

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA
AT KAMPALA

CONSTITUTIONAL PETITION NO. _____ OF 2023

1. PROF. SYLVIA TAMALE
2. HON. FOX ODOI-OYWELOWO
3. DR. BUSINGYE KABUMBA
4. ANDREW M. MWENDA
5. SOLOME NAKAWEESI KIMBUGWE
6. DR. FRANK MUGISHA
7. KASHA JACQUELINE NABAGESERA
8. RICHARD SMITH LUSIMBO
9. ERIC NDAWULA
10. WILLIAMS APAKO
11. HUMAN RIGHTS AWARENESS AND PROMOTION FORUM (HRAPF)

} :::: PETITIONERS

VERSUS

ATTORNEY GENERAL OF UGANDA ::::::::::::::: RESPONDENT

PETITION

(Under articles 137(1) & (3)(a) and (b), (4) of the Constitution of the Republic of Uganda, 1995 (as amended) and the Constitutional Court (Petitions and References) Rules, S.I. No. 91/2005)

THE PETITION of PROF. SYLVIA TAMALE, HON. FOX ODOI OYWELOWO, DR. BUSINGYE KABUMBA, ANDREW M. MWENDA, SOLOME NAKAWEESI KIMBUGWE, DR. FRANK MUGISHA, KASHA JACQUELINE NABAGESERA, RICHARD SMITH LUSIMBO, ERIC NDAWULA, WILLIAMS APAKO, AND HUMAN RIGHTS AWARENESS AND PROMOTION FORUM (HRAPF), whose addresses for the purposes of this petition are stated at the end of this petition, STATES THAT:

1. The **First Petitioner** is a female adult Ugandan of sound mind who is a Professor of Law formerly at Makerere University, School of Law. She has conducted extensive research and is widely published in the areas of human

rights, gender and sexuality. She founded and coordinated the Law, Gender and Sexuality Research Project at the School of Law, Makerere University.

2. The **Second Petitioner** is a male adult Ugandan of sound mind who is an advocate of the Courts of Judicature with a distinguished public service record. He is a member of the 11th Parliament representing West Budama North Constituency, Tororo district, and a member of the Sectoral Committee on Legal and Parliamentary Affairs of Parliament. He is also the Chairperson of the Human Rights Committee of Parliament.
3. The **Third Petitioner** is a male adult Ugandan of sound mind who is a Constitutional Law Expert, Senior Lecturer and Acting Director of the Human Rights and Peace Centre (HURIPEC) at Makerere University, School of Law. He has also researched and is widely published on constitutional law, human rights and international law.
4. The **Fourth Petitioner** is a male adult Ugandan of sound mind, and an independent journalist of national and international repute. He is the founder and proprietor of *The Independent*, a current affairs news magazine and a John S. Knight Journalism Fellow at Stanford University, USA. He is a long-term advocate for media freedoms, freedom of expression, good governance and the rule of law.
5. The **Fifth Petitioner** is a female adult Ugandan of sound mind who is a Pan-African feminist activist, researcher and analyst on women's rights and gender justice. She is an international development consultant who has specialised in social justice, human rights and governance.
6. The **Sixth Petitioner** is a male adult Ugandan of sound mind and is the Coordinator of Sexual Minorities Uganda (SMUG). He has dedicated his life to the national and global campaign to fight discrimination against sexual and gender minorities. He is a recipient of the 2011 Robert F. Kennedy Human Rights Award and the 2011 Thorolf Rafto Prize. He was a nominee for the **Nobel Peace Prize** in 2017. He has also published widely in the area of sexual and gender minorities.
7. The **Seventh Petitioner** is an adult Ugandan of sound mind, a human rights activist, founder and former Executive Director of Freedom and Roam

Uganda (FARUG). She is an ardent advocate for equality and non-discrimination against sexual and gender minorities. She was the recipient of the 2011 Martin Ennals Award for Human Rights Defenders.

8. The **Eighth Petitioner** is a male adult Ugandan of sound mind who is the founder and Director General of the Uganda Key Populations Consortium (UKPC) and is a renowned human rights and HIV advocate nationally and internationally.
9. The **Nineth Petitioner** is a male adult Ugandan of sound mind. He is a human rights advocate against all forms of discrimination against sexual and gender minorities with personal experience of marginalisation, discrimination, and abuse based on sexual orientation.
10. The **Tenth Petitioner** is a transgender male adult Ugandan of sound mind. He is the Executive Director of Tranz Network Uganda, an umbrella of organisations working on the human rights of transgender persons.
11. The **Eleventh Petitioner** is a human rights organisation incorporated under the laws of Uganda as a company limited by guarantee and registered and licensed as an indigenous organisation under the Non-Governmental Organisations Act, 2016. It provides legal aid services to marginalised people, conducts research and advocates for legal reform to attain a society where the human rights of all, including marginalised persons are respected, protected and upheld.
12. All the **Petitioners** have legal capacity to present this petition before this Honourable Court.
13. The **Respondent** is the Attorney General of the Republic of Uganda with capacity to sue or be sued on behalf of the government.
14. Your **forementioned Petitioners** are committed proponents of the rule of law, fundamental human rights and freedoms and the promotion of progressive constitutionalism, and have an interest in the matters herein which are said to be inconsistent with and in contravention of the relevant provisions of the Constitution of the Republic of Uganda, 1995 (as amended) (hereafter the Constitution), as follows:

- (a) **THAT** the enactment of the Anti-Homosexuality Act, 2023 by the 11th Parliament on 2nd May 2023 without meaningful and adequate public participation is inconsistent with and in contravention of Articles 1, 2, 8A, 20, 36, 38, 79 and Objective II (1) of the National Objectives and Directive Principles of State Policy of the Constitution.
- (b) **THAT** the conduct of the Speaker of the 11th Parliament during the second and third readings of the Anti-Homosexuality Bill, 2023, on the 21st March 2023, and the second and third readings of the Anti-Homosexuality Bill, 2023 on 2nd May 2023, amounted to bias, and is inconsistent with and in contravention of Article 89(1) and (2) of the Constitution.
- (c) **THAT** sections 1, 2, 3, and 6 of the Anti-Homosexuality Act, 2023, in criminalising consensual same-sex sexual activity among adults in private, are inconsistent with and in contravention of:
- (i) the right to equality and non-discrimination guaranteed under Articles 20 and 21(1) & (2) of the Constitution.
 - (ii) the right to dignity guaranteed under Articles 20, 24 and 44(a) of the Constitution.
 - (iii) the right to liberty guaranteed under Articles 20 and 23 of the Constitution.
 - (iv) the right to privacy guaranteed under Articles 20 and 27 of the Constitution.
 - (v) the right to health guaranteed under Objective XIV(b) of the National Objectives and Directive principles of State Policy, and Articles 8A, 20, 45 and 287 of the Constitution.
- (d) **THAT** section 4 of the Anti-Homosexuality Act, 2023, in providing for criminal liability of every child below 18 years is inconsistent with and in contravention of the rights of the child guaranteed under Articles 20, 34, 45, 8A and 287 and Objective XXVIII of the National Objectives and Directive Principles of State Policy of the Constitution.
- (e) **THAT** sections 9 and 11(1) and (2)(d) of the Anti-Homosexuality Act, 2023, by making it an offence for any person to allow and/or lease or sub-lease premises to be used for purposes of homosexuality or “activities that encourage homosexuality”, is inconsistent with and in contravention of:
- (i) the principle of legality guaranteed under Articles 20, 28(12) and 44(c) of the Constitution.

- (a) **THAT** the enactment of the Anti-Homosexuality Act, 2023 by the 11th Parliament on 2nd May 2023 without meaningful and adequate public participation is inconsistent with and in contravention of Articles 1, 2, 8A, 20, 36, 38, 79 and Objective II (1) of the National Objectives and Directive Principles of State Policy of the Constitution.
- (b) **THAT** the conduct of the Speaker of the 11th Parliament during the second and third readings of the Anti-Homosexuality Bill, 2023, on the 21st March 2023, and the second and third readings of the Anti-Homosexuality Bill, 2023 on 2nd May 2023, amounted to bias, and is inconsistent with and in contravention of Article 89(1) and (2) of the Constitution.
- (c) **THAT** sections 1, 2, 3, and 6 of the Anti-Homosexuality Act, 2023, in criminalising consensual same-sex sexual activity among adults in private, are inconsistent with and in contravention of:
- (i) the right to equality and non-discrimination guaranteed under Articles 20 and 21(1) & (2) of the Constitution.
 - (ii) the right to dignity guaranteed under Articles 20, 24 and 44(a) of the Constitution.
 - (iii) the right to liberty guaranteed under Articles 20 and 23 of the Constitution.
 - (iv) the right to privacy guaranteed under Articles 20 and 27 of the Constitution.
 - (v) the right to health guaranteed under Objective XIV(b) of the National Objectives and Directive principles of State Policy, and Articles 8A, 20, 45 and 287 of the Constitution.
- (d) **THAT** section 4 of the Anti-Homosexuality Act, 2023, in providing for criminal liability of every child below 18 years is inconsistent with and in contravention of the rights of the child guaranteed under Articles 20, 34, 45, 8A and 287 and Objective XXVIII of the National Objectives and Directive Principles of State Policy of the Constitution.
- (e) **THAT** sections 9 and 11(1) and (2)(d) of the Anti-Homosexuality Act, 2023, by making it an offence for any person to allow and/or lease or sub-lease premises to be used for purposes of homosexuality or “activities that encourage homosexuality”, is inconsistent with and in contravention of:
- (i) the principle of legality guaranteed under Articles 20, 28(12) and 44(c) of the Constitution.

- (ii) the obligation to respect, uphold, and promote human rights from infringement by private persons under Articles 20 and 27(1) of the Constitution.
 - (iii) the right to property and privacy of property guaranteed under Articles 26 and 27(2) of the Constitution.
 - (iv) the right to dignity and freedom from torture, cruel, inhuman and degrading treatment, guaranteed under Articles 20, 24, and 44(a) of the Constitution.
 - (v) the right to carry on any lawful occupation, trade or business guaranteed under Articles 20 and 40(2) of the Constitution.
- (f) **THAT** section 11(1) and (2)(a) of the Anti-Homosexuality Act, 2023, by prohibiting the encouragement or persuasion of any person to perform a sexual act with another person of the same sex or to do any other act that constitutes an offence under the Act, without defining what amounts to “encouragement” or “persuasion” is vague, ambiguous, and overly broad, and therefore inconsistent with and in contravention of the principle of legality under Articles 20, 28(12) and 44(c) of the Constitution.
- (g) **THAT** section 11(1) and (2)(b) of the Anti-Homosexuality Act, 2023, by criminalising the publication, communication, or distribution of any material that promotes or encourages homosexuality, is inconsistent with and in contravention of:
- (i) the principle of legality guaranteed under Articles 20, 28(12) and 44(c) of the Constitution.
 - (ii) the freedoms of speech and expression as guaranteed under Articles 20 and 29(1)(a) of the Constitution.
 - (iii) the freedoms of thought, conscience and belief, including academic freedom, guaranteed under Articles 20 and 29(1)(b) of the Constitution.
 - (iv) the right to impart, access and receive information guaranteed under Articles 20, 29(1)(a), 45 and 287 of the Constitution.
- (h) **THAT** section 11(1) and (2)(c) of the Anti-Homosexuality Act, 2023, by criminalising any form of financial support to “facilitate” activities that “encourage” homosexuality or the “observance” or “normalization” of homosexuality, is inconsistent with and in contravention of:
- (i) the principle of legality under Articles 20, 28(12) and 44(c) of the Constitution.

- (ii) the right to dignity and freedom from torture, cruel, inhuman and degrading treatment, guaranteed under Articles 20, 24 and 44(a) of the Constitution.
 - (iii) the right to equality and non-discrimination guaranteed under Article 20, 21(1) & (2) of the Constitution.
 - (iv) the right to health guaranteed under Objectives XIV(b) and XX of the National Objectives and Directive Principles of State Policy and Articles 8A, 45 and 287 of the Constitution.
- (i) **THAT** section 11(1) and 2(e) of the Anti-Homosexuality Act, 2023, by criminalising the operation of any organisation which “promotes” or “encourages” homosexuality or “observance or “normalisation” of conduct prohibited under the Act, is inconsistent with and in contravention of:
- (i) the principle of legality guaranteed under Articles 20, 28(12) and 44(c) of the Constitution.
 - (ii) the right to a fair hearing guaranteed under Articles 20, 28(1), (3)(c) &(d) and 44(c) of the Constitution.
 - (iii) the right to health guaranteed under Objectives XIV (b) and XX of the National Objectives and Directive Principles of State Policy, and Articles 8A, 20, 45 and 287 of the Constitution.
 - (iv) the right to freedom of association guaranteed under Articles 20, and 29(1)(e) of the Constitution.
 - (v) the rights of minorities to protection guaranteed under Articles 20 and 36 of the Constitution.
 - (vi) the right to practice one’s profession, occupation, trade or business guaranteed under Article 20, and 40(2) of the Constitution.
 - (vii) the right of every citizen to participate in civic activities guaranteed under Articles 20, and 38 of the Constitution.
 - (viii) the rights of women guaranteed under Articles 20 and 33 of the Constitution.
- (j) **THAT** section 12 of the Anti-Homosexuality Act, 2023, by prohibiting and disqualifying persons convicted of an offence of homosexuality from employment, is inconsistent with and in contravention of:
- (i) the right to practice one’s profession or carry on an occupation, trade or business guaranteed under Articles 20 and 40(2) of the Constitution.

- (ii) the right to equality and non-discrimination guaranteed under Articles 20, and 21(1) & (2) of the Constitution.
 - (iii) the right to dignity and freedom from cruel, inhuman and degrading treatment guaranteed under Articles 20, 24 and 44(a) of the Constitution.
- (k) **THAT** section 13 of the Anti-Homosexuality Act, 2023, by requiring compulsory disclosure of one's criminal record when seeking employment is inconsistent with and in contravention of:
 - (i) the right to equality and freedom from discrimination guaranteed under Articles 20, 21(1) & (2) of the Constitution.
 - (ii) the right to dignity and freedom from cruel, inhuman and degrading treatment guaranteed under Articles 20, 24 and 44(a) of the Constitution.
- (l) **THAT** section 14(1) and (2) of the Anti-Homosexuality Act, 2023, by imposing a duty on everyone to report to the police any person on mere suspicion that the person has committed or intends to commit an act of homosexuality or any other offence under the Act is inconsistent with and in contravention of:
 - (i) the right to a fair hearing guaranteed under Articles 20, 28(3) & (12) and 44(c) of the Constitution.
 - (ii) the right to practice one's profession, lawful occupation, trade or business guaranteed under Article 20 and 40(2) of the Constitution.
 - (iii) the right to access to legal and other facilities guaranteed under Articles 28(3)(c) & (d) and 44(c) of the Constitution.
 - (iv) the right to privacy guaranteed under Articles 20 and 27 of the Constitution.
 - (v) the right to health under Objectives XIV (b) and XX of the National Objectives and Directive Principles of State Policy, and Articles 8A, 20, 45 and 287 of the Constitution.

THAT the Anti-Homosexuality Act, 2023, by promoting and encouraging the targeting of a specific group on account of their sexual orientation and/or gender identity, institutionalises a culture of hatred and creates a class of social misfits, which is inconsistent with and in contravention of the right to dignity guaranteed under Articles 2(1) & (2), 20, 24 and 44(a) of the Constitution.

16. **THAT** the Anti-Homosexuality Act, 2023, by promoting and encouraging discrimination and stigmatisation against a specific group of people on the basis of their sexuality and gender identity, is inconsistent with and in contravention of the duty of the government to respect, protect and promote the rights and freedoms of persons likely to be affected by the Act as stipulated under Articles 2(1) & (2), 20, 21(1) & (2), and 32(1) & (2) of the Constitution.
17. **THAT** the Anti-Homosexuality Act, 2023, by criminalising consensual same sex sexual activity among adults, is inconsistent with the obligations relating to rights and freedoms guaranteed under international human rights instruments ratified or acceded to by Uganda and is in contravention of Objective XXVIII(I) (b) of the National Objectives and Directive principles of State Policy, and Articles 2(1) & (2), 8A, 20, 45 and 287 of the Constitution.
18. **THAT** the Petition is supported by the affidavits of the Petitioners, additional affidavits of other deponents and any other relevant evidence that may be adduced at the hearing.
19. **Your Petitioners'** advocates are: Onyango & Co Advocates, Plot 185, House B, Bbunga, Ggaba Road, P. O. Box 35881, Kampala, and Human Rights Awareness and Promotion Forum (HRAPF), Plot 1 Nsubuga Road, off Ntinda–Kiwatule Road, P. O. Box 25603, Kampala.
20. **Your Petitioners'** addresses of service for the purpose of this Petition are: Onyango & Co. Advocates, Plot 185, House B, Bbunga, Ggaba Road, P. O. Box 35881, Kampala and Human Rights Awareness and Promotion Forum (HRAPF), Plot 1, Nsubuga Road, off Ntinda–Kiwatule Road, Ntinda, Kampala P. O. Box 25603, Kampala, Uganda.
21. **The Respondent's** address is: Attorney General's Chambers, Ministry of Justice and Constitutional Affairs, Baumann House, Parliament Avenue, P. O. Box 7183, Kampala, Uganda.

WHEREFORE Your humble Petitioners pray that the Honourable Court makes the following Declarations:

- (a) **THAT** the process of enacting the Anti-Homosexuality Act, 2023 without meaningful and adequate public participation was inconsistent

with and in contravention of Articles 1, 2, 8A, 20, 36, 38, 79 and Objective II (1) of the National Objectives and Directive Principles of State Policy of the Constitution, and therefore the Anti-Homosexuality Act is null and void in its entirety.

- (b) **THAT** the conduct of the Speaker of the 11th Parliament during the debate and passing of the Anti-Homosexuality Bill, 2023 amounted to bias and is inconsistent with and in contravention of Articles 20, 89(1) and (2) of the Constitution.
- (c) **THAT** sections 1, 2, 3, and 6 of the Anti-Homosexuality Act, 2023, are inconsistent with and in contravention of Objective XIV(b) of the National Objectives and Directive Principles of State Policy and Articles 8A, 20, 21(1) & (2), 23, 24, 27, 44(a), 45 and 287 of the Constitution, and are therefore null and void.
- (d) **THAT** section 4 of the Anti-Homosexuality Act, 2023, is inconsistent with and in contravention of Article 34, 8A, 20, 45, 287 and Objective XXVIII of the National Objectives and Directive Principles of State Policy of the Constitution, and is therefore null and void.
- (e) **THAT** sections 9 and 11(1) and (2)(d) of the Anti-Homosexuality Act, 2023, are inconsistent with and in contravention of Articles 20, 24, 26, 27(2), 28(12), 40(2) and 44(a) & (c) of the Constitution, and are therefore null and void.
- (f) **THAT** section 11(1) and (2)(a) of the Anti-Homosexuality Act, 2023, is inconsistent with and in contravention of Articles 20, 28(12), 29(1)(a) & (b), 44(c) and 45 of the Constitution, and is therefore null and void.
- (g) **THAT** section 11(1) and (2)(c) of the Anti-Homosexuality Act, 2023, is inconsistent with and in contravention of Objectives XIV(b) and XX of the National Objectives and Directive Principles of State Policy and Articles 8A, 20, 24, 28(12), 44(a) & (c) and 45 of the Constitution, and is therefore null and void.
- (h) **THAT** section 11(1) and (2)(e) of the Anti-Homosexuality Act, 2023, is inconsistent with and in contravention of Objectives XIV(b) and XX of the National Objectives and Directive Principles of State Policy and Articles 8A, 20, 28(1), (3)(c) & (d), 29(1)(e), 33, 36, 38, 40(2), 44(a) & (c) and 45 of the Constitution, and is therefore null and void.
- (i) **THAT** section 12 of the Anti-Homosexuality Act, 2023, is inconsistent with and in contravention of Articles 21(1) & (2) and 40(2) of the Constitution, and is therefore null and void.

- (j) **THAT** section 13 of the Anti-Homosexuality Act, 2023, is inconsistent with and in contravention of Articles 20, 21(1) & (2), 24 and 44(a) of the Constitution, and is therefore null and void.
- (k) **THAT** section 14(1) and (2) of the Anti-Homosexuality Act, 2023, is inconsistent with and in contravention of Articles 20, 21(1) & (2), 28(3) & (12), 29(1)(a), (b) & (c), 40(2) and 44(c) of the Constitution, and is therefore null and void.
- (l) **THAT** the Anti-Homosexuality Act, 2023 institutionalises a culture of hatred and creates a class of social misfits, which is inconsistent with and in contravention of Articles 2(1) & (2), 20, 24, and 44(a) of the Constitution, and is therefore null and void in its entirety.
- (m) **THAT** the Anti-Homosexuality Act, 2023 promotes and encourages discrimination and stigmatisation against a specific group of people and is inconsistent with and in contravention of Articles 2(1) & (2), 20, 21(1) & (2), and 32(1) & (2) of the Constitution, and is therefore null and void in its entirety.
- (n) **THAT** the Anti-Homosexuality Act, 2023 criminalises consensual same sex sexual activity among adults, and is inconsistent with and in contravention of Objective V(ii) of the National Objectives and Directive principles of State Policy, and Articles 2(1) & (2), 8A, 20, 45 and 287 of the Constitution, and thus null and void in its entirety.
22. Your humble Petitioners pray for a permanent injunction restraining the Respondent and any of its agents from the implementation of the Anti-Homosexuality Act, 2023.
23. Your humble Petitioners further pray that the Respondent bears the costs of this Petition.

DATED at Kampala this 29th day of May 2023.



COUNSEL FOR THE PETITIONERS



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