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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 rights to freedom of peaceful assembly and of association
and the Special Rapporteur on the situation of human rights defenders.**

REFERENCE: AL Assembly & Association (2010-1) G/SO 214 (107-9)
BWA 2/2013

8 July 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/21 and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **allegedly arbitrary denial to register an organization aiming to work for the defence and promotion of human rights for all.**

According to the information we received:

On 16 February 2012, the founding members of LEGABIBO, a human rights organization that aims to promote non-discrimination and uphold the human rights of lesbian, gay, bisexual, transgender and intersex people, applied for the registration of this organization, in compliance with the provisions of the Societies Act of 1972.

On 12 March 2012, the Director of the Department of Civil and National Registration rejected the application on the basis that the Botswana Constitution does not recognize homosexuals and that the objectives of the organization were contrary to section 7(2) of the Societies Act. The applicants appealed this decision to the Minister of Labour and Home Affairs, but this appeal was reportedly rejected on 12 October 2012. On 25 March 2013, the applicants filed a case before the High Court of Botswana.

It is further alleged that this denial has adverse consequences on the ability for members of the organization to exercise their right to freedom of association, notably on their ability to seek funding, to rent an office or even to interact with the public.

Should this information be corroborated, concerns are expressed that the denial to register LEGABIBO may lack adequate legal basis and could be directly related to the organization's peaceful activities speaking up against discrimination and defending the rights of LGBTI people in Botswana. In addition concerns are expressed that the denial to register LEGABIBO does not comply with international norms and standards related to freedom of association, which provide for the exercise of this right for all without discrimination of any kind.

While we do not wish to prejudge the accuracy of these allegations, we wish to recall 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."

In connection with the allegations received indicating that the situation of LEGAGIBO is related to its activities promoting and defending the rights of LGBT people, we would also 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".

Furthermore, we would like to bring to the attention of your Excellency's Government 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.

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 on-going 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.

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.

Since 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, we would be grateful for your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please confirm the legal grounds for rejecting the application of LEGABIBO and explain how the denial of registration is compatible with international norms and standards as stated in the ICCPR, including Article 22 of the ICCPR.
4. Please indicate what measures have been taken to ensure that the legitimate right to freedom of association for all is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
5. Please kindly indicate what measures have been taken to ensure that human rights defenders, particularly those working for the rights of LGBTI people, are able to carry out their legitimate work without fear of acts of obstruction, intimidation and harassment 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 the members of LEGABIBO 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.

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders