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General situation of LGBTI people

Homophobia and transphobia is widespread in Uganda. It is sanctioned by state laws that criminalise same-sex sexual acts and fuelled by some religious and political leaders. Leaders have engaged in public rallies, using strong 'hate speech' language against same-sex sexual acts and against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. The president and several ministers have spoken out in public, strongly condemning homosexuality. An Anti-Homosexuality Act was passed (and later annulled by the constitutional court), which was meant to sharpen the penalty for same-sex sexual acts, restrict the freedom of association, and the right to privacy. The religious networks have strong international connections, particularly with the Christian conservative movement in the USA, that support and encourage the homophobia morally and financially. The anti-homosexual voices and cultural prejudices often associate LGBTI with paedophilia, accusing them to "recruit" minors. This makes it hard to support LGBTI youth or work with comprehensive sexual education.

LGBTI persons face high risks of being discriminated, harassed and arrested on arbitrary grounds, especially non-gender conforming or trans-persons. Blackmailing of LGBTI persons are common and many are disowned by their families, expelled from schools or discriminated in the health system.

Media generally does not support LGBTI rights and has been reluctant to communicate voices from the LGBTI community. There have been "outings" of activists in one local tabloid, causing severe problems for those persons; some of them had to flee the country.

There are several active LGBTI organisations in Uganda and the LGBTI movement has chosen a visible and proactive path. It has gone to court in cases of human rights violations, in several cases successfully. Ugandan LGBTI activists have worked strategically to gain visibility, which has sometimes turned activists into targets for public assaults. Simultaneously, LGBTI rights in Uganda have gained in

creased attention on the international human rights agenda, in the UN, and in the donor community.

Legal and human rights instruments

Constitutional provisions and legal framework

The Constitution has several provisions that guarantee equality, the right of all persons to respect and human dignity. It also prohibits discrimination against all persons (article 21). It further stipulates that the State shall take affirmative action in favour of marginalised groups and shall make laws for the fulfilment of this clause, including laws to establish an Equal Opportunities Commission (article 32). There are also provisions for freedom of expression and association. However, the general human rights situation in Uganda is complex. Many laws have been passed or being proposed in conflict with the Constitutional provisions, for example the Public Order Management Act (requiring permission to meet), the Anti-Pornography Act, the proposed NGO Amendment Bill and the Anti-Homosexuality Act (later annulled by the constitutional court). In order to promote and monitor human rights, Uganda Human Rights Commission was established in 1996 and an Equal Opportunities Commission in 2012. Despite these frameworks democracy and human rights are far from reality.

There are several sections within the Ugandan penal code that can be applied against LGBTI persons. In December 2013, the "Anti-Homosexuality Act" was passed and, in February 2014, signed into law. In August 2014 it was on technical grounds declared unconstitutionally passed and therefore non-valid. The government is appealing that decision. The annulled Anti-Homosexuality Act meant a sharpening of the previous penal code, that already criminalised same-sex sexual acts, by criminalising and defining "homosexuality" in itself. Even worse, "promotion of homosexuality" was made a criminal offense, which included counselling or reaching out to LGBTI persons and spreading information. Further, it criminalises any organisation or business "involved in promoting homosexuality". Whether the appeal is ap-

proved or not, or the new bill focusing on the “promotion” part will pass - the bill has created a lot of damage during the promotion and existence of it, increasing homophobia and transphobia across the country.

Currently, section 145 (belonging to “offenses against the morality”) under chapter 120 of the Ugandan penal code, criminalises “carnal knowledge against the order of nature”, which is liable to imprisonment for seven years. The same section states that letting “a male person to have carnal knowledge of him or her against the order of nature” is liable to imprisonment for life. There are other sections that can be used against LGBTI persons, like section 148 of “indecent practices” (liable to imprisonment of seven years). The criminalisation of the act of selling sex (“prohibition of prostitution”) section 139, which is also liable of seven years of imprisonment also affect persons of the LGBTI community. While the penal code is commonly interpreted as criminalising anal sex, the connotation that homosexuality is illegal also affects lesbians and transgender persons. In 2005, the Ugandan parliament approved a proposed constitutional amendment stating that ‘marriage is lawful only if entered into between a man and a woman’ and that ‘it is unlawful for same-sex couples to marry’. However, the government has urged that no one has ever been convicted of these offences as stipulated in the penal code since 1950.

Freedom of association and assembly are officially recognised by the constitution, Already in 2010, the “Public Order Management Bill” was passed, requiring that groups of three or more people receive prior police approval before gathering to discuss any government actions, failures, or policies. A case in point is the closure of a LGBTI workshop in 2012 on grounds of illegal assembly and engaging in illegal activities. The “Anti-homosexuality Act” would violate the right to organise for LGBTI persons and allies, and during the short period of time it was in place it affected the security of those organisations to work with LGBTI rights by creating fear of arrests.

Regional or international human rights instruments

Uganda is a member of the UN, and has ratified almost all the main international human rights instru-

ments. As such it is bound to fulfil, protect and respect the rights enshrined in these instruments. Ugandans may turn to the UN Human Rights Committee through procedure 1503, to the Special Rapporteurs for violations of specific human rights, to CEDAW for women's rights violations and use the UNESCO procedure for human rights violations in UNESCO's fields of mandate. Also, Uganda is a member of African Union and its citizens and NGOs may file complaints to the African Commission on Human and Peoples' Rights. All these instruments could be used to hold Uganda accountable to LGBTI rights. There is a pending case challenging the enactment of the AHA at the East African Court of Justice. The activists opted not to withdraw this case after the AHA was annulled locally because they this regional court would add clout to the voices of the local courts.

In May 2014, the African Commission on Human and Peoples' Rights adopted a resolution condemning violence based on sexual orientation and gender identity. The resolution calls on “State parties to ensure that human rights defenders are able to work in an environment free from stigma, reprisals or criminal prosecution as a result of their human rights protection activities.” It further urges States to recognise acts of violence and abuse by individuals and groups by enforcing appropriate laws prohibiting and punishing all forms of violence including those targeting people on the basis of their sexual identities. They must also ensure the proper investigation and diligent prosecution of perpetrators and have the necessary judicial procedures to respond to the needs of victims. This resolution is a milestone, but it has yet to be followed up at the national level.

Sexual and Reproductive Health and Rights, HIV/AIDS and Gender Based Violence

In May 2014, the government passed the “HIV/AIDS Prevention and Control Act”, first presented in 2010. The HIV/AIDS Prevention and Control Act incorporates provisions which criminalise ‘attempted’ and ‘wilful’ transmission of HIV with a five year imprisonment term. The Human Rights Awareness and Promotion Forum (HRAPF) call this a violation against the rights to equality, autonomy, bodily integrity and

privacy, guaranteed in the Constitution. Further, HRAPF argues that this act goes against evidence based effective rights-based approaches to HIV prevention, as embodied in the East African Community HIV and AIDS Prevention and Management Act of 2012. A Human Rights Watch statement on homophobia in Uganda (2007) say that 'state homophobia and well-funded fanaticism are undermining Uganda's efforts to combat the spread of HIV/AIDS'.

A study in Kampala in 2012 contracted out by the MARPs Network found HIV prevalence at 9.1 percent in MSM. MSM, MTF and sex workers of all genders are most at risk populations at higher risk, not at least while criminalised, which lead to less access to information and protection. The study is cited in the Government report to UNGASS, which also states that these groups are prioritised in the 2011-2015 NSP. However, the discrimination within the general health care is high and those groups suffer from not accessing enough prevalent information and services.

A Respondent Driven Sampling Survey done in 2012 concluded: "*MSM in Kampala are at substantially higher risk for HIV than the general adult male population. MSM reporting a lifetime history of homophobic abuse are at increased risk of being HIV infected. Legal challenges and stigma must be overcome to provide access to tailored HIV prevention and care services.*"

Lesbians and women who have sex with women (WSW) often have intimate sexual relationships with men alongside their same sex relations because of the social stigma and the hostility towards their sexuality and gender identity; lesbian, WSW and FTM are also a vulnerable group when it comes to HIV/AIDS prevention.

Violence against LGBTI persons is often based on non-conforming gender identity or sexuality. Not at least lesbians with masculine expression, transgender persons, and others that have non-conforming gender expressions risk stigma, violence, and sexual violence due to their gender expression. LGBTI persons' decision to have children is either frowned upon or used as an argument for the person to enter a heterosexual relationship. In Uganda this is not at least a problem for Muslim LGBTI persons exposed to arranged marriages.

Civil society organisations and institutions active in the LGBTI field

At the emergence of the Anti-Homosexuality Bill, the Uganda Civil Society Coalition on Human Rights and Constitutional Law was formed out of LGBTI organisations and other National Human Rights nongovernmental organisations with the purpose of using legal advocacy to prevent the Bill from passing. The coalition now consists of over fifty Ugandan civil society organisations, including human rights, feminist, HIV focused, LGBTI, media and refugee organisations and groups. These alliances are important also for future actions. It is however of utmost importance that it is the LGBTI movement that guides donors and supporters in terms of most appropriate actions and risk taking.

There are a number of activist LGBTI organisations in Uganda. Several have emerged under the umbrella organisation Sexual Minorities Uganda (SMUG). Given the criminal status of same-sex sexual acts in Uganda, LGBTI organising is challenging. Most of the LGBTI organisations are not legally registered under the NGO act or the Companies act due the nature of their activities and restrictions under the penal code act. In essence, they are operating illegally. It has been hard for LGBTI people to 'come out' and to participate actively in the LGBTI movement, due to the continued public stigma and hostile messages from both the state and the general public. However, since 2011, three pride events have been successfully organised the last two years but this was due the fact that some LGBTI activists have created strategic contacts and rapport with higher police authorities. Under normal circumstances, this would be rather difficult. During the presence of Anti-Homosexuality Act in 2014, the space for activism was enormously narrowed. LGBT activists relied on regional and mainstream human rights organisations for support.

On a positive note, the success of the Pride celebrations, earned the director of FARUG, Kasha Jacqueline Nabagesera, the Nuremberg International Human Rights Award 2013. Also, the director of SMUG, Frank Mugisha was awarded the 2011 Robert F. Kennedy Human Rights Award.

Organisations supporting LGBTI rights in Uganda

Freedom and Roam Uganda (FARUG)

<http://www.faruganda.org>

Ice Breakers Uganda

<http://www.icebreakersuganda.org>

Sexual Minorities Uganda (SMUG)

<http://www.sexualminoritiesuganda.org>

Civil Society Coalition on Human Rights and Constitutional Law <http://www.ugandans4rights.org/>

Spectrum Uganda <http://www.spectrumuganda.org>

Ugandans 4 Rights <http://www.ugandans4rights.org>

Reproductive Health Uganda <http://www.rhu.or.ug/>, member of IPP and supported by RFSU to mainstream LGBTI issues

Pan-African ILGA (regional) <http://africa.ilga.org>

Coalition of African Lesbians, CAL (regional)

<http://www.cal.org.za>

Uhai-Grant making mechanism for activist organisations (regional) <http://www.uhai-eashri.org/ENG>

What Sweden can do? – 11 questions to discuss

Within the broader context of support to democracy, human rights, and gender equality in Uganda, Sweden has a great opportunity to include issues related to the rights of LGBTI persons and their access to justice. When addressing LGBTI in a non-supportive government context as Uganda, it is very important to consult LGBTI organisations in the country to make sure not to overrule their agenda and to understand the level and criteria for engagement.

- While recognising that engagement is already ongoing, could Sweden do more to stay updated on the legal and security situation and the judgements and priorities of the LGBTI movement?

- Could Sweden do more to support organisations at risk and in need of safety measures (e.g. provision of flexible funding for capacity development and outreach in the country)? The strong movement and its bonds to Swedish organisations could be a basis for increased the cooperation.
- Could Sweden do more to attend court cases and offer protection and support to activists and organisations at risk? Attending court cases to show support is morally and symbolically important.
- Could Sweden do more to seek strategic alliances and address LGBTI rights in the dialogue with government institutions and representatives, with reference to international law that Uganda has signed?
- Could Sweden do more to support development of accountability mechanisms in the area of LGBTI (e.g. reform of laws, access to legal aid, capacitating of HR institutions such as Commissions for equal opportunities and Commission for Human Rights, development of monitoring and reporting methods)?
- Could Sweden do more to encourage Swedish faith based organisations operating in Uganda to engage with LGBTI rights?
- Could Sweden do more to include LGBTI activists and organisations in cultural and professional events and networks and in organisational development support programmes? This could be one way to enlarge the network and to get more support from other organisations in the civil society.
- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and mainstream Human Rights organisations nationally and regionally?
- Could Sweden do more to encourage and support cooperation and synergies between LGBTI organisations and general SRHR-organisations on a national as well as regional level?



Presently, discrimination within the labour market is a factor that strongly contributes to the marginalisation of LGBTI persons, and puts them at risk of poverty. The Swedish strategy for Uganda aims at improving opportunities for the poor to contribute to and access economic growth.

- In the dialogue concerning private sector development, could Sweden do more to address anti-discrimination, codes of conduct and labour legislation, with the aim of reducing discrimination against people based on sexual orientation or gender identity?

The Swedish Strategy for Uganda also aims at improving sexual and reproductive health and rights and to prevent gender based violence.

- Could Sweden do more to use SRHR or gender based violence programmes as entry points in the work towards acceptance of LGBTI persons?

For further advice on dialogue regarding LGBTI issues, download [Sida's Human Rights of Lesbian, Gay, Bisexual and Transgender Persons - Conducting a Dialogue](#) and the Ministry of Foreign Affairs [Dialogue brief](#) or the [EU tools](#) referred to in the reference list.

More specific advice and support measures, as well as contact information to mentioned groups, can also be provided through ILGA or RFSL, should the Embassy wish for a dialogue.

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The human rights of LGBTI persons have been a Swedish government priority since 2009. As a service to staff, briefs have been prepared to provide basic information about the situation of this (often forgotten) group and inspire discussions on what Sweden could do to better include LGBTI rights in diplomacy and programming.