

Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL UGA 2/2019

17 June 2019

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 33/30 and 34/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and detention of Mr. Robert Ssentamu Kyagulanyi.

Mr. Kyagulanyi is a musician and a Member of Parliament for Kyadondo East, Wakiso district. He is also known as "Bobi Wine."

Mr. Kyagulanyi was the subject of a communication sent by Special Procedures mandate holders on 29 August 2018 (ref. no UGA 4/2018), raising concerns at allegations of torture and ill-treatment in relation to his participation in an election campaign for an independent candidate. We regret that we have not received any reply from your Excellency's Government.

According to the information received:

On 9 March 2019, Mr. Kyagulanyi announced that he would run in the 2021 presidential elections.

On 25 March Mr. Kyagulanyi requested security support from the police for an upcoming concert—the Kyarenga Extra Concert. The Inspector General of the Police responded in a letter on 19 April 2019, denying the request for security and directing the cancellation of Mr. Kyagulanyi's upcoming concerts.

On 21 April the Commissioner of Police issued a public statement alleging that Mr. Kyagulanyi's concert promoters had failed to adhere to safety guidelines.

In response to the statement, Mr. Kyagulanyi arranged a press conference for 22 April 2019, at "One Love Beach," to address "the continuing misuse of authority and abuse of human rights by the police leadership." The military and police set up a roadblock to intercept Mr. Kyagulanyi on his way to the press conference. The police broke the windshield of the vehicle that Mr. Kyagulanyi and another Member of Parliament were in, sprayed teargas into the vehicle, arrested Mr. Kyagulanyi, and detained him in his home.

While detained at his residence, Mr. Kyagulanyi attempted to deliver notice of his intent to hold a public assembly to the Inspector General of Police, as required under the Public Order Management Act of 2013. The military and police prevented him from leaving his home to do so, and the police also prevented his lawyers from delivering the notice to police headquarters.

On 29 April 2019, Mr. Kyagulanyi attempted to go to the Criminal Investigations Division in Kampala when police arrested him again and remanded him to Luriza prison. He is currently charged with “disobeying statutory authority,” allegedly for leading protests against the Over the Top Application Tax in 2018.

We express concern at the arrest, detention and charges against Mr. Kyagulanyi, which appear to be directly related to the exercise of Mr. Kyagulanyi’s right to freedom of opinion and expression, in particular in an election context, where the promotion of such rights are of particular importance. The renewed targeting of Mr. Kyagulanyi after announcing a presidential candidacy and after criticizing police behavior suggests a concerning pattern of retaliation against Mr. Kyagulanyi for expressing his political opinions.

Given the seriousness of the above allegations and the record of police action against Mr. Kyagulanyi, we appeal to your Excellency’s Government to take all necessary steps to secure Mr. Kyagulanyi’s rights in accordance with the fundamental principles set forth in article 19 of the ICCPR and article 15 of the ICESCR. We would appreciate a response on the initial steps taken by your Excellency’s Government to ensure its protection of freedom of opinion and expression and the right to take part in cultural life, both in political discourse and artistic performance.

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 information about the legal basis for the arrest and detention of Mr. Kyagulanyi on 22 and 29 April 2019, and explain how you deem these actions to be consistent with Uganda’s obligations under international human rights law.
2. Please provide information about the grounds for ordering the cancellation of Mr. Kyagulanyi’s concerts and the security requirements for artistic performances. In particular, please provide information on measures taken to ensure that security requirements do not have the effect of curtailing artistic expression.

We would appreciate receiving a response within 60 days. Beyond this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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.

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 allegation letter in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Leigh Toomey
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

Annex

Reference to international human rights law

We would like to remind your Excellency's Government of its international obligations under article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda acceded on 21 June 1995. Article 19 provides that everyone shall have the freedom to seek, receive and impart information and ideas of all kinds through any media of his choice. Intimidation or retaliation of any kind against a person for holding and expressing an opinion, such as an opinion critical of the government or police, is a violation of ICCPR article 19(1). Further, artistic expression is a medium of disseminating information and ideas under article 19(2), and should therefore be protected against censorship or curtailment (CCPR/C/GC/34, paras. 11-12).

Because freedom of opinion and expression is critical to a democratic society, the ICCPR places special value on uninhibited expression in the context of political discourse. States are required to ensure that the exchange of information and ideas about political issues between citizens, candidates and elected representatives can take place freely and without fear of repercussion (CCPR/C/GC/34, para. 20). Any restrictions on freedom of expression that a State may seek to institute under article 19(3), therefore, must not infringe upon the freedom to hold open political debate (CCPR/C/GC/34, para. 28). The fact that the police prevented Mr. Kyagulanyi from submitting a notice to hold a public assembly on a political issue, as required under the Public Order Management Act, raises concerns regarding the enforcement of this law. We would like to remind your Excellency's Government that it agreed to review the enforcement of the Public Order Management Act, due to concerns such as this, in its recent report to the Human Rights Council (A/HRC/WG.6/26/UGA/1, para. 18).

We also wish to remind your Excellency's government that the right to liberty and security of persons is enshrined in article 9 of the ICCPR, and ensures the freedom from arbitrary arrest or detention. Arresting or detaining an individual as punishment for the legitimate exercise of the rights as guaranteed by the Covenant constitutes a violation of article 9 (CCPR/C/GC/35 para 17).

We would like also to refer your Excellency's Government to article 15 of International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Uganda acceded on 21 January 1987, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have also undertaken to respect inter alia the freedom indispensable for creative activity. The Special Rapporteur in the field of cultural rights stresses that all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations.

We would also like to remind your Excellency's Government of the recommendations from members of the Human Rights Council that it supported during the most recent Universal Periodic Review. For instance, your Excellency's Government

supported recommendations to ensure that its national laws remain in compliance with its international obligations to respect and protect the rights of all to exercise their freedom of expression and peaceful assembly (A/HRC/34/10, para. 115.19), and to work to mitigate police brutality and politically motivated action against opposition leaders (A/HRC/34/10, para. 115.102). Your Excellency's Government also supported the recommendation to ensure that all people in the nation are able to enjoy their civil and political rights, including participation in political affairs (A/HRC/34/10, para. 115.107). In addition, a number of States recommended that your Excellency's Government renew its efforts to strengthen the freedom of expression more generally (A/HRC/34/10, para. 85, 90, 92).