

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the Working Group on Arbitrary Detention; the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Independent Expert on human rights and international solidarity and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: UA KEN 4/2024  
(Please use this reference in your reply)

1 October 2024

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; Working Group on Arbitrary Detention; Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Independent Expert on human rights and international solidarity and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 54/14, 51/8, 52/17, 52/9, 50/17, 52/4, 53/12, 53/5 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of abductions, enforced disappearances and detention of individuals, including protestors, activists, lawyers, medical professionals and human rights defenders in relation to the protests that occurred in June, July and August 2024, calling for the repeal of the proposed Finance Bill 2024/2025, and accountability from the Government.**

According to the information received:

In June 2024, peaceful protests began to take place in the capital city, Nairobi and across other towns in Kenya against the proposed Finance Bill 2024/2025. The protesters were demonstrating against the additional hardship on the already struggling Kenyan population that would be inflicted by the proposed Finance Bill, including introducing new taxes on basic commodities such as bread, vegetables and sugar. In addition, the Bill would introduce a new tax of 2.5% of the value of a car to be paid annually and increase existing taxes on financial transactions, as well as on land ownership.

On 18 June 2024, the proposed Finance Bill was tabled before Parliament and on that day a social media campaign under the tag line "Reject Finance Bill 2024" and "Occupy Parliament" was launched. On the same day, a special team from the National Intelligence Service (NIS) and the Directorate of Criminal Investigation (DCI) were reportedly put into action to monitor social

media to identify the supposed leaders of the protests or persons with a large online following. Allegedly, once an individual was identified as a person of interest, physical surveillance followed to curb dissent. Reports indicate that many of those followed online were deprived of their liberty, out of which some were subsequently forcibly disappeared. These persons were taken to unofficial detention facilities for interrogation and would later appear at police stations. Many were released in unknown locations, far from the places where they were forcibly disappeared and had limited ways to contact others or receive any aid. In addition, the police crackdown on protesters led to a wide number of arrests, injuries and death of protesters. Reportedly, on 18 June 2024, between 300 and 400 protesters were arrested. On 20 June 2024, about 100 people were arrested, one person was killed, one person later died from injuries sustained and more than 200 persons were reportedly injured from police violence on that day.

Following the crackdown on the protesters and the Government's refusal to engage in an open dialogue about the Finance Bill, activists and civil society organizations announced a campaign entitled, "7 Days of Rage: For We have Courage", starting on 21 June 2024. They subsequently called for a national strike on 25 June 2024.

On 25 June 2024, protesters gathered in various cities, including Nairobi, Mombasa, Eldoret, Kisumu, Garissa and in other places. The Kenyan Parliament passed the Finance Bill on that day. Shortly after the passage of the Bill, protesters stormed the Parliament and there was a clash with police forces. On that evening, it was reported that there were five dead, 21 people were abducted, protesters also sustained injuries from live bullets (13) and rubber bullets (4).

Until 8 August 2024, protests continued to be held across various parts of the country on various days. These protests begun as peaceful and often escalated into violence following provocation by police. Reports indicate fatalities and many people wounded, arrests and enforced disappearances. The Independent Policing Oversight Authority (IPOA), reported that there were incidents of excessive use of force by the police and alleged police misconduct including fatal shootings, shooting causing serious and minor injuries, assault and abductions.

#### *Cases of Enforced Disappearances*

Since the protests began on 18 June 2024, activists, lawyers, medical professionals and human rights defenders have reportedly been subjected to enforced disappearances. The actual number of cases is difficult to assess, however, the Kenya National Commission on Human Rights reported on 16 July 2024 that 59 persons have been abducted or are missing. A few of these cases are provided below:

On 17 June 2024, a journalist was abducted by persons believed to belong to the Directorate of Criminal Investigations (DCI). The individual was later released on the same day as a case of mistaken identity.

On 21 June 2024, one individual was reportedly abducted from his home by four men and a woman and taken to an unknown location, where he was interrogated mainly about how the protests were funded. He was later released before midnight on 22 June 2024.

On 23 June 2024, two other individuals were reportedly abducted by plainclothes officers as a result of their participation in the protests. One individual was released on 24 June 2024, and one was released the following day on 25 June 2024.

On 25 June 2024, at least 52 individuals were abducted by a unit of officers comprising of DCI and NSI officials. These individuals were reportedly identified through their social media activities.

Those released have described armed men in balaclavas arriving in unmarked cars to their places of residence in the middle of the night. The individuals were blindfolded, beaten and taken to unknown places where they were interrogated about the protests without the presence of their lawyers or being presented before a judge.

The fate and whereabouts of many more protesters remains unknown.

Without prejudging the accuracy of the above information or formulating a conclusion on the allegations, we express our serious concern at the alleged abductions, enforced disappearances, detention and excessive use of force against activists, lawyers, medical professionals and human rights defenders, notably in apparent retribution for exercising their human rights, including to freedom of expression, peaceful assembly and association. If confirmed, these allegations would constitute *prima facie* violations of fundamental human rights, including the right to not be arbitrarily deprived of liberty, and the absolute and non-derogable prohibition of torture and other ill-treatment under the International Covenant on Political and Civil Rights (ICCPR), ratified by Kenya on 1 May 1972. In particular, we draw attention to articles 6, 7, 9, 10, 14, 16, 18, 19, 21 and 22, read alone and in conjunction with article 2(3).

Furthermore, the alleged facts would also amount to be a violation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Kenya became a State party on 21 February 1997. The Committee against Torture and the UN Human Rights Committee have repeatedly concluded that enforced disappearances amount to torture with regard to the disappeared and entail the ill-treatment of relatives of the disappeared person, due to the anguish and uncertainty concerning the fate and whereabouts of their loved ones and the authorities' attitude of official indifference vis-à-vis their ordeal.

Notably, the absolute prohibition of enforced disappearance and the corresponding obligation to investigate and sanction those responsible have attained the status of *jus cogens*.

Moreover, we are further drawing your Excellency Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes in its article 2, the prohibition to practice, permit or tolerate enforced disappearances. Moreover, articles 7, 9 to 13 of the Declaration,

provide that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances; the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons and the obligation to make the findings of an investigation into the circumstances of the disappearance available upon request to all persons concerned and to ensure that all involved in the investigation are protected against ill-treatment, intimidation, or reprisal. Article 19 of the Declaration requires that victims of acts of enforced disappearance and their family obtain redress and integral reparation for the harm suffered.

Article 3 of the Declaration on the Protection of All Persons from Enforced Disappearance stipulates that, "each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction". This is a broad obligation which is assumed by States and is primarily an obligation to do something. This provision cannot be interpreted in a restrictive sense, since what it does is to serve as the general model for the purpose and nature of the measures to be taken, as well as for the content of the international responsibility of the State in this regard.<sup>1</sup>

With regard to the nature of the measures to be taken, the text of the article clearly states that legislative measures are only one kind. In referring to "legislative, administrative, judicial" measures, it is clear that, as far as the Declaration is concerned, it is not enough to have formal provisions designed to prevent or to take action against enforced disappearances. It is essential that the entire government machinery should adopt conduct intended for this purpose. To this end, administrative provisions and judicial decisions play a very important role.<sup>2</sup>

We also recall the absolute and non-derogable prohibition of torture established in article 7 of the ICCPR, also with regard to the relatives of the disappeared person. Article 10(1) furthermore guarantees that all persons deprived of their liberty shall be treated with humanity and respect. We would also like to draw the attention of your Excellency's Government to its international obligations as per the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment.

We would like to refer to article 16 of the ICCPR, which provides that "Everyone shall have the right to recognition everywhere as a person before the law." In regard to the right to be recognized as a person before the law, we would like to refer to the report by the Working Group on Enforced and Involuntary Disappearances presented to the Human Rights Council, which states that "Enforced disappearance represents a paradigmatic violation of the right to be recognized as a person before the law. One of the constitutive elements of enforced disappearances is that the person is placed —outside the protection of the law. This means that not only the detention is denied, and/or the fate or the whereabouts of the person are concealed,

---

<sup>1</sup> Report of the Working Group on Enforced or Involuntary Disappearances, 1995. document E/CN.4/1996/38.

<sup>2</sup> *Ibid.*

but that while deprived of his/her liberty, this person is denied any right under the law, and is placed in a legal limbo, in a situation of total defencelessness” (A/HRC/19/58/Rev.1). Furthermore, placing a person outside the protection of the law means that all protections, including those intended to secure economic, social and cultural rights, cease to exist (E/CN.4/1435, paras. 184–187).

In relation to the allegations indicating that the individuals mentioned and other protestors were being targeted because of their activities defending human rights, we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which states that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and freedoms.

We would like to make specific reference to article 12(2) of the UN Declaration on Human Rights Defenders, which states that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliations, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Furthermore, article 9 of the ICCPR guarantees the right of all persons to liberty and security of person. Pursuant to article 9(1), “No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law.” As stated in the jurisprudence of the Working Group on Arbitrary Detention, enforced disappearances constitute a particularly aggravated form of arbitrary detention. We further wish to remind the Government of your Excellency that according to the jurisprudence of the Working Group on Arbitrary Detention and general comment No. 35, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, and freedom of peaceful assembly and of association, is arbitrary.

In addition, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

We are also very concerned about the notable chilling effect that the above-mentioned allegations are prone to have for other protesters, activists, human rights defenders and critical voices in Kenya, and for their ability to exercise their human rights and their work without fear of repression and reprisals. These allegations set a worrying negative precedent for the enjoyment of freedom of expression, peaceful

assembly and association in the country, in addition to breaching some of the fundamental rules and absolute prohibitions of international law, as detailed above. We are also concerned that is a roll back of your Excellency's Government pledge made during the Human Rights 75 initiative and to implement recommendations made by treaty bodies and the Universal Periodic Review process in light of the on-going national efforts to criminalize enforced disappearances through the Multiagency Committee on Enforced Disappearances and the Multi-agency Committee on National Coroners Service Act.

Finally, in relation to legal representation, we are concerned about inadequate or non-existing access to lawyers, the reported breaches of the right to legal counsel of one's choosing of those arrested, and their right to confer with a lawyer – all of which are key elements of due process.

The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. It contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal basis for the arrest and detention of protesters. Please include information on how many detained protesters have since been released, and whether those still detained have been charged with a recognizable criminal offence, 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.
3. Please indicate what measures have been taken to ensure that activists, lawyers and human rights defenders are able to carry out their legitimate work and exercise their rights to freedom of expression, peaceful assembly and association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment.
4. Please provide information on measures taken by your Excellency's Government to carry out a prompt, impartial, independent and effective investigation into the use of excessive and lethal force and deadly

targeted killings of protesters. If no investigations have yet been undertaken, or if they have been inconclusive, please provide information as to the reasons thereof.

5. Please provide information on the steps taken by the relevant authorities to investigate the allegations of enforced disappearances, identify those responsible for the crimes concerned, prosecute and sanction them, and the search activities to determine the fate and whereabouts of disappeared persons.
6. Please provide information on the consultative bodies and processes, and other mechanisms established to consult and include citizens in the decision making of public affairs, including the adoption of new legislation, and how they will be adjusted, or adopted if they do not exist.

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.

The allegations in the case of the crackdown on protesters raise serious concern on alleged grave violations of international human rights law that may cause irreparable damage to the life and personal integrity of those involved, which we believe warrants prompt attention. In this regard, we are considering to publicly express our concerns in this case in the near future, believing that the wider public should be informed about the implications of these allegations for the enjoyment and exercise of human rights in Kenya. Any public expression of concern in this regard, will indicate that we have been in contact with your Excellency's Government to clarify the issues in question.

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

We would like to bring to the attention of your Excellency's Government that should sources submit the allegations concerning individual cases of enforced disappearances for the consideration of the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure, the case will be examined by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

We would appreciate receiving a response within 60 days. Past 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.

Gabriella Citroni  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Ganna Yudkivska  
Vice-Chair on communications of the Working Group on Arbitrary Detention

Attiya Waris  
Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

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

Gina Romero  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite  
Special Rapporteur on the independence of judges and lawyers

Cecilia M. Bailliet  
Independent Expert on human rights and international solidarity

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