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H.E. Uhuru Kenyatta
President of the Republic of Kenya
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Your Excellency:

I am writing on behalf of the New York City Bar Association (the “Association”) to condemn in the strongest possible terms, the torture and murder of Willie Kimani, 32, a human rights lawyer, his client, Josephat Mwenda, and their taxi driver, Joseph Muiruri, as well as their abduction and illegal confinement by administrative police officers. We view this matter as a serious attack on the rule of law and administration of justice in Kenya and urge you to publicly condemn these extrajudicial killings and order a thorough and systematic investigation of the National Police Services. We ask that institutional reforms are made to ensure that lawyers can practice their profession free from intimidation and harassment, police interference and brutality of this sort.

The Association is an independent non-governmental organization with more than 24,000 members in over 50 countries. Founded in 1870, the Association has a long history of dedication to human rights, notably through its Committee on International Human Rights, that investigates and reports on human rights conditions around the world, and the Committee on African Affairs that closely monitors and responds to legal developments in Africa. In addition, the Association’s Cyrus R. Vance Center for International Justice advances global justice by engaging lawyers across borders to support civil society and an ethically active legal profession.

It has been reliably reported,¹ and confirmed by the National Police Service,² that Mr. Kimani, a human rights defender with the International Justice Mission, accompanied his client, Mr. Mwenda, to a trial in a case involving the client’s complaint against a police officer. After witness testimony, the case was adjourned and Mr. Kimani and his client left the courthouse in

¹ Jeffrey Gettleman, *Kenyan Filed a Complaint Against the Police, Then He and His Lawyer Disappeared*, N.Y. TIMES, June 30, 2016, at A9, available at <http://www.nytimes.com/2016/06/30/world/africa/kenya-lawyer-missing-human-rights-police.html>.

² National Police Service, Press Statement, June 30, 2016, available at <http://www.nationalpolice.go.ke/2015-09-08-17-56-33/news/167-press-statement-6.html>.

the taxi that brought them there. Mr. Mwenda had been shot in the arm by a police officer and brought a complaint against the officer. The officer and his colleagues retaliated by pursuing false charges against Mr. Mwenda, including drug counts and petty crimes, such as riding a motorcycle without a helmet.³ After Mr. Kimani, his client and their taxi driver left the courthouse, they were seen by a member of the public locked in a metal container at a police post. Mr. Mwenda threw out a note asking that his wife be alerted to the danger he was in. The National Police Service spokesman, George Kinoti, acknowledged that the men had been held in a cargo container.⁴ Soon after, Mr. Kimani, his client and the taxi driver disappeared, their whereabouts unknown.

After a public outcry, the police began investigations into the disappearance of Messrs. Kimani, Mwenda and Muiruri. On June 30, 2016, the men's bodies were found in the Oldonyo Sabuk River.⁵ A pathologist reported that all three had been brutally tortured—Mr. Kimani had 14 injuries to various parts of his body, his skull and genitals had been crushed and he died from blunt force trauma to his head. Mr. Kimani's client died from head, neck and chest injuries, and the taxi-driver had a rope around his neck and had died from strangulation.⁶

The arbitrary detention and torture of Mr. Kimani, his client and their taxi driver violates the basic legal principles set forth in the International Covenant on Civil and Political Rights⁷ (the "ICCPR"). In addition, Article 2(3) of the ICCPR requires states parties to ensure that any person whose rights or freedoms are violated has "an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Kenya acceded to the ICCPR on May 1, 1972.⁸ The torture and heinous murder of Mr. Kimani and his client also violates the Convention against Torture,⁹ (which Kenya acceded to on February 21, 1997),¹⁰ and the rule of customary international law.

Furthermore, international law makes clear that governments must ensure that lawyers do not face police persecution. This standard is enshrined in the U.N. Basic Principles on the Role of Lawyers (the "Principles")¹¹ and the African Union's Principles and Guidelines on the Right

³ *Id.* n. 1.

⁴ Mary Kulundu, *Police Reveal Another Mistake Officers in Willie Kimani Did*, Kenyans.co.ke, July 8, 2016, available at <https://www.kenyans.co.ke/news/police-reveal-another-mistake-officers-willie-kimani-murder-did>.

⁵ Jeffrey Gettleman, *3 Kenyans Last Seen at Police Station Found Dead*, N.Y. TIMES, July 1, 2016, available at <http://www.nytimes.com/2016/07/02/world/africa/kenya-lawyer-missing-kimani-police.html>.

⁶ *Willie Kimani: Kenyan lawyer tortured before death*, BBC NEWS, July 6, 2016, available at <http://www.bbc.com/news/world-africa-36722205>.

⁷ *International Covenant on Civil and Political Rights* ("ICCPR"), New York, December 16, 1966, United Nations Treaty Series, vol. 999, p.171 and vol.1057, p. 407, articles 7 and 9, available at <http://www.un-documents.net/iccpr.htm>.

⁸ United Nations Treaty Collection, Depository, Status of Treaties, Chapter IV, *ICCPR*, at no.4 (December 16, 1966), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en.

⁹ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, New York, December 10, 1984, United Nations, *Treaty Series*, vol.1465, p. 85, articles 2.1., 4.1, and 12, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

¹⁰ United Nations Treaty Collection Depository, Status of Treaties, Chapter IV, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at no. 9, (December 10, 1984) available at http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

¹¹ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, *Basic Principles on the Role of Lawyers* (adopted August 27 to September 7, 1990), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

to a Fair Trial and Legal Assistance in Africa¹² (the “Guidelines”). Kenya was admitted to the U.N. on December 16, 1963,¹³ and became a member of the African Union on December 13, 1963,¹⁴ and is subject to these international norms. The Principles state in Article 16 that “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;” The Guidelines contain similar requirements in Article I (b) 1&3.

Moreover, the targeting of a human rights lawyer, his client and their taxi driver by state actors also threatens the rule of law and protection of the rights of Kenyans guaranteed in the 2010 Kenya Constitution that states that one shall be free from “torture and cruel, inhuman and degrading treatment or punishment.”¹⁵

Due to the egregious infractions of the law and the heinous behavior of the police, the Association respectfully requests that systematic institutional reforms be made to Kenya’s police services to ensure that lawyers can practice their profession free from the brutality and intimidation we have witnessed in the tragic case of Mr. Kimani.

Respectfully,



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¹² African Union, African Commission on Human and Peoples’ Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* (2003), available at <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial>.

¹³ United Nations, Member States, available at <http://www.un.org/en/member-states>.

¹⁴ African Union, Member States of the African Union, available at http://www.au.int/en/AU_Member_States.

¹⁵ The Constitution of Kenya, Revised Edition 2010, Laws of Kenya, Kenya Law Reports, Chapter Four, Part I, par. 25 (a), available at http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/transitions/Kenya_19_2010_Constitution.pdf.

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