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PROCEDURES SPECIALES DU
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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 extrajudicial, summary or arbitrary executions

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (33-27) G/SO 214 (107-9)
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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 extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, and 17/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the killing of Mr. **Hassan Guyo**. Mr. Guyo was founder member and the Program Director at Strategies for Northern Development (SND), an organization that promotes human rights for women, children and refugees and also works on human trafficking issues in Eastern Africa. He was also a member of the UNDP Amkeni waKenya Civil Society Governance Program Stakeholders Reference Group.

According to the information received:

On 7 August 2013, Mr. Hassan Guyo attended, as a human rights observer, a demonstration against the suspension and the arrest of the Chief of Bori location, in Moyale, in the Marsabit County. Reportedly, the Kenya Defence Forces and Kenya Police Service were deployed to disperse the demonstrators. It is reported that police and army officers used excessive force, including live bullets, against protesters, resulting in serious injuries to at least two individuals.

While driving to meet with victims, Mr. Guyo reportedly found a road blocked by army officers. While he was standing near a barricade, Army officers reportedly shot at him and other demonstrators. It is reported that he raised his arms to

indicate that he was not armed and as a sign of surrender. As he turned to board his motorcycle, he was reportedly shot dead.

Reportedly, military and police forces fired bullets for more than one hour at individuals, including a uniformed Kenya Red Cross official, trying to rescue Mr. Guyo, preventing him from receiving any medical assistance.

It is reported that the death certificate indicates that “the cause of death of the late Hassan Guyo is chest and abdominal injuries due to a perforating single gunshot. There was also a major laceration of the left lobe of the liver through the inferior and superior surfaces”.

Grave concern is expressed about the killing of Mr. Hassan Guyo, as well as about the fact that this killing may be related to the exercise of his rights to freedom of association and of expression. Further concern is expressed about the security and the physical and psychological integrity of individuals exercising their rights to freedom of association and of peaceful assembly, and of expression in Kenya.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw the attention of your Excellency's Government on the principles set forth in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), acceded by Kenya on 1 May 1972. Articles 3 and 6 (1) of these instruments respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life. Furthermore, we would also like to refer to the principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council) which underlines that “there shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances (...)”. Moreover, we would like to remind your Excellency's Government of the 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). In particular, principle 12 provides that “everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the UDHR and the ICCPR, Governments and law enforcement agencies and officials shall recognise that force and firearms may be used only in accordance with principles 13 and 14.” Law enforcement officials may only use force when it is strictly necessary and only to the extent required, for the performance of their duties. The use of force and firearms must as far as possible be avoided, using non-violent means before resorting to violent means. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated, including giving a clear warning of the intent to use force and to provide sufficient time to heed that warning, and providing medical assistance as soon as possible when necessary.

We would also like to refer to the right to freedom of opinion and expression as set forth in article 19 of the ICCPR, 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.”

We would further like to refer to article 22 of the ICCPR, 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 respect, we also refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 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 this connection, 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 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, 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 the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully.

- 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.

With regards to the role of media and human rights defender in monitoring demonstrations, we would like to refer to the 2007 report to the General Assembly of the former Special Representative of the Secretary-General on the situation of human rights defenders (A/62/225, paras. 91 and 93) that underlines how “monitoring of assemblies can provide an impartial and objective account of what takes place, including a factual record of the conduct of both participants and law enforcement officials. [...] The very presence of human rights monitors during demonstrations can deter human rights violations. It is therefore important to allow human rights defenders to operate freely in the context of freedom of assembly. [...] Journalists as well have an important role to play in providing independent coverage of demonstrations and protests. [...] The media must therefore have access to assemblies and the policing operations mounted to facilitate them.”

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. Are the facts alleged in the above case accurate?
2. Has a complaint been lodged on behalf of Mr. Guyo?
3. Please provide the details, and where available the results, of any investigation, medical examination, and judicial or other inquiry which may have been carried out in relation to the killing of Mr. Guyo. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecution which has been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please clarify whether compensation has been made available to the victim’s family?
6. Please indicate what measures have been taken, or are being taken to ensure that the physical and psychological integrity of those exercising the rights to freedom of association, of peaceful assembly and of expression in Kenya.

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 to freedom of association and of peaceful assembly, and of expression 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.

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
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