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Ugandan officials summoned before court over torture of LGBT+ youth

The court's move is seen as a positive step for sexual minorities in the east African nation, where gay sex carries a life sentence and homophobia and the persecution of LGBT+ people is widespread, yet rarely punished.

By Alice McCool

Thomson Reuters Foundation (21.08.2020) - <https://tmsnrt.rs/3bitSlo> - A town mayor and senior prison official in Uganda have been summoned to appear before a criminal court over allegations of torture, inhuman and degrading treatment against a group of LGBT+ youth, the victims' lawyers said on Friday.

The court's move is seen as a positive step for sexual minorities in the east African nation, where gay sex carries a life sentence and homophobia and the persecution of LGBT+ people is widespread, yet rarely punished.

Witnesses and the victims say Hajji Abdul Kiyimba, chairman of Kyengera town council, beat members of the group and bound them with ropes before marching them barefoot to a nearby police station as onlookers jeered and threatened them.

Kiyimba told the Thomson Reuters Foundation that he was not involved in any acts of violence or torture against the group.

Philemon Woniola, deputy officer in charge at Kitalya Prison, located outside Kampala, is accused of violent acts against members of the group, their lawyers said.

The Thomson Reuters Foundation was not immediately able to reach Woniola. Uganda Prisons Services spokesman Frank Baine said he had "no powers to comment on court matters" regarding the case against Woniola.

The case dates back to March when Ugandan police raided a shelter on the outskirts of Kampala, charging 20 LGBT+ youth with disobeying rules on social distancing and risking the spread of COVID-19.

The arrests sparked widespread criticism from LGBT+ rights groups who said authorities in Uganda were using the restrictions to target sexual minorities.

"It sends a clear message that courts are willing to stand up for victims of torture, even where the police is reluctant to act," said Adrian Jjuuko, executive director of Human Rights Awareness and Prevention Forum (HRAPF), a legal charity representing the victims.

"The summons also send a clear message that torture is no longer something that you do ... You torture someone, you answer to criminal charges yourself."

The group - 13 gay men, two bisexual men and four transgender women - were imprisoned for over 50 days at Kitalya prison where they were taunted, flogged and denied access to food and medication, said their lawyers.

The LGBT+ group were released after prosecutors withdrew charges.

They have already won a civil case against the attorney general and commissioner general of prisons for denying them access to lawyers and were awarded five million Ugandan shillings (\$1,365) each in damages.

The summons, stating the complaint of "acts of torture, cruel, inhuman and degrading treatment or punishment" orders Kiyimba and Woniala to appear in court on the Aug 26. The two men are also facing a civil lawsuit to be heard on Sept 23.

LGBT+ campaigners in Uganda say members of the community risk physical attacks in their daily life and routinely encounter harassment, as well as facing prejudice over work, housing and health care.

Oryem Nyeko, Uganda researcher at Human Rights Watch, said the case could help deter attacks and promote more tolerance towards LGBT+ people in the county.

"(The case) has the potential to serve as a really important example of the implementation of Uganda's underused anti-torture law and to be deterrent to abuses against LGBT people and the population as a whole by security forces," said Nyeko.

High Court rules in favour of #COSF19, awards each UGX 5M in damages

Kuchu Times (20.06.2020) - <https://bit.ly/31s5M4V> - The civil division of the High Court, on 17th June 2020, delivered its final ruling in the main application filed by Human Rights Awareness and Promotion Forum (HRAPF) challenging the refusal of by prisons' authorities to allow the #COSF19 access to their legal representation.

The 19 LGBT youth were arrested on 29th March 2020 from the Children of the Sun shelter in Kyengera and were thereafter charged with doing 'a negligent act likely to spread infection of disease contrary to section 171 of the Penal Code Act, arraigned before the Chief Magistrates Court of Mpigi at Nsangi vide Criminal Case No. 113 of 2020 and remanded to Kitalya Prisons until 28th April 2020.

The 19 accused were then detained for 49 days and refused access to their legal representation. It is upon this background that HRAPF filed an application challenging the Commissioner General of Prisons' decision to deny the accused contact with their lawyers.

In a positive judgement delivered by Justice Micheal Elubu, the Court declared that the refusal tantamounted to a violation of the non derogable right to a fair hearing and the right to liberty. For these violations, the Court awarded 5 million Uganda shillings (about USD 1340) to each of the accused persons and also awarded costs to HRAPF. This now brings a close to the litigation in this case at the High Court.

Case History

On Sunday the 29th of March 2020 at about 11am, HRAPF received a call from the Executive Director of Children of COSF requesting HRAPF to respond to a raid by security officials and community leaders at their shelter located in Kyengera, Wakiso district. The HRAPF team composed of a lawyer and Community Paralegal went to the shelter but found that 23 persons had been arrested and taken to Nkokonjeru Police Post.

There was one Local Defence Unit member who informed the two that he had instructions to arrest anyone who came to the shelter, and as such he put the lawyer and Community Paralegal under formal arrest. After about one hour, the two were also taken to Nkokonjeru Police Post, where the Officer in Charge released them since he knew them to be HRAPF lawyers. At the station, they met their clients who had been arrested. Information gathered shows that the community members in the area and the leadership were worried about the 'homosexual' behavior of the youths who they believed to be a bad influence in the area.

They involved the Mayor of Nsangi Municipality, Hajj Abdul Kiyimba who stated that such behavior could not be tolerated in the area. He led the team that raided the shelter, assisted by members of the Local Defence Unit and the Uganda Peoples Defence Forces (UPDF). The mayor personally beat up at least two of those arrested as he questioned them about their homosexuality. After being questioned, the group was detained at Nkokonjeru Police Post. While at the station, a crowd continued to gather, some of whom even threatened the HRAPF lawyers. A search was conducted in the shelter in order to find evidence of 'homosexuality.' Some of the items recovered and kept as evidence included several bottles of an Anti-Retroviral Drug regimen commonly used as Pre-Exposure Prophylaxis, two oral HIV self-testing kits, several condoms in their foil packs and several pieces of condoms that the residents in the shelter had blown up.

Persons arrested

The total number of persons arrested was 23. These included a nurse from the COSF community clinic and the Executive Director of COSF. The others were all residents of the shelter. The shelter housed homeless LGBT youths. Among those arrested, three were released on police bond, one of whom was the nurse and the other two for medical reasons.

Charges

Statements were taken from the arrested persons. The Police first considered charging them with having carnal knowledge against the order of nature under section 145 of the Penal Code, but this was later changed to doing 'a negligent act likely to spread infection of disease' contrary to Section 171 of the Penal Code Act, and 'disobedience of lawful orders' under section 117 of the Penal Code Act. This was in the context of the Presidential Directives on COVID-19 which incidentally require people to stay indoors, the exact thing that the people at the shelter were doing.

Appearance before court

The 20 were arraigned before the Chief Magistrates Court of Nsangi and remanded to Kabasanda Prison until 29th April 2020, when they will appear back in Court.

Human rights violations involved

Article 23(1) of the Constitution, the right to liberty can only be limited in the case of a few exceptions including 'for the purpose of bringing that person before a court in execution of an order of a court or upon reasonable suspicion that the person has committed or is about to commit a criminal offence'. In this case, the arrested persons were suspected of being

'homosexuals' but were instead charged with offences related to violating the Presidential directives on COVID-19. These directives however, did not limit the number of people who stayed in a house provided they stayed at home. The charges were therefore unfounded.

At least two of those arrested were also subjected to beatings, which action contravenes article 24 of the Constitution, which protects from torture, inhuman and degrading treatment.

Uganda charges 20 LGBT+ people with risking spread of coronavirus

By Alice McCool

Thomson Reuters Foundation (31.03.2020) - <https://reut.rs/2wmouOi> - Ugandan police charged 20 LGBT+ people with disobeying rules on social distancing and risking the spread of coronavirus on Tuesday, drawing criticism from campaigners who said they were using the restrictions to target sexual minorities.

Gay sex carries a possible life sentence in Uganda, one of the most difficult countries in Africa to be a sexual minority.

The 14 gay men, two bisexual men and four transgender women were taken into custody on Sunday when police raided a shelter on the outskirts of the capital Kampala.

Police said they were disobeying coronavirus-related restrictions on social distancing by "congesting in a school-like-dormitory setting within a small house" despite a ban on gatherings of more than 10, which has now been reduced to five.

Deputy Police Spokesperson Patrick Onyango denied allegations made by LGBT+ campaigners that they were targeted because of their sexual orientation.

"We still have offences of unnatural sex in our law books," Onyango told the Thomson Reuters Foundation. "We would charge them with that law, but we are charging them with those counts as you can see."

Onyango said there were two charges against the group - disobedience of lawful order and committing neglectful acts likely to spread infection of disease. The charges carry a maximum of two and seven years imprisonment respectively.

Although 23 people were arrested initially, three people were released without charges on medical grounds. The group are now on remand and will appear in court on 29 April 29, he added.

LGBT+ campaigners in Uganda say members of the community risk physical attacks in their daily life and routinely encounter harassment, as well as facing prejudice over work, housing and health care.

"They are always using alternative charges to arrest people for unnatural offences so it (coronavirus) just worked perfectly for them," said Patricia Kimera, a lawyer with Human Rights Awareness and Promotion Forum, defending the group.

"But definitely the reason they have been arrested is their sexual orientation."