

IN THE EAST AFRICAN COURT OF JUSTICE

FIRST INSTANCE DIVISION
AT ARUSHA

REFERENCE NO. 29 OF 2023

BETWEEN



1. NIMROD MUHUMUZA
2. MELBA KATINDI KATSIVO
3. DR. FRANK MUGISHA
4. HUMAN RIGHTS AWARENESS

AND PROMOTION FORUM (HRAPE) APPLICANTS - 10

AND

THE ATTORNEY GENERAL OF THE
REPUBLIC OF UGANDA

..... RESPONDENT

AND

THE ATTORNEY GENERAL OF THE
REPUBLIC OF UGANDA

..... RESPONDENT

STATEMENT OF REFERENCE

(Under Articles 6(d), 7(2), 8(1)(c), 23(1), 27(1) and 30 (1) & (2) of the Treaty for the Establishment of the East African Community, 1999 (as amended) and Rules 4, 25(1), (2), (3) & (4) of the East African Court of Justice Rules of Procedure, 2019)

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1. STATEMENT AS TO THE PARTIES

A. APPLICANTS

- 1.1 The 1st Applicant is a male adult Ugandan citizen of sound mind and is a resident in Uganda within the East African Community. He is an advocate of the High Court of Uganda, and a legal doctoral researcher at the Dullah Omar Institute, University of the Western Cape, South Africa in the field of human rights and sexual and reproductive health and rights. He is an



ardent believer in good governance, the rule of law, democracy and human rights.

- 1.2 The **2nd Applicant** is a female adult of sound mind and a citizen of the Republic of Kenya who is currently resident in Kenya within the East African Community. She is an Advocate of the High Court of Kenya and a human rights advocate who works on promoting good governance and access to justice for all without discrimination.
- 1.3 The **3rd Applicant** a male adult Ugandan of sound mind and a co-founder, promoter and the current coordinator of Sexual Minorities Uganda (SMUG), an association which defends, advocates and promotes the fundamental human rights and freedoms, health, welfare and wellbeing of Lesbians, Gays, Bisexual, Transgender and Queer people (LGBTQ) in Uganda. He believes in the rule of law, democracy, equal opportunities and human rights for all. -10
- 1.4 The **4th Applicant** is a human rights organisation incorporated under the Laws of the Republic of Uganda as a company limited by guarantee and registered as an indigenous organisation. It provides legal aid services to marginalised people, conducts research and advocates for legal reform to attain a society where the human rights of all are respected, protected and upheld. The organisation promotes the principles of good governance, including the rule of law, democracy, transparency, social justice, equal opportunities and human rights for all persons. -20
- 1.5 The 1st, 2nd, and 3rd Applicants are natural persons and the 4th Applicant is a legal person all resident within the East African Community in accordance with Article 30 of the Treaty for the Establishment of the East African Community (hereafter, "the Treaty").
- 1.6 The Applicants' address for service for purposes of this Reference shall be: Onyango & Co Advocates, Plot 185, House B, Bbunga, Ggaba Road, P. O. Box 35881, Kampala, Uganda, email: info@onyangoadvocates.com and Human Rights Awareness and Promotion Forum (HRAPF), Plot 1 Nsubuga Road, off Ntinda-Kiwatule Road, P.O. Box 25603, Kampala, Uganda, email: info@hrapf.org. -30



B. RESPONDENT

- 1.7 The Respondent is the Attorney General of the Republic of Uganda, a Partner State of the East African Community.
- 1.8 The Respondent, as the Attorney General of the Republic of Uganda, is the principal legal advisor duly authorised to represent the Government of the Republic of Uganda.
- 1.9 The Respondent's address of service for purposes of this Reference is:
Attorney General's Chambers, Ministry of Justice and Constitutional Affairs, Bauman House, Parliament Avenue, P.O. Box 7183, Kampala, email, info@justice.go.ug. Service of this Reference on the Respondent shall be done by the Applicants' appointed advocates. - 10

2. SUBJECT-MATTER OF THE REFERENCE

- 2.1 The subject-matter of this Reference is in respect of the enactment of the *Anti-Homosexuality Act, 2023* by the Respondent, which became an Act of Parliament upon its Assent by the President of Uganda on 26th May 2023 and came into force when it was published in the Uganda Gazette on 30th May, 2023.
- 2.2 The facts constituting the subject-matter are as follows:
- (a) THAT the process and procedure of the enactment of the *Anti-Homosexuality Act, 2023* by the Respondent was without meaningful and adequate public participation. - 20
- (b) THAT the process and procedure of the enactment of the *Anti-Homosexuality Act, 2023* by the Respondent was conducted in a manner that exhibited bias and partiality on the part of the Speaker of the Parliament.
- (c) THAT the process and procedure of the enactment of the aforesaid Act was in contravention of the Respondent's own national constitution (the Constitution of Uganda, 1995 (as amended)) and laws.



3. POINTS OF LAW ON WHICH THE REFERENCE IS BASED

- 3.1. The process and procedure of the enactment of the *Anti-Homosexuality Act, 2023* by the Respondent, without meaningful and adequate public participation is an infringement of the principles of good governance including democracy, rule of law, accountability, transparency, social justice and equal opportunities, as well as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights, and the enhancement of civil society under Articles 5(3)(g), 6(d) and 7(2) of the Treaty -10
- 3.2. The process and procedure of the enactment of the *Anti-Homosexuality Act, 2023* by the Respondent in a manner that exhibited bias on part of the Speaker of the Parliament, is an infringement of the principles of good governance including democracy, rule of law, accountability, transparency, social justice, and equal opportunities, as well as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights under Articles 6(d) and 7(2) of the Treaty.
- 3.3. The process and procedure in the enactment of the *Anti-Homosexuality Act, 2023*, in contravention of the Respondent's own national constitution and laws, is an infringement of the principles of good governance, including democracy, rule of law, accountability, transparency, social justice, and equal opportunities, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights under Articles 6(d) and 7(2) of the Treaty. -20
- 3.4. The enactment of the *Anti-Homosexuality Act, 2023*, is in contravention of the obligation by the Respondent to abstain from measures likely to jeopardise the achievement or implementation of the obligations on good governance the principles of good governance including democracy, rule of law, accountability, transparency, social justice, and equal opportunities, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights as required under Article 8(1)(c) of the Treaty. -30



4. EVIDENCE IN SUPPORT OF REFERENCE


The Applicants intend to rely on the affidavits in support of this Reference, all the annexures thereto, electronic evidence and any other additional affidavits and relevant documents with the leave of the Court.

5. RELIEF SOUGHT BY THE APPLICANTS

The Applicants pray to the Honourable Court for:


- (a) DECLARATION that the process and procedure in the enactment of the *Anti-Homosexuality Act, 2023* by the Respondent contravenes Articles 5(3)(g), 6(d), 7(2) and 8(1)(c) of the Treaty.
- (b) DECLARATION that the *Anti-Homosexuality Act, 2023* is null and void; - 10
- (c) A PERMANENT INJUNCTION restraining the Respondents, its agents, employees and all those acting under its authority or directives from enforcing, implementing or effecting the provisions of the *Anti-Homosexuality Act, 2023*.
- (d) Such further ORDERS by the Court as it may deem just and necessary in the circumstances.

DATED at KAMPALA this 25th day of July 2023.


COUNSEL FOR THE APPLICANTS

FILED electronically by e-mail via bogoti@eachq.org this 25th day of July 2023. -20




REGISTRAR



Jointly prepared and filed by:

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