

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on the issue of human rights and transnational corporations and other business enterprises; 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

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(Please use this reference in your reply)

24 October 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on the issue of human rights and transnational corporations and other business enterprises; 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 52/4, 53/3, 46/7 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest and alleged arbitrary detention of environmental rights defender Mr. **Desire Nkurunziza**.

Mr. Desire Nkurunziza is an environmental rights defender and the elected leader of Nyairongo village in the Kikuube district. As a member of the Save the Bugoma Forest Campaign (SBFC) community task force, Mr Nkurunziza has been advocating against the deforestation of the Bugoma Central Forest Reserve, which has been leased to Hoima Sugar Limited company, primarily for sugarcane cultivation. As part of this advocacy, Mr. Nkurunziza has highlighted the involvement of the local and central government authorities in the project and been critical of the decision by the Bunyoro Kitara Kingdom, South-West region of Uganda, to lease the land to the company.

Save the Bugoma Forest Campaign (SBFC) is a coalition of civil society organizations and grassroots groups respectively working on environmental issues, to advocate against the deforestation of Bugoma Central Forest Reserve. SBFC works to raise awareness about the detrimental impact of the sugarcane plantation to the biodiversity of the forest, as well as the local community and their access to livelihoods, who have also reportedly been subjected to intimidation and extortion by persons allegedly associated to Hoima Sugar Ltd.

One of the groups forming SBFC, the civil society organization Africa Institute for Energy Governance (AFIEGO), and some of AFIEGO's members, were previously the subjects of communications sent by Special Procedures mandate holders to your Excellency's Government on 24 January 2022 (UGA 1/2022), 24 September 2021 (UGA 4/2020) and 6 July 2021 (UGA 3/2021). We regret to take notice that to date your Excellency's Government has yet to provide a response to any of the abovementioned letters.

The arrest and alleged arbitrary detention of human rights defenders and journalists advocating against the deforestation of the Bugoma Central Forest Reserve

was previously the subject of a communication to your Excellency's Government on 8 December 2020 (see UGA 3/2020). We regret to take notice that to date your Excellency's Government has yet to provide a response to the letter.

According to the information received:

Background

The Bugoma Forest Reserve is the second largest natural forest reserve in Uganda, covering more than 40,100 hectares (100,000 acres), and the largest remaining block of natural tropical forest along the Albertine rift valley. It was established as a Forest Reserve in 1932 and has been managed by the National Forestry Authority (NFA) since 2003.

In 2016, Mr. Solomon Iguru Gafabusa, Omukama of the ancient Bunyoro-Kitara kingdom, leased approximately 5,500 hectares of Bugoma Forest Reserve to Sugar Hoima Ltd. for 99 years, on the alleged claim that it was ancestral land and therefore not part of the protected forest area. The land was to be used for the Kyangwali Mixed Land Use project operated by Hoima Sugar Ltd. Alongside a sugarcane plantation, this project reportedly also included plans for an urban centre, an eco-tourism centre and a cultural site.

In August 2020, the National Environmental Management Authority (NEMA) granted Hoima Sugar Ltd an Environment and Social Impact Assessment (ESIA) certificate to proceed with the Kyangwali Mixed Land Use project, and work began to clear the forest for sugarcane cultivation.

From 2019 – 2020, a number of cases were filed before the Civil Division of the High Court in response to the issuance of the ESIA to Hoima Sugar Ltd for the Kyangwali project. In its case, the Water and Environment Media Network Uganda (WEMNET-U) sought an injunction, and alleged that the granting of the ESIA without public consultation was illegal as it prevented interested parties from expressing their views and their right to a clean, healthy and sustainable environment. Another case jointly filed by three NGOs – Greenwatch, National Association of Professional Environmentalists (NAPE) and Africa Institute for Energy Governance (AFIEGO) – similarly alleged that the ESIA had been issued without prior consultation or consideration for the views of local communities, and was not subjected to public scrutiny. The presiding judge threw out the case, reportedly claiming that it was based on unsubstantiated allegations to win public sympathy and had misled the court. The NFA filed a case against the Omukama of Bunyoro Kitara, Hoima Sugar Ltd and the Uganda Land Commission regarding the leasing of the land, and ultimately lost the case on appeal.

In September 2022, in response to an environment and social audit report submitted by Hoima Sugar Ltd for the Kyangwali project and subsequent investigations, NEMA found that the company had carried out deforestation of the natural, reserved forest areas. NEMA reported that as a result, the area of natural forest that was supposed to be protected had been severely degraded and ordered Hoima Sugar Ltd to immediately cease deforestation and undertake restoration of these areas, which the company agreed to.

In June 2023, in response to claims by the SBFC that Hoima Sugar Ltd were conducting destructive activities in the Bugoma Central Forest Reserve and the ESIA had been irregularly issued, a NEMA spokesperson is reported to have said that environmental activists sometimes “create unnecessary alarms” and accused activists of deliberately undermining manufacturing projects for the purposes of raising money from donors, and that they should learn to be “honest and patriotic” or risk the future of the country’s manufacturing sector.

As previously highlighted by Special Procedures mandate holders in UGA 3/2020, environmental human rights defenders working for WEMNET-U were allegedly arbitrarily detained in connection with their efforts to raise awareness about the deforestation of the Bugoma Central Forest Reserve for the purposes of sugarcane cultivation.

Alleged arrest and arbitrary detention of Mr. Nkurunziza

On 16 July 2023, two cars pulled up outside Mr. Nkurunziza’s home in Nyairongo trading center. One of the cars allegedly belonged to a supervisor from Hoima Sugar Ltd, and the other to an associate of the Kikuube Resident District Commissioner, both men known to Mr. Nkurunziza. The two men allegedly informed Mr. Nkurunziza that two members of his village had been arrested in the forest, now a sugar cane plantation, and so he agreed to go with the men to assist his constituents.

Upon arrival at the sugar cane plantation, Mr. Nkurunziza was reportedly handed over to two armed Hoima Sugar Ltd personnel. The men allegedly beat Mr. Nkurunziza, before recording a video of him in which they accused him of illegally cutting down sugar cane. Following this, Mr. Nkurunziza was then taken to the Kikuube police station, reportedly in the same Hoima Sugar Ltd car. At the station he was allegedly arbitrarily arrested on the grounds of “incitement of violence” and “criminal trespass” under sections 51 and 302 of the Penal Code Act. Mr. Nkurunziza was held in Kikuube police station for two days, during which time his request for temporary release from custody was denied.

On 18 July 2023, Mr. Nkurunziza’s application for Court bail was denied, despite his fulfilment of the necessary requirements, and with reportedly no reason provided for the denial of his application. Mr. Nkurunziza was then remanded to Kiryatete prison. Whilst detained, Mr. Nkurunziza was granted access to his lawyer and members of his family.

On 24 July 2023, Mr. Nkurunziza appeared in the Chief Magistrates Court of Hoima and was released on bail, after paying 300,000 Ugandan shillings and satisfying the conditions for release. As part of these conditions, Mr. Nkurunziza was obligated to report back to the Court on 31 August 2023.

On 31 August 2023, Mr. Nkurunziza reported to the Court, during which the Chief Magistrate informed him that he would need to report back to the Court on 2 November 2023.

On a previous occasion a number of months before the alleged arbitrary detention in July, Hoima Sugar Ltd employees reportedly attempted to arrest

Mr. Nkurunziza and other environmental activists whilst they were in Bugoma Central Forest Reserve with a cameraman, documenting the deforestation. Mr. Nkurunziza and those with him at the time reportedly ran away from the Hoima Sugar Ltd employees as they tried to arrest them.

Without prejudging the accuracy of the above-mentioned allegations, we wish to express our concern in response to the arrest and alleged arbitrary detention of Mr. Nkurunziza which appears to have occurred under circumstances in which he was reportedly misled and falsely accused of crimes in which he has no reported involvement. It would appear that Mr. Nkurunziza was accused of falsified allegations in connection with his legitimate work as an environmental human rights defender, primarily his opposition to the deforestation of the Bugoma Central Forest Reserve, which would amount to a violation of his right to defend environmental rights, including his human rights to a clean, healthy and sustainable environment, his right to freedom of opinion and expression and his right to liberty and security of person.

If true, these allegations would suggest that there has been a degree of collusion between the local authorities and Hoima Sugar Ltd in the attack against and alleged arbitrary detention of Mr. Nkurunziza, which would be in violation of their respective human rights obligations and responsibilities. This is particularly concerning as it may deter environmental human rights defenders and their organizations from exercising their peaceful and legitimate human rights activities, in particular those that involve manufacturing companies, for fear of being subjected to similar retaliation.

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 concerning the legal grounds for the arrest and detention of Mr. Nkurunziza, and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
3. Please provide information about the factual grounds that have justified the charges brought against Mr. Nkurunziza.
4. Please indicate what steps have been taken and measures put in place by your Excellency's Government to ensure that non-governmental organisations, civil society organisations and all human rights defenders in Uganda – specifically those working on environmental issues - can carry out their peaceful work free from fear of threat, violence, harassment, or retaliation of any sort.

5. Please highlight the steps that your Excellency's Government has taken, or is considering taking, to ensure that business enterprises, in particular Hoima Sugar Limited company, respect human rights in accordance with the United Nations Guiding Principles on Business and Human Rights, including to ensure that the rights of human rights defenders and the right to clean, healthy and sustainable environment, is respected. In particular, please detail how the implementation of the National Action plan on Business and Human Rights (NAP) helps to avoid those type of alleged business-related human rights abuses – such as attacks against human rights defenders and deforestation.
6. Please kindly provide information on how your Excellency's Government ensures that business enterprises under its jurisdiction do not impact negatively the work of human rights defenders, specifically in light of the recommendations provided to States in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (A/HRC/47/39/Add.2) the normative and practical implications of the Guiding Principles on Business and Human Rights in relation to protecting and respecting the vital work of human rights defenders.
7. Please provide information regarding any measures that your Excellency's Government is taking, or is considering taking, to ensure that people affected by the activities of Hoima Sugar Limited company, including Mr. Nkurunziza and the members of Save the Bugoma Forest Campaign, as well as the members of Nyairongo village, have access to effective remedies, in line with the UN Guiding Principles on Business and Human Rights, and the commitment under the Ugandan NAP (cf. objective 5).

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 be informed that a letter on this subject matter has been also sent to the business enterprise Hoima Sugar Ltd.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Damilola S. Olawuyi
Chair-Rapporteur of the Working Group on the issue of human rights and
transnational corporations and other business enterprises

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 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. 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 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to bring to the attention of your Excellency's Government the following provisions:

- article 1, which states 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;
- article 2, which states that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms;
- article 12, paragraph 2, which provides that the State shall take all necessary measures to ensure the protection of everyone 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 Declaration.

We would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

“States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;

The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. 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). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). 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 (guiding principle 25) .

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. Moreover, principle 26 stipulates that “States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.”

States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

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.

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.

Finally, both the United Nations General Assembly and the Human Rights Council recognized the right to a clean, healthy and sustainable environment with the adoption of resolutions A/RES/76/300 and A/HRC/RES/48/13. 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.”