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AUX DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (33-27) Assembly & Association (2010-1)
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 16/4, 16/5, 15/21, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding alleged death threats against Ms. **Edah Wangechi Maina** and her daughter Ms. **Mitchelle Grace Wangari**, as well as alleged threats against Mr. **David Macharia Wanjama**, Mr. **Prabhudas Damji Pattni** and Ms. **Josphine Aska**.

Ms. Edah Wangechi Maina is Vice President of the United Nations Committee on the Rights of Persons with Disabilities (CRPD) and is CEO of Kenya Society for the Mentally Handicapped (KSMH), a leading human rights organization which promotes and protects the rights of people with disabilities. Mr. Prabhudas Damji Pattni is Secretary General of KSMH and the Hindu Council of Africa. Mr. David Macharia Wanjama is Chairperson of Disabled Voters of Kenya Alliance (DVA). Ms. Josphine Aska is Director of the Central Region Deaf Network.

According to the information received:

On 30 March 2011, KSMH organized a peaceful demonstration against alleged human rights violations of people with disabilities and alleged corruption in the

National Council of Persons with Disabilities (NCPWD) and the Ministry of Gender Children and Social Development. Prior to the demonstration, Ms. Maina reportedly received anonymous threatening phone calls. Allegedly, the unknown individuals threatened to detain Ms. Maina and make her disappear, to cut off her head and to kidnap her daughter from her school.

In early September 2011, KSMH reportedly filed a constitutional lawsuit against the Kenyan Government, during which affidavits submitted by respondents exposed alleged illegal transfers of funds to United Disabled Persons of Kenya (UDPK) and member organizations. The affidavits reportedly claimed that these transfers were withdrawn in cash by UDPK officials and used for personal use.

On 28 and 29 July 2012, Kenya Television Network (KTV) is reported to have aired a two-part documentary exposing alleged corruption within UDPK. Sources indicate that alleged threats against Ms. Edah Wangechi Maina and her daughter, Mr. David Macharia Wanjama, Mr. Prabhudas Damji Pattni and Mr. Josephine Aska escalated following the broadcasting of this documentary. On 28 July, unknown individuals reportedly broke into the house of Ms. Maina and allegedly disconnected the security alarms and electricity supply. On 9 and 10 August 2012, a plan to eliminate Ms. Maina was reportedly made during a meeting of trustees of the NCPWD. During the meeting, Ms. Maina was identified as the leader of the group demanding accountability for mismanaged or lost funds.

Before the airing of the documentary by KTV on 28 and 29 July, unknown individuals reportedly removed the wheel nuts from Mr. Pattni's car, causing him to have an accident. On 28 July, Mr. Wanjama's car was reportedly followed by two unknown men. It is reported that upon discovering that Mr. Wanjama's brother was driving the car, the two men, who did not identify themselves and were not in police uniform, demanded that Mr. Wanjama present himself to the Industrial Area Police Station. Approximately one week before the documentary was aired by KTV, Ms. Aska reportedly received threatening text messages to her phone and was followed by unidentified persons.

Concern is expressed that the alleged death threats against Ms. Edah Wangechi Maina and her daughter Ms. Michelle Grace Wangari, as well as alleged threats against Mr. David Macharia Wanjama, Mr. Prabhudas Damji Pattni and Ms. Josephine Aska may be directly related to their peaceful and legitimate human rights activities, in particular their work to defend the rights of people with disabilities and to demand accountability in the management of state funds in the disability sector. Given the seriousness of the alleged death threats against Ms. Edah Wangechi Maina and her daughter, and the reported plot to eliminate her, grave concern is expressed for her and her daughter's physical and psychological integrity.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles applicable to the present cases under international law.

Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), which Kenya has acceded to on 1 May 1975, recognizes that every human being has the fundamental right to life and shall not be arbitrarily deprived of his or her life. It is incumbent upon States to protect the life of every individual on its territory and subjected to its jurisdiction. In this regard, we wish to refer to the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989/65 according to which all Governments shall provide “effective protection through judicial or other means to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats”, principle 4.

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 ICCPR, which provides that “[e]veryone 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.”

In this connection, we deem it appropriate to make reference to paragraph 3 of the Human Rights Council Resolution 12/16, in which it expressed its concern that “violations of the right to freedom of opinion and expression continue to occur, often with impunity, including extrajudicial killings, arbitrary detention, torture, intimidation, persecution and harassment, threats and acts of violence and of discrimination, including gender based violence and discrimination, increased abuse of legal provisions on defamation and criminal libel as well as on surveillance, search and seizure, and censorship, against persons who exercise, seek to promote or defend these rights, including journalists, writers and other media workers, Internet users and human rights defenders”, as well as to its paragraph 5 which calls upon States to “ensure that victims of violations of the right to freedom of expression have an effective remedy, to investigate effectively threats and acts of violence, including terrorist acts, against journalists, including in situations of armed conflict, and to bring to justice those responsible to combat impunity”.

We would further like to recall article 21 of the ICCPR, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

Similarly, we would like to refer to article 22 of the ICCPR, which provides that “[e]veryone shall have the right to freedom of association with others...”.

In this context, we would like to further refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... 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 highlight the following recommendations from the thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27):

- “The Special Rapporteur calls upon States...
 - o [t]o ensure that the rights to freedom of peaceful assembly and of association are enjoyed by everyone and any registered or unregistered entities, including women; youth; indigenous peoples, persons with disabilities, persons belonging to minority groups or groups at risk, including those victims of discrimination because of their sexual orientation and gender identity, non-nationals, as well as activists advocating economic, social, and cultural rights (para. 84(b)); and
 - o [t]o ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have to the right to an effective remedy and obtain redress (para. 84(j));
- “Any associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment (para. 96)”.

We also wish to draw your Excellency’s Government’s attention to 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 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or

groups, and to communicate with non-governmental or intergovernmental organizations.

- 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.
- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
- article 12 paragraphs 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.

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 above-mentioned persons 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 above summary of the cases accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide the full details of any prosecutions which have been undertaken. Will penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators?
5. Please indicate whether and how Ms. Edah Wangechi Maina and her daughter Ms. Michelle Grace Wangari, as well as Mr. David Macharia Wanjama, Mr. Prabhudas Damji Pattni and Ms. Josphine Aska will be compensated.
6. Please clarify whether protection measures will be put in place to guarantee the physical and psychological integrity of Ms. Edah Wangechi Maina and her daughter Ms. Michelle Grace Wangari, as well as Mr. David Macharia Wanjama, Mr. Prabhudas Damji Pattni and Ms. Josphine Aska.

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 particular their security. 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 our highest consideration.

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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