

Mandates of the Independent Expert on the situation of human rights in Somalia; 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

Ref.: AL OTH 30/2023
(Please use this reference in your reply)

18 April 2023

Dear Mr. Kayd,

We have the honour to address you in our capacities as Independent Expert on the situation of human rights in Somalia; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 51/38, 50/17 and 43/4.

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 Somaliland security forces against protesters during demonstrations that took place from 27 December 2022 to 9 January 2023 in Las Anod town, Sool region in Somaliland. We are also concerned by the reported arrest and detention of protestors from the same demonstrations.**

According to the information received:

Excessive use of force against protesters

On 27 December 2022, following news of the killing of a prominent Somaliland opposition member by unidentified armed actors on 26 December 2022, protests erupted in Las Anod town, Sool region. In response to the protests, the Somaliland authorities deployed security forces, who allegedly used excessive force, including firing live ammunition directly at protesters, resulting in at least 71 civilian casualties (12 killed and 59 injured) during demonstrations that took place from 27 December 2022 to 4 January 2023.

A religious leader, who had encouraged the public to come out and take part in the demonstrations, was reportedly injured while the Somaliland security forces were attempting to arrest him at his home.

On 4 January 2023, clashes between the protestors and Somaliland security forces intensified after the security forces reportedly shot and killed a businessman (khat trader) belonging to a local Dhulbahante/Daarood clan militia after he allegedly refused to comply with a security instruction.

On the same day, the Somaliland security forces withdrew from Las Anod town, after members of the Dhulbahante/Daarood clan militia, reportedly linked to the victim, took up arms and confronted them. The clan militia subsequently took control of the town.

Mr. Essa Abdirahme Kayd

On 9 January 2023, the Somaliland police fired in the air to disperse the protestors, injuring one female civilian, who was part of a small group of protestors gathered in the center of Las Anod town, bringing the total number of civilian casualties to at least 72 (12 killed and 60 injured). Eventually, the elders in Las Anod intervened and managed to disperse the protestors.

The clashes in Las Anod town forced more than 1,500 households, an estimated 9,000 civilians, to flee their homes and seek refuge in the nearby villages. The Somaliland authorities also temporarily shut down a telecommunication company providing internet services.

Arrest and detention of civilians during the protests

On 6 January 2023, the Somaliland authorities reportedly released without charge 59 protesters, who had been arrested and detained in connection with the protests that took place between 27 December 2022 and 4 January 2023, following negotiations between the Somaliland authorities and the Dhulbahante/Daarood politicians from Las Anod town.

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 protesters in Las Anod town, Sool region in Somaliland, resulting in injuries of at least 60 protesters and leading to the death of at least 12 protesters. We are also deeply concerned at the allegations that live ammunition may have been used against protesters. 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. Standards related to freedom of peaceful assembly provide that the acts of violent individuals should not be attributed to other participants of the assembly, and any such violent conduct does not suffice to declare the whole assembly as non-peaceful. This, and all other allegations of excessive use of force by security, 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 all the individuals initially detained have now been released, we are further concerned at the allegations of arbitrary arrests and detention without charge of individuals, in relation to their participation in 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.

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 excessive use of lethal force against protesters, and on the circumstances leading to the death 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 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 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 any possible unlawful acts committed, 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 protesters and address their legitimate concerns regarding the killing of the Somaliland opposition member.
7. Please indicate what measures have been or are being taken to ensure that law enforcement is well trained to police peaceful assemblies according to the international standards and protocols relevant in this area.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received 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.

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 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. Essa Abdirahme Kayd, the assurances of our highest consideration.

Isha Dyfan

Independent Expert on the situation of human rights in Somalia

Irene Khan

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 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 States must “refrain from 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” (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 previous thematic report on best practices related to freedom of association and of peaceful assembly (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 joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies in 2016 (A/HRC/31/66), where the Special Rapporteurs urge that law enforcement officials must be adequately trained in facilitating assemblies. This training should include proper knowledge of the legal framework governing assemblies, techniques of crowd facilitation and management, human rights in the context of assemblies and the important role assemblies play in a democratic order.

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 of 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 pre-trial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees (paragraph 53).