A SIMPLIFIED BOOKLET ON THE RIGHT TO HEALTH FOR MSM IN UGANDA

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AIDS FONDDET
RESEARCH TEAM

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KEY DEFINITIONS

**Discrimination:** Treating a person or group of persons differently or worse because of characteristics like their race, sexual orientation, gender identity, ethnicity, age or beliefs.

**Key Populations:** Groups with a higher risk of contracting HIV than the rest of the population.

**Men who have Sex with Men:** Males who have sex with males, regardless of whether they also have sex with females or whether they identify as being gay, bisexual, or heterosexual.

**Sexual and reproductive health:** Being well in all matters related to sexuality and the reproductive system.
## LIST OF ABBREVIATIONS

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<tr>
<td>AIDS</td>
<td>Acquired Immuno Deficiency Syndrome</td>
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<td>ARVs</td>
<td>Antiretro Viral Medicines</td>
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<td>CEDAW</td>
<td>International Covenant on the Elimination of all forms of Discrimination Against Women</td>
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<td>HRAPF</td>
<td>Human Rights Awareness and Promotion Forum</td>
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<td>LGBT</td>
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INTRODUCTION AND PREFACE

Men who have sex with men (MSM) are among the recognised KPs that are most at risk of acquiring and transmitting HIV. Realisation of the right to health is therefore crucial for them. Unfortunately, this group faces stigma and discrimination in accessing health services, especially sexual and reproductive health services. The barriers in accessing health services are further exacerbated by a restrictive legal environment, in which consensual same-sex conduct is criminalised. Other challenges include: lack of awareness about MSM issues; cultural, religious and other beliefs; unfavourable attitudes and stigma; poor financing and coordination; inadequate infrastructure and limited information about their specific needs.

The limited access to healthcare services for MSM further obstructs them from realising their other rights that are interlinked and interdependent of the right to health including the right to equal treatment and non-discrimination; the right to a family; the right to life and to dignity and personal integrity; the right to privacy; and the right to freedom of expression, association, participation and assembly. Inadequate access to specifically SRHR/HIV and AIDS services also leaves MSM at risk of acquiring HIV and deprived from appropriate care in case they are infected.

This simplified booklet is meant to guide MSM on the meaning of the right to health, to help them identify and analyse the laws and policies that affect the right to health including SRHR and access to HIV prevention and care services and the mechanisms for enforcing the right to health. It is intended to be a tool to use to advocate for better access to health services and an improved legislative environment in which human rights can be realised effectively.

The booklet is written in simple and non-legalistic language in order to make it easy for the different target groups to read and appreciate. I hope that the booklet helps to make the situation for MSM better through spurring awareness and eventually advocacy.

Dr. Adrian Jjuuko
Editor and Executive Director, Human Rights Awareness and Promotion Forum (HRAPF)
1. THE RIGHT TO HEALTH

1.1 Introduction

The right to health is one of the most important rights for MSM. This section introduces this right, and its key elements.

1.2 What is the right to health?

‘Everyone’ is entitled to ‘the highest attainable standard of health’. This is provided for in article 12 of the International Covenant on Economic Social and Cultural Rights, which is a treaty signed by different countries on rights that are classified as social, economic and cultural rights. The right extends to ‘everyone’ and this means that even those persons whom the majority considers as ‘immoral’, such as MSM are entitled to the right as well.

According to the World Health Organization (WHO), ‘Health’ is a state of complete physical, mental, and social well-being and not merely the absence of disease and infirmity. However, the right to health is expressed as the right to the ‘highest attainable standard of health’, which implies that it does not go to the extent defined in the WHO Constitution, as it puts into consideration individual persons’ composition and circumstances as well resources available to the state. It is therefore not the right to be ‘healthy’. Nevertheless the right is not limited to healthcare. It encompasses a number of other aspects beyond healthcare, which include: ‘food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment’.

The right to health is not a stand-alone right, and as such must be enjoyed with other rights, which all determine the quality of health. These include: the right to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement.

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3 Above.
4 Above, para 4.
5 Above, para 3.
The right to health has both freedoms and entitlements. Freedoms impose an obligation on the state not to interfere in the enjoyment of the right, while entitlements impose an obligation on the state to fulfill the requirements under the right.

The freedoms that are embedded within the right include: the right to control one’s health and body, which also includes sexual and reproductive freedom which would include aspects of sexual orientation, and the right to be free from interference, which includes freedom from torture, inhuman and degrading treatment, as well as non-consensual medical treatment and experimentation which would include aspects like non-consensual anal examinations. Therefore even if a person is a man who has sex with men, the state is not supposed to interfere with how such persons express their sexuality, and neither are they supposed to interfere with the privacy and dignity of such persons.

Entitlements on the other hand includes equality of opportunity for all within the health care system. As such discrimination in terms of access to health services is not acceptable. As such no discrimination is allowed on any of the prohibited grounds in international law. Prohibited grounds are those identified in the International Covenant on Economic, Social and Cultural Rights (ICESCR) as grounds upon which discrimination is not allowed. These are: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ‘Sex’ has been found by the Human Rights Committee which interprets the International Covenant on Civil and Political Rights (ICCPR) as including sexual orientation. The non-discrimination provision in the ICCPR is similar in all respects to that in the ICESCR. Indeed the ESCR Committee itself specifically included sexual orientation among prohibited grounds in General Comment 14.

The right to health has four ‘interrelated and essential elements’ namely: availability, accessibility, acceptability and quality (AAAQ). These four elements can be explained as follows:

**Availability**: States have to ensure that there are sufficient public health institutions in the country which have sufficient facilities, such as safe water and sanitation facilities, well trained and competitively paid medical professionals, as well as essential drugs.

**Accessibility**: Access to health should be without discrimination. Four elements underlie this element: non-discrimination which is about access to all without discrimination on the protected grounds above, both in law and fact; access should be physical accessibility which is about facilities and services being within reach of the populations and safe, particularly to those who are marginalised which would include MSM; economic accessibility which is about affordability for all including the poor and vulnerable; and information accessibility which is about access to information that is suitable for every group, including MSM.
**Acceptability:** The health facilities should respect medical ethics, standards and also cultures of persons including individuals and minority groups. This is more directed towards the individuals seeking the services and so cannot be used as an argument that the cultures of those opposed to same-sex conduct are the only ones worthy of protection.

**Quality:** This is about the facilities and services being suitable and medically proven to deal with the different health conditions. For example there must be skilled professionals, proper drugs, and adequate sanitation.

The right to health imposes the same obligations on other states as other rights. These are: the obligation to respect, protect and fulfil. The obligation to respect is an immediate obligation, which does not require states to have enough resources. This obligation includes ensuring that there is no discrimination in the provision of services.

The obligation to protect is also immediate and it is about ensuring that third parties do not violate the right, and if they do that measures are taken to ensure redress and to discourage a repeat of the same actions.
The obligation to fulfil on the other hand allows progressive realisation. This allows states to work on implementing the requirements of the right with due consideration to resources available to them. This obligation requires states to ‘adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health’. This implies that the state has to ensure that laws that ensure access to health for all are put in place. It also ensures that a budget is allocated to health, and in terms of the Abuja Declaration on HIV and AIDS, Tuberculosis (TB) and other related infectious diseases (2001), at least 15% of the national budget should be allocated to health. The judiciary should equally be alive to the right to health and ensure that it is fulfilled. This implies that special attention should be paid to cases brought to courts concerning the right to health. In Uganda, the right to health with respect to MSM and similar groups were included among the grounds for challenging the now nullified Anti-Homosexuality Act, 2014. The Court however decided the case solely on the grounds that presence of the necessary number of parliamentarians to pass a law was not ascertained when the law was passed in parliament. The other grounds, including the right to health grounds, were not considered.

With regards to MSM, the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, codifying international law principles and the Additional Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles, which were adopted by a group of international scholars, UN officials, and activists, also specifically include the right to the highest standard of health as applicable to MSM. Under Principle 17, ‘Everyone has the right to the highest attainable standard of physical and mental health, without discrimination on the basis of sexual orientation or gender identity’. They state that sexual and reproductive health is a fundamental aspect of this right. States are required to ‘take all necessary legislative, administrative and other measures to ensure enjoyment of the right to the highest attainable standard of health, without discrimination on the basis of sexual orientation or gender identity’. Specific emphasis has been put on non-discrimination and consent to treatment, including access to pre and post-exposure prophylaxis (PrEP and PEP), non-disclosure of HIV results except with consent and inclusion of information on sexual orientation and sexual behavior in medical curricula. Principle 19 protects MSM from medical abuses including any form of medical or psychological treatment, procedure, testing, or confinement to a medical facility, based on sexual orientation or gender identity.

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12 Above, para 33
13 Prof J Oloka Onyango & 9 others v Attorney General, Constitutional Petition No 8 of 2014 (The AHA case).
14 Above.
Illustration:

The right to health and MSM

Tonny, an MSM, goes to a government health centre with his partner to seek treatment for anal warts. While there, the doctor asks him how he got anal warts and starts preaching to him to stop the bad practice of homosexuality, as it is against Christianity and societal values. The doctor refuses to treat him as the anal warts are a ‘punishment from God’. In this case, both the element of non-discrimination and accessibility, which are key elements of the right to health, would have been violated.

1.3 Why is the right to health particularly important to MSM?

MSM a Key Population group in terms of HIV and AIDS. This means that they are more vulnerable to HIV infection than the general population due to a number of factors.

One vulnerability factor is the particular sexual behaviour associated with these groups. MSM are at a higher risk of HIV and STIs compared to the general population due to the level of friction during anal intercourse that may lead to tearing of the lining of the rectum. The presence of untreated Sexually Transmitted Infections (STIs) among MSM is also a frequent co-factor in HIV transmission.

These factors increase MSM’s vulnerability to acquiring HIV and other sexually transmitted infection along with their need for PEP to prevent infection and ARVs and information on adherence in case they are infected.

Another key aspect is criminalisation. Since same-sex relations are criminalised, many persons including in the health sector regard this as implying that no services can be provided to a criminalised population. They thus deliberately refuse to serve MSM populations, despite there being progressive policies that cater to the health needs of MSM. This is why it is important that the key elements of the right to health, particularly non-discrimination are pointed out and emphasised.

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15 See n 1 above.

16 Inter-agency working group on key populationsHIV and young men who have sex with men: A technical brief (2014) 20.

17 As above.
1.4 Conclusion

The right to health is an important right for MSM. It enables them to access health services and information in a non-discriminatory manner. The right imposes obligations upon states to ensure that discrimination is eliminated and that services can be accessed by all.
2. MSM AND THE RIGHT TO HEALTH IN UGANDA

2.1 Introduction

The highest law in Uganda, the Constitution, does not expressly protect the right to health. However, this does not imply that the right to health is not protected. The Constitution itself includes provisions that point to the right to health, and the country is also subject to obligations at the international and regional levels on the right to health. The different levels of obligations also show that MSM are included among persons to whom this rights applies. This sections sets out the framework at these various levels in which the right to health is protected in Uganda.

2.2 The right to health in Ugandan laws

The highest law in Uganda is the Constitution. This is followed by statutes passed by Parliament and then subsidiary laws which are made under these provisions. The other sources of law are decisions of judges and then the customs of the people.

2.2.1 The Constitution and the right to health

The starting point in considering the protection of the right to health under Uganda’s national laws is the Constitution, which is the supreme law in the country.

The right to health is unfortunately not expressly provided for in Chapter four of the Constitution where many other rights are expressly protected. However, the Constitution in article 45 protects other rights that are not expressly mentioned. The right to health being a right protected under international law can therefore be said to be protected under this provision.

The right is however included among the National Objectives and Directive Principles of State Policy (NODPSP), which since the introduction of article 8A of the Constitution, provides that ‘Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy’ it can be argued that the NODPSP can now be enforced as giving rise to obligations.18

18 For more discussion on this, see HRAPF A quick scan of the laws and policies affecting the HIV response among Men who have Sex with Men in Uganda (2017) 9.
In Objectives XX, the state is required to take all practical measures to ensure the provision of basic medical services to the population. In Objective XIV, the state is required to promote the social well-being of the people and in particular to ensure that all Ugandans enjoy rights and opportunities and access, amongst other things, to health services, clean and safe water, and food security. Objective XXI requires the state to ensure access to safe and clean water, a key component of the right to health. Finally Objective XXII requires the state to ensure proper nutrition for the country with the aim of promoting a healthy nation. All these obligations are imposed on the state and are not necessarily optional.

Again, the right to health can be implied from many of the rights that are specifically protected in the Constitution since human rights are interrelated and interdependent. These include:

- **Freedom from discrimination (article 21):** No one should be discriminated against on grounds including sex. Sex has been recognised as including sexual orientation and sexual behaviour, and so MSM can sustain an argument for non-discrimination. Again the list of grounds upon which someone cannot be discriminated against is not closed and can allow grounds that are similar to those listed.

- **The right to life (article 22):** The right to life does not merely mean the right to be alive. It goes beyond this to living a meaningful life, and therefore having access to health services is a main component of health.

- **Freedom from inhuman and degrading treatment (article 24):** By denying a sex worker or an MSM healthcare when they need it, the health worker is treating that person in an inhuman way as well as violating their right to access health services.

- **The right to privacy (article 27):** The right extends to protection of the individual from unlawful searches and access to their person. In this regard the right protects the information of patients and thus is the basis for the duty of confidentiality imposed upon health personnel, as well as the need to secure informed consent from patients for certain procedures including anal examinations and HIV tests.

- **The right to freedom of freedom of expression, conscience, assembly, association and religion (article 29):** This is about respecting people and their opinions as well as them coming together to advocate for their rights. These rights are the bedrock of organising including for health rights, as well as people belonging to groups of their choice and associating with those that they choose to. It also requires respect of press freedom, academic freedom and religious choices of difference people as well as their views and opinions.
• **The right to a clean and healthy environment (article 39):**
  Living in a dirty and polluted environment puts human beings at risk of getting diseases, thus affecting their health.

• **The right to work (article 40):**
  This requires healthy working conditions for persons who are employed.

• **The right to access to information (article 41):** Access to information concerning health is a key component of the right. As such access to information protections in the Constitution are a good way of ensuring that the right is protected.

Therefore the right to health is protected in the Constitution despite the absence of express protection.¹⁹

### 2.2.2 Statutes on the right to health

There are a number of statutes passed by Parliament, which have a bearing on the right to health in Uganda, and these include:

- The Public Health Act
- The HIV Prevention and Control Act
- The Health Services Commission Act
- The Medical and Dental Practitioners Act
- The Nurses and Midwives Act
- The Pharmacy Act
- The Allied Health Professionals Act
- Food and Drugs Act
- The Venereal Diseases Act
- The Water Act
- National Medical Stores Act
- National Environment Act

¹⁹For a detailed discussion of the different rights and how they apply to health see generally Centre for Human Rights and Development ‘Review of constitutional provisions on the right to health in Uganda: A case study report’ EQUINET Case study September 2018.
The above laws regulate how health services are provided in Uganda, as well as providing for the other determinants of the right to health. They mainly contain general provisions for provision of health services to all persons without discrimination. They neither specifically leave out MSM, nor do they provide for them. This means that MSM can claim protection under these laws. There is however need for laws with special mechanisms to ensure that KPs are not left out.

The criminalisation of same-sex relations in the Penal Code Act however greatly affects the implementation of these laws as regards MSM. The criminalisation is seen as a bar to including MSM in the provision of health services. This has been given more weight by the courts of law, as the High Court has ruled that registration of organisations working on issues affecting MSM would contravene the Penal Code, as would allowing meetings of persons who identify as LGBTI.

2.2.3 Policy framework regulating access to health services in Uganda

Uganda has a number of policies and guidelines regarding the provision of sexual and reproductive health services to the population. On a more positive note, some of the policies and guidelines have specific mention of MSM as KPs that need specific SRHR/HIV and AIDS services as a priority population category. The policies adopt the principle of equity in service delivery, which is the view that services should be provided to all on the basis of fairness, without discrimination. Some of the policies are:

- **The Patient’s Charter (2009)** was issued by the Ministry of Health to provide for the rights and duties of patients as they seek health services. Rights include: the right to medical care; prohibition of discrimination; the right to participate in the development of health policies; the right to a healthy and safe environment, proper medical care; the right to informed consent, confidentiality and privacy; the right to medical information and the right to redress.

- **The National Comprehensive Condom Programming Strategy and Implementation Plan (2017 – 2021)** sets out a vision where all risky sexual acts are protected by male or female condoms and it explicitly includes MSM. The strategy sets targets to increase consistent condom use during high-risk sexual encounters and includes a target of increasing condom use for MSM to 90% and also recognises the role and importance of lubricants in HIV prevention, when used alongside condoms.

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20 This was in the case of Frank Mugisha, Dennis Wamala & Ssenfuka Warry Joanita v Uganda Registration Services Bureau (URSB) Miscellaneous Cause No. 96 of 2016.

21 This was in the case of Kasha Nabagesera & 3 Others V The Attorney General and Hon. Rev. Fr Simon Lokodo, High Court Miscellaneous Cause No. 33 of 2012 (Lokodo case).
• The Investment Case/Revised Sharpened Plan for Reproductive, Maternal, Newborn, Child and Adolescent Health (2016) aims to improve the continuum of services along the life cycle i.e. pregnancy, childbirth, childhood, and adolescence, with focus on increasing access for high-burden populations. Although the Plan does not explain who these groups are, it can be interpreted to include MSM.

• The Uganda Family Planning Costed Implementation Plan (2015 – 2020) seeks to provide a framework for achieving Uganda’s family planning vision, which is universal access to family planning for all.

• The National Strategic Plan (NSP) for HIV & AIDS (2015/16 – 2019/20) recognises KPs / MARPS as a category at a higher risk of HIV and indeed as a group that contributes to the new infections experienced in the country. It includes non-discrimination as one of its guiding principles, and states that no person shall be discriminated from accessing HIV and AIDS services and also provides for a human rights and gender-based approach to programming.

• The National HIV and AIDS Priority Action Plan (2015/16 – 2017/18) recognises Key Populations including MSM and provides for reduction of stigma and discrimination, scaling up of services, revision of laws and policies, and strengthening institutional systems and mechanisms for responding to HIV among different population groups including MSM.

• The Roadmap for HIV Prevention (UAC 2018) recognises KPs as one of the main sources of new infections in Uganda and outlines interventions and targets for MSM. These include: community empowerment, HIV testing services, condoms and lubricants, PrEP, focusing on KPs, improving case finding and linkage to care. It also stresses reducing stigma and social discrimination against PLHIV and KPs, mapping of KPs geographically and targeting interventions to mapped hotspots and removal of laws, policies and practices hindering fair access to services.

• The National HIV Testing Services Policy and Implementation Guidelines (2016) recognises that KPs may not easily access HIV testing services due to a number of constraints including stigma, limited access to testing services, lack of confidentiality and criminalisation of KP sexual behaviours. The policy and guidelines are based on a number of guiding principles that include protection of human rights, the right to dignity (including privacy and confidentiality), the right to access, and promoting equality for priority populations. Specifically, the policy and guidelines state that ‘HIV testing services should be made accessible to all persons in Uganda irrespective of race, age, religious or political affiliation, ethnicity, disability, gender, economic or social status, or sexual orientation.'
• **The National Development Plan (2015/16–2019/20)** supports general implementation and effectiveness and efficiency in delivery of services to all persons including KPs like MSM.

• **The Health Sector Strategic Plan** recognises health as a fundamental human right and lays down administrative strategies through which health rights may be achieved for all.

• **The National HIV and AIDS Priority Action Plan (2015/16 – 2017/18)** recognises that HIV prevention is particularly important among KPs specifically mentioning MSM. It also indicates that the government would not exclude MSM from HIV programming simply because they engage in conduct which is criminalised.

• **The National Policy Guidelines and Service Standards for Reproductive Health Services (2001)** provides direction to actors involved in planning, promoting and providing services in respect of sexual and reproductive rights. Even though MSM are not specifically named or targeted for these services, the fact that a policy is in place which serves to generally increase access to SRHR and HIV prevention and care is a positive step.

• **The Ministerial Directive on access to health services without discrimination (2014)** provides for respect and adherence to existing ethical and professional codes of conduct. It makes reference to the repealed Anti-Homosexuality Act in its background and the effects of this Act on the rights of MARPS including the right to access health care services. It guides health providers in provision of services, and it provides for the right to medical care, non-discrimination, confidentiality and privacy, informed consent, a healthy and safe environment, among others. Most of these policies and guidelines contain universal provisions which guarantee access to health services including Sexual Reproductive Health services and HIV and AIDS services for the general population and in a few cases for KPs in general. Many do not mention MSM but their provisions nevertheless apply to them as Ugandans.

2.2.4 **Access to health services for MSM in Uganda.** Despite the criminal laws, the Ministry of Health has taken positive steps beyond laws and policies to ensure that MSM access health services. One of these steps is the Most at Risk Populations Initiative (MARPI) which provides specialised services for MSM and other Most at Risk Populations at major government health centres. This is a very progressive step that clearly shows the Ministry going beyond the laws and prejudices that exists to actual protection. Of course challenges remain and have been documented with many other government health facilities, but at least this is a step in the right direction.
2.3 The right to health in international human rights law. Uganda has signed a number of international instruments which expressly guarantee the right to health.\textsuperscript{22} International law also makes it clear that all human beings are equal and that they enjoy the same rights that everyone is entitled to.\textsuperscript{23} Although MSM are not specifically mentioned in these instruments, the provisions of these instruments apply to all. Some of these are:

- **The Universal Declaration of Human Rights (UDHR).** The UDHR provides that all human beings are born free and equal in dignity and rights, that all are equal before the law and that everyone is entitled to all the rights and freedoms guaranteed in the declaration. The right to health is specifically provide for under article 25(1).

- **International Covenant on Economic, Social and Cultural rights (ICESCR).** The ICESCR in article 12 provides that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. In its General Comment 14, The UN Committee on Economic Social and Cultural Rights provides detailed guidance to States regarding their obligations to respect, protect and fulfil the right to health, specifically providing for the features of the right to health to include accessibility, availability, acceptability and quality.\textsuperscript{24}

2.4 The right to health in the regional human rights framework. At the regional level, Uganda has ratified the African Charter on Human and Peoples’ Rights (ACHPR). Article 16 provides that ‘every individual shall have the right to enjoy the best attainable state of physical and mental health’. This right extends to ‘every individual’ and thus includes MSM. The African Commission on Human and Peoples’ Rights adopted Resolution 275 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity.\textsuperscript{25}

Therefore, there is protection of the right to health, including for MSM within the international and regional human rights framework.

\textsuperscript{22} HRAPF, A guide to the normative legal framework on the rights of LGBTI persons in Uganda (2019) 51.

\textsuperscript{23} See for example article 1 of the Universal Declaration of Human Rights which declares that all people are free and equal in dignity and rights.

\textsuperscript{24} See n 4 above.

\textsuperscript{25} The African Commission on Human and Peoples’ Rights ‘Resolution on the 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 African Commission on Human and Peoples’ Rights (the African Commission) meeting at its 55th Ordinary Session held in Luanda, Angola, from 28 April to 12 May 2014.
2.5 Conclusion

The right to health may not be specifically included in the Bill of Rights in Uganda, but aspects of it are protected in the Constitution. Since human rights are interrelated, many of the rights protected in the Constitution also apply to health. Similarly, under the international human rights framework, the right is also protected and it is applicable to all persons including MSM.
3. MECHANISMS FOR THE ENFORCEMENT OF RIGHT TO HEALTH

3.1 Introduction

When an MSM feels that their right to health has been violated, they should be able to get remedies from different bodies that have been put in place for this purpose. These bodies are discussed in this section.

3.2 Avenues for enforcing the right to health at the domestic level

Once an MSM or any other Ugandan feels that his or her right to health has been violated, there are a number of options for seeking redress:

- **The Uganda Human Rights Commission (UHRC)**
  The UHRC is a body established under the Constitution and the Uganda Human Rights Commission Act. Any person aggrieved that their right to health has been violated can file a complaint before the Commission. The Commission has a tribunal which hears complaints of violations and awards remedies. MSM can engage the UHRC and indeed one case involving a gay man was filed at the Commission in 2016, although no decision has been made to date.

- **The Equal Opportunities Commission**
  The Equal Opportunities Commission is a Commission provided for under the Constitution of the Republic of Uganda and established under the Equal Opportunities Commission Act, 2007. Its role is to ensure that affirmative action is undertaken in favour of marginalised groups and to enforce the prohibition of laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group or which undermine their status. The Constitutional Court declared section 15(6)(d) of the Equal Opportunities Commission Act unconstitutional as it stopped the Commission from investigating matters regarded as immoral or socially unacceptable. This was in the case of *Jjuuko Adrian v Attorney General*, Constitutional Petition 1 of 2009.

- **Courts of Law**
  Anyone who feels that their rights or the rights of others have been violated, has a right to access the courts of law under article 50 and article 137 of the Constitution. A case can thus be taken before the High Court for enforcement of the right or before the Constitutional Court in case there is need for interpretation of the right.
3.3 Avenues for enforcing the right to health at the regional and international levels

The right to health can also be enforced at the regional and international levels. One can bring a complaint directly to the African Commission on Human and Peoples’ Rights in cases of violations of the African Charter. However, to do this, one has to first exhaust all the avenues available at the domestic level. In other words, one has to go to Ugandan courts or tribunals first before accessing the regional or international mechanisms. The African Commission hears complaints and makes orders for remedies.

3.4 Conclusion

There are different avenues that persons whose rights have been violated may use to seek redress. These are at the domestic and international levels, and all persons including MSM can access these remedies in case they feel that their rights have been violated.
4. CONCLUSION

This booklet shows that the right to health is a universal right and integral in the realisation of all the other rights. Although there is an enabling legal and policy framework for the realisation of the right to health, there are still policy implementation gaps regarding access to sexual and reproductive health services and rights (SRHR) generally and HIV and AIDS services in particular for MSM.

The restrictive legal framework especially the criminalisation of same-sex sexual conduct causes the lack of recognition in mainstream laws, policies and programs addressing HIV and SRHR. MSM leaders and activists are encouraged to advocate for the decriminalisation of same-sex sexual conduct.

There is need for legal amendments to decriminalise same-sex conduct as well as policy which guides the allocation of more financial resources towards scaling up HIV and SRHR services across the country, including training health workers for working with procurement of necessary commodities and supplies, and expansion of services geographically necessary for the realisation of the right to health for all without discrimination.
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ABOUT HRAPF

Background
Human Rights Awareness and Promotion Forum (HRAPF) is a voluntary, not for profit, and non-partisan Non-Governmental Organisation. HRAPF works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, research, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. It was established in 2008 with a vision of improving the observance of human rights of marginalised persons in Uganda.

Vision
A society where the human rights of all persons including marginalised persons and Most at Risk Populations are valued, respected and protected.

Mission
To promote respect and protection of human rights of marginalised persons and Most at Risk Populations through enhanced access to justice, research and advocacy, legal and human rights awareness, capacity enhancement and strategic partnerships.

HRAPF’s Objectives
1. To create awareness on the national, regional and international human rights regime.

2. To promote access to justice for marginalised persons and Most at Risk Population groups.

3. To undertake research and legal advocacy for the rights of marginalised persons and Most at Risk Population groups.

4. To network and collaborate with key strategic partners, government, communities and individuals at national, regional and international level.

5. To enhance the capacity of marginalised groups, Most at Risk Populations and key stakeholders to participate effectively in the promotion and respect of the rights of marginalised person.

6. To maintain a strong and vibrant human rights organisation.
HRAPF Values

- Equality, Justice and Non-Discrimination
- Transparency, Integrity and Accountability
- Learning and Reflection
- Quality and Excellence
- Teamwork and Oneness
- Passion and Drive
- Networking and Collaboration

Slogan

Taking Human Rights to all