

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA UGA 4/2018

29 August 2018

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 34/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged torture and ill-treatment of Mr. Robert Ssentamu Kyagulanyi**.

Mr. Robert Ssentamu Kyagulanyi, also known as Bobi Wine, is a musician and a member of parliament of Kayonde East in Uganda.

According to the information received:

Mr. Kyagulanyi is a renowned musician, and a prominent opposition figure, who was taking part in an election campaign for an independent candidate in Arua district in Northern Uganda.

On the night of 13 August, 2018, Mr. Kyagulanyi's driver was shot dead in Arua, while he sat in Mr. Kyagulanyi's car. It is alleged that the homicide was a failed assassination attempt directed at Mr. Kyagulanyi.

On the early morning of 14 August 2018, around fifteen soldiers belonging to the Special Forces Command Unit of the Uganda People's Defence Forces raided the Pacific Hotel in Arua in search for Mr. Kyagulanyi. They broke into his room, ordered him to kneel and hit him on his head with an iron bar. They kicked him with military boots, and repeatedly squeezed his testicles. As a result of the ill-treatment Mr Kyagulanyi lost consciousness for a couple of hours. When he woke up he found himself handcuffed in the Arua military airfield. There, he was beaten and injected with substances without being informed what he was being administered.

On 15 August 2018, Mr. Kyagulanyi was transferred to the Gulu military barracks where he was refused access to his lawyers. It is alleged that, since the moment of his arrest and during his detention in Arua military airfield and in the Gulu military barracks Mr. Kyagulanyi was constantly handcuffed, and his legs were tied at all times.

On 16 August 2018, Mr. Kyagulanyi was remanded at Makindye Military Barrack and charged with unlawful possession of firearms and ammunition before the general court martial. Mr. Kyagulanyi had access to two of his lawyers for only two minutes. The lawyers of Mr. Kyagulanyi reportedly found him in a dire state, with a swollen and bruised face, wounds on his ears and arms and evidence that he had bled through the nose. He could not sit, stand or walk without support and could hardly see or speak; he had difficulty breathing and complained of pain in the left side of his rib cage.

On 17 August 2018, members of the Uganda's Human Rights Commission also visited Mr. Kyagulanyi at Makindye military detention centre and confirmed these reports.

While in military custody, Mr. Kyagulanyi requested access to his personal doctor, but it was denied. Instead, a military doctor examined him and indicated in the report that he had a damaged kidney allegedly as a result of the severe beating. Mr. Kyagulanyi reportedly continued to experience pain, with intermittent episodes of severe headache.

On 23 August 2018, the military court allegedly dropped the charges against Mr. Kyagulanyi in relation to the unlawful possession of arms. However, Mr. Kyagulanyi was instantly transferred from Makindye military prison to Gulu prison where he was detained on charges of treason and later released on bail on 27 August 2018.

Thirty-three other individuals, including Members of Parliament and representatives of the media have also been arrested on the same night as Mr. Kyagulanyi and are being accused with treason for stoning the president's convoy. Some of these individuals have also allegedly suffered similar ill treatment.

On the night of 25 August 2018, three individuals in police uniforms and in possession of guns surrounded the house of Mr. Henry Kilama Komakech, Mr. Kyagulanyi's lawyer, during five hours, in an alleged attempt to intimidate him. The next day, Mr. Robert Amsterdam, an international Lawyer and co-counsel on Mr Kyagulanyi's case was allegedly declared persona non grata and prohibited from entering Uganda to assist with the case of Mr. Kyagulanyi

Without prejudging the accuracy of the information made available to us, we would like to express our grave concern regarding the torture and ill-treatment that Mr. Kyagulanyi allegedly has been subjected to at the moment of his arrest and during his subsequent detention, which appears to be directly linked to the exercise of his right to freedom of opinion and expression. We express equal concern at the allegations that Mr. Kyagulanyi has had very limited access to his lawyers in violations of guarantees of due process. We furthermore express concern at the arrests and allegations of ill-treatment of Members of Parliament and media professionals, and at the broader implications these actions may have on political participation in the country, in an election context where political expression, dissent and the free exchange of opinion is of outmost importance.

In connection with the above alleged facts and concerns, we would like to recall that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is codified in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Uganda on 3 November 1986, and in article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified on 21 June 1995.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, which provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds either orally, in writing or in print, in the form of art, or through any other media of his choice.

In addition, we would like to remind your Excellency's government that Principle 15 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, as well as The UN Standard Minimum Rules for the Treatment of Prisoners (also known as the "Mandela Rules"), in its Rule 82, reaffirm that law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

Lastly, in the custodial context, States have a heightened duty to ensure and to protect the right to life. In cases when an individual dies in State custody, whether through acts of commission or omission, there is a presumption of State responsibility. The above alleged facts amount to a life-threatening situation. The risks of irreparable harm, including death, are immense. The responsibility of your Excellency's Government to protect Mr. Kyagulanyi and others arrested with him against further harm is thus deeply engaged.

Furthermore, the State is under an obligation to conduct prompt and impartial investigations into the alleged assassination attempt against Mr. Kyagulanyi that resulted in the death of his driver.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the assassination attempt of Mr. Kyagulanyi that resulted in the death of his driver. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the details, and where available the results, of any investigation, medical examination, and judicial or other inquiries carried out into the allegations that Mr. Kyagulanyi was subject to several ill-treatment, and torture, while in detention. If no inquiries have taken place, or if they have been inconclusive, please explain why, and how this is consistent with Uganda's obligations under the human rights Conventions it has ratified
4. In the event that the allegations of ill-treatment and torture have been confirmed, and the perpetrators identified, including those with direct and supervisory responsibility, please provide the full details of any prosecution that may have been undertaken. Have penal, disciplinary or administrative sanctions been imposed to the alleged perpetrators?
5. Please indicate any remedial action taken vis-à-vis Mr. Kyagulanyi and/or his family.

6. Please provide information about the allegations that Mr. Kyagulanyi has not had full access to his lawyers, and explain how this is compatible with international human rights law.
7. Please provide information on measures taken by your Excellency's Government to prevent the excessive use of force by law enforcement officials.

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 responsible of the alleged violations.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment