

**IN THE EAST AFRICAN COURT OF JUSTICE**

**FIRST INSTANCE DIVISION**

REFERENCE NO. 6 OF 2014

THE EAST AFRICAN COURT OF JUSTICE  
Lodged in the Sub-Registry  
Kampala  
23 APR 2014  
at 10:00 am/pm Sign: \_\_\_\_\_  
FIRST INSTANCE DIVISION

**HUMAN RIGHTS AWARENESS &  
PROMOTION FORUM (HRAPF) ..... APPLICANT**

**VERSUS**

**ATTORNEY GENERAL OF UGANDA ..... RESPONDENT**

**STATEMENT OF REFERENCE**

***[Under Article 6(d), 7(2), 8(1) and 30(1) Treaty for the  
Establishment of the East African Community, r.24(1), (2), 10  
(3), (4) of the East African Court of Justice Rules of  
Procedure 2013]***

THE HUMBLE REFERENCE of **HUMAN RIGHTS AWARENESS &  
PROMOTION FORUM (HRAPF)** whose address for the purpose  
of this application is stated at the foot of this statement of  
reference, refers:

1. The Applicant is a human rights organisation registered as a company limited by guarantee and working to achieve equality, non-discrimination and equal access to justice for marginalised groups in Uganda. The applicant is dedicated to upholding the Rule of Law, Fundamental Human Rights and Freedoms and Constitutionalism as enshrined in the Treaty for the Establishment of the East African Community. 20
2. The Respondent is the Attorney General of the Republic of Uganda and is cited as per the provisions of Article 119(4)(c) and 250(2) of the Constitution of the Republic of Uganda.
3. The Applicant files this reference against the respondent contending that certain provisions of Uganda's Anti-

Homosexuality Act, Act 4 of 2014 are in violation of the Treaty for the Establishment of the East African Community in Articles 6(d), 7(2) and 8(1)(c) as follows:-

- a) THAT sections 1, 2 and 4 of the Anti-Homosexuality Act 2014, in defining and criminalising consensual same sex/gender sexual activity among adults in private, are in contravention of the right to equality before the law without any discrimination and the right to privacy protected under Article 6(d) of the Treaty for the Establishment of the East African Community that enjoins partner states to govern 10 their populace on the principles of good governance, democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights which include inter alia, provision of equal opportunities and gender equality 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;
- b) THAT section 2(1)(c) of the Anti-Homosexuality Act 2014, in criminalising touching by persons of the same sex, creates an offence that is overly broad and therefore arbitrary and is 20 in contravention of the principles of the Rule of Law enunciated in Article 6(d) of the Treaty for the Establishment of the East African Community.
- c) THAT section 3(1)(b) of the Anti-Homosexuality Act 2014, in criminalising consensual same sex/gender sexual activity among adults in private in which one is a person living with HIV is discriminatory and therefore contrary to the rights recognised and guaranteed in the African Charter for Human and Peoples' Rights to which state parties must adhere as per Article 6(d) of the Treaty for the Establishment of the East African Community.
- d) THAT section 3(1)(e) of the Anti-Homosexuality Act 2014, in 30 criminalising consensual same sex/gender sexual activity among adults in which one is a person with disability is discriminatory and therefore contrary to the rights recognised and guaranteed in the African Charter for Human and Peoples' Rights to which state parties must adhere as



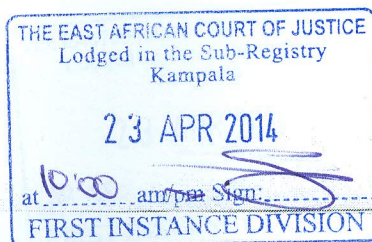
per Article 6(d) of the Treaty for the Establishment of the East African Community.

- e) THAT section 4(2) of the Anti-Homosexuality Act 2014, in stipulating a maximum life sentence for attempted aggravated homosexuality, imposes a disproportionate and thereby arbitrary punishment for the offence and is therefore in violation of the principle of the Rule of Law enshrined in Article 6(d) of the Treaty for the Establishment of the East African Community.
- f) THAT section 5(1) of Anti-Homosexuality Act 2014, in providing that a victim of homosexuality will not be prosecuted for any criminal act done in his or her purported defence against acts of homosexuality creates impunity and is counter to the dictates of the principle of the rule of law enunciated in Article 6(d) of Treaty for the Establishment of the East African Community. 10
- g) THAT sections 7 and 13(1) & (2) of Anti-Homosexuality Act 2014, in criminalising aiding, abetting, counselling, procuring and promotion of homosexuality, create offences that are overly broad, penalise legitimate debate, hamper professional counsel, and impede HIV related service provision and access to health services, are in violation of Article 7(2) of the Treaty for the Establishment of the East African Community that enjoins partner states to abide by the principles of the Rule of Law, social justice and the maintenance of universally accepted standards of human rights. 20
- h) THAT the spirit of the Anti-Homosexuality Act 2014, by promoting and encouraging homophobia, amounts to institutionalised promotion of a culture of hatred and constitutes a contravention of the right to dignity and is inconsistent with Article 7(2) of the Treaty for the Establishment of the East African Community that enjoins partner states to abide by the principles of good governance, Rule of Law, social justice and the maintenance of universally accepted standards of human rights. 30
- i) THAT the Anti-Homosexuality Act 2014, by encouraging



homophobia and stigmatisation, is in contravention of the duty of the government to respect, protect and promote the rights and freedoms of persons likely to be affected by the Act since Uganda is a partner state to the Treaty for the Establishment of the East African Community which requires in Article 7(2) that every partner state abides by the principles of good governance, the Rule of Law, social justice and the maintenance of universally accepted standards of human rights.

- j) THAT the Anti-Homosexuality Act 2014, in criminalising 10 consensual same sex/gender sexual activity among adults in private, is in contravention of several obligations with regards to the rights guaranteed under international human rights instruments ratified or acceded to by Uganda, including the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the United Nations Covenant on Civil and Political Rights; and the United Nations Covenant on Economic, Social, and Cultural Rights .
4. THIS reference is supported by the affidavit of the applicant 20 attached hereto and any other affidavits and evidence that shall be made available before the hearing.
5. The applicant's Advocates are: M/s Rwakafuuzi & Co. Advocates Plot 7 Luwum Street, Jafaali Kibirige House, P.O. Box 26003, Kampala, Tel: 0414258136, 0772406906, email: [kalr@utlonline.co.ug](mailto:kalr@utlonline.co.ug).
6. The applicant's address of service for the purposes of this Petition is C/o M/s Rwakafuuzi & Co. Advocates Plot 7 Luwum Street, Jafaali Kibirige House, P.O. Box 26003, Kampala, Tel: 0414258136, 0772406906, email: 30 [kalr@utlonline.co.ug](mailto:kalr@utlonline.co.ug).
7. THAT the Respondent's address is the Attorney General's Chambers, Ministry of Justice and Constitutional Affairs, Raja Chambers, P.O. Box 7183 Kampala, Uganda Parliamentary Avenue.



WHEREFORE the applicant brings this reference as an aggrieved person and in public interest and humbly prays that this Honourable Court may be pleased to grant the following Declarations and Orders:

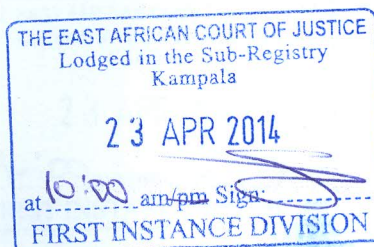
**I. DECLARATIONS THAT:**

- a) Sections 1, 2 and 4 of the Anti-Homosexuality Act 2014, in defining and criminalising consensual same sex/gender sexual activity among adults in private, are in contravention of the right to equality before the law without any discrimination and the right to privacy protected by Article 6(d) of the Treaty for the Establishment of the East African Community that enjoins partner states to govern their populace on the principles of good governance which include provision of equal opportunities and gender equality *inter alia*. 10
- b) Section 2(1)(c) of the Anti-Homosexuality Act 2014, in criminalising touching by persons of the same sex, creates an offence that is overly broad and therefore arbitrary and is in contravention of the principles of rule of law enunciated in Article 6(d) of the Treaty for the Establishment of the East African Community. 20
- c) Section 3(1)(b) of the Anti-Homosexuality Act 2014, in criminalising consensual same sex/gender sexual activity among adults in private in which one is a person living with HIV is discriminatory and therefore contrary to the Rights recognised and guaranteed in the African Charter for Human and Peoples' Rights to which state parties must adhere as per Articles 6(d) of the Treaty for the Establishment of the East African Community.
- d) Section 3(1)(e) of the Anti-Homosexuality Act 2014, in criminalising consensual same sex/gender sexual activity among adults in which one is a person with disability discriminatory and therefore contrary to the Rights recognised and guaranteed in the African Charter for Human and Peoples' Rights to which state parties must 30



adhere as per Articles 6(d) of the Treaty for the Establishment of the East African Community.

- e) Section 4(2) of the Anti-Homosexuality Act 2014, in imposing a maximum life sentence for attempted aggravated homosexuality, provides for a disproportionate punishment for the offence and therefore arbitrary and therefore in violation of the principle of the rule of law enunciated in Article 6(d) of the Treaty for the Establishment of the East African Community.
- f) Section 5(1) of Anti-Homosexuality Act 2014, in <sup>10</sup> decriminalising any criminal act done by a victim of homosexuality in his or her purported defence against acts of homosexuality creates impunity and is counter to the dictates of the principle of the rule of law enunciated in Article 6(d) of Treaty for the Establishment of the East African Community.
- g) Sections 7 and 13(1) & (2) of Anti-Homosexuality Act 2014, in criminalising aiding, abetting, counselling, procuring and promotion of homosexuality, create offences that are overly broad, penalise legitimate debate, professional counsel, HIV related service provision and <sup>20</sup> access to health services, is in violation of Article 7(2) of the Treaty for the Establishment of the East African Community that enjoins partner states to abide by the principles of the rule of law social justice and maintenance of universally accepted standards of human rights.
- h) The spirit of the Anti-Homosexuality Act 2014, by promoting and encouraging homophobia, amounts to the institutionalised promotion of a culture of hatred and constitutes a contravention of the right to dignity and is inconsistent with Article 7(2) of the Treaty for the <sup>30</sup> Establishment of the East African Community that enjoins partner states to abide by the principles of good governance, the Rule of Law, social justice and the maintenance of universally accepted standards of human rights.



i) THAT the Anti-Homosexuality Act 2014, by encouraging homophobia and stigmatisation, is in contravention of the duty of the government to respect, protect and promote the rights and freedoms of persons likely to be affected by the Act since Uganda as a partner state to the Treaty for the Establishment of the East African Community which requires in Article 7(2) that every partner state abides to the principles of good governance, Rule of Law, social justice and maintenance of universally accepted standards of human rights. 10

j) THAT the Anti-Homosexuality Act 2014, in criminalising consensual same sex/gender sexual activity among adults in private, is in contravention of several obligations with regards to the rights guaranteed under international human rights instruments ratified or acceded to by Uganda, including the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the UN Covenant on Civil and Political Rights; and the UN Covenant on Economic, Social, and Cultural Rights, which is in contravention of the Treaty for the Establishment of the East African Community which requires in Article 7(2) that every partner state abides by the principles of good governance, Rule of Law, social justice and the maintenance of universally accepted standards of human rights. 20

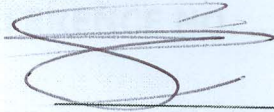
k) Any other reliefs that this Honourable Court may deem fit.

DATED at Kampala this 23 day 4 2014

~~Ladislau~~ **Ladislau Kiiza Rwakafuzi**  
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Counsel for the Applicant



**LODGED** in the East African Court of Justice Registry at Kampala  
this 23 day April 2014



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**FILED** in the East African Court of Justice Registry this 23<sup>rd</sup>  
day April 2014



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