

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights in the context of climate change; 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

Ref.: AL UGA 4/2023
(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; Special Rapporteur on the promotion and protection of human rights in the context of climate change; 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 52/4, 48/14, 52/9 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 violent arrest and alleged arbitrary detention of human rights defenders advocating for a just transition from the use of fossil fuels.**

Students against EACOP is a non-violent movement aiming at achieving climate justice through outreach, education, peaceful protests and civil disobedience. They formed in October 2022 and are currently active in 12 universities in Uganda. Messrs. **Kajjubi Marktum, Lyazi Alex Wasswa, Akiso Benjamin** and **Abduh Twaibu Magambo** are students, human rights defenders, and members of the group.

Concerns as to multiple alleged acts of retaliation against human rights defenders by state forces in Uganda have previously been communicated to your Excellency's Government (see, most recently, UGA 6/2022, UGA 4/2022 and UGA 3/2022). Concerns as to retaliation against human rights defenders working on issues related to climate change specifically, including raising concerns as to the human rights and environmental impact of the East African Crude Oil Pipeline (EACOP), were previously raised in communications UGA 1/2022 and UGA 3/2021. We express our deep regret that no responses have been received from your Excellency's Government to any of these communications.

According to the information received:

On 15 September 2023, as part of a global mobilization for a just transition from a fossil fuel-based energy system, Students Against EACOP, including Messrs. Marktum, Wasswa, Benjamin and Magambo, carried out a peaceful march in Kampala to the Ugandan Parliament. Once arrived at the Parliament, they sought to enter the building to deliver a petition calling on the legislators to end investments in fossil fuels projects, including the East African Crude Oil Pipeline (EACOP), and to redirect these funds to clean and renewable sources of energy. The human rights defenders also called on the Parliament to take a central role in the investigation of human rights violations linked to fossil fuel projects, with the petition stating the following: "In this our terse

petition, as students and young people of this country, we are the direct and major victims of climate crisis living in a country that is among the most affected by climate change yet one of the least prepared to respond and tackle its effects.”

Upon requesting entry to Parliament to deliver their petition, Messrs. Marktum, Wasswa, Benjamin and Magambo were singled out and set upon by approximately 15 police, who forced them into a holding 'cooler' within the Parliament entrance and severely beat them, hitting them in the head with the butts of their guns, and across their ankles with batons, all without explanation. A policeman stepped on the head of one of the defenders while he lay prone on the ground, while another kicked a defender's knees. At one point, Mr. Magambo was set upon and beaten by seven policemen, leaving him severely injured.

The defenders were eventually put into a police vehicle and driven to Kampala Central Police Station, where they were held for approximately two hours and forced to make written statements under duress. They were subsequently called to the office of the Officer in Charge (OC) at the station and interrogated by the OC and an unidentified man in plain clothes. The interrogation lasted approximately forty minutes and the defenders were asked to share information on their supposed funders. Thereafter, they were taken by foot to Buganda Road Court, where they were told they had been remanded to custody, despite them not having been presented before a magistrate. At no point during these events did the defenders have access to a lawyer. From Buganda Road Court, they were taken to Luzira Maximum Security Prison, where they were held in inhumane conditions, including severe overcrowding.

On 18 September 2023, the human rights defenders were presented in court to respond to the charge of common nuisance, under section 160(1) of the Penal Code. In the course of this hearing, during which the defenders were accompanied by their legal representatives, Mr. Magambo was unable to stand as a result of his assault on the day of his arrest, and an order allowing him to visit a doctor was granted. The case was adjourned to 20 September 2023, when the human rights defenders were released on bail.

This would not be the first instance in which the human rights defenders have faced retaliation in the exercise of their rights. In October 2022, Messrs. Marktum, Wasswa and Benjamin were among nine human rights defenders arrested and detained during a peaceful march to the Delegation of the European Union in Uganda, where they were planning to deliver a petition in support of an EU Parliament resolution expressing concern about human rights violations linked to the EACOP project and fossil fuel extraction in Uganda, including retaliation against human rights defenders.

Without wishing to prejudge the accuracy of the information received, we express our grave concern for the alleged violent arrest, arbitrary detention and charging of Messrs. Marktum, Wasswa, Benjamin and Magambo, which would appear to be a direct act of retaliation for their peaceful advocacy for the protection of human rights and the mitigation of climate change. We emphasise that any arrest or detention as punishment for the legitimate exercise of the rights to freedom of assembly and freedom of expression is arbitrary.

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 detailed information as to the factual and legal basis for the arrest and detention of Messrs. Marktum, Wasswa, Benjamin and Magambo, as well as the charges against them, and how these actions are compatible with Uganda's obligations under international human rights law, notably articles 9 and 21 of the International Covenant on Civil and Political Rights (ICCPR).
3. Please provide detailed information as to any investigations which have been carried out concerning the allegations of the gravely excessive use of force against Messrs. Marktum, Wasswa, Benjamin and Magambo by Ugandan police officers, as well as any sanctions or accountability processes which have been initiated in response to the results of any such investigations. If no investigations have been carried out, please explain why, and how this is compatible with Uganda's obligations under international human rights law, in particular article 9 of the ICCPR.
4. Please indicate what measures have been taken to ensure individuals, including human rights defenders, environmental activists, and members of civil society organizations, can exercise their right to freedom of peaceful assembly and association free from intimidation or persecution, and in line with international human rights standards.

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

Ian Fry
Special Rapporteur on the promotion and protection of human rights in the context of
climate change

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 relation to the above-mentioned allegations, we would like to refer your Excellency's Government to articles 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Uganda on 21 June 1995, which guarantee the rights to liberty and security of person, freedom of expression and freedom of peaceful assembly.

Concerning article 9 of the ICCPR, we recall that the Human Rights Committee, elaborating on States obligations under article 9 in its General Comment No. 35, made clear that detention is considered *prima facie* arbitrary when it constitutes a punishment for the legitimate exercise of the rights to freedom of opinion and expression, of assembly and association (under articles 19, 21 and 22 of the Covenant). Article 9 further guarantees the right of all persons arrested to be informed, at the time of their arrest, of the reasons why, as well as to be promptly informed of any charges the face. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The right to security of person, also guaranteed under article 9, protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained. Following article 9, as clarified by the Human Rights Committee in General Comment No. 35, state parties to the Covenant must prevent and redress unjustifiable use of force in law enforcement.

Article 21 of the Covenant, which guarantees the right to peaceful assembly, may only be restricted where such restrictions are provided for by law, and where they 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. Elaborating on the obligations of state parties to the Covenant stemming from the article, the Human Rights Committee, in its General Comment No. 37, established that States have an obligation to carry out timely, impartial and effective investigations into any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials in the context of assemblies, and hold individual officials responsible for violations while providing effective remedies for victims.

We would also like to refer to the fundamental principles set forth in 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 refer to articles 1 and 2 of the Declaration, which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. We would further wish to stress the following articles of the Declaration:

- article 6(b), which holds that all persons have the right to publish, impart or disseminate to others views, information and knowledge on

all human rights and fundamental freedoms;

- article 6(c), which guarantees the right to study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and to draw attention to these matters;
- article 9, paragraph 5, which holds that States shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction; and
- article 12, paragraph 2, holding that States 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 their legitimate exercise of the rights referred to in the Declaration.

In addition to the Declaration on Human Rights Defenders, we would like to highlight the recommendations for States included in the report of the UN Working Group on the issue of human rights and transnational corporations and other business enterprises concerning business and human rights defenders (A/HRC/47/39/Add.2).

We would also like to recall Human Rights Council resolution 38/12, which calls on States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors, to investigate any such alleged acts, to ensure access to justice and accountability, and to end impunity where such violations and abuses have occurred.