

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of peaceful assembly and of association

REFERENCE: OL
MNE 1/2015:

2 March 2015

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 and Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolutions 25/2 and 24/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the fast-tracked reform of the Public Assembly Act adopted by the Parliament, in December 2014, which allegedly excessively and disproportionately limits the rights to freedom of peaceful assembly and of expression.**

According to information received:

In 2011, the Constitutional court revoked as unconstitutional certain articles of the Public Assembly Act, which gave discretionary powers to law enforcement authorities to prohibit peaceful assemblies.

At the end of 2014, the Government proposed the fast-tracked reform of the Public Assembly Act introducing a series of new articles aimed to fill-in the legal gap regarding the role of law enforcement officers in facilitating assemblies. The reform was adopted by the Parliament in December 2014. Some of the new provisions included:

- Article 9a: reportedly prohibits peaceful gatherings organized less than 50 meters from hospitals, kindergartens and elementary schools, cultural monuments, the Parliament, the building of the Government and the Constitutional Court. It reportedly further prohibits assemblies in national parks and protected natural areas, except if protestors' claims concern the protection of the environment. Moreover, article 9 reportedly introduces a blanket prohibition to the right of assembly on freeways, highways, regional and local roads to protect "safety of traffic". Blanket bans also reportedly apply to assemblies, when "it is impossible

to provide temporary modification of traffic regime with additional measures, and the protection of health and security of people and property” or when law enforcement authorities consider that the characteristics of the assembly, such as space, time and size, “may seriously jeopardize movement and work of a number of citizens, rights and freedoms of others, health and safety of people, safety of property or cause violation of public order and peace”. In the case of assemblies that could potentially endanger health, information suggests that the health administration may request a temporary ban. In addition, Article 9a reportedly prohibits peaceful assemblies if their aim is to commit or incite criminal acts thus making use of vague wording not in compliance with the requirements imposed by international human rights law on restrictions to the right to peacefully assemble.

- Article 9b: reportedly temporarily prohibits peaceful gatherings not timely and properly notified at least 48 hours before the beginning of the activity, not organized in proscribed areas or places, and whose objective is to commit or incite violence.

Furthermore, sources consider that the 50 meters’ rule, when applied to the building of the Government, which is located in a very limited area in the center of Podgorica, makes it virtually impossible to organize a peaceful protest in the area without violating the Public Assembly Act.

We understand that the Public Assembly Act is reportedly currently undergoing a second process of reform within working groups appointed by relevant Ministries. The next steps reportedly foresee a public discussion, consideration of opinions of the Venice Commission, Government endorsement, adoption by the Parliament, and publication in the Official Gazette. The revised law is reportedly expected to be debated in the Parliament at the end of 2015.

We would like to express our concern regarding the fast-tracked adoption of a legal reform that excessively and disproportionately restricts the rights to freedom of peaceful assembly and of expression. In particular we are concerned about the adoption of blanket bans, geographical restrictions, mandatory notifications, authorizations based on the message of assemblies or on traffic flow considerations; we consider these measure as intrusive restrictions that well exceed the delimited criteria of necessity and proportionality. We are further concerned at the vague and disproportionate provisions of the Public Assembly Act that prohibits peaceful assemblies if these seek to commit or “incite” others to commit criminal acts and violence. In this regard the only permissible restrictions to the right of peaceful assembly are those which meet the test of necessity and proportionality or are expressly outlawed as advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. We believe that the law should have instead a clear presumption in favour of holding peaceful assemblies and that organizers and participants should not be considered responsible, or held liable, for the unlawful conduct of others. Similarly, we believe it is the responsibility of the

State to maintain public order and to protect peaceful demonstrators against violent behaviours.

In connection with the above alleged facts and concerns, please refer to the Reference to International Law Annex, attached to this letter which cites international human rights instruments and standards relevant to these obligations. The full texts of the human rights instruments and standards recalled in the Reference Annex are available on www.ohchr.org or can be provided upon request.

As it is your 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. Please provide any additional information and/or comment(s) you may have on the above mentioned issues.
2. Please indicate the status of the current revision of the Public Assembly Act and remaining steps until its possible adoption into law.

We would appreciate receiving a response within 60 days.

Your Excellency's Government response will be made available in a report to be presented to the Human rights Council for its consideration.

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

David Kaye
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

Annex
Reference to international human rights law

Concerning the above concerns, we wish to draw the attention of your Excellency's Government to the following international human rights standards::

- The International Covenant on Civil and Political Rights, which your Excellency's Government ratified on 18 March 1986, in particular its articles 19 on the right to freedom of expression and 21 on the right to peaceful assembly.

The General comment No. 34 (2011) of the Human Rights Committee elaborating on the restrictions applicable to article 19 is also of relevance in this case

- 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, in particular its Articles 1, 2 5, 6 and 12

- The Human rights Council resolution 12/16 which provides that: "the exercise of the right to freedom of opinion and expression is one of the essential foundations of a democratic society, is enabled by a democratic environment, which offers, inter alia, guarantees for its protection, is essential to full and effective participation in a free and democratic society, and is instrumental to the development and strengthening of effective democratic systems"

- The report of the visit of the Special Rapporteur on the on the promotion and protection of the right to freedom of opinion to Montenegro from 11 to 17 June 2013. where he expressed concern at the repeated decisions prohibiting demonstrations and urged Montenegrin law enforcement officers to make greater efforts to manage traffic around demonstrations, and address any other security concerns that may exist, in order to ensure that restrictions to this constitutional right occur only on exceptional occasions according to international human rights law.

- The report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association of 2012 that holds as best practice laws governing freedom of assembly that avoids blanket bans and location prohibitions. In his report, the Special Rapporteur reminds States that prohibitions should be a measure of last resort, and applied only if necessary and proportionate to the aim pursued, i.e. applied only if a less restrictive response would not achieve the legitimate aim pursued by the authorities in accordance with international law and standards. He agrees with the assessment of the ODIHR Panel of Experts that "the free flow of traffic should not automatically take precedence over freedom of peaceful assembly" (A/HRC/20/27, para. 39-41).