

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 promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL UGA 3/2021

6 July 2021

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 promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 43/16, 46/7 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary arrest and detention of environmental rights defender Maxwell Atuhura, and journalist Federica Marsi in Buliisa, in the Albertine region of Uganda in connection with the Tilenga oil project operated by Total.

Mr. **Maxwell Atuhura** is an environmental rights defender and is the Field Officer in Buliisa for the Africa Institute for Energy Governance (AFIEGO), working to support members of the community who have been affected by the Tilenga oil pipeline project.

In October 2019, AFIEGO and five other environmental organizations took legal action against Total in France under the 2017 Corporate Duty of Vigilance Law, claiming that the company had failed to fulfill its obligations to address the impact of the Tilenga oil project for the affected community and the environment. The organizations also allege that Total has both intimidated and failed to compensate over 5,000 local land-owners, and neglected to develop sufficient environmental safeguards to protect the surrounding national park. The claim also includes allegations about the potential displacement of thousands of people in the area and the immense environmental ramifications from the construction of a network of pipelines passing under the Nile River and the development of the longest heated electric pipeline in the world, the East Africa Crude Oil Export Pipeline (EACOP). The case alleges that the company's subsidiary, Total Uganda, and one of its subcontractors coerced land-owners into signing compensation agreements, and denied them access to their lands prior to providing the compensation.

Ms. **Federica Marsi** is an Italian national and freelance journalist whose reporting has focused on social and environmental issues.

The harassment and intimidation of human rights defenders in relation to their involvement in advocacy against the human and environmental impact of the Tilenga oil project in the Albertine Graben and the legal case against the company, was the subject of a previous communication by a number of Special Procedures mandate

holders to your Excellency's Government on 20 April 2020 (UGA 1/2020). We regret that no response was received from your Excellency's Government.

According to the information received:

On 24 May 2021, Mr. Atuhura filed a complaint at the Buliisa police station following break-ins at both his home in the oil region, and his family home in Kampala on 10 May 2021. In the weeks prior to the break-ins, Mr. Atuhura had also reportedly received a number of anonymous phone calls, threatening him.

On 25 May 2021 at approximately 3 p.m., Mr. Atuhura and Ms. Marsi were arrested by the Resident District Commissioner of Buliisa and the District Police Commissioner (DPC) at the Adonia Hotel in Buliisa, where they were staying. The officers reportedly did not present a warrant for their arrest, or a reason for their arrest. Mr. Atuhura and Ms. Marsi were taken to Buliisa Central Police Station (CPS), where they were interrogated and reportedly threatened by the police officers questioning them. Prior to their arrest, Mr. Atuhura and Ms. Marsi had been conducting interviews with individuals from the area whose land has been acquired or is due to be acquired as part of the oil project in Buliisa.

Later that day, Ms. Marsi was released from the police station, reportedly on condition that she leave Tilenga and travel back to Kampala, allegedly due to issues with her visa. She was reportedly arrested again later that day by two plainclothes officers in the town of Biso in Buliisa whilst attempting to leave the area in a taxi, and brought in front of the Biso police station, before she was eventually allowed to leave. Ms. Marsi arrived to Kampala late that evening.

On 26 May 2021, Mr. Atuhura was transferred to Hoima CPS, allegedly for further questioning. During the questioning, police officers reportedly asked Mr. Atuhura about his work, his connection to the lawsuit against Total, AFIEGO's relationship with other international organisations, why he was "working with foreigners" and claimed he was not "speaking the truth". Whilst detained, Mr. Atuhura was not brought before a judge, but was allowed access to his lawyers and his AFIEGO colleagues.

On the evening of 27 May 2021, Mr. Atuhura was released on bond. The police bond for his release reportedly states that Mr. Atuhura is being charged with "unlawful assembly", and was required to appear before the regional Criminal Investigations Department (CID) officer for the Albertine region in Hoima on 2 June 2021.

On 2 June 2021, Mr. Atuhura appeared before the CID officer in Hoima, and the bond was extended until 18 June 2021, when he was due to report to the police headquarters in Buliisa. Mr. Atuhura's mobile phone and camera, confiscated during his arrest, are yet to be returned to him.

On 18 June 2021, Mr. Atuhura notified the police station in Hoima that he would be unable to report to the station, due to the ban on inter-district travel as part of COVID-19 restrictions.

Whilst we do not wish to prejudge the accuracy of these allegations, we express serious concern in response to the alleged arbitrary arrest and detention of Mr. Atuhura and Ms. Marsi, seemingly in connection with their work in the context of the Tilenga oil project in Buliisa and conducting interviews with individuals from the affected community. We are further concerned that these apparent attempts to intimidate Mr. Atuhura and deter him from advocating against the impacts of the Tilenga oil project, are not isolated, as environmental rights defenders working in defence of the rights of the communities impacted by the project, have previously been subjected to harassment in retaliation for this work, as communicated to your Excellency's Government by the Special Procedures mandate holders. We fear the chilling affect this may have on all those seeking to uphold and defend human rights in Uganda, particularly those defending the rights of individuals whose livelihoods have been detrimentally impacted as a result of the actions of Total Oil in the Albertine region.

Furthermore, serious concern is also expressed by the charge of "unlawful assembly" against Mr. Atuhura, which can be viewed as an attempt to arbitrarily criminalise his peaceful and legitimate efforts to promote and protect human rights. We also wish to express serious concern in relation to the detention of Mr. Atuhura for over 48 hours without being brought before a judge, exceeding the limit as stipulated in Ugandan law.

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 any comment you may have on the above-mentioned allegations.
2. Please provide detailed information as to the factual and legal basis for the arrest and detention of Mr. Atuhura.
3. Please provide information as to the factual and legal reasoning for detaining Mr. Atuhura for over 48 hours, despite Ms. Marsi having been released on the day of the arrest.
4. Please provide information about the measures taken to investigate the complaint filed by Mr. Atuhura concerning the breaks-ins and the threats he was reportedly subjected to. If no investigation has taken place, please explain why.
5. Please provide detailed information as to the reasoning for charging Mr. Atuhura with "unlawful assembly", and how such charges related to his work interviewing individuals affected by the Tilenga oil project.

6. Please indicate what steps have been taken to ensure remediation for people who have lost their lands, livelihoods or suffered any other economic, environmental or cultural impacts due to the activities of the Tilenga oil project.
7. 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.
8. Please provide information as to the steps that your Excellency's 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.

Please be informed that a similar letter on the same subject has also been sent to the company, its subsidiary in Uganda, and the Government of France, where Total is registered.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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. Article 9 of the Universal Declaration of Human Rights (UDHR) also provides that no one shall be subjected to arbitrary arrest, detention or exile. 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 would like to recall articles 5 and 6 of the 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 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. Furthermore, we would also like to refer to article 12 (1) and (2), which provide that everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms, and that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse

discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

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 Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.” Principle 12, provides that States should ensure the effective enforcement of their environmental standards against public and private actors. As per principle 14, States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities