

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE:
AL SRB 2/2020

27 July 2020

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 34/19, 42/22, 34/18 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegation of the excessive use of force against and detention of protesters (up to 150 persons) by security forces, during protests which begun peacefully on 7 July 2020. The protests are reportedly ongoing in the capital and other cities.

According to the information received:

On 6 May 2020, emergency public health measures implemented due to the COVID-19 pandemic were lifted in Serbia, placing it amongst the first European countries to restore freedom of movement, allow large gatherings (e.g. pre-election activities, soccer matches, sport competitions, festivities) and reopen business, restaurants and clubs. Subsequent to this, however, the COVID-19 infection rates exponentially increased.

In view of this, on 7 July 2020, a Presidential announcement introduced restrictions aimed at curbing the escalating transmission of COVID-19, which included a ban on all public gatherings in the capital city of Belgrade (effective as of 8 July 2020) and a weekend curfew preventing the Belgrade residents from leaving their homes (effective between 10 and 13 July). After the broadcasted announcement, a large group of people of tens of thousands gathered peacefully in front of the Parliament to protest against the state's response to the worsening health crisis and its management of the COVID-19 pandemic.

At around 11pm on the evening of 7 July, a group of demonstrators broke through the protective fence in front of the National Assembly building with the intention

of entering it. Police in an attempt to prevent the breach and disperse the protesters violently clashed with the protesters. The police resorted to using force with batons, released tear gas into the crowd and used police horses and dogs against the protesters. The clashes escalated and spread all over the streets of Belgrade. Several smaller groups of protestors have reportedly attacked the police force by throwing stones, flares, glass bottles and setting police vehicles on fire.

In the following days, protests continued in the capital and in other cities. On 8 July 2020, thousands of demonstrators gathered in front of the National Assembly again and clashes with the police forces recurred. On 9 July, the protests were peaceful, while on 10 July there were reported clashes and violence. According to information received, protests were peaceful between 11 and 13 July, but the police violence continued.

Footage and live broadcasts on the national N1 television caught numerous examples of police use of force and brutality. A number of recordings show both uniformed and plain clothes officers beating people with batons and kicking them including children and women who are already on the ground and not resisting, bystanders or those running away. In a particular video while restraining a protester, the person is knocked to the ground and an officer puts his foot on their head. There are recorded instances of collective attacks of up to 15 officers on single individuals, as well as of police beating and kicking and firing tear gas directly at protesters. Some of the perpetrators of the violence used metal sticks, uncommon for Serbian police and are reportedly suspected not to be part of security forces but to be acting with the acquiescence of state authorities. Officers have also reportedly left injured protesters unattended. One video clip shows officers leaving their car to move a protester out of their vehicle's path and then abandoning leaving him lying on the sidewalk despite his injuries and inability to walk after having been badly beaten by numerous officers.

According to statements from the Police Directorate, it is not possible to provide a total number of people that suffered injuries or individuals put under arrest. However, based on daily information provided by the Ministry of Interior, it could be estimated that up to 150 protestors have been arrested and detained, with some of them convicted with up to 60 days imprisonment for insulting a police officer or with other charges. Several hundreds of police officers are reported injured, according to the Police Directorate.

Even though a number of video clips clearly show police officers in riot gear attacking peaceful and defenceless protesters, which is confirmed by a number of complaints submitted to the Belgrade Centre for Human Rights, public officials including the President, the Prime Minister, Minister of Interior, Ombudsman and Director of Police claim that there had been no excessive use of force by the police and security forces. Up to date, the Public Prosecutors Office in Belgrade

and in other cities have not initiated any investigation into the alleged cases of police brutality, and of ill-treatment, and have remained silent on several dozen criminal complaints on the use of violence amounting to ill-treatment by police forces, which have been submitted by individual victims and civil society organizations.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern about the above-mentioned allegations of transgressions against peaceful protesters by Serbian security forces in Belgrade and in other cities across the country. In this regard, we would like to draw your Excellency's attention to articles 7, 9, 14, 19, and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Serbia on 21 March 2001, codifying the absolute and non-derogable right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of persons, right to a fair trial, the rights to freedom of opinion and expression and the right of peaceful assembly, respectively.

We express grave alarm at the reported use of excessive force by security forces to disperse protesters, including the use of force through the use of tear gas, batons, dogs and horses against non-violent and injured individuals showing no sign of resistance. While the introduction of necessary and proportionate emergency measures in the context of the COVID-19 pandemic may be permitted under international law, under no circumstances can any individual lose their right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, protected in articles 2 and 16 of the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by Serbia, and article 7 of ICCPR. We also recall the right to peaceful assembly, stated in article 21 of ICCPR, which provides that "no restrictions may be placed on the exercise of [the right to peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others".

We would further like to call the attention of your Excellency's Government to the right to liberty and security of person in accordance to article 9 of the ICCPR, "protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or not" (CCPR/C/GC/35, para 9). Moreover, "any extra-custodial use of force that is intended to inflict pain or suffering on a "powerless" person (that is, a person who is under direct physical or equivalent control and is unable to escape or resist) as a vehicle for achieving a particular purpose amounts to an aggravated form of cruel, inhuman or degrading treatment or punishment" (A/72/178, para 30) and cannot be justified under any circumstances whatsoever.

We recall that the State remains responsible for any act of its state agents, “even if it exceeds its authority or contravenes instructions” (*ultra vires*) (see article 7 of the Articles on State Responsibility for Internationally Wrongful Acts. Moreover, we express concern at the alleged presence of armed private individuals using violence against protesters, recalling that under customary international law, the conduct of private individuals are attributable to the State in situations where it directs, instructs or exercises effective control over their activities (*id.* Art. 8). In all other situations, the State has a due diligence obligation to prevent violations committed by private actors (ICCPR Art. 2(1) and Human Rights Committee, General Comment no 31 para. 8).

The Special Rapporteur on Torture following his country visit to Serbia in November 2017, concluded in his report that there are credible indications of frequent torture and other cruel, inhuman or degrading treatment or punishment occurring at the hands of the police which needed to be addressed (A/HRC/40/59/Add.1). We recall the recommendations therein and urge your Excellency’s Government to combat impunity and undertake prompt, effective and impartial investigations into the above mentioned allegations in accordance with articles 7 and 12 of the CAT and article 2(3) of the ICCPR.

We also would like to raise our concern with regard to those arrested and detained for reasons related to the protests and riots. In particular, we appeal to your Excellency’s Government to take all necessary measures to guarantee their right not to be arbitrarily deprived of their liberty, and to due process before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR.

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.

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 rights of the above-mentioned person(s) 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 detailed information on measures taken by your Excellency’s Government to carry out prompt, impartial, independent and effective investigations into alleged cases of excessive use of force and ill-

treatment, including but not limited to those documented on video clips widely circulated in the media. If no investigations have been undertaken, please indicate how this is compatible with Serbia's international law obligations.

3. Please provide detailed information on the precise measures taken in follow-up of the report of the Special Rapporteur on torture on his official visit to Serbia in November 2017 (A/HRC/40/59/ADD.1), in particular his observation regarding systemic police violence (para 20) and the specific recommendation regarding the establishment of institutionally independent oversight and accountability mechanisms (para 24).
4. Please provide information on the factual and legal basis for the arrest, detention and trials of the up to 150 protesters. Please include information on how many detained protesters are in custody, have been released and whether those still detained have been charged with criminal offences, have been granted access to a lawyer of their choice, and have been promptly brought before a judge to determine the validity of their detention. Please also include information on how many protesters have been convicted and on what charges.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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 may 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.

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

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Annex
Reference to international human rights law

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

We would like to bring to the attention of your Excellency's Government, articles 7, 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which codifies the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, right to liberty and security, the guarantees of due process, the protection of the rights to freedom of opinion and expression and the rights to freedom of peaceful assembly, respectively, no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order ("ordre public"), the protection of public health or morals or the protection of the rights and freedoms of others.

We would like to stress the universal prohibition of torture is absolute, non-derogable and peremptory in character and has been restated in numerous international instruments of human rights, humanitarian and criminal law. It is reflected inter alia, in article 5 of the Universal Declaration of Human Rights (UDHR) and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Serbia became party to the CAT following ratification on 12 March 2001.

In the policing of assemblies, the primary duty of law enforcement agencies is to facilitate peaceful assemblies and protect individuals from harm (CCPR/C/GC/AGO/CO/1 para 21). With regards to the excessive use of force, we would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, "[l]aw enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result". In addition, Principle 5 provides that, "[w]henver the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment" (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

Furthermore, we would also refer to the paragraph 7b of Human Rights Council Resolution 16/23, which urges States “(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”