



## HRAPF FILES CASE CHALLENGING THE UGANDA PRISONS SERVICE'S REFUSAL TO ALLOW THE 19 LGBT PRISONERS IN THEIR CUSTODY TO ACCESS THEIR LAWYERS

Kampala

24<sup>th</sup> April 2020

Today, Friday 24<sup>th</sup> April 2020, Human Rights Awareness and Promotion Forum (HRAPF) filed a case before the Civil Division of the High Court of Uganda challenging the denial of the 19 LGBT persons currently on remand at Kitalya Mini Maxi Prison access to their lawyers by refusing to grant permission to the lawyers to access their clients in prison, citing 'the current COVID-19 pandemic lockdown.' The case is *Human Rights Awareness and Promotion Forum (HRAPF) vs. Attorney General and The Commissioner General of Prisons*, High Court Miscellaneous Cause No. 81 of 2020.

The 19 were charged with doing 'a negligent act likely to spread infection of disease' contrary to section 171 of the Penal Code Act on 31<sup>st</sup> March 2020 and remanded to Kitalya Mini Max Prison. They had been arrested at a house, which was used as a shelter for homeless LGBT persons, in Kyengera, Wakiso District.

Their lawyers from HRAPF were not able to appear in court on the day they were remanded due to the restrictions on transportation that had been imposed the night before by the President of Uganda.

All efforts to access the clients in prison have so far been unsuccessful, with the Uganda Prisons Service physically denying the lawyers access to their clients when they visited Kitalya Mini Maxi Prison on 31<sup>st</sup> March 2020. A letter was then written to the Commissioner General of Prisons on 3<sup>rd</sup> April 2020 requesting access to the prisoners for purposes of helping them to prepare their defence as well as bail applications since their case was coming up for hearing on 28<sup>th</sup> April 2020. After 19 days, the Office of the Commissioner General responded to HRAPF's letter on 22<sup>nd</sup> April 2020, denying access and advising HRAPF to 'be patient until the situation 'improves.'

HRAPF believes that this denial affects the right to a fair hearing of the accused persons who are expected back to court on 28<sup>th</sup> April 2020 for the hearing of their case. Article 28 of the Constitution of the Republic of Uganda, 1995 protects the right to a fair hearing, and under Article 44, this right is non-derogable. As such, the state cannot derogate from it, even if there was a declared state of emergency, which is not the case in Uganda. Specifically, article 28(3)(c) requires that every accused person should be 'given adequate time and facilities for the

preparation of his or her defence,' which certainly includes access to their lawyers in order to receive legal advice and to prepare the necessary documents, including bail application documents. There were many avenues available to the Prisons authorities to allow the accused persons to exercise this right without exposing the prisoners to COVID-19, including providing for telephone or video-conferencing facilities or imposing conditions on social distancing, which have not even been considered.

HRAPF thus wants the Court to declare the State and the Commissioner General of Prisons to be in violation of the Constitutional guarantees of the right to a fair hearing. In addition, HRAPF seeks urgent orders from the Court directing the Prisons authorities to grant the lawyers of the said accused persons access to their clients for purposes of advising them on how to prepare for their trial and bail application on 28<sup>th</sup> April 2020.

*'Whereas we need to protect everyone from COVID-19, we also equally need to respect and fulfill human rights, particularly for the most vulnerable amongst us. We believe that this case will help to vindicate not only the rights of our 19 clients but also all persons whose right to a fair hearing has been prejudiced under the guise of enforcing presidential directives on preventing the spread of COVID-19.'* said Dr. Adrian Jjuuko, HRAPF's Executive Director and one of the lawyers representing the 19.

The main suit and the miscellaneous applications thereunder were filed and received in the registry of the High Court today, the 24<sup>th</sup> of April 2020, and it is hoped that the miscellaneous applications will be heard and determined on Monday the 27<sup>th</sup> of April 2020.

### *Taking human rights to all*

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