

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: UA
KEN 5/2016:

9 November 2016

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; 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 violent repression of peaceful protests in Nairobi on 3 November 2016**.

According to the information received:

On 3 November 2016, a peaceful demonstration of around 300 people took place in Nairobi, in the Uhuru Park venue. The protests were sparked by indignation over the escalation of corruption scandals by state authorities and, in particular, by allegations that a large amount of money had been diverted from the Health Ministry. The protesters were demanding that the President act on the issue of corruption in the country, or resign.

In response to the peaceful demonstrations, the Police cordoned off the location where protests were taking place, and discharged tear gas canisters at the crowd gathered at the venue. The Police reportedly infiltrated the demonstration in plain clothes or in uniform, heavily armed.

The police reportedly beat protesters with batons. The journalists covering the event were also beaten and their equipment was damaged. At least 24 individuals were arrested and detained.

The protestors announced their intention to replicate their protest every Thursday until they receive a satisfactory government response.

The excessive use of force by security forces on 3 November happened in the context of what appears to have become a common pattern of violent dispersion of demonstrations by the Police in the past few months, in the context of upcoming elections.

Serious concern is expressed regarding the alleged violent repression of peaceful protests in Nairobi, which has reportedly led to numerous injured protesters, and arbitrary detentions. We express concern that these actions represent a disregard for the safety and security of individuals as well as the safety of journalists in the context of protests on an issue of great public interest, and we express concern at the broader effects these actions have on civil society, in particular on the exercise of the right to freedom of expression, both by individuals and by journalists.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency's Government to the international principles and norms applicable to the present case.

We would first like to draw the attention of your Excellency's Government to the rights to freedom of expression and opinion and freedom of peaceful assembly as set forth respectively in articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Kenya on 1 May 1972, and articles 9 and 11 of the African Charter on Human and People's Rights (ACHPR), which Kenya ratified on 23 January 1992. We would like to reiterate the principle enunciated in Human Rights Council 12/16, which calls on States to refrain from imposing restrictions that are not in line with the high threshold of article 19(3), including on discussion of government policies; government activities and corruption in government; and on peaceful demonstrations.

We would also like to refer to article XII (1) of the Declaration of Principles on Freedom of Expression in Africa, where public figures shall be required to tolerate a greater degree of criticism and any sanctions imposed for such criticism should not be so severe as to inhibit the right to freedom of expression.

In addition, we would like to 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 highlight articles 1, 2, 5, 6 and 12. In this context, we wish to also refer to Human Rights Council resolution 22/6, which urges States to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law and that it is not used to impede or restrict the exercise of any human right (OP 4). It further urges States to acknowledge publicly the important and legitimate role of human rights defenders in the promotion of human rights, democracy and the rule of law (OP 5).

Moreover, we would like to draw your Excellency's Government attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which reminds States that it is their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as

well as offline as well as to take 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.

Furthermore, we would like to recall the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies which established a set of recommendations for State authorities to manage assemblies in accordance with international human rights law.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the above-mentioned rights in compliance with international instruments.

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. Please provide any additional information and any comment you may have on the above mentioned allegations.
2. Please provide the details, and when available the results, of any investigation, medical and judicial, or other inquiries carried out in relation to injuries of protesters in the context of the abovementioned peaceful protests. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide information concerning the legal grounds for the arrest and detention of the protesters, as well as the charges brought against them, indicating how these are in compliance with international norms and standards.
4. Please provide detailed information concerning measures to ensure that everyone, including human rights defenders, journalists, and political opponents can exercise their rights to freedom of peaceful assembly and expression in Kenya without fear of harassment or retaliation, including the ability to express critical views critical of the human rights situation and of the governance.

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.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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