

**Mandates of 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; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE: AL  
KEN 2/2015:

20 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to Human Rights Council resolutions 25/2, 24/5, 25/18, and 22/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged freezing of the bank accounts of Muslims for Human Rights (MUHURI) and HAKI Africa**.

**Muslims for Human Rights (MUHURI)** is a non-governmental organization, based in Mombasa, Kenya. MUHURI was established in 1997, and is registered with the Non-Governmental Coordination Board. Mr. Maina Kiai, the UN Special Rapporteur the rights to freedom of peaceful assembly and of association, is a board member of MUHURI.

**HAKI Africa** is a Non-Governmental organization based in Mombasa, Kenya. HAKI Africa works to promote development and improve livelihoods, with a particular focus on economic and social rights.

According to the information received:

On 8 April 2015, MUHURI was unable to access its funds in its bank account, without having received any prior communication from its bank on this matter. MUHURI was allegedly subsequently informed that the bank had received an instruction from central bank headquarters, directing MUHURI's bank account to be 'frozen'. On the same day, HAKI Africa also found itself unable to access its funds in its bank account.

In a Gazette Notice 2326 of 7 April 2015, the Inspector General of Police publicly listed both MUHURI and HAKI Africa amongst 86 individuals and institutions as “Entities Suspected to be Associated with Al-Shabaab” under the Prevention of Terrorism Act 2012 (POTA). Pursuant to POTA, the Inspector General and the Cabinet Secretary have the power to make a “specified entity order” against an entity suspected to be involved in terrorism. It also provides that “Before making a recommendation ... the Inspector-General shall afford the affected entity an opportunity to demonstrate why it should not be declared as a specified entity.”

Being declared a “specified entity” has wider implications beyond freezing bank accounts, as “specified entities” are equated with “terrorist groups”. Furthermore, membership in a terrorist group is punishable by up to 30 years’ imprisonment.

Under the terms of the Gazette Notice, the two organizations were required to demonstrate why they should not be declared as ‘specified entities’ within 24 hours. Both organizations only learnt of the existence of the Gazette Notice through the media after their respective bank accounts had already been frozen on 8 April 2015 and could therefore not submit the requested information within the required 24 hours.

On the same day, both organizations wrote separately to the Inspector General of Police, protesting their inclusion on Gazette Notice 2326, denouncing the baseless allegations of their links with Al-Shabaab, and also provided relevant documentation related to their work, including audited accounts, program descriptions, list of board members and donors.

Concern is expressed that MUHURI and HAKI Africa may have had their bank accounts frozen as a result of their peaceful and legitimate human rights activities in Kenya.

In this connection with 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.

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 therefore be grateful for 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 provide detailed information concerning the grounds for including MUHURI and HAKI Africa on the list of entities suspected to be associated with Al-Shabaab.

3. Please provide detailed information on what remedies may be available to affected parties in cases of unlawful listing.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any persons responsible for the alleged violations.

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

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Ben Emmerson  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

**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 rights to freedom of opinion and expression and to freedom of peaceful assembly and of association as set forth in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR) which Kenya *acceded to* on 01 May 1972.

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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

We would also like to bring to the attention of your Excellency's Government article 5 (b), of the UN Declaration on Human Rights Defenders, which provides for the right to form, join and participate in non-governmental organizations, associations or groups.

Furthermore, in his report Ten areas of best practices in countering terrorism (A/HRC/16/51), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms, identifies the following elements of best practice concerning the listing of terrorist entities. The implementation of any sanctions against individuals or entities listed as terrorist shall comply with the following minimum safeguards: 1. Sanctions against the individual or entity are based on reasonable grounds to believe that the individual or entity has knowingly carried out, participated in or facilitated a terrorist act; 2. The listed individual or entity is promptly informed of the listing and its factual grounds, the consequences of such listing and the matters in items 3 to 6; 3. The listed individual or entity has the right to apply for de-listing or non-implementation of the sanctions, and has a right to court review of the decision resulting from such application, with due process rights applying to such review, including disclosure of the case against him, her or it, and such rules concerning the burden of proof that are commensurate with the severity of the sanctions; 4. The listed individual or entity has the right to make a fresh application for delisting or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing; 5. The listing of an individual or entity, and the sanctions resulting from it, lapse automatically after 12 months, unless renewed through a determination that meets the requirements of items 1 to 3 above; and 6. Compensation is available for persons and entities wrongly affected, including third parties.