

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; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: AL
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20 November 2015

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; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 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 the alleged denial of entry to, and deportation from, Republic of Korea of Mr. **Vital Nshimirimana**, notwithstanding possession of a valid entry visa for the country to allow his attendance at an international civil society event.

Mr. Vital Nshimirimana is a lawyer, civil rights leader and General Delegate of "**Le Forum pour le Renforcement de la Société Civile**" ("The Forum for the Strengthening of Civil Society"), a local umbrella organization of civil society organizations. He is also part of the "**Halte au troisième mandat**" ("Stop the third term of office") campaign, a movement formed in opposition of President Pierre Nkurunziza of Burundi's decision to run for a third presidential term. The movement, which began in January 2015, is comprised of 304 non-profit associations and mobilized peaceful demonstration against President Nkurunziza's third term.

Mr. Nshimirimana is the holder of a passport from Burundi (number OP301853) that expires in May 2016.

Mr. Nshimirimana was expected to attend the 8th Assembly of the World Movement for Democracy (WMD) in Seoul, Republic of Korea. He was scheduled to speak about the experience of Burundi and its democratic struggle.

A communication regarding allegations of the Government of Burundi declaring passports of their nationals as stolen to Interpol, including the case of Mr. Nshimirimana, has been sent to the Government of Burundi on 20 November 2015 (BDI 6/2015).

According to the information received:

On 31 October 2015, Mr. Nshimirimana arrived at the Incheon International Airport in Seoul, Republic of Korea, after about 15 hours of air travel from Kigali, Rwanda, via Doha, Qatar, to attend the 8th Assembly of the World Movement for Democracy.

Upon arrival at the airport, an immigration officer verified Mr. Nshimirimana's documents and told him to report to his superior. That supervisor informed Mr. Nshimirimana that Interpol records indicated that his passport was stolen. It is alleged that he was orally told that the Government of Burundi had reported it stolen, but no records were shown to him.

Mr. Nshimirimana attempted to clarify that the information was false, since he was holding the travel document with the valid entry visa, issued by the embassy of the Republic of Korea in Kigali, Rwanda, in his hands. He reportedly tried to explain that the Government of Burundi is allegedly declaring passports stolen as a strategy to silence activists and political opposition.

In the same conversation, Mr. Nshimirimana informed the officer that he had travelled on the same passport since 2011, including travelling to four countries in the two previous months (Belgium, Kenya Uganda and Rwanda). He also explained that the latest entries and exits in two countries had been, respectively, on Sunday and Friday of the previous week and that not one of the immigration officers had informed him that his passport was listed as stolen.

Mr. Nshimirimana further explained that other Burundians opposing President Nkurunziza's third term were facing the same situations regarding their passports being reported as stolen when they arrived in other countries. However, in those cases, the individuals were able to provide explanations to the immigration authorities and were successful in entering countries as such Belgium, Senegal, USA and the Netherlands.

Despite the clarifications Mr. Nshimirimana provided, the officer informed him that his passport was invalid. He requested to contact the organizations that invited him and showed the officer their information and contacts. The officer informed him that these contact persons would not be able to provide additional assistance because the immigration authorities were relying on information from Interpol.

The request by Mr. Nshimirimana to appeal the decision and access a lawyer in Republic of Korea as a matter of due process, as was stipulated in information available in the waiting room at the airport, was denied by the officer.

After six hours of waiting and discussion in a designated waiting room, Mr. Nshimirimana was brought to a custody room within the airport for about 35

minutes. He then embarked on a flight back to Kigali with his passport and a document about the reasons for the deportation handed directly to the crew.

On 1 November 2015, Mr. Nshimirimana was allowed to reenter Kigali, Rwanda, where he is currently in exile after spearheading protests against President Nkurunziza's third term in office.

Serious concern is expressed about denial of entry to, and deportation from, Republic of Korea of Mr. Nshimirimana in spite of his possession of a visa issued by the Government. Further concern is expressed that the reported declaration of Mr. Nshimirimana's passport as stolen prevented him from attending an important civil society event and may be connected to his legitimate work as human rights defender, and therefore unduly restricts his rights to freedom of peaceful assembly, freedom of opinion and expression and his freedom of movement.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
2. Please provide information on Mr. Nshimirimana's denial of admission to Republic of Korea, and legal grounds for his deportation, on 31 October 2015, and how these measures are compatible with the Republic of Korea's international obligations particularly with regards to the rights to freedom of peaceful assembly and freedom of opinion and expression.
3. Please provide information about how Mr. Nshimirimana was granted a visa to enter Republic of Republic in his passport, notwithstanding an alert from Interpol about the travel document where the visa was to be placed.
4. Please indicate the reasons that Mr. Nshimirimana was allegedly denied the right to appeal the decision by the immigration authorities and why was he refused the ability to get in touch with the inviting organizations.
5. Please explain how the efforts your Excellency's Government related to compliance with international security standards from Interpol were balanced against Mr. Nshimirimana's fundamental rights to freedom of peaceful assembly and freedom of opinion and expression in accordance with international and regional human rights standards.

6. Please indicate what measures have been taken to ensure that human rights defenders, political activists and members of political parties from other countries can operate in a safe and enabling environment and interact freely with the civil society without restrictions of any kind while in, and visiting, the Republic of Korea.

We would appreciate receiving a response within 60 days.

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

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

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the rights to freedom of movement, freedom of opinion and expression and freedom of peaceful assembly, enshrined in articles 12, 19 and 21, respectively, of the International Covenant on Civil and Political rights, acceded to by the Republic of Korea on 10 April 1990.

In addition, we draw the attention of 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to 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. We would also like to draw specific attention of your Excellency's Government to article 5, which stipulates the rights to assemble peacefully, to associate freely and to communicate with non-governmental or intergovernmental organizations.

In particular, we would like to draw the attention of Your Excellency's Government to the Commentary to the referenced Declaration by Special Rapporteur on the situation of human rights defenders (A/61/312) which indicates that "travel restrictions imposed on defenders in order to prevent them from participating in assemblies of different kinds outside their country of residence is contrary to the spirit of the Declaration and the recognition in its preamble that individuals, groups and associations have the right to —promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels."

Furthermore, we note that Human Rights Council resolution 24/5 (operative paragraph 2) "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."