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 OTH 75/2020

8 December 2020

Dear Mr. Philipp Prinz,

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.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 56 thematic and country mandates on a broad range of human rights issues. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your company cases of **alleged harassment of eleven land and environmental rights defenders opposing alleged forced evictions and land grabbing** by three companies, including the one you lead, operating in the district of Kiryandongo, 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.

According to the information received:

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 of the company, 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 transferred to the local 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. 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. In this regard, your company, through private security personnel, allegedly continues to intimidate individuals who peacefully protest for their right to land and the protection of their livelihoods.

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 their land. Threats, intimidation and detention discourage them from exercising their rights for fear that State and non-State actors may 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 human rights due diligence policies and processes put in place by your company to identify, prevent, mitigate and remedy adverse human rights impacts of your activities, in line with the UN Guiding Principles on Business and Human Rights.

3. Please provide information about specific due diligence or impact assessment measures taken by your company in Kiryandongo. In particular, please highlight how your company conducted meaningful consultation with affected stakeholders before and after the establishment of the farming projects. Please indicate whether any steps were taken to engage in dialogue with affected communities to avoid negative social, cultural and environmental impacts, including by seeking their free, prior and informed consent for the project on their lands.

4. Please provide information about measures taken by your company so far to provide for effective remedy (including compensation) to the villagers who might have been impacted by your farming projects.

5. Please provide information on steps taken by your company to establish operational-level grievance mechanisms to address adverse human rights impacts caused by your company throughout your operations.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received 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, Mauritius, and the United Kingdom of Great Britain and Northern Ireland, as well as to other companies involved in the abovementioned allegations.

Please accept, Mr. Prinz, 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 connection with above alleged facts and concerns, we would like to remind your company of its responsibilities under the Guiding Principles on Business and Human Rights (A/HRC/17/31). The Guiding Principles have established themselves as the authoritative global standard for business to prevent and address negative business-related impacts on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all businesses, wherever they operate. It exists independently of the ability and/or willingness of States to meet their own human rights obligations and does not diminish those obligations. It is an additional responsibility to that of complying with national laws and regulations protecting human rights.

"The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts". (Guiding Principle 13).

In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights;
(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute. (Guiding Principle 15)

In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships […] meaningful consultation with potentially affected groups and other relevant stakeholders (Guiding Principle 18).

Also, Principle 22 provides that "Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes". "Establishing grievance mechanisms at the operational level for those potentially affected by business activities can be an effective means of redress provided they meet certain requirements listed in Principle 31 (Commentary on Guiding Principle 22).

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.

We would like to recall the thematic report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (ref. A/HRC/32/45) which discusses the obligation of States to protect individuals against human rights abuses by companies that they own or control. In particular, we would like to highlight the following conclusions and recommendations: "All businesses, whether public or wholly private, have a responsibility to respect human rights. This responsibility is distinct from, but complementary to, the State's duty to protect against human rights abuses by business enterprises."

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.

Finally, Articles 5 and 6 of the same declaration 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.