

PERMANENT MISSION OF THE REPUBLIC OF UGANDA

TO THE UNITED NATIONS, GENEVA



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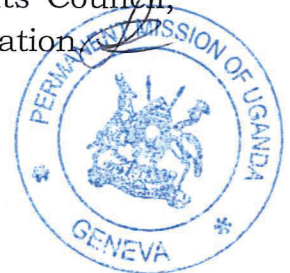
The Permanent Mission of the Republic of Uganda to the United Nations and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations Human Rights Council, Special Procedures Branch and has the honour to refer to the latter's Joint Communication from the Special Procedures, Ref. AL UGA 2/2018 dated 19th July 2018 and attach herewith the response of the Government of the Republic of Uganda.

The Permanent Mission of the Republic of Uganda to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the secretariat of the United Nations Human Rights Council, Special Procedures Branch the assurances of its highest consideration.

GENEVA: 22 October 2018

The Secretariat of the Human Rights Council,
Special Procedures Branch
GENEVA

Attach...



RESPONSES BY THE GOVERNMENT OF THE REPUBLIC OF UGANDA TO THE JOINT COMMUNICATION FROM THE SPECIAL RAPPORTEURS OF THE UNITED NATIONS HUMAN RIGHTS COUNCIL ON HON. BETTY NAMBOOZE, MEMBER OF PARLIAMENT FOR MUKONO MUNICIPALITY, PARLIAMENT OF UGANDA.

I. INTRODUCTION

1. The Government of the Republic of Uganda received a Communication under Ref. AL.UGA 2/2018 dated 19 July 2018 from the office of the United Nations Human Rights Special Procedures, specifically the Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and association; Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council Resolutions 34/18, 32/32, 34/5 and 34/19.
2. In the cited Communication, attention is drawn to the Government of the Republic of Uganda about serious allegations of human rights abuse against Hon. Betty Nambooze and the call to undertake a number of actions to address the allegations.
3. The Government of the Republic of Uganda acknowledges the events that took place in September 2017 regarding the introduction and debate of the Constitutional (Amendment) (No. 2), Bill 2017, and takes note of the serious allegations contained in the Communication. The Government of Uganda further avers that the allegations contain substantial misrepresentation of facts combined with wide-ranging falsehoods.
4. Therefore, the Government of the Republic of Uganda avails itself of the opportunity to respond to the allegations and clarify as follows:

II. MATTERS RAISED AND RESPONSES THERETO:

A. Additional information and comments on the allegations

i. Background to the events of the debate of the Constitutional (Amendment) (No. 2) Bill 2017

5. On 27th September, 2017, the Rt. Hon. Speaker, while communicating to the Parliament, noted that the House had not been able to conduct business properly since the 21st of September. She noted that this had happened because when Members were not willing to listen to their colleagues who had different opinions and the Deputy Speaker was forced to adjourn the House without conducting any serious business.
6. The Rt. Hon. Speaker informed the House that at the previous sitting of 26th September, 2017, the unruly conduct of the past week was repeated. She noted that the Speaker could not be heard in silence. Members were standing, climbing on chairs and tables, and they were dressed in a manner that violates Rule 73 of the House Rules of Procedure. She informed the House that she made several calls to the Members to sit down and be orderly, but this was not adhered to. Some Members crossed from one side to the other in a menacing manner, contrary to Rule 74 of the Rules of Procedure. The Speaker could not address the House in silence as many Members were menacingly standing near the Speaker's Chair.
7. The Speaker further reminded the Members that at the previous sitting, she had informed them that Parliament is a place to speak and exchange views, including listening to those you do not agree with. She observed that as Members, they could not all have the same views; that is why one of the cardinal tenets of Parliamentary etiquette, and indeed as provided for in the Rules of Procedure, Members should always listen to each other.
8. On the 18th day of December, 2017, the Parliament of Uganda convened to conduct business among which was the deliberation of the Constitutional (Amendment) (No. 2) Bill 2017. At this sitting, the Rt. Hon. Speaker, in her communication, appealed to the Honourable Members of Parliament to exercise tolerance and a spirit of accommodation while

debating and called on the Members not to endanger others' right to speak and vote. The Rt. Hon. Speaker cautioned Members that she would not hesitate to invoke the Speaker's authority to suspend any Member who misconducts himself or herself during the proceedings.

9. During the conduct of the Parliamentary Proceedings on the 18th December, 2017, some Members of Parliament (majorly from the opposition), Hon. Betty Namboozie included, proceeded to interrupt the Parliamentary debate, heckled fellow Members of Parliament and prevented the conduct of the Parliamentary Proceedings for over one and a half hours and basically made it impossible for the debate to continue in an orderly manner.
10. The above notwithstanding, the Rt. Hon. Speaker repeatedly appealed to the errant Members to be orderly and respectful of each other and the House so as to allow their colleagues to debate; but to no avail.
11. Article 94 of the Constitution of the Republic of Uganda, mandates Parliament to make its own rules of procedure and by virtue thereof, Parliament adopted the **Rules of Procedure of Parliament of Uganda**, which govern the general proceedings of Parliament, including the conduct of Members of Parliament. Due to the continued indiscipline of the Members of Parliament who were opposed to the Constitutional (Amendment) (No. 2) Bill 2017, the Rt. Hon. Speaker sought recourse to the Rules of Procedure and suspended the errant Members, Hon. Namboozie included. The rationale of the suspension was:-
 - a. Rule 7(1) and (2) mandate the Rt. Hon Speaker of Parliament to preside at any sitting of the House, to preserve order and decorum in the House and to decide questions of order and practice.
 - b. Under Rule 82 (1) (c), while a member is speaking, all other Members shall be silent and shall not make unseemly interruptions.
 - c. Under Rule 86 (1), the Speaker or Chairperson of a Committee shall be responsible for the observance of the rules or order in the House or Committee.

- d. By virtue of Rule 87 (2), the Speaker is clothed with authority to order any Member whose conduct is grossly disorderly to withdraw immediately from the House for the remainder of the day's sitting.
- e. Under Rule 88 (1) and (2), the Speaker is empowered, where she considers the conduct of a Member cannot be adequately dealt with under Sub-Rule (2) of Rule 87, to name and suspend Members of Parliament from the service of the House where their conduct is deemed to offend the rules and decorum of the House.

ii. Incitement of the Public to commit an offence

12. Following the brutal murder of Late Hon. Rtd. Col. Ibrahim Abiriga and his bodyguard Private, [REDACTED] on the 8th June, 2018, in Kawanda, Wakiso District, information amounting to incitement to the public circulated on social media suspected to have been authored by Hon. Betty Nambooze. The information was to the effect that Hon. Betty Nambooze had, by publication through social media and public utterances, encouraged the public to attack and harm public officials despite their security detail as had been the case with the late Abiriga.
13. A General Enquiry File (GEF 659/2018) was opened at Criminal Investigation Directorate to investigate the offence of incitement under Sec. 21 (1) of the Penal Code Act, and offensive communication under Sec. 25 of the Computer Misuse Act of 2011. On conclusion of preliminary investigations, the police file was submitted to the office of the Director of Public Prosecutions.
14. In relation to the allegation of Hon. Betty Nambooze being mishandled during arrest and detention, this contention is factually not true. Hon. Betty Nambooze was arrested by female Police Officers as stipulated by law, and while in custody, the Police responded to her health needs by taking her to Kiruddu Hospital; a Government facility for treatment. Her admission in hospital did not mean she was a free person, because she was actually under watch of Police Officers to secure her presence and therefore she remained in the protective detention of the Police while receiving treatment.

15. Regarding the allegations of threats to break her back in Parliament; this allegation is unsubstantiated and more specifics are required in order to be adequately addressed. The complaint is devoid of details as to who threatened her and who promised to break her back. That notwithstanding, the Parliament of Uganda is a free forum where Members deliberate, albeit within the confines of the Rules of Procedure as adopted, under the Constitution, by the Parliament itself.

16. On the suspension and eviction of Members of Parliament, Rule 87 (2) of the Rules of Procedure of the Parliament of Uganda, 2017, clearly provides that, *"The Speaker or Chairperson, shall order any member whose conduct is grossly disorderly to withdraw immediately from the House or committee for the remainder of that day's sitting; and the Clerk or Sergeant-at-Arms shall act on such orders as he or she may receive from the Speaker or Chairperson to ensure compliance with the rule"*. Rule 88 (6) is also instructive as it provides that, *"where a member who has been suspended under the rule from the service of the House refuses to obey the direction of the Speaker when summoned under the Speaker's orders by the Sergeant-at-Arms to obey such direction, the Speaker shall call the attention of the House to the fact that recourse to force is necessary in order to compel obedience to his or her direction, and the Sergeant-at-Arms shall be called upon to eject the member from the House"*

17. The above quotation was the basis on which the Speaker of Parliament asked the Sergeant-at-Arms to restore order. It turned out that the Sergeant-at-Arms was overwhelmed by the situation and thus requested for assistance from the Police leadership that in turn invited assistance from the Uganda Peoples' Defence Forces (UPDF) as permitted under the UPDF Act 2005, sections 42 and 43. The UPDF deployed the Special Forces Command (SFC) that was the nearest manpower to Parliament, because they are based at President's Office which is geographically close to the Parliament. It should, however, be noted that once the SFC was deployed as provided for under the law, they immediately were under the command of the Sergeant-at-Arms, and not the UPDF.

B. Information on the need for an immediate, impartial, and transparent investigation into the use of force by the Special Forces Command.

18. This issue has been impartially and extensively investigated and decided upon by the Constitutional Court in Consolidated Constitutional Petitions No. 49 of 2017 and Nos. 3, 05, 10, 37 of 2018; Hon. Karuhanga Kafureeka Gerald, Uganda Law Society, Mabirizi Male, Prosper Busingye & Abaine /Bulegyeya v. The Attorney General, where Hon. Betty Namboozee was a witness and was found untruthful by the Honourable Court.
19. The Constitutional Court quoted Constitutional Petition No. 47 of 2011: Twinobusingye Severino v. The Attorney General, wherein the Constitutional Court, called upon the Honourable Members of Parliament, whether of the Opposition or Government side, to carry out their honourable roles and responsibilities as people's representatives in Parliament very fiercely, but always in a manner that respects and gives honour and respect to the institution of Parliament as the fountain of constitutionalism.

The Court then went on to hold that-

"I regretfully find that a number of the Honourable Members of Parliament acted, on some of these occasions, without the necessary restraint, decorum, responsibility and respect to the chair of the Speaker expected of them as Honourable Members of Parliament... while under Articles 1,2,3 (2), 8A and 97 of the Constitution as well as the provisions of the Parliamentary (Powers and Privileges) Act, Honourable Members of Parliament, are entitled to rights and privileges that enable and empower them to effectively represent Ugandans in Parliament, that representation must not be at the expense of some of the Members of Parliament misconducting themselves and acting in disobedience of the lawful directions and guidance of the Speaker of Parliament. In this particular instance, within and inside the chamber of Parliament, it is the misconduct, particularly of failing to obey and heed the orders, directives and guidance of the Honourable Speaker, that led to the scuffle, and the Honourable Members of Parliament concerned have to bear the blame for the same". (per Hon. Mr. Justice Remmy Kasule, JA/JCC, 45 - 46.)

20. The above quotation summarises succinctly the findings of the Constitutional Court in relation to the conduct of the Members vis-à-vis the role of the Speaker. Indeed, it was held that a violation of the Rules of Procedure in the way that the members were doing was unconstitutional

for it was in violation of Article 94 of the Constitution of the Republic of Uganda.

21. The allegation that Hon. Betty Nambooze's spinal cord injury was caused by her arrest is not true. This problem was existent at the time she joined the Parliament of the Republic of Uganda. Past medical records can be called in question to attest to this fact, if she can waive her right to privacy.

22. The CCTV footage of the events of the day in question in regard to Hon. Nambooze reveals that she walked out of the Parliamentary Chamber on her own, was escorted by female security officers off the Parliamentary premises and walked off to the gate.

23. On 17th April, 2018, during the Constitutional Court hearing, the Chief of Defence Forces only admitted to acting on a request by the Inspector General of Police who was also responding to a request from the Sergeant-at-Arms who is in charge of the security in the Chamber of Parliament. As earlier stated in the background information, this intervention by the UPDF was done within the law as stipulated in sections 42 and 43 of the UPDF Act, 2005.

C. Information on the factual and legal basis for the re-arrest and detention of Ms. Betty Nambooze after release on bond and how it is compatible with Uganda's obligations under international law.

24. On the 13th day of June, 2018, Hon. Betty Nambooze was apprehended at her home at [REDACTED] interviewed at Nagalama Police Station and given Police Bond on medical grounds to do with her spinal injury, upon a request by her personal doctor.

25. After her release on bond, she made further utterances inciting the public which were seen on different television broadcasts prompting her re-arrest on 14th day of June, 2018.

D. Information on measures to repeal the provision on "offensive communication" under section 20 of the Computer Misuse Act

26. Section 25 of the Computer Misuse Act 2 of 2011 states: *“Offensive communication. Any person who wilfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues, commits a misdemeanour and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.”*
27. Article 29(1) (a) of the Constitution of the Republic of Uganda, 1995, provides for the right to freedom of speech and expression. Article 43 of the same Constitution states however that; *“In the enjoyment of rights and freedoms, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.”*
28. Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda is a party, also provides for the right to freedom of expression. Article 19(3) of the same Convention further provides for certain restrictions on this right. The restrictions include *“respect of the rights or reputations of others and the protection of national security or of public order”*.
29. The provision on offensive communication under the said Computer Misuse Act, is therefore in line with the permissible restrictions on the right to freedom of expression under the Constitution of the Republic of Uganda, 1995, as well as the Regional and International Human Rights Conventions that Uganda is party to.

E. Information on the legal basis for the court order demanding that Ms. Nambooze surrenders her computers, mobile phones and tablets

30. The Court Order demanding Hon. Betty Nambooze to surrender her computers, mobile phone and tablets was done in accordance with the law. The relevant facts are that, on 20/6/2018, the Director of Public Prosecutions (DPP) received a formal request from the Uganda Police to apply for a Court Order granting access to Hon. Betty Nambooze’s phones and computers. This was to aid in the conclusive investigations of the case. The DPP prepared the relevant application and filed it in Court. The same was later heard ex-parte by Court and allowed on the same day. An order was extracted and handed over to Police for service and execution.

31. On the 21st of June, 2018, the suspect was served with a Court Order arising out of a Criminal Miscellaneous Application No. 101 of 2018 in the presence of her lawyer, [REDACTED] at Mulago National Referral Hospital (Kiruddu) requiring her to surrender her communication gadgets, namely computers, mobile phones and tablets. The suspect received the Court Order through her said Lawyer but declined to acknowledge receipt of the same; protesting that the Application for the Court Order was heard ex-parte and that she was going to appeal against it. Since then the investigation team has not accessed the said gadgets. The Court Order is one of the requirements in the investigation of this offence under this Act (Computer Misuse Act, 2011).

F. Information on measures taken to ensure the security and physical integrity of Hon. Betty Nambooze

32. Under section 7(c) of the Administration of Parliament Act, the Parliamentary Commission is charged with the duty to maintain proper security for members of Parliament and facilities within the precincts of Parliament. This function has been properly carried out and continues to be carried out with the assistance of the Uganda Police Force but under the direct charge of the Sergeant-at-Arms who is an officer of Parliament.
33. Parliament is not legally charged with the responsibility of the safety and liberty of Members outside the precincts of Parliament. This duty, like in respect of all other citizens, is charged on the Uganda Police Force under the Laws of Uganda. In fact, where a citizen, (Member of Parliament or not), feels insecure or that their security is at risk, they are permitted by law to report the matter to the Police or even request for security operatives to be assigned to them for their own protection, taking into account availability of the requisite human resources.
34. In conclusion, we take this opportunity to assure the Special Rapporteurs that the Government of the Republic of Uganda remains committed to the Rule of Law and the promotion and protection of human rights of every citizen,

Prepared by ILSA Dept.

OCTOBER 2018