

Mr. Anand Grover

The United Nations Special Rapporteur on the Right to Health

Office of the High Commission on Human Rights, United Nations Office at Geneva

8-14 Avenue de la Paix

1211 Geneva 10

Switzerland

Subject: An Urgent Appeal within the mandate of the Commission on Human Rights Resolution 2002/31 on the matter of the Anti-Homosexuality Bill

Dear Sir:

This letter is to request your urgent attention and action regarding Uganda's proposed Anti-Homosexuality legislation ("the Bill"), which we believe is likely to be imminently considered and approved by Parliament.¹ The Bill if enacted would affect the right to the enjoyment of the highest attainable standard of physical and mental health of gays, lesbians, bisexual, transgender and intersex (LGBTI) persons in Uganda. It would also directly affect organizations and persons who take actions in defending LGBTI persons concerning the right to health.

We request that you launch a formal investigation into the impact that the Bill, if passed, would have on the obligations of Uganda regarding the right to health, in light of its international obligations, and to inform the Government of Uganda of resultant violations of international human rights law if the Bill were to become law.

The Bill was presented in 2009 to Parliament as a Private Member's Bill. Public hearings provided Parliament with relevant testimony regarding the harmful implications of this Bill, including by the Uganda Human Rights Commission. However the Speaker of Parliament has decided to bring the Bill forward and has expressed an intention to pass it urgently—before the final Parliamentary recess of 2012.

The objective of this Bill is to penalize any form of "homosexual act" or "attempt to commit a homosexual act," even consensual sex between same sex people. The vaguely worded Article 13 goes even further, criminalizing even the discussion of the rights of lesbian, gay, bisexual, transgender or intersex (LGBTI) people, by prohibiting "promotion of homosexuality." The bill also would require people, including doctors, to report anyone who has violated any of the Bill's clauses—or face criminal sanction. The Bill, if passed, will clearly have a significant impact on legitimate human rights work, access to health services and the realization of the right to health for all Ugandans.

This Bill's sweeping scope will have a disastrous impact on the response of the nation as a whole to HIV as well as other health priorities. In one study, rates of HIV infection among men who have sex with men were almost twice as high as the national average of 7.3% and those respondents who reported ever having been exposed to homophobic abuse were five times as likely to be HIV positive compared with peers who had never experienced homophobic abuse.² Unlike other African countries that have aggressively sought to reach

¹ As of the date of this submission, the Bill has not yet been reported out of the Committee on Legal and Parliamentary Affairs but has been listed as either item one or two under 'Business to Follow' on recent Order Papers of Parliament.

² The Crane Survey Report, 2010 High Risk Group Surveys Conducted in 2008-9. Makerere University School of Public Health, Ministry of Health, PEPFAR and Hladik W, Barker J, Ssenkusu JM, Opio A, Tappero JW, et al. (2012) HIV Infection among Men Who Have Sex with Men in Kampala, Uganda—A Respondent Driven Sampling Survey. PLoS ONE 7(5): e38143. doi:10.1371/journal.pone.0038143

vulnerable populations with services and support and that are reporting declining rates of new infections, Uganda's HIV incidence is rising, triggering concern and criticism.³ Vulnerable and isolated communities including men who have sex with men typically experience higher HIV Infection rates as stigma and bigotry deter them from accessing essential medicines, prevention services, counseling, and public health information. This endangers not only them and their communities but also the Ugandan population at large. The Global Commission on HIV and the Law recently presented incontrovertible evidence that discriminatory legislation such as criminalisation of homosexuality has a devastating impact and enhances HIV-related risks among men who have sex with men and other vulnerable groups most at risk of the epidemic and related diseases.

Clause 3(3) clearly violates other well-established best practice in the fight against HIV that HIV testing should be conducted with the consent of the individual. This clause asserts that a person charged with the offence of aggravated homosexuality will be subjected to an HIV test to ascertain his or her status without consent. A fundamental principle of human rights protections is that patients have the right of voluntary informed consent with respect to HIV testing, and that any form of mandatory testing violates that right.

The Bill sabotages Uganda's public health policies and efforts such as the Most At Risk Populations Initiative (MARPI) introduced by the Ministry of Health in 2008, which targets specific populations in a comprehensive manner to curb the HIV epidemic. Other donors, such as the U.S. President's Emergency Plan for AIDS Relief (PEPFAR), are planning to expand their investments in prevention, treatment and demand creation among men who have sex with men in Uganda. If this bill becomes law, health practitioners as well as partners that have invested into this exemplary initiative will automatically be liable to imprisonment for seven years. Medical confidentiality in Uganda will cease to exist.

The Bill clearly violates many well-established rights in international instruments ratified by the Ugandan government. For example, the International Covenant on Economic, Social and Cultural Rights under Article 12 stresses that every human being is entitled to the enjoyment of the highest attainable standard of health that is required to live with dignity. The core obligations of state parties are highlighted in General Comment 14 of the Covenant. It notes that these core obligations should include among others access to health facilities, goods and services on a non-discriminatory basis especially the vulnerable or marginalised groups.

The comment further notes that health is a fundamental human right that is linked to the realisation of other human rights including right to food, work, education, human dignity, life, non discrimination, equality, privacy, access to information, prohibition from torture among others. It also highlights the obligations of state parties such as the obligation of the government to adopt laws that ensure equal access to health care and health related services provided by third parties. The obligation to 'fulfil' the right to health also requires governments to give sufficient recognition to the right to health by way of legislation.

The African Charter on Human and Peoples Rights in Article 16 also provides for the right of everyone to enjoy the best attainable state of physical and mental health and enjoins state parties to take all necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

General principles of medical ethics also enjoin health practitioners not to discriminate against their patients, to maintain patients' confidentiality, and to act in their best interests. Psychologists, counsellors, lawyers, and social workers also often operate under similar ethical rules. The proposed law would require these professionals to violate their professional duties if they were to receive information from their patients or clients that had to be disclosed under threat either of the risk of criminal sanctions for the professional for non-disclosure or criminal sanctions for the client or patient because of disclosure.

³ 2011 Uganda AIDS Indicator Survey. Ministry of Health, 2012.

Furthermore, organisations such as CERHURD and others that defend human rights including the human right to health would be directly affected by the enactment of this Bill—efforts to defend the right to health for LGBTI populations, for example, would become criminalized.

The 1995 Uganda Constitution in Article 8A provides that the government is to be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy. Objective 14(b) obliges the government of Uganda to fulfil the fundamental rights of all Ugandans in regard to social justice in particular to ensure that all have access to health services.

Absurdly, clause 18 of the Bill requires Uganda to opt out of any international treaties that it has previously ratified that goes against the spirit of the bill. Article 287 of the Constitution obliges Uganda to fully subscribe to all its international treaty obligations ratified prior to the passing of the 2005 Constitution. If passed, Clause 18 would be against principles of international law as set out in Article 26 of the Vienna Convention on the Law of Treaties clearly sets out the *pacta sunt servanda* rule which requires that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith. If the Bill is passed in law, the application of International Covenant on Economic Social and Cultural Rights and other related regional and international laws will be in question.

It is against this background that we request your urgent intervention on this issue. Please find attached the draft Anti-Homosexuality Bill for your reference.

cc: UN Special Rapporteur on the Situation of Human Rights Defenders, Mrs. Margaret Sekaggya

Sincerely,

Action Against AIDS Germany
Action Group for Health, Human Rights and HIV/AIDS Uganda (AGHA)
Advocates for Public International Law
Advocates for Youth
African Men for Sexual Health and Rights (AMSHeR)
African Services Committee
African Women’s Development Fund
AIDES, France
AIDS Foundation Chicago
AIDS Law Project, Kenya
AIDS-Free World
Akina Mama wa Afrika
All Out
American Jewish World Service (AJWS)
Angels Refugee Support Group
Anonymous Members of the Civil Society Coalition on Human Rights and Constitutional Law
Asia Pacific Network of People Living with HIV/AIDS (APN+)
AVAC, Global Advocacy for HIV Prevention
Canadian HIV/AIDS Legal Network
Center for Land Economy and Rights of Women
Centre for Domestic Violence Prevention
Centre for Health, Human Rights and Development (CEHURD)
Centre for the Development of People (CEDEP), Malawi
Community Health Alliance Uganda
Council for Global Equality
Crested Crane Lighters
East and Horn of Africa Human Rights Defenders Project

European AIDS Treatment Group (EATG)
Evolve, Cameroon
Fem Alliance Uganda
Forum for Minority Rights
Forum for Women in Democracy
Frank & Candy, Uganda
Freedom and Roam Uganda
Gay and Lesbian Alliance (GALA)
Global Coalition of Women Against AIDS in Uganda
Global Justice Institute
Global Network of People Living with HIV/AIDS (GNP+)
Global Rights Alert
Health GAP (Global Access Project)
Health Rights Action Group (HAG), Uganda
HIV Medicine Association
HIV Prevention Justice Alliance
Human Rights and Peace Centre
Human Rights Awareness and Promotion Forum
Human Rights Defenders Solidarity Network
Ice Breakers Uganda
International Community of Women Living with HIV/AIDS East Africa, Uganda
International Council of AIDS Service Organizations (ICASO)
International HIV/AIDS Alliance
International Rectal Microbicide Advocates (IRMA)
International Refugee Rights Initiative
International Treatment Preparedness Coalition (ITPC)
Joint Adherent Brothers and Sisters Against AIDS Uganda
Kaleidoscope Trust
Kampus Liberty Uganda
Kenya Legal and Ethical Issues Network on HIV/AIDS (KELIN), Kenya
Kheth'Impilo AIDS Free Living
Lady Mermaid Bureau
Malaria No More UK
Mama's Club Uganda
MARPS Network
Mentoring and Empowerment for Young Women
Metropolitan Community Churches
Multicultural AIDS Coalition of Boston
National Association of Women's Organizations in Uganda
National Coalition of Women Living with HIV / AIDS
National Guidance and Empowerment Network of People Living with HIV/AIDS (NGEN+)
Okaloosa AIDS Support & Informational Services, Inc (OASIS)
Platform for Labor Action
PLUS, Coalition Internationale Sida
Program on Human Rights in the Global Economy (PHRGE), Northeastern University School of Law
Protection Desk Uganda
Queer Youth Uganda
Rainbow and Diversity Organization
Rainbow Health Foundation Mbarara
Raising Voices
Refugee Law Project
Salamander Trust

SECTION27

Sexual Health and Reproductive Rights for Youth

Sexual Minorities Uganda (SMUG)

Spectrum Uganda Initiatives

St. Paul Reconciliation and Equality Centre

Stop AIDS Campaign

Support Initiative for People with Atypical Sex Development

Thai AIDS Treatment Action Group (TTAG)

The Foundation for AIDS Research (amFAR)

The Global Forum on MSM and HIV (MSMGF)

The Learning Network, University of Cape Town

Toronto HIV/AIDS Network (THN)

Trans Equality Uganda

Trans Support Initiatives Uganda

Uganda Association of Women Lawyers

Uganda Harm Reduction Network

Uganda Health and Science Press Association

Uganda Health and Science Press Association (UHSPA)

Uganda Youth and Adolescent Health Forum (UYAHF)

UK Consortium on AIDS and International Development

Women for Fundamental Change

Women's Organization & Network for Human Rights Advocacy

World AIDS Campaign

Youth on Rock Foundation Uganda