



*Permanent Mission of the Republic of Kenya to the United Nations*  
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**REACTION  
TO A PRESS RELEASE ON KENYA ISSUED BY SOME UNITED  
NATIONS SPECIAL PROCEDURE MANDATE HOLDERS**

**DELIVERED**

**BY**

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PERMANENT REPRESENTATIVE OF THE REPUBLIC OF  
KENYA TO THE UNITED NATIONS**

**DURING**

**THE 23<sup>RD</sup> THIRD COMMITTEE MEETING ON PROMOTION  
AND PROTECTION OF HUMAN RIGHTS**

**WEDNESDAY, OCTOBER 18, 2017**

**The Government of Kenya is saddened and disappointed by statements that seem to suggest that the Government of Kenya does not honour its obligations and protect its citizens.** The Government of Kenya deeply regrets the statements made by some United Nations Special Procedure Mandate holders including the Special Rapporteur on the independence of judges and lawyers delivered on Monday, October 16, 2017 in Geneva.

The position of the Government of Kenya is as follows:-

1. That the government of Kenya has **gone to great lengths to maintain peace and security in Kenya and to provide an open free and fair environment for all generally, but also especially, in the context of the run up to the elections rescheduled to 26<sup>th</sup> October 2017.**
2. Despite **gross abuse of the right to protest, embedding of rioters in the demonstrations, and the unwillingness of the NASA political party to engage in the democratic process of peaceful campaigning and solicitation of votes, the country has remained peaceful and secure** with the exception of sporadic instigated acts of lawlessness and riotous behavior by a few people incited and mobilized to act in such a manner. Sadly there has been cases of loss of life in the midst of the riots.
3. Following this unfortunate statement made by the United Nations Special Procedure mandate holders, the Republic of Kenya's Mission to the United Nations would like to make the following clarification:
  - a. The issue of the “**ban**” on protests and demonstrations the lifting thereof, has been misrepresented and **is a matter that is before a competent judicial authority.** That notwithstanding, it should be noted that in keeping with international practice and in light of the riotous nature of the elements already embedded among the demonstrators, the Government of Kenya **was compelled to assign designated areas and locations for demonstrations and public political activity.** This is common practice in major cities of the world, where protesters are designated protest locations and timelines. The Government of Kenya has decided to borrow this good practice in order to protect people and property.
  - b. In this regard the restrictions on protests in three cities in Kenya was introduced in response to the increased acts of lawlessness that threatened to upend the peace and security and more importantly to allow normal business and commerce to continue during demonstrations.
  - c. There is a **mistaken notion that Article 37 of the Constitution of Kenya gives carte blanche to all protests and picketing, including violent ones.** Article 37 provides that “Every person has the right, peaceably and unarmed, to demonstrate, to picket and to present petitions to public authorities.” This cannot be said to be the case of the demonstrations currently being conducted by the NASA party. This was noted by the UN High Commissioner for Human Rights when he, to his credit,

in a communication dated August 15<sup>th</sup> 2017, decried the use of violence by the protestors.

- d. **Local and International media, as usual, seek to portray dramatic acts of violence and protest as it makes “good” news and television.** Sadly, however the protests organized by the NASA party are characterised by persons openly carrying all manner of crude weapons. They have engaged in looting, robbery with violence, disruption of lives and economic activities of other peaceable citizens; It should not be lost to anyone, especially the United Nations Special Procedure mandate holders, that these protests and activities fall outside the purview of the protection of Article 37 of the Constitution of Kenya.
- e. Any **instance of use of excessive force by law enforcement agencies has been expressly regretted by the Government and the Inspector General of the Kenya Police.** In all instances, **the Director of Public Prosecutions and the Independent Police Oversight Authority** have been instructed to take up the investigations of the said instances.
- f. **Sadly, as is the practice of the United Nations Special Procedure Mandate Holders and something member States have protested to time and again, there is no call for accountability by the organizers of these protests and riotous behavior even though they are known to all.**
- g. The dispatch from the United Nations Human Rights mandate holders **sadly ignores these fundamental principles and has proceeded to glibly cast aspersions on the Government of Kenya and its law enforcement agencies** without consulting on the ongoing investigations and without engaging in basic fact checking.
- h. The reporting of the human rights Mandate Holders is skewed since it apportions blame to the law enforcement agencies only and **does not call for accountability by the organizers of the protests.**
- i. The Constitution of Kenya 2010 institutionalized the doctrine of separation of powers between the Executive, the Legislature and the Judiciary. **Our constitution, therefore, not only guarantees the independence of the Judiciary** and other organs of Government but it also guarantees the independence of all commissions and independent offices created under it. **The recent Supreme Court of Kenya judgment, which annulled the results of the presidential election, a decision that was respected by all, is a manifestation of the indisputable independence of the Kenya Judiciary.**
- j. It is therefore particularly **distressing that the United Nations Special Procedure Mandate Holders in their irresponsible and careless manner have chosen to use inflammatory language,** quoting sources and suggesting that “harassment of judges and civil societies” has occurred. In this regard, **the Kenya Mission to the**

**United Nations has been instructed to seek substantiation from the Mandate holders on their claims.**

- k. The way in which the NASA Party has been conducting the demonstrations and protests tramples on every value and principle that democracies hold dear. These demonstrations embedded with riotous elements, have forced the hand of the Government as they are being used by the NASA Party to create chaos, promote anarchy and undermine peace and security and to project a dim view of the country and the government to the international community.**
  - l. The silent majority of Kenyans remain law abiding and peaceable citizens who wish for nothing more than that their will to vote in a free and fair election be respected as directed by the ruling of the Supreme Court. This is also what the government of Kenya is striving to achieve.**
- 4. Moving forward, the State will always keep the doors of political and social dialogue open.** But as a State that respects the rule of law and strives to promote democratic practice in its society, it is our hope that the international community will recognize the challenge of entrenching democracy and the rule of law in our nation.
  - 5. We hope that the United Nations and all its organs, institutions and agencies, including its Special Procedure Mandate holders will seek to support our efforts to do so.** Any provocation and/or anti-democratic behavior by a few will not be ignored nor allowed to undermine the rights of the silent majority: **The State will continue with its constitutional mandate and obligations to provide for all, without fear or favour, including in the areas of peace and security.**