

February 20, 2014

H.E. Kaguta Yoweri Museveni
President of the Republic of Uganda
Office of the President
P.O. Box 7168
Kampala, Uganda



Your Excellency:

Re: Anti-Homosexuality Bill

On behalf of the Canadian HIV/AIDS Legal Network, and our more than 100 members, I write to express our deep dismay at recent reports that you are planning to sign into law the *Anti-Homosexuality Bill, 2009* that was passed by Parliament in December of last year.

As is made clear in both its stated objectives and in its substantive provisions, the *Anti-Homosexuality Bill* authorizes and incites a witch-hunt against lesbian, gay, bisexual and transgender (LGBT) Ugandans.

As you know, the bill would:

- make any sexual activity between two consenting adults of the same sex – and even any physical contact “with the intention of committing the act of homosexuality” – a crime punishable by 14 years in prison;
- impose life imprisonment for so-called “aggravated homosexuality” if either (a) the person has been previously convicted of the offence of homosexuality or (b) the person is living with HIV;
- compel forced HIV testing on any person charged with the offence of “aggravated homosexuality;”
- impose imprisonment for 7 years for the offence of “attempted homosexuality,” and life imprisonment for “attempted aggravated homosexuality”;
- punish with 7 years’ imprisonment any person who “aids, abets, counsels or procures” another to engage in homosexuality, or who “keeps a house, room, set of rooms or place of any kind for purposes of homosexuality;”
- make it a crime, punishable by 5 years’ imprisonment, for any person who owns, occupies or controls any premises to “knowingly suffer any man or woman to resort to or be upon such premises for the purpose” of engaging in homosexual acts;
- make it a crime, punishable by life in prison, to contract a marriage with another person of the same sex;
- make it a crime, punishable at minimum by a fine and at maximum by 7 years in prison, to: (a) participate in producing, broadcasting, publishing or disseminating any

“pornographic materials for purposes of promoting homosexuality;” (b) “sponsor” homosexuality or other related activities; (c) offer any premises or assets “for purposes of homosexuality or promoting homosexuality;” (d) use any electronic device (including the Internet, films and mobile phones) “for purposes of homosexuality or promoting homosexuality;” or (e) “attempt to promote or in any way abet” homosexuality and related practices; and

- impose up to 3 years in prison on any “person in authority” who is aware of any act of homosexuality and does not report that to relevant authorities within 24 hours.

The bill represents a direct and extreme assault on basic human rights protected under international law, in direct violation of various treaties ratified by Uganda – including the fundamental principle of non-discrimination, basic personal bodily liberty, privacy rights, rights to a fair trial and against self-incrimination, and freedoms of expression and association. The bill would also undermine efforts to realize progressively the right of all Ugandans to the highest attainable standard of health, not least by undermining HIV prevention and treatment efforts by further stigmatizing and criminalizing communities that need access to such services.

It is, therefore, no surprise that Uganda has received widespread and deserved international criticism for contemplating such draconian legislation. The executive director of the Joint UN Programme on HIV/AIDS (UNAIDS) has strongly urged you to reject this bill, as it will undermine Uganda’s response to HIV, particularly among gay men and other men who have sex with men. The UN High Commissioner for Human Rights has condemned the bill as violating the fundamental rights of LGBT Ugandans and undermining the work of human rights defenders more broadly. In line with recommendations from these experts, and from the Global Commission on HIV and the Law, UN Secretary General Ban Ki-Moon has appealed to all countries, including Uganda, to decriminalize homosexuality, in line with basic universal human rights.

We have noted with growing dismay the hateful statements from some lawmakers and some news media that incite violence and discrimination against LGBT people. We have also heard repeatedly from the bill’s proponents and supporters that homosexuality is “unnatural” or “un-African.” Were the risks of violence and other harm to LGBT people, including the deprivation of liberty, not so grave, such statements would be laughable for being so nonsensical and divorced from reality.

We were, therefore, encouraged by your earlier suggestion that you wanted to study the bill passed by Parliament further, and that you wanted to ensure a consideration of science in this matter.

In recent weeks, you have heard from scientific experts from multiple disciplines and from around the world of the decades of ample evidence that homosexuality is a natural phenomenon among many species in addition to humankind. Professional medical associations have long ago recognized that homosexuality is not an illness of any kind. Sadly, what does persist in the minds of proponents of the *Anti-Homosexuality Bill* is an obsession with policing

other people's sex lives, not because they can point to any evidence that consensual sex between adults poses any harm to others, but simply because they seek to enforce their own personal views and dislikes, often based on personal religious beliefs. No society can claim to be democratic if a handful of legislators can, by majority vote, strip away basic human rights of their fellow citizens in the name of imposing a particular religion's teachings.

We are equally disturbed by claims that homosexuality is "un-African." On what possible factual or ethical basis could you or other lawmakers deny the existence of millions of LGBT people in Uganda and across Africa, or simply declare those born, raised and living in countries across the continent as somehow "un-African"? As has been amply documented, homosexuality is a phenomenon apparent in human societies around the world and throughout history, including across many African societies. Please have the honesty to reject publicly such declarations of homosexuality as "un-African" as simply factually inaccurate and an insult to the dignity of your fellow Africans and to the history of African peoples.

What is much more "un-African", at least in its origins and certainly in the case of Uganda – is the criminalization of homosexuality, which is a legislative legacy of colonialism. It is sad and tragic that, a few decades after achieving freedom from empire, Ugandan lawmakers are poised to not only perpetuate, but to intensify, this colonial hold-over by stripping their fellow citizens of their freedom to love and to express themselves, while declaring that this project somehow reflects Ugandan values or traditions.

Indeed, the *African Charter of Human and Peoples' Rights*, which Uganda ratified almost three decades years ago, declares that every person shall have the right to liberty and to security of the person (Article 6), protects the rights to equality before the law and freedom from discrimination (Articles 2 and 3), and guarantees freedoms of expression and association (Articles 9, 10 and 11). These are African values, endorsed by every member state of the African Union – just as they are internationally recognized fundamental rights. Similar provisions in other international instruments, including the *International Covenant on Civil and Political Rights*, also ratified by Uganda, have been found to be breached by countries that criminalize consensual sex between adults or that criminalize even defending the rights of LGBT people.

Finally, we noted with interest the statement issued earlier today by your office, responding to concerns that have been expressed by the international community about the *Anti-Homosexuality Bill*. Your statement reiterated the Ugandan government's "commitment to uphold and protect the fundamental rights and freedoms of all persons in Uganda," but then also immediately declared, "no person shall be prosecuted outside the provisions of the law." Given the staggering breadth of the bill, it is impossible to fathom how your office can in good faith assert a commitment to respecting human rights while at the same time enacting legislation that violates some of the most basic human rights and freedoms recognized in international law, including the *African Charter*. Such internally contradictory statements offer a meaningless reassurance to the international community.

More importantly, they are meaningless to the health, safety and lives of millions of Ugandans who are lesbian, gay, bisexual or transgender and who face very real threats of violence and imprisonment, and they are meaningless to their families, friends and loved ones. It is profoundly troubling and disappointing that Uganda's president and its legislators should spend time on fomenting discrimination and violence, and undermining the health and well-being of Ugandans, with this kind of legislation. In a world full of so much suffering, so much discrimination and so much division, why would Uganda's leaders spend a moment attacking and denigrating consenting adults' freedom to share intimacy and love, doing no harm to others?

Such conduct can only serve to damage Uganda's international reputation and isolate it increasingly from the international community of nations that insists on respect for universal human rights. True leadership, from your office and from other lawmakers, would come in the form of confronting Uganda's many health and development challenges, and in fostering a climate of dignity, tolerance and respect for the basic human rights of all Ugandans. We urge you to show such leadership, not only with your veto of this bill but by publicly speaking out, to all Ugandans and to the world, for tolerance, dignity and respect for the basic human rights of all.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Elliott', with a stylized flourish at the end.

Richard Elliott
Executive Director

Cc: H.E. John Chrysostom Alintuma Nsambu, High Commissioner of the
Republic of Uganda in Canada

Hon. John Baird, Minister of Foreign Affairs, Government of Canada