

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 PNG 1/2017

19 September 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; 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 28/11, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged intimidation, police harassment and reprisal against human rights defender Mr. **Joe Avapura Moses** and his family in connection with his work defending the rights of the Paga Hill Settlement community from illegal land grabbing and forced eviction.

Mr. Moses is the Chairman of the Paga Hill Heritage Association, a community leader of the Paga Hill settlement and a land rights defender who is focused on defending and promoting the rights of approximately 3000 persons residing at the Paga Hill Settlement on Paga Hill. He has been advocating for these rights in legal proceedings in the Papua New Guinean courts since 2012. Mr. Moses has been engaged in organizing sustainable development projects, such as trainings and small business projects for the benefit of his community, the Paga Hill Settlement, that resided on Paga Hill, an area that abutted the waterfront of Papua New Guinea's capital city, Port Moresby. Mr. Moses has also reached out to national and international NGOs in order to transfer knowledge and raise awareness of human rights violations stemming from land grabbing, corruption and the impact of forced evictions on urban communities. Mr. Moses also worked for the University of Papua New Guinea in the School of Humanities and Social Sciences Distance Program.

According to the information received:

The Paga Hill Settlement community has resided at Paga Hill for over fifty years in an area that abutted the waterfront of Papua New Guinea's capital city, Port Moresby, and which also consisted of a church, school and cultural space. Since 1996, the community has been in a land dispute with Paga Hill Development Company PNG Ltd (PHDC) and local authorities regarding the PHDC's intentions to clear the land in order to develop a hotel, marina, executive

apartment suites, an exhibition centre and a four-lane highway. However, when the PHDC obtained a lease in 1997 for “Portion 1597”, this allegedly did not include the waterfront area, where the majority of the Paga Hill community residents lived.

The Paga Hill Settlement community was situated on customary land owned by the Lohia Dirga people, who gained usufructuary rights to reside on the land at the end of World War II with permission from the customary landowners. Many of the original inhabitants were settlers from Kikori, in the Gulf Province of Papua New Guinea. They served in the Papua Infantry Battalion of the Papua New Guinean Defence Forces, and defended the entrance of Moresby Harbour during the Second World War. In September 1987, Paga Hill was designated as a National Park, with the consequence that Paga Hill would thereafter be excluded from development. The Lohia Dirga people aim to protect the legacy of historic shelters and relics, which scattered the site.

On 11 May 2012, the Paga Hill Settlement community was informed that it had been issued with an eviction notice by the District Court, in order for the PHDC to begin developing the area. The community was given until 18 May 2012 to vacate the area, but were not provided with a copy of the eviction order. Mr. Moses and other leaders organised the legal defence of their community, taking the land dispute conflict to the Papua New Guinean courts. When informed of the eviction notice, the community submitted an appeal under article 59 of the Constitution of Papua New Guinea to the District Court, arguing that the community was not provided with advance notice, or a copy of the eviction order and that said order was not signed by a judge, but by a District Court clerk. They also argued that the lease obtained for “Portion 1597” by the PHDC does not extend to the land surrounding the waterfront, and therefore does not entitle the company to build on this land. Mr. Moses and the community further appealed to the National Court for a stay order for the demolition, in order for the District court to hear the appeal submitted by the community to halt the evictions scheduled for 18 May 2012.

On 12 May 2012, the National Court held a special hearing on the Paga Hill community’s request for a stay order for the demolition. While Mr. Moses was at the National Court, approximately 100 armed police, along with several bulldozers and construction vehicles, allegedly entered the community and proceeded to demolish homes and intimidate and harass unarmed residents who were peacefully observing the demolition. This harassment allegedly included the police firing shots during the demolition. Several community members were injured during the forced eviction.

At the National Court hearing on 12 May 2012, Mr. Moses obtained a stay order from the Court to halt the demolition on humanitarian grounds. However, as the aforementioned demolitions were proceeding while the court was in session, a large percentage of the homes in Paga Hill Community were destroyed before Mr. Moses obtained the stay order. An estimated 1500 residents, including Mr. Moses

and his family, were left displaced and rendered homeless as a consequence of the demolitions.

On 29 January 2014, a hearing was held at the District Court regarding the appeal submitted by the community to halt the evictions. The court rejected the appeal, ruling in favour of PHDC, and provided residents just 45 days to vacate Paga Hill.

On the 29 May 2014, just over one month before Mr. Moses was due at the Supreme Court to argue the community's case against the developments, four policemen allegedly came to Mr. Moses' reconstructed home in Paga Hill Settlement and attempted to arrest him without an official arrest warrant. Mr. Moses reportedly refused to leave with the police officers in the absence of an arrest warrant and insisted on accompanying the police officers in his own vehicle to the police station to verify whether there was indeed an arrest warrant against him. The police allegedly deployed gas canisters within the community and fired shots into the air while attempting to arrest Mr. Moses. At least one community member was reported to have been injured as a result. Upon arrival at the police station in downtown Port Moresby and then also at the police station in Boroko, Mr. Moses and his lawyer found that there was no arrest warrant against him. While Mr. Moses was speaking with his lawyer outside the police station, plainclothed officers allegedly attempted once again to arrest him. Mr. Moses avoided arrest but due to the ongoing police surveillance, harassment and threats, went into hiding to avoid arbitrary arrest.

On 3 June, 2014 the police allegedly issued a press release entitled 'NCD Police on hunt for Joe Moses for unlawful discharge of firearm'. The statement claimed that Mr. Moses had escaped from custody, and was the subject of a manhunt. It was also alleged that Mr. Moses owned a firearm, without a license. However, Mr. Moses reportedly does not own a firearm, and no official arrest warrant was issued against him.

On 1 July 2014, the case *SCA 18 of 2014 Mr. Joe Moses, et al. (on behalf of the settlers of Paga Hill community) vs. Paga Hill Development Company (PNG) Limited* was heard at the Supreme Court of Papua New Guinea. Mr. Moses remained in hiding at the time of the hearing so he instructed other community leaders who appeared in court on his behalf. The judge ruled in favour of the Paga Hill Settlement community, stating that the Paga Hill Settlement situated along the waterfront was indeed beyond the scope of the lease held by PHDC for "Portion 1597."

On 21 July 2014, demolition of the Paga Hill community resumed and continued until November 2014, despite the ruling by the Supreme Court of Papua New Guinea. Police allegedly accompanied the demolitions and set fire to residents' homes, the school and the church. They also allegedly harassed and assaulted residents, including children. The demolitions reportedly displaced the residents of Paga Hill, dispersing them around Port Moresby.

Following the demolition, Mr. Moses prepared to file a case for compensation. In September 2014, Mr. Moses allegedly received threatening messages from anonymous sources, including drawings and death threats at his office at the University of Papua New Guinea. Furthermore, in June 2015, Mr. Moses' office at the University Papua New Guinea was broken into, and working documents were stolen.

On 1 April 2016, Mr. Moses filed the case, *Joe Moses and the Paga Hill Community V. Paga Hill Development Company (PNG) Ltd, Curtain Brothers Pty Ltd, the National Capital District (Port Moresby city authority), the Papua New Guinean Constabulary and the Papua New Guinean Government*, requesting compensation for the forced eviction and demolition at the Papua New Guinea National Court. The hearings were held between May and July 2016 and PHDC denied any involvement in the 2014 demolitions. This case is currently on hold due to lack of finances, pending additional funds from the Paga Hill community to pursue the case.

On 29 November 2016, when Mr. Moses was traveling to the 17th International Anti-Corruption Conference in Panama, he was allegedly subjected to intimidation by police who followed him through the airport at Port Moresby and onto the plane he was boarding to Singapore. Mr. Moses flew to Panama and participated in the conference. However, due to the alleged threats against him, the defender felt that it would be too dangerous to return to Papua New Guinea and was temporarily relocated.

Mr. Moses' family, who are still in Papua New Guinea, have been subjected to various anonymous threats and intimidations over the course of the past year.

Concern is expressed at the allegations of intimidation and harassment of human rights defender Mr. Moses and his family. Further concern is expressed that these actions aim to intimidate and impair the human rights activities of Mr. Moses, defending the rights of the Paga Hill Settlement community.

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please confirm the legal basis for the attempted arrest of Mr. Moses on 29 May 2014 and explain how these measures are compatible with international human rights standards as well as the reasons behind the failure to produce an arrest warrant.
3. Please elaborate on the factual basis for stating that Mr. Moses was in unlawful possession of a firearm in the police press release of 3 June 2014. What was the justification for the police subsequently undertaking a man hunt against Mr. Moses?
4. Please explain the legal basis of the forced eviction and demolition of the Paga Hill Settlement community and why the demolitions which took place between July and November 2014 were allowed to proceed in spite of the Supreme Court ruling of 1 July 2014.
5. Please explain the reasons why PHDC was allowed to obtain a development lease for “Portion 1597” and to proceed with developments on the Paga Hill site despite the fact that in September 1987, Paga Hill was designated as a National Park, with the consequence that Paga Hill should thereafter be excluded from development.
6. Please outline the measures taken by the Government to ensure that persons displaced by the forced eviction of the Paga Hill settlement community were provided with alternative accommodation above, or equal to, their former dwellings.
7. Please provide information about the measures that the Government has taken, or is considering to take, to ensure that the business owners and individuals affected have access to an effective remedy, including adequate compensation, in line with the UN Guiding Principles on Business and Human Rights. Top of Form
8. Please indicate what measures have been taken both immediate and structural, to ensure that human rights defenders in Papua New Guinea including environmental rights advocates are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation directed against them or their family members and stigmatisation and harassment of any sort, by State officials or any third parties, including business enterprises.

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 referred to in this communication and prevent their re-occurrence and in the event that your 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.

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

David Kaye

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

Annalisa Ciampi

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:

We would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Papua New Guinea acceded to on 21 July 2008, and in particular to articles 9(2), 19, 21 and 22 which provide the right to be informed at the time of arrest of the reasons for arrest and the rights to freedom of expression, peaceful assembly and freedom of association.

In its General Comment No. 31, the Human Rights Committee observed that there is a positive obligation on States to ensure protection of Covenant rights of individuals against violations by its agents and by private persons or entities, which includes the duty to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice and to redress the harm caused by non-state actors. A failure to investigate and bring perpetrators of such violations to justice could, in and of itself, give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

We would like to draw your Excellency's Government's attention to article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by your Government 21 July 2008, which states that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

With regard to the right to adequate housing, we would like to refer your Excellency's Government to Article 11(1) of the ICESCR, which recognizes the right to an adequate standard of living, including housing, and to the continuous improvement of living conditions.

We further recall the General Comments 4 and 7 of the Committee on Economic Social and Cultural Rights, which stress the need to provide adequate legal protection from forced eviction, due process, alternative accommodation, and access to an effective remedy of those that are affected by eviction orders. In its General Comment No. 7 on forced evictions, the Committee clarified that "appropriate procedural protection and due process are essential aspects of all human rights but are especially pertinent in relation to a matter such as forced evictions which directly invokes a large number of the rights recognized in both International Covenants on Human Rights. The Committee considers that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose

for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, Government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions should not take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts". The Committee has repeatedly expressed concern over forced evictions that have taken place without adequate compensation or alternative accommodations.

We would 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 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- 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;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We also refer to Human Rights Council resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

We would like to refer also to the Human Rights Council resolution 31/32 which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of

economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

In addition, we would also like to draw the attention of your Excellency's Government to the UN Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31) in 2011. The Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

With regards to the State responsibilities in relations to Business and Human Rights, the Guiding Principles clarify that under international human rights obligations "States must protect against human rights violations committed in their territory and / or their jurisdiction by third parties, including companies" (principle 1). This requires States to "state clearly that all companies domiciled within their territory and / or jurisdiction are expected to respect human rights in all their activities" (principle 2). In particular, this includes companies undertaking a due diligence process in the field of human rights to identify, prevent, mitigate and respond to the negative human rights consequences in which they may be involved, either through their Own activities or as a result of their commercial relations (principles 17-21). This process of identifying and assessing actual or potential negative human rights consequences should include substantive consultations with potentially affected groups and other stakeholders (principle 18). The Guiding Principles also emphasize that "States must ensure [...] that there is no obstacle to the legitimate and peaceful activities of human rights defenders" (comment on principle 26). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur.