

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights of indigenous peoples

REFERENCE:
AL ETH 3/2016

30 September 2016

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 24/7, 25/2 and 24/9.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, detention and conviction of the former Governor of Gambella, Mr. Okello Akway Ochalla, in connection with his legitimate exercise of the right to freedom of expression.

According to the information received:

Mr. Ochalla is an indigenous Anuak land rights defender and the former Governor of the Gambella region in Ethiopia.

In 2003, Mr. Ochalla was serving as Governor of the Gambella region when tensions between different groups, including Anuak people arose, resulting in the massacre of over 400 persons. Mr. Ochalla fled the country and was granted asylum in Norway. He is today a Norwegian citizen. In the ensuing years, Mr. Ochalla advocated and held protests for Anuak and indigenous rights. All of Mr. Ochalla's activities were held outside of Ethiopia.

In March 2014, Mr. Ochalla visited Juba, South Sudan, where he was reportedly abducted by security agents of the South Sudanese government and taken to Ethiopia. The same month, he was charged with violating Article 6 of the Anti-Terrorism Proclamation for "speaking to international media about the 2003 massacre of the Anuak people and the ongoing troubles plaguing the people of Gambella." The provision punishes with imprisonment between 10 and years, the publication of a statement that is likely to be understood as a direct or indirect encouragement to commission or prepare an act of terrorism.

The exact dates of Mr. Ochalla's detention remain unclear, but it has been reported that from March 2014 to March 2016, Mr. Ochalla was detained and subject to solitary confinement, severe beatings and torture.

On 27 April 2016, Mr. Ochalla was convicted for plotting against the State. Mr. Ochalla's conviction was allegedly based on a self-confession under torture, and he was sentenced to nine years in prison.

We express grave concern at the abduction, arrest, detention and conviction of Mr. Ochalla, which appear to be directly related to the exercise of his right to freedom of expression. In this regard, we express grave concern at the use of counter-terrorism legislation to criminalize expression that is dissenting or critical. We express further concern about the physical and psychological integrity of Mr. Ochalla with respect to the allegations about the conditions while in detention and the alleged torture, and the lack of sufficient guarantees for due process during his trial.

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 any comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the legal basis for the abduction and transfer of Mr. Ochalla from South Sudan to Ethiopia.
3. Please provide information about the legal basis for the arrest and conviction of Mr. Ochalla, and explain how these are compatible with international human rights law. In particular, please provide information about how Mr. Ochalla's exercise of his right to freedom of expression falls under Article 6 of the Anti-Terrorism Proclamation, and how the content and application of this provision is compatible with international human rights law.
4. Please provide information about measures taken to ensure Mr. Ochalla a fair trial in accordance with international human rights law, including possibilities to appeal the court decision.
5. Please provide information about any measures taken to ensure that individuals, including those with dissenting political views, are able to exercise their right to freedom of opinion and expression, and to work in a safe and enabling environment without fear of harassment and criminalization of their speech, in compliance with international norms and standards.

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.

José Guevara
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Victoria Lucia Tauli-Corpuz
Special Rapporteur on the rights of indigenous peoples

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to take all necessary steps to guarantee the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, the right to persons deprived of their liberty to be treated with humanity and respect for their inherent dignity and the prohibition of torture, in accordance with articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Ethiopia on 11 June 1993.

We also refer your Excellency's Government to the right to freedom of expression under article 19 of the ICCPR. Paragraph 3 of article 19 sets out the requirement that any restrictions to the right to freedom of expression must be necessary, proportionate and prescribed by law. While national security is a legitimate basis for restricting the right to freedom of expression under article 19(3), it is not enough to simply claim it as a justification to pursue illegitimate purposes such as silencing critical voices. The State has to demonstrate that it is necessary to do so to achieve a legitimate objective. We reiterate the statement by the Human Rights Committee in General Comment No. 34 that article 19(3) may never be invoked as a justification for the muzzling of any advocacy of human rights (CCPR/C/G/34).

We also wish to refer to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the General Assembly in 2007. Article 7 of UNDRIP provides that indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.