

**Flygtningenævnets baggrundsmateriale**

<b>Bilagsnr.:</b>	<b>472</b>
Land:	Uganda
Kilde:	International Commission of Jurists (ICJ)
Titel:	Submission of the International Commission of Jurists to the UN Human Rights Committee in view of the committee's examination of Uganda's second periodic report under article 40 of the International Covenant on Civil and Political Rights. 138th Session of the UN Human Rights Committee. 26 June to 28 July 2023
Udgivet:	29. maj 2023
Optaget på baggrundsmaterialet:	23. juni 2023



**UNITED NATIONS HUMAN RIGHTS COMMITTEE**

**138<sup>th</sup> Session of the UN Human Rights Committee  
26 June to 28 July 2023**

**SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE  
UN HUMAN RIGHTS COMMITTEE IN VIEW OF THE COMMITTEE'S  
EXAMINATION OF UGANDA'S SECOND PERIODIC REPORT  
UNDER ARTICLE 40 OF THE INTERNATIONAL COVENANT ON CIVIL AND  
POLITICAL RIGHTS**

Submitted on 29 May 2023

*Composed of 60 eminent jurists and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on five continents, the International Commission of Jurists aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

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## I. Introduction

1. During its 138<sup>th</sup> session, from 26 June to 26 July 2023, the Human Rights Committee ('the Committee') will examine Uganda's implementation of and compliance with the provisions of the International Covenant on Civil and Political Rights (ICCPR or Covenant), including in light of Uganda's second periodic report<sup>1</sup> under article 40 of the ICCPR and its replies to the Committee's List of issues in relation to the second periodic report of Uganda.<sup>2</sup>
2. Considering the above, the International Commission of Jurists (ICJ) wishes to draw the Committee's attention to significant concerns arising from Uganda's failure to comply with its obligations to respect, protect and fulfill several Covenant rights and the consequences of such failure. In particular, this submission addresses:
  - (a) violations of the right to freedom from discrimination, of the right to liberty and security of person and of the right to be treated with humanity in detention;
  - (b) violations of the right to life;
  - (c) violations of Uganda's obligations to administer justice and maintain judicial independence; and
  - (d) violations of the right to freedom of expression, of the right to participation in public affairs and of the right to equality before the law and equal protection of the law without discrimination.
3. This submission is relevant for the Committee's evaluation of Uganda's implementation of the State's obligations and related Covenant rights under articles 2, 3, 6, 7, 9, 10, 14, 17, 19, 20, 21, 22, 23, 24, 25 and 26 of the ICCPR.

## II. Non-discrimination, Right to Liberty and Security of Persons

### a. Enactment of "Anti-Homosexuality Act, 2023"<sup>3</sup>

1. On 26 May 2023, President Museveni assented to the "Anti-Homosexuality Act, 2023" two months after it was passed by the Ugandan Parliament.<sup>4</sup> Consensual same-sex sexual relations were already criminalized within the State prior to the passage of the "Anti-Homosexuality Act, 2023".<sup>5</sup> Sections 145, 146 and 148 of Uganda's Penal Code Act of 1950 criminalize "unnatural offences"<sup>6</sup>, "attempt to commit unnatural offences"<sup>7</sup> and "indecent practices",<sup>8</sup> respectively, and have been used to target lesbian, gay, bisexual, transgender, queer and intersex (LGBTQI+) people.<sup>9</sup> A conviction for an "unnatural

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<sup>1</sup> Human Rights Committee, [Second periodic report submitted by Uganda under article 40 of the Covenant, due in 2008](#), UN Doc. CCPR/C/UGA/2, 17 August 2020.

<sup>2</sup> UN Human Rights Committee, [List of Issues in relation to the second periodic report of Uganda](#), UN Doc. CCPR/C/UGA/Q/2, 13 April 2023; UN Human Rights Committee, [Replies of Uganda to the list of issues in relation to its second periodic report](#), UN Doc. CCPR/C/UGA/RQ/2, 31 January 2023.

<sup>3</sup> Anti-Homosexuality Act, 2023, Parliament of Uganda, As signed by President Museveni, 26 May 2023, <https://www.parliament.go.ug/sites/default/files/The%20Anti-Homosexuality%20Act%2C%202023.pdf>.

<sup>4</sup> *Id.*

<sup>5</sup> UN Human Rights Committee, [List of Issues in relation to the second periodic report of Uganda](#), UN Doc. CCPR/C/UGA/Q/2 para. 6, 13 April 2023.

<sup>6</sup> Uganda Penal Code Act, 15 June 1950, §145, <https://ulii.org/akn/ug/act/ord/1950/12/eng@2014-05-09>.

<sup>7</sup> Uganda Penal Code Act, 15 June 1950, §146, <https://ulii.org/akn/ug/act/ord/1950/12/eng@2014-05-09>.

<sup>8</sup> Uganda Penal Code Act, 15 June 1950, §148, <https://ulii.org/akn/ug/act/ord/1950/12/eng@2014-05-09>.

<sup>9</sup> *In 1950, Uganda's first modern law criminalizing same sex sexual relations*, CHAPTER FOUR, <https://chapterfouruganda.org/timelines/anti-homosexuality-bill-timeline/1950-ugandas-first-modern-law-criminalizing-same-sex> (last visited 5 June 2023).

offence”, under section 145, may be punished with imprisonment for life,<sup>10</sup> while a conviction for an “attempt to commit unnatural offences” or for “indecent practices”, under sections 146 and 148, respectively, may be punished with imprisonment for seven years.<sup>11</sup>

2. The “Anti-Homosexuality Act, 2023” criminalizes consensual same-sex activity,<sup>12</sup> advocacy around the human rights of LGBTQI+ individuals,<sup>13</sup> and imposes increasingly harsh penalties upon LGBTQI+ persons amounting to abhorrent violations of their human rights.<sup>14</sup> Under section 2 and 3 of the “Anti-Homosexuality Act, 2023”, the State has created the “offence of homosexuality” and the offence of “aggravated homosexuality”, respectively.<sup>15</sup> A person who “is a serial offender”, that is someone who has repeatedly committed the “offence of homosexuality” is liable to be convicted of “aggravated homosexuality.”<sup>16</sup> Additionally, if the consensual same-sex sexual act in question is with a child, including a consenting adolescent, or with “a person of advanced age”, meaning someone over the age of 75, or with “a person with a disability”, it amounts to the offence of “aggravated homosexuality”.<sup>17</sup> Furthermore, a consensual same-sex sexual relation resulting in the transmission of a “terminal illness”, which the act defines as “a disease without a scientific cure”, such as HIV/AIDS, also amounts to “aggravated homosexuality.”<sup>18</sup> Upon conviction for “the offence of homosexuality”, persons convicted face imprisonment for life, meaning “imprisonment for the natural life of a person without the possibility of being released”,<sup>19</sup> and for “aggravated homosexuality” persons convicted face the death penalty.<sup>20</sup> Section 6 of the Act provides that “[t]he consent of a person to commit a sexual act shall not constitute a defence to a charge under this Act.”<sup>21</sup> Among other things, advocacy around the human rights of LGBTQI+ individuals is also criminalized through sections 9, 10, 11, and 14 of the Act (see para. 4 below for a detailed analysis).<sup>22</sup>
3. Through the adoption of this latest piece of legislation, Uganda has enhanced its persecutory legal framework, and further violated the human rights of LGBTQI+ persons, including to life with dignity, without fear of persecution; to freedom from discrimination on grounds prohibited under the Covenant, including sexual orientation and gender identity; to freedom from stigmatization, harassment and violence, including while in police custody, on the basis of sexual orientation or gender identity; and to freedom from arbitrary arrest and detention.
4. Sections 9, 10 and 11 of the “Anti-Homosexuality Act, 2023” create three new offences that criminalize “knowingly allow[ing] any premises to be used by any person for the purposes of homosexuality”,<sup>23</sup> “marriage between person of [the] same sex”,<sup>24</sup> and the

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<sup>10</sup> *Supra* note 6.

<sup>11</sup> *Supra* notes 7-8.

<sup>12</sup> *Supra* note 3 §6, “6. Consent to sexual act is no defence: The consent of a person to commit a sexual act shall not constitute a defence to a charge under this Act.”

<sup>13</sup> *Supra* note 3 §§9-11, 14.

<sup>14</sup> *Id.*

<sup>15</sup> *Supra* note 3 §§2-3.

<sup>16</sup> *Supra* note 3 §3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Supra* note 3 §1.

<sup>20</sup> *Supra* note 3 §§ 2-3.

<sup>21</sup> *Supra* note 3 §6.

<sup>22</sup> *Supra* note 3 §§ 9-11, 14.

<sup>23</sup> *Supra* note 3 §9.

<sup>24</sup> *Supra* note 3 §10.

"[p]romotion of homosexuality",<sup>25</sup> respectively. As defined by the Act, the "promotion of homosexuality" includes distributing "any material encouraging homosexuality", "provid[ing] financial support ... to facilitate activities that encourage homosexuality or the observance or normalization of conduct prohibited under [the] Act", leasing or subleasing "a building or establishment for the purposes of undertaking activities that encourage homosexuality", or "operat[ing] an organization which promotes or encourages homosexuality or the observance or normalization of conduct prohibited under this Act."<sup>26</sup> Section 14 imposes a duty to report all known or reasonably suspected instances of homosexuality.<sup>27</sup> A conviction under section 9 is liable "to imprisonment for a period not exceeding seven years",<sup>28</sup> while a conviction under section 10 is liable "to imprisonment for a period not exceeding ten years."<sup>29</sup> Upon conviction under section 11, "a person who promotes homosexuality ... is liable ... to imprisonment for a period not exceeding twenty years", while a conviction of a legal entity promoting homosexuality under section 11 may result in a court imposing a fine "not exceeding fifty thousand currency points," a suspension of "the licence of the entity for a period of ten years" or a cancelation of "the licence granted to the entity." Most notably, section 11 states that "a person who promotes homosexuality commits an offence" which does not limit the offence to the promotion of same-sex sexual acts but rather criminalizes the "promotion of sexual orientation" itself. This broad scope results in criminalizing the act of providing services to LGBTQI+ persons, such as medical care, legal representation, or education related to sexual orientation or gender identity.<sup>30</sup> The effect of sections 9, 10, 11 and 14 of the Act is to criminalize any efforts to advocate, support, or provide services to LGBTQI+ persons, thereby further encouraging stigma, discrimination, isolation, violence and neglect of LGBTQI+ persons.

5. "The Anti-Homosexuality Act, 2023" reprises its predecessor, the "Anti-Homosexuality Act, 2014,"<sup>31</sup> which had attempted to criminalize "the offence of homosexuality" and "aggravated homosexuality," and impose imprisonment for life upon conviction for either offence.<sup>32</sup> However, in 2014, the Constitutional Court of Uganda ruled the act invalid on procedural grounds.<sup>33</sup>
6. Prior to the passage of the "Anti-Homosexuality Act, 2023", the UN Human Rights Committee requested the State to provide information on the number of arrests, prosecutions, convictions and sanctions imposed for consensual same-sex sexual relations in the previous five years and to indicate whether the State intended to repeal the criminalization of consensual same-sex relationships between adults to ensure compliance with its obligations under articles 2, 17 and 26 of the Covenant.<sup>34</sup> Rather than provide the Committee the information requested or reply to the Committee's question about the potential for repealing the criminalization of consensual same-sex relationships between adults, in its replies to the list of issues, the State party asserted digressively that, "Uganda does not arrest or prosecute any persons on the basis of their sexual

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<sup>25</sup> *Supra* note 3 §11.

<sup>26</sup> *Supra* note 3 §11(2)(a)-(e).

<sup>27</sup> *Supra* note 3 §14.

<sup>28</sup> *Supra* note 3 §9.

<sup>29</sup> *Supra* note 3 §10.

<sup>30</sup> *HIV alarm in Uganda as anti-gay law forces LGBT 'lockdown'*, REUTER, 8 June 2023, <https://www.reuters.com/world/africa/hiv-alarm-uganda-anti-gay-law-forces-lgbt-lockdown-2023-06-08/>.

<sup>31</sup> The Anti-Homosexuality Act, 2014, 24 February 2014, <https://www.refworld.org/pdfid/530c4bc64.pdf>.

<sup>32</sup> *Supra* note 31 §§ 2-3.

<sup>33</sup> Frederick Golooba-Mutebi, *Why was Uganda's Anti-Homosexuality Law Struck Down*, AL JAZEERA, 15 Aug. 2014, <https://www.aljazeera.com/opinions/2014/8/15/why-was-ugandas-anti-homosexuality-law-struck-down>

<sup>34</sup> *Supra* note 5.

orientation as the same would be contrary to its constitutional and statutory framework.”<sup>35</sup> Yet, rather than adhering to the State’s anti-discrimination legislation and constitutional requirements, let alone its obligations under the Covenant, the State party has deliberately ramped up its legal arsenal through the adoption of the “Anti-Homosexuality Act, 2023”,<sup>36</sup> making it easier to persecute people based on animus, prejudice or even hatred against their real or imputed sexual orientation, gender identity or expression. As a result, LGBTQI+ individuals have effectively been criminalized for who they are, rather than for what they are purportedly accused of doing.

7. Ugandan police have continued their systematic and targeted operations against LGBTQI+ persons through both direct criminalization<sup>37</sup> and through manipulation of public health measures.<sup>38</sup> During the COVID-19 pandemic, Ugandan police conducted multiple raids of LGBTQI+ shelters and arrested community members purportedly as a public health measure, accusing them of offences such as “negligent act likely to spread infection of disease” under Section 171 of the Penal Code Act.<sup>39</sup> Rather than complying with the Committee’s recommendations,<sup>40</sup> the State party has further criminalized the status and conduct of LGBTQI+ persons and sought to legitimize its illegal harassment and violence perpetrated against the LGBTQI+ community through legislation<sup>41</sup> that is in direct conflict with its Constitution<sup>42</sup> and obligations under international human rights law and standards, including treaties by which it is bound.<sup>43</sup>
8. As a State party to the ICCPR, Uganda has an obligation under Article 2 to undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind including sex and other status.<sup>44</sup> Additionally, Uganda has an obligation under article 17 of the Covenant not to subject any persons to arbitrary or unlawful interference of their privacy.<sup>45</sup> Also, Uganda has an obligation under Articles 19 and 20 to respect all persons’ right to freedom of expression, as well as an obligation to refrain from advocating religious hatred that constitutes incitement to discrimination.<sup>46</sup> Finally, Uganda has an obligation under Article 26 of the Covenant to ensure all persons are equal before the law and are entitled

<sup>35</sup> UN Human Rights Committee, [Replies of Uganda to the list of issues in relation to its second periodic report](#), UN Doc. CCPR/C/UGA/RQ/2 para. 27, 31 January 2023.

<sup>36</sup> *Supra* note 3.

<sup>37</sup> Nita Bhalla, *Uganda arrests 16 LGBT+ activists for gay sex*, REUTERS, 24 October 2019, <https://www.reuters.com/article/uganda-lgbt-arrests-idUSL3N2792K0>.

<sup>38</sup> Young Park & Onen Cylus, *Stigmatization and Criminalization of LGBT Persons in Uganda during COVID-19 Pandemic*, OPINIOJURIS, 30 June 2021, <http://opiniojuris.org/2021/06/30/stigmatization-and-criminalization-of-lgbt-persons-in-uganda-during-the-covid-19-pandemic/>.

<sup>39</sup> *Id.*

<sup>40</sup> CCPR/C/UGA/RQ/2; CCPR/CO/80/UGA.

<sup>41</sup> *Supra* note 3.

<sup>42</sup> Constitution of Uganda, Article 21, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>.

<sup>43</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, 173, art. 2; UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, art. 2. Additionally, Uganda is a State party to the African Charter on Human and Peoples’ Rights (the African Charter) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa. Resolution 275 of the African Commission on Human and Peoples’ Rights on Protection against Violence and other Human Rights violations against Persons on the basis of their real or imputed sexual orientation or gender identity confirms that the African Charter protects the human rights of all persons, including LGBTQI+ persons, from non-discrimination, equality, life, dignity and freedom from torture.

<sup>44</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, 173, art. 2.

<sup>45</sup> *Supra* note 44 art. 17

<sup>46</sup> *Supra* note 44 art. 19-20

without any discrimination to equal protection of the law. Under the Covenant any discrimination on grounds such as sex, gender or sexual orientation is prohibited.<sup>47</sup>

9. In 2015, following its examination of Uganda's initial report under the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Committee on Economic, Social and Cultural Rights expressed concern about the lack of comprehensive anti-discrimination legislation and the prevalence of societal stigma and discrimination on the grounds of sexual orientation.<sup>48</sup> The Committee went on to recommend the State to adopt a comprehensive anti-discrimination law to bring domestic law in line with the State's obligation as a party to the ICESCR.<sup>49</sup> The Committee also urged the State to withdraw a draft law on the "prohibition of promotion of unnatural sexual practices" and to amend the Penal Code to decriminalize consensual same-sex conduct.<sup>50</sup> The Committee finally urged the State to proactively investigate incidents of discrimination against LGBTQI+ persons to prevent the perpetration of violence against members of the LGBTQI+ community.<sup>51</sup> Rather than implement these recommendations and adhere to its international obligations, similar to its response to this Committee's requests<sup>52</sup>, Uganda has on multiple occasions<sup>53</sup> attempted to preserve and expand criminalization of LGBTQI+ persons and conduct. This included "The Sexual Offences Bill, 2019", which purported to combat sexual violence and address defects in the outdated Penal Code Act, but rather than repeal the criminalization of same-sex sexual conduct, the bill would have renewed this criminalization.<sup>54</sup> Although ultimately vetoed by President Museveni, in turn, leaving the Penal Act in place,<sup>55</sup> section 11 of "The Sexual Offences Bill, 2019" would have imposed a penalty of imprisonment for ten years upon conviction of an "unnatural offence."<sup>56</sup>

## Recommendations

**In light of the above, the Human Rights Committee should recommend that Uganda:**

- **Repeal immediately the "Anti-Homosexuality Act, 2023";**
- **Amend the Penal Code Act of 1950 to repeal the colonial era criminalization of acts of purported 'carnal knowledge against the order of nature' and purported 'gross indecency' under sections 145, 146 and 148;**
- **Pass legislation to implement full protections of human rights of LGBTQI+ people.**
- **Quash the convictions of LGBTQI+ persons who were prosecuted using the "Anti-Homosexuality Act, 2023" or section 145, 146 and 148 of the Penal Code; and**

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<sup>47</sup> *Supra* note 44 art. 26, art. 2.

<sup>48</sup> E/C.12/UGA/CO/1 para 15

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* para 16.

<sup>51</sup> *Id.*

<sup>52</sup> CCPR/C/UGA/RQ/2; CCPR/CO/80/UGA.

<sup>53</sup> *Supra* note 3; *supra* note 31; Sexual Offences Bill, 2019, Uganda, <https://parliamentwatch.ug/wp-content/uploads/2021/09/Sexual-Offences-Bill-2019-1.pdf>.

<sup>54</sup> Sexual Offences Bill, 2019, Uganda, <https://parliamentwatch.ug/wp-content/uploads/2021/09/Sexual-Offences-Bill-2019-1.pdf>.

<sup>55</sup> *Press Statement: Centre for Human Rights and Centre for Sexualities, AIDS and Gender condemn the passing of Uganda's Anti-Homosexuality Bill*, CTR. FOR HUM. RTS. UNIV. OF PRETORIA, 28 March 2023, <https://www.chr.up.ac.za/press-statements/3316-press-statement-centre-for-human-rights-chr-and-centre-for-sexualities-aids-and-gender-csa-g-condemn-the-passing-of-uganda-s-anti-homosexuality-bill>.

<sup>56</sup> *Supra* note 54 §11.





Comment No. 36, the Committee, insisted that the term “most serious crimes” must be read restrictively.<sup>70</sup> It went on to specify that crimes “not resulting directly and intentionally in death, such as ... sexual offences, although serious in nature, can never serve as the basis, within the framework of article 6, for the imposition of the death penalty.”<sup>71</sup> In its previous Concluding Observations, the Committee expressed concern over the broad array of offences punishable by the death penalty under Ugandan law, and recommended that Uganda bring its legislation and practice in line with the Covenant.<sup>72</sup> Rather than bringing its legislation and practice in line with the Covenant, Uganda has chosen to expand the scope of the death penalty and discriminately target LGBTQI+ persons.

13. The ICJ opposes the death penalty in all cases as a violation of the right to life, and considers that, per se, its imposition amounts to a form of cruel, inhuman and degrading treatment or punishment.

## Recommendations

**In light of the above, the Human Rights Committee should recommend that Uganda:**

- **Amend Ugandan law and completely abolish the death penalty;**
- **Pending abolition, implement an immediate moratorium on all executions and on the imposition of capital punishment;**
- **Pending abolition, ensure that proceedings in death penalty cases conform to the highest standards of judicial independence, competence, and impartiality, and strictly comply with all fair trial rights;**
- **Continue to re-sentence the remaining 120 inmates on death row, as of 2022, to ensure no executions take place; and**
- **Ratify or accede to the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty.**

## IV. Administration of Justice

### a. Judicial Independence and Arbitrary and Unfair Treatment of Supreme Court Justice Esther Kisaakye

14. On 18 March 2021, during proceedings related to the 2021 presidential election in Uganda, main opposition leader Robert Kyagulanyi Ssentamu filed a petition challenging

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penalty. In the same vein, a limited degree of involvement or of complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder, cannot justify the imposition of the death penalty. State parties are under an obligation to review their criminal laws so as to ensure that the death penalty is not imposed for crimes which do not qualify as the most serious crimes. They should also revoke death sentences issued for crimes not qualifying as the most serious crimes and pursue the necessary legal procedures to re-sentence those convicted for such crimes”. See UN Human Rights Committee, [General Comment No. 36](#) on the right to life, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 35, footnotes in the original omitted. The same standard appears in section N(9)(b) of The African Commission on Human and People’s Rights, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003) (Principles on Fair Trial in Africa). [Safeguards guaranteeing protection of the rights of those facing the death penalty](#), approved by Economic and Social Council resolution 1984/50 of 25 May 1984, art 1.

<sup>70</sup> See UN Human Rights Committee, [General Comment No. 36](#) on the right to life, UN Doc. CCPR/C/GC/36, 3 September 2019, para. 35.

<sup>71</sup> *Id.*

<sup>72</sup> CCPR/CO/80/UGA, para 13.

the results of the election.<sup>73</sup> Ssentamu made a follow-up application seeking leave of the Court to amend his main application.<sup>74</sup> The Supreme Court of Uganda refused to grant his application and held that it had been made beyond the strict time limit provided by law.<sup>75</sup>

15. Justice Esther Kisaakye was the sole justice dissenting in the Court's ruling to refuse Ssentamu's petition requesting leave to amend its claim.<sup>76</sup> Justice Kisaakye argued that Ssentamu had been deprived of his right to prepare his main application as he had been placed under illegal house arrest during the window of time he could have been preparing his application.<sup>77</sup>
16. On 18 March 2021, while delivering her dissenting opinion, Justice Kisaakye alleged that the Chief Justice, Alfonse Owiny-Dollo, had ordered the confiscation of her files to obstruct her from handing down her dissenting judgment.<sup>78</sup> Although armed police guards confiscated Justice Kisaakye's court files and reasoned ruling, she proceeded to deliver her dissenting judgment despite the lights and public address system in the courtroom being switched off.<sup>79</sup>
17. On 25 March 2021, Uganda's Judicial Service Commission (JSC) opened an investigation into the events of 18 March 2021.<sup>80</sup> On 25 July 2022, Justice Kisaakye was served with preliminary findings of the JSC investigation and alleged that JSC initiated a disciplinary inquiry that was disguised as a general inquiry to avoid any due process and constitutional procedures.<sup>81</sup>
18. Despite the apparent lack of due process in these unwarranted disciplinary proceedings, on 27 February 2023 the JSC recommended the removal of Justice Kisaakye to President Museveni.<sup>82</sup> President Museveni has not yet followed through on or dismissed the request but there are reports that Attorney General Kiryowa Kiwanuka is pushing for Justice Kisaakye's removal.<sup>83</sup>
19. The Judicial Service Act of Uganda defines the required process for removing a judicial officer: the judicial officer concerned is to be informed as part of their right to defend themselves.<sup>84</sup> Section 10(1) of Uganda's Judicial Service Regulations provides that respondents that complain of misconduct "shall be served the copy of the complaint and shall be required to file a reply within fourteen days from the date of service."<sup>85</sup> None of these procedures was followed in the disciplinary proceedings against Justice Kisaakye.<sup>86</sup>

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<sup>73</sup> *Uganda: Supreme Court Justice Ester Kisaakye must be granted a fair hearing to contest discipline charges*, INT'L COMM'N OF JURISTS, 30 Aug. 2022, <https://www.icj.org/uganda-supreme-court-justice-esther-kisaakye-must-be-granted-a-fair-hearing-to-contest-discipline-charges/>.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *IBAHRI concerned over reports of harassment of Ugandan Supreme Court Judge*, INT'L BAR ASS'N, 10 March 2023, <https://www.ibanet.org/IBAHRI-concerned-over-reports-of-harassment-of-Ugandan-Supreme-Court-Judge>.

<sup>79</sup> *Id.*

<sup>80</sup> Michael Odeng & Farooq Kasule, *JSC recommends removal of Justice Kisaakye from office for probe purposes*, NEWS VISION, March 2023, <https://www.newvision.co.ug/category/news/jsc-recommends-removal-of-justice-kisaakye-fr-154801>.

<sup>81</sup> *Supra* note 78.

<sup>82</sup> *Id.*

<sup>83</sup> *Museveni keeps Owiny-Dollo guessing over Justice Kisaakye*, THE OBSERVER, 29 March 2023, <https://observer.ug/news/headlines/77296-museveni-keeps-owiny-dollo-guessing-over-justice-kisaakye>.

<sup>84</sup> *Supra* note 73.

<sup>85</sup> *Id.*

<sup>86</sup> *Supra* note 78.

20. Justice Kisaakye has accused senior judicial figures of withholding her salary, housing, medical and other benefits as well as removing her research assistant and refusing to allow her to continue her judicial work.<sup>87</sup>
21. Article 28 of the Constitution of Uganda provides the right to a fair hearing.<sup>88</sup> In addition, as a State party to the ICCPR, Uganda has an obligation under Article 14 to ensure all persons shall be equal before the courts and be granted due process during judicial proceedings.<sup>89</sup> This includes an obligation that Justice Kisaakye should have been informed promptly and in detail of the nature and cause of the proceedings and of her right to a fair trial.<sup>90</sup> Furthermore, Principle 19 of the United Nations Basic Principles on the Independence of the Judiciary, states that, "[a]ll disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."<sup>91</sup> Such standards include the right of a judge to a fair hearing, as guaranteed for every person under article 28 of the Constitution of Uganda<sup>92</sup>, article 7 of the African Charter on Human and Peoples' Rights<sup>93</sup>, as well as article 14 of the International Covenant on Civil and Political Rights.<sup>94</sup>
22. By disguising the proceedings as a general inquiry, the State failed to properly inform Justice Kisaakye of the initiation of the disciplinary proceedings against her and thus violated her right to a fair hearing. In light of the above, the deceptive disciplinary proceedings are violations of both the State's domestic and international law obligations and a severe threat to the State's judicial independence. Attempted obstruction of judicial opinions and investigations lacking due process in an attempt to punish an active justice are blatant attacks on the judiciary's independence from the State's executive branch and select leaders within the judiciary.

## Recommendations

**In light of the above, the Human Rights Committee should recommend that Uganda:**

- **Cease the disciplinary proceedings against Justice Kisaakye;**
- **Revoke the JSC recommendation that Justice Kisaakye should be removed from her judicial appointment;**
- **Acknowledge the procedural defects in the disciplinary proceedings;**
- **Reinstate all of Justice Kisaakye's benefits including her salary, housing, medical, and access to judicial resources related to her appointment;**
- **Order wrongfully withheld salary be paid to Justice Kisaakye;**
- **Reinstate Justice Kisaakye to the fullest extent to her judicial appointment.**
- **Initiate disciplinary proceedings and investigations into the obstruction of Justice Kisaakye's dissent on 18 March 2023;**
- **Investigate the Chief Justice's motives for obstructing Justice Kisaakye's attempt to deliver her dissenting opinion; and**

<sup>87</sup> *Id.*

<sup>88</sup> *Constitution of the Republic of Uganda*, 22 September 1995, <https://www.refworld.org/docid/3ae6b5ba0.html>.

<sup>89</sup> *Supra* note 44, art. 14.

<sup>90</sup> *Id.*

<sup>91</sup> UN Basic Principles on the Independence of the Judiciary, 6 September 1985, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>.

<sup>92</sup> *Supra* note 88.

<sup>93</sup> *African Charter on Human and Peoples' Rights*, 1 June 1981, <https://au.int/en/treaties/african-charter-human-and-peoples-rights>, Uganda is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), and under the African Charter, Article 7 guarantees the right to a fair hearing.

<sup>94</sup> *Supra* note 44, art. 14.

- **Implement legislation that adheres to international law and human rights standards for investigations and disciplinary proceedings related to obstruction of judicial decisions.**

## V. Freedom of Expression and Participation in Public Affairs

### a. Election Interference and Rigging

23. Ugandan President Yoweri Museveni has been in power since 1986 and is one of Africa's longest-serving leaders.<sup>95</sup> In Uganda's 2021 presidential election Museveni was announced the winner ushering in a sixth term for his administration.<sup>96</sup> However, Robert Kyagulanyi Ssentamu, also known by his stage name Bobi Wine, the main opposing candidate to President Museveni denounced the results of the election as fraudulent.<sup>97</sup>
24. The Electoral Commission of Uganda announced the final results of the election with Museveni winning 5.85 million votes, or 58.6%, and Ssentamu collecting 3.48 million votes, or 34.8%.<sup>98</sup> However, there were serious allegations of electoral fraud by the incumbent government through the improper use of police interference,<sup>99</sup> internet shutdowns,<sup>100</sup> and security forces implementing an illegal house arrest against Ssentamu.<sup>101</sup>
25. The 2021 election resulted in strong international criticism of the State's electoral manipulation<sup>102</sup> and use of violence,<sup>103</sup> yet Museveni remains in power. The Electoral Commission of Uganda denied and ignored numerous civil society organizations' applications for permission to observe the election.<sup>104</sup> It denied more than 75 percent of the election observer accreditations requested by the United States without providing an explanation for the denials.<sup>105</sup> Ultimately, it approved only 15 accreditation requests from the United States.<sup>106</sup>
26. The Africa Election Watch coalition deployed 2,000 observers in 146 districts and in a statement reported they had observed irregularities, including the late opening of most polling stations, missing ballot papers, and illegally opened ballot boxes.<sup>107</sup> In 2021, the

<sup>95</sup> *Uganda's Museveni wins sixth term, rival alleges fraud*, REUTERS, 17 January 2021, <https://www.reuters.com/article/uk-uganda-election-idUSKBN29M04E>.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Uganda: Declaration by the High Representative on Behalf of the European Union on the Elections*, COUNCIL OF THE EU, 20 January 2021, <https://www.consilium.europa.eu/en/press/press-releases/2021/01/20/uganda-declaration-by-the-high-representative-on-behalf-of-the-european-union-on-the-elections/>.

<sup>100</sup> Nina Bhalla & Alice McCool, *100 Hours in the Dark: How an Election Internet Blackout Hit Poor Ugandans*, REUTERS, 20 January 2021, <https://www.reuters.com/article/us-uganda-internet-rights-trfn-idUSKBN29P1V8>.

<sup>101</sup> *Ugandan Opposition Leader Bobi Wine 'Under House Arrest'*, AL JAZEERA, 14 December 2021, <https://www.aljazeera.com/news/2021/12/14/uganda-opposition-leader-bobi-wine-under-house-arrest>.

<sup>102</sup> U.S. Mission Uganda, *Statement by U.S. Ambassador Natalie E. Brown on Cancellation of U.S. Diplomatic Observer Mission of Uganda's Elections*, U.S. EMBASSY IN UGANDA, 13 January 2021, <https://ug.usembassy.gov/statement-by-u-s-ambassador-natalie-e-brown-on-cancellation-of-u-s-diplomatic-observer-mission-of-ugandas-elections/>.

<sup>103</sup> *Supra* note 100.

<sup>104</sup> *Supra* note 103.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Supra* note 82.

U.S. State Department's top diplomat for Africa, Tibor Nagy, said that the "electoral process has been fundamentally flawed", citing fraud reports, denial of accreditation to observers, violence and harassment of opposition members, and the arrest of civil society activists.<sup>108</sup>

27. In 2018, during a political rally, a "stray bullet" fired by the Uganda police killed Ssentamu's driver.<sup>109</sup> That same year, Ssentamu was arrested, charged with treason, and reportedly tortured by State authorities.<sup>110</sup> In 2021, Ssentamu was arrested and his supporters prosecuted for allegedly violating COVID-19 regulations. In subsequent protests against his arrest at least 54 people were killed by soldiers deployed in Kampala with the Security Minister Elly Tumwine arguing the forces "have a right to shoot you and kill you if you reach a certain level of violence."<sup>111</sup> Ssentamu has been placed under house arrest on multiple occasions.<sup>112</sup> These seemingly arbitrary instances of police interference with Ssentamu's political expression raise deep concern that his right to participate in public affairs and right to freedom of expression have been violated the Ugandan authorities.

28. As a State Party to the ICCPR, Uganda has an obligation to ensure everyone shall have the right to hold opinions without interference and the right to freedom of expression.<sup>113</sup> Additionally, under Articles 25 and 26 of the Covenant, Uganda has an obligation to ensure every citizen shall have the right and opportunity, without distinction, to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and to be elected in genuine elections while enjoying their right to equality before the law and equal protection before the law without discrimination.<sup>114</sup>

29. The above-mentioned widespread claims of security forces' use of excessive force with the intent of electoral manipulation give rise to serious concern that the Uganda authorities have blatantly violated their Covenant obligations. The coercive impact of violence through military forces being deployed against the electorate violates the right to freedom of expression and the right to participate in public affairs without interference. The seemingly unjustifiable house arrest of opposition leader, Ssentamu, is a flagrant violation of Ssentamu's right to participate in public affairs and of his right to liberty. Furthermore, the intentional internet shutdown throughout Uganda during the election obstructed persons within the State from accessing information related to the election amounting to a violation of the Covenant under Articles 19 and 25.

#### b. Unsuccessful Election Petition

30. In the face of these seemingly illegal uses of force and electoral interference, Ssentamu submitted an election petition to the Supreme Court of Uganda.<sup>115</sup> Ssentamu sought a

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<sup>108</sup> *Supra* note 42; Bureau of African Affairs (@AsstSecStateAF), TWITTER (Jan. 16, 2021 3:03 AM), <https://twitter.com/AsstSecStateAF/status/1350247243333464070>.

<sup>109</sup> *Uganda Investigate Death of Opposition Politician's Driver*, AMNESTY INT'L, 14 August 2018, <https://www.amnesty.org/en/latest/news/2018/08/uganda-investigate-death-of-opposition-politicians-driver/>.

<sup>110</sup> *A Pop Star, a Protest, and Likely Case of Torture in Uganda*, THE ATLANTIC, 25 August 2018, <https://www.theatlantic.com/international/archive/2018/08/uganda-bobi-wine-arrested/568549/>.

<sup>111</sup> Kai M. Thaler, *The 2021 Elections and Uganda's Crisis of Continuity*, HARV. EPICENTER WEATHERHEAD CTR. FOR INT'L AFFS. 31 March 2021, <https://epicenter.wcfia.harvard.edu/blog/2021-elections-and-ugandas-crisis-continuity>.

<sup>112</sup> *Id.*

<sup>113</sup> *Supra* note 44, art. 19.

<sup>114</sup> *Supra* note 44, arts. 25-26.

<sup>115</sup> *Bobi Wine files election petition contesting Museveni win*, AFRICANEWS, 1 February 2021, <https://www.africanews.com/2021/02/01/bobi-wine-files-election-petition-contesting-museveni-win/>.

nullification of the election based on allegations of vote rigging and the widespread violence in the pre-election process.<sup>116</sup>

31. As mentioned above, following his initial petition, Ssentamu filed an application to amend his petition and provide additional evidence of the election misconduct of President Museveni.<sup>117</sup> However, as discussed in Section III of this submission, on 18 March 2021, the Supreme Court of Uganda dismissed Ssentamu's application for amendment and sought to silence Justice Kisaakye, the sole dissenting justice.<sup>118</sup> The Supreme Court's dismissal was purportedly based on Ssentamu failing to meet a filing deadline for his application; however, Ssentamu was illegally under house arrest and purposefully prevented from meeting the deadline.<sup>119</sup> Following the dismissal, Ssentamu withdrew his petition citing a biased Supreme Court.<sup>120</sup>

## Recommendations

**In light of the above, the Human Rights Committee should recommend that Uganda:**

- **Commit to allowing future accreditation application from electoral observers, such as other States or NGOs, and to allowing for uninterrupted observation of future elections;**
- **Refrain from deploying security forces against opposing political parties, candidates, and supporters;**
- **Prosecute security forces who use excessive force, including to suppress political oppositions;**
- **Initiate investigations into the improper use of force and detentions against Ssentamu;**
- **Initiate investigations into President Museveni's requests for the use of State sponsored security forces to counter political opponents;**
- **Refrain from future internet shutdowns unless they comply with Uganda's obligations under the Covenant; and**
- **Ensure that all political actors, including political opponents have access to justice and effective remedies.**

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<sup>116</sup> *Id.*

<sup>117</sup> Ephraim Kasozi & Job Bwire, *Uganda: Supreme Court Dismisses Bobi's Application to Amend Petition*, ALLAFRICA, 9 February 2021, <https://allafrica.com/stories/202102090802.html>.

<sup>118</sup> *Supra* note 73.

<sup>119</sup> *Id.*

<sup>120</sup> Elias Biryabarema, *Uganda's Wine withdraws election result challenge, alleges bias*, REUTERS, 22 February 2021, <https://www.reuters.com/article/us-uganda-politics-idUSKBN2AM0TM>.