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PROCEDURES SPECIALES DU
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UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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.

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (33-27)
KEN 6/2013

23 September 2013

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 extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 16/4, 16/5, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of Mr. **Maina Kiai**, human rights defender and United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, as well as of **his relatives**.

Mr. Maina Kiai was the subject of an urgent appeal sent on 15 January 2008 by the then Special Representative of the Secretary-General on the situation of human rights defenders. We regret that your Excellency's Government never responded to the concerns expressed in this appeal.

According to the information received:

On 20 September 2013, upon receiving intelligence that a militia group calling itself the "Nyaribo Support Group" intended to burn down the house of Mr. Maina Kiai and his family homestead in Nyeri, armed police with dogs were deployed at these locations to ensure protection.

It is reported that this group was reacting to a post from a blogger who has been criticizing in harsh terms the human rights work of Mr. Kiai on on-going cases before the International Criminal Court in relation to the 2007 and 2008 post-election violence in Kenya.

These threats reportedly take place against a backdrop of increased intimidation and harassment of witnesses and human rights defenders in Kenya engaged in fighting impunity and ensuring accountability for such violence.

While welcoming the police's intervention to protect Mr. Kiai and his family, grave concerns are expressed that the aforementioned threats are linked to his human rights activities before the International Criminal Court. Similar concerns are expressed for the physical and psychological integrity of Mr. Kiai and his relatives, and more generally for witnesses and human rights defenders in Kenya involved in cases before this Court.

Without in any way implying any determination on the facts of the case, we would like to recall the right to freedom of opinion and expression in accordance with 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."

Regarding allegations received indicating that the situation of Mr. Kiai is linked to his work on on-going cases before the ICC, 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.

Regarding the right to access and communicate with intergovernmental organizations and international bodies in the field of human rights, we would draw the attention of your Excellency's Government to article 5, paragraph c) of the Declaration which states that in order to promote and defend human rights and freedoms fundamental everyone has the right, individually or collectively, both nationally and internationally, "c) to communicate with non-governmental or intergovernmental organizations." Similarly, Article 9, paragraph 4, states that "(a) (...) everyone has the right, individually or collectively, in conformity with applicable international instruments and procedures, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms."

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 4, 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.

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 Mr. Kiai and his relatives in compliance with the above international instruments.

Moreover, since 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, we would be grateful for 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. Has a complaint been lodged by or on behalf of Mr. Kiai and his family?

3. Please provide the details, and where available the results, of any investigation, 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 or will be undertaken. Have or will penal, disciplinary or administrative sanctions been/be imposed on the alleged perpetrators?

5. Please indicate what further protection measures will be taken to ensure the physical and psychological integrity of Mr. Kiai and his relatives.

We undertake to ensure that your Excellency's Government's response is 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 protect the safety of Mr. Kiai and his relatives, guarantee that their rights and freedoms 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 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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions