

Uganda: Concerns about proposed Anti-Homosexuality Bill

Violation alleged: Non-respect of international standards on safeguards and restrictions relating to the imposition of capital punishment

Subject(s) of appeal: Group concern

Character of reply: No response

Observations of the Special Rapporteur: The Special Rapporteur regrets that the Government of Uganda has failed to cooperate with the mandate that he has been given by the General Assembly and the Human Rights Council.

Allegation letter dated 23 December 2009, sent with the Working Group on arbitrary detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

1136. We would like to bring the attention of your Excellency's Government information received concerning a legislative bill pending before the Ugandan legislature, Bill N° 18 of 2009.

1137. According to the information received, the Parliament of Uganda is currently considering Bill N° 18 of 2009 (also known as the "Anti-Homosexuality Bill") tabled before it on 15 October 2009. The proposed Bill increases penalties for homosexual conduct and criminalizes many related activities. The envisaged penalties range from imprisonment not exceeding three years for the failure to denounce the commission of an offence as defined by the Bill to life imprisonment and the death sentence. Consensual homosexual conduct is already a criminal offence under article 145 sub a) of the Ugandan criminal code, which penalizes "carnal knowledge of any person against the order of nature". However, Bill N° 18 would expand the reach of this existing provision by including "any person who touches another person with the intention of committing an act of homosexuality". The Bill also punishes 'aggravated homosexuality', including activity by 'serial offenders' or those who are living with HIV, with the death penalty.

1138. In addition, the Bill punishes any form of 'promotion of homosexuality' with imprisonment of five to seven years. This raises concerns that the work of civil society actors and human rights defenders addressing issues of sexual orientation or gender identity might be criminalized. The Bill specifies that this includes anyone who publishes or disseminates 'homosexual materials', 'funds or sponsors homosexuality and related activities', 'uses electronic devices which include internet, films and mobile phone' or 'who acts as an accomplice or attempts to promote or in any way abets homosexuality and related practices'. The Bill also criminalizes failure to report any offences within its scope, compelling citizens to report to the authorities anyone whom they suspect of engaging in homosexual activity.

1139. Furthermore, HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials, may be compromised by this Bill. However, women, sex workers, people living

with HIV, and other marginalized groups may also find their activities tracked and criminalized through this Bill should it be enacted into law.

1140. We would like to draw the attention of your Excellency's Government to its commitment to protect the right to health as reflected in the international legal instruments. The Universal Declaration of Human Rights provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food (Article 25 (1))." Article 12 of the International Covenant on Economic, Social and Cultural Rights, which your Excellency's Government ratified on 21 April 1987, specifically provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on part of all States parties to ensure that health facilities, goods, and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

1141. Furthermore, a number of studies indicate that criminalization of homosexuality will have a detrimental impact on efforts to combat the spread of HIV in Uganda. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons constitutes a far more effective approach to HIV prevention. If the Bill came into force, it would impede access to HIV- and health-related information and services for LGBT individuals and could thereby undermine the national HIV response, not only by discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.

1142. In this context, we would like to remind your Excellency's Government of General Comment N° 20 on Non-Discrimination in Economic, Social and Cultural Rights, adopted by the Committee on Economic, Social and Cultural Rights in 2009. In paragraph 32, the Committee stated that "parties should ensure that a person's sexual orientation is not a barrier to realizing Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place".

1143. The Committee also underlined in paragraph 33 that "health status refers to person's physical or mental health. States parties should ensure that a person's actual or perceived health status is not a barrier to realizing the rights under the Covenant. The protection of public health is often cited by States as a basis for restricting human rights in the context of a person's health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum. States parties should also adopt measures to address widespread stigmatization of persons on the basis of their health status"

1144. In relation to the penalty of imprisonment as enshrined in the Bill, we would like to draw your Excellency's Government's attention to article 9, paragraph 1, clause 2, of the International Covenant on Civil and Political Rights (ICCPR), which the Government

of Uganda ratified on 21 June 1995. This provision stipulates that [n]o one shall be subjected to arbitrary arrest or detention. The Working Group on Arbitrary Detention has qualified deprivation of liberty as arbitrary, inter alia, "[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II).

In this connection, we would like to draw your Excellency's Government to Opinion N° 22/2006 (A/HRC/4/40/Add.1, page 91), in which the Working Group on Arbitrary Detention, at para. 19, held that "[e]ver since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 ... the Working Group has followed the line taken in those cases. That means that the existence of laws criminalizing homosexual behaviour between consenting adults in private and the application of criminal penalties against persons accused of such behaviour violate the rights to privacy and freedom from discrimination set forth in the International Covenant on Civil and Political Rights. Consequently, the Working Group considers that the fact that the criminalization of homosexuality ... is incompatible with articles 17 and 26 of the International Covenant on Civil and Political Rights."

1145. In addition, with regard to the provisions in article 13 of the Bill which criminalize any form of 'promotion of homosexuality', including using electronic devices such as the Internet, films, mobile phones for "purposes of homosexuality" or "promoting sexuality", we would like to remind your Excellency's Government of its obligation to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the ICCPR, which provides that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

1146. Finally, we would like to draw your attention to principles of international law relevant in relation to article 3 of the Bill, which makes "aggravated homosexuality" (such as where the person against whom the "offence of homosexuality" is committed is a minor or a person with a disability, or the "perpetrator" is a person living with HIV or a "serial offender") punishable by the death penalty. We would like to recall that, although the death penalty is not prohibited under international law, it has long been regarded as an extreme exception to the fundamental right to life, and must as such be applied in the most restrictive manner. Article 6(2) of the International Covenant on Civil and Political Rights provides that "in countries which have not abolished the death penalty", the "sentence of death may be imposed only for the most serious crimes".

As the Special Rapporteur on extrajudicial, arbitrary or summary executions observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Article 3 of Bill N° 18 of 2009 is incompatible with this well-established principle of international law.

1147. We urge your Excellency's Government to take all necessary measures to ensure that the enjoyment of the right to the highest attainable standard of physical and mental health, of the rights not to be arbitrarily deprived of one's life or personal freedom, as well as of the right to freedom of opinion and expression is protected. It is our opinion as independent human rights experts of the Human Rights Council that only the withdrawal or rejection of Bill N° 18 of 2009 can ensure that fundamental principles of international human rights law binding for Uganda are not seriously violated.

1148. We would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged pertaining to the proposed "Anti-Homosexuality Bill" correct?
2. Please provide details of any actions taken to remove the provisions in the Bill which violate the human rights of the people of Uganda – specifically those relating to the application of the death penalty, imprisonment, discrimination on the basis of sexual orientation, discrimination on the basis of HIV status, freedom of opinion and expression, and the right to health, but generally with a view to the Bill in its entirety.
3. What measures have been taken to ensure non-discrimination on the basis of sexual orientation?