

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 28/11, 32/32, 27/23 and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged **threats, intimidation and assaults against four environmental human rights defenders - [REDACTED] - and their family members. The four defenders are members of the Center for Justice Governance and Environmental Action (CJGEA). CJGEA is a non-governmental organization that works to protect and promote human rights and environmental justice in Kenya.**

Some of the victims were the subject of a communication sent to the Government of Kenya [REDACTED]. We have not received a response to date.

According to information received:

Members of CJGEA and their families have been subjected to life-threatening intimidation, harassment and assaults. The threats against these environmental human rights defenders appear to be related to their filing a public interest lawsuit against the Government and two companies on behalf of the Owino Uhuru community. The community members believe that they are suffering from lead pollution caused by a local lead smelter (see [REDACTED]). All threats started immediately after the notice serving Metal Refinery EPZ Ltd and Penguin Paper and Book Company was announced in a newspaper on [REDACTED].

Reports suggest that [REDACTED], three other CJGEA members and their families have received death threats. All of the alleged victims had to move out of their homes and are being relocated fearing for their lives.

The assailants demanded that CJGEA withdraw the class action lawsuit regarding lead pollution from the court. It is alleged that the assailants are members of the Owino Uhuru community, who are acting based on false information spread throughout the community in the interest of companies. The community members were told that CJGEA is seeking their eviction through the lawsuit.

Details of the threats for each victim are as follows:

On 19 February 2017, [REDACTED] was informed that a reward has been offered to harm her. This serious threat forced her and her family to go into hiding. Her life remains to be in great danger. [REDACTED] received the [REDACTED] in 2015, one of the world's most prestigious awards given to environmental activists.

Threats against [REDACTED] started immediately after he participated in a three-day seminar organized by the CJGEA which ended on 11 February 2017. He was blocked by three men on his way home on 17 February and was told that they will burn him and his family. [REDACTED] reported the incident to the police the next morning, but it is reported that the case has not been investigated.

[REDACTED]'s 12-year-old son had been abducted for three days. He returned home safely in the evening of 22 February 2017 after being found by a passerby who recognized him. According to him, he had been driven around in confinement since he was taken by a group of men on 19 February 2017. The boy and his family are traumatized by the incident and have fears that it could happen again.

On 18 February 2017, [REDACTED]'s house was set on fire and was almost completely burned down. He and his family safely escaped the house, but they had to stay at the local police station over night because they feared for their lives. [REDACTED] has received numerous threats since 2 February 2017, including death threats.

[REDACTED] has been assaulted and received threats multiple times since 2 February 2017, including a threat that she will be raped. As the threats escalated, she decided to leave her home and go into hiding.

Reports suggest that the local authorities have engaged with members of the Owino Uhuru community aimed at stopping the threats. However, authorities' investigation into the above cases appears to be slow and inadequate.

We are deeply concerned about the safety of the CJGEA members and their families. Members of CJGEA have peacefully campaigned to protect the Owino Uhuru community's environmental and human rights for years. We remain deeply concerned about alleged attempts trying to stop the CJGEA from legitimately trying to uphold the community's right to a safe and healthy environment, as guaranteed in article 42 of the Kenyan Constitution.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the international principles and norms applicable to the present case.

We would like to refer to articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his or her life. In its General Comment No. 31, the Human Rights Committee stated that there is a positive obligation on States Parties to ensure the protection of the rights contained in the Covenant against violations by its agents. A failure to investigate violations of the Covenant and bring perpetrators of such violations to justice could in and of itself give rise to a separate breach of the ICCPR. (CCPR / C / 21 / Rev.1 / Add.13, paras. 15). Kenya acceded to the ICCPR in May 1972.

We would also like to refer to articles 21 and 22 of the ICCPR which guarantee freedoms of peaceful assembly and freedom of association respectively.

Additionally, we wish to bring to the attention of your Excellency's Government 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 Articles 1, 2, 5, 6 and 12.

We would also like to refer to the Convention for the Protection of All Persons from Enforced Disappearance (CED), signed by Kenya on 6 February 2007. Article 3 of the Convention stipulates the duty of States to take appropriate measures to investigate abduction and bring those responsible to justice. By signing the CED, the Kenyan Government obliged itself to respect the object and purpose of the international instrument, pending a decision on ratification.

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 information in detail on steps taken by the Government to investigate these cases and bring the perpetrator(s) to justice.
3. Please provide information on the progress made by the police investigation into the alleged abduction of [REDACTED]'s son.
4. Please indicate what measures have been taken to ensure that human rights defenders and environmental activists are able to carry out their legitimate work in a safe and enabling environment in Kenya, without fear of threats or acts of persecution 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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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.

John H. Knox
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a
safe, clean, healthy and sustainable environment

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

Baskut Tuncak
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