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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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9) G/SO 214 (33-27) G/SO 218/2
UGA 2/2012

29 March 2012

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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 15/18, 16/4, 15/21, 15/22, 16/5, and 17/5.

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

Bill N° 18 (also known as the Anti-homosexuality Bill) was the subject of a previous 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:

The Anti-Homosexuality Bill was re-tabled on 7 February 2012. If passed, it would further entrench the criminalization of homosexuality and would provide for increased criminal penalties against persons found to be homosexual.

According to the information received, the Bill has been re-tabled without any changes having been made from the original version. During its reintroduction, it is reported that the Speaker of Parliament announced that the previous report of the Parliament's Legal and Parliamentary Affairs Committee could be used, thus rendering a

full committee process unnecessary, thereby potentially expediting the passage of the Bill to Second and Third readings.

Based on the information received, there are several grave human rights concerns regarding the contents of the Bill, which have been analyzed in more detail in the previous communication sent to your Excellency's Government mentioned above (A/HRC/14/24/Add.1 p.326). These include the imposition of the death penalty for 'aggravated homosexuality', including for 'serial offenders' and those who are living with HIV; the criminalization of the 'promotion of homosexuality', including anyone who uses electronic devices, including the Internet, films, mobile phones for 'purposes of homosexuality or promoting homosexuality'; and the criminalization of the failure to report to the authorities those people who citizens suspect of being homosexual.

It is alleged that this Bill, if passed into law, would implicitly encourage the persecution of sexual minorities and prohibit any group from discussing and advocating for human rights for all without discrimination. Furthermore, it is reported that HIV prevention activities in Uganda, which rely on an ability to speak frankly about sexuality and health and to provide condoms and other safer sex materials, would be compromised.

Should this information be corroborated, serious concern is expressed that the proposed legislation may arbitrarily discriminate against LGBTI people and associations as well as against people living with HIV, thereby gravely breaching their human rights.

In relation to the criminalization of homosexuality as enshrined in the Bill, we would like to draw your Excellency's Government's attention to article 9, paragraph 1, clause 2, of the International Covenant on Civil and Political Rights (ICCPR), which the Government of Uganda acceded to on 21 June 1995. This provision stipulates that "[n]o one shall be subjected to arbitrary arrest or detention." The Working Group on Arbitrary Detention has qualified deprivation of liberty as arbitrary, inter alia, "[w]hen 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 (Category II). In this connection, we would like to draw 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 "[e]ver since the Human Rights Committee adopted its View in *Toonen v. Australia* and it itself adopted its Opinion 7/2002 ... the Working Group has followed the line taken in those cases. That means 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."

We also wish to remind your Excellency's Government that Uganda, as a State party to the International Covenant on Civil and Political Rights (ICCPR), has a duty to guarantee equal protection before the law and to prohibit discrimination on any ground. In *Toonen vs. Australia*, decided in 1994, the Human Rights Committee stated that "the

reference to ‘sex’ in articles 2, paragraph 1, and 26 of the ICCPR is to be taken as including sexual orientation.” Since then, in numerous Concluding Observations, the Committee has urged State parties to guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation. The right to freedom from discrimination on grounds of sex is also recognized in article 2 of the African Charter on Human and Peoples’ Rights, which was ratified by Uganda in 1986. The African Commission, in outlining that the aim of the principle in article 2 is to ensure equality of treatment for individuals, listed sexual orientation as one of the grounds of prohibited discrimination (Twenty-First Activity Report of the African Commission on Human and Peoples’ Rights, para. 169 (EX.CL/322 (X))).

In respect of the imposition of the death penalty for ‘aggravated homosexuality’, including for ‘serial offenders’ and those who are living with HIV under article 3 of the Bill reintroduced on 7 February 2012, we would like to draw your Excellency’s Government’s attention to relevant norms and standards applicable under international law. Although the death penalty is not per se prohibited under international law, it has been regarded as an extreme exception to the fundamental right to life and must as such be applied in the most restrictive manner. Article 6(2) of the ICCPR provides that “in countries which have not abolished the death penalty”, the “sentence of death may be imposed only for the most serious crimes”. As the Special Rapporteur on extrajudicial, arbitrary or summary executions observed in a report to the Human Rights Council, the conclusion to be drawn from a thorough and systematic review of the jurisprudence of all of the principal United Nations bodies charged with interpreting the most serious crimes provision, is that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Article 3 of Anti-Homosexuality Bill is incompatible with this well established principle of international law.

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.

In this connection, 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."

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 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.

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 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.

- 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.

Furthermore, we would highly appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of the person mentioned above. This right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (ratified by your Excellency's Government on 21 April 1987), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the 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.

Furthermore, a number of studies indicate that criminalization of homosexuality has a detrimental impact on efforts to combat the spread of HIV in Uganda. It has been shown that decriminalization of homosexuality, combined with efforts to address stigma and discrimination against LGBTI persons constitute a far more effective approach to HIV prevention. If the Bill came into force, it would impede access to HIV-and health-related information and services for LGBTI individuals and could thereby undermine the national HIV response, by not only discouraging those individuals from seeking and accessing services, but also by preventing service providers from providing information and services to members of this community.

In this regard, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the respect of the rights of peaceful assembly and of association as recognized in article 21 and 22 of the International Covenant on Civil and Political Rights.

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely [...] including persons espousing minority or dissenting views or beliefs [...] 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 provisions in the Bill which criminalize the ‘promotion of homosexuality’, including using electronic devices, such as the Internet, films, mobile phones for ‘purposes of homosexuality or promoting 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 respectfully request that your Excellency’s Government take into account our serious concerns in respect of the aforementioned Bill and urge your Excellency's Government to take all necessary measures not to enact Bill No. 18, the provisions of which would, on the basis of the information available to us, clearly violate fundamental principles and norms of international human rights law.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government in this regard.

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 in the summary of the case accurate?
2. Please provide the full details of any actions taken to remove the provisions of the Bill which appear to violate Uganda's international human rights obligations, specifically those relating to the application of the death penalty, imprisonment, discrimination on the basis of sexual orientation, discrimination on the basis of HIV status, freedom of opinion and expression, freedom of peaceful assembly and of association and the right to health.
3. Please provide information on what measures have been taken to ensure non-discrimination on the grounds of sexual orientation in Uganda.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

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