

THE REPUBLIC OF UGANDA  
IN THE CONSTITUTIONAL COURT OF UGANDA SITTING AT KAMPALA  
CONSTITUTIONAL PETITION NO.....OF 2023

1. HON. FOX ODOI-OYWELowo
2. FRANK MUGISHA
3. PEPE ONZIEMA
4. JACKLINE KEMIGISA
5. ANDREW MWENDA
6. LINDA MUTESI
7. KINTU NYAGO
8. JANE NASIIMBWA
9. HON. PAUL BUCYANA KWIZERA.....PETITIONERS



VERSUS

ATTORNEY GENERAL .....RESPONDENT

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NOTICE OF PRESENTATION OF PETITION

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To: The Attorney General's Chambers,  
Ministry of Justice and Constitutional Affairs,  
P. O. Box 7183  
Kampala.

TAKE NOTICE that HON. FOX ODOI-OYWELowo, FRANK MUGISHA, PEPE ONZIEMA, JACKLINE KEMIGISA, ANDREW MWENDA, LINDA MUTESI, KINTU NYAGO, JANE NASIIMBWA and HON. PAUL BUCYANA KWIZERA have filed a Petition against you in this Court. You are hereby required to file an answer within 10 days after the Petition has been served on you.

SHOULD YOU fail to answer on or before the date above mentioned, the Petitioners may proceed with the Petition which may be determined in your absence.

GIVEN under my hand and seal of this Honourable Court on this.....day of .....2023.

.....  
REGISTRAR

2230014602284.

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..... PETITIONERS

VERSUS

ATTORNEY GENERAL ..... RESPONDENT

PETITION

Petition for declarations and orders under Article 137(1), (2), (3) and (7) of the Republic of Uganda, 1995 and Rule 3 of the Constitutional Court (Petitions and Reference) Rules 2005

The humble petition of HON. FOX ODOI-OYWELowo, FRANK MUGISHA, PEPE ONZIEMA, JACKLINE KEMIGISA, ANDREW MWENDA, LINDA MUTESI, KINTU NYAGO, JANE NASIIMBWA and HON. PAUL BUCYANA KWIZERA whose address for purposes of this petition shall be *C/o. Akampumuza & Co. Advocates Property Services Building, Plot 65, Kitante (Yusuf Lule) Road, P.O. Box 35572, Kampala* showeth and states as follows:

**PARTIES**

1. Your 1<sup>st</sup> Petitioner is a Member of Parliament of the Republic of Uganda representing West Budama North East Constituency, the Chairperson of the Parliamentary Committee on Human Rights, a practicing advocate of the Courts of judicature, a human rights activist, an ardent believer in the rule of law, good governance, constitutionalism and brings this petition in the public interest.
2. Your 2<sup>nd</sup> Petitioner is a human rights activist, an ardent believer in the rule of law, good governance, and constitutionalism and brings this petition in the public interest. He has studied and written widely on the narrative of protection

of sexual and gender minorities from situations that lead to criminalization and exploitation of vulnerable community members based on real or imputed sexual and gender identities.

3. Your 3<sup>rd</sup> Petitioner is a human rights activist, an ardent believer in the rule of law, good governance, and constitutionalism. He has a working experience in grass root organizing, community-led advocacy, human rights programming and management, advocacy focusing on social justice, civil liberties, and equality and dignity for marginalized persons at national, regional, and international spaces.
4. Your 4<sup>th</sup> Petitioner is a writer, researcher and communications specialist, whose career has focused on understanding the intersections of women, sexual minorities, media, and policy in Eastern Africa with a bias on Uganda. She holds a record of accomplishments in policy analysis, research and documenting both the LGBTIQ+ and feminist movement with thematic expertise in feminism, LGBTIQ+, democracy, and civil society organizing.
5. Your 5<sup>th</sup> Petitioner is a veteran journalist, researcher, human rights activist, constitutional enthusiast, an ardent believer in the rule of law, good governance, and constitutionalism.
6. Your 6<sup>th</sup> Petitioner is a lawyer by profession with over 14 years of legal practice currently heading the Policy and General Practices at Adalci Advocates. She is a feminist and curator of several social impact projects in the arts, history and civic education spaces in Uganda. She is an entrepreneur and invests with locally owned initiatives and businesses across Uganda. She is Chair of the Taala Foundation, an organization that advances holistic wellbeing, inclusivity and upholding dignity for marginalized communities across Africa.
7. Your 7<sup>th</sup> Petitioner is a human rights activist, an ardent believer in the rule of law, good governance, and constitutionalism and brings this petition in the public interest. He is a patriotic Ugandan and Pan Africanist. He is a long serving Public Officer currently at the rank of Senior Foreign Service Officer.
8. Your 8<sup>th</sup> Petitioner is a mother of a Ugandan adult who identifies as a transgender person. She is an ardent believer of the rule of law, good governance and constitutionalism.
9. Your 9<sup>th</sup> Petition is a Member of Parliament of Kisoro Municipality and a member of the Legal and Parliamentary Affairs Committee, an ardent believer in the rule of law, good governance, constitutionalism and brings this petition in the public interest.

10. The Respondent is, by operation of Article 119 and 250(1) and (2) of the Constitution of the Republic of Uganda, 1995 (as amended), the mandated legal representative in all civil proceedings by or against the Government of Uganda.

## **BACKGROUND**

11. In keeping with its constitutional mandate to make laws for peace, order, development and good governance of Uganda under Article 79(1), and the right of a Private Member to move a Private Member's Bill under Article 94(4)(b), Parliament passed the Anti-Homosexuality Act, 2023.

12. On 28<sup>th</sup> February 2023, Parliament granted Hon. Asuman Basalirwa leave to introduce a Private Members Bill entitled the Anti-Homosexuality Bill, 2023, which was gazetted on 3<sup>rd</sup> March 2023, in Gazette Supplement No. 3 of 2023.

13. On Thursday 9<sup>th</sup> March 2023, Parliament referred the Bill to the Committee on Legal and Parliamentary Affairs for scrutiny.

14. The Committee sat for the first time to consider the Bill on 13<sup>th</sup> March 2023 and on that day met only one person, the sponsor of the Bill, the Honourable Asuman Basalirwa.

15. The Legal and Parliamentary Affairs Committee was required to conclude its scrutiny, consideration and consultation on the Bill by Tuesday 21<sup>st</sup> March 2023.

16. In total, the Committee sat for six (6) days to scrutinize, consider and consult on the Anti-Homosexuality Bill, 2023.

17. The Anti-Homosexuality Bill, 2023 was a Private Member's Bill that was introduced in Parliament without any prior consultation and/or participation of the people or public.

## **GROUND FOR THE PETITION**

18. Your aforementioned Petitioners are ardent advocates of the rule of law, constitutionalism, civic rights and freedoms and have an interest in the matters herein below which they verily believe are inconsistent with and/or in contravention of the provisions of the Constitution of the Republic of Uganda 1995, international treaties, covenants, conventions and declarations, continental and regional human rights instruments to which Uganda is a state party, as follows:-

**I: Unconstitutionality for offending Article 92 of the Constitution**

- a. That the Anti-Homosexuality Act, 2023 which was passed and assented to by the President of the Republic of Uganda on 26<sup>th</sup> May 2023 had the purpose, objective and effect of altering the decision and/or judgment of the Constitutional Court in *Oloka Onyango & Others v Attorney General Constitutional Petition No. 18 of 2014* and is therefore inconsistent with and/or in contravention of Article 92 of the Constitution.
- b. That the consideration or enactment of the Anti-Homosexuality Act, 2023 fundamentally, substantially and/or wholly varied the decision and/or judgment of the Constitutional Court in *Oloka Onyango & Others v Attorney General Constitutional Petition No. 8 of 2014* in contravention of Article 92 of the Constitution.
- c. That the consideration and passage/enactment of the Anti-Homosexuality Act, 2023 was in contravention of Article 92 of the Constitution of the Republic of Uganda.
- d. That the Anti-Homosexuality Act, 2023 is null and void having been passed to vary the decision in Constitutional Petition No. 18 of 2014 and in contravention of Article 92 of the Constitution.
- e. That the Anti-Homosexuality Act, 2023 which was passed and assented to by the President of the Republic of Uganda on 26<sup>th</sup> May 2023 had the purpose, objective and effect of altering the decision and/or judgment of the High Court in *Kasha Jacqueline & 2 Others v. Rolling Stone & Another HCMC No. 163 of 2010* and is therefore inconsistent with and/or in contravention of Article 92 of the Constitution.
- f. That the consideration or enactment of Sections 2, 3(1),(2)(c),(d),(e),(f),(h)&(j), 9, 11(1),(2)(d) of the Anti-Homosexuality Act, 2023 fundamentally, substantially and/or wholly varied the decision and/or judgment of the High Court in *Kasha Jacqueline & 2 Others v. Rolling Stone & Another HCMC No. 163 of 2010* in contravention of Article 92 of the Constitution.
- g. That Sections 2, 3(1),(2)(c),(d),(e),(f),(h)&(j), 9, 11(1),(2)(d) of the Anti-Homosexuality Act, 2023 are null and void having been passed to vary the decision in High Court in *Kasha Jacqueline & 2 Others v. Rolling Stone & Another HCMC No. 163 of 2010* and in contravention of Article 92 of the Constitution.

- h. That the Anti-Homosexuality Act, 2023 which was passed and assented to by the President of the Republic of Uganda on 26<sup>th</sup> May 2023 had the purpose, objective and effect of altering the decision and/or judgment of the High Court in Victor Juliet Mukasa & Another v. Attorney General HCMC No. 247 of 2006 and is therefore inconsistent with and/or in contravention of Article 92 of the Constitution.
- i. That the consideration or enactment of Sections 2, 3(1),(2)(c),(d),(e),(f),(h)&(j), 9, 11(1),(2)(d) of the Anti-Homosexuality Act, 2023 fundamentally, substantially and/or wholly varied the decision and/or judgment of the Victor Juliet Mukasa & Another v. Attorney General HCMC No. 247 of 2006 in contravention of Article 92 of the Constitution.
- j. That Sections 2, 3(1),(2)(c),(d),(e),(f),(h)&(j), 9, 11(1),(2)(d) of the Anti-Homosexuality Act, 2023 are null and void having been passed to vary the decision in High Court in Juliet Victor Mukasa & Another v. Attorney General HCMC No. 247 of 2006 and in contravention of Article 92 of the Constitution.
- k. That the consideration or enactment of Sections 4 of the Anti-Homosexuality Act, 2023 fundamentally, substantially and/or wholly varied the decision and/or judgment of the BN v. Uganda Criminal Appeal No. 381 of 2016 in contravention of Article 92 of the Constitution.

**II: Unconstitutionality for offending Articles 1(1), (2) & (3), 38(2) and 94 of the Constitution**

- l. That the consideration by the Legal and Parliamentary Affairs Committee, the Parliament of the Republic of Uganda and the ultimate enactment of the Anti-Homosexuality Bill, 2023 within six (6) days, a period far below the forty-five (45) days provided by the Rules, denied the public participation and contribution to the Bill in any meaningful, exhaustive or representative manner in contravention of the Rules of Procedure of Parliament and Article 94(1) of the Constitution.
- m. That the consideration by the Legal and Parliamentary Affairs Committee, the Parliament of the Republic of Uganda and the ultimate enactment and passage of the Anti-Homosexuality Bill in a period far below the forty-five (45) days provided by the Rules denied the public participation, involvement, input and contribution to the Bill in contravention of the Rules of procedure of Parliament and Article 1(1),(2) and (3) of the Constitution.

- n. That the Anti-Homosexuality Act, 2023 was a Private Member's Bill that was moved without any prior consultation and/or participation of the public.
- o. That there was no policy document that informed the introduction, consideration and passage of the Anti-Homosexuality Act, 2023.
- p. That the expediency, speed and haste with which the Anti-Homosexuality Act, 2023 was passed denied the people of Uganda exercise of their power and sovereignty in contravention of Articles 1(1),(2) and (3) of the Constitution.

**III: Unconstitutionality for offending Article 93(a)(ii) of the Constitution**

- q. The act of the Parliament of Uganda of passing the Anti-Homosexuality Bill, a Private Member's Bill, which had provisions, that had the effect of imposing a charge on the consolidated fund and other public funds of Uganda contravened Article 93(a)(ii) of the Constitution and is null and void to that extent.
- r. That Section 16 (1) & (2) and 17 to the extent that they impose a charge on the consolidated fund or any other public fund in Uganda is inconsistent with and contravenes Article 93(a)(ii) of the Constitution.
- s. That the Certificate of Financial Implication issued by the Minister does not conform to the provisions of Section 76 (2) and (3) of the Public Finance Management Act, 2015 (PFMA), in so far as it does not show the following;
  - (i) The revenue and expenditure expected from and on implementation of the Bill for a period of two years after the coming into effect of the Bill when passed.
  - (ii) The impact of the Bill on the economy.
- t. That Section 76 of the PFMA was passed to give effect to and safeguard Parliament from offending and/or breaching Article 93 (a)(ii).

**IV: Unconstitutionality for offending fundamental rights and freedoms guaranteed under Chapter Four of the Constitution**

- u. That Section 2(1) and (2) of the Anti-Homosexuality Act to the extent that it criminalizes consensual sex between adults of the same sex

contravenes Article 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution.

- v. That Section 2(3) and (4) of the Anti-Homosexuality Act to the extent that it criminalizes attempted consensual sex between adults of the same sex contravenes Article 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution.
- w. That Section 3(1),(2)(c),(d),(e),(f),(h)&(j) of the Anti-Homosexuality Act to the extent that it criminalizes consensual sex between adults of the same sex contravenes Articles 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and the principle of legality enshrined under Article 28(12) of the Constitution.
- x. That Section 3(3) and (4) of the Anti-Homosexuality Act to the extent that it criminalizes attempted consensual sex between adults of the same sex contravenes Article 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution.
- y. That Section 4 of the Anti-Homosexuality Act to the extent that it imposes criminal liability on persons between the ages of zero (0) to eighteen (18), in as far as the definition of a child in Section 1 is a person below the age of 18 and omits to take cognizance of the age of criminal liability, is in contravention and inconsistent with Articles 20(1), 24, 34(1) of the Constitution.
- z. That Section 5(2) of the Anti-Homosexuality Act to the extent that it seeks to penalize consensual same sex between adults contravenes and is inconsistent with Articles 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution.
- aa. That Section 6 of the Anti-Homosexuality Act to the extent that it criminalizes same sex between adults contravenes and is inconsistent with Articles 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and the principle of legality enshrined under Article 28(12) of the Constitution.
- bb. That Section 7 of the Anti-Homosexuality Act to the extent that it is couched in onerous, vague terms and criminalizes the publication of any other information tending to establish the identity of a victim is inconsistent with and contravenes the principle of legality set out in Article 28(12) of the Constitution.



- cc. That Section 7 of the Anti-Homosexuality Act in requiring editors, publishers, reporters, columnists, announcers, producers, film directors or any other person to seek authority from the victim or court before publishing any material tending to establish the identity of the victim and personal circumstances, establishes an unjustifiable restriction on the public's right to know, press freedom and the freedom of expression in trials that are open to the public, whittles away judicial independence and discretion and are therefore in contravention of and inconsistent with Articles 29 (1)(a) and 128 (1) and (2) of the Constitution.
- dd. That Section 8 of the Anti-Homosexuality Act to the extent that it purports to protect children only from same sex sexual acts, same sex picture, video, film or materials and does not criminalize the same in respect of heterosexual sex contravenes and is inconsistent with Articles 21(1),(2) and (3) of the Constitution.
- ee. That Section 9 of the Anti-Homosexuality Act to the extent that it imposes onerous, vague and indeterminate responsibility on keepers of a house, owners, occupiers or managers of premises contravenes and is inconsistent with the principle of legality enshrined in Articles 28(12), 40(2) and 43 of the Constitution.
- ff. THAT Section 11 (2)(c) of the Anti-Homosexuality Act in criminalising funding, whether in kind or cash, to facilitate activities that encourage homosexuality or the observance or normalisation of conduct prohibited under the impugned Act inhibits the right of access to resources and the freedom of association and establishes undefined and vague obligations that creates an offence that is overly broad and are in contravention of and inconsistent with Article 28 (12) and Article 29 (1)(e) of the Constitution.
- gg. THAT Section 11 (2)(d) of the Anti-Homosexuality Act in criminalising knowingly leasing or sub-leasing, use or allowing another person to use any house, building or establishment of the purpose of undertaking activities that encourage homosexuality or any other offence under the impugned Act provides undefine and vague obligations and creates an offence that is overly broad in contravention of the principle of legality under Article 28 (12) and 44 (c) of the Constitution.
- hh. THAT Section 11 (2)(e) of the Anti-Homosexuality Act in criminalising non-governmental organisations which promotes or encourages homosexuality or the observance or normalisation of conduct prohibited under the impugned Act provides for overly broad, undefine and vague obligations and inhibit the freedom of association and is in contravention

- of and inconsistent with Article 28 (12) and 29 (e) and 38 of the Constitution.
- ii. That Section 11(1),(2) and (3) of the Anti-Homosexuality Act to the extent that it is couched in broad, vague, indeterminate and infinite terms is inconsistent with and contravenes the principle of legality enshrined in Article 28(12), and the rights protected under Article 27(2), 29(1)(a)&(b), 40(2), 43 of the Constitution.
  - jj. That Section 11(2)(d) of the Anti-Homosexuality Act to the extent that it is couched in broad, vague, indeterminate and infinite terms is inconsistent with and contravenes the principle of legality enshrined in Article 28(12), and the rights protected under Articles 27(2), 29(1)(a)&(b), 40(2), 43 of the Constitution.
  - kk. That Section 11(2)(e) of the Anti-Homosexuality Act to the extent that it is couched in broad, vague, indeterminate and infinite terms is inconsistent with and contravenes the principle of legality enshrined in Article 28(12), and the rights protected under Article 27(2), 29(1)(a)&(b), 40(2), 43 of the Constitution.
  - ll. That Sections 14(1),(2), (3) of the Anti-Homosexuality Act to the extent it is couched in broad, vague, indeterminate, infinite, and onerous terms is inconsistent with and in contravention of Articles 28(12), 40(2) & 43 of the Constitution and the rights protected under Article 27(2) of the Constitution.
  - mm. That Section 14(2) of the Anti-Homosexuality Act to the extent that it ousts professional duty to protect client confidentiality is inconsistent with and in contravention of Articles 23, 27 and 40(2) of the Constitution.
  - nn. That Section 14(5) of the Anti-Homosexuality Act to the extent that it seeks to protect only advocates from the duty to report acts of homosexuality discriminates against other professionals who have professional duty to protect client's confidentiality and the same is inconsistent with and in contravention of Articles 23, 27 and 40(2) of the Constitution.
  - oo. That Section 15 of the Anti-Homosexuality Act to the extent it is couched in broad, vague, indeterminate, infinite, onerous terms is inconsistent with and in contravention of Articles 28(12), 40(2) & 43 of the Constitution.
  - pp. Sections 2, 3(2)(b)-(c), 4, 8 and 10 of the Anti-Homosexuality Act have equivalent provisions in pre-existing Ugandan legislation and the Anti-

Homosexuality Act evidently creates a discriminatory two-tier legal system in which LGBTIQ+ persons are treated in a discriminatory manner in contravention of Articles 21 and 24 of the Constitution.

**V: Unconstitutionality for offending International Human Rights Instruments, Conventions, Treaties and Articles 45, 123 and 8A of the Constitution and Objective XVIII(i)(b) of the National Objectives and Directive Principles of State Policy of the Constitution**

- qq. That the Anti-Homosexuality Act criminalises all same-sex activity, including consensual same-sex sexual activity, for which it imposes life imprisonment and a death penalty.
- rr. That the provisions of the Anti-Homosexuality Act are a flagrant violation of the human rights guaranteed by the Constitution, as well as those enshrined in international law, including (i) the right to life, (ii) the right to equality and to be free from discrimination, (iii) the right to human dignity, (iv) the right to privacy, (v) the right to freedom of expression protected under Articles 21, 22, 23, 27 and 29(1)(a) of the Constitution.
- ss. That the introduction of the death penalty for "*aggravated homosexuality*" under section 3 of the Act violates the right to life under Article 3 Universal Declaration of Human Rights ("**UDHR**"), Article 6 International Covenant on Civil and Political Rights ("**ICCPR**") and Article 4 African Charter on Human and Peoples' Rights ("**ACHPR**"), as well as the right to be protected from torture under Article 2 of the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ("**CAT**") and Article 45 and 8A of the Constitution.
- tt. The criminalisation of private same-sex conduct among consenting adults under sections 2 and 3 of the Anti-Homosexuality Act violates the right to be free from discrimination, as enshrined in Article 21 of the Ugandan Constitution, Articles 1 and 2 UDHR, Articles 2, 3 and 26 ICCPR, Articles 2 and 15(1) Convention on the Elimination of All Forms of Discrimination against Women ("**CEDAW**"), and Articles 2, 3 and 19 ACHPR and in contravention of Article 45 and 8A of the Constitution and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.
- uu. Sections 2 and 3 of the Anti-Homosexuality Act's criminalisation of same-sex conduct also violates the right to dignity, as protected by Articles 24 and 44(a) of the Constitution, Article 5 and 20(1) ACHPR, Article 1, Articles 22 and 23 of the UDHR, and Article 16 CAT and in contravention

of Article 45 and 8A of the Constitution and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.

- vv. The criminalisation of consensual adult same-sex conduct constitutes a violation of the right to privacy, as contained in Article 27(2) of the Ugandan Constitution, Articles 1 and 17(1)-(2) ICCPR, Article 12 UDHR and Article 22 ACHPR and Article 45 and 8A of the Constitution of the Republic of Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.
- ww. The criminalisation of all forms of consensual adult same-sex sexual activity are a violation of right to freedom of expression under Article 29(1)(a)-(b) of the Ugandan Constitution, Article 19 UDHR, Article 19 ICCPR, and Article 9 ACHPR and Article 45 and 8A of the Constitution of the Republic of Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.
- xx. Sections 13 and 14 Anti-Homosexuality Act, which require disclosure and reporting of a person's sexual orientation, are contrary to the right to privacy, dignity, equal treatment and freedom of expression.
- yy. The Anti-Homosexuality Act's broad, vague, onerous, indeterminate and infinite criminalisation of any "*promotion*" of homosexuality is a flagrant violation of the right to freedom of assembly, association and expression, the right of journalists and others to report on issues relating to LGBTQI+ community, the rights of NGOs, Charities and other organizations to support and assist LGBTQI+ persons as enshrined in Article 29(1)(d)-(e) of the Ugandan Constitution, Article 20 UDHR, Articles 21 & 22 ICCPR, Articles 10.1 & 11 ACHPR, Article 45 & 8A of the Constitution of the Republic of Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.
- zz. That the Anti-Homosexuality Act's criminalization of same sex conduct for consenting adults under Sections 2 and 3 and the disqualification from employment upon conviction under Sections 12, the duty to disclose a conviction of homosexuality to certain employers under Section 13 and the duty to report acts of homosexuality under Section 17 violates the economic and development rights of LGBTQI+ Ugandans in contravention of Articles 21 and 40 of the Constitution, Articles 1(1) ICESCR, Article 22(1) ADHR, the ACHPR and Article 45 and 8A of the Constitution of the Republic of Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.
- aaa. The criminalisation of adult consensual same-sex conduct under section 2, the disqualification from employment upon conviction under

section 12, the duty to disclose a conviction of homosexuality to certain employers under section 13, and the duty to report acts of homosexuality under section 14, all violate the economic and development rights of LGBTQI+ Ugandans protected under Articles 21 and 40 of the Ugandan Constitution, as well as under Article 1(1) ICESCR, Article 22(1) ADHR, and the ACHPR and Article 45 and 8A of the Constitution of the Republic of Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.

bbb. Provisions of the Anti-Homosexuality Act's criminalisation of "promoting" homosexuality, including the criminalisation of journalists reporting on issues relating to the LGBTQI+ community, are a violation of the right to freedom of speech, as protected by Article 29(1)(a)-(b) of the Ugandan Constitution, Article 19 UDHR, Article 19 ICCPR, and Article 9 ACHPR and Article 45 and 8A of the Constitution of the Republic of Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.

ccc. Section 16 of the Anti-Homosexuality Act, granting a Ugandan court the power to order conversion therapy (rehabilitation) as punishment for the offence of homosexuality, is contrary to the right to equal treatment under Article 21 of the Constitution of the Republic of Uganda, and protection against cruel and inhumane treatment protected under Article 24 of the Constitution.

ddd. Section 4 of the Anti-Homosexuality Act provides a sentence of three years imprisonment for children engaged in same sex activity to three years' imprisonment, in violation of the Convention on the Rights of the Child (the "CRC") which requires that detention is used only as a last resort and for the shortest possible length of time when considering criminal sentences for children and Article 45 and 8A of the Constitution of the Republic of Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.

eee. The tacit criminalisation of HIV+ people who engage in consensual sexual conduct with another person of the same sex under the "*aggravated homosexuality*" offence at section 3(2)(c) of the Anti-Homosexuality Act is in contravention of the rights afforded to HIV+ people in contravention of Article 12 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), the rights enshrined in the Convention on the Rights of Persons with Disabilities ("CRPD"), as well as Article 18 of the ACHPR and Articles 14(1) and 23(b) of the Protocol to the ACHPR on the Rights of Women in Africa (the "Maputo Protocol") and Article 45 and 8A of the Constitution of the Republic of

Uganda and Objective XXVIII(i)(b) of the National Objectives and Directive Principles of State Policy.

fff. The Anti-Homosexuality Act's offences, as currently defined, are overly broad and as such, the said law is practically unenforceable due to overbroad definitions in violation of the principle of legality as provided under Article 28(12) of the Constitution.

ggg. By international legal standards, the Anti-Homosexuality Act is practically unenforceable due to overly broad definitions of the criminalised conduct leading to inappropriate and ineffective charges potentially levelled against countless innocent individuals;

hhh. By international legal standards, the Anti-Homosexuality Act is judicially unenforceable due to clear conflicts between the conduct it purports to criminalise and the universally applicable human rights of those individuals who engage in such conduct (or indeed may engage, consider engaging, or even generate, distribute or discuss material which could be considered to promote engagement with the conduct).

**VI: Unconstitutionality of Article 31(2)(a) for offending Article 1(1), 44(a) and 94 of the Constitution**

iii. The Constitutional Amendment Bill (No. 3) 2005 proposed several amendments to the Constitution, which did not include to Article 31.

jjj. The Legal and Parliamentary Affairs Committee, in its report dated 25<sup>th</sup> May 2005, did not recommend any amendments to Article 31 of the Constitution.

kkk. The Chairperson of the Committee, the Hon. Oulanyah Jacob is captured in the Hansard as having reported that there was no proposed amendment to Article 31.

lll. From the Hansard, it is evident that the Hon. Abdu Kantuntu did not even circulate the proposed amendment to Article 31 prior to moving his proposal on the said Article on the Floor of the House.

mmm. It is further evident from the Hansard that the Hon. Abdu Kantuntu only wrote to the Attorney General and the Chairperson of the Committee.

nnn. There was no consultation and/or public input in the amendment on Article 31 that moved by the Hon. Abdu Kantuntu and passed by the House.

ooo. The passage of this amendment offended Article 1(1) of the Constitution and the Rules of Procedure of Parliament and Article 94 of the Constitution.

ppp. The Constitution obliges Parliament to make rules to regulate its procedure and that of its Committees.

qqq. Parliament has always provided for consultation with stakeholders and the people in its Rules of Procedure in recognition of the Constitutional provision that all power belongs to the people.

rrr. That consultation with the people on every constitutional amendment is of cardinal importance and cannot be dispensed with.

sss. The act of Hon. Abdu Kantuntu proposing and/or moving a constitutional amendment on the Floor of the House ousted the power of the people to exercise their power in the constitutional amendment process and the resultant amendment is therefore null and void.

ttt. The introduction and passage of Article 31(2)(a) has the effect of perpetually subjecting the LGBTIQ+ community to inhuman and degrading treatment.

uuu. The effect of Article 31(2)(a) was to relegate the LGBTIQ+ community to subhuman status and was therefore an inhuman or degrading treatment by legislation.

vvv. The passage of Article 31(2)(a) offends Article 44(a) of the Constitution of the Republic of Uganda.

## **PRAYERS**

19. **WHEREFORE**, your humble Petitioners bring this Petition as aggrieved persons and in the public interest and humbly pray that this Honourable Court may be pleased to declare and order that:-

- (i) The consideration, passage and enactment of the Anti-Homosexuality Act, 2023 was inconsistent with and/or in contravention of Article 92 of the Constitution and the same is null and void to that extent.
- (ii) The consideration by the Legal and Parliamentary Affairs Committee, the Parliament of the Republic of Uganda and the ultimate enactment of the Anti-Homosexuality Bill in a period that was far below the forty-five (45)

days provided by the Rules is inconsistent with and/or in contravention of Article 94(1) of the Constitution and the same is null and void to that extent.

- (iii) The consideration by the Legal and Parliamentary Affairs Committee, the Parliament of the Republic of Uganda and the ultimate enactment and passage of the Anti-Homosexuality Bill in a period of six (6) days excluded and/or denied the people of Uganda contribution and/or participation in legislation and the exercise of their power in contravention of Articles 1(1),(2) and (3) & 38(2) of the Constitution and the same is null and void to that extent.
- (iv) The act of the Parliament of Uganda of passing the Anti-Homosexuality Bill, a Private Member's Bill, which had provisions, that had the effect of imposing a charge on the consolidated fund and other public funds of Uganda contravened Article 93(a)(ii) of the Constitution and is null and void to that extent.
- (v) Section 16(1) and (2) of the Anti-Homosexuality Act to the extent that it imposes a charge on the consolidated fund or any other public fund in Uganda is inconsistent with and contravenes Article 93(a)(ii) of the Constitution and is null and void.
- (vi) Section 2(1) and (2) of the Anti-Homosexuality Act to the extent it criminalizes consensual sex between adults of the same sex contravenes Article 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and is null and void.
- (vii) Section 2(3) and (4) of the Anti-Homosexuality Act to the extent that it criminalizes attempted consensual sex between adults of the same sex contravenes Article 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and is null and void.
- (viii) Section 3(1),(2)(c),(d),(e),(f),(h)&(j) of the Anti-Homosexuality Act to the extent that it criminalizes consensual sex between adults of the same sex contravenes Articles 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and the principle of legality enshrined under Article 28(12) of the Constitution and is null and void.
- (ix) Section 3(3) and (4) of the Anti-Homosexuality Act to the extent that it criminalizes attempted consensual sex between adults of the same sex contravenes Article 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and is null and void.




- (x) Section 4 to the extent that it imposes criminal liability on persons between the ages of zero (0) to eighteen (18), in as far as the definition of a child in Section 1 is a person below the age of 18 and omits to take cognizance of the age of criminal liability, is in contravention and inconsistent with Articles 20(1), 24, 34(1) of the Constitution and is null and void.
- (xi) Section 5(2) of the Anti-Homosexuality Act to the extent that it seeks to punish consensual same sex between adults contravenes and is inconsistent with Articles 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and is null and void.
- (xii) Section 6 of the Anti-Homosexuality Act to the extent that it criminalizes same sex between adults contravenes and is inconsistent with Articles 20(1), 21(1),(2),(3), 24, 27, 29(1)(b), 32(1), 43(1)(c) and 44(a) and 45 of the Constitution and the principle of legality enshrined under Article 28(12) of the Constitution and is null and void.
- (xiii) Section 7 of the Anti-Homosexuality Act in requiring editors, publishers, reporters, columnists, announcers, producers, film directors or any other person to seek authority from the victim or court before publishing any material tending to establish the identity of the victim and personal circumstances, establishes an unjustifiable restriction on the public's right to know, press freedom and the freedom of expression in trials that are open to the public, whittles away judicial independence and discretion and are therefore in contravention of and inconsistent with Articles 29 (1)(a) and 128 (1) and (2) of the Constitution and is null and void.
- (xiv) Section 7 of the Anti-Homosexuality Act to the extent that it is couched in onerous, vague terms and criminalizes the publication of any other information tending to establish the identity of a victim is inconsistent with and contravenes the principle of legality set out in Article 28(12) of the constitution and is therefore null and void.
- (xv) Section 8 of the Anti-Homosexuality Act to the extent that it purports to protect children only from same sex sexual acts, same sex picture, video, film or materials and does not criminalize the same in respect of heterosexual sex contravenes and is inconsistent with Articles 21(1),(2) and (3) of the Constitution and is therefore null and void.
- (xvi) Section 9 of the Anti-Homosexuality Act to the extent that it imposes onerous, vague and indeterminate responsibility on keepers of a house, owners, occupiers or managers of premises contravenes and is

inconsistent with the principle of legality enshrined in Articles 28(12), 40(2) and 43 of the Constitution and is therefore null and void.

- (xvii) Section 11 (2)(c) of the Anti-Homosexuality Act in criminalising funding, whether in kind or cash, to facilitate activities that encourage homosexuality or the observance or normalisation of conduct prohibited under the impugned Act inhibits the right of access to resources and the freedom of association and establishes undefined and vague obligations that creates an offence that is overly broad and are in contravention of and inconsistent with Article 28 (12) and Article 29 (1)(e) of the Constitution and is therefore null and void.
- (xviii) Section 11 (2)(d) of the Anti-Homosexuality Act in criminalising knowingly leasing or sub-leasing, use or allowing another person to use any house, building or establishment of the purpose of undertaking activities that encourage homosexuality or any other offence under the impugned Act provides undefined and vague obligations and creates an offence that is overly broad in contravention of the principle of legality under Article 28 (12) and 44 (c) of the Constitution and is therefore null and void.
- (xix) Section 11 (2)(e) of the Anti-Homosexuality Act in criminalising non-governmental organisations which promotes or encourages homosexuality or the observance or normalisation of conduct prohibited under the impugned Act provides for overly broad, undefined and vague obligations and inhibit the freedom of association and is in contravention of and inconsistent with Article 28 (12) and 29 (e) and 38 of the Constitution and is therefore null and void.
- (xx) Section 11(1),(2) and (3) of the Anti-Homosexuality Act to the extent that it is couched in broad, vague, indeterminate and infinite terms is inconsistent with and contravenes the principle of legality enshrined in Article 28(12), and the rights protected under Article 27(2), 29(1)(a)&(b), 40(2), 43 of the Constitution and is therefore null and void.
- (xxi) Sections 14(1),(2), (3) of the Anti-Homosexuality Act to the extent it is couched in broad, vague, indeterminate, infinite, and onerous terms is inconsistent with and in contravention of Articles 28(12), 40(2) & 43 of the Constitution and the same is null and void.
- (xxii) Section 15 of the Anti-Homosexuality Act to the extent it is couched in broad, vague, indeterminate, infinite, onerous terms is inconsistent with and in contravention of Articles 28(12), 40(2) & 43 of the Constitution and the same is null and void.

- (xxiii) Article 31(2)(a) offends Article 44(a) of the Constitution of the Republic of Uganda and the same is null and void.
- (xxiv) The provisions of the Anti-Homosexuality Act are a flagrant violation of the human rights guaranteed by the Constitution, as well as those enshrined in international law, including (i) the right to life, (ii) the right to equality and to be free from discrimination, (iii) the right to human dignity, (iv) the right to privacy, (v) the right to freedom of expression protected under Articles 21, 22, 23, 27 and 29(1)(a), 45 and 8A of the Constitution and guaranteed under the Universal Declaration of Human Rights ("UDHR"), International Covenant on Civil and Political Rights ("ICCPR"), African Charter on Human and Peoples' Rights ("ACHPR"), Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment ("CAT").
- (xxv) Permanent injunction restraining the Respondent and/or its agents from enforcing the impugned Act.
- (xxvi) An order directing the Respondent to pay the costs of the Petition.

DATED at Kampala this ..... 30<sup>th</sup> ..... day of ..... May ..... 2023

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M/S. AKAMPUMUZA & CO. ADVOCATES  
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