

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 and the Special Rapporteur on the situation of human rights defenders

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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 rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 25/2, 24/5 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 arbitrary detention and judicial proceedings against ten human rights defenders: Mr. Ramadhan Mathenge, Mr. Charles Mwanzia, Mr. Justus Munyao, Mr. Fabian Ngure, Mr. Julius Kimondio, Mr. Frank Mbomani, Mr. Ambrose Hemed, Mr. Msafiri Mkillo, Mr. Julius Masuma and Mr. Peter Kithome**, as well as the ongoing harassment against Mr. Jasper Muruttu, reportedly in reaction to the legitimate exercise of their rights to freedom of expression and freedom of association in promoting land rights in Kenya.

According to the information received:

Harassment of land rights defenders has allegedly been a pattern in Kenya for the last few years in rural areas, in particular regarding extractive industries and salt companies as well as vis-à-vis land allegedly taken over by the government.

Community members and land rights activists claim the historical property of peasant farmers over the land in Taita Taveta County, which have allegedly been allocated to individuals close to the authorities. Over the past five years, community members and land rights activists in Taita Taveta County have consistently faced harassment due to their advocacy about this issue.

Mr. Jasper Muruttu and **Mr. Ramadhan Mathenge** have repeatedly faced intimidation and threats by police, including threats of arrest, following their advocacy of land rights. In particular, since Mr. Mathenge started to highlight dispossession of land of peasant farmers in Taveta and other human rights violations, he has faced multiple arrests and prosecutions. He always challenged the criminal cases against him by filing constitutional petitions in the High Court, challenging their constitutionality.

Both human rights defenders have regularly reported the incidents to various bodies: the Kenya National Commission on Human Right (KNCHR), the

Independent Policing Oversight Authority, (IPOA), the National Council on Administrative Justice (NCAJ), the Office of Inspector General of Police and Cabinet Secretary for the Ministry of Interior, as well as the Coordination of national governments.

On 27 February 2015, Mr Mathenge and three other individuals were arrested and charged with damage to property and unlawful assembly. The charges brought against Mr. Mathenge were later dropped.

On 31 October 2016, ten human rights defenders were arrested by the Police in Taveta Town, Taita Taveta County, while they were at the office of Building Africa, an NGO working on lands rights and hosting the Darubini ya Haki, a community based organization also advancing rights of communities who have been dispossessed of their land.

Among the ten individuals arrested, eight are members of the network organisation Building Africa, Messrs. Charles Mwanzia, Ramadhan Mathenge, Justus Munyao, Fabian Ngure, Julius Kimondio, Frank Mbomani, Ambrose Hemed, Msafiri Mkiilo, as well as two witnesses to a beneficiary of the organisation's services, Messrs. Julius Masuma and Peter Kithome.

On 1 November 2016, they were charged by the Taveta Court with taking part in an illegal gathering, in breach of section 79 of the Penal Code. On the same day, they were presented before a magistrate and the Court granted eight of the accused bonds of 300,000 (3,000 USD). They have remained in custody since their arrest, at Taveta GK prison, being unable to pay the bond. On 15 November, the human rights defenders filed another application to review the bond but the Court upheld its decision.

We express serious concern at the arbitrary arrest, detention and charges brought against Messrs. Charles Mwanzia, Ramadhan Mathenge, Justus Munyao, Fabian Ngure, Julius Kimondio, Frank Mbomani, Ambrose Hemed, Msafiri Mkiilo, Julius Masuma and Peter Kithome, as well as the ongoing harassment against Mr. Jasper Muruttu, which appear to be directly linked to their legitimate and peaceful work in defence of human rights and to their peaceful exercise of their rights to freedom of opinion and expression and to freedom of peaceful assembly. We wish to raise your attention over the fact that the arrests allegedly contravene article 49(1)(h) of the Kenyan Constitution which provides that an arrested person has the right to be released on bail or bond on reasonable conditions, pending a charge or trial unless there are compelling reasons not to be released. We additionally express concern vis-à-vis the situation of human rights defenders advocating for land rights in Kenya, who seem to have faced continuous harassment and intimidation from Kenyan authorities over the past few years. Moreover, we are concerned that the bail and bond system often disproportionately affects human rights defenders and activists, higher bail being granted to the latter, compared to criminal accused of more serious offences. We are therefore concerned about the fact that the disproportionate charges and bails could deter human rights defenders from conducting their legitimate human rights activities.

While we do not wish to prejudge the accuracy of these allegations, 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 articles 9, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Kenya on 1 May 1972.

The allegations that the above-mentioned individuals are connected to their human rights activities are in contravention with 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, and in particular with articles 1, 2, 5 and 6.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 international instruments.

As 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:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide full details of the legal grounds for the arrest and detention of the above-mentioned individuals, including how these measures are compatible with international norms and standards, in particular with the rights to freedom of expression and freedom of association.
3. Please indicate the reasons justifying the imposition of such an expensive bail and explain how this bail is proportionate to the charges brought against the accused individuals.
4. Please indicate what measures have been taken to ensure that the legitimate rights to freedom of opinion and expression and to freedom of peaceful assembly are respected and that the physical and psychological integrity of those exercising this right is guaranteed, as provided by Kenya's obligations under international human rights law..
5. Please kindly indicate what measures have been taken to ensure that human rights defenders in Kenya are able to carry out their legitimate work in a safe

and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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 person responsible of 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