

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

Mandates of 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; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on violence against women, its causes and consequences.

REFERENCE: AL/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (89-15)
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Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 16/4, 24/5, 16/5, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged arbitrary arrests and detentions of members of civil society organizations in the context of peaceful assemblies, and excessive use of force by police, including allegations of sexual abuse of one female demonstrator.

Highway Self-Help Group (HSHG) is a Non-Governmental Organization (NGO) that advocates for youth development and the rights of youth in the Mathare constituency in Nairobi.

Bunge la Mwananchi is a pro-poor social movement that demands social equality and focuses on empowerment and participatory democracy in Kenya.

According to the information received:

On 17 February 2014 at 11:00 a.m., three police officers from the Huruma police station in Nairobi reportedly disrupted a peaceful meeting organized by the Highway Self-Help Group (HSHG). The three police officers requested the organizers to provide them with permit papers for holding meetings. The police

officers reportedly arrested the following seven members of HSHG as they were unable to comply with this request: Ms. **Sarah Ashina**, Mr. **George Luvala**, Ms. **Susan Mutindi**, Mr. **Alex Kamande**, Mr. **Francis Gachui**, Mr. **Steven Muturi** and Mr. **Peter Mwangi**.

Ms. Ashina was eight months pregnant at the time of her arrest. It is alleged that one of the police officer in charge of her arrest slapped her in the face and pushed her to the ground. Furthermore, at the Huruma police station, the police allegedly confiscated Ms. Ashina's phone and denied her access to her family. Police officers also reportedly kicked and beat the other six members of HSHG with sticks and guns.

Ms. Ashina and Ms. Mutindi were reportedly both charged with "obstructing a police officer" under section 253(b) of the penal code. In addition, Ms. Ashina was charged with "assaulting a police officer" and "resisting arrest" under section 253 (a) of the penal code. The five men, Mr. Luvala, Mr. Kamande, Mr. Gachui, Mr. Muturi and Mr. Mwangi, were charged with "drunkenness".

All of the five men pleaded guilty to avoid prosecution, paying a 400 KSH fine each, and were released on 18 February 2014. Following pressure from local human rights activists, Ms. Ashina was allegedly released on the night of 17 February 2014 on bail-bond, after having spent almost 12 hours in an overcrowded police cell. Ms. Mutindi allegedly pleaded not guilty and was released on a cash-bail of 10,000 KSH. According to sources, none of the seven arrested members of HSHG had access to a lawyer while in detention.

On 18 February 2014, Ms. Ashina failed to appear in Court due to health complications and received a warrant of arrest. The first mention to Court was set on 4 March 2014. On 4 March 2014, Ms. Ashina appeared in Makadara Law Court, which reportedly ruled that she was not in a position to take a plea due to her pregnancy status and lifted the warrant of arrest against her. Ms. Ashina is expected to take a plea on 8 May 2014 –her baby is due on 18 March 2014.

On 13 February 2014, the Nairobi police reportedly arrested the following four members of Bunge la Mwananchi: Mr. **Wilfred Olal**, National Coordinator of the social movement, Mr. **Gacheke Gachihi**, Mr. **John Koome** and Mr. **Nelson Mandela**. At the time of their arrest, the four mentioned individuals were participating in a peaceful protest against the high level of unemployment and the prevalence of corruption in the country. While the organizers notified the police two weeks prior to the event, on the day of the protest, more than 500 police officers violently dispersed and arrested the protestors. The four above-mentioned individuals were reportedly charged with "riot after proclamation" and were released on a cash bail of 200,000 KSH.

On 15 October 2013, members of Bunge la Mwananchi and Bunge la Wamama Mashinani reportedly organized a peaceful demonstration against the tax regime.

The demonstration began at around 10:00 a.m. at the Tom Mboya monument in Nairobi. Shortly after the demonstration started, officers from the Nairobi Central Police reportedly arrived and dispersed the protestors claiming that the assembly was illegal. The police officers allegedly violently arrested the following protestors: Mr. **Kiptoo Kipkorir John**, Mr. [REDACTED], Mr. [REDACTED], Mr. **Wilfred Olal**, Mr. **John Koome** and Ms. [REDACTED]. A police officer allegedly sexually abused Ms. [REDACTED] during the course of her arrest.

It is alleged that these arrests are part of a pattern of harassment and stigmatisation of social activists and human rights defenders, including State instigated propaganda against civil society referred to as "evil society representing foreign powers".

We are concerned that the reported arbitrary detentions of the above-mentioned individuals may be related to their legitimate work in defence for human rights and in the exercise of their rights to freedom of peaceful assembly, association, and opinion and expression. We are also concerned about the treatment of women during arrests and detention, and sexual violence committed against women activists by law enforcement officers. We are similarly concerned regarding allegations of excessive use of force by law enforcement officers.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the fundamental principles set forth in 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts

of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Moreover, we would like to refer your Excellency's Government to the following provisions of the International Covenant on Civil and Political Rights (ICCPR) acceded by the Republic of Kenya on 1 May 1972:

- article 19, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.";

- article 21, which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others; and

- article 22, which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this connection, we would like to refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

In addition, with reference to the alleged human rights violations committed against Ms. Sarah Ashina, Ms. Susan Mutindi, and Ms. [REDACTED], we would like to draw the attention of your Excellency's Government to article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Article 4 (b) of the Declaration stipulates that States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should refrain from engaging in violence against women. Furthermore, article 4 (c & d) notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women (to which your Excellency's Government acceded on 9 March, 1984) whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay. In this recommendation, the Committee sets out specific punitive, rehabilitative, preventive and protective measures States should introduce to fulfil this obligation.

Furthermore, article 7 (c) of the International Convention on the Elimination of all forms of Discrimination against Women requires States Parties to take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would further like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association that underlines that States have "to take positive measures to establish and maintain an enabling environment" for individuals exercising the right to freedom of association and "to actively protect peaceful assemblies." (A/HRC/20/27, para. 33 and 63).

In addition, we would like to refer to the 2006 report to the General Assembly (A/61/312) (of the Special Representative of the Secretary-General on the situation of human rights defenders) and in particular to paragraph 98 which states that "in conformity with article 15 of the Declaration [on Human Rights Defenders], the Special Representative urges States to ensure that law enforcement agencies and their members are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies, including the Declaration on Human Rights Defenders, the Code of Conduct for Law Enforcement Officials and other relevant treaties, declarations and guidelines. The Special Representative also advises all States that all allegations of indiscriminate and/or excessive use of force by law enforcement officials should be properly investigated and appropriate action taken against the responsible officials".

Moreover, 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. Are the facts alleged above accurate?

2. Has a complaint been lodged by or on behalf of the aforementioned individuals and/or associations?

3. Please provide detailed information on the judicial and administrative proceedings conducted, and if criminal or disciplinary sanctions have been adopted against the alleged perpetrators.

4. Please explain or confirm the legal grounds for restrictions of peaceful assemblies and for the arrest of the above named individuals. Please include detailed information on the norms regulating: peaceful assemblies, the conduct of “drunkenness” and the criminal offenses of “obstructing a police officer”, “assaulting a police officer” and “resisting arrest”. Moreover, please indicate how these measures are compatible with international norms and standards as stated, among others, in the UDHR and the ICCPR.

5. Please indicate whether and how victims will be compensated.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency’s Government adopt effective measures to prevent the recurrence of these acts.

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

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

Maina Kiai
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