

Mandates of the Special Rapporteur on the situation of human rights defenders; 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 MUS 2/2020

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; 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, 37/8 and 41/12.

In this connection, we would like to bring to the Government of your Excellency's attention cases of **alleged arbitrary detention of eleven land and environmental rights defenders opposing forced evictions and land grabbing by private enterprises operating in Kiryandongo, West of Uganda**, including a company with a registered domicile in Mauritius Islands.

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.

According to the information received:

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 part of their bail requirements. 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.

While we do not wish to prejudge the accuracy of these allegations, we do 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 seem to be in retaliation for their work opposing land grabbing by private companies that operate in the area, including Kiryandongo Sugar Limited, belonging to RAI Group, with an alleged domicile in your territory. 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.

We express our grave concern that local communities in Uganda are being allegedly forcefully displaced from their territory and their rights are not being upheld in line with international human rights law. In this connection, we call on your Excellency’s Government to ensure independent oversight of those places where workers are subjected to any form of displacement or harassment by companies based in your jurisdiction. We are concerned that actions and inactions of the Mauritius-based company in response to these issues, including lack of an effective human rights due diligence process, sets a worrying precedent for its cooperation with local communities.

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 any information you have about the legal domicile of the company Kiryandongo Sugar Limited.

3. Please highlight the steps that your Excellency's Government has taken, or is considering to take, to protect against human rights abuse by Mauritian business enterprises, ensuring that business enterprises domiciled in its territory and/or jurisdiction conduct effective human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights throughout their operations (including abroad), as set forth by the UN Guiding Principles on Business and Human Rights.
4. Please describe the guidance, if any, that the Government has provided to Mauritian business enterprises on how to respect human rights throughout their operations in line with the UN Guiding Principles. This guidance may include measures, inter alia, conducting human rights due diligence, consulting meaningfully potentially affected stakeholders, and remediating any negative impacts. Please indicate whether any guidance was provided with regards to the duty to obtain free and informed consent of affected communities prior to the approval of the project.
5. Please indicate the steps that your Excellency's Government has taken, or is considering to take to ensure that business enterprises domiciled in its territory and/or jurisdiction 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.

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.

Please be informed that similar letters on the same subject have also been sent to the Governments of Uganda, the United Arab Emirates, 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

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 relation to the above-mentioned facts and concerns, we would like to draw the attention of your Excellency's Government to its obligations under binding international human rights instruments. The International Covenant on Civil and Political Rights (hereinafter, "ICCPR"), ratified by Mauritius in 1973, 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).

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.

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.