

**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**

**Mandates 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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.**

REFERENCE: UA G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (33-27)  
KEN 5/2013

26 September 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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 16/16, 16/4, 15/21, 16/5, 17/2, and 17/5.

In this connection, we would like to bring to the attention of your Excellency's Government's information we have received concerning the killing of Mr. **Peter Wanyama Wanyonyi, a human rights lawyer, and the harassment and intimidation of families of victims of enforced disappearances and human rights defenders in relation to their cooperation with the Working Group on Enforced or Involuntary Disappearances (WGEID).** The WGEID has already expressed concern over allegations of harassment, intimidation and acts of reprisals on 31 July 2013, together with the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. We regret that to date a response has not been received from your Excellency's Government to this communication.

According to the information received:

Since early July 2013, more than 28 families of victims of enforced disappearances have been visited in their homes by police officers from police

stations in Mount Elgon District. The police officers reportedly requested them to visit the police station and allegedly questioned the families of victims of enforced disappearances about the cases they had submitted to the WGEID. According to the source, the families of victims of enforced disappearances were reportedly further harassed by local chiefs and neighbouring families whose relatives were killed by the Sabotage Land Defence Force (SLDF). The neighbours allegedly told the families of victims of enforced disappearances to drop their cases against the military who intervened against the SLDF or otherwise they would face revenge. According to the source, following the police visits, more than 28 families have reportedly left their homes for fear of reprisals.

Information received indicates a climate of fear among local human rights defenders and NGOs, who have been subjected to harassment and threats by the police due to their work on reported cases of disappearances. It is reported that several have left their homes for fear of reprisals.

It was further reported that on 17 September 2013 at 1:30 a.m. in the town of Bungoma in the Western Province of Kenya, Mr. Peter Wanyama Wanyonyi, a human rights lawyer, was shot dead by unknown gunmen as he was returning home from a meeting. According to the source, Mr. Wanyama Wanyonyi, who was representing a politician in an election petition against a senator in Bungoma, was reportedly also assisting in documenting cases of enforced disappearances that occurred in the context of the joint operation by the military and the police known as “Okoka Maisha” against the SLDF in March and April 2008. According to the source, since 2011 a number of cases of enforced disappearances related to the “Okoka Maisha” operation have been transmitted to the WGEID.

Profound concern is expressed at the killing of Mr. Peter Wanyama Wanyonyi. Concern is expressed that the aforementioned events may be related to the engagement of families of victims of enforced disappearances and human rights defenders with the UN Human Rights Mechanisms, in particular the WGEID. Serious concern is expressed for the security and physical and psychological integrity of the families of victims of enforced disappearances and the human rights defenders perceived to have cooperated with the WGEID.

Without expressing at this stage an opinion on the facts of the case, we would like to recall that in article 13 of 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.

Further, 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.

In addition, we would like to refer to article 3 of the UDHR, stipulating that “everyone has the right to life, liberty and the security of person”. Moreover, Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded to on 1 May 1972, recognizes that every human being has the right not to be arbitrarily deprived of his or her life. Furthermore, we urge your Excellency’s Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions. Furthermore, Principle 4 states that effective protection through judicial or other means shall be provided to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

We would like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in 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 like to refer to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in 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”.

In this connection, we would 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.”

Furthermore, 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”.

In addition, 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; and

- article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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).

Regarding the killing of human rights lawyer Mr. Peter Wanyama Wanyonyi, we would like to refer Your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, Cuba, from 27 August to 7 September 1990, and in particular principle 16, which states: “Governments shall ensure that lawyers (a)

are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference [...]”; principle 17, which states: “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”; and principle 18, which states: “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the families of victims of enforced disappearances and the human rights defenders in compliance with the above international instruments.

Moreover, 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. Since we are expected 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 investigation and judicial or other inquiries carried out in relation to the aforementioned alleged acts of intimidation and harassment and of the killing of Mr. Peter Wanyama Wanyonyi. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of any prosecutions which will be undertaken in relation to the present case. Will 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 measures to protect the safety of the families of victims of enforced disappearances and human rights defenders in relation to their cooperation with the Working Group on Enforced or Involuntary Disappearances, and in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the killing of Mr. Peter Wanyama Wanyonyi and harassment and intimidation of families of victims of enforced disappearances and human rights defenders. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Excellency, the assurances of our 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  
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Maina Kiai  
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