



STATEMENT ON THE RAID OF THE CHILDREN OF THE SUN FOUNDATION SHELTER FOR LGBT YOUTHS IN UGANDA

31st March 2020

Introduction and overview

On the morning of 29th March, a shelter for LGBT youth operated by Children of the Sun Foundations (COSF) was raided by residents, and security forces. 23 people found at the shelter were arrested. Two of the 23 were beaten upon arrest, and all the rest were subjected to taunts from the community due to their perceived sexual orientation. They were formally charged with doing 'a negligent act likely to spread infection of disease' and 'disobedience of lawful orders' contrary to Sections 171 and 117 of the Penal Code Act respectively. On Tuesday 31st April 2020, 20 of those arrested were arraigned before the Chief Magistrates Court of Nsangi and remanded to Kabasanda Prison in Mpigi District until 29th April 2020.

Brief Facts

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.

Next steps and contextual challenges

HRAPF plans to secure their release on bail before the due date. However, as at 30th March 2020, there has been instituted a total lockdown, putting a stop to the movement of private vehicles

except for trucks that deliver cargo and food. All institutions, both public and private, have also been shut down, except for 'essential services,' which do not include legal services. Again the courts are currently closed except for 'serious' offences. The absence of private transportation coupled with the closure of the courts will make the response difficult. This therefore means that in all likelihood, the 20 people will be unable to exercise their right both to legal counsel and to apply for bail until after the lockdown is complete. Nevertheless, HRAPF shall continue to do all that is possible to ensure the protection of the basic inalienable rights of marginalised persons during this period.

HRAPF has issued a statement before, the call in which we hereby reiterate, urging the state to respect human rights and protect vulnerable groups even as the fight against COVID-19 goes on. See full statement at <https://hrapf.org/index.php/10-hrapf-news/89-hrapf-press-statement-on-human-rights-and-covid-19>