

**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 and of the Special Rapporteur on the rights to freedom of peaceful assembly and of association.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1)
USA 23/2011

21 December 2011

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/4 and 15/21.

In this connection, we would like to bring to your Excellency's Government's attention information received concerning an **alleged excessive use of force against peaceful protesters who were assembled in various cities throughout the United States of America.**

According to the information received:

In November 2011, groups of peaceful protesters from the "occupy movement" were subjected to forced removal by law enforcement officials in different cities within the country, including Portland, Davis, Oakland, New York, Seattle and Denver.

In the conduct of such operations, law enforcement officials in these cities allegedly used violence as a means to forcibly remove unwilling protesters from the public areas in which they were located. Reportedly police equipped with riot gear and law enforcement officers would have made use of heavy crowd control techniques and weaponry, including pepper spray, teasers and LRAD "sound cannons" to disperse protesters.

In some instances, police allegedly used force unnecessarily and disproportionately; pepper spray and tear gas would have been used deliberately on protesters at a very close distance, causing serious injuries to several protesters. In line with the information received, investigations on the alleged events above

resulted in ‘disciplinary measures’ for those police officers accused of misconduct. However, no criminal investigations have, or are in the process of, being pursued.

Further reports indicate that the adopted crowd control techniques used to manage and disperse these assemblies might have been intended to insert fear and intimidation on protesters throughout the country.

Should this information be corroborated, concerns are expressed that the aforementioned allegations of excessive use of force by law enforcement officials against protesters could have been related to their dissenting views, criticisms of economic policies, and their legitimate work in the defense of human rights and fundamental freedoms.

Without prejudging the accuracy of these allegations, we urge your Excellency’s Government to take all necessary measures to guarantee that the rights and freedoms of all peaceful protesters be respected. We also request that your Excellency’s Government adopt effective measures to investigate, sanction those responsible, and prevent the recurrence of these acts.

We would like to draw your Excellency's Government attention to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, Principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” (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).

We wish to appeal to your Excellency’s Government to ensure that the right to freedom of peaceful assembly, as recognized under article 21 of the International Covenant on Civil and Political Rights, is enjoyed free of arbitrary restrictions. In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular preambular paragraph 7, where it recognizes that, “exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting... political beliefs”. In this context, we would like to recall operative paragraph 1 of the same resolution that, “Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely,... 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.”

We would also like to appeal to your Excellency’s Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights, 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.”

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary accurate?
2. Has a complaint been lodged?
3. What was the legal basis for these actions that limit the exercise of the legitimate rights of the protesters?
4. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to these allegations.
5. In the event that the alleged perpetrators 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?
6. Please indicate whether compensation has been provided to any victim(s) or the family of the victim(s).

We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

Frank La Rue
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