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## REPORT EXPOSES MISUSE OF COMMON NUISANCE LAW TO HARASS MEMBERS OF THE LGBTQ COMMUNITY IN UGANDA

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### Trial Grade: D

#### CHARGES

Common Nuisance

#### OUTCOME

Some Cases Dismissed;  
Some Remain Pending

#### FAIRNESS REPORT

Authored by Staff at the American Bar Association Center for Human Rights

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TrialWatch, a Clooney Foundation for Justice initiative, has been monitoring, through the American Bar Association Center for Human Rights, criminal proceedings against 67 individuals arrested at Ram Bar in Uganda in November 2019. Ram Bar was known as one of the only safe spaces for the LGBTQ community in Uganda. The defendants, who were among a larger group of 125 individuals rounded up at the bar, were charged with common nuisance. They were then divided into five groups for trial. While the charges against two groups of defendants have been dismissed, proceedings against the others remain pending. The TrialWatch Fairness Report released today finds that the accused were targeted for their perceived sexual orientation. One magistrate evinced clear bias, asking if the case before her “was for the gay people misusing their bums.” Months into two of the five cases, the prosecution surprised the defense with allegations of same-sex activity seemingly unrelated to the nuisance charge.

These charges are part of a pattern of [harassment of the LGBTQ community in Uganda](#). In 2013, Uganda’s legislature adopted an “Anti-Homosexuality Bill,” which, before it was struck down by Uganda’s Constitutional Court, provided for potential life sentences for those convicted of “homosexual acts.” Although this Bill was struck down, the Penal Code still criminalizes same-sex activity under other provisions. And even apart from those provisions, [one activist has suggested](#) that authorities may be using a new tactic of “trumped-up . . . charges” to pursue members of the LGBTQ community. Similarly, UN experts [have expressed concern](#) that Uganda may be invoking COVID-19 to target the LGBTQ community.

The TrialWatch Fairness Report, authored by staff at the American Bar Association Center for Human Rights, finds that the defendants’ fair trial rights were violated, including as the result of severe prosecutorial misconduct, and that they were subjected to mistreatment in detention. The Report concludes that Uganda’s law criminalizing common nuisance runs afoul of human rights standards due to its vagueness, which creates opportunity for discrimination. **CFJ calls on Uganda to drop the charges against the remaining defendants, to cease harassment of the LGBTQ community, and to review and reform the common nuisance law to ensure that it does not facilitate discrimination.**

## BACKGROUND

On November 10, 2019, the police arrested 125 patrons at Ram Bar. One witness [overheard the police make homophobic comments](#). The police justified the arrests as an effort to enforce the Tobacco Control Act, [telling the press](#) that “[w]e have done these raids in many shisha smoking place.” And yet the defendants were not charged with breach of that Act, but rather with common nuisance.

One year after the arrests, no substantive evidence has been presented in any of the five cases. Indeed, the TrialWatch Fairness Report finds, “[o]ver the course of almost a year, state attorneys have failed to put forth a single witness or piece of evidence in the five cases against the 67.” Instead, the conduct of the proceedings makes clear the authorities’ discriminatory intent. In one of the cases, the Report notes that the prosecution alleged that the accused “had been reported by locals for engaging in gay sex, failing to explain how this related to the charge of common nuisance.” In another case, “the prosecution alleged that the accused had been sharing material with young people that promoted homosexuality and had been ‘conscripting’ youth into the LGBTQ community.” The Report concludes that “[t]he accused’s right not to be discriminated against was therefore violated.”

The Report, which is based on the monitoring of all of the hearings in the cases thus far, further finds:

- The charge sheets “did not meet [international and regional] requirement[s] that defendants be apprised of the ‘alleged facts’ on which charges are based;” and
- Because the “defendants were continuously denied access to . . . relevant documents notwithstanding orders from presiding magistrates that the state conduct disclosure,” the defendants’ right to adequate facilities to prepare a defense was violated.

Finally, the Report concludes that Article 160(1) of the Ugandan Penal Code, pursuant to which the defendants were prosecuted, violates international and regional standards due to its vagueness. Article 160(1) provides that “[a]ny person who does an act not authorised by law . . . and thereby causes any common injury, or danger or annoyance, or obstructs or causes inconvenience to the public in the exercise of common rights, commits . . . a common nuisance.” But the references to ‘danger or annoyance’ and ‘acts not authorized by law’ are too imprecise to allow anyone to know whether their conduct could be considered criminal.

For a full legal analysis of the trial and explanation of the grade that has been provided, please see the [TrialWatch Fairness Report](#).

Note: The Report is being released now despite the fact that proceedings remain pending against some of the defendants because all of the cases are based on the same facts and because of the severe consequences these proceedings have already had for the defendants—from forcible outings to the loss of jobs. Further hearings in two of the cases are expected next week.

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## ABOUT THE CLOONEY FOUNDATION FOR JUSTICE’S TRIALWATCH INITIATIVE



*The Clooney Foundation for Justice’s [TrialWatch](#) initiative monitors and grades the fairness of trials of vulnerable people around the world, including journalists, women and girls, religious minorities, LGBTQ persons and human rights defenders. Using this data, TrialWatch advocates for victims and is developing a Global Justice Ranking measuring national courts’ compliance with international human rights standards.*