

**Further information to the Parallel report, List of issues and Oral Statement submitted by FIAN  
International to the Pre- Sessional Working group of the Committee on Economic, Social and  
Cultural Rights  
1 of December 2014**

FIAN



## **Introduction**

The information which is provided in this document constitutes an add on to the parallel report, list of issues and oral statement submitted by FIAN. FIAN is an international human rights organization that advocates for the realization of the right to adequate food. FIAN consists of national sections, co-ordinations, and individual members in over 50 countries around the world. Moreover, FIAN collaborates with different partners at the national, regional and international level. FIAN is a not-for-profit organization without any religious or political affiliation and has consultative status to the United Nations.<sup>1</sup>

During the Pre-session meeting held on 01 December 2014 FIAN made an oral statement based on the previous documents (parallel report and list of issues) submitted to the Pre- Sessional Working group of the Committee on Economic, Social and Cultural Rights. The working group members showed the interest during the discussions and asked a question to know whether the 11 years delays on court proceedings at the High Court and the current further delays proceedings at the Court of Appeal in the Kaweri case (forced land eviction) is particular or whether the delays have to do in general with the judicial system in Uganda.

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<sup>1</sup> <http://www.fian.org/about-us/who-we-are/>

Based on this question FIAN would like to provide further information to the Working group and clarify the issues raised in the question.

### **Delays in general to provide justice in judicial system in Uganda**

1. According to the lawyer of the evictees *“There are few judges in the High Court who cannot handle the volume of cases filed. The appointing authority who is the Head of State takes long to make the appointments of qualified judicial officers or candidates recommended to him by the Judicial Service Commission.”*<sup>2</sup>
2. On 23 December 2013 two Ugandan lawyers namely Simon Peter Ochieng and John Tusiime have filed a case before the the East African Court of Justice accusing the President of Uganda of refusal to appoint justices of the Supreme Court and judges of the High Court as demanded by law.<sup>3</sup>
3. The filing of the case above has been reported by two news papers namely the Daily Monitor and Red Pepper on 13 October 2014<sup>4</sup>
4. Moreover, according to the oral information provided end of October 2014 by Simon Peter Orchieng one of the two lawyers who filed a case before the the East African Court of Justice, the High Court currently has 30 vacant seats out of a total of 82, the Court of Appeal has 4 vacant seats out of a total of 16 and athe Supreme Court has 3 vacant seats out of a total of 11.<sup>5</sup>
5. Honorable Mr. Justice Anup Singh Choudry who lastly handled the Kaweri case at the High Court in the favor of the evictees, criticized the judiciary in his court ruling that *“Justice delayed is justice denied and if the courts are to reduce the backlog they should be prepared to handle cases in good time and hence a good reflection of the judiciary.”*<sup>6</sup>
6. The paragraph 30 of the Court ruling in the Kaweri case demonstrates a chronology of the last 10 delays and Honorable Mr. Justice Anup Singh Choudry states that *...“the judges who came across this case were not prepared to hear it and hence it got adjourned every year when the hearings were fixed.”*<sup>7</sup>

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<sup>2</sup> Statement of Joseph Balikudembe, the lawyer of the evictees, by e-mail to FIAN International of 10.12.2014

<sup>3</sup> The East African Court of Justice, Reference No.11 of 2013 Simon Peter Orchieng and John Tusiim Vs Attorney General Uganda, [http://eaci.org/?page\\_id=2344](http://eaci.org/?page_id=2344), consulted on 12 Decembre 2014

<sup>4</sup> The Daily monitor: <http://www.monitor.co.ug/News/National/Government-dragged-to-regional-court-over-few-judges/-/688334/2484210/-/pp93xw/-/index.html>, consulted on 12 December 2014 and Red Pepper: <http://www.redpepper.co.ug/govt-sued-over-failure-to-appoint-judges/>, consulted on 12 December 2014

<sup>5</sup> Gertrud Falk, Telephone Interview with Simon Peter Orchieng through Joseph Balikuddembe In Kampala on 13.10.2014

<sup>6</sup> The High Court of Uganda at Kampala, Civil Suit No 179 of 2002, §29

<sup>7</sup> Idem

7. On the paragraph 31 of the Court ruling in the Kaweri case, Mr. Justice Anup Singh Choudry said that *“This is a typical case showing the delay in procecuting cases and hence piling up backlog. Apart from an application to challenge representative action, and scheduling, no activity took place. Each time a case was fixed continously for the last 10 years it got adjourned. In my view the case that should have taken 6 months took 10 years. It is a reflection of backlog of cases in the courts.”*<sup>8</sup>
8. In addition, the Uganda Human Rights Commission has reported that the average time to handle a land case at High Court is 26.7 month<sup>9</sup>.

The examples above show how long in general it takes a long time in the Ugandan judicial system to handle cases timely and hence provide prompt justice.

### **Delays to provide justice particularly in the Kaweri case**

1. The delays of 11 years in dealing with the Kaweri case and in order to provide justice constitutes an unusual situation of injustice in the history of the Ugandan judiciary.
2. Honorable Mr. Justice Anup Singh Choudry in paragraph 29 of the court ruling in the Kaweri case stated that *“ In fact it was a day to celebrate that the hearing came before the court after 10 years and a record that should have been entered into the Guinness Book of records”*<sup>10</sup>
3. According to the lawyer of evictees *“the judges who handled the Kaweri case were reluctant to hear it obviously because of fear of ruling against the government interest in the case which was to protect the German investors.”*<sup>11</sup>
4. The statement of the lawyer of the evictees is in line with the paragraph 33 of the court ruling in the Kaweri case which says that *“ The first defendant is the Uganda Investment Authority represented and sued as the Attorney General on behalf of the Governement of Uganda. The Ugandan Investment Authority (UIA) is a government parastatal, whose mission is to promote and facilitate investments projects, provide serviced land, and advocate for a competitive business environment. The UIA works with the government and the private sector to promote the economic growth of Uganda through investment and infrastructure development. In this case UIA were a conduit in introducing and facilitating the acquisition of leasehold land by the foreign Investors who cannot otherwise hold freehold land...”*<sup>12</sup>

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<sup>8</sup> Ibidem

<sup>9</sup> Uganda Human Rights Commission 2013 (<http://www.uhrc.ug/latest-annual-report/>): 16th Annual Report 2013, p. 141

<sup>10</sup> The High Court of Uganda at Kampala, Civil Suit No 179 of 2002, §29

<sup>11</sup> Statement of Joseph Balikudembe, the lawyer of the evictees, by e-mail of 10.12.2014 to FIAN International

<sup>12</sup> The High Court of Uganda at Kampala, Civil Suit No 179 of 2002, §33

5. The implication of different authorities at all levels before and after the eviction of the community members in the Kaweri case highlights the high interest of the State of Uganda in the coffee plantation business in Mubende. This is true by the fact that the President of Uganda launched himself this coffee project on 24<sup>th</sup> August 2001.<sup>13</sup>
6. In the court ruling on the Kaweri case particularly in the summary of the Plaintiff's evidence, after the launch of the project by the President of Uganda, "Immediately thereafter the German Investors through their workers started cutting and destroying the food crops and cash crops in the course of clearing the land"<sup>14</sup>
7. Even before the launch of the plantation, on 18<sup>th</sup> August many residents were kicked, beaten, by soldiers and their property and crops destroyed. A bulldozer Reg No UG0370W was used to demolish the houses."<sup>15</sup>
8. Moreover, paragraph 40 highlights that "A number of children and old people died because of cold. No professional surveyor was sent as promised and no compensation, or relocation was arranged or no settlement took place at Kambuye as promised."

## Conclusion

Further information provided aims at clarifying the questions asked by the Working group members after the oral statement. We would like to highlight once again that FIAN is at the disposal of the Working group members to provide more information if needed.

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<sup>13</sup> Idem § 40

<sup>14</sup> Ibidem

<sup>15</sup> Ibidem