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

Increasing protections and
reducing state violations

October 2018



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Increasing protections and reducing state violations

With contributions from:

FEM Alliance Uganda; Icebreakers Uganda (IBU); Queer Youth Uganda (QYU); Rainbow Mirrors Uganda; and Tranz Network Uganda

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ABOUT HUMAN RIGHTS AWARENESS AND PROMOTION FORUM (HRAPF)

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.

ABOUT THE CONTRIBUTING ORGANISATIONS

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 of 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 is a youth-led organisation that was started in 2006 with the aim of advocating for the rights of LGBT people in Uganda through sensitisation 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.

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 lesbian, bisexual and queer (LBQ), and transgender women in Uganda. FEM Alliance aims to promote human rights and restore the dignity of LBTQ/WSW through research and advocacy, supporting personal development and combating violence.

Rainbow Mirrors Uganda

Rainbow Mirrors Uganda is an organisation run by trans-women in Uganda. It focuses on providing emotional support for trans-people as well as empowering them to advocate for their rights and their 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 trans-people.

Tranz Network Uganda

Tranz Network Uganda is a platform that brings together persons and organisations that work with transgender and gender non-conforming individuals to advocate for socio-legal protection and empowerment of gender non-conforming individuals through awareness and sensitisation campaigns about trans issues. It also creates avenues for transgender people in Uganda to access social services in an environment free of condemnation and judgment. The organisation aims to create a safe open space for all transgender and gender non-conforming individuals in the country.

PREFACE

The Uganda Report of Violations based on Sexual Orientation and Gender Identity is an annual publication that examines cases of human rights violations against LGBT persons in Uganda. The report analyses trends in human rights violations and interrogates the socio-legal factors that have influenced human rights violations as well as human rights protection for LGBT persons in the preceding year.

This edition of the report is the 5th of its kind, and it examines the violations of human rights of LGBT persons that were recorded in the year 2017. It examines the trends in violations of human rights of LGBT persons in relation to the prevailing homophobia and the general attitudes of Ugandans towards homosexuality. The report also discusses the key developments that occurred in 2017 to influence the protection and violation of the rights of LGBT persons in that year.

The difference that this report has from those that preceded it is that it now expressly has a separate section that covers protections based on sexual orientation and gender identity. This is because, unlike before, the Uganda Police Force has gone out of its way to protect persons even when they are aware of their sexual orientation and gender identity, something that was not common before. Knowledge by the Police of someone's sexual orientation and gender identity was usually enough for the Police to instead arrest the person or refuse to investigate their case. This has now changed and thus this report has also changed to have a specific section for protections.

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 is intended to provide an insight into the situation of LGBT persons in Uganda as well as their lived realities in relation to their communities and the law. Through these reports, HRAPF and partners intend to highlight the realities of LGBT persons in Uganda, the violations that they face on the basis of their sexual orientation and gender identity and the duty of the state to protect them from those violations.

The report provides evidence of the violations of the rights of LGBT persons in Uganda and the gaps that still have to be addressed in order to enable the realisation of the full and equal dignity of LGBT persons in Uganda. It is hoped that the report will provide evidence for advocacy efforts geared towards legal and policy reform in favour of Uganda's sexual and gender minorities.

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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 society
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
FARUG:	Freedom and Roam Uganda
HRAPF:	Human Rights Awareness and Promotion Forum
IBU:	Ice Breakers Uganda
LGBT:	Lesbian, gay, bisexual, transgender
MARPI:	Most At Risk Populations Initiative
RMU:	Rainbow Mirrors Uganda
SMUG:	Sexual Minorities Uganda
SOGI:	Sexual Orientation and Gender Identity
TNU:	Tranz Network Uganda
UHRC:	Uganda Human Rights Commission
UPF:	Uganda Police Force
VCT:	Voluntary Counselling and Testing

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EXECUTIVE SUMMARY

Introduction

The Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity, 2018, examines the events of the year 2017 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 2017. 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.

Key Findings

1. A total of 74 violations arising out of 45 verified cases were recorded in 2017. This is a drastic decrease in the number of violations recorded in 2016 which were 171 arising out of 91 cases.
2. The trend of non-state actors perpetuating more violations than state actors continued this year with non-state actors being responsible for 45 violations out of the 74 recorded, accounting for 60.8% of all violations.
3. The Uganda Police Force accounted for 26 of the violations verified in that year, representing 35.1% of all violations reported.
4. The most violated right was the right to liberty. The state occasioned 15 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 four different social events for LGBT people throughout the year.
6. The Office of the Prime Minister also joined the ranks of state actors violating the rights of LGBT persons in Uganda by denying an applicant refugee status purely on the basis of his sexual orientation.
7. The current NGO Regulatory regime has continued to threaten the right to freedom of assembly and association, which threatens LGBT organising across the country, and could potentially lead to more human rights violations.

Key Recommendations

1. To the Uganda Police Force

- The Directorate of Human Rights and Legal Services of the Uganda Police Force should continue to train officers and all men of the force about the ultimate duty to protect the rights of all persons, including homosexuals and all suspects brought before them in execution of their duties.
- Strengthen human rights violations redress mechanisms within the Police to make them more effective, instead of simply transferring officers that have been reported as having violated the rights of civilians to other stations
- The Police Professional Standards Unit should deal more decisively and more speedily with police officers who violate the rights of all persons in order to curb the impunity with which some police officers have continued to violate the rights of LGBT persons.

2. To the Office of the Director of Public Prosecutions

- Train state prosecutors and state attorneys who work with the Police in identifying and sanctioning charges against suspects to recognise fully the limits of the law and relevant evidence required before sanctioning baseless charges, especially those premised on the 'idle and disorderly' and 'rogue and vagabond' as well as unnatural offences sections of the Penal Code Act

3. To the Parliament of Uganda

- Repeal laws creating the offence of having carnal knowledge against the order of nature, which makes every

LGBT person an 'unapprehended felon', and is therefore discriminative on that ground

- Repeal the sections of the law creating the offences of being idle and disorderly and being a rogue and vagabond, which are very discriminative on grounds of social class, and which also give rise to various violations of the rights and dignity of marginalised persons in Uganda through their arbitrary enforcement

4. To the Uganda Law Reform Commission

- Develop a proposal for a constitutionally compliant alternative to the vagrancy laws that will protect the rights of all persons in Uganda
- Suggest an amendment of the Penal Code Act to repeal the sections of the Penal Code Act that criminalise consensual sexual relations between adults

5. To the Uganda Human Rights Commission

- The UHRC should demand for accountability from the state for all human rights violations reported, especially those that go unaddressed.
- Hear and dispose of the various cases involving violations of the rights of LGBT persons in Uganda, which have been pending before the Commission's Complaints and Investigations Directorate as far back as 2016
- Propose amendments of laws that are discriminatory and those which encourage the violation of the rights of LGBT persons in Uganda

6. To the Equal Opportunities Commission

- Investigate systemic stigma and discrimination of individuals based on their sexual orientation or gender identity

7. To Civil Society Organisations

- Reach out to members of the LGBT community to discourage actions of blackmail and extortion against fellow community members, which greatly undermine advocacy efforts for the rights of LGBT persons generally
- Hold awareness sessions with members of the general community to ensure that there is widespread acceptance of the basic concepts of human rights and of their general applicability to LGBT persons in Uganda
- Support the families of LGBT persons to help them understand and appreciate the lived realities of their family members and their emotional, psychosocial and physical needs
- Build capacity of staff in documentation of violations based on gender identity and sexual orientation, and actively use these documents in advocacy for the legal recognition of the rights of LGBTI persons

8. To the Media

- Treat all people with respect and dignity, regardless of gender identity, or sexual orientation
- Learn about, monitor, and report on abuses of human rights and dignity that LGBT Ugandans face

9. To the Ministry of Health

- Continue to support MARPI in the training of healthcare service providers on sexual orientation and gender identity to enable provision of discrimination free health services for everyone including LGBT persons.
- Reinstate public health indicators for transgender people and MSM in the national Health Information Management System in order to encourage deliberate and systematic planning for their health needs

10. To the International Community

- Call on the government of Uganda to live up to its international human rights standards by protecting the rights of all persons including LGBT persons
- Sensitise Ugandan leaders on LGBT issues domestically and abroad and influence the adoption of non-discriminatory legislation against LGBT persons

11. To the President of the Republic of Uganda

- Clarify the portfolio of the Minister of Ethics and Integrity and castigate the office holder for actions that violate the rights of LGBT persons in Uganda
- Cause the Office of the Prime Minister to issue clear guidelines on non-discrimination in the handling of issues of refugees and asylum seekers to protect already vulnerable persons from further marginalisation

I. INTRODUCTION

The Uganda Report of Human Rights Violations based on Sexual Orientation and Gender Identity is an annual publication that seeks to examine the situation of LGBT persons in Uganda in regards to the protection, and violation, of their rights, and how this is affected by the prevailing laws and policies and society attitudes. This report is produced under the auspices of a loose Consortium on Monitoring and Documenting Violations based on Sexual Orientation and Gender Identity, made up of LGBT- service organisations.

This year's report examines events in the year 2017 from the perspective of a human rights advocacy organisation. It seeks to analyse the human rights situation of LGBT persons in Uganda during the year 2017, to examine the changes in the legal and policy environment and their impact on the social attitudes as well as respect for the rights and dignity of real or presumed LGBT persons and how these developments influenced the responses of duty bearers to reported violations of the rights of LGBT persons during the year under scrutiny.

There were a number of violations reported that year, as this report highlights, and once again the greatest number of violations stemmed from actions that violated the rights of suspected or real LGBT persons to liberty as well as the right to freedom from torture, cruel, inhumane and degrading treatment or punishment. These violations were perpetrated by both state and non-state actors, with the worrying trend that members of the LGBT community have taken to violating the privacy and dignity of their fellows, as well as threatening their lives, for monetary gain.

This report provides an insight into the events that stood out in the year 2017 which influenced protection for and violation of the rights of LGBT persons in Uganda, the likely implications of those events and their

proximate impact on the human rights situation for LGBT persons in Uganda and also makes recommendations to various duty bearers for the fulfilment of the rights of LGBT persons in Uganda.

I.1. Methodology

This report was compiled using quantitative data of the number of cases involving human rights violations that were reported to HRAPF and its partners during the year under review, as well as qualitative data on the nature and severity of the violations, the perpetrators of these violations, the factors that form the basis for these violations and the steps taken by both duty bearers and civil society actors working with the LGBT community to address these violations.

As such, data was collected through the physical review of case files for all the contributing organisations to ascertain the numbers and nature of the human rights violations reported, after which these violations were independently verified to ensure objectivity and veracity of this report. Only those cases involving human rights violations that could be independently verified form part of this report.

Reviewing case files

In compiling this report, all the physical files for all the cases reported and handled at HRAPF for the year 2017 were thoroughly reviewed to sort out cases in which human rights violations were reported. These cases were examined to ascertain the nature and numbers of human rights violations reported, as well as the basis of these violations, in order to sort out only those cases in which the violations were based exclusively or at least in part on the victims' sexual orientation or gender identity. The data that was collected from HRAPF's partners was

also subjected to the same scrutiny to ensure a uniform reporting standard for all the cases that are included in this report.

Documentary evidence

Once it had been established on the face of the facts of each case that a human rights violation occurred, a review of any documentary or other evidence on file verifying the violation was also done. This evidence usually consists of the Police bond forms, the Police Form 3 (medical examination forms for victims of violence), photographic evidence and witness statements attesting to the facts constituting the violation as alleged, etc. Most cases were considered verified at this point if there was valid documentation evidencing the violation on file.

Interviews with clients, witnesses and officers who handled the cases

In some cases, it became hard to verify alleged violations due to lack of proper documentation, and in such instances, the cases were verified by re-interviewing the clients/victims in the cases, the paralegals who referred the cases or the case officers who handled the cases. This was done in cases where the facts were unclear or improperly documented. Sometimes, the officers at the organisations who handled a specific case may be interviewed, especially if a case was for instance reported in the media or was otherwise sensationalised for whatever reason, making it easy for the officer to remember the matter.

1.2. Limitations

In the compilation of this report, there were a few challenges encountered that limit the applicability of the data presented in this report.

- i. Coverage: This report seeks to examine the human rights situation for LGBT persons nationally. However, there is still a

dearth of organisations working with LGBT persons in rural areas, particularly those in upcountry regions. As a result, violations of the rights of LGBT persons on the basis of their real or presumed sexual orientation or gender identity in those regions are rarely reported, and are therefore to a large extent excluded from this report.

- ii. Documentation: There is still a big challenge of lack of proper documentation in most organisations working with LGBT persons in Uganda. In a number of cases examined for this report, there was insufficient documentation to enable verification of the case itself, let alone the human rights violations disclosed by the facts of the case. There is still need to orient paralegals and leaders of organisations working with LGBT persons in Uganda on documenting human rights violations to ensure that all violations monitored and documented can be reported on and addressed by the relevant duty bearers.
- iii. Recognising a human rights violation: Another challenge that arose during the process of compiling this report was the limited capacity of persons handling cases involving human rights violations based on sexual orientation and gender identity to recognise them as such. This manifested in documentation of routine law enforcement actions as human rights violations, and conversely, failure to document actual human rights violations because the officer responsible simply did not recognise a specific fact/ set of facts as constituting a human rights violation. It is necessary to continue to demystify human rights and their normative content especially with persons charged with responding to complaints from LGBT persons and monitoring, documenting and reporting human rights violations in the relevant organisations.

2. HOMOPHOBIA, SOCIETAL ATTITUDES AND THE PROTECTION OF LGBT RIGHTS IN UGANDA: EXAMINING THE LEGAL, POLICY AND SOCIAL DEVELOPMENTS THAT INFLUENCED PROTECTION FOR AND VIOLATION OF THE RIGHTS OF LGBT PERSONS IN 2017

During the year 2017, a number of events occurred that impacted on the general human rights situation for LGBT persons in Uganda. These events were, in some cases, violations in and of themselves, but they also negatively impacted on society's perception of individual rights and freedoms and the willingness of law enforcers to protect the rights of LGBT persons in Uganda. Whereas most of it is innately socialised behaviours and attitudes by Ugandans in general, some of the homophobia and transphobia was and is being fuelled by specific actions of various state actors as well as the press. On the other hand, some events occurred that positively impacted on the rights of LGBT persons during the year 2017. The key events that stood out in contributing to the protection and violation of the rights of LGBT persons in Uganda are discussed below.

2.1. Developments in the legal and policy environment

The coming into force of the NGO Regulations¹

When the NGO Act of 2016 was enacted with draconian repressive provisions that threaten the existence of NGOs, particularly those working with groups considered to be socially unacceptable, despite efforts by the wider civil society movement to have the Bill modified,² it was thought that perhaps some of the worse provisions in the Act, particularly in relation to registration and licensing of NGOs as well as the special obligations of NGOs, would be modified by the regulations to make the regime more conducive for NGO work.

This was however not the case at all. The Regulations provided for onerous requirements for NGOs wanting to secure a permit to operate in Uganda, including receiving approval from the District NGO Board and the local Government of the district in which the NGO's headquarters are to be based, as well as other permits and licences, eight in total, all of which must be applied for (upon payment of a fee), from different entities.³ Further conditions such as requirements as to renewal of licences

¹ The NGO Regulations, 2017 (Enacted on May 5th, 2017 by the Minister of Internal Affairs).

² The Uganda National NGO Forum, 'Towards a facilitative NGO operating environment updates on the NGO Regulations Process' http://cisudk.org/Files/Filer/CISU/Landeprofiler/Uganda/NGO%20Regulations%20Process_Update%20Note.pdf.

³ See discussion of this in Human Rights Awareness and Promotion Forum *Uganda's NGO regulation regime: Implications for organisations working on marginalised peoples' rights*, HRAPF (2017).

on an annual basis, the wide vaguely defined discretionary powers of the Board to deregister or refuse to renew the licence of an NGO that did not adhere to its special obligations,⁴ the requirements to disclose sources and purpose of funding, etc. all have continued to threaten civic space for organisations working with an issue as unpopular as LGBT rights in Uganda, particularly given the numerous levels of approval required for registration, all of which involve a high degree of discretion on the part of the approving authorities who are highly likely to be homophobic.⁵

Continued impunity by the Minister of Ethics and Integrity

Ever since judgment in *Kasha Jacqueline Nabageesera, Frank Mugisha, Julian Onziema and Geoffrey Ogwaro v Hon Simon Lokodo and Attorney General*⁶ was delivered in June of 2014, there has been a definite steady increase in the impunity with which the Ministry of Ethics and Integrity infringes upon the right of LGBT persons to freedom of expression, association and assembly. In that case, the judge upheld the actions of the Minister of State for Ethics and Integrity, Hon. Simon Lokodo in closing

down an LGBT skills training workshop on the basis that it was an illegal activity since section 145 of the Penal Code criminalises same sex relations. In his judgment in that case, Justice Musota emphasised that homosexuals could not claim to have their rights infringed because they were involved in activities that were criminalised under the laws of Uganda. The judge relied heavily on the principle of criminal law that where an act is prohibited, so are all acts which directly or indirectly assist or encourage the commission of that act, including conspiracy and incitement to commit crime in sections 21, 390 and 391 of the Penal Code Act.⁷

This judgment can essentially be interpreted to mean that anything done in pursuance of the realisation of the rights of LGBT rights in Uganda, including advocacy for legal reform, provision of health services, provision of legal aid services to LGBT persons and even advocating for the protection of their rights could all be considered as illegal acts for the promotion of homosexuality.⁸ This went directly against the decision of the court in the case of *Kasha Jacqueline Nabageesera, David Kato Kisuule and Patience Onziema v The Rollingstone Newspaper and Giles Muhame*,⁹ with the court going so far as to criticise that

⁴ Section 44 of the NGO Act imposes special obligations on all NGOs not to engage in any acts that are prejudicial to the dignity and interests of Ugandans, although this is not defined by the Act and so it is unclear what this kind of action might entail. See for example, Uganda: Museveni's assent to NGO Act will cost us all, *The Observer*, 26 February 2016 <http://allafrica.com/stories/201602260831.html> (accessed 15 September 2018).

⁵ According to the Pew Research Centre, 96% of all Ugandans disapprove of homosexuality. See discussion in Human Rights Campaign (HRC), Global Spotlight, LGBT Uganda Today: Continuing danger despite nullification of Anti-Homosexuality Act, September 2015 http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/Global_Spotlight_Uganda__designed_version__September_25__2015.pdf (accessed 15 September 2018).

⁶ Miscellaneous cause no. 32 of 012. Judgment in this case was delivered on June 24th 2014 by Justice Stephen Musota.

⁷ Above.

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

⁹ Miscellaneous Cause No. 163 of 2010.

judgment for the emphasis placed on the fact that the legal position of the law in Uganda is that only very specific acts associated with homosexuality are criminalised, and not the identity of being gay or transgender in Uganda. This judgment has also been understood as barring homosexuals from claiming their rights were being infringed since they were involved in illegal activities like 'distributing same sex literature and encouraging homosexuals to have self-esteem and confidence about their sexual preference'.¹⁰ It in essence extended the prohibition of having carnal knowledge against the order of nature to also cover advocacy for LGBT rights, human rights and health education and skills empowerment for LGBT people in Uganda.

The case was also a personal victory and vindication of the actions of Hon. Lokodo. This explains why, since 2014, the Minister has personally been involved in stopping events organised by or for LGBT persons in Uganda. For 2017, the Minister on 16th of August 2017, directed the Sheraton Hotel in Kampala not to host the Pride 2017 gala.¹¹ On 8th December 2017, he went to the offices of Chapter Four Uganda where additional celebrations for the Pride Gala were being held and threatened to close the event.¹² On the same day, he ordered the Police to stop the 2017 Queer Kampala International Film Festival. This continued interference is being viewed on his own part as legitimate and necessary for the protection of the morality of Uganda and the eradication of the 'evil' of

homosexuality, which he says is worse than child rape.¹³

The arrest and detention of Dr. Stella Nyanzi

Another development in the law that reflected on the right of LGBT persons and the general public at large to freedom of expression was the arrest and on-going prosecution of Dr Stella Nyanzi under the Computer Misuse Act for criticism against the President and his wife through her social media page. In March of 2017, Dr Stella Nyanzi, a vocal activist for a wide array of issues, including LGBT rights, was arrested due to statements she made through her Facebook account which were considered insulting to the person of the President and his wife. She was later charged with cyber harassment and detained at Luzira prison for more than a month before being released on bail. Whereas this had no direct link to the rights of LGBT persons in Uganda, it speaks to the narrowing space for the freedom of expression in Uganda. Having Dr Stella Nyanzi charged with cyber harassment because she expressed a contrary opinion on the governance of the country points to a trend of increasingly reducing freedom of expression in Uganda, which restriction has increasingly been visited on LGBT persons in Uganda during the past year. Also as a person who publicly supports LGBT rights, her arrest and prosecution was a stark warning to LGBT activists, especially those that are active on social media, that they could easily be arrested

¹⁰ 'High Court dismisses homosexuals' case against Fr. Lokodo' <https://ugandaradionetwork.com/story/high-court-dismisses-homosexuals-case-against-fr-lokodo> (accessed September 10 2018).

¹¹ S Okiror 'No gay promotion can be allowed': Uganda cancels pride events' 21 August 2017. <https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt> (accessed 14 April 2018).

¹² Interview with Nicholas Opiyo, 19 March 2018, Kampala.

¹³ 'Ugandan Reverend Simon Lokodo: Child rape better than homosexuality (video)' <https://www.ibtimes.co.uk/ugandan-reverend-simon-lokodo-child-rape-better-homosexuality-video-1437976> (accessed September 10 2018).

and charged under the same law. Indeed this has happened before.¹⁴

2.2. Incidents arising out of social events that violated the rights of LGBT persons

There are some social events which, although not necessarily violations in and of themselves or which, even where they constitute human rights violations, would have had little impact in the development of the legal and policy framework, but they so hugely affect the societal perception of LGBT persons that they influence levels of homophobia and transphobia directly. This is because such events indirectly communicate that homophobia is acceptable to the general public. These incidents legitimise hate crimes against LGBT persons in Uganda, particularly when they seem to have been supported by the authorities. In the year 2017, two such incidents occurred, both occasioned by the Honourable Minister of Ethics and Integrity.

The stopping of the Queer Kampala International Film Festival¹⁵

In the month of April, the Queer Kampala International Film Festival was organised by a group of leaders in the LGBT community. It was meant to be a networking event for the members of the LGBT community as well as a celebration of film, art and culture that

recognises LGBT identities. A number of films and documentaries were slotted to be shown during the three-day event, and the organising committee had also set up a side event for the Human Rights Tattoo Project¹⁶ as part of the drive to raise human rights awareness, and particularly of the UDHR, all over the world by tattooing the document on different persons across the globe to create a 'human rights chain'.

The first night of the event went off without a hitch, but the next day, during the Human Rights Tattoo project¹⁷ event, a number of police officers showed up at the venue of the event claiming that they had been notified of insecurity in the area and had come to check it out. They asked various questions about the event itself and the motives of the organisers, although they did not arrest anyone.

Lawyers from Chapter 4 and HRAPF intervened and tried to find out from the Police what sort of insecurity they had been told to expect, although this was not clearly answered. The crowd which had gathered was forced to disperse, however, even though the Police did not find any threats to security at the scene. No one was arrested, but the LGBT community, was prohibited from enjoying the event and from associating with one another on the ground that the Police considered their sexual orientation and gender identity a security threat.

¹⁴ For details on how the Computer Misuse Act has affected LGBT persons, see Patricia Kimera 'Provisions of the Computer Misuse Act and how they violate constitutionally protected rights of LGBT persons in Uganda' in Human Rights Awareness and Promotion Forum (HRAPF) 'The Computer Misuse Act, 2011: Yet another legal fetter to the basic rights and freedoms of marginalised persons' The Human Rights Advocate, Fourth Issue, 2017, 35.

¹⁵ HRAPF/VR-18/022, HRAPF Records (2017).

¹⁶ This is a project by Sander van Bussel of Visual art collective Tilburg CowBoys, and Festival Mundial, where the purpose is to tattoo one of 6773 characters from the Universal Declaration of Human Rights on 6773 individuals across the world, to raise awareness among all peoples of their rights and the obligations to fight for and protect these rights. See <http://www.humanrightstattoo.org/about/>.

¹⁷ 'Uganda: The Police raid queer Kampala film festival' <https://www.hrw.org/news/2017/12/15/uganda-police-raid-queer-kampala-film-festival> (accessed September 10 2018).

The 2017 Pride Celebrations

Each year, the LGBT community all over the world celebrates a week, in August or in July, to mark the existence and celebration of the LGBT identities and, in places where the rights of LGBT persons are violated, protest the discriminatory laws and the wanton violation of the rights of LGBT people. In 2017, the organising committee of the Pride Week's activities had arranged for a series of activities, for which they had even sought and obtained the Police authorisation. However, about two weeks before the event, the Minister of Ethics and Integrity, Hon. Simon Lokodo called different leaders in the LGBT community and threatened to have them arrested if they even thought of attending or holding any pride celebrations at all. The event was stopped. This was an attack on the right to freedom of expression, association and assembly such as Hon. Lokodo has become accustomed to orchestrating,¹⁸ especially emboldened by the judgment in the case of *Jacqueline Kasha Nabageesera & Others v Hon. Lokodo & the Attorney General*.¹⁹

2.3. Increased engagements with the Police

For three years now, HRAPF has been actively engaged in training police officers to enable them understand the limits of the laws that they enforce, to appreciate their duty to protect the human rights of all persons and to reduce the violations occasioned by them against real and presumed members of the LGBT community. In the year 2017, a total of 4 trainings reaching out to 134 police officers across the country were conducted by HRAPF²⁰ with the support of the Uganda Human Rights Commission and the Directorate of Human Rights and Legal Services in the Uganda Police Force. Other partners such as Transgender Equality Uganda (TEU) and Sexual Minorities Uganda (SMUG) have also been engaged in different modes of training police officers across the board to protect the rights of LGBT persons. This in part accounts for the reduced number of violations of human rights based on sexual orientation and gender identity that were occasioned by the Police in the year 2017.²¹

¹⁸ Frank Mugisha, Pride Uganda has been crushed. Please don't look away <https://www.theguardian.com/commentisfree/2017/aug/21/lgbt-ugandans-pride-uganda> (accessed October 4 2018).

¹⁹ n 6 above.

²⁰ Human Rights Awareness and Promotion Forum, *2017 Annual report* (2017).

²¹ For comparison, in the year 2016, there were 183 verified violations arising out of 57 cases. This is more than half the verified incidents in 2017.

3. PROTECTION OF PERSONS REGARDLESS OF THEIR REAL OR PRESUMED SEXUAL ORIENTATION OR GENDER IDENTITY IN 2017

There have been isolated pockets of improvement in the human rights situation for LGBT persons who come into contact with the law. This is partly attributed to the increased engagement with police officers all over the country. HRAPF was able to register, during the year 2017, a number of incidents where the rights of LGBT persons were protected by the Police officers. As such, in recognition of the record of some police officers in protecting the rights of LGBT persons, HRAPF recognised ASP Philemon Ameru, then the Officer in Charge of Katwe Police Station, with an award presented to him at the organisation's 8th Annual General Meeting.

One such incident occurred in a case referenced as HRAPF/VR-18/020, where a young man was set on fire by random persons he met at a bar and was rescued by the Police, who took him to Mulago National Referral Hospital. In another case, a young man sold his laptop to someone, who apparently retrieved deleted data relating to the vendor's sexual orientation, and started demanding for money from him with threats of reporting him to the Police. The person went so far as to photo-shop a Police WANTED notice with the face of the person, threatening him with imminent arrest. When the Police were informed of this, they actively tracked down the blackmailer, arrested him and charged him with demanding for money by threats and with impersonation.

In addition to the specific incidents of protection of the rights of LGBT persons by the Police, 2017 witnessed a drop in the number of violations reported to HRAPF and partners by the LGBT community. A total of 74 violations arising out of 45 verified cases were recorded in 2017, as opposed to 2016 where a total of 183 human rights violations were recorded as having been verified, indicating that there has been a drastic reduction in the number of verifiable human rights violations from the year 2016 to 2017. As a matter of fact, two of the organisations that contributed to this report had not recorded any violations against LGBT persons for the entire year, despite the fact that there had been some arrests.²² This points to a big decline in the violations of the rights of LGBT persons generally in the year 2017, a positive development. This reduction in the number of violations is not by accident but by deliberate actions taken by civil society organisations, the Uganda Police Force, particularly through the Directorate of Human Rights and Legal Services, and the Uganda Human Rights Commission, which have collaborated to undertake training of police officers on the rights of LGBT persons.²³

²² Interview with Hajati Abdul Isanga, Executive Director, Rainbow Mirrors Uganda on 23rd July 2018 at the RMU Secretariat; Interview with Williams Apako, Executive Director, Tranz Network Uganda on 23rd July 2018 at the TNU Secretariat.

²³ 'Police organise workshop on how to protect gays' Daily Monitor 15 November 2017. Activists have also continued to drag errant police officers before the Professional Standards Unit.

4. VIOLATIONS OF HUMAN RIGHTS BASED ON REAL OR PRESUMED SEXUAL ORIENTATION AND GENDER IDENTITY IN 2017

As already discussed above, human rights violations against real and presumed LGBT persons were throughout the year 2017 perpetrated by a number of organs/ entities, both state and non-state. The violations were also categorised according to the rights violated. This section considers the different human rights violations based on the rights violated and the perpetrators of the violations.

The 1995 Constitution of the Republic of Uganda (as amended) provides in Article 20(2) that rights and freedoms of the individual and groups enshrined in Chapter 4 shall be respected, upheld and promoted by all organs and agencies of Government and by all persons. This article of the Constitution imposes a negative duty on all persons and all organs of government to refrain from interfering with the lawful exercise of rights of others and from infringing on those rights. However, it also imposes a positive obligation, particularly on the state, to promote the fundamental rights of all persons in the country. This duty to promote universal respect for and observance of human rights of all persons is imposed on states at international law.²⁴ As such, both individuals and state actors can occasion violations of human rights.

4.1 Violations by state actors

The state actors that stood out in the year 2017 for violating the rights of LGBT persons were the Uganda Police Force, Local Government authorities, the Minister of Ethics and Integrity and the Office of the Prime Minister. A total of 29 violations of human

rights arising from the actions of state actors were visited upon LGBT persons, accounting for 39.18% of all violations suffered in that year.

A. The Uganda Police Force

The Uganda Police Force were once again the biggest violators of the rights of LGBT persons in Uganda for the year 2017, although there were much fewer violations perpetrated by the Police in that year than in any of the previous years. This high propensity to violate the rights of LGBT persons is easily explained by the fact that the Police often interfaces more with LGBT persons, especially when they come into conflict with the law, and the limited levels of knowledge and understanding of LGBT issues among the members of the Police force. Nevertheless, there has been a tremendous improvement in the Police record with regards to the protection of the rights of LGBT persons. In the year 2017, the Police force accounted for 26 of the violations verified in that year, representing 35.1% of all violations reported. This was a reduction from 64 violations in 2016. Of these, three were violations of the right to equality and freedom from discrimination, fifteen were violations of the right to liberty, two were violations of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment, two were violations of the right to privacy and four were violations of the right to freedom of expression, movement, association and assembly.

²⁴ The Preamble to the International Covenant on Civil and Political Rights; The Charter of the United Nations; Article 6(d) of the Treaty for the Establishment of the East African Community.

Violations of the right to equality and freedom from discrimination

The right to equality and freedom from discrimination is provided for under Article 21 of the Constitution,²⁵ which guarantees every person equality before and under the law, and equal protection of the law. Nevertheless, a number of LGBT persons can only dream of this right as the discrimination arising from the prevailing homophobia in the country permeates every sphere of their lives, preventing them from living like other members of the community.

Three violations of the right to freedom from discrimination were visited upon LGBT persons by officers of the Uganda Police Force. One of these happened in a case referenced as HRAPF/VR-18/ 001, in which a gay man reported a case of theft to the Police but, after the Police found out that he was a homosexual, they simply watched as he was subjected to a forced HIV test by the Town Clerk and then went ahead to deny him protection of the law by refusing to investigate the complaint he had recorded.

In another incident, a young man was arrested and detained by the Police and charged with being a 'security threat' – a non-existent offence. The basis of this arrest was that the Police had come to suspect that he was a homosexual.²⁶ This arrest was irregular because it was arbitrary but also because it was discriminative in the sense that the person was arrested purely because the

Police objected to his sexuality, which would not have been the basis for the arrest of any other person.

The third incident involved a report by a gay man against his ex-partner who was extorting him for money.²⁷ When he reported the case to the Police, the suspect was arrested and his statement taken, and the client was then called back to make an additional statement, upon which he was arrested and the other person released. This is because the other person had recorded a statement indicating that the client is a homosexual. He was charged with homosexuality, which charge was later dismissed, but his own complaint was never investigated or followed up, denying him protection of the law.

Violations of the right to liberty

This right is guaranteed under Article 23 of the Constitution of the Republic of Uganda, which protects all persons from arbitrary arrests and prolonged detentions. The article has inbuilt safeguards of the liberty of individuals, which are meant to protect the liberty of those whose liberty must necessarily be limited by the state in pursuance of a court order or for purposes of producing them before a court of law. These safeguards, recognised at international law²⁸ as well as national level, include the right to freedom from arbitrary arrest,²⁹ freedom from prolonged detention without trial,³⁰ the right

²⁵ The 1995 Constitution of the Republic of Uganda (as amended).

²⁶ HRAPF/VR-18/010, HRAPF Records.

²⁷ HRAPF/VR-18/003, HRAPF Records.

²⁸ The International Covenant on Civil and Political Rights, ratified by Uganda on the 21st of June 1995, protects all persons from arbitrary arrests and detention and also provides for due process in limiting the rights to liberty.

²⁹ Article 23(1) of the Constitution of Uganda (as amended) lays down the circumstances under which an arrest or detention can be considered to be lawful. See also Article 9(1) of the ICCPR.

³⁰ Article 23(4)(b) of the Constitution of the Republic of Uganda; Article 9(3) of the ICCPR.

to consult a lawyer of one's choice,³¹ the right against self-incrimination,³² the presumption of innocence³³ and the principle of legality.³⁴

The right to liberty for LGBT persons in Uganda is a fragile thing however, for they are often subjected to arbitrary arrests and prolonged periods in the Police detention before being taken to court to face trial. In the year 2017, the state occasioned 15 violations of the right to liberty, all of which were perpetrated by the Uganda Police Force. The actions that resulted in violations of the right to liberty for LGBT persons in the year 2017 violated various constitutional guarantees of liberty as indicated below:

Freedom from arbitrary arrests

Article 23(1) of the Constitution of Uganda provides for 9 different circumstances under which a person can be lawfully detained/deprived of their liberty. These circumstances are clearly set out in order to ensure that there is no arbitrariness in any arrest by requiring that all arrests be justified under any of the specified grounds in Article 23(1)(a) to Article 23(1)(g), or at least authorised by some other law as provided for under Article 23(1)(g). 9 incidents involving arbitrary arrests of suspected LGBT persons were recorded in 2017.

One case that stands out particularly involved the arrest of the leader of an organisation following a Voluntary Counselling and Testing (VCT) exercise at the organisation's premises with LGBT persons. The Police raided the office premises a day after the event and arrested her, charging her with 'promotion of homosexuality'.³⁵ The arrest, based entirely on an offence that does not exist under the laws of Uganda, was an arbitrary arrest without basis in any reasonable suspicion that a crime had been/ was being committed, which was a violation of the right to liberty. No charges were brought against him. Such cases are common where the police continuously charges persons with offences related to having carnal knowledge against the order of nature, such as 'homosexuality', 'sodomy', 'promotion of homosexuality', etc. all of which are nonexistent at law and therefore cannot form the basis for a lawful arrest.³⁶

In a similar incident, a man was arrested on allegations of 'attempted sodomy'³⁷ although he was released later upon HRAPF intervention.

In another incident, a gay man was badly beaten by a mob, who attempted to lynch him and a friend of his upon suspicions that they were practicing homosexuality. When the Police arrived at the scene however, they instead arrested him and his friend, and charged them with having carnal knowledge

³¹ Article 23(3) of the Constitution of Uganda; Article 14(3)(d) of the ICCPR.

³² Article 14(3)(g) of the ICCPR.

³³ Article 28(3)(a) of the Constitution of Uganda provides that every person charged with a criminal offence shall be presumed innocent until proven guilty, or until they plead guilty. This is one of the fundamental guarantees of the right to a fair trial, which is non-derogable under any and all circumstances (Article 44(c)). See also Article 14(2) of the ICCPR.

³⁴ Article 28(12) of the Constitution of Uganda protects all persons from being tried for any offences which are not specifically defined at law.

³⁵ HRAPF/VR-18/005.

³⁶ See n 26 and 35 above. See also HRAPF/VR-18/010 (in which case the client was arrested and charged with being a 'security threat') all in HRAPF details.

³⁷ HRAPF/VR-18/002.

against the order of nature basing merely on the suspicions of the crowd of onlookers who had tried to lynch them. This case was later dismissed from court for want of prosecution.³⁸

In another case at Namakwekwe Police Post, two men were arrested because, according to the Officer in Charge (O/C) of the Post, they had always been suspected of being homosexuals.³⁹ On the basis of this suspicion, they were subjected to an anal exam and, when no useful evidence was found, they were released after being 'counselled' to change their 'evil ways' by the O/C. The arrest on suspicion of something that is not a criminal offence was arbitrary in as far as it fails to meet the constitutional standard of reasonable suspicion that a crime under the laws of Uganda had been committed.⁴⁰

Similarly, in the incident involving the arrest of a man on the report of an ex-partner who had been extorting him for money, a gay man was arrested and charged with homosexuality.⁴¹ The client had tried to report this case to the Police and, when he was called back to make a statement, he was arrested and charged with homosexuality on the basis of the report of the person he had lodged a complaint against. This was an arbitrary arrest because the charge was based on something that does not constitute a criminal offence at all, and also a violation of his right to equal protection of the law because his complaint was never investigated at all, after the allegations of homosexuality had been made.

Freedom from prolonged detention

Another commonly violated guarantee of the right to liberty is the right to freedom from prolonged detention as protected under Article 23(3) of the Constitution. A number of times, the Police arrest and detain suspected LGBT persons merely on the suspicion that they are homosexuals. They then impose a holding charge, or a charge upon an offence that does not exist, and force the detainee to wait for days beyond the constitutionally mandated 48 hours for a state attorney to peruse the case file and advise that there is no case. In the event that HRAPF or another legal aid service provider does not hear about the case in time, the person detained can spend as long as a week in the Police custody.

4 such incidents were reported and verified in 2017. In one of those cases,⁴² a man was set up by a sexual partner who invited the Police to their proposed meeting and had him arrested. He was charged with having carnal knowledge against the order of nature and detained from the 27th of July to the 31st of July, when he was finally produced in court. In a similar incident, the client was arrested from the grounds of the LDC Magistrates Court, where he was offering legal advice as a paralegal to some members of the LGBT community, on 7th June 2017. He was briefly detained at Katwe Police Station, then later driven to Sembabule Police Station where he was detained until the 12th of June 2017.⁴³ The paralegal claimed that he had been threatened before by officers from Katwe Police Station

³⁸ HRAPF/VR-18/017.

³⁹ Upon inquiry of the charges against our clients, the OC of the Station informed the HRAPF lawyer that the clients were arrested for suspected homosexuality in this case, referenced as HRAPF/VR-18/019.

⁴⁰ Article 23(1)(c), Article 28 (7) and Article 28 (12) of the 1995 Constitution of the Republic of Uganda (as amended).

⁴¹ n 27 above.

⁴² HRAPF/VR-18/011 (HRAPF records).

⁴³ HRAPF/VR-18/033 (HRAPF Records).

and smaller stations/ posts within the division due to his work as a paralegal working with marginalised communities. Not only was his arrest arbitrary, the detention was also irregular because of where he was held as opposed to where he was arrested and detained for an unduly prolonged time since he spent nearly a week in the Police custody without ever being taken to court.

One extreme example of such abuses is a case where a transwoman was arrested on the charge of obtaining money by false pretences and detained at Kabalagala Police Station from the 8th of May 2017 to the 23rd of May 2018.⁴⁴ For more than a fortnight, the client was forced to remain in the Police custody without being produced in court, even after HRAPF intervened. She was only released after HRAPF appealed to the Professional Standards Unit to intervene in the matter.

Cases of the Police abusing their powers to arbitrarily arrest suspected LGBT persons and detain them for long periods of time by setting unreasonable conditions, such as the suspect apologising and repenting of the 'offensive' behaviour, are still disturbingly common even in the current era of the UPF trying to follow the Human Rights Based Approach to policing. Due to their work as the primary law enforcement agency in the country, the Police is forced to have far more interaction with members of the LGBT community who find themselves in conflict with the law, and they unfortunately sometimes abuse that due to their personal biases, using their power and authority as police officers to force LGBT

persons to 'repent' of being homosexuals, and to 'reform'.⁴⁵

The right to dignity and freedom from torture and cruel, inhumane and degrading treatment or punishment

This right is enshrined under Article 24 of the Constitution. By virtue of Article 44(a) of the Constitution, it is also one of the rights that cannot be derogated from under any circumstances. This right is further protected under the Prevention and Prohibition of Torture Act⁴⁶ and the Convention against Torture.⁴⁷ These various provisions guarantee the dignity of the person and protect individuals against treatment amounting to 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 or private capacity.

However, the innate stigma attaching to the LGBT identity in Uganda permeates even the Police operations, fueling violations of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment even within the Police force.

In 2017, one case involving a violation of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment was registered and verified. The case involved a young man who was

⁴⁴ HRAPF/VR-18/035.

⁴⁵ For instance, in case number HRAPF/VR-18/019, the OC of the Police post where the clients had been detained informed the HRAPF lawyers that they simply wanted the young men to 'repent' and turn away from their 'sinful habits', and that the arrest was meant to help 'rehabilitate' them (Case in HRAPF Records).

⁴⁶ Act No. 3 of 2012, Laws of Uganda.

⁴⁷ UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, *Treaty Series*, vol. 1465, p. 85.

lured to meet another man he had come to know through social media, but when he got to the meeting place, he found two Policemen who started to beat him, accusing him of recruiting people into homosexuality.⁴⁸ After the beating, he was then arrested and detained at Salaama Road Police Post before being released unconditionally.

The right to privacy

Article 27 of the Constitution of Uganda protects all persons against unlawful interference with their person, home and correspondence. This is necessary to protect the private affairs of all persons from wanton interference. However, LGBT persons often find the privacy of their homes, persons and correspondence abused by both state and non-state actors who are simply curious about their lives. Two such cases were verified in 2017 when the Police interfered with the privacy of different LGBT persons in their jurisdictions..

In one incident, the home of a lesbian activist as well as her office were invaded by the Police in the middle of the night on 16th of February 2017 in search of evidence of homosexuality. This was premised entirely on the fact that a number of 'strange' looking people had been seen on the premises, when a VCT exercise for Key Populations had been done there. Nothing of the sort was found on the premises, even after the illegal search, but the Police went ahead to arrest her anyway, adding a violation of her liberty to the prior invasion of the privacy of her home.

In another case, a transwoman who had been arrested simply for walking past the

station dressed as a female was subjected to unnecessary media scrutiny when the Police invited journalists from a popular Luganda TV Station, Bukedde TV, to capture her story, telling them that she had been dressing as a woman to fleece fellow men. The police officers forced her to speak to the journalists and submit to having herself photographed/filmed, and the story later aired on the station's popular bulletin, 'Agataliiko Nfuufu'.⁴⁹ In that case, the Police actively engaged in and facilitated the abuse of the privacy of a suspect.

The right to freedom of conscience, expression, movement, religion, assembly and association

This right is protected in Article 29 of the Constitution of the Republic of Uganda, which guarantees all Ugandans the right to freedom of thought, conscience and belief, the right to freely express those opinions, including the freedom of the press, the right to associate freely with others and the right to move freely within and settle in any part of Uganda.⁵⁰ These constitutional guarantees have however always been under threat for LGTBI persons in Uganda, who are continuously harassed and barred from associating freely even in social events such as pride pageants and movie festivals, and whose organisations are also under siege as a result of the enactment of the new NGO Regulatory regime.⁵¹ In 2017, this right was violated by the Uganda Police Force in four cases.

In the incident where the Executive Director of an organisation was arrested following a VCT exercise, Uganda Police Force raided the offices of an organisation that was

⁴⁸ HRAPF/VR-18/030 (HRAPF records).

⁴⁹ HRAPF/VR-18/013, HRAPF Records.

⁵⁰ The right to freedom of movement is particularly protected under Article 29(2)(a).

⁵¹ n 3 above.

providing health services to LGBT persons in the area, claiming that the organisation was promoting homosexuality.⁵² The organisation was later forced to relocate because, after the organisation's executive director had been arrested on charges of 'promoting homosexuality', the landlady decided that she did not want homosexuals on her premises. Thus, the existence of the entire organisation was threatened by the Police on baseless allegations, thereby violating the right of all the members of that organisation to freedom of association and assembly.

In the incident concerning the raid of the film festival already discussed,⁵³ the Police raided an event that was organised as part of the Queer Kampala International Film Festival, an event that was organised as a celebration of art, film and drama that depicts the LGTBI realities in Uganda and the world in general. The excuse that the Police gave for this abuse was that they had been informed that the event was a security threat, even though at the time when the Police arrived at the scene, there were no more than 15 persons at the venue, all engaged in peaceful pursuits of getting and giving tattoos. Despite the obvious lack of threat of any nature, the Police still ordered all persons to vacate the scene, thus cancelling the entire festival.

In the incident involving the transwoman arrested at Ndeeba Police Station, the Police violated the right of a transgender woman to freely move throughout Uganda as protected in Article 29(2)(a) when they arrested her while she was walking by the station.⁵⁴ In that case, the young lady was simply passing by the Police Station on her way home when two officers came out of the station and started to quiz her on whether she was really male or female. When she admitted that she was

transgender, they took her into the station and forced her to stay there, even though at that point they kept insisting that she was not under arrest, for purposes of satisfying their curiosity as to her gender identity. This restriction of her movement was a violation of her right to movement, and it later escalated into violations of both her privacy and her liberty when the Police ended up arresting her and inviting media to document her arrest.

B. The Office of the Prime Minister

The office of the Prime Minister (OPM) deals with all matters relating to refugees and asylum seekers in the country. Given the incessant civil wars in some of the countries neighbouring Uganda and the rampant homophobia in the whole region generally, there is a substantial number of refugees in Uganda's refugee camps who identify as LGBT. In 2017 the office was faced with a request for asylum purely on the basis of sexual orientation. In response to this request, the OPM occasioned a violation of the right to equality and freedom from discrimination in that case,⁵⁵ as the gay person who tried to seek asylum was turned away. In that case, the client had been persecuted by his family, which paid the Police authorities in his home country to arrest and beat him in order to teach him a lesson. The client fled to Uganda for protection after he managed to bribe a police officer in his home country, and upon arriving in Uganda he was referred to the Office of the Prime Minister where he was categorically informed that he would not be given asylum in Uganda because Uganda does not tolerate homosexuals. He was forced to live on the street for weeks until he managed to leave Uganda. This was an act

⁵² n 35 above.

⁵³ n 15 above.

⁵⁴ n 49 above.

⁵⁵ HRAFP/VR-18/021.

of discrimination against him based purely on his sexual orientation. This was the only recorded violation occasioned by this Office in 2017.

C. The Office of the Minister of Ethics and Integrity

The Minister for Ethics and Integrity has based his battle against LGBT persons primarily on their right to organise and associate freely, and so in the year 2017, he occasioned one violation of the rights of LGBT persons, which was of the right to freedom of expression, association and assembly, which he violated by singlehandedly cancelling Pride 2017.⁵⁶

Since his appointment to the office of the Minister of Ethics and Integrity, Hon Simon Lokodo has made it a personal mission to harass LGBT persons across the country and prevent them as much as possible from organising and associating with others. This is usually through such acts as ordering raids on their meetings⁵⁷ and on Pride events,⁵⁸ and, in 2017, threatening the leaders of the community.⁵⁹ In 2017, as the organising

committee of the year's pride events was finalising preparations for the Pride Gala at Sheraton Hotel, the Minister of Ethics and Integrity called some of the leaders of the community, threatening to have them arrested and beaten if they attempted to hold any pride celebrations at all. He also went on to call and threaten the owners/ managers of some of the venues where the events were planned to take place, and to order heavy Police deployment in these places. In the end, the event was not held at all due to fear, which occasioned a violation of the right to freedom of expression, association and assembly for all LGBT persons in Uganda at the time.

In the same year, the Minister is believed to have ordered the raid on the Queer Kampala International Film Festival which was being held in one of the city suburbs. Police officers raided the event as already discussed,⁶⁰ and ultimately, although they found no basis for the allegations of pornography and insecurity that they stated were the cause of the raid, advised the persons found at the venue to pack up and leave.

⁵⁶ n 15 above.

⁵⁷ Such an action was the basis of the case of *Kasha Jacqueline Nabagesera and three Others v Hon Simon Lokodo and the Attorney General*, Miscellaneous Cause No. 33 of 2012.

⁵⁸ The Guardian, 'Ugandan the Police raid LGBT fashion show', 05 August 2016 <https://www.theguardian.com/world/2016/aug/05/uganda-the-Police-raid-lgbt-gay-pride#img-1>; See also Human Rights Awareness and Promotion Forum (HRAPF) 'A legal analysis of the brutal the Police raid of an LGBT pageant on 4th august 2016 and subsequent actions and statements by the Police and the Minister of Ethics and Integrity' HRAPR (2016).

⁵⁹ The Guardian 'No gay promotion can be allowed: Uganda cancels pride events' 21st August 2017 <https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt> (accessed 10th August 2018).

⁶⁰ See n 15 above. See also Human Rights Watch, 'Uganda: The Police Raid Queer Kampala Film Festival' <https://www.hrw.org/news/2017/12/15/uganda-the-Police-raid-queer-kampala-film-festival>; accessed 6th November 2018 and The Guardian, *No gay promotion can be allowed in Uganda: Uganda cancels Pride events* <https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt> accessed on 6th November 2018. The Minister of Ethics and Integrity has repeatedly ordered the canceling of all events he considers to be 'gay', viewing them as promotion of homosexuality. More recently, the Minister advised the cancellation of a local music festival dubbed Nyege Nyege. See The Observer, *Open sex prohibited at the Nyege Nyege festival* <https://observer.ug/news/headlines/58609-open-sex-prohibited-at-nyege-nyege-festival> accessed 6th November 2018.

D. Local Government Authorities

In 2017, there was only one violation recorded as having been perpetrated by Local Government authorities, despite their constant interaction with LGBT persons at the grassroots. This violation was of the right to privacy of one individual.

In that case⁶¹ a gay man had reported a case of theft against his ex-partner at the Police station, but his ex-partner happened to know the area town clerk and reached out to him for help. The town clerk went to the Police station and informed everyone that the complainant was a known homosexual who was trying to recruit others into homosexuality, and that he wanted to ascertain whether or not he had actually infected his ex with HIV. He then subjected him to an HIV test, in clear violation of his right to dignity and freedom from inhumane treatment, after which he announced to everyone at the Police station that the client was HIV positive. He went further to take the complainant's phone and laptop, copy files to his own device and then delete every other file on the device, all without the client's consent. After witnessing this blatant abuse of power meant to shame and humiliate the client, the Police declined to handle his matter, leading to the loss of the client's property. As such, not only was his dignity and the privacy of both his person and his correspondence grossly abused, he also suffered significant discrimination since his sexuality is the only reason the Police declined to give him protection of the law.

4.2. Violations Perpetrated by Non-State Actors

In 2017, non-state actors accounted for the majority of human rights violations based on sexual orientation and gender identity, perpetrating 44 verified violations of the rights of LGBT persons. This represents 59.45% of all violations reported in 2017. Of these, the general community in which LGBT persons live and subsist was the greatest violator, perpetrating 30 verifiable violations, followed by property owners/ landlords and landladies with 7 violations, other members of the LGBT community with four violations and finally family members of LGBT persons, who perpetrated three violations that could be verified.

A number of these cases were reported to the Police or otherwise came to their attention but were never addressed. This continued failure/ unwillingness to conclusively investigate and deal with acts of impunity against LGBT persons constitutes a continuing failure on the part of the state to protect and preserve the rights of all persons,⁶² as well as the requirement to specifically protect persons against violence on the basis of their sexual orientation and gender identity.⁶³

A. Violations by the general community

LGBT persons in Uganda must of necessity exist alongside the general community in Uganda, a great majority of whom are homophobic. According to a study done by AfroBarometer in 2016, 95% of Ugandans would not tolerate having a homosexual

⁶¹ HRAPF/VR-18/001.

⁶² See n 24 above.

⁶³ Resolution 275 of the African Commission on Human and Peoples' Rights on Protection of Persons against violence on the basis of their real or imputed sexual orientation and gender identity calls on all states to protect persons from such violence and to address such cases when they do happen.

neighbour;⁶⁴ and the general community in Uganda showed this once again by perpetrating 13 violations of the rights of suspected LGBT persons to dignity and freedom from cruel and degrading treatment, 10 violations of the right to equality and freedom from discrimination, six violations of the right to privacy and one violation of the right to property.

Violations of the right to Equality and freedom from discrimination

Out of the 31 violations of this right suffered by LGBT persons in 2017, members of the general communities in which they live perpetrated 10. These often arose out of social ostracism of suspected LGBT persons.

One of the cases in which this occurred was the case of a gay man who was employed as a carpenter in a wood workshop in Makerere. When his employer got reason to suspect that the client was gay, he summarily terminated him without notice.⁶⁵ In another case, a student of Makerere University was assaulted by fellow students purely because they suspected that he was a homosexual.⁶⁶ The client stated that he had had problems with various persons in his hall of residence ever since information about his sexuality had leaked through social media, until the day he was attacked by his fellow students. He was only rescued by the security guard at the hall of residence. This beating was based purely on his sexual orientation and as such not only violated his right to freedom from inhuman and degrading treatment but was also discriminative on the basis of his sexual

orientation. Despite the fact that the security guard handed him over to the Police out of whose custody HRAPF got him, there was no effort on the part of the Police to arrest and prosecute the mob that assaulted him. The client in fact reported that police officers also slapped him and insulted him, and when he tried to run away, they fired shots into the air to stop him.

In another similar incident, a suspected gay man was waylaid on his way home by persons he did not recognise, who informed him that he was the reason their area was not prosperous because God was unhappy with him and his kind of people. They then proceeded to beat him up.⁶⁷ The incident was reported to Kawempe Police station, but the Police did not follow up on the case.

Another incident happened at Kyoto Bar where a bouncer bodily threw a reveller out of the bar because he had been told that the person was a homosexual.⁶⁸ The bouncer threw him to the security guard and informed the security guard that the client was a homosexual, upon which the security guard also assaulted him by hitting him with his baton. He was later briefly detained at Nakumatt Police Post on vagrancy charges, but no efforts were made to prosecute the persons who assaulted him.

These violations of the right to equality and freedom from discrimination are almost always accompanied by other actions constituting violations of other rights because in nearly all cases, violations of the rights of LGBT persons is based on the inherent discrimination that they face based on their

⁶⁴ See AfroBarometer 'Good neighbours? Africans express high levels of tolerance for many, but not for all' Afrobarometer Dispatch No. 74 (2016) 12.

⁶⁵ HRAPF/VR-18/036, HRAPF Records.

⁶⁶ HRAPF/VR-18/032, HRAPF Records.

⁶⁷ HRAPF/VR-18/032 HRAPF Records.

⁶⁸ HRAPF/VR-18/034, HRAPF records.

sexual orientation and gender identity. Nowhere is this more evident than in the general community, in which the feelings and opinions of ordinary folks determines how they treat LGBT persons. Because this is set against the backdrop of rampant homophobia, a number of violations are always bound to occur, all of them based on discrimination of LGBT persons.

The right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment

This right is very intimately connected to the right to equality and freedom from discrimination for LGBT persons, because most violations of this right stem from the discrimination faced by LGBT persons, as already discussed. The assaults, degrading treatment and remarks and all other aspects of violation of this right are also in essence violations of the right to equality and freedom from discrimination.

In 2017, the general community in which LGBT persons live occasioned 13 violations of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment against LGBT persons. The most extreme of these cases was recorded under case reference HRAPF/VR-18/020 where a suspected gay man was dragged out of a bar by someone he did not know, who took him at a little distance from the bar and then, with the help of a boda boda (commercial transport motorcycle) rider, poured petrol on him and proceeded to set him on fire. The Police thankfully intervened, but not before he had been burnt badly, and they were never able to prosecute his assailants at all.

In the case where the person was assaulted by a bouncer and a security guard at a bar, he was subjected to cruel and inhumane treatment

merely because they found out he was gay. Similarly, in the case referenced as HRAPF/VR-18/031, a gay man was beaten brutally by men he did not know because of his sexual orientation. This also happened in another case where a young man was arrested and charged with being a security threat following suspicions of homosexuality.⁶⁹ This arrest was publicised in the area, and later, when he was released, he was attacked in his home by unidentified persons who beat him into a coma. This beating was premised on the suspicion that he was gay.

Such incidents are common for LGBT persons. The extreme violence is caused by homophobia and widespread stigma against the homosexual and transgender identities.

The right to property

The Constitution, in protecting the right to property, primarily aims at protecting persons from arbitrary deprivation of property without fair and adequate compensation and without following the law. Article 26 is in fact primarily meant to protect property of individuals from arbitrary alienation by the state. However, in 2017, there was a violation of the right to property occasioned by members of the community in which we live.

This happened in the case referenced as HRAPF/VR-18/023, in which a young man was attacked inside his home in the dead of night by persons from his neighbourhood, who kept telling him that they were 'confiscating' his household property because he was a homosexual and they did not want him in their area. In any other circumstances, this would have been a question of theft. However, in the instant case, the assailants thought of their action as rectifying a wrong by confiscating his property in order to force him to leave the area. This was an arbitrary

⁶⁹ HRAPF/VR-18/010.

deprivation of property based exclusively on the person's presumed sexual orientation, as well as a violation of his right to privacy.

The right to privacy

This right is protected in Article 27 of the Constitution as previously discussed. Members of the general community are usually curious about the homosexual and transgender identities and realities. The general community has however been encouraged to think that it is okay to seek for answers to their questions without any regard to the feelings or the rights of their victims. In 2017, the community among which LGBT persons live perpetrated 6 violations of the right to privacy based on the real or presumed sexual orientation or gender identity of the victims.

In one case, the person sold his laptop to someone who went ahead to import software into the laptop that could be used to retrieve information previously from the laptop.⁷⁰ This was done because he suspected that the client was a homosexual, and he was looking for proof of the same. Although no such proof was ever submitted to the Police, he went ahead to blackmail the seller of the laptop, insisting that he had images and videos of him. This was only arrested after the Police intervened to charge him with demanding money with threats and impersonating a police officer.

In another case, a gay man's home was invaded by his neighbours upon suspicion of his sexual orientation.⁷¹ Luckily for him, he heard about the proposed action before it was carried out and managed to escape unscathed and

catch a bus to Kampala. Nevertheless, his neighbours broke into the house, ransacked it and then set it on fire because they did not want a known homosexual living in their area. Besides the destruction of property, the raid was a violation of his privacy. This case was never reported to the Police in the area because the victim was too afraid to return to the scene for months after the event.

Another incident involved a gay man who, after quitting a job at which he felt he was being overworked and underpaid, was blackmailed by the former boss.⁷² The boss kept threatening to expose him as a homosexual if he did not return to the job, and in fact went ahead to speak to a few people about the client's sexuality. This made it difficult for the victim, who is a foreigner in the country, to coexist in his community, which is a close knit grouping of persons from his country of origin.

In another case, the invasion of the victim's privacy led to his arrest.⁷³ The neighbours of the victim kept trying to find out how many boys visited him at his home, and would even go so far as attempting to peep through the windows to find out what he was doing with his visitors. Eventually, the neighbours called the Police when he had a guest in his home and the Police broke into his house, together with some neighbours, in an attempt to stop the alleged commission of carnal knowledge against the order of nature.

B. Violations by property owners

Property owners, specifically landlords and landladies of LGBT persons, perpetrated 7 human rights violations in 2017. Five of these were violations of the right to equality and

⁷⁰ HRAPF/VR-18/004, HRAPF Records.

⁷¹ HRAPF/VR-18/012, HRAPF Records.

⁷² HRAPF/VR-18/039, HRAPF Records.

⁷³ HRAPF/VR-18/036, HRAPF Records.

freedom from discrimination, while two were violations of the privacy of their tenants.

Violations of the right to equality and freedom from discrimination

These violations are often as a result of the eviction of persons from rented accommodations purely on the basis of their sexual orientation or gender identity. This was the situation in five cases reported in 2017, in all of which the owners of the properties rented by LGBT persons evicted them on the singular basis of their sexual orientation and gender identity.⁷⁴

Violations of the right to privacy

Property owners violated the privacy of their tenants in two cases that were verified in 2017. In the first of these cases, the victim's landlady constantly checked his movements and monitored the persons who visited him at his home with a view to ascertaining whether or not he was a homosexual, and she later reported him to the Police with these allegations, on the basis of which the Police arrested him.⁷⁵ In the second incident, the landlord evicted the victim and his partner from the house because he suspected that they were gay and that they were trying to recruit his son. He informed them that he had been watching them for some time and was aware that only boys visited them, and that when these boys entered the house, they often did 'homosexual' things. This information was apparently collected from watching the tenants' movements and spying on them inside their house.

C. Violations by members of the LGBT Community

In 2017, a new trend started to emerge whereby members of the LGBT community started to blackmail other members of the community for money. This happened in four cases where members of the community, usually ex-lovers of the victim, would 'out' them or threaten to do so unless they were paid. This is a new and worrisome trend as it exposes LGBT persons to grave risk posed by other members of the very community to which they belong.

One of the cases in which this happened was the case referenced as HRAPF/VR-18/040, wherein a gay man's ex-lover started sending him threatening messages after their relationship ended. He kept demanding for payment, threatening to report him to the Police for sodomising him if he did not pay up. This also happened in cases referenced as HRAPF/VR-18/003 and HRAPF/VR-18/009, in both of which cases the victims were 'outed' by their former partners after their relationships ended. Such actions are usually induced by pain at the end of the relationship, spite or greed on the part of the jilted party.

D. Violations by family members

Much like members of the general community, sometimes family members find it difficult to accept that their children/ relatives could be homosexual or transgender. They thus afford them differential, and often detrimental, treatment on the basis of their confessed sexual orientation and gender identity. This happened in three verified cases in 2017.

In one case, the victim, who resided with her brother, was beaten and evicted from the

⁷⁴ HRAPF/VR-18/005, HRAPF/VR-18/026, HRAPF/VR-18/008, HRAPF/VR-18/045 and HRAPF/VR-18/017, all in HRAPF Records.

⁷⁵ HRAPF/VR-18/008.

home by the brother when he found out that she was a lesbian.⁷⁶ He later changed his mind and allowed her to stay on the condition that she would repent and leave her evil ways, but the entire incident was unnecessarily discriminatory on his part, since she is currently forced to hide her identity in order to be able to live peacefully in the home. This is similar to what happened in a case referenced in HRAPF records as HRAPF/VR-18/025, in which the client, who was residing with his paternal auntie, was evicted from home when she heard rumours about his sexuality. The aunt asserted that she was a Christian and was therefore not able to stay with an 'ungodly' person like her nephew.

In the final case where such a violation was occasioned by a family member, the client was arrested and detained and, when her father was called and asked to stand surety for her, he categorically stated that he could not waste his time going to a Police station over the issues of his 'son', which he described as nonsensical and evil.⁷⁷ The client ended up staying an extra night in custody until a paralegal who was willing to stand surety for her was found.

E. Violations by media

In 2017, there was one verified incident of violation of the privacy of a transwoman⁷⁸ who was forced by press to look into the cameras and pose for photos against her wishes. The press worked with the Police that had arrested her to force her to answer intrusive questions on camera, which interview was later aired on a popular bulletin, 'Agataliiko Nfuufu', in blatant violation of the victim's privacy and bodily integrity.

4.3. Conclusion

In 2017, there were a series of violations of the rights of LGBT persons occasioned by both state and non-state actors as described above. These incidents mostly went to the dignity and rights of LGBTI persons in Uganda, based on the homophobia and the general societal attitudes towards homosexuality in Uganda. Because transgender persons continue to be viewed as the face of homosexuality in Uganda, they have continued to be the worst victims of violations, particularly of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment. There have been continued efforts by the Police to protect LGBT persons in Uganda, but a lot more must be done to ensure that violations are reduced as much as possible.

⁷⁶ HRAPF/VR-18/018.

⁷⁷ HRAPF/VR-18/013.

⁷⁸ Above.

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

5.1. Analysis of the trends in 2017

During the year 2017, 46 cases were reported to HRAPF and partners containing 83 incidents of human rights violations, of which only 74 were verified. These violations were perpetrated by both state and non-state actors and included violations of a wide range of constitutionally guaranteed rights. This section analyses these violations in relation to human rights violations based on sexual orientation and gender identity that were perpetrated in preceding years.

Nature of the perpetrators

In 2017, a total of 74 violations of human rights on the basis of sexual orientation and gender identity were verified. Non-state actors occasioned 44 of those violations, accounting for 60.8% of all verified violations in that year, while state actors perpetrated 29 violations, accounting for 39.2% of all verified violations in that year. This means that non-state actors have once again claimed the top spot for violations against LGBT persons continuing the trend started in 2015. In 2016 non state actors accounted for 89 violations (48.6%) of 183 violations. This was due to the Police having multiple violations in one case-the Pride event stopping, which accounted for 53 incidents. Since the annulment of the Homosexuality Act in 2014, non-state actors have increasingly taken the law in their hands against LGBT persons. This implies that, despite the narrowing space for civil society engagement on LGBT issues, the bigger barrier to realisation of the rights of the LGBT persons in Uganda is homophobia and conservatism in the country, fueled by

the law and the state. This trend is continued from 2015 in which the non-state actors were once again the more prominent perpetrators of human rights violations based on real or presumed sexual orientation and gender identity.⁷⁹ However the failure by the state to protect LGBT persons against these violations and not doing much to provide redress makes the state legally culpable for these violations for failing to live up to the obligation to protect.

Table 1: Perpetrators of human rights violations based on sexual orientation and gender identity in 2017

Perpetrator	Number of violations occasioned
The Uganda Police Force	26
The general public	30
Property Owners	7
The LGBT Community	4
Local Government authorities	1
Family members	3
Press	1
Office of the Prime Minister	1
The Minister of Ethics and Integrity	1

Again for the first time, the general public have perpetrated more violations against LGBT

⁷⁹ Human Rights Awareness and Promotion Forum, 'Uganda report of violations based on sexual orientation and gender identity 2016', HRAPF (2016).

persons than the Uganda Police Force.⁸⁰ Again violations as perpetrated by the Police have greatly reduced over the years, suggesting that the Police maybe more likely to violate the rights of LGBT persons simply because of its status as the law enforcement organ in the country, but is none the less improving in its handling of real and suspected LGBT persons.

Another continuing trend from 2016 is the involvement of the Minister of Ethics and Integrity in the violations of the rights of LGBT persons, particularly the right to freedom of expression, association and assembly. The Minister continued to violate the right to freedom of association and assembly of LGBT persons by preventing the pride celebrations from happening at all,⁸¹ and also stopping the Queer Kampala Film Festival.

This year however, the Office of the Prime Minister also came under scrutiny in its dealings with persons seeking refugee status in Uganda.

This was the first such incident to be reported at HRAPF despite the big number of LGBT persons in refugee camps, perhaps because it was the first case in which the applicant expressly stated that he was leaving his country due to persecution because of his sexual orientation.

Another alarming trend that emerged in the year 2017 is the tendency of members of the LGBT community in Uganda to blackmail other members of the community, usually former lovers, for money on pain of exposure. This emerging trend shows an unfortunate

pattern of members of the LGBT community counter-mobilising against their own cause by violating the right to privacy and property of fellow community members.

Categories of rights being violated

Unlike previous years where the right to dignity and freedom from inhumane and degrading treatment was the most commonly violated right for LGBT persons in Uganda,⁸² in the year 2017 there was a spike in violations of the right to equality and freedom from discrimination by both state and non-state actors.

Table 2: Categories of rights most commonly violated in 2017 and 2016

Category of right	Number of violations per year	
	2017	2016 ⁸³
Right to equality and freedom from discrimination	22	46
Right to liberty	15	38
Right to dignity and freedom from cruel treatment	15	65
Right to privacy	16	38
Freedom of expression, association and assembly	5	7
Right to property	1	13

⁸⁰ Above, p 28-30.

⁸¹ The Guardian 'No gay promotion can be allowed': Uganda cancels pride events' 21 August 2017. <https://www.theguardian.com/global-development/2017/aug/21/no-gay-promotion-can-be-allowed-uganda-cancels-pride-events-lgbt> (accessed 14 April 2018); See also 'Ethics Minister Lokodo Blocks this year's gay pride parade' <https://edge.ug/2018/06/03/ethics-minister-lokodo-blocks-this-years-gay-pride-parade/>.

⁸² n 79 above p 34, 37.

⁸³ Human Rights Awareness and Promotion Forum Uganda report of violations based on sexual orientation and gender identity 2017 HRAPF 2017.

The violation of the rights of LGBT persons to personal liberty reduced significantly from 2016⁸⁴ with arbitrary arrests and prolonged detention being significantly reduced. This can be accounted for by the increased response of organisations working on LGBT rights, such as HRAPF and partners, to arrests of LGTBI persons. However, it also has something to do with the increased awareness of police officers on the human rights implications of actions of arbitrary arrests and prolonged detention, as well as the actual limits of the law. It also has a lot to do with the Uganda Police Force's Directorate of Legal Affairs and Human Rights mobilising police officers for trainings on LGBT issues, which has led to more than 200 senior officers being sensitised. This is in itself an improvement in the human rights situation for LGBT persons in Uganda.

In 2017, violations of the right to equality and freedom from discrimination superceded violations of the right to dignity and freedom from torture and cruel, inhumane and degrading treatment or punishment, contrary to the case in 2016.⁸⁵ This is in part due to the general reduction in violations by the Uganda Police Force, who were the biggest perpetrators of the violations to the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment. The increased awareness both in the general public and among the law enforcers of the rights of LGBT persons could also be partially influencing this trend, because more and more often, family members of LGTBI persons, property owners at the places where they live or rent and the general community are choosing to evict or not associate with real or suspected LGBT persons rather than lynch them as was common before. This violates their right to

equality, but has contributed to a decline in the number of physical assaults against LGBT persons.

Additionally, the year 2016 was marred by the violent raid on the Mr and Mx Pride Beauty Pageant that occasioned 53 violations of the rights of the attendees at the event, most of which were violations of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment,⁸⁶ thus indelibly marking the Police force's human rights record for that year.

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

It is patently clear that, on a comparative study of human rights violations based on sexual orientation and gender identity for the three years of 2015, 2016 and 2017, there is an improvement in the situation regarding the respect for the rights of LGBT persons in Uganda despite the active homophobia. It is clear from the figures that the violations are reducing steadily, with the exception of the year 2016 where the violent raid of the Pride Beauty Pageant by the Police in Kabalagala occasioned 53 different verifiable violations against various persons in a single night.

⁸⁴ Above.

⁸⁵ Above.

⁸⁶ Above.

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

Category of rights	Number of violations per year		
	2015 ⁸⁷	2016 ⁸⁸	2017
The right to equality and freedom from discrimination	51	46	22
The right to liberty	21	38	15
The right to dignity and freedom from cruel and inhumane treatment	36	65	15
The right to property	13	13	1
The right to privacy	28	38	16
The right to freedom of expression, association and assembly	4	7	5

What stands out is that there is an ever improving record for the Police protection for the rights of LGBT persons, and a reduction in the violations perpetrated by the Police. On the other hand, the Minister of Ethics and Integrity has remained steadfast in persecution of LGBT persons in Uganda, leading to violations of their rights to assemble through cancelling the pride celebrations every year.

The homophobia in the general society is also increasingly being manifested through the various violations of the rights to equality and dignity of LGBT persons, despite increased awareness of the existence of LGBT persons. In fact, it might very well be argued that the increased awareness about the existence of LGBT persons might be partly the cause for the increased violations of the rights of LGBT persons by members of the general community, indicating that there is a need to increase on the amount of factually accurate information about sexuality and gender among the general public.

⁸⁷ Human Rights Awareness and Promotion Forum Uganda report of violations based on sexual orientation and gender identity 2016 HRAPF 2016.

⁸⁸ Human Rights Awareness and Promotion Forum Uganda report of violations based on sexual orientation and gender identity 2017 HRAPF 2017.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. General Conclusion

It is clear that for 2017, despite a deteriorating legal and policy regime for the protection of the rights of LGBT persons and for civil society organising in advocacy for LGBT rights, there has been a steady reduction in the rights of LGBT persons generally, both from the Police and from the general community, unlike 2016 when the environment was extremely polar and LGBT persons were subjected to numerous egregious human rights violations. This points to an increasing tolerance for LGBT persons in Uganda despite the homophobia, and is to be encouraged as much as possible.

6.2. Recommendations

To the Uganda Police Force

The Uganda Police Force continues to be critical to the protection of the rights for LGBT persons in Uganda as the primary point of contact between them and the law. For as long as the law in Uganda continues to criminalise carnal knowledge against the order of nature with the corresponding majority interpretation that this in effect outlaws the homosexual identity, the Police will remain an extremely vital link in protecting the rights of LGBT persons and addressing violations. In order to fulfil this mandate, it is recommended that:

1. The Uganda Police Force through the Directorate of Legal and Human Rights should continue to train officers and all men and women of the force about the ultimate duty to protect the rights of all persons, including homosexuals and all suspects brought before them in execution of their duties

2. Strengthen human rights violations redress mechanisms within the Police to make them more effective
3. There should be further training especially through the Directorate of Crime Intelligence and Investigations to improve the capacity of police officers to recognise and appreciate the limits of the laws that they enforce
4. The Police Professional Standards Unit should deal more decisively and more speedily with police officers who violate the rights of all persons in order to curb the impunity with which some police officers have continued to violate the rights of LGBT persons

To the Office of the Director of Public Prosecutions

In ensuring protection of the rights of LGBT persons, it is recommended that the Office of the Director of Public Prosecutions continues to ensure the right to a fair trial and liberty for all LGBT persons in Uganda through:

1. Training of state prosecutors and state attorneys who work with the Police in identifying and sanctioning charges against suspects to recognise fully the limits of the law and relevant evidence required before sanctioning baseless charges, especially those premised on the 'idle and disorderly' and 'rogue and vagabond' sections of the Penal Code Act
2. Refraining from sanctioning charges where the facts do not support the imposition of such a charge, or where the charges are flimsy or non-existent, or where no evidence exists to prove the

charge. This will greatly help to reduce the amount of time LGBT persons (and all other persons) spend on pre-trial remand while awaiting prosecution for cases that often get dismissed for want of prosecution

To the Parliament of Uganda

As the sovereign law making body in Uganda, the parliament of Uganda is uniquely placed to ensure that the rights of LGBT persons are respected and upheld. It is therefore recommended that:

1. Parliament repeals laws creating the offence of carnal knowledge against the order of nature, which makes every LGBT person an 'unapprehended felon', and is therefore discriminative on that ground
2. Repeal the sections of the law creating the offences of being idle and disorderly and being a rogue and vagabond, which are very discriminative on grounds of social class, and which also give rise to various violations of the rights and dignity of marginalised persons in Uganda through their arbitrary enforcement
3. Enact a comprehensive Human Rights Enforcement Act that provides for clear mechanisms for making claims for the enforcement of human rights against both state and non-state actors
4. Operationalise Resolution 275 of the African Commission on Protection against Violence based on Real or Presumed Sexual Orientation and Gender Identity in order to provide more protection to LGBT persons in Uganda
5. Hold government accountable for the various obligations Uganda has undertaken at international and regional

levels to protect and preserve all human rights without discrimination, which have largely been ignored

To the Uganda Law Reform Commission

The Uganda Law Reform Commission is charged with advising the state on necessary amendments and legal reforms required for purposes of good governance, human rights protection and social justice. It is therefore recommended that the Law Reform Commission:

1. Develops a proposal for a constitutionally compliant alternative to the vagrancy laws that will protect the rights of all persons in Uganda
2. Suggests an amendment of the Penal Code Act to repeal the sections of the Penal Code Act that criminalise consensual sexual relations between adults

To the Uganda Human Rights Commission

The UHRC is a constitutional body mandated to ensure the preservation and protection of the basic human rights of all persons in both law and practice. As such, it is recommended that:

1. The UHRC should demand for accountability from the state for all human rights violations reported, especially those that go unaddressed
2. Hear and dispose of the various cases involving violations of the rights of LGBT persons in Uganda, which have been pending before the Commission's Complaints and Investigations Directorate as far back as 2016
3. Propose amendments of laws that

are discriminatory and those which encourage the violation of the rights of LGBT persons in Uganda

To the Equal Opportunities Commission

The Equal Opportunities Commission is the institution with the constitutional mandate to address marginalisation and discrimination in Uganda. It provides a platform for addressing the violations suffered by LGBT persons on grounds of sexual orientation and gender identity. The Commission can therefore do the following to effectively utilise this mandate:

1. Investigate systemic stigma and discrimination of individuals based on their sexual orientation or gender identity
2. Train the commission staff on LGBT issues in order to build their capacity in handling matters of discrimination and marginalisation based on sexual orientation and gender identity to ensure that members of the tribunal are objective in handling such complaints

To Civil Society Organisations

The existing CSOs in Uganda that work for the promotion of human rights in general and rights of LGBT persons in particular can create a substantive conversation about the rights of LGBT persons and the violations they suffer. They should therefore do the following:

1. Reach out to members of the LGBT community to discourage actions of blackmail and extortion against fellow community members, which greatly undermine advocacy efforts for the rights of LGBT persons generally
2. Hold awareness sessions with members of the general community to ensure

that there is widespread acceptance of the basic concepts of human rights and of their general applicability to LGBT persons in Uganda

3. Support the families of LGBT persons to help them understand and appreciate the lived realities of their family members and their emotional, psychosocial and physical needs
4. Build capacity of staff in documentation of violations based on gender identity and sexual orientation. And this document should be actively used for advocacy
5. Support public education and awareness-creation programs on sexuality, sexual and health rights, and violence and discrimination by targeting law enforcement agencies and health service provision institutions
6. Support the Uganda Human Rights Commission's mandate to monitor and document reports of violence, abuse, and discrimination based on sexual orientation and gender identity or expression
7. Strengthen reporting systems, evidence collection and data storage to facilitate easy verification of violations against people based on their sexual orientation and gender identity or expression
8. Create information sharing systems so that reports of violations can be used simultaneously by multiple parties
9. Hold awareness sessions with staff members to sensitize them on issues affecting LGBT Ugandans
10. Create partnerships with other organisations to monitor and document abuses of LGBT rights

To the Media

The media plays an important role of informing society and has power to control narratives, which must be used responsibly. Members of the media should therefore:

1. Treat all people with respect and dignity, regardless of gender identity, or sexual orientation
2. Learn about, monitor, and report on abuses of human rights and dignity that LGBT Ugandans face
3. Protect the privacy of LGBT individuals who may be threatened, assaulted, or even killed as a result of being “outed” by the media

To the Ministry of Health

The Ministry of Health is responsible for proper and accessible health care in Uganda. It has been very progressive and has had various health policies that are inclusive of LGBT persons, especially policies on HIV. The MARPI Programme in particular has been of great benefit to all LGBT persons in the areas where they have centres. There is however improvement needed in the provision of these inclusive services to LGBT persons. To achieve this, the Ministry of Health:

1. Should continue supporting MARPI to continue training healthcare service providers on sexual orientation and gender identity to enable provision of discrimination free health services for everyone including LGBT persons
2. Reinstate public health indicators for transgender people and MSM in the national Health Information Management System in order to encourage deliberate and systematic planning for their health needs

To the international community

The international community has considerable leverage to influence state institutions in Uganda to adopt policies and measures that ensure equal treatment of all persons regardless of their sexual orientation and gender identity. This however has to be done cautiously to avoid backlash. The community should therefore:

1. Call on the Government of Uganda to live up to its international human rights standards by protecting the rights of all persons including LGBT persons
2. Support initiatives aimed at creating public awareness on sexuality, sexual and health rights, and violence and discrimination and those aimed at influencing policy that ensures service provision to LGBT persons in Uganda

To the President of the Republic of Uganda

The president has a constitutional mandate to assent to or reject laws passed by Parliament. This office also directly supervises both the Office of the Prime Minister and the Minister of Ethics and Integrity. The Office of the President is therefore key to the law-making process and to ensuring that the laws enacted are compliant with the requirements of the constitution of Uganda and with international human rights standards. The President should:

1. Clarify the portfolio of the Minister of Ethics and Integrity and castigate the office holder for actions that violate the rights of LGBT persons in Uganda

2. Cause the Office of the Prime Minister to issue clear guidelines on non-discrimination in the handling of issues of refugees and asylum seekers to protect already vulnerable persons from further marginalization
3. Veto legislation that is discriminatory on the basis of sexual orientation or gender identity and call upon the Police and all intelligence agencies to investigate violations and abuse of the rights of persons based on their gender identity and sexual orientation
4. Ensure that issues of non-discrimination are prioritised within the Cabinet and the Executive



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