

**HRAPF’S INPUT IN THE INDEPENDENT EXPERT’S REPORT ON THE RIGHT TO FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY IN RELATION TO SEXUAL ORIENTATION AND GENDER IDENTITY (SOGI).**

**SUBMITTED TO:**

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**THE UN INDEPENDENT EXPERT ON PROTECTION AGAINST VIOLENCE AND DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY (IE SOGI)**

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**About Human Rights Awareness and Promotion Forum (HRAPF)**

HRAPF is non-governmental human rights advocacy organisation founded in May 2008.

HRAPF uses the law as a major entry point to contribute to a better legal and policy environment for the most marginalised persons and Key Populations (KPs) in Uganda. This is done through legal and human rights awareness, legal aid, research and legislative advocacy, capacity development, strategic litigation and strategic partnerships at national, regional and international level.

**Uganda’s legal and policy framework and its impact on the right to freedom of expression by civil society organizations and activists advocating for LGBT persons’ human rights.**

**Introduction**

Uganda is among the 31 African countries that criminalise homosexuality.[[1]](#footnote-1) Marriage between people of the same sex is expressly prohibited under article 31(2) of the Constitution of Uganda 1995 (as amended) and section 145 of the Penal Code Act, Cap. 120 criminalizes carnal knowledge against the order of nature. The NGO Act 2016 prohibits the NGO Bureau from registering organisations whose objectives ‘contravene the laws and prejudicial to the interests or dignity of the people of Uganda’ and as such many LGBT organisations find it extremely hard to be registered as NGOs as required by the law. The new Anti- Homosexuality Act 2023 (AHA) has catalyzed the negative impact of laws on the right to freedom of expression by activists and CSOs working with LGBT persons. The AHA has escalated homophobia and violence towards LGBT persons, activists and civil society organisations working on LGBT issues. By way of example, as of 31st December 2023, [a total of 523 cases of violations of human rights involving LGBTQ persons](https://hrapf.org/?mdocs-file=11371&mdocs-url=false) have been handled by [Human Rights Awareness and Promotion Forum (HRAPF)](https://hrapf.org) across the legal aid network of the organization of which 349 (66.7%) targeted LGBTIQ people based on their sexuality, affecting a total of 440 persons. This spate of homophobic violence is directly attributable to the AHA.

**Uganda’s Anti Homosexuality Act, 2023 and how it limits the enjoyment of the right to freedom of expression by civil society organizations and activists advocating for LGBT persons’ human rights.**

There are a number of provisions in the AHA that restrict the enjoyment of the right to freedom of expression by CSOs and activists. These provisions have the resultant effect of impairing or impeding legitimate debates and work on LGBT issues by activists and civil society organisations. These provisions affect the freedoms of expression, conscience and thought, assembly and association while also limiting civic participation and engagement on LGBT issues. Of course, this is in violation of the rights guaranteed under Article 29 of Uganda’s constitution and Article 19 of the International Covenant on Civil and Political Rights (ICCPR).

Section 11(1) and (2)of the AHA, criminalises the publication, communication, or distribution of any material that promote or encourage homosexuality. This section essentially makes it an offence for anyone to engage in the research, publication and or distribution of any material that is considered to be promoting homosexuality. This is a direct attack on CSOs and activists. It’s a gagging order. The overbroad provision for “promotion” makes it clear that any content with LGBT is capable of being interpreted as promoting or encouraging homosexuality. As such, organisations such as HRAPF that have been in the publication of research, community update magazines, newsletters, advocacy materials have had to suspend these activities in order to comply with the law.

Under Section 11(1) and (2)(b), a person promotes homosexuality if they knowingly advertise, publish, print, broadcast, distribute or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of a computer, information system or the internet, of any material promoting or encouraging homosexuality or the commission of an offence under the Act. This provision clearly bars people including activists and civil society organizations from voicing out their views, ideas and opinions in the promotion of the rights of all including LGBT persons. It is clear, the self-evident purpose of section 11(2)(b) of the Act is to criminalize actions of persons including activists and CSOs that publish, print, broadcast, distribute or cause the publication, printing, broadcasting or distribution by any means, including the use of a computer, information system or the internet, or any form of legitimate debate and discussion on issues of LGBT persons as such information can easily be termed promotion of homosexuality. Such debate or discussion in public fora is undoubtedly part and parcel of the freedom of expression as well as thought, conscience, and belief. The provision thus makes it hard for activists, scholars and civil society to freely voice out their views, opinions and ideas on issues of LGBT in a country where the social and religious environment is already harsh. To this end, the Uganda National Council of Science and Technology a body responsible for approving research issued a circular on 27th October 2023 emphasising to researchers the legal requirement under Section 14 of the AHA to report any person suspected of having committed an offence under the AHA.

Section 11(1) and (2)(b) also have the effect of impeding the right to access, receive and impart information, which is an integral part of the freedom of expression guaranteed under Article 19 of the ICCPR***.*** The effect of this right is that the free voicing of views, ideas, and opinions ensures that one has a right to express themselves while the other has a right to access and receive ideas and opinions. The curtailment of the publication and distribution of information is a violation of Article 19(2) of the ICCPR which Uganda acceded to.

By limiting the publication on issues involving LGBT persons, Section 11 (1) and (2) (b) is promoting the selective application and enjoyment of rights as only those preaching against LGBT issues are protected while those who express opposite viewpoints are subjected to criminal sanctions.

Section 11 of the AHA read together with section 44(f) of the NGO Act, further threaten the very existence of CSOs working on the rights of LGBT persons thus completely shutting down the space for engagement and dialogue on the rights of LGBT persons. For example, the National NGO Bureau in January, 2023 published a report accusing 26 CSOs of promoting homosexuality. These organisations have since been visited by the Bureau and interrogated on their activities.

**The AHA and how it limits the enjoyment of the right to freedom of association and freedom of peaceful assembly by civil society organizations and activists advocating for LGBT persons’ human rights.**

The right to freedom of association is guaranteed under Article 29(1)(e) of Uganda’s Constitution. The plain reading of Article 29 guarantees protection to all including persons who identify as lesbian, gay, bisexual, transgender and intersex to form organisations. The AHA added to the already harsh legal regime on the registration and operation of CSOs working on LGBT issues. Section 11(1) and (2)(e) criminalizes the operation of any organisation which “promotes” or “encourages” homosexuality or “observance or normalisation” of conduct prohibited under the Act. Ideally, this is a pronouncement that its illegal for CSOs to work on LGBT issues.

These provisions have been used to form the basis for investigating, stopping activities including workshops, and closing the operation of organisations whose work involves advocating for legal and policy reforms or ensuring legal protection of LGBT persons. On the 5th of August, 2022 the NGO Bureau released a press statement in which it communicated that it had closed down the operations of Sexual Minorities Uganda (SMUG) on the grounds of non-registration. It stated that, it had established that SMUG had applied to reserve its name but this had been rejected by the Uganda Registration Services Bureau (URSB) because the name was “***undesirable”***. It should be noted that HRAPF, acting for the promoters of SMUG had applied for incorporation of SMUG as a company limited by guarantee within the laws of Uganda. The refusal was allegedly based on **Section 145** of the Penal Code Act Cap 120, which criminalises consensual same-sex relations. HRAPF filed Miscellaneous Cause No. 96 of 2016 against the Uganda Registration Services Bureau (URSB).In June 2018,the High Court held, among others, that the refusal of the URSB to reserve SMUG’s name and consequently to register the proposed company did not contravene the Constitution of Uganda, *as the rights that the applicants claimed were capable of limitation under Article 43 of the Constitution*. ***Civil Appeal No. 338 of 2018 arising from Miscellaneous Cause No. 96 of 2016*** was filed and is still pending in the Court of Appeal.

Therefore, despite the appeal pending in the Court of Appeal, to deny the right to freedom of association and assembly, the NGO Bureau cited non-registration and closed SMUG. As matter of practice, all applications for incorporation by organisations with the words LGBT in any of the documents supplied for incorporation or registration are rejected by URSB. Those that manage to register are threatened with closure by the NGO Bureau and the situation is made worse by the criminalisation of such activities by 11(1) and (2)(e) of the AHA.

**Trends and practices that are likely to affect the enjoyment of the right to freedom of expression, association and/or peaceful assembly by LGBT people, activists and CSOs in Uganda.**

It is worth noting that there is a growing wave of anti-LGBT talk in Uganda and the region. And this ultimately will have a huge impact on the exercise and enjoyment of rights by LGBT community members, activists and civil society. Since the end of 2022, there has been a rapid growth in the Anti-LGBT movement. This movement has taken over social media to preach hate and homophobia on grounds of religion and what is regarded as ‘The traditional African family’. The western evangelical churches have taken to the pulpit to preach LGBT as a western agenda targeting to destroy the traditional African family. The unfortunate and unsubstantiated talk on recruitment of young children has been fronted to preach further hate. This has and will continue to promote ridicule, humiliation, violence, threats of violence, and silencing of conversations on LGBT issues. Clearly this movement was behind the passing of the AHA with such problematic provisions gagging civil society and activists.

These have promoted homophobic talk towards LGBT folks portraying LGBT people and CSOs as ‘unaprehended criminals’. LGBT issues have now been politicised, so much that politicians have depicted individuals and politicians accommodative of LGBT issues as promoters of homosexuality and thus a threat to the traditional African family. Uganda will go to general elections in 2026, and LGBT issues are likely to continue being used as smear campaigns towards political opponents especially since LGBT and their sympathisers are targeting young children for ‘recruitment’, causing a moral panic that parts of the population have reacted to with anti-gay talks to children in schools as well as a sweeping moral panic across the different sections of society in Uganda.

**Uganda’s Computer Misuse (Amendment) Act, 2022 and how it relates to the protection of human rights in relation to freedom of expression, association and/or peaceful assembly by LGBT people, activists and civil society organizations.**

The Computer Misuse (Amendment) Act, 2022 became law in October, 2022. The Act makes amendments to the Computer Misuse Act of 2011, wherein it introduces tough penalties for cyber-crimes. A number of provisions therein do have a direct bearing on the rights of LGBT persons, activists and CSOs.

Section 26A on hate speech stipulates that a person shall not write, send or share any information through a computer, which is likely to ridicule, degrade or demean another person, group of persons, a tribe, an ethnicity, a religion or gender; create divisions among persons, a tribe, an ethnicity, a religion or gender; or promote hostility against a person, group of persons, a tribe, an ethnicity, a religion or gender.

Section 12 (1) of the Principal Act was amended to clearly define the kind of information whose privacy is protected. This is by making it an offence for any person to access or intercept any program or another person’s data, voice or video record another person, or share any information about another person without authorisation. This amendment is a welcome development in as far as protection of the right to privacy of all including LGBT persons in Uganda is concerned. This is on account of the fact that it criminalises the publication of videos and pictures of persons including LGBT persons, especially transgender women, on both mainstream and social media platforms, wherein they are outed to the public.

On the other hand, it is important to note that the amendment of Section 12 (1) of the Computer Misuse Act, while beneficial to the expansion of the scope of privacy rights for LGBTQ persons, it does pose a grave threat to the right to freedom of expression for all persons, especially the already marginalised LGBT persons and rights advocates; especially when it comes to documentation and publication of incidents of human rights violations by both state and non-state actors.

The amendment of Section 12 (1) of the Computer Misuse Act falls short of the relevant human rights standards that permeate an infringement on the right to freedom of expression in a free and democratic society. This is owing to the fact that the privacy protections therein are too broad, as they prohibit voice or video recording and publication of information about an individual, without exception, whatsoever, and without clear justification.

Section 26A criminalizes the writing, sending or sharing of any information through a computer, which is likely to ridicule, degrade or demean another person, ***group of persons,*** a tribe, an ethnicity, a religion or ***gender***; create divisions among persons, a tribe, an ethnicity, a religion or gender; or promote hostility against a person, ***group of persons***, a tribe, an ethnicity, a religion or ***gender***. This provision is highly welcome as a shield against the homophobic attacks that members of the LGBTQ community are subjected to on various media platforms, including social media.

Article 20 (2) of the ICCPR lays a foundation of national legislation on hate speech. This is in as far it stipulates that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. In light of this, it is evident that Section 26A is in conformity with the human rights standards on the prohibition of hate speech, in as far as it criminalises promotion of hostility against a group of persons, including LGBTQ persons, who are often subjected to hate speech in the form of homophobic media reports and social media posts that encourage violent attacks against them by members of the public.

1. https://antigaylaws.org/regional/africa/ [↑](#footnote-ref-1)