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AUX DROITS DE L'HOMME

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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 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)
RUS 4/2012

20 June 2012

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

We would like to draw to the attention of your Excellency's Government information received regarding **allegations of acts of harassment, intimidation, arbitrary detention and searches in the residences of several activists and members of the opposition in the context of protests held in Moscow on 6 May 2012.**

According to the information received:

On 11 June 2012, at approximately 8:00 a.m. State investigators searched approximately 10 apartments hosting persons believed to have participated in protests. According to the spokesperson for the Prosecutor General's Office, an order was received to conduct inspections in several apartments under charges of organizing and participating in a "mass disorder" on 6 May 2012.

It is reported that access to the residences by the lawyers of opposition leaders **AA** and **BB** was denied by the police. Entrance to both AA and BB apartment buildings were guarded by police officers armed with submachine guns. It is reported that at least 100 persons, including journalists, gathered near AA's residence. Police allegedly seized personal items, including electronic devices and blocked the access to his office.

According to information made available to us, on 11 June 2012, the searches were also carried out in **CC's, DD's, EE's, FF's, GG's, HH's, II's, JJ's, KK's, LL's,** and **MM's** apartments. At the time when the searches started, MM's was

not in her residence. JJ and KK twittered that the police burst into their flats through balconies.

Meanwhile, according to some reports, opposition bloggers, HH, and KK were allegedly detained by the police. At approximately 3:00 a.m., on 11 June 2012, the police allegedly detained two other individuals, NN and OO, after searching their own respective apartments. They were both released soon after being interrogated. The charges against them, however, remain unclear.

It is also reported that police entered and searched the premises of the "Russian Party of Pirates". PP, editor of the twitter account of the party was arrested and taken for interrogation to Kitay-Gorod district police office of Moscow alongside QQ, leader of the Russian Pirates Party.

According to official information reportedly posted on the official webpage of the Investigatory Committee, on 10 June 2012, five persons were taken to custody, including VV (born 1990), WW (born 1987), XX (born 1985), YY (born 1981), ZZ (born 1977). These persons have allegedly been charged for "mass disorder" in violation of article 212 of the Criminal Code. It is reported that ZZ was arrested before reaching the venue of Triumfalnaya Square and was thus prevented from participating in the protests of 6 May 2012.

In the days following the 6 May 2012 protests, it is also reported that police detained seven people, including AAA, AAB, AAC, AAD, AAE (born 1992), and AAF. Allegedly, AAE was subjected to beatings and ill-treatment in Ostankino police station during the night between 6 and 7 May 2012.

While we do not wish to prejudge the accuracy of these allegations, serious concern is expressed regarding allegations of acts of harassment, intimidation, arbitrary detention and searches in the residences of several activists and members of the opposition, which could be related to their legitimate human rights activities. In this context, grave concern is expressed for the deteriorating environment for activists, human rights defenders and members of the opposition, including those who may be critical of actions and policies of the Government.

In addition, we would like to bring to the attention of your Excellency's Government information we have received concerning new legislation that can seriously limit the right to peaceful assembly. On 5 June 2012, the lower house of Parliament, the State Duma, adopted a bill after a third reading amending the Code on Administrative Violations and the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing. On 6 June 2012, the upper house of the Parliament, the Federation Council, endorsed these legislative amendments. On 8 June 2012, the bill was signed into law by President Vladimir Putin.

According to the information received:

The amendments to the Code on Administrative Violations and to the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing

significantly increased the fines for violating national legislation on holding public events and placed significant restrictions for anyone willing to express dissent through peaceful protest.

More concretely, the amendments in paragraph 1 of Part 1 of article 3.5 of the **Code on Administrative Violations** replace the text "for citizens in an amount not exceeding five thousand rubles for officials - fifty thousand rubles," with the following: "...for the citizens in the amount not exceeding five thousand rubles, and in cases specified in articles 5.38, 20.2, 20.22, 20.18, paragraph 4 of article 20.25 of this Code - three hundred thousand rubles for officials - and fifty thousand rubles, and in cases specified in articles 5.38, parts 1 - 4 of article 20.2, articles 20.22, 20.18 of this Code, - six hundred thousand rubles”.

According to this information, the amendments increase the minimum fine for participants of unsanctioned assemblies ranging from 1,000 rubles (US\$ 60 approx.) to 300,000 rubles (US\$ 9,000 approx.) or 200 hours of community service. In the event that a legal entity or organization is found responsible, penalties could reach to up to 1 million rubles (US\$30,000). Finally, the amendments stipulate that a fine of up to 50,000 rubles (US\$1,500 approx.) can be imposed in those cases where the number of participants in a peaceful assembly exceeds the number indicated in the notification.

The amendments also contain provisions for mass gatherings, including a fine of up to 20,000 rubles (US\$600 approx.) or 50 hours of community service. It is alleged that this provision is intended for circumstances where peaceful assemblies may cause littering, interfere with traffic and transportation, or damage green areas. The new legislation will consider these assemblies as illegal.

Moreover, according to the information received, the amendments to the **Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing** also contain a number of restrictions. In particular, if a person is found responsible for violating national legislation on holding assemblies in at least two occasions, that person may no longer be allowed to organize a peaceful assembly. Also, local authorities are permitted to publish lists of prohibited areas to conduct peaceful assemblies.

We would like to express our serious concern with regard to the amendments to the Code on Administrative Violations and to the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing. In particular, we are preoccupied that this legislation seemed to have been put in place to hamper the legitimate work of activists, human rights defenders and members of the opposition, and arbitrarily challenge the rightful expression of dissent through peaceful protests. In light of the recent allegations involving searches in the residences of several activists and members of the opposition, we are gravely concerned that with the entry into force of this legislation, similar reports could be received from civil society in future.

The fines that can be imposed on organizers or individual participants are disproportionate and they shift the burden of proof on organizers if participants in an

assembly cause disorder or damage. Moreover, while the aforementioned amendments rely on ambiguous language, we reiterate that any legislation restricting the enjoyment of fundamental freedoms should use clear, narrow and precise language, and contain adequate safeguards to avoid arbitrary and abusive interpretations. It is our concern that these provisions, if implemented, could violate the rights to freedom of opinion and expression, peaceful assembly and association, and deter participants and organizers from engaging in peaceful protests.

We wish to appeal to your Excellency's Government to ensure that the right to freedom of peaceful assembly, as recognized under article 21 of the International Covenant on Civil and Political Rights, is enjoyed free of arbitrary restrictions. In this context, we would like to refer to Human Rights Council resolution 15/21, and in particular preambular paragraph 7, where it recognizes that, "exercising the right... to freedom of peaceful assembly... free of restrictions, subject only to the limitations permitted by international law, in particular international human rights law, is indispensable to the full enjoyment of these rights, particularly where individuals may espouse minority or dissenting... political beliefs". In this context, we would like to recall operative paragraph 1 of the same resolution that, "calls upon States to respect and fully protect the rights of all individuals to assemble peacefully... 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... are in accordance with their obligations under international human rights law."

We wish to remind your Excellency's Government's of the common provisions stipulated under article 21 and 22 of the International Covenant on Civil and Political Rights, whereby "(n)o restrictions may be placed on the exercise of this right other than those which are prescribed by 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". Such permissible restrictions, however, can only be justified in a democratic society for achieving one of the abovementioned purposes and shall not be arbitrarily invoked to prevent dissenting views from exercising their legitimate rights.

We would like to draw the attention of your Excellency's Government to General Comment 31 of the Human Rights Committee on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant which states that the legal provisions under article 2 paragraph 1 of the International Covenant on Civil and Political Rights imply that "any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right". In this connection, as stipulated in the Committee's General Comment 27, "the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of

restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution”.

In this connection, 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;

- 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.

In addition, and without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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, and articles 9 and 14 of the International Covenant on Civil and Political Rights.

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 cooperation and your observations on the following matters:

In terms of the allegations received related to the protests held in Moscow in May 2012:

1. Are the facts alleged in the above summary of the case accurate?
2. Has a complaint been lodged by or on behalf of the alleged victims?
3. Please provide information concerning the legal grounds for the arrest, detention and search in their respective residences of the aforementioned persons, and how these measures are compatible with international norms and standards as stated, *inter alia*, in the UDHR and the ICCPR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.
4. Please provide the details, and where available the results, of any investigation, medical examinations, 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. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators? Please indicate whether compensation will be provided to the victims or their families
6. Please indicate what measures have been taken to ensure that members of the opposition, human rights defenders, activists and civil society organizations can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

With regard to the legislation recently enacted:

1. Please provide information regarding any consultation undertaken with civil society during the drafting of this legislation.
2. Please provide information on how the aforementioned amendments to the Code on Administrative Violations and to the Federal Law on Assemblies, Meetings, Demonstrations, Processions and Picketing are in line with your obligations under international human rights law, particularly articles 19 and 21 of the International Covenant on Civil and Political Rights.

3. Please provide information on how the aforementioned legislation facilitates the work of activists, human rights defenders and members of the opposition in the defence of human rights, including civil and political rights.

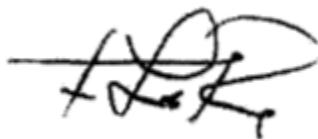
We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

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.



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

A handwritten signature in black ink, appearing to read 'M. Sekaggya', with a stylized, cursive script.

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders