

Promising Practice

The human rights-based approach (HRBA) in German development cooperation: Strengthening non-discrimination for LGBT in Uganda

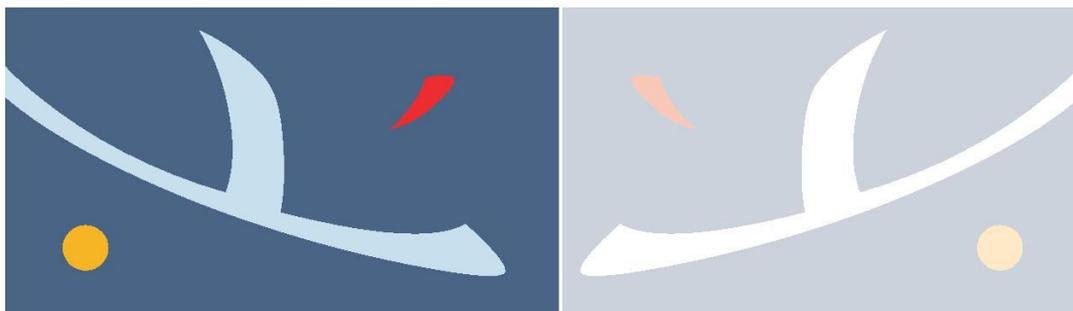
Background

Despite having ratified the pertinent international human rights treaties, Uganda falls short of implementing provisions related to non-discrimination of sexual minorities. While not explicitly mentioned in international human rights accords, discrimination based on sexual identity is now understood as being prohibited by human rights legislation.

Contrary to popular belief, Ugandan law does not criminalise homosexuality itself. Instead, the respective law refers to ‘carnal knowledge against the order of nature’ (Section 145 of the Penal Code Act), which is generally interpreted by lawyers and judges to refer to same-sex sexual activity. In the wider public, however, the narrow focus on behaviour leads to stigmatisation of homosexual lifestyles, identities, and individuals per se. In 2014, the Ugandan parliament passed the Anti-Homosexuality Act, which explicitly prohibited homosexuality and criminalised the promotion of LGBT rights. The Constitutional Court annulled it the same year due to shortcomings in parliamentary voting procedures. In May 2021 the parliament enacted the Sexual Offenses Bill that does not specifically target LGBT persons but aims at consolidating criminal provisions on sexual offenses generally. Nonetheless, many of the provisions affect the LGBT community. The law criminalises so called “Unnatural Offenses”, among them same-sex sexual acts and anal sex. Many human rights activists are currently lobbying against the adoption in its present form. The President has recently refused to sign the Bill on grounds that therein included offences are already provided for under the Penal Code.

There have been no convictions in a Ugandan court for engaging in homosexual behaviour, but arrests occur regularly. Very often these arrests are conducted under the guise of enforcing the law against same sexual relations, although persons arrested are not charged with having “carnal knowledge against the order of nature”. In 2018, 44 cases of arbitrary arrests were recorded that were based on the presumed sexual orientation or gender identity of LGBT persons.

22 out of these cases were founded on the actual offence of “carnal knowledge against the order of nature” presenting the highest number recorded in a single year (11 of the cases were persecuted). In 2019, 22 arrests of LGBT persons were recorded, affecting nearly 160 persons in total. 61 arbitrary arrests were reported in 2020, 42 of them were based on COVID-19 related infractions. In March 2020 a sad level of international awareness was reached when 20 LGBT youth were arrested under the pretext of breaking Covid-19 restrictions. They were kept imprisoned for 52 days without access to lawyers. Severe violations of human rights were reported from the detention period. In May 2021, 42 LGBT persons were arrested under the same pretext but released on bail one week later since the responsible Magistrate considered the charges as minor. Aside from the volatile legal situation for LGBT individuals, transphobia and homophobia are endemic within Ugandan society. Existing norms related to gender and sexuality lead to far reaching discrimination of LGBT individuals and to experiences of stigma and violence. One example is that LGBT employees run the risk of losing their jobs if they out themselves or are outed by others. During the discussion period for the Anti-Homosexuality Act especially, the LGBT community was subjected to numerous incidences of attacks, public slander and residential break-ins. David Kato, a gay rights activist, was murdered in 2011 after a tabloid published a list of names and addresses of LGBT activists. This gender regime based on deeply held patriarchal norms and values also affects state actors and shapes their everyday interactions with LGBT individuals. These norms and values are often more influential than the relevant legal provisions and lead, for instance, to a high number of arrests of LGBT people based solely on their physical appearance. During these arrests, LGBT individuals often experience inhumane treatment and torture. GIZ partner organisations report that intimidation and discrimination by security forces, including social media control and random office raids, result in fear and self-censorship within the LGBT community. Several partner organisations that are providing shelter to LGBT persons were raided by the police or community mobs. LGBT persons face significant discrimination when it comes to accessing public health care and education services.



The documentary “Resilience Diaries – Stories of Transgender Persons” tells various life stories of transgender persons in Uganda. The GIZ Human Rights Project supported EAVA in the realisation of the documentary.



Strengthening human rights in Uganda

Through its “Strengthening Governance and Civil Society Programme” (GCSP) co-funded by the German Federal Ministry for Economic Cooperation and Development (BMZ) and the European Union (EU), GIZ supports state and civil society stakeholders to better realize human rights and implement principles of good governance, such as non-discrimination. In line with the human rights-based approach (HRBA), the project aims to enhance the capacities of state actors as duty-bearers to fulfil their international human rights obligation. At the same time, it assists rights-holders and their organisations to assert their rights. To assure that partner organisations can fulfil their roles as independent stakeholders effectively and answer to their beneficiaries’ demands, GCSP focuses on strengthening their organisational capacities. Furthermore, the programme is promoting a conducive legal and political environment for civil society. As the LGBT community is one of the most marginalised groups in Uganda, activities are designed to address them specifically.

Towards a human rights-based approach

On the duty-bearer side, the project works with the National Planning Authority (NPA) on integrating the HRBA into national development planning processes, local government development plans and sectoral and ministerial plans. The project also supports the Uganda Human Rights Commission (UHRC) to fulfil its mandate, especially in raising citizen awareness on their rights and ensuring a strong complaints management mechanism. Activities with the UHRC comprehend the continuous operating of toll-free complaints line, investigating human rights cases, reducing case backlogs, monitoring places of detention and setting up legal clinics. Additionally, the project strengthens the capacity of the Uganda police force in non-discrimination and LGBT rights.

Activities are designed to raise police awareness of the rights of LGBT persons in Uganda and enhance the force’s knowledge of the relevant legal frameworks. Training courses also provide a safe space for interaction between police officers and LGBT individuals. LGBT persons talk about their personal experiences, how identifying as LGBT has affected their lives, as well as their experiences of arrest and torture. These face-to-face encounters provide a key opportunity for a counter-narrative on LGBT issues, which are usually rhetorically dominated by non-LGBT persons, scandalizing media, or often homophobic politicians. Such strategies allow police officers to develop an openness to the topic. They come to realize that LGBT individuals are human beings just like them and therefore should have the same rights as they do. In the same spirit, the project engages the media to create a culture of accurate media reporting on LGBT issues, to eliminate bias and stigmatization that can be fuelled by one-sided and derogatory reporting. In healthcare, the project engages health workers on the needs of the LGBT community, especial transwomen. Additionally, in 2021, 20 journalists received training in media and equity, where anti-LGBT biases and stereotypes were addressed.

With respect to rights-holders, GCSP addresses the lack of organizational capacities that often hinders the Ugandan LGBT community to tackle existing discrimination, assert their rights and represent their interests in society. Currently, GCSP is strengthening capacities of five LGBT organisations in different areas such as strategic planning, advocacy, and resource mobilization. Also, internal governance aspects and accountability systems are addressed to make sure that the partner organisations are fully functional and meet all legal requirements.

Furthermore, the project supports measures for training LGBT individuals regarding their human rights and national legislation that affects them directly or indirectly. Besides developing an awareness of their rights, participants also learn how to assert them. This includes skills in engaging the Ugandan institutions mandated with investigating human rights violations, and how to hold them accountable. Moreover, GCSP empowers the LGBT Community to tell their authentic stories through publications such as Bombastic magazine. The journal offers the LGBT community a safe space to create awareness through an alternative narrative, in the face of a biased media. In the same spirit, an innovative human rights media organization shot a [documentary](#) focusing on the lived realities of transgender persons in Uganda. It looks at the legal and health challenges that transgender persons face and gives individuals an opportunity to tell their resilience stories.

Through the Digital Human Rights Lab, GCSP strengthens the capacities of LGBT organisations in the use of digital tools.



A GUIDE TO THE NORMATIVE LEGAL FRAMEWORK ON THE HUMAN RIGHTS OF LGBTI PERSONS IN UGANDA

October 2015

In cooperation with the GIZ Human Rights Project, HRAPF developed information on the legal situation of LGBTI in Uganda.



A transwoman during the shoot of the documentary “Diaries – Stories of Transgender Persons”.

Strategic litigation is another approach the project works with to strengthen LGBT organisations. GCSP supports the court appeal of an LGBT organisation against the rejection of its official registration. In June 2018, the High Court upheld an earlier decision by the Uganda Registration Services Bureau to reserve the name of an organisation representing sexual minorities. The reservation of a name, however, is the first step in the registration process for NGOs. The verdict was based on the argument that the mandate of the organisation violates the laws and the morals and values of Uganda. From a human-rights perspective the refusal constitutes a violation of the freedom of association and assembly that are both enshrined in the Ugandan Constitution and in relevant human rights treaties that the country has ratified. The case is still pending in court.

Furthermore, GCSP accompanies two LGBT organisations in their official registration process with the NGO Bureau as required by the NGO Act. Almost no LGBT organisation is officially registered in Uganda which makes their activities susceptible to disruption for not following the legal requirements. They risk sanctions such as closure and cannot use their full capacity to advocate for their rights. Two LGBT organisations with an interest in their registration were selected as specimen, to test the progressiveness of the current registration process for organisations representing marginalized groups.

Achievements and impact

Technical advice for LGBT rights-holders

In the scope of its activities, GIZ technically supports LGBT partner organisations to advocate successfully for changes in the legal system. One of these organisations lobbied the Constitutional Court in Uganda to annul a section barring the Equal Opportunities Commission (EOC) from investigations in any matter that is considered to be ‘immoral’ and ‘socially harmful’, or ‘unacceptable’ ‘by the majority of the society in Uganda’. The provision significantly limited the EOC in executing its mandate related to protecting marginalised groups, among them LGBT individuals. The advocacy strategy was based on the *Adrian Jjuuko v Attorney General* case,

filed by the former. In 2016, the Constitutional Court delivered the landmark ruling declaring the respective Section 15(6)(d) of the EOC Act, 2007 null and void. By abolishing this legal provision, the Constitutional Court enabled the EOC to fulfil its mandate to advance the equality of all Ugandans. The Court’s ruling was a milestone and a fundamental step towards eliminating discrimination, ensuring equality, and strengthening human rights in Uganda.

The Digital Human Rights Lab has strengthened collaboration among LGBT organizations and improved their linkage with the broader human rights community. This has proved helpful, in strengthening capacities, peer-to-peer support and psychosocial support. Through the Innovation Program, an LGBT organisation has received funding and is currently receiving mentorship to improve a mobile application that connects the LGBT community to friendly healthcare services.

The LGBT partner organisations that have been collaborating with GCSP on organizational development for a longer time, show significant improvement in their capacities. Some of them managed to stabilize their income and resource mobilization. Others were able to improve their internal structures and activate the engagement of their Board of Directors which in turn gives the organisations better opportunities to steer in an already challenging environment and stabilize their strategic orientation.

Overall, LGBT partners are in a recognizably better position to claim their rights. They are increasingly accepted in traditional circles of human rights defenders which helps them to obtain support and legal assistance when needed.

Capacity development with duty-bearers

The project has now trained almost 500 police officers in different parts of Uganda. LGBT organisations can therefore rely on a network of allies within the police force. Furthermore, NGOs and the police have started to collaborate when cases of LGBT discrimination arise. Police officers, for instance, are increasingly approaching LGBT organisations, such as the Human Rights Awareness and Promotion Forum (HRAPF), when dealing with arrests or other difficult situations involving LGBT individuals.



Adrian Jjuuko’s lawyer addressing the media after a landmark ruling in 2016 at the Constitutional Court declaring a legal provision null and void that had been practically barring the investigation of discrimination against LGBT.



Since 2013, over 500 Ugandan police officers have been trained on non-discrimination of LGBT

Juliane Osterhaus
juliane.osterhaus@giz.de

Carolin Bernecker
carolin.bernecker@giz.de

The testimony of one participating police officer is illustrative: Upon learning about an arrest of a transgender person by his colleagues, he contacted the legal assistance team from HRAPF and made sure that the involved officers did not harm the arrested individual. Ultimately, the person was released unharmed. Despite these achievements, police officers are still a long way from being able to address these situations by themselves or confront their colleagues when witnessing discriminatory behaviour. Although the police gradually show more openness to learn about LGBT rights, continued efforts are necessary to increase their capacities to tackle LGBT discrimination autonomously.

Challenges

The societal context, characterised by a lack of knowledge regarding LGBT issues as well as conservative norms and moral values, remains challenging. There is very little knowledge among the general population but also among duty-bearers on who LGBT persons are and on the legal frameworks related to sexual orientation and gender identity. Many Ugandans are still convinced that the Anti-Homosexuality Act is in force and base their actions upon it. Besides that, homophobia is widespread in Ugandan culture, with religious institutions strongly promoting it.

Additionally, there is a tendency to politicise LGBT issues as a means of mobilising constituencies in Ugandan politics. During election times especially, politicians have used the topic to win supporters and to deflect public attention from urgent topics that could put their popularity at risk. Another challenge is the inconsistent and fragile network of allies that the project relies on. It is generally difficult to identify allies in Uganda who are interested in and willing to work on the rights of LGBT persons.

Furthermore, cooperation with institutions often depends on the personal interests of individuals and their positive attitudes towards LGBT issues. Often, when there is a change in staff or leadership, cooperation with the partner organisation collapses or has to be re-established from scratch.

The restrictions imposed by the government in the scope of the Covid-19 pandemic were repeatedly used against LGBT organisations and individuals. Several LGBT shelters were raided under the pretext of breaking Covid-19 procedures.

Even under normal conditions, LGBT individuals find themselves in economically very unstable situations – often not having a regular job and income. Therefore, they belonged to the groups most affected by the government lockdowns. Many of them were deprived of the last income generating options and had to move out of their houses when they were not able to pay the rent. A consequence is that currently shelters are overcrowded while the hosting organisations themselves face challenges to make ends meet.

Lessons learned

One of the most important lessons learned in the project relates to the framing of interventions.

Rather than emphasising the support of LGBT rights in an activist sense, the project works with a focus on non-discrimination, and thus positions itself with neutrality in terms of local interest groups. Arguments are drawn from the Ugandan Constitution (1995) that emphasises freedom from discrimination for all persons, including LGBT individuals.

Hence, the project does not proclaim to advocate for the interests of LGBT, but to support the Ugandan authorities in fulfilling their human rights obligations towards the most marginalised groups. Key reference points for the project are the national law and international human rights treaties to which Uganda has committed itself. The project takes a legal and human rights-based approach to an emotionally charged topic instead of engaging in moral or political discussions. Activities also correspond to this line of argumentation, using strategic litigation to change some of the discriminatory laws in Uganda and international mechanisms such as the Universal Periodic Review to raise awareness of and monitor the human rights of LGBT persons.

Published by

Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices Bonn and Eschborn, Germany

Cross sectoral programme
'Realising Human Rights in Development Cooperation'
Friedrich-Ebert-Allee 36 + 40
53111 Bonn, Germany
Phone: +49228 44 60-34 35
Mail: sv-menschenrechte@giz.de
Web: www.giz.de

As at

September 2021

Layout

kipconcept gmbh, Bonn

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On behalf of

Federal Ministry for Economic
Cooperation and Development (BMZ)
Division 401 – Human rights; gender equality;
inclusion of persons with disabilities, Bonn, Germany

In cooperation with

German Institute for Human Rights
Zimmerstraße 26/27
10969 Berlin, Germany