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Submission by: Front Line – the International Foundation for the Protection of Human Rights Defenders

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The following submission has been prepared by Front Line based on information received from independent human rights defenders.

Front Line is an international NGO based in Ireland with Special Consultative Status with the Economic and Social Council of the United Nations. We have particular expertise on the issue of the security and protection of human rights defenders and we work to promote the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by General Assembly resolution 53/144 of 9 December 1998.

Introduction

The situation in Kenya remains fragile and human rights defenders continue to operate at significant personal risk in an atmosphere of tension, hostility and impunity. There have been numerous reports of human rights defenders being victims of intimidation, attacks, arbitrary arrest and detention, surveillance, judicial harassment, death threats, and in some cases abduction and killing. In most cases, the targeting of defenders has occurred in a general climate of impunity.

As a consequence of carrying out activities such as investigating and exposing human rights violations, combating extra-judicial executions and abuses by law enforcement agents, or advocacy with respect to the post-electoral reconciliation process and the implementation of the recommendations of the Waki Commission (the Commission of Enquiry on Post-Election Violence in Kenya), many human rights defenders have been openly targeted. Threats and attacks have witnessed a dramatic escalation culminating into what could easily be called a crisis in the aftermath of the visit of the United Nations Special Rapporteur on extra-judicial, summary and arbitrary executions in February 2009. As a result, a high number of human rights defenders and civil society leaders had to temporarily go into hiding or exile for fear of being targeted. Prominent figures including Kenyan Nobel Peace Prize Laureate Wangari Maathai recognised the existence of a campaign of intimidation against human rights defenders involving the police as one of the main perpetrators.¹

With very few exception, serious investigations of attacks against defenders have not been conducted

¹ See for example reports by The Nation, 27 March 2009, available at <http://www.nation.co.ke/News/-/1056/553822/-/u3p8ne/-/index.html>

by the Kenyan authorities, even in the most serious cases including murders. The government has taken no concrete action to support and promote the work of human rights organisations, or to protect organisations or individual activists from attacks. On the contrary, public figures have publicly criticised human rights defenders and contributed to the climate of hostility against them, including members of the parliament as well as senior government officials such as the government spokesperson (see further below).

Freedom of expression

The Kenyan constitutional framework guarantees freedom of expression and freedom of information. However, a revised Media Law effective from November 2007 introduced a 13-member Media Council, with authority to grant and withdraw the accreditation of journalists, which seeks to monitor and regulate the media in a much stricter form. There are reports of journalists being harassed and attacked while reporting human rights issues and government actions. Following the controversial election results, in January 2008 the government banned live broadcasting by the Kenyan media in order to silence the denunciation of the post-electoral violence.

Intimidation and arrest of human rights defenders

Article 80 of the Constitution protects the right to freedom of assembly and association. However, a number of defenders have been arrested by police or security forces for their participation in peaceful protests and charged with 'taking part in illegal demonstration' or 'causing disturbance'. Several human rights organisations reportedly had their office searched, properties confiscated and staff arrested.

- Mr **Ken Wafula**, journalist and director of the Centre for Human Rights and Democracy (CHRD) in Eldoret, was arrested and interrogated by the Kenyan police on 9 October 2009. He was released on the same day but instructed not to leave the city. In the following days, between 10 and 15 October, he was repeatedly summoned to appear at the Eldoret police station and threatened with charges of 'inciting the public and causing national disturbance'. This followed media reports, attributed to Ken Wafula, on the re-arming of local communities in the Rift Valley region. He also reported being under surveillance and receiving several calls as well as a visit from unknown individuals. Local politicians have publicly expressed hostility against Ken Wafula and human rights defenders generally. The local member of parliament was quoted by media as declaring that "Those making claims of re-armament are the same people who gave our names to the Waki Commission [The Commission of Enquiry on Post-Election Violence in Kenya]". This statement was followed by other public statement, including on 12 October in Chepsaita, threatening those who challenged the authorities about re-armament and the recent political violence in Kenya.
- Mr **Samson Owimba Ojiayo** and Mr **Godwin Kamau Wangoe**, members of Bunge La Mwananchi, were arrested by plainclothes police officers on 15 September 2009 in Nairobi. Godwin Kamau was allegedly ill-treated and despite requests for legal representation he was denied access to a lawyer until the next day. On 16 September 2009, he was brought before a Nairobi magistrate, charged with belonging to an illegal organisation and granted bail. It is reported that police officers attempted to extort money. Samson Owimba was released without charge. Following their release, on 19 and 20 September 2009, police officers in plain clothes visited the homes of the two defenders and allegedly intimidated their families. The two defenders believed their arrest and the threats received were connected to their work on extrajudicial killings following the disputed December 2007 elections.
- On 15 January 2009, Mr **George Nyongesa**, community organiser with the grassroots movement Bunge la Mwananchi, was assaulted and mugged by four men in Nairobi. He reported that whenever he attempted to submit a statement to the police about the attack, he

was referred to a different police station. As the January assault was the third one suffered in nine months, and since other key members of Bunge la Mwananchi received numerous threats, George Nyongesa believe he had been specifically targeted.

- On 12 December 2008, over 60 civil society activists and journalists were arrested in Kenya for taking part in a peaceful protest on the occasion of Kenya's Jamhuri Day celebrations. A peaceful demonstration to protest against the failure of members of parliaments to pay taxes was moving towards the Nyayo National stadium in Nairobi, where President Mwai Kibaki was due to address people celebrating independence day. The police broke up the protest and initially arrested 23 demonstrators, among them several journalists, including two radio presenters. A second group of 32 protesters were later arrested near the stadium and taken to the city's Langata police station. The majority of those detained were released without charge. Mr **Mwalimu Mati**, chief executive of Mars Group Kenya, and his wife remained in detention for two nights and an investigation against them on the grounds of "incitement to violence" was opened.

Judicial harassment

In addition to the instances of arrest and harassment by law enforcement officials highlighted above, human rights defenders also reported several instances where the judicial system was used against them in retaliation for their human rights work. Illustrative is the example of **Bunge la Mwananchi**, a grassroots movement working against social injustice and to promote accountable leadership, which reported having at least six different court cases against its members. The court cases are pending in Thika, Kibera and Makadara Law Courts as well as in the High Court. In all cases, the charges range from participating in illegal meetings to creating disturbance or disobeying police orders, in connection to the activities organised by the movement.

Cooperation with the United Nations sparks killings

In the aftermath of the visit by the United Nations Special Rapporteur on extra-judicial, arbitrary and summary executions in February 2009, defenders who have passed information to the UN expert have been specifically targeted. At least three human rights defenders have been murdered and about fifteen have had to go into hiding or in exile. Some of the defenders who have fled, known to Front Line, are still in exile for fear of retaliation upon their return. The Kenya National Commission on Human Rights (KNCHR) reported that all those who interacted with the Special Rapporteur received threatening phone calls or text messages.

- In a case that sparked much international indignation as it shortly followed the release of the Special Rapporteur's preliminary findings, Mr **Oscar Kamau King'ara** and Mr **John Paul Oulu** were murdered on 5 March 2009. Oscar Kamau King'ara was a lawyer, founder and chief executive officer of the Oscar Foundation. John Paul Oulu worked for the Oscar Foundation as communications and advocacy officer. The Oscar Foundation had published reports on the extrajudicial killings and had provided information to the Kenyan parliament, the KNCHR and the Special Rapporteur on extrajudicial, summary or arbitrary executions. On 5 March 2009, the two members of the Oscar Foundation were shot to death in Nairobi while on their way to the KNCHR office. The murder has been preceded by accusations made by Government Spokesperson that the Oscar Foundation was funding Mungiki, a political and religious group. Eyewitness testified that some of the members of the commando who killed them were wearing police uniforms.
- Mr **Joab Murefu Wanyonyi** was murdered by two armed men on 21 May 2009 near Bungoma town. Joab Murefu Wanyonyi was a founder member of the Mwatikho Torture Survivors Organisation (MATESO) in Western Kenya. It is believed his murder was motivated by his work

on the post-election violence in January 2008 and the murder of over 800 people in the Mount Elgon region by the militia group Saboat Land Defense Force.

Recommendations

Front Line calls upon the UN to urge the authorities in Kenya to prioritise the protection of human rights defenders and in doing so to:

1. Conduct an independent inquiry into the source of threats, ill-treatment, and all forms of intimidation and harassment directed towards all those human rights defenders mentioned in this report;
2. Take immediate measures to ensure the safety and protection of human rights defenders, including publicly recognise the legitimacy of their work and the essential role they play in a democratic society;
3. Take immediate measures to tackle the problem of impunity for attacks and abuses perpetrated against human rights defenders, and in particular ensure that investigations on the killings of human rights defenders, including those mentioned in this report, are prompt and effective and the perpetrators are brought to justice;
4. Ensure that all human rights defenders in Kenya are free to carry out their human rights activities free from persecution.