

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human right to a clean, healthy and sustainable environment and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

Ref.: AL KEN 3/2024

(Please use this reference in your reply)

19 June 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human right to a clean, healthy and sustainable environment and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 52/4, 55/2 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the violent arrest and detention of human rights defenders in Uyombo village, Matsangoni, Kilifi County.

Messrs. **Moses Ngari** and **Edward Kitole** are local human rights defenders in Uyombo Village.

Mr. **Gordian Kimbo** is the Programmes Officer at the Centre for Justice, Governance and Environmental Action (CJGEA), which works to advocate for justice and protection of the rights of marginalized communities in Kenya through education, empowerment, strategic litigation and advocacy.

The situation in Uyombo village was the subject of a previous communication addressed to your Excellency's Government by multiple Special Procedures mandate holders ([AL KEN 3/2023](#)). We regret not having received a response from your Excellency's Government to this communication, in particular in light of the below detailed allegations.

According to the information received:

On 21 May 2024, unidentified persons, suspected to be from the Nuclear Power and Energy Agency (NuPEA), entered Uyombo village accompanied by heavily armed police to offload equipment onto the community chiefs' land. Upon observing this, local community members spoke with the chiefs, telling them that NuPEA had promised to carry out public consultations before proceeding with the work, however, they were ignored. Later that same day, suspected NuPEA workers, again accompanied by the police, entered a school in the community to install equipment for a data collection centre. Upon learning this, community members entered the school, intending to talk to the NuPEA workers. One of the local women present was beaten by police at the scene, leading the community to protest, mainly by dancing and singing, although the gate of the school was broken in the community's attempts to reach the injured woman. In response, the police violently repressed the protestors, spraying tear gas, firing live bullets into the air, and beating locals. According to the police incident report, 137 live rounds were fired by police, along with 44 blanks, while 70 tear gas canisters were used. At least three

community members were seriously injured during the events, including an 80-year-old member of the community who suffered a broken wrist.

Two local human rights defenders, Mr. Ngari and Mr. Kitole, attempted to speak with the local chiefs in an attempt to diffuse the situation, only to be violently arrested and seriously beaten by police. Mr. Ngari suffered severe bruises on his shoulder, back and leg during the arrest, while Mr. Kitole was also injured. When word spread of these arrests, the two human rights defenders were moved from Matsangoni Police Station, in the community, to Kilifi Police Station, some 30 km away. Upon learning they had been moved, the human rights defender Mr. Kimbo travelled to the police station to ask about their condition and whether any charges were being brought against them. Upon arrival, he was told by police that they had been looking for him, and he was also arrested.

On 22 May 2024, Mr. Kimbo was released on a free bond, and ordered to report to the station in one week, in the context of an investigation opened into alleged incitement to violence, assault of police officers while affecting arrests, and malicious damage to property. Mr. Ngari and Mr. Kitole were released later the same day on a personal bond, under the terms of which any failure to appear following a summons will result in the automatic issuing of an arrest warrant. They were ordered to report to the police station on 23, 28 and 30 May 2024.

Without wishing to prejudge the accuracy of the above-detailed allegations, we express serious concern at the violent arrest and detention of Messrs. Ngari, Kitole and Kimbo, as well as the alleged highly disproportionate use of force against the members of the Uyombo community in the dispersal of their spontaneous protest on 21 May 2024.

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.
2. Please provide information as to the factual and legal grounds for the arrest and detention of Messrs. Ngari, Kitole and Kimbo, as well as details of any investigation opened against them. As all three appear to have been arrested while attempting to ensure respect for human rights, please explain how the action taken against them by the State conforms with Kenya's responsibilities under the provisions of the UN Declaration on Human Rights Defenders.
3. Please provide information on any investigation opened into the alleged disproportionate use of force by police officers in Uyombo

village on 21 May 2024, and any sanctions ordered. Please provide also information on any investigations carried out and sanctions ordered in connection with the alleged violent arrest of Moses Ngari and Edward Kitole. If no such investigations have been carried out, please explain how this complies with Kenya's obligations under international human rights law, particularly articles 9 and 21 of the International Covenant on Civil and Political Rights (see annex).

4. Please also advise what measures your Excellency's Government will implement to respect, promote and protect human rights while facilitating future peaceful protests, and avoid violent responses by law enforcement. In particular, please advise of any planned measures to assist law enforcement agencies and officials in strengthening the required institutional capacity, rules, protocols, strategies and procedures.
5. As requested in the previous communication addressed to your Excellency's Government, on 7 November 2023 (AL KEN 3/2023), please provide information as to measures taken to guarantee that members of communities potentially affected by the proposed nuclear project in Matsangoni can participate in decisions concerning the project in an informed, safe and meaningful manner. If no such measures have been taken, please indicate what steps Kenya intends to take to ensure their full and meaningful participation and the respect of their rights, including their right to a clean, healthy and sustainable environment.

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.

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. More specifically we urge your Excellency's Government to close any investigation opened against the human rights defenders, and to ensure the meaningful participation of all potentially affected community members in discussions around the proposed nuclear power project, as well as to open an investigation into the allegations of excessive use of force by police which resulted in the injuries of some people present.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Astrid Puentes Riaño

Special Rapporteur on the human right to a clean, healthy and sustainable environment

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

Annex

Reference to international human rights law

In relation to the above-mentioned allegations, we would like to refer your Excellency's Government to articles 9 and 21 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Kenya on 1 May 1972, which guarantee the right to liberty and security person, including freedom from arbitrary arrest and detention, and the freedom of peaceful assembly.

Concerning article 9 of the Covenant, we recall that the Human Rights Committee, elaborating on States obligations under article 9 in general comment No. 35, made clear that detention is considered *prima facie* arbitrary when it constitutes a punishment for the legitimate exercise of the rights to freedom of opinion and expression or assembly (under articles 19 and 21 of the Covenant). Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

The right to security of person, also guaranteed under article 9, protects individuals against intentional infliction of bodily or mental injury. Following article 9, State parties to the Covenant must prevent and redress unjustifiable use of force in law enforcement.

Article 21 of the Covenant, which guarantees the right to peaceful assembly, may only be restricted where such restrictions are provided for by law, and where they 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.

Elaborating on the obligations of State parties to the Covenant under article 21, the Human Rights Committee, in general comment No. 37, underlined that spontaneous assemblies, typically direct responses to events, are protected under article 21. The Committee further held that there is a presumption in favour of considering assemblies as peaceful, and that isolated acts of violence by some participants in assemblies are not enough on their own to render an assembly violent.

States have an obligation to carry out timely, impartial and effective investigations into any allegation or reasonable suspicion of unlawful use of force or other violations by law enforcement officials in the context of assemblies, and to hold individual officials responsible for violations while providing effective remedies for victims. In policing assemblies, only the minimum force necessary may be used, and in those cases only where it is required for a legitimate law enforcement purpose during an assembly. We note the Special Rapporteur on the rights to freedom of peaceful assembly and of association's Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests (A/HRC/55/60), which outlines practical recommendations to assist States and their law enforcement agencies and officials in strengthening the required institutional capacity, rules, protocols, strategies and procedures and fulfilling their international human rights obligations, specifically in relation to respecting, promoting and protecting human rights while facilitating a peaceful protest.

We would also like to refer 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 state 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 fundamental freedoms. We would further wish to stress the following articles of the Declaration:

- article 9, paragraph 5, which holds that States shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction; and
- article 12, paragraph 2, holding that States 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, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration.

We would also like to recall Human Rights Council resolution 38/12, which calls on States to take all steps necessary to prevent threats, attacks, discrimination, arbitrary arrests and detention or other forms of harassment, reprisals and acts of intimidation against civil society actors, to investigate any such alleged acts, to ensure access to justice and accountability, and to end impunity where such violations and abuses have occurred.