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THE UGANDA REPORT OF
**HUMAN RIGHTS
VIOLATIONS
BASED ON SEXUAL
ORIENTATION AND
GENDER IDENTITY,
2018***

August 2019



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RIGHT NOW**



PITCH Partnership to Inspire, Transform
and Connect the HIV response

THE UGANDA REPORT OF HUMAN RIGHTS VIOLATIONS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY, 2018*

With contributions from

FEM Alliance Uganda; Icebreakers Uganda (IBU); Rainbow Mirrors Uganda; The National Security Committee and Queer Youth Uganda (QYU).

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Ministry of Foreign Affairs

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

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

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

PITCH is a strategic partnership between Aidsfonds, Frontline AIDS and the Dutch Ministry of Foreign Affairs.

ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM

Human Rights Awareness and Promotion Forum (HRAPF) is an independent, non-partisan non-governmental organisation that works towards the protection of rights of marginalised communities in Uganda through the direct provision of legal aid services, legislative advocacy, human rights awareness, research and community capacity enhancement. HRAPF operates the only specialised legal aid clinic for LGBT persons in Uganda.



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ABOUT THE CONTRIBUTING ORGANISATIONS

FEM Alliance Uganda

FEM Alliance Uganda is an organisation for lesbian, bisexual, transgender and queer women as well as women who have sex with women, which was established in 2011. It aims to advocate for the rights of lesbians, bisexual and queer (LBQ), and transgender women in Uganda. FEM Alliance aims to promote human rights and restore the dignity of LGBTQ/WSW through research and advocacy, supporting personal development and combating violence.

Ice breakers Uganda (IBU)

Ice Breakers Uganda is an LGBT care and support organisation that was formed in 2004. It caters for LGBT Ugandans above 18 years of age. Its vision is a Uganda of total justice devoid of discrimination based on sexual orientation and free from HIV/AIDS and its disastrous effects. Its mission is to support and raise awareness within the LGBT community about their human rights and advocate for change in attitude towards LGBT persons thereby reducing stigma on grounds of sexual orientation.

Queer Youth Uganda (QYU)

Queer Youth Uganda is a youth-led organisation that was started in 2006 with the aim of advocating for the rights of LGBT people in Uganda through sensitization on human rights and HIV/AIDS prevention, establishing community LGBT youth solidarity groups nationwide,

and building organisational capacity of LGBT youth groups to further human rights awareness and protection of individual LGBT youth against harassment and hate campaigns.

Rainbow Mirrors Uganda

Rainbow Mirrors Uganda is an organisation run by transwomen in Uganda. It focuses on providing emotional support for transpeople as well as empowering them to advocate for their rights and legal recognition. The organisation also runs a health services referral system through which they receive and refer cases of transgender persons in need of health services to pre-identified health service providers for management. They handle and refer cases requiring legal intervention and are currently diversifying to promote economic empowerment and sustainability for transpeople.

The National LGBTI Security Committee

The National LGBTI Security Committee provides support and solutions to LGBTI persons who come face to face with breaches or threats to their personal security.

PREFACE

This is the sixth edition of the Uganda Report of Violations based on Sexual Orientation and Gender Identity and it presents the violations of human rights of LGBT persons that were recorded in the year 2018. In the same way as the previous five editions, this report interrogates the social and legal factors which are responsible for the trends of human rights violations, as well as protection, of LGBT persons within a particular year.

The report considers key developments which occurred in 2018 and which influenced the trends in rights violations which were experienced by LGBT persons during the year.

This year the naming of the report has been changed so as to reflect the year of the violations rather than that of the publishing of the report. This report is thus also named as 'Uganda Report of Violations based on Sexual Orientation and Gender Identity 2018*'. The * is what distinguishes it from the report issued in 2018 for the year 2017. From now onwards the reports will follow this format.

Over the past six years, there has been a marked change in approach and attitude of the Uganda Police Force toward LGBT persons in the country. Police officers increasingly refrain from taking the law into their own hands when confronted with LGBT persons. A record of instances where the Police has acted to protect the rights of LGBT persons has also been kept in these reports.

This report notes that there have been a change in trends: there are far fewer violations committed against LGBT persons by the police and a greater number committed by the general community, their families and members of the LGBT community.

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

This report serves as an evidence-base of the number, extent and severity of violations which LGBT persons continue to face due to their real or perceived sexual orientation and/or gender identity and the need for intervention from the state, civil society and development partners to put an end to these violations.

This report is intended to support advocacy efforts towards positive changes in the legal and policy environment as it relates to LGBT persons. It is also intended to serve as a tool in sensitising both state and non-state actors on the discrimination and degradation which LGBT persons continue to face in their everyday lives.

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GLOSSARY

Bisexual:	A person romantically and/or sexually attracted to both men and women, though not necessarily at the same time
Gay:	A man romantically and/or sexually attracted to men
Gender identity:	A person's conception of self as male or female or both or neither
Homosexual:	A person attracted to persons of the same sex
Intersex:	A condition in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male
Lesbian:	A woman romantically and / or sexually attracted to women
Outing:	The act of disclosing a lesbian, gay, bisexual, transgender, and / or intersex person's true sexual orientation or gender identity without that person's consent
Perpetrator:	The person or institution responsible for causing a human rights violation
Sex:	The physical distinction between male and female (genitals)
Sexual minorities:	A group whose sexual orientation, gender identity, and / or practice differs from the majority of the surrounding
Sexual orientation:	A person's emotional, physical and sexual attraction and the expression of that attraction with other individuals
Transgender:	Someone whose deeply held sense of gender is different from their biological sex assigned at birth
Trans-man:	A transgender person who was assigned the female sex at birth but has a male gender identity
Trans-woman:	A transgender person who was assigned the male sex at birth but has a female gender identity

LIST OF ACRONYMS

AG:	Attorney General
DPP:	Directorate of Public Prosecutions
EOC:	Equal Opportunities Commission
HRAPF:	Human Rights Awareness and Promotion Forum
IBU:	Ice Breakers Uganda
LGBT:	Lesbian, Gay, Bisexual and Transgender
MARPI:	Most At Risk Populations Initiative
QYU:	Queer Youth Uganda
RMU:	Rainbow Mirrors Uganda
SMUG:	Sexual Minorities Uganda
SOGI:	Sexual Orientation and Gender Identity
UHRC:	Uganda Human Rights Commission
UPF:	Uganda Police Force
VCT:	Voluntary Counselling and Testing
YRF:	Youth on Rock Foundation

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EXECUTIVE SUMMARY

I. Introduction

The Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity, 2018, examines events of the year 2018 and critically analyses incidents and complaints reported by LGBT persons from a human rights perspective. It is focused on discussing the human rights violations occasioned against persons wholly, partly, or primarily on the basis of their real or presumed sexual orientation and gender identity throughout the year 2018. The report profiles the various violations LGBT persons suffered perpetrated by state actors and members of the general public by reason of their actual or presumed sexual orientation and gender identity, and includes factual examples of the violations thus suffered. It is hoped that this report is used as a tool for advocacy on the rights of LGBT persons in Uganda through providing evidence of systemic and contextual factors influencing the violations of the rights of LGBT persons.

The report is based on documentation of human rights abuses and violations based on gender identity and sexual orientation by HRAPF and the contributing organisations. Not all documented cases are however included.

Key Findings

1. A total of 69 violations arising out of 59 verified cases were recorded in 2018. This is an decrease from the 74 violations arising out of 46 cases reported in 2017, although the number of cases are more.
2. The trend of non-state actors directly perpetrating more violations than state actors continued this year with non-state actors being responsible for 39 violations out of the 59 recorded violations, accounting for 56.5% of all violations. Nevertheless, it is important to note that the state has the obligation to protect LGBT persons against violations by non-state actors, and this includes thorough investigation of such violations, this was not done, and as such the state is responsible for these violations too.
3. The Uganda Police Force accounted for 29 of the violations verified in that year, representing 43% of all violations reported.
4. The most violated right was the right to liberty. The state occasioned 23 of these violations, all of which were perpetrated by the Uganda Police Force.
5. The Minister of Ethics and Integrity continued to deliberately infringe on the right to freedom of expression, association and assembly by stopping a conference and other events for LGBT people through the year.

6. No violations were committed by Local Government Authorities and there was one case where community leaders protected LGBT persons who were holding a meeting from arrest.
7. The High Court delivered a negative judgment in a case on the registration of an LGBT organisation which sides with the view of earlier cases that it is prohibited to incite and promote the illegal actions prohibited under Section 145 of the Penal Code Act.

Key Recommendations

To Parliament

1. Repeal laws which create the offence of 'having carnal knowledge against the order of nature', which is interpreted to criminalise LGBT persons and strip them of equal protection of the law.
2. Repeal section of the Penal Code Act which create broad and vague petty offences such as 'being idle and disorderly' and 'being a rogue and vagabond', which are used to arbitrarily arrests persons who are poor and undesirable, including LGBT persons.
3. Ensure that government fulfils its international and regional human rights obligations to all without discrimination.

To the Uganda Police Force

1. Working through the Directorate of Legal and Human Rights, the Uganda Police Force should continue training police officers on the human rights of LGBT persons as well as the limits of the laws which they are mandated to enforce. The role of the UPF as a protector of the right of LGBT persons as a vulnerable group should be emphasised.
2. Strengthen mechanisms which exist to redress human rights violations committed by members of the UPF. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.
3. Thoroughly and convincingly investigate cases of violence against LGBT persons by members of the public.

To the Uganda Law Reform Commission

1. Develop a proposal for constitutionally compliant alternative to laws creating petty offences that will protect the rights of all while ensuring order in society.
2. Develop a proposal for the amendment of the Penal Code Act to repeal the sections that criminalise consensual sexual relations.

To the Uganda Human Rights Commission

1. Demand for accountability from the state for all human rights violations reported, especially those that go unaddressed.
2. Hear and dispose of cases involving violations of rights of LGBT persons that are pending before the Commission's Complaints and Investigations Directorate since 2016.
3. Develop proposals to amend laws that are discriminatory and which do not align with the Constitution of the Republic of Uganda.

To the Equal Opportunities Commission

1. Investigate systemic discrimination of individuals based on their sexual orientation and gender identity.
2. Continue to train the staff of the EOC in order to build their capacity in handling matters of discrimination and marginalisation on the basis of sexual orientation and gender identity.

To civil society organisations

1. Sensitise and support members of the LGBT community to discourage actions which violate the rights of community members, such as blackmail, outing and extortion which expose individual members to violence and insecurity and which

undermines the efforts of the movement as a whole.

2. Hold awareness sessions with members of the general community to demystify LGBT persons and help the community understand that LGBT persons are part of their community.
3. Reach out to the family members of LGBT persons to help them to understand, appreciate and accept the lived realities of their LGBT family members as well as their practical, emotional and psychosocial needs.
4. Develop the capacity of staff to document violations based on sexual orientation and gender identity. This could include adopting uniform guidelines for recording information on cases and violations.
5. Strengthen reporting systems, methods of evidence collection and data storage in order to facilitate the verification of violations against people based on their sexual orientation and gender identity.
6. Support the Uganda Human Rights Commission to monitor and document reports of violence, abuse, and discrimination based on sexual orientation and gender identity.
7. Establish further partnerships with organisations for the monitoring and documentation of LGBT rights.

I. INTRODUCTION

The Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity is published on an annual basis in order to consider the situation of LGBT persons in Uganda within a particular year. The report considers the violation of the rights of LGBT persons, along with instances of protection, and how these levels of protection or violation is affected by the prevailing legal and policy regime in the country. This report is produced under a loose consortium of organisations which provide services to LGBT persons and which is called the Consortium on Monitoring and Documenting Violations based on Sexual Orientation and Gender Identity.

This report examines events of 2018 from the perspective of a human rights advocacy organisation. The report aims to analyse the human rights situation of LGBT persons in Uganda for the year 2018 and considers how this is impacted by changes in the legal and policy environment.

During 2018, there were a number of violations of the right to liberty, the right to equality and freedom from discrimination and the right to dignity and freedom from torture and cruel, inhumane and degrading treatment and punishment. These violations were committed by both state and non-state actors with a continuing trend of members of the LGBT community violating the privacy, property and dignity of one another.

This report sheds light on major events which influenced the protection as well as violation of the rights of LGBT persons in Uganda and the likely implications that these events have had on the human rights of LGBT persons in Uganda. The report also makes recommendations to various duty-bearers on what can be done to protect, respect and fulfil the rights of LGBT persons in Uganda.

I.1 Methodology

This report was compiled by making use of both quantitative and qualitative methods. Quantitative data was collected by determining the number of verified violations reported to HRAPF and its partners during the course of the year 2018. Qualitative data was collected by considering the cases of LGBT persons reported to HRAPF and partners during the period under review in respect of the nature of the violations and factors surrounding the violations such as the perpetrators, the motivation behind the commission of the violations, and steps taken by both state and non-state actors to address reported violations. Every human rights violation noted was subjected to an independent verification exercise and only those cases involving human rights violations that could be verified independently form part of this report.

a) Review of case files and documentary evidence

Data was collected by reviewing the case files of all the contributing organisations. The review of case files provided data on the number and nature of violations committed against LGBT persons during 2018. All the case files were physically reviewed in order to ensure that only cases in which human rights violations had been committed against LGBT persons, partially or exclusively on the basis of their sexual orientation and /or gender identity, formed part of the final data set.

b) Documentary evidence

For every case in which it could be established on the face of it that a human rights violation had been committed on the basis of an LGBT person's sexual orientation and/or gender identity, documentary or other evidence on file were also reviewed. This documentary evidence usually takes the form of photographic evidence, Police Bond forms, Police medical examination forms for victims of violence (Police Form 3) and witness statements attesting to the facts of the alleged violation. A case would usually be considered verified if there is valid documentation which serves as evidence of the violation on file.

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

Where violations could not be verified on the basis of the documentation on file, the cases were instead verified by re-interviewing the clients or victims of

human rights violations or the Community Paralegals or case officers who handled the cases. These additional interviews helped to clarify facts and bring additional information on file with which to verify the alleged violation.

1.2 Limitations

There are a number of limitations to note that were faced in compiling this report.

Firstly, while the report does seek to cover the human rights situation of LGBT persons at a national level, it is limited to the work of lawyers and paralegals attached to HRAPF in areas beyond Kampala. National coverage has steadily improved over the past few years as HRAPF has opened up regional legal aid centres in various areas of Uganda. The report, however, does not cover all cases that have happened all over Uganda, and therefore does not give a complete picture of the state of human rights of LGBT persons in Uganda.

Secondly, uniform and comprehensive documentation remains a challenge for the majority of organisations working on LGBT issues in Uganda. In the compilation of this report, a number of instances were noted where neither the case nor the human rights violation that had resulted from the case could be verified due to insufficient information available on file. There remains a need for in-depth training of paralegals and leaders of organisations working with LGBT persons in Uganda on the documentation of human rights violations. Consistent, uniform and thorough documentation is a necessity for human rights violations to be

recorded and taken into consideration by governing authorities and law enforcers.

A third limitation that was noted in the compilation of this report is the fact that those handling cases involving human rights violations of LGBT persons do not necessarily have the capacity to frame their cases in the language of rights. In many instances, violations would occur on the basis of the sexual orientation and/or gender identity of the client involved, yet would not be recognised as such. Another difficulty which occurs is the fact that sometimes routine procedures and practices carried out by the police and other law enforcers could wrongfully be tagged as human rights violations. There remains a need for training and orientation of persons responsible for responding to complaints lodged by LGBT persons on the content, framing and recognition of human rights violations. Overall, the LGBT movement in Uganda will greatly benefit from continued in-depth training on human rights monitoring, documentation and reporting.

2. THE SOCIAL, LEGAL AND POLITICAL DEVELOPMENTS THAT INFLUENCED THE PROTECTION AND VIOLATION OF RIGHTS OF LGBT PERSONS DURING 2018

During 2018, a number of events occurred that impacted on the human rights situation of LGBT persons in Uganda. These events took place in terms of court decisions as well actions and decision by government leaders. Some events were violations in and of themselves, while others served to fuel and justify the prevailing homophobia and transphobia that has become the norm of the Ugandan society. Unlike the preceding year, there were very few notable events which positively impacted on the rights of LGBT persons.

2.1 Development in the legal and policy environment

a) Decision in the SMUG Registration case (Frank Mugisha, Dennis Wamala, Ssenfuka Joanita Warry v Uganda Registration Services Bureau High Court Miscellaneous Cause No. 96 of 2016)

The High Court delivered a negative judgment in a case on the registration of an LGBT organisation.

Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Warry are some of the promoters of a proposed company limited by guarantee, 'Sexual Minorities Uganda' (SMUG). The objectives of SMUG, according to its Memorandum of Association, include conducting research and documenting violations of fundamental human rights of LGBTI people in Uganda; promoting security, well-being and dignity of LGBTI persons; combatting discriminatory laws and providing healthcare services and security in crisis situations.

On 22 November 2012, the applicants applied to the Uganda Registration Services Bureau (URSB) under section 18 of the Companies Act, 2012 for the reservation of the name 'Sexual Minorities Uganda.' More than two years later, the URSB informed the applicants that the application has been rejected on the ground that the name was undesirable. In the view of the URSB, the proposed company was to advocate for the rights and well-being of people engaged in activities labelled 'criminal acts' under section 145 of the Penal Code Act, including lesbians and gay persons. The URSB also cited section 36 of the Companies Act, 2012 in its reasons for refusing reservation of SMUG's name.

On 1 June 2016, the applicants filed an application in the High Court in accordance with the procedure provided in Article 50(1) of the Constitution in response to the URSB's refusal to register SMUG's name. The applicants sought a declaration that the URSB's refusal to reserve SMUG's name, and consequently rejecting to register the proposed company, was a violation by the URSB of the right to equality and freedom from discrimination; the freedom of conscience, expression, assembly and association. The applicants also argued that the constitutional provisions dealing with protection of rights of minorities; civic rights and activities and affirmative action measures by the state in favour of marginalised groups are implicated. The applicants sought a further declaration that the delay to respond to their application to reserve the name of the proposed company was a violation by the URSB of their right to just and fair treatment in administrative action. The applicants also sought that the Registrar General of the URSB be ordered to reserve the name and register the proposed company and to pay the costs of the application.

The High Court held that the refusal of the URSB to reserve SMUG's name, and consequently to register the proposed company, did not contravene the Constitution of Uganda. The High Court stated that the rights which the applicants claimed had been violated are capable of limitation under Article 43 of the Constitution, which provides that the fundamental rights of others and the public interest shall not be prejudiced in the enjoyment of constitutional rights and freedoms.

The Court considered Article 31(2)(a) of the Constitution, amended by section 10 of the Constitution (Amendment) Act, 2005 which provides that 'Marriage between persons of the same sex is prohibited'. The Court also referred to section 145 of the Penal Code Act prohibiting 'having carnal knowledge against the order of nature'. The Court agreed with the respondents that the objectives of the company were to promote behaviour that contravene both of these sections. The proposed company would be an organisation formed to protect and promote an assembly or association of persons whose practices, ideals, beliefs and objectives contravene the law. The Court held that the company name and objects go against the values and norms of the Ugandan people and are prejudicial to the public interest. It held that the URSB was justified in refusing to reserve SMUG's name as this was an action taken in the public interest.

Perhaps the most alarming finding in this case is the fact that the court also stated that it was entirely in agreement with the decision of Musota J in *Jacqueline Kasha Nabagesera and 3 Others v Attorney General & Rev. Fr. Lokodo (Lokodo case)*. In that case, the court held that apart from the substantive offence under Section 145 of the Penal Code Act, it is also prohibited to directly or indirectly encourage or assist the commission of an offence or to conspire to do so with others, regardless of whether the offence is actually committed or not. To incite and promote an illegality is prohibited. On the other hand, the Court also criticised the position taken in the case of *Jacqueline Kasha Nabagesera & 2 Others v Rollingstone Ltd. & Another (Rollingstone*

case). In that case, Musoke-Kibuuka J held that the scope of section 145 of the Penal Code is narrower than gayism generally and that one has to commit an act prohibited under that section in order to be regarded as a criminal.

The support mounted for the decision in the *Lokodo* case, while at the same time criticising the *Rollingstone* case, is a discouraging step in the development of LGBTI rights jurisprudence in Uganda. Instead of separating the issue of violation of human rights from the fact that same-sex sexual conduct is criminalised in Uganda, the courts are moving toward interpreting the exercise of any fundamental right by an LGBTI person or organisation to be disallowed on the basis of section 145 of the Penal Code Act. The ruling also predicts gloom in the face of the multiple prongs of registration which organisations are required to obtain in order to be fully registered and permitted to operate under the new non-governmental organisations regime. A refusal to register an LGBTI organisation at the first and most simple step of registration, prior to attempting to obtain registration at the NGO Bureau, runs a hazardous inroad into freedom of association for minority organisations and civil society as a whole.

b) Banning of discussion of homosexuality at the Inter Parliamentary Union

In October 2018, the Uganda Speaker of Parliament, Rebecca Kadaga, led a move to ban debate on the subject of Lesbian, Gay, Bisexual and Transgender rights within the Inter-Parliamentary Union.¹ This move was supported by 689 of the 1188 MPs representing nations across the globe.² The purpose of the Inter-Parliamentary Union is to work for peace and cooperation among peoples and to contribute to the defense and promotion of human rights. It is therefore a very worrying move that the mere debate on the topic of LGBT rights within the IPU has been banned.

Kadaga was also celebrated by fellow Uganda parliamentarians for her efforts to prevent the discussion of same-sex matters in the IPU by passing a resolution which commended her for upholding and protecting Uganda's cultural values.³ At the same event, the MPs vowed to reintroduce the hateful anti-homosexuality legislation that was passed into law in 2013 and annulled by the Constitutional Court in August 2014.⁴

These homophobic decisions within the Parliament of Uganda indicates a climate

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¹ Kadaga rallies IPU legislators to oppose gay debate in Geneva' *The Observer* 16th October 2018. Available at <https://observer.ug/news/headlines/58921-kadaga-rallies-ipu-legislators-to-oppose-gay-debate-in-geneva> (accessed 13th June 2019).

² As above.

³ Parliament of the Republic of Uganda 'Kadaga honoured for defeating LGBT agenda at IPU meeting' 14th November 2018. Available at <https://www.parliament.go.ug/news/2909/kadaga-honored-defeating-lgbt-agenda-ipu-meeting> (accessed 13th June 2019).

⁴ 'MPs renew call for anti-homosexual law' *New Vision* 17th April 2018. Available at https://www.newvision.co.ug/new_vision/news/1475795/mps-renew-anti-homosexual-law (accessed 13th June 2019).

which is ripe for legislative opposition to the gains made in the recognition and protection of the rights of LGBT persons in Uganda.

2.2 Developments on the executive front

a) **Homophobic actions by the Minister of Ethics and Integrity**

In May of 2018, the Minister of Ethics and Integrity, Hon. Simon Lokodo shut down a celebration of the International Day Against Homophobia, Biphobia and Transphobia organised by Sexual Minorities Uganda.⁵ Hon. Lokodo also vowed to block the Ministry of Health's first Annual Conference on Key and Priority Populations, on the basis that it would promote 'homosexuality and other dirty things'.⁶ As a result, the conference was cancelled.

These actions follow a long line of events which have been arbitrarily stopped by the Minister in recent years. The first event hosted by LGBT persons which was forcibly brought to a close by the Minister was a skills training workshop

held in 2012. In this case, the actions of the Minister were upheld by the High Court in the case of *Kasha Jacqueline Nabagesera, Frank Mugisha, Julian Onziema and Geoffrey Ogwaro v Hon. Rev. Simon Lokodo and Attorney General*.⁷ The High Court held that since section 145 of the Penal Code Act prohibits same-sex sexual conduct, acts which directly or indirectly encourage or assist the commission of that act are also prohibited. The Minister was therefore justified to close down the LGBT training workshop.

According to this dangerous reasoning, actions and activities which pursue LGBT rights could be considered illegal acts which promote homosexuality.⁸ The criminal act of 'having carnal knowledge against the order of nature' has been extended to cover even LGBT rights advocacy and actions performed in pursuit of the realisation of LGBT rights. This same reasoning was relied on by the High Court in the *SMUG Registration* case.⁹

As a result, the Minister of Ethics and Integrity has been supported in his rampage against events hosted to promote the realisation of LGBT rights. He has personally prevented Pride events from taking place in 2017 and 2016

⁵ 'Uganda: Protests greet shutdown of LGBTI event' *Rights Africa* 18th May 2018. Available at <https://rightsafrika.com/2018/05/18/uganda-protests-greet-shutdown-of-lgbti-rights-event/> (accessed on 11th June 2019).

⁶ 'Uganda: Minister Lokodo blocks HIV/AIDS conference' *The Monitor* 2nd May 2018. Available at <https://allafrica.com/stories/201805030118.html> (accessed 11th June 2019).

⁷ Miscellaneous Cause No. 32 of 2012.

⁸ Human Rights Awareness and Promotion Forum (HRAPF) *Litigating on the rights of LGBT persons in Uganda: Successes, setbacks, outcomes and lessons learnt* (2017) 75.

⁹ See 2.1 above.

and also cancelled the Queer Kampala International Film Festival.¹⁰

b) Changes within the Uganda Police Force

In March 2018, the Inspector General of Police, Kale Kayihura, was fired from his position and replaced with General Okoth Ochola.¹¹ This shift at the top of the Uganda Police Force has had repercussions for civil society efforts to engage the UPF on LGBT rights. HRAPF has been actively engaged in training police officers to equip them to better understand the limits of the laws that they enforce, to appreciate their duty to protect LGBT persons as a vulnerable minority group and address violations committed against them. During 2017, four trainings reaching out to 134 police officers across the country were conducted by HRAPF with the support of the Uganda Human Rights Commission. During 2018, eight trainings were held with police officers on marginalisation of sexual minorities.¹² HRAPF believes that these trainings account for the reducing number of violations of human rights against LGBT persons committed over the years. However, toward the end of the

year, the Uganda Police Force expressed that it is no longer open to training their officers on the human rights of LGBT persons in particular. There seems to be a move away from collaboration with human rights NGOs on matters of concern to LGBT persons in particular which could lead to a tremendous setback in the recognition and protection of the rights of this group.

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¹⁰ See a discussion on the actions of the Minister in 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) 4-7.

¹¹ D Mumbere 'Museveni replaces security minister and police chief Kale Kayihura' *Africanews* 4th March 2018 available at <https://www.africanews.com/2018/03/04/museveni-replaces-security-minister-and-police-chief-kale-kayihura/> (Accessed 2nd October 2019).

¹² Human Rights Awareness and Promotion Forum 2018 *Annual Report* (2019) 18.

3. PROTECTION OF PERSONS AT RISK DUE TO THEIR REAL OR PRESUMED SEXUAL ORIENTATION OR GENDER IDENTITY IN 2018

Over the past six years, there have been instances and pockets of improvement of the levels of recognition and protection of human rights of LGBT persons who come into contact with the law. In previous years, cases were recorded where the police stepped in to protect the rights of LGBT persons. During 2018, no such particular incident was registered. However, the number of violations committed by the Police have decreased in recent years and have remained lower in 2018 than it had been in 2016 and 2015.

Another encouraging finding is that no violations were committed by Local Council leaders against LGBT persons. In one case, the rights of a group of LGBT persons were protected by local community leader. An LGBT organisation based in one of the member's homes held an event to sensitise LGBT people about HIV and AIDS. A group of men from the neighbourhood alerted the police that 'a strange meeting was being held'.

The Police stormed the meeting and attempted to arrest the organisation's leader. The organisation's leader called HRAPF who sent a community paralegal. By the time the community paralegal got to the meeting, the police had already been convinced not to make any arrests by the Local Council chairperson. The Local Council chairperson explained to the police that he had been informed in advance of the event and that the group should not be disturbed. This action by a Local Council chairperson to stand up for the rights of LGBT persons is a positive step which could encourage the broader community to be tolerant and even supportive of their LGBT neighbours.

4. VIOLATIONS OF HUMAN RIGHTS BASED ON REAL OR PRESUMED SEXUAL ORIENTATION AND GENDER IDENTITY IN 2018

During the course of 2018, human rights abuses were committed against LGBT persons on the basis of their real or presumed sexual orientation and gender identity and /or expression by both state and non-state actors. This report categorises violations against LGBT persons on the basis of the rights violated and the perpetrators of these violations.

Chapter 4 of the Constitution of the Republic of Uganda of 1995 (as amended) sets out the rights and freedoms to be enjoyed by individuals and groups in Uganda. Article 20(2) provides that the rights and freedoms set out in that chapter is to be respected, upheld and promoted by all organs and agencies of government and by all persons. There is thus a constitutional duty on all persons as well as all organs of government not to infringe upon the rights of others. The Constitution also places a positive duty on the state to promote the fundamental rights of all persons in the country. This duty on the state to promote human rights of all persons is also echoed and affirmed in Uganda's regional and international law obligations.¹³

Both the state and private individuals are capable of violating human rights and both have a duty not to interfere with the lawful exercise of rights by others.

4.1 Violations by state actors

The state actors that were responsible for rights violations of LGBT persons during 2018 were the Uganda Police Force and the Minister of Ethics and Integrity. A total of 30 violations of human rights arising from the actions of state actors were visited upon LGBT persons during 2018, which constitute 43% of all violations suffered in that year. In 2017, 29 violations of human rights, constituting 39.18% of all violations were committed by state actors.

A. The Uganda Police Force

There has been a remarkable improvement in the way the Police relates to LGBT persons over the years. In 2018, there were only 29 violations committed by the police, which amounts

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

to 42% of all violations committed during the year, and 97% of all state violations. A similar low number of violations were recorded in 2017, namely 26 cases which is a stark reduction from the 64 violations recorded in 2016. Of the 29 violations one was a violation of the right to equality and freedom from discrimination, 23 were violations of the right to liberty, one was the violation of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment, one was a violation of the right to privacy, two were violations of the right to property and one was a violation of the right to freedom of expression, movement, association and assembly.

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

Article 21 of the Constitution protects the right of every person to equality before and under the law as well as equal protection of the law. This right is far from the reality of LGBT persons in Uganda who face discrimination, unfair treatment and exclusion at every turn. The continued criminalisation of same-sex sexual conduct feeds into the homophobic climate in the country and prevents LGBT persons from living free, secure and normal lives, on an equal footing with other persons in the country.

During 2018, LGBT persons suffered the violation of the right to freedom from discrimination at the hands of the Uganda Police Force in only one case. A man who self-identifies as gay went to the police in order to report the theft of his phone. The police initially arrested the man on the basis that he appeared to be gay. It was only after they realised that he had come to report another case that he was released.¹⁴ It is a matter of grave concern that an LGBT person was not offered equal protection under the law and was denied the right to have his case resolved by the security machinery of the state on the basis of his sexual orientation.

ii) Violation of the right to liberty

Article 23 of the Constitution of the Republic of Uganda guarantees the right to liberty and protects against arbitrary arrest and prolonged detention. Article 23(1) sets out the circumstances under which a person's liberty may be limited through a lawful arrest or detention.¹⁵ Other safeguards offered to persons arrested or detained for the purposes of bringing them before a court of law or in pursuit of a court order include freedom from prolonged detention without a trial;¹⁶ the right to be supported by a lawyer of your choice;¹⁷ the right not to incriminate oneself;¹⁸ the right to be presumed innocent;¹⁹ and the right not

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¹⁴ HRAPF/VR-19/007.

¹⁵ See also Article 9(1) of the ICCPR.

¹⁶ Article 23(4)(b) of the Constitution; Article 9(3) of the ICCPR.

¹⁷ Article 23(3) of the Constitution and Article 14(3)(d) of the ICCPR.

¹⁸ Article 14(3)(g) of the ICCPR.

¹⁹ Article 28(3)(a) of the Constitution; Article 14(2) of the ICCPR.

to be tried for an offence which is not defined by law.²⁰

The right to liberty is the most commonly violated right of LGBT persons for the year 2018. LGBT persons are often subjected to arbitrary arrest and prolonged periods in Police detention before being taken to court to face trial or being released. A total of 23 violations of the right to liberty of LGBT persons were committed by the Police during the course of the year.

Freedom from arbitrary arrest

The Constitution of the Republic of Uganda, under Article 23(1) sets out nine particular circumstances under which a person may be lawfully deprived of their liberty. All arrests must be justified under one of these nine grounds, otherwise they will be considered arbitrary.²¹ Thirteen incidents involving arbitrary arrests of suspected LGBT persons were recorded in 2018. These incidents took place when LGBT persons were arrested and not charged; were arrested based on offences which do not exist in law or in the absence of reasonable suspicion that the person has committed a crime.

There were cases recorded where LGBT persons were arrested during police raids. In one such a case the gay man who was arrested was later released without

any charge upon the intervention of a paralegal.²² In another case, the gay man involved was arrested from a bar for 'supporting People Power'. He was later charged with being Idle and Disorderly which charge was later changed to the offence of smoking opium.²³ In another case, two transgender women were arrested on their way home and taunted by the police for 'being gay' in attempts to convince them to 'reform'.²⁴ The arrest was based on the way the two transwomen were dressed and they were later released without any charge. These cases of unclear or shifting reasons for arrest of LGBT persons create the impression that the police may simply want to 'teach a lesson' to LGBT persons without having real grounds for bringing them before a court of law.

A case was also recorded according to which a transwoman was arrested and charged with 'impersonation' on the basis of the fact that the police viewed her as a man dressed as a woman.²⁵ Such an arrest is arbitrary since it is not against the law for men to dress in clothing that would typically be associated with women. The police misapplied the offence of 'personation' which criminalises the act of falsely representing oneself to be another person with the intent to defraud.²⁶ In another case, two transgender women and their male friend were beaten by a

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²⁰ Article 28(12) of the Constitution sets out the principle of legality.

²¹ See Article 23(1)(a) to 23(1)(g) of the Constitution.

²² HRAPF/VR-19/006.

²³ HRAPF/VR-19/046.

²⁴ HRAPF/VR-19/037.

²⁵ HRAPF/VR-19/019.

²⁶ Section 381 of the Penal Code Act.

group of men in a bar and then dragged to the police.²⁷ Instead of arresting the assailants for their violent behavior against the group, the police instead arrested the two transgender women and charged them with impersonation.

In another case, a group of a gay men followed up on an assault case of one of their friends at a police station and were arrested on a baseless ground in order to deter them from following up on the case.²⁸ In terms of Article 27(1)(c) of the Constitution provided that a person can be deprived of their liberty upon reasonable suspicion that the person has committed or is about to commit a criminal offence. Police tend to be quick to be suspicious of LGBT persons and would arrest them without in-depth interrogation of the allegations against them. This was the case when a gay man had an altercation with a boda boda motorcyclist who demanded double the agreed fee from him and reported him to the police on the far-fetched allegation that the gay man tried to undress him during the journey.²⁹ The police arrested the gay man and were thereby complicit in allowing the criminal justice system to be used to settle personal scores and civil matters in an arbitrary way, on the basis of a discriminatory attitude against LGBT persons. In a similar vein, there was also a case where a gay man was tricked by a debtor to go to a police station where he

was arrested and charged with unnatural offences.³⁰

Freedom from prolonged detention

The right to liberty can also be violated if a person is detained beyond the time period of 48 hours allowed in the Constitution.³¹ After 48 hours of detention, an arrested person should either be produced before a court or released.

During 2018, there were nine instances where LGBT persons were arrested for various reasons and kept in police custody beyond 48 hours. Even though police officers undergo trainings on human rights and are sensitised to understand and protect the rights of all, instances of abuse of police power on the basis of a suspect's presumed sexual orientation and / or gender identity continue to take place. LGBT persons are still arbitrarily arrested and subjected to unlawful conditions of release such as apologising, promising to desist from engaging in 'evil' conduct or paying bribes.

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

Article 24 of the Constitution protects the right to dignity and freedom from

²⁷ HRAPF/VT-19/074.

²⁸ HRAPF/VR-19/039.

²⁹ HRAPF/VR-19/049.

³⁰ HRAPF/VR-19/056.

³¹ Article 23(3).

torture and cruel, inhumane and degrading treatment or punishment.³² This right cannot be derogated under any circumstances.³³ Uganda has adopted a law to detail the protection of this right and to prohibit torture which is defined as 'any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the consent or acquiescence of any person, whether a public official or other person acting in an official capacity'.³⁴ The right is also protected under the Convention Against Torture (CAT), to which Uganda is a party.³⁵

While LGBT persons face the violation of their right to dignity and freedom from torture and cruel treatment on a regular basis, the Uganda Police Force was responsible for only one such violation during 2018. In the case in question, a gay man was arrested for allegedly trespassing on palace grounds of the Buganda King.³⁶ During the course of the arrest, the man was beaten and handled roughly by the police. He was later released with no charge after intervention of a paralegal.

iv) Violation of the right to privacy

In terms of Article 27 of the Constitution, all persons are protected against the unlawful interference with their person,

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³² Article 24.

³³ Article 44(a) of the Constitution.

³⁴ The Prevention and Prohibition of Torture Act No. 3 of 2012.

³⁵ UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, United Nations Treaty Series Vol. 1465, p.85.

³⁶ HRAPF/VR-19/017.

³⁷ HRAPF/VR-19/069.

home and correspondence. The right to privacy of LGBT persons are under threat in particular since society tends to be very curious about their lifestyle and personal affairs. During the course of 2018 cases were identified in which both state and non-state actors interfered with the right to privacy of LGBT persons.

The police in particular, interfered with this right in one verified case. In one of these cases, a gay man was arrested in Mbarara and charged with unnatural offences.³⁷ During the course of the investigation, nude photographs were taken of the suspect which were shared with and published by a local newspaper. In this case, the police violated the right to privacy of the LGBT person in question by outing him in public and sharing photographs with the media. While the police is not the biggest violator of this right, they nevertheless have the important duty of ensuring that the right is not violated when LGBT persons are in their custody.

v) Violation of the right to property

Article 26 of the Constitution protects the right to own property and provides conditions for the lawful deprivation of property. The Article makes it clear that deprivation of property can only be justified if the acquisition is necessary for

the public benefit or public health or if there is a law which makes compulsory the taking of possession of property. During 2018, there were two cases of the violation of the right to property perpetrated by the Police. In both of these two cases the Police retained possession of property that was taken as part of investigations. In the first case the case was closed, yet the Police did not return the personal belongings of the gay man who had been charged with unnatural offences.³⁸ In the other case, a wig, dress and make-up was taken from a transgender woman upon arrest and was not returned to her after her release.³⁹

vi) Violation of the right to freedom of conscience, expression, movement, religion, assembly and association

This right is protected under Article 29 of the Constitution. All persons are guaranteed the right to freedom of thought, conscience and belief and the right to freely express their opinions. The Article furthermore protects the freedom of the press, the right to freedom of movement and the right to associate freely with others. These rights are often violated in the case of LGBT persons who are inhibited from freely expressing themselves, freely associating in formal and informal ways and from holding meeting and social events without

undue interference.

This right was violated by the Police in one case concerning LGBT persons in 2018. In this case, Police interrupted a meeting organised to sensitise LGBT persons on HIV/AIDS at an organisation based within a neighbourhood.⁴⁰ The Police were finally convinced not to arrest the leaders of the organisation, but the commotion led to curiosity among community members and the premises was raided and searched by two private individuals on the same evening. The organisation was also evicted from the premises after the incident.

B. The Office of the Minister of Ethics and Integrity

The Minister of Ethics and Integrity perpetrated one violation of the right to freedom of expression, association and assembly of LGBT persons by cancelling a planned celebration on International Day Against Homophobia, Transphobia Interphobia and Biphobia shortly before it was scheduled to start.⁴¹ This violation follows a long line of events hosted by LGBT persons in Uganda which have been cancelled or disrupted by the Minister's Office in recent years.

Sexual Minorities Uganda (SMUG) had organised an event to commemorate the International Day Against Homophobia, Biphobia and Transphobia. SMUG had

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³⁸ HRAPF/VR-19/050.

³⁹ HRAPF/VR-19/065.

⁴⁰ HRAPF/VR-19/008.

⁴¹ 'Uganda: Protests greet shutdown of LGBTI event' *Rights Africa* 18th May 2018. Available at <https://rightsafrika.com/2018/05/18/uganda-protests-greet-shutdown-of-lgbti-rights-event/> (accessed on 11th June 2019).

notified the area Police Station for the event to take place, as required under the Public Order Management Act of 2013.⁴² The Minister claimed that the event had to be cancelled because it was a gathering aimed at promoting homosexuality. The Minister's officers ordered the crowd that had begun to gather for the event to disperse. This action amounts to a violation of the right to freedom of expression, association and assembly since the group had attempted to lawfully exercise their right to assemble, but was forcibly prevented from doing so by the actions of the Minister.

The Minister seems committed to prevent LGBT persons from exercising their right to organise and associate with others as much as possible. The Minister had ordered a raid of the 2016 Pride celebrations and canceled the 2017 Pride while threatening owners and managers of the venues where the events were to take place.⁴³ The Minister also ordered a raid on the Queer Kampala International Film Festival and advised the persons that they found there to leave the premises. Thus far, the Minister's violations of the rights of LGBT persons has been met with impunity.

4.2 Violations perpetrated by non-state actors

Article 20(2) of the Constitution makes it clear that the rights enshrined in chapter 4 of the Constitution is to be respected, upheld and promoted by *all persons* along with all organs and agencies of government. Human rights violations committed by non-state actors can therefore be addressed and remedied by the courts, the Uganda Human Rights Commission and the Equal Opportunities Commission where the right to equality and freedom from discrimination is at stake. The High Court has provided remedies for LGBT applicants where the violation of their rights has been threatened by private actors. In the case of *Kasha Jacqueline and 2 Others v Rolling Stone Ltd. and Another*⁴⁴ the High Court held that the publishing of pictures of the three applicants along with others, who are members of the LGBT community, in an article calling for the 'hanging' of Uganda's 'homos' constituted a threat of violation of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment or punishment. The Court ordered the newspaper and its Managing Director to pay compensation to the applicants and also issued an injunction against the

⁴² 'Minister Lokodo halts Uganda's 2018 IDAHOBIT event' *Kuchu Times* 17th May 2018. Available at <https://www.kuchutimes.com/2018/05/minister-lokodo-halts-ugandas-2018-idahobit-event/> (accessed on 2nd October 2019).

⁴³ 'Activists condemn Minister Lokodo over gay party raid' *The Observer* 17th August 2016. Available at <https://observer.ug/news-headlines/45959-activists-condemn-minister-lokodo-over-gay-party-raid> (Accessed 2nd October 2019); 'No gay promotion can be allowed: Uganda cancels Pride events' *The Guardian* 21st August 2017. Available at <https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt> (Accessed 2nd October 2019).

⁴⁴ Miscellaneous Cause No. 163 of 2010.

further publication of their identities.⁴⁵

In 2018, non-state actors were responsible for the majority of human rights violations committed on the basis of the victim's sexual orientation and gender identity. Non-state actors committed 39 such violations, which amounts to 56.5% of all violations verified for the year.

Among non-state actors, the greatest number of violations were committed by members of the general public (22). Seven violations were committed by family members of the victims; five were committed by property owners / landlords and landladies, three were committed by the media and one by a private tertiary institution.

Some of these matters were settled through mediation. In many cases, the victims were reluctant to follow through with police investigations since they fear for their own security in relating to the police since they are a criminalised minority.

A. Violations by the general community

LGBT persons in Uganda find themselves in a society which is notoriously homophobic. In a survey conducted by the Pew Research Centre in 2013, it was found that 96% of Ugandans do not believe that society should accept homosexuality.⁴⁶ A

2016 Afrobarometer study also found that 95% of Ugandans would not tolerate having a homosexual neighbour.⁴⁷ On the basis of these statistics, it can be expected that LGBT persons would fall victim to human rights violations at the hands of their neighbours and community at large. During 2018, there were ten instances of violations of the right to dignity and freedom from torture and cruel treatment, two violations of the right to liberty, six violations of the right to privacy, one violations of the right to freedom of expression, association and assembly, two violations of the right to property and one violation of the right to equality and freedom from discrimination.

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

Members of the general community in which LGBT persons live were responsible for 10 violations of the right to dignity and freedom from torture and from cruel, inhuman and degrading treatment and punishment.

In some cases, the community lash out in violence against LGBT persons on the basis of their sexual orientation and gender identity. In one such a case, a gay man was beaten over the head with an iron rod and kidnapped while he was on his way

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⁴⁵ As above.

⁴⁶ Pew Research Centre 'The Global Divide on homosexuality' 4th June 2013. Available at <https://www.pewresearch.org/global/2013/06/04/the-global-divide-on-homosexuality/> (Accessed on 2nd October 2019).

⁴⁷ Afrobarometer 'Good neighbours? Africans express high levels of tolerance for many, but not for all' Afrobarometer Dispatch No. 74 (2016) 12.

from work along Masaka Road.⁴⁸ He lost consciousness and when he woke up he was blindfolded and tied up in a place he could not recognise. The people who had kidnapped him asked him how he could be attracted to men, chastised him for marring their church and slapped, kicked and spat on him. He fell unconscious again and when he woke up, he was still tied up and was covered in clay. He was found by a worker of the nearby brick-laying swamp the next morning and taken to the police station before being taken to hospital. The kidnapping and assault was not investigated by the police.

In another case, a gay man was pulled into a van by four men as he left a pub where he had been performing.⁴⁹ The men tied him up and beat him. Eventually, he was taken to a police station where the men tried to open a case against him, claiming that he had broken the window of their truck. The man registered a case of assault with the police and received medical treatment for his wounds. These two cases of kidnap also amounted to the violation of the right to liberty.

A case was reported where a gay man was beaten by one of his neighbours, who is a priest, for using a pathway that belonged to the neighbour's employer in order to reach enclosed land belonging to the man's grandfather.⁵⁰ It was agreed in the presence of the Local Council leader that the pathway through the church grounds may be used by members of the public, since it was the only way to reach the enclosed land. When the priest saw the

man walking on the path, he got out of his car and told him that he was not allowed to use the path. The man tried to explain that he was passing through the property and that he was not a thief, but the priest pushed him and he fell down. The priest then hit him with a baton that he borrowed from his guard until the client was unconscious. Police and other people had gathered at the scene and when they asked the priest to transport the man to the hospital he refused. The actions of the priest seem disproportionately violent under the circumstances and is believed to be motivated by homophobia.

In another violent case, two Rwandan refugees who identify as gay were in their rented residence watching a movie when five men entered the home.⁵¹ The men were beaten and cut with knives. They were placed in the middle of the room and the men poured paraffin over them. The assailants asked the men for matches as they continued to scream for help and refused to point them to their matchboxes. After failing to find a way to set them on fire, the assailants continued to beat them and left with their tablet and laptop. The men saw their neighbours escort the assailants away. One of the most troubling factors of this case is the fact that it seemed that the neighbours of the two gay men who were attacked were the instigators of the attack. As they screamed for help, no-one who lived around them came to their rescue. An investigation revealed that the men were attacked by Comorians. A mediation was held with members of the Comorian

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⁴⁸ HRAPF/VR-19/023.
⁴⁹ HRAPF/VR-19/026.
⁵⁰ HRAPF/VR-19/053.

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⁵¹ HRAPF/VR-19/071.

community in Kampala, though not with the men who were responsible for the attack, and some compensation was paid to the two men for their stolen goods. The violation of their right to property was thus addressed, but the violent attack remained unaddressed.

Another violent case concerned two transgender women who went to a bar together. One of them were questioned by some men at the bar as to whether she was male or female. When she insisted that she was female, the men forcibly undressed her. When they found out that she was biologically male, they beat her. They then asked the other transgender woman whether she was male or female and to avoid being undressed, she told them they she was biologically male. They also beat the man that she had come to the bar to meet even though she insisted that he did not know that she was a transwoman. The group of them then dragged the two transwomen and their male friend to a police station where they were arrested and charged with impersonation. It is troubling that the police did not come to the aid of the group who had been attacked and violated, but rather sided with their assailants and added to their abuse.

These cases reveal the dangerous effects of homophobia and transphobia within society and the confidence with which members of the public commit violence against LGBT persons. For as long as same-sex sexual conduct remains criminalised, LGBT persons will not be viewed as citizens who are deserving of the protection and vindication of their rights on an equal footing with all other persons.

ii) Violation of the right to privacy

The right to privacy of LGBT persons is often violated by members of the general public who desired to 'out' them or who are curious about details of their personal lives. Six cases were recorded in which members of the general public violated the right to privacy of LGBT persons.

There was a case where the manager of a women's soccer club confiscated the phones of the players in order to destroy evidence of sexual harassment.⁵² The manager found suggestions of lesbian relationships between some of the players on their phones and informed their employers, family members and the media of their sexual orientation. This outing had destructive consequences in the players' lives. One of them received threats from unknown persons and were also followed around after the very public outing.⁵³

An associate pastor who identified as gay was outed by members of the congregation to the whole church, which also violated his right to privacy.

In the case of the two Rwandan refugees who were assaulted by a mob in their home, their right to privacy was also violated by the group of men who entered their home without their permission.⁵⁴

The violation of the right to privacy can have dire consequences in a homophobic society which can lead to the loss of employment, family support and even violence. There is need for community

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⁵² HRAPF/VR-19/003.

⁵³ HRAPF/VR-19/009.

⁵⁴ HRAPF/VR-19/071.

sensitisation about LGBT persons in order to encourage support from the general community and curb curiosity and homophobia and biphobia.

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

One case was recorded during 2018 in which an LGBT organisation based in Kampala faced threats and intimidation from their neighbours.⁵⁵ The members of the organisation explained that they received verbal threats and taunts from their neighbours when arriving at work in the morning and when leaving their office premises in the evening. These threats and taunts continued until the organisation eventually decided to move their offices to a different location. The actions of the neighbouring community violated the members of the organisation's right to equality and freedom from discrimination. The actions also violated their right to freely associate and interfered with their work.

B. Violations by property owners

Property owners, and in particular landlords and landladies, were responsible for committing 6 human rights violations on the basis of the victim's sexual orientation and/or gender identity during 2018. In four of these cases the right to equality and freedom from discrimination was violated and in two cases the right to freedom of association was also violated.

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⁵⁵ HRAFP/VR-19/086.

i) Violation to the right to freedom of association

In one case, police stormed a meeting on HIV sensitisation and awareness raising at an organisation that operates from a gay man's home.⁵⁶ The police did not make any arrests but the landlord got to hear about the incident and gave the organisation and the person who lived on the premises two weeks to relocate. The landlord's reason for this action was that he did not want to be targeted for 'harbouring homosexuals'. There was another case in which an LGBT organisation in Mbale was evicted from their premises on the basis of the category of clients which they served.⁵⁷ Both these instances also constituted a violation of the right to freedom of association since the organisations were hampered in their activities by their landlords' homophobia.

ii) Violations of the right to equality and freedom from discrimination

There were four instances recorded during 2018 in which LGBT persons were evicted from their homes by their landlords on the basis of their sexual orientation and gender identity.

There were two cases in which two gay individuals were evicted by their landlord and landlady respectively on the basis of their sexual orientation.⁵⁸ The trend of eviction of persons once it comes to light that they are LGBT is a cause of insecurity and instability in their lives. LGBT persons have to live in secrecy and do all they

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⁵⁶ HRAFP/VR-19/008.

⁵⁷ HRAFP/VR-19/066.

⁵⁸ HRAFP/VR-19/030; HRAFP/VR-19/034.

can to avoid that their neighbours and landlords discover their sexual orientation and gender identity.

In two other cases, organisations run by and for LGBT persons were evicted from their premises which also constituted the violation of the right to equality and freedom from discrimination.

C. Violations by family members

LGBT persons often face ostracism and rejection from their families when they come to know about their sexual orientation and gender identity. There were 7 verified violations committed against LGBT persons by their family members on the basis of their sexual orientation and gender identity during 2018.

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

There were six recorded cases where family members of LGBT persons evicted them from the family home on the basis of their sexual orientation and/or gender identity. These instances amount to a violation of the right to equality and freedom from discrimination.

In one case, a young gay man told his family about his sexual orientation.⁵⁹ The family responded by disowning him and sending him away from the family home. The young man started to attend overnight prayer services at a local church simply to have shelter during the night. In another case, the mother of a young gay man sent him away from home so he would not 'teach' her other children to be gay.⁶⁰ In two cases, parents evicted their sons, who were still minors, when they found out that they were gay.⁶¹ In one of the cases the mother of the young gay man also refused to continue to pay for his tuition.⁶²

In one case, a gay man's sister found out about his sexual orientation and told the entire family about who, which⁶³ led to a family meeting at which he was asked to drop the family name.⁶⁴ The family of another 22-year old gay student went as far as to report him to the police which led to his arrest.⁶⁵

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

A transgender woman and her partner was attacked and beaten by a mob of three men shortly after her sister found

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⁵⁹ HRAPF/VR-19/005.

⁶⁰ HRAPF/VR-19/036.

⁶¹ HRAPF/VR-19/067; HRAPF/VR-19/075.

⁶² HRAPF/VR-19/075.

⁶³ HRAPF/VR-19/057.

⁶⁴ HRAPF/VR-19/042.

⁶⁵ HRAPF/VR-19/057.

out about her gender identity.⁶⁶ The attackers said that they would rather see them dead than to embarrass the trans-woman's family.

D. Violations by media

In 2018, there were three verified cases of violations of rights of LGBT persons by the media. In all three cases, the right to privacy was violated by media publications. A newspaper in Mbarara violated the right to privacy of a gay man by publishing nude pictures of him that were taken by the police during the course of their investigation into a charge of unnatural offences.⁶⁷ In the case where a gay man was kidnapped and assaulted by a mob, he was also outed by the media as the story was covered in such a way that it revealed the details of the attackers' intentions.⁶⁸ The fact of the outing added to the turmoil of the man who was already severely traumatised by the violent attack. In the case where a number of lesbian and bisexual soccer players were outed by the former manager of their soccer club, the media was complicit in this violation of the players' right to privacy and exposed them to violence and prejudice by publishing stories which outed them.⁶⁹

E. Violations by private institutions

During 2018, one case was recorded where a university violated against a gay student on the basis of his sexual orientation. The gay student was asked to move to a different university after the administrators of the university where he was a student came to know about his sexual orientation.⁷⁰ Apart from suffering discrimination on the basis of his sexual orientation, the student also lost a part of his scholarship in the process of moving to a different university. This incident violated the student's right to equality and freedom from discrimination.

4.3 Conclusion

During 2018, there were a series of violations of the rights of LGBT persons perpetrated by both state and non-state actors. These violations mostly infringed on LGBT persons' right to liberty, their right to privacy and their right to dignity and to be free from torture and cruel, inhuman and degrading treatment and punishment.

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⁶⁶ HRAPF/VR-19/027.

⁶⁷ HRAPF/VR-19/069.

⁶⁸ See HRAPF/VR-19/023.

⁶⁹ HRAPF/VR-19/003 and HRAPF/VR-19/009.

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⁷⁰ HRAPF/VR-19/063.

5. GENERAL ANALYSIS OF REPORTED VIOLATIONS OF HUMAN RIGHTS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

5.1 Analysis of trends in 2018

During the year 2018, 59 cases were reported to HRAPF and the contributing organisations revealing 69 verified incidences of human rights violations against LGBT persons on the basis of their sexual orientation and/or gender identity. While 36 other cases were also reported, these could not be verified; did not constitute a human rights violation; constituted human rights violations which were not based on the victim's sexual orientation and/or gender identity or took place in neighbouring countries and not in Uganda. The human rights violations were committed by both state actors and non-state actors. A variety of constitutionally guaranteed human rights were violated, in particular: the right to liberty, the right to privacy, the right to dignity and freedom from torture and cruel, inhumane and degrading treatment or punishment and the right to property. This section analyses and summarises the violations based on sexual orientation and gender identity committed during 2018 in comparison to preceding years.

a) Nature of perpetrators

During 2018, a total of 69 human rights violations on the basis of sexual orientation and gender identity were recorded and verified. Non-state actors were responsible for 39 of these violations, constituting 56.5% of the violations while state actors occasioned 30 or 43.5% of these violations. This ratio follows a similar trend to that of 2017, during which year non-state actors were responsible for 60.8% of all verified violations. From the time of the annulment of the Anti-Homosexuality Act, 2014 in August 2014, there has been a steady increase in violations committed by non-state actors who seemingly believe themselves to be justified in taking the law into their own hands in order to punish LGBT persons for living a lifestyle which they do not agree with. In 2015, 54.4% of verified violations were committed by non-state actors with a slightly lower 48.6% in 2016. The upward trend in violations by non-state actors evidenced in 2018 shows that homophobia is deeply ingrained in the Ugandan society and continues to be fueled by the criminalisation of same-sex sexual conduct and the discriminatory and hateful utterances and decisions by the country's leaders. The state, while not directly responsible for the greatest number of human rights violations

based on sexual orientation and gender identity, do have the responsibility to protect LGBT persons from violence and discrimination.⁷¹

Table 1: Perpetrators of human rights violations based on sexual orientation and gender identity

Perpetrator	Number of violations occasioned
The Uganda Police Force	29
The general public	22
Family members	7
Property owners	6
The media	3
The Minister of Ethics and Integrity	1
Private tertiary institutions	1

The Uganda Police Force perpetrated the highest number of violations against LGBT persons, followed by the general public.

The number of violations committed by the Uganda Police Force are however, on a seeming continuing downward trend and were almost as few as the 26 violations verified in 2017. The way in which members of the general public have increasingly perpetrated human rights violations against LGBT persons is very worrying.

A continuing trend from 2016 and 2017 are actions by the Minister of Ethics and Integrity which violate the rights of LGBT persons to freedom of expression, association and assembly. In 2018, the Minister prevented the celebrations on the International Day Against Homophobia, Biphobia and Transphobia from taking place, in the same way as he has been stopping Pride events and the Queer Kampala Festival in previous years.⁷²

Family members of LGBT persons have also been actively opposing them and wracking havoc in their lives and an upward trend of acts of discrimination by family members on the basis of the victim's sexual orientation and gender identity has been recorded.

The African Commission, in its Resolution '[s]trongly urges States to end all acts of violence and abuse, whether committed by State or non-state actors, including ... punishing all forms of violence including those targeting persons on the basis of

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⁷¹ African Commission on Human and Peoples' Rights Resolution 275: Resolution on the protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014.

⁷² 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.

their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.⁷³ At present, Uganda is not giving heed to this call of the African Commission considering that LGBT persons who report the crimes committed against them risk being arrested themselves. The cases which were reported to the police were not investigated and resolved, leaving the violations faced by the LGBT persons involved unaddressed.

The Uganda Human Rights Commission has the authority to investigate instances of human rights violations, either in response to a complaint or on its own initiative.⁷⁴ The EOC has a similar authority to inquire into 'any act, circumstance, conduct, omission, programme, activity or practice which seems to amount to or constitute discrimination, marginalization or to otherwise undermine equal opportunities'.⁷⁵ During 2018, none of the violations committed by either state or non-state actors were investigated by the UHRC or the EOC on their own accord. The UHRC's mechanism for investigating complaints has a significant backlog and even where cases of human rights violations are brought to the UHRC's attention, multiple years will go by before these cases are investigated. Human rights violations committed against LGBT persons by non-state actors are by and large met with complete impunity.

b) Categories of rights violated

While the right to dignity and freedom from cruel treatment was the most violated right in 2016, and the right to equality in 2017, the right to liberty is recorded as the most violated right in 2018. 2018 had fewer cases of violation of the right to equality and freedom from discrimination, while there was a marked increase in the number of violations of the right to property.

Table 2: Categories of rights most commonly violated in 2018 and 2017

Category of right	Number of violations per year	
	2018	2017 ⁷⁶
Right to liberty	25	15
Right to privacy	10	16
Right to dignity and freedom from torture	12	15
Right to equality and freedom from discrimination	13	22
Right to property	4	1
Freedom of expression, association and assembly	5	5

⁷³ African Commission, n 78 above.

⁷⁴ Art 52(1)(a) of the Constitution.

⁷⁵ Sec 14(2) of the Equal Opportunities Commission Act, 2007.

⁷⁶ As above.

The violation of the right to liberty had increased since 2017. This was notable due to the large number of cases where LGBT persons were arrested for committing non-existent offences such as 'impersonation' and 'sodomy' as well as the cases of arrest in circumstances which could not have constituted reasonable suspicion that the person has or is about to commit a crime. The number of cases of prolonged detention also remained high. This slight increase in the violation to the right to liberty from 2017 and 2018 may be attributed to the shifts in power within the Uganda Police Force and the fact that the Police, under the leadership of the new Inspector General, is less willing to engage with civil society and send police officers on human rights trainings and sensitisation workshops.

There was an increase in the number of cases of the violation of the right to dignity and freedom from torture and cruel, inhuman and degrading treatment and punishment, mostly due to a larger number of members of the general public attacking LGBT persons in small groups and subjecting them to 'mob justice'. This kind of lawlessness and homophobic violence is of great concern, particularly in instances where the police respond by arresting the victims rather than protecting the LGBT persons from the violation of their rights.

5.2 General overview of trends in the violation of the rights of LGBT persons over the years

Table 3: Comparative overview of human rights violations over four years

Categories of rights	Number of violations per year			
	2015	2016	2017	2018
The right to equality and freedom from discrimination	51	46	22	13
The right to liberty	21	38	15	25
The right to dignity and freedom from cruel and inhumane treatment	36	65	15	12
The right to property	13	13	1	4
The right to privacy	28	38	16	10
The right to freedom of expression, association and assembly	4	7	5	5
TOTAL	153	207	74	69

In comparing the numbers of violations over the past four years, it is clear that there is a downward trend in incidences of violations on the basis of sexual orientation and gender identity, despite the pervasive homophobia and transphobia in the country. The number of violations recorded in 2016 is an exception since the violent raid of the Pride pageant, which was a single incident, resulted in 53 separate verified violations on the same night.

The record of the police is consistently improving as the number of violations committed by the Police continues to go down. The Minister of Ethics and Integrity consistently violates the right to assembly and association of LGBT persons by cancelling and shutting down events organised by the LGBT community, year in and year out.

There is a rise in violent homophobia and transphobia as expressed by the general community. There is need for intervention at community level to sensitise the general population about LGBT rights and to demystify sexualities and gender identities which deviate from the norm. The fact that same-sex sexual conduct remains criminalised and the violations perpetrated against LGBT persons by state agents seem to justify to members of the public efforts to punish or discriminate against LGBT persons.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 General conclusion

In 2018, the legal and policy regime remained similar to that of 2017 with a number of decisions and actions from the judiciary, parliament and the executive which limited the rights of LGBT persons. The level of hostility seems to have neither increased nor decreased, which also explains the similar numbers of verified violations recorded in 2017 and 2018. While 2018 does not see an improvement in the environment for LGBT persons from 2017, the general levels of hostility remains lower than what they were in 2016 when LGBT persons were subjected to mass violations. Despite the persisting homophobia in the country, levels of tolerance and acceptance are nevertheless consistent and efforts of sensitisation and awareness raising among both state and non-state actors are seemingly not in vain.

6.2 Recommendations

To the President of the Republic of Uganda

The Office of the President is key to the law-making process and supervises the Directorate of Ethics and Integrity. The President has the authority to address laws that are not compliant with the Constitution and initiate processes to have such laws amended. It is recommended that the President does the following:

1. Ensure that issues of non-discrimination and the protection of vulnerable minorities are discussed and priorities within Cabinet and the Executive.
2. Reject proposed legislation which discriminates on the basis of sexual orientation and gender identity.
3. Hold the Minister of Ethics and Integrity to account when he commits actions which violates the rights of LGBT person's to freely assemble and associate.

To Parliament

The Parliament of Uganda has the authority to legislate and can therefore greatly influence the levels of protection or violation experienced by LGBT persons in Uganda in their daily lives. The Members of Parliament are also influential in international fora. They are recommended to do the following:

1. Repeal laws which create the offence of 'having carnal knowledge against the order of nature', which is interpreted to criminalise LGBT persons and strip them of equal protection of the law.
2. Repeal section of the Penal Code Act which create broad and vague petty offences such as 'being idle and disorderly' and 'being a rogue and vagabond', which are used to arbitrarily arrests persons who are

poor and undesirable, including LGBT persons.

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

To the Uganda Police Force

The Uganda Police Force remains the critical actor in terms of protecting and violating the rights of LGBT persons. This is so because the law criminalises consensual same-sex sexual conduct, which is understood to criminalise the homosexual identity on the whole and the police is the first point of contact between LGBT persons and the criminal justice system. It is up to police to either protect the rights of LGBT persons when they face abuse and discrimination from the general public or to condone and exacerbate such homophobic behavior. It is also up to police to determine whether or not LGBT persons will be arrested and prosecuted on the basis of their real or presumed sexual orientation and/or gender identity. In this regard, the following recommendations are made to the Police:

1. Working through the Directorate of Legal and Human Rights, the Uganda Police Force should continue training police officers on the human rights of LGBT persons as well as the limits of the laws which they are mandated to enforce. The role of the UPF as a protector of the right of LGBT persons as a vulnerable group should be emphasised.
2. Strengthen mechanisms which exist to redress human rights violations committed by members of the UPF. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.
3. Thoroughly and convincingly investigate cases of violence against LGBT persons by members of the public.

To the Uganda Law Reform Commission

The Uganda Law Reform Commission is authorised to advise the state on needed reforms to the law in order to bring them in line with the constitution and principles of good governance, human rights and social justice. It is recommended that the Law Reform Commission:

1. Develop a proposal for constitutionally compliant alternative to laws creating petty offences that will protect the rights of all while ensuring order in society.
2. Develop a proposal for the amendment of the Penal Code Act to repeal the sections that criminalise consensual sexual relations.

To the Uganda Human Rights Commission

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

1. Demand for accountability from the state for all human rights violations reported, especially those that go unaddressed.
2. Hear and dispose of cases involving violations of rights of LGBT persons that are pending before the Commission's Complaints and Investigations Directorate since 2016.
3. Develop proposals to amend laws that are discriminatory and which do not align with the Constitution of the Republic of Uganda.

To the Equal Opportunities Commission

The Equal Opportunities Commission is an institution mandated to address marginalisation and discrimination in Uganda. The EOC provides a platform for addressing violations suffered by marginalised persons, including LGBT persons who suffer discrimination on the grounds of sexual orientation and gender identity. The Commission is recommended to use its mandate to do the following:

1. Investigate systemic discrimination of individuals based on their sexual orientation and gender identity.

2. Continue to train the staff of the EOC in order to build their capacity in handling matters of discrimination and marginalisation on the basis of sexual orientation and gender identity.

To civil society organisations

Organisations which exist to promote human rights, including the rights of LGBT persons, are equipped to raise awareness about the discrimination and challenges which LGBT persons face within the Ugandan society. It is recommended that civil society does the following:

1. Sensitise and support members of the LGBT community to discourage actions which violate the rights of community members, such as blackmail, outing and extortion which expose individual members to violence and insecurity and which undermines the efforts of the movement as a whole.
2. Hold awareness sessions with members of the general community to demystify LGBT persons and help the community understand that LGBT persons are part of their community.
3. Reach out to the family members of LGBT persons to help them to understand, appreciate and accept the lived realities of their LGBT family members as well as their practical, emotional and psychosocial needs.
4. Develop the capacity of staff to document violations based on sexual orientation and gender identity. This could include adopting uniform guidelines for recording information on cases and violations.

5. Strengthen reporting systems, methods of evidence collection and data storage in order to facilitate the verification of violations against people based on their sexual orientation and gender identity.
6. Support the Uganda Human Rights Commission to monitor and document reports of violence, abuse, and discrimination based on sexual orientation and gender identity.
7. Establish further partnerships with organisations for the monitoring and documentation of LGBT rights.

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

