

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: AL
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17 December 2015

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 systemic judicial harassment of land rights defenders in the context of three criminal cases that were brought against members of the Malen Land Owners and Users Association (MALOA).

The **Malen Land Owners and Users Association (MALOA)** is a land-grab resistance group that monitors, documents and denounces human rights violations and negative human rights impact resulting from activities of multi-national agricultural companies in the Malen region of Sierra Leone.

According to the information received:

The group of six land rights defenders

On 16 October 2013, six MALOA members were arrested at various locations in the region of Malen and the city of Bo on charges of "destruction of growing plants" and "conspiracy". One of the members was also charged with "incitement". They were then detained in a Bo City prison. The charges against the six defenders are allegedly connected to their human rights activities related to palm oil plants belonging to Socfin Agricultural Company Sierra Leone Ltd (SAC), a subsidiary company of the Belgian-based Socfin Group.

On 24 October 2013, the six MALOA members were released from prison in Bo City pending investigation of their case.

On 12 July 2014, the case against the six individuals was referred by the Bo Magistrate Court to the Bo High Court. They were subsequently returned to detention in a Bo City prison. All six were released the following day, 13 July 2014, after posting bail of approximately 400,000 Leones (approximately 134 USD).

On 20 October 2014, the trial of the six MALOA members began before the Bo High Court. On 4 November 2015, the final submissions of the prosecution and defence were made. The trial was then adjourned pending the setting of a date for the final hearing.

The group of eleven individuals

On 14 January 2014, a shooting incident involving two SAC staff occurred in the village of Bamba in the Malen district.

Two separate MALOA members and nine MALOA supporters were arrested in the Malen region between 28 January 2014 and 26 February 2014 on charges of “conspiracy and malicious damage”, “riotous conduct”, “destroying growing plants”, “stoning”, and “carrying offensive weapons”. The arrests were made in relation to the above-mentioned shooting incident, however, the accused MALOA members denied being present during its occurrence. All eleven individuals were subsequently released on bail.

On 6 October 2015, the Magistrates Court dismissed three of the charges against the eleven individuals, namely, “conspiracy and malicious damage”, “riotous conduct”, and “stoning”. The latest hearing in the case was scheduled for 20 November 2015.

The group of seven land rights defenders

On 8 September 2015, seven other MALOA members were arrested in Malen on charges of “writing down names of people in town without the knowledge of the chiefs”. On 10 September 2015, all seven MALOA members were released after paying a total of 350,000 Leones (approximately 78 USD) in bail, pending the commencement of their trial.

Serious concern is expressed at the alleged systematic persecution of members of MALOA through judicial harassment in relation to their legitimate land rights advocacy in the Malen region, exercising their right to freedom of expression and association.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** 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 you may have on the above-mentioned allegations.
2. Please provide details on the legal grounds for the detention and charges brought against the three groups, and the guarantees of due process provided to the above-mentioned land rights defenders and supporters of MALOA, indicating how these comply with relevant international human rights norms and standards.
3. Please indicate what measures have been taken to ensure that human rights defenders, and in particular those working on land rights, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and persecution 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 ensure that above-mentioned land rights defenders and supporters of MALOA are provided with all the due process guarantees of a fair trial, preventing their prosecutions serving, in practice, to stifle the legitimate exercise of their rights to freedom of expression and association, in performing their human rights advocacy work in relation to land rights.

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.

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

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) and articles 19 and 22 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Sierra Leone on 23 August 1996, which provide for the right to freedom of expression and opinion and the right to freedom of association.

We would like to refer your Excellency's Government 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (b), which provides for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 (b) and (c), which provide for 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 effective and non-discriminatory access to participation in public affairs.

We would also like to refer Your Excellency's Government to Human Rights Council resolution 24/5, and in particular its operative paragraph 2, in which the Council "reminds States of their obligation to respect and fully protect the rights of all individuals to associate and assemble peacefully, ... including persons espousing minority or dissenting views or beliefs, human rights defenders... seeking to exercise or to promote these rights, and to take all necessary 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".