

Mandates of the Working Group of Experts on people of African descent; 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 minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL
USA 14/2014:

28 August 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group of Experts on people of African descent; 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 minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 18/28, 25/2, 24/5, 25/5, 25/32, and 26/12.

The alleged undue delays in the investigation and provision of appropriate reparations in the case of Trayvon Martin were the subject of a joint allegation letter submitted to your Excellency's Government by the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (AL Af. Descent 2012 G/SO 214 (78-15) USA 15/2013).

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **killing of a young African-American man, and the subsequent reported excessive use of force and acts of intimidation against demonstrators and journalists in the city of Ferguson, as well as the lack of transparency and access to information concerning the investigation into this killing and the police response to protesters.**

According to the information received:

On 9 August 2014, an 18-year-old African-American man, Mr. Michael Brown, was shot to death by a police officer in Ferguson, Missouri. It is reported that

Mr. Brown was unarmed when he was shot multiple times after an altercation with a police officer. Sources alleged that the use of force was excessive and not in compliance with international standards related to the use of force and firearms by law enforcement officials.

Since that date, daily protests have called for an independent and transparent investigation into the killing of Mr. Brown. Law enforcement officials appear to have met these reportedly mostly peaceful protests with excessive use of force and acts of intimidation, engendering a climate of fear.

On 11 August 2014, it is alleged that law enforcement responded to a largely peaceful demonstration with tear gas and rubber bullets. It is reported that the police used indiscriminate force against demonstrators and residents protesting the killing of Mr. Brown, as well as against journalists, who were ordered to leave the area and to cease filming.

On 13 August 2014, elite police of Special Weapons and Tactics (SWAT) teams directed military equipment, including armored vehicles and assault rifles, at peaceful protesters gathering near a church. It is also reported that law enforcement officials shot tear gas and rubber bullets at the crowd, including at retreating protesters.

On the same day, two journalists were reportedly assaulted by police forces in a restaurant from where they were reporting on the events. The two journalists were sent to a precinct station where they were held for a short period, before being released without any charges.

On 19 August 2014, it is alleged that two journalists were assaulted and arrested by the police. While reporting on the protests, the journalists were confronted by police in armored vehicles with guns pointed at them and ordered to walk forward. While the journalists were walking with their hands in the air and stating that they were journalists, police shot both journalists with rubber bullets. They were subsequently arrested and later told their detention was for “failure to disperse.” It is reported that at least 11 journalists have been detained in Ferguson while covering the protests.

Following these events, demonstrations continued to occur in the city of Ferguson, on the grounds of alleged racial discrimination against the African-American population. It is reported that demonstrators continued to face undue restrictions to their right of peaceful assembly, including through the police’s practice of “kettling” and arresting protesters. Since the demonstrations started, police have reportedly failed to identify agents provocateurs from the mostly peaceful crowd and to guarantee the conduct of peaceful assemblies.

We wish to express serious concern about policing methods after the killing of Mr. Brown. Serious concern is also expressed about the lack of transparency and access

to information, both in the investigation into the killing of Mr. Brown and the police response to protesters. This lack of transparency and access to information appears to have been influential in the inception of the protests and a deliberate strategy by the police in the handling of subsequent peaceful demonstrations.

We also have serious concern over the allegations of excessive use of force against peaceful demonstrators and various acts of intimidation, including arbitrary arrests, against protesters exercising the rights to expression and assembly and journalists covering the demonstrations.

We are also particularly concerned by the alleged low levels of representation of the majority African-American community in the local police department and local government in Missouri.

We take note of and appreciate the fact that the U.S. Department of Justice has launched an inquiry into the death of Mr. Brown under relevant U.S. civil rights laws. We would urge an expeditious and impartial investigation, and the inquiry to include an assessment of the compliance of acts of local government, including police action with U.S. obligations under international human rights law, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination.

While we do not wish to prejudge the actions described in the above information, the alleged acts appear to be in contravention of international human rights law to which the United States is obligated: the right of life, the right for peaceful protesters to assemble and express themselves, and the freedom of the press to report on events without intimidation or harassment. The above-stated allegations have also brought to the fore the need to address manifestations of racial discrimination faced by African-Americans within the justice system.

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.

Since 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 the details, and where available the results, of any investigation and judicial or other inquiries carried out in relation to the killing of Mr. Michael Brown; the alleged undue restrictions to the right of peaceful assembly; the alleged assaults against the aforementioned four journalists and the alleged discrimination

faced by African-Americans. If no inquiries have taken place, or if they have been inconclusive, please explain why that is the case.

3. In the event that the alleged perpetrators of the cases mentioned above are identified, please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

4. Please indicate any remedial action taken vis-à-vis the victims or his/her family.

5. Please indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is guaranteed, and that the physical and psychological integrity of those exercising this right is guaranteed.

6. Please provide information on the regulations and operational procedures for law enforcement agents concerning the use of force in the context of law enforcement during assemblies and whether such regulations and procedures are compatible with international standards on the use of force and firearms by law enforcement.

We would appreciate a response within 60 days.

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.

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Chair-Rapporteur of the Working Group of Experts on people of African descent

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

Reference to international human rights law

In connection with above, and without prejudice to the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards.

We would like to refer to the right to freedom of peaceful assembly as set forth in Article 20 of the Universal Declaration of Human Rights and in article 22 of the International Covenant on Civil and Political Rights (ICCPR), which the United States of America ratified on 8 June 1992. We would also like to refer to your Excellency's Government to article 19 of the ICCPR, which guarantees the right to freedom of opinion and expression, and to Article 6(1) of the ICCPR, which recognizes that every human being has the right not to be arbitrarily deprived of his or her life.

We should further like to refer to the right to equality and non-discrimination of demonstrators, in accordance with your Government's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, such as the one established in Article 5 (d) point vii. ,

We draw your attention to the "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities". In particular article 4(1) of the Declaration requires governments to take measures to ensure that minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.

We also refer to the UN Code of Conduct for Law Enforcement Officials which provides, "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty" (Article 3). Reference is also made to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990). Principle 14 provides that law enforcement officials may not use firearms, except under the conditions stipulated in principle 9, which makes clear that firearms may only be used in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger ... and only when less extreme measures are insufficient to achieve these objectives. Principle 9 further stipulates that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life. In its concluding observations issued in April 2014 (CCPR/C/USA/CO/4), the Human Rights Committee stressed the necessity for the US to prevent the excessive use of force by law enforcement officers by ensuring compliance with the aforementioned principles.

Furthermore, we would like to refer to Human Rights Council resolution 25/38, which calls upon States "...to pay particular attention to the safety of journalists and media workers covering peaceful protests, taking into account their specific role,

exposure and vulnerability”. Council resolution 25/38 further urges States “...to avoid using force during peaceful protests and to ensure that, where force is absolutely necessary, no one is subject to excessive or indiscriminate use of force” (paragraphs 8 and 9).

According to the Human Rights Committee, article 6 (1) of the ICCPR include the obligation for States parties to take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces. We refer also to Article 50 of the ICCPR, which provides, “The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”

We further refer to the recommendations contained in thematic reports of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, especially those contained in his report A/HRC/20/27, in which the Special Rapporteur made clear that “Assembly organizers and participants should not be held responsible and liable for the violent behaviour of others” (para. 93). In this report, the Special Rapporteur stressed that States “have a positive obligation to actively protect peaceful assemblies. Such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agents provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies” (para. 33). The Special Rapporteur also emphasised that he “is opposed to the practice of “kettling” (or containment) whereby demonstrators are surrounded by law enforcement officials and not allowed to leave” (para. 37).

Concerning the protection of journalists, in the aforementioned report A/HRC/20/27, the Special Rapporteur further called upon States to “ensure the protection of those monitoring and reporting on violations and abuses in the context of peaceful assemblies.” (para. 94)