PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chair/Rapporteur: Mr. Sètondji Roland Jean-Baptiste Adjovi (Benin)
Vice-Chair: Ms. Leigh Toomey (Australia)
Mr. José Antonio Guevara Bermúdez (Mexico)
Mr. Seong-Phil Hong (Republic of Korea)
Ms. Elina Steinerte (Latvia)

HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Stella Nyanzi,
Citizens of the Republic of Uganda
v.
Government of the Republic of Uganda

URGENT ACTION REQUESTED

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7[1]
Submitted By:

Nicholas Opiyo
Lead Attorney & Executive Director
Chapter Four Uganda
Plot 2 Wampewo Close
P.O Box 33159, Kampala, Uganda
Office: +256790916614; Cell: +256752636516
nopiyo@chapterfouruganda.com
&
Wade McMullen
Managing Attorney
Robert F. Kennedy Human Rights
1300 19th Street NW, Suite 750
Washington, DC 20036
Office: +1-202-463-7575; mcmullen@rfkhumanrights.org; legal@rfkhumanrights.org

April 24, 2017

[1] Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which "assume[d]… all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights…" pursuant to *UN General Assembly Resolution 60/251*, GA

Basis for Urgent Action Request

As set forth in the attached Petition, the Government of the Republic of Uganda is arbitrarily depriving Stella Nyanzi of her liberty and continues to arbitrarily detain her. Ms. Nyanzi is a citizen of Uganda and has been detained since April 7, 2017. She continues to be subject to grave prison conditions and possible abuse, causing serious threats to her physical and psychological integrity; urgent action is thus requested from the Working Group on her case.

Ms. Nyanzi is a prominent human rights defender, social activist, and academic in Uganda who campaigns on a variety of issues. As a leading voice on sexual freedom and women's rights, Ms. Nyanzi has long defended LGBTI rights in Uganda, where LGBTI issues are particularly sensitive. As a social and political activist, she has not been afraid of speaking out against the government's misconduct. Recently, her criticism of President Museveni and the First Lady and Minister of Education Janet Museveni has focused on the backtracking of an electoral promise to provide free sanitary pads to schoolgirls. Ms. Nyanzi started a campaign in March, 2017 to provide the pads herself, which has collected thousands of dollars and gained widespread publicity.

Due to her criticism against the government and social activism, Ms. Nyanzi has faced escalating government restrictions and intimidation for the past couple of months. She was summoned by the Criminal Investigations Department for hours of interrogation regarding her social media posts about President Museveni and the First Lady. She was also blocked from boarding a plane to an academic conference in the Netherlands. She was even suspended from her job as a research fellow at Makerere University for criticizing the First Lady. Moreover, armed individuals raided her home and threatened her three children and a domestic worker, and her sister was also trailed by armed individuals.

Finally, on April 7, 2017, Ms. Nyanzi was waylaid under the cover of darkness by armed individuals in private and civilian vehicles, forcibly arrested in Kampala as a presentation at a Rotary Club in Kampala. She was detained incommunicado for 18 hours and later found at Kira Division police station. She was physically assaulted and was not allowed to see her lawyer or family for 18 hours. During the first 18 hours of her detention, she was also denied access to family and access to sanitary towels and left to bleed. She was paralyzed from the waist down with high blood pressure resulting from the manner of her arrest. She later recovered. After spending three nights at Kira Division police station, she appeared before the Bugandan Road Magistrate's Court on April 10, 2017. Two criminal charges were leveled against her:

- Count 1 (Cyber Harassment under section 24(1)(2)(a) of the Computer Misuse Act 2011): Stella Nyanzi on the 28th January2017 at Kampala or thereabout used a computer to post on her Facebook page 'Stella Nyanzi' where she made a suggestion or proposal referring his excellency Yoweri Kaguta Museveni as among others 'a pair of buttocks' which suggestion/proposal is obscene or indecent.
- Count 2 (Offensive Communication under section 25 of the Computer Misuse Act 2011): Stella Nyanzi between January 2017 to March 2017, in Kampala district, 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.

Although she pleaded not guilty to both charges, Ms. Nyanzi and her lawyers were caught off guard by the prosecution's application to have Ms. Nyanzi's sanity ascertained. Ms. Nyanzi and her lawyers were not given an adequate time to prepare their defense against the application because it was served to them at the court. The court declined to explained to Ms. Nyanzi her right to apply for bail and blocked her lawyers from applying for it despite bail being a right and being within the jurisdiction of the court to hear and grant it. The court instead remanded her to prison insisting that her bail application will not be heard until after disposing the prosecution's application for mental examination. The case was adjourned to April 25, 2017, and Ms. Nyanzi was then remanded to Luzira prison, a maximum security prison.

Today, Ms. Nyanzi remains in pretrial detention at Luzira prison. Luzira prison is the country's only maximum security prison where they detain death row inmates. In Uganda, prison conditions are poor and can even be life threatening in some cases. Serious problems included overcrowding, physical abuse of detainees by security staff and fellow inmates, inadequate food, and understaffing. Torture by security forces and prison personnel have been consistently reported. Indeed, Ms. Nyanzi was physically assaulted and was denied feminine hygiene products for her menstruation while she was detained at Kira Division police station. Moreover, on April 12, 2017, government mental hospital doctors attempted to conduct a forced medical examination on Ms. Nyanzi at Luzira Prison, where she is currently detained, without her consent or court order. Mental examinations in Uganda are usually reserved offenses such as statutory rape. It has also been reported that she is being allowed fewer visits than the norm.

Ms. Nyanzi has been subjected to abuse while in detention. She was blocked from seeing her family and guests on several occasions. Her three children were kept for over 8 hours when they went to visit her. They were only able to visit her after protest from her lawyers. Her lawyers have been unable to have private client-advocate consultations in prisons because every time they visited her, a prison official insists on siting through their meeting. Ms. Nyanzi has been denied access to her own reading materials and her notes are confiscated by the authorities.

Accordingly, it is hereby requested that the Working Group consider this Petition pursuant to its Urgent Action Procedure.[2] Additionally, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reiterated by Resolutions 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, and 24/7.

[2] Report of the Working Group on Arbitrary Detention, A/HRC/16/47, Annex ¶ 7(b) ("Revised Methods of Work"), Jan. 19, 2011, at ¶ 22–24.

Questionnaire To Be Completed[3]

I. IDENTITY

1. **Family name:** Nyanzi

2. **First name:** Stella

3. **Sex:** Female

4. **Birth date or age (at the time of detention):** [redacted]

5. **Nationality/Nationalities:** Republic of Uganda

6. (a) **Identity document (if any):** n/a
   (b) **Issued by:** n/a
   (c) **On (date):** n/a
   (d) **No.:** n/a

7. **Profession and/or activity (if believed to be relevant to the arrest/detention):** Ms. Nyanzi was a researcher at Makerere University before she was suspended on March 31, 2017 for making critical comments against the First Lady of Uganda and Minister of Education Janet Museveni on social media.

8. **Address of usual residence:** [redacted]

II. ARREST

1. **Date of arrest:** April 7, 2017

2. **Place of arrest (as detailed as possible):** The Mackinnon Suites Hotel, 15 Mackinnon Road, Nakasero-Kampala, Uganda.

3. **Forces who carried out the arrest or are believed to have carried it out:** Plainclothes police officers from the "Flying Squad," a unit in charge of violent crimes in the police

4. **Did they show a warrant or other decision by a public authority?** The people who carried out the arrest did not introduce themselves or tell her the reason for her arrest. They were in private cars, wielding guns and did not bother to show a warrant. No such warrant has since been shown.

5. **Authority who issued the warrant or decision:** The Inspector General of Police Kale Kayihura publicly stated that he had ordered the arrest of Ms. Nyanzi because of her comments on social media.[4]

[3] *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx.

6. **Reasons for the arrest imputed by the authorities:** The Inspector General of Police Kale Kayihura publicly stated that he had ordered the arrest of Ms. Nyanzi for abusing the Computer Misuse Act that her "vulgar and dehumanizing communication on her Facebook page tantamount to abuse of laws governing the use of social media."[5]

7. **Legal basis for the arrest including relevant legislation applied (if known):** Sections 24(1)(2)(a) and 25 of the Computer Misuse Act 2011.

III. DETENTION

1. **Date of detention:** April 7, 2017

2. **Duration of detention (if not known, probable duration):** Ms. Nyanzi has been in detention from April 7, 2017 to the date of this communication.

3. **Forces holding the detainee under custody:** Government of Uganda

4. **Places of detention (indicate any transfer and present place of detention):** Ms. Nyanzi spent 3 nights at Kira Division police station beginning April 7, 2017. After the court hearing on April 10, 2017, Ms. Nyanzi was transferred to Luzira Murchison Bay Prison, where she is currently detained.

5. **Authorities that ordered the detention:** The Inspector General of Police Kale Kayihura and Buganda Road Court Chief Magistrate James Ereemye

6. **Reasons for the detention imputed by the authorities:** Ms. Nyanzi faces two charges: a cyber harassment charge under section 24 of (1)(2)(a) of the Computer Misuse Act 2011 for her Facebook posting referring President Museveni as "a pair of buttocks"; an offensive communication charge under section 25 of the Computer Misuse Act 2011 for willfully and repeatedly posting offensive messages on Facebook to disturb or attempted to disturb the peace, quiet or right of privacy of President Museveni with no purpose of legitimate communication.

7. **Legal basis for the detention including relevant legislation applied (if known):** Ms. Nyanzi faces possible sentencing under sections 24(1)(2)(a) and 25 of the Computer Misuse Act 2011.

---

[4] Joseph Kato, *I ordered for Dr Nyanzi's arrest, says IGP Kayihura*, DAILY MONITOR (Apr. 12, 2017), http://www.monitor.co.ug/News/National/Ordered-Dr-Nyanzi-s-arrest-Kayihura/688334-3886770-18yjxkz/index.html.
[5] Joseph Kato, *I ordered for Dr Nyanzi's arrest, says IGP Kayihura*, DAILY MONITOR (Apr. 12, 2017), http://www.monitor.co.ug/News/National/Ordered-Dr-Nyanzi-s-arrest-Kayihura/688334-3886770-18yjxkz/index.html.

Questionnaire To Be Completed[6]

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND THE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY

a. Statement of Facts

Part i of this section describes the Ugandan government's documented history of suppressing fundamental rights and using arbitrary detention to limit the political and social activism. Part ii presents the case of Stella Nyanzi, a Ugandan activist and human rights defender arbitrarily arrested and detained since April 7, 2017.

i. Background on Uganda

1. Political, Legal, and Social Background of Uganda

Uganda is a constitutional republic led by President Yoweri Museveni of the National Resistance Movement party (NRM) since 1986.[7] Uganda's unicameral Parliament and the president are elected for five-year terms.[8] Constitutional amendments in 2005 lifted a ban on political parties but also removed presidential term limits.[9] Power is concentrated in the hands of the NRM leadership, the security forces, and especially the president, who retains office through flawed elections.[10] Parliamentary members and CSOs have little practical ability to affect legislation or government policies.[11] Despite scandals and investigations, increased media scrutiny, and corruption focused laws and institutions, top government officials are rarely held accountable for such offenses.[12] The opposition is limited by harassment of opposition leaders, restrictive requirements on party registration and voter and candidate eligibility, the use of government resources to support NRM candidates, a lack of state-media coverage, paramilitary groups that intimidate voters and government opponents, infighting, and funding shortages.[13]

On February 18, 2016, Uganda held its fifth presidential and legislative elections since President Museveni came to power in 1986.[14] President Museveni was reelected with 61 percent of the vote, and the opposition Forum for Democratic Change (FDC) candidate Besigye finished second with 36 percent.[15] The NRM also took about 70 percent of the seats in the 431-member unicameral Parliament.[16]

---

[6] *Model Questionnaire To Be Completed By Persons Alleging Arbitrary Arrest or Detention*, UN WORKING GROUP ON ARBITRARY DETENTION, http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx.
[7] U.S. Department of State, *Uganda 2016 Human Rights Report* (2017), https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper [hereinafter *State Department 2016 Report*].
[8] Freedom House, *Freedom in the World 2016: Uganda* (2016), https://freedomhouse.org/report/freedom-world/2016/uganda [hereinafter *Freedom House 2016 Report*].
[9] Freedom House 2016 Report, *supra* note 8.
[10] Freedom House 2016 Report, *supra* note 8.
[11] Freedom House 2016 Report, *supra* note 8.
[12] Freedom House 2016 Report, *supra* note 8.
[13] Freedom House 2016 Report, *supra* note 8
[14] State Department 2016 Report, *supra* note 7.
[15] State Department 2016 Report, *supra* note 7.
[16] State Department 2016 Report, *supra* note 7.

Both domestic and international election observers stated that the elections fell short of international standards.[17] The run-up to the elections was marred by violence, voter bribery, and brutality against the opposition.[18] Citizens groups, CSOs, and opposition parties repeatedly called for free and fair elections, and presented proposals for electoral reforms to the parliament.[19] None of the proposals, including presidential term limits, was incorporated into the Constitution (Amendment) Bill 2015 passed by Parliament in April 2015.[20] The Commonwealth Observer Mission's report noted flawed processes, and the EU's report noted an atmosphere of intimidation and police use of excessive force against opposition supporters, media workers, and the general public.[21] The observers also noted biased media coverage and the Electoral Commission's lack of transparency and independence.[22]

Since a series of terrorist bombings in Kampala in 2010, security forces have illegally detained and abused terrorism suspects.[23] Security was ramped up periodically in response to alleged terrorist threats during 2015.[24] In June 2015, Parliament passed the Anti-Terrorism (Amendment) Bill, which grants police discretion to freeze and seize the assets of terrorism suspects.[25] The opposition criticized the bill's definition of terrorism, which they claimed was vague and open to abuse.[26]

2. Civil Society and Arbitrary Detention in Uganda

The freedoms of expression, assembly, and association continue to be violated in Uganda. Civicus rates Uganda's civil society as repressed.[27] In Freedom House's 2016 Freedom in the World report, Uganda earned a "Partly Free" status.[28]

Constitutionally protected freedoms of expression and of the press are often undermined by provisions in the penal code, including laws on criminal libel and treason, as well as by extralegal government actions.[29] Although Uganda's vibrant media sector is often critical of the government, it has faced escalating government restrictions and intimidation, leading to self-censorship.[30] More than a hundred cases of harassments of journalists have been reported each year,[31] and several media houses were closed by the government.[32] The space for journalists became even more restricted in the run-up to and during the election in 2016.[33] Moreover, all

[17] State Department 2016 Report, *supra* note 7.
[18] U.S. Agency for International Development, *The 2015 CSO Sustainability Index for Sub-Saharan Africa* (2017), https://www.usaid.gov/sites/default/files/documents/1866/2015_Africa_CSOSI.pdf [hereinafter *USAID 2015 Report*].
[19] USAID 2015 Report, *supra* note 18.
[20] USAID 2015 Report, *supra* note 18.
[21] State Department 2016 Report, *supra* note 7.
[22] State Department 2016 Report, *supra* note 7.
[23] Freedom House 2016 Report, *supra* note 8.
[24] Freedom House 2016 Report, *supra* note 8.
[25] Freedom House 2016 Report, *supra* note 8.
[26] Freedom House 2016 Report, *supra* note 8.
[27] Civicus Monitor, *Uganda*, https://monitor.civicus.org/country/uganda/ [hereinafter *Civicus Monitor*].
[28] Freedom House 2016 Report, *supra* note 8.
[29] Freedom House 2016 Report, *supra* note 8.
[30] Freedom House 2016 Report, *supra* note 8.
[31] Human Rights Network Journalist-Uganda, *Press Freedom Index Report 2015* 26 (2016), https://hrnjuganda.org/?wpfb_dl=59.
[32] Human Rights Watch, *Uganda: UPR Submission* (2017), https://www.hrw.org/news/2016/11/01/uganda-upr-submission.
[33] Civicus Monitor, *supra* note 29.

social media services were shut down during the election day and the inauguration day of president Museveni in 2016.[34]

The government has increased surveillance of internet and mobile-phone communications in the context of antiterrorism campaigns.[35] Privacy International's 2015 report revealed a secret government program started in 2011 to remotely monitor the computers and communication devices of opposition members, journalists, and activists.[36] The 2014 Anti-Pornography Act defines pornography in broad terms and gives a Pornography Control Committee broad powers to determine what amounts to pornography in any medium, including online.[37] Potential penalties for violations include fines and up to 10 years in prison.[38] The Computer Misuse Act also threatens freedom of expression and a bundle of other rights through vague and confusing provisions.[39]

Freedom of association is guaranteed in the constitution but often unlawfully restricted.[40] Although civil society remains vibrant, their existence and activities are vulnerable to legal restrictions and burdensome registration requirements.[41] In January 2016, President Museveni signed the Non-Governmental Organizations Act into law, which places limits on the independence of organizations and the freedom of association.[42] For instance, the Act bars organizations from activities prejudicial to the "security of Uganda" and the "interests of Uganda and the dignity of Ugandans."[43] Recently, several human rights organizations have been raided, but no meaningful investigations have taken place.[44]

Constitutionally protected freedom of assembly is restricted by law and in practice.[45] The authorities have violently suppressed peaceful demonstrations and routinely arrested protesters, especially in the months leading up to the 2016 general election.[46] The Public Order Management Act 2013 gives police broad authority to deny approval for any political gatherings if they are not in the "public interest," and to use force to disperse assemblies judged unlawful. The opposition leader Besigye and others have been arrested numerous times in recent years for organizing marches and protests.[47]

Although the Constitutional Court nullified the Anti-Homosexuality Act in 2014, there are concerns that similar measures could still become law.[48] Same-sex conduct remains

---

[34] Freedom House, *Uganda: Social Media Ordered Blocked for Museveni Inauguration*, FREEDOM HOUSE (May 11, 2016) https://freedomhouse.org/article/uganda-social-media-ordered-blocked-museveni-inauguration.
[35] Freedom House 2016 Report, *supra* note 8..
[36] Freedom House 2016 Report, *supra* note 8..
[37] Freedom House 2016 Report, *supra* note 8.
[38] Freedom House 2016 Report, *supra* note 8..
[39] Human Rights Network Journalist-Uganda, *Analysis of the Computer Misuse Act 2011* 8, https://hrnjuganda.org/?wpfb_dl=38.
[40] Freedom House 2016 Report, *supra* note 8.
[41] Freedom House 2016 Report, *supra* note 8.
[42] Civicus Monitor, *supra* note 29.
[43] Civicus Monitor, *supra* note 29.
[44] Civicus Monitor, *supra* note 29.
[45] Freedom House 2016 Report, *supra* note 8.
[46] Civicus Monitor, *supra* note 29.
[47] Freedom House 2016 Report, *supra* note 8.
[48] Human Rights Watch, World Report 2016: Uganda (2016), https://www.hrw.org/world-report/2016/country-chapters/uganda.

criminalized under Uganda's colonial-era law.[49] The new NGO law also raises concerns about the criminalization of legitimate advocacy for the rights of LGBTI people.[50] Police continue to carry out forced anal examinations on men and transgender women accused of consensual same-sex conduct.[51] In August 2016, police unlawfully raided an LGBTI event in Kampala.[52] Police locked the venue's gates, arrested activists, and harassed hundreds of people.[53]

Although the Constitution and law prohibit such practices, security forces often arbitrarily arrest and detain opposition leaders, politicians, activists, demonstrators, and journalists on politically motivated grounds.[54] Authorities released many without charge, but charged others with crimes including terrorism, treason, inciting violence, holding illegal meetings, and abuse of office. Common arbitrary detention problems include the police arresting people without warrants, holding detainees beyond the statutory deadline to charge them, failing to inform detainees of the reasons for detention, failing to obtain search warrants to enter premises, and failing to respect the right to legal representation.[55]

3. Lack of Judicial Independence and Due Process Protections in Uganda

The constitution and law provide for an independent judiciary, but the government has not always respect this provision.[56] Corruption, understaffing, inefficiency, and executive branch interference with judicial rulings often undermined judicial independence.[57]

Although the law provides for a presumption of innocence, authorities did not always respect this right.[58] Case backlogs due to an inefficient judiciary, the absence of plea bargaining prior to 2015, and insufficient use of bail contribute to pretrial detentions as long as seven years, thus violating detainees' right to a speedy trial.[59] Detainees' right to file a legal challenge against their detention, and obtain prompt release and compensation, has seldom been employed and rarely successful.[60] The authorities have not always respected defendants' right to obtain, prior to their trial, evidence the state intends to use.[61] The authorities have not always respected defendant's right to question witnesses testifying against them and present witnesses and evidence on their own behalf.[62]

---

[49] Human Rights Watch, World Report 2017: Uganda (2017), https://www.hrw.org/world-report/2017/country-chapters/uganda [hereinafter *HRW World Report 2017*].
[50] HRW World Report 2017, *supra* note 51.
[51] HRW World Report 2017, *supra* note 51.
[52] HRW World Report 2017, *supra* note 51.
[53] HRW World Report 2017, *supra* note 51.
[54] State Department 2016 Report, *supra* note 7.
[55] State Department 2016 Report, *supra* note 7.
[56] State Department 2016 Report, *supra* note 7.
[57] State Department 2016 Report, *supra* note 7.
[58] State Department 2016 Report, *supra* note 7.
[59] State Department 2016 Report, *supra* note 7.
[60] State Department 2016 Report, *supra* note 7.
[61] State Department 2016 Report, *supra* note 7.
[62] State Department 2016 Report, *supra* note 7.

4. Prison Conditions in Uganda

Prison conditions remain poor and even life threatening in some cases.[63] Serious problems included overcrowding, physical abuse of detainees by security staff and fellow inmates, inadequate food, and understaffing.[64] Torture by security forces and prison personnel have been reported.[65] Reports of forced labor continued, and most prisons did not have accommodations for persons with disabilities.[66]

ii. The Detention of Stella Nyanzi

1. Background Information on Stella Nyanzi

Stella Nyanzi is a prominent academic, human rights defender, and social activist in Uganda who campaigns on a variety of issues, from sanitary pads to LGBTI rights.[67] She is 42 years old and the mother of three children: a 12 year old daughter and two 10 year old twin boys.[68] She had been working at Makerere University of Uganda as a researcher until she was suspended in March 2017, for criticizing the First Lady and Minister of Education Janet Museveni.

Ms. Nyanzi is a human rights defender who has been a leading voice on sexual freedom and women's rights.[69] She has advocated for LGBTI rights in Uganda, where LGBTI issues are particularly sensitive.[70] She writes, speaks, and protests to defend LGBTI rights in Uganda.[71]

Ms. Nyanzi is also an outspoken social activist who has been critical of the government and President Museveni. Ms. Nyanzi received much attention across social media in the run-up to Uganda's general election in February 2016.[72] She openly supported the opposition Forum for Democratic Change (FDC) presidential candidate Kizza Besigye.[73] She writes extensively on her

---

[63] State Department 2016 Report, *supra* note 7.
[64] State Department 2016 Report, *supra* note 7.
[65] State Department 2016 Report, *supra* note 7.
[66] State Department 2016 Report, *supra* note 7.
[67] *Stella Nyanzi, the Ugandan accused of insulting the president*, BBC (Apr. 11, 2017), http://www.bbc.com/news/world-africa-39558007.
[68] *Stella Nyanzi, the Ugandan accused of insulting the president*, BBC (Apr. 11, 2017), http://www.bbc.com/news/world-africa-39558007.
[69] Max Bearak, *This professor called her president 'a pair of buttocks.' Now she's in a maximum security prison*, WASHINGTON POST (Apr. 12, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/04/12/this-professor-called-her-president-a-pair-of-buttocks-now-shes-in-a-maximum-security-prison/?utm_term=.6a1f30f90b6a.
[70] *Stella Nyanzi, the Ugandan accused of insulting the president*, BBC (Apr. 11, 2017), http://www.bbc.com/news/world-africa-39558007.
[71] Colin Stewart, *Uganda targets LGBTI ally Stella Nyanzi*, ERASING 76 CRIMES, (Apr. 11, 2017), https://76crimes.com/2017/04/11/uganda-targets-lgbti-ally-stella-nyanzi/; Nasa Tushabe, *Who is Stella Nyanzi? Biography, CV, background, marriage, career and war against Museveni*, BLIZZ UGANDA (Apr. 12, 2017), http://ugblizz.com/stella-nyanzi-biography-cv-background-marriage-career-war-museveni/; Department of Global Health, *Sexuality in Uganda: Western Regional Keynote Speaker Stella Nyanzi Offers Her Perspective from Uganda*, UNIVERSITY OF WASHINGTON (Feb. 20, 2014), https://globalhealth.washington.edu/news/2014/02/20/sexuality-uganda-western-regional-keynote-speaker-stella-nyanzi-offers-her.
[72] *Stella Nyanzi, the Ugandan accused of insulting the president*, BBC (Apr. 11, 2017), http://www.bbc.com/news/world-africa-39558007.
[73] *Stella Nyanzi, the Ugandan accused of insulting the president*, BBC (Apr. 11, 2017), http://www.bbc.com/news/world-africa-39558007.

Facebook page, which has more than 140,000 followers, [74] and she is not afraid to speak out against the authorities. On January 27, 2017, she referred President Museveni as a "pair of buttocks."[75] In her February 15, 2017 Facebook post, Ms. Nyanzi criticized the First Lady and Minister of Education Janet Museveni[76] who told the parliament that the government cannot fulfill an electoral pledge to provide free sanitary pads to schoolgirls.[77] Lack of sanitary pads for schoolgirls has been pointed out as one of the leading causes of girls dropping out of school in Uganda.[78] Subsequently, Ms. Nyanzi started the "Pads4GirlsUG" campaign to provide the pads herself, which has collected thousands of dollars and gained widespread publicity.[79]

2. Arbitrary Arrest and Detention of Stella Nyanzi

Ms. Nyanzi's social activism and criticism of the government led to escalating government harassment and repression against her, particularly in recent months. On March 6, 2017, she was summoned by the Criminal Investigations Department for hours of interrogation regarding her critical posts about President Museveni and the First Lady.[80] On March 19, 2017, she was also blocked from boarding a plane to an academic conference in the Netherlands.[81] On March 31, 2017, Ms. Nyanzi was even suspended from her job as a research fellow at Makerere University – Uganda's largest public university – for criticizing the First Lady, who is also the minister of Education, in charge of among others, Makarere University.[82] On April 3, 2017, armed individuals raided her home and threatened her three children and a domestic worker, and her sister was also trailed by armed individuals.[83] Supporters of Ms. Nyanzi have also been attacked. On April 8, 2017, a prominent journalist Gertrude Uwitware was abducted and driven blindfolded to a secret location where she was beaten and interrogated for hours. She had her hair cut off, alcohol poured in her face, and was threatened that she and her family would be

---

[74] Stella Nyanzi, *Facebook*, FACEBOOK, https://www.facebook.com/stella.nyanzi?fref=nf.
[75] Stella Nyanzi, *Facebook Post*, FACEBOOK, (Jan. 27, 2017), https://www.facebook.com/stella.nyanzi/posts/10154878225000053.
[76] Stella Nyanzi, *Facebook Post*, FACEBOOK, (Feb. 15, 2017), https://www.facebook.com/stella.nyanzi/posts/10154932446045053.
[77] Lilian Namagembe, No money for sanitary pads, gov't tells parliament, Daily Monitor (Feb. 16, 2017), http://www.monitor.co.ug/News/National/No-money-for-sanitary-pads--gov-t-tells-parliament/688334-3813362-14iyxnd/index.html.
[78] Amnesty International, *Uganda: Detention of feminist academic for criticizing president a travesty*, AMNESTY INTERNATIONAL (Apr. 10, 2017), https://www.amnesty.org/en/latest/news/2017/04/uganda-detention-of-feminist-academic-for-criticizing-president-a-travesty/.
[79] Amnesty International, *Uganda: Detention of feminist academic for criticizing president a travesty*, AMNESTY INTERNATIONAL (Apr. 10, 2017), https://www.amnesty.org/en/latest/news/2017/04/uganda-detention-of-feminist-academic-for-criticizing-president-a-travesty/.
[80] Amnesty International, *Uganda: Detention of feminist academic for criticizing president a travesty*, AMNESTY INTERNATIONAL (Apr. 10, 2017), https://www.amnesty.org/en/latest/news/2017/04/uganda-detention-of-feminist-academic-for-criticizing-president-a-travesty/; Maxamed Sulayman, *Ugandan Police Interrogate Prominent Feminist for 'Offending' President*, MAALMAHA (Mar. 10, 2017), http://www.maalmahanews.com/2017/03/10/ugandan-police-interrogate-prominent-feminist-for-offending-president/.
[81] Amnesty International, *Uganda: Detention of feminist academic for criticizing president a travesty*, AMNESTY INTERNATIONAL (Apr. 10, 2017), https://www.amnesty.org/en/latest/news/2017/04/uganda-detention-of-feminist-academic-for-criticizing-president-a-travesty/.
[82] Musa Mwiiru, *Breaking! Stella Nyanzi Suspended from Makerere for Insulting First Lady*, UGANDA TODAY (Mar. 31, 2017), http://www.theugandatoday.com/education/2017/03/breaking-stella-nyanzi-suspended-from-makerere-for-insulting-first-lady/.
[83] Max Bearak, *This professor called her president 'a pair of buttocks.' Now she's in a maximum security prison*, WASHINGTON POST (Apr. 12, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/04/12/this-professor-called-her-president-a-pair-of-buttocks-now-shes-in-a-maximum-security-prison/?utm_term=.6a1f30f90b6a; Bwesigye Bwa Mwesigire, *Uganda: Stella Nyanzi Charged for Calling President Museveni a "pair of buttocks"*, African Arguments (Apr. 10, 2017), http://africanarguments.org/2017/04/10/uganda-stella-nyanzi-charged-calling-president-museveni-pair-buttocks/?utm_content=bufferbeb3f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer.

killed if she did not stop supporting Ms Nyanzi.[84] The kidnappers referred to the journalist's social media post defending Ms. Nyanzi's criticism of Janet Museveni, and ordered the journalist to delete her social media posts.[85]She was forced at gun point to delete all her social media postings relating to the issues Ms. Nyanzi advocated for.

Following months of continued harassment, Ugandan police arbitrarily arrested Ms. Nyanzi on April 7, 2017.

That day, Ms. Nyanzi was invited to be a keynote speaker on the subject of menstruation, hosted by Rotary Club of Kampala Metropolitan, at the Mackinnon Suites Hotel in Kampala. Sometime between 8:00pm and 8:30pm, as she ended her keynote speech, Ms. Nyanzi and her team, realizing that the Hotel was surrounded by intelligence operatives, snuck out of the hotel through a back door.[86] However, in the process eight men in plainclothes, three of whom were armed, forcibly removed Ms. Nyanzi from her car and bundled her up into the back of the intelligence officers' vehicles. The people who carried out the arrest did not introduce themselves or tell her the reason for her arrest. They were in private cars, wielding guns and did not bother to show a warrant. No such warrant has since been shown. She was taken to Kira Division police station[87] where she was physically assaulted and denied the ability to see her lawyer for 18 hours.[88] When she finally met her lawyer Nicholas Opiyo, her clothes had been torn and she was denied feminine hygiene products for her menstruation.[89] She was left to bleed.[90] On April 8, police confirmed the arrest of Ms. Nyanzi and said that she would be arraigned in court on two counts: cyber harassment and offensive communication under Computer Misuse Act.[91] On April 11, 2017, the Inspector General of Police Kale Kayihura publicly stated that he had ordered the arrest of Ms. Nyanzi because of her comments on social media.[92]

---

[84] Reporters Without Borders, *TV Reporter Kidnapped and Beaten over Post About First Lady*, REPORTERS WITHOUT BORDERS (Apr. 10, 2017), https://rsf.org/en/news/tv-reporter-kidnapped-and-beaten-over-post-about-first-lady.
[85] Reporters Without Borders, *TV Reporter Kidnapped and Beaten over Post About First Lady*, REPORTERS WITHOUT BORDERS (Apr. 10, 2017), https://rsf.org/en/news/tv-reporter-kidnapped-and-beaten-over-post-about-first-lady.
[86] Nasa Tushabe, Rotary Club Set a Trap to Have Stella Nyanzi Arrested – Nyanzi Team Reveals, BLIZZ UGANDA (Apr. 13, 2017), http://ugblizz.com/rotary-club-set-trap-stella-nyanzi-arrested-nyanzi-team-reveals/;
Esther Oluka, *Family Narrates How Dr Nyanzi Was Arrested*, DAILY MONITOR (Apr. 9, 2017), http://www.monitor.co.ug/News/National/Family-narrates-how-Dr-Nyanzi-was-arrested/688334-3882814-11jpllrz/index.html;
Joseph Kato and Derrick Wandera, *Dr Nyanzi Arrested over Offensive Communication*, DAILY MONITOR (Apr. 8, 2017), http://www.monitor.co.ug/News/National/Dr-Nyanzi-Janet-Museveni-Education-pad-schools-offensive/688334-3882326-oik0hh/index.html.
[87] Alex Otto, *Stella Nyanzi Held at Kira Division Polic*e, UGANDA RADIO NETWORK (Apr. 8, 2017), https://ugandaradionetwork.com/story/stella-nyanzi-faces-charges-of-cyber-harrasment-offensive-communication.
[88] Kimiko de Freytas-Tamura, *Uganda Tries to Commit Critic of President to Mental Institution*, NEW YORK TIMES (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/world/africa/uganda-yoweri-museveni-protest-mental-institution.html
[89] Kimiko de Freytas-Tamura, *Uganda Tries to Commit Critic of President to Mental Institution*, NEW YORK TIMES (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/world/africa/uganda-yoweri-museveni-protest-mental-institution.html
[90] Kimiko de Freytas-Tamura, *Uganda Tries to Commit Critic of President to Mental Institution*, NEW YORK TIMES (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/world/africa/uganda-yoweri-museveni-protest-mental-institution.html
[91] Joseph Kato and Derrick Wandera, *Dr Nyanzi Arrested over Offensive Communication*, DAILY MONITOR (Apr. 8, 2017), http://www.monitor.co.ug/News/National/Dr-Nyanzi-Janet-Museveni-Education-pad-schools-offensive/688334-3882326-oik0hh/index.html; Ashraf Habib, Police Confirm Dr. Nyanzi Arrest, Charges, GALAXY FM (Apr. 9, 2017), ; http://www.galaxyfm.co.ug/2017/04/09/police-confirm-dr-nyanzi-arrest-charges.
[92] Joseph Kato, *I ordered for Dr Nyanzi's arrest, says IGP Kayihura*, DAILY MONITOR (Apr. 12, 2017), http://www.monitor.co.ug/News/National/Ordered-Dr-Nyanzi-s-arrest-Kayihura/688334-3886770-18yjxkz/index.html.

3. Unlawful Prosecution of Stella Nyanzi

On April 10, 2017, Ms. Nyanzi appeared before the Bugandan Road Magistrate's Court.[93] Ms. Nyanzi was charged on two counts: a cyber harassment offense violating section 24(1)(2)(a) of the Computer Misuse Act, and an offensive communication offense violating section 25 of the Computer Misuse Act.[94] The charge sheet dated March 23, 2017, states:

- Count 1 (Cyber Harassment under section 24(1)(2)(a) of the Computer Misuse Act 2011): Stella Nyanzi on the 28th January2017 at Kampala or thereabout used a computer to post on her Facebook page 'Stella Nyanzi' where she made a suggestion or proposal referring his excellency Yoweri Kaguta Museveni as among others 'a pair of buttocks' which suggestion/proposal is obscene or indecent.[95]
- Count 2 (Offensive Communication under section 25 of the Computer Misuse Act 2011): Stella Nyanzi between January 2017 to March 2017, in Kampala district, 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.[96]

Ms. Nyanzi pleaded not guilty to both charges.[97] Ms. Nyanzi and her lawyers, however, were caught off guard by the prosecution at the hearing, when the prosecution filed an application for Ms. Nyanzi's sanity to be ascertained, invoking 1938 Mental Treatment Act.[98] The prosecution wanted to detain her at a mental hospital for 14 days to carry out a mental examination on her.[99] Ms. Nyanzi and her lawyers were not given adequate time to prepare their defense against the application because it was served to them at the court.[100] The Court then declined to hear Ms. Nyanzi's bail application until after disposing the prosecution's application for mental examination.[101] The case was adjourned to April 25, 2017, and she was remanded to

---

[93] Betty Ndagire and Job Bwire, *Dr Nyanzi Charged in Court for Insulting Museveni*, DAILY MONITOR (Apr. 10, 2017), http://www.monitor.co.ug/News/National/Dr-Stella-Nyanzi-court-amid-heavy-police-deployment/688334-3884426-pb9rfmz/index.html.

[94] Spear Team, *Dr Stella Nyanzi's Charge Sheet, Accused of Calling Museveni a "Pair of Buttocks" as Hundreds Wait Outside*, THE SPEAR NEWS (Apr. 10, 2017), https://thespearnews.com/2017/04/10/dr-stella-nyanzis-charge-sheet-accused-calling-museveni-pair-buttocks-hundreds-wait-outside/.

[95] Spear Team, *Dr Stella Nyanzi's Charge Sheet, Accused of Calling Museveni a "Pair of Buttocks" as Hundreds Wait Outside*, THE SPEAR NEWS (Apr. 10, 2017), https://thespearnews.com/2017/04/10/dr-stella-nyanzis-charge-sheet-accused-calling-museveni-pair-buttocks-hundreds-wait-outside/.

[96] Spear Team, *Dr Stella Nyanzi's Charge Sheet, Accused of Calling Museveni a "Pair of Buttocks" as Hundreds Wait Outside*, THE SPEAR NEWS (Apr. 10, 2017), https://thespearnews.com/2017/04/10/dr-stella-nyanzis-charge-sheet-accused-calling-museveni-pair-buttocks-hundreds-wait-outside/.

[97] Amnesty International, *Uganda: Detention of feminist academic for criticizing president a travesty*, AMNESTY INTERNATIONAL (Apr. 10, 2017), https://www.amnesty.org/en/latest/news/2017/04/uganda-detention-of-feminist-academic-for-criticizing-president-a-travesty/.

[98] Derrick Kiyonaga, *Uganda: How the State Ambushed Nyanzi With Insanity Claim*, ALLAFRICA (Apr. 12, 2017), http://allafrica.com/stories/201704120365.html.

[99] http://matookerepublic.com/2017/04/10/stella-nyanzi-to-undergo-mental-examination-but-still-faces-two-weeks-temporary-detention-at-luzira-prison-referral-hospital/.

[100] Derrick Kiyonaga, *Uganda: How the State Ambushed Nyanzi With Insanity Claim*, ALLAFRICA (Apr. 12, 2017), http://allafrica.com/stories/201704120365.html.

[101] Derrick Kiyonaga, *Uganda: How the State Ambushed Nyanzi With Insanity Claim*, ALLAFRICA (Apr. 12, 2017), http://allafrica.com/stories/201704120365.html.

Luzira prison, a maximum security prison.[102] Luzira prison is the country's only maximum prison where they detain death row inmates.[103] Regarding Ms. Nyanzi's case, the Ugandan government spokesperson admitted that her case was not properly managed.[104] But he added that he doubts "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."[105]

4. Current Status

Ms. Nyanzi is still detained at Luzira prison. On April 12, 2017, government mental hospital doctors attempted to conduct a forced mental examination on Ms. Nyanzi at Luzira Prison, where she is currently detained, without her consent or court order.[106] Ms. Nyanzi managed to resist the forceful examination.[107] Mental examinations in Uganda are usually reserved offenses such as statutory rape.[108] She is being allowed fewer visits than the norm.[109]

b. Legal Analysis

For the reasons set forth below, the detention of Ms. Nyanzi constitutes an arbitrary deprivation of her liberty[110] under Category I, Category II, Category III, and Category V as set forth by the United Nations Working Group on Arbitrary Detention (herein, the Working Group).

The detention is arbitrary under Category I because it does not have any legal justification. The detention is arbitrary under Category II because it resulted from Ms. Nyanzi's

---

[102] Derrick Kiyonaga, *Uganda: How the State Ambushed Nyanzi With Insanity Claim*, ALLAFRICA (Apr. 12, 2017), http://allafrica.com/stories/201704120365.html; The Associated Press, *Uganda Charges, Jails Academic for Insulting the President*, NEW YORK TIMES (Apr. 10, 2017), https://www.nytimes.com/aponline/2017/04/10/world/africa/ap-af-uganda-academic-arrested-.html.

[103] David Goldblatt, *The Prison Where Murderers Play for Manchester United*, GUARDIAN (May 28, 2015), https://www.theguardian.com/football/2015/may/28/the-prison-where-murderers-play-for-manchester-united.

[104] Giles Muhame, *Opondo: Stella Nyanzi Saga Not Properly Managed*, CHIMP REPORTS (Apr. 11, 2017), http://www.chimpreports.com/opondo-stella-nyanzi-saga-not-properly-managed/.

[105] Giles Muhame, *Opondo: Stella Nyanzi Saga Not Properly Managed*, CHIMP REPORTS (Apr. 11, 2017), http://www.chimpreports.com/opondo-stella-nyanzi-saga-not-properly-managed/.

[106] The Associated Press, *Uganda Charges, Jails Academic for Insulting the President*, NEW YORK TIMES (Apr. 10, 2017), https://www.nytimes.com/aponline/2017/04/10/world/africa/ap-af-uganda-academic-arrested-.html; Emmanuel Ainebyoona, *Dr Nyanzi Fights Doctors to Stop Medical Examination*, DAILY MONITOR (Apr. 12, 2017), http://www.monitor.co.ug/News/National/Dr-Nyanzi-fights-doctors-to-stop-medical-examination/688334-3886694-keo07u/index.html.

[107] The Associated Press, *Uganda Charges, Jails Academic for Insulting the President*, NEW YORK TIMES (Apr. 10, 2017), https://www.nytimes.com/aponline/2017/04/13/world/africa/ap-af-uganda-academic-arrested.html.

[108] Aljazeera, *Academic Stella Nyanzi Charged With 'Cyber Harassment'*, ALJAZEERA (Apr. 10, 2017), http://www.aljazeera.com/news/2017/04/academic-stella-nyanzi-charged-cyber-harassment-170410183134831.html.

[109] Max Bearak, *This professor called her president 'a pair of buttocks.' Now she's in a maximum security prison*, WASHINGTON POST (Apr. 12, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/04/12/this-professor-called-her-president-a-pair-of-buttocks-now-shes-in-a-maximum-security-prison/?utm_term=.6a1f30f90b6a.

[110] An arbitrary deprivation of liberty is defined as a "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, Art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. Id. "No one shall be subjected to arbitrary arrest, detention or exile." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, Art. 9 (1948) [hereinafter Universal Declaration]. "Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law." Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998, Principle 2 [hereinafter Body of Principles].

peaceful exercise of her right to freedom of expression. The detention is arbitrary under Category III because the government's detention and prosecution of Ms. Nyanzi failed to meet minimum international standards of due process. The detention is arbitrary under Category V because Ms. Nyanzi was targeted by the government in part because of her political opinion.

i. Category I: No Basis for Detention

The detention of Ms. Nyanzi is arbitrary under Category I.

1. The Continued Detention of Ms. Nyanzi Violates Domestic Regulations on Pretrial Detention

A detention is arbitrary under Category I when it is "clearly impossible to invoke any legal basis justifying the deprivation of liberty."[111]

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."[112] This right is reiterated by article 9 of the UDHR and principles 2 and 36(2) of the Body of Principles.[113] The Committee has interpreted this right to mean 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."[114] 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.[115] 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. Thus, any time in excess of 48 hours that the accused spends in custody without being brought before a court constitutes unlawful arrest and detention. The people who carried out the arrest did not introduce themselves or tell her the reason for her arrest. They were in private cars, wielding guns and did not bother to show a warrant. No such warrant has since been shown.

Here, the detention of Ms. Nyanzi violated Uganda's Constitutional limit. Ms. Nyanzi was arrested and detained at the Kira Division police station on April 7, 2017. She remained there until she was brought before a judge on April 10, 2017. Her detention at the Kira Division police station clearly exceeded 48 hours. Thus, her continued detention in excess of 48 hours at the Kira Division police station was unconstitutional and had no legal basis. Having no legal basis, Ms. Nyanzi's detention is arbitrary under Categoy I.

2. The Charges against Ms. Nyanzi are without Merit and Cannot be Used as a Basis to Justify Her Continued Detention

[111] *Report of the Working Group on Arbitrary Detention*, A/HRC/30/69, Aug. 4, 2015, ¶8(a) [hereinafter *Revised Methods of Work]*.
[112] ICCPR, at art 9(1).
[113] UDHR, at art 9; Body of Principles, at principles 2 and 36(2).
[114] UN Human Rights Committee, *General Comment No. 35*, UN Doc. CCPR/C/GC/35, ¶ 23, (16 Dec. 2014).
[115] *Id.*

The two charges brought against Ms. Nyanzi cannot justify her pretrial detention because their overly broad construction and specific application to Ms. Nyanzi violate both domestic and international law.

The right to freedom of expression is expressly protected under international and Ugandan law. Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda is a State Party, provides that "[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."[116] The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights (UDHR). Further, Article 29 of the Ugandan Constitution likewise guarantees the right to freedom of opinion and expression.[117] Article 19(3) of the ICCPR provides that restrictions on the right to freedom of expression are permissible only when they are 1) prescribed by law, 2) for a legitimate aim, and 3) necessary in a democratic society. To be "prescribed by law," a law must be duly enacted and must be "formulated with sufficient precision to enable an individual to regulate his or her own conduct accordingly."[118] A law cannot allow for unfettered discretion upon those charged with its execution.[119] Rather, "laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not."[120]

Here, the provisions of the Computer Misuse Act cannot be a legitimate basis to charge and detain Ms. Nyanzi because they are vague and open to broad interpretation. Ms. Nyanzi is charged with sections section 24(1)(2)(a) and 25 of the Act. Section 24(1)(2)(a) makes it an offense to "mak[e] any request, suggestion or proposal which is obscene, lewd, lascivious or indecent." However, the terms "obscene, lewd, lascivious or indecent" are not defined anywhere in the Act, and leave room for misinterpretation and discretion. The same goes for section 25 of the Act which criminalizes communication that "disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication." The provision does not explain what is meant by "disturb or attempts to disturb" or "legitimate communication." Both sections are vaguely worded and are open to broad interpretation. It is impossible for people to know which actions or communications would violate these sections. In addition as applied in Ms. Nyanzi's case, the government is utilizing this overly broad construction to impermissibly restrict speech that is clearly permissible and protected under international human rights law and the Ugandan constitution.

As such, section 24 and 25 of the Computer Misuse Act cannot be considered as "prescribed by law," and cannot be considered as legitimate restrictions on the freedom of expression permissible under international law. Since the provisions used to detain Ms. Nyanzi pretrial are not legitimate laws, her detention is arbitrary under Category I.

---

[116] *ICCPR,* art. 19(2).
[117] Constitution of the Republic of Uganda, Art. 29 (1), (2).
[118] Human Rights Committee, *General Comment No. 34(Article 19: Freedom of opinion and expression)*, para. 25, U.N. Doc. CCPR/C/GC/34 (2011) [hereinafter *HRC General Comment 34*], http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.
[119] HRC General Comment 34, at para. 25.
[120] HRC General Comment 34, at para. 25.

i. Category II: Substantive Fundamental Rights

The detention of Ms. Nyanzi is arbitrary under Category II.

A detention is arbitrary under Category II when the detention results from the exercise of fundamental rights protected by international law. More specifically, the arbitrary detention results "[w]hen 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, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights."[121] In light of this, the detention of Ms. Nyanzi is arbitrary because the detention resulted from the exercise of her fundamental right to freedom of opinion and expression.[122]

The right to freedom of expression is expressly protected under international and Ugandan law. Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Ugandan is a State Party, provides that "[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."[123] The right to free expression is also protected by Article 19 of the Universal Declaration of Human Rights (UDHR). Further, Article 29 of the Ugandan Constitution likewise guarantees the right of its citizens to freedom of opinion and expression.[124]

Along with these express protections set forth in international and domestic law, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The concept of a human rights defender is codified under the UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, unanimously adopted by the UN General Assembly on 9 December 1998 (Declaration on Human Rights Defenders).[125] The Declaration on Human Rights Defenders affirms their role at the local, regional, national, and international levels. (Journalists working on reporting of human rights abuses are explicitly recognized as falling under the definition of human rights defenders.)[126] The UN General Assembly and Human Rights Council (formerly the Commission on Human Rights) have since regularly reaffirmed the rights of human rights defenders to conduct their work.[127]

---

[121] *Revised Methods of Work*, ¶7(e).
[122] *ICCPR,* Art. 22.
[123] *ICCPR,* art. 19(2).
[124] Constitution of the Republic of Uganda, Art. 29 (1), (2).
[125] Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organizations such as associations or foundations. Anyone, regardless of their occupation, can be a human rights defender; they are defined primarily by what they do rather than their profession. See generally, Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Resolution 53/144, UN Doc. A/RES/53/144, (8 Mar. 1998).
[126] See, e.g., "Who is a Defender", Website of the UN Special Rapporteur on the situation of human rights defenders, available at http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx.
[127] Most recently, these bodies unanimously passed resolutions in support of the rights related to the work of human rights defenders and on the protection of human rights defenders in general and women human rights defenders in particular. See UN Human Rights Council, Protecting Human Rights Defenders, Resolution No. 22/6, UN Doc. A/HRC/22/L.13, (15 Mar. 2013); Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and

Moreover, the Working Group has recognized the necessity to "subject interventions against individuals who may qualify as human rights defenders to particularly intense review."[128] This "heightened standard of review" by international bodies is especially appropriate where there is a "pattern of harassment" by national authorities targeting such individuals.[129]

In addition, Article 19 of the ICCPR is of special importance for human rights defenders. The Working Group has recognized the right of human rights defenders "to investigate, gather information regarding and report on human rights violations."[130] The UN Human Rights Committee, the body tasked with interpreting the ICCPR, has also specifically recognized that Article 19(2) protection "includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment."[131]

Despite international and Ugandan law's clear guarantees for individuals' rights to freedom of expression, the Ugandan government arbitrarily detained and prosecuted Ms. Nyanzi as a direct result of her expression. As set forth above, the Ugandan government has a well-documented pattern of attacking and attempting to silence its opponents and critics through harassment and arbitrary detention.

Considering this history, it is clear that the Ugandan government targeted Ms. Nyanzi for arrest and made charges against her to prevent her from making continued criticism against the government. Ms. Nyanzi has been a long critic of the government and the First family. She is also a well known ally for advocating in support of the LGBTI rights movement within Uganda. Recently, Ms. Nyanzi has been vocal about the government's failure to provide sanitary pads to school girls as promised during last year's presidential campaigns. The First lady and Minister of Education Janet Museveni said in February 2017, that the government had no money for sanitary pads, the lack of which is attributed as one of the leading causes of Ugandan girls dropping out of school. Ms. Nyanzi criticized the First lady and the President for their failure to keep the promise and launched a public fundraising to distribute sanitary pad for school girls herself. In the months leading up to her arrest, she has been interrogated by the Crime Investigation Department regarding her social media posts, subjected to a travel ban because of investigations regarding her social media posts, suspended from her job because of her social media posts criticizing the First lady, and her family members were threatened by armed individuals.

Protect Universally Recognized Human Rights and Fundamental Freedoms: Protecting Women Human Rights Defenders, G.A. Resolution 68/181, UN Doc. A/RES/68/181, (18 Dec. 2013).

[128] Nega v. Ethiopia, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, UN Doc. A/HRC/WGAD/2012/62, ¶ 39, (21 Nov. 2012); see also, Sotoudeh v. Islamic Republic of Iran, UN Working Group on Arbitrary Detention, Opinion No. 21/2011, UN Doc. A/HRC/WGAD/2011/21, ¶ 29, (27 Jan. 2011).

[129] Bialiatski v. Belarus, UN Working Group on Arbitrary Detention, Opinion No. 39/2012, ¶ 43, (23 Nov. 2012).

[130] Hassan Ahmed Hassan Al-Diqqi v. United Arab Emirates, UN Working Group on Arbitrary Detention, Opinion No. 8/2009, UN Doc. A/HRC/13/30/Add.1, ¶ 18, (2010). Although the Working Group came to this conclusion by referencing the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, it noted that "in the Working Group's view" the rights and principles of the Declaration "are based on human rights standards enshrined in the Universal Declaration of Human Rights and in the Charter of the United Nations." Id.

[131] De Morais v. Angola, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002, ¶ 6.7, (29 Mar. 2005).

The attempt to prevent Ms. Nyanzi from continuing her social and political activism through arbitrary arrest and trumped-up charges is in line with the Ugandan government's broader history of attempting to suppress the free expression and civic activism of individuals and constitutes a violation of article 19(2) of the ICCPR, article 19 of the UDHR, and article 29 of the Ugandan Constitution. Moreover, because of Ms. Nyanzi's work as a scholar, social activist, and human rights defender, she enjoys special protection under international law with respect to any detention related to her advocacy. Any government interference, such as detention, which serves to restrict her speech is entitled to heightened scrutiny from the Working Group. It is precisely her work—seeking to raise awareness of good governance and social issues—which ultimately motivated her detention. As such, the detention in this is case cannot meet the "particularly intense review" mandated by the jurisprudence of the Working Group.

ii. Category III: Due Process Rights

The detention of Ms. Nyanzi is arbitrary under Category III.

A detention is considered arbitrary under Category III "[w]hen 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."[132] Additionally, the Working Group looks to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).[133]

1. Ugandan Authorities Violated Ms. Nyanzi's Right by Detaining Her Without a Judicial Order

Ugandan authorities have violated Ms. Nyanzi's right to be detained by virtue of a judicial order. Article 9(1) of the ICCPR[134] and Principle 2 of the Body of Principles[135] prohibit arbitrary arrest and detention and state that no one shall be deprived of liberty except on such grounds and in accordance with the procedure established by the law.

The people who carried out the arrest did not introduce themselves or tell her the reason for her arrest. They were in private cars, wielding guns and did not bother to show a warrant. No such warrant has since been shown.

2. Ugandan Authorities Violated Ms. Nyanzi's Right by Failing to Inform Her of Charges Against Her

Ugandan authorities have violated Ms. Nyanzi's right to be informed of the reasons for her arrest. Under Articles 9(2) and 14(3)(a) of the ICCPR[136] and Article 23 of the Constitution,[137]

---

[132] *Revised Methods of Work*, ¶8(c).
[133] *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998 [hereinafter *Body of Principles*].
[134] *ICCPR,* Art. 9.
[135] *Body of Principles*, Principle 2.
[136] *ICCPR,* Arts. 9, 14.
[137] *Constitution of the Republic of Uganda*, Art. 523.

Uganda is obligated to guarantee that those arrested are informed of the reasons for their arrest and promptly informed of the charges brought against them. Principles 10 and 13 of the Body of Principles reiterate the same.[138]

During Ms. Nyanzi's arrest, she was not informed of the charges against her. While in detention, and without her lawyers, the police interrogated her and attempted to record a statement. She however objected to it. She was only formally informed of the charges in relation to the Computer Misuse Act when produced in court.

3. Ugandan Authorities Violated Ms. Nyanzi's Right by Failing to Promptly Bring Her Before a Judge and Failing to Try Her Without Undue Delay

Ugandan authorities have violated Ms. Nyanzi's right to be promptly brought before a judge and tried without undue delay. Article 9(3) and (4) of the ICCPR protect an individual's right to challenge the legality of his continued detention. This right is reiterated by principles 4, 11(1), 32 and 37 of the Body of Principles.[139] Article 9(3) of the ICCPR requires that a detainee "be brought promptly before a judge or other officer authorized by law to exercise judicial power" and "applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity."[140] The Committee has interpreted the term "promptly" to be within about 48 hours, except in exceptional circumstances.[141] Further, article 23(4)(b) of the Constitution of Uganda specifies that the accused detainee must be brought before a Court no later than forty-eight hours from the time of his or her arrest, if not released earlier. The Committee has also determined that *incommunicado* detention inherently violates article 9(3) of the ICCPR.[142] This guarantee not only serves as a check on arbitrary detention, but also provides an important safeguard for other related rights, such as freedom from torture.[143] Article 9(4) of the ICCPR extends this principle of *habeas corpus* to non-criminal detainees as well.[144]

As well as requiring that detainees be allowed to promptly challenge his detention, article 9(3) of the ICCPR also enshrines the right to an individual's release pending trial by confirming that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody . . . ."[145] The Committee has found that"[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances."[146] Principles 38 and 39 of the Body of Principles

---

[138] *Body of Principles*, Principles 10, 13.
[139] Body of Principles, at principles 4, 11(1), 32 and 37.
[140] General Comment No. 35, *supra* note 114, at ¶ 32.
[141] *Id.*, at ¶ 33.
[142] *Id.*, at ¶ 35.
[143] *Id.*, at ¶ 34. Other rights that may be at risk are those guaranteed by articles 6, 7, 10 and 14 of the ICCPR. *Id.*, at 35.
[144] *Id.*, at ¶ 39.
[145] ICCPR, at art 9(3).
[146] General Comment No. 35, *supra* note 114, at ¶ 38.

further confirms that, except in special cases, a criminal detainee is entitled to release pending trial.[147]

Here, the Ugandan authorities violated Ms. Nyanzi's rights to be promptly brought before a judge and tried without undue delay. First, as explained above, the authorities failed to bring her before the court within 48 hours. Ms. Nyanzi was arrested by plainclothes officers at about 8:30pm on April 7, 2017, and detained at Kira Division police station until brought before a judge on April 10, 2017. This clearly exceeded the mandate that an accused detainee be brought before the court within 48 hours of arrest. Second, upon her arrest, Ms. Nyanzi was held incommunicado for 18 hours before her lawyer was finally allowed to see her. As determined by the Human Rights Committee, incommunicado detention constitutes a violation of article 9(3) of ICCPR. Third, her bail hearing was unduly delayed by the prosecution's unanticipated application for Ms. Nyanzi's mental examination. On April 10, 2017, Ms. Nyanzi appeared before the Bugandan Road Magistrate's Court. The prosecution surprised Ms. Nyanzi and her lawyers with an application asking for Ms. Nyanzi's sanity to be ascertained before the case proceeds, invoking Uganda's 1938 Mental Treatment Act. This application was served to Ms. Nyanzi and her lawyers at the court. The court declined to hear Ms. Nyanzi's bail application until after disposing the prosecution's application for mental examination on April 25, 2017. She was then remanded to Luzira prison. The prosecution's failure to notify and serve Ms. Nyanzi the application for medical examination caused the delay in her bail application. Because of the prosecution's dirty tactic, Ms. Nyanzi's pretrial detention has been extended to April 25, 2017. Thus, in contradiction to the requirement that pretrial detention be the exception rather than the rule and that such pre-trial detention be based on an individualized determination that it is both reasonable and necessary to deny release given a defendant's circumstances, the judge impermissibly defaulted to continuing the detention of Ms. Nyanzi. Given the absence of a warrant the Ugandan police also violated section 17 of the Criminal Procedure Code Act which states that for a non-serious offense, a person must be released on a bond if it is "not practicable" to bring the person before the Magistrates Court within twenty-four hours of arrest. A request to release her on police bond was denied by the Kiira Division police CID officer under the pretext that he was only holding her and did not have the authority to grant her bond.

By failing her to bring Ms. Nyanzi before the court within 48 hours, detaining her incommunicado, and delaying her bail hearing through an uninformed mental exam application, Uganda violated her right to be promptly brought before a judge and tried without undue delay.

4. Ugandan Authorities Violated Ms. Nyanzi's Right to Have Adequate Time and Facilities for the Preparation of Her Defense

Ugandan authorities have violated Ms. Nyanzi's right to prepare an adequate defense. Article 14(3)(b) of the ICCPR guarantees the right to have adequate time and facilities for the preparation of a detainee's defense.[148] Article 28(3)(c) of the Ugandan Constitution likewise guarantees this right. Adequate time depends on the circumstances of the particular case. The

[147] Body of Principles, at principles 38 and 39.
[148] *ICCPR,* Art. 14.

United Nations Human Rights Committee has noted that facilities must include access to documents and other evidence that the accused requires to prepare his case.[149]

Ms. Nyanzi's right to prepare an adequate defense was violated by the prosecution's failure to inform her of their application to subject her to mental examination. On April 10, 2017, the prosecution asked the Bugandan Road Magistrate's Court to commit Ms. Nyanzi for a medical examination, invoking Uganda's 1938 Mental Treatment Act, and with an affidavit from a police officer. Ms. Nyanzi and her counsel, however, were not informed of such application until they arrived at the court, and were not afforded adequate time to prepare their defense. Because Ms. Nyanzi was not able to prepare defense for the mental examination application, Ms. Nyanzi's pretrial detention has been impermissibly extended. If her lawyers had known about it and prepared for it, Ms. Nyanzi's bail application could have been heard that day. Although the court granted Ms. Nyanzi time to respond the prosecution's application by adjourning the hearing to April 25, 2017, the prosecution's tactic already caused her grave injury by extending her arbitrary detention.

5. Ugandan Authorities Violated Ms. Nyanzi's Right to be Presumed Innocent Until Proven Guilty

Ugandan authorities have violated the right of Ms. Nyanzi to be presumed innocent until proven guilty. Under Article 14(2) of the ICCPR,[150] Article 11(1) of the UDHR,[151] Article 28(3)(a) of the Ugandan Constitution,[152] and Principle 36 of the Body of Principles,[153] every citizen has the right to be presumed innocent. The Human Rights Committee has stated that:

> "the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial."[154]

Article 10(2)(a) of the ICCPR states that "accused persons shall, save for exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons."[155] Principle 8 of the Body of Principles reiterates that unconvicted persons should be kept separately from convicted persons and should be treated accordingly.[156]

Here, Ms. Nyanzi's right to be presumed innocent has been violated. First, by detaining Ms. Nyanzi in Luzira prison, Ugandan authorities have subjected her to treatment that is similar to that of charged and sentenced persons. Luzira prison is the country's only maximum security

---

[149] *General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14)*, UN HUMAN RIGHTS COMMITTEE, HRI/GEN/1/Rev.1, Apr. 13, 1984, ¶11.
[150] *ICCPR,* Art. 14.
[151] *Universal Declaration*, Art. 11.
[152] *Constitution of the Republic of Uganda*, Art. 28(3)(a).
[153] *Body of Principles*, Principle 36.
[154] *General Comment No. 13*, ¶7.
[155] *ICCPR,* Art. 10.
[156] *Body of Principles*, Principle 8.

prison and houses Uganda's death row inmates. Rather than ensuring that Ms. Nyanzi receives treatment that reflects her innocent status, Ugandan authorities have placed her side-by-side with charged and sentenced persons. Second, by attempting to subject Ms. Nyanzi to a mental examination, Ugandan authorities have treated her differently from others. The prosecution moved to subject Ms. Nyanzi subject to a mental examination based on the Mental Treatment Act 1938, which allows examination of people with unsound mind. This law, however, does not conform with the presumption of innocence guaranteed in the Ugandan Constitution and international instruments because until evidence is produced showing that Ms. Nyanzi is of unsound mind, she should be judged to be of sound mind. The affidavit produced by the prosecution cannot serve as evidence to prove Ms. Nyanzi's mental state because the affiant, Emmanuel Mbonimpa, is a police officer and is not an expert psychiatrist. Nor was the defense given the opportunity to cross-examine the affiant to prove his character or competency. In addition, mental examination are usually only required for certain offenses, such as statutory rape.[157] The prosecution's application, thus, clearly treated her differently from other accused persons. Moreover, on April 12, 2017, psychiatrists visited Ms. Nyanzi at Luzira prison to conduct a medical examination on her without her consent or court order. Ms. Nyanzi was able to resist it. Routine medical check is common practice in Luzira, but this does not include mental exams. Medical exams upon arrival at Luzira prison entail tests for malaria, tuberculosis, and other illnesses and communicable diseases. In any case, these exams are only conducted by doctors from the prison hospital. However in Ms. Nyanzi's case, the doctors that came to examine her where from the Butabika Mental Hospital. The different treatment of Ms. Nyanzi violates her right to presumption of innocence. Third, by allowing fewer visitors to Ms. Nyanzi compared to others, Ugandan authorities have failed to treat her as an innocent person. It has been reported that she is being allowed fewer visits than the norm.[158] This indicates that Ugandan authorities are treating her different from others and are failing to treat her as an innocent person.

By placing Ms. Nyanzi in a maximum security prison, forcing her mental examination, and allowing less visitors compared to others, the Ugandan authorities have violated her right to a presumption of innocence.

6. Ugandan Authorities Violated Ms. Nyanzi's Rights to be Free from Cruel, Inhuman, or Degrading Treatment

Ugandan authorities have violated the right of Ms. Nyanzi to be free from cruel, inhuman or degrading treatment or punishment. Article 7 of the ICCPR,[159] Article 5 of the UDHR,[160] Articles 24 and 44 of the Ugandan Constitution,[161] and Principle 6 of the Body of Principles[162] collectively establish this prohibition. The Body of Principles states that this prohibition "should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive

---

[157] Aljazeera, *Academic Stella Nyanzi Charged With 'Cyber Harassment'*, ALJAZEERA (Apr. 10, 2017), http://www.aljazeera.com/news/2017/04/academic-stella-nyanzi-charged-cyber-harassment-170410183134831.html.
[158] Max Bearak, *This professor called her president 'a pair of buttocks.' Now she's in a maximum security prison*, WASHINGTON POST (Apr. 12, 2017), https://www.washingtonpost.com/news/worldviews/wp/2017/04/12/this-professor-called-her-president-a-pair-of-buttocks-now-shes-in-a-maximum-security-prison/?utm_term=.6a1f30f90b6a.
[159] *ICCPR,* Art. 27.
[160] *Universal Declaration*, Art. 5.
[161] *Constitution of the Republic of Uganda*, Arts. 24, 44.
[162] *Body of Principles*, Principle 6.

him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time."[163] Further, Articles 1-2 and 4-7 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[164], to which Uganda is a state party, also collectively prohibit the infliction of physical or mental pain or suffering by a public official with the intention to intimidate or coerce.

More broadly, Article 10(1) of the ICCPR[165] and Principle 1 of the Body of Principles[166] state that persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Uganda's treatment of Ms. Nyanzi during her pretrial detention violates international and Ugandan law on the prohibition of torture and cruel, inhuman or degrading treatment. Ms. Nyanzi was physically abused. During the pretrial detention period at Kira Division police station, Ms. Nyanzi was beaten. [167] Her clothes had been torn and had not been given anything to take care of her menstruation when she was finally allowed to see her lawyer after being held for 18 hours.[168] Ms. Nyanzi was psychologically abused as well. On April 12, 2017, government mental hospital doctors attempted to conduct a forced mental examination on Ms. Nyanzi at Luzira Prison, where she is currently detained, without her consent or court order.

By beating Ms. Nyanzi and attempting to force medical examination on her, Uganda has violated her right to be free from cruel, inhuman and degrading treatment and torture.

7. Ugandan Authorities Violated Ms. Nyanzi's Right to Examine Witnesses Against Her

Article 14(3)(e) of the ICCPR guarantees to a criminal defendant the right to examine any witnesses against him. The Committee has confirmed that this guarantee is a crucial application of the principle of equality of arms and important for ensuring an effective defense.[169]

Here, Ms. Nyanzi's right to examine witnesses against her was violated because the affiant against her was not available for cross examination during her arraignment hearing on April 10, 2017. On that day, the prosecution asked the court to subject Ms. Nyanzi to a mental examination based on an affidavit sworn by Emmanuel Mbonimpa, the head of Police's Media Crime unit. Based on his interactions with her, Mbonimpa, who is not an expert, claimed that Ms. Nyanzi has mental issues. Mbonimpa's affidavit claimed that Ms. Nyanzi allegedly went through "erratic episodes" and "made unusual behavior" while she was detained at the Kira District police station. The affidavit also attached a photo of Ms. Nyanzi's protest in 2016 as evidence of her insanity. The affidavit also claimed, without any evidence, that Ms. Nyanzi was

---

[163] *Id.*
[164] *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, June 26, 1987, 1465 U.N.T.S. 85, Arts. 1-2, 4-7.
[165] *ICCPR,* Art. 10.
[166] *Body of Principles*, Principle 1.
[167] Kimiko de Freytas-Tamura, *Uganda Tries to Commit Critic of President to Mental Institution*, NEW YORK TIMES (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/world/africa/uganda-yoweri-museveni-protest-mental-institution.html.
[168] Kimiko de Freytas-Tamura, *Uganda Tries to Commit Critic of President to Mental Institution*, NEW YORK TIMES (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/world/africa/uganda-yoweri-museveni-protest-mental-institution.html.
[169] General Comment No. 32**Error! Bookmark not defined.**, at ¶ 39.

at one time admitted to a mental facility. Ms. Nyanzi's counsels, however, were not allowed the opportunity to cross-examine the Mbonimpa, who was not present at the hearing. They could not examine his character or his competency to make such observations and judgments. And precisely because of the mental examination application, the court denied to Ms. Nyanzi's bail application that day and her pretrial detention was extended. Not being given the opportunity to examine the witness against her caused, in part, her current pretrial detention.

By failing to give Ms. Nyanzi's lawyers the opportunity to cross-examine the affiant against her, Uganda has violated her right to examine witnesses against her.

iii. Category V: Discrimination Based on a Protected Class

The detention of Ms. Nyanzi due to her political opinions, political participation, and status as a human rights defender is arbitrary under Category V.

A detention is arbitrary under Category V when, in violation of international law, the detention is discriminatory "based on . . . political or other opinion . . . that aims towards or can result in ignoring the equality of human beings."[170] Article 7 of the UDHR[171] and Article 26 of the ICCPR[172] further prohibit discrimination before the law on a number of grounds, including "political or other opinion." Similarly 21 of the Ugandan Constitution guarantees equality before the law on the basis of political opinion.[173]

The facts at hand indicate that Ms. Nyanzi was arrested due to her political opinions, political participation, and status as a human rights defender. Ms. Nyanzi is being charged based on her social media posts and criticizing the work of the government and the First family. Ms. Nyanzi had been under the surveillance of Ugandan authorities for a lengthy period of time because of her social and political activism.[174] Ms. Nyanzi has been an advocate of LGBTI rights in Uganda and publicly opposed the Anti-Homosexuality Act.[175] She played a big role in the 2016 Uganda General Elections where she launched a campaign against the incumbent party and supported the opposition.[176] Recently, she has criticized the government for backtracking on its promise to provide sanitary pad for school girls and launched the "Pads4GirlsUG" Project where she managed to collect thousands of reusable sanitary pads and distributed them to school girls.[177] Because of such political and social activism, Ms. Nyanzi has been harassed by the government. For example, she has been summoned by the Criminal Investigations Department for hours of interrogation, blocked from travelling abroad, suspended from her job, reported

---

[170] *Revised Methods of Work*, ¶7(e).
[171] *Universal Declaration*, Art. 7.
[172] *ICCPR,* Art. 26.
[173] *Constitution of the Republic of Uganda*, Art. 21(2).
[174] Maxamed Sulayman, *Ugandan Police Interrogate Prominent Feminist for 'Offending' President*, MAALMAHA (Mar. 10, 2017), http://www.maalmahanews.com/2017/03/10/ugandan-police-interrogate-prominent-feminist-for-offending-president/; Kenneth Kazibwe, *I ordered Stella Nyanzi Arrest-Kayihura*, CHIMP REPORTS (Apr. 11, 2017), http://www.chimpreports.com/i-ordered-stella-nyanzi-arrest-kayihura/
[175] Nasa Tushabe, *Who is Stella Nyanzi? Biography, CV, background, marriage, career and war against Museveni*, BLIZZ UGANDA (Apr. 12, 2017), http://ugblizz.com/stella-nyanzi-biography-cv-background-marriage-career-war-museveni/.
[176] Nasa Tushabe, *Who is Stella Nyanzi? Biography, CV, background, marriage, career and war against Museveni*, BLIZZ UGANDA (Apr. 12, 2017), http://ugblizz.com/stella-nyanzi-biography-cv-background-marriage-career-war-museveni/.
[177] Nasa Tushabe, *Who is Stella Nyanzi? Biography, CV, background, marriage, career and war against Museveni*, BLIZZ UGANDA (Apr. 12, 2017), http://ugblizz.com/stella-nyanzi-biography-cv-background-marriage-career-war-museveni/.

threats from armed individuals on her family members.[178] Thus, the facts indicate that Ms. Nyanzi was arrested in light of her political opinions and activities; by extension, her detention is discriminatory based on her political opinions and her status as a social activist and human rights defender.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.

On April 10, 2017, Ms. Nyanzi was charged on two counts: cyber harassment under section 24(1)(2)(a) Computer Misuse Act and offensive communication under section 25 of the Computer Misuse Act. A request for bail has not been given proper or due consideration. Instead, Ms. Nyanzi's pretrial detention has been unfairly extended by the prosecution and the court.

VI. CONCLUSION

The arrest and continued detention of Ms. Nyanzi is an egregious violation of her fundamental rights. The Government of the Republic of Uganda has violated the following rights under various provisions of the Ugandan Constitution, Ugandan laws, and international law in extending the detention of Ms. Nyanzi and subjecting her to mistreatment:

- The right to be free from arbitrary detention;
- The right to freedom of expression;
- The right to due process, including the right to be detained only with a judicial order, the right to be informed of the reasons for arrest, the right to be promptly brought before a judge, the right to prepare an adequate defense, the right to be presumed innocent before guilty, the right to examine witnesses against her; and
- The right to dignity and the right to be free from cruel, inhuman or degrading treatment or punishment.

We hereby request that the United Nations Working Group on Arbitrary Detention:

1. Issue an opinion finding Ms. Nyanzi's ongoing pretrial detention to be in violation of Uganda's obligations under international law;
2. Call for Ms. Nyanzi's immediate release;
3. Request that the Government of Uganda investigate and hold accountable all persons responsible for the unlawful arrest, continued detention, and mistreatment of Ms. Nyanzi; and
4. Request the Government of Uganda to award Ms. Nyanzi compensation for the violations she has endured as a result of her unlawful arrest, arbitrary detention, and mistreatment while in state custody.

[178] Lukwago J, *Stella Nyanzi charged For Calling Ugandan President a "Pair of Buttocks"*, NEWSLEX POINT (Apr. 11, 2017), http://newslexpoint.com/stella-nyanzi-charged-buttocks/.

VII. FULL NAME AND ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION

Nicholas Opiyo
Lead Attorney & Executive Director
Chapter Four Uganda
Plot 2 Wampewo Close
P.O Box 33159, Kampala, Uganda
nopiyo@chapterfouruganda.com
Office: +256790916614
Cell: +256752636516

Wade McMullen
Managing Attorney
Robert F. Kennedy Human Rights
1300 19th Street NW, Suite 750
Washington, DC 20036
mcmullen@rfkhumanrights.org;
legal@rfkhumanrights.org
Office: +1-202-463-7575

On the brief:
William Juhn
Dale & James J. Pinto Fellow
Robert F. Kennedy Human Rights