

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; 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 Independent Expert on the situation of human rights in Somalia

Ref.: AL OTH 9/2023
(Please use this reference in your reply)

10 March 2023

Dear Mr. Kayd,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; 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 Independent Expert on the situation of human rights in Somalia, pursuant to Human Rights Council resolutions 50/17, 51/8, 44/5, 43/4 and 51/38.

In this connection, we would like to bring to your attention information we have received concerning **the alleged use of excessive and lethal force by security forces against protestors on 11 August 2022 in Somaliland. We are also concerned by the reported arrest and detention of protestors from the same demonstrations.**

According to the information received:

On 11 August 2022, supporters of opposition political parties in Somaliland held protests, including in Hargeisa, Burao and Ceerigaavo townships in Somaliland, to demand timely presidential elections after concerns arose that the 2022 presidential election in Somaliland, scheduled for 13 November 2022, may be delayed. Somaliland security forces reportedly used a mixture of live bullets, rubber bullets and tear gas in an attempt to disperse the demonstrators in Hargeisa, Burao and Ceerigaavo, reportedly resulting in the deaths of five individuals. The security forces reportedly mostly shot bullets into the air but in certain cases shot directly at protesters in order to intimidate and disperse them. Three of the individuals who died were killed due to gunshot wounds, while one individual was killed due to injuries caused by being hit by a police car and another individual suffocated after being taken to hospital due to the effects of tear gas.

At least 86 people (21 in Burao, 52 in Hargeisa and 13 in Ceerigaabo) were injured during the protests. 16 people (9 men and 7 women) were injured by gunfire. Security forces also reportedly arrested 332 protestors throughout the regions (160 in Burao, 142 in Hargeisa and 30 in Ceerigaabo), including a senior member of the opposition political party. Leaders of the political parties involved stated that the protests were peaceful. The deputy commander of the Somaliland police claimed that “dozens” of security personnel were injured during clashes with protestors and added that protestors possessed weapons

Mr. Essa Abdirahme Kayd

and damaged property.

By 16 August 2022, 72 detained protesters had been released without being charged, while 70 were remanded for seven days and held in different police stations in Hargeisa and Mandheera Prison, east of Hargeisa. By 17 August 2022, reportedly all individuals detained in Burao and Ceerigaavo had been released without being charged. There are reports that other individuals connected to opposition political leaders who criticized the use of excessive force during the protests have been intimidated, harassed and arrested. By 28 August 2022, of the individuals who were held in prolonged detention after the 11 August protests, 49, including 26 men and 23 women, had been released on bail after negotiations between the police and clan elders of those detained.

On 30 August 2022, the Somaliland authorities released a report on the events of 11 August 2022. It stated that “opposition parties were explicitly informed that they could hold peaceful gatherings outside their office premises across all regions of Somaliland, they were also informed that the police will be deployed to maintain the peace and to protect the demonstrators and community.” The report further indicated that opposition political parties had allegedly disregarded these instructions, with protestors spreading outside their offices warranting police to confront them to protect the peace.

On 11 September 2022, ten more men were released on bail, leaving 16 detainees still in detention relating to the protests. On 10 October 2022, seven senior politicians who had been transferred to Baki were released. On 13 October 2022, the last group of detained protesters were released from Mandheera Prison. All of the individuals detained in connection with the events of 11 August 2022 are now understood to be released and are not facing charges. The issue of the disputed election date continues and risks a deterioration in the situation if a consensus is not reached.

While we do not wish to prejudge the accuracy of the above-mentioned allegations, we are deeply concerned by the apparent excessive and lethal use of force by security forces against peaceful protesters across various towns in Somaliland, using tear gas, live ammunition, and rubber bullets, resulting in injuries of several protesters and leading to the death of at least five protesters. We are also deeply concerned at the allegations that live ammunition may have been used against protesters, as security forces should not resort to violence during peaceful protests. Should these allegations be confirmed, they would be in violation of international human rights law, in particular articles 6, 19 and 21 of the International Covenant on Civil and Political Rights (“ICCPR”).

We would like to respectfully recall that peaceful assemblies may only be dispersed in exceptional cases, and lethal force may only be used against specific individuals to address an imminent threat of death, or serious injury, and is subject to strict requirements of necessity and proportionality, in situations where less harmful measures are manifestly ineffective to address the threat.

Law enforcement officials may not use greater force than reasonably necessary. The acts of violent individuals should not be attributed to other participants of the assembly, and such violent conduct does not suffice to declare the whole

assembly as non-peaceful. This, and all other allegations of violence, should be investigated in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, with the aim to ensure that those responsible are brought to justice, promote accountability and prevent impunity, avoid denial of justice and repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.

While recognising that individuals originally detained have now been released, at least on bail, we are further concerned at the allegations of arbitrary arrests and detention without charge of individuals, including opposition political leaders, in relation to their participation in the peaceful protests and their due process rights being violated.

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.

We are issuing this communication in order to safeguard the rights of the above individuals from irreparable harm and without prejudicing any eventual legal determination.

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(s) you may have on the above-mentioned allegations, including on the allegations of the use of excessive and lethal force against protesters and the circumstances of the killing and injury of protesters.
2. Please provide the details, and where available, the results, of any investigation and judicial or other inquiry undertaken in relation to the above allegations of unlawful death, ill-treatment, and arbitrary detention reported in the context of the protests. Please explain whether they were conducted in compliance with international standards, particularly the Minnesota Protocol on the Investigation of Potentially Unlawful Death.
3. Please further provide the full list and details of all those arrested at the recent protests, as well as details on whether the arrested individuals were released or are currently detained. Please provide information on the legal bases of the above-mentioned arrests and detentions, whether any charges have been brought against the individuals detained, keeping in mind international human rights standards.
4. Please indicate what measures were taken to ensure that any use of force by security forces during the above-mentioned protests would only be used against specific individuals to address an imminent threat of death, or serious injury, keeping in mind international human rights standards and the need to avoid unnecessary harm. Please provide

further information on any investigations that have taken place or are planned into these allegations of excessive use of force by police and armed forces.

5. Please indicate which measures have been or are being taken to ensure accountability for the unlawful acts committed while policing assemblies, including the use of force, notably at the commandant level.
6. Please provide information on which measures have been taken to open avenues for dialogue with peaceful protestors and address their legitimate concerns regarding the possible delaying of political elections.
7. Please indicate what measures have been or are being taken to ensure that law enforcement is well trained to police assemblies according to the international standards and protocols relevant in this area.

This communication and any response received from you 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(s) responsible for 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 you to clarify the issue/s in question.

We would like to inform you that after having transmitted the information contained in the present communication, the Working Group on Arbitrary Detention may also transmit cases through its regular procedure in order to render an opinion on whether a deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. You are required to respond separately to the allegation letter and the regular procedure.

Please note that this letter does not in any way imply the expression of any opinion concerning the legal status of any country, territory, city or areas, or of its authorities.

Please accept, Mr. Kayd, the assurances of our highest consideration.

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

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

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

Isha Dyfan
Independent Expert on the situation of human rights in Somalia

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer you to the international norms and standards applicable to the present case. We would first like to recall article 20(1) of the Universal Declaration of Human Rights which states that “[e]veryone has the right to freedom of peaceful assembly and association”. We would further like to refer to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the rights to freedom of expression and opinion and freedom of peaceful assembly respectively. Article 21 states that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right 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”.

The Human Rights Committee further stated that “[a]rticle 21 of the Covenant protects peaceful assemblies wherever they take place: outdoors, indoors and online; in public and private spaces; or a combination thereof. Such assemblies may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. They are protected under article 21 whether they are stationary, such as pickets, or mobile, such as processions or marches” (CCPR/C/GC/37, para. 6).

We would like to remind you of the views expressed by the Human Rights Council noting that “imposing restrictions which are not consistent with paragraph 3 [of article 19 of ICCPR], including on discussion of government policies and political debate; reporting on human rights, engaging in peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups” must be refrained from (A/HRC/RES/12/16, para. 5(p)(i)). Moreover, the Human Rights Committee indicated that “restrictions on peaceful assemblies must not be used, explicitly or implicitly, to stifle expression of political opposition to a government (CCPR/C/MDG/CO/4, para. 51), challenges to authority, including calls for democratic changes of government, the constitution or the political system, or the pursuit of self-determination. They should not be used to prohibit insults to the honour and reputation of officials or State organs” (CCPR/C/GC/37, para. 49).

We would further like to recall that the Special Rapporteur on the right to freedom of peaceful assembly and of association has stressed in a report (A/HRC/20/27), that there is a positive obligation under international human rights law not only to actively protect peaceful assemblies, but also to facilitate the exercise of the right to freedom of peaceful assembly. The law only protects assemblies that are not violent and where participants have peaceful intentions, and that shall be presumed. Therefore, acts of sporadic violence or other punishable acts committed by others do not deprive peaceful individuals of their right to freedom of peaceful assembly (para. 25) (A/HRC/23/39, para. 49). We therefore remain concerned with regards to the allegations that the violence that occurred during peaceful assemblies was engendered by acts from protesters, as this contravenes international human rights laws and standards.

We would also like to recall that “[t]he principles of necessity and proportionality apply to the use of all force, including potentially lethal force. Specific rules apply to the use of firearms for law enforcement, also during assemblies (principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary)” (A/HRC/31/66, para. 59). Moreover, “[f]irearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (see A/HRC/26/36, para. 75). Intentional lethal use of force is only lawful where it is strictly unavoidable to protect another life from an imminent threat; this is sometimes referred to as the protect life principle (ibid., para. 70)” (A/HRC/31/66, para. 60). We would also like to draw your attention to principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement 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”. In its general comment no. 37, the Human Rights Committee stated that wherever possible, only law enforcement officials who have been trained in the policing of assemblies should be deployed for that purpose, and that, as a general rule, the military should not be used to police assemblies (para. 97). The Committee further noted that only in exceptional cases may an assembly be dispersed (para. 96). This may be the case if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence, but in all cases the rules on the use of force must be strictly followed.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

In relation to the allegations of restrictions on access to justice for protesters, we would like to remind you that “[a]ccess to justice, the rights to freedom of peaceful assembly and association, and the strengthening of civic space are inextricably linked” and that “barriers to access to justice should never be placed as deterrence measures undermining the essence of other rights” (A/HRC/47/24, paras. 20 and 22).

We wish to draw your attention to article 9 of the ICCPR, whereby everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention and no one shall be deprived of one’s liberty except on such grounds and in accordance with such procedure as are established by law. With reference to the jurisprudence of the Working Group on Arbitrary Detention, we wish to recall that the arrest or detention of individuals is considered arbitrary when it constitutes punishment for the legitimate exercise of human rights, such as freedom of opinion and expression, as well as assembly and association and participation in public affairs (see also CCPR/C/GC/35, para. 17).

Furthermore, we wish to draw your attention to a recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16), where the Working Group reiterated that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty (paragraph 50). The right to legal assistance must be ensured from the moment of deprivation of liberty and across all settings of detention, including, inter alia, criminal justice and administrative detention (paragraph 51). Legal assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees (paragraph 53).