

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants and the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

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(Please use this reference in your reply)

24 May 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 human rights of migrants and Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, pursuant to Human Rights Council resolutions 43/16, 43/6 and 41/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning repeated, years-long attacks against defenders of the rights of lesbian, gay, bisexual and trans (LGBT) people living in Nakivale refugee settlement in Uganda.

Mr. **Serge Musana** is a refugee at the Nakivale refugee settlement in southern Uganda. He is a defender of the rights of LGBT persons and director of the Nakivale Victims' Association (NVA). NVA is an organisation that fights discrimination based on sexual orientation, gender identity and HIV status, in the refugee settlement. The association carries out cultural, humanitarian and sporting activities aimed at integrating LGBT people into the wider refugee population. The organisation has also reported on alleged violations and instances of corruption among State officials in the asylum process.

We have written 10 previous communications to your Excellency's Government since 2018 on the situation of human rights defenders. We deeply regret that only one of those communications has received a reply. We have serious concerns for the welfare of human rights defenders in Uganda given the low response rate and urge your Excellency's Government to effectively engage with UN Special Procedures mandate holders.

According to the information received:

On 6 October 2016, three men reportedly attacked and attempted to kill Mr. Serge Musana in front of the entrance of the canteen of Base Camp 1 of Nakivale refugee camp. One of the men reportedly tried to tie a rope around Mr. Musana's neck while two others stabbed him in the chest and the abdomen with a knife. He spent the night in hospital and reported the incident to police. The incident was registered under case SD 12/07/10/16.

On 17 March 2017, Mr. Serge Musana was reportedly abducted from Nakivale refugee camp, tortured and sexually abused by three military officers. He was beaten, physically and verbally abused, burned by lit cigarettes, and raped. In the early hours of the morning of 19 March 2017, Mr. Musana was blindfolded and left in a forest outside Nakivale, where he was reportedly told that, if he had not died by the time someone found him, he was to tell police that he was

kidnapped by unidentified individuals. Mr. Musana survived and filed a complaint with the police under reference number SD 05/19/3/2017. He was examined by a doctor, however, the medical examination only recorded the cigarette injuries and he reportedly did not receive adequate medical treatment.

On 30 November 2020 at approximately 20:00, Mr. Serge Musana was beaten by a group of other refugees at Base Camp 2 of Nakivale refugee camp. They reportedly told him that there was no place for “gays” in African society. He reported the incident to the police, who filed it under case number SD 07/01/12/2020. He underwent a medical examination and reportedly received basic medical treatment.

At 20:20 on 27 March 2022, **Mr. Serge Musana Ms. Kiza Esther** and **Ms. Mukendi Kabedi, also members of the NVA**, were attacked by unidentified individuals while on their way back from a reception centre for newly arrived refugees, where they were looking for an LGBT refugee from the Democratic Republic of Congo. As they left the centre, a group of villagers reportedly attacked them with knives and verbally abused them, calling them “gay undesirables”. The group reported the incident to the police the following day, who carried out a medical examination of the human rights defenders and filed the case under reference number SD 16/27/03/2022.

According to the information received, the three human rights defenders mentioned are just some of a number of human rights defenders who have been attacked for working to combat discrimination on the basis of sexual orientation and gender identity in Nakivale refugee settlement. According to records kept by the organisation, 24 human rights defenders have been targeted for their work, including four who have been killed. Others have suffered threats, torture, rape and attempted killings. One of those killed was **Mr. Mulanga Germos**. It is alleged that official entities have suspicions of poisoning as the cause of his death.

Mr. Musana reportedly suffers long lasting injuries as a result of the multiple physical attacks he has endured and the attempt on his life. According to the information received, neither Mr. Musana nor NVA are aware of any follow up or investigation by police on the threats and attacks that they reported.

Without wishing to prejudge the accuracy of the information received, we express our deep concern regarding these allegations, according to which there have been years of violent harassment and discrimination of defenders of the rights of LGBT refugees in Nakivale refugee settlement.

We are particularly concerned by allegations that Mr. Musana may have been physically and sexually assaulted by members of the military in Uganda. We are furthermore concerned that the human rights defenders who have reported threats and attacks to police, have not been provided with any updates on the status of the investigation or prosecution of any perpetrators. We are concerned that persistent impunity and lack of adequate investigation may lead to the reoccurrence of violations, putting the lives and wellbeing of human rights defenders working to combat discrimination on the basis of sexual orientation and gender identity at great risk.

We convey our deep concern to your Excellency's Government that human rights defenders working for NVA have been targeted not only for their work as human rights defenders, but also for their perceived sexual orientation and gender identity. In a joint statement issued on 24 March 2022, the UN Special Rapporteur on the situation of human rights defenders and the UN Independent Expert on sexual orientation and gender identity (SOGI) warned that human rights defenders working on SOGI issues are constantly at risk, and states have an obligation to cultivate an environment where they, and all human rights defenders, can operate freely and to establish protection and specific awareness raising programmes tailored to their specific needs.

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 updates on the status of investigation of the abovementioned cases lodged with police regarding threats and attacks against members of NVA.
3. Please provide information on measures taken to protect the security of refugees in Uganda.
4. Please provide information on the measures in place to ensure that human rights defenders can carry out their legitimate work in Uganda in an enabling environment, regardless of their legal status in the country or their belonging to minority or vulnerable groups, including human rights defenders working on SOGI issues.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. 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

Felipe González Morales
Special Rapporteur on the human rights of migrants

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we wish to draw the attention of your Excellency's Government to the applicable international human rights law and standards:

Articles 6, 19, 20, and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Uganda on 21 June 1995, guarantee the right to life and physical integrity, freedom of opinion and expression and the right to freedom of peaceful assembly and of association.

In particular, we would like to draw your attention to article 3 of the Universal Declaration of Human Rights which states that "Everyone has the right to life, liberty and security of person"; and article 6 (1) of the ICCPR, which provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

We wish to stress that the right to life is the supreme right from which no derogation is permitted. It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the enjoyment of all other human rights and whose content can be informed and infused by other human rights.

Furthermore, we recall that an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents, including incidents involving allegations of excessive use of force with lethal consequences.

We would also like to refer to the General Comment No. 34 (2011) of the Human Rights Committee, which provides in paragraph 9 that "All forms of opinion are protected, including opinions of a political, scientific, historic, moral or religious nature... The harassment, intimidation or stigmatization of a person, including arrest, detention, trial or imprisonment for reasons of the opinions they may hold, constitutes a violation of article 19, paragraph 1" (ICCPR).

We wish to refer to articles 21 and 22 of the ICCPR, which guarantee the right to freedom of peaceful assembly and of association. Article 22 (2) further indicates that no restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. The Human Rights Committee further affirmed that recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure

its exercise without discrimination (CCPR/C/GC/37, para. 8).

We underline the obligation on State Parties to ensure the protection of the rights contained in the Covenant against violations by its agents and to take all necessary measures intended to prevent arbitrary deprivations of life by their law enforcement officials. We note that the duty to investigate arises in circumstances in which a serious risk of deprivation of life was caused by the use of potentially lethal force, even if the risk did not materialize and that a failure to investigate and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR (CCPR/C/21/Rev.1/Add.13 and CCPR/C/GC/36). physical integrity, freedom of opinion and expression and the right to freedom of peaceful assembly and of association.

We would like to also recall that the ICCPR provides in its article 20(2) that States must prohibit by law and to ensure full enforcement of the law against every incident of advocacy of hatred that constitutes incitement to discrimination, hostility or violence in accordance with article 20(2), which is further provided for by the Human Rights Committee in paragraph 8 of its General Comment No. 34.

We wish to draw the attention of your Excellency's Government to article 7 on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, of the ICCPR, and to the right of all individuals, including migrants and asylum seekers, to the enjoyment of the highest attainable standard of physical and mental health, which is stated on Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Uganda on 21 June 1995.

We would like to further emphasise that human rights are universal and apply to everyone, irrespective of their sexual orientation or gender identity. The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. They are reaffirmed in article 2 (1) of the ICCPR. The Human Rights Committee emphasised that States have a legal obligation to ensure everyone the rights recognised by the ICCPR without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3).

Article 26 of the ICCPR further states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In the United Nations High Commissioner for Human Rights' report to the Human Rights Council (A/HRC/29/23), he reiterated that all human beings, irrespective of their sexual orientation and gender identity, are entitled to enjoy the protection of international human rights law with respect to the freedom of expression and association, as well as all other civil, political, economic, social, and cultural rights (paragraph 9) and States have well-established obligations to respect, protect, and fulfil the human rights of all persons within their jurisdiction, including LGBT and intersex persons (paragraph 10). States should refrain from directly interfering with these rights and protect LGBT persons exercising these rights from attacks and reprisals (paragraph 18).

We would also like to refer to 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. In particular, we would like to draw your attention to article 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels. 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.

We also refer our Excellency's Government to the following articles of the Declaration on Human Rights Defenders:

- article 9 (1): “[...]to benefit from an effective remedy and to be protected in the event of the violation of those rights”,
- article 12(2): “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”.

Finally, under international law, the right to freedom of expression extends to everyone, including all migrants regardless of their status. The rights to freedom of expression and freedom of association for migrants and migrants rights defenders is essential to express their needs, protect their right to life and defend their economic, social, cultural and other human rights. As emphasised by the Special Rapporteur on the human rights of migrants in his report on the right to freedom of association of migrants and their defenders, the work of migrants rights defenders and support from civil society organizations is crucial for migrants, particularly for those in an irregular situation or with vulnerabilities (A/HRC/44/42). Given the interconnected nature of human rights, restrictions on migrants' and their defenders' freedom of expression and association further hinder migrants' enjoyment of other rights. In this report, the Special Rapporteur also urged States to ensure that criminal justice laws are not misused to punish migration-related humanitarian acts or to harass civil society organizations that work with migrants.

Furthermore, the importance of the right to defend the human rights of migrants was recently reaffirmed in the report on principles and practical guidance on the protection of the human rights of migrants in vulnerable situations (A/HRC/37/34); according to principle 18, States must “respect and support the activities of human rights defenders who promote and protect the human rights of migrants”.