

Mandates of the Working Group on Arbitrary Detention; 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; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL TZA 2/2018

25 April 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; 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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 33/30, 34/18, 32/32, 33/9, 34/5, 32/19 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the arrest, detention, and prosecution of human rights defender Sophia Donald, as well as the arrest and detention of Ms. Donald's mother.**

Ms. Sophia Donald is a human rights defender and the coordinator of the registered non-governmental organization (NGO) Sauti ya Wanawake Ukerewe (SAWAU). SAWAU works with a target population of women and youth, especially adolescent girls and young women, and works on issues including human rights and a rights-based approach; climate change and sustainable use of natural resources; economic empowerment through entrepreneurship skills; and democracy and governance.

Concerns about restrictions to the dissemination of information relating to reproductive health were raised by Special Procedures mandate holders in a communication to your Excellency's Government on 22 February 2018 (TZA 1/2018). We regret that we have not received any response to this communication to date.

According to the information received:

On 17 January 2018, SAWAU sent a letter to the Mwanza Regional Commissioner requesting permission to launch a project entitled "Kuwa Mjanja." The Kuwa Mjanja project, which is operated in partnership with Population Services International (PSI) and which has also been implemented in Ethiopia,

Nigeria, and other regions of Tanzania, promotes the right to health of girls age 15-19 by providing them with reproductive health education, including information on contraception.

According to the partnership between SAWAU and PSI, SAWAU's role in the Kuwa Mjanja project was primarily to mobilize youth and to provide trainings on entrepreneurship skills, while PSI would provide contraception advice and services.

On 30 January 2018 the Mwanza Regional Commissioner granted permission for SAWAU to engage in campaigns, mobilization and education as part of the Kuwa Mjanja campaign. Permission was granted in a letter with reference No. AG.69/240/01/88.

On 5 March 2018, Ms. Donald was arrested and charged with violating subsection 35 of the Tanzania NGO Act 2002 by "providing sexual and reproduction health services including contraceptive method to adolescent girls which is contrary to SAWAU's constitution." Ms. Donald was released on bail, with no conditions attached.

On 6 March 2018, Ms. Donald traveled from Mwanza to Dar es Salaam to attend the International Forum on Women in Sustainable Development in Africa, and to obtain a visa for travel to the United States of America, and on 10 March 2018 Ms. Donald traveled to New York to attend the 62nd Session of the Commission on the Status of Women, on the invitation and sponsorship of an American non-governmental organization.

In Ms. Donald's absence from Mwanza, on 7 March 2018 her mother was requested to report to the police station, where she gave evidence that Ms. Donald had traveled on official business and with an invitation. While at the police station Ms. Donald's mother was arrested and detained and refused bail, in an apparent effort to compel Ms. Donald to return to Tanzania. On 10 March 2018, as she was preparing to travel to the United States, Ms. Donald received a telephone call from the Mwanza District Commissioner, who allegedly informed Ms. Donald that she would be arrested if she attempted to leave the country, and that if Ms. Donald left for the United States her mother's life would be in danger and that her mother would be detained until her return. Ms. Donald proceeded to travel to the United States, and her mother was held until 14 March 2018.

On 20 March 2018 Ms. Donald returned to Tanzania, and on 26 March 2018, responding to pressure from the District Commissioner, she reported to the police station in Mwanza, where she was again arrested on the same charges and detained until 29 March 2018 when she was released on bail. She is scheduled to return to court on 28 April 2018.

We wish to express our serious concern regarding the arrest and detention of both Ms. Donald and her mother and the continued criminal proceedings against Ms. Donald, which seem to be in relation to Ms. Donald's legitimate human rights work and her legitimate exercise of the right to freedom of expression.

We wish to express particular concern that Ms. Donald's mother was allegedly arrested and arbitrarily detained not on any legal grounds but solely as a coercive measure to ensure her daughter's return to Tanzania.

We are further concerned that these acts appear to have the aim of punishing Ms. Donald for SAWAU's participation in a campaign that seeks to provide adolescents and girls with crucial information relevant to their human rights, including their rights to sexual and reproductive health. Such punishment represents a severe restriction on the right to freedom of expression, including access to information, as it impedes the free exchange of information on matters of interest to the general public. It also imposes serious restrictions on the enjoyment of the right to health which extends not only to timely and appropriate healthcare but also to the access to health-related education and information, including on sexual and reproductive health.

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 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 provide details of any investigation of any potential misconduct by the Mwanza District Commissioner related to the above-mentioned information, and of the procedures in place to ensure that District Commissioners in Tanzania and other local officials involved in the regulation of civil society are conducting their tasks in a manner that is transparent, accountable, non-discriminatory, and consistent with international human rights laws and standards.
3. Please provide information regarding the precise legal grounds for the arrest and prosecution of Ms. Donald, especially in light of the prior approval granted for SAWAU's participation in the Kuwa Mjanja project;
4. Please provide any information regarding the legal grounds for the arrest and detention of Ms. Donald's mother, bearing in mind article 9 of the International Covenant on Civil and Political Rights (ICCPR);

5. Please provide information regarding the legal basis for restricting the activities of SAWAU in the promotion of human rights awareness;
6. Please provide information regarding the measures taken to promote health education, including information campaigns, in particular the provision of comprehensive and scientifically based sex education in Tanzania and all necessary measures to prevent early and teenage pregnancies;
8. Please provide information about the measures taken by your Government to ensure access to health care, including reproductive health care and family planning services, by girls and women at all stages of their life-cycle.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Michel Forst
Special Rapporteur on the situation of human rights defenders

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Alda Facio
Chair-Rapporteur of the Working Group on the issue of discrimination against women in
law and in practice

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 draw the attention of your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), acceded to by Tanzania on 11 June 1976. Article 9 of the ICCPR provides that no one shall be subjected to arbitrary arrest or detention, and that no one shall be deprived of liberty without due process of law. Article 19 of the ICCPR guarantees the right to freedom of opinion and expression, while article 22 of the ICCPR guarantees that "everyone shall have the right to freedom of association with others," and limits the restrictions that may be placed on that right.

In this vein, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognize the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Any limitation to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 4 and 19 (3) of the ICCPR and 29 (2) of the Universal Declaration on Human Rights. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

We would like to note that the freedoms of information, expression, and association are also protected by articles 9 and 10 of the African Charter on Human and Peoples' Rights, ratified by Tanzania on 18 February 1984, and that article 6 of the Charter guarantees the right to liberty and to freedom from arbitrary arrest and attention. The Declaration of Principles on Freedom of Expression in Africa elaborates on the guarantee of freedom of expression and information found in article 9 of the Charter, and affirms that no one shall be subject to arbitrary interference with his or her freedom of expression. The Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, promulgated by the African Commission on Human Rights, specify that persons shall only be deprived of their liberty on grounds and procedures established by law, and that such laws and their implementation must be clear, accessible and precise, consistent with international standards and respect the rights of the individual (para. 2(a)).

Furthermore, 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, articles 1 and 2 the Declaration 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 that everyone has the right to form, join, and participate in non-

governmental organizations for the purpose of promoting and protecting human rights and fundamental freedoms and to communicate with such organizations, Article 6 provides for the right to disseminate information and knowledge regarding all human rights and fundamental freedoms, and Article 12 details the obligation of States to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders.

We would also like to refer your Excellency's Government to General Assembly resolution 68/181, which calls upon States to "exercise due diligence in preventing violations and abuses against human rights defenders, including through practical steps to prevent threats, harassment and violence against women human rights defenders, who face particular risks, and in combating impunity by ensuring that those responsible for violations and abuses, including gender-based violence and threats against women human rights defenders, committed by State and non-State actors, including online, are promptly brought to justice through impartial investigations." In this resolution as well as Human Rights Council resolution 31/32, States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders.

We would also like to call your Excellency's Government's attention to article 7(c) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), ratified by Tanzania on 20 August 1985, which explicitly provides for the promotion and protection of women in freely participating in public matters. States agreed to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, to ensure to women, on equal terms with men, the right to participate in non-governmental organizations and associations concerned with the public and political life of the country. Further, in its General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, the Committee on the Elimination of Discrimination Against Women recognizes the arbitrary deprivation of liberty of women as a form of prohibited gender-based violence (para. 14).

With regard to the prosecution of Ms. Donald for SAWAU's participation in the Kuwa Mjanja campaign, we would like to recall article 12 of the International Covenant on Economic Social and Cultural Rights which your Excellency's Government ratified on 11 Jun 1976. It establishes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In this connection, General Comment 14 of the Committee on Economic, Social and Cultural Rights, indicates that the right to health, as defined in article 12.1, is an inclusive right extending not only to timely and appropriate healthcare but also to the access to health-related education and information, including on sexual and reproductive health (GC14 para.11). Therefore, indicates the Committee, States are under the obligation to abstaining from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, as well as from preventing people's participation in health-related matters (GC 14, Para.34).

Furthermore, CEDAW article 10 guarantees women and girls' right to access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning, while article 12 sets out the obligation of States Parties to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

Additionally, the Committee on the Elimination of all forms of Discrimination against Women emphasizes in its General Recommendation 22 that States are obliged to ensure that adolescents have full access to appropriate information on sexual and reproductive health, including family planning and contraceptives, the dangers of early pregnancy (para. 44). The Committee urges States to take affirmative measures to eradicate social barriers in terms of norms or beliefs that inhibit individuals of different ages and genders, women, girls and adolescents from autonomously exercising their right to sexual and reproductive health (para. 48).

Similarly, in a recent report focusing on the right to health of adolescents, the Special Rapporteur on the right to health stressed that lack of access to safe reproductive health services and information contributes to adolescent girls among the most at risk of dying or suffering from serious or lifelong injuries associated with early pregnancies and childbirth (A/HRC/32/32, para. 5). The Special Rapporteur recommended that States should introduce measures to raise adolescents' awareness of their rights to sexual and reproductive health and to services and goods at the family, school and community levels and insisted that age-appropriate, comprehensive and inclusive sexuality education, based on scientific evidence and human rights, should be part of the mandatory school curriculum, with special attention given, inter alia, to preventing early pregnancy and sexually transmitted infections (Ibid., para. 91). Further, in its report focusing on discrimination against women with regard to health and safety, the Working Group on the issue of discrimination against women in law and in practice emphasizes the need for access to unbiased, quality education, including evidence-based comprehensive sexuality education, to ensure access to health care (A/HRC/32/44, para. 95). The Working Group emphasized that States have an obligation to allow information about health matters to flow freely, without State interference on moral or other grounds, and to allow non-State actors to disseminate information, including in relation to sexuality and sexual and reproductive health services (Ibid., para 96).

We would like also to refer your Excellency's Government to the Convention on the Rights of the Child (CRC), ratified by Tanzania on 10 June 1991, which guarantees girls' rights to non-discrimination (art.2), health (art. 24), education (art.28), and to privacy and physical integrity (art.16). The Committee on the Rights of the Child, in its General Comment No. 4 (2003) on "Adolescent health and development in the context of the CRC", has specified that the right of adolescents to access appropriate information on health-related situations, including family planning, is crucial. In its General Comment No. 15 (2013), the Committee affirms the need for special attention to the impact of gender-related social norms and values on the health and development of boys and girls, and states that "All policies and programmes affecting children's health should be grounded in a broad approach to gender equality that ensures young women's full

political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security.”

We would also like to recall that article 14 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, ratified by Tanzania on 3 March 2007, guarantees the rights to health and reproductive rights, including the right to have family planning education, and mandates that States Parties shall take appropriate measures to provide adequate, affordable and accessible health services, including information, education and communication programmes to women.

Finally, we would like to recall the joint statement, issued 24 September 2015, of a number of international and regional human rights experts, including with the Special Rapporteurs on the Rights of Women and Human Rights Defenders of the African Commission on Human and Peoples’ Rights regarding implementation of SDGs and sexual and reproductive rights (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E>), which reaffirms that States have an obligation to take concrete measures to address barriers faced by adolescent girls in accessing comprehensive and evidence-based information on sexuality and reproduction, including timely information and education on prevention of early and unwanted pregnancies. The joint statement also emphasizes that adolescents need services that respond to their specific sexual and reproductive health needs.