

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Ref.: AL UGA 4/2022
(Please use this reference in your reply)

3 October 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 43/16, 50/17 and 41/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the forced closure of human rights organisation Sexual Minorities Uganda.

Sexual Minorities Uganda (SMUG) is a non-governmental organisation established in 2004 which advocates for the promotion and protection of the human rights of lesbian, gay, bisexual and transgender (LGBT) persons in Uganda. The organisation supports access to health services of LGBT people and helps members of the LGBT community to live openly with regards to their sexual orientation and gender identity. The organisation has also taken legal action to protect Ugandans from violence and discrimination on the basis of their sexual orientation and gender identity.

According to the information received:

SMUG applied for registration for the first time in 2012. In February 2016, SMUG was notified that the Uganda Registration Services Bureau (URSB) rejected the registration of its name on the basis that it was "undesirable and unregistrable" given that it advocates for the rights and wellbeing of LGBT persons, who in Uganda are considered to be "engaged in activities labelled as criminal acts under section 145 of the Penal Code Act."

After 2016, SMUG reportedly continued its activities providing support to LGBT people in Uganda. On 3 August 2022, the National Bureau for Non-Governmental Organisations in Uganda ordered SMUG to shut down its operations with immediate effect, given that it was operating without a valid permit. According to the information received, SMUG did not receive any prior warning about the shutdown, though the decision can be appealed.

Without prejudging the accuracy of the information, we wish to express our deep concerns regarding the closure of SMUG, which appears to be in retaliation for its work defending the human rights of LGBT persons in Uganda. We are concerned that the authorities refused to register SMUG on the basis that it works to defend the rights of LGBT persons. Its ultimate closure for non-registration would therefore be based on the denial to recognise SMUG's legitimate human rights work. We are consequentially concerned for the welfare of all LGBT persons living in Uganda, who

already live in a deeply precarious situation due to the criminalisation of homosexuality in the country. The forced closure of SMUG would remove one of the few sources of specialised support available to them. We are deeply concerned for the signal this sends more generally concerning the legitimacy of the work of human rights defenders working on sexual orientation and gender identity and any human rights defenders supportive of their work. We are similarly concerned by the impact this decision has on the right to freedom of association.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on how the rejection of registration of SMUG, an organisation advocating for the human rights of LGBT persons, is consistent with your obligations under international law, in particular article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) and article 7 of the Declaration on Human Rights Defenders.
3. Please provide information on how the rejection of registration of SMUG and the subsequent order for the organization to shut down are consistent with your obligations under international law, in particular article 22 of the ICCPR.
4. Please advise what steps are being considered to repeal laws criminalizing consensual sexual activity between adults that are of the same sex.

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

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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw the attention of your Excellency's Government to the applicable international human rights law and standards:

We would like to emphasise that human rights are universal and apply to everyone, irrespective of their sexual orientation or gender identity. The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. They are reaffirmed in article 2 (1) of the International Covenant on Civil and Political Rights. The Human Rights Committee emphasised that States have a legal obligation to ensure everyone the rights recognised by the ICCPR without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3).

Article 26 of the ICCPR further states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

We wish to refer to article 22 of the ICCPR, which guarantees the right to freedom of association. Pursuant to article 2 of the ICCPR, States have a responsibility to take deliberate, concrete and targeted steps towards meeting the obligations recognized in the respective Covenants, including by adopting laws and legislative measures as necessary to give domestic legal effect to the rights stipulated in the Covenants and to ensure that the domestic legal system is compatible with the treaties.

Article 22(2) ICCPR provides that any restrictions must be "prescribed by law" and "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." For a restriction to meet the ICCPR requirement of being "prescribed by law," it imposed must have a formal basis in law, as must the mandate and powers of the restricting authority. The law itself must be publicly accessible and sufficiently precise to limit authorities' discretion and enable an individual to assess whether or not his or her conduct would be in breach of the law, and also foresee the likely consequences of any such breach.¹ To meet the requirement that a restriction be "necessary in a democratic society," the restriction must be least intrusive instrument among those which might achieve to one of the legitimate aims enumerated above. In determining the least intrusive instrument to achieve the desired result, authorities should consider a range of measures, with prohibition remaining a last resort.² The word "necessity" means that there must be a "pressing social need" for the interference. When such a pressing social need arises, States must then ensure that any restrictive measures fall within the limit of what is

¹ HRC/31/66, para. 30.

² HRC/31/66, para. 30.

acceptable in a “democratic society”.³ To conform to the principle of proportionality, any restriction must be appropriate and narrowly tailored to achieve their protective function.⁴ The onus of establishing the necessity and proportionality of the restriction always rests on the State.⁵

In the United Nations High Commissioner for Human Rights’ report to the Human Rights Council (A/HRC/29/23), it is reiterated that all human beings, irrespective of their sexual orientation and gender identity, are entitled to enjoy the protection of international human rights law with respect to the freedom of expression and association, as well as all other civil, political, economic, social, and cultural rights (paragraph 9). States have well-established obligations to respect, protect, and fulfil the human rights of all persons within their jurisdiction, including LGBT and intersex persons (paragraph 10). States should refrain from directly interfering with these rights and protect LGBT persons exercising these rights from attacks and reprisals (paragraph 18).

We would also like to refer to 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 (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels. Articles 5 and 6 guarantee the right to meet or assemble peacefully; as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We also refer our Excellency’s Government to the following articles of the Declaration on Human Rights Defenders:

- Article 5: everyone has the right, individually and in association with others, (b) to form, join and participate in non-governmental organizations, associations or groups; (c) to communicate with non-governmental or intergovernmental organizations.
- Article 7 to develop and discuss new human rights ideas and principles and to advocate their acceptance.
- Article 6 (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.

³ HRC/20/27 para. 17.

⁴ HRC/31/66, para. 30.

⁵ HRC/41/41, para 49.