

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

Ref.: AL OTH 133/2023
(Please use this reference in your reply)

24 October 2023

Dear Mr. Venket,

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.

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 59 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 your attention information we have received concerning the arrest and alleged arbitrary detention of environmental rights defender Mr. **Desire Nkurunziza** in connection with his opposition to the deforestation of the Bugoma Central Forest Reserve by Hoima Sugar Ltd.

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

Hoima Sugar Ltd

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.

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 and healthy 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.

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, 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 as to what human rights due diligence policies and processes have been put in place by the company to identify, prevent, mitigate and account for how you address adverse human rights impacts throughout your business activities, in line with the UN Guiding Principles on Business and Human Rights. Please clarify how the company significantly consults civil society organizations, human rights defenders and independent experts in

relation to the Kyangwali Mixed Land Use project in the framework of its human rights due diligence.

3. Please provide information as to whether Hoima Sugar Ltd employees were present during the abovementioned incident, prior to Mr. Nkurunziza's alleged arbitrary arrest.
4. Please provide information as to ways in which Hoima Sugar Ltd is exercising its leverage with the Government of Uganda and other relevant stakeholders to ensure that the human rights are respected in relation to the Bugoma Central Forest Reserve, and more specifically, to ensure the rights of environmental rights defenders engaged in advocacy against the project, are protected.
5. Please provide information as to whether Hoima Sugar Ltd is engaged in consultations with civil society organizations, human rights defenders and or independent experts in relation to the Kyangwali Mixed Land Use project and its human rights due diligence.
6. Please provide information on the remedial measures your company has taken, or plans to take, to address the negative human rights impacts caused by its activities, as such as intimidation of human rights defenders and deforestation.
7. Please provide information as to Hoima Sugar Ltd's existing policies to fulfil its obligations to respect and protect human rights defenders.

We would appreciate receiving a response within 60 days. Past 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 a letter on this subject matter has been also sent to the Government of Uganda.

Please accept 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 the above alleged facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011 are grounded in recognition of:

- a) “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) “The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c) “The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur, [and] (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”.

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate, and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.

In this connection, we also wish to highlight the Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the 47th Human Rights Council on guidance on ensuring respect for human rights defenders, pursuant to the Guiding Principles (A/HRC/47/39Add.2). In its guidance to business enterprises, the Working Group emphasizes the need to treat human rights defenders as “valued partners” and “critical friends” in all levels of its operations and conduct, and to develop and implement human rights policies with specific focus on risks faced by human rights defenders, pursuant to Guiding Principle 15. Such policies should include commitments to zero-tolerance for attacks on human

rights defenders, which may occur in connection with a business enterprise's operations, or their business relationships, assurances to publicly condemn attacks against human rights defenders, which may occur in connection with a business enterprise's operations, or their business relationships, assurances to publicly condemn attacks human rights defenders, as well as commitments to support independent fact-finding missions to assess the situation of human rights and human rights defenders where they are operating. Regarding the exercise of leverage pursuant to guiding Principle 19, the Working Group also recommends illustrative actions that business enterprises should take when human rights defenders are at risk and there is a link to the enterprise's own activities, including but not limited to:

- “stand up against abusive government actions, restrictions and regulations, making reference to the Guiding Principles e.g. where human rights defenders are targets or judicial or legislative processes.
- Write or sign open letters to States where human rights defenders are being attacked or put on trial for their legitimate human rights work as this can be an effective way for a concerned business to respond to issues occurring within its own sector and make its voice heard while setting standards for its peers.
- Include in such letters that human rights defenders are protected under the United Nations Declaration on Human Rights Defenders, and that business enterprises rely on human rights defenders to be able to speak freely, and without fear of reprisal, in order to learn about challenges in supply chains, encourage due diligence and provide remedy when harm occurs.
- Intervene when threats are made against human rights defenders, even before legal processes are launched against human rights defenders, in order to prevent them from escalating, and in order to set out the situations that a business enterprise finds acceptable.”