

**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 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:  
UA KEN 6/2018

25 May 2018

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 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 37/8, 36/15 and 34/5.

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 environmental human rights defenders - Mr. **Alfred Ogola**, Ms. **Anastacia Nambo**, Mr. **Wilfred Kamencu** and Ms. **Kavumi Munga** in relation to their involvement in the Owino Uhuru class action litigation challenging the government and a local battery smelter under Article 42 of the Kenyan Constitution which guarantees the right to a clean and healthy environment. They have been defending the rights of community members and recently have been called to the court as witnesses.

The Center for Justice Governance and Environmental Action (CJGEA) filed for a class action lawsuit on behalf of the Owino Uhuru community in 2016. 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 communications sent to the Government of Kenya dated 16 December 2014 (KEN 6/2014) and 23 February 2017 (KEN 6/2017). We have not received a response to date.

According to information received:

The aforementioned defenders have been subjected to continuous threats, intimidation and assaults for their legitimate activities (see KEN 6/2017) and the level of threats has escalated since the hearing, which took place on 17 May 2018 at the Mombasa High Court. The threats against these environmental human rights defenders appear to be related to their testimonies at the court in relation to 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 KEN 6/2014).

Many of them have reported the incidents to the local police station. However, authorities' investigation into the cases appears to be slow and inadequate. The defenders still fear for their safety and life and are seeking help to relocate.

Details of the threats for each victim are as follows:

After he testified in court on 17 May 2018, Mr. Alfred Ogola has been continuously receiving unknown visitors at his house banging on his door at night. No harm has been reported from these visits yet, but he lives in fear in his own house as these visits were preceded by an incident that happened about six months ago where he was attacked by six men with pangas (machetes) while having dinner with his family at home. On 20 May 2018, he reported on these incidents at the Changamwe Police station (OB number: 55/20/5/2018).

Immediately after the hearing on 17 May, a group of people visited Mr. Wilfred Kamencu's house several times at night banging on his door and asking him to get out of the house. Fearing for his safety, he reached out to the CJGEA at 4 in the morning on 18 May 2018. With the help of CJGEA, he reported the incident to the Mombasa Central Police on 18 May 2018 (OB number: 32/18/05/18). The visits have not stopped and Mr. Kamencu still lives in fear.

On the night of 17 May some people showed up at Ms. Anastacia Nambo's house and asked her to come out. She did not respond, and the people allegedly disposed of some unknown substance to her house which made her unable to open her eyes and made her eyes swell and ache. She reported the incident to the Changamwe police station on 18 May 2018 (OB number: 57/21/5/201).

Ms. Kavumbi Munga testified on the impacts of the lead poisoning on her son at the court on 17 May 2018. Three days later, someone broke into her house at night. She was confronted with this unknown person in the dark. She ran outside screaming for help. She wasn't hurt but still fears to stay at her house. The case was reported (OB number: 07/21/05/2018).

There are seven more defenders and members of the community who are experiencing similar threats and intimidation because they have and plan to testify at the court. For fear of retaliation, they requested to remain unnamed. Some of these individuals are staying at friends' houses as they are afraid of further threats.

We are deeply concerned about the safety of the above defenders and community members who were continuously intimidated, threatened and harassed while legitimately trying to uphold their constitutional right to a safe and healthy environment.

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.

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

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://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 updates following the communications sent to the Government of Kenya on 16 December 2014 (KEN 6/2014) and on 23 February 2017 (KEN 6/2017).

3. Please provide information in detail on steps taken by the Government to provide protection to those defenders faced with imminent threat.
4. Please provide information on the progress made by the police investigation into these cases and efforts to bring the perpetrator(s) to justice.
5. Please indicate what measures have been taken to ensure that human rights defenders and environmental activists in Kenya are able to carry out their legitimate work in a safe and enabling environment, 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 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

Baskut Tuncak

Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Michel Forst

Special Rapporteur on the situation of human rights defenders