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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 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 the independence of judges and lawyers

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)
TJK 3/2012

29 August 2012

Excellency,

We have the honour to address you in our capacity 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; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, and 17/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding allegations of **lack of procedural safeguards in the case against the Association of Young Lawyers of Tajikistan (Amparo)**. The association is one of the leading human rights organizations in the country, composed of more than 40 human rights lawyers that provide free legal aid and human rights education and training.

According to the information received:

On 28 June 2012, the Department of Justice of the Sughd Province launched an audit into the Association of Young Lawyers of Tajikistan (Amparo) for suspicion of illicit activity. A day later, on 29 June, the association received notification of a law suit against the association for allegedly violating several provisions of the Law on Public Associations. It is reported that the Department of Justice demanded the regional court of Sughd to dissolve the association.

The audit found that Amparo had violated the law by failing to re-register certain amendments to its Statutes; for failing to convene a General Assembly session to approve the new legal address; for carrying out activities in districts where they had no branch; for creating a website in contravention with the Civil Society Law; for failing to appoint a Board of Directors; and for conducting lectures for senior high school students in Spitamen and Bobojonghafurov districts without the required licence.

According to reports received, there were significant irregularities in the auditing of the association. In particular, and contrary to article 34 of the Law on Public Associations, Amparo was not informed or notified that an audit was going to take place; it was not given a chance to present information to counter the allegations made against its members; it was not granted a period of one month to correct the irregularities allegedly found in the audit; and, in contravention of article 17 of the Law on the Inspection of Economic Entities, it was not given a copy of the audit report. It has also been reported that prior to being audited by the Ministry of Justice, the association was arbitrarily prevented from conducting human rights education activities.

On 6 August, the association allegedly received a written notification that an administrative case against them was opened. Should the court proceedings resolve in favour of the plaintiff, the Association of Young Lawyers of Tajikistan will be obliged to put an end to its legitimate human rights activities.

The court proceedings are expected to take place by the end of the month of August 2012.

Without prejudging the accuracy of these allegations, serious concern is expressed that the allegations of lack of procedural safeguards against the Association of Young Lawyers of Tajikistan could be related to its legitimate work in the defence of human rights and fundamental freedoms.

We would 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 23, which states: "Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."; and principle 24, which states: "Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference."

We would also like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular principle 6, which states: "The principle of the independence of the judiciary entitles and requires the

judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”

Further, we would like to refer your Excellency’s Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular principle 5, which states: “Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.”

We would like to recall 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 6 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.
- article 9 paragraph 3 point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

We would further like to refer to article 19 of the International Covenant on Civil and Political Rights (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.” and in article 22 of the ICCPR, which provides that “Everyone 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 context, we would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “Calls upon States to respect and fully protect the right... of all individuals to... associate freely... 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 right... to freedom of ... association are in accordance with their obligations under international human rights law.”

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 referred to above in compliance with the above international instruments.

Moreover, as 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, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide details on how the auditing of the Association of Young Lawyers of Tajikistan and the lawsuit in the regional court of Sughd is in compliance with international human rights law and with article 22 of the ICCPR in particular.
3. Please provide details on the legal basis for initiating the case against the Association of Young Lawyers of Tajikistan before the regional court of Sughd and explain what measures have been taken to ensure compliance with the principles of a fair hearing and due process, as provided in article 14 of the ICCPR, as well as the Basic Principles on the Independence of the Judiciary and Bangalore Principles of Judicial Conduct.
4. Please provide information on the measures taken to ensure that activists and human rights defenders, including lawyers, are able to conduct their activities in a safe and enabling environment without discrimination, undue restrictions or fear of intimidation or harassment.

We undertake to ensure that your Excellency’s Government’s response is reflected in the report we will submit 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 organization and its members 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.

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

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Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers