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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 the situation of human rights defenders.

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9)
UGA 6/2012

21 February 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 16/4, 15/21, 15/22, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the draft "anti-homosexuality legislation" which remained in the "business to follow" section of the order paper during the current session of the 9th Parliament of Uganda in February 2013.**

The Anti-Homosexuality Bill was the subject of an additional communication, sent to your Excellency's Government on 29 March 2012, by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions. We regret that to date no reply has been transmitted by your Excellency's Government to this communication.

Furthermore, the aforementioned Bill was also the subject of an additional communication sent to your Excellency's Government on 23 December 2009 by the Chair-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur

on the promotion and protection of the right to freedom of opinion and expression, 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 extrajudicial, summary or arbitrary executions. We regret that to date no reply has been transmitted by your Excellency's Government to this communication.

According to the information received:

It is alleged that the draft anti-homosexuality legislation (the Bill) has remained in the order of "business to follow" for the duration of the current session of the 9th Parliament of Uganda in February 2013.

The re-tabling of the Bill would violate fundamental principles and norms of international human rights law if enacted. Reportedly, there are several grave human rights concerns regarding the contents of the Bill, which have been analyzed in more detail in the previous communications sent to your Excellency's Government mentioned above.

According to sources, the Bill would criminalize "any form of homosexual" act or "attempt to commit a homosexual act, including consensual sex between same-sex individuals". It is alleged that the Bill would also prohibit the "promotion of homosexuality" and require people, including doctors, to report anyone who has violated any of the Bill's clauses, or risk criminal sanction. Additionally, clause 3(3) of the Bill allegedly asserts that a person charged with the offence of "aggravated homosexuality" would be subjected to an HIV test without his/her consent. The proposed legislation may arbitrarily discriminate against LGBTI people and unduly restrict and criminalize the work of those defenders and associations advocating for human rights without discrimination, including for the rights of LGBTI people.

It is reported that LGBTI people in Uganda are already subject to frequent harassment, discrimination and intimidation. The perception of LGBTI as criminal offenders under the Bill would allegedly institutionalize discrimination against such groups and would further increase the social stigmatization of these persons.

It is also alleged that the Bill would negatively impact on the country's response to the increasing incidence of HIV in Uganda and other health priorities. Rates of HIV infection among men who have sex with men are reportedly twice as high as the national average of 7.3 per cent and people exposed to homophobic abuse are reportedly five times likely to be HIV positive compared with peers who had never experienced homophobic abuse.

It is further alleged that clause 18 of the Bill, which requires Uganda to opt out of any previously ratified international treaty that goes against the spirit of the Bill,

would be inconsistent with the article 287 of Uganda's Constitution that requires the State to fully subscribe to its international treaty obligations.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

With regard to clauses in the draft Bill relating to the criminalization of the 'promotion of homosexuality', we would like to appeal to your Excellency's Government 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 International Covenant on Civil and Political Rights, 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."

We would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

With regard to the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, we would like to refer your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by your country on 21 January 1987. This includes an obligation on the part of all States parties to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially the most vulnerable or marginalized sections of the population, without discrimination. Furthermore, article 2 of the ICESCR requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind.

We also wish to draw the attention of your Excellency's Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which

provides that the right to health is closely related to, and dependent upon, the realization of other human rights including non-discrimination, privacy and right to information (para.3). The Committee reiterates the Covenant's prohibition of any discrimination in the realization of the right to health on the grounds of national or social origin, sexual orientation, health status (including HIV/AIDS), and civil, political, social or other status (para.18). The principle of non-discrimination applies to all aspects of the right to health and constitutes an immediate obligation (para.30).

With regard to the freedoms enjoyed under the right to health, the Committee, in its General Comment No. 14, underscores the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as from non-consensual medical treatment and experimentation (para.8). Furthermore, all health facilities, goods and services must be respectful of medical ethics and culturally appropriate, as well as being designed to respect confidentiality and improve the health status of those concerned (para.12).

In his report to the Human Rights Council, the Special Rapporteur on the right to health points out that laws requiring mandatory testing or mandatory reporting violate ethical obligations of confidentiality and impede equal access to health services and information for lesbian, gay, bisexual, transgender and intersex individuals (LGBTI) due to fear of non-consensual disclosure (A/HRC/14/20, paras.18-19). Criminalization of same-sex conduct also has an adverse effect on the ability of individuals to access appropriate health facilities, goods and services due to the stigma attached to criminalization (paras17-18),

We would also like to draw the attention of your Excellency's Government to the Human Rights Committee's decision in *Toonen v. Australia* (CCPR/C/50/D/488/1992), which held that criminalization of consensual same-sex conduct was discriminatory, violated the right to privacy, could not be considered a necessary public health measure and was not a reasonable measure to prevent the spread of HIV/AIDS (paras.8.2, 8.5 and 8.7). Furthermore, in reference to discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity, the United Nations High Commissioner for Human Rights recommends States to repeal laws used to criminalize individuals on grounds of homosexuality for engaging in consensual same-sex sexual conduct, and ensure that other criminal laws are not used to harass or detain people based on their sexuality or gender identity and expression (A/HRC/19/41, para 84(d)).

Furthermore, we would also like to refer your Excellency's Government to the African Charter on Human and Peoples Rights, ratified by your country on 10 May 1986, which requires States parties to "take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick" (article 16). The Charter also imposes the obligation of non-discrimination when ensuring the right to the highest attainable standard of physical and mental health (article 28).

Concerning the fact that the provisions contained in the proposed legislation may unduly restrict and criminalize the work of those defenders and associations advocating for human rights without discrimination, including for the rights of LGBTI people, we would like to refer Your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Moreover, we would like to bring to the attention of your Excellency's Government article 7 of the Declaration, the Special Rapporteur on the situation of human rights defenders has stated¹ that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

We wish to also refer to article 12, paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other

¹ A/66/203, paras. 56-61 and 112-114.

arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In light of the above, we urge your Excellency's Government take all necessary measures to ensure that the right to health of all persons, including LGBTI individuals and those supporting or advocating on their behalf, is respected.

It is our responsibility under the mandate provided by the Human Rights Council and reinforced by the appropriate resolution of the General Assembly, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Please provide details of any assessment undertaken to ensure that the provisions contained in the Bill are in compliance with Uganda's obligations under international human rights law.
3. Please provide details of the measures taken to safeguard the rights of LGBTI individuals, in particular the right to the enjoyment of the highest attainable standard of health.
4. Kindly provide information of the measures taken to create a conducive environment for human rights defenders and those advocating for the rights of LGBTI individuals in Uganda to carry out their legitimate work without fear of harassment or intimidation of any sort.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of all persons, including LGBTI individuals and those supporting or advocating on their behalf are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our highest consideration.

Frank La Rue

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