

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Communications to and from Governments, A/HRC/14/24/Add.1, 18 June 2010: Uganda

Uganda: Death in custody of Brian Mpadde

Violation alleged: Deaths in custody owing to torture, neglect, or the use of force, or fear of death in custody due to life-threatening conditions of detention.

Subject(s) of appeal: 1 males (death in custody) and 8 others.

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.

Urgent appeal dated 12 November 2009, sent with the Working Group on arbitrary detention, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

1126. In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention of nine men under Penal Act Code Article 145(a) and the alleged ill treatment of two of the detainees, one of which died immediately upon release from prison.

According to the information received:

Consensual homosexual conduct is a criminal offence in Uganda, punishable, in some cases, with life imprisonment. At present people suspected of homosexual conduct are being prosecuted on the charge of 'carnal knowledge of any person against the order of nature' under Penal Act Code Article 145 (a). Reportedly, nine men are currently being detained on this charge and have been held in detention for over 90 days without trial. They were allegedly arrested without warrant or other permission by local police officers in some cases cooperating with the Local Council Officials, on the basis of unfounded allegations of homosexuality made by fellow villagers. They have then been detained for extended periods of time, longer than the maximum of 48 hours, during which time some men were beaten by other detainees and police, forced to undergo invasive medical examinations, and were denied access to necessary health care.

Details regarding each of the individuals are outlined below:

1. Mr. Simon Semondo was first detained in Nakifuma, Kawuuga Prison, Mukono, and is now detained in Luzira Prison, Kibuye. Initially charged with "carnal knowledge against the order of nature", he was later charged with "defilement" and "aggravated defilement". Mr. Semondo remains in Luzira Prison pending a hearing on his application for bail, which has recently been postponed for two months

2. Mr. Shasha Kalule Kirumira has been detained since March 2009 in Kigo Prison, Entebbe. He was initially charged with "carnal knowledge against the order of nature" and later with "aggravated defilement".
3. Mr. Christopher Timmy: The details of his detention are unknown.
4. Mr. Julius Kizito is detained in Butuntumula Prison, Luwero Village. Initially charged with "carnal knowledge against the order of nature", he was later charged with "defilement" and "aggravated defilement".
5. Mr. Joseph Ssempijja was detained from June 2009 to 13 July 2009 in Luzira Prison, Kibuye, charged with "aggravated defilement".
6. Mr. David Erias Musoke Kazeeyi Kazooba was arrested in May 2009 in Nakawuka Village, Kasanje Sub-County, Wakiso District and charged with "aggravated defilement".
7. Mr. Justus Kiiza Turyamureba was arrested in October 2008 in Karoza, Mitooma, Bushenyi and charged with "carnal knowledge against the order of nature".
8. Mr. Fred Wasukiara (also known as Nabooza Margate) was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda and charged with "carnal knowledge against the order of nature". He was detained in Kampala Road Police Station, Mbale Police Station, and Maluke Prison (all in the Mbale District of Eastern Uganda) until 20 May 2009.
9. Mr. Brian Mpadde was arrested on 8 April 2009 in Namakwekwe Village, Mbale District of Eastern Uganda, charged with "carnal knowledge against the order of nature". He was detained, in Kampala Road Police Station, Mbale Police Station and Maluke Prison (all in the Mbale District of Eastern Uganda) until June 16, 2009.

In particular, information received regarding Mr. Brian Mpadde and Mr. Fred Wasukira suggests that there were no investigations into allegations by the police who lacked warrants of arrest. The arrests followed denunciations of Namakwekwe villagers and local LCD officers who 'suspected' Wasukira and Mpadde of homosexual activity. At the Kampala Road Police Station, both men were kept in a cell with 17 other men who allegedly severely beat them on two occasions, allegedly after having been incited by the police to do so and disclosure of the allegations against them. On 9 April 2009, both men were transferred to Mbale Police Station, where they were allegedly examined by a police doctor in a humiliating and invasive manner.

The report of these examinations (dated 16 June 2009) stated that both men had the STI gonorrhoea and were HIV negative and mentioned that both men had pierced ear lobes, a presumed sign of homosexuality. The police also allowed the media to take photographs of Mr. Wasukira and Mr. Mpadde, which were then used in full coverage stories on television and in newspapers. Reports about these alleged violations of the right to privacy were submitted to the Uganda Human Rights Commission on 17 June 2009. Both men remained in custody at Mbale until 17 April 2009 when they were formally charged in court with 'having carnal knowledge against the order of nature'. They were then transferred on remand to Maluke Prison in Mbale. Following appearances on 21 April 2009 and 4 May 2009, bail was set for both of them.

However, neither man could immediately meet the financial terms and conditions set by the court, so their detention was again extended until 20 May 2009, when Mr. Wasukira was released. He is attending court hearings while on bail. Meanwhile, Mr. Mpadde

remained in custody until 16 June 2009. Due to the violent treatment received while in custody, Mr. Mpadde was admitted to Mbale District Hospital, with severe injuries to his head and internal organs, immediately upon getting bail. However, he went into a coma before any medical examinations were carried out.

Subsequently, his condition deteriorated and he died on 13 September 2009. Medical records contain conflicting information on the cause of this death. While one report indicates that the coma was due to complications from syphilis, others indicate that his death was related to meningitis or anemia. Despite the resulting uncertainty, no autopsy was carried out on Mr. Mpadde and the cause of this death remains unknown. However, a number of sources have indicated their fear that physical and psychological ill-treatment or torture during Mr. Mpadde's detention may have caused or contributed to his death.

1127. Without expressing at this stage an opinion on the facts of the above cases and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights.

1128. We would also like to draw your Excellency's Government's attention 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.

1129. We would further like to draw your Excellency's Government's attention to the evidence that shows that criminalization of homosexuality has a negative effect on responses to HIV. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against lesbian, gay, bisexual and transgender (LGBT) presents an effective approach to HIV prevention. Criminalization of homosexuality impedes access to HIV- and health-related information and services for LGBT individuals and thereby can undermine the national HIV response, by not only discouraging LGBT individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community

1130. In this context, we would like to draw your Excellency's Government's attention to General Comment No. 20 on Non-Discrimination in Economic, Social and Cultural Rights (art. 2 para. 2) of the Committee on Economic, Social and Cultural rights, and in particular to its paragraph 7, which states: "Non-discrimination is an immediate and

cross-cutting obligation in the Covenant. Article 2(2) requires States parties to guarantee nondiscrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights”.

1131. Furthermore, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this context, we would like to draw your Excellency’s Government’s attention to paragraph 1 of Human Rights Council Resolution 8/8 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

1132. With regard to Mr. Mpadde, we wish to recall that, when the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council at its 8th Session in Resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions” (OP 4).

1133. In the event that your investigations support or suggest the above allegations to be correct, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the aforementioned persons are respected and accountability of any person guilty of the alleged violations is ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

1134. In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the abovementioned persons in compliance with the above international instruments.

1135. Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged pertaining to the arrests and detention of the nine men listed above correct?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these nine cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please indicate which measures were taken to address the medical needs of Mr. Brian Mpadde and Mr. Fred Wasukira following the injuries they sustained as a result of the alleged beatings, and to ensure the right to the highest attainable standard of health. If no measures were taken, please explain why.
4. What measures have been taken to ensure non-discrimination on the basis of sexual orientation in the realization of the right to health?
5. Please indicate the legal basis for the arrest and detention of these persons and how these measures are compatible with applicable international human rights principles and standards as contained, inter alia, in the Universal Declaration of Human Rights.