

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Working Group on Arbitrary Detention; 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 torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 42/22, 42/16, 43/20, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government allegations we have received concerning the alleged acts of **harassment, humiliation and violence performed by state and non-state actors against two groups of LGBT+ persons in Uganda, namely a group of 44 individuals in Nansana and another group of 16 individuals in Kyengera, who have reportedly been subjected to ill-treatment as well as acts of torture, cruel, inhuman and degrading treatment through anal examinations in detention.**

According to the information received:

On 31 May 2021, 44 members of the lesbian, gay, bisexual, and transgender (LGBT+) community were arrested at a shelter operated by Happy Family Youth Uganda Limited in Nansana, Wakiso district, while attending a private function. The individuals were allegedly subject to verbal abuse and physical violence by police agents during the arrest. They were reportedly filmed against their will and videos from the incident were shared widely across social media.

The individuals were allegedly arrested for failure to observe the COVID-19 guidelines. The Kampala Metropolitan Police Deputy Spokesperson confirmed the arrest of 38 men and six women. 42 of them were charged with acts thought to spread the infection of a disease, under section 171 of Chapter 120 of the 1950 Penal Code.

On 1 June 2021, at approximately 5:30 p.m., the accused individuals were arraigned before Nansana Magistrates' Court where each of them entered a plea of "not guilty" to the charge. It is reported that, due to the late hour of the proceedings, their bail application hearing was adjourned for the next day, 2 June, and that they were therefore further held on remand pending the bail application hearing. It is reported that the detained persons were subject to torture and degrading treatment while held on remand, including humiliations

and beatings from fellow inmates which were not halted by prison personnel. Reports also indicate that 15 persons of the group were forced to undergo anal examinations.

On 2 June 2021, three of the individuals were granted bail, while 39 remained on remand pending their bail hearing, scheduled for 4 June 2021. Yet, on 30 November 2021 it was reported that they still remained on remand and that the new proposed bail hearing date had been postponed and was yet to be confirmed.

This incident is not the first instance of harassment, arbitrary arrest and detention, ill treatment and forced anal examinations of members of the LGBT+ community that has been reported. Indeed, on 21 October 2019, a shelter for LGBT+ persons, located in Kyengera, Wakiso District, was attacked. The shelter, operated by Let's Walk Uganda, a nongovernmental organization, as well as its occupants were reportedly threatened by a crowd, armed with stones and sticks. The crowd allegedly screamed insults and chants and alluding to the sexual orientation of the residents of the shelter and threatened to set fire to the premises. The occupants contacted lawyers representing the Human Rights Awareness and Promotion Forum (HRAPF), whom also contacted the police. Both lawyers and police officers arrived at the scene to intervene within the hour.

It is reported that upon arrival, the police officers did not apprehend the crowd but indicated that the residents of the shelter would be taken to Nsangi Police Station as a protective measure. The individuals were held overnight. Despite being informed that they would be detained under protective custody and released following reception of their statements, the following morning, the police detained 16 individuals on the ground of having 'carnal knowledge against the order of nature', which is contrary to section 145 of the Penal Code Act. The detention followed the acquisition of a search warrant by the police to search the premises of the shelter, where they reportedly retrieved, *inter alia*, "condoms, lubricants and HIV testing kits."

The individuals, 14 of whom identify as gay men and two as trans women, were detained for two days and were reportedly denied food and access to toilet facilities, while being subjected to insults, threats and assaults. On the second day, they were taken to Nsambya Police Barracks, where they were allegedly all subjected to forced anal examinations. They were released on police bond later the same day, without being taken to a Court.

Without wishing to prejudge the accuracy of the information received, we wish to express our serious concern that the facts, as alleged, would be in contravention of the right to freedom of association, the right of every individual to liberty and security of persons, the right to health, physical and mental integrity, the right to fair trial, the right to be free from torture, cruel, inhuman and degrading treatment, and the right to be free from persecution and non-discrimination.

In particular, we are concerned that the sanitary measures, issued through Presidential Decree in the context of the COVID-19 pandemic, as well as their

connection to Section 171 of the Penal Code Act,¹ were allegedly used in a discriminatory manner to directly target 44 residents of the shelter in Nansana because of their perceived sexual orientation and/or gender identity, leading to their alleged arbitrary arrest and detention.

We are equally concerned at the alleged arbitrary arrest and detention of 16 people in Kyengera under the charges of having ‘carnal knowledge against the order of nature’ - a provision applied against persons of diverse sexual orientation and/or gender identity in violation of the prohibition of discrimination under international human rights law.

We are making this appeal to preserve the alleged victims’ rights from irreparable harm and without prejudice against possible court ruling, legal action or determination.

We are furthermore concerned at the reported practice of subjecting gay men and transgender women to anal examinations that are intended to obtain physical evidence for prosecution on homosexuality-related charges, in violation of their right to health and freedom from torture, cruel, inhuman and degrading treatment. We are also concerned with the allegations of ill-treatment in detention, including insults, humiliations, threats, and physical violence by state and non-state actors, as well as the deprivation of food and water and the lack of access to sanitary installations.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As 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. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the legal grounds for the arrest and detention of the 44 individuals in Nansana. In particular, please explain how the determination was made that the residents of the shelter in question breached sanitary orders issued through the presidential directive on COVID-19.
3. Please provide information on the legal grounds for the arrest of the 16 individuals in Kyengera, and explain if the State regards these measures as compatible with Uganda’s international human rights obligations.

¹ Notably: Section 171 Penal Code Act, Chapter 120: ‘Negligent act likely to spread infection of disease’, states that: “Any person who unlawfully or negligently does any act which is and which he or she knows or has reason to believe to be likely to spread the infection of any disease dangerous to life commits an offence and is liable to imprisonment for seven years.”

4. Please provide information on the measures undertaken to ensure fair trial rights and guarantees of due process to all defendants, in particular the right to access their lawyers.
5. Please provide information on the measures taken to provide adequate conditions of detention to the 44 individuals arrested in Nansana and the 16 individuals arrested in Kyengera, and to ensure their physical and mental health while in detention.
6. Please provide results of any investigation carried out in relation to the allegation that 15 victims detained in Nansana and 16 victims detained in Kyengera were submitted to forced anal examinations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
7. Please provide information on the steps taken by Uganda to prohibit anal examinations and other forms of torture and other cruel, inhuman, or degrading treatment or punishment, in line with Uganda's international human rights obligations.
8. Please advise what steps are being considered to repeal laws criminalizing consensual sexual activity between adults, including persons of the same sex.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and the regular procedure.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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

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Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex

Reference to international human rights law

In connection with the above-mentioned facts and concerns, we would like to remind your Excellency's Government of its obligations under articles 3, 5, 9, 10, 20 and 25 of the Universal Declaration of Human Rights (UDHR); article 7, 9, 10, 14 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which Uganda acceded to on 21 June 1995; articles 2(2) and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Uganda acceded on 21 January 1987; and articles 2, 6 and 16 of the Convention against Torture (CAT), to which Uganda acceded on 3 November 1986.

Arbitrary arrest and detention

The criminalisation of same-sex sexual relations between consenting adults has been condemned as violating international human rights norms enshrined in treaties to which Uganda is party, including the ICCPR, the Convention Against Torture (CAT), the ICESCR, the Convention on the Elimination of All Forms of Discrimination against Women (ratified by Uganda on 22 July 1985), and the Convention on the Rights of the Child (ratified by Uganda on 17 August 1990). Human rights treaty bodies and the High Commissioner for Human Rights have repeatedly called for such discriminatory laws to be repealed (A/HRC/29/23, A/HRC/19/41). The Human Rights Committee and the Working Group on Arbitrary Detention have clarified multiple times that detention on discriminatory grounds, including based on sexual orientation and gender identity, is per se arbitrary, and violates the ICCPR (CCPR/C/GC/35, A/HRC/22/44 and Opinion No. 14/2017 of the Working Group on Arbitrary Detention).

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, in 2015 the United Nations High Commissioner for Human Rights emphasized that States have an obligation to, among other things, revise criminal laws to remove offences relating to consensual same-sex conduct and other offences used to arrest and punish persons on the basis of their sexual orientation and gender identity or expression; protect individuals from violence, torture and discrimination based on their sexual orientation and gender identity; provide redress to victims; and, provide training to law enforcement personnel and judges in gender-sensitive approaches to addressing violations related to sexual orientation and gender identity. In addition, the High Commissioner for Human Rights recommended that States ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 78 and 79).

In this vein, we would like to recall Concluding Observations of 8 July 2015 of the Committee on Economic, Social and Cultural Rights, in which it was highly concerned about the criminalization of consensual same-sex sexual conduct in Uganda's Penal Code, as well as about information that there had been an increase in arbitrary detention and police abuse of LGBTI persons. In light of this, the Committee urged Uganda to immediately take steps to amend the Penal Code to decriminalize consensual same-sex sexual conduct. The Committee also urged Uganda to investigate, deter and prevent acts of discrimination against LGBTI people, bring perpetrators to justice and provide compensation to victims (E/C.12/UGA/CO/1, para.

16).

Regarding States' security measures in their response to COVID-19 crisis, the United Nations High Commissioner for Human Rights has stated in March 2020 that "measures to contain and combat the spread of COVID-19 should always be carried out in strict accordance with human rights standards and in a way that is necessary and proportionate to the evaluated risk".² UN human rights experts echoed this call and warned "emergency declarations based on the Covid-19 outbreak should not be used as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health". They further stated that although some States and security institutions may find the use of emergency powers attractive because it offers short cuts, "[t]o prevent such excessive powers to become hardwired into legal and political systems, restrictions should be narrowly tailored and should be the least intrusive means to protect public health".³

Furthermore, the Working Group on Discrimination against Women and Girls expressed in its thematic report on Women deprived of liberty (A/HRC/41/33) that LGBTI women are disproportionately targeted for social control based on their perceived challenge to or "transgression" of established norms of gender roles and sexuality (A/HRC/23/50, para.47). As a result, they face increased vulnerability to criminalization and deprivation of liberty. Even in cases where such women are not expressly criminalized based on their sexual orientation or gender identities, they may face a heightened risk of encountering the criminal justice system. For example, transgender women are arbitrarily profiled and targeted for prostitution/ sex work.

Freedom from torture, cruel, inhuman and degrading treatment or punishment

Under international law, States have the obligation to prohibit, prevent and provide redress for torture and ill treatment in all contexts of State custody or control, investigate such acts and bring perpetrators to justice (CAT/C/GC/2, 2008, at para. 15).

The practice of subjecting cisgender men and transgender women who are arrested on homosexuality-related charges to anal examinations that are intended to obtain physical evidence for prosecution has been condemned by the Committee against Torture, the Working Group on Arbitrary Detention, and the Special Rapporteur on torture, who has also characterized it as "medically worthless".⁴

The CAT establishes that any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by a public official for the purposes of: obtaining information or a confession, punishing, intimidating or coercing, or for any reason based on discrimination of any kind⁵. In 2012, Uganda

² Press release by the United Nations High Commissioner for Human Rights "Coronavirus: Human rights need to be front and centre in response, says Bachelet" (March 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>.

³ Press release by UN human rights experts "COVID-19: States should not abuse emergency measures to suppress human rights – UN experts" (March 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>.

⁴ See for example, Committee against Torture, Concluding Observations on Tunisia (CAT/C/TUN/CO/3), 2016, paras. 41-42, and on Egypt (CAT/C/CR/29/4), 2002, at paras. 5-6; Reports of the Special Rapporteur on Torture (A/HRC/22/53), 2013, paras. 76, 79; report on communications (A/HRC/31/57/ Add.1), 2016, paras. 118-119, 713-714.

⁵ Convention against Torture, Article 1(1).

passed the Prevention and Prohibition of Torture Act, which domesticates the United Nations Convention against Torture, prohibiting and criminalizing torture in Uganda.

In that sense, the Special Rapporteur on torture has described invasive forensic examinations as being intrusive and degrading with the potential to amount to torture or ill-treatment (A/HRC/31/57 para. 36). The Working Group on Arbitrary Detention has also stated that “forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment”⁶, which is absolute and non-derogatory.

Moreover, we would like to emphasize article 10 of the ICCPR, which states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. In that vein, the revised UN Standard Minimum Rules for the Treatment of Prisoners (also known as the Nelson Mandela Rules) establishes what is generally accepted as being good principles and practice in the treatment of prisoners. Practices such as deprivation of food and water and lack of access to sanitary installations are in clear breach of the Rules. Similarly, neglecting the individual needs and vulnerability of prisoners when they are exposed to violence while in custody also fails to comply with the minimum standards established by the Rules and violates the absolute prohibition of torture or cruel, inhuman and degrading treatment.

Freedom from gender-based violence against women

We would like to bring to Your Excellency’s attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

We recall article 4 (b) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. Furthermore, we would like to remind your Excellency’s Government that in its General Recommendation No. 35 (2017) on gender-based violence against women, the Committee on the Elimination of Discrimination against Women has clarified that, under the Convention and general international law, a State party is responsible for acts or omissions of its organs and agents that constitute gender-based violence against women, which include the acts or omissions of officials in its executive, legislative and judicial branches. States parties are responsible for preventing such acts or omissions by their own organs and agents, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities.

Finally, we would like to remind your Excellency’s Government that the Special Rapporteur on violence against women has recommended that States should

⁶ Opinion No. 25/2009 on Egypt (A/HRC/16/47/Add.1), 2011, at paras. 23, 28-29.

abolish any provisions that criminalize consenting sexual relations between adults, including same-sex relations (A/HRC/47/26).