

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
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 Special Rapporteur in the field of cultural rights; 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 violence against women, its causes and consequences

REFERENCE: AL Cultural rights (2009) G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (89-15) G/SO 214 (107-9)
BIH 1/2014

7 February 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; 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 violence against women, its causes and consequences pursuant to Human Rights Council resolutions 19/6, 16/4, 24/5, 16/5, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **violent disruption of the Queer Festival Merlinka in Sarajevo** organised by the Sarajevo Open Centre, a non-governmental organization which promotes and protects the rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons. The Queer Festival Merlinka is an event which aims at raising awareness about the situation of LGBT people and speaking out against discrimination on the basis of sexual orientation and gender identity through the projections of films.

A similar LGBT event, the Sarajevo Queer Festival, was the subject of a communication on 25 November 2008 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and Special Rapporteur on the situation of human rights defenders. We regret that no response from Your Excellency's Government has been received as of today, particularly given the seriousness of the allegations.

According to the information received:

On 31 January 2014, the administrators of the Facebook page "Let's Stop the Parade of Faggots on May the First 2014" reportedly posted a message calling on

their followers to disrupt the Queer Festival Merlinka and attack persons based on their sexual identity.

On 1 February 2014, a group of 12 to 14 unidentified individuals wearing masks reportedly stormed the Art Cinema Kriterion in Sarajevo where the aforementioned festival was taking place. They shouted “where are you faggots!”, “there will be no [pride] parade in Sarajevo”, and “there will be no faggots in Sarajevo”. They then physically assaulted three attendees who sustained minor physical injuries, and psychologically traumatized over 25 other attendees who were subsequently moved to safe locations in the city.

The Ministry of Internal Affairs of the Canton of Sarajevo, in collaboration with the Sarajevo Open Centre, was in charge of ensuring the security of the festival. According to the information received, two hours prior to the attack, the Centre had reported the threats made on Facebook to the police. However, the police allegedly failed to provide protection to the organizers and participants, despite reassurances that police officers would be deployed during different events of the festival.

Victims and witnesses of the attack reportedly filed a complaint to the police, which is allegedly investigating the case.

Serious concerns are expressed about the violent disruption of the Queer Festival Merlinka in Sarajevo, which seems to be linked to the exercise by the festival’s organisers and participants of their rights to freedom of peaceful assembly, association, and opinion and expression, and their legitimate work to combat discrimination on the basis of sexual orientation and gender identity. Similar concerns are expressed about the on-going harassment of LGBT persons in the country and those who advocate for their rights, as evidenced, inter alia, by a similar attack against the organizers and participants of the first edition of the Queer Sarajevo Festival in 2008, which was the subject of the aforementioned communication of 25 November 2008. The police similarly failed to provide protection, and no one was reportedly held accountable for such an attack.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency’s Government to the following provisions of the International Covenant on Civil and Political Rights:

- article 19, which provides that “[e]veryone 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”;
- article 21, which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which 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”; and

- article 22, which provides that “[e]veryone 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 connection, we would like to further refer to Human Rights Council resolution 24/5, and in particular operative paragraph 2 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and 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 rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In connection to the above, we would like to bring to the attention of your Excellency’s Government the relevant international standards related to women’s rights and in particular article 4 (c & d)) of the United Nations Declaration on the Elimination of Violence against Women, which, amongst others, notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (adopted by General Assembly resolution 48/104 on 20 December 1993).

In addition, we would like to refer to article 15 of International Covenant on Economic, Social and Cultural Rights, recognizing the right of everyone to take part in cultural life. Under this provision, States Parties have undertaken to respect the freedom indispensable for creative activity. As stressed by the Special Rapporteur in the field of cultural rights, all persons enjoy the right to freedom of artistic expression and creativity, which includes the right to freely experience and contribute to artistic expressions and creations, through individual or joint practice, to have access to and enjoy the arts, and to disseminate their expressions and creations. The Special Rapporteur recommended in particular that States abide by their obligation to protect artists and all persons participating in artistic activities or dissemination of artistic expressions and creations from violence by third parties. (A/HRC/23/34, paras. 85 and 89 e).

Finally, in reference to acts of violence against individuals based on their gender identity, the United Nations High Commissioner for Human Rights recommends States to, inter alia, protect persons from transphobic violence and investigate and prosecute perpetrators of such violence; prevent the torture and cruel, inhuman and degrading treatment of transgender persons in detention; ensure that criminal laws are not used to harass or detain people on the basis of their gender identity and expression; enact comprehensive laws that include gender identity as prohibited grounds of discrimination and provide education and training to prevent discrimination and stigmatization of transgender persons; ensure that individuals can exercise their rights to freedom of

expression, association and peaceful assembly in safety and without discrimination on the basis of gender identity; and facilitate legal recognition of the preferred gender of transgender persons and establish arrangements to permit relevant identity documents to be reissued reflecting preferred gender and name, without infringements of other human rights (A/HRC/19/41, para 84(a)-(h)).

In addition, 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 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.

Article 7 of the Declaration provides for the right to discuss and advocate for human rights ideas and principles that, in some contexts, are perceived as new or unpopular because they address human rights issues that might challenge tradition and culture. In this regard, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions

of the world, committed against individuals because of their sexual orientation and gender identity.

Moreover, since 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. Are the facts alleged in the summary of the case accurate?
2. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken. Will penal, disciplinary or administrative sanctions be imposed on the alleged perpetrators?
4. Please indicate whether compensation will be provided to the victims.
5. Please indicate what protective measures are to be taken to ensure the physical and psychological integrity of individuals and groups promoting and protecting the rights of LGBT persons in the country.

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report 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 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.

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

Farida Shaheed
Special Rapporteur in the field of cultural rights

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

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

Rashida Manjoo
Special Rapporteur on violence against women, its causes and
consequences