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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 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 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 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9)  
UGA 1/2014

3 February 2014

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 resolutions 24/7, 16/4, 24/5, 24/6, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the Anti-Homosexuality Act, 2013**.

The Anti-Homosexuality Bill, 2009, was subject of an allegation letter sent to your Excellency's Government on 21 February 2013, by 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 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The Bill was also the subject of an allegation letter 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, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

It was also the subject of an allegation letter sent to your Excellency's Government on 17 December 2009 by 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 response has been received from your Excellency's Government to any of these three communications.

Furthermore, on 27 December 2013, on behalf of the United Nations High Commissioner for Human Rights, Ms. Navi Pillay, her spokesperson publicly expressed her concern regarding the implications of this Bill.

Upon approval by Parliament, the final text of the Act has not yet been made public. The following comments are based on the official report of Parliament on the session of 20 December when debated and approved the Act.

According to information received:

On 20 December 2013, Parliament amended the original Anti-Homosexuality Bill, 2009 and approved the Anti-Homosexuality Act, 2013. On 23 January 2014, the Act was formally presented to President Yoweri Kaguta Museveni and it is currently pending for assent by the President before 22 February 2014.

According to our information, death penalty has been removed from the Act for the offence characterized as 'aggravated homosexuality' and has been replaced by life imprisonment.

However, the Act allegedly still retains the majority of the provisions that were subject of the aforementioned allegation letters, including life imprisonment for consensual, same sex relationships and same-sex marriage as well as the offence characterized as 'attempt to commit aggravated homosexuality' and prison sentences for the offences characterized as 'attempt to commit homosexuality', 'aiding and abetting homosexuality', 'conspiracy to engage in homosexuality' and conducting a marriage ceremony between persons of the same sex, and for those who "promote" homosexuality and "related practices".

In particular, the Act spells out that where the offender of promoting homosexuality is 'a corporate body or a business or an association or a non-governmental organization, on conviction its certificate of registration shall be cancelled and the director or proprietor or promoter shall be liable on conviction to imprisonment for seven years' (Section 13.(2)).

We have further received information that, at the same time that the Anti-Homosexuality Act as passed by Parliament is pending for assent by the President, the Government is also examining the possibility of reviewing the Act, or of

tabling an alternative draft legislation, that would maintain some of the provisions of the existing Act.

Serious concerns are expressed that the aforementioned Act, if signed into law, would unduly limit the free exercise of the rights to freedom of association, assembly and opinion and expression, and the right to enjoy the highest attainable standard of physical and mental health. Concerns are further expressed that obstacles may be put in place to prevent human rights defenders and activists defending the human rights of lesbian, gay, bisexual and transgender (LGBT) persons, to peacefully advocate for dissenting views and exercise their legitimate rights. Concerns are also expressed that the Act might have an intimidating effect on a wide range of associations working in related fields, including for instance those who provide psychosocial support to LGBT people, those who advocate for human rights for all without discrimination, and those working to prevent transmission of HIV. Due to these concerns, we would like to strongly encourage President Museveni to refrain from signing the Anti-Homosexuality Act or any other legislation that might violate the human rights of LGBT persons and those defending their rights in Uganda.

We would also like to reiterate our concern with respect to the criminalization of homosexuality as proposed in the Act. As mentioned in the abovementioned communications of 29 March 2012 and 17 December 2009, the Working Group on Arbitrary Detention considers deprivation of liberty as arbitrary when, inter alia, “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”. In this regard, we would like to draw the attention of 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 “...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.” Accordingly, in our view, the imposition of life imprisonment for engaging in consensual, same sex relationships would amount to a violation of article 9, paragraph 1, clause 2, of the International Covenant on Civil and Political Rights (ICCPR), which provides that “[n]o one shall be subjected to arbitrary arrest or detention”.

With regard to the potential negative impacts that this Act can have on the work of people who defend the human rights and freedoms of LGBT individuals as citizens like all others, we wish 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”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- 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 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.

With regard to article 7 of the Declaration on Human Rights Defenders, the Special Rapporteur on the situation of human rights defenders has stated 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 and articulation of human rights. Article 7 provides for the right to discuss and advocate for human rights ideas and principles that, in some contexts, are perceived as new or unpopular because they address human rights 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.

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)).

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 would further like to refer your Excellency's Government to the following provisions of the ICCPR:

- article 19 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;"

- article 21 which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others;

- article 22 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 24/5, and in particular operative paragraph 2 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."

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:

1. Are the alleged facts pertaining to the Anti-Homosexuality Act correct?
2. Please provide the full details of the aforementioned Act and explain how its provisions are in accordance with the Government of Uganda's obligations under international human rights law and standards, particularly with regard to the rights to freedom of peaceful assembly, association and expression.
3. Please indicate what measures have been taken to ensure that human rights defenders, activists and civil society organizations, including those working on the human rights of LGBT individuals, can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.
4. Please indicate what measures have been taken by your Excellency's Government to decriminalize same-sex conduct in private between consenting adults and to ensure that LGBT persons are protected from discrimination in Uganda.
5. Please indicate what measures have been taken by your Excellency's Government to ensure that LGBT persons are protected from violence and have access to information and health facilities, goods and services without discrimination, including within the context of HIV/AIDS prevention and treatment.
6. Please indicate any consultation undertaken, including with civil society on this Act.

Given the seriousness and urgency of the allegations, we would like to inform your Excellency's Government that we might consider issuing a press release on the issues contained herein.

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 the above mentioned persons 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.

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