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ORAM - ORGANIZATION FOR REFUGE, ASYLUM AND MIGRATION

COUNTRY OF ORIGIN REPORT:
SEXUAL AND GENDER MINORITIES

UGANDA

About this report

Country of Origin (COI) reports are an essential tool in asylum adjudication procedures. The reports are used for assessing a triptych of elements in asylum claims: individual risk of persecution; an applicant's credibility; and the availability of state protection. Thus, ORAM's Uganda COI Report is intended to help adjudicators and protection experts assess asylum claims by contextualizing personal stories of persecution.

Evidentiary concerns affect all COI reports. For instance, research sources may be regarded as superficial or biased, whereby the information portrayed may lead to a vague and generalized conceptualization of daily circumstances in foreign countries. Moreover, the data available is often fragmentary, and in cases where no official documentation exists, lack of evidence may be mistaken for absence of persecution. As sexual orientation and gender identity (SOGI) are still taboo topics in many countries, such evidentiary concerns are often exacerbated in COI's SOGI-related information.

Building on its extensive research and training experience within the refugee field, ORAM has identified that a more nuanced and culturally sensitive conceptualization of sexual orientation and gender identity in COI reports could lead to a more accurate adjudication of asylum claims of this nature. Most importantly, as "lesbian," "gay," "bisexual," "transgender," and "intersex" (LGBTI) are terms largely absent from non-Western lexicons, ORAM's Uganda COI Report utilizes the concept of sexual and gender nonconformity (SGN) in the asylum adjudication context. This term encapsulates a more inclusive understanding of identity, one that is based on asylum seekers and refugees' own narratives. This nuanced perception informed the structure and research methodology of ORAM's Uganda COI report. We hope that this report will become part of a growing library of specialized tools readily available to refugee professionals, as well as to those fleeing persecution on the basis of their sexual orientation and/or gender identity.

About ORAM

ORAM - Organization for Refuge, Asylum & Migration is the leading global advocate for persons seeking refugee protection based on their sexual orientation, gender identity and/or gender expression. ORAM fosters global support for thousands of sexual and gender minority asylum seekers and refugees through advocacy and education. It provides technical assistance and training to governments, intergovernmental agencies, non-governmental organizations, academic institutions and protection professionals.

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COUNTRY OF ORIGIN REPORT: SEXUAL AND GENDER MINORITIES - UGANDA

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Abbreviations

AIDS	Acquired Immunodeficiency Syndrome
BIA	Board of Immigration Appeals (United States)
CAT	Convention Against Torture
CNDA	Cour Nationale du Droit d’Asile (France)
COI	Country of Origin Information
CSCHRCL	Civil Society Coalition on Human Rights and Constitutional Law (Uganda)
DRC	Democratic Republic of Congo
ECJ	European Court of Justice
FARUG	Freedom and Roam Uganda (Uganda)
HIV	Human Immunodeficiency Virus
HOCA	Horizon Community Association (Rwanda)
HRAPF	Human Rights Awareness and Promotion Forum (Uganda)
IDP	Internally Displaced Person
IGLHRC	International Gay and Lesbian Human Rights Commission
IJ	Immigration Judge (United States)
IOM	International Organization for Migration
IRB	Immigration and Refugee Board (Canada)
IRCU	Inter-Religious Council of Uganda (Uganda)
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
LRA	Lord’s Resistance Army
MSM	Men who have Sex with Men
MUWRP	Makerere University Walter Reed Project (Uganda)
NGO	Non-governmental Organization
NRM	National Resistance Movement (Uganda)
ORAM	Organization for Refuge, Asylum & Migration
PSG	Particular Social Group
RAD	Refugee Appeal Division (Canada)
RLP	Refugee Law Project (Uganda)
RPD	Refugee Protection Division (Canada)
RRT	Refugee Review Tribunal (Australia)
RSD	Refugee Status Determination

SGN	Sexually and Gender Nonconforming
SIPD	Support Initiative for People with Atypical Sex Development (Uganda)
SMUG	Sexual Minorities Uganda (Uganda)
SOGI	Sexual Orientation and Gender Identity
UMSC	Uganda Muslim Supreme Council
UNDESA	United Nations Department of Economic and Social Affairs
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UPDF	Uganda People's Defense Force (Uganda)
WSW	Women who have Sex with Women

Terms Relating to Sexual Orientation and Gender Identity

Bisexual refers to individuals who have the capacity for profound emotional, affectional, and/or sexual attraction to, and sexual relations with, people regardless of their gender or sex.

Gay refers to a self-identifying man who has the capacity for profound emotional, affectional and/or sexual attraction to and sexual relations primarily with other men.

Gender refers to the roles, behaviors, activities, and attributes that a given society considers appropriate for men and women.

Gender Expression (or “gender presentation”) refers to the external appearance, dress, mannerisms and behavior through which individuals present their gender identity.

Gender Identity is each person’s deeply felt internal and individual experience of being a man, woman or other gender, which may or may not correspond with the sex assigned at birth.

Heterosexual describes people whose enduring physical, romantic and/or emotional attraction is to people of the opposite sex. Often referred to as “straight” in the West.

Homophobia refers to a hatred or fear of homosexuals – that is, people attracted to members of the same sex – sometimes leading to acts of violence and expressions of hostility.

Homosexual describes people who are attracted to people of the same sex.

Intersex refers to people who are born with reproductive, sexual anatomy, and/or chromosomal patterns that do not fit typical definitions of male or female.

Lesbian refers to a self-identifying woman who has the capacity for profound emotional, affectional, and/or sexual attraction to and sexual relations primarily with other women.

LGBTI is the acronym for “lesbian, gay, bisexual, transgender, and/or intersex.”

Sex refers to the biological and physiological characteristics that define men and women. Biological and physical characteristics include sex chromosomes, gonads, sex hormones, internal reproductive structures, and external genitalia.

Sexual Orientation refers to a person’s capacity for profound emotional, affectional, and/or sexual attraction to, and sexual relations with, individuals of a different gender, the same gender, or more than one gender.

Sexually and Gender Nonconforming (SGN) is an umbrella term used in asylum adjudication context to refer to individuals whose sexual practices, attractions, and/or gender identity and expression are different from the societal expectations based on their assigned sex at birth. It is intended to be a broader term than “LGBTI.”

Transgender refers to people whose gender identity, expression, or behavior is different from those typically associated with their assigned sex at birth.

Transsexual individuals alter their bodies to match their gender identity. Transsexuals may use surgery of the face, chest, genital areas, and other parts of the body, as well as hormonal treatments, to alter their bodies. Transsexual men are individuals who were born as biological females and later identified as men. Transsexual women are individuals who born as biological men and later identified as women.

I. General Information

A. Uganda: An Overview

The Republic of Uganda (Uganda) is a 241,550 square kilometers, ethnically diverse country located in East Africa. A former British colony, it gained its independence in 1962. Following years of civil war, political instability, and mass population displacement, reforms brought by President Yoweri Museveni's single rule since 1986 have led to a period of relative stability in the country.

1. Population

The population of Uganda is estimated at 35,918,915.¹ The median age is 15.5 years.² Of the total population, 48.3 percent are under age fourteen, 44 percent are age fifteen to sixty-four, and 7.7 percent are aged 60 and over.³

Sixteen percent of the population in Uganda lives in urban environments;⁴ the urban population is growing at a rate of 5.7 percent, compared to the national growth rate of 3.1 percent.⁵ The population of the largest city and capital, Kampala, was estimated at 1.72 million in mid-2012.⁶ According to the International Organization for Migration (IOM), "rural-urban and rural-rural migration is a survival strategy for many Ugandans."⁷ Rural to rural migration, particularly from the highly populated southwestern districts to the sparsely populated mid-western districts, has also occurred due to a shortage of land for cultivation.⁸

Very little information is available on the number or places of residency of sexually and gender nonconforming (SGN) individuals in Uganda. It is known that many migrate to Kampala, and the city has been the base for LGBTI rights organizations and community networks in recent years. Smaller scale activism and support networks also exist outside of the capital city; Kampala activists held the first Ugandan Pride Parade in Entebbe in 2012,⁹ as well as a smaller parade in August 2014,¹⁰ and some sexual minorities rights organizations operate in the country's rural parts.¹¹

¹ Central Intelligence Agency, *The World Factbook: Uganda*, (last updated June 20, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html> [hereinafter CIA World Factbook].

² *Id.*

³ UN Data, *Uganda Country Profile*, <http://data.un.org/CountryProfile.aspx?crName=Uganda> (last accessed Oct. 22, 2014).

⁴ *Id.*

⁵ The 46th Session of the United Nations Commission on Population & Development, *Statement by Dr. Kisamba-Mugerwa, Chairman National Planning Authority of Uganda*, 2 (Apr. 23, 2013), available at http://www.un.org/en/development/desa/population/pdf/commission/2013/country/Agenda%20item%204/Uganda_Item4.pdf.

⁶ UGANDA BUREAU OF STATISTICS, 2012 STATISTICAL ABSTRACT, available at <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2012StatisticalAbstract.pdf>.

⁷ International Organization for Migration, Regional Office for East and Horn of Africa, *Uganda*, available at <http://ronairobi.iom.int/our-work/programmes/workersprofessionals/itemlist/user/62-oimmain> (last accessed Oct. 18, 2014).

⁸ *Supra* note 5, at 3.

⁹ Alexis Okeowo, *Gay and Proud in Uganda*, THE NEW YORKER (Aug. 6, 2012), available at http://www.newyorker.com/online/blogs/newsdesk/2012/08/gay-and-proud-in-uganda.html#slide_ss_0=1.

¹⁰ Chris Johnston, *Uganda Holds First Pride Rally after 'Abominable' Anti-Gay Law Overturned*, THE GUARDIAN (Aug. 9, 2014), available at <http://www.theguardian.com/world/2014/aug/09/uganda-first-gay-pride-rally-law-overturned>.

¹¹ Sylvia Tamale, *Out of the Closet: Unveiling Sexuality Discourses in Uganda*, in CATHERINE M. COLE & AL. AFRICA AFTER GENDER? 18 (2007).

2. Languages

Forty-one different languages are spoken in Uganda.¹² The major indigenous language families are Bantu, Central Sudanic, and Nilotic.¹³ English is the official language, and is taught in schools and used in the courts of law, by most newspapers, and by some radio broadcasts.¹⁴ The *de facto* national language is Luganda, a Niger-Congo language that is widely used in Kampala.¹⁵ Swahili, another Niger-Congo language, is the second official language; however, Swahili is less frequently used as it remains associated with the bloody dictatorial regime of Idi Amin (1971-79), who declared it the national language.¹⁶ Nevertheless, the government has recently ordered that all citizens learn Swahili as it is set to become the official language of the East African Community.¹⁷

3. Religions

Uganda has no official state religion. Approximately 85 percent of the populace practices a form of Christianity; an estimated 42 percent are Roman Catholic, 36 percent Anglicans and 4.6 percent Pentecostals.¹⁸ Twelve percent of Ugandans are Muslim, the majority of which are Sunni, and 3 percent identify as “Other,” which includes various indigenous beliefs.¹⁹

4. Ethnicities

Ethnic identity remains a prominent mobilizing force in Uganda.²⁰ Ethnicity influences political affiliations,²¹ and deep and often violent ethnic and regional divisions, particularly between Uganda’s south and the north, continue to shape the national level.²² There are over forty ethnicities within the four main ethnic groups in Uganda, which are often defined through a shared language.²³ Some scholars consider the country the most ethnically diverse in the world, though no ethnicity constitutes a majority.²⁴

¹² For a detailed breakdown of the prevalence of each language, see Ethnologue: Languages of the World, *Uganda*, <http://www.ethnologue.com/country/UG> (last accessed Oct. 18, 2014).

¹³ African Studies Center, University of Pennsylvania, *Uganda: A Profile*, <http://www.africa.upenn.edu/NEH/uhome.htm> (last accessed Oct. 22, 2014).

¹⁴ CIA World Factbook, *supra* note 1.

¹⁵ *Id.*

¹⁶ THE AFRICA REPORT, *Swahili to Become East Africa’s Official Language*, (Oct. 25, 2013), available at <http://www.theafricareport.com/East-Horn-Africa/swahili-to-become-east-africas-official-language.html>.

¹⁷ *Id.*

¹⁸ UGANDA BUREAU OF STATISTICS, UGANDA POPULATION AND HOUSING CENSUS, 11 (2002), available at <http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/2002%20Census%20Final%20Reportdoc.pdf>.

¹⁹ U.S. DEPARTMENT OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, UGANDA: INTERNATIONAL RELIGIOUS FREEDOM REPORT 2009 (Oct. 26, 2009), available at <http://www.state.gov/j/drl/rls/irf/2009/127261.htm>.

²⁰ Minority Rights Group International, World Directory of Minorities and Indigenous People, *Uganda: an Overview*, <http://www.minorityrights.org/5037/uganda/uganda-overview.html> (last accessed Oct. 22, 2014).

²¹ Elizabeth Carlson, *Great Expectations: Ethnicity, Candidate Performance and Voters in Uganda*, African Studies Association Conference Paper, 2 (Jan. 31, 2011), available at http://www.sscnet.ucla.edu/polisci/wgape/papers/18_Carlson.pdf.

²² INTERNATIONAL ALERT, RENEGOTIATING THE ‘IDEAL’ SOCIETY: GENDER RELATIONS IN THE WAKE OF CONFLICT AND DISPLACEMENT IN UGANDA, 22 (2013), available at <http://www.international-alert.org/resources/publications/reneegotiating-ideal-society> [hereinafter INTERNATIONAL ALERT: GENDER RELATIONS IN UGANDA].

²³ *Supra* note 21.

²⁴ *Id.*

- Bantus, who occupy the southern, central and western regions of Uganda, make up the largest ethnic group.²⁵ The Bantu groups include the Baganda, Banyankole, Basoga, Bakiga, Batoro, Banyoro, Banyarwanda, Bagisu, Bagwere and Bakonia. According to a 2002 census, 16.9 percent of all Ugandans are Baganda, 9.5 percent are Banyakole, 8.4 percent are Basoga, 6.9 percent are Bakiga, 4.6 percent are Bagisu, and 2.7 percent are Banyoro.²⁶
- The Nilotics occupy the north-central regions of Uganda and include the Lango, Acholi, Alur, Padhola, Lulva and Jonam. 6.1 percent of all Ugandans are Langi and 4.7 percent are Acholi.²⁷
- The Nilo-Hamitics occupy eastern and northeastern regions of Uganda and include the Teso, Karamojong, Kumam, Kakwa, Sebei, Pokot, Labwor and Tepeth. 6.4 percent of all Ugandans are Teso.²⁸
- Finally, groups such as the Lugbara, Madi and Lendu live in the northwest of Uganda. 4.2 percent of all Ugandans are Lugbara.²⁹

5. Governance

Uganda is a multiparty democratic republic with three branches of government: executive, legislative, and judicial.³⁰ Uganda's system of governance is laid out in its 1995 Constitution, which was last amended in 2005.³¹ Amendments to the constitution included the return of multiparty politics to Uganda in 2006 after President Yoweri Museveni's single rule since 1986 and the National Resistance Movement (NRM) single party politics, along with the removal of presidential term limits.³² The independent judicial branch is comprised of magistrate's courts, high courts, courts of appeals, and the Supreme Court.³³ The legislative branch consists of a unicameral National Assembly with 375 seats.³⁴ The president and members of the National Assembly are elected every five years.³⁵ Currently, President Museveni is serving his fourth term in office,³⁶ parallel to what many Ugandan critics regard as increasing intolerance for political opposition and growing repression of public dissent.³⁷

²⁵ Foreign Affairs and International Trade Canada, Centre for Intercultural Learning, *Uganda Country Overview* (last updated Dec. 19, 2011), available at <http://www.international.gc.ca/cfsi-icse/cil-cai/magazine/v06n01/3-2-eng.asp> (last accessed Oct. 22, 2014).

²⁶ CIA World Factbook, *supra* note 1.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Government of Uganda, Constitution & Government, available at <http://www.gov.ug/about-uganda/sector/constitution-government>.

³¹ *Id.*

³² THE CONSTITUTION (AMENDMENT) ACT, 2005, available at http://www.parliament.go.ug/new/images/stories/constitution/Constitutional_Amendment_Act_2005.pdf.

³³ CIA World Factbook, *supra* note 1.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See, for example: Richard M. Kavuma, *Threats and Arrests in Uganda*, THE GUARDIAN (Nov. 8, 2011), <http://www.theguardian.com/global-development/poverty-matters/2011/nov/08/uganda-amnesty-report-media-crackdown>.

6. Major Conflicts

Before Yoweri Museveni was installed in power in 1986, Uganda experienced decades of brutal rebellions, military coups, dictatorships, and civil war.³⁸ From 1894 to 1962, Uganda was a protectorate of the British Empire. In drawing the boundaries of the country, the British grouped together a wide range of ethnic groups with different political and cultural systems. The British used competing ethnic interests to extend their control over the protectorate, creating a difficult environment for political cohesion following Uganda's independence.³⁹ In the 1970s and 1980s, nearly half a million Ugandans lost their lives to state-sponsored violence under the dictatorship of Idi Amin and the second presidency of Milton Obote (1980-85).⁴⁰ The legacy of ethnic affiliation, regional divide and political violence remains a powerful force in Ugandan politics today.⁴¹

Currently, "armed fighting" exists among "hostile ethnic groups, rebels, armed gangs, militias, and various government forces that extend across Uganda's borders."⁴² In recent years, armed fighting within Uganda has included violent inter-communal land disputes in northern Uganda,⁴³ racial violence in Kampala,⁴⁴ and most notably, an over 20-year-long conflict with the Lord's Resistance Army (LRA).

The LRA is Africa's oldest and most persistent armed group.⁴⁵ It was formed in northern Uganda in the late 1980s to overthrow the Ugandan government so that the country could be governed by biblical commandments and Acholi traditions.⁴⁶ The atrocities and human rights abuses inflicted by the LRA, as well as Uganda People's Defense Force (UPDF), have led to thousands of deaths, abductions, torture, and massive displacement.⁴⁷ The LRA has additionally utilized violent coercive recruitment tactics, including abduction of children.⁴⁸ At the height of the conflict, there were over two million citizens displaced in northern Uganda.⁴⁹ Following a truce with the Ugandan government, the LRA moved its operation into the Democratic Republic of Congo (DRC) in 2006.⁵⁰ Since then, LRA fighters have continued to attack local populations in the DRC, Central African Republic, and South Sudan.⁵¹

Uganda has additionally "contributed to, and has been impacted in various ways, by conflicts beyond its borders."⁵² The UPDF has been involved in armed action in neighboring countries including in

³⁸ BBC News Africa, *Uganda Profile*, (last updated Nov. 25, 2013), available at <http://www.bbc.co.uk/news/world-africa-14107906> [hereinafter BBC Uganda Profile].

³⁹ A.B.K. Kasozi, *Social Origins of Violence in Uganda, 1964-1985*, 22-29 (1994).

⁴⁰ BBC Uganda Profile, *supra* note 38.

⁴¹ Minority Rights Group International, *supra* note 20.

⁴² CIA World Factbook, *supra* note 1.

⁴³ IRIN, *Uganda: Land Disputes Threaten Northern Peace* (Apr. 19, 2012), <http://www.irinnews.org/report/95322/uganda-land-disputes-threaten-northern-peace>.

⁴⁴ Xan Rice, *Uganda Forest Protest Sparks Racial Violence*, THE GUARDIAN (Apr. 12, 2007), available at <http://www.theguardian.com/world/2007/apr/13/uganda.international>.

⁴⁵ U.S. Department of State, *The Lord's Resistance Army: Fact Sheet* (Mar. 23, 2012), available at <http://www.state.gov/r/pa/prs/ps/2012/03/186734.htm> [hereinafter LRA Factsheet].

⁴⁶ Xan Rice, *Background: The Lord's Resistance Army*, THE GUARDIAN (Oct. 20, 2007), available at <http://www.theguardian.com/katine/2007/oct/20/about.uganda>.

⁴⁷ LRA Factsheet, *supra* note 45.

⁴⁸ A 2006 study funded by UNICEF estimated that at least 66,000 children and youth had been abducted by the LRA between 1986 and 2005. ANNAN, JEANNIE, ET AL., THE STATE OF YOUTH AND YOUTH PROTECTION IN NORTHERN UGANDA: FINDINGS FROM THE SURVEY FOR WAR AFFECTED YOUTH, A REPORT FOR UNICEF UGANDA 55 (2006), available at <http://chrisblattman.com/documents/policy/sway/SWAY.Phase1.FinalReport.pdf>.

⁴⁹ LRA Factsheet, *supra* note 45.

⁵⁰ CIA World Factbook, *supra* note 1.

⁵¹ LRA Factsheet, *supra* note 45.

⁵² INTERNATIONAL ALERT: GENDER RELATIONS IN UGANDA, *supra* note 22.

the DRC, the Central African Republic, Rwanda, Somalia and South Sudan. Uganda has also had border disputes with the DRC⁵³ and South Sudan.⁵⁴

B. Neighboring Country Information



Source: The Nations Online Project, <http://www.nationsonline.org/oneworld/map/uganda-map.htm>

Uganda is bordered by Kenya to the east, South Sudan to the north, the DRC to the west, Rwanda to the southwest, and Tanzania to the south. Uganda hosts over 300 thousand refugees and asylum seekers from neighboring countries, as well as from Somalia.⁵⁵ Congolese account for two-thirds of asylum seekers and refugees in Uganda, while Somalis and South Sudanese are the second and third largest refugee groups, respectively.⁵⁶

Uganda's neighbors have an uneven record on the treatment of SGN persons. Three of Uganda's border countries have criminalized same-sex sexual acts, and all have documented instances of abuse, violence and discrimination. Kenya receives the vast majority of Ugandan refugees, including those fleeing

⁵³ BBC Uganda Profile, *supra* note 38.

⁵⁴ *Uganda and South Sudan Resolve Border Dispute*, THE MONITOR (Nov. 14, 2012), <http://www.monitor.co.ug/News/National/Uganda-and-South-Sudan-resolve-border-conflict/-/688334/1619748/-/12inwn5z/-/index.html>.

⁵⁵ UNHCR, 2014 UNHCR Country Operations Profile: Uganda, <http://www.unhcr.org/pages/49e483c06.html> (last accessed Oct. 22, 2014).

⁵⁶ *Id.*

persecution based on their sexual orientation and/or gender identity. The following section provides background information on each of the Uganda's bordering states.

1. Kenya

The Republic of Kenya (Kenya) is a diverse and predominantly Christian country of 45,010,056 inhabitants.⁵⁷ 82.5 percent of Kenyans are Christian, 11.1 percent are Muslim, and the rest follow other faiths.⁵⁸ Kenya's elections in December 2007 were marred by serious irregularities, resulting in unrest and inter-ethnic violence.⁵⁹ This led to a constitutional reform, intended to create a more power-sharing government.⁶⁰ The elections in 2013, the first under the new constitution, were largely peaceful.⁶¹

UNHCR reports that, as of January 2014, there are 534,938 refugees residing in Kenya.⁶² The majority of these refugees - 482,390 in December 2013 - were from Somalia.⁶³ In March 2014, the Kenyan government ordered all Somali refugees living in urban areas to return to refugee camps.⁶⁴ There are 20,000 stateless persons in Kenya, but no recorded IDPs.⁶⁵

Section 162 of Kenya's Penal Code criminalizes "carnal knowledge against the order of nature," which has been understood by officials as prohibiting consensual same-sex activity, particularly between men.⁶⁶ In 2012, there were no reported prosecutions under these laws.⁶⁷ As a consequence of this leniency in law enforcement, and because UNHCR processes asylum applications in the country, large numbers of Ugandan SGN refugees flee to Kenya.⁶⁸

SGN individuals face discrimination and risk of violence in Kenya.⁶⁹ According to the U.S. State Department, although the police intervene in such attacks they are not sympathetic to LGBT individuals.⁷⁰ Following the enactment of the Anti-Homosexuality Act in Uganda, a group of Kenyan lawmakers formed an anti-gay caucus and called for the laws criminalizing homosexuality in Kenya to be enforced.⁷¹

Refugees experience violence in Kenya as a result of their sexual orientation.⁷² Human Rights First recorded various violations carried out in response to the exposure of individuals' sexual orientation,

⁵⁷ CENTRAL INTELLIGENCE AGENCY, *The World Factbook: Kenya*, (last updated Jun. 20, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/ke.html>.

⁵⁸ *Id.*

⁵⁹ BBC NEWS AFRICA, *Kenya Profile* (last updated Sept. 10, 2013), <http://www.bbc.co.uk/news/world-africa-13681341>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² UNHCR, *2014 UNHCR Country Operations Profile: Kenya*, <http://www.unhcr.org/pages/49e483a16.html> (last accessed Oct. 22, 2014).

⁶³ *Id.*

⁶⁴ James Macharia, *Kenya orders Somali refugees back to camps after attacks*, REUTERS U.S., (Mar. 25, 2014) <http://www.reuters.com/article/2014/03/25/us-kenya-somalia-refugees-idUSBREA2O1ON20140325>.

⁶⁵ *Supra* note 62.

⁶⁶ U.S. DEPARTMENT OF STATE BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, KENYA 2013 HUMAN RIGHTS REPORT, 58 (2013), *available at* <http://www.state.gov/documents/organization/220336.pdf> [hereinafter KENYA 2013 HUMAN RIGHTS REPORT].

⁶⁷ *Id.* at 50.

⁶⁸ James Patinkin, *Kenya: A Safe Haven for Persecuted Gays?* UNHCR REFUGEE DAILY, (Mar. 27, 2014), <http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=463ef21123&id=5335159e8>.

⁶⁹ KENYA 2013 HUMAN RIGHTS REPORT, *supra* note 66.

⁷⁰ *Id.*

⁷¹ *Kenya: A Safe Haven for Persecuted Gays?* *supra* note 68.

⁷² HUMAN RIGHTS FIRST, *THE ROAD TO SAFETY: STRENGTHENING PROTECTION FOR LGBTI REFUGEES IN UGANDA AND KENYA*, 8 (2012), *available at* https://www.humanrightsfirst.org/wp-content/uploads/pdf/RPP-The_Road_to_Safety.pdf.

including abduction, beating, immolation and rape.⁷³ SGN refugees experience abuse from both Kenyan citizens and refugees; in the majority of cases reported, other refugees were the perpetrators.⁷⁴

2. South Sudan

The Republic of South Sudan (South Sudan) gained its independence from Sudan in July 2011, following a peace agreement that ended the longest civil war in Africa.⁷⁵ Nevertheless, it continues to experience conflict with Sudan regarding oil ownership and border disputes.⁷⁶ Many of South Sudan's political, administrative and economic structures are in development stages,⁷⁷ and the government lacks capacity to provide adequate services for much of the population.⁷⁸ In December 2013, tension between the president and a deputy resulted in violent fighting between government troops and opposition forces.⁷⁹ There are various other conflicts occurring in South Sudan at the time of writing this report.⁸⁰ These include reciprocal cattle-raiding between different ethnic groups in Jonglei, and a land struggle between Dinka Ngok farmers and Misseriya Arab tribesmen in the border region of Abyei.⁸¹

In October 2014, the UN estimated there were over 599,000 South Sudanese refugees in neighboring countries,⁸² including 151,228 refugees in Uganda.⁸³ In mid-2013, there were 223,636 refugees residing within South Sudan.⁸⁴ These numbers increased dramatically since late 2013 due to severe violence and human rights violations relating to food availability.⁸⁵ The UN estimates that there were 1.4 million IDPs in the country as of October 2014.⁸⁶

South Sudan punishes consensual “unnatural offenses,” defined as “carnal intercourse against the order of nature,” with up to ten years’ imprisonment.⁸⁷ In 2012 there were no reports of this law being enforced, though it has been reported that LGBT persons face social stigma and widespread discrimination in the country.⁸⁸

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ BBC News Africa, *South Sudan Profile*, (last updated Aug. 6, 2014), <http://www.bbc.co.uk/news/world-africa-14069082>.

⁷⁶ *Id.*

⁷⁷ UNHCR, *2014 UNHCR Country Operations Profile: South Sudan*, <http://www.unhcr.org/pages/4e43cb466.html> (last accessed Oct. 13, 2014).

⁷⁸ *Id.*

⁷⁹ UN News Agency, *Number of Civilians Protected at UN Peacekeeping Bases is ‘Swelling’*, RELIEFWEB (Apr. 16, 2014), available at <http://reliefweb.int/report/south-sudan/number-civilians-protected-un-peacekeeping-bases-swelling>.

⁸⁰ BBC News Africa, *South Sudan Profile*, *supra* note 75.

⁸¹ *Id.*

⁸² UNHCR, Information Sharing Portal: South Sudan Situation (last updated Oct. 21, 2014), <https://data.unhcr.org/SouthSudan/regional.php>.

⁸³ UNHCR Information Sharing Portal: South Sudan Situation, (last updated Oct. 21, 2014), <http://data.unhcr.org/SouthSudan/country.php?id=229>.

⁸⁴ *UNHCR Country Operations Profile: South Sudan*, *supra* note 77.

⁸⁵ UN News Centre, *In South Sudan, UN Rights Chief Appeals for Safety to Allow Displaced to Return Home* (Apr. 28, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47669#.U211P1eO2kE>.

⁸⁶ OCHA, *South Sudan Crisis: Situation Report as of 16 October 2014* (Situation Report number 58), available at http://reliefweb.int/sites/reliefweb.int/files/resources/South_Sudan_Situation_Report_58_as_of_16_October.pdf.

⁸⁷ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, *SOUTH SUDAN 2012 HUMAN RIGHTS REPORT*, 33, available at <http://www.state.gov/documents/organization/204381.pdf>.

⁸⁸ *Id.*

3. Democratic Republic of Congo

The DRC is struggling to recover from its civil war between 1998 and 2003, in which fighting between government forces supported by Angola, Namibia and Zimbabwe, and rebels supported by Uganda and Rwanda, led to an estimated 3 million deaths.⁸⁹ The situation is most volatile in the eastern parts of the country, where human rights abuses are widespread;⁹⁰ the UN reports that over the past 15 years the situation has been particularly severe in the Kivu region, where “hundreds of thousands [have] been displaced multiple times.”⁹¹ The conflict in the east is the direct cause of the 2.6 million IDPs recorded in DRC in 2013, who currently reside either in camps or with host families.⁹² The LRA remains active in the north-east, and the M23, a rebel group made up primarily of Tutsis, continues to operate despite a peace agreement overseen by the UN in 2013.⁹³

According to UNHCR figures, there were over 183,000 refugees in the DRC in mid-2013.⁹⁴ Of the 60,000 refugees assisted by UNHCR in 2013, 50,000 were from the Central African Republic.⁹⁵ The fighting in DRC’s east has also resulted in 450,000 Congolese refugees in neighboring countries,⁹⁶ including thousands in the Kyangwali refugee settlement in Uganda.⁹⁷

There are no laws specifically prohibiting homosexuality or same-sex relations in the DRC. However, homosexuality remains a cultural taboo in the country,⁹⁸ and individuals may be prosecuted under public decency provisions.⁹⁹ According to Fahamu Refugee Programme, “[t]hose who are open about their sexual orientation face hostility, widespread discrimination, rejection, social exclusion, and harassment.”¹⁰⁰ In October 2010, the *Sexual Practices against Nature Bill*, which aims to criminalize same-sex sexual acts as well as materials or associations promoting sexual practice “against nature,” was introduced to the Socio-Cultural Committee.¹⁰¹ An additional bill aiming “[to] make homosexuality and transgenderism illegal” was introduced to the Congolese National Assembly in December 2013.¹⁰² Although both Bills gained widespread support from the public and within the government, they have not been passed as of October 2014.¹⁰³

⁸⁹ BBC NEWS AFRICA, *Democratic Republic of Congo Profile* (last updated Sept. 16, 2014), <http://www.bbc.com/news/world-africa-13283212>.

⁹⁰ *Id.*

⁹¹ UN Press Conference on Humanitarian Situation in Central African Republic, Briefing (Oct. 29, 2013), available at http://www.un.org/News/briefings/docs/2013/131029_Guest.doc.htm.

⁹² UNHCR, *2014 UNHCR Country Operations Profile: Democratic Republic of the Congo*, available at <http://www.unhcr.org/pages/49e45c366.html>.

⁹³ BBC NEWS AFRICA, *Democratic Republic of Congo Profile*, *supra* note 89.

⁹⁴ UNHCR Country Operations Profile: *Democratic Republic of the Congo*, *supra* note 92.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ UNHCR Country Operations Profile: *Uganda*, *supra* note 55.

⁹⁸ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, DEMOCRATIC REPUBLIC OF THE CONGO 2012 HUMAN RIGHTS REPORT, 34, available at <http://www.state.gov/documents/organization/204319.pdf>.

⁹⁹ *Id.* See CONGOLESE PENAL CODE, Art. 176 (translated to English in IMMIGRATION AND REFUGEE BOARD OF CANADA, *Democratic Republic of the Congo: Situation of Homosexuals, including Legislation and Support Services; Treatment of Homosexuals by Society and Government Authorities (2008 - February 2011)* (Mar. 3, 2011), COD103703.FE (Can.), available at <http://www.refworld.org/docid/4db7c4272.html>).

¹⁰⁰ FAHAMU REFUGEE PROGRAMME, *Democratic Republic of Congo LGBTI Resources*, <http://www.refugeelegalaidinformation.org/democratic-republic-congo-lgbti-resources> (last accessed Oct. 22, 2014).

¹⁰¹ *Id.*

¹⁰² Valerie Bah, *DRC Looks to Follow in Uganda's Footsteps with Anti-Gay Bill*, THINK AFRICA PRESS (Mar. 11, 2014), available at <http://thinkafricapress.com/drc/looks-follow-ugandas-footsteps-anti-gay-bill>.

¹⁰³ *Id.*

4. Rwanda

The Republic of Rwanda (Rwanda) has 12,337,138 inhabitants.¹⁰⁴ Close to two-thirds of its population lives below the poverty line.¹⁰⁵ However, the Rwandan economy is currently experiencing steady growth, and the government has implemented an Economic Development and Poverty Reduction Strategy to encourage further improvements.¹⁰⁶

In 1994, ethnic tensions between the dominant Tutsi and the majority Hutus resulted in the death of over one million Tutsis and moderate Hutus in a state-orchestrated genocide.¹⁰⁷ Following the genocide, over two million Hutus fled to neighboring Tanzania, Uganda, Burundi and former Zaire (now the DRC).¹⁰⁸ The Rwandan army pursued Hutu fighters into DRC,¹⁰⁹ and rebel forces from the two countries continued to clash until 2009, when a peace deal was agreed.¹¹⁰ Rwanda came under scrutiny from UN member states in 2012 for allegedly providing financial backing to the Congolese rebel group M23, an accusation Rwanda strongly denied.¹¹¹ In 2013, the United States withdrew its aid to Rwanda in response to its suspected involvement with M23.¹¹²

In January 2014, the UN recorded 73,349 refugees living in Rwanda, all of whom were dispersed between four camps and a transit center.¹¹³ The majority of refugees residing in Rwanda are from the DRC.¹¹⁴ There were no recorded IDPs in Rwanda as at January 2014.¹¹⁵ In November 2013, there were 14,000 Rwandan refugees living in Uganda.¹¹⁶

In 2009, the lower House of the Rwandan parliament was due to vote on a revision to the Penal Code, which would have made homosexuality a criminal offense.¹¹⁷ However, as a result of strong pressure from activists and diplomats, the Rwandan Minister of Justice declared sexual orientation to be a private matter rather than state concern.¹¹⁸ There are currently no laws criminalizing same-sex sexual activity in Rwanda.¹¹⁹ Nonetheless, it has been claimed that LGBT individuals face societal discrimination and abuse in Rwanda.¹²⁰ In April 2011, the LGBTI rights group Horizon Community Association (HOCA) established an office in Kigali, but was quickly evicted after the landlord claimed to have experienced duress from the local community.¹²¹ Also in 2011, the Rwandan government signed the UN Joint

¹⁰⁴ Central Intelligence Agency, *The World Factbook: Rwanda* (last updated Jun. 20, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/rw.html>.

¹⁰⁵ BBC News Africa, *Rwanda Profile* (last updated Mar. 14, 2014), <http://www.bbc.co.uk/news/world-africa-14093238>.

¹⁰⁶ The World Bank, *Rwanda Overview* (last updated Apr. 9, 2014), <http://www.worldbank.org/en/country/rwanda/overview>.

¹⁰⁷ BBC News Africa, *Rwanda Profile*, *supra* note 105.

¹⁰⁸ *The World Factbook: Rwanda*, *supra* note 104.

¹⁰⁹ BBC News Africa, *Q&A: DR Congo's M23 Rebels*, (last updated Nov. 5, 2013), <http://www.bbc.com/news/world-africa-20438531>.

¹¹⁰ *Id.*

¹¹¹ BBC News Africa, *Rwanda Profile*, *supra* note 105.

¹¹² *Q&A: DR Congo's M23 Rebels*, *supra* note 109.

¹¹³ UNHCR, *2014 UNHCR Country Operations Profile: Rwanda*, available at <http://www.unhcr.org/pages/49e45c576.html>.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ UNHCR Press Release, (Nov. 5, 2013), available at <http://www.unhcr.org/527908899.html>.

¹¹⁷ The European Parliament's Intergroup on LGBT Rights, *Rwanda Paves the Way for Universal Respect of Human Rights in Africa* (Jan. 15, 2010), <http://www.lgbt-ep.eu/news-stories/rwanda-paves-the-way/>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, RWANDA 2012 HUMAN RIGHTS REPORT, 45, available at <http://www.state.gov/documents/organization/204366.pdf>.

¹²¹ *Id.*

Statement *Ending Acts of Violence and Related Human Rights Violations Based on Sexual Orientation and Gender Identity*.¹²² In 2012, there were no officially reported attacks against LGBTI individuals.

5. Tanzania

The United Republic of Tanzania (Tanzania) is one of the poorest countries in the world, with many of its inhabitants living below the World Bank poverty line.¹²³ However, Tanzania has enjoyed relative political stability since the mid-60s and has not experienced internal strife like its neighbors.¹²⁴

The UN characterizes Tanzania as “hospitable” to refugees, despite its economic instability.¹²⁵ In 2010, the Government naturalized over 162,000 Burundian refugees who had been living in Tanzania.¹²⁶ Refugees residing in Tanzania are restricted in their movement, and must apply for permits from the Ministry of Home Affairs before exiting the camps in which they live.¹²⁷ As of January 2014, there were 102,506 asylum seekers and refugees residing in Tanzania, and no recorded IDPs.¹²⁸

According to the U.S. State Department, LGBT individuals in Tanzania “face societal discrimination that restrict[s] their access to health care, housing, and employment.”¹²⁹ The government has not attempted to combat this discrimination, which has included the attack of SGN individuals and a lack of police investigation into attacks.¹³⁰ Tanzania criminalizes consensual same-sex conduct, though the law has not been enforced.¹³¹ Nonetheless, in 2011, an NGO reported that the perpetration of “unnatural offences” was one the most common reasons for the pretrial detention of minors.¹³² In 2009, a group of 39 gay and lesbian activists were out socializing in Dar es Salaam when they were arbitrarily arrested and charged with operating as sex workers.¹³³

¹²² *Id.*

¹²³ Central Intelligence Agency, *The World Factbook: Tanzania* (last updated Jun. 20, 2014), <https://www.cia.gov/library/publications/the-world-factbook/geos/tz.html>.

¹²⁴ BBC News Africa, *Tanzania Profile*, (last updated Jul. 29, 2014), <http://www.bbc.co.uk/news/world-africa-14095776>.

¹²⁵ UNHCR, *2014 UNHCR Country Operations Profile: United Republic of Tanzania*, <http://www.unhcr.org/pages/49e45c736.html>.

¹²⁶ *Id.*

¹²⁷ UNHCR, *2009 UNHCR Global Report – United Republic of Tanzania*, available at <http://www.unhcr.org/4c08f3039.pdf>.

¹²⁸ *UNHCR Country Operations Profile: United Republic of Tanzania*, *supra* note 125.

¹²⁹ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, TANZANIA 2012 HUMAN RIGHTS REPORT, 35, available at <http://www.state.gov/documents/organization/204386.pdf>.

¹³⁰ *Id.* at 35-36.

¹³¹ *Id.* at 35.

¹³² *Id.*

¹³³ ILGHR, *Tanzania: Arbitrary Arrests and Detentions of Gay and Lesbian Activists*, (Oct. 30, 2009), <https://iglhr.org/content/tanzania-arbitrary-arrests-and-detentions-gay-and-lesbian-activists>.

C. Migration Flows

Migration to, from, and in Uganda is influenced by a complex web of political, economic and cultural factors.¹³⁴ Migration is mostly internal, from rural areas to urban centers, or to agricultural areas with employment opportunities and land availability.¹³⁵ Political instability, population growth, and poverty have also contributed to increased external migration.¹³⁶

1. Emigration

Emigration from Uganda has intensified since the 1990s, largely due to rapid population growth,¹³⁷ high unemployment,¹³⁸ a lack of attractive employment opportunities,¹³⁹ and demand for cheap labor in the Middle East and Asia.¹⁴⁰ Corruption and decline in public services have contributed to poor economic conditions as well.¹⁴¹ Corruption has included embezzlement and diversion of public funds to private entities, leading to severe lack of essential resources for Ugandan citizens.¹⁴²

The exact number of Ugandans residing outside of Uganda is indeterminate, and estimates vary widely. As of 2013, for example, the UN estimated that 628,845 Ugandan citizens were residing abroad, where as other estimates pointed to numbers up to 3 million.¹⁴³

Eighty-two percent of Ugandan emigrants remain in the African continent, while 12 percent immigrate to Europe, and 5 percent to the United States and Canada.¹⁴⁴ According to the United Nations Department of Economic and Social Affairs (UNDESA) Kenya, South Sudan and Rwanda were the top destinations for Ugandan emigrants in 2010 and 2013; they were followed by the United Kingdom, the United States, Canada, South Africa and Tanzania.¹⁴⁵

Large numbers of Ugandan skilled personnel emigrate for better work opportunities, leaving behind a shortage of professionals in Uganda.¹⁴⁶ For example, many Ugandan doctors have emigrated to Botswana, South Africa, Rwanda, Swaziland, the United Kingdom, Canada, and the United States.¹⁴⁷ While significant numbers of skilled workers immigrate to other African countries, unskilled Ugandans, known

¹³⁴ DEBORAH MULUMBA & WENDO MLAHAGWA OLEMA, POLICY ANALYSIS REPORT: MAPPING MIGRATION IN UGANDA, 8 (Sep. 18, 2009), available at <http://www.immis.org/wp-content/uploads/2010/05/Policy-Analysis-Report-Uganda.pdf>.

¹³⁵ INTERNATIONAL ORGANIZATION FOR MIGRATION, MIGRATION IN UGANDA: A RAPID COUNTRY PROFILE, 24 (2013), available at <http://www.opm.go.ug/assets/media/resources/486/THE%20UGANDA%20MIGRATION%20PROFILE.pdf> [hereinafter Migration in Uganda].

¹³⁶ *Id.*

¹³⁷ As of 2012, Uganda had the fifth highest growth rate in the world. See Carol Natukunda, *Uganda population at record 37 million*, NEW VISION (Uganda) (Jun. 23, 2013), available at <http://www.newvision.co.ug/news/644270-uganda-population-at-record-37-million.html>.

¹³⁸ Uganda has the highest youth unemployment rate in Sub Saharan Africa, with 62% being unemployed. MIGRATION IN UGANDA, *supra* note 135, at 25.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 26.

¹⁴¹ HUMAN RIGHTS WATCH, LETTING THE BIG FISH SWIM: FAILURES TO PROSECUTE HIGH-LEVEL CORRUPTION IN UGANDA (Oct. 21, 2013), available at <http://www.hrw.org/node/119839>.

¹⁴² *Id.*

¹⁴³ MIGRATION IN UGANDA, *supra* note 135, at 17.

¹⁴⁴ *Id.*

¹⁴⁵ UN DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, UGANDA MIGRATION PROFILE 2013, available at <http://esa.un.org/MigMGProfiles/indicators/files/Uganda.pdf> (last accessed Oct. 22, 2014).

¹⁴⁶ POLICY ANALYSIS REPORT: MAPPING MIGRATION IN UGANDA, *supra* note 134, at 21.

¹⁴⁷ *Id.*

as *Kyeyo* (“broom”), tend to immigrate to the Global North.¹⁴⁸ Economic migrants often perform menial labor and send remittances to family members who remain in Uganda.¹⁴⁹

2. Forced Migration

i. Internal Displacement

For nearly three decades, civil war in the north of Uganda has resulted in vast internal displacement. By 2005, approximately 1.8 million people resided in IDP camps, while an unknown number of civilians fled to urban areas in other parts of the country.¹⁵⁰ After a cease-fire agreement was signed in 2006 between the government of Uganda and the LRA, most IDPs returned to their places of origin.¹⁵¹ As of 2011, about 30,000 Ugandans remained in IDP camps, predominantly because they either did not have the means to return home, or had no land to which to return.¹⁵²

Forced migration has also resulted from governmental resettlement programs in rural areas,¹⁵³ localized violent conflicts, and natural disasters.¹⁵⁴ It has been estimated that “7 million Ugandans have been affected by internal conflicts, cattle rustling and natural disasters since independence in 1962.”¹⁵⁵

A recent U.K. Home Office report stated that “[As] homophobic attitudes are widely held across society, both in urban and rural areas, it is...unlikely that an LGBT person would be able to relocate within Uganda to escape persecution.”¹⁵⁶

ii. Refugees and Asylum Seekers

The number of Ugandan citizens seeking asylum has increased steadily since 2008.¹⁵⁷ According to UNHCR figures, 15,400 Ugandans applied for asylum between 2009 and 2012 worldwide.¹⁵⁸ The vast majority of asylum applications by Ugandans were launched in South Africa, followed by the United Kingdom, the United States and Kenya.¹⁵⁹ As of 2013, refugee status was granted in 1,744 of these asylum cases, notably in the United States, the United Kingdom, Canada and Sweden.¹⁶⁰

¹⁴⁸ *Id.* at 61.

¹⁴⁹ *Id.*

¹⁵⁰ INTERNAL DISPLACEMENT MONITORING CENTER (IDMC) & NORWEGIAN REFUGEE COUNCIL, UGANDA - NEED TO FOCUS ON RETURNEES AND REMAINING IDPS IN TRANSITION TO DEVELOPMENT, 3 (May 24, 2012), available at <http://www.internal-displacement.org/sub-saharan-africa/uganda/2012/uganda-need-to-focus-on-returnees-and-remaining-idps-in-transition-to-development>.

¹⁵¹ *Id.* at 4.

¹⁵² *Id.*

¹⁵³ HUMAN RIGHTS WATCH: LETTING THE BIG FISH SWIM, *supra* note 141, at 20.

¹⁵⁴ REFUGEE LAW PROJECT, FROM ARID ZONES INTO THE DESERT: THE UGANDAN NATIONAL IDP POLICY IMPLEMENTATION 2004-2012 (Working Paper 23), 2 (Oct. 2012), available at http://www.refugeelawproject.org/files/working_papers/RLP.WP23.pdf

¹⁵⁵ *Id.* at 2.

¹⁵⁶ UNITED KINGDOM HOME OFFICE, COUNTRY INFORMATION AND GUIDANCE - UGANDA: CLAIMS BASED ON SEXUAL ORIENTATION, §1.3.18 (August 2014), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346274/CIG_Uganda_SOGI_2014_8_20_v2_0.pdf [hereinafter UK COUNTRY INFORMATION AND GUIDANCE].

¹⁵⁷ MIGRATION IN UGANDA, *supra* note 135, at 17.

¹⁵⁸ *Id.* at 40.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

As the majority of governments do not track such information, it is unknown how many Ugandans apply for asylum on sexual orientation or gender identity (SOGI) grounds each year. Similarly, it is unknown in which countries SOGI-based asylum claims were launched. However, most SGN persons who escape Uganda flee to Kenya, which does not require a visa and where the law prohibiting same-sex sexual acts is sparingly enforced.¹⁶¹ ORAM has additionally observed that a large percentage of SGN Ugandans who remain in the African continent flee to South Africa.

¹⁶¹ *Kenya: A Safe Haven for Persecuted Gays?*, *supra* note 68.

II. Legal Environment for SGN Individuals

Ugandan law criminalizes same-sex sexual acts, as well as activities in support of sexual minority rights. The law additionally restricts the access of SGN individuals to protections against discrimination that are available to other Ugandans.

A. Criminalization of Same-Sex Acts

Same-sex sexual activity is criminalized under Uganda's Penal Code, which prohibits "unnatural offences" and "acts of gross indecency." Popular support for new laws imposing harsher punishments for persons believed to be 'homosexual' culminated in the movement to enact the Anti-Homosexuality Bill of 2009.¹⁶²

The Bill was drafted and debated in the context of increasing homophobia in the national public discourse, and a growing drift toward "sexuality-managing legislation."¹⁶³ Debate over the Bill, which came to be known as "Kill the Gays Bill", raged in the legislature, media and general society, attracting significant international attention. In December 2013, the Ugandan Parliament passed an amended version of the Bill; on February 20, 2014, President Museveni signed the Bill into law.

The Anti-Homosexuality Act was comprehensive in its coverage, criminalizing same-sex sexual activity as well as activities in support or "promotion" of homosexuality, all punishable by prison sentences. In August 2014, the Ugandan Constitutional Court annulled the law after finding it was enacted without a proper quorum. The possibility of re-introducing an anti-homosexuality bill has been widely debated since the ruling.

While the annulment of the Act means promotion of homosexuality is no longer criminalized, and that Ugandans are no longer seemingly required to report gays and lesbians to authorities, homosexuality remains a criminal offense under Uganda's Penal Code.

1. The Penal Code Act of 1950

Same-sex sexual conduct is criminalized in Uganda under sections 145 through 148 of the Penal Code Act of 1950 ("Penal Code"), commonly referred to as the "sodomy" laws, which remain in force today.¹⁶⁴ Sections 145 through 148 pre-date Ugandan independence, having been established during the

¹⁶² ANTI-HOMOSEXUALITY BILL OF 2009, 102 UGANDA GAZETTE 74, Bill Supplement No. 13 (Sep. 25, 2009) [hereinafter ANTI-HOMOSEXUALITY BILL], available at

<http://www.asylumlaw.org/docs/sexualminorities/UgandaBillNo18AntiHomosexualityBill092509.pdf>.

¹⁶³ J. Oloka-Onyango, *'We Are More Than Just Our Bodies': HIV/AIDS and the Human Rights Complexities Affecting Young Women who have Sex with Women in Uganda*, HURIPEC Working Paper 36 (2012) [hereinafter 'We Are More Than Just Our Bodies']

¹⁶⁴ PENAL CODE ACT OF 1950, as amended, §§ 145-48, LAWS OF UGANDA Cap. 120 (Rev. ed. 2000) [hereinafter 1950 Penal Code], as amended, Penal Code (Amendment) Act of 2007 [hereinafter Penal Code Amend. 2007] [together hereinafter Penal Code]. Sections 145 through 148 are enumerated under Division III ("Offences Injurious to the Public in General"), Chapter XIV ("Offences Against Morality"), which includes provisions criminalizing rape, prostitution, abduction for human trafficking, incest, sexual assaults and "defilements" of women, among other acts. Note the numbering of these sections has changed several times over the years (many sources refer to sections 140 through 143 rather than to sections 145 through 148, respectively), and as of the date of this report it is unclear exactly when and how these changes occurred.

British colonial period; they were reinstituted when the modern Penal Code was enacted in 1950, and retained after Ugandan independence in 1962.¹⁶⁵

Section 145 of the Penal Code prohibits “unnatural offences,” defined as “carnal knowledge of another person against the order of nature,” and imposes a penalty of life in prison.¹⁶⁶ Section 146 punishes any “attempt to commit” an “unnatural offense” with seven years’ imprisonment.¹⁶⁷ The same punishment is imposed under Section 148 for any “act of gross indecency” or “attempt to procure” such an act, whether conducted in public or in private.¹⁶⁸ Section 147 imposes a penalty of fourteen years’ imprisonment for anyone who “unlawfully and indecently assaults a boy” less than eighteen years old (which effectively includes consensual same-sex acts between teenage boys).¹⁶⁹

Advocates have argued that the Penal Code’s sections 145 through 148 are incompatible with the Constitution of Uganda,¹⁷⁰ and with the rights and protections the Constitution guarantees.¹⁷¹ For example, such provisions appear to conflict with Article 27 of the Constitution, guaranteeing the right to privacy in one’s home and personal communications,¹⁷² to which the High Court of Uganda has ruled SGN Ugandans are equally entitled.¹⁷³ The High Court has issued two prominent decisions holding that all Ugandans are entitled to the freedoms and rights enshrined in the Constitution regardless of their sexual orientation.¹⁷⁴ SGN Ugandans theoretically enjoy equal protection of the law¹⁷⁵ and freedom from discrimination based on sex, race, color, ethnicity, tribe, religion, socio-economic status, political opinion, and disability.¹⁷⁶ However, no decision of the High Court has held sections 145 through 148 to be facially unconstitutional, and these provisions remain in effect.

The contradiction between the right to freedom from discrimination and the criminalization of private consensual sexual acts between members of the same sex was considered reconciled because the

¹⁶⁵ See HUMAN RIGHTS WATCH, THIS ALIEN LEGACY: THE ORIGINS OF “SODOMY” LAWS IN BRITISH COLONIALISM, 3 (2008) [hereinafter HUMAN RIGHTS WATCH, ALIEN LEGACY], available at http://www.hrw.org/sites/default/files/reports/lgbt1208_web.pdf.

¹⁶⁶ 1950 PENAL CODE, *supra* note 164, at §145.

¹⁶⁷ *Id.* at § 146.

¹⁶⁸ *Id.* at § 148.

¹⁶⁹ *Id.* at § 147.

¹⁷⁰ HUMAN RIGHTS WATCH, UGANDA: ANTI-HOMOSEXUALITY BILL IS INHERENTLY DISCRIMINATORY AND THREATENS BROADER HUMAN RIGHTS, (2010), available at:

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/droi/dv/201/201101/20110124_409aiaantihomo_en.pdf.

¹⁷¹ See CONSTITUTION OF THE REPUBLIC OF UGANDA (1995), available at

http://www.parliament.go.ug/new/images/stories/constitution/Constitution_of_Uganda_1995.pdf; THE CONSTITUTION

(AMENDMENT) ACT, 2005 (Uganda), available at

http://www.parliament.go.ug/new/images/stories/constitution/Constitutional_Amendment_Act_2005.pdf; THE CONSTITUTION

(AMENDMENT) (No. 2) ACT OF 2005 [hereinafter ABRIDGED CONST.], available at <http://constitution.co.ug/> [together hereinafter UGANDA CONST.]. The 1995 Constitution, as amended, is the country’s *de jure* supreme governing document; the 2006 Abridged Constitution (incorporating the language of the 1995 Constitution and all amendments through February 15, 2006), is a simplified document prepared by the Ugandan Law Reform Commission to increase accessibility to constitutional rights for all Ugandans. Though the language in this version was not intended to be legally binding, it is frequently cited as *de facto* law.

¹⁷² UGANDA CONST., *Id.* at art. 27 § 2. The right to privacy is omitted from the Abridged Constitution intended to be more readily accessible to all Ugandans. Compare UGANDA CONST. art. 27 § 2 with ABRIDGED CONST. ch. 4, art. 7.

¹⁷³ [Victor] Juliet Mukasa & Yvonne Oyo v. Attorney General, Misc. Cause No. 247 of 2006, High Court of Uganda in Kampala, (2008) AHRLR 248 (UGHC 2008), available at <http://www.chr.up.ac.za/index.php/browse-by-subject/490-uganda-mukasa-and-another-v-attorney-general-2008-ahrlr-ughc-2008-.pdf> [hereinafter *Mukasa & Oyo*].

¹⁷⁴ See Kasha Jacqueline, Pepe Onziema & David Kato v. Giles Muhame & Rolling Stone Publications Ltd., Misc. Cause No. 163/2010, (2011) (UGHC), available at [http://www1.chr.up.ac.za/images/files/documents/smr/cases/SMR-Jacqueline%20Kasha%20&%20Others%20v.%20Rolling%20Stone%20Ltd%20\(2010\).PDF](http://www1.chr.up.ac.za/images/files/documents/smr/cases/SMR-Jacqueline%20Kasha%20&%20Others%20v.%20Rolling%20Stone%20Ltd%20(2010).PDF) [hereinafter *Kato et. Al v. Rolling Stone*] (finding independent news media violated constitutional right to privacy of LGBTI individuals); *Mukasa & Oyo*, *supra* note 173 (finding police violated LGBTI individuals’ constitutional privacy rights and protection against unlawful searches and inhumane treatment).

¹⁷⁵ UGANDA CONST., *supra* note 172, at art. 21 § 1; see also Abridged Const., *supra* note 172 at ch. 4, art. 2 §1.

¹⁷⁶ *Id.* at art. 21 §2.

Penal Code prohibited only “unnatural” sexual acts, not homosexuality.¹⁷⁷ The argument presented was that only forbidden sexual acts were punishable, regardless of whether the actors self-identified as homosexual or lesbian.¹⁷⁸ The only defense to a charge under sections 145 through 148 is thus coercion.¹⁷⁹ Along these lines, the High Court of Uganda held in January 2011 that criminal liability under section 145 applies only if sodomy had actually taken place, and not simply because the prosecuted individual is gay. Any search, detention, or prosecution for a charge under the sodomy laws may be premised only on evidence that sodomy had actually occurred.¹⁸⁰ Law enforcement action violates constitutional privacy rights when based solely on an individual’s appearance, an individual’s advocacy for sexual minority rights, or rumors about one’s sexual orientation.¹⁸¹

In practice, law enforcement authorities have not adhered to this judicially construed distinction. Authorities typically consider merely *being* a homosexual as a breach of the sodomy laws, and simply violating social norms can create a *presumption* of sodomy.¹⁸² Historically, some officials have had a much broader understanding of “unnatural” acts than the courts have defined, justifying harassment, arrest, and incarceration of SGN people regardless of whether they had engaged in an illegal sexual act.¹⁸³ Officials typically rely on “presumptions fed by prejudice, or stereotypes of attire, manner, or association” to justify harsh punitive action;¹⁸⁴ violation of gender norms in one’s outward expression is in practice deemed sufficient for arrest and incarceration for sodomy.

Although police have used the sodomy laws to arrest and charge individuals for committing ‘homosexual activities’, no person to date has been convicted under these laws.¹⁸⁵ Cases were either dismissed or remain ongoing, and many of those detained opt to paying heavy fines in order to secure their release.¹⁸⁶

A case against Sexual Minorities Uganda (SMUG) members George Oundo and Brenda Kiiza for indecent practices was dismissed in 2009 for lack of evidence.¹⁸⁷ In April 2009, charges were again brought against SMUG members, with Fred Wasukira and Brian Mpadde arrested and charged with homosexual conduct.¹⁸⁸ The case was ongoing as of the end of 2010, and no information is available on the current status of the case.¹⁸⁹ In June 2009, former Police Football Club coach Charles Ayeikoh was charged with homosexual acts, but charges were dismissed in September 2010.¹⁹⁰ In April 2012, a deputy head teacher

¹⁷⁷ See HUMAN RIGHTS WATCH, *ALIEN LEGACY*, *supra* note 165, at 37-48 (citing D.D.N. Nsereko, *Uganda*, in 4 INTERNATIONAL ENCYCLOPEDIA OF LAWS, Criminal Laws, pt. 1, ch. 7 ¶ 385 in Roger Blanpain et al. eds., Kluwer Law International 2006).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Michael Hollander, *Gay rights in Uganda: Seeking to Overturn Uganda’s Anti-Sodomy Laws*, 50(1) VA. J. OF INT’L L., 219-266 (2009).

¹⁸³ *Id.*

¹⁸⁴ HUMAN RIGHTS WATCH, *ALIEN LEGACY*, *supra* note 165, at 49.

¹⁸⁵ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2013 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: UGANDA, 33 (Feb. 27, 2014), available at <http://www.state.gov/documents/organization/220383.pdf> [hereinafter UGANDA 2013 HUMAN RIGHTS REPORT].

¹⁸⁶ Barbara Among, *Ugandan Men to Go on Trial on Homosexuality Charges*, THE GUARDIAN (Apr. 17, 2014), available at <http://www.theguardian.com/world/2014/apr/17/ugandan-men-trial-homosexuality-charges>.

¹⁸⁷ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2009 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: UGANDA (Mar. 11, 2010), available at <http://www.state.gov/j/drl/rls/hrrpt/2009/af/135982.htm> [hereinafter UGANDA 2009 HUMAN RIGHTS REPORT].

¹⁸⁸ *Id.*

¹⁸⁹ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 2010 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES: UGANDA, 48 (Apr. 8, 2011), available at <http://www.state.gov/documents/organization/160149.pdf> [hereinafter UGANDA 2010 HUMAN RIGHTS REPORT].

¹⁹⁰ *Id.*

was arrested and charged with engaging in homosexual activities;¹⁹¹ the trial was still pending at the end of 2012 and no new information is available.¹⁹² In November 2013, Samuel K. Ganafa, Spectrum Uganda Initiatives' Executive Director, was arrested in Kampala with three other LGBTI activists and a family member and was subjected to HIV testing; the case against him was dismissed by a Ugandan court in October 2014.¹⁹³ In December 2013, Kim Mukisa and Jackson Mukasa were arrested in Jinja and charged with "sexual knowledge against the order of nature" under the Penal Code.¹⁹⁴ Their trial was scheduled to open in June 2014.¹⁹⁵ In April 2014, up to 12 SGN individuals were awaiting trial under the Penal Code.¹⁹⁶ On June 27, 2014, five men were arrested on allegations of homosexuality in the district of Pader. They were questioned and subjected to an anal examination.¹⁹⁷ No charges were made and the five were later released, though the investigation remains ongoing.¹⁹⁸

2. The Anti-Homosexuality Bill and the Anti-Homosexuality Act

i. The Anti-Homosexuality Bill

In July 2005, police raided the home of Victor Mukasa, a transgender man and prominent rights activist; the police also arrested Yvonne Oyo, a guest in Mukasa's home, and subjected her to humiliating treatment in detention.¹⁹⁹ Subsequently, Mukasa and Oyo filed suit against the government for violating their constitutional right to privacy and freedom from arbitrary arrest and inhumane punishment. The *Mukasa & Oyo* case received broad publicity and elevated the issue of sexual minority rights in Uganda to national attention. As the case was pending, Ugandan media outlets published articles identifying alleged homosexuals and calling for legislation increasing punishment for homosexual conduct; many articles called for the use of violence to eliminate LGBTI people altogether.²⁰⁰ In December 2008, the High Court of Uganda issued a decision in the *Mukasa & Oyo* case, affirming the equal constitutional rights of SGN Ugandans, and holding that the government's invasive and degrading treatment of the plaintiffs had been illegal.²⁰¹

Although the decision received widespread praise internationally, President Museveni - along with numerous MPs, government officials, religious leaders, and the popular media - decried the decision as an affront to Ugandan values.²⁰² In March 2009, a conference organized by American and Ugandan religious leaders, and attended by Ugandan government officials and civil servants, called for the enactment of tough anti-homosexuality legislation.²⁰³ On April 29, 2009, the Ugandan Parliament passed

¹⁹¹ UGANDA 2013 HUMAN RIGHTS REPORT, *supra* note 185, at 36.

¹⁹² *Id.*

¹⁹³ Colin Stewart, *Ugandan Court Dismisses Case against Activist Sam Ganafa*, ERASING 76 CRIMES (Oct. 28, 2014), <http://76crimes.com/2014/10/28/ugandan-court-dismisses-case-against-activist-sam-ganafa/>

¹⁹⁴ *Ugandan Men to Go on Trial on Homosexuality Charges*, *supra* note 186.

¹⁹⁵ *Id.*

¹⁹⁶ Collin Stewart, *As Many as 12 Awaiting Gay-Sex Trials in Uganda*, ERASING 76 CRIMES (Apr. 25, 2014),

<http://76crimes.com/2014/04/25/as-many-as-12-awaiting-gay-sex-trials-in-uganda/>.

¹⁹⁷ *Five Arrests for "Homosexuality" in Uganda: A Fuller Story*, A PAPER BIRD (Jul. 11, 2014), <http://paper-bird.net/tag/hrapf/>.

¹⁹⁸ *Id.*

¹⁹⁹ *Mukasa & Oyo*, *supra* note 173.

²⁰⁰ For a more detailed discussion on Ugandan media, see *infra* notes 375-402 and accompanying text.

²⁰¹ *Mukasa & Oyo*, *supra* note 173.

²⁰² See Jeff Sharlet, *Straight Man's Burden*, HARPER'S MAGAZINE (Sept. 2010), available at <http://harpers.org/archive/2010/09/straight-mans-burden/>. For a more detailed discussion on anti-LGBTI social norms in Uganda, see *infra* notes 311-332 and accompanying text.

²⁰³ Jeffry Gettleman, *Americans' Role Seen in Uganda Anti-Gay Push*, THE NEW YORK TIMES (Jan. 3, 2010), available at http://www.nytimes.com/2010/01/04/world/africa/04uganda.html?_r=0.

a resolution allowing MP David Bahati to submit a private member's bill to strengthen laws against homosexuality, beyond the provisions of the Penal Code.²⁰⁴

Submitted on October 14, 2009, the Anti-Homosexuality Bill characterized homosexuality as a threat to Ugandan society, and homosexuals as individuals who engage in "promiscuity," "sexual abuse," and "deviation."²⁰⁵ The Bill proposed to criminalize same-sex sexual activity with up to life imprisonment.²⁰⁶ In so-called "aggravated" circumstances, such as where the accused was HIV-positive, same-sex activity was punishable by death.²⁰⁷ The Bill also outlawed same-sex marriage and the "promotion" of homosexuality.²⁰⁸ Failure to report an offense under the Bill within 24 hours was punishable by a fine or up to three years' imprisonment.²⁰⁹ Literature related to homosexuality was described as "pornographic."²¹⁰ President Museveni and Minister of Ethics and Integrity, James Nsaba Buturo, announced that Uganda's government was determined to pass the Bill "even if it meant withdrawing from international treaties and conventions such as the UN's Universal Declaration on Human Rights, and foregoing donor funding."²¹¹

The Anti-Homosexuality Bill was condemned by Uganda's Human Rights Commission.²¹² The international outcry, including indications from donor nations that they would withdraw financial aid if the Bill passed, eventually forced President Museveni to soften his official stance.²¹³

On May 13, 2011, the Parliament closed its session without an official vote on the Bill. Though this was viewed by Ugandan rights activists as a "victory," concerns remained that it would reappear in some form because widespread anti-homosexuality sentiments remained high.²¹⁴

On November 28, 2012, the Anti-Homosexuality Bill returned as an item of business on the Parliament's order paper.²¹⁵ The Bill's author, Bahati, told the Associated Press that the newly introduced bill no longer contained the death penalty, but rather focused on "protecting children from gay

²⁰⁴ Jim Burroway, *Uganda's Parliament Agrees to Motion to Consider Anti-Homosexuality Bill, April 29, 2009*, BOX TURTLE BULLETIN (Dec. 20, 2009), available at <http://www.boxturtlebulletin.com/ugandas-parliament-agrees-to-motion-to-consider-anti-homosexuality-bill-april-29-2009>.

²⁰⁵ ANTI-HOMOSEXUALITY BILL, *supra* note 162, at Memorandum § 2.1.

²⁰⁶ *Id.* at § 2(2).

²⁰⁷ *Id.* at § 3(2).

²⁰⁸ *Id.* at § 12-13.

²⁰⁹ *Id.* at § 14.

²¹⁰ ANTI-HOMOSEXUALITY BILL, *supra* note 162, at Memorandum §§ 1.1, 2.1. For an in-depth analysis of the Anti-Homosexuality Bill and its incompatibility with Uganda's Constitution and international legal obligations, see Ugandan Civil Society Coalition on human Rights and Constitutional Law [UCSC], *Final Submission to the Legal and Parliamentary Affairs Committee of the Ugandan Parliament in the Anti-Homosexuality Bill of 2009* (2011), available at http://www.ugandans4rights.org/attachments/article/404/11_05_09_Final_Coalition_submission_to_Legal_committee_of_parliament.pdf.

²¹¹ Xan Rice, *Uganda Considers Death Sentence for Gay Sex in Bill before Parliament*, THE GUARDIAN (Nov. 29, 2009), available at <http://www.guardian.co.uk/world/2009/nov/29/uganda-death-sentence-gay-sex>.

²¹² UGANDA HUMAN RIGHTS COMMISSION, 12TH ANNUAL REPORT, 167-171 (2009) available at <http://www.rwi.lu.se/NHRIDB/Africa/Uganda/2009%20Annual%20Report.pdf> [hereinafter UHRC REPORT]

²¹³ *Americans' Role Seen in Uganda Anti-Gay Push*, *supra* note 203.

²¹⁴ See Tristan McConnell, *Is This the End of Uganda's Anti-Gay Law?*, GLOBAL POST (May 13, 2011), <http://www.globalpost.com/dispatch/news/regions/africa/110513/uganda-gay-bill-rights>.

²¹⁵ See Warren Throckmorton, *Contentious Day Ahead for Uganda's Parliament; Anti-Homosexuality Bill Still on Deck; Update on Death Penalty*, PATHEOS (Nov. 28, 2012), available at <http://www.patheos.com/blogs/warrenthrockmorton/2012/11/28/contentious-day-ahead-for-ugandas-parliament-anti-homosexuality-bill-still-on-deck/>.

pornography, banning gay marriage, counselling gays, as well as punishing those who promote gay culture.”²¹⁶ On December 20, 2013, a revised version of the Bill was passed in Parliament.²¹⁷

Despite growing international condemnation, and after ‘finding’ that homosexuality is an acquired behavior rather than a genetic condition,²¹⁸ President Museveni signed the Anti-Homosexuality Bill into law on February 20, 2014. The Anti-Homosexuality Act was largely similar to that proposed in 2009. Significant deletions from the original Bill were the imposition of capital punishment, the provision criminalizing failure to report an offense under the Bill, and the provision providing for extraterritorial jurisdiction.

ii. Reaction to the Anti-Homosexuality Bill

The Anti-Homosexuality Bill enjoyed support from a sizable majority of Ugandans, and the period since its introduction has been marked by waves of anti-LGBTI sentiments.²¹⁹ Highly publicized anti-homosexuality religious conferences²²⁰ and media campaigns “outing” alleged gays and lesbians have led to an increase in violence against SGN individuals.²²¹ As sexual minority rights groups, human rights organizations and health advocates denounced the Anti-Homosexuality Bill for its “serious human rights implications”²²² and its “disastrous impact on the country’s HIV response,”²²³ large sections of Ugandan society reacted by calling for “increased harassment and intimidation,”²²⁴ and prosecution of activists for “sodomy” and “promotion of obscenity.”²²⁵ This trend has “created an environment of fear” for SGN people and a sense of impunity for assailants.²²⁶ Public incitements from high-profile figures have contributed to a climate of anxiety.²²⁷

²¹⁶ Rodney Muhumuza, *Uganda Anti-Gay Bill Drops Death Penalty Clause*, THE STAR (Nov. 30, 2012), available at <http://www.thestar.com/news/world/article/1295596--uganda-anti-gay-bill-drops-death-penalty-clause>.

²¹⁷ Lauren Carasik, *Retrogressive Anti-Gay Law in Uganda has Ties to the US*, ALJAZEERA AMERICA (Jan. 13, 2014), available at <http://america.aljazeera.com/opinions/2014/1/retrogressive-antigaylawinugandahastiestotheus.html>.

²¹⁸ *Museveni Sets Terms for Signing Gay Bill*, OBSERVER (Jan. 26, 2014), available at http://www.observer.ug/index.php?option=com_content&view=article&id=29839:museveni-sets-terms-for-signing-gay-bill&catid=34:news&Itemid=114.

²¹⁹ Melissa Minor Peters, *Kuchus in the Balance: Queer Lives under Uganda’s Anti-Homosexuality Bill*, 236 (May 2014) [hereinafter *Kuchus in the Balance*].

²²⁰ UGANDA 2009 HUMAN RIGHTS REPORT, *supra* note 187.

²²¹ *Gays in Uganda Say They’re Living in Fear*, NBC NEWS (Oct. 19, 2010), available at http://www.nbcnews.com/id/39742685/ns/world_news-africa/#.U15XPSiEPzI.

²²² *Uganda’s Anti-Homosexuality Bill Has ‘Serious Human Rights Implications’* - UNAIDS, UN NEWS CENTRE (Feb. 18, 2014), available at http://www.un.org/apps/news/story.asp?NewsID=47169&Cr=uganda&Cr1=#.UwZb1_lDWJU.

²²³ *Uganda’s “Anti-Homosexuality” Bill Will Have a Disastrous Impact on Country’s HIV Response*, THOMSON REUTERS FOUNDATION (Dec. 20, 2013), available at <http://www.trust.org/item/20131220135510-8rqz9/?source=hptop>.

²²⁴ UGANDA 2009 HUMAN RIGHTS REPORT, *supra* note 187, at § 5.

²²⁵ UHRC REPORT, *supra* note 212, at 166. In February 2011, Margaret Sekaggya, the UN Special Rapporteur on the Situation of Human Rights Defenders, reported to the UN Human Rights Council about the “urgent” situation facing LGBTI rights advocates in Uganda. The Special Rapporteur voiced “deep concern” about the Anti-Homosexuality Bill, the increase in violations of “the fundamental rights of [LGBTI] people in Uganda,” and the criminalization of “the legitimate activities of men and women, as well as national and international organizations, who strive for the respect for equality and non-discrimination on the basis of sexual orientation.” Special Rapporteur on the Situation of Human Rights Defenders, *Summary of Cases Transmitted to Governments and Replies Received*, Human Rights Council, ¶ 2310, UN Doc. A/HRC/16/44/Add.1 (Feb. 28, 2011), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.44.Add.1_EFOnly.pdf.

²²⁶ Thomas Muyunga, *Effects of a Two Year Sustained Anti-Gay Campaign on Health Seeking Behaviour of the Sexual Minorities in Uganda*, 1 (Jan. 10, 2010), available at <http://www.msmgf.org/files/msmgf/SubSaharanAfrica/EffectsUganda.pdf>.

²²⁷ Kathambi Kinoti, *Being Lesbian in Uganda and the Threat of Anti-Homosexuality Legislation* (Interview with Kasha Jacqueline of FARUGANDA), ASSOCIATION FOR WOMEN’S RIGHTS IN DEVELOPMENT (Feb. 19, 2010) [hereinafter FARUGANDA Interview], available at <http://www.awid.org/Library/LGBTI-rights-in-Uganda>.

While the Anti-Homosexuality Bill increased discrimination against SGN persons, it also galvanized the LGBTI rights movement in Uganda.²²⁸ Growing international attention since 2009 has led to increased funding of Ugandan LGBTI rights organizations.²²⁹ Whereas prior to 2009 activism in support of SGN persons focused primarily on discreet social support provisions, LGBTI organizations have since turned to public advocacy.²³⁰ It has also been claimed that the years since the introduction of the Bill have been characterized by an increase in the number of sexual minority rights activists.²³¹

iii. Substance of the Anti-Homosexuality Act

The Anti-Homosexuality Act, which was annulled by Uganda's Constitutional Court in August 2014 on a parliamentary technicality, criminalized same-sex sexual activity, and any form of support of individuals who engage in same-sex sexual activity. The Act imposed life imprisonment for the "offence of homosexuality," which a person committed if:

- (a) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;
- (b) he or she uses any object or sexual contraption to penetrate or stimulate [the] sexual organ of a person of the same sex;
- (c) he or she touches another person with the intention of committing the act of homosexuality.²³²

An "attempt to commit homosexuality" was punishable by seven years' imprisonment.²³³

"Aggravated homosexuality" was punishable by life imprisonment and occurred when any of the following conditions were met:

- the homosexual act is with a person less than eighteen years old;
- the accused is HIV-positive;
- the accused is a parent, guardian, or "person in authority over" the sexual partner;
- the sexual partner is disabled;
- the accused is a "serial offender," or the accused "applies, administers or causes to be used" by another person of the same sex "any drug, matter or thing" to enable a homosexual act.²³⁴

An "attempt to commit "aggravated homosexuality" was punishable by life imprisonment.²³⁵ The Act did not distinguish between consensual and nonconsensual same-sex sexual acts, nor between private and public sexual acts.²³⁶ Persons charged with "aggravated homosexuality" had to undergo HIV testing

²²⁸ Mark Canavera, *The Kuchu Beehive*, THE HUFFINGTON POST (Aug. 2, 2010), available at http://www.huffingtonpost.com/mark-canavera/the-kuchu-beehive_b_666033.html.

²²⁹ *Kuchus in the Balance*, *supra* note 219, at 15.

²³⁰ Meredith Lukow, *Opportunity & Repression: LGBT & Activism in an African Context* (Jul. 31, 2012), available at <http://aladinrc.wrlc.org/bitstream/handle/1961/10637/Lukow%2c%20Meredith%20-%20Spring%2012.pdf?sequence=1>.

²³¹ Hilary Heuler, *2nd Annual Gay Pride Parade Held in Uganda*, VOICE OF AMERICA (Aug. 4, 2013), available at <http://www.voanews.com/content/second-annual-gay-pride-parade-held-in-uganda/1723313.html>

²³² ANTI-HOMOSEXUALITY ACT (2014) § 2, available at https://hivos.org/sites/default/files/the_ugandan_anti-homosexuality_act_2014.pdf.

²³³ *Id.* at § 4(1).

²³⁴ *Id.* at § 3(1).

²³⁵ *Id.* at § (2).

²³⁶ UCSC Final Submission to the Legal and Parliamentary Affairs Committee, *supra* note 210.

under the Act.²³⁷ A person convicted of “homosexuality” or “aggravated homosexuality” could have been ordered to pay compensation to the victim in addition to serving a prison sentence.²³⁸

The Anti-Homosexuality Act also penalized non-sexual “homosexual acts,” as well as persons who support or “promote” homosexuality; whether an individual identified as a “homosexual” or a “lesbian” was irrelevant under the Act. “Aiding and abetting homosexuality” was punishable by seven years’ imprisonment.²³⁹ “Conspiracy to engage in homosexuality” was similarly punishable by seven years’ imprisonment.²⁴⁰ Under a provision on “brothels,” keeping a house or other place for “purposes of homosexuality” was punishable by up to seven years’ imprisonment.²⁴¹ A person who owns, occupies, or manages a property and knowingly allows same-sex sexual activity on that premises was considered to be committing a felony punishable by up to five years’ imprisonment.²⁴² “Purport[ing] to contract” a same-sex marriage was punishable by life imprisonment, while conducting a same-sex marriage ceremony was punishable by up to seven years’ imprisonment.²⁴³ “Promotion” or “abetting” of homosexuality subjected a person to a fine, between five and seven years’ imprisonment, or both.²⁴⁴ Lastly, the Anti-Homosexuality Act required extradition to Uganda of any person who has committed an offense under the Act.²⁴⁵

iv. Legal Developments following the Anti-Homosexuality Act

According to activists, 12 SGN individuals were awaiting trial in Uganda because of their homosexuality and/or gender nonconformity as of April 2014, some of whom were subject to anal examinations.²⁴⁶ On June 27, 2014, five men were arrested on allegations of homosexuality in the district of Pader. They were questioned and subjected to an anal examination.²⁴⁷ No charges were made and the five were later released, though the investigation remains ongoing.²⁴⁸

In April 2014, Uganda’s Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) filed a reference before the East African Court of Justice, asking that the Act be declared incompatible with the Treaty for the Establishment of the East African Community.²⁴⁹

Also in April 2014, Jane Ruth Aceng, Uganda’s Director General of Health Services, signed a revision of the *Draft Guidelines for Health Workers Regarding Health Services for Homosexuals*.²⁵⁰ The revision expanded the circumstances in which medical professionals were required to report an LGBT

²³⁷ ANTI-HOMOSEXUALITY ACT (2014), *supra* note 232, at § 3(3).

²³⁸ *Id.* at § 5(3). “Compensation” is not defined. A “victim” is a person “involved in homosexual activities against his or her will.” *See id.* at § 1.

²³⁹ *Id.* at § 7.

²⁴⁰ *Id.* at § 8.

²⁴¹ *Id.* at § 11(1).

²⁴² *Id.* at § 11(2).

²⁴³ *Id.* at § 12. The broad language of this provision could apply not only to those who enter into a same-sex marriage, but also those who officiate, solemnize, witness, attend, or provide services for such a marriage.

²⁴⁴ *Id.* at § 13.

²⁴⁵ *Id.* at § 14.

²⁴⁶ *As Many as 12 Awaiting Gay-Sex Trials in Uganda*, *Supra* note 196.

²⁴⁷ *Five Arrests for “Homosexuality” in Uganda: A Fuller Story*, *supra* note 197.

²⁴⁸ *Id.*

²⁴⁹ Civil Society Coalition on Human Rights and Constitutional Law, *Uganda’s Anti-Homosexuality Act Challenged before the East African Court of Justice* [Press Release], (Apr. 25, 2014), available at http://www.hrapf.org/sites/default/files/publications/14_04_23_cschrcl_press_release_upon_eacj_reference_filing_final.pdf.

²⁵⁰ Sunnivia Brydum, *Health Care Workers Must Out LGBT Ugandans, According to New Guidelines*, ADVOCATE (Apr. 24, 2014), available at <http://www.advocate.com/world/2014/04/24/health-care-workers-must-out-lgbt-ugandans-according-new-guidelines>.

person to police to include when a “person has been sodomized” or in cases of “aggravated homosexuality”, as defined by the Anti-Homosexuality Act.²⁵¹ The Draft’s revision held researchers, investigators, health workers and their facilities responsible to ensure “no acts of promotion or recruitment of subjects into acts of homosexuality... occur” and in the “event of promotion or recruitment, they shall be held accountable.”²⁵² However, the *Ministerial Directive on Access to Health Services without Discrimination*, published in June 2014, explicitly prohibits discrimination on the ground of sexual orientation.²⁵³

Legislation barring NGOs in Uganda from “promoting homosexuality” has been drafted in April 2014.²⁵⁴ The proposed law will prohibit Ugandan NGOs from advocating for sexual minority rights,²⁵⁵ an act previously punishable under the Anti-Homosexuality Act.²⁵⁶ The legislation will also bar international NGOs, or NGOs receiving funding from abroad, from commenting on Uganda’s politics.²⁵⁷ In March 2014, The Refugee Law Project’s refugee casework capacities in settlements and in Kampala were suspended by the Commissioner for Refugees for “promoting homosexuality.”²⁵⁸

On June 23, 2014, the High Court ruled that as homosexuality is illegal and “un-African,” and as its “promotion” is contradictory to public interest, LGBTI activists’ rights to freedom of speech and expression, freedom of assembly, and rights to equal treatment before the law were not violated when their Entebbe workshop was raided in 2012.²⁵⁹ A notice of appeal has been filed.

v. Annulment of the Anti-Homosexuality Act

On March 11, 2014, a petition challenging the legality of the Anti-Homosexuality Act was filed before Uganda’s Constitutional Court, auspices by the Civil Society Coalition on Human Rights and Constitutional Law (CSCRCL).²⁶⁰ The ten petitioners asserted that the Anti-Homosexuality Act was enacted by Parliament without quorum in contradiction to Uganda’s Constitution and the Parliamentary Rule of Procedure;²⁶¹ and that the Anti-Homosexuality Act contravened the rights enshrined in Uganda’s Constitution.²⁶²

²⁵¹ *Id.*

²⁵² J. Lester Feder, *Ugandan Health Workers Could become Front-Line Enforcement of Anti-Homosexuality Act*, BUZZFEED (Apr. 23, 2014), available at <http://www.buzzfeed.com/lesterfeder/updated-ugandan-guidelines-could-make-health-workers-front-l>.

²⁵³ THE MINISTERIAL DIRECTIVE ON ACCESS TO HEALTH SERVICES WITHOUT DISCRIMINATION, §5(b) (June 2014), available at <http://www.scribd.com/doc/233209149/MoH-Ministerial-Directive-on-Access-to-Health-Services-Without-Discrimination-19-June-14>.

²⁵⁴ Elias Biryabarema, *Uganda Says Planning Tougher Law Limiting Gay Sex, Foreign NGOs*, REUTERS (Apr. 28, 2014), available at <http://www.reuters.com/article/2014/04/28/us-uganda-politics-idUSBREA3R10820140428>.

²⁵⁵ *Id.*

²⁵⁶ The International Center for Non-Profit Law, NGO Law Monitor: Uganda (Last updated Aug. 2, 2014), available at <http://www.icnl.org/research/monitor/uganda.html>.

²⁵⁷ *Uganda Says Planning Tougher Law Limiting Gay Sex, Foreign NGOs*, *supra* note 254.

²⁵⁸ Refugee Law Project, *Letter to the Media; Re: Incorrect Allegations of RLP Closure by Government*, available at <http://www.refugeelawproject.org/component/content/article/9-general/357-letter-to-the-media-re-incorrect-allegations-of-rlp-closure-by-government.html> (last accessed Oct. 14, 2014).

²⁵⁹ *Jacqueline Kasha Nabagesera et al. v. Attorney General and Hon. Rev. Fr Simon Lokodo*, Miscellaneous Cause No. 33 of 2012, High Court of Uganda, Civil Division.

²⁶⁰ Derrick Kiyonga, *Uganda: 10 Challenge Anti-Homosexuality Law*, THE OBSERVER [Kampala] (Mar. 12, 2014), available at <http://allafrica.com/stories/201403121311.html>.

²⁶¹ *Oloka-Onyango et al v. Attorney General*, Constitutional Petition 08 Of 2014, Constitutional Court of Uganda at Kampala (Petition, Mar. 11, 2014), at §12(a), available at http://www.hrapf.org/sites/default/files/publications/14_03_11_anti_homosexuality_act_2014_petition.pdf.

²⁶² *Id.* at §12(b)-(n).

On August 1, 2014, the Constitutional Court ruled that the Anti-Homosexuality Act 2014 was “null and void” as it was passed without quorum,²⁶³ an allegation that was not denied by the Attorney General. The Court did not consider the substantive content of the Act and the legality of its provisions. According to Amnesty International, “[t]he government has filed a notice of appeal against this ruling, and the case is expected to go to the Supreme Court.”²⁶⁴ The dismissal of the Act on a parliamentary technicality left open the possibility it will be re-introduced, an initiative that has since gained support in Parliament. Meanwhile, President Museveni has indicated that a new Anti-Homosexuality Bill will not be introduced because of economic considerations, and the negative implications that anti-homosexuality legislation had had on Uganda’s trade and export.²⁶⁵ As of October 2014, a similar legislation has not been re-introduced by lawmakers. Homosexuality remains criminalized under Uganda’s Penal Code.

B. Prohibition on Same-Sex Marriage

Same-sex marriage was criminalized in Uganda under the Anti-Homosexuality Act and punishable by life imprisonment. Conducting a same-sex marriage ceremony was punishable by up to seven years’ imprisonment for individuals, or cancellation of the license to marry for institutions.

Same-sex marriage remains prohibited under the Constitution of Uganda. Prior to 1995, Article 31 of Uganda’s Constitution provided that:

(3) Marriage shall be entered into with the free consent of the man and woman intending to marry.²⁶⁶

The 2005 amendments to the Constitution added a clause which states that “[m]arriage between persons of the same sex is prohibited.”²⁶⁷ The International Gay and Lesbian Human Rights Commission (IGLHRC) argued that considering the criminalization of same-sex relations and the implicit language of Article 31, the amendment was “unnecessary and redundant,” and served to codify discrimination against LGBTI individuals.²⁶⁸

C. Exemption from Protection by the Equal Opportunities Commission

The Ugandan Equal Opportunities Commission was established in 2007 by an Act of Parliament to eliminate discrimination, and take affirmative action in favor of marginalized groups.²⁶⁹ The Commission is mandated to monitor and ensure that the policies of government bodies, businesses, non-governmental

²⁶³ *Oloka-Onyango et al v. Attorney General*, Constitutional Petition 08 Of 2014, Constitutional Court of Uganda at Kampala (Ruling, Aug. 1, 2014), at p.26-27, available at http://www.hrapf.org/sites/default/files/publications/ruling_on_the_anti-homosexuality_act.pdf.

²⁶⁴ AMNESTY INTERNATIONAL, RULE BY LAW: DISCRIMINATORY LEGISLATION AND LEGITIMATED ABUSES IN UGANDA (Oct. 16, 2014), at 18, available at <http://www.amnesty.org/en/library/asset/AFR59/006/2014/en/aa50ac80-a17e-4534-8979-3ba8ed114172/afr590062014en.pdf> [hereinafter AMNESTY INTERNATIONAL, RULE BY LAW]

²⁶⁵ *Uganda’s Leader, Museveni Rethinks the Anti-Gay Law*, THE NEWS [Nigeria] (Oct. 3, 2014), available at <http://thenewsnigeria.com.ng/2014/10/03/ugandas-leader-museveni-rethinks-the-anti-gay-law/>.

²⁶⁶ 1995 CONST. *supra* note 171, at art. 31 §§ 1, 3. See also ABRIDGED CONST. *supra* note 171, at ch. 4, art. 14 §§ 1, 3.

²⁶⁷ CONST. AMEND., *supra* note 171, at § 10(b).

²⁶⁸ IGLHRC AND SEXUAL MINORITIES OF UGANDA, REPORT ON THE RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE REPUBLIC OF UGANDA UNDER THE AFRICAN CHARTER OF HUMAN AND PEOPLES’ RIGHTS: IN RESPONSE TO THE PERIODIC REPORT OF THE REPUBLIC OF UGANDA (Nov. 2006), available at <http://iglhrc.org/sites/iglhrc.org/files/105-1.pdf>.

²⁶⁹ EQUAL OPPORTUNITIES COMMISSION ACT (2007), available at http://www.hrapf.org/sites/default/files/publications/equal_opportunities_commission_act_2007.pdf.

organizations, and social and cultural communities “are compliant with equal opportunities and affirmative action in favour of groups marginalized on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age or any other reason created by history, tradition or custom.”²⁷⁰ However, under Section 15(6)(d) of the Equal Opportunities Commission Act, the Commission is prohibited from investigating “any matter involving behavior which is considered to be (i) immoral and socially harmful, or (ii) unacceptable, by the majority of the cultural and social communities in Uganda.”²⁷¹

Section 15(6)(d) of the Equal Opportunities Commission Act does not explicitly prohibit the Commission from combating discrimination against SGN persons. Ugandan rights organizations, however, have criticized the clause as vague and effectively discriminatory against sexually nonconforming individuals, noting that, “[the Equal Opportunities] Commission will never address the severe discrimination faced by LGBT people as long as homosexuality is considered immoral or unacceptable by a majority of Ugandans.”²⁷² Former Ugandan Finance Minister Syda Bbumba reportedly stated during Parliamentary debates of the Equal Opportunities Commission Act that “homosexual” persons should be targeted by the clause.²⁷³ In 2009, Adrian Jjuuko, Executive Director of the Human Rights Awareness and Promotion Forum (HRAPF), filed a constitutional challenge against Section 15(6)(d) of the Equal Opportunities Commission Act.²⁷⁴ The case was heard by the Constitutional Court of Uganda in October 2011, but as of October 2014 no ruling had yet been delivered.²⁷⁵

D. Identity-Specific Information

1. Women

Same-sex sexual activity between women was explicitly criminalized for the first time under the Anti-Homosexuality Act.²⁷⁶ Currently, SGN women face discrimination, arrest, and incarceration under the broad interpretation of the Penal Code’s section 145.²⁷⁷

Under section 131 of the Penal Code, “[a]ny person who. . . procures or attempts to procure any girl or woman under the age of twenty-one years to have unlawful carnal connection” with another person may be punished by up to seven years’ imprisonment.²⁷⁸ With same-sex sexual conduct in effect criminalized under section 145 of the Penal Code, the “procurement” provision imposed further legal proscriptions upon women who engaged in consensual same-sex conduct with women under age 21.

²⁷⁰ *Id.* § 14(1).

²⁷¹ *Id.* §15(6)(d).

²⁷² *Statement by Freedom and Roam Uganda (FARUG) to the 47th Session of the Commission on the Convention on the Elimination of All Forms of Discrimination against Women* (Oct. 2010), available at <http://www.iglhrc.org/binary-data/ATTACHMENT/file/000/000/444-4.pdf>.

²⁷³ African Activist, *Uganda: The Constitutional Court Hears Case on Equal Opportunities for All*, (July 2011) reprinted at INTERNATIONAL LESBIAN, GAY, BISEXUAL, TRANS AND INTERSEX ASSOCIATION <http://ilga.org/ilga/en/article/n5FBPK613y>.

²⁷⁴ *Jjuuko Adrian v. Attorney General of Uganda*, Constitutional petition No.1 of 2009, Uganda Constitutional Court at Kampala [2009]; *Judgment in Jjuuko Adrian vs. Attorney General Awaited*, Human Rights Awareness and Promotion Forum - Uganda (HRAPF) (Aug. 22, 2012), <http://www.hrapf.org/news-events/judgment-ijuuko-adrian-vs-attorney-general-awaited>.

²⁷⁵ HRAPF, Human Rights Advocate: Section 15(6)(D) of the Equal Opportunities Commission Act: Implications For Marginalised Groups, 2 (December 2013), available at http://hrapf.org/sites/default/files/publications/the_human_rights_advocate.pdf.

²⁷⁶ Andrew Harding, *Uganda President Yoweri Museveni Signs Anti-Gay Bill*, THE GUARDIAN (Feb. 24, 2014), available at <http://www.bbc.com/news/world-africa-26320102>.

²⁷⁷ UGANDA 2009 HUMAN RIGHTS REPORT, *supra* note 187; 1950 PENAL CODE, *supra* note 164, at § 145.

²⁷⁸ 1950 PENAL CODE, *supra* note 164, at § 131(1).

Though a recent Ugandan legal commentary observed that lesbians and women who have sex with women (WSW) are not legally punishable under the sodomy laws because they do not possess a penis, and Ugandan law does not perceive non-penetrative sex as “real,”²⁷⁹ SGN women are harassed and detained for perceived sodomy by virtue of their nonconformity with social and cultural norms.²⁸⁰ Societal and familial pressure for conformity are a continuous issue for SGN women, and nonconforming women and lesbians are often perceived as a threat. Kasha Jacqueline, founder of Freedom and Roam Uganda, claims that society views lesbians as wanting to be men.²⁸¹

Women whose sexual orientation, gender identity, or outward expression does not comport with established gender norms are exposed to physical and verbal abuse.²⁸² Sexually nonconforming women have reported incidents and threats of “curative” rape, where attackers rape in order to “cure” homosexuality.²⁸³ In some “curative” rape cases, the attackers are members of the victim’s family or neighbors.²⁸⁴ Women, and SGN women in particular, are often afraid to report incidents of sexual assault for fear of retaliation.²⁸⁵

2. Men

Same-sex sexual activity between men was criminalized under the Anti-Homosexuality Act until its annulment by the Constitutional Court.²⁸⁶ Homosexuality is in effect criminalized under the Penal Code, which remains in force today.²⁸⁷ Societal perceptions about the definitions of “carnal knowledge,” “homosexual,” “indecent,” “sodomy,” “unnatural” and other ambiguous terms in the Penal Code fuel misunderstanding about how to apply the law. This results in applications inconsistent with legal principles. Ugandan authorities typically identify homosexuality as a breach of the law, regardless of an individual’s sexual practices.²⁸⁸ Men who violate gender norms are often assumed to be homosexual, irrespective of their sexual preferences.²⁸⁹

Ugandan cultural norms identify the “feminine,” “submissive” or penetrated partner in a male-male sexual pairing as more culpable for “sodomy” or “homosexuality.” The “masculine,” “dominant,” or penetrating partner may be perceived as “less homosexual” and may, in some cases, escape culpability if he does not self-identify as a gay man, even though both partners technically have equal liability under the law.²⁹⁰ Because of these perceptions of masculinity, male victims of same-sex rape are regarded as willing perpetrators of “sodomy” and are often perceived as homosexual.²⁹¹

²⁷⁹ *Out of the Closet: Unveiling Sexuality Discourses in Uganda*, *supra* note 11; HUMAN RIGHTS WATCH ALIEN LEGACY, *supra* note 165, at 54 [quoting Lillian Tibatemwa-Ekirikubinza, *Criminal Law in Uganda: Sexual Assaults and Offences against Morality* 97 (2005)].

²⁸⁰ HUMAN RIGHTS WATCH, ALIEN LEGACY, *supra* note 165, at 49-50.

²⁸¹ Laura Gallego, *In My Country Lesbians are Raped to be Cured of their Disease*, GUIN GUIN BALI (Sep. 4, 2010), available at http://www.guinguinbali.com/index.php?lang=en&mod=news&task=view_news&cat=2&id=263.

²⁸² *Id.*

²⁸³ UK COUNTRY INFORMATION AND GUIDANCE, *supra* note 156, at §2.8.3.

²⁸⁴ FARUGANDA Interview, *supra* note 227.

²⁸⁵ *Id.*

²⁸⁶ See *supra* section A.2.5.

²⁸⁷ See *supra* note 164.

²⁸⁸ HUMAN RIGHTS WATCH, ALIEN LEGACY, *supra* note 165, at 49 n.16.

²⁸⁹ *Id.*

²⁹⁰ HUMAN RIGHTS WATCH, ALIEN LEGACY, *supra* note 165, at 37-48.

²⁹¹ Will Storr, *The Rape of Men: the Darkest Secret of War*, THE OBSERVER (Jul. 17, 2011), available at <http://www.theguardian.com/society/2011/jul/17/the-rape-of-men>.

3. Bisexuality

Bisexual individuals face the same potential of discrimination as men who have sex with men (MSM) and WSW. For instance, some Ugandan men marry women, have children, and also have sex with fellow men. These men often do not self-identify as gay.²⁹² However, any individual engaging in same-sex sexual activity in Uganda was subject to criminal punishment under the Anti-Homosexuality Act, prior to its annulment by the Constitutional Court, and the broad interpretation of the Penal Code.²⁹³

4. Gender Nonconformity

While Ugandan law only criminalizes same-sex sexual activity, transgender Ugandans and others who defy gender norms are subjected to the same discrimination visited upon gay men and lesbian women, regardless of their actual sexual orientation. Nonconforming gender expression can increase the frequency or severity of discrimination for Ugandan men and women. Violating gender norms can create a presumption of homosexuality and lead to harassment and arrest.²⁹⁴ According to one report, “whether someone identifies as transgender, as intersex, or dresses in a manner perceived to be too masculine or improper for a woman, they are accused of being homosexual – gay or lesbian – and persecuted because of this perceived identity.”²⁹⁵ According to another report, gender nonconforming Ugandans are “most visible and most likely to be harassed, discriminated against or even attacked”.²⁹⁶

Partial understanding of nonconforming gender identity characterizes the treatment of transgender individuals in Uganda.²⁹⁷ For instance, Cleo Kambugu, a 27-year old transgender woman living in Kampala, explains that there is no word for transgender in Luganda.²⁹⁸ Limited understanding of transgender identity is also an issue in the research projects that are undertaken in this area.²⁹⁹ Studies continually demonstrate that few gender nonconforming individuals identify as transgender.³⁰⁰ The term itself is not necessarily used by gender nonconforming Ugandans, who instead use local terms that reflect their own understandings.

There have been reports of discrimination against transgender individuals in Uganda in recent years. Transgender women in particular “are caught in between extreme levels of societal and institutionalized prejudices when they are mistakenly taken for homosexuals and face violence, arrests, torture, ridicule and rape.”³⁰¹ In 2008, while out dancing at a club, two transgendered individuals were beaten by bouncers “while being asked whether they were men or women, and ‘accused’ of being

²⁹² Kikonyogo Kivumbi, *Opinion: Anti-Gay Forces Sabotaging Uganda’s Fight against HIV/AIDS*, Changing Attitude (Apr. 18, 2012), available at <http://changingattitude.org.uk/archives/5683>.

²⁹³ 1950 PENAL CODE, *supra* note 164, at § 129, § 148-150.

²⁹⁴ HUMAN RIGHTS WATCH, ALIEN LEGACY, *supra* note 165, at 49.

²⁹⁵ IGLHRC AND FARUG, UGANDA: VIOLATION OF THE HUMAN RIGHTS OF LESBIAN, BISEXUAL, TRANSGENDER (LBT), AND KUCHU PEOPLE IN UGANDA, 4 (Oct. 26, 2010), available at <http://iglhrc.org/content/uganda-violation-human-rights-lesbian-bisexual-transgender-lbt-and-kuchu-people-uganda> (last accessed Oct. 14, 2014) [hereinafter IGLHRC SHADOW REPORT].

²⁹⁶ AMNESTY INTERNATIONAL, RULE BY LAW, *supra* note 264, at 30.

²⁹⁷ Cleo Kambugu, *LGBTI Africa: A Trans Woman in Uganda*, THE INDEPENDENT (Jul. 16, 2013), available at <https://www.independent.org/2013/07/16/lgbti-africa-trans-woman-uganda> (last accessed Oct. 14, 2014).

²⁹⁸ *Id.*

²⁹⁹ Geoffrey Jobson et al., *Transgender in Africa: Invisible, Inaccessible, or Ignored?* SAHARA J: J. OF SOCIAL ASPECTS OF HIV/AIDS, (Nov. 28, 2012), available at <http://www.tandfonline.com/doi/pdf/10.1080/17290376.2012.743829>.

³⁰⁰ *Id.*

³⁰¹ Transgender Equality Uganda, *Ugandan Transwomen Demand an End to Gender Based Violence and Institutional Prejudice against Them*, IGLHRC (Nov. 30, 2012), <https://iglhrc.org/content/ugandan-transwomen-demand-end-gender-based-violence-and-institutional-prejudice-against-them>.

homosexuals;”³⁰² they were then taken to the Kabagala Police Station, where they were held for four days.³⁰³ While in detention they were repeatedly beaten by police officers and had their genitals fondled by detainees.³⁰⁴ Upon release, they were both charged with public nuisance.³⁰⁵ In 2011, a transsexual woman pled for police protection after being molested five times in less than two months. She also had been beaten unconscious by bouncers at a club for “looking abnormal” and evicted from her home for “not looking like a man.”³⁰⁶

Discrimination within the family home and at school is common for gender nonconforming Ugandans. “Transgender individuals and lesbians have been subjected to ‘curative’ rape and the perpetrators in most of the cases recorded come from the victims’ immediate families.”³⁰⁷ Other transgender individuals report being subjected to forced medical treatment and nonconsensual therapy for the purpose of “fixing” their gender identity.³⁰⁸

5. Intersex

According to the Support Initiative for People with Atypical Sex Development (SIPD), an organization that addresses the human rights of intersex people in Uganda and East Africa:

“Many people with intersex conditions experience significant stigma and discrimination in Uganda such as humiliation, ostracism, exploratory rape, evictions from accommodation facilities due to superstitions, ritualistic murder of intersex infants, lack of access to healthcare, employment, and education to exclusion from community and family life as well as domestic violence for mothers of such children.”³⁰⁹

Julius Kaggwa, SIPD’s director, has reported being targeted due to his intersex identity. He had his “house set on fire, had several demands for invasive body searches as a prerequisite for job interviews and church membership, and lost a job due to media coverage of [his] sexuality.”³¹⁰

³⁰² Amnesty International, *Uganda: Amnesty International Condemns Attacks against Lesbian, Gay, Bisexual and Transgender People* [Public Statement] (June 4, 2008), <http://www.amnesty.org/en/library/asset/AFR59/004/2008/en/6e4ca521-32e1-11dd-863f-e9cd398f74da/afr590042008eng.pdf> (last accessed Oct. 14).

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ Kikonyogo Kivumbi, *In Uganda, Trans Woman Desperately Seeks Police Protection*, LGBT ASYLUM NEWS (July 8, 2011), <http://madikazemi.blogspot.com/2011/07/in-uganda-trans-woman-desperately-seeks.html>.

³⁰⁷ FARUGANDA Interview, *supra* note 227.

³⁰⁸ *Id.* at 27.

³⁰⁹ Support Initiative for People with Atypical Sex Development (SIPD), <http://sipd.webs.com/aboutus.htm> (last accessed Oct. 22, 2014).

³¹⁰ Julius Kaggwa, *Ugandan Anti-Homosexuality Bill Doubly Endangers LGBT Community and Human Rights Activists*, HUFFINGTON POST (Feb. 16, 2010), http://www.huffingtonpost.com/julius-kaggwa/ugandan-anti-homosexualit_b_463810.html.

III. Social Conditions for SGN Individuals

A. Societal Attitudes

Homosexuality is rejected by most Ugandans “on the basis of tradition, culture, religion and moral values.”³¹¹ Many in Uganda perceive homosexuality as “un-African and un-Christian”³¹², a phenomenon inspired by “Western practices.”³¹³ Homosexuality is often presented in connection to wider threats to ‘authentic’ African values and traditions.³¹⁴ Anti-homosexuality activists have presented homosexuals as “an imminent threat ... posing a serious moral danger to other persons and society”,³¹⁵ and SGN individuals have been portrayed as invaders intent on “overthrowing the straight” way of life and “polluting” the population.³¹⁶ It has been argued that some cultural norms within Uganda, and particularly the emphasis on “respectability,” can explain the widespread public support the Anti-Homosexuality Act enjoyed.³¹⁷

A 2013 Pew Global Attitudes Survey found that 96 percent of Ugandans believe that homosexuality should be rejected, ranking Uganda as the third most intolerant country for same-sex relations among the thirty-nine nations polled worldwide.³¹⁸ Nearly two-thirds of Ugandans surveyed in a 2010 Pew Research Center Report on Sub-Saharan Africa believed that HIV/AIDS is God’s punishment for the sexual immorality of LGBT people.³¹⁹ An individual’s nonconforming sexuality, whether real or perceived, can often affect the social status of his or her family.³²⁰

In predominantly Christian Uganda, many find support for their opposition to homosexuality in the national narrative of the Ugandan Martyrs. In the late 1880s, King Mwanga II of the Kingdom of Buganda murdered a group of Catholic and Protestant missionaries and converts, in part for their refusal to accept Mwanga’s alleged homosexual advances.³²¹ Celebrating Uganda Martyrs Day in 2010, President Museveni recalled this history in stating, “even before religion was introduced in the country, we were against homosexuality and any form of sexual abuse.”³²² Museveni praised the Christian Church, stating that it “has been at the fore in fighting homosexuality and moral decadence.”

³¹¹ UHRC REPORT, *supra* note 212, at 166.

³¹² Dana Hughes, *Africa’s Culture War: The Fight over Uganda’s Anti-Gay Bill*, ABC NEWS (Dec. 14, 2009), <http://abcnews.go.com/blogs/headlines/2009/12/africas-culture-war-the-fight-over-ugandas-antigay-bill/>.

³¹³ UHRC REPORT, *supra* note 212, at 166.

³¹⁴ Guy Grossman, *Renewalist Christianity, Political Competition and the Political Saliency of LGBTs in sub-Saharan Africa*, 2 (May 7, 2013), available at http://cega.berkeley.edu/assets/cega_events/53/WGAPE_Sp13_Grossman.pdf.

³¹⁵ Lydia Boyd, *The Problem with Freedom: Homosexuality and Human Rights in Uganda*, *Anthropological Quarterly*, 86(3), 717-718 (2013).

³¹⁶ E.g. Goodman Musambante, *Jinja Cops Hunt for Gays*, RED PEPPER (Sep. 7, 2006), reprinted in *Asylum Law*, available at <http://www.asylumlaw.org/docs/sexualminorities/Uganda070906.pdf>.

³¹⁷ *Id.* at 699.

³¹⁸ Pew Research Center, *The Global Divide on Homosexuality* (JUNE 4, 2013), available at <http://www.pewglobal.org/2013/06/04/the-global-divide-on-homosexuality/>.

³¹⁹ PEW RESEARCH CENTER, *TOLERANCE AND TENSION: ISLAM AND CHRISTIANITY IN SUB-SAHARAN AFRICA*, 191 (Apr. 15, 2010), available at <http://www.pewforum.org/files/2010/04/sub-saharan-africa-full-report.pdf>.

³²⁰ Fergus Kerrigan, *The Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Africa*, THE DANISH INSTITUTE FOR HUMAN RIGHTS, 36 (2013) available at <http://um.dk/en/~media/UM/English-site/Documents/Danida/Partners/Research-Org/Research-studies/LGBT.pdf>.

³²¹ See generally *The Christian Martyrs of Uganda*, <http://www.buganda.com/martyrs.htm> (last accessed Oct. 14, 2014); accord Bob French, *The Uganda Martyrs: Their Countercultural Witness Still Speaks Today*, *The World Among Us* (Aug. 2008), http://wau.org/archives/article/the_uganda_martyrs; see also John K. Abimanyi, *Tracing the Descendants of Uganda Martyrs*, THE SATURDAY MONITOR (June 3, 2010), <http://www.monitor.co.ug/News/National/Tracing-descendants-of-Uganda-martyrs/-/688334/1870404/-/skxxj1z/-/index.html>.

³²² Ephraim Kasozi & Patience Ahimbisibwe, *Ugandans Opposed to Homosexuality – Museveni*, DAILY MONITOR (June 4, 2010).

B. Community Life

SGN Ugandans often refer to themselves as *kuchu*, a term most analogous to “queer.”³²³ ‘Gay’, ‘lesbian’, ‘bisexual’ and ‘transgender’ are acceptable and endorsed terms in Uganda; however, SGN Ugandans do not necessarily use these to describe themselves. There is also no essential correlation between SGN Ugandans’ sexual practices and the way they self-identify, and individuals often change the local terms in which they self-identify.³²⁴ This fluid identity is a response to stigmatization and the social and economic instability that it brings. However, it is also an expression of Ugandan culture and history, which relies on behavior rather than identity-based LGBTI terminology to describe sexually and gender nonconforming identities.³²⁵

Sexual minority community networks in Uganda exist in a variety of forms, and reflect the diversity of the LGBTI community. Some function primarily as online forums, whereas others run legal aid clinics, or provide health services to individuals.³²⁶ The majority of these networks are based in Kampala, though some organizations have members throughout rural Uganda, and others have an active online presence.³²⁷ Underground social spaces such as bars have served as critical meeting places and safe spaces for SGN persons in Uganda,³²⁸ though recent incidents of violence have dismantled many of these establishments.³²⁹

The formation of the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL), referred to as “the Coalition,” marks a major shift in Ugandan LGBTI activism since the introduction of the Anti-Homosexuality Bill in 2009. The Coalition was originally formed in order to fight the Bill, but has since grown to 51 member organizations, ranging from prisoners’ rights, feminist, refugee, media and HIV/AIDS groups and organizations, which aim to strengthen the capacity of sexual minority communities throughout Uganda.³³⁰ It has also been claimed that the introduction of the Anti-Homosexuality Bill has led to an increase in the number and visibility of LGBTI rights activists and organizations.³³¹ In 2011, a joint submission to the United Nations Human Rights Council (UNHRC) Universal Periodic Review on Uganda stated there were over 500 activists involved in Ugandan LGBTI organizations.³³²

³²³ *Out of the Closet: Unveiling Sexuality Discourses in Uganda*, *supra* note 11, at 20.

³²⁴ *Kuchus in the Balance*, *supra* note 219.

³²⁵ *Id.*

³²⁶ Mark Canavera, *The Kuchu Beehive*, THE HUFFINGTON POST (Aug. 2, 2010), http://www.huffingtonpost.com/mark-canavera/the-kuchu-beehive_b_666033.html.

³²⁷ *Out of the Closet: Unveiling Sexuality Discourses in Uganda*, *supra* note 11, at 18.

³²⁸ *Id.* at 20.

³²⁹ *Kuchus in the Balance*, *supra* note 219.

³³⁰ Civil Society Coalition on Human Rights and Constitutional Law, *About Us*, <http://www.ugandans4rights.org/index.php/about-us.html> (last accessed Oct. 14, 2014).

³³¹ Hilary Heuler, *2nd Annual Gay Pride Parade Held in Uganda*, VOICE OF AMERICA (Aug. 4, 2013), <http://www.voanews.com/content/second-annual-gay-pride-parade-held-in-uganda/1723313.html>.

³³² Civil Society Coalition on Human Rights and Constitutional Law, Joint Submission for Universal Periodic Review (UPR) for Uganda LGBTI Report, §2 (Mar. 11, 2011), *available at* <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/UG/JS1-JointSubmission1-eng.pdf>.

C. Treatment by State Actors

1. Public Condemnation by State Officials

Leaders in the Ugandan government have reinforced the perception that homosexuality is “immoral and abnormal.”³³³ President Museveni called homosexuality “a decadent culture... being passed by Western nations,” warning: “it is a danger not only to the [Christian] believers but to the whole of Africa.”³³⁴ In a letter to the Speaker of Parliament regarding the Anti-Homosexuality Bill, President Museveni described homosexuality as “abnormal,” “deviant,” and “disgusting behaviours.”³³⁵ Members of Parliament have also been vocal in their intolerance for homosexuality, in part in order to secure popular votes. For instance, Odongo Otto stated that “allowing gays and lesbians to be alive in our lifetime in Uganda will not happen . . . Gays should suffer death not only by hanging but also by stoning at a public marketplace.”³³⁶ It has also been asserted that governmental officials regularly attempt to repress public discussion on sexual minority rights.³³⁷

2. Police Discrimination and Lack of Protection

SGN individuals are often unable to receive police protection from abuse by non-state actors. Many SGN individuals do not feel comfortable reporting incidents of sexual harassment, rape, or abuse to the police for fear of being ignored, or arrested and further abused.³³⁸

The murders of SGN people have been inadequately investigated by Ugandan police. In 2003, an 18-year-old female student was beaten in school for allegedly receiving love letters from other girls.³³⁹ The student did not show up for treatment from school health authorities, and several days later she was found dead in her dormitory.³⁴⁰ The government took no action, although at least one report suggested that the student may have died of injuries resulting from the attack, and despite calls for the government to investigate the student’s death.³⁴¹ In 2011, LGBTI activist David Kato was murdered shortly after a local newspaper called for him to be hung because he was gay. Many believed Kato’s murder to be a hate crime because of the many death threats he had received; however, the police quickly ruled out homophobia as the motive (Kato’s murderer was later found guilty and sentenced to thirty years in prison).³⁴²

SGN Ugandans also face abuse and mistreatment from police forces. SGN Ugandans report being arbitrarily arrested and detained, sometimes as a means of extorting money.³⁴³ Those arrested have

³³³ FARUGANDA Interview, *supra* note 227.

³³⁴ HUMAN RIGHTS WATCH, *ALIEN LEGACY*, *supra* note 165, at 3.

³³⁵ *Id.*

³³⁶ Odongo Otto, *MPs Forum: I Can’t Believe Some People’s Stand on Gays*, THE OBSERVER (Feb. 28, 2010), http://www.observer.ug/index.php?option=com_content&task=view&id=7449&Itemid=66.

³³⁷ Human Rights Watch, *World Report 2013: Uganda*, available at <http://www.hrw.org/world-report/2013/country-chapters/uganda?page=2> (last accessed Oct. 22, 2014) [hereinafter HRW World Report 2013].

³³⁸ IGLHRC SHADOW REPORT, *supra* note 295, at 9.

³³⁹ *Sodomy Laws, Lesbian Student Punished for Sexuality Rumours Kills Herself*, (Dec. 19, 2003), <http://www.glapn.org/sodomylaws/world/uganda/ugnews19.htm>.

³⁴⁰ *Id.*

³⁴¹ IGLHRC SHADOW REPORT, *supra* note 295, at 9.

³⁴² Jeffrey Gettleman, *Ugandan Who Spoke Up for Gays Is Beaten to Death*, THE NEW YORK TIMES (Jan. 27, 2011), http://www.nytimes.com/2011/01/28/world/africa/28uganda.html?_r=0.

³⁴³ IGLHRC SHADOW REPORT, *supra* note 295, at 12-13; ORAM, *BLIND ALLEYS, PART II, COUNTRY FINDINGS: UGANDA*, 7-9 (Feb. 2014), available at http://www.oraminternational.org/images/stories/PDFs/blindalleys/20130301%20oram_ba_uganda.pdf [hereinafter ORAM, *BLIND ALLEYS II*].

reported being verbally, physically and/or sexually abused by police officers.³⁴⁴ For example, in 2008 two transgendered individuals were held for four days in a police station, during which time they were beaten by police officers.³⁴⁵ There also have been several reports of gay men disappearing after being abducted or detained. In June 2010, men claiming to be members of the Criminal Investigation Directorate detained a gay man from a school in Kibuli. The victim of the abduction has not been seen since.³⁴⁶ In April 2010, a gay man was detained and forced into a medical center for treatment where he was heavily medicated and declared mentally ill. He has also disappeared since.³⁴⁷ According to a report from May 2014, thirteen incidents in which LGBTI individuals were intimidated by police officers were reported since the beginning of 2014.³⁴⁸ Activists have additionally reported a sharp rise in arbitrary detention of SGN individuals since the passage of the Anti-Homosexuality Act.³⁴⁹ Men who are detained on suspicion of homosexuality have been forced to undergo anal examinations.³⁵⁰

Activists have also been harassed and detained by the police. In July 2008, an activist with the organization Sexual Minorities Uganda (SMUG) alleged that police tortured and humiliated him during an illegal detention.³⁵¹ In 2009, SMUG reported further police harassment of their members. Two activists, Fred Wasukira and Brian Mpadde, were arrested on April 5, 2009, and charged with “homosexual conduct” on April 17. The men were remanded to Maluke prison, where they were detained for several weeks until released on bail.³⁵² Also in 2009, FARUG, another sexual minorities’ rights organization, reported police encircled their office and monitored the movements of their members for two weeks.³⁵³ In November 2013, Samuel K. Ganafa, Spectrum Uganda Initiatives’ Executive Director, was arrested along with three other LGBTI activists and a family member.³⁵⁴ According to reports, he was subjected to an HIV testing and his house was searched three times without a warrant.³⁵⁵ The case against him was dismissed in October 2014.

3. Freedom of Association and Expression

The right to freedom of association and expression has come under increasing government scrutiny in recent years, despite being enshrined in Uganda’s Constitution and law.³⁵⁶ The Ugandan

³⁴⁴ HUMAN RIGHTS WATCH, *ALIEN LEGACY*, *supra* note 165, at 3.

³⁴⁵ *Amnesty International Condemns Attacks against Lesbian, Gay, Bisexual and Transgender People*, *supra* note 302.

³⁴⁶ Human Rights First, *Communities under Siege: LGBTI Rights Abuses in Uganda*, (2010), <http://www.humanrightsfirst.org/wp-content/uploads/Discrimination-against-LGBTI-Ugandans-FINAL.pdf> (last accessed Oct. 22, 2014).

³⁴⁷ *Id.*

³⁴⁸ SEXUAL MINORITIES UGANDA (SMUG), *FROM TORMENT TO TYRANNY: ENHANCED PERSECUTION IN UGANDA FOLLOWING THE PASSAGE OF THE ANTI-HOMOSEXUALITY ACT 2014 20 DECEMBER 2013 – 1 MAY 2014*, §2.3 (May 9, 2014), *available at* <http://www.sexualminoritiesuganda.com/Torment%20to%20Tyranny%2009-05-2014%20FINAL.pdf>.

³⁴⁹ AMNESTY INTERNATIONAL, *RULE BY LAW*, *supra* note 264, at 33.

³⁵⁰ *Five Arrests for “Homosexuality” in Uganda: A Fuller Story*, *supra* note 197.

³⁵¹ UGANDA 2009 HUMAN RIGHTS REPORT, *supra* note 187, at §5.

³⁵² *Id.*

³⁵³ IGLHRC SHADOW REPORT, *supra* note 295, at 17.

³⁵⁴ *Statement on the Arrest and Detention of Mr. Samuel K. Ganafa and Four Others*, SEXUAL MINORITIES UGANDA, SPECTRUM UGANDA INITIATIVES AND CIVIL SOCIETY COALITION ON HUMAN RIGHTS AND CONSTITUTIONAL LAW ((Nov. 14, 2013), <https://www.sexualminoritiesuganda.com/images/PR.%20SamGanafaArrest14112013.pdf>.

³⁵⁵ *Id.*

³⁵⁶ AMNESTY INTERNATIONAL, *STIFLING DISSENT: RESTRICTIONS ON THE RIGHTS TO FREEDOM OF EXPRESSION AND PEACEFUL ASSEMBLY IN UGANDA*, (2011), *available at* <http://www.amnesty.org/en/library/asset/AFR59/016/2011/en/0d582c10-b11a-4119-bcde-13ec0d2718da/af590162011en.pdf> [hereinafter AMNESTY INTERNATIONAL, *STIFLING DISSENT*].

government has been accused of curtailing opposition by intimidation of journalists, rights activists and opposition leaders,³⁵⁷ and by introducing a string of restrictive legislation.³⁵⁸

Because of criminalization, LGBTI organizations cannot legally register and operate in Uganda, and rights to freedom of association and expression are commonly violated by state authorities.³⁵⁹ A law prohibiting Ugandan NGOs from advocating for sexual minority rights has been drafted in April 2014, and is currently being studied before its introduction in Parliament.³⁶⁰

Police have forcibly ejected and arrested LGBTI activists advocating for sexual minorities' rights in public spaces.³⁶¹ In 2010, a transgender activist was arrested for protesting at a meeting; while in detention, "he was tortured by the police with verbal and sexual abuse and held for three days without being allowed to use the toilet."³⁶² On February 14, 2012, Uganda's Minister for Ethics and Integrity, Simon Lokodo, accompanied by the police, raided a capacity-building workshop for human rights defenders organized by LGBTI activists in Entebbe.³⁶³ On March 15, 2012, these activists filed a petition in the High Court for the illegal closure of their workshop.³⁶⁴ The ruling, given on June 23, 2014, found that as homosexuality and its promotion are unlawful and contradictory to public interest, the claimants' freedom of association and assembly were not violated.³⁶⁵ In another instance, police raided a workshop on June 18, 2012, and detained participants, guests, and hotel staff for more than three hours.³⁶⁶

State officials have obstructed public discussions of sexual minority rights as "promotion of homosexuality",³⁶⁷ a clause that was introduced in the Anti-Homosexuality Bill for the first time and is not grounded in legislation. In August 2012, a play showing "a sympathetic portrayal of a young Ugandan businessman who comes out as gay and is then murdered" was staged in Kampala.³⁶⁸ Several days after the play closed, the Uganda Media Council ruled that the play could not be staged because it "implicitly promote[d] homosexual acts" that were "contrary to the laws, cultural norms and values of Uganda."³⁶⁹ The producer was arrested and imprisoned for staging the play without official clearance.³⁷⁰ Although the charges were dismissed in January 2013, the producer was detained again shortly thereafter and ordered to be deported immediately to the United Kingdom, his home country.³⁷¹

³⁵⁷ *Id.*

³⁵⁸ The latest of which is the Public Order Management Act which was signed into law in October 2013, and which grants authorities greater discretion in prohibiting public meetings. See Deo Walusimbi, *Uganda: Details of the Public Order Management Act Out*, THE OBSERVER (Kampala) (Nov. 3, 2013), available at <http://allafrica.com/stories/201311040068.html>.

³⁵⁹ HRW World Report 2013, *supra* note 337.

³⁶⁰ Elias Biryabarema, *Uganda Says Planning Tougher Law Limiting Gay Sex, Foreign NGOs*, REUTERS (Apr. 28, 2014), <http://www.reuters.com/article/2014/04/28/us-uganda-politics-idUSBREA3R10820140428>.

³⁶¹ AMNESTY INTERNATIONAL, STIFLING DISSENT, *supra* note 356, at 18.

³⁶² IGLHRC SHADOW REPORT, *supra* note 295, at 12.

³⁶³ Karen Veldkamp, *Uganda: Government Raid on LGBTI-Rights Workshop*, AMNESTY INTERNATIONAL (Feb. 14, 2012), <http://www.amnesty.org/zh-hant/node/29721>.

³⁶⁴ *Nabagesera v. Attorney General*, *supra* note 259.

³⁶⁵ *Id.*

³⁶⁶ UGANDA 2013 HUMAN RIGHTS REPORT, *supra* note 185, at 37.

³⁶⁷ Mark Schenkel, *Uganda: Producer of Nation's First Gay Play Could be Jailed*, ALLAFRICA (Sept. 8, 2012), <http://allafrica.com/stories/201209090351.html>.

³⁶⁸ Maev Kennedy, *Stars Sign Petition over British Theatre Producer's Uganda Arrest*, THE GUARDIAN (Sept. 20, 2012), available at <http://www.theguardian.com/world/2012/sep/20/petition-british-theatre-producer-uganda>.

³⁶⁹ Brody Levesque, *British Producer Jailed in Uganda for Staging Play Depicting Gay Characters*, LGBTQNATION (Sept. 13, 2012), <http://www.lgbtqnation.com/2012/09/british-producer-jailed-in-uganda-for-staging-play-depicting-gay-characters/>.

³⁷⁰ Mark Brown, *Theatre Producer Deported by Uganda for Gay Play Vows Fight to Return*, THE GUARDIAN (Feb. 15, 2013), available at <http://www.theguardian.com/world/2013/feb/15/theatre-producer-deported-uganda-fight-return>.

³⁷¹ *Id.*

Media outlets that have publicized pro-LGBTI statements have also faced injunctions and fines. In 2004, the Ugandan government fined Radio Simba and demanded a public apology for airing an interview with LGBTI rights activists.³⁷² James Nsaba Buturo, then Minister of Information, claimed that the radio station had violated Section 145 of the Penal Code, prohibiting “unnatural offences,” as well as the Electronic Media Act, which “prohibits any broadcasting that is contrary to public morality.”³⁷³ In 2007, the Ugandan government suspended radio presenter Gaetano Kaggwa for hosting a talk show that included prominent activist Victor Mukasa, as part of a widespread crackdown on pro-LGBTI messages in the media.³⁷⁴

D. Treatment by Non-State Actors

1. Media

In the last decade, publications singling out ‘homosexual’ Ugandans for harassment and violence have increased and intensified, as well as pressure on journalists who have challenged stereotypical views of SGN persons.³⁷⁵

On July 6, 2005, a writer for the government-owned *New Vision* media publication called on the state to crack down on homosexuals, saying “the police should visit the holes mentioned in the press, spy on the perverts, arrest and prosecute them. [The government] must outlaw or restrict websites, magazines, newspapers and television channels promoting immorality – including homosexuality, lesbianism, pornography etc.”³⁷⁶ On August 8, 2006, the Ugandan tabloid *Red Pepper* published an article entitled “Gay Shock!” which claimed to expose the names and locations of forty-five allegedly gay men.³⁷⁷ Many of the men whose names were mentioned were later harassed and attacked, and some were arrested.³⁷⁸ A month later, on September 7, *Red Pepper* followed up with an article entitled “Cops Hunt for Gays” touting the success of the anti-gay campaign in getting the police and the public to cooperate in tracking down homosexual “invaders” to stop them from “polluting” the population.³⁷⁹ The next day, *Red Pepper* published the names of thirteen alleged lesbians in order “to rid our motherland of the deadly vice” of lesbianism.³⁸⁰ In the weeks that followed these publications, the police arrested five of the identified men on charges of sodomy.³⁸¹ Increased violence against other identified individuals forced some to flee.³⁸²

³⁷² *Fine for Ugandan Radio Gay Show*, BBC NEWS (Oct. 3, 2004), <http://news.bbc.co.uk/2/hi/africa/3712266.stm>.

³⁷³ *Id.*

³⁷⁴ Sokari Ekine, “Maroon the Gays”: Elaborate Plan by the Ugandan Government to End LGBTI Activities, NEW INTERNATIONALIST (Jan. 1, 2008), <http://www.newint.org/columns/currents/2008/01/01/sexualminorities>.

³⁷⁵ Nic Muirhead, *Uganda Media and the Anti-Gay Agenda* (listening post), AL-JAZEERA (last updated Mar. 2, 2014), <http://www.aljazeera.com/programmes/listeningpost/2014/03/ugandan-media-anti-gay-agenda-20143111742293364.html>.

³⁷⁶ *Fears of Enhanced Gay Repression in Uganda*, AFROL NEWS (Jul. 11, 2006), <http://www.afrol.com/articles/16744>.

³⁷⁷ See Gary Hermann, *Sex, Lies and the Ugandan Tabloids*, MEDIA DIVERSITY INSTITUTE (May 20, 2011), http://www.media-diversity.org/en/index.php?option=com_content&view=article&id=1854:sex-lies-and-the-ugandan-tabloids&catid=15:medi-news&Itemid=33.

³⁷⁸ *Id.*

³⁷⁹ Musambante, *supra* note 316.

³⁸⁰ *Kampala’s Notorious Lesbians Unearthed*, RED PEPPER (Uganda) (Sep. 8, 2006), *partially published at* Doug Ireland, *Uganda’s Anti-Gay Witch Hunt Escalates*, DIRELAND (Sep. 13, 2006), http://direland.typepad.com/direland/2006/09/ugandas_antigay.html.

³⁸¹ *Uganda: Arrests on Sodomy Charges*, IGLHRC (Oct. 17, 2006), <http://www.iglhrc.org/cgi-bin/iowa/article/takeaction/resourcecenter/318.html>.

³⁸² *Id.*

Media-driven harassment has become a regular phenomenon in Uganda. Sexual Minorities Uganda's (SMUG) press conference on August 16, 2007³⁸³ was followed by *Red Pepper* publishing an article naming forty more allegedly homosexual men under the heading "Homo Terror!"³⁸⁴ In late 2007, the *Daily Monitor* and *New Vision* both published an editorial by the former Minister of Justice and Constitutional Affairs calling homosexual, lesbian and transsexual Ugandans "a sexually predatory group" that threatens "the continuance and survival of Ugandans as a people" and who must "be erased lock, stock and barrel."³⁸⁵ Several publications, including *The Independent* in October 2008 and the *Daily Monitor* in April 2009, reported that homosexuals received foreign payments for "recruiting" others, primarily in secondary schools and prisons.³⁸⁶ Several media outlets, including *New Vision* in March 2009, published a series of "insider exposés" claiming that "former" homosexuals had "confessed" to having been involved in homosexuality-promoting organizations to recruit "new members" into adopting "abnormal practice[s]."³⁸⁷ In September 2009, *Red Pepper* accused Kushaba Moses Mworeko, a Ugandan seeking asylum in the United States, of raping young schoolboys and called for his extradition to Uganda, where he would face the death penalty.³⁸⁸

On October 2, 2010, the Ugandan tabloid *Rolling Stone* published a cover story providing the names, photographs, and addresses of people alleged to be among the "Top Homos" in Uganda.³⁸⁹ The front page read "We Shall Recruit 1,000,000 Innocent Kids by 2012: Homos",³⁹⁰ while an inside headline read, "Hang them; They are after our kids!"³⁹¹ Soon thereafter, one of the identified individuals reported being forced to flee her home after a mob attack.³⁹² Several of the identified individuals were attacked and forced into hiding immediately after the publication of the article, while the Ugandan government reportedly took no action to protect them.³⁹³ A few weeks later, *Rolling Stone* published an article entitled "More Homos' Faces Exposed," alleging that the identified individuals had intentionally spread HIV and

³⁸³ See *Uganda: State homophobia putting gays at HIV risk – activists*, IRIN (Aug. 24, 2007),

<http://www.irinnews.org/report/73931/uganda-state-homophobia-putting-gays-at-hiv-risk-activists>.

³⁸⁴ *We Name Guys and Babes Who Enjoy Bum Sex in Kampala*, RED PEPPER (Uganda) (Sep. 2, 2007), cited in IGLHRC SHADOW REPORT, *supra* note 295); *Homo Terror! We Name and Shame Top Gays in the City*, RED PEPPER (Uganda) (Sep. 9, 2007), cited in *Letter to Congressional Caucus about US support for Uganda Homophobia*, Human Rights Watch (Oct. 12, 2007), <http://www.hrw.org/news/2007/10/10/letter-congressional-caucus-about-us-support-ugandan-homophobia>.

³⁸⁵ Mayanja Nkangi, *Opinion: Government Must Tighten Screws on Gays and Lesbians*, DAILY MONITOR (Uganda) (Nov. 28, 2007), reprinted in ASYLUM LAW, available at

<http://www.asylumlaw.org/docs/sexualminorities/Uganda081128%20Monitor%20Online%20%20Opinions%20%20Govt%20must%20tighten%20screws%20on%20gays,...pdf>; Mayanja Nkangi, *Homosexuals and Lesbians Erode National Decency*, NEW VISION (Uganda) (Dec. 16, 2007), <http://www.newvision.co.ug/D/8/459/602379>.

³⁸⁶ John Njoroge, *Uganda Fights to Keep Straight, but Money Stands in the Way*, THE INDEPENDENT (Uganda) (Oct. 22, 2008), <http://www.independent.co.ug/society/society/291-uganda-fights-to-keep-straight-but-money-stands-in-the-way>; Mercy Nalugo, *Homosexuality Threat to Ugandans*, DAILY MONITOR (Uganda) (Apr. 24, 2009), reprinted in ASYLUM LAW, available at <http://www.asylumlaw.org/docs/sexualminorities/Uganda042409.pdf>.

³⁸⁷ Moses Mulondo, *Eight Denounce Homosexuality*, NEW VISION (Uganda) (Mar. 25, 2009), <http://www.newvision.co.ug/D/8/12/675844>.

³⁸⁸ *This Gay Monster Raped Boys in School but Failed to Bonk Wife*, RED PEPPER (Uganda) (Sept. 24, 2010), reprinted at Will O'Bryan, *RadicalRetelling*, METRO WEEKLY (Oct. 2, 2010), <http://www.metroweekly.com/news/?ak=5634>.

³⁸⁹ *100 Pictures of Uganda's Top Homos Leak*, ROLLING STONE (Uganda) (Oct. 2, 2010), reprinted at Chris Rovzar, *Ugandan Newspaper Publishes Names of 'Top 100' Homosexuals, Calls for Their Hanging*, NEW YORK MAGAZINE (Oct. 19, 2010), http://nymag.com/daily/intelligencer/2010/10/ugandan_newspaper_publishes_na.html.

³⁹⁰ Xan Rice, *Ugandan Paper Calls for Gay People to Be Hanged*, THE GUARDIAN (Oct. 21, 2010), available at <http://www.theguardian.com/world/2010/oct/21/ugandan-paper-gay-people-hanged>.

³⁹¹ Xan Rice, *Ugandan Paper Calls for Gay People to Be Hanged*, THE GUARDIAN (Oct. 21, 2010), available at <http://www.theguardian.com/world/2010/oct/21/ugandan-paper-gay-people-hanged>.

³⁹² Jody Clarke, *Gay Ugandans Targeted After Outing*, MAIL & GUARDIAN ONLINE (S. Afr.) (Oct. 29, 2010), <http://mg.co.za/article/2010-10-29-gay-ugandans-targeted-after-outing>.

³⁹³ HUMAN RIGHTS WATCH, *WORLD REPORT 2011*, at 190 (2011), available at <http://www.hrw.org/sites/default/files/reports/wr2011.pdf>.

recruited and raped children.³⁹⁴ The publication also produced articles alleging that gay Ugandans had conspired with terrorists in the July 2010 bombings in Kampala that killed seventy-six people.³⁹⁵

Three human rights advocates who had been identified in the October 2, 2010 *Rolling Stone* article filed suit against the publication and its editor for violation of their constitutional rights. The High Court of Uganda, in a decision issued on January 3, 2011, held that outing “gay persons” and inciting others to hang them is an unlawful attack on the rights to privacy and dignity of LGBTs under Articles 24 and 27 of Uganda’s Constitution.³⁹⁶ The Court granted a permanent injunction, stopping *Rolling Stone* from publishing any more names or photos. On January 26, 2011, David Kato, a well-known LGBTI rights activist and one of the plaintiffs in the *Rolling Stone* suit, was beaten to death in his home.³⁹⁷ *Rolling Stone* did not publish an apology for publishing the article calling for him to be hanged.³⁹⁸

In 2013, still images from private videos of a gay British long-time resident of Uganda having sex with his Ugandan partner were published by a Ugandan tabloid.³⁹⁹ The Briton was subsequently charged with trafficking obscene material, punishable by up to two years’ imprisonment.⁴⁰⁰ His partner was charged with the more serious crime of gross indecency, carrying a punishment of up to seven years’ imprisonment.⁴⁰¹ In January 2014, the charges against the British man were dropped and he was deported to the United Kingdom.⁴⁰² The Ugandan man remained charged in Uganda and faced death threats from neighbors.

2. Religion

Religion plays a central role in social and political life in Uganda. Religious figures have been at the forefront of anti-homosexual promulgation, and their campaigns have been viewed as a major force in the growth and vehemence of homophobic sentiments in Uganda.⁴⁰³ Following the enactment of the Anti-Homosexuality Act, a national “thanksgiving service celebration” was organized by the Inter-Religious Council of Uganda (IRCU), in which President Museveni was praised by Anglican, Catholic, and Orthodox Christian and Muslim leaders.⁴⁰⁴

The Anglican Church of Uganda has specifically come out in favor of the Anti-Homosexuality Act despite extensive criticism from Anglican churches outside of Uganda. Stanley Ntagali, Uganda’s top Anglican archbishop expressed a willingness to split with the broader Anglican church over

³⁹⁴ *More Homos’ Faces Exposed*, ROLLING STONE (Uganda) (Nov. 1, 2010), reprinted at Jim Burroway, *Ugandan Tabloid Resumes Anti-Gay Vigilante Campaign*, BOX TURTLE BULLETIN (Nov. 1, 2010), <http://www.boxturtlebulletin.com/2010/11/01/27639>.

³⁹⁵ HUMAN RIGHTS WATCH, WORLD REPORT 2011, *supra* note 393, at 190.

³⁹⁶ *Kato et. al v. Rolling Stone*, *supra* note 174; *Court Rules That All Ugandans Have a Right to Privacy and Dignity*, IGLHRC (Jan. 3, 2011), <http://iglhrc.org/content/court-rules-all-ugandans-have-right-privacy-and-dignity>.

³⁹⁷ *Uganda Gay Rights Activist David Kato Killed*, BBC NEWS AFRICA (Jan. 27, 2011), <http://www.bbc.co.uk/news/world-africa-12295718>.

³⁹⁸ Xan Rice, *Ugandan ‘hang them’ paper has no regrets after David Kato death*, THE GUARDIAN (Jan. 27, 2011), available at <http://www.theguardian.com/world/2011/jan/27/uganda-paper-david-kato-death>.

³⁹⁹ David Smith, *Gay Briton and Ugandan Partner Face Jail over Sex Images from Stolen Laptop*, THE GUARDIAN (Nov. 13, 2013), available at <http://www.theguardian.com/world/2013/nov/14/gay-briton-uganda-sex-images-jail>.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Uganda Gay Sex Case Briton Bernard Randall to Be Deported*, BBC NEWS (Jan. 22, 2014), <http://www.bbc.co.uk/news/uk-england-kent-25843460>.

⁴⁰³ Bénédicte Desrus & Jocelyn Edwards, *Living in Fear: Gay and Persecuted in Uganda*, CREATIVE REPORTS (Dec. 3, 2013), <http://creativetimereports.org/2013/12/03/living-in-fear-gay-and-persecuted-in-uganda/>.

⁴⁰⁴ J. Lester Feder, *Uganda Celebrates Anti-Gay Law with Five-Hour Ceremony*, BUZZFEED NEWS (Mar. 31, 2014), <http://www.buzzfeed.com/lesterfeder/uganda-celebrates-anti-gay-law-with-five-hour-ceremony>.

the issue, stating that “homosexual practice is incompatible with scripture, and no one in the leadership of the church can say legitimize same sex unions or homosexuality.”⁴⁰⁵ Hajji Nsereko Mutumba, President of the Uganda Muslim Supreme Council (UMSC) previously commended President Museveni for signing the Anti-Homosexuality Bill.⁴⁰⁶

The Catholic Church’s stance on the legislation has been more contested. While Archbishop Cyprian Lwanga of Kampala, speaking on behalf of the Catholic bishops’ conference in 2009, described the Anti-Homosexuality Bill as “being at odds with the core values” of Christianity⁴⁰⁷ the Church is associated with the IRCU, which the stated its support for the re-introduction of the Bill in 2012. The Catholic health facilities in Uganda, however, announced in April of 2014 that they would “not discriminate against gay patients” despite the restrictions that the Anti-Homosexuality Act imposed on hospitals and other healthcare providers prior to its annulment.⁴⁰⁸ Several news outlets have reported individual Catholic bishops have publicly supported anti-homosexuality legislation, though there is no reliable confirmation of any public statement made by the church leaders in either support or condemnation.

Conservative Ugandan leaders with substantial financial backing from North American Evangelist partners have widely professed that “it is good for the government of Uganda to criminalize homosexuality [and] subject the criminals of homosexuality to [corrective] therapy.”⁴⁰⁹ Martin Ssempe, a prominent Ugandan pastor with ties to Evangelical churches in the United States, has called for homosexuals be “stamped out” and excluded from Ugandan programs to combat HIV/AIDS.⁴¹⁰ Ssempe has additionally posted the names, photos and addresses of Ugandan LGBTI rights activists on his website.⁴¹¹ Although a majority of Ugandans oppose the importation of “Western” ideas, 73 percent of Ugandans believe that it is a “good thing” that Christian leaders from outside Uganda have “a great deal” or at least “some” influence in Ugandan politics.⁴¹²

In August 2013, a federal judge in the United States ruled that a lawsuit filed by the Center for Constitutional Rights on behalf of Sexual Minorities Uganda (SMUG) against American Evangelist Minister Scott Lively could move forward.⁴¹³ The lawsuit seeks to hold the minister accountable for his role in promoting persecution of LGBTI individuals in Uganda, which culminated with the introduction of the Anti-Homosexuality Bill.⁴¹⁴ In his decision to allow the case to move forward, the judge held that “[w]idespread,

⁴⁰⁵ *Uganda church warns of Anglican split over gay law*, THE TELEGRAPH (Mar. 3, 2014),

<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/uganda/10673021/Uganda-church-warns-of-Anglican-split-over-gay-law.html>.

⁴⁰⁶ *Uganda Muslims Laud Anti-Gay Bill*, ONISLAM (Feb. 20, 2014), <http://www.onislam.net/english/news/africa/469431-uganda-muslims-laud-anti-gay-bill.html>.

⁴⁰⁷ *When the Law is a Crime*, America, THE NATIONAL CATHOLIC REVIEW (Mar. 10, 2014), <http://americamagazine.org/issue/when-law-crime>.

⁴⁰⁸ Mwesigye, Shifa, *Catholic hospitals ‘won’t discriminate’ homosexuals*, THE OBSERVER, (Apr. 9, 2014), http://www.observer.ug/index.php?option=com_content&view=article&id=31144:-catholic-hospitals-wont-discriminate-homosexuals&catid=34:news&Itemid=114.

⁴⁰⁹ See, e.g., David Roberts, *Forced Ex-Gay Therapy in Uganda: The Other Shoe Drops*, EX-GAY WATCH (Mar. 6, 2009), <http://www.exgaywatch.com/2009/03/forced-ex-gay-therapy-in-uganda-the-other-shoe-drops/> (quoting President of Defend the Family International, Scott Lively; Defend the Family is a ministry with the stated objective to “promote and defend the Biblical view of marriage and family” but an almost exclusive focus on homosexuality).

⁴¹⁰ Martin Ssempe, quoted in *Uganda State Homophobia Putting Gays at HIV Risk - Activists*, IRIN/PLUS NEWS (Aug. 24, 2007), <http://www.plusnews.org/report.aspx?ReportID=73931>.

⁴¹¹ HUMAN RIGHTS WATCH, *ALIEN LEGACY*, *supra* note 165, at 4.

⁴¹² TOLERANCE AND TENSION, *supra* note 319, at 201-03.

⁴¹³ Sunnive Brydum, *Scott Lively Will be Tried for fueling Anti-gay Persecution in Uganda*, THE ADVOCATE (Aug. 15, 2013), <http://www.advocate.com/news/world-news/2013/08/15/scott-lively-will-be-tried-fueling-antigay-persecution-uganda>.

⁴¹⁴ Josh Glasstetter, *Judge Clears Path for Groundbreaking Lawsuit against Scott Lively*, SOUTHERN POVERTY LAW CENTER (Aug. 16, 2013), <http://www.splcenter.org/blog/2013/08/16/judge-clears-path-for-groundbreaking-lawsuit-against-scott-lively>.

systematic persecution of LGBTI people constitutes a crime against humanity that unquestionably violates international norms.”⁴¹⁵ Court proceedings are not yet scheduled, but the next pretrial hearing date is set for May 6, 2015.⁴¹⁶

3. Medical Treatment

SGN Ugandans often receive inferior medical services, or are denied medical services.⁴¹⁷ The Ugandan government and medical professional associations have developed few resources about SGN health related issues, and SGN individuals are hesitant to inquire about these due to criminalization and stigmatization.⁴¹⁸ Many avoid seeking healthcare altogether out of fear of mistreatment if their sexual orientation and/or gender identity is exposed.⁴¹⁹

Legislation and growing anti-homosexuality sentiments since 2009 have impacted the quality of healthcare for SGN persons. One Ugandan health services provider, MARPI, recorded that the number of gay, lesbian and transgender patients seeking medical exams and treatment “dwindled continuously” from an average of ten per week in 2008-2009 to three per week in 2010.⁴²⁰ The Anti-Homosexuality Act, now annulled, further restricted access to healthcare for men who have sex with men (MSM) and women who have sex with women (WSW) by criminalizing the provision of health services to these individuals.⁴²¹ A sharp decline in both the availability of medical services and the number of SGN visitors to medical clinics has been reported while the Act was in force;⁴²² sexual health services have been particularly affected.⁴²³ The revised *Draft Guidelines for Health Workers Regarding Health Services for Homosexuals*, signed in April 2014, required medical professionals to report individuals to police when a “person has been sodomized” or in cases of “aggravated homosexuality.”⁴²⁴ The Draft placed further responsibility on medical staff and institutions for insuring that homosexuality is not “promoted.”⁴²⁵ However, the *Ministerial Directive on Access to Health Services without Discrimination*, which was published in June 2014, explicitly prohibits discrimination on the ground of sexual orientation.⁴²⁶

The United Nations Country Team (UNCT) has expressed concern about the impact of criminalizing homosexuality on the availability, accessibility, acceptability, and quality of health services for LGBTI persons living with HIV/AIDS.⁴²⁷ The International HIV/AIDS Alliance previously stated that further anti-homosexuality legislation would likely lead to increased number of HIV infections, particularly

⁴¹⁵ *Sexual Minorities Uganda v. Scott Lively*, Mem. and Order Regarding Def.’s Mot. to Dismiss, C.A. No. 12-cv-30051-MAP, 20 (Aug. 14, 2013), available at http://ccrjustice.org/files/SMUG_OrderDenyingDefMTD_08_13.pdf.

⁴¹⁶ Stephanie Barry, *Lawsuit against Scott Lively, Springfield evangelist and gubernatorial candidate, claiming crimes against humanity, has no trial date yet*, MASS LIVE (powered by THE REPUBLICAN) (Jan. 19, 2014), http://www.masslive.com/news/index.ssf/2014/01/no_trial_date_set_in_scott_liv.html.

⁴¹⁷ ‘We are More than just Our Bodies’, *supra* note 163, at 36.

⁴¹⁸ IGLHRC SHADOW REPORT, *supra* note 295, at 26.

⁴¹⁹ *Id.* at 28.

⁴²⁰ *Effects of a Two Year Sustained Anti-Gay Campaign on Health Seeking Behaviour of the Sexual Minorities in Uganda*, *supra* note 226.

⁴²¹ See generally *supra* Section II.A.

⁴²² AMNESTY INTERNATIONAL, RULE BY LAW, *supra* note 264, at 62-64.

⁴²³ *Id.*

⁴²⁴ Sunnive Unnive Brydum, *Health Care Workers Must Out LGBT Ugandans, According to New Guidelines*, ADVOCATE, (Apr. 24, 2014), <http://www.advocate.com/world/2014/04/24/health-care-workers-must-out-lgbt-ugandans-according-new-guidelines>.

⁴²⁵ J. Lester Feder, *Ugandan Health Workers Could Become Front-Line Enforcers of Anti-Homosexuality Act*, BUZZFEED NEWS (Apr. 23, 2014), <http://www.buzzfeed.com/lesterfeder/updated-ugandan-guidelines-could-make-health-workers-front-l>.

⁴²⁶ THE MINISTERIAL DIRECTIVE ON ACCESS TO HEALTH SERVICES WITHOUT DISCRIMINATION, §5(b) (June 2014), available at <http://www.scribd.com/doc/233209149/MoH-Ministerial-Directive-on-Access-to-Health-Services-Without-Discrimination-19-June-14>.

⁴²⁷ ‘We are More than just Our Bodies’, *supra* note 163, at 35.

amongst MSM and transgender persons.⁴²⁸ In 2004, the Minister of Information demanded that both the United Nations and Ugandan AIDS authorities exclude all people who engage in same-sex activities from HIV/AIDS programs and planning, citing Uganda's criminalization of homosexual acts.⁴²⁹ In 2006, the Uganda AIDS Commission declared that gays and lesbians were to be excluded from "the national strategic framework" to combat HIV/AIDS "because the practice of homosexuality is illegal."⁴³⁰ Government officials' refusal to implement the HIV/AIDS program to include sexual minorities forces individuals to hide their sexual identity in order to access treatment.⁴³¹

On April 3, 2014, the Makerere University Walter Reed Project (MUWRP), a U.S. funded health clinic and medical research facility known to offer HIV/AIDS services to MSM, was raided by Ugandan authorities.⁴³² The raid led to the arrest of one of the facility's employees, allegedly for conducting "unethical research" and "recruiting homosexuals."⁴³³ A Ugandan government spokesman, Ofwono Opondo, said the clinic was targeted for "training youths in homosexuality."⁴³⁴

On July 31, 2014, the HIV and AIDS Prevention Control Act was signed into law.⁴³⁵ The law imposes a fine and a ten-year prison sentence for "intentional transmission of HIV,"⁴³⁶ and a fine and a five-year prison sentence for "attempted transmission of HIV."⁴³⁷ The HIV and AIDS Prevention Control Act additionally allows compulsory HIV testing for a person who is apprehended for a sexual offense for purposes of criminal proceedings and investigation,⁴³⁸ and for victims of sexual offenses, pregnant women, and partners of pregnant women.⁴³⁹

WSW are exposed to an increased risk of contracting HIV/AIDS because of the risk of sexual assault, coupled with the tendency of government programs against HIV/AIDS to ignore WSW because of the assumption that they are at a low-level of risk.⁴⁴⁰ WSW also face marginalization and discrimination when attempting to access reproductive health care, and report that many services cater only to those in heterosexual relationships.⁴⁴¹

Gender nonconforming Ugandans report facing discrimination in accessing health care, including from government-funded facilities.⁴⁴² A group of Ugandan transgender rights organizations have stated

⁴²⁸ Int'l HIV/AIDS Alliance, *Uganda's "Anti-Homosexuality" Bill Will Have a Disastrous Impact on Country's HIV Response*, THOMSON REUTERS FOUNDATION (Dec. 20, 2013), <http://www.trust.org/item/20131220135510-8rqz9/?source=hptop>.

⁴²⁹ HUMAN RIGHTS WATCH, *ALIEN LEGACY*, *supra* note 165, at 3.

⁴³⁰ *Uganda Stuck in the Closet: Gays Left Out of HIV/AIDS Strategy*, IRIN (Mar. 17, 2006), <http://www.irinnews.org/report/39429/uganda-stuck-in-the-closet-gays-left-out-of-hiv-aids-strategy>.

⁴³¹ *FARUGANDA Interview*, *supra* note 227.

⁴³² Rodney Muhumuza, *Uganda's Makerere University Walter Reed Project Raided in Wake of Anti-Gay Law*, HUFFPOST (Apr. 4, 2014), http://www.huffingtonpost.com/2014/04/04/uganda-aids-group-gay-law_n_5092692.html.

⁴³³ Marie Harf, *Raid on Makerere University Walter Reed Project by Ugandan Authorities*, U.S. DEPARTMENT OF STATE (Press Release) (Apr. 4, 2014), <http://www.state.gov/r/pa/prs/ps/2014/04/224431.htm>.

⁴³⁴ *Uganda: Police Raid U.S.-Financed Health Project*, NEW YORK TIMES (Apr. 5, 2014), available at http://www.nytimes.com/2014/04/05/world/africa/uganda-police-raid-us-financed-health-project.html?_r=0.

⁴³⁵ HIV and AIDS Prevention Control Act, 2014, available at <https://www.scribd.com/doc/237225003/Signed-Ugandan-HIV-and-AIDS-Prevention-and-Control-Act-2014>.

⁴³⁶ *Id.* art. 43.

⁴³⁷ *Id.* art. 41.

⁴³⁸ *Id.* art. 12.

⁴³⁹ *Id.* art. 13. See also Maria Burnett, *Dispatches: Another Step Back for Uganda's HIV Fight*, Human Rights Watch (Sept. 9, 2014), <http://www.hrw.org/news/2014/09/09/dispatches-another-step-back-uganda-s-hiv-fight>; J. Lester Feder, *Ugandan President Signs Law Criminalizing HIV Transmission*, BUZZFEED NEWS (Aug. 19, 2014), <http://www.buzzfeed.com/lesterfeder/ugandan-president-signs-law-criminalizing-hiv-transmission#38y2n0r>.

⁴⁴⁰ *Id.*

⁴⁴¹ 'We are More than just Our Bodies', *supra* note 163.

⁴⁴² ORAM, *BLIND ALLEYS II*, *supra* note 343, at 16-17.

that transgender women are afraid to obtain voluntary health testing “because of the fear of explaining themselves to biased health staff asking whether they are men or women.”⁴⁴³ Although transgendered persons may not necessarily be denied access to healthcare, the discrimination they face may result in their effective exclusion.

4. Schools

In 2005, Martin Omagol, Uganda’s Commissioner for Special Needs Education, Guidance and Counseling, addressed a group of 600 head teachers and encouraged them to take action against the rise of homosexuality in secondary schools.⁴⁴⁴ The Education Ministry warned that any student who engages in homosexual activity could face indefinite suspension.⁴⁴⁵ In 2008, the director of the Uganda AIDS Commission, Dr. Kihumuro Apuuli, stated that homosexuality is largely practiced by school and university-age people, and described educational institutions as “breeding ground[s]” for homosexual activity.⁴⁴⁶

According to reports, SGN students, particularly girls and women who are “rumoured to be lesbian or that visibly violate gender stereotypes and norms, are routinely expelled from schools at all levels.”⁴⁴⁷ Jacqueline Kasha, a prominent activist, claimed that the president of her university made her sign a “memorandum of understanding” stating that she was not permitted to be within 100 meters of the women’s residence halls because of her sexual identity.⁴⁴⁸

Discrimination of SGN students and those who support them has been recorded at educational institutions.⁴⁴⁹ In July 2009, the Mbalala Senior Secondary School in Mukono District dismissed student John Paul Mulumba, after he acknowledged that he was a SMUG member.⁴⁵⁰ In September 2008, Rev. Erich Kasirye was dismissed from his position as Chaplain of King’s College Budo, after it was discovered that he was holding a support group for homosexuals at the school.⁴⁵¹

5. Housing

The Anti-Homosexuality Act restricted access to housing for gay and lesbian individuals by making it a crime, punishable by five years’ imprisonment, to own, occupy, or manage a property and knowingly allow same-sex sexual activity in it.⁴⁵² This was viewed by advocates as amounting to a “homelessness sentence” for LGBTI Ugandans.⁴⁵³ Sixty-eight persons stated they have been evicted from their homes because of their sexual and gender nonconformity since December 2013.⁴⁵⁴ Though the Act is no longer

⁴⁴³ Transgender Equality Uganda, *supra* note 301.

⁴⁴⁴ F. Ahimbisibwe, *Students Warned on Homosexuality*, NEW VISION, (Feb. 4, 2005), <http://www.newvision.co.ug/D/8/13/416267>.

⁴⁴⁵ *Id.*

⁴⁴⁶ Anne Mugisa, “Schools Breed Homosexuals”, NEW VISION (Aug. 24, 2008), <http://www.newvision.co.ug/D/8/13/646175>.

⁴⁴⁷ IGLHRC SHADOW REPORT, *supra* note 295, at 20.

⁴⁴⁸ *Id.*

⁴⁴⁹ Patricia Nantayi Lumala, *The Homophobia in Ugandan Schools: An Ethnomethodological Approach to the Problem*, paper presented at The United Nations Commission on the Status of Women panel on Homophobia in Schools, 2010, available at <http://ilga.org/ilga/static/uploads/files/2010/3/3/Homophobia%20in%20Ugandan%20Schools.pdf>.

⁴⁵⁰ UGANDA 2009 HUMAN RIGHTS REPORT, *supra* note 187, at § 5.

⁴⁵¹ *The Homophobia in Ugandan Schools*, *supra* note 449.

⁴⁵² ANTI-HOMOSEXUALITY BILL, *supra* note 162, at § 11(2).

⁴⁵³ Gregory Warner, *Uganda Passes Anti-Gay Bill That Includes Life in Prison*, NATIONAL PUBLIC RADIO, (Dec. 20, 2013), <http://www.npr.org/blogs/parallels/2013/12/20/255825383/uganda-passes-anti-gay-bill-that-includes-life-in-prison>.

⁴⁵⁴ SEXUAL MINORITIES UGANDA (SMUG), FROM TORMENT TO TYRANNY: ENHANCED PERSECUTION IN UGANDA FOLLOWING THE PASSAGE OF THE ANTI-HOMOSEXUALITY ACT 2014 20 DECEMBER 2013 – 1 MAY 2014

in force, an increase in the number of forced evictions, by landlords and/or fear of violence, has been reported since its enactment in February 2014.⁴⁵⁵

A lesbian woman was evicted from her property in March 2014, and her landlord cited the tenant's "depraved" sexual behavior and the recent legislation as the reason for the eviction.⁴⁵⁶ In May 2014, gay activist and co-founder of Spectrum Uganda Initiatives, John Abadallah Wambere, sought asylum in the United States after experiencing harassment and eviction from his home as a result of his homosexuality.⁴⁵⁷ SGN individuals who live with their families also face risk of being exposed and forcibly thrown from their homes.⁴⁵⁸

Sexual minority rights organizations may also face threat of eviction. For example, in 2007, the LGBTI rights group FARUG was evicted from its offices after the landlord learned that the organization advocated for the rights of lesbians.⁴⁵⁹ The next year, FARUG had to move again following threats from neighbors.⁴⁶⁰

6. Employment

Individuals have reported being forced to leave their place of employment after their sexual identity was discovered, or having been attacked and verbally abused at work.⁴⁶¹ SGN individuals are also less likely to be regularly employed as they face eviction from their homes and more frequently required to relocate.⁴⁶² Employment is also denied to persons who violate gender norms, either by their physical attributes and/or by the clothes they choose to wear; this has been an issue for women in particular.⁴⁶³

Underprivileged or less educated SGN individuals and those who are more visibly nonconforming are often pushed into low paying and under-regulated jobs.⁴⁶⁴ Self-employment is a significant source of financial support for LGBTI Ugandans.⁴⁶⁵ However, for large numbers of SGN individuals the only available option for self-employment is commercial sex work.⁴⁶⁶

Under the "Promotion of Homosexuality" clause of the Anti-Homosexuality Act, a "corporate body or business" seen to be "promoting" homosexuality was liable to have its certificate of registration

(May 9, 2014) at \$3.1, available at <http://www.sexualminoritiesuganda.com/Torment%20to%20Tyanny%2009-05-2014%20FINAL.pdf>.

⁴⁵⁵ AMNESTY INTERNATIONAL, *RULE BY LAW*, *supra* note 264, at 54-55.

⁴⁵⁶ Sunnive Brydum, *Ugandan Lesbian Evicted, Landlord Cites 'Jail the Gays' Law*, *ADVOCATE* (Mar. 05, 2014), <http://www.advocate.com/world/2014/03/05/ugandan-lesbian-evicted-landlord-cites-jail-gays-law>.

⁴⁵⁷ Press release, *GAY AND LESBIAN ADVOCATES AND DEFENDERS*, (May 06, 2014), <http://www.glad.org/current/press-release/prominent-ugandan-gay-activist-files-for-asylum-in-united-states>.

⁴⁵⁸ Rob Watson, *How a Ugandan Teen was Thrown out of his Home, Arrested and Tortured*, *HUFFPOST* (Apr. 19, 2014), http://www.huffingtonpost.com/2014/04/19/gay-ugandan-teen- n_5175833.html.

⁴⁵⁹ IGLHRC SHADOW REPORT, *supra* note 295, at 17.

⁴⁶⁰ *Id.* at 17.

⁴⁶¹ Faith Karimi, *Uganda Newspaper Publishes 'Gay List,' Calls for their Hanging*, *CNN* (Oct. 20, 2010), <http://edition.cnn.com/2010/WORLD/africa/10/20/uganda.gay.list/index.html>; See also ORAM, *BLIND ALLEYS II*, *supra* note 343, at 16.

⁴⁶² DANISH IMMIGRATION SERVICE AND DANISH REFUGEE COUNCIL, *JOINT REPORT: SITUATION OF LGBT PERSONS IN UGANDA*, at 55 (Jan 2014), available at <http://www.nyidanmark.dk/NR/rdonlyres/C0BC7D6B-C3E0-46DA-B151-EA7A28E4362F/0/SituationofLGBTpersonsInUgandaFinal.pdf>.

⁴⁶³ IGLHRC SHADOW REPORT, *supra* note 295, at 22.

⁴⁶⁴ *Kuchus in the Balance*, *supra* note 219.

⁴⁶⁵ DANISH IMMIGRATION SERVICE AND DANISH REFUGEE COUNCIL, *JOINT REPORT*, *supra* note 462, at 39.

⁴⁶⁶ *Id.*, at 55.

revoked, and its director or proprietor could face seven years' imprisonment.⁴⁶⁷ Since the passing of the Anti-Homosexuality Act, the NGO All Out has put pressure on Western corporations to ensure protection and support for their LGBT employees working in Uganda.⁴⁶⁸

⁴⁶⁷ ANTI-HOMOSEXUALITY BILL, *supra* note 162, at §13(2).

⁴⁶⁸ Uganda Corporations Campaign, ALL OUT (Mar. 2014), <https://www.allout.org/en/actions/uganda-corps>.

IV. SGN Ugandans' Asylum Claims

This section provides a summary of leading SOGI-based asylum claims in the United States, United Kingdom, Australia, Canada, the EU and France, in which the applicant was a Ugandan citizen.

Though in each of the cases below the nature and level of persecution in Uganda is debated, it is important to emphasize that each asylum case is unique and needs to be individually contextualized. The outcome of a SOGI-based asylum application cannot simply be inferred from previous cases. Moreover, the majority of available SOGI-based asylum decisions predate the Anti-Homosexuality Act and the change in condition for SGN Ugandans since 2009. If and how changes in Uganda will reflect in SOGI-based asylum cases is not yet clear.

A. United States

The United States has recognized asylum claims based on sexual orientation and gender identity since 1994, when the Attorney General designated the 1990 landmark decision *Matter of Toboso-Alfonso* as nationwide binding precedent.⁴⁶⁹ The decision resulted in U.S. asylum case law that focused on nonconforming sexual identity rather than same-sex sexual acts.⁴⁷⁰ Nevertheless, the United States does not keep records on how many SOGI-based asylum claims it receives and grants.

The Real ID act, passed by the U.S. Congress in 2005, has increased the burden of proof for credibility determination in asylum cases. The Act requires documentation to substantiate claims “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”⁴⁷¹ This documentation requirement poses particular challenges for SGN asylum seekers, who often conceal their sexual orientation and/or gender identity and associational ties in their countries of origin.

1. Cases Granting Relief

In the U.S. asylum system, only cases that are appealed and heard by the Board of Immigration Appeals (BIA) are published. It is therefore possible that many more SGN Ugandan asylum seekers were granted or denied relief in their initial application, but no published case law exists.

i. Nabulwala v. Gonzales⁴⁷² – *Asylum claim granted a review, recognizing persecution by non-state actors and denial of state protection*

Olivia Nabulwala, a citizen of Uganda, applied for asylum and withholding of removal on the basis of membership of a particular social group (PSG) on the grounds of her sexual orientation.⁴⁷³ She also applied for protection under the Convention against Torture (CAT). Nabulwala alleged she was abused

⁴⁶⁹ *Matter of Toboso-Alfonso*, 20 I. & N. Dec. 819, 820-23. (BIA 1990).

⁴⁷⁰ Swetha Sridharan, *The Difficulties of U.S. Asylum Claims Based on Sexual Orientation* (Oct. 29, 2008), Migration Policy Institute, <http://www.migrationpolicy.org/article/difficulties-us-asylum-claims-based-sexual-orientation>.

⁴⁷¹ IMMIGRATION EQUALITY, *Immigration Law Basics: Real ID Act*, <http://immigrationequality.org/issues/law-library/lgbth-asylum-manual/real-id-act/#sthash.sCyQEu3P.dpuf>.

⁴⁷² *Id.* at 1116-17.

⁴⁷³ *Nabulwala v. Gonzales*, 481 F.3d 1115 (8th Cir. 2007).

and raped by family members because she was a lesbian, and was also attacked by a mob during a meeting of Wandegeya, a lesbian rights organization.

Although the Immigration Judge (IJ) explicitly recognized that homosexuals may be members of a particular social group and did not doubt that the respondent suffered in Uganda because of her sexual orientation, all claims for relief were denied.⁴⁷⁴ The IJ found that Nabulwala's injuries at the Wandegeya meeting did not meet the level of persecution required by precedent.⁴⁷⁵ In addition, the IJ held that the family abuse was a "private family mistreatment," and therefore that Nabulwala's past persecution was "not in any way government-sponsored or authorized abuse."⁴⁷⁶

On appeal, the Board of Immigration Appeals (BIA) adopted and affirmed the IJ's decision. The BIA stated that "[c]oncerning the issue of past persecution, the Immigration Judge correctly found that the respondent failed to demonstrate . . . that the government was unwilling to protect her."⁴⁷⁷

Upon Nabulwala's petition for review, the Eighth Circuit found that the IJ was wrong in concluding that qualification for asylum required proof of persecution by government officials.⁴⁷⁸ The court held that "persecution may be a 'harm' to be inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control."⁴⁷⁹ The court therefore returned the case to the BIA for review, noting that the BIA had not examined the government's inability or unwillingness to protect Nabulwala.⁴⁸⁰

2. Cases Denying Relief

i. **Kibuuka v. Gonzales**⁴⁸¹ - *Denial of asylum based on one-year bar; denial of withholding of removal and CAT based on failure to prove membership of a particular social group*

Robert Kibuuka, a Ugandan citizen, applied for asylum and withholding of removal on the basis of membership of a particular social group (PSG) based on his sexual orientation. Kibuuka also applied for relief under the Convention against Torture (CAT).⁴⁸² Kibuuka expressed fear of persecution because of his homosexuality, and claimed that he was once beaten by the police while attending a same-sex wedding in Uganda.⁴⁸³

The Immigration Judge (IJ) denied his asylum claim as Kibuuka had not applied for asylum within one year after entering the United States, and did not establish extraordinary circumstances to justify this delay.⁴⁸⁴ The IJ additionally rejected Kibuuka's claims for withholding of removal and relief under CAT

⁴⁷⁴ *Id.* at 1117.

⁴⁷⁵ *Id.* at 1117-18.

⁴⁷⁶ *Id.* at 1118, referencing *Setiadi v. Gonzales*, 437 F.3d 710, 713 (8th Cir. 2006) (personal disputes are "not usually grounds for a finding of past persecution").

⁴⁷⁷ *Id.* at 1118.

⁴⁷⁸ *Id.* at 1118.

⁴⁷⁹ *Id.* at 1118, quoting *Suprun v. Gonzales*, 442 F.3d 1078, 1080 (8th Cir. 2006).

⁴⁸⁰ *Nabulwala*, *supra* note 473, at 1118-1119.

⁴⁸¹ *Kibuuka v. Gonzales*, No. 05-1437 at 2 (1st Cir. Apr. 14, 2006).

⁴⁸² *Id.*

⁴⁸³ *Id.*

⁴⁸⁴ *Id.* at 3; The U.S. asylum system applies a time bar, and an alien must apply for asylum within one year after entering the country. Asylum applications filed after a year from the time of entry are considered only when extraordinary circumstances that justify the delay have been proven (U.S.C. § 1158(a)(2)(B)&(D)).

because of insufficient evidence that he had attended the same-sex wedding, and because he failed to prove that he was a “member of the gay community.”⁴⁸⁵

Kibuuka appealed to the Board of Immigration Appeals (BIA) to challenge the IJ’s time-bar ruling, and asked to reopen the case in order to present ‘new’ evidence that he was involved in a homosexual relationship at the time of his initial hearing.⁴⁸⁶ The BIA denied Kibuuka’s appeal and motion to reopen his case.⁴⁸⁷

Kibuuka appealed to the First Circuit, contending that the IJ “erred by ruling his asylum application untimely without explicitly considering whether his depression should excuse the late filing.” He additionally argued that the BIA abused its discretion in denying the motion to reopen because Kibuuka did not understand he was required to present evidence he was in a same-sex relationship in order to prove his homosexuality.⁴⁸⁸

Regarding the IJ’s consideration of depression as an excuse for Kibuuka’s late filing for asylum, the First Circuit held that there was no reason for it to infer that the IJ failed to consider Kibuuka’s mental state.⁴⁸⁹

Regarding the BIA’s denial of Kibuuka’s petition to allow new evidence of his homosexuality, the court held that the information was available at the time of the hearing. The court rejected Kibuuka claim that the information should be allowed because he was unaware it would be used as a ground for decision. The court noted that the IJ primarily rejected Kibuuka’s claim because of inconsistencies between his testimony and the information detailed in the psychologist’s report, and therefore nothing about Kibuuka’s same-sex relationship would undercut the IJ’s primary basis for denying Kibuuka relief.⁴⁹⁰ Kibuuka’s claim for review was therefore dismissed.

ii. Sempagala v. Holder⁴⁹¹ - Denial of asylum and withholding of removal based on failure to prove a likelihood of future persecution; denial of relief under CAT

Nicholas Sempagala, a citizen of Uganda, applied for asylum and withholding of removal on the ground of his membership of a particular social group (PSG) based on his sexual orientation. Sempagala claimed that he feared persecution upon returning to Uganda due to his bisexuality.⁴⁹² Sempagala also applied for relief under the Convention against Torture (CAT).⁴⁹³

The Immigration Judge (IJ) denied all claims for relief.⁴⁹⁴ Sempagala testified that he never had any problems with the Ugandan government and could not provide any proof that anyone in Uganda knew of his sexual orientation.⁴⁹⁵ Sempagala was able to keep his bisexuality a secret during a four-year relationship with an older man, and was not able to submit evidence from his wife verifying her knowledge

⁴⁸⁵ *Id.* at 4.

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.* at 5.

⁴⁹⁰ *Id.* at 8.

⁴⁹¹ *Sempagala v. Holder*, No. 08-3695 (6th Cir. Apr. 1, 2009).

⁴⁹² *Id.* at 2.

⁴⁹³ *Id.* at 1.

⁴⁹⁴ *Id.* at 3-4.

⁴⁹⁵ *Id.* at 3.

of his bisexuality.⁴⁹⁶ In addition, Sempagala stated that the main reason he came to the United States was to work in order support his family in Uganda.”⁴⁹⁷

The IJ held that Sempagala failed to establish eligibility for asylum and withholding of removal.⁴⁹⁸ Sempagala had neither established past persecution nor “a belief or characteristic” of which a persecutor in Uganda could become aware of.⁴⁹⁹ In addition, the IJ found that there was a lack of evidence that individuals with an “alternative sexual orientation” were subject to persecution or torture in Uganda.⁵⁰⁰

On review, the Board of Immigration Appeals (BIA) denied Sempagala’s appeal, finding an absence of past persecution or “a reasonable likelihood of future persecution upon returning to Uganda after a ten-year absence.”⁵⁰¹ The BIA also found that the threat of harm to people who are in a similar situation as Sempagala was “not so systemic or persuasive as to amount to a pattern or practice of persecution.”⁵⁰²

Upon appeal, the Sixth Circuit affirmed the BIA’s denial of asylum.⁵⁰³ The court ruled that the BIA’s finding was supported by substantial evidence.⁵⁰⁴ Regarding the reasonable possibility that Sempagala would be singled out for persecution if returned to Uganda, the court held that “Sempagala’s testimony that his primary reason for being in the United States [wa]s economic severely undercut his claim that he fear[ed] persecution.”⁵⁰⁵ The court also held that Sempagala had not provided proof that his bisexuality or past sexual conduct would become known in Uganda upon his return.⁵⁰⁶

The court further noted that Sempagala’s relationship with the older man ended ten years prior, that he was currently married to a woman, and that he was not involved in a same-sex relationship since he left Uganda.⁵⁰⁷ In addition, the court found that there was not “the slightest shred of evidence” in the record that anyone had an interest in targeting Sempagala for persecution.⁵⁰⁸

Regarding the existence of a “pattern or practice” of persecution of bisexual or homosexual individuals in Uganda,⁵⁰⁹ the court held that evidence of:

(1) a constitutional amendment making marriage lawful only when it is between a man and a woman; (2) sodomy laws criminalizing same-sex sexual acts; (3) isolated instances of government acts of discrimination; and (4) private acts of intolerance and harassment was not so systematic and severe as to compel a finding of a pattern or practice of persecution.⁵¹⁰ The court therefore denied Sempagala’s petition for review.

⁴⁹⁶ *Id.* at 3-4.

⁴⁹⁷ *Id.* at 4.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ *Id.* at 4.

⁵⁰⁴ *Id.* at 5-7.

⁵⁰⁵ *Id.* at 6.

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.* at 7.

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.* at 7.

⁵¹⁰ *Id.* at 8.

B. United Kingdom

The United Kingdom has recognized SOGI-based asylum claims since 1999. The Supreme Court's ruling in the landmark case of *HJ (Iran) and HT (Cameroon)* in 2010 marked a major shift in the way SOGI asylum cases are adjudicated in the United Kingdom.⁵¹¹

There are notable inconsistencies in the United Kingdom's approach to Ugandan's SOGI-based asylum claims. According to the UK Lesbian and Gay Immigration Group, establishing credibility in SOGI claims remains problematic even though U.K. authorities have recognized that conditions for SGN persons in Uganda have been consistently deteriorating.⁵¹² Revised assessments of conditions for sexual minorities in Uganda were published by the Home Office in April 2014 and in August 2014.⁵¹³

1. Cases Granting Relief

i. *SB (Uganda) v. Secretary of State for the Home Department*⁵¹⁴ - *Asylum claim granted judicial review on the ground that a fresh tribunal might find the Claimant at risk of persecution if returned to Uganda*

The main issue before the Court was whether the Secretary of State erred in law when it concluded that new evidence on the condition of sexual minorities in Uganda did not affect the claimant's risk of persecution, or the potential success of her asylum claim. The Court ruled that in light of changes since the introduction of the Anti-Homosexuality Bill, as well as the claimant's personal history, the Secretary of State erred in its assessment that SB's risk of persecution was "clearly unfounded."

SB, a Ugandan citizen, arrived in the United Kingdom in 2004 on a three-month visitor's visa.⁵¹⁵ She was arrested in 2008, sentenced to a year's imprisonment, and recommended for deportation.⁵¹⁶ SB applied for asylum after her sentencing, claiming that as a lesbian she would be at risk of persecution if returned to Uganda.⁵¹⁷

SB's initial asylum claim was denied because the adjudicator did not believe her to be a lesbian, and was not persuaded she was arrested in Uganda because of her sexual orientation.⁵¹⁸ On appeal, the Immigration Judge accepted SB was a lesbian and was indeed arrested because of her sexuality, but

⁵¹¹ *HJ (Iran) and HT (Cameroon) v. SSHD*, [2010] UKSC 31, available at <http://www.refworld.org/docid/4c3456752.html>. The Supreme Court's decision outlined the test for sexual identity asylum claims and determined that the UK could not return lesbian and gay asylum seekers to their home countries where they could live a "discreet" life, without first examining the cause of "discretion."

⁵¹² UK LESBIAN & GAY IMMIGRATION GROUP, MISSING THE MARK: DECISION MAKING ON LESBIAN, GAY (BISEXUAL, TRANS AND INTERSEX) ASYLUM CLAIMS (Sep. 2013), available at <http://uklgig.org.uk/wp-content/uploads/2014/02/Missing-the-Mark.pdf>.

⁵¹³ UK HOME OFFICE COUNTRY OF INFORMATION GUIDANCE, UGANDA: CLAIMS BASED ON SEXUAL ORIENTATION, (Apr. 10, 2014), available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302569/Uganda_country_info.pdf; UK COUNTRY INFORMATION AND GUIDANCE, *supra* note 156.

⁵¹⁴ *SB (Uganda) v. Secretary of State for the Home Department*, [2010] EWHC 338 (Admin), United Kingdom: High Court (England and Wales) (24 February 2010), available at <http://www.refworld.org/docid/4b952eeb2.html>.

⁵¹⁵ *Id.* at ¶ 5.

⁵¹⁶ *Id.*

⁵¹⁷ *Id.* at ¶ 6.

⁵¹⁸ *Id.*

considered her accounts exaggerated, finding that the “Claimant could return to Uganda and continue her discreet homosexual life.”⁵¹⁹ The appeal was rejected.

Further representations based on new evidence in light of the introduction of the Anti-Homosexuality Bill were made to the Secretary of State on SB’s behalf.⁵²⁰ The Secretary of State rejected these representations, and classified SB’s asylum and human rights claims as “clearly unfounded,” thus denying SB’s right to submit a fresh claim in the High Court of Justice.⁵²¹ SB challenged this decision.

Without deciding on the merits of SB’s asylum application, the Court ordered that the case be granted judicial review. The Court determined that the Secretary of State had evidence before it in February of 2010 that indicated a general deterioration in the treatment of gays and lesbians in Uganda following the introduction of the Anti-Homosexuality Bill, and increased discrimination by the public, government and police.⁵²² Furthermore, the Court found that “evidence that those in authority in Uganda are increasingly suggesting that the current Penal Code provisions relate to lesbians as well and gay men [sic] arguably reflects a growing willingness on the part of the state to enforce anti-homosexuality legislation in Uganda.”⁵²³ The Court held that previous Tribunal decisions holding that in effect “Ugandan authorities did not arrest or ill-treat” gay or lesbians were not reliable in this case.⁵²⁴

Based on new evidence, the Court found that it is “unlikely” that SB will be able to live a discrete life as a lesbian in Uganda, and may as a result face risk of persecution.⁵²⁵ The evidence included a “wanted list” of distributed to police stations throughout Uganda that would likely include SB’s name from previous arrests, evidence of abuse suffered by lesbians in detention, and a risk that SB be identified as a “bail runner” or lesbian upon entering Uganda.⁵²⁶

The Court concluded that the Secretary of State erred in law when it classified SB’s claims as “clearly unfounded.” Based on the evidence, it determined that a tribunal might find the claimant at risk of persecution if returned to Uganda, and granted SB’s request that her claim be granted judicial review.

2. Cases Denying Relief

i. EK (Non Overt - Homosexual) Uganda v The Secretary of State for the Home Department⁵²⁷ – *Denial of asylum based on failure to establish risk of persecution, or risk of harm under Article 3 of the European Convention of Human Rights*

The Immigration Appeals Tribunal considered two issues in this case: whether the asylum adjudicator was correct in concluding that EK was not a homosexual; and if “proven” homosexual, whether

⁵¹⁹ *Id.* at ¶ 8.

⁵²⁰ *Id.* at ¶ 9-17.

⁵²¹ *Id.* at ¶ 17.

⁵²² *Id.* at ¶ 47.

⁵²³ *Id.* at ¶ 46.

⁵²⁴ *Id.* at ¶ 47.

⁵²⁵ *Id.* at ¶ 51(iii).

⁵²⁶ *Id.* at ¶ 51.

⁵²⁷ *EK (Non Overt - Homosexual) Uganda v. The Secretary of State for the Home Department*, [2004] UKIAT 00021, UK: Asylum and Immigration Tribunal / Immigration Appellate Authority (12 February 2004), available at <http://www.refworld.org/docid/47dfb45d.html>.

EK would face risk of persecution or inhuman or degrading treatment once returned to Uganda.⁵²⁸ The tribunal rejected both of these assertions and upheld the Adjudicator's decision.

EK, citizen of Uganda, entered the UK with a false passport in March 2000 and applied for asylum two months later.⁵²⁹ He discovered his homosexuality at the age of 18, but because suspicions he was gay made him a subject of abuse, he did not have other same-sex relations in Uganda.⁵³⁰ He also had a female partner in Uganda, with whom he had a daughter.⁵³¹ He had one homosexual relationship in the U.K. which lasted for six weeks.⁵³²

The Tribunal accepted EK's claim that the adjudicator erred in concluding he was not a homosexual.⁵³³ After accepting EK's sexual orientation, the Tribunal proceeded to analyze "the risk to him on that basis."⁵³⁴

In order to analyze the level of persecution that EK may face if returned to Uganda, the Tribunal analyzed Ugandan law and human rights reports. It concluded that there were severe punishments for "persons who practice homosexuality" and that "occasional" willingness to persecute homosexuals appeared even at the highest level of government.⁵³⁵ Nevertheless, as evidence did not suggest that lengthy prison sentences were imposed,⁵³⁶ the tribunal concluded that homosexual Ugandans "are plainly discriminated against ... and are subject of disapproval."⁵³⁷

The Tribunal cited as precedent the case of a gay asylum seeker from Jamaica.⁵³⁸ In that case, the Court of Appeal accepted that the criminalization of homosexual acts was not a sufficient ground for asylum, because "on that basis, anyone who is a homosexual can come to this country and claim asylum."⁵³⁹ Thus, the Immigration Appeal Tribunal concluded that the criminalization of homosexuality in Uganda is not in itself proof of risk of persecution, and is not a sufficient basis on which to grant asylum.⁵⁴⁰

The Tribunal additionally concluded that because of his personal history, there was no reason for Ugandan authorities to suspect EK was homosexual.⁵⁴¹ As he did not engage in homosexual relations of any kind from the age of 18 until the age of 31, the Tribunal concluded that homosexual urges were not important for him.⁵⁴² The Tribunal therefore did not consider EK's inability to express his sexuality in Uganda as sufficient ground for engaging Article 3 of the European Convention on Human Rights, which refers to the prohibition of torture and inhuman or degrading treatment or punishment.⁵⁴³ The Tribunal therefore denied EK's appeal.

⁵²⁸ *Id.* at ¶ 4.

⁵²⁹ *Id.* at ¶ 14.

⁵³⁰ *Id.* at ¶ 11.

⁵³¹ *Id.* at ¶ 15.

⁵³² *Id.* at ¶ 14.

⁵³³ *Id.* at ¶ 10.

⁵³⁴ *Id.*

⁵³⁵ *Id.* at ¶ 6.

⁵³⁶ *Id.* at ¶ 7.

⁵³⁷ *Id.* at ¶ 8.

⁵³⁸ *SSHD v. Z; A v. SSHD; M v. SSHD*, [2002] EWCA Civ 952, available at <http://www.refworld.org/docid/404f15c54.html>.

⁵³⁹ *Supra* note 527, at ¶ 9.

⁵⁴⁰ *Id.* at ¶ 10.

⁵⁴¹ *Id.* at ¶ 16.

⁵⁴² *Id.*

⁵⁴³ *Id.* at ¶ 17.

ii. JM (homosexuality: risk) v Secretary of State for the Home Department [2008] UKIAT 00065, United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, (11 June 2008); OO (Sudan) and JM (Uganda) v The Secretary of State for the Home Department [2009] EWCA Civ 1432, United Kingdom: Court of Appeal (England and Wales) (18 November 2009) – Denial of asylum based on failure to establish persecution of homosexuals in Uganda

The central issue for the Tribunal was whether JM would suffer persecution or serious harm, or if his human rights would be violated if returned to Uganda.⁵⁴⁴ The Tribunal dismissed JM's appeal and ruled that although Ugandan legislation criminalizes same-sex sexual acts, there is little evidence the law is enforced. However, the UK Home Office instructs its adjudicators not to rely on the findings in *JM* due to "societal harassment, discrimination, intimidation, and threats to their wellbeing, as well as denial of access to health services, which has been exacerbated by the Anti-Homosexuality Act and the rhetoric surrounding it."⁵⁴⁵

JM, a Ugandan citizen, entered the U.K. in 2000 to visit his cousin. Eighteen months after his entry and one-year after his leave expired, JM applied for refugee status, claiming that because of his homosexuality he would face persecution and degrading treatment if returned to Uganda.

In Uganda, JM ran a hairdressing business and maintained a good relationship with his family members, who were unaware of his sexual orientation.⁵⁴⁶ He claimed he had no same-sex relationships in Uganda because of the criminalization of homosexuality; however, he had a relationship with another man while he lived in Kenya for two years. He also had several homosexual relationships since he arrived in the U.K., where he was able to freely express his sexuality. He thus felt he could not go back to "living in the closet."⁵⁴⁷ JM described himself as feminine and soft-spoken, a description that the Tribunal considered accurate.⁵⁴⁸

JM stated that he would be at risk of persecution, arrest and harassment if he returned to Uganda.⁵⁴⁹ He argued that homosexuality is an identity that encompasses more than sexual conduct, and given the context in Uganda, his right to freely express his sexual identity would be violated.⁵⁵⁰ Given his single marital status at the age of 32 and the case of the newspaper that made public the identity of gay and lesbians, he claimed his sexual orientation would inevitably be discovered.⁵⁵¹

The Secretary of State contended that JM's return to Uganda would not expose him to serious risk of persecution. While it was not disputed that JM was gay or that homosexuality is criminalized and treated with significant prejudice in Uganda, the Secretary claimed that there was "no real risk in Uganda for those who give public expression to their homosexuality."⁵⁵² The Secretary additionally argued that there was little evidence that the law was being applied or that homosexuals were ill-treated in general.⁵⁵³

⁵⁴⁴ *JM v Secretary of State for the Home Department*, [2008] UKIAT 00065, available at <http://www.refworld.org/docid/48ca3fa32.html>.

⁵⁴⁵ UK COUNTRY INFORMATION AND GUIDANCE, *supra* note 156, at 37.

⁵⁴⁶ *JM*, *supra* note 544, at ¶ 17.

⁵⁴⁷ *Id.* at ¶ 24.

⁵⁴⁸ *Id.* at ¶ 13.

⁵⁴⁹ *Id.* at ¶ 79.

⁵⁵⁰ *Id.* at ¶ 80.

⁵⁵¹ *Id.* at ¶ 81.

⁵⁵² *Id.* at ¶ 77.

⁵⁵³ *Id.* at ¶ 70.

The tribunal dismissed JM's appeal, thus denying him refugee status, because there was little evidence that the criminalizing law was being enforced. Central to the Tribunal's decision was the fact that JM did not flee to the U.K. in order to avoid persecution, but came to visit his cousin.⁵⁵⁴ The Tribunal held that JM's evidence depicting Uganda as a place of harassment and fear for homosexuals could not be reconciled with the background material he had presented,⁵⁵⁵ concluding therefore that the witnesses have sought to exaggerate discriminatory conditions in Uganda.⁵⁵⁶

Additionally, the Tribunal held that no action was being taken against Ugandan gay and lesbian organizations that publicly voice their views,⁵⁵⁷ and that evidence "falls well short of establishing" that public condemnation by Ugandan state officials provokes physical violence against homosexuals.⁵⁵⁸ For these reasons, the Tribunal concluded that the evidence failed to establish that there was persecution of homosexuality in Uganda.⁵⁵⁹

JM appealed the decision on the ground that the Asylum and Immigration Tribunal erred when it held that a press conference organized by the LGBTI community in August 2007 had no violent repercussions.⁵⁶⁰ Upholding the decision, the Court of Appeals found that the overall conclusion, that the evidence did not establish persecution of homosexuals in Uganda, was "not perverse."⁵⁶¹

However, due to changing circumstances, the Tribunal's finding that discrimination against homosexuals does not amount to persecution in Uganda is no longer considered reliable by the U.K. Home Office.⁵⁶²

C. Australia

Australia has recognized asylum claims based on sexual orientation since 1992. The Australian Refugee Review Tribunal's (RRT) heavy reliance on evidentiary procedures often makes it difficult for applicants to prove their sexual identity, as well as past persecution in their home countries.

While the Australian court can remand cases to the Refugee Review Tribunal for reconsideration, only Tribunal members can determine the outcome of applications; it is also under the Tribunal's sole discretion to determine the sexuality of asylum seekers. However, the Department of Immigration and Border Protection has yet to publish SOGI specific guidelines for asylum adjudicators.

⁵⁵⁴ *Id.* at ¶ 148.

⁵⁵⁵ *Id.* at ¶ 95.

⁵⁵⁶ *Id.* at ¶ 97.

⁵⁵⁷ *Id.* at ¶ 170(5).

⁵⁵⁸ *Id.* at ¶ 170(2).

⁵⁵⁹ *Id.* at ¶ 171.

⁵⁶⁰ *OO (Sudan) and JM (Uganda) v. Secretary of State for the Home Department*, [2009] EWCA Civ 1432, at ¶26, available at <http://www.refworld.org/docid/4ba775c52.html>.

⁵⁶¹ *Id.* at ¶31.

⁵⁶² UK COUNTRY INFORMATION AND GUIDANCE, *supra* note 156, at 37.

1. Cases Granting Relief

i. RRT Case No. 1102095 [2011], RRTA 349 (May 10, 2011) *Australia: Refugee Review Tribunal – Remittance for reconsideration based on claimant’s membership of Particular Social Group of “lesbians in Uganda”*

The applicant, a citizen of Uganda, applied for a protection visa based on membership of a particular social group (PSG) of lesbians in Uganda.⁵⁶³ The applicant expressed fear that if the Anti-Homosexuality Bill was to pass, her friends, family and other people in Uganda who were aware of her sexual orientation would be forced to report her to the authorities, and that she could “face detention and other serious harm amounting to persecution” if returned.⁵⁶⁴

The applicant stated that she had a long-time girlfriend in Uganda, and that they were severely beaten and raped by two men in October 2008.⁵⁶⁵ They were unable to report the attack to local police “for fear of being found out.”⁵⁶⁶ She also claimed harassment from other community members.⁵⁶⁷ The applicant stated that she did not socialize with other homosexuals in Uganda except for her girlfriend because she was fearful of “mob justice.”⁵⁶⁸

The Minister for Immigration and Citizenship denied her application for a protection visa.⁵⁶⁹ The asylum delegate found that the claimant was not a lesbian, and that her accounts of rape and harassment were doubtful;⁵⁷⁰ it additionally concluded that the applicant would not face persecution if returned to Uganda.⁵⁷¹ The applicant applied to the Refugee Review Tribunal (RRT) for a review of the decision.

On review, the RRT concluded that it was “uncontroversial to conclude that homosexuals are a particular social group in Uganda,” and that the applicant had proven that she was a “homosexual” based upon questioning by the Tribunal and the testimony of the applicant’s sister-in-law.⁵⁷² Regarding “the [Minister for Immigration and Citizenship] delegate’s concerns and her comments about the applicant not accessing any lesbian groups prior to her interview with the delegate,” the RRT found that “the applicant was so scared about keeping her homosexuality a secret that she chose not to contact any of the groups.”⁵⁷³

Furthermore, the RRT found that the harm that the applicant fears upon returning to Uganda are substantiated and amount to risk of persecution.⁵⁷⁴ The RRT additionally found that if information about the applicant and her girlfriend relationship were widely known “they could be subjected to serious harm, both by members of the community and the police.”⁵⁷⁵ Based on country condition information, which assessed the effect of the Anti-Homosexuality Bill, the RRT concluded that the applicant had a well-

⁵⁶³ RRT Case No. 1102095.

⁵⁶⁴ *Id.* at 5.

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

⁵⁶⁸ *Id.* at 6.

⁵⁶⁹ *Id.* at 3.

⁵⁷⁰ *Id.* at 39.

⁵⁷¹ *Id.*

⁵⁷² *Id.* at 15.

⁵⁷³ *Id.* at 16.

⁵⁷⁴ *Id.* at 69.

⁵⁷⁵ *Id.* at 71.

founded fear of persecution, and that relocation within Uganda was not a viable option in her case.⁵⁷⁶ The RRT found that the applicant was a person to whom Australia had protection obligations under the Refugee Convention, and that the applicant satisfied the criteria for a protection visa.⁵⁷⁷

ii. RRT Case No. 01/39528, [2002] RRTA 1135 (December 19, 2002) Australia: Refugee Review Tribunal – Remittance for reconsideration based on claimant’s membership of Particular Social Group of “homosexual men in Uganda”

The applicant, a Ugandan citizen, applied for a protection visa based on membership of the particular social group (PSG) of homosexual men in Uganda.⁵⁷⁸ The applicant claimed that “he was detained for a significant period after authorities discovered that he is homosexual and was living with another homosexual man.”⁵⁷⁹ The applicant was refused a protection visa. On review, the Refugee Review Tribunal (RRT) found that the applicant was a person to whom Australia had protection obligations under the Refugee Convention and remitted the case for reconsideration.⁵⁸⁰

Although the RRT found a “number of the claims made by the applicant at the hearing regarding his treatment while in detention to be far-fetched and implausible”, it accepted that the applicant was a homosexual and that this had become publicly known when he was detained.⁵⁸¹ In determining whether homosexuals constitute a particular social group in Uganda, the RRT noted that homosexual sex is outlawed in Uganda, and that President Museveni and church leaders have publicly called for the arrest of and action against homosexuals.⁵⁸²

The RRT referenced evidence demonstrating that “homosexuality is unacceptable to most Ugandans and those who are known to be homosexuals face social ostracism and in some cases serious harassment, discrimination and even violence.”⁵⁸³ Based on this information, the RRT concluded that “homosexuals are seen as people united and set apart from society by their sexually [*sic*] in Uganda,” and therefore constitute a particular social group.⁵⁸⁴ The RRT found that as the applicant’s sexuality was publicly known, there was a real chance that he would face harm amounting to persecution if returned to Uganda.⁵⁸⁵

⁵⁷⁶ *Id.* at 71-74

⁵⁷⁷ *Id.* at 5.

⁵⁷⁸ *RRT Case No. 01/39528.*

⁵⁷⁹ *Id.*

⁵⁸⁰ *Id.* at 5.

⁵⁸¹ *Id.* at 3.

⁵⁸² *Id.*

⁵⁸³ *RRT Case No. 01/39528* at 3.

⁵⁸⁴ *Id.* at 5.

⁵⁸⁵ *Id.*

D. Canada

Canada has recognized SOGI-based asylum claims since 1991.⁵⁸⁶ Statistics highlight that from April 2009 to June 2011, 561 SOGI-based refugee claims were finalized by the Refugee Protection Division (RPD) of the Immigration and Refugee Board of Canada (IRB). In fifty-eight percent of these claims refugee protection has been granted.⁵⁸⁷

In contrast to other jurisdictions, Canada adopts either a “protected characteristics” or “voluntary association” approach when deciding whether SOGI-based claims can qualify as members of a particular social group. This inclusive approach defines a particular social group as either being based on a characteristic that is either ‘immutable or fundamental’⁵⁸⁸ or as a “collection of people closely affiliated with each other, who are actuated by [a] common impulse or interest.”⁵⁸⁹ It is only necessary for refugee applicants to satisfy one of these two criteria.

1. Cases Granting Relief

i. X (Re), 2004 CanLII 56794 (CA IRB) – Applicant granted refugee status on the grounds that he would suffer persecution due to his sexual orientation if he returned to Uganda

The central issue before the Refugee Protection Division (RPD) was whether the applicant would suffer persecution or serious harm if he returned to Uganda.⁵⁹⁰

X asserted that he realized he was gay at the age of 12, and was discriminated against by his family, community and friends since then. He was expelled from a boys’ school in 1997 when he was discovered having sex with another student in one of the classrooms.⁵⁹¹ In 1997, he was allegedly attacked by five men when returning home and was degraded by a doctor and the police because of this incident. In 2002 he attended a party with gay friends that was raided by the police. He was kept in police detention for three days.⁵⁹²

X obtained a Canadian visitor’s visa to attend the World Youth Day in Toronto. He arrived in Toronto in 2002 and applied for refugee status.

The Board held that the applicant was gay despite disbelieving many of the incidents of discrimination that he alleged to have suffered.⁵⁹³ The Board placed significant weight on a 1997 medical report from the school’s doctor in which concluded that the applicant was having regular anal sex.⁵⁹⁴

⁵⁸⁶ *Re R (UW)* (2 January 1991), Toronto T90-02900 (CRDD) (available on QL).

⁵⁸⁷ Nicole LaViolette, *Sexual Orientation, Gender Identity and the Refugee Determination Process in Canada*, Immigration and Refugee Board, Refugee Protection Division (2013), available at https://www.academia.edu/3431684/Sexual_Orientation_Gender_Identity_and_the_Refugee_Determination_Process_in_Canada.

⁵⁸⁸ UNHCR, *Guidelines on International Protection: “Membership of a particular group” within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating the Status of Refugees*, HCR/GIP/02/02 (May. 7, 2002) (hereinafter UNHCR Guidelines MPSG), available at <http://www.refworld.org/pdfid/3d36f23f4.pdf>.

⁵⁸⁹ See generally *Matter of S-E-G*, 24 I & N Dec. 579 (BIA 2012).

⁵⁹⁰ *X (Re)*, 2004 CanLII 56794 (CA IRB), at 1.

⁵⁹¹ *Id.* at 1

⁵⁹² *Id.*

⁵⁹³ *Id.* at 7.

⁵⁹⁴ *Id.* at 6.

The Board further analyzed documentary evidence and declarations by the Ugandan President Museveni in September 1999 that “all homosexuals must be arrested and prosecuted,”⁵⁹⁵ to conclude that homosexuality is criminalized, and that the treatment accorded to homosexuals in Uganda amounts to persecution.⁵⁹⁶

Despite disbelieving many of X’s allegations, the Board found X’s homosexuality to be credible. It therefore concluded that there was a serious risk that X would face severe repression, amounting to persecution, should he return to Uganda. The Board therefore recognized X as a refugee.⁵⁹⁷

ii. X (Re), 2013 CanLII 91131 (CA IRB) – upholding the claimant’s appeal and granting refugee status on the basis of sexual orientation as a bisexual person

The main issue before the Refugee Appeal Division (RAD) was whether the Immigration Board (the Board) had erred when it concluded that the appellant (X) was heterosexual and therefore not entitled to refugee protection.⁵⁹⁸

X, a Ugandan citizen, self-identified as a gay male and claimed he was known to be gay to most of his acquaintances in Uganda. He alleged that on several occasions he made reports to the police of threats he had received on account of his homosexuality, which were ignored.⁵⁹⁹ In 2010, X was granted a Canadian student visa and attended university. In 2012, he married a woman in Canada.⁶⁰⁰ The Board rejected his case in April 2013 on the grounds that he was heterosexual.⁶⁰¹

On appeal, the RAD held that the Board’s conclusion as to X’s sexual identity was incorrect. The RAD found that it was unreasonable to suggest that X, while engaging in same-sex activity over an extended time period was never gay, or that he has ceased to be gay.⁶⁰² The RAD stated that although X was now in a heterosexual relationship, there is still the possibility that he will engage in homosexual relationships in the future.⁶⁰³

The RAD held that the Board had also erred when it did not consider whether X’s sexual identity may be best understood as bisexuality, rather than homosexuality or heterosexuality.⁶⁰⁴ This was irrespective of the fact that X did not define himself as a bisexual man. The RAD stated that the situation in Uganda may mean that X will not be able to express his bisexuality for personal or cultural reasons.⁶⁰⁵ It highlighted that bisexuality is not well understood in many countries, and that bisexuals may be persecuted because of their orientation.⁶⁰⁶ The RAD therefore set aside the decision of the Board and granted the applicant refugee status.⁶⁰⁷

⁵⁹⁵ RIR, Number: UGA35463.E of 31 October 2000.

⁵⁹⁶ X (Re), 2004 CanLII 56794 (CA IRB), at 6.

⁵⁹⁷ *Id.* at 7.

⁵⁹⁸ X (Re), 2013 CanLII 91131 (CA IRB), at 11.

⁵⁹⁹ *Id.* at 6.

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.* at 10.

⁶⁰² *Id.* at 37.

⁶⁰³ *Id.*

⁶⁰⁴ *Id.* at 43.

⁶⁰⁵ *Id.* at 47.

⁶⁰⁶ *Id.*

⁶⁰⁷ *Id.* at 54.

2. Cases Denying Relief

i. X (Re), 2008 CanLII 87945 (IRB) – Denial of asylum based on lack of credible evidence regarding persecution on return to Uganda

The central issue before the Immigration and Refugee Board of Canada (IRB) was whether the applicant would suffer persecution or serious harm if he returned to Uganda.⁶⁰⁸

X asserted that he was persecuted in Uganda as a result of his sexual orientation. He presented evidence that he began to engage in same-sex activities while he was in high school in 1987.⁶⁰⁹ He was suspended a year later, after he and his lover were suspected of engaging in homosexual activities. Due to his family's pressure, he entered into a heterosexual relationship that lasted 10 years, during which time he became the father of three sons.

X stated that he was physically attacked by "police and thugs" in 2006, after he and his lover were discovered together on a beach. When X regained consciousness, he was under police guard in a hospital. He allegedly managed to escape the hospital with assistance from his friend and travelled to Kenya. In Kenya, he was granted a Canadian Visitor's Visa, and he submitted an application for refugee status upon his arrival in Canada in 2006.⁶¹⁰

The Board found that X had not established an "objective basis for his fear of persecution because of a lack of credibility in pivotal areas of his testimony."⁶¹¹ In its decision, the Board found that a person who had been in a relationship since 1987 would have cards, gifts or other memorabilia to prove the existence of this relationship.⁶¹²

The Board also held that the applicant displayed little concern for the safety and welfare of his partner, and found that he showed "no emotional attachment such that one would expect of the alleged extended relationship."⁶¹³ X had failed to attempt to contact his partner whilst in Canada or inquire of his wellbeing.

The Board held that the claimant had not suffered serious harm while in Uganda, and that it was more likely than not that he would not suffer serious harm should he return to that country.⁶¹⁴ X application for refugee status was therefore denied.

ii. Wokwera v. Canada (Citizenship and Immigration), 2012 FC 132 (CanLII) 2012-02-02 Federal Court of Canada — Canada (Federal) – Denial of asylum based on insufficient credible evidence as to the claimant's fear of persecution

⁶⁰⁸ X (Re), 2008 CanLII 87945 (CA IRB) at p 1.

⁶⁰⁹ *Id.* at 1.

⁶¹⁰ *Id.*

⁶¹¹ *Id.* at 2.

⁶¹² *Id.* at 3.

⁶¹³ *Id.*

⁶¹⁴ *Id.* at 4.

The main issue before the Federal Court was whether the Immigration Board (the Board) had erred when it concluded that there was no corroborating evidence that would support the applicant's subjective fear of persecution as a physician who has provided treatment to homosexuals in Uganda.⁶¹⁵

Wokwera, a thirty-six-year old citizen of Uganda, was a married medical doctor and a father of two. He sought asylum on the basis of his imputed political opinion as a person sympathetic to homosexuals in Uganda.

Wokwera assisted members of a secret gay fraternity who were in need of a doctor they could confide in without stigmatization or fear of exposure.⁶¹⁶ Wokwera provided medication, free consultation and counseling services. He allegedly became known as a "homosexual sympathizer," and was consequentially received anonymous death threats and was followed by persons he suspected were security personnel.⁶¹⁷ In 2009, he was attacked and stabbed by a man who identified him as a homosexual sympathizer. He reported the attack to the police as an attempted robbery but nothing came of the investigation.⁶¹⁸

Wokwera passed the Medical Counsel of Canada Evaluating Exam and applied for a visa. He arrived in Canada in October 2009 and filed his claim for refugee status in March 2010.⁶¹⁹

The Federal Court held that the Board was correct in ruling that there was insufficient evidence to prove Wokwera's fear as a medical officer who provided counseling to homosexuals and treatment to gay and HIV infected persons. The Court noted that although the Anti-homosexuality Bill was introduced in 2009, there was no evidence that it contained a prohibition on physicians treating HIV patients.⁶²⁰ As the applicant's work was not conducted in public, he would not be at risk of persecution as a "homosexual sympathizer."⁶²¹

Wokwera was also unable to provide evidence to corroborate his links with the gay community.⁶²² The Court found that this was unreasonable since he was a highly educated individual with legal representation and family connections in Uganda.⁶²³ The court therefore found that the Board's decision was reasonable and dismissed the applicant's appeal for refugee status.

⁶¹⁵ *Wokwera v. Canada (Citizenship and Immigration)*, 2012 FC 132 (CanLII) at 21.

⁶¹⁶ *Id.* at 4.

⁶¹⁷ *Id.* at 6.

⁶¹⁸ *Id.* at 8.

⁶¹⁹ *Id.* at 9.

⁶²⁰ *Id.* at 19.

⁶²¹ *Id.* at 32.

⁶²² *Id.* at 41.

⁶²³ *Id.* at 42.

E. European Union

The European Court of Justice (ECJ) assures, in the context of preliminary rulings, the uniform interpretation of European law by the national courts. The ECJ, for this purpose, deals only with legal issues, while the application of the legal principles to the facts of the cases remains a matter of the national courts.⁶²⁴

1. Cases Granting Relief

X (Sierra Leon), Y (Uganda), Z (Senegal) v Minister voor Immigratie, Integratie en Asiel (Joined cases C-199/12, C-200/12 & C-201/12); European Union: Court of Justice of the European Union, 7 November 2013

The case concerns three gay men of Sierra Leonean, Ugandan and Senegalese nationality who claimed they were persecuted in their countries of origin because of their sexual orientation. Their claims were based on the criminalization of same-sex sexual activity in their countries. The applicants claimed asylum in the Netherlands, and the case was referred by the Dutch court to the European Court of Justice (ECJ). The Dutch court asked the ECJ to interpret the Qualification Directive 2004/83/EC, primarily: whether homosexuals form a Particular Social Group (PSG); what constitutes persecution; and does criminalization, which includes prison sentencing, amount to persecution.⁶²⁵

The ECJ recognized sexual orientation as a basis for PSG. It established that Article 10(1) of the Qualification Directive, which recognizes PSG when particular characteristics or social visibility are found, covers sexual orientation as the shared characteristic.⁶²⁶

Secondly, the ECJ established that if a law criminalizing same-sex sexual acts includes prison sentencing, then the law in itself amounts to persecution if it is in effect applied.⁶²⁷ Considering Uganda's Penal Code, the ECJ found that Uganda falls under this category.⁶²⁸ Finally, the ECJ recognized that asylum applicants cannot be expected to conceal their sexual orientation in their country of origin in order to avoid persecution.⁶²⁹

⁶²⁴ Treaty on the Functioning of the European Union, art. 267, 2008 O.J. C 115/47.

⁶²⁵ CJEU, X, Y, Z v *Minister voor Immigratie, Integratie en Asiel* (joined cases of C-199/12, C-200/12 and C-201/12) (7 Nov. 2013), at 2.

⁶²⁶ *Id.* at 49.

⁶²⁷ *Id.* at 55-56.

⁶²⁸ *Id.*, at 39.

⁶²⁹ *Id.* at 76.

F. France

1. Cases Granting Relief

i. CNDA, 1er juillet 2008, 571904, K. – *Granted refugee status on the grounds that the applicant would suffer persecution due to his sexual orientation if returned to Uganda*

The Cour Nationale du Droit d'Asile (CNDA) considered credible the applicant's claims of having had a homosexual relationship for years, of having being discovered by his relatives, and of consequently fearing for his own safety in Uganda.⁶³⁰

The CNDA held that individuals who assert their homosexuality in Uganda and openly express their nonconforming behavior and/or appearance in public are at risk of criminal prosecution on the basis of the country's Penal Code, and can be subject to police surveillance and harassment.

The CNDA found that the fear expressed by the applicant could reasonably be based on his homosexuality. Examining the country conditions, the CNDA found the applicant's fear to be well-founded. The applicant was granted refugee status.

ii. CNDA 11 juillet 2011 M. M. n° 10020448 C - *Granted refugee status on the grounds that the applicant would suffer persecution due to his sexual orientation if he returned to Uganda*

The applicant, a citizen of Uganda, concealed his homosexuality for years until he was caught in a homosexual pub, accused of homosexual activities, and detained for a day in a police station. He was able to retain his job but lived in a state of fear, until he fled Uganda.⁶³¹

The Cour Nationale du Droit d'Asile (CNDA) recognized that homosexuals in Uganda are severely prosecuted on the basis of the Penal Code, which criminalizes "carnal acts against nature," and face up to life imprisonment. The court additionally recognized that homosexuals are exposed to acts of persecution, including physical and mental violence, discriminatory police treatment and disproportionate sentencing.

The CNDA noted that homosexuals are perceived as a Particular Social Group (PSG) by both Ugandan authorities and general society, and as a consequence are victims of a specific persecution. The CNDA found that the applicant would be at risk of persecution upon returning to Uganda. The applicant was granted refugee status.

⁶³⁰ Cour Nationale du Droit d'Asile, 11 Jul. 2008, 571904, K, *Contentieux des Réfugiés, Jurisprudence du Conseil d'État et de la Cour Nationale du Droit d'asile, Année 2008*, at 36, available at <http://www.cnda.fr/media/document/recueil2008.pdf>.

⁶³¹ Cour National d'Asile, 11 Jul. 2011 M. M. n° 10020448 C, *Contentieux des Réfugiés, Jurisprudence du Conseil d'État et de la Cour Nationale du Droit d'asile, Année 2011*, at 89, available at <http://www.cnda.fr/media/document/CNDA/recueil-annuel-2011-version-anonymisee.pdf>.

Appendix: LGBTI and Human Rights Organizations in Uganda

Foundation for Human Rights Initiative

Human Rights House
Plot 1853, Lulume Road Nsambya
P.O. Box 11027, Kampala
Tel: +256-414-510263
Email: fhri@dmil.ug
Web: www.fhri.or.ug

Freedom & Roam Uganda (FARUG)

Clock Tower, Kampala, Uganda
P.O. Box 501 Kampala, Uganda
Tel: +256(0) 256 312 518 501
Help Line: +256(0) 771840233
Facebook: Freedom and Roam Uganda – FARUG
Email: info@faruganda.org
Web: www.faruganda.org

Human Rights Network Uganda (HURINET)

Plot 94 Old Kiira Road, Ntinda (Near Ministers' Village)
P.O. Box 21265, Kampala, Uganda
Tel: +256-41-286923
Tel: +256-41-285362
Fax: +256-41-286881
Email: hurinet@gmail.com / info@hurinet.or.ug
Web: www.hurinet.or.ug

Refugee Law Project

Plot 5, 7 & 9 Perryman Gardens, Old Kampala
(*Opposite Old Kampala Primary School*)
P.O. Box 33903
Kampala, Uganda
Tel: +256 (0) 414 343 556 / +256 (0) 414 235 330
Fax: +256 (0) 414 346 491
Email: info@refugeelawproject.org
Web: <http://www.refugeelawproject.org/>

Sexual Minorities Uganda (SMUG)

Clock Tower, Kampala, Uganda
P.O. BOX 70208
Email: info@smug.org
Web: <https://www.sexualminoritiesuganda.com>

Spectrum Uganda Initiatives

Suite ML 69 Mukwano Mall, Rashid Hamisi Road
Kampala, Uganda 25641
P.O. BOX 31670
Tel: +256 772 635542 / +256 782 854391
Web: www.facebook.com/spectruganda

Transgender, Intersex, Transexual (TITs)

Salongo Nikki, Programmes Co-ordinator

P.O. Box 70116, Kampala

Ugandan Civil Society Coalition on Human Rights and Constitutional Law (UCSC)

Physical Address: Plot 9 Perryman Gardens, Old Kampala (Opposite Old Kampala Primary School)

Coordinator: Plot 5 Perryman, Old Kampala

Tel: +256 41 4343556

Email: info@ugandans4rights.org

Web: www.ugandans4rights.org

Uganda Human Rights Commission (UHRC)

Head Office

Plot 22B Lumumba Avenue

P.O. Box 4929, Kampala

Tel: 0414-348007/8, 0414 - 233757

Fax: 0414-255261

Email: uhrc@uhrc.ug

Web: www.uhrc.ug

ORAM - Organization for Refuge, Asylum & Migration is the leading global advocate for persons seeking refugee protection based on their sexual orientation, gender identity and/or gender expression. ORAM fosters global support for thousands of sexual and gender minority asylum seekers and refugees through advocacy and education. It provides technical assistance and training to governments, intergovernmental agencies, non-governmental organizations, academic institutions and protection professionals.



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