

**THE SOUTH-KIVU REPORT OF
HUMAN RIGHTS VIOLATIONS
ON THE BASIS OF SEXUAL
ORIENTATION AND GENDER
IDENTITY, 2021**



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PREFACE

This report presents the violations committed against LGBTI persons in South-Kivu, Democratic Republic of Congo in 2021. It is the first edition of the South-Kivu Report of Violations based on Sexual Orientation and Gender Identity. This report interrogates the social, political and legal factors which are responsible for the trends of human rights violations, as well as protection, of LGBTI persons within a particular year. The report analyses and considers the key developments which occurred in 2021 and which influenced the trends in rights violations which were inflicted upon LGBTI person during the year.

Over the past two years, the DR Congo National Police and Army has had shifting attitudes toward LGBT persons in the country. From 2019 up to 2020, it was recorded that Police officers increasingly refrained from taking the law into their own hands when confronted with LGBTI persons. An encouraging record of instances where the Police has acted to protect the rights of LGBTI persons has also been kept in these reports. During 2021, however, it appears that the encouraging upward trend of the treatment of LGBTI persons by the Police took a turn for the worst. Various cases of mass arrests were recorded. The public also appear to be increasingly hostile and even violent toward LGBT persons. These emerging trends are discussed in detail in the report.

The report sets out the various violations suffered by LGBTI persons for the period of November 2020 to November 2021, as recorded by Weka Organisation's legal aid program, and the partner organisations. Weka Organisation offers legal aid to LGBT persons across Eastern of Democratic Republic of Congo and reaches beyond Uvira, where the Secretariat is based, through its two centres and by training and supporting Community Paralegals who are based in various towns in the Eastern part of the country.

This report differs from the violation's report published in last year in that the acts of violence and violations committed against LGBTI persons by non-state actors are no longer classified as human rights violations. Instead, only acts committed by state actors are classified as human rights violations. This change is considered to more accurately reflect the state's responsibility in respect of the human rights of citizens under international human rights law. This change in classification, however, does affect comparisons with figures of previous years and the analysis of trends since, in previous reports, acts of violence and violations of dignity committed by non-state actors were considered to be included under 'human rights violations.

All the cases handled by Weka Organisation and the contributing partner organisations were considered in compiling this report. All the cases in this report have been independently verified through reference to case files and interviews with the victims of the violations or the lawyers or paralegals who handled the cases.

This report serves as an evidence-base of the number, extent and severity of violations which LGBTI persons continue to face due to their real or perceived sexual orientation and/or gender identity and the need for intervention from the state, civil society and development partners to put an end to these violations. It is intended to support advocacy efforts toward positive changes in the legal and policy environment in respect of LGBT persons. It is also intended to serve as a tool in sensitising both state and non-state actors on the discrimination and degradation which LGBTI persons continue to face in their everyday lives.

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GLOSSARY

Gay:	A man romantically and/or sexually attracted to men
Bisexual	A person romantically and/or sexually attracted to both men and women, though not necessarily at the same time
Gender identity:	A person's conception of self as male or female or both or neither
Homosexual:	A person attracted to persons of the same sex
Intersex:	A condition in which a person is born with a reproductive or sexual anatomy that does not seem to fit the typical definitions of female or male
Key Population:	Group experiencing increased impact from HIV as well as decreased services due to stigma and discrimination; violence and harassment; restrictive laws and policies and the criminalisation of behavior.
Lesbian:	A woman romantically and / or sexually attracted to women
Outing:	The act of disclosing a lesbian, gay, bisexual, transgender, and / or intersex person's true sexual orientation or gender identity without that person's consent
Perpetrator:	The person or institution responsible for causing a human rights violation
Sex:	The physical distinction between male and female (genitals)
Sexual minorities:	A group whose sexual orientation, gender identity, and / or practice differs from the majority of the surrounding community
Sexual orientation:	A person's emotional, physical and sexual attraction and the expression of that attraction with other individuals
Transgender:	Someone who's deeply held sense of gender is different from their biological sex assigned at birth
Trans-man:	A transgender person who was assigned the female sex at birth but has a male gender identity
Trans-woman:	A transgender person who was assigned the male sex at birth but has a female gender identity

LIST OF ACRONYMS

SOGI:	Sexual Orientation and Gender Identity
MSM:	Gay and bisexual men as well as other men who have sex with men
WEO:	Weka Organisation
LGBT:	Lesbian, Gay, Bisexual and Transgender
DRCNP:	Democratic Republic of Congo National Police
DRCAF:	Democratic Republic of Congo Force Army
DRC:	Democratic Republic of Congo
NDPSCA:	Narcotic Drugs and Psychotropic Substances Control Act
CRPD :	Centre de Recherche pour la Paix et le Développement
KP :	Key Population

1. Introduction

The South-Kivu Report of Human Rights Violations on the basis of Sexual Orientation and Gender Identity, 2021, analyses cases of incidents involving violations against LGBTI persons using a human rights lens. The report discusses the human rights violations committed against LGBTI persons, entirely or partially, on the basis of their real or presumed sexual orientation and gender identity in 2021. The report classifies the various categories of human rights violations suffered by LGBTI persons. The report also details some of the specific incidents of violations in order to enable the reader to understand the context and brutality of rights violations that would otherwise appear as mere figures. The report also considers violations of human dignity committed against LGBTI persons by non-state actors.

The Constitution of DR Congo¹ establishes that no person or group of people may not be discriminated against in the enjoyment of their rights and freedoms. However, the cultures tradition and the Congolese mentality in general are loath to consider LGBTI persons in all their humanity. The discrimination against LGBTI persons is widespread and these are often rejected by their communities.

As a result, discrimination against LGBTI persons paves the way for all human rights violations and the spread of HIV / AIDS. Threats, reprisals, insults, arrests and / or detentions arbitrary acts, ostracism, contempt, social exclusion, denial of justice, are deliberately used to attack the fundamental values and characteristic traits of LGBTI persons.

LGBTI persons, like all Congolese citizens, are protected by the law and the judiciary must apply the law to them against without discrimination. However, in most cases, LGBTI persons complain that they are not listened to and that they are not secure. We even notice that in the distribution of public services, they do not access under the same conditions as other citizens. Almost always, society tolerates violence against LGBTI, public power does not seek to prevent or punish acts of violence. The state does not seem to pay particular attention to their situation. Nothing is done and no effort is made to ensure a safe environment for LGBTI persons.

Discrimination has had serious consequences for victims, who are thus forced to abandon their studies, their work, their original social background, their means of existence, and end up in misery. Currently, several changes are being made by different actors in various areas of life for the well-being of the population. Particular attention should also be drawn to LGBTI persons so that the conditions of their existence cannot escape efforts to improve the living conditions of society in general. It is essential to put in place support mechanisms to protect LGBTI persons against discrimination and intolerance and to fight effectively against any deed, gesture, writings, offensive remarks, treatment, etc. which are likely to doom them to contempt, to disdain. Although the DRC does not criminalize sexual relations

¹ Article 11, 12 and 13 of DRC Constitution

between persons of the same sex in its penal code, but persons LGBT are regularly arrested and charged under Article 176 of the Penal Code which penalizes activities against "good morals".

This report is intended to be used as a tool for advocacy on the rights of LGBT persons in Democratic Republic of Congo through providing evidence of the violations which they continually suffer within society.

The report is based on documentation of human rights abuses and violations based on gender identity and sexual orientation by WEO and other contributing partner organisations. The report, however, does not include all documented cases of violations committed against LGBT persons but only those violations which could be independently verified.

Key Findings

1. A total of 118 violations were committed against LGBT persons during 2021. Out of these, 196 were human rights violations arising out of 78 verified cases and committed by state actors. The remaining 40 violations were violations of human dignity committed by non-state actors. This is a radical increase from the 74 violations arising out of 59 cases reported in 2020.
2. A new trend of mass arrests emerged in 2021. There were Four such cases with 98 persons arrested at a bar, and 38 people arrested at their homes and shelter.
3. The Congolese National Police was the leading violator of the rights of LGBT persons, accounting for 194 of the 196 violations verified in the year.
4. The most violated right was the right to liberty. The state occasioned 102 of these violations, all of which were perpetrated by the Congolese National Police during and after mass arrests of LGBT persons.
5. The Minister of Human Rights continued to deliberately violate the right to freedom of expression, association and assembly by stopping events organised by LGBT persons during the year. The Minister was responsible for one human rights violation during 2021.
6. The 25 violations of human dignity committed by non-state actors against LGBT persons could mostly be classified as acts or threats of violence and evictions.
7. There was a marked increase in violent attacks and attempts to execute 'mob justice' on LGBT persons by members of the general community. In two cases, LGBT persons were brutally murdered by members of the public. These severe cases are the first murders to be recorded in this series of violations reports.

Key Recommendations

To the President of the Democratic Republic of Congo

1. Make clear statements that acts of violence and discrimination against vulnerable minorities, including LGBT persons, will not go unpunished.
2. Publicly reject proposed legislation, which discriminates on the basis of sexual orientation and gender identity.

To National and Provincial Parliament

1. Repeal laws which create the offence of ‘having carnal knowledge against the order of nature’, which is interpreted to criminalise LGBT persons and are used to justify denying them equal protection of the law.
2. Repeal sections of the Penal Code Act which create broad and vague petty offences such as ‘being a common nuisance’, which are used to arbitrarily arrest and punish persons who are poor and undesirable, including LGBT persons.
3. Ensure that government fulfils its international and regional human rights obligations to all without discrimination.

To the Congolese National Police

1. Thoroughly and conclusively investigate cases of violence against LGBT persons by members of the public.
2. Continue training Police officers on the human rights of MSM and transgender persons as well as the limits of the laws which they are mandated to enforce.
3. Strengthen mechanisms which exist to redress human rights violations committed by members of the DRCNP. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.

To the Congolese Standing Law Reform Commission

1. Develop a proposal for constitutionally compliant alternatives to laws creating petty offences that will protect the rights of all while ensuring order in society.
2. Develop a proposal for the amendment of the Penal Code Act to repeal the sections that criminalise consensual sexual relations between persons of the same sex.

To the Congolese National Human Rights Commission

1. Demand accountability from the state for all human rights violations reported, especially those that go unaddressed.
2. Hear and dispose of cases involving violations of rights of LGBT persons some of which have been pending before the Commission’s Complaints and Investigations Directorate since 2018.
3. Develop proposals to amend laws that are discriminatory and which do not align with the Constitution of the Democratic Republic of Congo.

To the Congolese Senate

1. Investigate systemic discrimination of individuals based on their sexual orientation and gender identity and report findings.
2. Include cases of discrimination based on sexual orientation and gender identity in the annual reports to Prime Minister.
3. Continue to train the staff of the Senate in order to build their capacity in handling matters of discrimination and marginalisation on the basis of sexual orientation and gender identity.

To civil society organisations

1. Ensure that the Police fully and effectively investigates cases of violations committed against LGBTI persons.
2. Advocate for the adoption of a law that would categorise crimes committed against LGBTI persons on the basis of their sexual orientation or gender identity as hate crimes.
3. Develop the capacity of staff to document violations based on sexual orientation and gender identity. This could include adopting uniform guidelines for recording information on cases and violations.

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1. INTRODUCTION

The South-Kivu Report of Human Rights Violations based on Sexual Orientation and Gender Identity is published on an annual basis under a loose consortium of organisations which provide services to LGBTI persons. The purpose of the report is to consider the situation of LGBTI persons in Democratic Republic of Congo within a particular year. The report considers both instances of protection along with violations of the rights of LGBTI persons. The report also sets out to draw a link between the prevailing legal and policy regime in the country and the emerging trends in protection and violation of the rights of LGBTI persons.

The report classifies the various categories of human rights violations suffered by LGBTI persons and distinguishes between violations committed by state actors and those committed by non-state actors. The report highlights some of the cases and gives insight into the impact of human rights violations on the individual lives of the LGBTI persons concerned. The report also makes recommendations to various duty-bearers on what can be done to protect, respect and fulfil the rights of LGBTI persons in Democratic Republic of Congo.

This report is intended to be used as a tool for advocacy on the rights of LGBT persons in Democratic Republic of Congo through providing evidence of the ongoing and widespread human rights violations suffered by this group.

The report is based on documentation of human rights abuses and violations based on gender identity and sexual orientation by WEO through its central legal aid program, trained Community Paralegals as well as contributing partner organisations. All the documented cases of violations committed against LGBTI persons are not included in the report, however, since every reported case and violation could not be independently verified.

1.1 Methodology

This report was compiled by making use of both quantitative and qualitative methods. Quantitative data was collected by determining the number of verified violations reported to WEO and contributing partners during the course of 2021. Qualitative data was collected by considering the nature of the violations, the identity of the perpetrators, the motivation behind the commission of the violations, and steps taken by both state and nonstate actors to address reported violations. Every case and every human rights violation recorded for 2021 was subjected to an independent verification exercise and only those cases involving human rights violations that could be verified are included in this report.

a) Review of case files

Data was collected by reviewing the case files of all the contributing organisations. The review of case files provided data on the number and nature of violations committed against LGBTI persons during 2021. All the case files were reviewed and data was collected using WEO's data collection tool in order to ensure that only cases in which human rights violations had been committed against LGBTI persons, partially or wholly on the basis of their sexual orientation and /or gender identity, were included in the final data set.

b) Review of documentary evidence

For every case in which it could be established on the face of it that a human rights violation had been committed on the basis of the sexual orientation and/or gender identity of an LGBT person, documentary or other evidence on file were also reviewed. This documentary evidence included photographic evidence, Police Bond forms, Police medical examination forms for victims of violence and witness statements attesting to the facts of the alleged violation. A case would usually be considered verified if there is valid documentation on file which serves as evidence of the alleged violation.

c) Interviews with clients, witnesses and officers who handled the cases

Where violations could not be verified on the basis of the documentation on file, or where facts were unclear in one way or another, the clients, victims of the violation or Community Paralegal or officer who handled the case was contacted and interviewed. These interviews served to provide additional information, clarify facts and sequences of events and verify some of the violations on file.

1.2 Limitations

There are a number of limitations which were faced in developing this report.

In the first place, while it is the aim of the report to give a national-level picture of the human rights violations suffered by LGBT persons in Democratic Republic of Congo, the information available for compiling the report is limited to the work of lawyers and paralegals attached to WEO and our partner organisations in areas beyond Uvira. The report, however, does not include each and every case that has happened in Democratic Republic of Congo, and therefore it cannot give a complete picture of the state of human rights of LGBTI persons in the country.

Secondly, uniform, consistent and comprehensive documentation remains a challenge for the majority of organisations working on LGBTI issues in Democratic Republic of Congo. While there are a large and growing number of organisations that provide services and support to LGBTI persons, the primary focus of very few of these would involve the thorough documentation of human rights violations committed against LGBTI persons. In the compilation of this report, a number of instances were noted where neither the case nor the human rights violation noted could be verified due to insufficient information available on file. There remains a need for in-depth training of paralegals and leaders of organisations working with LGBTI persons in DRC on the importance of documentation of human rights violations. Consistent, uniform and thorough documentation of human rights violations have to be undertaken by increasing numbers of LGBTI organisations in order to provide accurate, comprehensive and authoritative information on human rights violations against LGBTI persons to governing authorities and law enforcers.

A fourth limitation that was noted in the compilation of this report is the fact that all those handling cases involving human rights violations of LGBTI persons do not necessarily frame their reports on the cases in the language of rights. Violations which occur on the basis of the sexual orientation and/or gender identity of the client involved, are not always recognised as such. In some cases, routine procedures and practices carried out by the Police and other law enforcers are wrongly recorded as human rights violations. There remains a need for training and orientation of persons responsible for responding to complaints of LGBTI persons on the recognition and most appropriate framing of human rights violations. Strengthening capacity and systems for the monitoring, documenting and reporting on human rights violations among LGBTI organisations all across the country will greatly benefit the movement.

2. THE SOCIAL, LEGAL AND POLITICAL ENVIRONMENTS THAT IMPACTED ON THE RIGHTS OF LGBT PERSONS DURING 2021

In the DRC, no law criminalizes sexual intercourse between people of the same sex, but since 2013 a deputy by the name of Steve Mbikayi has tried to pass his anti-gay bill to criminalize homosexuality throughout the country. national assembly in Kinshasa but until now this bill is still in the drawer and it has never been the subject of a debate.

In Bukavu, South Kivu Province in eastern DRC, the environment for LGBTI persons is hostile and discriminatory, LGBTI persons have faced a notable increase in arbitrary arrests, police abuse and extortion, job loss, evictions and homelessness, and others are often denied justice on the basis of their sexual orientation or gender identity.

These acts of violations of the rights of LGBTI people are not only the work of the often-under-informed population. They are mostly orchestrated by law enforcement officers, malicious politicians and conservative evangelists. Many LGBTI persons in Bukavu and Uvira live in fear of arrest and avoid all contact with the authorities.

LGBTI persons who are victims of violence or discrimination say they fear reporting such cases to the police, fearing that they in turn will be arrested, or sometimes the same authorities laugh at them saying they have it. well looked for and that it is well done for them. Homophobia escalated in the last three months of October to December 2020 by pastors of Protestant churches with the erection of posters and sermons to incite the community to hatred against LGBTI persons. They also promised to pressure provincial authorities to ban LGBTI person from entering Bukavu and Uvira main market. Often lesbian, transgender women and transgender men or those perceived as such in Bukavu and Uvira are often victims of corrective rape by young people in their neighbourhoods in order to punish them for their gender expression and sexual orientation.

LGBT people who suffer from acts of violence and degrading treatment are a daily reality and a constant source of fear in the city of Bukavu. Degrading treatment and violence against LGBTI people constitute both an attack on physical and psychological integrity prohibited by the African Charter. Most members of the LGBT community in Bukavu and Uvira hide their sexual orientation and gender identity to protect themselves from acts of cruelty and violence at the hands of provincial authorities.²

3. PROTECTION OF PERSONS AT RISK DUE TO THEIR REAL OR PRESUMED SEXUAL ORIENTATION OR GENDER IDENTITY IN 2021

² <https://www.gaystarnews.com/article/anti-lgbti-mob-torch-streets-in-homophobicprotest/#gs.a6q5fu>

<http://www.laprunellerdc.info/2018/05/17/sud-kivu-les-minorites-sexuelles-plaident-pour-plus-de-protection-de-la-part-de-letat/>

<https://laprunellerdc.info/bukavu-la-societe-nous-rejette-suite-a-notre-orientation-sexuellekipinde-mwamba-transgenre/>

WEO and partners have documented instances of improvement of the levels of recognition and protection of human rights of LGBT persons over the past Four years. Cases have been recorded every year in which the Police stepped in to protect the rights of these groups. During 2021, only one such incident was registered. In October 2021, a group of 7 MSM, including activists, were trapped in the offices of Weka organisation by a mob of angry community members.²⁷ The office space is also used as a shelter for LGBTI persons who need temporary housing. The community members were hurling homophobic insults at the men trapped inside the offices and threatened to break in. The Police came to the aid of the men by escorting Weka volunteer lawyers to the premises and dispersing the mob. Directly thereafter, however, the Police themselves proceeded to insult the men trapped in the house and arrested all 7 of them. The Police searched the premises and confiscated condoms, lubricants and anti-retroviral medicines. The men were charged with the offence of ‘having carnal knowledge against the order of nature’ and were subjected to anal examinations.

This incident sends a very clear message that LGBTI person’s risk arrest if they call upon the Police to come to their aid when they have been the victim of a crime. LGBT persons are not afforded equal protection of the law since they are viewed as criminals by the Police on the basis of their identity. An incident such as this one is a step backward for the relationship between the Police and the LGBT community at large and indicates an urgent need for continued sensitisation and awareness raising of LGBT rights among the Police.

4. VIOLATIONS OF HUMAN RIGHTS ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY DURING 2021

4.1 Introduction

During the course of 2021, human rights abuses were committed against LGBT persons on the basis of their real or presumed sexual orientation and gender identity and /or expression. This report categorises violations against LGBT persons on the basis of the rights violated and the perpetrators of these violations. The Constitution of the Democratic Republic of Congo of 2005 (as amended) in its chapter 2 sets out the rights and freedoms to be enjoyed by individuals and groups in DRC. Article 11 of the Constitution provides that the rights and freedoms set out in that chapter are to be respected, upheld and promoted by all organs and agencies of government and by all persons. The Constitution therefore places a duty on all persons as well as all organs of government not to violate the rights of others³. The Constitution also places a positive duty on the state to promote the human rights of all persons in the country. This obligation on the state to promote human rights of all persons is also created by the regional and international human rights instruments to which DRC is a party⁴.

4.2 Number of violations

A total of 118 human rights violations were committed against LGBT persons on the basis of their sexual orientation and gender identity during 2021. This number is much higher than the total number of violations committed against LGBT persons in 2019 and 2020, in which years only 59 and 74 violations on the basis of sexual orientation and /or gender identity were respectively recorded and verified.

4.3 Nature of violations

Various rights of LGBT persons were violated on the basis of their sexual orientation and /or gender identity during 2021. The nature of rights which were violated were: the right to liberty, the right to equality, the right to freedom from torture and cruel, inhuman and degrading treatment and punishment, the right to privacy and the right to freedom of expression, association and assembly. Instances of violation of each of these rights are discussed in more detail in this section.

4.3.1 Violation of the right to liberty

The right to liberty of LGBT persons was violated 153 times in 11 cases. It is by far the most violated right of LGBT persons for 2021. The period under review has seen instances of mass arrests which accounts for the high numbers of violations: in a single arrest, the right to liberty of multiple people can be violated. The right to liberty is guaranteed in Article 17 of the Constitution of the Democratic Republic of Congo. Article 17(4) sets out the specific, limited circumstances under which a person's liberty may be limited through lawful arrest or detention⁵. Safeguards are also put in place for persons arrested or detained for the purposes of bringing them before a court of law or in pursuit of a court order. These safeguards include: freedom from prolonged detention without a trial; the right to be supported by a lawyer of your choice; the right not to incriminate oneself; the right to be presumed innocent; and the right not to be tried for an offence which is not defined by law.

³ Preamble of the African Charter on Human and Peoples' Rights; Art 6(d) of the Treaty for the Establishment of the East African Community; Preamble of the International Covenant on Civil and Political Rights.

⁴ https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011.pdf?lang=en

⁵ Art 17(1) of the Constitution, Art. 9(3) of the ICCPR

a) Freedom from arbitrary arrest

The Constitution of the Democratic Republic of Congo, under Article 17(4) sets out nine particular circumstances under which a person may be lawfully deprived of their liberty. Arrests must be justifiable under one of these nine grounds, otherwise they will be considered arbitrary. There were 136 incidents of arbitrary arrest of LGBT persons during 2021. These incidents took place when LGBT persons were arrested in the absence of reasonable suspicion that these persons had committed or were about to commit a crime; were charged with crimes which do not exist in law; were arrested and not charged or if the charges against them were changed without explanation after the arrest.

In one case, 98 persons were arrested from a bar which is known to be a popular place of socialisation for LGBT persons. During the arrest, a Police man in plain clothing revealed a bag of marijuana and claimed that the persons who were being arrested were in possession of the drugs. The arrestees were taken to Police Station and initially charged with possession of narcotics under the Narcotic Drugs and Psychotropic Substances Control Act (NDPSCA). This charge was later changed to the charge of 'being a common nuisance' under the Penal Code Act. This charge is suspicious and unfounded considering that the arrest was not made in response to a noise complaint or any other complaints from the community surrounding the bar. The fact that the charge was changed indicates an intention on the part of the arresting officers to have the persons arrested and 'punished' for their presumed sexuality and gender identity and expression. There was no real suspicion that the arrestees had all committed a crime or were about to commit a crime. Some of the arrestees were released on bond while others paid bribes. A total of 52 LGBT persons were remanded to Central prison.

In another incident, MSM who had travelled to Sange to attend an event hosted there were arrested from their lodgings. The owners of two homes where the travelers were hosted were arrested along with their guests. After the arrest, the arrestees were beaten and forced to confess to practicing homosexuality. After the intervention of Community Paralegals and WEO lawyers, they were released without charge.

A concerning incident took place at the offices of an LGBT organisation which runs economic empowerment programmes for LGBT persons and provides shelter at the office to those in need. Community members surrounded the office, shouted insults at the inhabitants and threatened to break into the premises. There were 7 MSM and transgender persons on the premises at the time of the incident. The Police came to the aid of the group trapped inside the office, however, after dispersing the mob of community members, proceeded to arrest all 7 of the MSM found in the building while also hurling homophobic insults at them. This arrest can be considered arbitrary since the Police were called to protect the LGBT persons from a violent attack, yet ended up arresting them on the basis of their presumed sexual orientation and gender identity. The case also did not proceed to Court, which could indicate that the LGBT persons were arrested with the purpose of 'punishing' them, even though the Police officers ought to have been aware that charges of 'having carnal knowledge against the order of nature' could not have been proven in Court.

The Police exhibit a willingness to arrest LGBT persons on extremely flimsy grounds, which violate their right to liberty since there is no real reason to believe that a crime has been committed or is about to be committed and no real intention to bring the arrested person before a court of law. In one case, a gay man was arrested and charged under section 176 of the Penal Code Act. While he was still in custody, two of his friends visited him and were also arrested because the Officer in Charge of the station was of the view that they 'looked like homos'. Another transgender person was also arrested for talking to a Police detained without the permission of the Police officers. A group of 7 men who identify as gay were on their way to their respective workplaces in one car in the Mulongwe area. They were all arrested and were not told what the charges against them were. In one extreme case, a gay man was arrested after being outed in the newspaper. He was accused of engaging in homosexual relations by a 15-year-old boy whom he says he had never met before. After being released on bond, he was repeatedly

approached by Police officers who asked him for money in order to make his file disappear. The case was eventually dismissed due to a lack of evidence and the man filed a case at the Inspectorate General of Government against the Police officers who attempted to extort him⁶.

The Police are also willing to arrest LGBT persons in cases where they had been the victims of crime and the perpetrators use their sexual orientation in order to prevent them from accessing justice. In two respective cases, gay men were the victims of theft. Upon reporting the crimes committed to the Police, those who had been accused turned the accusation around and caused the men to be arrested on allegations of sodomy. It is worrying that Police allow LGBT persons' sexual orientation to be used against them and to be complicit in preventing them from bringing those who wrong them to book. Arrests are also considered arbitrary when they are carried out on the basis of criminal offences which do not exist in law. Two MSM were arrested in Kakungwe area for the crime of 'possession of opium' – an offence which had been repealed by the NDPSCA. An MSM was also arrested in Kalamabenge and charged with 'smoking opium' even though this offence no longer exists and has been repealed and replaced by provisions of the NDPSCA.⁷

b) Freedom from prolonged detention

The right to liberty is violated if a person is detained beyond the time period of 48 hours without being produced before a court⁸. During 2021, there were four instances where LGBT persons were arrested for various reasons and were kept in Police custody beyond 48 hours without being brought before a court. In one case, a gay man spent a full 20 days in Police custody and was not brought before a court.⁹ In another case, a gay man was held in Police custody for 10 days after arrest.

4.3.2 Violation of the right to equality and freedom from discrimination

During 2021, there were 25 violations of the right to equality and freedom from discrimination committed against LGBT persons in DRC arising out of two cases. Article 11 of the Constitution protects the right of every person to equality before and under the law as well as equal protection of the law. The fact that same-sex sexual conduct remains criminalised in DRC makes it near impossible for this right to be fulfilled for LGBT persons living in DRC. During the period under review, LGBT persons suffered 25 violations of the right to freedom from discrimination at the hands of the National Congolese Police. The fact that 23 LGBT persons were arrested after they had sought protection from the Police is an alarming violation of the right to equal protection of the law. LGBT persons are effectively barred from accessing the services of the Police on the basis of their sexual orientation and / or gender identity. The case where four gay men were arrested while visiting a detainee on the basis that they 'looked like homos' also amounted to the violation of the right to equality and freedom from discrimination. The four men suffered arrest purely on the basis of what the Officer in Charge perceived to be their sexual orientation.

⁶ <https://www.wipo.int/edocs/lexdocs/laws/fr/cd/cd004fr.pdf>

⁷ Interview with WEO Legal Associate who handled the matter, 19th June 2021.

⁸ Art 17(3)

⁹ WEO/FILE/0123

4.3.3 Violation of the right to life

During 2021, both a gay man and a transgender woman were murdered, violating their right to life. Article 13(1) of the Constitution provides that no person shall be deprived of their right to life apart from within the execution of a death sentence¹⁰. A gay man was brutally murdered in his home in Kalamabenge. The victim worked as a Community Paralegal supporting LGBT persons in his Zone and was also a peer educator trained by The Centre de Recherche pour la Paix et le Développement (CRPD). He suffered trauma to his head inflicted by a hoe which the attackers found in his home. The motive of the murder has not been confirmed and the Police have not concluded investigations, even though WEO provided them with needed logistical support and documentation. No arrests were made up to nine months after the incident, which indicate a failure on the part of the state to appropriately investigate and conclude the case, which renders the state responsible for this violation. Another horrific case was verified in which a young transgender woman was murdered by a group of Motorbike transporter. The deceased had taken a motorcycle to deliver groceries to a friend in the Kalundu area¹¹. Upon returning to her home, she was waylaid by the driver of the motorcycle and a group of other motorcyclists who had been gathered by him. This group attacked the deceased with stones and other blunt objects that caused injuries resulting in her death. Although the Police had responded by making one arrest, the main suspect was not arrested despite the fact that evidence implicating him was made available to the Police. To date, the case has not been resolved which indicates a failure on the part of the state to address the case and renders them responsible for the human rights violation. Cases of this level of brutality were not recorded in previous years and therefore this increase of violent crime against LGBT persons is a matter of grave concern. Of even greater concern is the failure on the part of the Police to conclusively investigate and resolve these brutal cases.

dispersing the mob, the Police proceeded to violate this right of the 23 LGBT persons involved by arresting them and denying them food while in custody. When their lawyers brought them food, they were denied access to their clients. The arrestees were only allowed to eat the food brought by their lawyers on the third day spent in custody. The arrestees were all taken to Zone Police Hospital one days after their arrest and were subjected to anal examinations which further violated their right to dignity and freedom from cruel, inhuman and degrading treatment. There arrestees were furthermore transported on an open truck, even at night time and while it was raining. The right to freedom from torture and cruel, inhuman and degrading treatment and punishment was also violated by Police when two gay men arrested from their lodgings in Kavinvira were beaten after arrest.

4.3.4 Violation of the right to freedom of conscience, expression, movement, religion, assembly and association

There were 20 violations of the right to freedom of conscience, expression, movement, religion, assembly and association of LGBT persons during 2021.

The right to freedom of conscience, expression, movement, religion, assembly and association is protected under Article 22 of the Constitution. The Article protects the right of groups to assemble and

¹⁰ Art 13

¹¹ The Prevention and Prohibition of Torture Act No. 3 of 2012.

the right to associate freely with others. LGBT persons regularly face interferences with their right to associate in organisations and to assemble by holding meetings and social events.

This right was violated when 20 staff members of a transgender organisation were arrested at Mangwa Hotel in Uvira during a Five-day training on Digital Security. The hotel management had assured the organisation of adequate security during their stay. However, on the second day of the training they were all arrested and taken to Mulongwe Police station. The group was charged under unlawful assembly as they had not notified the local Police of their presence. According to Section 4(2)(b) of the Public Order Management Act, the training could be considered as a meeting of members of a registered organisation, convened in accordance with its constitution and held for a lawful purpose of the organisation, therefore not qualifying as a 'public meeting' which would require permission to be held in accordance with the Act.

This right was also violated when an event planned to celebrate IDAHOBIT was disrupted and shut down by the police. The IDAHOBIT event was to take place at the offices of Weka Organisation. Ten Police officers from Zone Police Station arrived at the offices an hour before it was scheduled to start and expressed that they were acting on behalf of the Provincial Minister of Social in closing down the celebrations. This action amounts to a violation of the right to freedom of expression, association and assembly since the organisers were forcibly prevented from lawfully exercising their right to assemble by the Minister.

4.3.5 Violation of the right to privacy

During 2021, there was one violation of LGBT persons' right to privacy. Article 27 of the Constitution provides that no person shall be subjected to an un lawful search of their person, home or other property or unlawful entry by others of the premises of that person. The section also provides that no person shall be subjected to interference with the privacy of their home, correspondence, communication or other property. In the one recorded case, a Local leader violated a transgender woman's right to privacy.

The Local leader, along with the defence secretary of the area, broke into the transgender woman's home in order to investigate claims that she was having a relationship with a boy who also stayed in her house.

4.4 Conclusion

During 2021, there were 126 violations of the rights LGBT persons perpetrated by state actors. These violations mostly infringed on LGBT persons' right to liberty, their right to equality and their right to be free from torture and cruel, inhuman and degrading treatment and punishment.

5. CASES OF VIOLENCE AND OTHER VIOLATIONS OF HUMAN DIGNITY ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY DURING 2021

5.1 Introduction

This section sets out violations of human dignity which were perpetrated by non-state actors against LGBT persons on the basis of their sexual orientation and gender identity during 2021.

According to Article 17 of the Constitution, the human rights and freedoms protected in chapter 1 of the Constitution are to be respected, upheld and promoted by all persons along with all organs and agencies of government. This means that non-state actors are to refrain from inflicting violence and other human rights violations on others¹².

Both regional and international law places a duty on the state to protect the human rights of all persons in the country. The state has a duty under international law to ensure an effective remedy for a person whose rights or freedoms have been violated. This duty is expressed in respect of LGBT persons in particular in Resolution 275 of the African Commission on Human and Peoples' Rights 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. The African Commission expresses deep disturbance at the failure of law enforcement agencies to 'diligently investigate and prosecute perpetrators of violence and other human rights violations targeting persons on the basis of their imputed or real sexual orientation or gender identity'¹³.

The African Commission has furthermore strongly urged 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.'*¹⁴

This section sets out the violations of human dignity suffered by LGBT persons on the basis of their sexual orientation and gender identity. Some of these matters were settled through mediation. Many, however, remained unreported and unresolved due to fear on the part of the victim to pursue the matter and risk further loss or violation. By and large, these violations went without redress by the state, thus the state also failed in its obligation to provide an effective remedy for acts of violence and violations of dignity.

¹² https://www.constituteproject.org/constitution/Democratic_Republic_of_the_Congo_2011.pdf?lang=en

¹³ 7 African Commission on Human and Peoples' Rights 'Resolution 275 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 55th Ordinary Session of the African Commission held in Luanda, Angola 28th April – 12th May 2014.

¹⁴ Preamble of the African Charter on Human and Peoples' Rights'; Art 6(d) of the Treaty for the Establishment of the East African Community; Preamble of the International Covenant on Civil and Political Rights (1966).

5.2 Violations of human dignity on the basis of sexual orientation and gender identity

During 2021, a total of 23 violations of human dignity on the basis of sexual orientation and gender identity were recorded. This section sets out the specific violations of human dignity suffered by LGBT persons on the basis of their sexual orientation and gender identity. The violations of human dignity are classified as acts or threats of violence; evictions; denial of employment; denial of education and denial of contact with children.

5.2.1 Acts or threats of violence

During 2021, 23 acts or threats of violence against LGBT persons on the basis of their sexual orientation and/or gender identity were recorded.

The human dignity of 15 LGBT persons was violated by their neighbours and community members when these formed a mob and surrounded the offices of an LGBT organisation based in Mulongwe. The community members were insulting the LGBT persons as they trapped them in the house which serves as an office building and a shelter. They also threatened to break into the house and it cannot be known what the fate of the people found in the house would have been if the Police did not arrive at the scene and dispersed the mob.

An incident was recorded where a group of teachers of a secondary school confronted a 15-year-old male student who was rumoured to be gay. The teachers comprising of 9 males called the pupil to a room and started to interrogate him about the homosexuality allegations and rumours that were making rounds in the school. They then ordered him to lie down and beat him one after the other. Thereafter he was locked up in the room where he spent the night.

In another case, a gay man was assaulted by a mob led by his brother in the Bagira area. Another case was recorded where a gay man was attacked and beaten by three unknown men in Sange. In yet another case, a gay man was severely beaten by a group of men at a bar who had found out that he was gay. The assailants also stole his phone and wallet.

One incident was verified where a healthcare provider brutally assaulted a potential patient on the basis of her perceived sexual orientation. The victim is a lesbian woman who was friends with the daughter of an eye specialist. She went to the hospital premises because she wanted to get a pair of glasses. The doctor responded to the victim's arrival at the premises by using a stick to severely beat her for being a lesbian. Assault charges have been laid against the doctor at Police level and the Provincial Ministry of Health directed the Medical and Dental Practitioners Council to investigate the allegations. The victim, however, decided not to pursue the case further.

During 2021, both a gay man and a transgender woman were murdered, which were the most extreme cases of violence recorded for the year. The gay man was brutally murdered in his home in Kigongo. The victim worked as a Community Paralegal supporting LGBT persons in his town and was also a peer educator trained by Weka Organisation (WEO). He suffered trauma to his head inflicted by a hoe which the attackers found in his home. A young transgender woman was murdered by a group of boda-boda motorcyclists. The deceased had taken a boda-boda motorcycle to deliver clothes to a friend in the Kimanga area. Upon returning to her home, she was waylaid by the driver of the motorcycle and a group of other motorcyclists who had been gathered by him. This group attacked the deceased with stones

and other blunt objects that caused injuries resulting in her death. Cases of this level of brutality were not recorded in previous years and therefore this increase of violent crime against LGBT persons is a matter of grave concern.

5.2.2 Evictions

A total of 18 evictions on the basis of sexual orientation and gender identity were recorded during 2021, which actions violated the human dignity of the LGBT persons involved.

LGBT persons often face ostracism and rejection from their families when they come to know about their sexual orientation and gender identity. There were nine recorded cases where family members of LGBT persons evicted them from the family home on the basis of their sexual orientation and/or gender identity. In one of these cases, a transgender man was sent away from the family home by his parents because he 'dressed like a man'. In another case, the parents of a gay man found out about his sexual orientation after he was arrested in the bar incident and appeared on the news. They subsequently sent him away from the family home. A young lesbian woman was also told to leave the family home after her sexual orientation came to light.

Five LGBT persons who were outed during the bar incident were evicted by their landlords on the basis of their sexual orientation and / or gender identity. Two other LGBT individuals were also evicted from their homes after their landlords came to know about their sexual orientation. Three LGBT organisations were evicted or forced to abandon their premises on the basis of discriminatory acts by their neighbours and community members. An organisation based in Nyamyanda faced continuous attacks on its staff members by the community. Community members also stole organisational property and continuously taunted the members. Eventually, the organisation was evicted from the premises. The offices of an organisation based in Kalundu were closed down on the basis of threatening communications from their neighbours¹⁵. An organisation which operates a shelter for LGBT persons who had been excommunicated from their families in Kasenga was raided. Community members continuously threatened the organisation, forcing those who were making use of the shelter as a safe house to seek alternative accommodation.¹⁶

5.2.3 Denial of employment

One case was recorded in which a gay man lost his job after his former partner informed some of his work colleagues that he was gay. The fact that his employment was ended merely on the basis of his rumoured sexual orientation amounted to a violation of his human dignity.

5.2.4 Denial of education

One case was verified in which a gay man was prevented from writing his examinations at a university after his sexual orientation came to light during the bar outing. Preventing a student from continuing their studies, merely on the basis of their sexual orientation, is a blatant violation of their human dignity.

¹⁵ WEO/VR/2-21/007

¹⁶ WEO/VR/2-21/008

5.2.5 Denial of contact with children

There were two verified cases in which LGBT persons were denied access to their children on the basis of their sexual orientation. In the one case, the mother of the children of a gay man denied him access to the children on the basis of the fact that he has sexual relations with men. Similarly, a lesbian woman was also prevented from seeing her children by their father on the basis of her sexual orientation

5.2 Conclusion

During 2021, there were 45 violations of the human dignity of LGBT persons on the basis of their sexual orientation and gender identity which can be classified as acts or threats of violence; evictions; denial of employment; denial of education and denial of contact with children.

6. PERPETRATORS OF VIOLATIONS ON THE BASIS OF SEXUAL ORIENTATION AND GENDER IDENTITY DURING 2021

6.1 Introduction

During 2021, the human rights of LGBT persons were violated on the basis of their real or presumed sexual orientation and/or gender identity by state actors. Non-state actors also committed violations of the human dignity of LGBT persons on the basis of their sexual orientation and gender identity, which included the commission of severe acts of violence.

6.2 Human rights violations by state actors

During 2021, three state actors were responsible for human rights violations against LGBT persons namely the Congolese National Police, and a Local leader. A total of 135 violations arising from the actions of state actors were visited upon LGBT persons during 2021. This is an alarming increase from the 30 violations committed by state actors against LGBT persons in 2020 and the 29 violations recorded in 2019.

6.2.1 The Congolese National Police

Despite a trend of greater protection and fewer violations committed by the Police over the past few years, the data from 2021 reveal a sudden upward trend of violations committed by the Police against LGBT persons. In 2020, there were only 29 violations committed by the Police, which amounts to 42% of all violations committed during the year. A similarly low number of violations were recorded in 2019, namely 26 violations and 64 violations were recorded in 2018. During 2021, the Police were responsible for committing 233 violations against LGBT persons. Of the 233 violations, 162 were violations of the right to liberty, 18 were a violation of the right to equality and freedom from discrimination, 18 were the violation of the right to dignity and freedom from torture, cruel, inhumane and degrading treatment or punishment, two were violations of the right to life and 33 were violations of the right to freedom of expression, movement, association and assembly.

6.2.3 Local Council leaders

In one case, a Local leader violated a transgender woman's right to privacy by breaking into her home in order to investigate claims that she was having a relationship with a boy who also stayed in her house.

6.3 Violations of human dignity perpetrated by non-state actors

During 2021, non-state actors committed 45 violations of human dignity against LGBT persons.

Among non-state actors, the greatest number of violations of dignity were committed by members of the general public (18). Twelve violations were committed by family members of the victims; one was committed by teachers; eight by landowners renting out premises; one by a university; one by a private healthcare provider and one by an employer.

Some of these matters were settled through mediation. Many, however, remained unreported and unresolved due to fear on the part of the victim to pursue the matter and risk further loss or violation.

By and large, these violations went without redress by the state, thus the state also failed in its obligation to provide an effective remedy for human rights violations.

6.3.1 Violations of human dignity by the general community

The Congolese society is decidedly homophobic. A survey conducted by the Centre de Recherche pour la Paix et le Développement in 2015 found that 96% of Congolese do not believe that society should accept homosexuality. A 2014 SIDA study also found that 95% of Congolese would not tolerate having a homosexual neighbour¹⁷. Although the exactness of these estimates may be questioned, the statistics indicate a societal set-up where it can almost be expected that violations against LGBT persons will occur and that they will furthermore be condoned by the majority of society.

During 2021, members of the general community committed 21 violations of dignity against LGBT persons. These violations include 15 threats of violence and four acts of violence; and two cases in which LGBT organisations were forced to leave their premises due to repeated taunts, threats and theft of property by community members.

6.3.2 Violations of human dignity by family members

There were 12 verified violations of dignity committed against LGBT persons by their family members on the basis of their sexual orientation and gender identity during 2021. Nine of these violations took place where family members of LGBT persons evicted them from the family home on the basis of their sexual orientation and/or gender identity. There were two cases in which the LGBT parents were denied contact with their children by the children's other parent. There was also a case in which a gay man was assaulted by a mob led by his brother.

6.3.3 Violations of human dignity by teachers

An incident was recorded where a group of teachers of a secondary school confronted a 15-year-old male student who was rumoured to be gay. The student was interrogated, beaten and locked in a room overnight.

6.3.4 Violations of human dignity by private healthcare providers

One incident was verified where a healthcare provider brutally assaulted a potential patient on the basis of her perceived sexual orientation. The victim is a lesbian woman who was friends with the daughter of an eye specialist who had gone to see the doctor at the hospital in order to get a pair of spectacles. A case such as this, where a medical professional openly assaults a patient on the basis of their sexual orientation is unprecedented in RDC and very alarming.

6.3.5 Violations of human dignity by employer

One case was recorded in which a gay man lost his job after his former partner informed some of his work colleagues that he was gay. The fact that his employment was ended merely on the basis of his rumoured sexual orientation amounted to a violation of his dignity.

¹⁷ <https://cdn.sida.se/app/uploads/2021/05/07083458/rights-of-lgbt-persons-drc.pdf>

6.3.6 Violations of human dignity by landowners

During 2021, eight violations of dignity were committed by landowners who evicted LGBT persons or organisations on the basis of their sexual orientation and / or gender identity or on the basis of the work that they do within the LGBT community. An organisation offering services to LGBT persons in Mulongwe were evicted from their premises by their landlord after a period of constant harassment by the neighbouring community. Five LGBT persons who were outed during the bar incident were also evicted by the landlords. Two other LGBT individuals were also evicted from their homes after their landlords came to know about their sexual orientation.

6.3.7 Violation of human dignity by a private university

One case was verified in which a gay man was prevented from writing his examinations at a university after his sexual orientation came to light during the bar outing. Preventing a student from continuing their studies, merely on the basis of their sexual orientation, is a blatant violation of dignity.

6.4 Conclusion

During 2021, there were a series of violations of the rights LGBT persons perpetrated by state actors. These violations mostly infringed on LGBT persons' right to liberty, their right to equality and their right to be free from torture and cruel, inhuman and degrading treatment or punishment. Non-state actors also violated the human dignity of LGBT persons on the basis of their sexual orientation and gender identity, mainly through committing violent acts against them and evicting them from their homes or organisational premises.

7. GENERAL ANALYSIS OF REPORTED VIOLATIONS OF HUMAN RIGHTS BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

Over the past ten years, there has been a steady decline of human rights violations committed against LGBT persons. Police officers increasingly refrained from taking the law into their own hands when confronted with LGBT persons up to the end of 2020. However, considering the figures from 2021, there has been a marked increase in the number of violations committed against LGBT persons by state actors. The number of violations of human dignity, and particularly acts of violence, committed against LGBT persons by members of the public has increased and includes murder, which has not been the case in previous years.

7.1 Analysis of trends 2021

During 2021, 179 cases were reported to WEO and partner organisations, revealing 226 verified human rights violations against LGBT persons on the basis of their sexual orientation and/or gender identity. All the cases handled by WEO's secretariat, and affiliated Community Paralegals did not constitute a human rights violation or constituted human rights violations which were not based on the victim's sexual orientation and/or gender identity. A variety of constitutionally guaranteed human rights were violated, in particular: the right to liberty, the right to privacy, the right to dignity and freedom from torture and cruel, inhuman and degrading treatment or punishment and the right to equality and freedom from discrimination. This section analyses and summarises the violations committed against LGBT persons during 2021 in comparison to preceding years.

7.2 Trends in number of rights violations

A total of 226 human rights violations were committed against LGBT persons on the basis of their sexual orientation and gender identity during 2021. This number is much higher than the total number of violations committed against LGBT persons in 2020 and 2019, in which years only 68 and 75 violations on the basis of sexual orientation and /or gender identity were respectively recorded and verified.

7.3 Trends in nature of rights violations

While the right to dignity and freedom from cruel, inhuman and degrading treatment and punishment was the most violated right in 2018, and the right to equality in 2019, the right to liberty is recorded as the most violated right in 2020. In 2021, the right to liberty was by far the most violated right.

Table 1: Categories of rights most commonly violated in 2021, 2020 and 2019

Category of right	Number of violations per year		
	2021	2020	2019
Right to liberty	153	23	10
Right to privacy	1	9	14
Right to dignity and freedom from torture	15	13	10
Right to equality and freedom from discrimination	15	14	20
Right to life	2	0	0
Right to property	0	7	1
Freedom of expression, association and assembly	30	8	4

The violation of the right to liberty had increased dramatically since 2019. This right was mostly violated in instances where large groups of LGBT persons were arrested at the same time on grounds that were not clear; on the basis of charges which could not be sustained or in the absence of reasonable suspicion that the person has or is about to commit a crime. This increase in the number of violations of the right to liberty may be attributed to rumours and talk that Parliament intends to reintroduce the Anti-Homosexuality Bill. The mere possibility that the hateful legislation may be reintroduced was enough to spark a scourge of violations and acts of violence against LGBT persons by both state and nonstate actors.

As was the case in the two preceding years, a considerable number of violations of the right to freedom from torture and cruel, inhuman and degrading treatment or punishment were committed by mainly the Police, during and after the process of arresting LGBT persons.

7.3.1 General overview of trends in the violation of the rights of LGBT persons over the years

Table 2: Comparative overview of human rights violations over five years

Categories of rights	Number of violations per period under review				
	2017	2018	2019	2020	2021
The right to equality and freedom from discrimination	50	46	20	14	15
The right to liberty	22	37	14	23	153
The right to freedom from cruel and inhuman treatment	36	63	10	13	15
The right to property	12	13	1	7	0

The right to privacy	27	8	14	9	1
The right to freedom of expression, association and assembly	5	38	4	8	30
The right to life	0	0	0	0	2
TOTAL	152	205	59	74	236

In comparing the numbers of violations over the past five years, it is clear that there was a downward trend in violations on the basis of sexual orientation and gender identity up to 2020. However, in 2021 there is a clear upward trend of violations committed against LGBT persons.

There is a rise in violent homophobia and transphobia as expressed by state actors in the harsh deprivation of liberty of LGBT persons both in cases where mass arrests were carried out as well as the case where 16 LGBT persons were arrested after calling for Police protection when they were threatened by a mob.

7.3.2 Trends in violations of human dignity

During 2021, non-state actors committed 45 violations of human dignity against LGBT persons on the basis of their sexual orientation and / or gender identity. These violations included 22 cases of violence or threatened violence; 18 evictions; one case of denial of education; one case of denial of employment and two cases of denial of contact with children.

Table 3: Violations of human dignity committed against LGBT persons in 2021

Category of violation of the right to human dignity	Number of cases
Violence or threatening violence	22
Evictions	18
Denial of employment	1
Denial of education	1
Denial of contact with children	2
TOTAL	44

Violations committed by members of the public against LGBT persons have become more frequent and more violent than it had been in previous years. In 2020 a total of 22 violations were committed by members of the public. This number was much higher in 2021. Two murders of LGBT persons were recorded, along with 21 others acts of violence committed against LGBT persons.

Some of these matters were settled through mediation. Many, however, remained unreported and unresolved due to fear on the part of the victim to pursue the matter and risk further loss or violation. By and large, these violations went without redress by the state, thus the state also failed in its obligation to provide an effective remedy for acts of violence and violations of human dignity.

7.3.3 Trends in perpetrators of violations of human dignity

State actors were responsible for 226 human rights violations committed during 2021. Previous reports considered acts of violations as well as violations of human dignity committed by non-state actors to be classified as human rights violations. A ratio of violations committed by state actors as opposed to non-state actors could thus be determined and compared from year to year. This report does not consider such acts committed by non-state actors to qualify as human rights violations, but does consider the state's responsibility to prevent and address such acts. In terms of sheer numbers, human rights violations committed by state actors have drastically increased in 2021. In 2020, state actors committed only 30 verified violations against LGBT persons

Table 4: Perpetrators of human rights violations against LGBT persons

Perpetrator	Number of violations occasioned
The Uganda Police Force	224
The Office of the Minister of Ethics and Integrity	1
Local Council leaders	1
TOTAL	226

7.3.4 Trends in perpetrators of violations of human dignity

Table 5: Perpetrators of violations of human dignity against LGBT persons in 2021

Perpetrator	Number of violations of human dignity
Members of the general public	22
Family members	12
Landowners	8
Teachers	1
Private universities	1
Private medical practitioners	1
Employers	1
TOTAL	46

The cases of murder of LGBT persons within the community as well as the numerous cases of mobs inflicting violence on LGBT persons are extremely worrying. There is need for drastic intervention at both state and community level to sensitise the country about the rights of LGBT persons and to demystify sexualities and gender identities which deviate from the norm. There is need for the government to send a very clear message to the citizenry that crimes and other human rights violations committed against LGBT persons shall not go unpunished.

7.4 Conclusion

An analysis of the trends indicates that there has been an increase of human rights violations committed against LGBT persons by state actors as well as an increase in the number and severity of violations of human dignity committed by non-state actors, as compared to previous years.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 General conclusion

In 2021, a stark increase in the number and severity of human rights violations committed against LGBT persons by state actors was evident. There was also an alarming number of acts of violence committed against LGBT persons by non-state actors. There is seemingly an increased level of hostility against LGBT persons and the environment for this group is deteriorating. Mass violations were committed against groups of LGBT persons by both state and non-state actors, a trend which has not been seen since 2017. The year also saw two violent murders of LGBT persons. There seems to be a measure of loss of the gains made thus far with sensitisation and awareness raising among both state and non-state actors on the rights of sexual minorities. A strong stand has to be taken on the part of the leadership of the country to ensure that the downward spiral of violence and denigration of LGBT persons comes to an end.

8.2 Recommendations

To the President of the Republic of Democratic Republic of Congo

The Office of the President is key to the law-making process and the President has the authority to address laws that are not compliant with the Constitution and initiate processes to have such laws amended. The President also has the power to issue Directives that are to be followed by all state and non-state actors within the country. It is recommended that the President does the following :

1. Make clear statements that acts of violence and discrimination against vulnerable minorities, including LGBT persons will not go unpunished.
2. Publicly reject proposed legislation which discriminates on the basis of sexual orientation and gender identity.

To Parliament

The Parliament of Democratic Republic of Congo has the authority to legislate and thereby influence the levels of protection or violation experienced by LGBT persons in DRC. They are recommended to do the following:

1. Repeal laws which create the offence of 'having carnal knowledge against the order of nature', which is interpreted to criminalise LGBT persons and are used to justify denying them equal protection of the law.
2. Repeal sections of the Penal Code Act which create broad and vague petty offences such as 'being a common nuisance', which are used to arbitrarily arrest and punish persons who are poor and undesirable, including LGBT persons.
3. Ensure that government fulfils its international and regional human rights obligations to all without discrimination.

To the DRC National Police

The DRC National Police is a critical actor in terms of protecting and violating the rights of LGBT persons. The Police can either protect the rights of LGBT persons when they face abuse and discrimination from the general public or condone and thereby exacerbate such homophobic and transphobic behavior. The Police also determine whether or not LGBT persons will be arrested and prosecuted on the basis of their real or presumed sexual orientation and/or gender identity. In this regard, the following recommendations are made to the Police:

1. Thoroughly and conclusively investigate cases of violence against LGBT persons by members of the public.
2. Continue training Police officers on the human rights of MSM and transgender persons as well as the limits of the laws which they are mandated to enforce.
3. Strengthen mechanisms which exist to redress human rights violations committed by members of the UPF. In particular, improve the responsiveness of the Police Professional Standards Unit in handling matters of alleged violations committed by Police Officers.

To the Congolese National Human Rights Commission

The Uganda Human Rights Commission is mandated to ensure the preservation and protection of the basic human rights of all, both in law and in practice. It is recommended that the UHRC does the following:

1. Demand accountability from the state for all human rights violations reported, especially those that go unaddressed.
2. Hear and dispose of cases involving violations of rights of LGBT persons, some of which have been pending before the Commission's Complaints and Investigations Directorate since 2018.
3. Develop proposals to amend laws that are discriminatory and which do not align with the Constitution of the Democratic Republic of Congo.

To the media

The media has an important part to play in either promoting or combating stigma against LGBT persons, depending on how they choose to frame stories which concern members of this group. The media is also in a position to 'out' LGBT persons to the public, which can be extremely dangerous to their life, security and well-being. The media is recommended to do the following :

1. Report cases of violations against LGBT persons as such, rather than maintaining silence amidst such violations.

To civil society organisations

Organisations which exist to promote human rights, including the rights of LGBT persons, are equipped to raise awareness about the discrimination and challenges which KPs face within the Congolese society.

These organisations can advocate for an improved legal and policy environment through various means. It is recommended that civil society does the following :

1. Ensure that the Police fully and effectively investigates cases of violations committed against LGBT persons.
2. Advocate for the adoption of a law that would categorise crimes committed against LGBT persons on the basis of their sexual orientation or gender identity as hate crimes.
3. Develop the capacity of staff to document violations based on sexual orientation and gender identity. This could include adopting uniform guidelines for recording information on cases and violations.

ABOUT WEKA ORGANISATION

Background

Waka Organisation is a voluntary, not for profit, and nonpartisan Non-Governmental Organisation. WEO works for the promotion, realisation, protection and enforcement of human rights through human rights awareness, advocacy and legal aid service provision, with a particular focus on minorities and disadvantaged groups. It was established with a vision of improving the observance of human rights of marginalised persons in Democratic Republic of Congo.

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, and advocacy, legal and human rights awareness, capacity enhancement and strategic partnerships.

WEO'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 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 persons.
6. To maintain a strong and vibrant human rights organisation.

Our target constituencies

1. Lesbian, Gay, Bisexual and Transgender (LGBT) persons
2. Intersex Persons
3. Sex Workers
4. Women, girls and service providers in conflict with abortion laws
5. People who use drugs
6. People Living with HIV and TB (PLHIV/TB)

WEO 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