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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
BLR 9/2011

15 August 2011

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; and Special Rapporteur on the situation of human rights defenders pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18, 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the arrest and detention of human rights defender Mr. Ales Bialatski. Mr. Bialatski is the President of Human Rights Centre (HRC) "Viasna", a human rights organisation which focuses on the defence, protection and promotion of political and social rights. He is also Vice-President of the International Federation of Human Rights (FIDH).

Mr. Ales Bialatski and the HRC "Viasna" have been the subject of previous communications sent by the Chair-Rapporteur 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 torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the situation of human rights defenders. The joint communications were issued on 14 May 2009, 24 August 2009, 22 December 2010 and 1 June 2011. We acknowledge receipt of the responses transmitted by your Government to these communications. An urgent appeal concerning Mr. Bialatski and the HRC "Viasna" was also sent on 25 February 2011. However, we regret that to date no related response has been transmitted by your Excellency's Government.

According to the information received:

On 4 August 2011, at approximately 2:00 p.m., a group of individuals in plainclothes reportedly surrounded the offices of the HRC “Viasna” in Minsk. Staff members of HRC “Viasna” allegedly evacuated the office and locked the door. While evacuating the office, one of them heard a plainclothed individual talking on his mobile phone, saying that Mr. Bialatski was not to be found at the office.

On the same day, at approximately 4:30 p.m., Mr. Bialatski was arrested in Minsk’s city centre by police representatives of the Department of Financial Investigations. A search was conducted at his home by police officers. Mr. Bialatski was subsequently taken to the Viasna office which was also searched by the police.

On 5 August 2011, Mr. Bialatski was allegedly transferred from a cell at the Financial Investigation Department of the State Control Committee to the detention centre of the Ministry of Interior, where he remains to date.

Mr. Bialatski is allegedly being held in detention for having failed to declare the existence of a private foreign account registered on his name. As a result, a tax evasion case was allegedly opened against Mr. Bialatski for “concealment of profits on an especially large scale” under Article 243(2) of the Criminal Code of the Republic of Belarus, which provides for up to seven years of imprisonment and confiscation of property.

According to the information received, the purpose of the foreign account was to receive donations registered on the name of Mr. Bialatski, to finance “Viasna’s” human rights activities.

In June 2011, Mr. Bialatski was reportedly informed that an investigation on his private financial matters was being carried out by the authorities.

In view of his alleged detention, serious concern is expressed for the physical and psychological integrity of Mr. Ales Bialatski. Further concern is expressed that his detention may be directly related to his work in defence of human rights, in particular with HRC “Viasna”.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Ales Bialatski is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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).

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 "[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."

Furthermore, we would like to draw to the attention of your Excellency's Government article 22(1) of the ICCPR, which provides that "[e]veryone shall have the right to freedom of association".

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:

- 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.

- article 13, (b) and (c) which stipulate that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means.

- 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.

We would also like to refer to the report A/64/226 of the Special Rapporteur on the situation of human rights defenders to the General Assembly, which states that “[a]ccess to funding, the ability of human rights organizations to solicit, receive and use funding, is an inherent element of the right to freedom of association. In order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediments, including funding restrictions” (para. 91).

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Ales Bialatski 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 Mr. Ales Bialatski 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 above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Bialatski?
3. Please provide information concerning the legal grounds for the arrest and detention of Mr. Bialatski and how these measures are compatible with international norms and standards as stated, *inter alia*, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
4. Please provide the details, and where available the results, of any investigation, and judicial or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please provide information regarding the measures taken to ensure the physical and psychological well-being of Mr. Bialatski.

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

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