

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL KEN 1/2019

21 March 2019

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 torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 34/18, 34/19, 32/19 and 32/4.

In this connection, we would like to follow up the communication we sent in February 2018 (communication AL KEN 2.2018) concerning **instances of sexual and gender-based violence during the 2017 General Election period**.

We regret that, as of today, we have not received any reply from your Excellency's Government while we continue to receive information that cases of sexual and gender-based violence during the 2017 General Election period continue to emerge and to be documented. In particular, we are alarmed by the findings of the investigation conducted by the Kenya National Commission on Human Rights (KNCHR), which put the number of victims of sexual and gender-based violence during the 2017 General Election to at least 201.

We would like to reiterate our concern that the large majority of victims of sexual and gender-based violence during that period did not have access to medical treatments, as recommended by the National Guidelines on the management of sexual violence in Kenya, which hampered the recovery of the victims and impeded, among others, the collection of essential forensic evidence for prosecution purposes. We continue to be concerned at the deterrent effect of sexual and gender-based violence on women who were exercising their rights to freedom of expression, assembly and association and political participation during the electioneering period. The widespread occurrence of sexual violence curtails women's participation in the public and political life, including exercising the basic right to vote, especially in the context of stigma and widespread impunity over these forms of violence against women and girls.

We keep being informed that impunity remains prevalent for crimes of sexual and gender-based violence which occurred during the 2017 General Elections. We are alarmed by the continuing small number of complaints filed with the police, which is reportedly due to several factors, such as the fact that the police was a key perpetrator of

these violations, fear of reprisal and stigmatization and lack of evidence. We are also concerned that the police dismissed the KNCHR's findings as "sensational" and "preposterous".

We would like to recall the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Human Rights Council, in which he stressed that "rape and other serious acts of sexual violence by officials in contexts of detention or control not only amount to torture or ill-treatment, but also constitute a particular egregious form of it, due to the stigmatization they carry" (A/HRC/7/3, para. 69).

We regret that similar violations had already occurred in the context of the previous electoral processes of 2007-2008 and that the Fact-finding Mission to Kenya of the Office of the UN High Commissioner for Human Rights and the Committee on the Elimination of Discrimination against Women (CEDAW) had already provided recommendations aimed at supporting your Excellency's Government in addressing and preventing the recurrence of such violations.

We therefore remain highly interested in receiving responses to the questions included in our previous communication and reproduced below for easy reference:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the type of action taken to investigate and establish responsibilities at commanding and lower levels among security agents involved in the violence. Please also indicate whether the National Police has shared the initial deployment plan with the Office of the Director of Public Prosecution.
3. Please provide details on what measures, if any, were in place to prevent and respond to sexual violence by the 180.000 security forces deployed to provide security during the electioneering period.
4. Please specify whether security and law enforcement officers receive compulsory trainings on human rights and prevention of sexual violence and abuse.
5. Please specify how many complaints have been recorded by the police and what is being done to ensure that survivors can file complaints in a safe and dignified way, with no risk of retaliation from security agents who are alleged involved.
6. Please describe what action is being taken to ensure implementation of the national guidelines on management of sexual violence in Kenya, notably with regard to timely post-rape medical care to survivors.

7. In light of the repeated incidence of sexual and gender-based violence against women and men during elections time, including the General Election of 2007, please provide detailed information on the efforts made by the State to prevent the re-occurrence of sexual and gender-based violence, particularly by the police and security forces. Were there any specific legislation in place but not adequately enforced during the 2017 General Election? Was there any early warning mechanism in place?

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dubravka Šimonovic

Special Rapporteur on violence against women, its causes and consequences

Ivana Radačić

Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice