

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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31 January 2017

Hon. Uhuru Kenyatta

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Re: Protection for Lawyer Simon Lilan and investigation into alleged assault

Dear Mr. President, Excellencies, Ministers, Inspector-General, Chairs,

I am writing on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and other human rights defenders who promote international human rights and the rule of law through advocacy, education and legal research. LRWC is a volunteer-run NGO in Special Consultative Status with the Economic and Social Council of the United Nations. I write further to our letter of 13 January in respect of the disappearance of Kenyan lawyer **Simon Lilan**.

Mr. Lilan had been in hiding since 9 January 2017, fearing for his life and safety following his work to prevent the burial of the late politician Mark Too and to ensure an investigation into his death. Mr. Too had claimed publicly that “powerful people want to finish me following my stand on the death of Mr. Too,” and that he had sought protection from the police.¹ He received no protection, and on 29 January

¹ Dennis Lubanga and Wycliff Kipsang “Panic as Lawyer Goes Missing Days After Claiming Mark Too Was Assassinated” 11 Jan 2017 Nairobi News online:

<http://nairobinews.nation.co.ke/news/panic-lawyer-goes-missing-days-claiming-mark-assassinated/>

2017 was allegedly assaulted by six security guards at his own office as a uniformed police officer stood by.²

LRWC believes the attack on Mr. Lilan is the latest in a pattern of violations against lawyers and other human rights defenders, including the disappearance and murder of lawyer Willie Kimani with his driver in June 2016. The non-governmental watchdog Independent Medico-Legal Unit (IMLU) says Kenyan police and security officers killed 97 people in 2015 alone.³

LRWC condemns in the strongest terms attacks with impunity on lawyers like Mr. Lilan, and the disappearance and extra-judicial killing of other lawyers and human rights defenders by police and security forces. We join the Law Society of Kenya (LSK) and others in calling for immediate action to:

- provide protection for Simon Lilan and for his family members who may also be at risk;
- investigate and ensure appropriate criminal sanction of responsible parties;
- Guarantee in all circumstances the physical integrity and security of human rights defenders, activists, advocates, their families, and their staff;
- Establish an Independent Commission of Inquiry to review cases of enforced disappearance and extra-judicial killings and to address specific and systemic factors contributing to the high rate of disappearance and assassination in Kenya; and,
- Comply with all provisions of the UN Declaration on Human Rights Defenders⁴ and in particular with Articles 1 and 12.2.

Under the *UN Declaration on Human Rights Defenders*,⁵ Kenya must safeguard the ability of human rights defenders to make complaints about official policies and acts, to attend public hearings and trials, and to benefit from effective remedies. Importantly, Art. 12(2) imposes on States a responsibility

“to take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, 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.”

It is widely accepted that states must adopt and maintain effective measures to ensure the safety and independence of lawyers and the freedom to engage in their professional activities as lawyers and prosecutors without reprisals. The United Nations’ *Basic Principles on the Role of Lawyers* (“*Basic Principles*”)⁶ describe specific state duties that ensure the right to legal representation by ensuring the independence and safety of lawyers, including from interference by state and other actors. Article 16 of *The Basic Principles* provides that lawyers must be able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference and that lawyers shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics. Article 17 requires that states shall adequately safeguard the security of lawyers who are threatened as a result of discharging their functions.

² Julia Majale, “Mark Too’s lawyer who went missing ATTACKED in Eldoret” Tuko, 29 Jan 2017, online: <https://www.tuko.co.ke/228895-mark-toos-lawyer-missing-attacked-eldoret.html>

³ “Report on deaths from police bullets from January to December 2015”, The Independent Medico-Legal Unit, online: <http://www.imlu.org/2011-06-30-23-44-4/2015-08-28-09-08-23/reports/finish/2-reports/457-report-on-deaths-from-police-bullets-from-january-to-december-2015/0.html>

⁴ “Declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms”, A/RES/53/144 adopted by the UNGA 1998.

⁵ A/RES/53/144 adopted 8 March 1999.

⁶ *The Basic Principles*, adopted by the Eighth United Nations’ Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

LRWC reminds the Kenyan authorities that under the *Vienna Convention on the Law of Treaties*, States are bound by their treaty obligations and all treaty obligations must be performed in good faith (the principle of *pacta sunt servanda*).⁷ Article 27 of the *Vienna Convention* reads: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” This principle was part of international law long before The *Vienna Convention* came into force. Failure to act quickly and effectively would in the circumstances, itself constitute a violation of the *International Covenant on Civil and Political Rights*.⁸

LRWC calls on the Government of Kenya to act immediately to ensure the physical safety and security of **Simon Lilan** in carrying out his public and professional duties, and to ensure remedial action to prevent future and punish past violations.

We look forward to your response.

Sincerely,



Gavin Magrath, J.D., LL.M, Barrister and Solicitor
Director, Lawyers' Rights Watch (Legal Research) Canada

Copied to:

Working Group on Enforced or Involuntary Disappearances

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⁷ Article 26 of the Vienna Convention on the Law of Treaties, entered into force on 27 January 1980. U.N.T.S. Vol. 1155, p. 331 [Vienna Convention].

⁸ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 8. Kenya acceded to the International Covenant on Civil and Political Rights on 1 May 1972.