

Universal Periodic Review (UPR) for Uganda LGBTI report

Joint NGO Submission by Civil Society Coalition on Human Rights & Constitutional Law on behalf of the following LGBTI groups in Uganda:

SIPD-UGANDA
TITS UGANDA
KULHAS UGANDA
FRANK AND CANDY
QUEER YOUTH UGANDA
ICEBREAKERS UGANDA
SEXUAL MINORITIES UGANDA
SPECTRUM UGANDA MISSION
FREEDOM AND ROAM UGANDA

1. Introduction

1.1 This is a joint submission of the above-mentioned organizations. The focus of this submission is LGBTI rights in Uganda focusing on the discriminatory legal environment in Uganda, protection of the right to life, protection of the right to personal liberty, protection of rights & freedoms of human rights defenders, freedom from torture, cruel inhuman and degrading treatment and punishment, right to privacy, right to a fair hearing/ justice, expression, association, assembly, right to health, right to education and access to information as well as the right to work and right to housing.

2. About LGBTI in Uganda

2.1 Ugandan Gay, Lesbian, Bisexual, Transgender and Intersexual associations/ organizations comprise of over 500 gay, lesbian, bisexual and trans persons. A further 20 civil society collaborating organizations are involved in defending human rights relating to sexual orientation and gender identity through the Civil Society Coalition on Human Rights & Constitutional Law. The organizations aim at promoting and defending the rights of gay men, lesbian women, bisexuals and Trans and intersex persons, contributing towards the building of a society in Uganda free from all forms of discrimination, including those based on sexual orientation and gender identity, and therefore upholding freedom to diversity of sexual orientation and gender identity with no closed definition.

2.2 Whereas there are a number of international instruments that protect specifically rights of LGBTI people, as set out in the Yogyakarta Principles, these are not recognized by the Ugandan government: human rights violations targeting persons because of their actual or perceived sexual orientation constitute a global and entrenched pattern of serious concern. They include, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary arrest and detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, including acts of hatred, discrimination and exclusion, such as those based on, age, religion, disability, or economic, social or other status.

2.3 In the face of these violations, considerable progress has been made in the country regarding LGBTI activism towards ensuring that gay men, lesbians, bisexuals and transgender persons can live with the same dignity and respect to which all people have a right in the world without harassment or intimidation for being who they are.

3. Legal framework

3.1 Uganda is a state party to a host of the International Covenants and the 1995 Constitution of Uganda establishes that “every person has a right and freedom from discrimination, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex or gender (...)”.

3.2 The Human Rights Committee has found that the criminalization of same-sex sexual conducts between consenting adults violates Articles 2(1), 17, and 26 of the ICCPR. According to the Committee the notion of sex of Articles 2(1) and 26 must be interpreted as including sexual orientation. That decision constitutes an important term of reference for the Committee as well as for other treaty bodies and U.N. special procedures with reference to discrimination on grounds of sexual orientation in the light of the ICCPR.

3.3 In Uganda Section 144 of the Penal Code Act Cap 120, of the Laws of Uganda, criminalizes same-sex sexual conducts in private between consenting adults and thus contravenes Articles 2(1), 17 and 26 of the ICCPR. Section 144 establishes that “Any person who- (a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of an animal; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony and is liable to imprisonment for life”.

3.4 As indicated below, the criminal provisions above mentioned not only per se violate the various international covenants, but reinforce social stigma and homophobia against sexual and gender non normative behaviour, whether perceived or real, that may easily cause discrimination or more serious forms of human rights abuses, such as crimes motivated by hatred that attempt to threaten life or physical integrity of individuals perceived as gay, lesbian, bisexual or transgender. This has been manifested by continued calls by newspapers in the country to have ‘homos’ hanged, as well as calls on the general public to report LGBTI persons wherever they are.

3.5 The climate has been worsened by the tabling of the Anti-Homosexuality Bill in October 2009 as a Private Member’s Bill, and the Sexual Offences Bill in January 2011. Both seek to further criminalise consensual same sex attraction. Both are due to be discussed in Parliament between now and May 2011, and are likely to be passed into law unless considerable domestic and international pressure can be brought to bear. Although they have not yet been enacted, for many LGBTI persons their impact has already been felt.

3.6 The retention of laws and the threatened enactment of new ones that further criminalize sexual relationships between same-sex consenting adults has a devastating impact on same-sex practicing people in Uganda. They live in constant fear of arbitrary arrest and detention, discrimination in education, employment, housing, and access to services (especially health services), excommunication from places of worship and extortion—all buttressed by the existence of laws that criminalize same sex and lack of specific legal protections for LGBT under Ugandan law as they are not even recognized as minorities under the Equal opportunity Commission Act (see Section 15 (6)(d).

4. Arbitrary Arrests and Detention

4.1 All human rights defenders in Uganda who have fought against discrimination related to sexual orientation or gender identity have been systematically attacked or silenced by both state and private actors. In a statement to parliament and the press, the minister of Ethics and integrity Hon Nsaba Buturo vowed that, "If anybody promotes gay rights, the law will take its course. We need to protect public morality. Human rights that aim at destroying the traditional African family will not be accepted in Uganda." It was a clear instruction for arrests by the police of anybody who identified or supported gays and lesbians. In November 2010 the Minister closed a workshop in which sex worker rights were being discussed, and in December 2010 he locked the National Theatre to prevent the launching of a documentary in which an LGBTI rights activist was featured.

5. Difficulties building LGBTI movement

5.1 LGBTI organizations in Uganda are not allowed to formally register with the national institutions because the law looks at the activities they make as contrary to public morals.

5.2 Members of organizations working on LGBTI issues in the country have been forced to flee Uganda fearing for their lives after a local newspaper¹ printed articles exposing their sexuality in a highly inflammatory manner with pictures and their physical addresses/locations calling on the government to hang them. This eventually culminated into the brutal murder of an activist David Kato at his home at a broad day light on the 26th January 2011 an action that was decried/ denounced by the international community but the state turned a deaf ear. The Late David Kato² was one of those whose pictures and physical locations was published by the "Rolling Stone News Paper³". The lack of education on the totality and complexity of human sexuality has resulted in continued hate speech by Ugandan religious and political leaders and as a result, the entire LGBTI community is considered to be "gay" in the Ugandan context. This has paused several dangers where the different populations tried to address their unique needs and formulate relevant interventions – whether health, social, legal, or cultural. It has also created the dangerous and unacceptable image that being gay is the most evil form of "moral decadence".

6. Health/HIV/AIDS

6.1 Equally disturbing, given Uganda's HIV sero-prevalence rates which currently stands at 10% among adults, at present, there are no known government or privately funded HIV/AIDS programs that target same-sex practicing persons in Uganda.

7. Media (negative reporting)

7.1 Extortion of LGBTI persons remains a major problem, and is often conducted with police participation. Gay men often report that blackmail of men believed to be gay is a regular

1 <http://independent.co.ug/index.php/component/content/article/106-myblog/3796-uganda-talks-exclusive-rolling-stone-newspaper-to-appeal-high-court-ruling>

2 <http://www.bbc.co.uk/news/world-africa-12295718>

3 <http://www.ultimate-guitar.com/forum/archive/index.php?t-808713.html>

occurrence and often leads its victims to financial ruin, depression and ostracism from family and community.

8. Concluding Notes

8.1 Violence against members of the LGBTI community in Uganda, contrary to violence of other kinds, such as that relating to racism and sexism, is not only more openly displayed, in targeting community members particularly the activists, but has also driven many LGBTI community members into hiding for fear of their lives and abuse by not only religious persons in the country but also the private individuals.

8.2 Sections 145 of the Penal Code continues to criminalize any form of consensual same sex conduct in private between consenting adults, and provides for the possibility of imprisonment for life. Such provisions reinforce social stigma against gay, lesbian, bisexual and transgender individuals and expose them to the risk of deprivation of liberty, life, right to privacy, physical integrity and health.

8.3 Whereas international human rights law provides for the protection of all persons equally without distinction or discrimination, the broad range of human rights- civil, political, economic, social and cultural- should equally be enjoyed by all groups of individuals in Uganda. The protection of the basic human rights of same-sex attracted persons is therefore, grounded in a human rights framework that all people are worthy of equal respect and dignity whatever their situation. Thus we call upon the government of Uganda to respect its international obligation and treat equally all persons that exist in the country with dignity without discrimination basing on sexual orientation, and to repeal those laws and policies that promote discrimination.

8.4 As members of the United Nations, States are bound to respect, protect and fulfil human rights, and should abstain from interfering directly or indirectly in the exercising of human rights especially through its security agencies that, in Uganda, have continually laid traps to arrest LGBTI members and extort money from them for their freedom.

8.5 It is our understanding that the denial of this right to homosexual couples is a human rights violation. The State's obligation to protect its LGBTI citizens should bind the State to adopting legislative, judicial and other measures necessary for all citizens to have full access to their human rights.

8.6 Government should, refrain from limiting equal access of all persons, including men who have sex with men, and should abstain from enforcing discriminatory practices as State policy.

8.7 The organizations listed above note and also recognizes that whereas the President personally halted the debate on the Anti-Homosexuality Bill, there is still much to be done to make the action and other government programs that do not recognize the rights of LGBTI community effective and produce real changes for this community,

8.8 Among the various actions that need to be undertaken in order for the LGBTI community in Uganda to realize their rights, a number of objectives have to be achieved, and are highlighted hereunder:

a) support to projects intended to strengthen both public and non-governmental organizations that work to promote LGBTI rights in Uganda like the World AIDs Day that is

informally commemorated by Uganda Aids Commission and all the unrecognized organizations working on LGBTI issues;

b) capacity-building for professionals especially health workers at referral hospitals to offer specialized health care to the LGBTI community and human rights lawyers not to shy away from representing LGBTI persons in court;

c) dissemination of information about rights, and to promote LGBTI self-esteem; and

d) encourage the reporting and documenting of human rights violations in relation to LGBTI to authorities after establishing a helpline desk at the police stations or the Uganda human rights commission;

e) respect and protect the rights of representatives of the LGBTI who work to defend human rights.

8.9 We also need the various Ministries and state organs to incorporate the various best practices on LGBTI into their agendas in an organized manner, with guidance from the Yogyakarta principles on how to treat the issue of LGBTI in Uganda holistically, thereby generating State policies for the LGBTI population, and not just government policies which may not be adopted and fail to become enduring, so that the defence of the human rights of LGBTI are truly incorporated.

8.10 In light of the above, we wish to request that as part of Uganda's Universal Periodic Review the agenda of those who defend the human rights of LGBTI in Uganda who have continued to receive threats to their lives and limbs under the watchful eye of the state perpetrated by the various state parties and in some cases private actors without the state coming out to clearly and strongly condemn the actions, to be analysed taking into consideration the issues which we consider to be essential and in relation to which we request OHCHR intervention and action in relation to the Ugandan government.

9. Recommendations to the government of Uganda

We urge the Government of Uganda:

1. Foster an **enabling environment** such that all persons in Uganda enjoy their inherent human rights.
2. Consider having LGBT desk at police/ or the Uganda Human Rights Commission to handle cases and complaints from persons of the LGBTI community facing threats and abuse.
3. Amend the Constitution to explicitly recognize the rights of the LGBTI community – in Uganda and accord them the same status like other Ugandans
4. Amend the law and refine the term “sex” to include transgender – i.e. just making reference to gender and taking off male and female and would be inclusive to others
5. Repeal /or amend policies and legislations that are discriminatory and violate human rights
6. Officially recognize the rights of the LGBTI and respect their sexual orientation

7. Integrate LGBTI issues into the national HIV/AIDS policies.
8. Recognize diverse sexual orientation and gender identities in national policies
9. Extend the right to association to allow the LGBTI community to form associations with legal status – the NGO Act currently does not clearly enable the LGBTI groups to associate
10. We recommend independent research on the claims of deliberate recruitment of school children in to homosexuality.
11. Adopt the Yogyakarta principles, disseminate the information and create awareness and translate them at the local level
12. Promote education on human sexuality through ministries such as education and health
13. Redefine marriage – civil marriage concerns – to not restrict it to woman and man
14. Revise the Equal Opportunities Act to include sexual minorities and gender diversity
15. Ensure non-discriminatory access to medical health services – doctors and patients usually have to falsify documents in order to treat community member
16. Include access to health care and HIV/AIDS services by the LGBTI in to the health policies
17. Government should raise awareness amongst religious and cultural leaders – it is the government's duty to protect all its citizens, and only to promote cultures that do not discriminate
18. Ensure access to education, information, guarantee of right to privacy, guarantee access to health services.
19. Train service providers on how to handle LGBTI community, at schools, universities, health officials and the police.
20. Raise community awareness on LGBTI rights to stop targeted discrimination based on sexual orientation.

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