

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 35/15, 32/32, 34/18, 34/5, 26/7 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information indicating **persistent repression of peaceful protests and the use of excessive force by Kenyan police and security forces during protests, particularly in the context of post-election violence on 11 and 12 August 2017 and during the more recent demonstrations related to the upcoming re-run of the presidential elections.**

Concerns about restrictions to political expression in the period leading up to the elections were raised by Special Procedures mandate holders in a communication sent to your Excellency's Government on 27 July 2017 (KEN 10/2017). We regret that we have not yet received any reply to this communication.

According to information received:

On 8 August 2017, national elections were held in Kenya to elect the President, members of Parliament and local government representatives. The elections took place against a backdrop of rising political and ethnic tensions, cases of hate speech and intimidation, despite a call by a group of Special Rapporteurs stressing that Kenya must act to ensure peaceful elections¹.

Following the declaration of the results of the presidential elections in the evening of 11 August 2017 and until 13 August 2017, protests - which included assembly of mostly unarmed protesters, tire-burning, erecting improvised roadblocks, as

¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21946&LangID=E>

well as incidences of stone-throwing - turned violent in several areas, notably in and around Kisumu and Nairobi.

As a response to the protests, the Kenyan police and security forces allegedly used excessive force, including indiscriminate use of tear gas, water cannons, and use of live ammunition on the crowds. According to available information, 37 persons, including children and women, lost their lives and more than 170 were injured.

Since 1 September, and the Supreme Court's decision invalidating the results of the presidential election and ordering that a new presidential election be held within 60 days, the opposition has called for nation-wide demonstrations. Numerous reports indicate that in some cases, these demonstrations have been met with excessive use of force by the Kenyan police and other security agencies.

In this context, on 28 September 2017, at least 27 University of Nairobi students were injured when the police allegedly entered the Architecture, Design and Development (ADD) building and the compound of the University of Nairobi (UoN). The police reportedly raided lecture halls, laboratories and hostels following student protests against the arrest of a student leader and a Member of Parliament for Embakasi East. Some of the protesters disrupted traffic in the vicinity of the UoN and the UoN administration called in the police, who allegedly used excessive force in the ensuing operation.

On 2 October 2017, the opposition called again for nation-wide demonstrations to, inter alia, peacefully react against and oppose acts that had resulted in different violations and to draw public attention to the observance of human rights and fundamental freedoms. Participants in demonstrations were called to exercise their legitimate right to defend human rights and fundamental freedoms. Protests were organized in the following cities: Nairobi, Kisumu, Mombasa, Kakamega, Garissa, Kitui, Embu, Homa Bay, Siaya, Migori, Busia and Vihiga. Most of these counties reportedly experienced unrests with anti-riot police engaging in running battles with the protesters, using teargas and rubber bullets.

Measures taken to respond to the above allegations are reportedly inadequate and have led to a climate of impunity for law enforcement officers. The Independent Police Oversight Authority is facing serious challenges in discharging its mandate and investigating allegations of excessive use of force by law enforcement officers, which includes what appears to be systematic and consistent lack of cooperation by the Kenya Police Service, inadequate resources, and reluctance of victims and witnesses to come forward for fear of retaliation by security agencies. In a recent interview, the Inspector-General of the police noted investigations are on-going; however, he also appeared to deny claims of excessive use of force by the police.

Reports indicate political interferences in the independence of the judiciary. Following the decision of the Supreme Court of 1 September 2017, invalidating the results of the presidential election, the Independent Electoral and Boundaries Commission set 26 October 2017 as the new date for the presidential election re-run. In the aftermath of the Supreme Court ruling, there has been an increase in verbal attacks against individual judges and the judiciary, which appear to be aimed at intimidating them. In this context, we received reports that the government has or is considering the suspension of the activities of the International Development Law Organisation.

President Kenyatta has criticized the Supreme Court's decision and has reportedly publicly referred to the Chief Justice and other Supreme Court judges as foreign funded crooks. The Chief of Justice has expressed concern about the response, or lack thereof, of Kenyan security forces to these threats and attacks.

It has been also reported that President Kenyatta has instructed Parliament to amend electoral legislation in a manner that would limit the role of the judiciary in addressing election-related petitions, and require a return to older (manual) forms of election result transmission methods.

Finally, we received information of civil society representatives being denigrated and intimidated, and civil society space being further restricted in the aftermath of the move, currently on hold, to de-register Kenya Human Rights Commission and Africog, and are concerned at the continued lack of implementation of the Public Benefits Organisations Act, pending since 2013.

We are gravely concerned by the information received, which points to a persistent trend of excessive use of force by law enforcement, and continuing impunity for the use of such force, resulting in violations of Kenya's obligations under international law to prohibit torture, inhumane or degrading treatment or punishment and summary executions.

Grave concern is further expressed at the allegations of violent repression of peaceful protests in Kenya, including excessive use of force by Kenyan police and security forces, which has allegedly led to deaths and injuries. We are concerned that the incidents and responses set out above could deter individuals from exercising and defend their rights to freedom of expression and peaceful assembly, leading to a further escalation of political tensions.

We are equally concerned by other reports of attempts to undermine or threaten the independence of the judiciary, to restrict freedom of expression and jeopardise the safety of human rights defenders, particularly during protests.

While we do not wish to prejudge the accuracy of the above 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 right to life, to the prohibition of torture, to the rights to freedom of expression and opinion and freedom of peaceful assembly as set forth respectively in articles 1, 6, 7, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded by Kenya on 1 May 1972, and articles 4, 5, 9 and 11 of the African Charter on Human and People's Rights (ACHPR), which Kenya ratified on 23 January 1992.

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 and 2, which establish both, everyone's right to promote and to strive for the protection and realization of human rights and fundamental freedoms, as well as the State responsibility to protect, promote and implement all human rights and fundamental freedoms. Articles 5 and 12 establish everyone's right to participate in peaceful activities and to be protected effectively in reacting against, or opposing, through peaceful means, activities and acts that result in violations of human rights and fundamental freedoms. Finally, article 6 establish everyone's right to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Lastly, we would like to draw the attention of your Excellency's Government to the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/72/178) which established the relevance of the prohibition of torture and other ill-treatment for the extra-custodial use of force by law enforcement officials. 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 abovementioned 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 the deaths and injuries of protesters in the context of the above-mentioned allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide statistical information on the number of cases of alleged extra judicial killings, torture or inhuman or degrading treatment or punishment officially recorded, on the number of investigations initiated and on the number of perpetrators involved, which were identified since August 2017.

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.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Annalisa Ciampi
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Michel Forst
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