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AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; 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; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
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22 March 2012

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/21, 16/5, 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding alleged ill-treatment of Mr. **A**, Mr. **B**, Mr. **C**, Mr. **E**, Mr. **F**, Mr. **G**, and Mr. **H**, **and others**, and the forcible dispersal and acts of violence against peaceful protesters in the context of peaceful demonstrations held on 6 and 17 March, in the center and proximities of the city of Baku, respectively.

According to the information received:

On 6 March, a peaceful assembly was held in the center of the city of Baku by a number of youth activists. Protesters were denouncing the alleged beating of two detainees, Mr. **I** and Mr. **J**, recognized as prisoners of conscience by Amnesty International, by security guards while being transferred from one prison to another. It is reported that police violently dispersed the assembly, detaining at least 14 protesters and a journalist. As a result, a number of detainees were severely beaten by the police, including Mr. **A** who suffered injuries to his right eye, and Mr. **B** who suffered injuries to his lips and chin. The protesters were taken to the 28th Yasmal District police station. It is reported that another activist, Mr. **C**, was also beaten during interrogation while in police custody. Moreover, it is alleged that another protester, Mr. **E**, the Chair of an opposition youth group, suffered electro-shocks used by police guards and repeated beatings.

On 17 March, at approximately 15:00 hours, 500 to 1000 persons participated in a peaceful assembly organized by a youth organization, the Youth Rights Defense Committee, in the outskirts of Baku, to express dissent and opposition to the current Government. Participants used slogans such as "freedom for the prisoners

of conscience” or “we want to live without the New Azerbaijan Party”. At approximately 16:00 hours, a resolution was adopted by demonstrators demanding, among other things, the release of political prisoners and an end to the persecution of human rights defenders.

It is reported that the leader of a band named M, Mr. G, used swearwords to criticize Azerbaijani President Ilham Aliyev while on stage during a musical performance at the protest. In reaction to these remarks, it is reported that a number of unidentified individuals supposedly provoked violence against protesters. Police proceeded with the arrest of Mr. G, as well as at least two other persons, including a second member of the band M, Mr. K, and a blogger and head of N, Mr. H. It is also reported that these persons showed signs of heavy beating while they were transferred to a police station, including blood on their faces.

The three persons were allegedly convicted on minor hooliganism charges and ordered to be detained for six, ten and five days respectively. However, while all three were supposed to be transferred to Binagadi prison for administrative detention, for unknown reasons they are apparently being kept at Sabael district police offices. It is also reported that their lawyer was denied access to them. It appears that the authorities may not be releasing information, and that there is considerable concern that they are being subjected to ill-treatment while in police custody.

Should this information be corroborated, grave concern is expressed regarding the physical and psychological integrity of these persons, as well as that of the participants in the demonstration held on 17 March at the outskirts of Baku. Similar concern is also expressed for the fact that the aforementioned persons may have been subjected to acts of ill-treatment for exercising their legitimate rights to freedom of opinion and expression, and to peaceful assembly.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the cases of the persons named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context and with respect to the allegations according to which Mr. G, Mr. K, Mr. H, Mr. A, Mr. B, Mr. C and Mr. E were severely beaten and/or ill-treated while

being transported to a police station or while under police custody, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

In this connection, 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 to the article 12, paras 2 and 3 of the Declaration which provide 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, retaliation, 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. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

With regards to youth defenders taking part in demonstrations, we would like to refer to the 2007 report to the General Assembly (of the Special Representative of the Secretary-General on the situation on human rights defenders) in which she recommends to "take steps to create a conducive environment that allows children and young adults to associate and express views on matters affecting them as well as on broader human rights issues. Student protests have a high educational value as they are among the first experiences of public participation and human rights defense of students. Ensuring a conducive environment for student protests is a social investment in addition to a legal obligation (A/62/225, para. 101 b),

We would also like to appeal to your Excellency's Government to ensure that the right to freedom of peaceful assembly is respected, in accordance with article 21 of the ICCPR. In this context, we would like to refer to Human Rights Council resolution 15/21,

and in particular preambular paragraph 7, where it recognizes that, “exercising the rights to freedom of peaceful assembly and of association free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting... political beliefs”. In this context, we would like to recall operative paragraph 1 of the same resolution that, “(c)alls upon States to respect and fully protect the rights of all individuals to assemble peacefully... including persons espousing minority or dissenting views or beliefs, human rights defenders,... and others,..., 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 rights to freedom of peaceful assembly... are in accordance with their obligations under international human rights law.”

Moreover, we reiterate that under article 3 of the UN Code of Conduct for Law Enforcement Officials, “(l)aw enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”. As well, and in line with provisions 4 and 7 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, law enforcement officials shall make use of non-violent means, as far as possible; and that States should ensure that “arbitrary or abusive use of force... by law enforcement officials is punished as a criminal offence under their law”.

We would also 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.”

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

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 persons in compliance with the above 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 summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?

3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries carried out in relation to these cases. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

5. Please indicate whether compensation will be provided to the victims or the family of the victims.

6. Please provide information concerning the legal grounds for the arrest and detention of Mr. A, Mr. B, Mr. C, Mr. E, Mr. F, Mr. G, and Mr. H and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

7. Please provide information on measures taken to ensure the well-being of the forementioned individuals.

8. Please explain what measures have been taken to ensure that the rights of everyone, including human rights defenders, to freedom of peaceful assembly, and of opinion and expression, are guaranteed and effectively respected.

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.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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