

TELEGRAMS: "LOCAL ADMIN" KAMPALA
FAX Nos: MINISTER347339
PERMANENT SECRETARY258127
TELEPHONES: GENERAL LINE233513/341224
MINISTER341279
MINISTER OF STATE342368
PERMANENT SECRETARY256533
DIRECTOR LOCAL GOVT ADMIN & INSPCT. 254501
DIRECTOR DECENTRALISATION SECRETARIAT..... 342864
UNDER SECRETARY FINANCE & ADMIN 258120
COMMISSIONER LOCAL COUNCILS DEV 258100
COMMISSIONER LOCAL GOVT ADMIN 343785
COMMISSIONER LOCAL GOVT INSPCT 258101
ASSISTANT COMMISSIONER PLANNING 342854
E-mail: molg@infocom.co.ug



THE REPUBLIC OF UGANDA

OFFICE OF THE MINISTER
MINISTRY OF LOCAL GOVERNMENT

P. O. BOX 7037

KAMPALA

UGANDA

IN CASE OF ANY CORRESPONDENCE ON

THIS SUBJECT PLEASE QUOTE REF MC.22

15th March 2010.

Hon. Nsaba Buturo,
Minister of State for Ethics and Integrity,
Kampala.

The Anti-Homo Sexuality Bill, 2009.

I acknowledge receipt of your letter dated 11th March 2010 on the above subject.

1. The Committee is a Committee of Cabinet. We sat and considered the Bill clause by clause. As a Committee of Cabinet we did not find it prudent to concretise the Government position and dialogue with Hon. Bahati before Cabinet has considered and adopted our recommendations on the Bill. Hence our decision to present the Committee report to Cabinet for its consideration.
2. The Cabinet Committee could not proceed to present amendments to the relevant committee of Parliament because we have no amendments to make on the Bill (see the Committee Report). If in spite of our recommendation, Cabinet feels that amendments should be made, the line Minister will carry those amendments to the relevant Committee of Parliament.
3. I note that you have concerns which the report has not captured. I did invite you to attend the Cabinet Committee of 22/2/2010 as a member, you did not turn nor had the courtesy to communicate your apologies. The following members of the Committee did attend and deliberated on the Bill.

Hon. Adolf Mwesige, Minister of Local Government.

Hon. Namirembe Bitamazire, Minister of Education & Sports.

Hon. Isaac Musumba, Minister of State for Foreign Affairs.

- The First parliamentary Counsel represented the Deputy Attorney General.

→ The members of the Committee who did not attend the meeting are free to express their views in Cabinet.

I do not find it procedurally correct to communicate the findings of the Cabinet Committee to Hon. Bahati, a non-member of Cabinet before Cabinet has approved the Committee's recommendations. I have already submitted the report of the Cabinet Committee to the Secretariat for Cabinet's discussion. The report is already scheduled on the Agenda of Cabinet. I am therefore not in position to hold another meeting of the Committee as your letter suggests. I have attached a copy of my invitation letter to you and a copy of the minutes of the Cabinet Committee meeting for your ease of reference.



Adolf Mwesige,
MINISTER OF LOCAL GOVERNMENT.

- c.c.: Hon. Gabriel Opio,
Minister of Gender, Labour & Social Development.
- c.c.: Hon. Kabakumba Masiko, Information and National Guidance.
- c.c.: Hon. Geraldine Bitamazire Namirembe,
Minister of Education & Sports.
- c.c.: Hon. Fred Ruhindi, Deputy Attorney General/
Minister of State for Justice and Constitutional Affairs.
- c.c.: Hon. Isaac Musumba,
Minister of State for Foreign Affairs (Regional Affairs).
- c.c.: Hon. D. Bahati, MP Ndorwa West, Kabale District.
- c.c.: The Head of Public Service/Secretary to Cabinet.

SECRET

MINUTES OF THE 1ST MEETING OF THE CABINET COMMITTEE ON THE ANTI-HOMOSEXUALITY BILL, 2009 HELD ON MONDAY 22ND FEBRUARY, 2010 AT 2.00 P.M. IN THE MINISTRY OF LOCAL GOVERNMENT BOARD ROOM, 2ND FLOOR, WORKERS' HOUSE, SOUTHERN WING.

PRESENT.

- (1) Hon. Adolf Mwesige
Minister of Local Government (Chairperson)
- (2) Hon. Geraldine Bitamazire Namirembe,
Minister of Education and Sports
- (3) Hon. Isaac Musumba Isanga,
Minister of State for Foreign Affairs (Regional Affairs)

IN ATTENDANCE.

1. Ms. Harriet Lwabi,
Director, Legislative Drafting,
First Parliamentary Counsel,
Ministry of Justice and Constitutional Affairs
2. Ms. Bucyana U. Allen,
State Attorney
Office of the First Parliamentary Counsel,
Ministry of Justice and Constitutional Affairs
3. Mr. Aluma B. Adam,
Personal Assistant to
Minister of Local Government
4. Ms. Akurut Jane Margaret [Minute Secretary]
Senior Assistant Secretary
Cabinet Secretariat.
Office of the President.

SECRET

ABSENT (ON DUTY):

1. Hon. Gabriel Opio, Minister of Gender, Labour and Social Development;
2. Hon. Kabakumba Labwoni Masiko, Minister of Information and National Guidance;
3. Hon. Dr. Nsaba Buturo, Minister of State, Office of the President (Ethics and Integrity);
4. Hon. Fredrick Ruhindi, Minister of State for Justice and Constitutional Affairs/Deputy Attorney General.

MINUTE 01/2010:

COMMUNICATION FROM THE CHAIR.

The Chairperson informed the meeting as follows:

- (1) That he wished to welcome all Members to the meeting, especially the technical team from the Ministry of Justice and Constitutional Affairs who had critically analyzed the Draft Anti Homosexuality Bill, 2009 and made their comments.
- (2) That the team from the Ministry of Justice and Constitutional Affairs had prepared a written analysis of the Bill which would guide the discussions and decisions of the Committee.
- (3) That the Committee had been expected to present their report in Cabinet on Wednesday 10th February 2010, but that the Committee meetings previously planned for on the 1st and 15th February, 2010 had failed to take place since he

had other urgent assignments which he had to attend to and that accordingly, the Committee was unable to report back to Cabinet as expected.

- (4) That he was hopeful that now that the Committee was meeting, he would be able to report back to Cabinet on Wednesday 3rd March 2010 and that the First Parliamentary Counsel should prepare the draft report for the Chairperson by Wednesday 24th February, 2010.

MINUTE 02/2010:

**PRESENTATION AND
DISCUSSIONS ON THE ANTI-
HOMOSEXUALITY BILL, 2009.**

- (1) That it was not clear who drafted the Bill since the First Parliamentary Counsel had not been consulted as required under the Law, (Article 94 of the Constitution) and that therefore the Bill was inconsistent with the provisions of the law.
- (2) That however, the Private Member had invited the Office of the First Parliamentary Counsel to participate in a consultative meeting on the Bill after it had already been published and that this was out of procedure.
- (3) That therefore, the Private Member had not complied with the Constitutional provisions as contained in Article 94 and that the Bill was considered unconstitutionally before Parliament.
- (4) That due to the omission, the Attorney General had realised that the Bill had technical defects both in form and content as follows:

→ (i) Clause 1 - Interpretation:

That the clause had defined some words that were not used in the draft Bill; for example: "bisexual", "gay", "lesbian" and that these words rendered the Bill irregular.

(ii) Clause 2 - The offence of Homosexuality:

That the offences listed under this clause were already adequately provided for in the Penal Code Act Cap. 120, section 145 (a) and (c), and that there was no need to create these offences again in a separate Act of Parliament.

(iii) Clause 3 - Aggravated Homosexuality:

That the offences under this clause needed to be harmonized with the existing penalties in the already existing laws.

(iv) Clause 4 - Attempt to Commit Homosexuality:

(a) That section 146 of the Penal Code Act, Cap 120 already prescribes penalties against any person who attempts to commit "unnatural offences" as specified under this clause and that these provisions were adequate and there was no need to state them in a separate law.

(b) That in addition, the use of the words "*unnatural offences*" should not be used but rather the emphasis in the law should be on the offences committed.

(v) Clause 5 - Protection, assistance and payment of compensation to victims of homosexuality:

That clause 5(3) and (4) of the bill on **compensation** could be included in the amendments arising out of the Uganda Law Reform Commission Study Report on Sexual Offences that was due to be amended as follows:

That under clause 5(2);

(a) "A victim of homosexuality shall be assisted to enable his or her views and concerns to be presented and considered at the appropriate stage of the criminal proceedings".

(b) That sub-clauses (3) and (4) are based on assumptions that there exist victims of homosexuality and that since compensation is a positive step, it could be included in the amendments to the Sexual Offences.

Clause 6 - Confidentiality:

(a) That this clause on confidentiality was not necessary since it had already been adequately **catered** for in the various existing laws like, the Constitution and Procedural laws, and that it was already the practice of court to hold proceedings in camera if it deemed it necessary.

(b) That for instance, Article 28 of the Constitution gives Judicial discretion to a court or tribunal to exclude the press or the public from all or any proceedings before it for reasons of morality, public order or national security as may be in a free and democratic society.

(c) That however, there was need to include in the law the issue of a party being able to apply for proceedings to be held in camera to avoid suspects being lynched.

(vii) Clause 7 - Aiding and Abetting Homosexuality:

That this clause had already been catered for under section 19(1)(c) of the Penal Code Act, Cap 120 which criminalises aiding and abetting to the effect that when an offence is committed, every person who aids or abets another person commits an offence and shall be deemed to have taken part in committing the offence.

(viii) Clause 8 - Conspiracy to engage in Homosexuality:

That the issue of conspiracy to engage in homosexuality was already covered under sections 390-392 of the Penal Code Act, and therefore was not necessary.

(ix) Clause 9 - Procuring homosexuality by threats, etc:

That this clause appears to reproduce section 132 of the Penal Code Act, Cap. 120 and that therefore, it could be similar to clause 7 of the Bill; that of aiding and abetting homosexuality and that preferably, the Director of Public Prosecutions could be consulted on the interpretations of this.

(x) Clause 10- Detention with intent to commit Homosexuality:

That this clause was not necessary since it had already been adequately catered for under section 134 of the Penal Code Act which was much broader.

(xi) Clause 11 - Brothel:

(a) That this provision is similar to section 137 of the Penal Code Act, Cap. 120 but that there was need to factor it in the Sexual Offences amendments to include the offence of homosexuality.

(b) That in addition, prostitution as defined in the Penal Code Act, Cap. 120 does not differentiate between selling sexual intercourse between man and woman and selling sexual intercourse between man and man, and woman and woman but that preferably, this could be specifically mentioned in the law for the avoidance of doubt.

→ (xii) Clause 12 - Same Sex Marriages:

(a) That this provision had already been catered for under the Constitution, Article 31(2a) which prohibits marriage between persons of the same sex and accordingly, any such relationship were unconstitutional.

(b) That in addition to the case of same sex marriages, the purporting parties should apply to the parties marrying and the one presiding over the marriage, and that there was need for the Attorney General to further internalize this clause.

→ (xiii) Clause 13 - Promotion of Homosexuality;

(a) That this appears to be the core of the Bill and should be upheld due to the fact that there was massive recruitment to entice people into homosexuality going on especially among the youth.

(b) That therefore, the law should provide that all the parties: publishers, printers, distributors, etc. of any materials that promote homosexuality should all be liable to have committed an offence.

→ (xiv) Clause 14 - Failure to disclose the offence;

(a) That this clause was rather broad and easy to abuse since it could be incapable of proof.

(b) That in addition, the use of the words "a person in authority" was not necessary since the existing laws already provide that any person who observes an offence being committed is under obligation to report it.

(xv) Clause 15 - Jurisdiction:

That this clause was not necessary since jurisdiction is already defined by the laws of Uganda. That however, any statute may prescribe the jurisdiction of a Court to handle the subject depending on the offence committed.

(xvi) Clause 16 - Extra-territorial jurisdiction:

That this clause was not necessary since it may not be easy to criminalise an offence which was not considered an offence in the country where it was committed and that therefore, the law could not be applied extra-territorially.

(xvii) Clause 17 - Extradition:

That similarly, this clause was not necessary since extradition thrives on reciprocal arrangements of given countries and that the Extradition Act, Cap. 17 provides for extradition of persons accused or convicted of crimes committed within the jurisdiction of other countries.

(xviii) Clause 18 - Nullification of inconsistent International Treaties, Protocols, Declarations and Conventions.

- (a) That there was need for the Ministry of Foreign Affairs to state that Uganda had not entered into any convention that enjoins it to promote homosexuality, and that therefore, this provision does not apply to Uganda.

(b) That in addition, Uganda has not signed any Human Rights Conventions which were **inconsistent** with the Constitution, but that preferably, all the Conventions the country had entered into could be reviewed to avoid any contradictions that may arise.

2. The Committee resolved as follows:

- (1) . That the Anti-Homosexuality Bill should be reviewed since some provisions of the Constitution were not followed in the process of drafting and that therefore, it was illegally before Parliament.
- (2) That the title of the Anti-Homosexuality Bill, 2009 is stigmatising and accordingly, only the useful provisions of the bill could be incorporated in the Sexual Offences bill yet to be amended so that the proposed legislation does not appear to be targeting a particular group of people.
- (3) That however, **some** provisions of the Bill had **already** been catered for in the existing laws like the **Constitution and the Penal Code Act, Cap. 120**.
- (4) That preferably, some sections of the Penal Code Act could be amended to include some good provisions of the Bill, and that the Attorney General could issue a waiver to that effect.
- (5) That in addition, the Minister of Justice and Constitutional Affairs/Attorney General could expedite discussion of Cabinet Memorandum CT (2008) 144 on Principles for Bills to Implement Recommendations from a study by the Uganda Law Reform Commission on Sexual Offences, previously distributed to Cabinet and currently on the pending business of Cabinet and present for Cabinet consideration.

Minister of Local Government.