

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 on the basis of 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. There have been no convictions in a Ugandan court for engaging in homosexual behaviour, but a number of arrests have been made and at least one criminal trial conducted. In 2016, 31 arbitrary arrests were **verified**, though the number of unreported cases may be significantly higher.

Aside from the volatile legal situation for LGBT individuals, transphobia and homophobia are endemic within Ugandan society. In a similar way to the structural discrimination of women, 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

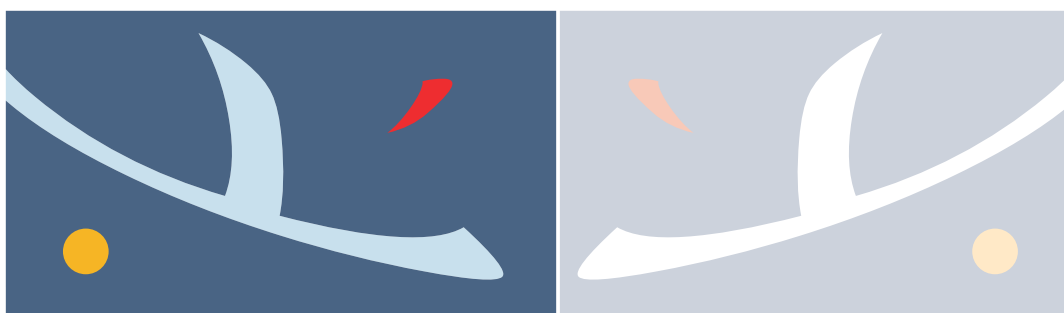
Act especially, the LGBT community was subjected to numerous incidences of attacks, public slander and residential break-ins. David Kato, a gay rights activist, was murdered in 2011 after a tabloid published a list of names and addresses of LGBT activists.

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. LGBT persons face significant discrimination when it comes to accessing public health care and education services.

Strengthening human rights in Uganda

Against this backdrop of LGBT discrimination, GIZ commenced implementation of the 'Strengthening Human Rights in Uganda' project in 2013, financed by the German Federal Ministry for Economic Cooperation and Development (BMZ). Since 2017, the Strengthening Governance and Civil Society Programme has been continuing with the human rights component as one of its five pillars.

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 to practice non-discrimination while at the same time assisting rights-holders and their organisations to assert their rights.



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.



As the LGBT community is one of the most marginalised groups in Uganda, activities are designed to address them specifically. The project is thus working towards increasing tolerance and non-discrimination of LGBT persons in Uganda.

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 works with the Ugandan Human Rights Commission and the Equal Opportunities Commission to enhance their capacities for promoting human rights, e.g. by facilitating the exchange of experiences with other human rights institutions in Africa.

The Ugandan police force is another partner of the project. 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, when they realised that they felt 'different' and how identifying

as LGBT has affected their lives. They also share 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, scandalising media or politicians. Such strategies allow police officers to develop an openness to the topic. They come to realise that LGBT individuals are people just like them who should have the same rights as they do.

With respect to rights-holders and in cooperation with the new Civil Society in Uganda Support Programme (CUSP), the project works with LGBT organisations to specifically address the political marginalisation of persons identifying as LGBT. One key factor leading to this marginalisation is the discrimination experienced by LGBT individuals in the education sector. Persons identifying as LGBT are often unable to finish primary school and/or obtain any secondary or tertiary education due to high levels of discrimination in schools. Most educational facilities systematically exclude LGBT students once they have come out. This leads to a lack of basic education, not to mention accounting or advocacy skills that would be crucial to managing an organisation.

Against this backdrop, GIZ seeks to empower the Ugandan LGBT community and organisations by means of organisational capacity development. This focus enhances the ability of LGBT persons to tackle existing discrimination, assert their rights and represent their interests in society. The project supports measures for training LGBT persons with regard to 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 knowing how to engage the Ugandan institutions mandated with investigating human rights violations. Additionally, the training equips organisations with the skills needed to hold the two institutions accountable for fulfilling their mandate, not least vis-à-vis the LGBT community.

Strategic litigation is another approach the project works with to strengthen LGBT organisations. It is currently supporting a court case to challenge the refusal to reserve the name of an LGBT organisation. In June 2018, the High Court upheld an earlier decision by the Uganda Registration Services Bureau to refuse the registration of the organisation. An appeal was therefore filed to challenge this decision. The reservation of a name is the first



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.

Graphic: HRAPF (2015)



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

step in the process for registering an organisation. The respective agency had justified its refusal by arguing that the mandate of the organisation violated the laws and the morals and values of Uganda. From a human-rights perspective, however, 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.

Achievements and impact

Technical advice for LGBT rights-holders

With the ‘Strengthening Human Rights in Uganda’ project, GIZ provided technical advice to LGBT organisations, supporting them 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 investigating any matter involving behaviour which is considered to be ‘immoral and socially harmful’, or ‘unacceptable’ ‘by the majority of the society in Uganda’. The provision entailed significant limitations for 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.

Capacity development with duty-bearers

The project has now trained over 400 police officers in different parts of Uganda and LGBT organisations can 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. 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 off being able to address these situations by themselves or confront their colleagues when witnessing discriminatory behaviour. Although there is now a general openness within the police 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



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



Since 2013, over 400 Ugandan police officers have been trained on non-discrimination of LGBTI.

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orientation and gender identity. Many people 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 interest of individuals and their positive attitude 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.

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.

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