



MEMORANDUM

To: Nancy Nicol, Principle Investigator, York University, Envisioning Global LGBT Human Rights (funded by the Social Science and Humanities Research Council of Canada)*
From: Atrisha Lewis (3L) & Zahra Ahmed (LL.M.), International Human Rights Clinic
Date: January 2nd, 2012
Re: Uganda's Interactions with the UN System on the Issue of LGBT Rights

This document was prepared by law students and highlights publicly-accessible information available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto, Faculty of Law cannot provide such advice or assistance.

Overview of the UN System

There are two major human rights systems at the United Nations (the "UN"): the Treaty based system and the Charter based system. The treaty-based human rights system consists of nine treaty bodies that monitor state compliance with the obligations under their respective conventions. Each treaty body is comprised of a committee of independent experts that interpret and apply the convention in reviewing and commenting on periodic state reports and individual complaints. The treaty bodies are not judicial institutions and there is debate as to the nature of the body of law that the treaty bodies produce.¹ Regardless of whether these normative findings are actually law, they have legal significance as they are referenced in international and domestic decisions.²

The Charter based human rights system derives its authority from the UN Charter itself. The UN Human Rights Council, the successor to the Human Rights Commission is the main organ in this Charter based system. The mandate of the Human Rights Council is to make recommendations on situations of human rights violation, while being guided by principles of "universality, impartiality, objectivity, and non-selectivity."³ This intergovernmental body, which meets in Geneva 10 weeks a year, is composed of 47 elected United Nations Member States who serve for an initial period of 3 years, and cannot be elected for more than two consecutive terms. The Human Rights Council oversees the Universal Periodic Review (UPR), which is a process that involves a review of the human rights records of all 192 UN Member States once every four years.

While not a human rights system, the General Assembly also deals with human rights issues through its broad mandate. Established in 1945 under the Charter of the United Nations, the General Assembly is the chief deliberative, policymaking and representative organ of the United

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¹ Burgenthal, *The Evolving International Human Rights System* 100 A.J.I.L. 788, 787-791

² *Ibid*

³ G.A. Res. 60/251 (March 15, 20006)



Nations. Comprising all 193 Members of the United Nations, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter.

Uganda

1. Summary

- Uganda has ratified all human rights treaties that are germane to SOGI issues.
- UN bodies, such as the *Committee on the Elimination of Discrimination against Women* and the *Universal Periodic Review Committee* have expressed grave concerns about the status of LGBTI people and LGBTI activists in Uganda.
- Uganda’s UN voting record on SOGI issues reflects a strong opposition to the recognition of SOGI rights as an international Human Right, as Uganda either voted against or abstained with respect to any affirmative resolutions relating to SOGI issues.
- Today, the main LGBTI Human Rights issue in Uganda is the proposed Anti-Homosexuality Bill, submitted by private member David Bahati on October 14th, 2009. The proposed Bill will broaden the offence of homosexuality and increase the punishments associated with homosexuality to include the death penalty. The Bill was tabled for discussion after receiving a significant amount of international criticism and attention. However, on October 25, 2011, Parliament voted to re-open the debate and the proposed legislation is being sent to a committee for consideration. UN Rapporteurs and the UN High Commissioner on Human Rights have spoken out against this proposed Bill. This will become a source of much international attention in the upcoming future.

2. Treaty/ Convention Status

The following chart highlights the international treaties that protect sexual orientation and gender identity rights through affirming international human rights principles such as the right to equality. Uganda has ratified all relevant treaties. The chart highlights when Uganda has ratified these conventions.

Treaty	Date of Ratification
Convention on the Elimination of all forms of Racial Discrimination (“CERD”)	21 Nov 1980 a
International Covenant on Civil and Political Rights (“ICCPR”)	21 June 1995 a
Optional Protocol to the ICCPR	14 Nov 1995 a
International Covenant on Economic, Social and Cultural Rights (“ICESCR”)	21 Jan 1987 a
Convention on the Elimination of all forms of Discrimination Against Women (“CEDAW”)	22 July 1985
Convention against Torture (“CAT”)	3 Nov 1986
Convention on the Rights of the Child (“CRC”)	17 Aug 1990

a=accession



3. All Official State Positions on LGBT Rights as Reflected in Voting Patterns

Human Rights Council

Year	Resolution	Vote
2011	Resolution 17/19 Human rights, sexual orientation and gender identity⁴ The resolution requested that the UN High Commissioner on Human Rights conduct a study on SOGI Human Rights violations in all regions of the world, convene a panel to discuss the results, and remain seized of the issue.	Against

General Assembly Resolutions

The votes on the draft resolutions relating to the *Special Rapporteur on Extra-judicial executions* are tracked in the following chart. The draft resolutions relate to whether the scope of investigation should specifically include investigating extra-judicial killings on the basis of sexual orientation. The chart tracks draft resolutions because this is where the clear statements and votes relating to SOGI issues actually occur. The final resolutions are typically passed without any discussion relating to the inclusion or removal of the words "sexual orientation." Uganda's voting pattern on this issue is consistent as Uganda abstains or votes against any resolutions favouring LGBT rights.

Final Resolution	Draft Resolution	Vote/ Comments
57/214	2002 Draft Resolution ⁵	
	New reference to "sexual orientation"	Abstain
59/197	2004 Draft resolution ⁶	
	Retain words "sexual orientation"	Against
63/182	2009 Amendment ⁷ to Draft Resolution ⁸	
	Remove words "sexual orientation"	In Favour *Amendment brought forward by Uganda
	Comments	Uganda signed on to Syria's statement: "...the statement delves into matters which fall essentially within the domestic jurisdiction of States, counter to the commitment in the Charter of the United Nations to respect the sovereignty of States

⁴ A/HRC/RES/17/19

⁵ A/C.3/57/L.56/Rev.1

⁶ A/C.3/59/L.57/Rev.1

⁷ A/C.3/63/L.75

⁸ A/C.3/63/L.35/Rev.1



		and the principle of non-intervention... The notion of orientation spans a wide range of personal choices that expand far beyond the individual sexual interest in a copulatory behaviour between normal consenting adult human beings, thereby ushering in the social normalization and possibly the legitimization of many deplorable acts, including paedophilia. The second notion is often suggested to attribute particular sexual interests or behaviours to genetic factors, a matter that has repeatedly been scientifically rebuffed.” ⁹
65/208	2010 Amendment ¹⁰ to Draft Resolution ¹¹	
	Remove words "sexual orientation"	In Favour
	2010 Amendment ¹² to Draft Resolution ¹³	
	Re-include "sexual orientation"	Against

4. All UN Statements on the situation of LGBT rights in the countries of focus

Universal Periodic Review

The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The Universal Periodic Review process began in 2006 and the first round will be completed by 2011. The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including non-governmental organizations and national human rights institutions. Following the State review, a report referred to as the “outcome report” is produced. This report consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

Year	Uganda’s National Report	Outcome of the Review
2011	“Article 31(2a) of the Constitution prohibits marriage between persons of the same sex. Sections 145 and 146 of the Penal Code prohibit same sex relations. While the Constitution, under Chapter Four, guarantees rights of persons, it also imposes duties and obligations on them to ensure that in the enjoyment of such rights,	Not yet available

⁹ A/63/PV.70

¹⁰ A/C.3/65/L.65

¹¹ A/C.3/L.29/Rev.1

¹² A/65/L.53

¹³ A/C.3/L.29/Rev.1



	<p>they do not infringe on the rights of others. Those who practice and / or support lesbian, gay, bisexual, transgender and intersex (LGBTI) issues continue to push for their recognition as a right. There is information of covert recruitment, of especially our children and youth, into such practices which we consider to be detrimental to the moral fabric of our society. In Uganda, there is an overwhelming consensus that such practices are untenable; and thus culturally and legally unacceptable. It is our considered opinion that such practices remain a matter of private choice. There should be no promotion of those practices.”¹⁴</p>	
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Committee on the Elimination of Discrimination against Women

The Committee on the Elimination of Discrimination against Women, composed of 23 independent experts, monitors the Convention on the Elimination of All Forms of Discrimination Against Women. In 2010, the Committee addressed LGBTI Human Rights in Uganda in its Concluding Observation.

Year	Report	Concluding Observations
2010	Fourth to Seventh Report of Uganda ¹⁵	<p>“The Committee notes with grave concern that homosexual behaviour is criminalized in Uganda. The Committee also expresses its serious concern about reported harassment, violence, hate crimes and incitement of hatred against women on account of their sexual orientation and gender identity. The Committee is further concerned that they face discrimination in employment, health care, education and other fields. Furthermore, the Committee notes with concern the private member’s proposed Anti-Homosexuality Bill, the contents of which would result in further discrimination of women on the basis of sexual orientation and gender identity.</p> <p>The Committee calls on the State party to decriminalize homosexual behaviour and to provide effective protection from violence and discrimination against women based on their sexual orientation and gender identity, in particular through the enactment of comprehensive anti-discrimination legislation covering, inter alia, the prohibition of multiple forms of discrimination against women on all grounds, including on the grounds of sexual orientation and gender identity. To this end, the Committee urges the State party to oppose the private member’s proposed Anti-Homosexuality Bill. The Committee also urges the State party to intensify its efforts to combat discrimination against women on account of their sexual orientation and gender identity, including by launching a sensitization campaign aimed at the general public, as well as providing</p>

¹⁴ A/HRC/WG.6/12/UGA/1 at para 105

¹⁵ CEDAW/C/UGA/4-7



	appropriate training to law enforcement officials and other relevant actors.” ¹⁶
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Statements by Special Rapporteurs and UN High Commissioner on Human Rights

Date	UN Official	Comment
22 January, 2010 ¹⁷	Anand Grover (Special Rapporteur on health)	The Anti-Homosexuality Bill is “Not only a violation of the fundamental human rights of Ugandans, but will also undermine efforts to achieve universal access to HIV prevention, treatment, care and support.”
15 January, 2010 ¹⁸	Navi Pillay (UN High Commissioner for Human Rights)	“It is extraordinary to find legislation like this being proposed more than 60 years after the adoption of the Universal Declaration of Human Rights – as well as many subsequent international laws and standards – made it clear this type of discrimination is unacceptable.”
1 March 2010 ¹⁹	Margaret Sekaggya (Special Rapporteur on the situation of human rights defenders) and Frank La Rue (Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression)	“Adopting the Bill would be in clear breach of international human rights norms and standards contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on Human Rights Defenders and the African Charter on Human and Peoples’ Rights.” [Referring to the proposed Anti-Homosexuality Bill]

5. Individual Complaints

Uganda has accepted the competence of the Human Rights Committee to consider complaints from Ugandan individuals.²⁰ Presently, the Human Rights Committee has not received any individual complaints relating to Uganda. Uganda has not accepted the competence of any other body to consider individual complaints.

Special procedures have expressed concern over events in Uganda, on behalf of individuals, by means of the submission of letters of allegation and/or urgent appeals to the Government of Uganda. The below chart refers to these communications relating to SOGI issues.

Type of Communication	Special Procedure	Complaint	Result
Letter of	Special	Ms Victor Juliet Mukasa,	No response

¹⁶ CEDAW/C/UGA/CO/7 at para 43-44

¹⁷ <http://www2.ohchr.org/english/issues/health/right/index.htm>

¹⁸ <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

¹⁹ <http://www2.ohchr.org/english/issues/defenders/index.htm>

²⁰ See Optional Protocol 1 to the ICCPR



Allegation, 30 November 2007 ²¹	Representative of the Secretary- General on the situation of human rights defenders, Hina Jilani	members of Sexual Minorities Uganda (SMUG), Amakula (Non- LGBT organization who showed a film that addressed homosexuality) were prevented from delivering their speeches at the Commonwealth Heads of Governments Meeting (CHOGM) Speaker’s Corner in Kampala.	
Letter of Allegation, 12 August 2008 ²²	Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya	Nikki Mawanda was arrested and tortured after a protest where he and others protested against statements made by director general of the Uganda AIDS Commission. The director stated that “gays are the main driver of HIV in Uganda.”	No response; Police have not detained the people responsible for Mukwada’s torture; The government has ended the judicial proceedings against Mawanda
Urgent Appeal, 22 September 2008 ²³	Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya	George Oundo and Kiiza Brendah, LGBT activists, were arrested and detained for 7 days without charge. The police removed LGBT literature from Oundo’s home.	No response

6. Domestic Court Decisions

The High Court of Uganda at Kampala considered international conventions and human rights jurisprudence, in addition to the Uganda Constitution, in cases brought forward by human rights activists.²⁴ It is encouraging that in both instances the Court ultimately decided in favour of the publicly gay applicants. The Court decided based on considerations for human dignity, finding that human dignity applies universally.

Unfortunately, in the *Rolling Stone* decision, the Court upheld the validity of Ugandan anti-homosexuality laws. The Court noted that, under section 145 of the Penal Code Act, a person was not considered a criminal for the sole fact of being gay. In order to be regarded as a criminal, one had to commit an act prohibited under that provision. The Court thus distinguished between the

²¹ A/HRC/7/28/Add.1, 5 March 2008 Para. 1907-1908

²² A/HRC/10/12/Add.1, 4 March 2009 Para 2608-2615

²³ *Ibid*

²⁴ *Mukasa and Oyo v. Attorney General*, High Court of Uganda at Kampala (22 December 2008)[Mukasa]; *Kasha Jacqueline, David Kato Kisule and Onziema Patience v. Rolling Stone Ltd and Giles Muhame*, High Court of Uganda at Kampala (30 December 2010) [Rolling Stone]



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being gay and sexual conduct. This distinguishing is unhelpful in the movement towards the recognition of SOGI rights.