

Hon Justice Yorokamu Bamwine  
Principal Judge  
The Judiciary Courts of Judicature  
High Court Building  
Box 7085 Kampala - Uganda  
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**Re: Forced eviction in the Mubende district: 10 years of impunity and lack of adequate remedies**

Heidelberg, August 19, 2011

Dear Hon Justice Bamwine,

Foodfirst Information and Action Network (FIAN) is an international human rights organization working for the worldwide implementation of the human right to adequate food. FIAN has consultative status with the Economic and Social Council of the United Nations (ECOSOC).

In my role as Secretary General of FIAN, I am writing to you in relation to the case of a coffee plantation in Mubende. From 17<sup>th</sup> to 21<sup>st</sup> August 2001 the Ugandan army (Uganda People's Defense Force – UPDF) violently expelled more than 2,000 inhabitants of four (4) villages namely Kitemba, Luwunga, Kijunga and Kirymakole in Mubende district from their land (2524 ha) in order to lease it to Kaweri Coffee Plantation Ltd., a 100% subsidiary of the Neumann Kaffee Gruppe (NKG) based in Hamburg/Germany. To date, the evictees have not been compensated for the eviction and the loss of their property. Their living conditions have deteriorated since the eviction.

The affected communities described the eviction process as brutal and inhuman. The villages were stormed by military personnel and inhabitants violently expelled from the area. The evictees report that they were forced at gunpoint to leave and that some of them were beaten. Houses were burnt and demolished, including a private clinic containing medical equipment and six churches. Movable properties were looted and crops were destroyed. Today, the building that previously housed Kitemba primary school is used as the headquarters of the Kaweri Company while the children are confined to a very small area unsuitable for educational purposes.

In 2002 the evictees brought their case to the Ugandan High Court (H.C.C.S.No. 179/2002 Baleke Kayira Peter & four others vs. 1. Attorney General, 2. Kaweri Cofee Plantation). Since 2002 the case at Nakawa High Court (Kampala), has been delayed to such an extent that the complainants can no longer expect to get legal redress. During the past nine (9) years, the investigations of the court have not made any substantial progress. The case remains pending; no decision has been reached.

Meanwhile the eviction continues to have a severe impact on the communities. Increased illnesses and deaths followed the displacement. This can largely be attributed to the loss of access to clean water and health care. Many of the evictees have been living on the border of the plantation since the

eviction in makeshift homes. In order to sustain their livelihoods some evictees have found temporary shelter on neighboring land where they practice interim, small-scale farming. However the small plots of land available for farming are insufficient to provide their families with adequate food. Moreover, reduced incomes mean parents can no longer send their children to secondary school.

This situation is a breach of both international and domestic laws, especially these recognizing the human rights to adequate food, water, housing, health, education, due process of law and access to effective remedy. The main arguments against the Ugandan State, analysed in the scope of our mandate, are:

The State of Uganda is violating the right to adequate food enshrined in the Article 11 of the International Covenant on Economic, Social and Cultural Rights and developed in the General Comment Nr. 12 of the Committee on Economic, Social and Cultural rights (CESCR). This violation concerns diverse levels of obligations under the right to adequate food, as follow: 1) *The obligation to respect*, which requires States not to interfere with existing access to, and availability of, adequate food or the resources needed to produce it. 2) *The obligation to protect*, which requires States to adopt all necessary measures, including those judicial in nature, in order to avoid third parties' (including the Companies) interference in the realization of the right to adequate food and 3) *The obligation to fulfill*, which requires States to pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. In the Mubende case, the State of Uganda has not adopted any measures to facilitate community members' access to other resources which allow them to feed themselves nor has it provided food for the marginalized communities.

- The eviction was carried out by the State in a manner that breaches General Comment 7, Paragraph 13 of the CESCR on the right to housing, according to which the Ugandan government should have ensured that all the evictees received adequate compensation for any property which was affected.
- The eviction also constitutes a violation of the Ugandan Constitution (Article 26, 29(2-a) and 237(1, 3-a, 8) which states that no person shall be compulsorily deprived of property unless it is necessary for public use or in the interest of defense, public safety, public order, public morality or public health, and that prior to the taking of possession or acquisition of the property prompt payment of fair and adequate compensation has to be made. In fact, many of the evictees were lawful customary tenants who are guaranteed security of occupancy under the 1998 Land Act of Uganda. According to this Act, specifically Article 29(2-a), the evictees were bona fide occupants of the land. This means that they had occupied and utilized or developed the land unchallenged by the registered owner or agent of the registered owner for 12 years or more. In the Mubende case the evictees lived in the land more than 12 years, unchallenged.
- The Ugandan State has also violated the International Covenant on Civil and Political Rights, which it has accessed. According to Article 2(3) of this Covenant, States shall ensure "an effective remedy" for persons whose rights have been violated and the obligation lies with the "competent authorities (to) enforce such remedies when granted" (General Comment 7, Paragraph 13 - CESCR). As the evictees have struggled to assert their rights peacefully through institutional and administrative channels for ten years without fair remedy this provision has been clearly violated by the State.

Considering that according to Par. 14 of the General Comment Nr. 9 of the UN-CESCR: “14...., courts should take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law which must always be taken to include respect for international human rights obligations.” we kindly remind you of the international duty of judicial authorities to apply international human rights law in their decisions. Local judges provide the last opportunity for States to resolve issues at a national level before they are denounced and become subject to regional and international human rights mechanisms that hold them accountable for their human rights violations.

Based on these arguments, FIAN requests you to comply with your duty and to apply international human rights law in the prompt resolution of the Mubende case. An adequate application of international Human Rights Standards shall include the adoption of a judicial decision in favor of the evictees, which orders: a) the restitution of the land, b) the proper compensation for all the damages suffered and c) the guarantee of freedom from a repetition of the perpetrated violations. Moreover the judicial decision should include the provision of monitoring mechanisms to ensure the implementation of such decision.

Honorable Justice Bamwine, FIAN is confident of the crucial role you can play in carrying out your judicial functions with due diligence through the implementation of Uganda's international human rights obligations in favor of the victims of the Mubende case. We appeal to your commitment for a just decision which firstly protects the human rights of the affected communities in this specific case but also sets an important precedent for all victims of injustice deprived of the opportunity to live with dignity.

Sincerely,



Flavio Valente  
FIAN International  
Secretary General

**CC:**

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