

UGANDA: 'WHERE DO WE GO FOR JUSTICE?'



The Abuse of the Rights of Sexual Minorities in Uganda's Criminal Justice System

PHOTO CREDITS:
Rebecca Vassie

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PART I

Introduction

There have been many reports about the abuse of fundamental rights and freedom of sexual minorities in Uganda. What then is the purpose of this report? Is it just another report in the long list of reports on this very sensitive issue in Uganda? Two things have made it necessary to conduct this research and write this report. The first is that all previous reports document cases of abuse of sexual minorities and provide useful statistics. The Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL) for instance, in a report titled *Uganda Report of Violations Based on Sex Determination, Gender Identity and Sexual Orientation* document instances of arbitrary arrests, long pre-trial detention, evictions by landlords, limited access to health services among others.

Sexual Minorities Uganda (SMUG) in its report *From Torment to Tyranny, enhanced Persecution in Uganda Following the Passage of the Anti-homosexuality Act, 2014* covering the period December 20, 2013 to May 1, 2014 chronicles the intensity of violations that were sparked off as a result of the enactment of the law. The report provides statistical data on the number of cases reported and the nature of violations. It put the number of reported cases over the period at 162 cases ranging from physical violence, kidnap, arrests, and blackmail to press intrusion.

There have also been other reports by Amnesty International that documented increased homophobia and the use of the law to restrict the space for assembly and association especially for sexual minorities.

This report seeks to go behind the arrests and long pre-trial detention to examine the treatment of sexual minorities within the criminal justice system and examine the experiences of victims in the criminal justice system. The report seeks to vividly highlight the treatment of sexual minorities in the criminal justice system. It also highlights the response of the criminal justice system to reported cases of criminality against sexual minorities.

Secondly, the timing of this report is important. After the annulment of the Anti-Homosexuality Act (AHA) by the Constitutional Court, an attempt was made to force a re-tabling of a new law on homosexuality. Shortly after the annulment, two Members of Parliament; Hon. David Bahati and Hon Hudson Obua, sought, and were granted leave to table another law on homosexuality.

The MPs went into overdrive collecting signatures from other MPs to petition the Speaker of Parliament to reintroduce a new law. Several MPs from across the political divide found a convergence in an attempt to table a new law. The ruling party subsequently set up a committee to review the pleadings in the AHA petition, the ruling of the court and concerns raised. In a leaked bill named *The Prohibition of Unnatural Sexual Offences Bill 2014*, the ruling party committee proposes a more extreme bill than the AHA, in terms of its provision.

There is a possibility that this leaked draft bill will be tabled for enactment in the remaining tenure of this parliament. This

report is an attempt to provide some context into the implications of such a law especially on access to justice and the impact within the criminal justice system on sexual minorities.

The report thus provides real-life experiences of sexual minorities in the criminal justice system in Uganda. It is impossible to stop that which is unseen. When we fail to acknowledge the existence of sexual minorities, transgender people, and intersex people, their oppression, whether within the criminal justice system or elsewhere, remains invisible. In documenting these lived experiences of sexual minorities in the criminal justice system in Uganda, Chapter Four Uganda seeks to garner recognition that the violence experienced by LGBTI people is real and distinct.

Key Recommendations

To the Uganda Police

- Immediately cease the use of intrusive, non-consensual, inhumane and degrading anal/rectum examinations of persons of different sexual orientation and gender identity as a means of investigations.
- Provide counseling services and obtain patient consent prior to the conduct of medical procedures during the investigation of alleged crimes.
- Immediately issue practice directives for the conduct of investigations of sexual offences to ensure the observance of fundamental rights of both victims and suspects.
- Urgently investigate all allegations of refusal/disregard to investigate cases reported by persons of different sexual orientations and gender identity to the police and ensure that such cases are duly

investigated and prosecuted

- Stop parading arrested suspects to the media; particularly LGBTI individuals who face increased violence as a result of such parade.
- Guarantee sexual minorities right to privacy and confidentiality while reporting abuses to the police. Their sexual orientation *per se* must not be a crime.
- Institute an investigation into assaults of sexual minorities suspects on the basis of their sexual orientation by the police officers at police stations and make such report public.
- Discipline and refer for criminal prosecution police officers who engage in assaulting of LGBTI suspects and other forms of homophobic treatment while at police installations.
- Investigate and discipline officers engaging in the abuse of the criminal justice process to blackmail and extort money and property from sexual minorities.
- Train officers handling LGBTI related cases on the principle of non-discrimination on the basis of sexual orientation and gender identity.

Methodology

This report is based on information gathered by Chapter Four Uganda between the months of December 2014 and February 2015 in the districts of Buikwe (Lugazi township), Entebbe, Kampala and Mbarara. Chapter Four relied on secondary and primary sources obtained in the research period. The report focuses on the real life experiences of individuals, who have gone through the criminal justice system on accusation of homosexuality.

The report focuses on the experiences of criminal justice actors; people who on a day to day basis conduct investigations, hear cases, examine victims and suspects and lawyers who defend or prosecute cases related to sexual minorities.

Chapter Four Uganda traced, obtained and reviewed volumes of documents including police statements, police files, court files, charge sheets, medical examination reports, and media reports relating to sexual minorities between the years 2012-2015. In all, 14 police files and 10 court files were obtained. In all, these files contained hundreds of pages of witnesses and suspect statements, taken at various police stations, medical reports from the police doctors and other private medical facilities authorized by the police to carry out medical examinations as part of the formal investigations. The case files were corroborated with interviews with victims, lawyers, medical practitioners and the police officers that handled the cases. These files are on record at Chapter Four Uganda.

Chapter Four Uganda carried out one-on-one interviews with 21 individuals who were arrested by the authorities on allegations of homosexuality. These interviews were conducted in-person, via telephone, email, or via Skype. The identities of the individuals interviewed have been replaced with pseudonyms for their own safety, except for those who agreed for their names to be mentioned in the report. The case file numbers have been cited in full as indicated in the court records or on the police files for ease of reference.

No incentives were offered for the interviews. The respondents voluntarily

participated in the research and were informed that the interviews were purposely for research that would lead to the writing and publication of this report.

Chapter Four Uganda interviewed two (2) medical doctors who routinely conduct medical examinations on suspects and victims in homosexuality related cases. These doctors, by their own admission, have between themselves conducted more than twenty-five (25) medical examinations on cases related to homosexuality. Also interviewed were twelve (12) police officers, and eleven (11) activists working with non-governmental organizations (NGOs) dedicated to supporting sexual minorities.

Chapter Four Uganda sent letters to the Inspector General of Police (IGP) and the Director of Public Prosecutions (DPP) requesting for information and clarifications in relation to violations documented in this report. The DPP offered a reply and corresponded with Chapter Four Uganda on two occasions while the IGP did not respond to the letter at the time of compilation of the report. The Police Command Unit (PCU) however, received a copy of the letter addressed to the IGP and committed to follow up the concerns raised in this report.

The report also benefited from secondary data collected by the *Civil Society Coalition on Human Rights and Constitutional Law* and compiled in a report titled *Uganda Report of Violations, based on Sexual Determination, Gender Identity and Sexual Orientation* dated October 2014; two reports compiled by Sexual Minorities Uganda (SMUG) and other related human rights reports.

PART II

Context

“Whether there is a law or no law, the discrimination of persons with different sexual orientation and gender identity continues unabated in the Ugandan society. The narrative that describes persons of different sexual orientation as evil and child predatory is being preached in churches, mosques and in the community everyday putting the lives of many in danger...”

Ms. Clare Byarugaba, former co-coordinator of the Civil Society Coalition on Human Rights and Constitutional Law¹

Background to the report

In August of 2014, the Constitutional Court nullified the Anti-homosexuality Act, 2014 (AHA) for having been passed in violation of the rules of procedure of parliament. The court found that the law was passed without the requisite Quorum of two thirds required to enact legislation.

The ruling of the court did not delve into the substantive challenges to the Anti-homosexuality Act contained in the main body of the petition. The court did not pronounce itself on the issues of discrimination on the basis of sexual orientation, the broad definition contained in the law such as ‘recruitment into homosexuality’ and ‘promotion of homosexuality,’ among others.

The court missed the opportunity to settle these questions and bring to a close in Uganda, the debate on discrimination on the basis of sexual orientation.

The ruling of the court was nonetheless significant in many ways. First, several individuals and organizations that were under investigations or arrests for offences under the AHA such as promoting homosexuality received temporary reprieve as the basis for their investigations were rendered a nullity².

A case in point is the Walter Reed Project of the School of Public Health Makerere University. The police on August 4, 2014 raided the Nakasero based project, arresting two staff members on allegations of recruiting the youth into homosexuality³. Although the two personnel arrested were released without charge, the police interrogated several board members of the project and no charges have since been brought against them.

Secondly, the nullification of the AHA halted a dangerous precedent from being concretized in a law.

² In fact, no known prosecution was ever commenced under the AHA even though many of the arrests were done under the pretext of the law after it was passed. All the cases recorded at police and in court were prosecuted under the provisions of the Penal Code Act. They were either terms as sodomy, acts of gross indecency or having carnal knowledge of a person against the order of nature. See Promoting ‘Morals’ by Dehumanizing Suspected LGBTI Persons? A critique of the enforcement of the Law Criminalizing Same Sex Conduct in Uganda, HRAF and CSCHRCL, October 2013 (available at http://www.hrapf.org/sites/default/files/publications/section_145_research_report_full_version.pdf accessed on February 16, 2015)

³ A police file General Enquiries File (GEF): 51/14 was opened March 15, 2014 based on ‘intelligence information.’ An initial report obtained by Chapter Four Uganda prepared on March 8, 2015 by No. 25809 D/Sgt. Mifitundinda Edward addressed to the IGP concluded that ‘the US Government is sponsoring the research on HIV, Makerere University Walter Reed Project, which is also recruiting homosexuals.’ The report further concluded that ‘there was recruitment of youths ageing between 15-25 years of male only (sic)’

¹ Chapter Four Uganda interview with Clare Byarugaba, Kampala, February 2nd, 2015

It forced a deeper reflection among the political leadership and the general public on the unintended consequences of such legislation on access to public health, economic development and inclusiveness. At the very least, the legislators will pay attention to the issues raised in the petition, judgment of the court and the debate that ensued post enactment.

The above notwithstanding, the nullification of the AHA has not resolved the deeper societal concerns about discrimination, violence and all forms of abuse towards sexual minorities. Reports indicate increased cases of persecution of sexual minorities. Sexual Minorities Uganda (SMUG) in its report *From Torment to Tyranny, enhanced Persecution in Uganda Following the Passage of the Anti-homosexuality Act, 2014* reported that between the months of December 20, 2013 and May 1, 2014 'there were 162 reported incidences of 'persecution perpetrated against LGBTI people'⁴.

In the report, the number of cases in 2012 was 19, and in 2013, 8 cases representing a significantly low numbering in the previous period. Another report conducted between the periods of October 2013 and April 2014 registered 153 cases of various forms of violations against sexual minorities⁵. The statistics in the report, verified through LGBTI networks and legal aid clinics, paint a picture of continued and intensified discrimination of sexual minorities in Uganda after the enactment and nullification of the AHA.

Continued criminalization of same sex conduct

Same sex "relations" still remain outlawed in Uganda. Article 31 of the constitution prohibits same sex marriages. Arrests of sexual minorities or suspected sexual minorities continues to rise due to the continued use of Uganda's *Penal Code Act Cap 120 enacted in 1950*, a piece of colonial legislation that has been maintained as a part of Ugandan law. Some provisions of this colonial rulebook are now the "primary tool" for the harassment of sexual minorities.

For example, Section 145 of this Penal Code title "*Unnatural offences*" provides for life imprisonment of persons found guilty of "having or permitting a male person to have carnal knowledge with a fellow male or female "against the order of nature". The same sentence is prescribed for persons found guilty of having sex with animals. Section 146 of the same provides for a seven-year jail term for persons found guilty of "attempting" to have carnal knowledge with humans or animals. Additionally, Section 148 of the same code provides for a seven-year jail term for a person who "commits or attempts to procure the commission of any acts of gross indecency" publicly or in private. To date, no prosecution under this law has been successful although it continues to be used on sexual minorities.

Vitriolic rhetoric of government officials

After the Constitutional Court struck down the Anti-homosexuality Act 2014 on August 01st, 2014, the government and anti-gay activists engaged in sensational rhetoric as they came to terms with the ruling of the court. It also presented a moment for a slight change in rhetoric by Uganda's President Yoweri Museveni.

⁴ Sexual Minorities Uganda (SMUG) report *From Torment to Tyranny, enhanced Persecution in Uganda Following the Passage of the Anti-homosexuality Act, 2014* at page.2.

⁵ See Uganda Report of Violations Based on Sex Determination, Gender Identity and Sexual Orientation

In August 12th, 2014, President Museveni addressed Members of Parliament (MPs) at State House Entebbe where he signaled a major change of rhetoric. While reminding them that the anti-gay law was not a 'priority' for Uganda's development, he is quoted to have observed;

"A country which has no vision punishes a divided house. We need to work together through consensus and use of collective methods... This is now an issue of Semusota guli muntamu (a snake which has entered into a cooking pot – a local proverb used to describe a delicate situation which if not carefully handled, would result in major catastrophe). If we try to kill the snake, we may break the pot, if we don't, we won't" - President Yoweri Kaguta Museveni

The President further reportedly complained that his advice on the drafting of the annulled anti-gay law was **ignored**. As he commissioned a 10-member committee chaired by the Vice President Edward Kiwanuka Sekandi to draft a new anti-gay bill, he cautioned the committee to '**study the petition**' which successfully got the anti-gay law nullified.

As the Speaker of Parliament Rebecca Kadaga and a number of MPs passionately swore to pass the bill when it gets to Parliament, President Museveni cautioned them to debate the law without any emotional feelings. Speaker Rebecca Kadaga, in an extensive interview with the State owned New Vision newspaper, lambasted judges of the court over the annulment of the AHA and was further quoted saying,

"Now that we have the 207 signatures (of MPs who had informally vowed to vote for the new anti-gay bill which was even not yet drafted), the rest (passing of the new anti-gay bill) is going to be smooth" ⁶

Pastor Martin Ssempea reacted by promising that, *"We (anti-gay movement) want to join with the Attorney General to appeal this to the Supreme Court. This decision is a legal travesty. It is an insult to all family-culture-loving people in Uganda"*⁷. He questioned the independence of the judiciary and wondered why a 'conservative religious judge ... like Justice Remy Kasule... (was) not included on the bench'⁸. Ssempea further questioned whether there had been a conspiracy by the government since the President was travelling to Washington DC for the US-Africa Summit. President Museveni denied these allegations in an interview⁹ with Agence France Press.

Increased number of LGBTI fleeing the country

As a result of the continued discrimination, violence and harassment, LGBTI people continue to seek refuge out of Uganda. Statistics on the numbers seeking asylum is scanty but the CSCHRCL reported that in the aftermath of the enactment of the AHA, 25 cases were registered. Kenya's National Gay & Lesbian Human Rights Commission also noted close to 20 cases of Ugandans seeking asylum in Kenya.

This is a large increase from 2013 where

⁶ Kadaga Blasts Court on Gay Law, The New Vision August 17, 2014

⁷ Uganda: Ssempea claims governmental conspiracy after anti-gay law overturned: <http://www.pinknews.co.uk/2014/08/04/uganda-ssempea-claims-governmental-conspiracy-after-anti-gay-law-overturned/>

⁸ Ibid

⁹ Museveni denies Uganda forced to drop anti-gay law: <http://mg.co.za/article/2014-08-02-museveni-denies-uganda-forced-to-drop-anti-gay-law>

the NGO noticed only five such cases¹⁰. According to an online blog, there were an estimated 60 members of Uganda's LGBTI community in refugee camps by 2014¹¹.

Due to the sensitivity of the circumstances under which these persons fled Uganda, Chapter Four Uganda resolved not to make public their identities or the countries they have found peace and comfort in.

Understanding a criminal case flow in the criminal justice system

The mandate of prosecution of all criminal cases is vested in the Director of Public Prosecution (DPP) and all criminal cases are instituted in the name of the State. The DPP supervises over case investigations, and conducts prosecution through Resident State Attorneys (RSAs). Cases are investigated by the Uganda Police Force (UPF) through the Directorate of Criminal, Investigation and Intelligence Department (CIID).

The criminal justice system in Uganda revolves around the police, the Director of Public Prosecutions (DPP), courts of law, and the Uganda Prisons which detains the accused persons during trial.

Any persons with complaints of a criminal nature is at liberty to visit any police station to register a complaint and later receive a police reference number, often abbreviated as CRB or SD REF. In some instances, the police open a General Enquiry File (GEF) if the reported allegations of criminality are of a general nature. Complainants are required to have their statements recorded with the help of an assigned police officer.

The complainant is then required to read and confirm that what has been recorded is accurate. Also complainants are at times asked to provide potential witnesses to corroborate their cases. The police have the powers to summon anyone for interrogation to help with investigations into a reported case.

The police also seek medical examinations in cases where it is deemed necessary. These medical examinations are conducted by police doctors or private doctors authorized by the police. Medical examinations results are recorded in police forms PF 3 or PF 18.

Once a case has been deemed to be of merit, the police proceed to seek the accused persons. It is mandatory that the police issue criminal summons in the event that potential witnesses or accused persons are uncooperative.

During investigations, the police can conduct searches at the suspects' houses or work places in the event that such a search could yield evidence.

¹⁰ Ibid

¹¹ <http://oblogdeeblogda.me/2014/06/16/ugandan-gays-in-kenya-desperate-sick-and-fear-death/>

The head investigator then forwards the complete police file containing all the statements and preliminary evidence obtained to the Resident State Attorney (RSA)¹² for perusal and legal advice.

The RSA may then arrive at any of the following conclusions.

1. Sanction the file if he or she finds a *prima facie* case against the accused and order that he or she be produced in court at the earliest opportunity to answer to the charges alleged against him or her.
2. Order the police to close the file if there is no *prima facie*¹³ due to insufficient evidence.
3. The RSA may also direct the police criminal investigations department to release the accused on police bond and proceed with further investigations.

If the RSA prefers the case to court, a court case number will be obtained and the accused will then be arraigned before the court to take plea.

While before the court, the accused has the option to either take a plea of guilty or a plea of not guilty. If the accused pleads guilty, the court will record such plea and adjourn the case for sentencing. If the accused pleads not guilty, the court will record the same and adjourn the case as his or her trial starts in earnest.

During the trial, the accused is free to alter his or her plea. The RSA also has the liberty to amend the charge sheet or enter a *nolle prosequi*¹⁴ if new evidence surfaces or incriminating statements are recanted.

In the trial, the prosecution adduces evidence it has against the accused in court after which the court rules on whether the accused has a case to answer. If the prosecution in the opinion of the court has established no case, the accused will be set free. However, if the court finds incriminating facts against the accused, he or she will be put on defence.

Judging on the evidence adduced during the entire trial, the court will either acquit the accused or convict him or her and adjourn for purposes of passing sentence accordingly.

At all times during this case flow within the criminal justice system, the accused has a right to bail and several other attendant fundamental rights such as the right to a fair and speedy hearing and freedom from torture, inhumane and degrading treatment while in detention.

12 Resident State Attorney is a representative of the Director of Public Prosecutions in a respective magisterial area. He or she exercises the powers of a prosecutor in criminal trials.

13 A fact that is presumed to be true on the face of it unless it is rebutted

14 A formal notice to court by a prosecutor indicating that prosecution is abandoning all or part of a case against an accused person

PART III

Grave violations within the criminal justice system

Intrusive non-consensual and inhumane anal examinations

The practice of subjecting suspects and victims in homosexuality related offences to intrusive non-consensual and inhumane anal examinations is common practice in the criminal justice system. It is considered among practitioners and investigating officers 'normal and formalistic practice' in cases involving sexual offences.

The practice as narrated to Chapter Four Uganda involves identifying the suspects and victims by police officers who routinely take them to a medical doctor, with medical examination forms, with instructions to have them conduct anal examinations on grounds they are either suspects or victims in alleged acts of homosexuality.

On these instructions, doctors conduct anal/rectum examinations on the patients in the presence of at least one police officer. These examinations are done without, consent or any form of counseling. It involves doctors inserting their fingers in the rectum to determine the circumference of the rectum and locate any signs of rectum penetration. The doctors then fill the police form with their observations. The process is unscientific, with some doctors who carry out these kinds of examinations, finding it disturbing.

In two separate interviews with medical practitioners who routinely carry out these examinations, they described how the "suspects" are ordered by the police officers present to remove all their clothes, lay on

the examination table with one leg up or bend over. The medical practitioner is then asked to conduct a "thorough search" of the suspect's private parts, around the anus and testicles area. The medical practitioner is required to forcefully insert his finger or fingers into the anus of the suspect, measuring the anal sphincter and checking for the anal tone. This inhumane practice is often characterized by continuous movements of the doctor's fingers inside the anus of the suspect. No scientific means exist for this test.

A Medical Clinical Officer¹⁵ working at a private clinic in Kampala told Chapter Four Uganda that he had conducted numerous anal examinations on suspects brought to him by the police. He explained to Chapter Four Uganda how he conducts these examinations.

"I have had several requests to conduct medical examinations on people suspected to have been involved in homosexuality. It is usually the victim of the act and some times, the suspect as well. We do not ask for their consent because they are suspects. In these medical examinations, we have two types of Uganda Police medical examination forms. The first is the medical examination form of a victim of sexual assault (Police Form 3A) and the other is the medical examination form of a person accused of sexual assault (24A)." ¹⁶

¹⁵ Real names withheld on request of the interviewee for confidentiality and other personal reasons (pseudonym)

¹⁶ Chapter Four Uganda interview with a Medical Clinical Officer, Kampala (Uganda), January 8th, 2015

He further explained to Chapter Four Uganda the examination process.

*“After taking the narration, I ask the patient to remove all his clothes and lie naked on a table with one hand on the cheek. After this, I ask them to lift one leg up and keep it there to allow me space to search his private parts around the testicles and the anus for any signs of sexually transmitted infections (STIs) such as Genital warts and signs of abrasions around the opening of the anus. While the patient is still lying down on the table, I insert my fingers into his anus to check the looseness of the anal sphincter. The walls are normally tight and any signs of easy penetration indicate evidence of previous internal involuntary penetration by a large object.”*¹⁷

Chapter Four Uganda inquired whether there are scientific examination procedures conducted to determine anal penetration. He said all the examinations are done by fingers.

*“Having handled these medical examinations, I still don’t understand why the state should mind what people do in their bedrooms. For example, “does the government know what you do in your bedroom?”. “You see, those are private things and government should have no business there”. In my opinion, they should not be prosecuted.”*¹⁸

In a separate interview, a gynecologist at a Government Hospital, told Chapter Four Uganda;

*“When I receive a patient who normally comes along with a medical form from police, I first interview them to take down important background information. After the interview, I ask the patient to lie down naked with one leg up and the buttocks are positioned at the edge of the table he is lying on. I then put on gloves, get the light on and start inspecting him or her mostly around the anus. If the area around the anus is darker or has bruises or abrasions, then I can conclude that there has been penetration of the anus with an external object. I further insert one finger or more into the anus of the patient to check for the sphincter muscles. While the finger is in, I ask the patient to squeeze the finger with his/her anal muscles as I try to move it around. Inserting the fingers helps me to check the anal tone and to see if the grip is still there. If my fingers move freely then I can say that there is a poor anal tone. This examination is completely done by the eyes and the hands.”*¹⁹

Victims of this manual rectum examination are left disturbed, mentally tortured and physically assaulted. They are humiliated and robbed of their dignity.

In an interview with Chapter Four Uganda, Jackson Mukasa²⁰ **who while in police detention underwent an anal examination without his consent** narrated how humiliated he was.

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Chapter Four Uganda interview with a Gynecologist (name withheld on request), Kampala (Uganda), January 8th, 2015

²⁰ Jackson Mukasa, aged 19, charged with the offence of ‘permitting a person to have carnal knowledge of a person against the order of nature’ contrary to section 145 (c) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

"The doctors treated me badly. He asked me to remove my clothes and quickly bend over. He then started pulling my private parts. I felt a lot of pain I regret that day. It was a very, very bad day for me" ²¹

100 THE UGANDA GAZETTE POLICE FORM 34

REPUBLIC OF UGANDA

UGANDA POLICE

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT

PART (I)

REQUEST FOR MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT
(To be filled by a Police Officer in duplicate)

TO: MEDICAL PRACTITIONER

FROM: LUNGUZA POLICE STATION

Police Unit: GEF NO 0021014

Police Case No: 31220 Rank: SGT

Name of the Police Officer: [Signature] Telephone contact: 075556909

Who is a victim in a case and has been sent to you by the day of JANUARY 2014

See report your findings in part (b) below. The duplicate should be kept at the health unit.

Name of the Police Officer: [Signature] Rank: SGT

Signature: [Signature] Telephone contact: 075556909

PART (II)

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT
(To be filled by a Medical Health practitioner, in duplicate)

1) Place of Medical Examination: MAYFAIR CLINIC

28/01/14

Signature and Stamp of Examining Practitioner

* Health Health practitioner means a clinical officer, registered midwife or a medical doctor.

1

100 THE UGANDA GAZETTE

2) Particulars of the Victim

Name: Mukasa Jackson

Sex: Male Occupation: Student Marital Status: Single

Place of Residence: Kawaala

3) State the apparent age based on your medical examination and briefly explain how the age was estimated.

Nineteen (19) years old, age based on physical development and dentition

4) History and Circumstances of the incident(s) as narrated to the practitioner.

Reports he was forced into an act of sexual nature by a fellow male about a year ago.

Name of Narrator: Mukasa Jackson Relationship to victim: Self

5) General examination (Note the physical condition of the victim and the state of clothing where applicable).

In fairly good general condition

6) Mental status (include behaviour and emotional state).

Normal mental state

7) Examination of the regions of the body. (Carefully document the nature, number, position, age and dimensions of all injuries and show them on the pictogram on page 4).

(a) Head and Neck (including the mouth):

(b) Chest and Breast:

(c) Abdomen and Back:

NO injuries

28/01/14

Signature and Stamp of Examining Practitioner

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT

2

101 THE UGANDA GAZETTE

(d) Upper and lower limbs:

(e) Genitals:

(f) Buttocks and anus (where applicable): Anal Sphincter Surgery

(g) What is the probable cause(s) of the above injuries? Abreaction due to probable recent anal intercourse

Material samples for purposes of analysis/evidence (indicate materials/samples taken for purposes of analysis/evidence):

10) Other investigations e.g. Ultra-sound scan and X-rays:

HIV test done

NB: Report and attach the results of the investigations in (9) and (10) above if available.

11) State whether there is need for referral or review and the reasons therefor.

None

State any other relevant observations: Confirmed victim of anal intercourse 2-3 days ago

Name of Examining Medical/Health practitioner: Obigo Michael

Medical Clinic Officer

Telephone contact and address: 0771 666 573

28/01/14

Signature and Stamp of Examining Practitioner

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT

3

102 THE UGANDA GAZETTE

PICTOGRAM FOR EXAMINATION OF A VICTIM OF SEXUAL ASSAULT

FRONT OF A PERSON

BACK OF A PERSON

RIGHT SIDE

LEFT SIDE

LEFT SIDE

RIGHT SIDE

MALE ORGAN OF A PERSON

FEMALE ORGAN OF A PERSON

28/01/14

Signature and Stamp of Examining Practitioner

MEDICAL EXAMINATION OF A VICTIM OF SEXUAL ASSAULT

Inspector General of Police

4

In January 2014, Kim Mukisa²² was also subjected to the same. He narrated how a doctor ‘fixed’ his ‘fingers’ in his ‘anus’ to find if he was having anal sex.

According to records obtained by Chapter Four Uganda, in the case of Tommy²³, a gay Ugandan man accused of sodomy, his alleged victims were subjected to mandatory anal medical examinations in February 2014. Chapter Four Uganda did not see any record of consent on the file. In the case of Ahmad Shabaz²⁴, a Pakistani man, charged with three others of allegedly gang raping and sodomising a Ugandan female in Kampala, official records show two non-consensual anal examinations were conducted on the alleged victim.

In the first, conducted at Mulago National Referral Hospital, the examining doctor wrote, “*Vagina normal, rectal, no abnormality*”²⁵ further adding “*there could have been anal sex but no trauma seen*”²⁶.

On 11th July 2013, police took the same victim to Market Street Consultation Clinic, a private clinic in downtown Kampala. The doctor at this clinic also noted, ‘anal sphincter has moderate looseness, but still able to keep tight. No injury noted’²⁷.

In November 2013, Samuel Ganafa²⁸, a gay Ugandan man and LGBTI activist was arrested and ordered to undergo anal medical examination. He told Chapter Four Uganda that it was clear no one cared about his opinion. His alleged victims were also subjected to the same anal medical examinations.

In April 2014, Ugandan born American resident Jojo²⁹ was forced into a medical examination room ran by a Uganda Police medical doctor. He recounted to Chapter Four Uganda how in the presence of four police officers, one of whom was female, he was ordered to strip, kneel on a bed and bend-over forward.

The doctor then fisted Jojo’s anus repeatedly as the police officers watched, making “*comments and observations*”. Jojo narrated how the doctor then pushed inwards and sideways several of his fingers, claiming to be measuring his anal sphincter.

The doctor then ordered him to turn over and face the roof; with his legs wide open and he repeated the same procedure, only this time using metallic objects. One police officer took photographs of Jojo during the entire procedure.

22 Kim Mukisa, aged 24, charged with the offence of ‘having carnal knowledge of a person against the order of nature’ contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

23 Real names withheld on request of the interviewee for confidentiality and other personal reasons (pseudonym). GEF E/488/2013 (CIID Police Headquarters). His case is still going on in court.

24 Ahmad Shabaz, charged with the offence of ‘having carnal knowledge of a person against the order of nature’ contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 155/2013 (Kiwatule Police Station); The accused was acquitted by the trial Chief Magistrate at Buganda Road Court in December 2014.

25 Excerpts from the medical records of the victim in Ahmad’s case; CRB 155/2013 (Kiwatule Police Station)

26 Ibid

27 Ibid

28 Samuel Ganafa, aged 54, charged with the offence of ‘having carnal knowledge of a person against the order of nature’ contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 145/2013 (Kasangati Police Station). The case was dismissed in October 8th, 2014 for want of prosecution

29 Real names withheld on request of the interviewee for confidentiality and other personal reasons (pseudonym). CRB 585/14; SD REF 71/07/4/2014 (Kabalagala Police Station). Jojo was charged with the offence of *sodomy & being in possession of narcotics*. The Principal State Attorney wrote a letter on May 6th, 2014 under Ref MAK-1693-2014 confirming that the DPP did not find sufficient evidence that can sustain any charge against the suspect. He advised the regional CID Officer of Kampala Metropolitan Police-South to close and put away the file.

James³⁰, a gay man aged 33 told Chapter Four Uganda in an interview that after he was arrested, he was taken to a doctor called 'Kapingo' somewhere in Kabalagala, a Kampala suburb. He was ordered to strip naked while a police officer stood at the doorway holding a gun.

*"I was treated like a thief, even worse. The doctor approached me, ordered me to bend over and he checked my private parts, including my anus with his hands. I later read in the local tabloid, the Red Pepper that I had tumors in my anus. This is completely false as the doctor confirmed that nothing was wrong with me. I feel how Red Pepper treated me was very inhumane."*³¹

In yet another interview, British national Bernard Randall³², told Chapter Four Uganda how a doctor forcefully 'stuck his finger' into his anus to check if he had been having anal sex. All this happened as police officers stood-by to witness. He said it was painful and very demeaning to him. However, no one cared about what he thought or felt.

In October 2010, Wilberforce B.³³, a gay Ugandan man aged 30, and his alleged

victim Robert R.³⁴, were taken by police officers from Katwe Police Station to have an anal examination at a government medical facility. Their consent was never asked for.

In November 2014, Bob T.³⁵, the alleged victim in the case of Kevin Kevin³⁶, was also subjected to an anal medical examination at Mayfair Clinic in Kampala. No record exists to suggest that he consented to the examination.

In April 2014, Dickens³⁷, an alleged victim, purportedly sodomised by Jojo³⁸ was taken to Muyenga Dispensary for a compulsory anal examination.

This non-consensual, intrusive medical experimentation of suspects, in detention, in the name of 'investigations', constitutes an act of torture³⁹ in contravention to the UN Convention Against Torture⁴⁰.

30 Real names withheld on request of the interviewee (pseudonym) CRB 889/13 (Entebbe Police Station). His case is still ongoing in court.

31 Chapter Four Uganda interview with James (pseudonym), Kampala (Uganda), February 10th, 2015

32 Chapter Four Uganda Skype interview with Bernard Randall, Kent (UK), February 11th, 2015 (CRB 889/13 & CRB 848/2013 – Entebbe Police Station). He was charged with the offence of *trafficking obscene publications* C/s 166(1)(a) of the PCA Cap 120 and *sodomy* respectively. The two cases against him were dropped & court ordered that he be deported from Uganda.

33 Real names withheld on request (pseudonym); SD REF 02/12/10/2010; CR No. 7183/10 (Katwe Police Station). He was charged with the offence of *having carnal knowledge of a person against the order of nature*. His case was dismissed in July 2011 for lack of prosecution.

34 Real names withheld (pseudonym). He is the alleged victim in the case against Wilberforce B. (pseudonym)

35 Real names withheld (pseudonym). He is the victim in the case against Kevin Kevin; SD REF 49/01/11/2014 (Seeta Police Station)

36 Real names withheld (pseudonym). He was charged with the offence of *'having carnal knowledge of a person against the order of nature'* contrary to section 145 (a) of the Penal Code Act Cap 120; SD REF 49/01/11/2014 (Seeta Police Station). Kevin is facing *sodomy* charges and his case is still ongoing.

37 Real names withheld (pseudonym). He is the alleged victim in the case against Jojo (pseudonym)

38 Real names withheld on request of the interviewee for confidentiality and other personal reasons (pseudonym). CRB 585/14; SD REF 71/07/4/2014 (Kabalagala Police Station). Jojo was charged with the offence of *sodomy* & being in possession of narcosis. The Principal State Attorney wrote a letter on May 6th, 2014 under Ref MAK-1693-2014 confirming that the DPP did not find sufficient evidence that can sustain any charge against the suspect. He advised the regional CID Officer of Kampala Metropolitan Police-South to close and put away the file.

39 The U.N. Committee Against Torture; in 2002 reviewed the issue of forensic anal examinations; referred to 'forensic anal examinations' as a 'degrading treatment'

40 Article 7 of the ICCPR - "... In particular, **no one** shall be subjected without *his free consent to medical or scientific experimentation*". This position is sustained by the UN Committee Against Torture in 2002 after a review of the issue of forensic anal examinations (Committee referred to '*anal examinations*' as '*degrading treatment*' and the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; OHCHR Report on Sexual Orientation and Gender Identity

It further amounts to obtaining 'evidence' through torture and other illegal procedures and such evidence ought not to be admissible against the accused in a court of law for violating⁴¹ basic human rights of the victim. The involvement and conduct of medical practitioners in these non-consensual and intrusive procedures violates fundamental medical professional ethics by illegally 'applying their knowledge and skills in order to assist' the state obtain 'evidence' through degrading means.

The Uganda Medical and Dental Practitioners Council's Code of Professional Ethics⁴², the World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians⁴³ forbid members of the profession from participating in acts that violate of human rights.

Research further indicates that this non-consensual anal examination often has no evidential value in court. Apart from the fact that most of these examinations are conducted after a significant time lapse from the time of committal of the alleged offence, they cannot, in part for the manner in which they are conducted, establish a causal relation between the suspects and victims.

Most of the cases reviewed in this research were dismissed in courts of law after long periods of trial for 'lack of evidence' even in cases where 'positive' medical results of anal examinations were on record.

What it in fact achieves is to insidiously punish a suspect who is still presumed innocent and add torture to the victim of the alleged crime.

Inhumane medical examinations without prior counseling and consent

The intrusive mandatory HIV testing that is 'sanctioned' by the Penal Code (Amendment) Act, 2009 violates fundamental rights to the security, privacy, physical and mental health of the person. Although this inhumane medical experiment applies to heterosexuals in sexual related offences, UNAIDS and WHO clarify that there are no exceptions⁴⁴ to justify compulsory HIV tests and the procedure in which it is conducted.

The new HIV and AIDS Prevention and Control Act⁴⁵, 2014 provides for mandatory HIV testing for suspects in '***sexual offences***' for purposes of '***criminal proceedings and investigations***'. It does not mention the interests of the supposed victim of the sexual offence; an argument that is often conveniently and albeit, lazily fronted to justify the attendant violations.

The evidence collected during this research reveals how these inhumane medical examinations are conducted without any form of pre or post-test counseling.

41 April 2011; - The 'UNHCR's Comments on the Practice of Phallometry in the Czech Republic to Determine the Credibility of Asylum Claims based on Persecution due to Sexual Orientation': <http://www.unhcr.org/refworld/docid/4daeb07b2.html>.

42 See Part II: The Uganda Medical and Dental Practitioners Council's code of professional ethics - <http://www.umdpc.com/uploads/codeofethics.pdf>

43 The World Medical Association and the UN Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians; Principle No. 4. Link: <http://www.un.org/documents/ga/res/37/a37r194.htm>

44 UNAIDS/WHO, "UNAIDS/WHO Policy Statement on HIV Testing," June 2004, <http://www.who.int/entity/hiv/pub/vct/en/hivtestingpolicy04.pdf> (accessed October 27, 2009)

45 The HIV and AIDS Prevention and Control Act, 2014 signed into law on 31st July 2014. Section 12. - <http://www.hivlawandpolicy.org/sites/www.hivlawandpolicy.org/files/Ugandan-HIV%20Law.pdf>

No effort to secure consent from the patients before these tests are conducted is ever done. In an interview with a Gynecologist⁴⁶ at a government hospital, the patients taken to their facilities by the police are required to have their blood samples taken to facilitate an HIV and other STI tests.

In the case of King⁴⁷, he was subjected to medical examination without his consent while in police custody shortly after his arrest.

*“During my detention, the police took me to Ntungamo Medical Centre for medical examination. The medical officer came to take my blood to test my HIV status & other STI tests and when I asked him why he had not even counseled me or asked for my consent, he laughed at me and assured me that police suspects need not give consent because it is by force and there is no need to counsel me.”*⁴⁸

King told Chapter Four Uganda that he felt the medical officer who attended to him looked at him as an animal when he heard that he was being accused of sodomising schoolboys. He appeared so judgmental and very hostile.

King's alleged victims were also medically examined during which their HIV status and other STI tests were conducted. No record exists to show that it was consensual.

In the case of Kim Mukisa⁴⁹ & Jackson Mukasa⁵⁰, the two recounted to our researchers in an interview that during their detention in January 2014, they were subjected to the humiliating and intrusive HIV and other STI tests without their consent. They were never counseled before or after the tests.

According to the records that Chapter Four Uganda obtained in the case of Tommy N.⁵¹, a gay man accused of sodomy, he was also subjected to the degrading and discriminatory mandatory HIV testing in February 2014. No evidence on file suggests that he consented to the medical examination or that he was counseled prior to the same being subjected to him.

In February 2014, Tommy's alleged victims were also subjected to mandatory HIV status medical examinations. Our researcher did not see any record of consent or evidence of counseling.

Chapter Four Uganda also conducted an interview with Ahmad Shabaz⁵², an alleged gay man recently charged with gang-raping and sodomising a young lady in Kampala in the company of three of his other co-accused.

46 Chapter Four Uganda interview with a Gynecologist (name withheld on request), Kampala (Uganda), January 8th, 2015

47 King Byabagye Wenceslaus; charged with the offence of *sodomy under CRB 2354/13. GEF 17/2013*. The case was still pending at police at the time of publication of this report. The suspect continues to report on police bond.

48 Chapter Four Uganda interview with Byabagye King Wenceslaus, Kampala (Uganda), January 19, 2015

49 Kim Mukisa, aged 24, charged with the offence of '*having carnal knowledge of a person against the order of nature*' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

50 Jackson Mukasa, aged 19, charged with the offence of '*permitting a person to have carnal knowledge of a person against the order of nature*' contrary to section 145 (c) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

51 Real names withheld on request of the interviewee for confidentiality and other personal reasons (pseudonym). GEF E/488/2013 (CIID Police Headquarters). His case is still going on in court.

52 Ahmad Shabaz, charged with the offence of '*having carnal knowledge of a person against the order of nature*' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 155/2013 (Kiwatule Police Station); The accused was acquitted by the trial Chief Magistrate at Buganda Road Court in December 2014.

He said he was subjected to mandatory HIV testing three times while in police custody. Because of the homophobia he faced as a result of his alleged orientation and the sodomy charges he faced, he said that the police authorities and medical officers did not believe the results of lab tests. He told our researcher that they had to do it three times instead of once to believe it.

In October 2013, Ahmad's co-accused Mohammad Waqas⁵³ was also subjected to a mandatory HIV/STI tests.

The victim in this case was also subjected to repeated HIV tests in July 2013 and no record on file suggests that there was consent or counseling during these intrusive medical examinations.

In November 2013, Samuel Ganafa⁵⁴, a gay man and LGBT activist was arrested and his blood samples were also forcefully taken to facilitate his HIV/STI tests. He received no counseling services prior or after the tests. He told our researcher that it was clear no one cared about his opinion. His alleged victims were also subjected non-consensual to HIV tests.

James⁵⁵, a gay man aged 33 shared with our researcher medical records revealing how he was subjected to mandatory HIV testing. He did not receive any pre or post-test counseling and his consent was never sought.

In an interview with Bernard Randall⁵⁶, he narrated to Chapter Four Uganda how the doctor forcefully took his blood sample in the presence of the police without his consent. His HIV test was conducted and no counseling was ever offered to him.

In October 2010, Wilberforce B.⁵⁷, a gay man aged 30, was taken to Muyenga Dispensary Laboratory and police officers from Katwe Police Station ordered the medical officer to run his HIV blood test. According to the records obtained by Chapter Four Uganda, the clinical notes of Wilberforce had the writing, 'homosexuality'. His alleged victim, Robert R.⁵⁸, was also subjected to the same mandatory HIV test. No records on file as well suggest that he consented to this intrusive medical test.

In November 2014, Kevin Kevin⁵⁹, aged 18, was arrested and taken to a hospital to have his HIV status checked without his consent. The 'sperms' allegedly recovered on the clothes of the alleged victim were also collected and subjected to a DNA test. In the same month, his alleged victim, Bob T.⁶⁰, was also subjected to an HIV test at Mayfair Clinic in Kampala. In the familiar pattern, no consent form exists on record.

The prevalence of non-consensual inhumane medical examinations specifically in relation to mandatory HIV and STI tests is a norm as documented in this section in violation

53 Charge sheet in the case of Ahmad Shabaz & 3 others which Chapter Four Uganda obtained

54 Samuel Ganafa, aged 54, was charged with the offence of '*having carnal knowledge of a person against the order of nature*' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 145/2013 (Kasangati Police Station). The case was dismissed in October 8th, 2014 for want of prosecution

55 Real names withheld on request of the interviewee (pseudonym)

56 Chapter Four Uganda Skype interview with Bernard Randall, Kent (UK), February 11th, 2015

57 Real names withheld on request (pseudonym)

58 Real names withheld (pseudonym). He is the victim in the case against Wilberforce B. (pseudonym)

59 Real names withheld (pseudonym). He was charged with the offence of '*having carnal knowledge of a person against the order of nature*' contrary to section 145 (a) of the Penal Code Act Cap 120. Seeta Police Station. The case is still going on at Mukono Court

60 Real names withheld (pseudonym). He is the victim in the case against Kevin Kevin

charge and caution statement

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In this charge and caution statement recorded on October 3, 2013 Waswa Ssentamu admits to having been part of the gang of four that robbed Bernard Randall at his Entebbe home. In the statement Ssentamu reveals how the robbery was planned and the items they took.

of codes of medical ethics and acceptable human rights standards.

According to the Uganda Medical and Dental Practitioners Council's Code of Professional Ethics⁶¹, it is unethical to violate the human rights of a patient, even if such violation is being done under the orders of the state. It adds that no practitioner shall use his or her professional skills to participate in any actions that occasion violations of human rights. In defining human rights, the code refers to the definitions set out in Chapter Four of the Constitution of the Republic of Uganda and espouses the spirit of international human rights law (*Part II to the code*).

In the Uganda National Policy Guidelines for HIV Counseling and Testing⁶², it is postulated that mandatory HIV testing '*must proceed post exposure prophylaxis*' and adds that, '*it must be accompanied with appropriate post-test information giving*'. In practice, no pre- or post-test counseling is ever given to suspects subjected to mandatory HIV tests.

The lack of counseling services creates room for a wide range of unexpected pitfalls capable of even affecting the victim of the alleged crime. For example, instead of protecting the victims, the mandatory examination that is conducted without any form of counseling actually compromises them. It exposes them to impromptu discovery and a negative HIV result may erroneously make one to decline HIV post-exposure prophylaxis (PEP) yet perhaps it

was a false negative.

It also has to be noted that compulsory HIV medical examination on criminal suspects does not present any significant forensic purpose to the victim or for evidential value during trials since it draws no clear connection between the parties involved and the alleged crime.

Similar to the consequences of non-consensual anal examinations, what these inhumane medical examinations achieve, is to insidiously punish a suspect who is still presumed innocent and add torture to the victim of the alleged crime by subjecting them to discovery.

Refusal to investigate cases reported by persons of different sexual orientation and gender identity

The police routinely refuse to investigate cases reported by persons of different sexual orientation and gender identity when reported. In several cases investigated for this report, the police instead turn against the persons reporting the cases and charge them for crimes ranging from indecent exposures, sodomy and having sex against order of nature.

The complaints of criminality against persons of different sexual orientation and gender identity are often ignored and the reported suspects turned into witnesses in charges against persons of different sexual orientation and gender identity for their own sexuality and gender identity. In some cases, they are attacked and assaulted by the police to whom they have run for protection.

Kim Mukisa told Chapter Four Uganda that after running away from a mob that wanted

61 The Uganda Medical and Dental Practitioners Council's code of professional ethics - <http://www.umdpc.com/uploads/codeofethics.pdf>

62 Uganda National Policy Guidelines for HIV Counseling and Testing, Ministry of Health February 2005, Page 3 - http://www.who.int/hiv/pub/guidelines/uganda_art.pdf

to kill him because of his sexuality, he reported a case of assault at the Old Kampala Police Station.

“Shockingly, the police officers at Old Kampala Police Station refused to handle our assault case and instead put us under arrest for being gay. They slapped Kim and beat him with wires, and forced him to make a statement accepting to be gay” - Jackson Mukasa (Kim, a co-accused agreed to this statement during the interview) ⁶³

In February 2014, Sammy S.,⁶⁴ aged 28, a transgender man and a Paralegal offering free legal assistance to LGBTI people was assaulted by the police while he had gone to follow up on a case. He said the police officers at Kira Police Station in Namugongo detained him and asked him whether he was a boy or a girl. He hesitated to answer being surprised by the question. A police officer suddenly started slapping, beating, and punching him, demanding he answers. Sammy told Chapter Four Uganda the officer then violently touched his crotch and chest to “confirm” his gender.

Sammy was then handed to a female officer. This officer took Sammy to a different room and forcibly removed his clothes. She then touched him while pointing at his private parts. During this process, the female officer slapped and screamed at him. A crowd gathered and the police paraded Sammy before them. Sammy said they then took him around the police station, telling whoever cared to hear that he was a “thug” and that no one should associate with him.

Sammy was then forcefully detained with female suspects. After a while, he was removed and forced to record a statement. He was ordered to sign the statement without reading it. Sammy said to date; he does not know what the police officer wrote in that statement. He was further denied the right to make a phone call to his friends.

In September of 2013, Bernard Randall was attacked and robbed of his British passport, visa ATM card, three smart phones, an iPad, a laptop computer, two digital cameras, £2,500, €90 and Ugx 1,5 million and wristwatch. He reported a case of robbery at the Entebbe police station on the same day and No 29058 D/CPL Tusiime took his statement⁶⁵. On October 1, 2013, the police arrested the suspects, Eric Bugembe and Waswa Sentamu.

The suspects confessed to stealing Randall’s property and recorded police statements. In a charge and caution statement taken before D/C ASP Aguti Pamela, the suspects confessed to the robbery and were charged before the Entebbe Chief Magistrates’ Court and remanded to prison.

On October 18, 2013, pictures of Randall were published in a local tabloid and he was subsequently arrested on October 21, 2013 and charged with trafficking in obscene publication in accordance with Section 166 (1) of the Penal Code⁶⁶. The self confessed suspects in the robbery of Randall’s property return up as police witnesses and record statements claiming attempted Sodomy.

⁶³ Chapter Four Uganda interview with Jackson Mukasa, Kampala, January 20, 2015

⁶⁴ Chapter Four Uganda interview with Sammy S., (not real names), Kampala, February 03rd, 2015

⁶⁵ Case was recorded under CRB 848/2013. Police statement obtained and on file at Chapter Four Uganda

⁶⁶ Court case file on record at Chapter Four Uganda. Case number is CO/0648 of 2013

The robbery case trial abated and a furious effort to charge, humiliate and expose Randall ensued leading up to his deportation from Uganda.



In-cell abuse of sexual minorities

Chapter Four Uganda documented cases of police officers, and fellow inmates assaulting and abusing suspects in detention because of their sexual orientation. The criminal justice system has general systemic problems on matters of mistreatment of inmates and detainees, but the research carried out by Chapter Four identified specific cruel and inhumane treatment directed towards sexual minorities on account of their sexual orientation and usually at the instigation of the police.

Societal homophobia, as well as the misapplication of an already existing retrogressive legal regime on sexual minority persons, emboldened police officers, and other inmates to violate, dehumanize and degrade the sanctity of sexual minority persons while in custody of the justice system. Jackson Mukasa told Chapter Four Uganda that after his arrest, he was taken to Lungunja Police Station. Upon arrival, the police officers and suspects in the cell questioned him why he was gay.

“The police officers slapped me around and called me insulting names. They threatened to seriously beat me up if I don’t say what they want to hear in the statement. They forcefully obtained a statement from me under threats and forced me to sign it yet I never wanted too. The police officers also told me that I am cursed. That how can I allow people to fuck me in the anus?” - Jackson ⁶⁷

“They (police) said they would even tell the prisoners in the cell to beat me up” - Jackson ⁶⁸

Jackson said the treatment in the hands of the police was generally bad. The treatment in the police cell was not any better.

“I felt that the police officers did not treat us as human beings. We were different from the other prisoners in the cells. We were eating a special food. The food that they brought for us was so disgusting. Our food was different compared with other prisoners. Our treatment was really bad.” - Jackson ⁶⁹

In another interview, Bad Black, a 25-year old gay Ugandan man living in Bwaise, a Kampala suburb, spoke of how his wrists were tightly tied with ropes during his arrest by police officers. The ropes left painful scars on him. On arrival at the police station, other officers beat him.

“They (police) told all the inmates that I was gay and that they shall do anything they want with me” - Bad Black ⁷⁰

In October 2013, James, a gay man aged 33, said he was punched, slapped, kicked and pushed around by police officers and prison warders during the entire time in detention. In his own words, James refers to the beatings and insults as ‘common’ incidences that made him feel like “taking his own life” to escape the suffering. His lawyers confirmed to Chapter Four Uganda he (James) reported these incidences.

“I was treated very badly. I felt very small and thought several times about committing suicide” ⁷¹

He further told Chapter Four Uganda that his fellow inmates were more cordial at first but upon learning of the reason for his detention, he was beaten up very often.

“They (fellow inmates) would charge me money for sleeping on the cold ground floor of cement” ⁷²

Samuel Ganafa told Chapter Four Uganda that while in detention, a police officer called him to record his statement. He spoke while the officer presumably wrote down what he said. Samuel was then asked to sign the statement. Samuel politely requested to read the statement before signing it. He asked for his glasses.

⁶⁷ ⁶⁷ Chapter Four Uganda interview with Jackson Mukasa, Kampala, January 20th, 2015

⁶⁸ Ibid

⁶⁹ Ibid

⁷⁰ Chapter Four Uganda interview with Bad Black, Kampala, January 30th, 2015

⁷¹ Chapter Four Uganda interview with James, Kampala, February 10th, 2015

⁷² Ibid

The police officers refused to give them to him. He said he was finally forced to sign a statement he had not fully read and understood.

Samuel further said he was also assaulted on arrival at Luzira prison. He said a prison warder promised to kill him himself if he had sex with other inmates at the prison.

British national Bernard Randall detained on charges of 'trafficking in obscene publications' said he was not treated so badly by the police though he generally observed that the officers' attitude towards him was different because of his sexual orientation.

"I was not beaten by the police but the fact that I am white must have helped"

However, Randall complained of the police refusing to allow him make any phone calls while at the police station. This frustrated his efforts to access legal representation.

In the case of Kevin Kevin, while in detention at a police station, an anti-gay vigilante group stormed the police station, grabbed him and beat him in the presence of police officers.

Kelly M., aged 25, narrated to Chapter Four Uganda how he was arrested and locked up in a police cell in Kikajjo Police Station. He said the officers refused to tell him why he was being detained. While in detention, the police officers refused to allow him make phone calls to his lawyer or friend. The in-cell violations documented above, point to a recurrent pattern of physical and psychological abuse of persons of different sexual orientation and gender identity while in detention or custody.

Sexual minority persons have little chance at justice in the criminal justice system. It is more imperative for the State to reform its policies and practices on the detention of sexual minority persons, and provide effective safeguards for the fair treatment of these persons while under custody of the justice system.

The duty to protect sexual minority suspects, like other suspects in detention, is on the State. According to the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa:⁷³

"States shall ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for the inherent dignity of the human person."

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The public justice system in Uganda must ensure that when, specifically, a person of different sexual orientation and gender identity is deprived of their liberty, it takes all steps necessary to ensure that the detained or imprisoned person is neither tortured, nor subjected to cruel, inhumane or degrading treatment.

However, our findings indicate that sexual minority persons have been repeatedly and severely beaten, denied the opportunity to inform next of kin of their arrests, admonished and chastised for being gay, threatened with violence including death, discriminatively treated compared to other prisoners and inmates, tortured for purposes of information extraction, indecently

73 African Commission on Human and Peoples' Rights, DOC/OS (XXX) 247.

74 M7, p. 12, (*Right to humane treatment*).

assaulted, and forced to authenticate their written statements without reading or verifying the information.

Media parading of LGBTI victims in the face of increased risks in the society

The parading of suspects to the media by the police before production in court is common practice. The parade of suspects is accompanied with them being photographed and their statements scrutinized by journalists. The press coverage of these parades often refers to suspects as “hardcore criminals” and “thugs,” even though they have never been convicted of any crime⁷⁵. In the case of persons with different sexual orientation and gender identity, they are always accompanied by the demeaning and derogative words such as “serial sodomiser”, “child pedophile” et al.⁷⁶.

The press parades by the police serve several purposes: to create public support for the police and satisfy the largely religious and other folks, to serve as a deterrent, and to be a potential platform for suspects’ confessions. However, such policies aimed at forced public shaming of individuals can amount to violations of suspects’ rights to a fair trial and flout principles of due process⁷⁷.

In limited circumstances, the Police Act⁷⁸ provides for an exception for a police officer

above the rank of inspector to ‘cause’ taking of photographs of any suspect or convict who is in *lawful custody*. In the event that such a person ‘refuses’ to allow his or her photographs to be taken, they become liable to a fine or imprisonment for one month. It is only after serving this sentence that the police may use ‘reasonable force’ to have such photographs taken. The intended purpose of the provision was for evidential and record, not press, purpose.

The parade of persons of different sexual orientation and gender identity in the press only escalates the risks of violence in a society that is hostile to them. In this report, Chapter Four Uganda has documented cases where the police officers use threats and beatings to get some LGBTI suspects to the media parade.

Whereas media parades of detainees are a general violation, this practice presents increased risks to persons of different sexual orientation and gender identity. Public and any information describing an individual as homosexual is likely to attract cruel and violent reaction from the anti-gay vigilantes. During this research, Chapter Four Uganda documented cases of LGBTI suspects and victims being evicted from their residences, loss of employment, excommunication from their communities, and other gross violations as result of being identified in the local media as gay or transgender.

In October 2013, King⁷⁹, aged 30, was arrested on charges of sodomy. He recounted to Chapter Four Uganda that while in detention, he was forcefully pulled out of his

75 See for instance Human Rights watch, Violence Instead of Vigilance, Torture and Illegal Detention by Uganda’s Rapid Response Unit (available at <http://www.hrw.org/sites/default/files/reports/uganda0311Web.pdf>. Accessed Feb., 2015)

76 “Gang of rapists, defilers arrested”, The Red Pepper newspaper, 26/11/2013 on page 10; “Teacher nabbed for sodomising students”, The Red Pepper newspaper, 12/11/2013 on page 10. King has these copies of the publications photocopied and neatly stapled together in an old file that he moves with. He told Chapter Four Uganda that he hopes one day, he will get justice when his name is cleared

77 Ibid

78 The Police Act Cap 303, Section 30; <http://www.opm.go.ug/assets/media/resources/297/POLICE%20ACT.pdf> Accessed Feb., 2015

79 King Byabagye Wenceslaus; charged with the offence of sodomy under CRB 2354/13. GEF 17/2013. The case was still pending at police at the time of publication of this report. The suspect continues to report on police bond.

cell numerous times to be paraded before the media to have his photographs taken.

*“A journalist would walk into the police station at anytime and ask to see me and they would bring me out of my cell to be photographed without my consent after which I would be taken back to my cell. I felt as if I was less human.”*⁸⁰

In all publications and broadcasts, King's names and/or photos were characteristically exposed. In one of the publications we have referenced, a journalist of the Red Pepper tabloid wrote, 'Byabagye at Ntungamo Police Station under King's photo. The police was gladly authorizing this violation of King's right to privacy and fundamental tenets of right to fair hearing.

King recounted that after his release on police bond in January 22nd, 2014, he could not stay at his home. The media publicity in his case made everyone aware of his sexual orientation. An anti-gay vigilante group in his locality once attempted to lynch⁸¹ him because they could not stay with a homosexual in the same village. Jackson Mukasa⁸² and Kim Mukisa⁸³ narrated to Chapter Four Uganda how they were paraded

before the media several times during their detention in February 2014. Their photographs and video footage were taken at the police station before they were formally charged in court. Due to the massive media coverage, Kim was disowned by his family. He was evicted from a small business stall he operated in a local market. They both reported receiving threats from the public.

Sammy S.,⁸⁴ a transgender man who also offers free paralegal services to the LGBTI community in Uganda was paraded to the media together with the suspect (another transgender man). Sammy had gone to that police station to secure police bond for the detained transgender man. The police officers accused him of impersonation and theft. He said the police claimed he had been conning people by 'pretending to be a man'. Sammy's efforts to explain to them who a transgender is were all futile.

*“Before the media, the transgender man I had come to help out and I were both paraded for impersonation and theft. The police officers claimed that I had been conning people by pretending to be a man. I appeared on news on Bukedde Television. I tried to explain to them what it means to be a transgender but they did not listen to me at all.”*⁸⁵

80 Chapter Four Uganda interview with Byabagye King Wenceslaus, Kampala (Uganda), January 19, 2015

81 *“Immediately I got bond, the community in Ntungamo and Mbarara wanted to lynch me. I had to flee to Kampala for my life after receiving threats from mobs I often met on the road”* – King's statement from an interview with Chapter Four Uganda, Kampala (Uganda), January 19th, 2015

82 Jackson Mukasa, aged 19, charged with the offence of 'permitting a person to have carnal knowledge of a person against the order of nature' contrary to section 145 (c) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

83 Kim Mukisa, aged 24, charged with the offence of 'having carnal knowledge of a person against the order of nature' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

84 Real names withheld on request (pseudonym). He was arrested and detained at Kira Police Station in Namugongo in February 2014 on charges of *impersonation and theft*. The case was dismissed at the police station and no reasons were given

85 Chapter Four Uganda interview with Sammy S., (pseudonym), Kampala (Uganda), February 3rd, 2015

In another interview⁸⁶, Ahmed Shabaz⁸⁷ told Chapter Four Uganda that the media coverage in his case was deafening. He said the unnecessary negative media exposure depicted him and his colleagues, as rapists and homosexuals. It built a very negative narrative towards the company that his bosses had to terminate his services even if he was found innocent by court⁸⁸.

Samuel Ganafa,⁸⁹ a 54-year old gay activist in Kampala told Chapter Four Uganda that he was paraded before the media against his will while in detention. His photographs were taken and a video recorded for news clips. They were aired on local television channels. In all these broadcasts and publications, Samuel said his 'innocence' was 'robbed' from him before he was produced in court.

"I was identified as a sexual offender by some media houses while others referred to me as a rapist. It was very humiliating" ⁹⁰

In an interview, James,⁹¹ a gay man aged 33 years, told Chapter Four Uganda that he tried to protest being paraded before the media but was seriously beaten by the police.

"When I refused to be photographed, the police started to beat me. I was beaten all over my body. They forced me, and I could not fight with 20 police officers" ⁹²

James said he was forcefully paraded, photographed and video graphed. He said police made sure he did not protest. He said since his family and pastor saw him on the news, none of them associate with him anymore.

Bernard Randall narrated to Chapter Four Uganda how it became routine while at the police station to be paraded in front of journalists to have them take photographs. He said he did not consent to the media parade but the police didn't care what he thought.

"There was this journalist from the Red Pepper; Sadik was his name. He was so interested in my medication. The journalist had become interested in my medicine since the police openly exposed everything for them and called my medicine – drugs for gays. They later wrote very bad things about me" ⁹³

In April 2014, following the arrest of Milton K,⁹⁴ aged 26, an LGBTI rights activist, a police officer at Kireka Police Station took his photos and displayed them with homophobic wordings.

86 Chapter Four Uganda telephone interview with Ahmad Shabaz who was in Pakistan, January 22nd, 2015

87 Ahmad Shabaz, charged with the offence of 'having carnal knowledge of a person against the order of nature' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 155/2013 (Kiwatule Police Station); The accused was acquitted by the trial Chief Magistrate at Buganda Road Court in December 2014.

88 Chapter Four Uganda telephone interview with Ahmad Shabaz who was in Pakistan, January 22nd, 2015

89 Samuel Ganafa, aged 54, charged with the offence of 'having carnal knowledge of a person against the order of nature' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 145/2013 (Kasangati Police Station). The case was dismissed in October 8th, 2014 for want of prosecution

90 Chapter Four Uganda interview with Samuel Ganafa, Kampala (Uganda), January 6th, 2015

91 Real name of accused withheld on his request for fear of further victimization (pseudonym). CRB 889/13 (Entebbe Police Station). His case is still ongoing in court.

92 Chapter Four Uganda interview with James (pseudonym), Kampala (Uganda), February 10th, 2015

93 Chapter Four Uganda interview with Bernard Randall, Kent (UK), February 11th, 2015

94 Milton K., was arrested after being found with two gay magazines in his home. He was detained at Kireka Police Station and later released after the police finally dropped the case

*“I remember the officer in charge even took photos of me without my consent and he printed those photos and put them on the notice board in the police station – meanwhile he had written on the photos: ‘Be aware of gays’. I felt so badly treated”*⁹⁵

While speaking at the launch⁹⁶ of the pre-trial detention guidelines, Justice David Wangutusi observed that no amount of crime, including terrorism, justifies police’s actions of parading criminal suspects before the press.

*“Presumption of innocence is absolute; you cannot perforate it on the negative. When police parades suspects on TV, what do you expect the courts to do? To believe witnesses who come and identify them on TV?..... If they have already identified suspects on TV, which court can believe them? You are opening the Attorney General (AG) to payment of damages if these people file suits for having been convicted by police before court convicts them. The AG is liable so we lose either way.”*⁹⁷

In reaction to Justice David Wangutusi’s comments, James Kusemererwa, a senior superintendent from the police’s directorate of human rights admittedly observed;

*“It is a mistake and we shall take it up as an institution (police). Our public relations officers need more sensitization”*⁹⁸

Despite of all this rhetoric, police and the media continue to connive to parade suspects to the media and have sensational stories published with no regard to the attendant human rights violations.

It is important to observe the role this irresponsible and unprofessional practice plays in promoting hate crimes against sexual minorities in Uganda.

Difficulty to access court bail and police bond

Chapter Four’s investigations revealed instances of different sections of the public and the justice system, arbitrarily restricting the right to sexual minority persons to access both police bond and bail.

Under a police bond, the police officer in charge of a police station has the power to release a person taken into custody without a warrant where it is not reasonably possible to take that person to court within forty-eight hours of arrest. No fee is required to be paid for this process.

Bail on the other hand is an agreement between the accused, including the sureties, and the Court that the accused will pay a certain sum of money fixed by the court on failure to attend the trial on a determined date.

These two process are hinged on the presumption of innocence of the accused person/suspect; the notion that one should

95 Chapter Four Uganda interview with Milton K., Kampala (Uganda), February 2nd, 2015

96 Launch took place on 08th August 2014

97 “Stop parading suspects before the media, Judge warns police” – Daily Monitor - <http://www.monitor.co.ug/News/National/Stop-parading-suspects-before-the-media--Judge-warns-police/-/688334/2413692/-/qq9aag/-/index.html> Accessed in Feb, 2015

98 Id

not be confined or incarcerated where there has been no clear and proven guilt of an offence⁹⁹.

The person in custody has the right to apply for bail, not necessarily the right to be granted bail. Thus, as the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* indicate, on the satisfaction of the fact that the case will not be jeopardized by the release of the accused person, the Court can grant bail.

*“Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.”*¹⁰⁰

The Constitution of Uganda further provides for the right to apply for bail:

*“Where a person is arrested in respect of a criminal offence— [...] the person is entitled to apply to the court to be released on bail, and the court may grant that person bail on such conditions as the court considers reasonable [...]”*¹⁰¹

However the discretion of the Court as to what the conditions should be, is guided by what is *reasonable* in the circumstances. Relatedly, Chapter Four discovered that

some sexual minority persons were being denied police bond and being given unreasonable conditions for bail by courts.

When Kim Mukisa and Jackson Mukasa were arrested for being gay, they were detained for seven days in police custody. Kim said a police officer indicated to him that there was no hope in them getting police bond because of the extensive media coverage and public interest in their case. Jackson further told Chapter Four Uganda that it had to take efforts¹⁰² of their lawyers to engage the Inspector General of Police and the Uganda Human Rights Commission to have them produced in court. Kim and Jackson narrated to Chapter Four Uganda how police officers denied them access to their family and friends who were looking to help them. Jackson said they refused to tell his lawyer where exactly he was locked up because they wanted him to suffer.

Furthermore, both Kim and Jackson told Chapter Four that during their trial, they applied for bail. They said that they were shocked when the trial Chief Magistrate ordered them to bring four sureties each, and a recommendation letter from the very Local Council (LC) Chairperson who led the anti-gay vigilante group that assaulted them during their arrest. Kim told Chapter Four Uganda that his father had to kneel down for the area Chairperson to write that recommendation letter; a letter in which the Chairperson unusually included a disclaimer. The whole ordeal was very humiliating for both Kim and his father.

The unusual nature of the treatment of Kim and Jackson during the process of

⁹⁹ Article 28(3)(a) of the Constitution of the Republic of Uganda

¹⁰⁰ African Commission on Human and Peoples' Rights, DOC/OS (XXX) 247, M (1)(e)

¹⁰¹ Article 23(6)(a)

¹⁰² Chapter Four Uganda had not obtained a copy of any of the correspondence referred to here by the time of writing this report.

bail application was the fact that common practice required two sureties per accused rather than four as Court insisted. More to that, court adjourned the case to scrutinize the bail documents of the accused – something not usual in regular criminal law practice. It is no surprise that, in the end, the whole bail application procedure took four months before the two were finally released.

It is very evident that the sexual orientation of Kim and Jackson had a bearing on the difficulty in them accessing both police bond and bail. Both the Police and the Court made a curious deviation from common practice in these processes to make it next to impossible for the two to access bond and bail, respectively.

The discretionary nature, particularly of the bail process, has great potential for abuse. It is easy for homophobic persuasions to be disguised and hidden behind supposedly fair and judicious pronouncements by the Courts. Although some could explain away these discrepancies with a fervent argument for the latitude of the Court's discretion on reasonableness, it is extremely difficult to escape the role that sexual orientation and homophobia had to play in these unusually delayed, otherwise swift processes. It is very critical that the criminal justice system reforms its approach in this matter, and desists from abuse of both legal processes and judicial discretion.

Use of criminal charges for extortions and blackmail

Chapter Four uncovered evidence of extortion of money, and the attempts to do so, from sexual minority persons by the police and the media. This form of blackmail

characterized itself in the constant threat that a sexual minority person would be 'outed' or revealed to the general homophobic public/society as a homosexual. Police and other persons who were aware of the bashing, ostracism, and general mistreatment that sexual minority persons would receive on exposure, perpetrated this extortion based on the fear of publicity on the part of the sexual minority persons.

The Uganda public justice system is required to adhere to certain basic minimums of fairness, independence and justice and not yield to corruption and misuse of the system to profit from the misfortune or vulnerability of victims or accused persons. Extortion and blackmail by the Police in particular, compromises the ability of the justice system to effectively investigate and prosecute crime. In particular, sexual minority persons find themselves excluded from the cover of the law when they are required to make payments in order to be protected. This further encourages discrimination by the system and fosters an arbitrary approach in the way cases of sexual minority persons are handled.

From investigations and interviews carried out by Chapter Four, it was evident that extortion of money and property from sexual minority persons was very prevalent. Due to their sexual orientation, homosexual persons experienced delays in having their matters recorded and concluded at police. These delays were not premised on similar factors as other matters at police; these unnecessary delays hinged on the fact that the Police could easily expose the sexual minority persons to potential injury and harm from a very homophobic society.

King told Chapter Four Uganda that the police officers handling his file blackmailed him to extort money on numerous occasions despite him being a suspect.

King said they had so far extorted approximately UGX: 1,500,000/= (US\$555)¹⁰³ from him. One of the reasons the officers allegedly used numerous times to blackmail him was that the money was “transport facilitation” to search for complainants and victims to make statements from which he was promised that it would provide a basis for him to be found “with no case to answer” since they also believed that he was innocent.

The complainants and victims had disappeared and were no longer following their case. To provide a basis for his allegations, Chapter Four Uganda asked King to make a phone call to one of the police officers handling his file at Rwizi Regional Police in Mbarara to inquire about the status of his file and the officer was heard¹⁰⁴ demanding for money from the suspect if he is to be set free.

In May 2014, a gay man by names of Peter K., was arrested and detained at Namasuba Police Station.

“They (police officers) started asking me humiliating questions such as; Why are you gay? Who is funding you? How much do you earn when you have sex with a man?” ¹⁰⁵

Peter told Chapter Four Uganda that the officers further verbally accused him of kidnapping school children, young boys and having sex with them. No related charges were placed on him despite the horrendous sweeping accusations. He said he believed the allegations were intended to blackmail him to pay money.

While at the police station, Peter narrated to Chapter Four Uganda how he was detained in the police cells without taking his statement or particulars. He said his information was not entered into the registration book for a while as officers tried to extort money from him. He told Chapter Four Uganda that it is only after they realized he had no money that they opted to register his details. This case was never presented to court.

In an interview with James, he told Chapter Four Uganda that after the police paraded him before the media, he started receiving threatening calls from a journalist. He said one journalist introduced himself as a staff reporter at the Red Pepper tabloid and clearly wanted to blackmail him.

The journalist wanted at least US\$5,220 in exchange for not publishing his pictures taken at the police station. James told him he did not have the amount of money and his photographs were published shortly after that.

James further told Chapter Four Uganda that while at the police station, the police officers that handled his case blackmailed and assaulted him.

¹⁰³ Because of the nature of extortion claims, Chapter Four Uganda would not independently verify the specific details of these claims

¹⁰⁴ During the telephone conversation between King and the police officer on January 19th 2015, Chapter Four Uganda heard the officer demanding for money from King to facilitate him to ‘transport’ the file from Mbarara to CIID police headquarters in Kampala.

¹⁰⁵ Chapter Four Uganda interview with Peter K., Kampala, January 05th, 2015

*“The police asked me how much property or money I had. When I refused or hesitated to answer, they slapped me in the face and beat me up. After I told them that I owned a car, land, and a small boutique, they forced me to sign some papers indicating that I had given up or sold some of those items. It was terrible”*¹⁰⁶

James was later to hand over his property and had to pay another £2,500 and UGX: 12 millions to police officers.

In a nutshell, the above information demonstrates a very clear pattern of abuse of the criminal justice system to prey on the vulnerability of sexual minority persons. This vulnerability that causes homosexual persons to pay large sums of money to protect their identity from exposure, is rooted in the fact that a broken justice system recognizes the ‘benefit’ in preying on rather than protecting citizens.

It is on this premise that Chapter Four challenges the main players in the justice system, particularly the Police, to monitor and establish internal checks and mechanisms to guard against this use of the criminal justice system for financial gain from vulnerable sexual minority persons.

Arbitrary arrests and prolonged detention

The practice of police arbitrarily arresting suspects and subjecting them to prolonged detention beyond the constitutionally provided timeframe of 48 hours is common in Uganda’s criminal justice system. It is a violation that occurs to many suspects, LGBTI or heterosexuals.

The police have often fronted an argument that it is difficult to complete investigations within the 48 hours to produce an accused for trial at court. They have also detained suspects brought to them by anti-gay vigilantes without conducting professional investigations into the complaints.

Whereas arbitrary arrests and prolonged detention of detainees are general violations, these practices present far-reaching consequences to people of sexual minorities. Cases of police officers arresting people because of their alleged sexual orientation or gender identity without any *prima facie* case and detaining them for long periods because of homophobic public pressure were documented.

The victims interviewed for this report narrated how these arbitrary arrests and prolonged detention subjected them to being outed, attacks from the homophobic anti-gay community members, loss of employment, evictions and intrusive non-consensual medical experiments.

King¹⁰⁷, a secondary school teacher¹⁰⁸ aged 30, was arbitrarily arrested and detained at a police station for 84 days without charge. These violations were precipitated by his sexual orientation. As a gay man, he had his adult partner who was neither a staff nor a student at the school. When the school administration somehow learnt of his sexual orientation, they framed¹⁰⁹ him for

¹⁰⁶ Chapter Four Uganda interview with James (pseudonym), Kampala (Uganda), February 10th, 2015

¹⁰⁷ King Byabagye Wenceslaus; charged with the offence of *sodomy* under CRB 2354/13. GEF 17/2013. The case was still pending at police at the time of publication of this report. The suspect continues to report on police bond.

¹⁰⁸ He was teaching at Hibiscus High School in Ntungamo District. The school was managed by PEAS Uganda.

¹⁰⁹ King notes that the lead complainant in the case was the Headmaster of the school and not the purported victims or their parents. No charge has further been placed on him despite being arrested over a year ago.

sodomising his male students to make sure that he lost his job at the school¹¹⁰. He was arbitrarily arrested¹¹¹ on 30/10/2013 without any formal, substantial complaints being registered at the Police Station.

King was then arbitrarily detained at Ntungamo Police Station for 16 days without being produced in court.

In November 16th, 2013, he was transferred to Mbarara Police Station and his file forwarded to Rwizi Regional Police for further management under reference GEF 17/2013.

*“I learnt that the cause of my transfer was that after the suspected victims were medically examined and all the other statements reviewed, the Resident State Attorney of Ntungamo found that I had no case to answer. She refused to sanction the file. When the headmaster heard of this, he thought I had bribed the State. This made him run to see the CID boss in Mbarara to allege that the file was being mishandled which prompted him to call for my file hence the transfer.”*¹¹²

In Mbarara, King was detained for 68 more days in police custody. He narrated to Chapter Four Uganda of how he was arbitrarily detained for a total number of 84 days in police custody without being formally charged or produced before a

court. His pleas to get police bond were rubbished¹¹³ even when he had substantial sureties.

King told Chapter Four Uganda that it took heightened pressure from the Uganda Human Rights Commission¹¹⁴ to the Rwizi Regional Police to have them release him on police bond on January 22nd, 2014 from the cell where he had been locked up and forgotten.

To date, King has reported on police bond 12 times. One year after he was first arrested, King's personal liberty continues to remain constrained and he is yet to be produced in any court to have a chance to prove his innocence. King has been robbed of his right to a fair and speedy trial, if indeed; he has any case to answer.

A researcher from Chapter Four Uganda travelled to Mbarara and Ntungamo districts to independently verify these claims and establish the status of the file. The officers at Rwizi Regional Police informed our researcher that the file had been transferred to Kibuli Police CIID headquarters.

Thus, Chapter Four Uganda contacted the records department at Kibuli Police CIID headquarters and independently established that indeed, the file was received on 16th of January 2015. However, no progress had been registered on this file by the time of writing this report.

110 Chapter Four Uganda obtained a copy of King's letter of termination from Hibiscus High School dated 30/01/2014

111 Chapter Four Uganda could not independently verify King's claims that no substantive complaints had been made at the time of his arrest to qualify the need to have him arrested. However, the narrative and information seen by Chapter Four Uganda appear to strongly justify his assertions

112 Chapter Four Uganda interview with Byabagye King Wenceslaus, Kampala (Uganda), January 19, 2015

113 Chapter Four Uganda obtained a copy of a letter from the Uganda Human Rights Commission dated 20/12/2013 under Reference MBR/90/2013 to the Regional Police Commander of Rwizi observing that efforts by the relatives of King to secure police bond for the suspect had been futile.

114 Chapter Four Uganda obtained copies of two letters from the Uganda Human Rights Commission addressed to the Regional Police Commander of Rwizi Region. The first letter is dated 20/12/2013 and after receiving no response, a reminder letter was issued on 10/01/2013 demanding for immediate action.

Stephen & Milton, both transgender people in their 20s, were arbitrarily arrested at a 5-Star hotel in Kampala and detained at Kampala Central Police Station for hours on unfounded suspicion that they were holding a gay wedding ceremony at the 5-Star hotel. They were part of a gathering attending a cocktail organized by Sexual Minorities Uganda (SMUG).

*“I was at the hotel like other people when I suddenly saw 2 people in plain clothes approaching me and my colleague. They identified themselves as police officers and asked for our identification and what we were doing at the hotel. I told them I was there to attend a cocktail dinner organized by SMUG. One of the officers then ordered me to hand over my wallet and while he searched my wallet, another officer showed up and placed the two of us under arrest and ordered us to accompany them to the police station. I asked to know why I was being arrested but the officers did not tell me why.”*¹¹⁵

Stephen told Chapter Four Uganda that they were later arbitrarily detained at the police station for no apparent reason and their Identity Cards were confiscated and photocopied. They were however shortly released, for no apparent reason, without charge despite the arrest and detention.

As already pointed out in this report, In January 2014, Kim Mukisa¹¹⁶ and Jackson Mukasa¹¹⁷ were arrested and detained for seven days in police custody for being gay. Kim said a police officer indicated to him that there was no hope in getting police bond because of the extensive media coverage and public interest in their case. Jackson further told Chapter Four Uganda that it had to take efforts¹¹⁸ of their lawyers to engage the Inspector General of Police and the Uganda Human Rights Commission to have them produced in court.

Jackson and Kim narrated to Chapter Four Uganda how police officers denied them access to their friends who were trying to help them. Jackson said they refused to tell his lawyer where exactly he was locked up because they wanted him to suffer for being gay.

In December 2013, Tommy N.¹¹⁹, aged 54 was arbitrarily arrested and subsequently detained for 10 days before being given police bond. According to Tommy's police statement¹²⁰, while in the United Kingdom (UK) in December 2012, he was shocked by news on the Internet alleging that he had sodomised several people here in Uganda.

116 Kim Mukisa, aged 24, charged with the offence of 'having carnal knowledge of a person against the order of nature' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

117 Jackson Mukasa, aged 19, charged with the offence of 'permitting a person to have carnal knowledge of a person against the order of nature' contrary to section 145 (c) of the Penal Code Act Cap 120; CRB 143/2013 (Old Kampala Police Station); Case was dismissed for want of prosecution in October 2014

118 Chapter Four Uganda had not obtained a copy of any of the correspondence referred to here by the time of writing this report.

119 Real names withheld on request of the interviewee for confidentiality and other personal reasons (pseudonym). GEF E/488/2013 (CIID Police Headquarters). His case is still going on in court.

120 Chapter Four Uganda obtained copies of statements and medical records on Tommy's (pseudonym) file for analysis

115 Chapter Four Uganda interview with Stephen (pseudonym), Kampala (Uganda), January 19, 2015

Graphic images allegedly depicting him in compromising positions with his victims were widely circulated.

Records on file indicate that upon learning of his alleged sexual orientation in the news, the police solely relied on that information to open up a General Enquiries File (GEF)¹²¹ and process an Interpol arrest warrant.

In December 2013, Tommy came back to Uganda and reported himself to the police to categorically deny the allegations and the authenticity of the images depicting him as to have been committing the offence. No evidence in our research suggests that the police conducted a comprehensive verification process to fully ascertain the authenticity of the images in the local tabloids. The police officers handling the file did not share with us any information to the contrary despite being approached.

Nevertheless, Tommy was put under arrest and members of the public were called upon to go and report to police if they are victims of the accused. An extensive search for the purported victims started in earnest while he was in detention.

Chapter Four Uganda further obtained a copy of an amended charge sheet¹²² detailing how police has received only two alleged victims, one of whom claims to have been sodomised by Tommy in 2004 (over 10 years ago).

Ahmad Shahbaz¹²³, aged 32, of Pakistan origin faulted the police for rushing to arbitrarily arrest him and his colleague without verifying the allegations that they had gang-raped and sodomised a 23-year-old woman in Kampala.

He told Chapter Four Uganda that the police's actions were dictated by media pressure and homophobia of the public that effectively made them fail to carry out proper investigations.

*"There was no proof; she reported to them (the Police) and then my colleagues and I were arrested. The Police never went to check the information to get the truth."*¹²⁴

He was then detained at Kira Road Police Station in Kamwokya for one week.

Samuel Ganafa¹²⁵, an LGBTI rights activist told Chapter Four Uganda that police officers from Kasangati Police Station went to his home and informed him that they had got orders from higher ranking officials to arrest him and other LGBTI people who were within his home that day. They accused him of recruiting people into homosexuality and after failing to found their allegations; they decided to charge him with sodomy.

¹²¹ The original case file was opened up at Kira Police Station before being transferred to Kibuli Police CIID headquarters

¹²² Amended charge sheet dated 8/8/2014 has two counts of *having carnal knowledge against the order of nature*, contrary to section 145 (1) of the Penal Code Act, Cap 120. Two victims are mentioned.

¹²³ Ahmad Shabaz, charged with the offence of '*having carnal knowledge of a person against the order of nature*' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 155/2013 (Kiwatule Police Station); The accused was acquitted by the trial Chief Magistrate at Buganda Road Court in December 2014.

¹²⁴ Chapter Four Uganda telephone interview with Ahmad Shabaz who was in Pakistan, January 22nd, 2015

¹²⁵ Chapter Four Uganda interview with Samuel Ganafa, Kampala, January 06th, 2015. Samuel Ganafa, aged 54, was charged with the offence of '*having carnal knowledge of a person against the order of nature*' contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 145/2013 (Kasangati Police Station). The case was dismissed in October 8th, 2014 for want of prosecution

In October 2013, James¹²⁶ was arbitrarily arrested at Entebbe Police Station where he had gone to follow up a case of theft he had reported at the same police station.

He told Chapter Four Uganda that the robbers who stole his property had been arrested and during interrogation, they told the police officers that James, the complainant, in their case was gay.

Without any incriminating evidence to warrant an arrest apart from unverified video recordings, police arrested him and went ahead to deny him police bond.

Kelly M. was arbitrarily arrested and detained at Kikajjo Police Station after finding him with correspondences indicating that he had been invited to an LGBTI conference in Mexico in 2014. The conference was organized by Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA). He said his house was searched without a search warrant.

*“She (CID boss) urgently informed me about my rights and she even blamed the police for not allowing me to make my phone call. The CID knew the law, this was totally different with the police (who arrested him).”*¹²⁷

In February 2014, Sammy S.,¹²⁸ was arbitrarily arrested and detained when he had gone to Kira Police Station in Namugongo to follow up on a case of another transgender man. After the police officers failed to agree

with him that he is a man, Sammy said he was beaten, undressed and detained for impersonation and theft. The police officers were furious that he said he was a ‘man’ yet according to them; he was a ‘woman’.

These incidences of arbitrary arrests and prolonged detention contravene the Constitution of the Republic of Uganda as espoused under Article 23 (1) (c) & (4) (b) in relation to the protection of personal liberty.

The practice is also in total violation of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa¹²⁹ as provided under section M (1) (2) (3) & (4) and other several international legal instruments ratified by Uganda.

Institutionalized homophobia in the criminal justice system

Chapter Four Uganda reviewed the collected data to assess whether there is any pattern of behavior indicating a biased approach from the major actors in the criminal justice system on the basis of sexual orientation or gender identity.

Research revealed patterns of endemic institutionalized homophobia within the criminal justice system.

The police tended to allow its actions to be dictated by a homophobic society compounded by sensational and intrusive media coverage. This involved decisions related to when to effect arrests, conduct of investigations and collection of evidence including extraction of statements, and the exercise of discretion to grant police bond.

126 Chapter Four Uganda interview with James (pseudonym), Kampala (Uganda), February 10th, 2015

127 Chapter Four Uganda interview with Kelly M., Kampala (Uganda), January 23rd, 2015

128 Chapter Four Uganda interview with Sammy S., (pseudonym), Kampala, February 03rd, 2015

129 The principles were developed by the African Commission on Human and Peoples' Rights of the African Union

Cases of police officers assaulting suspects or extorting money from them on basis of their sexual orientation or gender identity were also documented as detailed in other parts to this report.

Chapter Four Uganda wrote a letter to the Director of Public Prosecutions (DPP) requesting for official statistics from his office to inform our interrogation of the conviction rate in these cases but the DPP implied lack of this information by only observing, *“unfortunately, we don’t have the statistics”*¹³⁰.

However, of all the cases reviewed by Chapter Four Uganda for this research, no single case resulted in successful conviction where the accused was sentenced.

Whereas this pattern of failure to secure convictions can be attributed to numerous factors as rightly observed by the DPP, his Lordship, Mike J. Chibita thus, *“Courts of law have the final say”*¹³¹, it is difficult not to question the impartiality of State Attorneys who exercise the DPP’s powers when sanctioning these cases. More to this, incidences of prosecutors using evidence obtained through torture and other degrading means to prosecute people of sexual minorities were documented.

Chapter Four Uganda further documented cases of Judicial Officers entertaining cases that are founded on evidence that is obtained through torture and abuse of the accused’s rights. Police and the prosecutors consistently obtain medical evidence through intrusive, inhumane, and degrading

procedures and the courts entertain the accused to be tried on the basis of such evidence.

As a result of the institutionalized homophobia within the judiciary and the entire criminal justice system, these violations have become a norm of the *modus operandi*.

Chapter Four Uganda obtained case records of Johnny¹³², a 24-year-old gay man. Analysis of the file revealed evidence of institutionalized homophobia in police and the office of the DPP on the basis of sexual orientation or identity.

In his police statement in January 2014, the victim who was accusing Johnny of the offence stated;-

*“... and when he came in, he again smeared me the jelly in the anus and whenever he could try to push the penis in my anus, it could go between my thighs whereby he did not penetrate my anus”*¹³³

He further followed that; -

*“However, (Johnny’s) penis did not enter into my anus but it was just passing between my thighs”*¹³⁴

In January 31st, 2014, Johnny also made his statement at police. He states;-

132 Real names withheld on request (pseudonym). Accused was charged with the offence of ‘having carnal knowledge of a person against the order of nature’ and then the prosecutor amended the charge sheet and preferred the charges of ‘simple defilement’ and ‘indecent assault’. The case was dismissed for want of prosecution after prosecution failed to produce any evidence despite numerous adjournments

133 Excerpts from the signed police statement of the victim in the case of Johnny (pseudonym)

134 Ibid

130 Excerpt from a letter from the Director of Public Prosecutions dated February 5, 2015 under Ref: PRO 42/80/01

131 Ibid

“I told him (alleged victim) that I like masturbation and I used petroleum jelly and smeared him in between his thighs and pressed my penis between the thighs fucking until I released sperms.”

135

Noticeably, if Johnny was to be charged with any offence, it was supposed to be ‘*indecent assault*’ but because of the institutionalized homophobia, the moment the police and office of the Director of Public Prosecutions heard of the related words, they erroneously charged Johnny with an offence they were obviously fully aware that he had not committed. To suggest otherwise would be to undermine their legal knack. There was no *actus reus*¹³⁶ to found the charge.

In February 2014, the police formally preferred a charge¹³⁷ of ‘*having carnal knowledge of a person against the order of nature*’.

A month later in March 2014, the Resident State Attorney at Buganda Road Court amended¹³⁸ the charge sheet by preferring the charges of ‘*simple defilement*’ and an alternative charge of ‘*indecent assault*’.

By this time, Johnny had suffered the stigma that comes with being outed as a homosexual.

In an interview with Samuel Ganafa¹³⁹, an LGBTI rights activist in Kampala, he expressed concern over the conduct of the police which he described as a general perception that a gay suspect must be locked up even if it is based on the slightest of suspicions.

“The police was homophobic and solely took one side. The case was not fairly investigated. The police was biased and did not even take time to investigate. They just tried as much as possible to get a gay-person in prison.”

140

James¹⁴¹ told Chapter Four Uganda that his doctor gave him medicine to take while still in police custody since he was not feeling well. He said that whenever he took his medicine, the police officers present would make fun of him and often said it was ‘**drugs for gays**’ and they would never want to touch the medicine.

Several cases have also been documented in this report¹⁴² revealing how institutionalized homophobia within the police makes police officers to ignore complaints filed by LGBT people or offences generally committed against them. This has resulted in numerous chilling LGBT rights violations by those that should be protecting all citizens without discrimination.

135 Excerpt from the police statement of Johnny (pseudonym) dated January 31st, 2014

136 Latin term used to describe the physical act of the crime one is charged with

137 Chapter Four Uganda obtained a copy of the charge sheet. The Resident State Attorney at Mwanga II Court sanctioned the file and a magistrate signed the same

138 Chapter Four Uganda obtained a copy of the amended charge sheet dated 24/03/2014 and the details under statement of offence are; *Simple defilement C/s 129 (1)* and an alternative charge of *Indecent assault on a boy under eighteen C/s 147* of the Penal Code Act Cap 120.

139 Samuel Ganafa, aged 54, charged with the offence of ‘*having carnal knowledge of a person against the order of nature*’ contrary to section 145 (a) of the Penal Code Act Cap 120; CRB 145/2013 (Kasangati Police Station). The case was dismissed in October 8th, 2014 for want of prosecution

140 Chapter Four Uganda interview with Samuel Ganafa, Kampala (Uganda), January 6th, 2015

141 Real names withheld on request (pseudonym)

142 See the section of ‘*Disregard of LGBT violations by the criminal justice system*’ to this report for samples of cases which were ignored by the police

Sammy S¹⁴³, a transgender and paralegal attending to LGBTI cases, decried the institutionalized homophobia in the police. He observed that his efforts to explain to the police officers what being a transgender man means but they never wanted to listen.

*“I believe that the Police were biased against me because they could not understand what I meant when I said I was a transgender person. To their understanding, you’re either male or female, because of the cultural norms that they are accustomed to.”*¹⁴⁴

In an interview with Kim Mukisa and Jackson Mukasa, they told Chapter Four Uganda that during their trial, they applied for bail. Kim said he was shocked when the trial Chief Magistrate ordered him to bring a recommendation letter from the very Local Council (LC) Chairperson who led the anti-gay vigilante group that assaulted them during their arrest and a number of other stringent demands and processes ensued as documented in another part to this report.

*“In court, both of us felt very targeted as the Chief Magistrate read out our charges. Despite being arrested before the Anti-Homosexuality Law was passed, the courts treated us like an example to that bill. There was too much homophobia all around us.”*¹⁴⁵

Kelly M., told our researchers how he experienced homophobia against sexual minorities at Kikajjo Police Station.

*“I feel to a large extent that the police officers are not well informed about the law regarding homosexuality. They just search as much as they can to try to put people like me, with my sexual orientation, behind bars. I think everyone shall be treated equally.”*¹⁴⁶

In an interview with Apollo K., he narrated to Chapter Four Uganda how he has experienced homophobia at the hands of the police.

*“I have faced a lot of challenges as being gay in Uganda, while I tried to stand up for human rights. One time, in 2011, I was arrested and brought to Mukono Police Station. I spent 3 days at Mukono Police Station and was later released on a bond..... It is hard to be gay in Uganda. The police in Uganda are mainly homophobic.”*¹⁴⁷

Apollo said that after he was arrested, he was also forcefully detained in the cell of women instead of men because of homophobia associated with police hearing that he was gay.

*“They (police officers) told me that I would start to have sex with other inmates if they put me in the same police cell with men, and therefore I had to stay in a police cell for women.”*¹⁴⁸

¹⁴³ Real names withheld on request (pseudonym). He was arrested and detained at Kira Police Station in Namugongo in February 2014 on charges of impersonation and theft. The case was dismissed at the police station and no reasons were given

¹⁴⁴ Chapter Four Uganda interview with Sammy S., (pseudonym), Kampala (Uganda), February 3rd, 2015

¹⁴⁵ Chapter Four Uganda interview with Kim Mukisa, Kampala (Uganda), January 20th, 2015

¹⁴⁶ Chapter Four Uganda interview with Kelly M., Kampala (Uganda) January 23rd, 2015

¹⁴⁷ Chapter Four Uganda interview with Apollo K., Kampala, (Uganda) February 2nd, 2015

¹⁴⁸ Ibid

In his reply to the queries raised by Chapter Four Uganda as observed during this research, the DPP declined to condemn the acts of parading suspects to the media at police stations and did not offer any 'omnibus' answer to the non-consensual and degrading medical examinations that are detailed in this report. This position underscores the level of institutionalized homophobia within the criminal justice system.

The DPP continues to use evidence that they ought to reasonably believe was obtained through recourse to unlawful methods that bear grave violations of the suspect's human rights. Intrusive non-consensual inhumane anal and HIV medical examinations are conducted on suspects and the same results are used as evidence against the suspect during trial.

As standard procedure, any well-intentioned prosecutor is expected to refuse to use such evidence against anyone on the basis of how it was procured, other than those who violated the rights of the victim to procure the same in the first place.

Unfair trials of sexual minorities

Chapter Four Uganda documented cases of unfair trials of suspects based on their sexual orientation or gender identity in Uganda. Research suggests that these unfair trials are directly linked with the perspective that sexual minorities are criminals and as such cannot be seen seeking justice. This denies them the right to an effective remedy.

Cases of abuses and violations against sexual minorities being ignored by the criminal justice system were recorded during this research.

According to the cases documented, it is also observed that the DPP has apparently ignored his role of supervising the legality of police investigations, criminal investigations, and the other roles critical for a smooth functioning of the criminal justice system.

Research findings also revealed cases of unfair trials on the basis of sexual orientation and gender identity associated with provisions applicable to arrest and detention. Specifically, the violations documented fall within the categories of arbitrary arrests and prolonged detention in breach of the right to personal liberty and the right to be brought promptly before a judicial officer, denial of a chance to contact a lawyer or next-of-kin in violation to the rights upon arrest, and assaults during investigations in violation of their right to humane treatment.

Findings further revealed a common pattern of victims in these cases being subjected to inhumane and degrading treatment through compulsory non-consensual anal and HIV medical examinations. No evidence exists on the files reviewed by Chapter Four Uganda to suggest that the alleged victims gave their consent to undergo these intrusive medical experiments.

Unfair trials of victims resulting in deportations from Uganda without being convicted by court were also recorded. None of these victims were given chance to appeal against the deportation orders.

In September 2012, a UK theatre producer David Cecil Edward Hugh was arrested for performing a controversial¹⁴⁹ play titled, '*The River and the Mountain*' allegedly against the orders of the Media Council.

¹⁴⁹ The story of the play was based on a gay business man who was killed by his employees

In August 14th, 2012, David had written to the Uganda Media Council requesting for 'appraisal and review' of the play. In August 29th, 2012, the Council replied ordering David not to stage the play on grounds that "*the play depicts Uganda as a country full of intolerant and violent people who take the law into their own hands*"¹⁵⁰. The Council further noted that homosexuality is "*a crime against morality*"¹⁵¹ and that "*such behavior is immoral and culturally unacceptable (in Uganda)*"¹⁵².

When David was produced in court, he was charged with the offence of "disobedience of lawful orders"¹⁵³ but due to lack of 'evidence', the charges were dropped.

Surprisingly, shortly after the charges were dropped, court ordered that he be deported from Uganda. Immigration officers arrested David and deported him from Uganda where he reportedly has a girlfriend and two children.

In reaction to the deportation, a British foreign office spokesman was quoted as observing that they were "*concerned that he (David) was deported without being given an opportunity to challenge the deportation order through the Ugandan courts*"¹⁵⁴.

In January 2014, Bernard Randall¹⁵⁵, another British man was deported from Uganda on orders of the court over alleged

homosexuality after being found with "obscene materials". Like in David's case, the Director of Public Prosecutions dropped the charges against him without any clear explanations and deportation was shortly thereafter ordered by court.

These arbitrary, discriminatory deportation decisions that flout procedural guarantees¹⁵⁶ subject sexual minorities to unfair trials.

The standard procedural guarantees violated include the right to be heard, the right to appeal to a higher authority, the right to remain pending an appeal, and the right to enjoyment of all facilities to seek a remedy. Foreigners who can demonstrate a close attachment to a state are not supposed to be deported unless all procedural guarantees are fully complied with which in these cases, were not (**ICCPR, Article, 2, 3, 13, 12(4) & 26**)¹⁵⁷.

150 Excerpts from the letter from Uganda Media Council addressed to David Cecil dated 29/08/2012 and duly signed by Goretti Nassanga and Pius Mwinganisa as Chairperson and Secretary to the Media Council respectively (Ref: MC/L/2/12)

151 Ibid

152 Ibid

153 Contrary to section 117 of the Penal Code Act

154 Uganda 'deports' David Cecil, producer of gay play: <http://www.bbc.com/news/world-africa-21423496>

155 Entebbe Police Station, CRB 848/2013

156 ICCPR - articles 12, 13; Declaration on Non-Nationals - article 7; Right of appeal - Decision No. 155/1983 of the UN Human Rights Committee

157 For further reading, see - E/CN.4/L.189/Rev.1 and E/CN.4/SR.316,5 and the notes on A.S. v. Canada, Decision No. 68/1980 of the Human Rights Committee (Nowak's CCCPR Commentary at 219); Marafidou v. Sweden, Decision No. 58/1979 of the Human Rights Committee

PART IV

International, regional and national law standards

General State obligations

The application of international human rights law and the obligation of State parties that result from it are guided by the principles of universality of human rights and non-discrimination. This is enshrined in the Universal Declaration of Human Rights (UDHR), which provides that 'all human beings are born free and equal in dignity and rights.' International law provisions on non-discrimination and equal protection of the law guarantee the freedom from discrimination.

While the right to nondiscrimination protects against discrimination in the enjoyment of other human rights, the right to equal protection of the laws is an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights¹⁵⁸.

The Vienna Declaration and Programme of Action confirms that, 'while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms'¹⁵⁹. The duty to guarantee freedom from discrimination is reiterated under article 26 of the International Covenant on Civil and

Political Rights requiring States to prohibit discrimination.

The Human Rights Committee has stated, 'that the term 'discrimination'...should be understood to imply ***any distinction, exclusion, restriction or preference*** which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and ***which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms*** (emphasis added)'¹⁶⁰.

Sexual orientation as a basis for non-discrimination

The legal provisions under international human rights treaties do not expressly cover discrimination on the basis of one's sexual orientation. However, the grounds enumerated in, for instance, article 26 of the International Covenant on Civil and Political Rights, article 2 of the African Charter on Human and Peoples' Rights are not exhaustive. As is clear from the words 'such as' and 'other status' in all these articles, the lists are illustrative only.

The UN Committee Against Torture, in General Comment No. 2, stated that 'the principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention...States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied

¹⁵⁸ General Comment No. 18, in United Nations Compilation of General Comments, p. 134, para. 1

¹⁵⁹ A/CONF.157/23, para. 5.

¹⁶⁰ Ibid Para 7

to all persons, regardless of . . . sexual orientation, transgender identity ...or any other status or adverse distinction¹⁶¹.

Most recently, the UN Committee on Economic, Social and Cultural Rights, which monitors implementation of the ICESCR, stated that 'other status' as recognized in article 2(2) includes sexual orientation" and gender identity¹⁶².

In Zimbabwe NGO Human Rights Forum v. Zimbabwe, the African Commission on Human and Peoples' Rights observed that 'together with equality before the law and equal protection of the law, the principle of non-discrimination provided under Article 2 of the Charter provides the foundation for the enjoyment of all human rights... The aim of this principle is to ensure equality of treatment for individuals irrespective of nationality, sex, racial or ethnic origin, political opinion, religion or belief, disability, age or sexual orientation'¹⁶³.

National Standard

Uganda has ratified the above regional and international human rights instruments and incorporated the provisions in the national constitution. The principles of universality of human rights (**article 2(1)**), equality and non-discrimination (**article 21 (1)**) are espoused in the constitution. The duty of the states and all its organs to protect, promote and uphold human rights (**article 20 (2)**) is also provided including the duties of all security organs to uphold human rights in the performance of their duties (**article 221**).

¹⁶¹ Committee Against Torture, General Comment 2, UN Doc. CAT/C/GC/2 24 January 2008, at para. 21.

¹⁶² Committee on Economic, Social and Cultural Rights, General Comment 20, UN Doc. E/C.12/GC/20, 10 June 2009, at para. 32.

¹⁶³ Communication 245/2002 – Zimbabwe Human Rights NGO Forum/Zimbabwe, 21st Activity Report, EX.CL/322(X), Annexure III at para.169

The duty of State institutions particularly those involved in the criminal justice system in Uganda to respect, uphold and promote human rights for all is derived from both the constitution and international human rights instruments which Uganda has ratified.

African Commission for Human & Peoples' Rights Resolution on non-discrimination

The African Commission on Human and Peoples' Rights Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity also condemns 'the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity.'

The resolution calls on States 'to end all acts of violence and abuse, whether committed by State or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims'¹⁶⁴.

Standard for medical practitioners

In particular reference to the role of medical practitioners' within the criminal justice system, the Code of Professional Ethics

¹⁶⁴ Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity Adopted at the 55th Ordinary Session of the African Commission on Human and Peoples' Rights in Luanda, Angola, 28 April to 12 May 2014

for Medical and Dental Practitioners¹⁶⁵ puts a mandatory requirement on medical practitioners to respect the fundamental rights of a patient and forbids the willful participation of a practitioner in any actions that violates human rights.

The Code of ethics provides that 'a practitioner shall not violate the human rights of a patient, the patient's family or his or her care giver' (Rule 4 (1). It forbids a practitioner from using 'his or her professional skills to participate in any actions that lead to violations of human rights' (Rule 4(2) (a), and to 'report to Council if there has been a violation of human rights' (Rule 4(2) (b).

The Code further requires medical and dental practitioners 'not to carry out any specific actions that constitute a violation of the bill of rights enshrined in the constitution of Uganda and international human rights law'¹⁶⁶.

These standards are in consonance with international medical practice and are considered sacred in the medical profession. They apply to all medical and dental practitioners whether in the private practice or in the service of the police.

Standard for law enforcement officers

The Ugandan constitution provides the general standard for law enforcement officers to respect, promote and uphold human rights. The constitution provides that 'it shall be the duty of the Uganda Peoples' Defence Forces and any other armed force established in Uganda, the Uganda Police Force and any other police force, the Uganda Prison

Services¹⁶⁷, all intelligence services and the national Security Council to observe and respect human rights and freedoms in the performance of their function'.

This general obligation is also provided for in the Police Act. The Uganda Police Disciplinary Code of Conduct sets out standards for police officers while in execution of their duty. On the values of non-discrimination and equal treatment, it provides that, '*a member of the (police) force shall **treat humanely** all persons at his or her disposal **without discrimination***'¹⁶⁸.

These principles general reflect international standards of treatment of prisoners. According to the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 'State shall ensure that all persons under any form of detention or imprisonment are treated in a humane manner and with respect for inherent dignity of the human person'¹⁶⁹.

The International Human Rights Standards for Law Enforcement confirms this by stating that, '*all police action shall respect the principles of legality, necessity, **non-discrimination**, proportionality and **humanity***'¹⁷⁰.

The Universal Declaration of Human Rights, ICCPR, UN Standard Minimum Rules for the Treatment of Prisoners, and the Torture

167 (Article 221 – see also article 20 (2) which requires all organs and agencies of government and all persons to respect, uphold and promote human rights)

168 (Schedule to section 44 of the Act).

169 Principles and Guideline on the Right to a Fair Trial and Legal Assistance in Africa, M (7) (a), DOC/OS(XXX)247, page 12

170 'International Human Rights Standards for law Enforcement', by the United Nations High Commissioner for Human Rights <http://www.ohchr.org/Documents/Publications/training5Add1en.pdf> - Code of Conduct, articles 2, 3, 5, 7 and 8; Principles on Force & Firearms, preamble and principles 2, 4, 5, 9, 11, 13, 14, 15, 16, 24, 25 and 26

165 Available at <http://www.umdpc.com/uploads/codeofethics.pdf>

166 (Rule 4(2) (c).

Convention all demand for the respect of inherent human rights of detainees by explicitly condemning any acts that amount to subjecting a detainee to torture or to cruel, inhumane or degrading treatment or punishment or any form of violence or threats.

PART V

General Recommendations

To the Uganda Police

- Immediately cease the use of intrusive, non-consensual, inhumane and degrading anal/rectum examinations of persons of different sexual orientation and gender identity as a means of investigations.
- Provide counseling services and obtain patient consent prior to the conduct of medical procedures during the investigation of alleged crimes.
- Immediately issue practice directives for the conduct of investigations of sexual offences to ensure the observance of fundamental rights of both victims and suspects.
- Urgently investigate all allegations of refusal/disregard to investigate cases reported by persons of different sexual orientations and gender identity to the police and ensure that such cases are duly investigated and prosecuted
- Stop parading arrested suspects to the media; particularly LGBTI individuals who face increased violence as a result of such parade.
- Guarantee sexual minorities right to privacy and confidentiality while reporting abuses to the police. Their sexual orientation per se must not be a crime.
- Institute an investigation into assaults of sexual minorities suspects on the basis of their sexual orientation by the police officers at police stations and make such report public.
- Discipline and refer for criminal prosecution police officers who engage in assaulting of LGBTI suspects and other forms of homophobic treatment while at police installations.
- Investigate and discipline officers engaging in the abuse of the criminal justice process to blackmail and extort money and property from sexual minorities.
- Train officers handling LGBTI related cases on the principle of non-discrimination on the basis of sexual orientation and gender identity.

To the Directorate of Public Prosecutions

- Direct the immediate cessation of the use of intrusive non-consensual and inhumane medical examinations results as evidence to prosecute suspects in 'unnatural offences'.
- Take all necessary steps to ensure that all officers responsible in procuring such evidence through torture & inhumane treatment are brought to justice.
- Document and make public annual statistics of cases against LGBTI community.
- Take all steps to prevent abuse of legal process occasioned by non-consensual medical experiments, media parades by the police etc. Take a stand on the same.
- Ensure that the police investigate and forward the files for prosecution in cases of rights abuses against sexual minorities.
- Issue guidelines to State Attorneys on the supervision of investigations to ensure compliance with human rights standards by police officers during investigations

To the Courts of Judicature

- Interrogate how the evidence used by the police and the DPP to incriminate and prosecute sexual minorities was procured with a view of rejecting adducing of any evidence that was obtained through torture, inhumane and degrading means.
- Conduct vigorous review on the legal reason for the arrest of the suspect and generally safeguard his or her well being while in detention.
- The trial chief magistrates' conduct in these trials should not be swayed by the homophobic public opinion.
- Ensure that all accused sexual minorities receive a fair, speedy, and impartial hearing without any form of discrimination on basis of sexual orientation or gender identity.
- Order for prompt investigations of any abuses or rights violations against sexual minorities brought to the attention of the court.
- As soon as practical, dismiss all cases against sexual minorities that fall short of demonstrating a prima facie case.

To the media

- Immediately cease the outing and publication of police parades of suspects particularly of persons of different sexual orientation and gender identity.
- Develop in-house policies that promote non-discrimination on the basis of sexual orientation or gender identity.

To the Civil Society Organizations

- Develop advocacy strategies targeting criminal justice stakeholders with an aim of addressing cases of discrimination and other violations suffered by sexual minorities.
- Develop manuals and conduct trainings on the rights of sexual minorities within the criminal justice system.

