

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL UGA 3/2020

8 December 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 42/22, 37/8 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged cases of **arbitrary detention of thirteen land and environmental rights defenders opposing environmental degradation, forced evictions and land grabbing by private companies** operating in the districts of Kiryandongo and Hoima, in the West of Uganda.

Mr. Fred Mwawula, Mr. Ramu Ndahimana, Mr. Samuel Kusiima, Mr. Martin Munyansia, Mr. Martin Haweka, Mr. Amos Wafula, Mr. Eliot Talemwa, Mr. Erias Wanjala, Mr. Godfrey Ssebisolo, Mr. George Rwakabisha and Ms. Pamela Mulongo are land rights defenders and local leaders who have led and organized the peaceful resistance of their communities against alleged forced evictions and land grabbing by private companies working on sugar cane, coffee and grain growing in the district of Kiryandongo.

Mr. Venex Watebawa and Mr. Joshua Mutale are environmental rights defenders and journalists working for the Water and Environment Media Network (WEMNET) - Uganda, a platform that promotes environmental awareness through informing, educating citizens, highlighting environmental rights violations and demanding accountability and good governance from national and local authorities.

According to the information received:

Environmental human rights defenders arbitrarily detained in Hoima

On 15 September 2020, **Mr. Venex Watebawa and Mr. Joshua Mutale** were invited to a radio talk show at Spice FM Radio, in Hoima, to discuss the impacts of sugar cane growing and farming in the Bugoma forest, as well as the oil contamination stemming from private industries in national parks and forests. During the broadcast, they were to invite the population to participate in the peaceful protests taking place on 16-17 September 2020 in order to demand accountability for the damage in biodiversity in the forest. On their way to the radio station, they were arrested by the local police and taken to the Hoima

district police station without explanation. Once there, local officers suggested that nobody would attend the demonstration on the following days and told them their arrest was “preventive”. They were not granted access to legal representation until the 17 September 2020, when they were finally released on bail, charged with “inciting violence to cause a demonstration”.

Since then, the human rights defenders periodically travel from Kampala to Hoima, about 200 kms distance, for their bail requirements, which have been extended until 11 January 2020. They still don’t know their hearing will take place.

Land rights defenders harassed and arbitrarily detained in Kiryandongo

On 10 February 2020 and 23 April 2020 local communities filed complaints before the Masindi High Court against Dubai domiciled Great Season SMC Limited, Cayman Islands domiciled Agilis Partners and Mauritius domiciled Kiryandongo Sugar Limited. These companies operate sugar cane and farming projects in Kiryandongo. The allegations include the forced eviction of about 35,000 local residents, intimidation by the company’s private security agents and bulldozing of schools, health centres and religious establishments. Reportedly, these companies have not consulted *bonafide* local communities on the land acquisition, and there has not been a proper valuation of the properties, or agreed rates for compensation. After the complaint was filed, residents reported an escalation of harassment by employees of the company, and decided to file a certificate of urgency on 29 May 2020. A hearing was scheduled for 17 June 2020 against Agilis Partners and Kiryandongo Sugar Limited but it did not take place as the judge was absent. As of the date of this letter, the hearing against Great Season SMC Limited has not been scheduled yet.

On 25 February 2020, land rights defenders Mr. Fred Mwawula, Mr. Erias Wanjala and Mr. Godfrey Ssebisolo were arrested at their homes by Kiryandongo local police. No warrants were presented nor statements collected, and they were not presented before a court. Once in the police station, local officers, the Assistant Superintendent of the Police and representatives of the three companies tried to force the defenders to sign documents agreeing to vacate their land in exchange for their freedom, but they allegedly refused. They were later transferred to the Dyanga prison without being presented before a court and were held two weeks in detention before being released on bail and charged with “trespassing on private land” on 12 March 2020. The same day, their houses, located in Kisalanda village, were allegedly bulldozed by Great Season SMC Limited. Short after, there were incidents in which members of the community were allegedly subjected to harassment and beatings from workers of the three companies.

On 4 September 2020, Mr. Fred Mwawula went to the office of Great Season SMC Limited, in Kiryandongo, to ask for three of his goats, which were reportedly stolen the day before by four employees of the company. While attempting to speak with a representative, he was arrested by local police officers guarding the premises. His wife, who was with him at the time, informed other community leaders, after which several members of the

community arrived to the premises to peacefully demand for Mr. Mwawula's release. Police officers used tear gas and live ammunition to disperse the crowd. During the demonstration, police officers arrested Mr. Ramu Ndahimana, Mr. Samuel Kusiima, Mr. Martin Munyansia, Mr. Martin Haweka, Mr. Amos Wafula and Mr. Eliot Talemwa. Ms. Pamela Mulongo who was also arrested, reported being beaten on the stomach with batons by three police officers. She subsequently was denied medical care by authorities at the station who refuted her accusations and claimed she was lying about her pain, despite her visible injuries. The seven defenders were then taken to the police station, where Mr. Mwawula was being held. Although they were not charged, they were still required to report back to the police station on 15 September 2020. During their time in detention they had access to legal representation.

On 7 September 2020, seven employees of Great Season SMC Limited and three local police officers entered Mr. George Rwakabisha's garden while he was with other community members. They were allegedly beaten by the company employees and Mr. Rwakabisha was arrested by police, with no explanation. The land rights defender was then detained in the Kiryandongo police station together with the eight defenders arrested on 4 September 2020. Mr. Rwakabisha was told at the police station that he would be charged with "criminal trespass" and "malicious damage to property". However, he was officially charged with "threatening violence" like the rest of the defenders, even though he did not participate in the protests. On 8 September 2020 the nine human rights defenders were released on bail. During their time in detention, they had access to legal representation.

On 15 September 2020, Mr. Fred Mwawula, Mr. Ramu Ndahimana, Mr. George Rwakabisha, Mr. Samuel Kusiima, Mr. Martin Munyansia, Mr. Martin Haweka, Mr. Amos Wafula and Mr. Eliot Talemwa were arrested again by the Kiryandongo police while reporting to the police station, as required on 4 September 2020. Ms. Pamela Mulongo could not report to the station as she was in hospital getting treated for her injuries. After two days in detention, on 17 September 2020, the eight land rights defenders were charged with "threatening violence" and transferred to Masindi Prison. Their hearing was due to take place on 6 October 2020, but was cancelled for the absence of the state prosecutor. It was therefore re-programmed for 15 October 2020, day in which they were finally released. Their next hearing is scheduled for 15 December 2020 at the Kiryandongo Magistrate Court. During their time in detention, they had access to their lawyers.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our concern over the alleged forced evictions of tens of thousands of persons in Kiryandongo, and the resulting detentions of human rights defenders resisting them. Such detentions take place in an environment that appears to be in retaliation for their work opposing land grabbing by private companies who operate in the area, and seem to have the acquiescence of local authorities. We are concerned that these patterns of arbitrary detention might be in retaliation for their legitimate and peaceful defence of the environment and their right to land.

At the outset, we remain concerned at the chilling effect that these attacks might have on other human rights defenders for their legitimate work protecting the environment and their land. Threats, intimidation and detention discourage them from exercising their rights for fear that State or non-State actors may penalize them or further harass them.

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 information about the factual and legal basis for the detention of the thirteen human rights defenders, both in Hoima and in Kiryandongo and explain how these actions are consistent with Uganda's obligations under international human rights law.
3. Please provide information about the legal basis for the dispersal of the peaceful protest in Kiryandongo on 4 September 2020.
4. Please indicate what steps have been taken to ensure that people who have lost their lands, livelihoods or suffered any other economic or cultural impacts due to the activities of sugar cane and farming projects are compensated adequately and have access to effective remedy.
5. Please indicate the steps that your Excellency's Government has taken, or is considering to take to ensure that business enterprises operating in its territory establish effective operational-level grievance mechanisms, or cooperate with legitimate remedial processes, to address adverse human rights impacts that they have caused or contributed to.
6. Please indicate the steps that the Government has taken, or is considering to take, to ensure the implementation of the United Nations Guiding Principles on Human Rights, such as (i) setting out clearly the expectations that all businesses respect human rights throughout their operations, including human rights due diligence and (ii) taking appropriate steps to ensure the effectiveness of domestic judicial mechanisms with respect to business-related human rights abuses.

We would appreciate receiving a response within 60 days. Passed 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 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.

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.

Please be informed that similar letters on the same subject have also been sent to the Governments of the United Arab Emirates, Mauritius, the United Kingdom of Great Britain and Northern Ireland, as well as to the companies involved in the abovementioned allegations.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

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

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

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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to remind your Excellency's Government of its international obligations under article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Uganda acceded on 21 June 1995, which 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). According to article, 9 of the ICCPR, any arrest or detention shall be carried out in accordance with the grounds and procedures established by law. In addition, anyone deprived of his liberty shall be entitled to challenge the legality of such detention before a court or judicial authority; this is a self-standing human right, the absence of which constitutes a human rights violation (A/HRC/30/37). Moreover, the deprivation of liberty as punishment for the legitimate exercise of rights guaranteed by the ICCPR is arbitrary, this includes protections for the rights to freedom of opinion and expression, as well as freedom of assembly and association (CCPR/C/GC/35).

Furthermore, we wish to highlight that, according to article 9(3) of the ICCPR, anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. According to article 9(4), anyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Therefore, any situations where an arrested individual was held in custody for multiple days without being brought before a judge and where the individual was unable to challenge the legality of his or her detention would be contrary to the norms stated above.¹ Moreover, The Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court establish in its principle 9 that persons deprived of their liberty should have the right to legal assistance including immediately after the moment of apprehension. Upon apprehension, all persons shall be promptly informed of this right (A/HRC/30/37 para. 12)

We recall that, under article 14 of the ICCPR, anyone charged with a criminal offence shall be presumed innocent, and treated as such, until proven guilty before a court of law. In addition, article 14 also guarantees the right of all persons facing criminal charges to have access to effective legal assistance in such circumstances that allows for adequate privileged communications with counsel as well as for adequate time and facilities for the preparation of the defense. The right to have access to a lawyer without delay and in full confidentiality is also enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and the Basic Principles on the Role of Lawyers (Principles 7 and 8).

¹ See e.g. opinions No. 1/2017, para. 47; No. 42/2018, para. 79; No. 44/2018, para. 79; No. 78/2018, para. 71; No. 84/2018, para. 61; No. 2/2020, para. 62; No. 29/2020, para. 75, and No. 30/2020, para 74.

We also wish to remind your Excellency's Government of State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, particularly the obligation to non-discrimination (ICESCR). In its General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, the Committee recognized that "among the groups that are often disproportionately affected by the adverse impact of business activities are peasants and other people working in rural areas" (ICESCR/GC/24/sec.3/A/ para 8).

Furthermore, we would like to recall articles 9 and 12 (2) of Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. These articles provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone whose rights or freedoms are allegedly violated has the right to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress where there has been a violation of that person's rights or freedoms; and that the State shall take all necessary measures to ensure the protection of anyone facing violence, threats, discrimination, or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Articles 5 and 6 guarantee the right to meet or assemble peacefully; as well as right to freely publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms, while each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

The Human Rights Council resolution 31/32 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.

The United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011 are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

It is a recognized principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). 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 occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human rights law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors.

Finally, the Guiding Principles also recognise the important and valuable role played by independent civil society organisations and human rights defenders. In particular, Principle 18 underlines the essential role of civil society and human rights defenders in helping to identify potential adverse business-related human rights impacts. The Commentary to Principle 26 underlines how States, in order to ensure access to remedy, should make sure that the legitimate activities of human rights defenders are not obstructed.