

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
UGA 2/2015:

12 August 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged temporary arrest and repeated harassment of human rights defender Mr. Justus Orishaba Bagamuhunda**.

Mr. Justus Orishaba Bagamuhunda is the executive director of the National Foundation for Democracy and Human Rights in Uganda (NAFOD), based in Kabale, Western Uganda. NAFOD develops programmes aimed at promoting human rights, democracy and good governance. Mr. Bagamuhunda is also the managing director of *Freedom Radio 94.7 FM*, a community-based radio station developed by NAFOD, which promotes peace, good governance and discusses development issues in Uganda.

According to the information received:

On 9 July 2015, Mr. Justus Orishaba Bagamuhunda was summoned to appear before a criminal investigating officer of the Kabale police on 10 July 2015. The summons was allegedly based on an accusation that Mr. Bagamuhunda had withheld the payment of an NAFOD employee's salary.

On 10 July 2015, Mr. Bagamuhunda presented himself at the police station in Kabale and was presented with a letter for his arrest, issued by the State Attorney, for disobeying a District Labour Officer. Mr. Bagamuhunda was held at the police station for approximately four hours before being released on police bond, with the condition that he presents himself at the police station when requested.

Following requests received, Mr. Bagamuhunda presented himself at the police station in Kabale on 13 July 2015, 16 July 2015, 20 July 2015, 27 July 2015, 3 August 2015, and 4 August 2015.

On 4 August 2015, upon presenting himself at the Kabale police station, Mr. Bagamuhunda was taken to the Chief Magistrates Court of Kabale and was charged with the criminal offence of disobeying lawful orders of a District Labour Officer. He was subsequently released on bail and ordered to reappear at the Chief Magistrates Court of Kabale on 19 August 2015.

Concern is expressed that the charges brought against Mr. Bagamuhunda, and his repeated summoning by the Kabale police, are related to his legitimate and peaceful human rights advocacy. Concern is also expressed that this may be an attempt to dissuade him from continuing in his role as a human rights defender, in particular through his work with NAFODU's Freedom Radio project. Further concern is also expressed that the above-mentioned acts could result in 'a chilling effect' that could contribute to stifling reporting on issues of public interest and to restricting the legitimate exercise of the right to freedom of expression and opinion, the right to seek, impart and receive information, and the right to freedom of association.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to International Law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information concerning the legal grounds for the arrest and detention of the Mr. Bagamuhunda.
3. Has a complaint been lodged by or on behalf of Mr. Bagamuhunda?
4. Please indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

Both article 9 of the African Charter on Human and Peoples' Rights (ACHPR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified and acceded by Uganda on 10 May 1986 and 21 June 1995 respectively, establish the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. In this regard, we wish to remind your Excellency's Government that any restrictions to the exercise of the right freedom of expression, in accordance with article 19 (3) ICCPR must be provided by law and necessary and proportionate.

The Human Rights Committee, in its General Comment No. 34 provides that States parties should ensure that public broadcasting services operate in an independent manner and that, in this regard, they should guarantee their independence and editorial freedom.

We also draw the attention of your Excellency's Government to article XI (1) of the Declaration of Principles on Freedom of Expression in Africa which states that "intimidation of and threats to media practitioners and others exercising their right to freedom of expression ...undermines independent journalism, freedom of expression and the free flow of information to the public." Article XI (2) of the Declaration reminds States of their "obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies."

Similarly, we would like to refer to article 22 of the ICCPR and Human Rights Council resolution 24/5, in particular operative paragraph 2, that guarantee the right to freedom of association.

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups; and

- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

We would also like to refer to Human Rights Council Resolution 22/6, which urges States to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law and that it is not used to impede or restrict the exercise of any human right (OP 4).