

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chairman/Rapporteur: Mr. José Guevara Bermúdez (Mexico)
Vice-Chairperson on Communications: Ms. Leigh Toomey (Australia)
Vice-Chairperson on follow-up: Ms. Elina Steinerte (Latvia)
Mr. Seong-Phil Hong (Republic of Korea)
Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
[REDACTED]

v.

Government of the Republic of Uganda

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7¹

Submitted By:

Human Rights Awareness and Promotion Forum (HRAPF)
Robert F. Kennedy Human Rights
Sexual Minorities Uganda (SMUG)

May 15, 2020

¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, Mar. 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, 20/16, and 24/7.

Basis for Petition

As set forth in the attached Petition, the Government of the Republic of Uganda is arbitrarily depriving 19 individuals of their liberty based on their real or perceived gender identity and sexual orientation. These 19 individuals are citizens of Uganda and have been detained since March 29, 2020. They continue to be detained and subject to possible abuse due to their gender identity and/or sexual orientation. An opinion is therefore sought from the Working Group finding their ongoing pretrial detention to be arbitrary and in violation of Uganda's obligations under international law.

As lesbian, gay, bisexual, transgender, and intersex (LGBTI) advocates and allies have made bold gains in the visibility and acceptance of LGBTI people in Uganda, they have faced swift and systematic backlash, particularly over the last decade, through attempts to pass anti-LGBTI legislation, through state violence and repression of civil society, and through overt transphobia, homophobia, and other forms of societal exclusion and discrimination. Since October of 2019 anti-LGBTI sentiment has increased amidst a series of raids, mass arrests, and arbitrary detentions of LGBTI people.²

On March 29, 2020, the mayor of Nsangi Town Council, Hajji Abdul Kiyimba and officers of the Uganda Police Force raided an LGBTIQ shelter, Children of the Sun Foundation (COSF), in Kyengera Town Council. During the raid, the officers arbitrarily arrested twenty-three (23) individuals, nineteen (19) of whom remain arbitrarily detained in state custody.³ Under a thinly veiled guise of COVID-19 prevention measures, these authorities targeted this known LGBTIQ shelter and arbitrarily arrested all 23 individuals because of their real or perceived sexual orientation and gender identity.

According to a police statement made the day after the arrest, the 23 individuals were arrested for violating Uganda's stay-at-home orders and social distancing directives put in place to curb the spread of COVID-19.⁴ On March 21st President Museveni issued a detailed directive on preventative measures to be taken in order to curb the spread of the COVID-19 virus. The directive specifically orders people to stay at home⁵ and further prohibits gatherings of more than 10 people.⁶ For allegedly violating these directives, the individuals were charged with engaging in "negligent acts likely to spread infection of disease" contrary to Section 171 of the Ugandan Penal Code Act and "disobedience of a lawful order" under Section 117 of the Ugandan Penal Code Act,⁷ although the charge under Section 117 was later

² See e.g., Sexual Minorities Uganda (SMUG), *Covid-19 : End Arbitrary Raids and Arrests on LGBTIQ Shelters*, 9 April 2020, available at <https://sexualminoritiesuganda.com/covid-19-end-arbitrary-raids-and-arrests-on-lgbtqi-shelters/> [hereinafter SMUG Statement].

³ SMUG Statement

⁴ Uganda Police Force, *23 People Picked by Security For Congesting in a House*, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

⁵ NTV News, *COVID-19: President Museveni unveils new directives*, 21 Mar. 2020, available at <https://www.youtube.com/watch?v=VTqRX7A06EQ>

⁶ Reuters, *Uganda Charges 20 LGBT People with Risking Spread of Coronavirus*, 31 Mar. 2020, available at <https://www.reuters.com/article/us-health-coronavirus-uganda-lgbt/uganda-charges-20-lgbt-people-with-risking-spread-of-coronavirus-idUSKBN21I2QD>

⁷ Uganda Police Force, *23 People Picked by Security For Congesting in a House*, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

dropped. After being held in police custody for one night, the police released four people on March 30th on health grounds. The remaining 19 individuals were arraigned and remanded to Kitalya Prison until April 29th.⁸ The police purportedly raided the LGBTI shelter and arrested all 23 individuals for violating the president's directive, even though at the time of their arrest they were in complete compliance with the COVID-19 restrictions. 13 of the currently detained individuals are shelter residents and were peacefully in their residence when the police raided their home and arrested them. The remaining six, although non-shelter residents, were also in compliance with the law. Although the president's directive set limits on the number of people allowed for a gathering, it did not establish limits on the number of individuals permitted in a private home or shelter.

The initial police statement following the arrests claimed that they raided the shelter and subsequently arrested the 23 individuals for violating the COVID-19 restrictions and therefore intended to charge them with violating Sections 171 and 117 of the Ugandan Penal Code. However, reports later revealed that the police initially charged the 23 individuals with engaging in "carnal knowledge," in violation of Section 145 of the Ugandan Penal Code⁹ - a homophobic colonial-era provision, that criminalizes same-sex sexual relations.¹⁰ The police charged these individuals under this provision although they did not witness anyone engaging in sexual relations at the time of the raid and arrests. Local media footage of the raid recorded neighbours of the shelter and leaders of the area stating that they were worried about the "homosexual behaviour" of the youths in the COSF shelter.¹¹ The footage also showed Mayor Hajji Abdul Kiyimba, whipping and verbally lashing out at two of the shelter residents while forcing them to admit that they are homosexuals.¹² According to witness statements a search was conducted of the shelter in order to find "evidence of homosexuality."¹³ According to witness statements some of the items recovered and kept as evidence included several bottles of an Antiretroviral Drug regimen commonly used as Pre-Exposure Prophylaxis, two oral HIV self-testing kits, and several condoms.¹⁴

The 19 individuals who remain arbitrarily detained face imminent risk of irreparable harm to their lives and wellbeing due the well-documented mistreatment of LGBTI in state custody and the additional threats posed by the novel COVID-19 coronavirus to all those detained in unsanitary conditions at this time.

Accordingly, it is hereby requested that the Working Group consider this Petition a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human

⁸ SMUG Statement.

⁹ SMUG Statement.

¹⁰Uganda: The Penal Code Act, *Section 145*.

¹¹ SMUG Statement.

¹² SMUG Statement.

¹³ HRAPF, *Statement of the Raid of the Children of the Sun Foundation Shelter for LGBT Youths in Uganda*, 31 Mar.2020, available at

<https://hrapf.org/index.php/resources/other-publications/131-20-03-31-hrapf-statement-on-the-arrests-at-the-cosf-lgbt-shelter-2-copy/file>

¹⁴*Id.*

Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

Questionnaire To Be Completed¹⁵

I. IDENTITY

1. **First and last names; 2. Age; 3. Sex & Gender Identity:** [REDACTED]
4. **Nationality/Nationalities:** Republic of Uganda
5. **(a) Identity document (if any): (b) Issued by: (c) On (date): (d) No.:** NONE
6. **Profession and/or activity (if believed to be relevant to the arrest/detention):** N/A
7. **Address of usual residence:** [REDACTED]

II. ARREST

1. **Date of arrest:** March 29, 2020
2. **Place of arrest (as detailed as possible):** LGBTIQ shelter Children of the Sun Foundation (COSF) in Kyengera Town Council, Wakiso district.
3. **Forces who carried out the arrest or are believed to have carried it out:** Mayor of Nsangi Town Council- Hajji Abdul Kiyimba, members of the Uganda Peoples Defence Forces (UPDF) and officers of the Uganda Police Force.
4. **Did they show a warrant or other decision by a public authority?** No
5. **Authority who issued the warrant or decision:** N/A
6. **Reasons for the arrest imputed by the authorities:** According to a police statement made the day after the arrest, the 23 individuals were arrested for violating Uganda's stay-at-home orders and social distancing directives put in place to curb the spread of COVID-19.¹⁶ However, the police initially charged the 23 individuals with engaging in "carnal knowledge" in violation of Section 145 of the Ugandan Penal Code¹⁷ - a colonial-era provision, that criminalizes same-sex sexual relations.¹⁸
7. **Legal basis for the arrest including relevant legislation applied (if known):** According to a police statement made the day after the arrest, the 23 individuals were arrested for violating

¹⁵ Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention, UN Working Group on Arbitrary Detention, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

¹⁶ Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

¹⁷ SMUG Statement.

¹⁸ SMUG Statement.

Uganda’s stay-at-home orders and social distancing directives put in place to curb the spread of COVID-19.¹⁹ Specifically, the individuals were charged with engaging in “negligent acts likely to spread infection of disease” contrary to Section 171 of the Ugandan Penal Code Act and disobedience of a lawful order under Section 117 of the Ugandan Penal Code Act .²⁰ However, the police initially charged the 23 individuals with engaging in “carnal knowledge” in violation of Section 145 of the Ugandan Penal Code²¹ - a colonial-era provision, that criminalizes same-sex sexual relations.²²

III. DETENTION

1. **Date of detention:** March 29, 2020.
2. **Duration of detention (if not known, probable duration):** 4 of the 23 arrested individuals spent one night in police custody before later being released on health grounds. The remaining 19 have been detained since March 29, 2020 to the date of this communication.
3. **Forces holding the detainee under custody:** Uganda Prisons Service
4. **Places of detention (indicate any transfer and present place of detention):** Initially Nkokonjeru Police Post, Wakiso District and then Kitalya Prison, Wakiso District, Uganda.
5. **Authorities that ordered the detention:** Mayor of Nsangi Town Council, Hajj Abdul Kiyimba
6. **Reasons for the detention imputed by the authorities:** According to a police statement made the day after the arrest, the 23 individuals were arrested for violating Uganda’s stay-at-home orders and social distancing directives put in place to curb the spread of COVID-19.²³ Specifically, the individuals were charged with engaging in “negligent acts likely to spread infection of disease” contrary to Section 171 of the Ugandan Penal Code Act and disobedience of a lawful order under Section 117 of the Ugandan Penal Code Act .²⁴ However, following the arrest, the police initially charged the 23 individuals with engaging in “carnal knowledge” in violation of Section 145 of the Ugandan Penal Code²⁵ - a colonial-era provision, that criminalizes same-sex sexual relations.²⁶

¹⁹Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

²⁰Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

²¹ SMUG Statement.

²² SMUG Statement.

²³Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

²⁴Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

²⁵ SMUG Statement.

²⁶ SMUG Statement.

7. **Legal basis for the detention including relevant legislation applied (if known):** According to a police statement made the day after the arrest, the 23 individuals were arrested for violating Uganda’s stay-at-home orders and social distancing directives put in place to curb the spread of COVID-19.²⁷ Specifically, the individuals were charged with engaging in “negligent acts likely to spread infection of disease” contrary to Section 171 of the Ugandan Penal Code Act and disobedience of a lawful order under Section 117 of the Ugandan Penal Code Act.²⁸ However, following the arrest, the police initially charged the 23 individuals with engaging in “carnal knowledge” in violation of Section 145 of the Ugandan Penal Code²⁹ - a colonial-era provision, that criminalizes same-sex sexual relations.³⁰

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND THE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY

Part A of this section describes the Ugandan government’s documented history of suppressing the fundamental rights of their LGBTI community and the particular vulnerabilities facing detained persons due to the threat of COVID-19. Part B presents the case of 23 individuals who were arbitrarily arrested and the remaining 19 who are currently arbitrarily detained because of their real or perceived sexual orientation or gender identity following an unlawful raid of the LGBTIQ shelter, Children of the Sun Foundation (COSF).

A. Background on Uganda

1. Relevant Political, Legal and Social Background of Uganda

Uganda is a constitutional republic led since 1986 by President Yoweri Museveni of the National Resistance Movement (NRM) party. The NRM retains power through the manipulation of state resources, intimidation by security forces, and politicized prosecutions of opposition leaders.³¹ In 2016 Museveni assumed a fifth five-year term and returned an NRM majority to the unicameral parliament after a flawed election that fell short of international standards amid voter disenfranchisement and intimidation.³² The periods before, during, and after the elections were marked by an increasing closing of political space, intimidation of journalists, and widespread use of torture by the security agencies. In the Freedom in the World Report 2019, Uganda’s status declined from “partly free” to “not free” due to attempts by president

²⁷Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

²⁸Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

²⁹ SMUG Statement.

³⁰ SMUG Statement.

³¹ Freedom House, Freedom in the World 2019: Uganda, <https://freedomhouse.org/country/uganda/freedom-world/2019> [hereinafter Freedom House 2019 Report].

³² U.S. Department of State, Uganda 2019 Human Rights Report (2019), <https://www.state.gov/wp-content/uploads/2020/02/UGANDA-2019-HUMAN-RIGHTS-REPORT.pdf> [hereinafter State Department 2019 Report].

Yoweri Museveni's government to restrict free expression, including through surveillance of electronic communications and a regressive tax on social media use. Human rights issues included reports of unlawful or arbitrary killings; forced disappearance; torture; arbitrary detention; political prisoners; violence and intimidation against journalists, censorship, criminalization of libel, and restricted access to the internet; substantial interference with the rights of peaceful assembly and freedom of association; restrictions on political participation; corruption; criminalization of same-sex consensual sexual conduct; and security force harassment and detention of LGBTI persons.³³

2. Arbitrary Detention in Uganda

Although Ugandan law prohibits arbitrary arrest and detention, security forces often arbitrarily arrested and detained persons, including opposition leaders, politicians, activists, human rights defenders, journalists and LGBTI individuals.³⁴

3. Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

Although the Constitutional Court nullified the Anti-Homosexuality Act in 2014, consensual same-sex sexual conduct is still illegal according to a colonial-era law that criminalizes “carnal knowledge of any person against the order of nature” and provides for a penalty of up to life imprisonment.³⁵ Although the law does not expressly restrict freedoms of expression or peaceful assembly based on sexual orientation or gender identity, the government has severely restricted such rights for LGBTI people. The law does not prohibit discrimination against LGBTI persons in housing, employment, nationality laws, or access to government services. LGBTI persons face discrimination, legal restrictions, societal harassment, violence, and intimidation. Authorities perpetuate violence against LGBTI individuals, block meetings organized by LGBTI persons and activists and routinely arbitrarily arrest and detain them. Police continue to carry out forced anal examinations on men and transgender women accused of consensual same-sex conduct.³⁶ Local civil society organizations report that public and private health-care services turn away LGBTI persons who seek medication and some lead community members to harass persons seeking medical care.³⁷

4. Targeting of LGBTI Persons and Escalating Patterns of Arrests

In recent months, anti-LGBTI violence and discrimination have reached alarmingly high levels. In August 2019, a lesbian woman was brutally beaten by a doctor, who allegedly used an iron bar to crack her skull and dislocate her arm.³⁸ In October 2019, Brian Wasswa, a young gay activist, was bludgeoned

³³State Department 2019 Report.

³⁴State Department 2019 Report.

³⁵State Department 2019 Report.

³⁶ Human Rights Watch, World Report 2017: Uganda (2017), <https://www.hrw.org/world-report/2017/country-chapters/uganda> [hereinafter HRW World Report 2017].

³⁷State Department 2019 Report.

³⁸World Politics Review, Uganda's Escalating LGBT Crackdown Feels Eerily Familiar, 21 Nov. 2019, available at <https://www.worldpoliticsreview.com/articles/28364/uganda-s-escalating-lgbt-crackdown-feels-eerily-familiar>

to death inside of his home in the eastern town of Jinja. Days after Wasswa's murder, Ethics and Integrity Minister Simon Lokodo told reporters that parliament planned to introduce a bill that would criminalize the "promotion and recruitment" by LGBTI people, and would include the death penalty for "grave" consensual same-sex acts.³⁹ A few days later Ugandan MP, James Buturo, said parliamentarians wanted to retaliate the "Kill the Gays" bill.⁴⁰ The Office of the President later tried to walk back this promise to reintroduce a "Kill the Gays" bill, stating that the "Government of Uganda has no plans of re-introducing the anti-homosexuality bill on the floor of parliament,"⁴¹ however, the Minister's statement was still out there, fueling homophobic sentiments and leaving members of Uganda's LGBTI community vulnerable and susceptible to targeted attacks. Later that month, the Ugandan authorities carried out raids and mass arrests of LGBTI persons. The police arrested 16 LGBTI activists at their office after the activists had themselves called the police for protection from a homophobic mob that surrounded their office. But, after dispersing the mob the police arrested the 16 activists all while using homophobic insults⁴². While in police custody, the 16 detainees were forced to undergo anal examinations and abuse. They were later released on bail but currently face charges for "carnal knowledge against the order of nature" under the Ugandan Penal Code.⁴³ In November 2019, the Ugandan police forces raided Ram Bar, a well-known bar where specific nights are known to be safe and welcoming for LGBTI people to attend, in the capital of Kampala, and arrested 127 people.⁴⁴ Patrons were listening to music, and holding a health meeting when the police stormed in, brutally arresting the patrons, throwing them into police trucks and detaining them at Central Police Station in Kampala. On March 6, 2020, police officers arrested 13 LGBTI people who were part of an HIV outreach in Masaka district and detained them overnight without charge. The 13 were released the following day, and subsequently their property was given back to them.⁴⁵

5. Detention Conditions in Uganda

Detention conditions remain poor and even life threatening in some cases.⁴⁶ Serious problems included overcrowding, physical abuse of detainees by security staff and fellow inmates, inadequate food,

³⁹ Human Rights Watch, Uganda: Brutal Killing of Gay Activist, 15 Oct. 2019, available at <https://www.hrw.org/news/2019/10/15/uganda-brutal-killing-gay-activist>

⁴⁰ The Guardian, Ugandan MPs Press for Death Penalty for Homosexual Acts, 15 Oct. 2019 available at https://docs.google.com/document/d/1ThLhKfZO_dv0Zgmsmwfb-j7jyokM-Z2X7shbwa2X0Q/edit

⁴¹ LGBTQ Nation, Uganda Says it's Not Reintroducing the Kill the Gays' Bill, Confusing Everyone, 15 Oct. 2019, available at <https://www.lgbtqnation.com/2019/10/uganda-says-not-reintroducing-kill-gays-bill-confusing-everyone/>

⁴² The Guardian, Uganda Arrests 16 LGBT Activists on Suspicion of Gay Sex, 24 Oct. 2019, available at <https://www.theguardian.com/world/2019/oct/24/sixteen-lgbt-activists-arrested-in-uganda-as-hate-crimes-soar>

⁴³ Uganda: The Penal Code Act, Section 145.

⁴⁴ Independent, Uganda Charges 67 After Raid on Gay Bar, 13 Nov. 2019, available at <https://www.independent.co.uk/news/world/africa/uganda-lgbt-rights-arrest-crime-punishment-death-penalty-activis-m-a9201426.html>

⁴⁵ Sexual Minorities Uganda (SMUG), Covid-19 : End Arbitrary Raids and Arrests on LGBTIQ Shelters, 9 April 2020, available at <https://sexualminoritiesuganda.com/covid-19-end-arbitrary-raids-and-arrests-on-lgbtiq-shelters/> [hereinafter SMUG Statement].

⁴⁶State Department 2019 Report.

and understaffing.⁴⁷ Torture by security forces and prison personnel have been reported.⁴⁸ Reports of forced labor continued, and most prisons did not have accommodations for persons with disabilities⁴⁹.

6. COVID-19 and Detention

COVID-19 has been declared a global pandemic and the prevention of the spread of the virus is difficult everywhere but prisons in particular are some of the hardest places to protect. Due to the nature of prisons, detained persons face higher vulnerabilities to the spread of COVID-19.⁵⁰ Detained persons are often confined to small spaces with a high concentration of other people, an environment that allows for the rapid transmission of the disease. It is for these reasons why there have been global calls for the depopulation of prison populations in order to curb the spread of COVID-19 and ensure the right to health for all persons deprived of their liberty. In light of this the World Health Organization (WHO) and the Office of the High Commissioner for Human Rights (OHCHR) issued an interim guidance specific to the issues of persons deprived of their liberties. In their guidance, the agencies specifically state that all those who are arbitrarily detained should be released immediately as the prohibition of arbitrary detention is a non-derogable norm and their continued detention under the current public health emergency may also severely impact their right to health and their right to life.⁵¹ In Uganda there are currently 79 confirmed cases of COVID-19 and 0 confirmed deaths.⁵² In response to the growing number of cases, the State has imposed strict preventative measures to curb the spread of the disease including, stay-at-home orders, a ban on public transport, and a national curfew.⁵³ Unfortunately, reports have revealed security forces using excessive force and committing other abuses in order to enforce these strict measures.⁵⁴ UN experts have also expressed concern that Uganda may be using COVID-19 emergency laws to target gay, lesbian, bisexual and transgender people under the guise of protecting public health.⁵⁵ In particular they referenced the March 29th raid and arrest of 23 individuals at the LGBTIQ shelter, Children of the Sun Foundation (COSF).⁵⁶ In an effort to decongest their crowded prisons to prevent transmission of the virus, the Uganda Prisons Service has listed 2,000 prisoners across the country to be released pending approval

⁴⁷Id.

⁴⁸Id.

⁴⁹Id

⁵⁰Inter-Agency Standing Committees, Interim Guidance COVID-19: FOCUS ON PERSONS DEPRIVED OF THEIR LIBERTY Mar. 2020, available at

<https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf>

⁵¹Id.

⁵² Ministry of Health, Guidelines on Preventive Measures Against Coronavirus, 2020, available at <https://www.health.go.ug/covid/#>

⁵³ Anadolu Agency, Uganda Tighten Measures After COVID-19 Rises, 09 April 2020, available at <https://www.aa.com.tr/en/africa/uganda-tightens-measures-after-covid-19-cases-rise/1797954>

⁵⁴ Human Rights Watch, Uganda: Respect Rights in Covid-19 Response, 02 April 2020, available at <https://www.hrw.org/news/2020/04/02/uganda-respect-rights-covid-19-response>

⁵⁵ United Nations Human Rights Office of the High Commissioner, UN rights experts fear Uganda is using COVID-19 emergency powers to target LGBT people, 27 Apr. 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25770&LangID=E>

⁵⁶ Id.

by the Attorney General.⁵⁷ The UN experts have called on Uganda to include those detainees, who were arrested during the COSF raid, in the planned release⁵⁸

B. The Arrest and Detention of 23 LGBTI Individuals at LGBTIQ Shelter, Children of the Sun Foundation (COSF)

On March 29, 2020, the mayor of Nsangi Town Council, Hajji Abdul Kiyimba and officers of the Uganda Peoples Defence Forces (UPDF) raided an LGBTIQ shelter, Children of the Sun Foundation (COSF), in Kyengera Town Council. During the raid, the officers arbitrarily arrested twenty-three (23) individuals, 13 of the arrested were shelter residents, and the remaining six were not. Five of the non-shelter residents were visiting from another shelter, one was a guest to one of the residents and one a resident nurse.⁵⁹ The police targeted this known LGBTIQ shelter and arbitrarily arrested all 23 individuals because of their real or perceived sexual orientation and gender identity.

According to a police statement made the day after the arrest, the 23 individuals were arrested for violating Uganda's stay-at-home orders and social distancing directives put in place to curb the spread of COVID-19.⁶⁰ On March 21st President Museveni issued a detailed directive on preventative measures to be taken in order to curb the spread of the COVID-19 virus. The directive specifically orders people to stay at home⁶¹ and further prohibits gatherings of more than 10 people.⁶² For allegedly violating these directives, the individuals were charged with engaging in "negligent acts likely to spread infection of disease" contrary to Section 171 of the Ugandan Penal Code Act and "disobedience of a lawful order" under Section 117 of the Ugandan Penal Code Act,⁶³ although the charge under Section 117 was later dropped. After being held in police custody for one night, the police released four people on March 30th on health grounds. The remaining 19 individuals were arraigned and remanded to Kitalya Prison until April 29th.⁶⁴ The police raided the LGBTIQ shelter and arrested all 23 individuals for violating the president's directive, even though at the time of their arrest they were in complete compliance with the COVID-19 restrictions. 13 of the currently detained individuals are shelter residents and were peacefully in their residence when the police raided their home and arrested them. The remaining six, although

⁵⁷CGTN AFRICA, Uganda prisons identify 2,000 inmates for release amid COVID-19 outbreak, 7 Apr. 2020, available at

<https://africa.cgtn.com/2020/04/07/uganda-prisons-identify-2000-inmates-for-release-amid-covid-19-outbreak/>

⁵⁸United Nations Human Rights Office of the High Commissioner, UN rights experts fear Uganda is using COVID-19 emergency powers to target LGBT people, 27 Apr. 2020, available at

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25770&LangID=E>

⁵⁹ SMUG Statement.

⁶⁰ Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

⁶¹ NTV News, COVID-19: President Museveni unveils new directives, 21 Mar. 2020, available at <https://www.youtube.com/watch?v=VTqRX7A06EQ>

⁶²Reuters, Uganda Charges 20 LGBT People with Risking Spread of Coronavirus, 31 Mar. 2020, available at <https://www.reuters.com/article/us-health-coronavirus-uganda-lgbt/uganda-charges-20-lgbt-people-with-risking-spread-of-coronavirus-idUSKBN21I2QD>

⁶³Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

⁶⁴ SMUG Statement.

non-shelter residents, were also in compliance with the law. Although the president’s directive set limits on the number of people allowed for a gathering, it did not establish limits on the number of individuals permitted in a private home or shelter.

The initial police statement following the arrests claimed that they raided the shelter and subsequently arrested the 23 individuals for violating the COVID-19 restrictions and therefore intended to charge them with violating Sections 171 and 117 of the Ugandan Penal Code. However, reports later revealed that the police initially charged the 23 individuals with engaging in “carnal knowledge,” in violation of Section 145 of the Ugandan Penal Code⁶⁵ - a homophobic colonial-era provision, that criminalizes same-sex sexual relations.⁶⁶ The police charged these individuals under this provision although they did not witness anyone engaging in sexual relations at the time of the raid and arrests. Local media footage of the raid recorded neighbours of the shelter and leaders of the area stating that they were worried about the “homosexual behaviour” of the youths in the COSF shelter.⁶⁷ The footage also showed Mayor Hajji Abdul Kiyimba, whipping and verbally lashing out at two of the shelter residents while forcing them to admit that they are homosexuals.⁶⁸ After their arrest a search was reportedly conducted of the shelter in order to find “evidence of homosexuality.”⁶⁹ Some of the items recovered and kept as evidence included several bottles of an Antiretroviral Drug regimen commonly used as Pre-Exposure Prophylaxis, two oral HIV self-testing kits, and several condoms.

1. Current Status

On March 31, 2020, the 19 individuals were arraigned before the Chief Magistrates Court of Mpigi at Nsangi⁷⁰ and charged with “doing negligent acts likely to spread infection or disease” contrary to Section 171 of the Uganda Penal Code Act and “disobedience of a lawful order” contrary to Section of 117 of the penal code,⁷¹ although the charge under Section 117 was later dropped. All 19 individuals were remanded to Kitalya Prison until April 28, 2020. The Uganda Prisons Service denied the 19 individuals access to their lawyers.⁷² The lawyers then challenged the legality of the denial of access to lawyers in the High Court and the High Court then granted a certificate of urgency in the matter. Their lawyers also filed a bail application before the Chief Magistrates Court of Mpigi at Nsangi, however it has yet to be fixed for hearing.

⁶⁵ SMUG Statement.

⁶⁶Uganda: The Penal Code Act, Section 145.

⁶⁷ SMUG Statement.

⁶⁸SMUG Statement.

⁶⁹ Towleroad, Uganda Raids LGBTQ Homeless Shelter, Arrests and Jails 23 People for Unwarranted COVID-19 Offenses After Considering Charging Them Under Anti-Homosexuality Laws, 6 Apr. 2020, available at <https://www.towleroad.com/2020/04/uganda-lgbtq-coronavirus/>

⁷⁰ SMUG Statement.

⁷¹ Uganda Police Force, 23 People Picked by Security For Congesting in a House, 30 Mar. 2020, available at <https://www.upf.go.ug/23-people-picked-by-security-for-congesting-in-a-house/>

⁷² Letter from Uganda prisons dated 22nd April 2020

On April 28, 2020, the scheduled hearing did not take place. The 19 were not brought to court for the hearing and neither did the magistrate or the prosecution showed up. If found guilty under Section 171 of the Ugandan Penal Code they could face up to seven years in prison.

2. Legal Analysis

For the reasons set forth below, the detention of these 19 individuals constitutes an arbitrary detention of their liberty⁷³ under Category I, Category III and Category V as set forth by the United Nations Working Group on Arbitrary Detention (herein, the Working Group). The detention is arbitrary under Category I because it does not have any legal justification. The detention is arbitrary under Category III because the government's detention and prosecution of these 19 individuals fails to meet minimum international standards of due process. The detention is arbitrary under Category V because the 19 victims were targeted by the government because of their real or perceived gender identity and sexual orientation.

i. Category I: No Basis for Detention

The detention of these 19 individuals is arbitrary under Category I, as the charges against these 19 individuals are without merit and cannot be used as a lawful basis to justify their continued detention.

A detention is arbitrary under Category I when it is “clearly impossible to invoke any legal basis justifying the deprivation of liberty.”⁷⁴ Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”⁷⁵ This right is reiterated by Article 9 of the UDHR and principles 2 and 36(2) of the Body of Principles.⁷⁶ The U.N. Human Rights Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and State parties should ensure compliance with their legally prescribed procedures.”⁷⁷ Further, in light of the global pandemic that is COVID-19,

⁷³ An arbitrary deprivation of liberty is defined as a “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. Id. “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, Art. 9 (1948) [hereinafter UDHR]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law.” Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998, Principle 2 [hereinafter Body of Principles].

⁷⁴ Report of the Working Group on Arbitrary Detention, A/HRC/30/69, Aug. 4, 2015, ¶8(a) [hereinafter Revised Methods of Work].

⁷⁵ ICCPR, at art 9(1).

⁷⁶ UDHR, at art 9; Body of Principles, at principles 2 and 36(2).

⁷⁷ UN Human Rights Committee, General Comment No. 35, UN Doc. CCPR/C/GC/35, ¶ 23, (16 Dec. 2014).

OHCHR issued a statement calling on governments to release every person being detained without sufficient legal basis.⁷⁸

The 19 LGBT individuals have been charged with engaging in “negligent acts likely to spread infection or disease” contrary to Section 171 of the Ugandan Penal Code Act. The specific application of these charges against all 19 individuals cannot justify their pretrial detention because the acts proscribed in the statute cannot be attributed to their actions and thus lack sufficient legal basis.

Section 171 of the Ugandan Penal Code Act provides that it is a crime if any person: “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.”⁷⁹

Here Section 171 of the penal code cannot be a legitimate basis to charge and detain all 19 individuals. On March 29th the Ugandan police raided the known LGBTIQ shelter, Children of the Sun Foundation. The police claimed that all 19 individuals violated Section 171 of the Penal Code by “congesting in a school-like-dormitory setting within a small house” clearly disobeying coronavirus-related directives on social distancing, in particular the ban on gatherings of more than ten.⁸⁰ These charges cannot be attributed to these individuals because, contrary to the police’s claims, they were in compliance with President Museveni’s COVID- 19 restrictions. On March 21st President Museveni issued a detailed directive on preventative measures to be taken in order to curb the spread of the novel COVID-19 virus. The directive specifically orders people to “stay indoors in their home except for the cargo transporters.”⁸¹ It also stated that gatherings of more than 10 persons are prohibited.⁸² At the time of their arrest, these individuals were actually in compliance with the directive issued by President Museveni. 13 of the currently detained individuals are shelter residents and were peacefully in their residence when the police unlawfully raided their home and arrested them. The remaining six, although non-shelter residents, were also in compliance with the law. Although President Museveni’s directive set limits on the number of people allowed for a gathering, it did not establish limits on the number of individuals permitted in a private home or shelter. Ugandan authorities are attempting to criminalize these individuals' lawful actions of existing in their private dwelling. Because the 19 individuals were in compliance with President Museveni’s directives, they cannot be found to be in violation of Section 170 which makes it a crime to “unlawfully” engage in an act likely to spread the infection of any disease dangerous to life.⁸³

⁷⁸UN Human Rights Office of the High Commissioner, Press briefing note on COVID-19, 3 Apr. 2020, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25770&LangID=E>

⁷⁹ Uganda: The Penal Code Act, Section 171.

⁸⁰Reuters, Uganda Charges 20 LGBT People with Risking Spread of Coronavirus, 31 Mar. 2020, available at <https://www.reuters.com/article/us-health-coronavirus-uganda-lgbt/uganda-charges-20-lgbt-people-with-risking-spread-of-coronavirus-idUSKBN21I2QD>

⁸¹The State House of Uganda, More guidelines on COVID19, preventive measures & the need for a shut down - President Museveni, 30 Mar. 2020, available at <http://www.statehouse.go.ug/media/press-releases/2020/03/30/more-guidelines-covid19-preventive-measures-need-shut-down-president>

⁸²Id.

⁸³ Uganda: The Penal Code Act, Section 170.

Since the 19 individuals cannot be attributed to the crimes laid out in Section 170 of the Ugandan Penal Code Act, there is no legal basis for their detention under these laws and therefore their continued detention under these sections are arbitrary under Category I.

ii. Category III: Violation of the Rights of Due Process

The detention of these 19 individuals is arbitrary under Category III. A detention is considered arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”⁸⁴ Additionally, the Working Group looks to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).⁸⁵

Article 14 of the International Covenant on Civil and Political Rights recognizes the right of an accused person in a criminal proceeding to a fair trial.⁸⁶ An element of this right is the right to counsel, enshrined in section 3(b) and 3(d) of Article 14. Article 14(3)(b) provides that everyone charged with a criminal offence has the right to “have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”⁸⁷ Article 14(3)(d) also states that all persons charged with a criminal offence has a right “to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”⁸⁸ Principle 11 of the Body of Principles reiterates the right, providing that “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.”⁸⁹ The right to counsel is also guaranteed under Section 28(d) of the Ugandan Constitution, providing that every person who is charged with a criminal offence shall “be permitted to appear before the court in person or, at that person’s own expense, by a lawyer of his or her choice.”⁹⁰ The Working Group has consistently affirmed the right to counsel and has interpreted the right to include the right to communicate with a lawyer promptly following arrest.⁹¹

Since their arrest on March 29, 2020, the 19 defendants were denied access to their lawyers at Human Rights Awareness and Promotion Forum (HRAPF). Due to the COVID-19 restrictions on movement to curb the spread of the virus, all private cars and public transport are banned from moving,

⁸⁴ Revised Methods of Work, ¶8(c).

⁸⁵ Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998 [hereinafter Body of Principles].

⁸⁶ International Covenant on Civil and Political Rights, Article 14.

⁸⁷ International Covenant on Civil and Political Rights, Article 14(3)(b).

⁸⁸ International Covenant on Civil and Political Rights, Article 14(3)(d).

⁸⁹ Body of Principles, at principles 11.

⁹⁰ Ugandan Constitution, Section 28(d)

⁹¹ *Gaybullo Jalilov v. Uzbekistan*, Working Group on Arbitrary Detention, Opinion No. 4/2013, U.N. Doc. A/HRC/WGAD/2013/4, ¶ 62. Found Mr. Jalilov was arbitrary because he was not allowed to meet with his lawyer until over two months after his arrest

except for those performing essential services.⁹² When the lawyers at HRAPF filed an application with the Ministry of Works to visit their clients, it was rejected⁹³ - effectively denying all 19 individuals the right to communicate with their lawyers as required under international human rights law. The Uganda Prisons Service also officially denied the 19 individuals access to their lawyers.⁹⁴ The lawyers also challenged the legality of the denial of access to lawyers in the High Court and the High Court granted a certificate of urgency in the matter. Their lawyers also filed a bail application before the Chief Magistrates Court of Mpigi at Nsangi, however it has yet to be fixed for hearing. Finally, on May 13 the High Court ordered that their lawyers be granted reasonable access to all 19 defendants, and their lawyers are currently in the process of gaining such access.

The 19 defendants were forced to appear before a magistrate, the day after their arrest, without their legal counsel present, in violation of international human rights law and the Ugandan constitution.⁹⁵ By preventing these 19 individuals from accessing their legal counsel, Uganda has violated their right to counsel, an element of the right to a fair trial. Therefore, their detention has failed to meet the minimum standards of due process under both international law and the Ugandan constitution and is therefore arbitrary under Category III.

iii. Category V: Discrimination Based on a Protected Class

The detention of 19 individuals due to their gender identity and/or sexual orientation is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the deprivation of liberty is discriminatory “based on ...gender, sexual orientation ...that aims towards or can result in ignoring the equality of human beings.”⁹⁶ Equal protection of all people before the law and freedom from discrimination is expressly protected under international and Ugandan law. Article 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda is a State Party, provides that “[a]ll 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 grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁹⁷ Equal protection is also guaranteed by Article 7 of the Universal Declaration of Human Rights (UDHR). Further, Article 21 of the Ugandan Constitution likewise guarantees equality and freedom from discrimination for all.⁹⁸ The

⁹² Erasing 76 Crimes, No lawyers for 20 LGBT Ugandans in prison on Covid-19 charges, 31 Mar. 2020, available at <https://76crimes.com/2020/03/31/no-lawyers-for-20-lgbt-ugandans-in-prison-on-covid-19-charges/>

⁹³ <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext>

⁹⁴ Letter from Uganda prisons dated 22nd April 2020

⁹⁵ Erasing 76 Crimes, No lawyers for 20 LGBT Ugandans in prison on Covid-19 charges, 31 Mar. 2020, available at <https://76crimes.com/2020/03/31/no-lawyers-for-20-lgbt-ugandans-in-prison-on-covid-19-charges/>

⁹⁶ Revised Methods of Work, ¶7(e).

⁹⁷ ICCPR, Art. 26.

⁹⁸ Mukasa and Oyo v. Attorney-General (2008) AHRLR 248 (UgHC 2008) (finding that the Ugandan constitutional rights apply to lesbian, gay, bisexual, and transgender (LGBT/Kuchu) people regardless of whether they are homosexual or transgender)

UN Human Rights Committee has found that in order for a state to remain in compliance with Article 26 of the ICCPR, any differential treatment amongst groups must be reasonable and imposed for objective and legitimate purposes.⁹⁹

The UN Human Rights Committee, the body tasked with interpreting the ICCPR, has specifically chosen to interpret the reference to “sex” in Article 26 of the ICCPR to include discrimination based on sexual orientation.¹⁰⁰ The Human Rights Committee and the Working Group have also clarified several times that detention on discriminatory grounds, including on the basis of sexual orientation and gender identity, is per se arbitrary, and violates the ICCPR.¹⁰¹ The Working Group has acknowledged that sexual orientation and gender identity are prohibited grounds of discrimination under international law, citing to both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee’s findings that States have a legal obligation to ensure to everyone the rights recognized by the two Covenants (ICCPR and ICESCR) without discrimination on the basis of sexual orientation or gender identity.¹⁰² More specifically, the Working Group expressly adopted this view in *Yasser Mohamed Salah et al. v. Egypt*, finding that by detaining a number of individuals based on their sexual orientation, the Egyptian government violated the equal protection provisions espoused in Article 26 of the ICCPR. Further, the Working Group has reaffirmed its position that detaining someone for offences relating to sexual orientation or gender identity, including offences not directly related to sexual conduct, such as those pertaining to physical appearance, breaches international law.¹⁰³

Despite both international and Ugandan law clearly guaranteeing freedom from discrimination and equal protection under the law, the Ugandan government arbitrarily arrested and detained 19 individuals because of their real or perceived sexual orientation and gender identity.

The initial police statement following the arrests claimed that they raided the shelter and subsequently arrested the 23 individuals for violating the COVID-19 restrictions and therefore intended to charge them with violating Sections 171 and 117 of the Ugandan Penal Code. However, reports later revealed that the police initially charged the 23 individuals with engaging in “carnal knowledge,” in

⁹⁹ United Nations Human Rights Office of the High Commissioner, Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers ch. 13, available at <https://www.ohchr.org/Documents/Publications/training9chapter13en.pdf>

¹⁰⁰ *Toonen v. Austl.*, Comm. 488/1992, U.N. Doc. A/49/40, Vol. II, at 226 (HRC 1994).

¹⁰¹ Human Rights Committee, International Covenant on Civil and Political Rights General Comment No. 35, 16 Dec. 2014 available at <https://undocs.org/CCPR/C/GC/35>

¹⁰² United Nations Working Group on Arbitrary Detention, Communication Reference AL KEN 9/2018, 21 Sept. 2018 available at <https://ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24091> see also Human Rights Committee, General Comment No. 35 Article 9 (Liberty and Security of Person), para. 3., 16 Dec. 2014, available at <https://undocs.org/CCPR/C/GC/35> see also Committee on Economic, Social and Cultural Rights, General Comment No. 20 Non-discrimination in Economic, Social and Cultural Rights (art. 2, para.2 of the International Covenant on Economic, Social and Cultural Rights), para. 32, 2 July 2009, available at <https://undocs.org/E/C.12/GC/20>

¹⁰³ United Nations Human Rights Council, Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity, 17 Nov. 2011 available at https://www.ohchr.org/Documents/Issues/Discrimination/A.HRC.19.41_English.pdf

violation of Section 145 of the Ugandan Penal Code¹⁰⁴ - a homophobic colonial-era provision, that criminalizes same-sex sexual relations.¹⁰⁵ The police charged these individuals under this provision although they did not witness anyone engaging in sexual relations at the time of the raid and arrests. Local media footage of the raid recorded neighbours of the shelter and leaders of the area stating that they were worried about the “homosexual behaviour” of the youths in the COSF shelter.¹⁰⁶ The footage also showed Mayor Hajji Abdul Kiyimba, whipping and verbally lashing out at two of the shelter residents while forcing them to admit that they are homosexuals.¹⁰⁷ After their arrest a search was reportedly conducted of the shelter in order to find “evidence of homosexuality.”¹⁰⁸ Some of the items recovered and kept as evidence included several bottles of an Antiretroviral Drug regimen commonly used as Pre-Exposure Prophylaxis, two oral HIV self-testing kits, and several condoms.¹⁰⁹ These facts demonstrate that the Ugandan authorities are weaponizing measures aimed at protecting the spread of COVID-19 to further marginalize and target already vulnerable populations, in particular LGBTI individuals.

The Ugandan government offers no reasonable or legitimate purpose for the differential treatment of the 19 LGBT individuals currently detained. Since the implementation of COVID-19 prevention measures there have been no similar reports of raids on shelters, private homes or businesses like that of the raid on the LGBTIQ COSF shelter. The 19 individuals were arrested under the guise of enforcing COVID-19 prevention measures, yet they were arrested for being in compliance with President Museveni’s directives further lending to the fact that these arrests serve no legitimate or objective purpose, but are rather a pretext for targeting and detaining LGBTI individuals based on their real or perceived sexual orientation and gender identity and to further restrict the rights and freedoms that are to be enjoyed by all individuals in Uganda, irrespective of sexual orientation or gender identity.¹¹⁰ The Working Group has repeatedly emphasized in its jurisprudence that deprivation of liberty on the basis of sexual orientation and gender identity is arbitrary and prohibited under international law.¹¹¹ The Ugandan authorities’ discriminatory actions are in direct contradiction with international law and the opinions expressed by the Working Group. In continuing to deprive them of their liberty under baseless charges, solely because of their sexual orientation and gender identity, the actions of the Ugandan government are discriminatory and in violation of the equal protection guarantees under article 26 of the ICCPR and article 7 of the UDHR. As a result, their detention is arbitrary under Category V.

V. INTERNAL STEPS TAKEN

¹⁰⁴ SMUG Statement.

¹⁰⁵ Uganda: The Penal Code Act, Section 145.

¹⁰⁶ SMUG Statement.

¹⁰⁷ SMUG Statement.

¹⁰⁸ Towleroad, Uganda Raids LGBTQ Homeless Shelter, Arrests and Jails 23 People for Unwarranted COVID-19 Offenses After Considering Charging Them Under Anti-Homosexuality Laws, 6 Apr. 2020, available at <https://www.towleroad.com/2020/04/uganda-lgbtq-coronavirus/>

¹⁰⁹ Id.

¹¹⁰ Mukasa and Oyo v. Attorney-General (2008) AHRLR 248 (UgHC 2008) (finding that the Ugandan constitutional rights apply to lesbian, gay, bisexual, and transgender (LGBT/Kuchu) people regardless of whether they are homosexual or transgender)

¹¹¹ Cornelius Fonya v. Cameroon, WGAD Opinion No. 14/2017, Adopted Apr. 21, 2017

On March 29, 2020, the mayor of Nsangi Town Council, Hajji Abdul Kiyimba and officers of the Uganda Police Force arbitrarily arrested twenty-three (23) individuals. After being held in police custody for one night, the police released four people on March 30th on health grounds. The remaining 19 individuals were arraigned and remanded to Kitalya Prison until April 29, 2020. If found guilty under Section 170 of the Ugandan Penal Code they could face up to seven years in prison. Since their arrest on March 29, 2020, the 19 defendants have been denied access to their lawyers at the LGBT advocacy organization- Human Rights Awareness and Promotion Forum (HRAPF). Due to the COVID-19 restrictions on movement to curb the spread of the virus, all private cars and public transport are banned from moving, except for those performing essential services.¹¹² When the lawyers at HRAPF filed an application with the Ministry of Works to visit their clients, it was rejected¹¹³ - effectively denying all 19 individuals the right to communicate with their lawyers as required under international human rights law. The Uganda Prisons Service also officially denied the 19 individuals access to their lawyers.¹¹⁴ The lawyers also challenged the legality of the denial of access to lawyers in the High Court and the High Court granted a certificate of urgency in the matter. Their lawyers also filed a bail application before the Chief Magistrates Court of Mpigi at Nsangi, however it has yet to be fixed for hearing. The 19 defendants were forced to appear before a magistrate, the day after their arrest, without their legal counsel present, in violation of international human rights law and the Ugandan constitution.¹¹⁵

VI. CONCLUSION

The arrest and continued detention of these 19 individuals is an egregious violation of their fundamental rights. The Government of the Republic of Uganda has violated the following rights under various provisions of the Ugandan Constitution, and international law in continuing to detain these individuals due to their real or perceived sexual orientation or gender identity:

- The right to be free from arbitrary detention;
- The right to due process; and
- The right to equal protection under the law and freedom from discrimination

We hereby request that the United Nations Working Group on Arbitrary Detention:

1. Issue an opinion finding the 19 individuals' ongoing pretrial detention to be in violation of Uganda's obligations under international law;
2. Call for their immediate release;
3. Request that the Government of Uganda investigate and hold accountable all persons responsible for the unlawful arrest, continued detention, and mistreatment of all 19 individuals; and

¹¹² Erasing 76 Crimes, No lawyers for 20 LGBT Ugandans in prison on Covid-19 charges, 31 Mar. 2020, available at <https://76crimes.com/2020/03/31/no-lawyers-for-20-lgbt-ugandans-in-prison-on-covid-19-charges/>

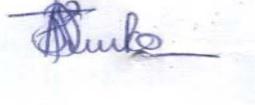
¹¹³ <https://www.hrw.org/news/2020/04/03/uganda-lgbt-shelter-residents-arrested-covid-19-pretext>

¹¹⁴ Letter from Uganda prisons dated 22nd April 2020

¹¹⁵ Erasing 76 Crimes, No lawyers for 20 LGBT Ugandans in prison on Covid-19 charges, 31 Mar. 2020, available at <https://76crimes.com/2020/03/31/no-lawyers-for-20-lgbt-ugandans-in-prison-on-covid-19-charges/>

4. Request the Government of Uganda to award all 19 compensation for the violations they have endured as a result of their unlawful arrest, arbitrary detention, and mistreatment while in state custody.

VII. NAME AND CONTACT OF THE PERSON(S) SUBMITTING THE INFORMATION



Adrian Jjuuko
Executive Director
Human Rights Awareness and Promotion Forum (HRAPF)
P.O. Box 25603 Kampala, Uganda
+256 (0) 414 530683

Frank Mugisha
Executive Director
Sexual Minorities Uganda (SMUG)
+256 39 2174432



Wade H. McMullen, Jr.
SVP Programs & Legal Strategy
Robert F. Kennedy Human Rights
legal@rfkhumanrights.org; mcmullen@rfkhumanrights.org
1300 19th Street NW Suite 750
Washington, DC 20036
+1-202-649-0080



Ngwika Crystal Fomba
Stimson Fellow
Robert F. Kennedy Human Rights
legal@rfkhumanrights.org
1300 19th Street NW Suite 750
Washington, DC 20036



Angelita Baeyens
Programs Director, International Advocacy & Litigation
Robert F. Kennedy Human Rights
legal@rfkhumanrights.org
1300 19th Street NW Suite 750

Washington, DC 20036
+1-202-649-0080