

Joint Statement

Joint CSO statement on enforced disappearances of Ugandan citizens since November 2020

16 March 2021

Since November 2020, Uganda has seen a wave of arrest and detention of its citizens by security operatives in the run-up to its 2021 elections. On 4 March 2021, the Minister of Internal Affairs released a list of 177 names to Parliament of missing Ugandans in detention following arrest. Earlier, in response to a public outcry over the disappearances, President Yoweri Kaguta Museveni had acknowledged the arrests of 242. On its count, the National Unity Platform (NUP) reports 680 persons missing. Most people report being abducted and held incommunicado, i.e. in unknown, unofficial or inaccessible places hence denying them access to their next of kin, medical treatment and lawyers. Witnesses and victims attest to arrests by gun-wielding plain-clothed men. Over the last few weeks, a number of the missing persons were found in remote places, some bearing signs of torture. At least one missing person has been found dead. A great number of persons remain unaccounted for, as their name did not appear in the government list, leaving their relatives and communities in utter distress.

We note that these disappearances are part of a larger context of securitisation of the Ugandan civic and political space against the backdrop of the January 2021 general elections. At least 54 persons were killed already on 18 November 2020 during demonstrations that followed the arrest of then presidential candidate Robert Kyagulanyi. The same period Uganda witnessed increased restriction of several NGOs and arbitrary arrests of human rights defenders and lawyers across the country. Whereas the undersigned commend the production of this list as an important step in ensuring that due process of the Law is restored, they remain concerned with the general debasement of the Rule of Law in security operations, the promotion of illegal and abusive detention by the highest state authorities and the continuing violations of constitutional and international rights of those still detained.

Under Article 23 of the Constitution of Uganda, every person has a right to the protection of their personal liberty. Arrests and detentions are only lawful if they are authorised by law, justifiable and carried out in accordance with the law. In particular, any arrested person must be brought before a court within 48 hours. During those 48 hours, arrested persons have a right to access a lawyer, their next of kin, and medical treatment. The Constitution explicitly outlaws the holding of persons in unauthorised places of detention, such as military barracks or 'safe houses'. Importantly, according to Article 44 of the Constitution the right to a fair hearing and the right to an order of habeas corpus are non-derogable. Under Section 11 of

the 2019 Human Rights Enforcement Act (HREA) the derogation from a non-derogable right is considered as an offence.

Under the 2006 International Convention for the Protection of All Persons from Enforced Disappearance, which Uganda has signed, states have the obligation to prevent enforced disappearances and to hold those involved criminally responsible. An enforced disappearance is 'the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.'

In 2009, the Supreme Court ruled that military prosecutions of civilians are unlawful and unconstitutional, and established the illegal nature of Section 119 (g) and (h) of the UPDF Act. The same practice contradicts Article 7 of the African Charter on Human and Peoples' Rights on fair trials, and the recommendations of the UN Working Group on Arbitrary Detention. Finally, the 2019 HREA allows for the criminal, civil and administrative (personal) liability of state (notwithstanding any immunity) and private actors for violations of the rights guaranteed under the Constitution. Any person or organisation with an interest may seek redress, in the form of compensation, restitution, rehabilitation, apology or guarantees of non-repetition. Equally, under the HREA any detention officer has the duty to release or apply to court in case they have reason to believe a person is subjected to arbitrary detention (Section 15 (2)).

In light of the above, the undersigned,

- Wish to reaffirm that the Rule of Law is an essential feature of security management and should be upheld in all circumstances;
- Call on the Government to restore the due process of the Law and prevent impunity for human rights violations by:
 - Accounting for the persons who are still missing, the reason for their arrest and detention, and duration;
 - Immediately release all civilians currently held and tried by military agencies, and those who have been held in detention in excess of the Constitutional 48-hour limit;
 - Upholding constitutional rights of the persons still in detention by enabling them to have access to a lawyer of choice, their next of kin, and medical treatment;
 - Holding accountable all officers that have committed violations of constitutional rights of the Ugandan population by detailing their names and actions committed to the Director of Public Prosecution office and the Uganda Human Rights Commission for review;
 - Enforcing the Supreme Court Ruling of 2009, by repealing section 119(g) and (h) of the UPDF Act.

This joint CSO statement is delivered on behalf of:

- ***Legal Aid Service Providers' Network (LASPNET)***
- ***Chapter Four Uganda***
- ***Avocats Sans Frontières (ASF)***

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PROTECTING CIVIL
LIBERTIES & PROMOTING
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