

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandate of the Working Group on Enforced or Involuntary Disappearances; 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: UA G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
KEN 3/2013

31 July 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; 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 resolution 16/16, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the harassment and intimidation of families of victims of enforced disappearances and eight human rights defenders in relation to their cooperation with the Working Group on Enforced or Involuntary Disappearances (WGEID).

According to the information received:

Since 2 July 2013, over 20 families of victims of enforced disappearances have been visited at their homes by police officers from the Kopsiro and Cheptais police stations in Mount Elgon District. The police officers reportedly requested them to visit the police station. The police officers allegedly questioned the families of victims of enforced disappearances about their engagement with UN human rights mechanisms in Geneva, in particular the WGEID. According to the source, the police officers allegedly compelled families to sign written statements without disclosing the content. According to the source, following the police visits, some of the families have left their houses for fear of reprisals.

On 5 July 2013, a local NGO issued a press release addressing the alleged incidents of intimidation of the families of victims of enforced disappearances and called for investigations of the reported harassment and protection of the

families. It was reported that eight human rights defenders of the local NGO have also been subjected to harassment and threats by the police due to their work on reported cases of disappearances. According to the information received, some of the human rights defenders have fled their homes in fear.

It was further reported that some of the military personnel who were allegedly responsible for the reported disappearances have been redeployed to the area. According to the source, families of victims of enforced disappearances are intimidated by the heavy military presence in the region.

Concern is expressed that the aforementioned measures taken by the police against families of disappeared persons and human rights defenders may be related to their engagement with the UN Human Rights Mechanisms, in particular the WGEID. Serious concern is expressed for the physical integrity and security of the families of victims of enforced disappearances perceived to have cooperated with the WGEID as well as of the members of the local NGO who addressed the incident in a press release. Further concern is expressed at the reported redeployment of some of the alleged perpetrators of the disappearances.

Without expressing at this stage an opinion on the facts of the case, we would like to recall that in its resolution 21/4, adopted without a vote, the Human Rights Council urged States to take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances and the lawyers and families of disappeared persons against any intimidation, persecution, reprisals or ill-treatment to which they might be subjected, paying special attention to women as relatives of disappeared persons in the context of their struggle to resolve the disappearance of members of their families.

Further, we would like to recall that in the Declaration on the Protection of all Persons from Enforced Disappearance, adopted by General Assembly resolution 47/133 of 18 December 1992, it is stated that States must take steps to ensure that persons involved in investigations [of cases of disappearance], including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal. It also stated that States must take steps to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

We wish to refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would further like to refer your Excellency's Government to article 22 of the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

We would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, 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.”

In this connection, 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

We also wish to recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who

seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3).

Since it is our responsibility under the mandates provided to us by the Human Rights Council, to clarify all cases brought to our attention, and to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide the details, and where available the results, of any investigations carried out in relation to the aforementioned alleged acts of intimidation and harassment. If no investigations have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions undertaken in relation to the present case, including any penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators.

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of my highest consideration.

Olivier de Frouville
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression

Maina Kiai
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