



Uganda

Country report for use in Canadian refugee claims based on persecution on the basis of sexual orientation or gender identity

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By: Sexual Orientation and Gender Identity Working Group

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EXECUTIVE DIRECTOR
Renu Mandhane, J.D., LL.M.
39 Queen's Park
Room 106
Toronto, Ontario M5S 2C3
Tel: 416.946.8730
Fax: 416.978.8894
renu.mandhane@utoronto.ca



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I. Introduction

This Country Report on Uganda surveys the treatment of the LGBT community with emphasis on the effects of the Anti-Homosexuality Act that was passed in February 2014 and proposed legislation that targets the LGBT community and groups who advocate on its behalf in Uganda.

In particular, this report covers the enactment and repeal of the Anti-Homosexuality Act in 2014 and the recently proposed legislation in Uganda criminalizing the “promotion of unnatural sexual practices.”¹ Same-sex sexual conduct is illegal in Uganda. Governmental reports indicate a broad consensus on the threat of persecution faced by the LGBT community in Uganda because of the recent anti-LGBT legislation and homophobic sentiments. More troubling, the work of NGOs is threatened by the proposed criminal legislation.

Uganda is not a Designated Country of Origin (DCO) for the purposes of the Canadian refugee determination process.

¹ This phrase is used in the proposed legislation. For the proposed bill, see <http://www.scribd.com/doc/245855111/The-Prohibition-of-Promotion-of-Unnatural-Sexual-Practices-Bill-of-2014>. <http://ihrp.law.utoronto.ca/>



II. Legislation

The Uganda Legal Information Institute provides free access to Ugandan law. Their website is: <http://www.ulii.org/>

1. *The Constitution of Uganda (1995)*

Online: http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf

- In “Protection of the Family,” the definition of family does not explicitly exclude same-sex couples.
- Article 20 states that all persons and agencies of the government shall respect, uphold, and promote all fundamental human rights discussed in Chapter 4 of the Constitution.
- Article 21 grants equal protection under the law in all spheres of political, social, economic, and cultural life to all persons. Sexual orientation is not specifically protected.
- Article 31(1) grants men and women the right to marry and equal rights in marriage. It does not define marriage as between a man and a woman.
- Article 32 requires the State to take affirmative action in favour of groups marginalized on the basis of “any other reason created by history, tradition or custom” to redress imbalances that exist against them. However, the article does not list sexual orientation or identity specifically as grounds for State affirmative action but does list gender.
- Article 287 stipulates that all treaties, conventions, and agreements that Uganda entered into before the Constitution came into force and were still active when the Constitution was enacted are still in force and are not affected by the Constitution.
 - Uganda signed and ratified the *African Charter on Human Rights* on May 10 1986. Article 2 of the Charter grants every individual the enjoyment of their rights and freedoms without distinction based on any “other status.”² Sexual orientation is not listed specifically in the Article.
 - Uganda signed and ratified the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* on September 3 2000. Article 2 commits signatories to eliminate harmful

² All the international conventions that Uganda has signed can be found at: <http://www1.umn.edu/humanrts/research/ratification-uganda.html>. See *African Charter of Human and Peoples' Rights* at <http://www1.umn.edu/humanrts/instree/z1afchar.htm>
<http://ihrp.law.utoronto.ca/>



social and cultural practices based on the superiority of either sex or the stereotyped roles of men and women.³

National Objectives and Directive Principles of State Policy/*XIX Protection of the Family*

The family is the natural and basic unit of society and is entitled to protection by society and the State.

Article 20/*Fundamental and Other Human Rights and Freedoms*

(1) Fundamental rights and freedoms of the individual are inherent and not granted by the State.

(2) The rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

Article 21/*Equality and Freedom from Discrimination*

(1) All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

(2) Without prejudice to clause (1) of this article, a person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.

Article 27/*Right to Privacy of Person, Home, and Property*

(1) No person shall be subjected to—

- (a) unlawful search of the person, home or other property of that person; or
- (b) unlawful entry by others of the premises of that person.

(2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property.

Article 29/*Protection of Freedom of Conscience, Expression, Movement, Religion, Assembly and Association*

(1) Every person shall have the right to—

- (a) freedom of speech and expression which shall include freedom of the press and other media;
- (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;
- (c) freedom to practice any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with this Constitution;
- (d) freedom to assemble and to demonstrate together with others peacefully and

³ <http://www1.umn.edu/humanrts/africa/protocol-women2003.html>
<http://ihrp.law.utoronto.ca/>



unarmed and to petition; and

(e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

Article 31/Rights of the Family

Men and women of the age of eighteen years and above have the right to marry and to found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.

Article 32/Affirmative Action in Favour of Marginalized Groups

(1) Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them.

(2) Parliament shall make relevant laws, including laws for the establishment of an equal opportunities commission, for the purpose of giving full effect to clause (1) of this article.

Article 38/Civic Rights and Activities

(2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations.

Article 45/Human Rights and Freedoms Additional to Other Rights

The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.

Article 52/Functions of the Human Rights Commission

(1) The commission shall have the following functions—

(a) to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;

(b) to visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations;

(c) to establish a continuing programme of research, education and information to enhance respect of human rights;

(d) to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights or their families;

(e) to create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda;

(f) to educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation;

(g) to formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people;



- (h) to monitor the Government's compliance with international treaty and convention obligations on human rights; and
- (i) to perform such other functions as may be provided by law.

Article 53/Powers of the Commission

(2) The commission may, if satisfied that there has been an infringement of a human right or freedom, order—

- (a) the release of a detained or restricted person;
- (b) payment of compensation; or
- (c) any other legal remedy or redress.

Article 287/International Treaties, Agreements, and Conventions

Where—

- (a) any treaty, agreement or convention with any country or international organisation was made or affirmed by Uganda or the Government on or after the ninth day of October, 1962, and was still in force immediately before the coming into force of this Constitution; or
- (b) Uganda or the Government was otherwise a party immediately before the coming into force of this Constitution to any such treaty, agreement or convention, the treaty, agreement or convention shall not be affected by the coming into force of this Constitution; and Uganda or the Government, as the case may be, shall continue to be a party to it.

2. Bill: The Prohibition of Promotion of Unnatural Sexual Practices

Online: <http://www.scribd.com/doc/245855111/The-Prohibition-of-Promotion-of-Unnatural-Sexual-Practices-Bill-of-2014>

- **As of February 2015, this law has not been formally introduced to Parliament but is still in an ad-hoc committee.**⁴
- **The bill would criminalize the “promotion of unnatural sexual practices,” defined within section 1 to include same-sex, transsexual and anal sexual acts.**
- **Section 2 would criminalize the work of groups who advocate for LGBT rights.**
- **Section 3 would make it illegal for advocacy groups to receive funding or advertise their work and activities in any form.**

⁴ <http://www.hrw.org/world-report/2015/country-chapters/uganda>
<http://ihrp.law.utoronto.ca/>



Introduction to the Bill

An act to prohibit the promotion of unnatural sexual practices; to criminalise funding for purposes of promoting unnatural sexual practices; to make it an offence to exhibit unnatural sexual practices; to criminalise inducement with intent to engage in unnatural sexual practices, and for related matters.

Section 1/Interpretation

“Promotion” means recruiting, encouraging, soliciting, or inciting a person to engage in unnatural sexual practices by providing premises, distributing textual or visual material or any other means to interest a person in unnatural sexual practices.

Section One/Sexual Act

“sexual act” means—

- (a) the penetration of the vagina, mouth, or anus, however slight, of any person, by a sexual organ;
- (b) the unlawful use of any object or organ by a person on another persons [sic] sexual organ;

“sexual organ” means vagina or penis;

“transsexual” means a person born with the physical characteristics of one sex but who has undergone or is preparing to undergo sex-change surgery;

“unnatural sexual practice” means a sexual act between persons of the same sex, or with or between transsexual person [sic], a sexual act with an animal, and anal sex, within the meaning of section 145 of the Penal Code act;

Section 2/ Prohibition of promotion of unnatural sexual practices

(1) A person shall not promote or aid or abet the promotion of the performance of unnatural sexual practices.

(2) A person who—

- (a) advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcasting or distribution of any document or information intended or likely to facilitate engaging in unnatural sexual practices;
- (b) participates in producing, procuring, marketing, broadcasting, disseminating or publishing materials for the purposes of promoting the performance of unnatural sexual practices;
- (c) leases or subleases, uses or allows to be used any premises for the purpose of engaging in unnatural sexual practices
- (d) uses information technology; including the internet, films or mobile phones for purpose [sic] of promoting unnatural sexual practices;



- (e) introduces or matches any person to another for purposes of engaging in unnatural sexual practices;
- (f) confines a person for purposes of engaging that person in the promotion of unnatural sexual practices;
- (g) adopts or facilitates the adoption of a child for purposes of engaging that child in unnatural sexual practices;
- (h) attempts to solemnize or solemnize [sic] a same sex marriage; or
- (i) recruits, transports, transfers, harbours, provides or receives a person for domestic or overseas employment or training or apprenticeship with the intention of introducing that person to unnatural sexual practices; commits the offence of promotion of unnatural sexual practices and is liable on conviction to imprisonment not exceeding seven years.

(3) A person who acts as an accomplice or attempts to promote or in any way aids or abets the promotion of the performance of unnatural sexual practices, commits an offence and is liable on conviction to imprisonment not exceeding five years and on a subsequent conviction for the same offence, is liable to imprisonment no exceeding seven years.

Section 3/Funding for purposes of promoting unnatural sexual practices

A person who funds or sponsors another person with intent to promote unnatural sexual practice commits an offence and is liable on conviction to imprisonment not exceeding seven years.

Section 4/ Exhibiting unnatural sexual practices

A person who makes a representation through publication, exhibition, cinematography, information technology or by whatever means, of a person engaged in real or fictitious unnatural sexual practices commits an offence and is liable on conviction to imprisonment not exceeding seven years.

Section 6/Inducement with intent to engage in unnatural sexual practices

(1) A person who induces another person by false pretences or other fraudulent means to engage in unnatural sexual practices commits an offence and is liable on conviction to imprisonment not exceeding seven years.

(2) A person commits the offence of aggravated inducement with intent to engage in unnatural sexual practices where—

- (d) the offender is engaged in organizing, directing, or protecting vulnerable persons in society; or
- (e) the offender is a person exercising authority over the victim; and is liable on conviction to imprisonment not exceeding ten years.



Section 8/Consent is not a defense

The consent of a person or, in the case of a child, the consent of a parent or guardian is not a defense to an offence under this Act.

3. *Anti-Homosexuality Act.*

Online: <http://www.refworld.org/pdfid/530c4bc64.pdf>

- **The law was passed by Parliament on December 20, 2013 and was signed into law on February 24, 2014.**
- **On August 1, 2014 the High Court annulled the law because it was passed without the requisite quorum.**
- **David Bahati, the parliamentarian who introduced the bill, said the government would appeal the decision.⁵**
- **The Act criminalizes same-sex sexual activity and penalizes it with life imprisonment.**
- **Section 13 criminalizes the “promotion of homosexuality” and targets the work of groups that advocate on behalf of the LGBT community.**

Introduction:

An Act to prohibit any form of sexual relations between persons of the same sex; prohibit the promotion or recognition of such relations and to provide for other related matters.

“homosexual” means a person who engages or attempts to engage in same gender sexual activity;

“homosexuality” means same gender or same sex sexual acts;

Section 2/The Offence of Homosexuality

(1) A person commits the offence of homosexuality if—

- (a) he penetrates the anus or mouth of another person of the same sex with his penis or any other sexual contraption;
- (b) he or she uses any object or sexual contraption to penetrate or stimulate sexual organ of a person of the same sex;
- (c) he or she touches another person with the intention of committing the act of homosexuality.

(2) A person who commits an offence under this section shall be liable, on conviction, to imprisonment for life.

⁵ <http://www.monitor.co.ug/News/National/Government-to-petition-court-over-anti-gay-law-ruling/-/688334/2405248/-/3linyez/-/index.html>
<http://ihrp.law.utoronto.ca/>



Section 3/Aggravated Homosexuality

- (1) A person commits the offence of aggravated homosexuality where the—
- (a) person against whom the offence is committed is below the age of eighteen years;
 - (b) offender is a person living with HIV;
 - (c) offender is a parent or guardian of the person against whom the offence is committed;
 - (d) offender is a person in authority over the person against whom the offence is committed;
 - (e) victim of the offence is a person with disability;
 - (f) offender is a serial offender; or
 - (g) offender applies, administers or causes to be used by any man or woman any drug, matter or thing with intent to stupefy or overpower him or her so as to enable any person to have unlawful carnal connection with any person of the same sex.

(2) A person who commits the offence of aggravated homosexuality shall be liable, on conviction, to imprisonment for life.

(3) Where a person is charged with the offence under this section, that person shall undergo a medical examination to ascertain his or her HIV status.

Section 4/Attempt to commit homosexuality

(1) A person who attempts to commit the offence of homosexuality commits a felony and is liable, on conviction, to imprisonment for seven years.

(2) A person who attempts to commit the offence of aggravated homosexuality commits an offence and is liable, on conviction, to imprisonment for life.

Section 7/Aiding and abetting homosexuality

A person who aids, abets, counsels or procures another to engage in acts of homosexuality commits an offence and is liable, on conviction, to imprisonment for seven years.

Section 8/Conspiracy to engage in homosexuality

A person who conspires with another to induce another person of the same sex by any means of false pretense or other fraudulent means to permit any person of the same sex to have unlawful carnal knowledge of him or her commits an offence and is liable, on conviction, to imprisonment for seven years.

Section 10/Detention with intent to commit homosexuality

A person who detains another person with the intention to commit acts of homosexuality with



him or her or with any other person commits an offence and is liable, on conviction, to imprisonment for seven years.

Section 12/Same sex marriage

(1) A person who purports to contract a marriage with another person of the same sex commits the offence of homosexuality and shall be liable, on conviction, to imprisonment for life.

(2) A person or institution commits an offence if that person or institution conducts a marriage ceremony between persons of the same sex and shall, on conviction, be liable to imprisonment for a maximum of seven years for individuals or cancellation of licence for an institution.

Section 13/Promotion of homosexuality

(1) A person who—

- (a) participates in production, procuring, marketing, broadcasting, disseminating, publishing of pornographic materials for purposes of promoting homosexuality;
- (b) funds or sponsors homosexuality or other related activities;
- (c) offers premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality;
- (d) uses electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality; or
- (e) who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices; commits an offence and is liable, on conviction, to a fine of five thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and imprisonment.

(2) Where the offender is a corporate body or a business or an association or a non-governmental organization, on conviction its certificate of registration shall be cancelled and the director, proprietor or promoter shall be liable, on conviction, to imprisonment for seven years.

4. *Marriage and Divorce Bill:*

Online:

http://www.ulii.org/files/ug/legislation/bill/2009/10/marriage_and_divorce_bill_bill_no_19_of_2009_pdf_76370.pdf

- **Section 18 prohibits same-sex marriages in civil marriages.**
- **Section 40 prohibits same-sex marriages in Christian marriages.**
- **Section 3 defines “cohabitation” as “a man and a woman living together as husband and wife.”**
- **Section 3 defines “family” as “a husband and wife, including their children.”**



- **Section 3 defines “marriage” as “the union between a man and a woman for life or until it is dissolved in the manner accepted by that form of marriage; and which is recognized under the laws of Uganda...”**

Section 3/Interpretation

“cohabitation” means a man and a woman living together as husband and wife.

“family” means a husband and wife, including their children.

“marriage” means the union between a man and a woman for life or until it is dissolved in the manner accepted by that form of marriage; and which is recognised under the laws of Uganda.

Section 18/Same Sex Marriage Prohibited (Civil Marriages)

Marriage between persons of the same sex is prohibited.

Section 40/Same Sex Marriage Prohibited (Christian Marriages)

Marriage between persons of the same sex is prohibited.

4. Penal Code Act.

Online: <http://www.ulii.org/ug/legislation/consolidated-act/120>

- **The Penal Code contains a colonial era provision, section 145, which criminalizes same-sex conduct.**
- **Section 145 prohibits carnal knowledge of any person against the “natural order of nature”⁶ with imprisonment for life.**
- **Section 145 prohibits bestiality with imprisonment for life and groups it with carnal knowledge between people that is against “the natural order of nature.”**
- **Section 145 includes same-sex sexual practices with the phrase “permits a male person to have carnal knowledge of him...against the order of nature.”**
- **The penalty for this section is life imprisonment and is one of the most severe penalties in the world for same-sex sexual activity.⁷**
- **At least three people are currently facing charges that were filed under Section 145.⁸**

Section 145 of the Uganda Penal Code/Unnatural Offences

⁶ Quoted from Section 145 of the Uganda Penal Code (www.ulii.org/ug/consolidated-act/120)

⁷ <http://www.hrw.org/news/2014/08/07/it-now-legal-be-gay-uganda>

⁸ Ibid.

<http://ihrp.law.utoronto.ca/>



“Any person who—has carnal knowledge of any person against the natural order of nature; has carnal knowledge of an animal; or permits a male person to have carnal knowledge of him or her against the order of nature commits an offence and is liable for imprisonment for life.”

III. Case Law

Immigration and Refugee Board of Canada Decisions

1. *X, Re*, 2013 CarswellNat 5278

Holding: Application allowed

- The appellant alleges that he is known to be a LGBT member in Kampala, that he has received threats and will receive them again.
- He alleges he was attacked in his home in Uganda in 2005.
- The court found there is clear and convincing evidence that Uganda is unable and unwilling to protect bisexuals like the claimant.
- The court held that it was not reasonable for him to seek protection from the state if he were persecuted. There is more than a mere possibility that the claimant would face a well-founded fear of persecution due to his sexual orientation and membership in the LGBT community in Uganda.
- Furthermore, the court found there was no place in Uganda to live openly and safely in a same-sex relationship without a well-founded fear or persecution.
- There is “no viable internal flight alternative available to him anywhere in the country”(para 53).

Federal Court of Canada Decisions

1. *Wokwera v. Canada (Minister of Citizenship and Immigration)*, 2012 FC 132, 223 A.C.W.S. (3d) 473

Holding: Application dismissed

- The Board ruled against his application because he did not supply any documentation to corroborate his claims of discrimination and harassment.
- The Federal Court found the Board’s findings reasonable and denied the request for judicial review.



Mr. Wokera sought protection in Canada on the basis that he sympathizes with same-sex relationships. He befriended a member of the LGBT community while a medical student and was introduced to the Brotherhood of Samia, a “fraternity of homosexuals” (at para 4). After helping the group, he became known as a “homosexual sympathizer” (at para 6). He experienced harassment at work, was threatened on the street at gunpoint in 2001, a goat’s carcass was placed at his home and work, and he was fired. He was reinstated but left Basia for work in Kampala where he continued to be harassed and said he was attacked in the street in October 2009 by a man who alleged he was a “homosexual sympathizer” (at para 8). He filed his claim for refugee status in March 2010.

There was insufficient evidence linking Wokwera with the LGBT community. Also, there was insufficient evidence to prove that Wokwera was or would be persecuted as a doctor who provided counseling and treatment to the LGBT community and to people with HIV.

2. *Bagire v. Canada (Minister of Citizenship and Immigration)*, 2013 FC 816, 2013 CF 816

Holding: Application Dismissed

- **The Board found the claimant to be neither a person in need of protection, nor a Convention refugee, because his identity could not be established.**

The claimant claimed to be Benon Bagire, a citizen of Uganda. Mr. Bagire claimed to be a member of the LGBT community and at risk of persecution based on his LGBT status. However, his identification could not be established conclusively based on the documents he provided.

IV. Domestic Jurisprudence

Constitutional Law Jurisprudence

All court cases can be found online at: <http://www.ulii.org>

1. *Nabagesera and Three Others v Attorney General & Anor*, 2014 UGHCCD 85

Holding: For the Attorney General

- **The Plaintiffs were challenging the constitutionality under Article 29(1), freedom of assembly, of a government order to shut down a workshop**



that they organized at the Imperial Resort beach hotel in Entebbe between the 9th and 16th of February 2012.

- The workshop was organized by NGOs supporting LGBT rights in Uganda.
- The court ruled that the organization of the workshop violated section 145 of the Penal Code because it promoted same-sex sexual practices.
- The court held that the order was valid because the plaintiffs were engaged in illegal activities.

2. *Oloka-Onyango and 9 Others v Attorney General*, 2014 UGCC 14

Holding: There was no quorum in Parliament when the Anti-Homosexuality Act was passed, and the Speaker acted illegally in neglecting to address this issue.

- **This case ruled that the Anti-Homosexuality Act was unconstitutional because there was no quorum in Parliament when the bill was enacted.**

3. *Kasha Jacqueline vs Rolling Stone Limited & another*, Misc. Cause 163 of 2010

Holding: The court awarded damages to people named as LGBT members in the tabloid *Rolling Stone* and the court issued an injunction ordering the paper never to repeat the exercise again.⁹

- ***Rolling Stone* showed pictures of Jaqueline Kasha and David Kato, among others, on its cover alleging they were members of the LGBT community.**
- **The front paper also read “Hang Them” next to their pictures.**

V. International Law

UN Treaties

Treaty	Date of Signature	Date of Ratification
ICCPR	N/A	1995
ICCPR – First OP	N/A	1995

⁹ Information on the case can be found at: <http://www.theguardian.com/world/2011/jan/03/uganda-court-damages-gay>
<http://ihrp.law.utoronto.ca/>



ICCPR – Second OP	N/A	Not ratified
ICESCR	N/A	1987
ICESR – First OP	N/A	Not ratified
CAT	N/A	1986
CAT – First OP	N/A	Not ratified

Human Rights Committee

1. United Nations — “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant. Initial Report: Uganda” (25 February 2003)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fUGA%2f2003%2f1&Lang=en

- **Section D 10-11 states that Uganda is committed to the protection of human and social rights. The report cites the National Human Rights Commission as part of the evidence of the Government’s commitment to promoting human rights (page 10).**
- **The discussion of non-discrimination and equality does not mention LGBT rights (page 13).**

Committee on Economic, Social and Cultural Rights

1. United Nations— “Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic Social and Cultural Rights” (6 December 2012)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fUGA%2f1&Lang=en

- **The report discusses Uganda’s policies against discrimination and supporting equality but does not discuss sexual orientation in this context (page 13).**
 - **The report does not discuss LGBT members in the section on “Protection of the Family” (page 26).**
2. United Nations CESCR 54th Pre-Sessional Working Group, “The International Commission of Jurists’ Submission to the UN Committee on Economic, Social and Cultural Rights on the Preparation of a List of Issues for the Examination of Uganda’s Initial Periodic Reports under the International Covenant on Economic, Social and Cultural Rights” (October 2014)



Online:

http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/UGA/INT_CESCR_ICO_UGA_18579_E.pdf

- The report discusses the problems with the Anti-Homosexuality Act and other criminalization of consensual same-sex sexual conduct.
- The report discusses how the laws in Uganda impact the LGBT community and specifically how certain laws violate the Covenant rights in Articles 2(2), 6, 7, 11, 12, and 13.
- The report notes how the criminal laws deprive LGBT persons of police protection and judicial redress.

Committee Against Torture

1. United Nations – “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ” (30 June 2004)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f5%2fAdd.32&Lang=en

- The report discusses the Human Rights Commission as a tribunal that claimants can use to seek redress when unsatisfied with their treatment in a court of law.
- There is no discussion of LGBT treatment in jails or by police officers.
- The report states that torture in central government prisons has decreased.
- Torture in locally administered prisons remains alarming (page 10).

2. United Nations— “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (16 July 2010)

Online:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%09%2fC%2fUGA%2fQ%2f2&Lang=en

- The report asks for information for Uganda’s response to cases of rape, sexual exploitation, and sexual harassment of women in vulnerable situations, “notably...internally displaced women” (page 4).
- There is no express mention of LGBT members, but “internally displaced women” could encompass women who have had to move in Uganda based on persecution for their sexual identity.



Universal Periodic Review by the Human Rights Council

1. United Nations— “Report of the Working Group on the Universal Periodic Review” (22 December 2011)

Online: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UGSession12.aspx>

- **Canada is concerned with the treatment of the LGBT community in Uganda and makes recommendations (page 7).**
- **Netherlands recommends the investigation and prosecution of intimidation and attacks against LGBT community members and activists (page 19).**
- **Belgium recommends thorough investigation and sanction of violence against LGBT and LGBT activists (page 19).**
- **Czech Republic recommends taking concrete steps to stop discrimination and assaults against LGBT persons (page 19).**
- **Belgium recommends lifting laws that are contrary to Uganda’s international obligations to protect the right of peaceful and legitimate assembly (page 19).**
- **Slovenia recommends rejecting the Anti-Homosexuality Bill and decriminalizing same-sex relationships between consenting adults (page 24).**

Regional Treaties and Monitoring Bodies

1. African Charter on Human and People’s Rights (as of 1986)

Online: <http://www.achpr.org/instruments/achpr/>

- **Uganda has signed and ratified the African Charter on Human and People’s Rights (as of 1986).**

VI. Government Reports

Canada

1. Canada: Immigration and Refugee Board of Canada, “Uganda: Treatment of homosexuals by society and government authorities; legal recourse and protection available to homosexuals who have been subject to ill-treatment (2005-2006),” (February 2007)

Online: <http://refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=469cd6c01e&skip=0&query=LGBT%20or%20gay%20or%20lesbian%20or%20transgender%20or%20homosexual&coi=UGA>



- **Homosexuality is illegal in Uganda.**
- **Although prosecutions are rare, the LGBT community is stigmatized and harassed by Ugandan authorities.**
- **In September 2005, Uganda’s parliament passed a bill to make same-sex marriages illegal. These new criminal penalties “can only have one purpose: to codify prejudice against same-sex couples.”**
- **Most Ugandans prefer to pretend sexual minorities do not exist at all.**
- **There is no legal recourse for LGBT persons who have been subject to ill-treatment.**

United Kingdom

1. UK Visas and Immigration, “Country Information and Guidance Report: Uganda, sexual orientation and Gender”, (August 2014)

Online:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/346274/CIG_Uganda_SOGI_2014_8_20_v2_0.pdf

- **LGBT persons likely to face harassment, discrimination and mistreatment that amounts to persecution (1.4.3).**
- **LGBT persons do not have effective protection from persecution (1.4.4).**
- **There is no option to relocate elsewhere in Uganda (1.4.5).**
- **An LGBT person is likely to have a well-founded fear of persecution in Uganda (1.4.7).**
- **The practice of publicly “outing” members of the LGBT community is a problem in Uganda (19.29-32). This leads to mob violence and persecution of the LGBT community.**
 - **The tabloid paper *Rolling Stone* published names, addresses, and details of places along with the subtitle “Hang them! They are after our children!”**
 - **The High Court of Uganda granted an injunction against publishing names and information about alleged LGBT persons and awarded 646\$US to each applicant.**
 - **However, David Kato, an LGBT activist whose picture was featured in the tabloid, was beaten to death in his home on 25 January 2011.**

This report provides guidance to authorities in the Home Office of the UK who handle claims made by nationals/residents of Uganda. It is the SOGI report used by the Home Office. The document provides guidance on whether claims are likely to justify granting asylum. Section 1 provides guidance on issues relating to asylum-seekers from Uganda whose claims are based on persecution for being a member of the LGBT community. Section 2 provides a synopsis of



legal rights of the LGBT community (section 2.1), the Anti-Homosexuality Act of 2014 (section 2.2), laws affecting LGBT persons (section 2.3), information on arrests (section 2.5), and societal attitudes and treatment (2.8).

2. Home Office, UK Border Agency, “Uganda: Country of Origin Information Report”, (20 April 2011)

Online:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/310178/Uganda_COI_report_2011.pdf

- **Section 19.01-02 summarizes material on the lack of legal rights for LGBT members of society from the United States Department of State *Country Report on Human Rights Practices 2009, Uganda.***
 - **Illegal to engage in same-sex relationships based on Section 145 of the Penal Code.**
- **Section 19.05 cites a report entitled “The Effects of a Two Year Sustained Anti-Gay Campaign on Health Seeking Behaviour of the Sexual Minorities in Uganda (2009-2010)”, dated January 2010, that describes the climate of fear stemming from the Anti-Homosexuality Bill of 2009.¹⁰**

United States of America

1. United States Department of State, “Uganda 2013 Human Rights Report” 2013, (27 February 2014)

Online: <http://www.state.gov/documents/organization/220383.pdf>

- **The report provides examples of court cases from 2009-13 that involve members of the LGBT community charged under section 145 of the Penal Code for engaging in sexual practices “against the order of nature.”**
 - **The trial of Patrick Musoke on charges of engaging in unnatural acts was pending at year’s end.**
 - **In April 2012, Richard Mulwo was remanded to the High Court for trial on charges of engaging in unnatural activities. His trial was pending at the end of the year.**
- **The report states that LGBT persons are the targets of societal harassment, discrimination, and intimidation; are denied access to health services; and are subjected to threats against their safety.**

¹⁰ The report can be found here: http://www.msmgf.org/index.cfm/id/11/aid/2398/lang_id/1.
<http://ihrp.law.utoronto.ca/>



VII. Reports from International Agencies and Non-Governmental Organizations

Amnesty International

1. "Uganda: Discriminatory Legislation Fuels Repression and Abuse," October 16, 2014

Online: <https://www.amnesty.org/en/articles/news/2014/10/uganda-discriminatory-legislation-fuels-repression-and-abuse/>

- The Anti-Homosexuality Act led to LGBT people being evicted from their houses and losing their jobs.
- LGBT members were subject to mob attacks after the Anti-Homosexuality Act was passed.
- Authorities suspended the work of the Refugee Law Project in Uganda on allegations that it was "promoting homosexuality."
- A police raid on the Walter Reed Project, an HIV research project, in April 2014, made LGBT community too scared to access healthcare.

Freedom and Roam Uganda

1. "Press Release on the Implications of the Anti-Homosexuality Act on the Work of Human Rights Defenders in the Republic of Uganda," March 10, 2014

Online: <http://www.faruganda.org/index.php/news-and-events/84-press-release-on-the-%09implications-of-the-anti-homosexuality-act-on-the-work-of-human-rights-defenders-in-%09the-republic-of-uganda.html>

- The Anti-Homosexuality Act is likely to endanger the lives of members of the LGBT community, people alleged to be LGBT, and advocates for LGBT rights.
- The Special Rapporteur on Human Rights Defenders in Africa, Commissioner Reine Alapini-Gansou, expressed concern about intimidation of the LGBT community following the law's passage.
- The Special Rapporteur is concerned that newspapers are already publishing names, pictures, and information about alleged members of the LGBT community.

FARUG is an organization founded in 2003 by female members of the LGBT community in Uganda who faced insults, discrimination and harassment because of their sexual orientation and gender identity. They note that even though same-sex female relationships are not technically banned in Section 145 of the Penal Code, they face the same discrimination as



male members of the LGBT community. They note that the discrimination creates a climate of fear especially for LGBT persons seeking health care, treatment for STDs and protection from STDs such as HIV.

Human Rights Watch

1. "Dispatches: Not Again Uganda," November 12 2014
Online: <http://www.hrw.org/news/2014/11/12/dispatches-not-again-uganda>
 - The report focuses on the new "Prohibition of the Promotion of Unnatural Sexual Practices" and how it targets NGOs and LGBT support groups in addition to same-sex sexual practices.
 - The bill would make it illegal for groups to advertise or receive funds for their work.
 - The justification of the bill is to protect children.
 - "Promotion" will criminalize anyone who supports or expresses support for the LGBT community.

2. "Uganda: Ruling Against LGBT Activists Violates Rights," July 11, 2014
Online: <http://www.hrw.org/news/2014/07/11/uganda-ruling-against-lgbt-activists-%09violates-rights>
 - Uganda High Court decision, published on July 9 2014, upheld the government's closure of an LGBT rights workshop.
 - The High Court ruled against four activists at the meeting, which took place in February 2012, who sued the ethics and integrity minister, Simon Lokodo, for shutting it down.
 - Justice Musota ruled that the meeting was a cover-up for promoting same-sex acts.
 - Freedom and Roam Uganda (FARUG), which advocates for the LGBT community, held the workshop on February 12, 2012, in a hotel in Entebbe.
 - Justice Musota relied on the affidavit of an "ex-gay" who said that the workshop was "training homosexual youths to safely engage in the same-sex practices by distributing condoms."

ILGA

1. "Uganda: Five Arrested for 'Promoting' Homosexuality," July 9, 2014
Online: <http://ilga.org/uganda-five-arrested-for-promoting-homosexuality/>



- This is a short article relating that Uganda media reported that five “suspected homosexuals” were arrested in Uganda for “promoting homosexuality” and “recruiting children.”
- The report speculates that these could be the first arrests made under the Anti-Homosexuality Act.

International Gay and Lesbian Human Rights Commission

1. “Human Rights Defenders Call on Uganda to Repeal Discriminatory Anti-LGBT Rights Legislation,” February 24, 2014
Online: <http://iglhrc.org/content/human-rights-defenders-call-uganda-repeal-discriminatory-anti-lg>
 - The report compares the Anti-Homosexuality Act to similar bills in Russia and Nigeria and expresses concern that a rise in violence against LGBT community could happen now that the law is passed.
 - The report quotes Thomas Ndayiragije, Senior Program Officer in the IGLHRC Africa Program, as saying that the bill could lead to imprisonment for health workers who provide aid to the LGBT community.

VIII. Newspaper and Media Reports

* There has been extensive media coverage around the world of Uganda’s anti-LGBT laws. This is a small selection of the available literature.

1. “Uganda’s leading gay activist: We live in fear of violence, blackmail and extortion,” Naith Payton, Pink News, December 3 2014.
Online: <http://www.pinknews.co.uk/2014/12/03/ugandas-leading-gay-activist-we-live-in-fear-of-violence-blackmail-and-extortion/>
 - Ugandan LGBT activist Frank Mugisha discusses how international pressure helped to make the Ugandan High Court rule that the Anti-Homosexuality Act was invalid.
 - Mugisha warns that the “Prohibition of the Promotion of Unnatural Sexual Practices” bill could be just as destructive because it criminalises anyone who provides housing to LGBT people, publishes, broadcasts, or distributes information that facilitates same-sex relationships.
 - Blackmail and extortion could get worse if the new bill is passed.



- **American evangelicals are instrumental in spreading homophobia in Uganda.**
2. “New anti-gay bill in advanced stages,” Mikkel Danielsen and Isaac Imaka, Saturday Monitor, November 20 2014.
Online: <http://www.monitor.co.ug/News/National/New-anti-gay-Bill-in-advanced-stages/-/688334/2528396/-/14e5eauz/-/index.html>
 - **A committee is finalizing a draft of the Anti-Homosexuality Act that will appear before the public by the end of 2014.**
 - **The new bill follows the pattern of the repealed Anti-Homosexuality Act and there are only changes in wording.**
 - **Protecting, housing, or transporting members of the LGBT community can result in prison sentence of up to 10 years.**
 3. “Ugandan Government Launches Investigation of leading NGO for “Promoting Homosexuality,”” J. Lester Feder, BuzzFeed News, June 4 2014.
Online: <http://www.buzzfeed.com/lesterfeder/ugandan-government-launches-investigation-of-leading-ngo-for#.mmKAK7wpk>
 - **The government is investigation the country’s leading human rights group, The Refugee Law Project, for “the promotion of homosexuality.”**
 - **Activists fear the proposed “Prohibition of the Promotion of Unnatural Sexual Practices” will be used to silence critics of President Museveni.**
 - **The RLP opposed the Anti-Homosexuality Act, but its main focus is on aiding the roughly 265,000 foreigners in Uganda.**
 4. “Ugandan Who Spoke up for Gays is Beaten to Death in Uganda,” Jeffrey Gettleman, New York Times, January 28 2011.
Online: http://www.nytimes.com/2011/01/28/world/africa/28uganda.html?_r=0
 - **David Kato was a leading figure in, and considered to be a founding father of, Uganda’s LGBT rights movement and was beaten to death months after his photo was published in a Rolling Stone tabloid outing members of the LGBT community.**
 - **Anti-LGBT Christian groups, especially from the United States, spread anti-LGBT messages and have considerable influence in politics and society.**
 - **The article quotes James Nsaba Buturo, Uganda’s minister of ethics and integrity as saying “Homosexuals can forget about human rights.”**



IX. Scholarship

1. Susan Dicklitch, Berwood Yost, Bryan M. Dougan, “Building a Barometer of Gay Rights (BGR): A Case Study of Uganda and the Persecution of Homosexuals,” *Human Rights Quarterly*, vol. 34, no. 2, pp. 448-71, May 2012
 - **The authors attempt to assess precisely how protective and responsive a country is to LGBT rights, and they use Uganda as a case study.**
 - **The BGR attempts to measure the degree to which Uganda is an “active persecutor” of the LGBT community.**
 - **The BGR measures constitutional protections for the LGBT community; their civil, political and socioeconomic rights; the presence and efficacy of LGBT advocacy groups; and the degree of societal persecution.**
 - **The study is a response to the Anti-Homosexuality Act and how it changed the international perception of Uganda as one of the more progressive countries in Africa for human rights.**

2. Joanna Sadgrove, Robert M. Vanderbeck, Johan Andersson, Gill Valentine, Kevin Ward, “Morality plays and money matters: towards a situated understanding of the politics of homosexuality in Uganda,” *Journal of Modern African Studies* vol. 50, no. 1, 102-29, March 2012
 - **Investigates the social and cultural factors that enable anti-same-sex rhetoric to flourish in Uganda.**
 - **Anti-same-sex rhetoric is studied in relationship to discourses of public morality and national sovereignty.**
 - **Analysis of rhetoric in a government aligned newspaper *New Vision*, focuses on three key features of anti-LGBT discourse in Uganda:**
 - **Construction of the West as a decadent “other” in contrast to a morally virtuous Uganda.**
 - **Positioning individual Ugandans as custodians and caretakers of a morally virtuous Uganda in their roles as parents, community members, exemplars, and educators.**
 - **Anti-LGBT rhetoric is tied to anxieties of national and communal decline and the idea that same-sex activity can only result from greed for material gain.**

The article analyses same-sex relationships in Uganda through the discourses of nationalism and personhood. The authors argue that same-sex relationships are transgressive in Uganda because Ugandans perceive the LGBT community, in rejecting their reproductive capacities, to threaten the well-being of the family and the wider community. Procreation is considered a



core social responsibility and people who are unwilling to produce offspring transgress this fundamental social norm. LGBT community forces Uganda to confront the prospect of a new kind of modern individual because they do not “adequately embed themselves in reciprocal social relations” (Page 126).