



August 10, 2016

His Excellency Robinson Njeru Githae
Ambassador of the Republic of Kenya



RE: The Protection of Human Rights Attorneys and Clients in Kenya

Dear Mr. Ambassador:

By way of introduction, the American Center for Law & Justice (ACLJ) is an organization dedicated to fighting for the rule of law and human rights both in the United States and abroad. Our affiliate office, the East African Centre for Law & Justice (EACLJ), partners with us to achieve these goals in Kenya.

We write to you today on behalf of the ACLJ, the EACLJ, and more than 125,000 concerned people from the United States and around the world who have signed petitions urging Kenya to uphold the rule of law and ensure that police who abuse their power are brought to justice.

On June 23, 2016, Willie Kimani, a Kenyan human rights attorney, along with his client, Josephat Mwenda, and their taxi driver, Joseph Muiruri, were kidnapped as they left Mavoko Law Court. Eight days later, their bodies were found in the Ol-Donyo Sabuk River.

These crimes were not random. Their murders were an attempt to silence those who sought to hold abusive police officers accountable.

Kimani, an attorney for the Christian organization International Justice Mission, joined the case of Josephat Mwenda, a man falsely accused of a crime and subsequently shot by police. According to Mr. Kimani's firm, throughout the legal proceedings, Kimani and the other attorneys faced immense amounts of illegal pressure by rogue police officers.

The corruption took a deadly turn when the men and their taxi driver were abducted while leaving Mavoko Law Court following a hearing relating to the case. The three men were allegedly tortured, held, and eventually murdered.



Lawyers play a vital role in ensuring that the victims of human rights violations are adequately protected and the perpetrators are brought to justice. According to Kenyan and international law, lawyers must be guaranteed independence and non-interference.

The preamble to the Universal Declaration of Human Rights states that "... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."¹ The ability of advocates like Willie Kimani to represent their clients free from intimidation or interference is imperative for the rule of law to be upheld.

Likewise, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), enshrine basic principles about the rule of law that require independent counsel. The ICCPR explicitly requires the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law.² All of these principles are compromised if attorneys are unable to provide independent and competent representation due to threats or improper interference. The ICESCR reiterates the obligation of States to promote universal respect for human rights and freedoms.³ In order to ensure human rights are protected, it is imperative that victims and their legal advocates are free to bring claims of human rights violations. As a state party to both treaties, it is imperative that Kenya upholds the rule of law by ensuring attorneys and victims of human rights violations are protected at every stage of legal proceedings.

To further ensure the protection of legal advocates, in 1990, the United Nations General Assembly adopted the UN Basic Principles on the Role of Lawyers, which articulates the right to independent counsel and the importance of protecting lawyers from improper interference. It declares that the "adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession."⁴

¹ *The Universal Declaration of Human Rights*, UNITED NATIONS, available from <http://www.un.org/en/documents/udhr/>.

² International Covenant on Civil and Political Rights, (19 December 1966) 999 U.N.T.S 171 available from <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

³ International Covenant on Economic, Social and Cultural Rights, (16 December 1966) 993 U.N.T.S. 3 available from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁴ General Assembly resolution, *Basic Principles on the Role of Lawyers* (18 December 1990), available from <https://www.un.org/ruleoflaw/blog/document/basic-principles-on-the-role-of-lawyers/>.

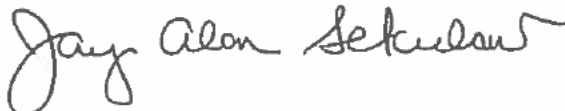
The corrupt officials who tried to silence Willie Kimani and Josephat Mwenda have not only undermined the fundamental freedoms of these men, but if justice is not served in this case, their actions threaten to undermine the rule of law for all Kenyans.

Just like Willie Kimani, our lawyers at the EACLJ in Kenya, are involved in suits against powerful governmental officials. Right now, we are litigating cases on behalf of young Kenyan girls illegally mutilated and sold into slavery as child brides at the hands of powerful men, including one public official engaged in the practice. In light of the recent targeted killings of Willie Kimani and his client, we are concerned about the safety of our staff as well as the safety of all legal advocates in Kenya.

Human rights defenders must be guaranteed safety. When the rule of law is compromised, it is the most vulnerable members of society who suffer the greatest. Disregard of the law destroys the fabric of society, making it difficult for humans to flourish in stable and secure communities.

We urge you to uphold Kenyan law and Kenya's numerous obligations under international law by ensuring that corruption is punished and that all lawyers are allowed to freely provide competent counsel to those who need it most.

Respectfully,

A handwritten signature in black ink that reads "Jay Alan Sekulow". The signature is written in a cursive, flowing style.

Jay Alan Sekulow
Chief Counsel