



Kampala,

16th June 2020

HIGH COURT DECLARES DENIAL OF DETAINED LGBT PERSONS ACCESS TO THEIR LAWYERS DURING COVID-19 A VIOLATION OF HUMAN RIGHTS

On 15th June 2020, Human Rights Awareness and Promotion Forum (HRAPF) and Children of the Sun Foundation (COSF) received the ruling by the High Court of Uganda in the case of *Human Rights Awareness and Promotion Forum (HRAPF) Vs. Attorney General and The Commissioner General of Prisons*, High Court Miscellaneous Cause No. 81 of 2020. The ruling was signed by Justice Michael Elubu of the High Court Civil Division on 5th June 2020.

The Court declared that denial of 19 LGBT persons detained during the COVID-19 lockdown access to their lawyers was a violation of their rights to a fair hearing and liberty. The Court also awarded damages of UGX 5,000,000 (about USD 1340) to each of the Accused Persons.

The 19 are LGBT youths who were part of a group of 23 people arrested from a homeless shelter operated by the COSF in Kyengera, Wakiso District on 29th March 2020. They were charged with 'doing a negligent act likely to spread infection of disease' contrary to section 171 of the Penal Court Act, before the Chief Magistrates Court of Mpigi at Nsangi. They were then remanded to Kitalya Prison on 31st March 2020. Attempts by HRAPF's legal aid lawyers to access them for purposes of preparing their bail applications were denied by the Prisons authorities both physically and in writing. In a letter dated 22nd April 2020 and signed on behalf of the Commissioner General of Prisons, the reason for the denial of access was stated as the 'current COVID-19 pandemic' and HRAPF was advised to 'be patient until the situation improves.'

It was upon this background that HRAPF filed this application seeking orders that the denial of access to lawyers was a violation of the Accused Persons' right to a fair hearing and the right to liberty. Article 28(3)(d) of the Constitution of Uganda requires that every accused person should be 'given adequate time and facilities for the preparation of his or her defence,' while Article 23(5)(d) requires that a person detained is allowed access to their lawyers. Since the Court could only hear 'urgent matters,' HRAPF applied for the case to be certified as urgent, which was done on 28th April 2020. Subsequently, on 12th May 2020, the Court issued an order allowing HRAPF lawyers to access the 19 inmates, 43 days after they were remanded. The main application which required the Court to declare human rights violations as well as award of damages is what the Court decided on 15th June 2020.

The Court observed that the right to a fair hearing could not be waived even during the COVID-19 crisis since the right is 'inalienable whatever the circumstances.' The Court further observed that the Chief Justice issued guidelines for certificates of urgency as well as taking pleas and bail applications during the COVID-19 lockdown, something that showed that lawyers had to have access to their clients if these matters were to be heard. The Prisons authorities could therefore not deny lawyers access to their detained clients using the excuse of COVID-19. The Court referred to the Interim Guidance issued by the Office of the High Commissioner for Human Rights and the World Health Organisation in March 2020, which emphasised that measures taken to prevent COVID-19 outbreaks in detention centres must respect human rights, and that the ability to meet with legal counsel must be maintained.

On the right to liberty, the Court observed that although the right could be limited, there were many options available to prisons authorities to allow lawyers to access their clients without putting people at risk of contracting COVID-19. Therefore, denying the Accused Persons access to their lawyers for 40 days was 'unreasonable and unjustifiable.'

In awarding damages to the Accused Persons, the Court observed that the damages were 'a measure of vindication of the rights this court found had been infringed and the non-pecuniary loss occasioned.' However, the Court also put into consideration 'the fact that the country was dealing with a novel situation of the pandemic' and that as such some of the 'extreme measures resulted from inappropriate knee jack reaction to the situation by the authorities' and this mitigated the amount of damages awarded.

HRAPF and COSF welcome this ruling of the Court as a vindication of the rights of the 19 accused persons whose rights were violated through the decision by the prisons authorities to deny lawyers access to their clients in detention during the COVID-19 pandemic.

'The Court's earlier ruling allowing our lawyers to visit us in prison gave us hope that we could be released, which indeed happened a few days thereafter. We applaud the Court for standing with us during this difficult period,' said Henry Mukiibi, the Executive Director of COSF and one of the 19 Accused Persons.

'We hope that this decision will light the way for the many persons still detained in Kitalya and other prisons without being granted access to their lawyers during this period of COVID-19. The fact that the judge did not dwell on the Accused Persons' sexual orientation but rather addressed their rights as human beings is a breath of fresh air in Uganda's LGBT rights related jurisprudence,' said Dr. Adrian Jjuuko, Executive Director of HRAPF.

Taking human rights to all

Human Rights Awareness and Promotion Forum (HRAPF), Plot 390 Prof. Apollo Nsibambi Road, Namirembe, Kampala. P. O. Box 25603, Kampala, Tel: +256-414-530683/+256-312-530683, Email: info@hrapf.org Website: www.hrapf.org

Children of the Sun Foundation (COSF), Kampala Uganda Email: cosf.uganda@gmail.com