



NEW YORK  
CITY BAR

JOHN S. KIERNAN

PRESIDENT

Phone: (212) 382-6700

Fax: (212) 768-8116

jkiernan@nycbar.org

July 25, 2017

By Facsimile: 011-254-020-2436  
H.E. Uhuru Kenyatta  
President of the Republic of Kenya  
State House Road  
P.O. Box 40530 00100  
Nairobi, Kenya  
E-mail: [president@statehousekenya.go.ke](mailto:president@statehousekenya.go.ke)

Your Excellency:

I write on behalf of the New York City Bar Association to strongly support the Purple Ribbon Campaign by the Law Society of Kenya commemorating the first anniversary of the abduction, illegal detention, torture, and killing of human rights attorney Willie Kimani, his client, Joseph Mwenda, and their taxi driver, Joseph Muiruri. We strongly condemned those crimes in a letter sent to you last year.<sup>1</sup> Both the U.N. Basic Principles on the Role of Lawyers and the African Union's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa recognize that lawyers have the right to practice their profession free from intimidation, harassment, police interference, and brutality.<sup>2</sup> Furthermore, failing to provide a remedy for the acts of torture committed violates the International Covenant on Civil and Political Rights<sup>3</sup> and Convention against Torture.<sup>4</sup> We join the Law Society of Kenya in the Purple Ribbon Campaign and call for the government of Kenya to act more assertively to end

---

<sup>1</sup> Letter from John Kiernan, President, New York City Bar Association, to H.E. Uhuru Kenyatta, President of the Republic of Kenya (July 25, 2016), available at [http://s3.amazonaws.com/documents.nycbar.org/files/20073144-letter\\_regarding\\_murder\\_of\\_Kenyan\\_lawyer\\_AFRICAN\\_7.25.16.pdf](http://s3.amazonaws.com/documents.nycbar.org/files/20073144-letter_regarding_murder_of_Kenyan_lawyer_AFRICAN_7.25.16.pdf) [hereinafter City Bar Letter].

<sup>2</sup> 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>; 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/files/instruments/principles-guidelines-right-fair-trial/achpr33\\_guide\\_fair\\_trial\\_legal\\_assistance\\_2003\\_eng.pdf](http://www.achpr.org/files/instruments/principles-guidelines-right-fair-trial/achpr33_guide_fair_trial_legal_assistance_2003_eng.pdf).

<sup>3</sup> International Covenant on Civil and Political Rights, (adopted December 16, 1966), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

<sup>4</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted December 10, 1984), available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

intimidation, harassment, extrajudicial killings, and forced disappearances by the police in Kenya.

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, which investigates and reports on human rights conditions around the world, and the Committee on African Affairs, which closely monitors and responds to legal developments in Africa. Our Task Force on the Independence of Lawyers and Judges speaks out against the harassment and intimidation of lawyers and judges. In addition, the Association's Cyrus R. Vance Center for International Justice advances global justice by engaging lawyers across borders to support civil society.

Mr. Kimani, a human rights lawyer, was abducted, illegally detained, tortured, and killed in June 2016 along with Mr. Mwenda—who had filed a complaint against a police officer—and Mr. Muiruri. The abusive treatment and killing of the three men took place while a trial on Mr. Mwenda's complaint was in progress. The bodies of the three men were discovered in plastic bags in the Ol-Donyo Sabuk River, eight days after their abduction, and showed signs of torture.<sup>5</sup>

One year later, the High Court of Kenya at Milimani is now hearing the trial of five administration police officers accused of murdering Mr. Kimani and the others. However, the accused and their defense continue to find ways to interfere with and delay the trial,<sup>6</sup> including, more recently, filing an application for more time to appeal the court's dismissal of an application to prevent the victims' lawyers from cross-examining witnesses. This was despite the trial having resumed after a two-month delay. Nevertheless, the court remains committed to rejecting schemes aimed at delaying the trial.<sup>7</sup> Given the well-documented history of extrajudicial killings and police misconduct in Kenya,<sup>8</sup> the Association welcomes the effort to ensure accountability through the ongoing trial and stands with the Law Society of Kenya in

---

<sup>5</sup> BBC NEWS, *Willie Kimani: Kenyan lawyer tortured before death*, July 6, 2016, available at <http://www.bbc.com/news/world-africa-36722205>; City Bar Letter, *supra* note 1.

<sup>6</sup> Carole Maina, *Cops charged with Willie Kimani murder want LSK, IJM stopped from probing witnesses*, *The-star.co.ke*, April 24, 2017, available at [http://www.the-star.co.ke/news/2017/04/24/cops-charged-with-willie-kimani-murder-want-lsk-ijm-stopped-from\\_c1549046](http://www.the-star.co.ke/news/2017/04/24/cops-charged-with-willie-kimani-murder-want-lsk-ijm-stopped-from_c1549046). See also, Carole Mania, *High profile Willie Kimani murder trial resumes in camera*, *The-star.co.ke*, February 14, 2017, available at [http://www.the-star.co.ke/news/2017/02/14/high-profile-willie-kimani-murder-trial-resumes-in-camera\\_c1506726](http://www.the-star.co.ke/news/2017/02/14/high-profile-willie-kimani-murder-trial-resumes-in-camera_c1506726). See also, Richard Munguti, *Trial adjourned after suspect in lawyer Willy Kimani's case falls sick in court*, *nairobinews.co.ke*, March 24, 2017, available at <http://nairobinews.nation.co.ke/news/suspect-willy-kimani-case/>.

<sup>7</sup> Carole Mania, *Aps lose bid to delay Willie Kimani trial, case continues for 2 weeks*, *The-star.co.ke*, July 14, 2017, available at [http://www.the-star.co.ke/news/2017/07/14/aps-lose-bid-to-delay-willie-kimani-trial-case-continues-for-2-weeks\\_c1596521](http://www.the-star.co.ke/news/2017/07/14/aps-lose-bid-to-delay-willie-kimani-trial-case-continues-for-2-weeks_c1596521). See also, C. Campbell, *ijm.org*, June 2, 2017, LIVE BLOG: SEEKING JUSTICE FOR WILLIE, JOSEPH AND JOSEPHAT, available at <https://freedomcommons.ijm.org/news/live-blog-seeking-justice-in-kenya>.

<sup>8</sup> Amnesty International, *Annual Report Kenya 2016/2017*, available at <https://www.amnesty.org/en/countries/africa/kenya/report-kenya/>. See also, Human Rights Watch, *Deaths and Disappearances; Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya*, available at <https://www.hrw.org/report/2016/07/19/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and#2fe00a>.

calling on the judiciary to ensure a speedy and thorough trial.

According to Amnesty International, by October 2016, conservative figures<sup>9</sup> showed that “a total of 122 extrajudicial killings had been reported in Kenya, out of 177 cases in Africa.”<sup>10</sup> In addition, Haki Africa details the deaths or disappearance of 81 people from 2012 to 2016.<sup>11</sup> Further, Human Rights Watch notes in its 2016 World Report: “security forces continued to be implicated in extrajudicial killings, torture, disappearances and arbitrary detentions, particularly during counterterrorism operations in Nairobi, Mombasa, the coast and in the northeast, and rarely faced investigations or prosecutions.”<sup>12</sup> Such impunity violates international law, regional norms, and the Constitution of Kenya.

Article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Kenya acceded on February 21, 1997,<sup>13</sup> obligates states to prevent torture. The 2010 Kenya Constitution also guarantees freedom from “torture and cruel, inhuman and degrading treatment or punishment.”<sup>14</sup> Having acceded to the International Covenant on Civil and Political Rights (ICCPR) on May 1, 1972,<sup>15</sup> Kenya is obligated 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.”<sup>16</sup> Under Article 12 of CAT, states parties must ensure “prompt and impartial investigation” of alleged cases of torture.

Moreover, failure to ensure that lawyers can practice without being subjected to police persecution or other interference violates the U.N. Basic Principles on the Role of Lawyers and Section I(b)(i) of the African Union’s Principles and Guidelines on the Rights to a Fair Trial and

---

<sup>9</sup> An Amnesty International report alludes to the fact that the figures could be higher as “Kenya does not have an official database of police killings or enforced disappearances.” See Amnesty International, *Annual Report Kenya 2016/2017*, available at <https://www.amnesty.org/en/countries/africa/kenya/report-kenya/>.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* See also, Human Rights Watch, *Deaths and Disappearances; Abuses in Counterterrorism Operations in Nairobi and in Northeastern Kenya*, available at <https://www.hrw.org/report/2016/07/19/deaths-and-disappearances/abuses-counterterrorism-operations-nairobi-and#2fe00a>. See further, *Kenya Police admit extrajudicial killings*, Al Jazeera English, September 18, 2016, available at <http://video.aljazeera.com/channels/eng/videos/kenya-police-admit-extrajudicial-killings/3929474849001>. See also *supra* note 5.

<sup>12</sup> Human Rights Watch, *WORLD REPORT 2016; Kenya Events of 2015*, available at <https://www.hrw.org/world-report/2016/country-chapters/kenya>.

<sup>13</sup> United Nations Treaty Collection, *Convention against Torture*, Chapter IV, §4, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9&chapter=4&lang=en).

<sup>14</sup> The Constitution of Kenya 2010, Chapter 4, Part 1, Art. 25(a) available at <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>.

<sup>15</sup> United Nations Treaty Collection, *International Covenant on Civil and Political Rights*, Chapter IV, § 4, available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-4&chapter=4&clang=en).

<sup>16</sup> ICCPR, *supra* note 3, Article 2(3).

Legal Assistance in Africa.

We strongly support the Purple Ribbon Campaign and reiterate our previous request urging the government of Kenya to undertake systematic institutional reforms to Kenya's police services, to ensure that lawyers can practice their profession free from brutality and intimidation. We urge the government to publicly condemn extrajudicial killings and forced disappearances and take additional steps to end those violations of international law.

Respectfully yours,



John S. Kiernan

Ccs:

Hon. Githu Muigai  
Attorney General  
Sheria House, Harambee Avenue  
P.O. Box 41112-00100  
Nairobi, Kenya  
E-mail: [info@ag.go.ke](mailto:info@ag.go.ke)

Mr. Joseph Boinnet  
Inspector General of National Police Service  
Jogoo House 'A'  
Taifa Road  
P.O. Box 44249-00100  
Nairobi, Kenya  
E-mail: [nps@nationalpolice.go.ke](mailto:nps@nationalpolice.go.ke)

Ambassador Robinson Njeru Githae  
Kenya Ambassador to the United States  
Embassy of the Republic of Kenya  
2249 R Street NW  
Washington, DC 20008  
Fax: (202) 462 3829

Mr. Isaac E.N. Okero  
President, Law Society of Kenya  
Lavington, Opposite Valley Arcade, Gitanga Road  
P.O. Box 72219-00200  
Nairobi, Kenya  
E-mail: [lsk@lsk.or.ke](mailto:lsk@lsk.or.ke)

Honorable Faith Pansy Tlakula  
Chairperson of the African Commission on Human and Peoples' Rights  
No. 31 Bijilo Annex Layout  
Kombo North District, Western Region  
P.O. Box 673  
Banjul, The Gambia  
Fax: 011-220-441-05-04  
E-mail: [achpr@achpr.org](mailto:achpr@achpr.org)

Honorable Commissioner Zeid Ra'ad Al Hussein  
High Commissioner  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
Palais des Nations  
CH-1211 Geneva 10, Switzerland  
Fax: 011-41-22-928-9010

Honorable Rex W. Tillerson  
Secretary of State  
U.S. Department of State  
2201 C Street NW  
Washington, D.C.20520  
Fax: (202) 647-1579

Ambassador Nikki R. Haley  
U.S. Permanent Representative to the U.N.  
799 United Nations Plaza  
New York, NY 10017  
Fax: (212) 415-4443