org/index.php/resources/violation-reports/118-the-uganda-report-on-human-rights-violations-based-on-sogi-2018/file> accessed on 29th January 2020.

<sup>206</sup> As above.

<sup>207</sup> As above n 29.

In specific stations and posts, in spite of the initiatives undertaken by the Police, human rights violations targeting LGBT persons are still prevalent. These may be attributable to the homophobia and overzealousness on the part of individual police officers and commanders. The fact that such officers carry out violations with impunity underlines lack of commitment within the Force to combat the violations. The UPF, especially the PSU, is also faced with institutional and structural bottlenecks relating to funding, human resources and training which adversely impact on the rights of detainees.

Imprisonment facilities at Luzira Women's Prison and Luzira Remand Prison have greatly improved especially in terms of hygiene and welfare. This is highlighted by the provision of proper toilet and shower facilities, prohibition of violence inside prison wards and enforcement of a strict disciplinary code. Overcrowding in wards remains a major challenge but there are also challenges with clothing, nutrition and treatment of prisoners. That said, LGBT inmates are still ridiculed, threatened and occasionally humiliated by both prison officials and other inmates.

Violations arising out of overcrowding, insufficient food and clothing, deprivation of property and lack of awareness and facilities for transgender people and inadequate training of prisons staff, are part of general administrative and structural challenges faced by UPS and not

specifically targeted at LGBT inmates.

The role of the informal institutions such as inmate communities and leadership cannot be underestimated. Whereas there were instances of authorities delivering suspects and prisoners to detention cells and prison wards with a tacit notice that the new arrival was LGBT, cases of physical abuse by inmates were reported to have reduced. The contribution of such informal bodies in violations is reducing especially in Prisons thanks to stringent disciplinary codes.

## 4.4 Recommendations

### To the Uganda Police Force

The Uganda Police Force is legally responsible for persons in its detention, and it can do the following to protect the rights of LGBT persons in police detention:

- i) The Police should avoid arbitrary arrests of LGBT persons simply on the basis of their suspected sexual orientation. Arrests should only be done where there is reasonable suspicion that an offence has been committed.
- ii) The Human Rights and Legal Directorate should spearhead the development of guidelines / standards that specifically guide on the treatment of LGBT persons in Police detention.
- iii) The Human Rights and Legal Directorate should ensure that the UPF Human Rights Policies

and Organs are permeated within the Force all the way to the grassroot police stations and posts across the country.

- iv) The Police Professional Standards Unit should be revamped and fully staffed and facilitated to handle disciplinary complaints against Police Officers. Its decisions and sanctions should be enforced by the Police Authority.
- v) The practice of revealing the sexual orientation or gender identity to other detainees should stop in the interest of protecting detainees from violence/sexual abuse by other detainees.
- vi) More attention should be paid to where transgender detainees are held in custody in order to prevent violence or sexual abuse against them.
- vii) The Police should partner with organisations that work on LGBT issues/the Uganda Human Rights Commission in order to hold more human rights trainings and sensitisations on LGBT persons.

### To the Uganda Prisons Services

A number of LGBT persons end up in detention in prisons, and so the Uganda Prisons Service has to take steps to protect this vulnerable group of persons. The Uganda Prisons Service can do the following:

- i) Develop guidelines/standards on the treatment of imprisoned persons who identify as LGBT.
- ii) The practice of undressing and humiliating inmates should be prohibited and replaced with more humane search procedures.
- iii) Efforts should be made to provide specialised imprisonment facilities to transgender people so as to preserve their dignity and privacy.
- iv) The practice of revealing the sexual orientation or gender identity to inmates should stop in the interest of protecting detainees from violence/sexual abuse by other detainees.

### To Parliament

Parliament is responsible for making of laws and for holding the state accountable and in this respect should:

- i) Amend the Penal Code to repeal section 145 which criminalises same-sex sexual conduct, as well as sections 167 and 168 which prohibit vagrancy conduct, which form the basis for most arrests of LGBT persons.
- ii) Parliament should enact a law to prohibit all forms of violence and discrimination on any ground, including sexual orientation, against people in detention and imprisonment in Police, Prisons and any other authorised places of detention in Uganda.

## The President

The President is in charge of the executive arm of the government, under which the Police and the Prisons operate and as such the President should:

- i) Issue a directive to the police to stop arresting people for being rogue and vagabond, as well as for carnal knowledge against the order of nature.
- ii) Direct the Police and Prisons to treat LGBT persons in their custody with the dignity appropriate to all human beings.

## The Minister of Justice and Constitutional Affairs/Attorney General

The Ministry should do the following:

- i) Initiate a process to repeal the sections 145, 146, 167 and 168 of the Penal Code by presenting a white paper to cabinet and subsequently a bill to parliament.
- ii) Initiate a process to repeal Article 31(2a) of the Constitution which prohibits same sex marriage as it fuels discrimination against LGBT people by feeding into and provides a legal justification to the existing homophobia.

## The Ministry of Internal Affairs

This is the ministry responsible for both the Uganda Police Force and the Uganda Prisons Service. As such the Ministry should issue a policy

directive prohibiting all forms of violence and discrimination against prisoners and detainees, and specifically LGBT detainees.

## The Uganda Human Rights Commission

The Commission is responsible for investigating cases of human rights violations, and they should:

- i) Prioritise the investigation of cases involving violations of LGBT persons as they are a minority and vulnerable group
- ii) Continue training police officers and prisons officials on the treatment of LGBT persons in detention
- iii) Raise issues of violation of the rights of LGBT persons in detention in their annual report to Parliament.

## The Equal Opportunities Commission

The Commission is responsible for providing redress in situations of discrimination and in this regard should:

- i) Investigate reports of discrimination against LGBT persons while in police detention or in prisons and produce reports.
- ii) Raise issues of violation of the rights of LGBT persons in detention in their annual report to Parliament.

## The Uganda Law Reform Commission

The Commission is responsible for making recommendations for amendment of laws. In this regard the Commission should make recommendations for the repeal of sections 145, 146, 167 and 168 of the Penal Code as they are the basis of violation of the rights of LGBT persons.

## To LGBT organisations

LGBT organisations are established for purposes of ensuring that LGBT persons enjoy their rights, and in this regard these organisations should:

- i) Document violations against LGBT persons in detention and imprisonment and share these with the Uganda police Force and the Uganda Prisons Service.
- ii) Partner with the Uganda Police Force and the Uganda Prisons Service to conduct trainings and sensitisations on the rights of LGBT persons, especially geared towards mid-level and lower level officials of UPS and UPF. It is the lower and mid-level officials who directly and regularly handle detainees and prisoners while the OCs, OC CIDs and DPCs are for the most part not involved in day-to-day lives of the inmates.
- iii) Partner with the Uganda Police Force and the Uganda Prisons Service to draft standards for the treatment of LGBT persons in the custody of UPF and UPS.

## To mainstream Civil Society

These should do the following:

- i) Make use of the provisions of the Human Rights (Enforcement) Act 2019, in particular section 3 which enables filing of a petition on behalf of another person whose human rights have been violated as well as in the public interest, and section 10 which provides for individual responsibility for violations of human rights as well as those of the Prohibition and Prevention of Torture Act which also creates individual responsibility in order to bring errant officers of the Uganda Police Force and/or the Uganda Prisons Service to book.
- ii) Support LGBT organisations to document violations against LGBT persons in detention/imprisonment.
- iii) Bring complains before the Professional Standards Unit of the Police and before the Uganda Prisons Service on violations against LGBT persons. They should also ensure proper follow up.
- iv) Extend legal support to LGBT persons

# REFERENCES

---

Adula. A Undated. A History of the Violation of the Right to Personal Liberty in Uganda: Are there any improvements? <http://ebookbrowse.com/a-history-of-theviolation-of-the-right-to-personal-liberty-in-uganda-doc-d107679647>, accessed 30 October 2012

African Commission on Human and Peoples Rights (ACHPR); Report of the Mission of the Special Rapporteur on Prisons and Conditions of Detentions in Africa to Uganda, (2002) available at [http://www.achpr.org/files/sessions/33rd/mission-reports/uganda/achpr33\\_misrep\\_specmec\\_priso\\_uganda\\_2001\\_eng.pdf](http://www.achpr.org/files/sessions/33rd/mission-reports/uganda/achpr33_misrep_specmec_priso_uganda_2001_eng.pdf)

Jjuuko, A “The incremental approach: Uganda’s struggle for the decriminalization of homosexuality” In C Lennox & Waites (eds) *Human Rights, Sexual Orientation and Gender Identity The Commonwealth: Struggles for Decriminalization and Change. Institute of Commonwealth Studies, School of Advanced Study, University of London*, (2013)

Association for the Prevention of Torture and Penal Reform International; LGBTI Persons deprived of their liberty, a framework for preventing monitoring (2015 Edition)

Civil Society Coalition on Human Rights and Constitutional Law (CSCHRLC) & 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’ 2013

Foundation for Human Rights Initiative (FHRI), Justice delayed is justice denies; the plight of pre-trial detainees in Uganda (2017)

Human Rights Awareness and Promotion Forum ‘A guide to the normative legal framework on the human rights of LGBTI persons in Uganda’ Second Edition, February 2019, 6.

Human Rights Awareness and Promotion Forum (HRAPF) The Enforcement of Idle and Disorderly Laws on the Human Rights of Marginalized Groups in Uganda (2016) available at <https://hrapf.org/index.php/resources/research-reports/32-160929idleanddisorderlyresearchfinalreport/file>

Human Rights Awareness and Promotion Forum (HRAPF), Civil Society Coalition on Human Rights and Constitutional Law (CSCHRLC), Sexual Minorities Uganda (SMUG), Rainbow Health Foundation (RHF) and Support Initiative for Persons with Congenital Disorders (SIPD);

Uganda Report of Violations Based on Gender Determination, Gender Identity and Sexual Orientation, (2014).

Human Rights Watch, *Even dead bodies must work: Health, hard labor and abuse in Ugandan prisons* (2011)

Marshall & N Martin: *Sampling for Qualitative Research Family Practice* 13, 1996

Kajubi, P etal 'Correlates of unprotected receptive anal intercourse among gays and bisexual men in Kampala, Uganda.

Karugonjo-Segawa, R Pre-trial detention in Uganda, APCOF Policy Paper No. 4 of 2012, available at [https://www.researchgate.net/publication/272171799\\_Pre-trial\\_Detention\\_in\\_Uganda](https://www.researchgate.net/publication/272171799_Pre-trial_Detention_in_Uganda)

Atkinson, R John Flint, University of Surrey, Research Update, 2001

Mills S "Worst Place to Be Gay? London: BBC Three (2011) cited in S Nyanzi & A Karamagi "The social-political dynamics of the anti-homosexuality legislation in Uganda" accessed on 20<sup>th</sup> August 2019 at [https://www.researchgate.net/publication/274891022\\_The\\_Social-Political\\_Dynamics\\_of\\_the\\_Anti-Homosexuality\\_Legislation\\_in\\_Uganda](https://www.researchgate.net/publication/274891022_The_Social-Political_Dynamics_of_the_Anti-Homosexuality_Legislation_in_Uganda)

Mukasa, S & Gathumbi, A "HIV/AIDS, Human Rights and Legal Services in Uganda, a country assessment" Open Society Initiative for East Africa (OSIEA), 2008

The Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation "Uganda Report of Violations Based on Gender Identity and Sexual Orientation" (2017) at <https://hrapf.org/index.php/resources/violation-reports/104-lgbt-violations-report-2017/file>.

UK Home Office "Country Information and Guidance, Uganda Sexual Orientation and Gender Identity", August 2014, available at <http://www.refworld.org/pdfid/53fc864d4.pdf>

# **ABOUT HRAPF**

## **Background**

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

## **Legal Status**

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

## **Vision**

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

## **Mission**

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

## **HRAPF's Objectives**

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

## **Our target constituencies**

1. Lesbian, Gay, Bisexual and Transgender (LGBT) persons
2. Intersex Persons
3. Sex Workers
4. Women, girls and service providers in conflict with abortion laws
5. People who use drugs
6. People Living with HIV and TB (PLHIV/TB)
7. Poor women, children and the elderly with land justice issues

## **HRAPF Values**

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

## **Slogan**

Taking Human Rights to all