



UPDATE ON THE CASE OF THE 19 LGBT PERSONS CURRENTLY ON REMAND IN UGANDA AND URGENT APPEAL

8th April 2020

Introduction and background

Following the remand on 31st March 2020 of some of the 23 persons arrested during the raid on the Children of the Sun Foundation (COSF) Shelter in Kyengera, Wakiso district, HRAPF was able to obtain further information and make yet unsuccessful attempts to get them released on bail. This is an update to the statement issued by HRAPF on 31st March 2020.

Number of persons arrested during the raid

There were 23 persons arrested during the raid. COSF has clarified that of these, 15 were shelter residents while eight were not. Of these eight, one was the Executive Director of COSF, five were visitors from another shelter, one was a nurse working at the shelter, and the other a visitor to one of the residents. The nurse was staying at the shelter together with the residents, while the COSF Executive Director, Henry Mukiibi, had responded to the raid and was arrested as he intervened.

Number of persons charged and remanded

The total number of persons charged was 19. This differs from the earlier reported number of 20 because another person was released on the same day the group was taken to court.

Preferred Charges

The file was presented before the Resident State Attorney of Nsangi, who sanctioned the file with only one charge, not two as earlier stated. The charge that appears on the charge sheet is: doing 'a negligent act likely to spread infection of disease' contrary to Section 171 of the Penal Code Act.

Court appearance

The case is officially filed as *Uganda Vs. Mukiibi Henry and others*, Criminal case No. 113 of 2020. The accused were presented before the Grade 1 Magistrate of Nsangi Magistrates Court, Her Worship Sarah Basemera, on 31st March 2020. The charges were read to them to which they pleaded not guilty. They were remanded to Kitale Prison until the 29th of April 2020.

Legal steps taken so far to secure the release of the 19

i) Interventions at Court

With the prohibition of travel by both public and private means by the President, as of 30th March 2020, the lawyers were not able to get to court on time on the 31st March 2020. They were thus not present in court when the 19 were remanded to prison. They later got to court using alternative means but found the court premises closed with no one present.

On 6th April 2020, HRAFP prepared an application for a production warrant, and unsuccessfully tried to have it filed and heard in 3 courts with geographical jurisdiction in the case; that is: Nsangi Court, Mpigi Court, and the High Court. This was due to the fact that the courts were not actively operating; which, according to the Court Clerk that the HRAFP lawyers interacted with at one of the courts, was as a result of the inability of judicial officers to report for duty, following the presidential ban on movement of passenger vehicles, and their failure to secure permits from the Ministry of Works and Transport, exempting them from the ban.

On 7th April 2020, efforts were made to secure a certificate of urgency from the High Court. The HRAFP lawyers interacted with the Registrar of the Criminal Division, who informed them that she was the only registrar that had been issued a permit for travel in a private passenger vehicle by the Ministry of Works and Transport, for purposes of executing administrative duties. She further informed them that no certificates of urgency would be issued in respect to criminal matters, especially since no judicial officers would be present to determine the cases. The lawyers returned to Nsangi Court, where they were able to file the application for a production warrant, although it is pending determination by the Magistrate.

ii) Prison Visits

On 31st March 2020, the lawyers proceeded to Kitalya Prison but the Officer in charge denied having received any new inmates that day. He also noted that even if he had had them in custody, he would not allow the lawyers to access them, due to COVID-19. That he could only do so with express permission from Prisons Headquarters. The lawyers then went to Kabasanda Prison on 2nd of April 2020 to verify whether the accused persons were there. The Officer In Charge noted that the 19 were not in her custody. She further consulted the Officers In Charge of the neighbouring prisons in Nkozi and Mpigi Prisons, respectively, who also stated that they did not have them in their custody. She informed the lawyers that due to the outbreak of the COVID-19 pandemic, all new suspects and inmates were taken to Kitalya Prison. She availed the lawyers with the telephone number of the Officer In Charge of Kityala Prison, and they contacted him. During his phone conversation with the lawyers, the Officer in Charge of Kitalya Prison admitted to having in his custody, detainees that had been remanded by the Magistrates Court in Nsangi on 31st March 2020. He however reiterated that he would not allow the lawyers to access them without authorisation from Prisons Headquarters.

On 3rd of April 2020, HRAFP wrote a letter to the Commissioner General of Prisons, requesting for access to the 19 detainees. The letter was received by officials at Prison Headquarters, who also emphasised that due to the COVID-19 crisis, authorisation to access detainees was to be granted directly by the Commissioner General of Prisons. HRAFP's

follow up on its request on 6th and 7th April 2020 was to no avail, as the Commissioner General of Prisons had not given them a response.

Prospects of release as part of the COVID-19 decongestion efforts

On 6th April 2020, the Commissioner General of Prisons announced, in a media interview, plans to have over 2000 inmates released in response to the COVID-19 pandemic.¹ He stated that those to be released include: petty offenders who have served three quarters of their sentence, lactating mothers and those above 65 years who have served half of their sentence and are not capital offenders. He stated that a request was made to the Registrar of Courts, to take steps towards having petty offenders who have served the mandatory remand period released on bail. While this is a welcome measure, the 19 are not within the ambit of those that are to be released. This was confirmed by the spokesperson of Uganda Prisons Service, Mr. Frank Baine, who informed HRAPF lawyers that remandees who are not due for release on mandatory bail will not be freed.

Urgent Appeal

As of 7th of April 2020, all available legal avenues for gaining access to our clients, as well as securing their release on bail have been explored. These efforts have however been in vain, owing to the fact that courts are currently not operating at full capacity, due to the restrictions on movement, which have made it virtually impossible for judicial officers to report for duty. With only the slim possibility of having our application for a production warrant granted, it is imperative that we explore other available avenues to secure our clients' release. We therefore appeal to the different stakeholders to engage the Government of Uganda, with a view to the securing the release of the 19 LGBT persons that are currently on remand at Kitalya prisons.

The main bases for the urgent appeal are:

- 1) The continued detention of the 19 is unlawful, as the charges against the 19 are unfounded. They were arrested because of their perceived sexual orientation, gender identity and expression, and not because of flouting the presidential directives on COVID-19. The charges that were later preferred against them in relation to the presidential directives served as the perfect disguise to the homophobic arbitrary arrest that they were subjected to, following the Police's failure to obtain evidence of commission of the offence of carnal knowledge against the order of nature. They were not in contravention of the President's ban on public gatherings of more than 10 persons, as they were on residential premises.² Additionally, none of them presented with symptoms of COVID-19, neither were they subjected to a COVID-19 test that turned out positive. As such, the charge of 'negligent act likely to spread infection of disease' is unfounded. This therefore is a case that is different from others where persons were arrested under the COVID-19 restrictions. It is a case that is fraught with discrimination, which the United Nations has decried. The UNAIDS has issued

¹ 'Covid-19: Prisons identify 2,000 inmates for release' Daily Monitor, 7th April 2020

<https://www.monitor.co.ug/News/National/Covid-19-Prisons-identify-2000-inmates-release/688334-5516728-13p3t9g/index.html> (accessed 8th April 2020).

² For the detailed presidential address on the COVID-19 preventive measures, see: NBS (2020), *President Museveni Addresses Nation on Corona Virus* <https://www.youtube.com/watch?v=EkAKrRobfxE>. (Accessed 8th April 2020).

advice on managing the pandemic, encouraging states to be cautious of the fact that the measures they put in place to curb its spread will have a disproportionate effect on vulnerable communities, including, key populations, and as such, they ought to take affirmative action to protect them from all forms of injustices during the pandemic.³

- 2) No one, including the Uganda Human Rights Commission (UHRC) has been allowed to visit the prisoners and therefore we are worried about the conditions in which they are, more especially since they are vulnerable due to their sexual orientation and/or gender identity.
- 3) Continued detention of persons who have not been convicted of any offence in light of COVID-19 is the wrong approach. Prisons need to be decongested, as advised by the Sub-Committee on Prevention of Torture, which has enjoined states to, among other measures, grant bail to detainees, in cases that do not involve charges for capital offences.

³ UNAIDS 'Rights in the time of COVID-19: Lessons from HIV for an effective community-led response' 2020 Accessed 8th April 2020 at https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf