

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
KEN 3/2015:

24 April 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged threats to the life of Mr. **Maina Kiai** and the alleged risk of deportation of Ms. **Lucy Elizabeth Hannan**, in relation to their legitimate and peaceful work and human rights activities in Kenya.

Mr. Maina Kiai is the director of the human rights organization InformAction and the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. Ms. Lucy Elizabeth Hannan, and is the co-director of InformAction and has resided in Kenya since 1994.

InformAction is a field-based organization that shows powerful activist films every week in the regions and holds community discussions on rights-based issues. Ms. Hannan, who possesses British Citizenship, is the director of 15 human rights films and a former journalist and human rights author.

Mr. Maina Kiai was the subject of an Urgent Appeal to your Excellency's Government by the mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders, and the Special Rapporteur on extrajudicial, summary or arbitrary executions on 23 September 2013 (KEN 6/2013). He was previously the subject of an Urgent Appeal to your Excellency's Government by the Special Representative of the Secretary-General on the situation of human rights defenders on 15 January 2008 (KEN 1/2008). We regret that to this date, no response has been received to the Allegation Letter and two Urgent Appeals.

Ms. Hannan was the subject of an Allegation Letter to your Excellency's Government on 4 April 2014 by the mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders (KEN 4/2014).

The case of Mr. Maina Kiai

According to the information received:

Due to his human rights work with InformAction and his criticism of the administration, Mr. Maina Kiai has received threats, including by politicians, against his life, family and livelihood.

On 15 October 2014, civil society members, including Mr. Kiai, were attacked by a Member of Parliament during a parliamentary debate. He reportedly said “[...] it became clear to me that maybe we had been wondering about the party that bears the greatest responsibility for the post-election violence. It was all clear to me. The parties are all the same. We are talking about Africa Centre for Open Governance (AfriCOG), Kenyans for Peace with Truth and Justice (KPTJ) and Kenya Human Rights Commission (KHRC). That is the same cast. The forest might be different at different times but the monkeys are always the same [...] the names are the same: John Githongo, Maina Kiai, Gladwell Otieno and Harun Ndubi[...] Secondly, we have been waiting for a long time for this House to bring forward the issue of amending the Public Benefits Organisations Act, so that the likes of Maina Kiai, Gladwell Otieno and Harun Ndubi can be put in their rightful place[.]”

On 19 October 2014, a threat against Mr. Kiai's life was posted on his official Facebook page as the UN Special Rapporteur for Freedom of Assembly and Association. The threat was from 'Muiruri Jeri' and read “You are a dog, the arse of white people. We will kill you for fixing our president, never come to Kenya you homosexual”.

The case of Ms. Lucy Elizabeth Hannan

According to the information received:

Ms. Lucy Elizabeth Hannan has previously been harassed for her work as a human rights defender, for making human rights films, and for associating with Maina Kiai as well as the civil society sector more generally. In early 2014, a threatening comment was made online to an article on The Star news site. The comment stated that Ms. Hannan and Mr. Kiai should both be “killed by the criminal gang Mungiki”, and this comment was later removed. Ms. Hannan also previously received an antagonistic anonymous message on her phone, which was investigated and discovered to have come from Kamiti Maximum Prison in

Nairobi. Additionally, she received a hacking threat online by a user known as ‘Nipate’ in 2012, stating he was ‘about to crack’ her email account.

Ms. Hannan was called to the Immigration office in August 2013, where a senior officer seized her passport and informed her that she had no right to be in the country. Reportedly, the intention of that officer was to deport her immediately. Ms. Hannan was protected from further retaliation by the presence of Mr. Maina Kiai, who was familiar with correct procedures and insisted that they be followed.

On 12 March 2014, Ms. Hannan’s presence in Kenya was declared “contrary to national interest.” by the High Court of Kenya, which could result in her arrest, or that of her family, at any time.

Between February 2014 and November 2014, Ms. Hannan did not possess legal status in Kenya, before being granted a temporary work permit. Furthermore, Ms. Hannan cannot work in certain regions of Kenya or attend film screenings. During this period, she was unable to visit her children abroad or work outside Kenya’s borders, for fear of arrest on return. Furthermore, Ms. Hannan’s children were unable to obtain student passes as required by educational institutions, because of her absence of a legal status in the country.

It is also reported that Ms. Hannan’s phone appears to be under periodic surveillance and that she has allegedly had to increase security at her house and limit her movements during the evening.

Serious concerns are expressed regarding the threats against Mr. Maina Kiai, including during a parliamentary debate. Further concerns are expressed that the harassment and the risk of deportation of Ms. Lucy Elizabeth Hannan appears to be linked to her peaceful and legitimate work with InformAction.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please indicate what measures have been taken following the threats made against Mr. Maina Kiai.

3. Please provide information concerning the legal grounds for denying Ms. Hannan legal status in Kenya and how this is compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

4. Please indicate what measures have been taken to ensure that Ms. Hannan and Mr. Kiai can pursue their legitimate in a safe and enabling environment and can carry without fear of harassment, stigmatization or criminalization of any kind.

We would appreciate a response within sixty days.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Lucy Hannan and Mr. Kiai 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.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer to article 19 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kenya on 1 May 1972, 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 also 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 draw your attention to articles 5, 6 and 12 of the mentioned Declaration.