

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; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

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(Please use this reference in your reply)

24 January 2022

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; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 46/7, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information received about the criminalization and acts of intimidation against non-governmental organizations working on oil and gas issues, and the arrest of Mr. **Joss Kaheero Mugisa** and Mr. **Robert Birimuye**, human rights defenders working in the same field.

Mr Joss Kaheero Mugisa is the chairperson of Oil and Gas Human Rights Defenders Association (OGHRA), a community-based organisation, paralegal for the Ugandan Law Society and observer for AFIEGO (Africa Institute for Energy Governance) in the district of Buliisa in Uganda. AFIEGO undertakes public policy research and advocacy to influence energy policies to benefit the poor and vulnerable. Mr. Robert Birimuye is the leader of the East African Crude Oil Pipeline (EACOP) Project Affected People (PAP). They are also part of the anti-TOTAL movement in Uganda, in which connection Special Procedures mandate holders send a communication to your Excellency's Government on 6 July 2021 (UGA 3/2021) to which we have not received a response yet.

The civil society organisation AFIEGO was previously the subject of a communication sent by Special Procedures mandates holders to your Excellency's Government on 24 September 2021 (see UGA 4/2021). We regret to take notice that to date your Excellency's Government has yet to provide a response to the aforementioned letter.

AFIEGO, together with 53 other civil society organisations, was suspended by the NGO Bureau on 20 August, 2021, on the grounds that the organisations were allegedly found to be "non-compliant with the NGO Act, 2016".

Mr. Maxwell Atuhura, who is also a member of AFIEGO and the journalist Federica Marsi were also previously subject of a communication sent by Special Procedures mandates holders to your Excellency's Government on 6 July 2021. We

regret to take notice that to date your Excellency's Government has failed to provide a response to the aforementioned letter.

According to the information received:

On 7 October 2021, the Hoima field officer of AFIEGO was summoned to the Hoima police station and warned against reopening the AFIEGO field office in Buliisa. On the same day, the director of the Buliisa police went to the Buliisa local office of AFIEGO and took photos of the premises. The office also serves as headquarters of two other NGOs.

On 8 October 2021, and following the suspension of AFIEGO by the NGO Bureau, subject to the letter above, around 20 police officers raided the office of the three organisations in Buliisa, requiring their members to close down and leave the premises within two hours. As a result of the raid, Mr. Maxwell Atuhura, the head of AFIEGO's Buliisa office, removed the computers and most of the equipment from the premises and all the members left the office.

On 14 October 2021, at 10:00 am Mr. Mugisa was arrested under accusations of threats of violence and verbal abuse within a family context and held in custody at the police station of Buliisa for 24 hours. He was released on bond, before being rearrested on 18 October 2021, and brought before a judge on 20 October 2021, who remanded him in custody until 10 November 2021. He was charged with two counts of "threatening violence" against two women of his family and one count of "threatening to destroy their house". Mr. Mugisa denies these accusations as does another witness.

The police have allegedly told him that he was arrested because he disobeyed police orders by not removing the sign post from AFIEGO's office after it was requested he do so. Mr. Mugisa had already been under threat for several weeks prior to his arrest, due of his field work in the oil region, whilst other members of AFIEGO have also been threatened with arrest.

On 22 October 2021, Mr. Birimuye, a leader of the East African Crude Oil Pipeline (EACOP) Project Affected People (PAP) leader from Kyotera district, Massaka region, was arrested by the Kyotera district police commander during a meeting of PAPs organised by a Member of Parliament for Kyotera district, in Luseese Village, Nabigasa Sub-county, Kyotera District.

He was accused of disturbing the EACOP project by challenging the assessments and compensations he considers unfair, working with an unregistered organisation in the district and trying to sabotage the government project. Subsequently, he was detained at the Kyotera City Police Station. Mr. Birimuye was released on bond a few hours later as investigations against him on charges of "inciting violence, sabotage of government programmes and unlawful assembly" are ongoing.

Later in the day of 22 October 2021, six AFIEGO members were arrested by the police. The six human rights defenders were detained at the Kiira police station

and the charges against them were not made known to them. They were released on 25 October 2021. The police has not pressed charges yet.

Without prejudging the accuracy of the above-mentioned allegations, we wish to express our concerns regarding the arrests, acts of intimidation and judicial harassment against human rights defenders and NGOs working in the oil and gas sector in Uganda, which appear to be directly related to their legitimate human rights activities. These acts seem to be part of a broader pattern of intimidation and harassment of civil society organisations and groups in Uganda who have raised human rights concerns arising from oil and gas projects.

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. Joss Kaheero Mugisa and Mr. Robert Birimuye, as well as the six additional members of AFIEGO.
3. Please indicate measures taken by your Excellency's Government to ensure that human rights defenders and NGOs are able to carry out their legitimate and peaceful activities in an enabling environment, free from threats, attacks, reprisals and acts of intimidation, of any kind.

We would appreciate receiving a response within 60 days. Past 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 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

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 refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), to which Uganda acceded on 21 June 1995, in particular articles 9, 19, 21 and 22.

Article 9 of the ICCPR 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 this article, 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 also like to remind your Excellency's Government that any restrictions to the right to freedom of association must meet the criteria established by international human rights standards, such as Article 22 (2) of the ICCPR. Under these standards, the restrictions must conform the strict tests of legality and necessity. In its report on the rights to freedom of peaceful assembly and of association, the former UN Special Rapporteur adds the criteria of proportionality while restricting the corresponding rights by stating that “[t]he suspension and the involuntarily dissolution of an association are the severest types of restrictions on freedom of association. As a result, it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law.

It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient” (A/HRC/20/27/para. 75).

We also wish to refer to the Human Rights Council Resolution 22/6, which calls upon States to ensure that “procedures governing the registration of civil society organizations exist, that these are transparent, accessible, non-discriminatory, expeditious and inexpensive, allow for the possibility to appeal and avoid requiring re-registration, in accordance with national legislation, and are in conformity with international human rights law” (A/HRC/RES/22/6, para. 8).

Human Rights Council Resolution 22/6 also calls upon States to ensure “(a) that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy”; and (b) “that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration (...), other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto”. (OPs 8 and 9)

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. Under Article 19 (3) of the ICCPR, any restriction on the right to freedom of expression must be: (i) provided by law; (ii) serve a legitimate purpose; and (iii) be necessary and proportional to meet the ends it seeks to serve. In this context, we would like to underscore that the deprivation of liberty as punishment for the legitimate exercise of the rights to freedom of opinion and expression and freedom of assembly and association is arbitrary.

In this context, we would further like to draw the attention of your Excellency’s Government to the Human Rights Council resolution 12/16, calling on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. Furthermore, we would like to refer to Human Rights Council resolution 24/5 in which the Council “remind[ed] States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections and including persons espousing *minority or dissenting views or beliefs*, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions of the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law” (OP2, emphasis added).

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.

On 8 October 2021, the Human rights Council adopted resolution 48/13, recognizing the right to a clean, healthy and sustainable environment. In addition, 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.”