

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

REFERENCE:
AL UGA 1/2018

28 March 2018

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 situation of human rights defenders; and Special Rapporteur on the human rights of migrants, pursuant to Human Rights Council resolutions 34/18, 34/5 and 34/21.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and the different threats against Mr. Kulihoshi Musikami Pecos, a human rights defender defending refugee rights.

Mr. Pecos is a Congolese refugee in Uganda, and has been engaged in the defense and promotion of the rights of refugees in the country for the last 10 years. He is the Executive Director of the Foundation People for Peace and Defense of Human Rights, an organization led by refugees and working for the promotion of peace, human rights, good governance, democracy and quality leadership in the Great Lakes Region of Africa, focusing on refugee matters.

According to the information received:

On 14 February 2018 at around 9:30 a.m., Mr. Pecos was arrested in his office in Kampala by four unidentified armed men dressed in plain clothes without a warrant, and taken to an unknown location with his sight blinded. His mobile phone and his laptop were also confiscated.

On 15 February 2018, he was allegedly taken to the Old Kampala Police Station and interrogated about his work supporting refugees and particularly on opinion pieces and information he had published online. He was then informed that an investigation for "libel and defamation" had been opened against him, under the reference GEF: 03/2018, based on evidence obtained from his laptop and his mobile phone. In particular, a deceptive message circulated through WhatsApp calling all refugees who arrived to Uganda between 1996 and 2005 to get ready for resettlement through UNHCR, as well as criticism voiced against the asylum authorities in the country, were attributed to him. Mr. Pecos was released on bail by the authorities later that day. However, since his release he has allegedly noticed on different occasions that he is being followed.

Activists and civil society organizations in Uganda have expressed concern that the detention and charges against Mr. Pecos hide an attempt to silence and punish him for what is perceived by authorities as his collaboration in the recent disclosures of deviation of aid and corruption within the Ugandan asylum authorities and UNHCR.

We express concern at the secret detention for over a day, the confiscation of private devices and information, as well as at the investigation of Mr. Kulihooshi Musikami Pecos under charges of “libel and defamation”. We are concerned that these acts appear to be related to his activities as human rights defender and the denunciation of corruption in the Ugandan asylum system. We express further concern at the continued existence of criminal defamation in the legal framework of Uganda, which represents an illegitimate restriction on the exercise of freedom of expression.

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

As 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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain under what basis Mr. Pecos was arrested on 14 February 2018 and why he was kept in an unknown location with his eyes blind-folded and without being granted access to a lawyer for a day.
3. Please provide information concerning the legal grounds for the charges of “libel and defamation” pressed against him. In particular, please provide details of how these accusations are compatible with articles 14 and 19 of the International Covenant on Civil and Political Rights.
4. Please indicate what measures have been taken to ensure that human rights activists and defenders in Uganda are able to carry out their 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. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

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.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Felipe González Morales
Special Rapporteur on the human rights of migrants

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to articles 9, 14, and 19 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Uganda on 29 July 1993, which establish the rights not to be deprived arbitrarily of liberty, to the guarantees of due-process and to freedom of opinion and expression.

In particular, we would like to remind your Excellency's Government that everyone has the right, under articles 9 and 14 of the ICCPR, to be informed, upon arrest, of the charges against him or her, and to be brought promptly before a judge or other officer authorized by law to exercise judicial power. We would also like to emphasize that secret and incommunicado detention jeopardize the presumption of innocence, facilitates the perpetration of torture or other forms of cruel, inhumane and degrading treatment or punishment, and amounts in itself to ill-treatment.

We would also like to note that the criminal procedures pursued against Mr. Pecos appear to fall short of the requirements of article 19 (3) of the ICCPR to legitimately restrict freedom of expression, according to which any limitation must be provided by law and be necessary for the respect of the right of others, or for the protection of national security or public order, or of public health or morals. We underline that criminal defamation laws have been deemed incompatible with permissible restrictions under article 19 (3) (CCPR/C/GC/34). In addition, we refer to the Declaration of Table Mountain in 2012, which calls on African governments to abolish criminal defamation laws. We would urge the authorities to initiate a process to repeal these provisions, in order to bring the legal framework into compliance with international human rights standards.

Moreover, we would like to refer to 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. Article 5 of the Declaration provides for the right to form, join and participate in non-governmental organizations, associations or groups.

We would finally like to highlight article 6 (b) and (c) of the UN Declaration on Human Rights Defenders which states that everyone has the right, individually and in association with others, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means,

to draw public attention to those matters. Further, article 9, paragraph 3 (c) of the same Declaration provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.