

Flygtningenævnets baggrundsmateriale

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UGANDA



Penal Code of 1950, VI Laws of Uganda, Cap. 120 (rev. ed. 2000).

Section 145. Unnatural offences

[AGAINST THE ORDER OF NATURE]

“Any person who—

- (a) has carnal knowledge of any person against the order of nature;
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.”

Section 146. Attempt to commit unnatural offences

[ATTEMPTED UNNATURAL OFFENCE]

“Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.”

Section 148. Indecent practices:

[GROSS INDECENCY]

“Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.”

On 20 December 2013, the Parliament adopted the **Anti-Homosexuality Act**, which sought to punish same-sex sexual relations with imprisonment for life, and prohibited same-sex marriage and “homosexual propaganda”. However, on 1 August 2014, the Act was **annulled** by the Constitutional Court, which ruled that parliament lacked a required quorum when the law was approved, thereby retaining the previous 1950 Penal Code.

On 29 October 2014, members of Uganda’s ruling party circulated a draft of a **new bill** entitled, “The Prohibition of Promotion of Unnatural Sexual Practices Bill”, which was intended to replace the annulled 2013 Act by categorizing same-sex sexual acts alongside pedophilia, bestiality and other heinous acts. The Human Rights Awareness and Promotion Forum **sought** a ruling from the East African Court of Justice in February 2015, to clarify that laws such as the Ugandan Anti-homosexuality Act, are unacceptable and violate human rights. That Court **found** that because the law was not enacted, the case was moot, but under a public interest exception the court did not find the [government] evidence sufficient to “... establish the degree of public importance attached to the practice of homosexuality in Uganda....”.

In July 2015, the Uganda Consortium on Monitoring Violations Based on Sex Determination, Gender Identity and Sexual Orientation **published** a detailed report on violations based on SOGI in 2014 with targeted recommendations, and in September 2016 produced a **report** outlining 171 recorded violations in the previous period.

The Human Dignity Trust **records** that in September 2015, the Prime Minister on being asked about the passage of the 2014 Bill stated: “That law [anti-homosexuality legislation] was not necessary, because we already have a law which was left by the British which deals with this issue”. Convictions were on-going in 2015.

In March 2016, the **NGO Act** entered into force, representing “**legalised repression**” according to an article in the Third Issue of the *Human Rights Advocate* (download [here](#)), produced by the Human Rights Awareness and Promotion Forum (HRAPF) in December 2016.

Sexual Minorities Uganda (SMUG) launched an important **case** regarding the effects of the evangelical pastor Scott Lively anti-LGBT rhetoric, which is ongoing. In August 2016, Pride week in Kampala was **violently upset** by police raids and **planning**.

Uganda has been directly addressed by various UN mandate-holders, amongst which the following are of relevance to the current legislation: criminal laws, human rights defenders, HIV/AIDS in relation to SOGI in 2010, criminal laws, hate crime

in 2010, hate crimes, death, human rights defenders in 2011, death and criminal laws in 2012, and human rights defenders in 2013. In July 2015, the Concluding Observations of the Committee on Economic, Social and Cultural Rights, identified (paras. 15 and 16) that the lack of anti-discrimination law called for Uganda to urgently take steps to amend the Penal Code to decriminalize consensual same-sex sexual conduct”, as well as to prevent discrimination against LGBTs [sic] and “bring perpetrators to justice”.

In October 2011, at its 1st UPR review, Uganda received 19 recommendations, only three of which it accepted (all to do with prosecution of individuals who perpetrate violence against LGBT people). The rest of the recommendations concerned existing and proposed new legislations. At Uganda’s 2nd UPR in November 2016, the Draft Report of the Working Group appears to contain 18 sexual orientation recommendations that the State received – at time of writing (March 2017) the Delegation has not yet delivered its responses. However, in its Interactive Dialogue it claimed that LGBTI people are not discriminated against and can petition any complaint like all citizens (para. 56).

In May 2016, the Committee overseeing the Convention of the Rights of People with Disabilities noted “the absence of concrete measures to prevent and eradicate discrimination against women and girls with disabilities... especially on the grounds of sexual orientation and gender identity.”

In light of the extreme repression visited on LGBTI people in Uganda, the universal principle of non-discrimination was evident in the ruling given in the High Court of Uganda in *Mukasa and Oyo*, where although acts of “carnal knowledge against the order of nature” were penalised, the sexual orientation of the plaintiffs was not at issue, but what was being adjudicated on was the police ill-treatment (search and seizure of property and physical abuse) of them based on that sexual orientation. Likewise, two years later in *Kasha Jacqueline, David Kato, and Onziema Patience v. Rolling Stone*, the question was about whether, in the heightened atmosphere around the proposed Anti-Homosexuality Bill (AHB) in Uganda, the constitutional rights of the plaintiffs had been breached, and not about “homosexuality *per se*”.

ZAMBIA



Penal Code Act (as amended by Act No. 15 of 2005).

Section 155. Unnatural offences

[AGAINST THE ORDER OF NATURE]

“Any person who-

- (a) has carnal knowledge of any person against the order of nature; or
- (b) has carnal knowledge of an animal; or
- (c) permits a male person to have carnal knowledge of him or her against the order of nature;

commits a felony and liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life:

Provided that where a person-

- (i) has carnal knowledge of a child against the order of nature;
- (ii) causes a child to have carnal knowledge of an animal; or
- (iii) permits a male person to have carnal knowledge of a male or female child against the order of nature;

that person commits an offence and is liable, upon conviction, to imprisonment for not less than twenty-five years and may be liable to imprisonment for life.”

Section 156. Attempt to commit unnatural offences

[ATTEMPTED UNNATURAL OFFENCE]

“Any person who attempts to commit any of the offences specified in section one hundred and fifty-five commits a felony and is liable, upon conviction of not less than seven years but not exceeding fourteen years.”