

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	414
Land:	Uganda
Kilde:	JS 38
Titel:	Joint submission by civil society organisations advocating for the transgender and gender diverse persons
Udgivet:	2021
Optaget på baggrundsmaterialet:	28. februar 2022

UNIVERSAL PERIODIC REVIEW OF UGANDA

JOINT SUBMISSION BY CIVIL SOCIETY ORGANISATIONS ADVOCATING FOR THE TRANSGENDER AND GENDER DIVERSE PERSONS

TO: THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

List of Contributing Organisations

1. Come Out Positive Test Club	2. Kuchu Shiners Uganda
3. Tranz Network Uganda.	4. Trans Youth Initiative Uganda
5. Initiative for Rescue Uganda	6. Tomorrow Women in Sports
7. Rainbow Mirrors Uganda	8. Blessed Rwenzori Uganda
9. Lived Realities Uganda	10. Rainbow Shadows Uganda
11. The Taala Foundation	12. Transgender Equality Uganda
13. The Anna Foundation Uganda	14. FEM Alliance Uganda
15. Sexual Minorities Uganda	16. Human Rights Awareness and Promotion Forum

Contents

1. Introduction.....	2
2. Executive Summary.....	3
3. Legal and Constitutional framework affecting transgender persons in Uganda between 2016 and 2020.....	5
4. The Human Rights Situation for Transgender persons in Uganda.....	8
A. The right to liberty, security and freedom from arbitrary arrest and detention.....	8
B. The Right to freedom from torture or cruel, inhuman, and degrading treatment.....	9
C. The right to life.....	11
D. The right to health.....	12
E. Freedom of expression, association and assembly.....	13
5. Conclusion.....	13
6. Recommendations.....	13

1. Introduction

- 1.1. This report is a joint submission of organisations working on the rights of transgender and gender diverse persons in Uganda. Tranz Network Uganda is a network of organisations in Uganda advocating for the rights and wellbeing of trans gender persons in Uganda. Tranz Network Uganda has worked with other organisations for years, systematically documented violations of human rights based on sexual orientation and gender identity. publishing the annual Uganda Report(s) of Human Rights Violations based on Sexual Orientation and Gender Identity. The Contributing Organisations serve transgender and gender diverse persons in Uganda under different mandates and focus areas, including capacity building economic empowerment, counselling, crisis shelter management and healthcare services while others provide legal aid to transgender persons. These Organisations in carrying out their different mandates capture information concerning transgender persons, representing a fairly clear image of the human rights situation for transgender persons in Uganda.

- 1.2. This report has been compiled to address the various challenges that transgender and gender diverse persons in Uganda face especially in accessing justice and health services. As part of the LGBTI community in Uganda, transgender and gender diverse persons have been exposed much to the same struggles and marginalisation as the wider LGBTIQ community. However, unlike Lesbian, Gay, Bisexual, and Intersex persons, transgender and gender diverse persons are more easily recognisable, making them the “face of the LGBTI community in Uganda”, thus exposing them to a lot more violence and discrimination. For this reason, the issues that specifically affect transgender persons must be independently flagged and brought to the attention of the government of Uganda and other stakeholders at the 40th session of the UPR.
- 1.3. During Uganda’s review in the previous cycle of the UPR (2011-2016), no recommendations were made specifically to address the needs of transgender and gender diverse persons, and Uganda did not adopt any of the recommendations made on SOGIE either. However, during the first cycle in 2011, Uganda made several commitments on strengthening human rights systems, protection of human rights defenders and protection of LGBTI persons from violence.¹ This report explores the steps taken by the government of Uganda in fulfilment of those commitments and other human rights obligations as they relate to transgender and gender non-conforming persons in the period from 2016 to 2021.

2. Executive Summary

- 2.1. Uganda has made some efforts to fulfill its obligations as per the commitments made in the first and second cycles of the UPR towards offering effective redress for victims of human rights violations; the Uganda police force has engaged the Human Rights Awareness and Promotion Forum and partner organisations in training Police officers on issues of marginalisation and the treatment of LGBT persons while in police custody, and Uganda also enacted the Human Enforcement Act, 2019 to provide efficient and speedy mechanisms for providing redress to victims of human rights abuses.
- 2.2. However, even with the above-mentioned efforts, transgender and gender diverse persons in Uganda have continued to face transphobia, violence, discrimination and marginalisation. This has been fueled by the legal and policy regime which criminalises same-sex relations. The criminal law is used as justification for the continued discrimination and violations of the rights of transgender and gender non-conforming persons.
- 2.3. Despite the enactment of progressive laws such as the Human Rights (Enforcement) Act, 2019, the incidences of human rights violations are on the rise particularly in the face of the COVID-19 pandemic and the measures instituted by the state to curb its spread. The

¹ Office of the United Nations High Commissioner for Human Rights http://www.uprinfo.org/database/index.php?limit=0&f_SUR=182&f_SMR=All&order=&orderDir=ASC&orderP=true&f_Issue=All&searchReco=&resultMax=300&response=&action_type=&session=&SuRRgrp=&SuROrg=&SMRRgrp=&SMROrg=&pledges=RecoOnly

realities of transgender persons in the face of COVID-19 and the attendant regulations and directives only serve to exacerbate the already deteriorating human rights situation. There have been several incidents of raids on LGBT shelters and places of entertainment/ social hang-outs in the last few months as a result of the changing socio-legal environment.²

- 2.4. Even though no recommendations on SOGIE issues were accepted by Uganda in the second cycle in 2016, Uganda did make commitments to, among other things, continue to harmonise its domestic legislation with all international human rights instruments that Uganda is a party to, to ensure that the country's laws are in compliance with international human rights standards and to further ratify and incorporate all the ratified international legal instruments into domestic law.³ These international instruments protect the rights of LGBTI persons and yet they continue to face severe marginalisation based on real or presumed sexual orientation or gender identity.
- 2.5. In relation to health, Uganda committed to increase its health budget allocation and ensure the extension of health care to all persons without distinction based on gender, and to this end, the government of Uganda has supported initiatives to provide friendly health services to the LGBT, through the Most at Risk Populations Initiative. Nevertheless, TGGD persons have continued to face discrimination in health service delivery, with the MARPI model having very few centres (about 35 across the entire country), and providing primarily HIV/ STI treatment and care services and not the entire range of SRHR services and other health services needed by TGGD persons particularly transgender persons.
- 2.6. This report focuses on transgender persons in Uganda, and although they fall within the LGBT community, there are unique experiences and pervasive forms of violence that transgender persons suffer that do not intersect with the larger LGBQI community because transgender persons are not expressly recognised by the laws in Uganda.
- 2.7. Information for this report was gathered through extensive consultation with the transgender communities in Uganda. These consultations were conducted through four meetings held in four regions, of Eastern Region (in Mbale City), the Northern Region (in Gulu City), the Western Region (in Mbarara City), and the Central Region (in Kampala City) between February and April 2021. Reference was made to secondary information such as media reports, reports by civil society organisations on the human rights situation for transgender persons from 2016 to 2021, and national, regional, and international human rights instruments were also analysed to inform the discussion on Uganda's human rights obligations to transgender persons. Reference is also made to the outcome report from Uganda's previous UPR reviews to ascertain the commitments made therein to effectively comment on the progress thus far achieved in meeting these

² Human Rights Watch 'Uganda LGBT Shelter Residents Arrested on COVID-19 Pretext' 3 April 2020. <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext> and Police raids 'gay-friendly' Ram Bar, arrests 120 The Observer 12 November 2019 <https://observer.ug/news/headlines/62595-police-raids-gay-friendly-ram-bar-arrests-120>

³ n 5 above

commitments.

3. Legal and Constitutional framework affecting transgender persons in Uganda between 2016 and 2020

- 3.1. The Constitution of Uganda offers equal protection to all persons without discrimination, with all other laws expected to be consistent with this principle of equality.⁴ In addition, Uganda's international obligations require Uganda to harmonise its laws to meet international human rights instruments and ensure that Ugandan laws comply with international human rights standards and that the enforcement of the laws is in line with the state's obligation to protect and promote the human rights of all. Just as important.
- 3.2. The Human Rights (Enforcement) Act 2019. This was one of the most progressive laws that have been enacted in the period. The Act seeks to improve the environment for the enforcement of human rights and bring the consequences of human rights violations down to the individual perpetrator and simplify and expedite justice for victims of human rights violations. It is a positive step in Uganda's efforts to ensure the progressive realisation of a society governed by the rule of law and based on human rights. The act further empowers courts to administer justice without undue regard to technicalities, to ensure that human rights violations are addressed expeditiously. The act has already been utilised to ensure the rights of transgender persons are upheld.⁵
- 3.3. However, despite this apparent protective regime, TGGD persons are not expressly recognised in the laws of Uganda and as such do not enjoy the protection of the law, with the result being that they can be (and often have been) conveniently forgotten in planning processes.⁶ The complete silence about the mere existence of transgender persons in the law has created a community that is quite entirely invisible, and this has made them prone to violence, discrimination and exclusion in service provision.
- 3.4. However, penal provisions criminalising consensual same-sex sexual relations continue to exist in the Penal Code Act, and they are used to justify human rights violations against TGGD persons in Uganda. Section 145 of the Penal Code Act criminalises having carnal knowledge against the order of nature and whereas this does not particularly refer to TGGD persons,⁷ they are usually the most affected. Furthermore, the offences of

⁴ Article 20(1) of the 1995 Constitution of the Republic of Uganda

⁵ Human Rights Awareness and Promotion Forum (HRAPF) vs. Attorney General and Another (High Court MA No. 188 of 2020) this case was brought under the provisions of the Human Rights Enforcement Act 2019 and the High Court found that the denial of access to lawyers for 8 transgender persons of the 20 LGBT persons arrested was a violation of their right to liberty and the right to a fair hearing. The court awarded compensation of Ugx 5,000,000 to each victim.

⁶ Human Rights Awareness and Promotion Forum, 'The Impact of the Legal and Policy Framework on Access to Justice for Transgender Persons in Uganda' 2020. <https://www.hrapf.org/index.php/resources/research-reports>

⁷ Adrian Jjuuko, 'The incremental approach: Uganda's struggle for the decriminalisation of homosexuality' (2013) <https://sas-space.sas.ac.uk/4815/1/14Jjuuko.pdf> (accessed 29 April 2021)

personation, being idle and disorderly, being a common nuisance, and being a rogue and vagabond⁸ have been used to justify the arrest and harassment of TGGD persons by state actors. The offences as listed are often difficult to prosecute because, without a confession from the suspect, it is almost impossible to find proof of the commission of such offences. These petty offences as well heavily rely on the economic and social standing of persons and as such these offences often target the poor and marginalised,⁹ including transgender and gender diverse persons. Additionally, the law as is informs the misguided use of anal examinations to allegedly gather evidence of having carnal knowledge against the order of nature,¹⁰ violating the right to privacy and bodily integrity and freedom from cruel and inhumane treatment guaranteed under Articles 27 and 24 of the Constitution respectively.

- 3.5. In the wake of the COVID-19 pandemic, the police have also been actively arresting LGBTI persons en masse for the offences of “disobeying lawful orders” and “doing a negligent act likely to spread infection of disease (sections 117 and 171 of the Penal Code Act). Despite the understandable rationale of trying to enforce the COVID-19 directives, this enforcement has intentionally or unintentionally targeted marginalised persons particularly transgender persons. One such targeted arrest was witnessed on March 29th, 2020 with the arrest of 23 youths from a homeless person’s shelter for LGBT persons in Kyengera Town Council of whom 11 were transgender women. Although all indications are that the arrest was based purely on their perceived sexual orientation and/or gender identity, they were charged with ‘doing a negligent act likely to spread infection of disease.’ 8 of the transgender women were eventually remanded to prison, denied access to their lawyers, and subjected to inhuman and degrading treatment. However, the High Court later ruled that the denial of access to lawyers was a violation of the right to liberty and the right to a fair hearing.¹¹
- 3.6. In addition to the already existing laws criminalising consensual same-sex sexual relations, the Parliament of Uganda passed the Sexual Offences Bill, which shall widen the criminalisation of transgender persons. This Bill, passed on Monday 3rd May 2021 and currently awaiting presidential assent, will in effect criminalise as “carnal knowledge against the order of nature” all sexual contact between persons of the same gender (understood in this context to refer to the biological sex of the persons involved), the use of sex toys, some aspects of oral sex to mention but a few.¹² If signed into law by the president, this Bill will expand the criminalisation and greatly undermine efforts towards full recognition of the rights of TGGD persons and LGBTI persons generally.

⁸ Penal Code Act Cap 120, sections 381, 167, 160 and 168 respectively.

⁹ See HRAPF (n 7 above)

¹⁰ Human Rights Watch ‘Uganda: Stop Police Harassment of LGBT People’ 17 November 2019 <https://www.hrw.org/news/2019/11/17/uganda-stop-police-harassment-lgbt-people> (accessed 29 April 2021)

¹¹ Human Rights Awareness and Promotion Forum (HRAPF) vs. Attorney General and Another (High Court MA No. 188 of 2020).

- 3.7. In addition, transgender persons have been denied legal recognition under the laws of Uganda by operation of the Registration of Persons Act, 2015. This act gives direction on the recognition and registration of persons in Uganda, provides the procedure for change of names and makes provision for intersex children to change their sex on their birth records once they undergo “gender affirming” surgery. However, this right does not extend to adults, particularly those who cannot prove they were born intersex, thus limiting access to services and other opportunities like employment unless they go through sex reassignment surgeries. There have been no court cases on the rights of TGGD persons, although LGBT rights activists have continued to use the courts of law as an avenue for securing legal reform in favour of LGBTI persons during the last five years, and the courts have on several occasions upheld these rights. The Constitutional Court of Uganda in November of 2016 delivered its decision in the case of *Adrian Jjuuko v Attorney General*¹³ declaring section 15(6)(d) of the Equal Opportunities Act 2007, which prohibited the Equal Opportunities Commission from investigating and hearing matters considered socially unacceptable by a majority of social and cultural groupings in Uganda, to be inconsistent with the constitutional provisions on freedom from discrimination and the right to a fair hearing, and therefore null and void. This case has a positive bearing on the rights of transgender persons who are considered socially unacceptable and marginalised by the community. Despite the case having taken over 7 years before judgment, it made a firm statement against discrimination against sexual and gender minorities such as TGGD persons in Uganda and reaffirmed equality of all persons under the law.¹⁴
- 3.8. Be that as it may, the Judiciary has also set bad precedents in deciding matters that concern sexual and gender minorities. The High Court has for instance held that a government official did not violate the rights of LGBT persons when he closed down a skills training workshop, citing section 145 of the Penal Code Act as justification.¹⁵ This decision is on appeal in the Court of Appeal but is yet to be heard 5 years on.¹⁶ Similarly, in 2018, the High Court upheld the decision of the Uganda Registration Services Bureau to refuse to reserve and register the name “Sexual Minorities Uganda” on the grounds that it was undesirable, and that, as the organisation’s objectives included promoting the rights of LGBTI persons, its registration would amount to aiding and abetting the offence of having carnal knowledge against the order of nature in section 145 of the Penal Code Act.¹⁷ The appeal that was filed in this case in 2018 is still pending a hearing before the Court of Appeal.¹⁸

¹³ Constitutional Petition No.001 of 2009

¹⁴ Human Rights Watch ‘A Step Towards Better Addressing Discrimination in Uganda: Court Ruling Allows Equal Opportunities Commission to Hear Broader Range of Cases’. 11 November 2016 <https://www.hrw.org/news/2016/11/11/step-towards-better-addressing-discrimination-uganda> (accessed 29 April 2021.)

¹⁵ *Jacqueline Kasha Nabagesera & 3ors v AG & Anor* Misc. Cause No 33 of 2012

¹⁶ *Jacqueline Kasha Nabagesera & 3ors v AG & Anor* Civil Appeal No 195 of 2014

¹⁷ High Court Miscellaneous Cause No. 96 of 2016

¹⁸ Civil Appeal No. 233 of 2018

- 3.9. Civil society organising for TGGD persons and LGBTI persons generally is also further complicated by the provisions of the Non-Governmental Organisations Act 2016 (NGO Act), which imposes special obligations on organisations not to engage in acts that are ‘prejudicial to the interests of Uganda and the dignity of the people of Uganda.’¹⁹ This provision has forced significant self-censorship among civil society organisations as its vagueness can be used to target CSOs focusing on unpopular issues, such as the rights of sexual and gender minorities. In addition, the penal code provisions on personation, consensual same-sex relations, and being a rogue and vagabond, to mention but a few, justify the harassment and attacks against transgender persons, for whom the gaps in the law have created a sort of “legal limbo” in which they exist but aren’t recognised or acknowledged by the state. The freedom to associate for TGGD persons in Uganda is therefore rather precarious and dependant on the whim of the sitting authorities.²⁰
- 3.10. In addition, state institutions in health service delivery, law enforcement, civil society regulation, and even the courts of law tend to exhibit an inherent bias against serving transgender persons often targeting them for arrest and prosecution for petty offences, denying them access to essential health services and restricting them to certain “friendly” facilities and community drop-in-centers, which generally focus only on HIV and STI prevention and management.
- 3.11. This legal and policy environment is not only repressive but also contravenes Uganda’s obligations under various international instruments that Uganda has ratified. They reinforce stigma and social misconceptions against transgender persons and are a justification for the violation of their rights.

4. The Human Rights Situation for Transgender persons in Uganda

A. The right to liberty, security and freedom from arbitrary arrest and detention

- 4.1. This right is guaranteed under Article 9 of the ICCPR, Article 6 of the ACHPR, and Article 23 of the 1995 Constitution of Uganda. This right guarantees that a person shall not be deprived of their liberty except as provided for under the law. Article 10 of the ICCPR further emphasises the right to be treated with dignity and humanity once the right to liberty has been curtailed.
- 4.2. With the enforcement of the COVID-19 regulations, arbitrary arrests and detentions have continued to spike, with several incidences of targeted arrests and arbitrary detentions of transgender persons under the guise of enforcing these regulations being reported.²¹ In March 2021, for instance, a group of 23 youths was arrested from an LGBT

¹⁹ Non-Governmental Organisations Act, 2016 sections 30 and 44.

²⁰ See HRAPF (n 7 above).

²¹ Health Gap ‘Uganda’s COVID-19 Response is Terrorizing Women with Arbitrary Detention, Blackmail, and Violence.’ 30 April 2020 <https://healthgap.org/press/ugandas-covid19-response-is-terrorizing-women-with-arbitrary-detention-blackmail-and-violence/> (accessed 29 April 2021).

crisis shelter of which 11 of these were transgender persons. 8 of these transgender persons were detained and spent over 50 days on remand in prison for allegedly disobeying the COVID-19 lockdown rules.²² While in detention, they were subjected to inhumane and undignified treatment and initially denied access to their lawyers.²³

- 4.3. Given their often gender atypical appearance/ expression, transgender persons are often charged with personation,²⁴ i.e, holding oneself out as a different person, either living or dead, to defraud another. Transgender and gender diverse persons are also often arrested and charged with having carnal knowledge against the order of nature on the erroneous assumption that they are gay, but the difficulty in proving the offence often means that the Police resort to charging transgender persons with petty offences such as being idle and disorderly,²⁵ being a rogue and vagabond,²⁶ being a common nuisance²⁷ and, in recent times, disobeying lawful orders²⁸ and doing a negligent act likely to spread infection of disease²⁹ for allegedly flouting presidential directives on the prevention of the spread of COVID-19. The Police have also exhibited a proclivity to arrest transgender persons on flimsy grounds as a form of punishment, and this happened in one incident when the Police arrested 16 transgender persons after rescuing them from an angry mob, insulted them, charged them with having carnal knowledge against the order of nature and subjected them to forced anal examinations, although the case did not reach the courts of law.³⁰

B. The Right to freedom from torture or cruel, inhuman, and degrading treatment

- 4.4. Article 7 and 10 of the ICCPR provide for the right to freedom from torture, cruel, inhumane and degrading treatment, and this same right is guaranteed at the regional level under Article 5 of the African Charter on Human and Peoples Rights, and it is codified in the laws of Uganda under Article 24 of the 1995 Constitution of Uganda. Cruel, inhumane and degrading treatment against transgender persons in Uganda manifests in several forms, including public parading of transgender persons whenever

²² Human Rights Awareness and Promotion Forum. 'Report of human rights violations against key populations in Uganda January- June 2020' August 2020. <https://www.hrapf.org/index.php/resources/violation-reports>

²³ See n 15 above.

²⁴ Section 381 of the Penal Code Act Cap 120, Laws of Uganda

²⁵ Section 167 of the Penal Code Act, Cap 120, Laws of Uganda

²⁶ Section 168 of the PCA

²⁷ Section 160 of the PCA. See for instance Buganda Road Court Criminal cases KLA-00-CR-CO-1263/2019 (Uganda vs Asuman Sserubiri and Others), KLA-00-CR-CO-1266/2019 (Uganda vs Male Marvin and others), KLA-00-CR-CO-1264/2019 (Uganda vs Ssematimba Titus and Others) and KLA-00-CR-CO-1265/2019 (Uganda vs Katongole Ibrahim and Others), in which 67 out of 125 people arrested at a gay bar in Kampala in a targeted swoop were arraigned before courts on charges of being a common nuisance.

²⁸ Section 117 of the Penal Code Act

²⁹ Section 171 of the Penal Code Act

³⁰ Human Rights Awareness and Promotion Forum, 'The Uganda report of human rights violations on the basis of sexual orientation and gender identity 2019' March 2020. . <https://www.hrapf.org/index.php/resources/violation-reports>

they are arrested, endangering their lives,³¹ non-consensual anal examinations to establish evidence of having had “carnal knowledge against the order of nature”, or merely to humiliate the person,³² rape or threats of rape of transgender persons,³³ physical violence against transgender persons by arresting and detaining officers in both police stations and prisons (in one extreme case, this violence culminated in a Deputy Officer in charge of a prison burning the anus and private parts of a transgender woman with a smouldering log to “teach her a lesson”).³⁴

- 4.5. Additionally, politicians in Uganda have used the threat of re-tabling the Anti-Homosexuality Act 2014 to keep LGBTI persons in perpetual fear in public discourse that often sparks violence against LGBTI persons.³⁵ This is cruel and degrading to transgender persons, who are forced to live in perpetual fear of such a threat being realised, a fear that has since increased after parliament enacting the Sexual Offences Bill, 2019.³⁶ The media in Uganda has also become an agent for the violation of the rights of transgender persons by publishing degrading and dehumanising articles and photographs of transgender persons arrested by the police.³⁷
- 4.6. Forced anal examinations, conducted purportedly to find “evidence” of homosexual conduct, are usually done by the medical personnel forcibly inserting their fingers or other objects into the anus of the suspect. Victims have described the exams as painful and degrading, explaining that they are always conducted in the presence of a police officer, and the victims are often forced to endure prolonged visual examination by both health workers and police personnel;³⁸ Some TGGD persons also experienced anal examinations as a form of sexual violence, while others have reported the use of violence by both health workers and police personnel to secure their cooperation in the exercise, all despite the fact that anal exams have no evidentiary value.³⁹ This makes the evidence thus acquired almost entirely useless in the context of criminal trials, but the exams are nevertheless conducted with gusto in Uganda, with a recent example of a group of 20 persons, charged with doing a negligent act likely to spread infection of disease,

³¹ See for instance ‘Shock as Kayunga imam discovers his newlywed wife is a man’ The Daily Monitor <https://www.monitor.co.ug/uganda/news/national/shock-as-kayunga-imam-discovers-his-newlywed-wife-is-a-man-1868920> (accessed 29 April 2021); ‘44 arrested for organizing, attending same sex wedding’ The Nile Post 1 June 2021 <https://nilepost.co.ug/2021/06/01/44-arrested-for-organizing-attending-same-sex-wedding/>

³² See HRAPF (n 26 above) pg. 21

³³ See HRAPF (n 7 above)

³⁴ See HRAPF (n 26 above)

³⁵ ‘Amid ‘Kill the Gays’ bill uproar, Ugandan LGBTQ activist is killed’ NBC News 16 October 2019 <https://www.nbcnews.com/feature/nbc-out/amid-kill-gays-bill-uproar-ugandan-lgbtq-activist-killed-n1067336>.

³⁶ See n 28 above

³⁷ Open Democracy ‘I’ve defended hundreds of LGBTI people arrested in Uganda. Our laws must change – but we need public acceptance too.’ 23 January 2020 <https://www.opendemocracy.net/en/5050/ive-defended-hundreds-of-lgbti-people-arrested-in-uganda-our-laws-must-change-but-we-need-public-acceptance-too/>

³⁸ Issues raised by LGBT persons at the consultative meeting for the central region held on 23 April 2021 at Nob View Hotel.

³⁹ “Statement on Anal Examinations in Cases of Alleged Homosexuality,” Independent Forensic Expert Group, January 2016, DOI: 10.7146/torture.v26i2.108205.

reporting anal examinations on at least 8 transgender persons.⁴⁰

- 4.7. Body autonomy is a right that transgender persons and gender diverse persons are often denied. The right to bodily autonomy is not expressly provided for under international and national law but is a summation of several other rights such as the right to life with dignity⁴¹, the right to privacy of the person⁴² and the freedom from torture cruel and degrading treatment. Transgender persons and gender diverse persons are often denied the right to participate in and make decisions about their bodies, and this manifests in the undressing of transgender persons, allegations of personation, corrective rape, being placed in the wrong detention facilities upon arrest, limited and or no access to gender transformative surgery. The most pervasive manifestation of the denial of bodily integrity is the use of anal examinations to humiliate and or punish transgender persons upon arrest, in one extreme case a Deputy Officer in charge of prisons burnt the anus and private parts of a transgender woman with a smouldering log to “teach her a lesson”⁴³. This is in complete dereliction of the state's obligation to protect and promote the rights of all persons⁴⁴.

C. The right to life

- 4.8. Article 6 of the ICCPR, Article 4 of the ACHPR and Article 22 of the 1995 Constitution of Uganda guarantee the right to life, which goes beyond the mere aspect of living and breathing but concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.⁴⁵ Transgender and gender diverse persons are however often denied such dignity as they face the brunt of all negative media and public attention directed at LGBTI persons. The negative reporting and police brutality essentially prejudice the quality of the life of transgender persons.
- 4.9. The state is under a duty to protect the right to life of all persons including transgender persons. This duty extends to ensuring that transgender persons are not prematurely deprived of their life by both state and non-state actors. In 2019, a transgender woman was attacked by boda boda cyclists and killed, the Police failed to arrest the main suspect despite overwhelming evidence pointing in the main suspect, and barely a month later, another transgender woman was attacked and beaten to death in her home, still with no visible efforts by the police authorities to apprehend the persons responsible.⁴⁶

⁴⁰ See HRAFP (n 26 above)

⁴¹ UN Human Rights Committee, ‘General comment no. 36, Article 6 (Right to Life)’, 3 September 2019, CCPR/C/GC/35, paragraph 9 available at: <https://www.refworld.org/docid/5e5e75e04.html>

⁴² The Constitution of Uganda, Article 27

⁴³ See HRAFP (n 26 above)

⁴⁴ The Constitution of Uganda 1995, Article 20(2)

⁴⁵ UN Human Rights Committee, ‘General comment no. 36, Article 6 (Right to Life)’, 3 September 2019, CCPR/C/GC/35, available at: <https://www.refworld.org/docid/5e5e75e04.html> (accessed 30 April 2021)

⁴⁶ See HRAFP (n 35 above)

D. The right to health

- 4.10. Article 12 of the ICESCR and Article 16 of the ACHPR provide for the right to health. The Constitution of Uganda does not explicitly provide for the right to health but recognises the right of every Uganda to access medical care without discrimination.⁴⁷ The right to health is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health such as availability, accessibility, acceptability and quality.⁴⁸ Unfortunately, the right to health for transgender persons is often denied due to the social and cultural misconceptions against transgender persons, and this is reflected in the budget allocations that do not include sexual reproductive health services for transgender persons.⁴⁹
- 4.11. Transgender persons encounter discrimination, stigmatisation and hostility in accessing the health care system in Uganda, and this discrimination is based on the criminalisation of same sex sexual conduct under the Penal Code Act. This also informs the negative attitudes of health workers to transgender persons,⁵⁰ despite the fact that they remain classified as key populations and as a group most at risk of acquiring HIV.⁵¹
- 4.12. Additionally, there are no specialised healthcare services tailored towards the special needs of transgender persons.⁵² Services unique to transgender persons are usually not readily available at healthcare facilities,⁵³ and there is documented evidence of healthcare service providers refusing to serve transgender persons based on their fear of supporting them in their “imported behaviours”, whereas others claim not to have the requisite skills.⁵⁴ Furthermore, the type of data collected within the health care system does not provide an accurate data pool from which healthcare needs of transgender persons can be obtained and provided.
- 4.13. Non-Governmental Organisations such as the Most at Risk Populations Initiative and community drop-in-centres operated by LGBTI led organisations are the primary source of health care services for TGGD persons.⁵⁵ The SRHR needs of TGGD persons are generally not considered, and government efforts to raise awareness on SRHR issues as

⁴⁷ Article 8A read together with Objective 20 of the National Objectives and Directive Principles of State Policy.

⁴⁸ Committee on ESCR ‘General Comment 14: The right to the highest standard of physical and mental health’. HRI/GEN/1/Rev 9 (Vol1) (2000) para 11.

⁴⁹ Human Rights Awareness and Promotion Forum ‘Trends Analysis of Programming and Budget Allocation to SRHR Commodities and Services For LGBT persons In Uganda Trends Analysis Of Programming And Budget Allocation To SRHR Commodities And Services For 2016/2017 - 2021/2021’ (2020) <https://www.hrapf.org/index.php/resources/legal-policy-analyses>

⁵⁰ Information from all consultative meetings with LGBT persons in all four regions

⁵¹ HRAFP ‘How laws that promote human rights impact on access to HIV and TB services for Key Populations in Uganda.’ 2020 <https://www.hrapf.org/index.php/resources/>

⁵² Human Rights Awareness and Promotion Forum ‘Sexual And Reproductive Health (SRH) Needs for LGBTI persons and Quality of available services to LGBTI persons’ 2021 <https://www.hrapf.org/index.php/resources/research-reports>

⁵³ As above

⁵⁴ Joseph. K. B. Matovu et al ‘Health providers’ experiences, perceptions and readiness to provide HIV services to men who have sex with men and female sex workers in Uganda – a qualitative study’. (2019) 19 *BMC Infectious Diseases*, 214 <https://bmcinfectdis.biomedcentral.com/articles/10.1186/s12879-019-3713-0>

⁵⁵ n 50 and 51 above

well as the minimum SRHR packages available are all tailored towards heterosexual persons, such as the Ministry of Health's long-standing campaign on the use of contraception, which exclusively targets heterosexual couples.

- 4.14. The mental health of transgender persons and gender diverse persons is almost in its entirety ignored in the provision of health care services. Often being transgender is misdiagnosed as a mental disorder and transgender and gender diverse persons are treated as such, an act that violates their right to health⁵⁶. The psychological stress that results from the discrimination and marginalisation of transgender persons and gender diverse persons is an aspect of health that ought to be addressed by the Government of Uganda.⁵⁷

E. Freedom of expression, association and assembly

- 4.15. Article 19 of the ICCPR and Article 21 of the Constitution of Uganda, 1995 guarantee the right of all persons to freedom of expression, conscience, religion, association and assembly, as well as the right to freedom of movement, which is fundamental to the creation of vibrant and effective civil society movements. However, CSOs that serve TGGD persons in Uganda face unjustified interference with this right by the state. One such incidence was the arrest of 33 members of a transgender-led organisation while at a training on Sustainable Development Goals and charging them with unlawful assembly.⁵⁸

5. Conclusion

- 5.1. International human rights instruments and national law protect all persons equally without distinction as to race, social standing or sexual orientation and gender identity or expression, upholding the inherent and inalienable nature of human rights for all persons. However, TGGD persons are often denied their rights on flimsy transphobic grounds. The community of transgender and gender diverse persons, therefore, calls upon the Government of Uganda to respect its obligations under international, regional and national human rights law to treat all persons equally regardless of sexual orientation and gender identity or expression.

6. Recommendations

- i. Enact regulations to govern the humane and dignified treatment of all suspects, particularly transgender persons, upon arrest and while in detention based on internationally acceptable standards of respect for basic human rights.

⁵⁶ Elvis Herbert Ayesiga, 'Invisible Scars: A focus on the Mental Health of Queer people in Uganda' 2019 <https://www.google.com/url=https://2Fvoice.global%2Fassets%2F2019%InvisibleScars.pdf>. see also "'I also need to be happy': Anna Morena's story" UNAIDS 25 June 2020.

https://www.unaids.org/en/resources/presscentre/featurestories/2020/june/20200625_anna-uganda

⁵⁷ As above

⁵⁸ See HIRAPF (n 35 above).

- ii. Investigate and prosecute state actors and individuals perpetrating violence against transgender persons
- iii. Respect, protect and promote the human rights of all persons without discrimination on any grounds, including sexual orientation, gender identity.
- iv. Strengthen the health policy framework to better serve the unique health needs of transgender persons, and strengthen human rights training for health workers on the issues that concern marginalised persons within the healthcare system.
- v. Increase funding for the health sector in line with the Abuja Declaration, with a specific provision of funds to meet the unique SRHR needs of transgender persons, and strengthen universal health coverage for HIV services for transgender persons.
- vi. Pass a directive to all health workers to stop conducting anal examinations on transgender persons.
- vii. Repeal all repressive and discriminatory laws that are used to unjustifiably limit the human rights of transgender persons and limit the operating space for civil society organisations working with sexual minorities.
- viii. Repeal all discriminatory laws inconsistent with Uganda's international obligations and enact laws to ratify and operationalise international human rights instruments that Uganda is a state party to. In particular, repeal sections 139 and 145 of the Penal Code Act and sections 44 (d) (f) of the NGO Act and review the Sexual Offences Bill prior to Presidential assent to remove the further criminalisation of consensual same-sex sexual relations.
- ix. Strengthen the Judicial and Administrative systems to better offer redress to victims of violations and intensify efforts to clear case backlog through the scheduling, hearing, and determining cases filed for the protection of the human rights of marginalised persons.
- x. Review national laws and policies to expressly recognise transgender persons and recognise transgender as gender of its own.