

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 situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: AL UGA 6/2016:

29 August 2016

Excellency,

We have the honour to address you in our capacities as 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 situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, 25/18, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Police raids during the "Uganda Pride" between 2 August to 7 August 2016, the arrest of several human rights defenders and activists, and the assault of many participants.

In this regard, we remind your Excellency's Government's that several allegations letters have been sent previously regarding the growing hostile environment over the past years towards LGBT people in Uganda. The Special Procedures have particularly expressed their concern with regards to the disruption and restrictions of activities by human rights defenders working on the rights of LGBT persons, discrimination and violence towards LGBT people, and the criminalization of consensual relations between adults of the same sex on 29 March 2012 (UGA 2/2012), on 25 June 2012 (UGA 5/2012), on 21 February 2013 (UGA 6/2012) and on 3 February 2014 (UGA 1/2014). We regret that to date, no response has been received from your Excellency's Government to any of these communications.

According to the information received:

During the week of 2 August to 7 August 2016, a series of events related to "Uganda Pride 2016" were organized by Ugandan human rights defenders who work on the promotion and protection of the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people. These events celebrated Uganda's fifth annual national LGBTI Pride.

On 4 August 2016, at 11:30 p.m., police forces reportedly raided an evening event and brutally assaulted participants. The event was organized in Kampala's Club

Venom. The police allegedly locked the gates of the club and arrested at least 16 people, in majority LGBTI human rights defenders, including Ms. **Clare Byarugaba**, Equality and Non-Discrimination Coordinator at Chapter Four Uganda, Ms. **Sandra Ntebi**, an LGBTI activist who works with the Ugandan LGBT Security Committee and Sexual Minorities Uganda (SMUG), as well as two leaders of the Sexual Minorities Uganda (SMUG), Messrs. **Pepe Julian Onziema** and **Frank Mugisha**. They were reportedly accused of being “ringleaders”. They were held in custody at Kabalagala Police Station for over an hour during which they were denied access to a lawyer and police officers allegedly slapped them and pushed them around. At 1 a.m., the police cancelled the event. By 1:20 a.m., all individuals arrested were released without charges but were warned not to organize a similar event without a previous authorization from the police. The police had been informed about the event in July by several activists during a meeting organized by them to discuss all Pride events. During the meeting, the police informed them they only needed to provide a written notice for the parade, which they proceeded to do.

At the Club Venom, after the police closed the gates, about 200 individuals were detained for approximately 90 minutes. During this time, individuals were beaten by police officers with clubs. Moreover, several participants, in particular transgender men and women, were sexually assaulted; police officers groped and fondled them “to confirm their identity”. Police forces humiliated participants by taking pictures against their will and threatened to publish them. Journalists’ cameras and recordings were confiscated by the police. During these events, one person jumped out of the window from the six-floor building and is in hospital in critical condition.

On 5 August 2016, the Minister of Ethics and Integrity, requested the police to summon individuals who had been arrested the previous evening to the police station. Mr. **Nicholas Opiyo**, Director of the human rights organization Chapter Four Uganda, which also works on the protection of the human rights of LGBTI people, went to the Police station, along with other LGBTI organizations on their behalf. The Minister, in the presence of the Deputy Commandant of the Kampala Metropolitan Police and the Kabalagala District Police Commissioner, informed them that if another event was scheduled the next day, he would encourage mobs and the police to put a halt to the parade.

After the event, several LGBTI human rights defenders were reportedly victims of harassment by the police. On 5 August, Ms. Ntebi reportedly received threats from the police department and other individuals by phone calls or in person, notably demanding her to appear at the police station. On 16 August, a press conference was organized by a coalition of human rights defenders at the Kampala Fairway Hotel. While driving to the press conference, a driver tried to intimidate Ms. Ntebi by bumping into her car, which caused damage to it, and

requested her to go immediately to the police station. Ms. Ntebi refused and went back home.

On 8 August 2016, the Minister of Ethics and Integrity issued a statement that the Gay Pride festivities were criminal and illegal and that they had not been cleared by the Uganda Police Force, and that the ‘the promotion of homosexuality’ is criminal and against the laws of the Republic of Uganda. The Minister indicated that meeting was interrupted on the basis that it was perceived as an event ‘promoting homosexuality.’ The Minister further indicated that the Government would “continue to suppress such activities”, called on the organizers to “stop their activities immediately” and has developed a “program to rehabilitate members of the LGBT Community”.

We express serious concern at the excessive use of force, arbitrary arrests, detentions, cruel, inhuman and degrading treatments, including threats and intimidation against members of the LGBTI community and human rights defenders working for the protection of the rights of LGBTI people. We express concern that these actions appear to be efforts to criminalize the legitimate exercise of the rights to freedom of expression, peaceful assembly and association by members of the LGBTI community. Furthermore, we express our concern regarding the authorities’ direct threat against the organizers to cancel this and other events relating to the protection and promotion of the human rights of LGBTI people. Concern is also expressed that this may be an attempt to dissuade activists and human rights defenders of the LGBTI community from continuing their action in favour of the promotion and protection of human rights of LGBTI people in Uganda. Further concern is also expressed that the above-mentioned acts could result in ‘a chilling effect’ that could contribute to restricting the legitimate exercise of the right to freedom of expression and opinion and the right to freedom of association and peaceful assembly of the LGBTI community in Uganda. Finally, we express grave concern that these actions are part of a continued pattern of discrimination, violence and other human rights violations against LGBTI people in the country.

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 confirm the legal grounds for arresting and detaining participants of the “Uganda Pride 2016” and explain how these measures are compatible with

international human rights norms and standards governing the rights to freedom of expression, freedom of association and freedom of peaceful assembly.

3. Please provide information on any measures taken to ensure the physical and psychological integrity of the above named individuals.

4. Please explain the legal grounds for cancelling the events and explain how these measures are compatible with international human rights norms and standards governing the right to freedom of expression, freedom of association and freedom of peaceful assembly.

5. Please provide the details and when available, the results, of any judicial investigation, or any criminal charges and other inquiries carried out in relation to the police's use of force, sexual assaults, harassment and threats against the participants of the event and against human rights defenders working for the protection of the rights of LGBTI people. If no inquiries have taken place, or if they have been inconclusive, please explain why.

6. Please provide information about instructions given to the police regarding the use of force during the raid on 4 August 2016, as well as the subsequent alleged harassment of human rights defenders by the police.

7. Please provide information about the legal basis for confiscating the cameras and recordings of journalists. Please provide information about whether these belongings have been returned.

8. Please provide details on measures taken to ensure that human rights defenders, including those working on issues related to sexual orientation and gender identity, and the human rights of LGBTI people, are able to carry out their legitimate and peaceful activities freely and without fear of judicial harassment or other restrictions in Uganda.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Juan Ernesto Mendez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the rights to freedom of expression and opinion and freedom of peaceful assembly and freedom of association enshrined in articles 19, 21 and 22, respectively, of the International Covenant on Civil and Political rights (ICCPR), acceded to by Uganda on 21 June 1995. We would like to underline, that these rights apply to "everyone", including members of the LGBTI community.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Uganda ratified in 1986. We would also like to draw the attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

Furthermore, Principle 5 provides that, "[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

We wish to remind your Excellency's Government of the duty to guarantee equal protection before the law and to prohibit discrimination on any ground under article 26 of ICCPR, and recall that the words "or any other grounds" have been interpreted to include sexual orientation and gender identity by the United Nations Human Rights Committee. Other United Nations treaty bodies including the Committee on Economic, Social and Cultural Rights, the Committee against Torture, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child have also clarified that sexual orientation and gender identity are prohibited grounds of discrimination under the ICESCR, CAT, CEDAW and CRC, to which Uganda is also a State party. The Committee on Economic, Social and Cultural Rights has furthermore raised concerns with regards to discrimination on the grounds of sexual orientation and gender identity, the criminalization of consensual same-sex sexual conduct, arbitrary detention and police abuse of LGBTI people in Uganda and called on Uganda to decriminalize consensual same-sex sexual conduct and 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, 8 July 2015).

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 on 10 May 1986. The African Commission on Human and Peoples' Rights, 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. The African Commission has further adopted a resolution condemning violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, including attacks by State actors, physical assaults, torture, arbitrary arrests and detentions, particularly those targeting human rights defenders and civil society organisations working on issues of sexual orientation or gender identity in Africa. The Commission has called on State Parties to end all acts of violence and abuse, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims, and to ensure that human rights defenders work in an enabling environment that is free of stigma, reprisals or criminal prosecution as a result of their human rights protection activities, including the rights of sexual minorities (Twenty-First Activity Report of the African Commission on Human and Peoples' Rights, para. 169 (EX.CL/322 (X) and resolution 275 of the African Commission).

Furthermore, we would like to refer to Human Rights Council resolution 24/5 (operative paragraph 2), in which the Council "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."

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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a) which provides for the right to meet and assemble peacefully;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and
- article 12, (1) and (3) which provides for the right to participate in peaceful activities against violations of human rights and fundamental freedoms and for the right to be protected effectively under national law in reacting against, or opposing, through peaceful means, activities and acts, attributable to States that result in violations of human rights and fundamental freedoms.

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. The Special Rapporteur 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.

Lastly, we would like to recall resolutions 17/19, 27/32 and 32/2 of the Human Rights Council, where the Council has repeatedly 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.