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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21-25 August 2017

Opinion No. 57/2017 concerning Stella Nyanzi (Uganda)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in its resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 9 May 2017 the Working Group transmitted a communication to the Government of Uganda concerning Stella Nyanzi. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Stella Nyanzi is a prominent academic, human rights defender and social activist in Uganda. She is 42 years old and the mother of three children. According to the source, Ms. Nyanzi has been a leading voice in Uganda in relation to women's rights. Among other things, she has advocated for the need to provide free sanitary pads to schoolgirls. She has also been a vocal advocate for the rights of lesbian, gay, bisexual, transgender and intersex people, a particularly sensitive topic in Uganda.

5. The source notes that Ms. Nyanzi is also an outspoken social activist, who has been critical of the Government and President Museveni. In the run-up to the general elections in February 2016, she openly supported Kizza Besigye, the presidential candidate of the opposition Forum for Democratic Change. She writes extensively on her Facebook page, which has more than 140,000 followers. On 27 January 2017, Ms. Nyanzi referred to President Museveni as a "pair of buttocks". On 15 February 2017, she criticized Janet Museveni, the First Lady and Minister of Education, for telling parliament that the Government could not fulfil an electoral pledge to provide free sanitary pads to schoolgirls. Lack of sanitary pads for schoolgirls has reportedly been pointed out as one of the leading causes of girls dropping out of school in Uganda. Subsequently, Ms. Nyanzi started the "Pads4GirlsUG" campaign to provide the pads herself. The campaign has collected thousands of dollars and gained widespread publicity.

Background

6. The source recalls that on 18 February 2016, Uganda held its fifth presidential and legislative elections since President Museveni came to power in 1986. President Museveni was re-elected with 61 per cent of the vote, while Mr. Besigye finished second with 36 per cent of the vote. The source emphasizes that the rights to freedom of expression, assembly and association continue to be violated in Uganda and that the media has been facing increasing government restrictions and intimidation, leading to self-censorship. The source also notes that although the Constitutional Court nullified the anti-homosexuality act in 2014, there are concerns that similar measures could still become law. Same-sex conduct remains criminalized under the colonial-era law in Uganda. The source submits that the new law on non-governmental organizations also raises concerns about the criminalization of legitimate advocacy for the rights of lesbian, gay, bisexual, transgender and intersex people.

Arrest and detention

7. According to the source, Ms. Nyanzi's social activism and criticism of the Government has led to escalating harassment and repression of her by the authorities, particularly in recent months. On 6 March 2017, she was summoned by the Directorate of Criminal Investigation and Crime Intelligence for hours of interrogation regarding her critical Facebook posts about President Museveni and the First Lady. On 19 March 2017, she was prevented from boarding a plane to go to an academic conference in the Netherlands. On 31 March 2017, Ms. Nyanzi was suspended from her job as a research fellow at Makerere University, Uganda's largest public university, for criticizing the First Lady, who, as Minister of Education, is in charge of Makerere University.

8. The source reports that on 3 April 2017, armed individuals raided the home of Ms. Nyanzi and threatened her three children and a domestic worker. The source also reports that the sister of Ms. Nyanzi was followed by armed individuals and some of her supporters were attacked.

9. According to the source, following months of continued harassment, the Ugandan police arbitrarily arrested Ms. Nyanzi on 7 April 2017. That day, she had been invited to be a keynote speaker at an event held in a hotel in Kampala. At the end of her speech, the hotel was surrounded by "intelligence operatives" and Ms. Nyanzi tried to leave through a back door. However, the source reports that eight men in plainclothes, three of whom were armed, forcibly removed Ms. Nyanzi from her car and put her into the back of their vehicle.

According to the source, the men were police officers from the "Flying Squad", a unit in charge of violent crimes.

10. The source reports that Ms. Nyanzi was taken to the Kira Division police station, where she was allegedly beaten and denied the opportunity to see her lawyer for 18 hours. When she finally met her lawyer, her clothes had been torn and she had reportedly been denied feminine hygiene products.

11. On 8 April 2017, the police confirmed the arrest of Ms. Nyanzi and said that she would be brought to court on two counts, namely cyberharassment and offensive communication under the Computer Misuse Act. The source notes that on 11 April 2017, the Inspector General of Police publicly stated that he had ordered the arrest of Ms. Nyanzi because of her comments on social media.

12. Also on 8 April 2017, a prominent journalist was reportedly abducted and driven blindfolded to a secret location where she was beaten and interrogated for hours. The kidnappers allegedly referred to the journalist's social media post defending Ms. Nyanzi's criticism of the First Lady and the journalist was forced at gun point to delete all her social media postings relating to issues for which Ms. Nyanzi has advocated.

Prosecution

13. On 10 April 2017, Ms. Nyanzi appeared before the Bugandan Road magistrate's court. The source notes that according to the charge sheet, dated 23 March 2017, Ms. Nyanzi was charged on two counts:

(a) Count 1 (cyberharassment under section 24 (1) and (2) (a) of the Computer Misuse Act, 2011) referred to the Facebook post of Ms. Nyanzi dated 28 January 2017 alluding to the President as "a pair of buttocks", an expression considered obscene or indecent;

(b) Count 2 (offensive communication under section 25 of the Computer Misuse Act, 2011) referred to the fact that between January and March 2017, Ms. Nyanzi "willingly and repeatedly used electronic communication to post messages offensive in nature via Facebook, transmitted over the Internet to disturb or attempted to disturb the peace, quiet or the right of privacy of his Excellency the President of Uganda Yoweri Kaguta Museveni with no purpose of legitimate communication".

14. Ms. Nyanzi pleaded not guilty to both charges. According to the source, Ms. Nyanzi and her lawyers were caught off guard at the hearing, when the prosecution filed an application for her sanity to be ascertained, invoking the Mental Treatment Act of 1938. The prosecution wanted to detain her at a mental hospital for 14 days to carry out a mental examination. The source stresses that Ms. Nyanzi and her lawyers were not given adequate time to prepare their defence against this application because it was served on them at court. The Court declined to hear Ms. Nyanzi's bail application until after disposing of the application by the prosecution for a mental examination.

15. The case was adjourned to 25 April 2017 and Ms. Nyanzi was remanded to Luzira prison, where she is still detained. The source reports that Luzira is a maximum security prison, where death row inmates are detained, and that Ms. Nyanzi is allowed fewer visits than the norm.

16. The source notes that during an interview, the government spokesperson admitted that the case of Ms. Nyanzi was not properly managed but also reportedly added "I doubt Nyanzi or the forces behind her, which is Besigye and company plus the LGBT lobby, can sustain an extended political fight with us Government on any issue".

17. According to the source, on 12 April 2017, doctors from a government mental hospital attempted to conduct a forced mental examination of Ms. Nyanzi at Luzira Prison, without her consent or a court order. Ms. Nyanzi managed to resist the forceful examination. The source submits that mental examinations in Uganda are usually reserved for offences such as statutory rape.

18. The source reports that Ms. Nyanzi appeared before a High Court judge on 25 April 2017 to seek bail. Ms. Nyanzi also asked the High Court to stop the magistrate's court from

considering the application by the State to have her sanity ascertained. However, the High Court denied this request and stated that her sanity should first be ascertained before applying for bail. The High Court noted that the State could seek to carry out a mental examination of anyone and that the magistrate's court had the power to entertain such an application. The High Court decided that Ms. Nyanzi could apply for bail only after the determination of the application for her mental examination, currently scheduled for 10 May 2017. In the meantime, Ms. Nyanzi was sent back to Luzira prison. Nevertheless, the source notes that the High Court judge criticized the magistrate's court for not having given Ms. Nyanzi the right to apply for bail.

19. The source alleges that the detention of Ms. Nyanzi constitutes an arbitrary deprivation of her liberty under categories I, II, III and V.

Arbitrary detention under category I

Violation of domestic regulations on pretrial detention

20. The source notes that the Human Rights Committee has interpreted article 9 (1) of the Covenant, ratified by Uganda on 21 June 1995, as meaning that "procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures".[1] Article 9 (1) requires compliance with domestic rules that define such procedures for arrest, such as specifying when a warrant is required and permitting access to counsel.[2] The source recalls that article 23 (4) (b) of the Ugandan Constitution provides that the accused detainee must be brought before a court no later than 48 hours from the time of his or her arrest. The source submits that any time in excess of 48 hours that the accused spends in custody without being brought before a court constitutes unlawful arrest and detention.

21. According to the source, the detention of Ms. Nyanzi violates the constitutional limit of 48 hours, as she was arrested and detained at the Kira Division police station on 7 April 2017 and only brought before a judge on 10 April 2017. As Ms. Nyanzi's detention at the police station exceeded 48 hours, the source submits that her detention was unconstitutional and had no legal basis. The source considers that Ms. Nyanzi's detention is therefore arbitrary under category I.

Charges without merit and that cannot be used as a basis to justify continued detention

22. The source submits that the two charges brought against Ms. Nyanzi cannot justify her pretrial detention, as they were construed in an overly broad manner and the specific application to Ms. Nyanzi violates both domestic and international law on freedom of opinion and expression (article 29 of the Constitution of Uganda; article 19 of the Covenant and article 19 of the Universal Declaration on Human Rights).

23. Ms. Nyanzi is charged with sections 24 (1) and (2) (a) and 25 of the Computer Misuse Act. Section 24 (1) and (2) (a) makes it an offence to "mak[e] any request, suggestion or proposal which is obscene, lewd, lascivious or indecent". The source notes that the terms "obscene, lewd, lascivious or indecent" are not defined anywhere in the Act and leave room for misinterpretation and discretion. Similarly, section 25 of the Act criminalizes communication that "disturbs or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication", without explaining what is meant by "disturb or attempts to disturb" or "legitimate communication". The source submits that both sections are vaguely worded and are open to broad interpretation, which makes it impossible for people to know which actions or communications would violate these provisions.

24. According to the source, as applied in the case of Ms. Nyanzi, the Government is utilizing this overly broad interpretation to unlawfully restrict speech that is clearly

[1] See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 23.

[2] Ibid.

permissible and protected under international human rights law and the Constitution. As such, the source submits that sections 24 and 25 of the Act cannot be considered as "prescribed by law" and cannot be considered as legitimate restrictions to freedom of expression. Since the provisions used to justify the pretrial detention of Ms. Nyanzi are not legitimate laws, the source considers her detention as arbitrary under category I.

Arbitrary detention under category II

25. According to the source, the detention of Ms. Nyanzi is arbitrary under category II because her detention results from the exercise of her fundamental right to freedom of opinion and expression.

26. The source recalls that the Human Rights Committee has specifically recognized that the protection provided by article 19 (2) of the Covenant "includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment".[3]

27. The source also notes that the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. It refers to the Working Group on Arbitrary Detention, which has recognized the necessity to "subject interventions against individuals who may qualify as human rights defenders to particularly intense review".[4] This "heightened standard of review" by international bodies is especially appropriate where there is a "pattern of harassment" by national authorities targeting such individuals.[5]

28. According to the source, the Government of Uganda has a well-documented pattern of attacking and attempting to silence its opponents and critics through harassment and arbitrary detention. The source submits that the authorities targeted Ms. Nyanzi — a long-time critic of the Government and the First Family — to prevent her from making continued criticisms of the Government, including on issues such as its failure to uphold the presidential promise to provide sanitary pads to schoolgirls.

29. Given her work as scholar, social activist and human rights defender, the source notes that Ms. Nyanzi enjoys special protection under international law with respect to any detention related to her advocacy. The source submits that the detention of Ms. Nyanzi does not meet the "particularly intense review" mandated by the jurisprudence of the Working Group and should be considered arbitrary under category II.

Arbitrary detention under category III

30. The source considers that the detention of Ms. Nyanzi should also be considered arbitrary under category III for the reasons mentioned below.

Detention without a judicial order and violation of the right to be informed of charges

31. According to the source, the authorities violated Ms. Nyanzi's right to be detained by virtue of a judicial order and to be informed of the reasons for her arrest, (as provided by articles 9 (1) and (2) and 14 (3) (a) of the Covenant; principles 2, 10 and 13 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and article 23 of the Constitution).

32. The source notes that the individuals who carried out the arrest of Ms. Nyanzi did not introduce themselves; did not inform her of the reason for her arrest; and did not show an arrest warrant. Moreover, the source reports that when Ms. Nyanzi was in detention and without the support of a lawyer, the police interrogated her and attempted to record a statement, to which she objected. Ms. Nyanzi was only formally informed of the charges against her when they were produced in court.

[3] See communication No. 1128/2002, *De Morais v. Angola*, Views adopted on 29 March 2005, para. 6.7.

[4] See opinion No. 62/2012, para. 39.

[5] See, for example, opinion No. 39/2012, para. 45.

Violation of the right to be brought promptly before a judge and be tried without undue delay

33. According to the source, by failing to bring Ms. Nyanzi before the court within 48 hours, detaining her incommunicado for 18 hours before her lawyer could see her and delaying her bail hearing through an application for a mental examination, of which she had not been informed, the Government violated her right to be brought promptly before a judge and tried without undue delay (as provided by article 9 (3) and (4) of the Covenant; principles 4, 11 (1), 32 and 37 of the Body of Principles; and article 23 (4) (b) of the Constitution).

34. Given the absence of an arrest warrant, the source also submits that the police violated section 17 of the Criminal Procedure Code which states that for a non-serious offence a person must be released on a bond if it is "not practicable" to bring that person before a magistrate's court within 24 hours of their arrest. A request to release Ms. Nyanzi on a police bond was reportedly denied by the Kira Division police officer under the pretext that he did not have the authority to grant her such a bond.

Violation of the right to prepare an adequate defence

35. According to the source, the authorities violated the right of Ms. Nyanzi to have adequate time and facilities for the preparation of her defence (as provided by article 14 (3) (b) of the Covenant and article 28 (3) (c) of the Constitution).

36. On 10 April 2017, the prosecution applied to the magistrate's court to submit Ms. Nyanzi to a mental examination. The source reports that Ms. Nyanzi and her counsel were not informed of such an application until they arrived at court and were not afforded adequate time to prepare their defence. Because Ms. Nyanzi was not able to prepare her defence against the application in advance, the hearing was adjourned, which also delayed the hearing on her bail application.

Violation of the right to be presumed innocent until proven guilty

37. The source considers that by placing Ms. Nyanzi in a maximum security prison with convicted detainees; forcing her to undergo a mental examination; and allowing her fewer visitors than other detainees, the authorities violated the right of Ms. Nyanzi to be presumed innocent until proven guilty (as provided by articles 10 (2) (a) and 14 (2) of the Covenant; article 11 (1) of the Universal Declaration on Human Rights; principles 8 and 36 of the Body of Principles; and article 28 (3) (a) of the Constitution).

Violation of the right to be free from cruel, inhuman, or degrading treatment

38. According to the source, by allegedly beating Ms. Nyanzi at the Kira Division police station, not allowing her access to feminine hygiene products and attempting to force a mental examination on her, the Government violated her right to be free from cruel, inhuman and degrading treatment and torture and her right to be treated with humanity and with respect for the inherent dignity of the human person (as protected by articles 7 and 10 (1) of the Covenant; articles 1, 2, 4, 5, 6 and 7 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; article 5 of the Universal Declaration on Human Right; principles 1 and 6 of the Body of Principles; and articles 24 and 44 of the Constitution).

Violation of the right to examine witnesses against the defendant

39. According to the source, the prosecution asked the court to subject Ms. Nyanzi to a mental examination based on an affidavit by the head of the police media crime unit who, based only on his interactions with Ms. Nyanzi and without being an expert, claimed that she had mental health issues. The affidavit claimed that Ms. Nyanzi went through "erratic episodes" and "made unusual behaviour" while she was detained at the Kira District police station. The affidavit also attached a photo of her protest in 2016 as evidence of her insanity and claimed — without producing any evidence — that Ms. Nyanzi was at one time admitted to a mental facility. However, the source points out that Ms. Nyanzi's lawyers were not allowed the opportunity to cross-examine the head of the police media crime unit,

who was not present at the hearing, and therefore could not examine his character or competency.

40. The source considers that by failing to provide Ms. Nyanzi's lawyers with the opportunity to cross-examine the head of the police media crime unit, the authorities violated the right of Ms. Nyanzi to examine witnesses against her (as protected by article 14 (3) (e) of the Covenant).

Arbitrary detention under category V

41. Finally, the source submits that the detention of Ms. Nyanzi is also arbitrary under category V, as her detention is due to her political opinions, political participation and status as a social activist and human rights defender.

Response from the Government

42. On 9 May 2017, the Working Group transmitted the allegations from the source to the Government through its regular communication procedure. The Working Group requested the Government to provide detailed information by 10 July 2017 on the current situation of Ms. Nyanzi and any comments which it might have on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds invoked by the authorities to justify her arrest and continued detention, and to provide details regarding the conformity of the relevant legal provisions and proceedings with international law, in particular human rights treaties that it had ratified. Moreover, the Working Group called upon the Government to ensure Ms. Nyanzi's physical and mental integrity.

43. The Working Group regrets that it did not receive a response from the Government, nor did the Government request an extension of the time limit for its reply, as provided for in paragraph 15 of the Working Group's methods of work.

Discussion

44. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

45. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

46. The Working Group also reiterates that it applies a heightened standard of review in cases where the freedom of expression and opinion is restricted or where human rights defenders are involved.[6] Ms. Nyanzi's role as a prominent academic and social activist defending women's rights and the rights of lesbian, gay, bisexual, transgender and intersex persons requires the Working Group to undertake this kind of strict scrutiny.[7]

[6] See, for example, opinion No. 38/2017, para. 95; opinion No. 62/2012, para. 39; opinion No. 54/2012, para. 29; and opinion No. 64/2011, para. 20. Domestic authorities and international supervisory bodies should apply the heightened standard of review of government action, especially when there are claims of a pattern of harassment. See opinion No. 39/2012, para. 45. See also the Declaration on Human Rights Defenders, article 9 (3).

[7] Human rights defenders in particular have the right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through those and other appropriate means, to draw public attention to such matters, see the Declaration on Human Rights Defenders, article 6 (c). Human rights defenders have the right to investigate, gather information regarding human rights violations and report on them, see opinion No. 8/2009, para. 18.

Category I

47. The Working Group will examine the relevant categories applicable to its consideration of this case, including category I, which concerns deprivation of liberty without invoking any legal basis.

48. In the present case, the Working Group notes that on 7 April 2017, Ms. Nyanzi was arrested by plain clothes police officers from the "Flying Squad", as she tried to leave an event in a hotel in Kampala, without being presented with an arrest warrant or informed of the reasons for her arrest. She was held incommunicado in police custody for 18 hours, during which time she was beaten, resulting in her clothes being torn, and denied feminine hygiene products before she was allowed to see her lawyer. The Government has failed to provide any legal basis for Ms. Nyanzi's initial arrest and detention.

49. In view of the fact that Ms. Nyanzi was also denied her right to challenge her deprivation of liberty, the Working Group notes that article 9 (2) of the Covenant states that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his or her arrest and shall be promptly informed of any charges against him or her. Article 9 (3) of the Covenant provides that anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power by law. Furthermore, Human Rights Committee general comment No. 35 (2014) on liberty and security of person provides that article 9 of the Covenant "requires compliance with domestic rules that define when authorization to continue detention must be obtained from a judge or other officer, … when the detained person must be brought to court and legal limits on the duration of detention" (see para. 23).

50. In view of the above, the Working Group determines that the Government has failed to undertake the necessary formal procedures to establish the legal basis for Ms. Nyanzi's arrest and being held incommunicado without any access to her lawyer or family, as well as her detention after the 48-hour limit and prior to her presentation before the court.

51. The Working Group, therefore, considers that Ms. Nyanzi's initial arrest and detention lack a legal basis in violation of article 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, falling within category I.[8]

Category II

52. The Working Group recalls that holding and expressing opinions, including those that are not in accordance with official government policy, are protected by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant.[9] In that regard, the Human Rights Committee stated in its general comment No. 34 (2011) on the freedoms of opinion and expression that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, adding that all public figures, including those exercising the highest political authority such as Heads of State and Government, are legitimately subject to criticism and political opposition. The Committee specifically expressed concern regarding laws on such matters as lese-majesty (see para. 38).

53. The right to freedom of expression in article 19 (2) of the Covenant includes the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.[10] Ms. Nyanzi has been a prominent advocate for women's rights, in particular the provision of free hygiene products to schoolgirls, which concerns not only the right to sanitation but also the right of access to education.[11] She has

[8] See also article 6 of the African Charter on Human and Peoples' Rights.

[9] Ibid., article 9.

[10] See *De Morais v. Angola*, para. 6.7.

[11] The International Covenant on Economic, Social and Cultural Rights obligates progressive extension of safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children. See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 29. See also General Assembly resolution 70/169, 17 December 2015, preambular para. 14 and para. 5 (e).

also been a relentless defender of the rights of lesbian, gay, bisexual, transgender and intersex persons and the right to health.

54. Ms. Nyanzi criticized Janet Museveni, the First Lady and Education Minister, for failing to fulfil the Government's electoral promise to provide free sanitary pads and openly backed the opposition in the 2016 general elections in the exercise of her right to take part in government and the conduct of public affairs, directly or through freely chosen representatives in accordance with article 21 of the Universal Declaration of Human Rights and article 25 of the Covenant.[12]

55. Before her arrest, Ms. Nyanzi was subjected to interrogation by the Directorate of Criminal Investigation and Crime Intelligence for her Facebook posts criticizing President Museveni and his wife, the First Lady and Education Minister, prevented from boarding a plane to go to an academic conference abroad and suspended from her job at the largest public university in Uganda, which is under the purview of the First Lady,[13] had her house raided and her sister and supporters were harassed by armed individuals.

56. The Working Group expresses its grave concern at the public statement by the Inspector General of Police that he ordered the arrest of Ms. Nyanzi for her social media activity and the reported comment by the government spokesperson during an interview that he doubted that "Nyanzi or the forces behind her, which is Besigye and company plus the LGBT lobby, can sustain an extended political fight with us Government on any issue".[14]

57. With regard to the prosecution under sections 24 (1) and (2) (a) and 25 of the Computer Misuse Act 2011, the Working Group has been unable to find Ms. Nyanzi's deprivation of liberty for their alleged violations necessary or proportional for the purposes set out in article 19 (3) of the Covenant. As noted above, the Human Rights Committee considers that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.[15]

58. It is difficult for the Working Group to consider that Ms. Nyanzi's postings could plausibly threaten national security or public order, let alone public health or morals. There was no suggestion by the Government that any of the permitted restrictions on the freedom of expression found in article 19 (3) of the Covenant, such as restrictions that are necessary for respect of the rights or reputation of others, applied in her case.

59. For those reasons, the Working Group finds that Ms. Nyanzi's deprivation of liberty under the legal veneer of sections 24 (1) and (2) (a) and 25 of the Computer Misuse Act 2011 is in violation of articles 19 and 21 of the Universal Declaration of Human Rights and article 19 and 25 of the Covenant, thus it is arbitrary and falling within category II.

Category III

60. The Working Group has also considered whether violations of the right to a fair trial and due process suffered by Ms. Nyanzi were grave enough to give her deprivation of liberty an arbitrary character, falling within category III.

61. In particular, the Working Group addresses the following considerations, which have not been disputed by the Government:

[12] See also article 13 (1) of the African Charter on Human and Peoples' Rights.

[13] Ms. Nyanzi's suspension from Makerere University raises serious concerns about academic freedoms and the autonomy of institutions of higher education. See Committee on Economic, Social and Cultural Rights, general comment No. 13 (1999) on the right to education, paras. 39-40.

[14] Such comments by public officials further raise concerns about violation of the presumption of innocence, which is considered below with regard to category III. While it is true that the presumption of innocence needs to be balanced with the public's right to know in a democratic society, the latter must be proportionate to the former. See, for instance, Bundesverfassungsgericht judgment, BVerfGE 35, 202-245, 5 June 1973 (Germany) and 26-1(A) KCCR 534, 2012 Hun-Ma 652, 27 March 2014 (Republic of Korea).

[15] See general comment No. 34, para. 38.

(a) Ms. Nyanzi was not brought promptly before a judge, but instead held incommunicado by the police. That effectively nullified her right to recognition everywhere as a person before the law (contrary to articles 6 and 9 of the Universal Declaration of Human Rights and articles 9 (3) and 16 of the Covenant);

(b) Ms. Nyanzi was not informed promptly and in detail of the nature and the reasons for the criminal charge against her (contrary to articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (a) of the Covenant);

(c) During her initial detention, Ms. Nyanzi was kept incommunicado, denied contact with or visits from her family or lawyer and interrogated without her lawyer being present and under torture or cruel, inhuman or degrading treatment, including beatings and denial of sanitary pads, (contrary to articles 5, 10 and 11 (1) of the Universal Declaration of Human Rights and articles 7 and 14 (1) and (3) (b) and (d) of the Covenant);[16]

(d) On 10 April 2017, when Ms. Nyanzi was brought before a judge, she and her lawyer were not informed in advance of the application by the prosecution for a mental examination and she did not have adequate time and facilities to prepare her defence (contrary to article 10 of the Universal Declaration of Human Rights, article 14 (3) (b) of the Covenant and article 28 (3) (c) of the Constitution);

(e) Ms. Nyanzi was denied bail for her refusal to take the mental examination, which is usually reserved for offences such as rape, and was detained on remand in a maximum security prison with death-row inmates, despite her status as an unconvicted person, in violation of the principle of presumption of innocence (contrary to article 11 (1) of the Universal Declaration of Human Rights and articles 9 (3), 10 (2) (a) and 14 (2) of the Covenant);

(f) Ms. Nyanzi's lawyer was not allowed to cross-examine the head of the police media crime unit, whose sworn affidavit was the basis for the prosecution demand that she undergo a mental examination (contrary to article 10 of the Universal Declaration and article 14 (3) (e) of Covenant);

(g) The spokesperson of the Government, while admitting that Ms. Nyanzi's case was not properly managed, expressed a doubt that Ms. Nyanzi and the forces behind her could sustain an extended political fight with the Government. Such a statement is considered to be in violation of the principle of the presumption of innocence as stipulated in article 14 (2) of the Covenant.

62. The Working Group considers that holding a detainee incommunicado and interrogating her without her lawyer being present and under torture or cruel, inhuman or degrading treatment violates the minimum guarantees for fair trial and due process rights. In that regard, the Working Group recalls the judgment by the International Court of Justice holding that the prohibition of torture is part of customary international law and it has become a peremptory norm (*jus cogens*).[17]

63. The Working Group considers that the violations of Ms. Nyanzi's right to a fair trial are of such gravity as to give her deprivation of liberty an arbitrary character. Accordingly, her deprivation of liberty falls within category III.

Sections 24 (1) and (2) (a) and 25 of the Computer Misuse Act

64. The Working Group will elaborate further on the propriety of sections 24 (1) and (2) (a) and 25 of the Computer Misuse Act, in view of the principle of legality and its effect on the right to a fair trial. One of the fundamental guarantees of due process is the principle of legality, including the principle of *nullum crimen sine lege certa*, which is particularly

[16] See also United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), para. 5.

[17] International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgments, I.C.J. Reports 2012*, p. 422. See also article 5 of the African Charter on Human and Peoples' Rights.

relevant in the case of Ms. Nyanzi. The principle of legality, in general, ensures that no defendant may be punished arbitrarily or retroactively by the State. That means that a person cannot be convicted of a crime that was not publicly accessible, nor can they be charged under a law that is excessively unclear, or convicted under a penal law that is passed retroactively to criminalize a previous act or omission.

65. Laws that are vaguely and broadly worded may have a chilling effect on the exercise of the right to freedom of expression, as they have the potential for abuse. They also violate the principle of legality under article 11 (2) of the Universal Declaration of Human Rights and article 15 of the Covenant, as it makes it unlikely or impossible for the accused to have a fair trial.[18] Furthermore, the Working Group has found in its case law that detention pursuant to proceedings that are incompatible with article 15 are necessarily arbitrary within the meaning of article 9 (1) of the Covenant.[19]

66. The Working Group has also expressed its concern that antiterrorism laws "by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention" with the consequence that "legitimate democratic opposition … becomes a victim in the application of such laws" (see E/CN.4/1995/31, para. 25 (d)). Notably, with regard to article 15 (1) of the Covenant, the prohibition of terrorist conduct must be framed in such a way that the law is adequately accessible, so that the individual has a proper indication of how the law limits his or her conduct and the law is formulated with sufficient precision so that the individual can regulate his or her conduct (see E/CN.4/2006/98, para. 46).

67. The concerns expressed with regard to the vague definition of terrorist conduct (see, for example, CCPR/CO/81/BEL, para. 24) and other criminal offences, such as organized crime (see, for example, CCPR/C/79/Add.115, para. 12), are equally pertinent for the alleged acts criminalized by the broadly worded ban on criticism of the State authority. In that respect, the Working Group notes with concern that sections 24 (1) and (2) (a) and 25 of the Computer Misuse Act contain unclear wording that denies foreseeability for potential, unsuspecting defendants.[20]

68. The Working Group also expresses its concern about the reported abuse of the psychiatric system for political purposes by the Government. The Working Group notes that the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care states that a determination of mental illness shall be made in accordance with internationally accepted medical standards and shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status (principle 4 (1) and (2)).

69. The Working Group further notes the recommendations to States of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concerning abuses in health-care settings, to safeguard free and informed consent on an equal basis for all individuals without any exception, through a legal framework and judicial and administrative mechanisms, including through policies and practices to protect against abuses, and to adopt policies and protocols that uphold autonomy, self-determination and human dignity (see A/HRC/22/53, para. 85 (e)).

70. Furthermore, the Working Group notes with concern that a prominent journalist was beaten and interrogated for hours at a secret location for defending Ms. Nyanzi's criticism of the First Lady in her social media postings and forced at gun point to delete all her postings concerning the issues advocated for by Ms. Nyanzi. Such practices of reprisals and those of holding persons incommunicado, place the victims outside the protection of the law and deprive them of any legal safeguards.

[18] See also article 7 (2) of the African Charter on Human and Peoples' Rights and CCPR/C/KWT/CO/3, para. 41.

[19] See Human Rights Committee, communication No. 1629/2007, *Fardon v. Australia*, Views adopted on 18 March 2010, para. 7.4 (2).

[20] See also opinion No. 20/2017, para. 52.

Disposition

71. In the light of the foregoing, the Working Group renders the following opinion:

> The deprivation of liberty of Stella Nyanzi, being in contravention of articles 5, 6, 7, 9, 10, 11, 19 and 21 of the Universal Declaration of Human Rights and of articles 3, 7, 9, 14, 15, 16, 19, 25 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III.

72. The Working Group requests the Government of Uganda to take the steps necessary to remedy the situation of Stella Nyanzi without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Arab Charter on Human Rights.

73. The Working Group considers that taking into account all the circumstances of the case, the appropriate remedy would be to release Stella Nyanzi immediately and accord her an enforceable right to compensation and other reparations, in accordance with international law.

74. The Working Group urges the Government to bring the relevant legislation, particularly sections 24 (1) and (2) (a) and 25 of the Computer Misuse Act, which has been used to restrict the right to freedom of expression, into conformity with the commitments of Uganda under international human rights law.

Follow-up procedure

75. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

(a) Whether Ms. Nyanzi has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Ms. Nyanzi;

(c) Whether an investigation has been conducted into the violation of Ms. Nyanzi's rights and, if so, the outcome of the investigation;

(d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Uganda with its international obligations in line with the present opinion;

(e) Whether any other action has been taken to implement the present opinion.

76. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example, through a visit by the Working Group.

77. The Working Group requests the source and the Government to provide the above information within six months of the date of the transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

78. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.[21]

[*Adopted on 24 August 2017*]

[21] See Human Rights Council resolution 33/30, paras. 3 and 7.