

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights in the context of climate change and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL KEN 3/2023
(Please use this reference in your reply)

7 November 2023

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 promotion and protection of human rights in the context of climate change and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 52/4, 48/14 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the stigmatization and threatening of human rights defender Phyllis Omido and the obstruction of a human rights training in Matsangoni, Kilifi County.**

Ms. **Phyllis Omido** is human rights defender who has been advocating for the defence of the environment and human rights threatened by climate change for more than a decade. In 2009, she co-founded the **Centre for Justice, Governance and Environmental Action (CJGEA)**, which works to advocate for justice and protection of the rights of marginalized communities in Kenya through education, empowerment, strategic litigation and advocacy. She was awarded a Goldman Prize for her work for environmental justice in 2015.

According to the information received:

On 21 September 2023, the Centre for Justice, Governance and Environmental Action (CJGEA), organised a human rights training for community members in Uyombo Village in the Ward of Matsangoni in Kilifi County. The training was organised following a request by elders from the community to Ms. Phyllis Omido, in the context of the identification of Uyombo Village as the site of a future nuclear reactor by Kenya's Nuclear Power and Energy Agency (NuPEA). Prior to the planned training, CJGEA had helped arrange three meetings for community members to inform them about the nuclear project. In the third of these meetings, which counted on the presence and participation of NuPEA, community members raised concerns as to the impact of nuclear project on the local environment, ecosystems and water supply. They also sought information as to what would happen with waste produced by the reactor. During the meeting, representatives of NuPEA threatened Ms. Omido, naming her and accusing her of inciting discord in the community.

Shortly before the training on 21 September 2023 was set to begin, Ms. Omido received a call informing her that heavily armed police had begun forcefully dispersing those who had gathered for the training, disconnecting the PA system and removing the chairs and projector from the venue. She spoke to the police over the phone and asked them to give her time, as the training's organiser, to reach the area. Upon arriving, she requested information as to what law the

training was in contravention of and was told by the police commander that she needed permits from a number of actors, including the local Governor, in order for the training to go ahead. Despite Ms. Omido insisting that the Governor had no mandate to provide such a permit, the training was not permitted to proceed and Ms. Omido was told if she did not leave the area she would be arrested.

Without wishing to prejudge the accuracy of the above-detailed allegations, we express serious concern at the obstruction of the planned human rights training for the Matsangoni community and the threats made against Ms. Omido. These actions would strongly indicate an attempt by the authorities to impede and repress the informed participation of local communities in discussions around the proposed nuclear project in the area, and to stigmatise Ms. Omido and the CJGEA for their attempts to facilitate the community member's defence of their human rights.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide precise information as to the reasons for the prevention of the planned human rights training on 21 September 2023 from going ahead, and how this act is compatible with Kenya's obligations under article 21 of the International Covenant on Civil and Political Rights.
3. Please provide information as to measures taken to guarantee that members of communities potentially affected by the proposed nuclear project in Matsangoni can participate in decisions concerning the project in an informed, safe and meaningful manner. If no such measures have been taken, please indicate what steps Kenya intends to take to ensure their full and meaningful participation.

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

Ian Fry
Special Rapporteur on the promotion and protection of human rights in the context of
climate change

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex

Reference to international human rights law

In relation to the above-mentioned allegations, we would like to refer your Excellency's Government to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kenya on 1 May 1972, which guarantee the freedoms of expression and assembly.

Article 19 of the ICCPR guarantees the right of all persons to freedom of expression, encompassing the freedom to seek, receive and impart information and ideas of all kinds. Any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19 (3) of the Covenant, following which any limitations must be determined by law and conform to the strict tests of necessity and proportionality. As underlined by the Human Rights Committee in its General Comment no. 34, attacks on persons because of the exercise of their freedom of expression, including in the form of arbitrary arrest, cannot under any circumstance be compatible with article 19.¹ As highlighted by the Committee, persons engaged in gathering, analysing and reporting on human rights are frequently subjected to such acts of intimidation because of their activities.²

Article 21 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of peaceful assembly. It states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. Article 22 of the ICCPR protects the right to freedom of association with others. As stated in a report by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards [A/HRC/17/27, para. 66; and A/HRC/29/25/Add.1]. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2 (1) of the International Covenant on Civil and Political Rights).

Elaborating on the obligations of state parties to the Covenant stemming from article 21 of the ICCPR, the Human Rights Committee, in its General Comment No. 37, if the conduct of participants in an assembly is peaceful, the fact that certain domestic legal requirements pertaining to an assembly have not been met by its organizers or participants does not, on its own, place the participants outside the scope of the protection of article 21. Furthermore, the Committee clearly stated that there is a presumption in favour of considering assemblies as peaceful.³

¹ Human Rights Committee, *General Comment No. 34*, CCPR/C/GC/34, para 23

² Idid

³ Human Rights Committee, *General Comment No. 37*, CCPR/C/GC/37, paras 16 and 17

We would also like to refer 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 further wish to stress the following articles of the Declaration:

- article 6(b), which holds that all persons have the right to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- article 6(c), which guarantees the right to study, discuss, form and hold opinions on the observance, both in law and practice, of all human rights and fundamental freedoms and to draw attention to these matters;
- article 9, paragraph 5, which holds that States shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction; and
- article 12, paragraph 2, holding that States shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration.

We would also like to recall Human Rights Council resolution 38/12, which calls on States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors, to investigate any such alleged acts, to ensure access to justice and accountability, and to end impunity where such violations and abuses have occurred.

Finally, we would like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, public acknowledged the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.