

**Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**

REFERENCE:  
AL KEN 3/2018

2 February 2018

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **shutdown of four television networks by the Communication Authority of Kenya (CAK), allegedly for having broadcasted an event organized by the political opposition parties contesting the results of the Kenyan presidential election of 2017.**

According to the information received:

On 26 January 2018, several media managers and editors were summoned in Nairobi by high governmental authorities and told that their networks would be suspended and their licenses revoked if they broadcasted an event scheduled on 30 January 2018 where an opposition leader would undertake a symbolic oath as "the people's president" in protest of the disputed elections of 2017. The authorities allegedly warned that they considered the event as "treasonous", and thus potentially leading to criminal prosecution.

On 30 January 2018, while the mock ceremony was taking place, the CAK, together with the Kenyan police, shut down the television networks that were broadcasting the event: Citizen TV, Inooro TV, NTV, and KTN News. After the shutdown, the Cabinet Secretary of the Ministry of Interior issued a statement claiming that the broadcasting of the event was a serious breach of security, jeopardizing the security of Kenyans. The networks remained off the air in the following days.

According to a report in local media, later confirmed by CAK's director general, KTN News received a letter from CAK soon after the shutdown citing the network's "defiance" of a government "ban on live coverage of the events" as reason for the cut in transmission.

On 1 February 2018, the High Court of Kenya suspended the CAK's order to shut down Citizen TV, Inooro TV, KTN News and NTV, pending the hearing and determination of the petition filed before court by a third party. The court has also

issued an order barring the authorities from interfering with all television transmission before hearing of the case on 14 February 2018.

Deep concern is expressed at decision of the Kenyan authorities to interrupt and completely shut down Citizen TV, Inooro TV, KTN News and NTV, for broadcasting an event by the political opposition in Kenya contesting the presidential elections of 2017. While I welcome the suspension of the order by the High Court of Kenya, I remain concerned that a final decision has not yet been reached and could eventually overturn the suspension. These measures represent a severe restriction on the right to freedom of expression, as they impede the free exchange of information on political matters of interest to the general public, and appear not to be duly justified as necessary and proportional for preserving national security.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment you may have on the above-mentioned allegations.
2. Please provide information on the legal basis of the orders shutting down Citizen TV, Inooro TV, KTN News and NTV, and explain how they are compatible with article 19 of the ICCPR. In particular, please explain how the broadcasting of the event on 30 January 2018 could have represented a threat to national security severe enough to merit the complete shutdown of the networks concerned.
3. Please provide information on the measures taken by your Excellency's Government to ensure that information concerning the political situation of Kenya is freely disseminated in the media.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge your Excellency's Government to take all necessary measures to ensure that the right to freedom of expression is fully respected in Kenya. Moreover, I request that your Excellency's Government adopt effective measures to prevent future shutdowns and restrictions on any type of media outlet.

I would further like to inform your Excellency's Government that I am considering to publicly express my concerns in the near future as, in my view, the information in our possession is sufficiently credible to indicate a matter warranting immediate attention. My public statement would indicate that I have been in contact with your Excellency's Government to clarify the case 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 my highest consideration.

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

### **Annex**

#### **Reference to international human rights law**

While I do not want to prejudge the accuracy of these allegations, they appear to be, if true, in contravention of the right to freedom of opinion and expression, guaranteed by article 19 of the International Covenant on Civil and Political Rights, ratified by Kenya on 1 May 1972.

In this vein, I wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognize the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society Any limitation to the right to freedom of expression must meet the criteria established by

international human rights standards, such as article 4 and 19 (3) of the ICCPR and 29 (2) of the Universal Declaration on Human Rights. Under these standards, limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

In particular, I would like to underline that any restriction on expression or information on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. In particular, a government must demonstrate that (a) the expression or information at issue poses a serious threat to a legitimate national security interest; (b) the restriction imposed is the least restrictive means possible for protecting that interest; and (c) the restriction is compatible with democratic principles.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.