

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 24/7, 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **serious criminal charges against eight human rights defenders who took part in a peaceful demonstration.**

According to the information received:

On 18 December 2014, Messrs. **Gacheke Gachihi, Wilfred Olal, John Koome, Kenneth Kirimi, Francis Sakwa, Denis Ouma, Okello Odhiambo** and **Denis Okota**, from Bunge La Mwananchi, a Kenyan movement advocating for social justice and human rights, took part in a peaceful demonstration against the Security Laws (Amendment) Bill. The mentioned Bill was at the time being debated in Parliament. It was adopted by Parliament on 18 December 2014 and was signed into law by the President on the following day.

While protesters marched towards the Parliament building singing, they were confronted by a contingent of armed officers from the General Service Unit Police who violently dispersed the demonstration. After demonstrators decided to retreat and use an alternative route to reach the Parliament building, they were again

confronted by armed police officers who again used force to disperse them. The aforementioned eight activists were arrested and subsequently charged under the Penal Code with “taking part in an unlawful protest” and “inciting violence”.

On 19 December 2014, the activists appeared before the Milimani Law Courts, which denied them cash bail, despite the fact that the state attorney reportedly had no objection to this. The activists were instead imposed a very high bail bond as a condition for their release, pending the opening of their trial. On 23 December 2014, all eight human rights defenders were released upon payment of a bail bond of Kenyan Shillings 300,000 (about 2,700 euros).

A first hearing has been scheduled for 3 March 2015. Mr. Wilfred Olal, who had previously been arrested and charged with a criminal offense of “rioting” could face life imprisonment, if found guilty. Although he was arrested many times in the past, he has reportedly never been convicted for a criminal offense.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed that the criminal charges against the aforementioned activists appears to be related to the legitimate exercise of their rights to freedom of opinion and expression and to freedom of peaceful assembly. Grave concern is also expressed that these criminal charges may be perceived as the punishment for their peaceful initiative to demonstrate against the Security Laws (Amendment) Bill.

In this context, we would like to draw the attention of your Excellency’s Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In particular, we refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR) ratified by Kenya on 1 May 1972. We further allude to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5 and 6.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide information concerning the legal grounds for the use of force to disperse the aforementioned demonstration and how these measures are compatible with international human rights law.
3. Please indicate the legal basis for the arrest and detention of the aforementioned activists and how these measures are compatible with international norms and standards as contained inter alia in the International Covenant on Civil and Political Rights.
4. Please indicate what measures have been taken to ensure that the legitimate right to assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Michel Forst
Special Rapporteur on the situation of human rights defenders