

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the Special Rapporteur on extrajudicial, summary or arbitrary executions**

Ref.: AL KEN 6/2021  
(Please use this reference in your reply)

17 November 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolutions 43/16, 46/7 and 44/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the killing of environmental human rights defender **Joannah Stutchbury**. Ms. Joannah Stutchbury was an environmental human rights defender in Kenya, who opposed developments in the Kiambu forest on the outskirts of Nairobi.

According to the information received:

On 15 July 2021, at around 10:00 pm, Ms Joannah Stutchbury was shot dead near her home on the outskirts of Nairobi, Kenya, after receiving multiple death threats following her campaign against the development of wetlands in a national park. Unknown assailant attacked her on the driveway to her house and shot her four times.

Ms. Stutchbury had vocally opposed attempts by powerful local businessmen to build on the nearby Kiambu forest. Two years before her killing, Ms. Stutchbury stood up to private developers and the dredging of the Kiambu forest. An iconic photo of her sitting in an excavator bucket went viral and also caught the attention of the Kenya Forest Service, and the attempt was stopped.

The Kiambu forest lies on the outskirts of the Nairobi, where land prices have soared in recent years. Gitathiru, one of five perennial tributaries of the Nairobi River, is located in Kiambu forest. These tributaries form the Nairobi Water Basin and are a critical source of fresh water for the Thwake Dam, 200km away in Kitui County.

Without prejudging the accuracy of these allegations, we express serious concern at the killing of Ms Joannah Stutchbury, which appears to be clearly linked to her activities in protecting the environment, in particular her advocacy to protect the Kiambu forest. We express further concerns about the chilling effect her murder may have on civil society as a whole in Kenya, and in particular on human rights defenders.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter,

which cites international human rights instruments and standards relevant to these allegations.

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 on any investigation, prosecution or sentencing that has taken place. Please include information on the specific investigative steps taken and on compliance with the *UN Minnesota Protocol on the Investigation of Potentially Unlawful Death*.<sup>1</sup> If no investigation or prosecution has taken place, or the perpetrators have not been brought to justice, please explain why.
3. Please provide information on whether any authorities of Kenya were aware of threats made against Ms Joannah Stutchbury and, if so, any assessment made or steps taken in relation to these threats.
4. Please provide information on steps taken and guarantees put in place by your Excellency's government to provide a safe and enabling environment for human rights defenders, including environmental defenders. If no measures have been taken, please indicate a means by which we may engage with your Excellency's government on the development of such protection measures.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

David R. Boyd  
Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Morris Tidball-Binz  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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<sup>1</sup> Available at: <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>



## **Annex**

### **Reference to international human rights law**

In connection with the above facts and concerns, we would like to refer your Excellency's government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Kenya on 1 March 1972. Article 6 of the Covenant states that every human being has the inherent right to life.

We would like to refer to Human Rights Committee, General Comment 36 which states that States parties are under a due diligence obligation to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life originating from private persons and entities whose conduct is not attributable to the State. The duty to protect the right to life requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. In particular, States parties must take the necessary measures to respond to death threats and to provide adequate protection to human rights defenders, including the creation and maintenance of a safe and enabling environment for defending human rights.

The General Comment additionally states that “an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents. Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.”

We would also like to draw your attention to the UN Framework and Guiding Principles on Business and Human Rights, a corporate human rights responsibility initiative that provides a global standard for preventing business activity and development negatively impacting human rights. We would urge your Excellency's government to hold private actors whose business activity results in human rights violations accountable for their actions, in compliance with the UN framework. We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Also, 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, also known as the UN Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realization of human rights and indicates the State's prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (articles 1 and 2). Article 12, paragraphs 2 and 3 provides that the State shall take all necessary measures to ensure the protection of everyone 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.

We would also like to draw your attention General Assembly Resolution 68/181 whereby States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves. (OP5, 19 and 20).

We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Lastly, we would like to highlight the UN Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. “States’ existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached.”

According to the Guiding Principles, States have a duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises.

The obligation to protect, respect, and fulfill human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8).

It is a recognized principle that States must protect against human rights abuse by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to “prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (Guiding Principle 1). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (Guiding Principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in

instances where adverse human rights impacts linked to business activities occur.

On 8 October 2021, the Human Rights Council adopted resolution 48/13, recognizing the right to a clean, healthy and sustainable environment. In addition, the Framework Principles on Human Rights and the Environment, presented to the Human Rights Council in March 2018 (A/HRC/37/59) set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Principle 4 provides, specifically, that “States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.”