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PERMANENT MISSION OF  
THE REPUBLIC OF KENYA  
TO THE UNITED NATIONS

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SWITZERLAND

REF. N° **KMUNG/OHCHR/SPMH/CSI/VOL.I (10)**

**18th October, 2017**

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**RE: JOINT URGENT APPEAL FROM SPECIAL PROCEDURES**

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We refer to your letter reference UA KEN 13/2017 dated 16th October, 2017 on a joint urgent appeal sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The letter has been transmitted to the relevant authorities in Nairobi for review and preparation of an appropriate response.

In the meantime, please find attached, a statement conveying a preliminary response on the issues raised by the Special Rapporteurs which I request that you bring to their attention and also disseminate to your media sources.

A handwritten signature in black ink, appearing to read 'Stephen Ndung'u Karau'.

**Dr. Stephen Ndung'u KARAU, MBS, OGW, COL (Rtd)**  
**AMBASSADOR/ PERMANENT REPRESENTATIVE**

**Encl.**



## STATEMENT REGARDING SPECIAL PROCEDURES MANDATE HOLDERS CLAIMS OF PATTERNS OF POLICE AND SECURITY FORCES BRUTALITY IN KENYA

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The Permanent Mission of the Republic of Kenya to the United Nations Office in Geneva wishes to acknowledge receipt of the letter of 12<sup>th</sup> October 2017 from six Special Procedures Mandate Holders entitled **“Joint urgent appeal from Special Procedures”** which was followed by a Press release issued through the Office of the High Commissioner for Human Rights with the same content entitled **“Kenya must lift ban and end pattern of police brutality ahead of poll, UN Experts warn”**. The two communications make serious allegations of police brutality following action taken by the Kenya Police and other security agencies to control violent protests that came in the wake of the announcement of the presidential election results on the 11<sup>th</sup> of August 2017 and those polls’ subsequent annulment by Kenya’s Supreme Court on 1<sup>st</sup> September 2017.

Kenya views the allegations made in the communications with deep concern as they give an unsubstantiated and one sided view of the developments which have taken place since the elections. It is our position that the views emanating from officials of the Human Rights Council are expected to present all the facts correctly, ascertain that the views of all sides are reflected and ensure that all claims made are verifiable.

While we have conveyed the letter to the relevant authorities in the capital to provide a substantive response on the claims, we wish to convey a preliminary response to the issues outlined in the letter.

Firstly, we wish to point out that the Government of Kenya has a constitutionally mandated duty to protect all the people of Kenya and their property and ensure that no life is lost or property damaged. In that regard, it should be noted that the Kenya Police has consistently endeavoured to carry out its mandate of protection under difficult circumstances in the wake of the elections, whereby demonstrators have acted violently, using crude weapons, such as machetes and stones, destroying and looting property, and disrupting business, as well as the daily livelihood activities of ordinary people in three of the major cities in the country. This has included targeting of Police stations by the demonstrators. The police have risked their own lives in carrying out their responsibilities in a bid to restore order, and have used the necessary means as mandated by law to control and disperse the protestors.

Secondly, the claim that measures to respond to the various allegations of police brutality are inadequate and leading to a climate of impunity are also misleading. Kenya does not condone the use of excessive force or violence in any form against any person. In situations where there have been any allegations of use of force by the police or security agencies, investigations are carried out and those suspected of carrying out any malpractices are dealt with in accordance with the law. Indeed, the Independent Experts themselves correctly pointed out that several investigations had been launched, including one into the violence that followed the 8<sup>th</sup> August general election. It needs to be appreciated however, that we cannot have a situation of instant justice. Investigations take time, including gathering evidence that will ensure that prosecutions



are undertaken in a fair and credible manner in order to dispense justice, with fairness, while upholding the rights of the accused as well as the victim.

Thirdly, it needs to be recognized also that whereas Kenya believes in the right of any citizen to picket, protest, assemble, or associate with one another, or to express their views freely, they must do so peacefully and unarmed and these rights must not be at the expense of the rights of other citizens to peace, security and the ability to carry out their day to day activities without interference. In a bid therefore to prevent further excesses by demonstrators whose leaders had called for daily protests and demonstrations against the Independent Electoral and Boundaries Commission (IEBC) in the central business districts of Nairobi, Mombasa and Kisumu, activities which were becoming increasingly disruptive and destructive and trampling on and violating the rights of other citizens, the Government took a decision to safeguard these rights and temporarily only allow protests in areas outside the central business districts of the aforementioned cities.

It is clearly a demonstration of the independence of the Judiciary in Kenya that the Opposition members were able to take this matter to the High Court which made a determination on 17<sup>th</sup> October 2017 that the temporary ban on anti-IEBC demonstrations in the central business districts of those cities be lifted.

Fourthly, it must be emphasized that Kenya being a constitutional democracy believes in the rule of law and the separation of powers between the Judiciary, the Executive and Parliament, and there is no interference by any of these branches in the work of the other. In that regard, after nullification of the Presidential elections by the Supreme Court, the Executive took the necessary administrative and financial measures to ensure that the order of the Supreme Court to carry out a repeat poll was implemented. Parliament on the other hand, of its own volition, determined that there was need to amend some sections of the electoral laws to ensure the smooth conduct of the polls and announcement of the results and hence effectively carry out the will of the people. It is regrettable that the Opposition Parliamentarians boycotted this important legislative function of Parliament, despite which the Elections Amendment Act was passed by a majority in both the National Assembly and the Senate and will become part of Kenyan law, once assented to and gazetted.

Kenya wishes to reaffirm its strong belief in the role played by the Special Procedures Mandate holders in the implementation of human rights and fundamental freedoms. Consequently, we appreciate the efforts that the mandate holders have made to raise their respective concerns regarding the unfolding developments in Kenya related to the past and forthcoming polls. The Government of Kenya remains ready to work with the mandate holders, other human rights mechanisms and civil society, in ensuring that all rights of the people in Kenya are implemented fully.

17 October 2017

**Permanent Mission of the Republic of Kenya  
to the United Nations Office in Geneva and  
other International Organizations in Switzerland**