

African Commission calls for respect for the right to peaceful protests in Kenya

Jul 21, 2023

The African Commission on Human and Peoples' Rights (the African Commission), through its Country Rapporteur for the Republic of Kenya – Honourable Commissioner Solomon Ayele Dersso, follows with concern recent incidents of violence in the context of mass protests held in Kenya.

According to reports reaching the African Commission, in the protests held on 7 July and 12 July 2023 in Nairobi and some other parts of Kenya, there were regrettable incidents in which confrontation between the police and protesters turned violent, with the police using excessive and brutal force, arbitrary arrests and firing of teargas. The reports reveal that during the 7 July protests, these acts resulted in the death of at least three protesters, with dozens injured, and the arrest of over 17 human rights defenders and several protesters currently incarcerated and denied bail. From the protests that took place on 12 July, while some in the protest were engaged in the looting and destruction of public property, the confrontation with the police, including the police's use of excessive force, led to the loss of lives of at least nine people.

The African Commission affirms that the right to peaceful protest does not give some among protesters the licence to engage in acts of violence, including looting and destruction of property, or intimidation of, or incitement of violence against anyone. It also affirms that the occurrence of such incidents by itself alone does not give the police the authority to engage in the use of excessive force. The Commission is also mindful of the adverse impacts of the closure of public spaces and various facilities, particularly on the right of affected people to their socio-economic rights, notably the most vulnerable.

The African Commission particularly deplors all acts of violence including most notably the excessive use of force by the police that led to loss of lives. The Commission equally deplors the report from the July 12 protests that the throwing of gas canisters by police in the Kihumbuini Primary school forced 53 school children to be admitted to hospital after suffering from breathing difficulties.

The African Commission is concerned that such actions may constitute violations of the rights and freedoms enshrined in the African Charter on Human and Peoples' Rights (the African Charter), to which Kenya is a party. The rights and freedoms endangered include the rights to life, integrity and dignity of the person (Article 4); protection from torture, arbitrary arrest and detention (Articles 5 & 6); freedom of association and assembly (Articles 11 & 12); the right to peace and security (Article 23); and the duty of the State to take all necessary measures to guarantee all rights enshrined within the African Charter (Article 1).

The African Commission wishes to draw the attention of the Government of Kenya to General Comment No. 3 on Article 4 (the Right to Life) of the African Charter which emphasizes among other things, the need for States to take all reasonable precautionary steps to prevent excessive use of force by its agents, and to ensure that any such use of force is exercised in accordance with the principles of necessity and proportionality.

In the light of the foregoing, and the need to uphold the rights prescribed within the African Charter, the African Commission requests the Republic of Kenya to:

- 1)Initiate prompt and independent investigation into the reported excessive use of force by the police, acts of looting and destruction, the use of teargas targeting a school that forced 53 school children to be admitted into hospital and the circumstances that led to loss of lives, with a view to hold those responsible accountable and ensure that justice is served to survivors and families of those who lost their lives;
- 2)Take appropriate measures for building trust and coordinate with members of the society who wish to exercise their right to peaceful assembly, with a view to protecting peaceful assemblies from being used for engaging in acts of looting, destruction, intimidation or incitement and/or use of violence against any one;
- 3)Put in place appropriate guidelines and the necessary oversight structures on the management of protests by law enforcement agents, in accordance with the African Commission's Guidelines on Policing of Assemblies of 2017;
- 4)Ensure respect for and protect the right to peaceful assembly as stipulated in the African Charter and the Kenyan Constitution, in accordance with the African Commission's Guidelines on Freedom of Association and Assembly of 2017;
- 5)Ensure that the police exercise the authority for effecting arrests in strict compliance with the right to liberty and not to be subjected to arbitrary arrests or detention; and
- 6)Guarantee that those arrested or detained are treated humanely and have access to their rights to due process of the law as guaranteed under Article 7 of the African Charter.

The African Commission takes this opportunity to renew its commitment to support the efforts of and work with the Republic of Kenya to respect, protect, promote and fulfil human rights guaranteed under the African Charter and other relevant human rights instruments.

14 July, 2023

Commissioner Solomon Ayele Dersso
Country Rapporteur for the Republic of Kenya