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PROCEDURES SPECIALES DU
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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24) Toxic waste (1995-14)
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20 December 2013

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; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 24/5, 16/5, 17/2, 19/10, 18/11, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **alleged arbitrary detention of 30 environmental activists following their participation in a demonstration organized by Greenpeace against oil drilling in the Arctic**. Greenpeace is an independent global organisation which works to change attitudes and behaviour in order to conserve the environment and protect the right to enjoy a safe, clean, healthy and sustainable environment on a worldwide scale.

According to the information received:

Since 2011, there have been concerns that oil companies are exploiting the fact that sea-ice in the Arctic is receding in order to drill for oil. It is alleged that such enterprises are extremely high-risk and that an accident resulting in an oil spill

would be almost impossible to clean-up, resulting in grave consequences for the marine ecosystem, as well as for the indigenous populations living in the Arctic.

Your Excellency's Government is part of the Arctic Council, which has reportedly agreed that such enterprises' contingency plans in the event of an oil spill be made public information. Concerns have been raised regarding the Prirazlomnaya oil platform which is located in the exclusive economic zone (EEZ). It has been alleged that Gazprom, the company which runs Prirazlomnaya, has made public only a two-page summary of their report, the content of which implies that the company might be unprepared for possible accidents. The full version of the report can only be viewed at the company's office under close supervision.

On 18 September 2013, the Greenpeace ship Arctic Sunrise was present in the EEZ in order to protest against the activities of Prirazlomnaya. At approximately 4:37 am, Ms. Sini Saarela and Mr. Marco Paolo Weber, attempted to climb the structure of the platform with the aim of unfurling a banner below the main deck. Approximately one hour later, it is reported that two inflatable boats manned with masked Coast Guard officers approached and collided with Greenpeace inflatable boats which were also at the scene. It is alleged that the Greenpeace vessels were damaged with knives. It is further alleged that, in spite of the activists raising their arms to indicate the absence of resistance, shots were fired from the rig and also from the Coast Guard vessels towards the activists and their vessels. It has also been reported that crew members of Prirazlomnaya attempted to hose the activists off the platform, and that some of the Coast Guard officers attempted to pull Sini Saarela off the platform using her safety rope. Both activists fell into the water at one point and at 6:59 am were taken on board the Coast Guard vessel "Ladoga".

At approximately 6:28 am, the Coast Guard reportedly forbade the Arctic Sunrise from taking the inflatable boats on board, because such an action would constitute an act of terrorism. The Coast Guard also signalled its intent to conduct an inspection of the Arctic Sunrise and the vessel was ordered to stop for boarding. It is alleged that between 7:13 and 8:46 am, 11 warning shots were fired with the Coast Guard's artillery cannon. At 7:49 it is alleged that the Coast Guard attempted to board the Arctic Sunrise, however the captain took evasive action as he believed such an action would be illegal. At 9:21 am it is reported that the Coast Guard threatened to fire on the ship if it did not allow boarding, and indicated that any resulting casualties would be the responsibility of Greenpeace. There was a discussion two hours later regarding the release of the activists in return for voluntary boarding, however this did not happen. Repeated attempts by the organisation's legal counsel to verify the activists' situation and to communicate with the Coast Guard later in the day reportedly failed.

Sources indicate that the incident was portrayed in the Russian media as an attempt by extremists to mount a terrorist attack. The Ministry of Foreign Affairs reportedly published a statement to the effect that the actions by Greenpeace had been aggressive and provocative and could have resulted in death.

On 19 September 2013, at approximately 6:30 pm, the Arctic Sunrise was reportedly boarded by approximately 15 Federal Security Service (FSB) agents who descended from a helicopter wearing balaclavas and bearing arms. It is alleged that they ordered the crew to the helicopter deck and removed or damaged the ship's radio equipment. At 11:45 pm, it is reported that the agents read a list of formal allegations to the captain of the ship, Mr. Peter Henry Willcox. The charges included terrorism, breach of a safety zone, illegal scientific activities and attempting to seize control of a platform.

On 20 September 2013, administrative proceedings including the transportation of the Arctic Sunrise to Murmansk were initiated against Peter Willcox for "failure to follow the lawful order of a body exercising state supervision". That same day, the Investigative Committee is reported to have published a statement stating it had found evidence of piracy. On 24 September 2013, the ship was brought to Murmansk and the thirty persons on board were led into the building of the Investigative Committee. It is reported that consular staff and legal personnel who were present at the disembarking were not allowed to enter with them. The 30 were allegedly arrested without formal charges at that stage.

On 26 and 29 September 2013, the 28 activists, as well as a free-lance photographer and a cameraman, were remanded in custody for two months by a court in Murmansk, facing investigation on possible charges of "piracy" under Article 227 of the Russian Criminal Code, which carries up to 15 years in jail.

On 2 October 2013, charges of "piracy" were confirmed by a court in Murmansk against the following individuals:

Ana Paula Alminhana Maciel (crew member)
Kieron Bryan (freelance videographer)
Roman Dolgov (environmental activist)
Sini Saarela (environmental activist)
Dimtri Litvinov (environmental activist)
Anthony Perrett (environmental activist)
Camila Speziale (environmental activist)
Faiza Oulahsen (environmental activist)
Mannes Ubels (crew member)
Tomaz Dziemianczuk (environmental activist)
Alexandra Harris (environmental activist)
Philip Ball (environmental activist)

On 3 October 2013, the following individuals were also charged with "piracy":

Anne Mie Roer Jensen (crew member)
Jonathan Beauchamp (crew member)
Denis Sinyakov (freelance photographer)
Colin Russell (crew member)
Andrey Allakhverdov (environmental activist)
Miguel Hernan Perez Orsi (crew member)
Francesco Pisanu (crew member)

Alexandre Paul (crew member)
David John Haussmann (crew member)
Cristian D'Alessandro (crew member).

The following individuals were also charged with “piracy” on the same dates:

Gizem Akahn (crew member)
Frank Hewetson (environmental activist)
Iain Rogers (crew member)
Paul Ruzycki (crew member)
Marco Paolo Weber (environmental activist)
Peter Willcox (crew member - captain)
Ruslan Yakushev (crew member)
Ekaterina Zasp (crew member)

On 27 October 2013, sources indicate that the charges against those detained were replaced with “hooliganism”, which carries a maximum sentence of seven years imprisonment. However, it is alleged that no formal notification had been made to detainees or their legal counsel that the piracy charges were withdrawn. It has been further alleged that throughout the period of their detention, the 30 detainees have been provided with inadequate translations and little or no information with regard to their circumstances or legal situation. Furthermore, there have been allegations that the activists were interviewed in the absence of legal counsel, were not given access to legal counsel, or were subjected to restrictions during interviews with legal counsel, thus denying them their right to confidentiality.

On 11 November 2013, the 30 detainees were transferred to a prison facility in St Petersburg, SIZO no’s 1, 4 and 5. On 22 November 2013, the International Tribunal for the Law of the Sea issued an order which required Russia to release the Arctic Sunrise and all detainees upon the posting of a bond by the Netherlands (the flag state of the Arctic Sunrise). Between 18 and 29 November 2013, all 30 detainees were released on bail of 2 million RUB (approx. 45,000 euro) each. Nonetheless, it is reported that the non-Russian members of the group are not allowed to leave the country.

We have also received allegations indicating that the activists may have been subjected to cruel, inhuman or degrading treatment during the period of their detention. There have been allegations that their right to privacy was in some cases not respected, that some members of the group were subjected to 24 hour video surveillance and/or monitoring by guards, including while using the toilet. There are also reports that some were detained in shared cells with open toilets, and that sanitary conditions were not adequate.

Sources indicate that some of the activists were subjected to constant loud noise or music during daytime (6am to 10pm) in the Murmansk SIZO. Other detainees were allegedly held in solitary confinement, and some were subjected to inappropriate strip-searches, including the strip-searching of female detainees by heavily-armed male guards wearing balaclavas. Sources further indicate that

guards acted in an aggressive and intimidating manner towards the detainees throughout their detention.

There are further reports of excessive use of handcuffing and it is alleged that during each appearance in court, the detainees appeared separately and were held in metal cages. They were also allegedly held in cages and handcuffed, and were not provided with seatbelts, access to toilet or adequate food and water during transportation.

Information received indicates that the Russian Investigative Committee rejected the request to submit applications for visas to the Federal Immigration Services made by the non-Russian members of the 30 detainees to be able to go home and return when summoned by the authorities. This refusal is reportedly in breach of the ruling made by the International Tribunal for the Law of the Sea which ordered that the group be allowed to leave the Russian Federation immediately.

According to the latest information received, the Amnesty Law adopted on 18 December 2013 by the Duma will apply to the Artic 30 group which is a development that we welcome.

Serious concern is expressed at the possibility that the above-mentioned persons may have been charged in connection with their human rights work, in particular for their activities defending the right to the enjoyment of a safe, clean, healthy and sustainable environment and opposing extractive oil operations. Serious concern is expressed that the environmental activists were held in pre-trial detention for a prolonged period of time. Further serious concern is expressed at the seriousness of the charges brought against them. Grave concern is expressed at the extent of the force used against the activists whilst protesting, and at allegations that they may have been subject to cruel, inhuman or degrading treatment during their detention. Finally, concern is expressed that the activists are not allowed to leave the country in breach of the ruling by the International Tribunal for the Law of the Sea.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described 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 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would also like to draw your Excellency's Government's attention to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your attention to the Body of Principles for the

Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

In this context, 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."

We would also like to refer your Excellency's Government to article 9(2) of the International Covenant on Civil and Political Rights also states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

Moreover, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; [...] (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In this connection, we would further like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular:

- Principle 8, which states: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

- Principle 22, which states: "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."

Regarding allegations that the 30 individuals were held in metal cages when appearing in court, we would like to refer your Excellency's Government to article 14(2) of the International Covenant on Civil and Political Rights, which states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." As explained by the Human Rights Committee in its General

Comments no. 32, “Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”

We wish 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 International Covenant on Civil and Political Rights, 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.”

Similarly, we would like to refer article 21 of the International Covenant on Civil and Political Rights, which provides that “The 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 interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

In this connection, we would also like to 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 addition, regarding allegations indicating the situation of the Artic 30 group could be linked to their human rights activities, 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 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- 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.

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:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information concerning the legal grounds for the charges being brought against the above-named individuals and the evidence for the same.
3. 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.
4. Please kindly indicate when the non-Russian members of the Artic 30 group will be allowed to leave the country as a result of the adoption of the Amnesty Law.
5. Kindly explain why the request by some non-Russian members of the 30 detainees to be granted exit visas to leave the country and come back when summoned by the authorities was not processed.

6. Please indicate what measures have been taken to ensure that the legitimate rights to freedom of opinion and expression and peacefully assembly are respected, and that the physical and psychological integrity of those exercising these rights is guaranteed.

7. Please explain why the ruling of the International Tribunal for the Law of the Sea has not been complied with.

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.

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freedom of opinion and expression

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