



IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

CONSTITUTIONAL PETITION NO. 08 OF 2014

- 1. PROF. J OLOKA-ONYANGO
2. HON. FOX ODOI-OYWELowo
3. ANDREW M. MWENDA
4. PROF. MORRIS OGENGA-LATIGO
5. DR. PAUL NSUBUGA SEMUGOMA
6. JACQUELINE KASHA NABAGESERA
7. JULIAN PEPE ONZIEMA
8. FRANK MUGISHA
9. HUMAN RIGHTS AWARENESS & PROMOTION FORUM (HRAF)
10. CENTRE FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT (CEHURD)

PETITIONERS

VERSUS

ATTORNEY GENERAL OF UGANDA

RESPONDENT

PETITION

(Under Articles 137(1) & (3) (a) and (b), (4) of Constitution of Uganda and the Constitutional Court (Petitions and References) Rules, S.I. 91/2005)

THE HUMBLE PETITION of PROF. J OLOKA-ONYANGO, HON. FOX ODOI-OYWELowo, ANDREW MUJUNI MWENDA, PROF. MORRIS OGENGA LATIGO, DR. PAUL NSUBUGA SEMUGOMA, JACQUELINE KASHA NABAGESERA, JULIAN PEPE ONZIEMA, FRANK MUGISHA, HUMAN RIGHTS AWARENESS & PROMOTION FORUM (HRAF) and CENTRE FOR HEALTH, HUMAN RIGHTS & DEVELOPMENT (CEHURD) whose addresses for the purpose of this petition are stated at the foot of this petition, states-

1. **Your** First Petitioner is a male adult Ugandan of sound mind, a Professor of Law at the School of Law, Makerere University. He has worked as Director of the Human Rights and Peace Center at Makerere University and is widely published in the areas of human rights, and Constitutional Law and History of Uganda. His experience includes being a member of the UN Sub-Commission on the Promotion and Protection of Human Rights, and UN Special Rapporteur on Globalisation and Human Rights;
2. **Your** Second Petitioner is a male adult Ugandan of sound mind and is an Advocate of the Courts of Judicature, a Member of the 9th Parliament representing West Budama County North, Tororo District, Chairperson of the Rules and Privileges Committee of the 9th Parliament, and Member of the Legal and Parliamentary Affairs Committee of the 9th Parliament. He is one of the authors of the minority report on the Anti-Homosexuality Bill;
3. **Your** Third Petitioner is a male adult Ugandan of sound mind, a journalist of global repute, founder and owner of *The Independent*, a current affairs newsmagazine, a John S. Knight Journalism Fellow at Stanford University in the United States, and an advocate of freedom of expression. He was a petitioner in *Constitutional Appeal No. 2 of 2002* that challenged the constitutionality of the publication of the offence of publication of false news, which was a provision in the Penal Code Act;
4. **Your** Fourth Petitioner is a former member of Parliament and Leader of Opposition in the 8th Parliament and he was an Associate Professor of Entomology and Ecology of Makerere University. He is an advocate of good governance and constitutionalism in Uganda;
5. **Your** Fifth Petitioner is a male adult Ugandan of sound mind, a practicing medical doctor who has been offering medical treatment to gay persons in Uganda. He is also a global activist on HIV/AIDS prevention, and non-discrimination of sexual minorities in provision of health services;
6. **Your** sixth Petitioner is a female adult Ugandan of sound mind, a Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) human rights activist, founder and former Executive Director of Freedom & Roam Uganda (FARUG) and the recipient of the 2011 Martin Ennals Award for Human Rights Defenders. She has campaigned publicly in and outside Uganda for an end to homophobia and all forms of discrimination against LGBTI persons;
7. **Your** Seventh Petitioner is a transgender adult Ugandan of sound mind, a Programs Director & Advocacy Officer of Sexual Minorities

Uganda (SMUG) and is the recipient of the 2012 Clinton Global Citizen Award. Your Petitioner has campaigned against homophobia and discrimination against transgender persons and is a human rights defender;

8. **Your** Eighth Petitioner is a male adult Ugandan of sound mind, the Executive Director of Sexual Minorities Uganda (SMUG) and the recipient of the 2011 Robert F Kennedy Human Rights Award and the 2011 Thorolf Rafto Prize. He has been a global campaigner against discrimination and homophobia against sexual minorities;
9. **Your** Ninth Petitioner is a human rights organisation registered as a company limited by guarantee working to achieve equality, non-discrimination and equal access to justice for marginalised groups in Uganda;
10. **Your** Tenth Petitioner is a human rights organisation registered as a company limited by guarantee working towards an effective, equitable, people-centred health system and ensuring the full realisation of the right to health and the promotion of human rights;
11. The Respondent is the Attorney General of the Republic of Uganda with capacity to sue or be sued on behalf of the Government and is the representative of the Government of Uganda in all legal proceedings to which the Government is a party;
12. **All** your aforementioned humble Petitioners are ardent believers in the Rule of Law, Fundamental Human Rights and Freedoms and Constitutionalism and have an interest in the matters herein below which they firmly believe are inconsistent with and in contravention of the provisions of the Constitution of the Republic of Uganda, as follows:
 - (a) **THAT** the enactment of the Anti-Homosexuality Act 2014 by the 9th Parliament on 20 December 2013 without quorum in the House was in contravention of **Articles 2(1) & (2), 88 and 94(1) of the Constitution of the Republic of Uganda and Rule 23 of the Parliamentary Rules of Procedure;**
 - (b) **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 guaranteed under **Articles 2(1) & (2), 21(1), (2) & (4) and 27 of the Constitution of the Republic of Uganda respectively;**

- (c) **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 is in contravention of the principle of legality under **Articles 2(1) & (2), 28(1), (3b), (12), 42 and 44(c) of the Constitution of the Republic of Uganda;**
- (d) **THAT** section 2, of the Anti-Homosexuality Act 2014, in imposing a maximum life sentence for homosexuality provides for a disproportionate punishment for the offence in contravention of the right to equality and freedom from cruel, inhuman and degrading punishment guaranteed under **Articles 2(1) & (2), 21, 24 and 44(a) of the Constitution of the Republic of Uganda;**
- (e) **THAT** section 3(1)(b) of the Anti-Homosexuality Act 2014, in criminalising consensual same sex/gender sexual activity among adults in which one is a person living with HIV is in contravention of the freedom from discrimination guaranteed under **Articles 2(1) & (2) and 21(1) & (2) of the Constitution of the Republic of Uganda 1995.**
- (f) **THAT** 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 is in contravention of the freedom from discrimination and the right to dignity of persons with disabilities guaranteed under **Articles 2(1) & (2), 21(1), (2) & (4c) and 35 of the Constitution;**
- (g) **THAT** section 3(3) of the Anti-Homosexuality Act 2014, in subjecting persons charged with aggravated homosexuality to a compulsory HIV test, is in contravention of the freedom from discrimination, the right to privacy, freedom from cruel, inhuman and degrading treatment, and the right to the presumption of innocence guaranteed under **Articles 2(1) & (2), 21, 24, 27, 28, 44 and 45 of the Constitution of the Republic of Uganda;**
- (h) **THAT** 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 in contravention of the right to equality, and the freedom from cruel, inhuman and degrading punishment guaranteed under **Articles 2(1) & (2), 21, 24 and 44(a) of the Constitution of the Republic of Uganda 1995;**

- (i) **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, professional counsel, HIV related service provision and access to health services, in contravention of the principle of legality, the freedoms of expression, thought, assembly and association, and the right to civic participation guaranteed under principle XIV of the **National Objectives and Directive Principles of State Policy, Articles 2(1) & (2), 8A, 28(1), (3b), & (12), 29(1), 36, 38(2), 42 and 44(c) of the Constitution of the Republic of Uganda 1995;**
- (j) **THAT** section 8 of the Anti-Homosexuality Act 2014, in criminalising conspiracy by any means of false pretence or other fraudulent means, is vague, uncertain and ambiguous and in contravention of the principle of legality under **Articles 2(1) & (2), 28(1) & (3b), 42, 44(c), 28(12) of the Constitution of the Republic of Uganda 1995.**
- (k) **THAT** section 11 of the Anti-Homosexuality Act 2014, in classifying houses or rooms as brothels merely on the basis of occupation by homosexuals, creates an offence that is overly broad and in contravention of the principle of legality guaranteed under article 28(12) of the Constitution; and is further in contravention of the rights to property and privacy guaranteed under **Articles 2(1) & (2), 21, 26, 27 and 28 (12) of the Constitution of the Republic of Uganda 1995;**
- (l) **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 and in contravention of **the National Objectives and Directive Principles of State Policy especially objective No. III, V, VI and XIV and Articles 2(1) & (2), 8A, 24 and 44(a) of the Constitution of the Republic of Uganda 1995;**
- (m) **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 as stipulated under **Articles 2(1) &(2), 20(2), 21(1), 32(1) and (2) of the Constitution;**

- (n) **THAT** the Anti-Homosexuality Act 2014, in criminalising consensual same sex/gender sexual activity among adults, is in contravention of obligations with regards to the rights guaranteed under international human rights instruments ratified or acceded 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; and in contravention of **Objectives XIV, XXXVIII(i)(b) of the National Objectives and Directive principles of State Policy, Articles 2(1) & (2), 8A, 20, 45 and 287 of the Constitution;**
13. **THIS** Petition is supported by the affidavits sworn by the Petitioners attached hereto and any other affidavits and evidence that shall be made available before the hearing;
14. **Your** Petitioners Advocates are: *M/s Onyango & Co. Advocates, Plot 185, House B, Bunga (along Ggaba Road) P. O Box 35881, Kampala, Uganda; Rwakafuuzi & Co. Advocates Plot 7 Luwum Street, Jafaali Kibirige House, P.O. Box 26003, Kampala, Uganda; Alaka & Co Advocates, Plot 46 Bukoto Street, Kamwokya, P.O. Box 71628 Kampala, Uganda; and Human Rights Awareness and Promotion Forum, Plot 390 Prof. Apolo Nsibambi Road, Namirembe, Po Box 25603, Kampala, Uganda.*
15. **Your** Petitioners address of service for the purpose of this Petition is *C/o M/s Onyango & Co. Advocates, Plot 185, House B, Bunga (along Ggaba Road), P. O Box 35881, Kampala, Uganda; Rwakafuuzi & Co. Advocates Plot 7 Luwum Street, Jafaali Kibirige House, P.O. Box 26003, Kampala, Uganda; Alaka & Co Advocates, Plot 46 Bukoto Street, Kamwokya, P.O. Box 71628 Kampala, Uganda; and Human Rights Awareness and Promotion Forum, Plot 390 Prof. Apolo Nsibambi Road, Namirembe, Po Box 25603, Kampala, Uganda.*
16. **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.*

WHEREFORE your humble Petitioners bring this Petition as aggrieved persons and in public interest and humbly pray that this Honourable Court may be pleased to grant the following Declarations and Orders:

I. DECLARATIONS THAT:

- (a) The act of Parliament in passing into law and enacting the **Anti-Homosexuality Bill** on 20 December 2013 without a quorum is inconsistent with and in contravention of **Articles, 2(1) & (2), 88 and 94 (1) of the Constitution of the Republic of Uganda 1995 and Rule 23 of the Parliamentary Rules of Procedure and thus null and void.**
- (b) **Sections 1, 2, and 4 of the Anti-Homosexuality Act, 2014** which define and criminalise consensual same sex/gender sexual activity among adults are in contravention of the right to equality before the law without any discrimination and the right to privacy guaranteed under articles 21 and 27 of the Constitution and thus inconsistent with and in contravention of **Articles 2(1) & (2), 21(1) & (2) and 27 of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (c) **Section 2(1)(c) of the Anti-Homosexuality Act, 2014** in criminalising touching by a person of the same sex, creates an offence that is overly broad, vague and uncertain and is inconsistent with and in contravention of **Articles 2(1) & (2), 28(1), (3b), (12), 42 and 44(c) of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (d) **Sections 2 of the Anti-Homosexuality Act, 2014**, in imposing a maximum life sentence for homosexuality disproportionate punishment for the offence in contravention of the freedom from cruel, inhuman and degrading punishment guaranteed under **Articles 21, 24 and 44(a) of the Constitution of the Republic of Uganda** and thus null and void.
- (e) **Section 3(1)(b) of the Anti-Homosexuality Act, 2014** in criminalising consensual same sex/gender sexual activity among adults in which one is a person living with HIV is inconsistent with and in contravention of **Articles 2(1) & (2) and 21(1) & (2) of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (f) **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, is inconsistent with and in contravention of the freedom from discrimination and the right to dignity of persons with disabilities guaranteed under **Articles 2(1) & (2), 21(1), (2) & (4c), and 35 of the Constitution of the Republic of Uganda 1995** and thus null and void.

- (g) **Section 3(3) of the Anti-Homosexuality Act, 2014** in subjecting persons charged with aggravated homosexuality to **compulsory HIV test**, is inconsistent with and in contravention of **Articles 2(1) & (2), 21, 24, 27, 28, 44 and 45 of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (h) **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 is thus inconsistent with **Articles 2(1) & (2), 21, 24 and 44(a) of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (i) **Sections 7 and 13 (1) & (2) of the Anti-Homosexuality Act, 2014** in criminalising aiding, abetting, counselling, procuring and promotion of homosexuality, creates offences that are overly broad, penalise legitimate debate and professional counsel in contravention of the principle of legality, the freedoms of expression, thought, assembly and association, and the right to civic participation and is inconsistent with and in contravention of **Objective XIV of the National Objective and Directive Principles of State Policy, Articles 2(1) & (2), 8A, 28(1), (3b), & (12), 29(1), 36, 38(2), 42 and 44(c) of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (j) **Section 8 of the Anti Homosexuality Act 2014** in criminalising conspiracy by any means of false pretence or other fraudulent means is vague, uncertain and ambiguous and is inconsistent with and in contravention of the principle of legality under **Articles 2(1) & (2), 28(1),(3b), (12), 42, and 44(c) of the Constitution of the Republic of Uganda** and thus null and void.
- (k) **Section 11 of the Anti-Homosexuality Act, 2014** in classifying houses or rooms as brothels merely on the basis of occupation by homosexuals, creates an offence that is overly broad in contravention of the principle of legality and is discriminatory and is inconsistent with and in contravention of **Articles 2(1) & (2), 21, 26, 27 and 28 (12) of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (l) **The spirit of the Anti-Homosexuality Act, 2014 and 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 and in contravention of **the National Objectives and Directive Principles of State Policy especially objective No. III, V and VI and Articles 2(1) & (2), 24 and 44(a) of the Constitution of the Republic of Uganda 1995** and thus null and void.

- (m) **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 as stipulated under article 20(2) of the Constitution and is inconsistent with and in contravention of **Articles 2(1) & (2), 20(2), 21(1), 32(1) and (2) of the Constitution of the Republic of Uganda 1995** and thus null and void.
- (n) **The Anti-Homosexuality Act, 2014** in criminalising consensual same sex/gender sexual activity among adults, is inconsistent with and in contravention of obligations with regards to the **rights guaranteed under international human rights instruments ratified or acceded by Uganda and in contravention of Objectives XIV and XXVIII(i)(b) of the National Objectives and Directives of State Policy, articles 2(1) & (2), 8A, 20, 45 and 287 of the Constitution of the Republic of Uganda 1995** and thus null and void.

II. ORDERS:

- (a) Permanently staying the operationalisation of the Anti-Homosexuality Act, 2014.
- (b) Permanently staying the gazetting of the Anti-Homosexuality Act, 2014.
- (c) Permanently prohibiting any person, organisation, Company and/or entity to write, publish, or mount a campaign against adult persons who profess and engage in consensual same sex/gender sexual activity among themselves as adults.
- (d) Permanent injunction and/or gagging order against persons, organisations, or companies restraining them from publishing, or writing in the print and electronic media including the internet; articles, letters, against adult persons who profess and engage in consensual same sex/gender sexual activity among themselves as adults which articles may bring such persons into public ridicule, odium and hatred.
- (e) Any other reliefs that this Honourable Court may deem fit.

DATED at Kampala this 10th day March 2014



Dr. Henry Onoria
Counsel for the Petitioners



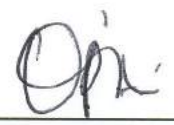
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