

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

REFERENCE:
UA UGA
3/2016

30 May 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of disproportionate measures against the political opposition in Uganda following presidential elections, and in this connection, the arbitrary arrest and charging of human rights defender, Mr. Solomon Akugizibwe, and presidential candidate and member of the Forum for Democratic Change (FDC), Mr. Kizza Besigye, for exercising their rights to freedom of expression and freedom of peaceful assembly and association.**

Mr. Solomon Akugizibwe works for the **Association for Human Rights Organizations (AHURIO)**, which is an umbrella organisation encompassing more than fifteen human rights organisations. It strengthens the organisations that are members of the association through capacity building, research, advocacy and increasing access to legal support. The organisation is based in Fort Portal in the Ruwenzori Region, Western Uganda.

Mr. Kizza Besigye is a member of the **Forum for Democratic Change (FDC)** and was a candidate in the presidential elections in February 2016. He has been under house arrest and government supervision since before the presidential election.

According to the information received:

On 18 February 2016, presidential elections took place in Uganda, and President Yoweri Museveni was sworn in for a fifth term. The results are being contested by the opposition, who have set off a wave of protests against the recent election results. It is alleged that the lead-up to the elections as well as the situation post-election have been marked by several restrictions and disproportionate measures on opposition activity.

Ahead of President Yoweri Museveni's fifth-term inauguration, the Uganda Communication Commission issued an order blocking access to several social

media platforms, including Facebook, Twitter and WhatsApp. Similar social media blackouts were imposed during the elections in February 2016.

On 29 April 2016, the Constitutional Court of Uganda issued a decision banning any political gathering of the FDC, pending a determination by the court of an election petition.

On 5 May 2016, the Government announced that it bans the live broadcast of opposition activities by all media. The Prime Minister reportedly warned that any media house violating the new order would risk having its licence revoked.

The case of Mr. Akugizibwe

On 5 May 2016, Mr. Akugizibwe was arrested while monitoring a demonstration by the Forum for Democratic Change (the main opposition party) in Fort Portal.

On 6 May 2016, Mr. Akugizibwe was charged with “disobeying lawful orders”, in relation to the resolution passed by the Cabinet, as he was monitoring demonstrations. He was released on bail and is due to stand trial on 1 June 2016 at the High Court in Fort Portal. If sentenced, he will potentially face two years imprisonment.

The case of Mr. Besigye

On 11 May 2016, Mr. Besigye was arrested for unlawfully declaring himself the winner of the February 2016 presidential election, and for having hosted his own swearing in ceremony in Kampala. Mr. Besigye has rejected the results and pointed to alleged irregularities, including vote rigging, a biased electoral commission and intimidation by security services.

On 16 May 2016, the Chief Magistrate Court of Moroto charged Mr. Besigye with treason under section 23(2) of the Penal Code Act, cap.120 and transferred his case to the Chief Magistrate in Kampala. Treason is a capital offence in Uganda. Mr. Besigye was remanded to Moroto government prison where he spent three days before being transferred to Luzira prison.

On 18 May 2016, Mr. Besigye appeared before the Nakawa Chief Magistrates Court where charges of treason were read to him in the absence of his lawyers. He was subsequently remanded to Luzira prison until 1 June 2016, when his case will be heard in court.

Concern is expressed at the arbitrary arrest and charging of Mr. Solomon Akugizibwe and Mr. Kizza Besigye, which appear to be in retaliation for their peaceful and legitimate human rights work, political activities and the exercise of their rights to peaceful assembly and association, and the right to freedom of expression, in the context of monitoring of demonstrations organized by the opposition. Further concern is

expressed that the disproportionate measures against the political opposition in Uganda, including restrictions on media and measures curtailing the right to freedom of expression online could have a deterrent effect on civil society as a whole. These measures stifle the dissemination of opinions and views that are critical of the government.

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.

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 therefore 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 the legal grounds for the detention and the charges brought against Mr. Akugizibwe and the results of any investigations in relation to this case.
3. Please provide information about the justification for applying article 23(2) of the Penal Code against Mr. Besigye. In particular, please explain the justification for sanctioning the exercise of the right to freedom of expression with charges of treason.
4. Please provide information about measures taken to provide Mr. Akugizibwe and Mr. Besigye with the guarantee of a fair and impartial judicial procedure as provided by international human rights law.
5. Please provide information on how the restrictions placed on the right to freedom of expression through the resolution passed by the Ugandan Cabinet to stop any media stations to cover opposition activities is in accordance with international human rights norms and standards, in particular with the conditions set forth in article 19(3) of the ICCPR.
6. Please kindly indicate what measures have been taken to ensure that individuals, political opponents, human rights defenders and the media in Uganda are able to carry out their legitimate work and exercise their rights to freedom of peaceful assembly and association and freedom of expression in a safe and enabling environment, without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving a response within 60 days.

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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of association

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Uganda on 21 June 1995, which guarantee the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association, respectively.

We would like to reiterate the principle enunciated in Human Rights Council resolution 12/16, that calls on States to refrain from imposing restrictions which are not consistent with paragraph 3 of article 19, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government, engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would like to also reiterate 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, articles 1 and 2 the Declaration 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.

- article 5, which provides for the right to form, join and participate in non-governmental organizations, associations or groups;

- article 6, which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and

- article 8 which provides for the right to participate in the government of one's own country and the conduct of public affairs.

Moreover, we would like to draw your Excellency's Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which reminds States that it is their obligation of States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline as well as to take measures to ensure that any restrictions on 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.

Furthermore, in his first thematic report to the Human Rights Council, the Special Rapporteur on the rights to freedom of peaceful assembly and of association called upon States to ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by law, which is necessary in a democratic society, and proportionate to the objective pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. Therefore, any restrictions should be subject to an independent, impartial, and prompt judicial review (A/HRC/20/27, paragraph 84 (d) and (e)).