

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

REFERENCE:
AL USA 3/2021

14 January 2021

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 43/4.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning allegations of serious human rights violations during the 6 January protest in Washington DC which led to violence, physical harm and destruction of property.

Verbal attacks of public officials on the media were the subject of a previous communication and a press release sent by my predecessor to your Excellency's Government, respectively on 6 November 2017 (AL USA 26/2017) and 2 August 2018¹. We thank your Excellency's Government for its response dated 12 January 2018, but we remain concerned about the impact of such attacks given the new allegations received.

According to the information received:

On 6 January 2020, a large protest in Washington DC was addressed by the US President himself and other political leaders. Shortly after the meeting, large numbers of protesters marched to the Capitol, destroyed media equipment, broke down the barriers around the building and forced their way on to the premises to disrupt proceedings of the US Congress underway to confirm the results of the Presidential election. In the ensuing violence between the protesters and the police, five individuals died and dozens of others were injured.

It is alleged that the attack on the Capitol was instigated by violent extremist groups using social media platforms. It is also alleged that false statements deliberately made by senior leaders, including President Trump himself, about the legitimacy of US Presidential election results, served to incite the groups. Following the 6 January protest, several social media accounts, including that of President Trump, were reportedly suspended over fears of "incitement to further violence".

Reportedly, over 100 events are planned across the country for the coming days, where statements could lead to incitement of violence and hatred.

Without prejudging the accuracy of the information received, I would like to express serious concern at the deliberate spread of false information online and offline

¹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23425&LangID=E>

by public officials and senior political leaders in order to discredit the democratic process and overturn the results of the US Presidential election, as well as the propagation of extremist ideologies by various groups to generate violence and hatred.

In this regard, I remind that the acts of senior public officials, including the Head of State, acting in an official capacity, are attributable to the State. I further remind that under human rights law, States are under the obligations to prohibit incitement to violence and hostility by law, to refrain from threats to the right to life and to physical integrity, to protect from such threats, and to respect and ensure the right of political participation in elections.

With regard to attacks against the media, I recall that my mandate previously raised concerns that intimidation and threats against the media “can increase the risks that journalists face, and could suggest that the acts of violence aimed at suppressing them in one way or another enjoy the acquiescence of the government”. I am concerned that a hostile environment for a free and independent press has serious adverse impact on freedom of expression and political participation in elections.

While acknowledging the need to address the threats of violence, I urge the Government to ensure that its responses are consistent with its international human rights obligations, including on freedom of expression and due process of the law.

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 my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the scope and status of investigations that may have been undertaken in relation to the above-mentioned events.

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, I 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.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press

release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to remind your Excellency's Government of its international obligations under articles 6 (1), 7, 9(1), 19, 20, 21 and 25 of the International Covenant on Civil and Political Rights (ICCPR), which the United States ratified on 8 June 1992, which protect the right to life, right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, right to security of person, right to freedom of expression, the obligation to prohibit incitement to violence and hostility, the rights to freedom of peaceful assembly, and the right to take part in the conduct of public affairs, directly or through freely chosen representatives, respectively.

It has long been established by the General Assembly, the Human Rights Council and the Human Rights Committee that permissible restrictions on the Internet are the same as those offline.²

Under Article 19(1) of the ICCPR, everyone has the right to hold opinions without interference. This right is absolute. Article 19(2), which protects the right to freedom of expression, states that this right shall include the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his [or her] choice." Under Article 19(3), any restrictions on freedom of expression must be "provided by law", proportionate, and necessary for the respect of the rights and reputations of others", "for the protection of national security or of public order, or of public health and morals".

The right to freedom of expression enshrined in Article 19 (2) of the ICCPR applies to everyone, and protects even expressions that "shock, offend or disturb". However, it does not protect speech that falls within the scope of article 20, although such speech must be restricted in accordance with aforementioned article 19 (3) ICCPR. Article 20 of the ICCPR places a duty on the part of the State to prohibit by law any "advocacy of ... racial ... hatred that constitutes incitement to discrimination, hostility or violence".

More generally, the State is under an obligation to respect and ensure the rights enshrined in the Covenant, see article 2 (1). This entails a negative obligation to refrain from violating the rights enshrined, and a positive obligation to protect individuals from human rights abuse committed by third parties (see Human Rights Committee, General Comment no. 31)

Under general international law, the acts of public officials, including the Head of State, are attributable to the State, see International Law Commission 2001 Articles on State Responsibility, even where they act *ultra vires*. As such, incitement to violence or hostility by public officials which lead to physical harm or the loss of life, contrary to articles 6 and 9(1) of the Covenant, may be attributable to the State.

² See General Assembly resolution 68/167; Human Rights Council resolution 26/13; Human Rights Committee, General Comment No. 34.

Lastly, I remind of the general duty to provide effective remedies to alleged violations, including the obligation to investigate alleged human rights violations and to prosecute and punish those responsible for the offence, see General Comments no. 31 paras. 15ff, no. 34 para. 23 and no. 36 para. 27.