

NATIONS UNIES
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AUX DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of 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; and the Special Rapporteur on the situation of human rights defenders

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
BLR 4/2012

18 October 2012

Excellency,

We have the honour to address you in our capacities as 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; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the non-governmental organization Platforma, a human rights organization specializing in the protection of the rights of prisoners.

The case of the organization was raised by the Secretary-General in his report on "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights" (A/HRC/21/18, page 7, paras. 22 and 23). The report highlights the concern that the temporary travel ban imposed in March 2012 on Mr. Bondarenko, Director of Platforma, was allegedly a consequence of his human rights work, including his participation in the 47th session of the Committee against Torture, held in November 2011 in Geneva (Switzerland).

According to the information received:

On 21 August 2012, the Inspection of the Inspectorate of Taxes and Duties of Soviet District filed a claim to liquidate the association Platforma, on the basis of sub-item 3.2 of the Decree "on state registration and liquidation of economic subjects" of 16 January 2009, which provides for the liquidation of associations "in case of repeated or gross violations". The association had allegedly missed a deadline for submitting tax declarations and failed to notify the tax inspection of its move to a new office.

On 9 October 2012, the Minsk Economic Court reportedly decided to close down Platforma.

It is alleged that the court decision is without legal basis. The association had reportedly submitted all papers to the Tax Inspection in due time, on 20 March 2012 and once again on 24 July 2012. Furthermore, it is alleged that Platforma had not moved offices, but has different addresses, including its physical and its registration addresses, where it reportedly successfully received notifications related to the case.

It is also alleged that this judicial decision constitutes double punishment as Platforma had been fined twice before for the two aforementioned offences, respectively on 25 July 2012 and on 2 August 2012.

It is further alleged that this decision does not comply with legal provisions stipulated in the Ordinance of the Plenum of the Highest Economic Court of the Republic of Belarus (No. 18) of 22 December 2006, which provide that an organization can be liquidated if it changes its charter or its statutes without informing the relevant authorities. According to sources, Platforma has not changed its statutes.

Representatives of Platforma reportedly announced that they would appeal against the court's decision.

Moreover, it is also reported that Platforma has been subjected to repeated harassment over the past months. On 26 June 2012, Mr. Andrei Bondarenko, Director of Platforma, was reportedly warned by the Minsk Prosecutor's Office that he had "discredited the Republic of Belarus and its governmental bodies". This written warning reportedly took place a few days after Platforma had published a report on human rights abuses in detention centres and a few months after Mr. Bondarenko participated in the 47th session of the UN Committee against Torture.

Concern is expressed that the closure of Platforma may be a direct attempt to prevent the association from exercising its legitimate right to freedom of association. Without prejudicing the accuracy of these allegations, grave concern is expressed that these measures may form part of a continued campaign of harassment of members of human rights organizations in order to arbitrarily prevent them from carrying out their legitimate work in defence of human rights and fundamental freedoms.

In addition, serious concerns are expressed about the persistence of acts of intimidation and reprisals against human rights organizations, including Platforma, which have cooperated with the United Nations, its representatives and mechanisms in the field of human rights.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights (ICCPR), which provides that "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the rights of all individuals to...associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the right... to freedom of... association (is) in accordance with their obligations under international human rights law.”

The Special Rapporteur on the rights to freedom of peaceful assembly and of association also refers to paragraph 100 of his first thematic report A/HRC/20/27, in which he called upon States to ensure that any “[s]uspension or involuntary dissolution of associations ... be sanctioned by an impartial and independent court in case of a clear and imminent danger resulting in a flagrant violation of domestic laws, in compliance with international human rights law”.

Regarding allegations indicating that the closure of Platforma is a direct consequence of its legitimate work in defense of 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, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, 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, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration, and in particular article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations.

Related to our concern about the persistence of acts of intimidation and reprisals against human rights organizations in Belarus, we also wish to recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3).

We would further like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

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 and freedoms of the members of Plataforma, in compliance with the abovementioned international instruments.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged on behalf of Plataforma? If so, please provide details on any follow-up given to it. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide the full details of the legal basis for the closure of Plataforma and explain how these measures comply with international human rights law.
4. Please indicate what measures have been taken to ensure that the legitimate right to freedom of association is respected and that the physical and psychological integrity of those who cooperate with the United Nations human rights mechanisms when exercising their right to association is guaranteed.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of those working for Plataforma are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible for the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

Maina Kiai

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

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
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