

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
AL KEN 4/2018

26 March 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 35/15, 34/18 and 34/5.

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. **Evans Njoroge**, a student human rights defender, after a demonstration for students' rights outside Meru University.

Mr. Njoroge was a students' human rights defender at Meru University of Science and Technology, a public, higher-education institution in Tigania West, Kenya. He was the Secretary General of the University's Student Council, and was particularly active in advocating for the rights to freedom of expression and assembly within the student community of the University.

According to the information received:

On 27 February 2018, protests took place at the Meru University of Science and Technology on rising tuition fees. Police dispersed the crowd by firing indiscriminately. It is alleged that they were profiling and targeting student leaders.

Mr. Evans Njoroge, a student leader fled from the Police. Two Police Officers pursued him into a private compound at the Karebe Village. The Police found him hiding under a tree and shot him. He received a bullet to the head at close range and died instantly.

The officer who fired the shots was dressed as an Administration Police officer but changed his uniform after the shooting in an attempt to conceal his identity.

On 28 February 2018, the Independent Policing Authority (IPOA) dispatched a team to investigate the incident and announced that if an officer is found culpable he would face the full force of the law.

On 3 March 2018, a post-mortem was conducted at Meru Level Five Hospital in the presence of IPOA and criminal investigation officers. Initial findings indicate he was shot through the back of his head causing instant death. The full report is not yet available.

The Cabinet Secretary of the Ministry of Education indicated in a press release she had constituted a team to urgently investigate the matter with a view to making recommendations to forestall similar situations in the future. Several politicians have condemned the death.

A statement was recorded at Meru Police Station in relation to the incident. The Meru County Police Commander said they would conduct independent investigations and the perpetrator would be brought to book, further stating “whoever will be found culpable will be prosecuted even if he is one of us since he is a criminal like any other.”

The Independent Policing Oversight Authority announced they concluded the investigation and passed the file to the Office of the Director of Public Prosecution.

We express serious concern at the extrajudicial execution of Mr. Evans Njoroge, who appears to have been intentionally targeted and killed by members of the Police Force in relation to his participation in a student protest and his activities as student rights defender. Further concern is expressed at the use of indiscriminate firing to dispel a peaceful protest at Meru University of Science and Technology and the apparent profiling and targeting of student leaders.

We welcome statements from the Cabinet Secretary of the Ministry of Education, Meru County Police Commander, IPOA and others that the killing will be investigated and perpetrators prosecuted. We call on the government to ensure that investigations are conducted promptly, effectively and thoroughly, with independence, impartiality and transparency and fully in line with international standards.

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 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/or comment you may have on the above-mentioned allegations.
2. Please provide information on the results of the inquiry to investigate the killing of Mr. Njoroge, led by the Independent Policing Oversight Authority and, when available, on the results of the investigation led by the Office of the Director of Public Prosecution.
3. Please share the Government's views on the causes of Mr. Njoroge's killing. Please provide information with regard to the alleged mismanagement of the student conflict at Meru University by the Kenyan authorities, and the disproportionate repressive reaction to them including alleged excessive use of force.
4. Please provide information on the measures adopted by your Excellency's Government to guarantee the safety of all student leaders and to ensure the respect of the student's rights to freedom of expression, peaceful assembly, and association.

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, 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(s) responsible for the alleged violations.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Michel Forst
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), ratified by Kenya on 1 May 1972, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation. Moreover, in General Comment No. 31, the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. 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, 27 August to 7 September 1990) provide that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8). According to the Basic Principles and the Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. 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.

We would as well like to remind your Excellency's Government of the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. We would also like to refer in this regard to the Minnesota Protocol on the investigation of Potentially Unlawful Death.

Article 19 of the ICCPR enshrines the right to freedom of expression. In relation to this right, we wish to reiterate the principle enunciated in Human Rights Council Resolution 12/16, which calls on States to recognise the exercise of the right to freedom of opinion and expression as one of the essential foundations of a democratic society. 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.

With regard to freedom of peaceful assembly, established in article 21 of the ICCPR, we would like to make reference to Human Rights Council resolution 24/5, and in particular operative paragraph 2 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.”

Furthermore, we would like to refer to 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 refer to articles 1 and 2 of the Declaration which state that everyone has the right 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. Article 5 of the Declaration provides for the right to form, join and participate in non-governmental organizations, associations or groups.

In particular, we wish to note that articles 5 and 6 reiterate the rights to meet or assemble peacefully; to form, join and participate in non-governmental organizations, associations or groups; to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; as well as the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights. We would also like to refer to provisions in the Declaration as article 12, which provides that State must take all necessary measures to ensure the protection of everyone 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.