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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

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OFFICE OF THE UNITED NATIONS
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; and the Special Rapporteur on the situation of human rights defenders.

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

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a new law on peaceful assembly, which would allegedly undermine the norms and standards cited below related to the right to freedom of peaceful assembly, with a direct effect on the exercise of the right to freedom of opinion and expression as well.**

According to the information received:

A new Law no. 65/2012 which aims at regulating peaceful protests was recently passed by the Libyan General National Congress. It is reported that some provisions of this law may unduly restrict the right to freedom of peaceful assembly. These restrictions in turn have the potential of also restricting the closely related right to freedom of opinion and expression as well. Should the information be corroborated, the following provisions would be of particular concern:

Article 2 of the law reportedly allows for the prohibition of peaceful assemblies in case they disrupt public utilities, which may include roadways. Such a provision does not comply with the best practices identified by the Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report

A/HRC/20/27, para. 41 (report attached for ease of reference). In the report, the Special Rapporteur made clear that “the free flow of traffic should not automatically take precedence over freedom of peaceful assembly”. It is further reported that article 7 of the law provides for the prohibition of an assembly for general “security reasons” and that this provision is drafted in broad and vague terms and does not therefore comply with article 21 of the International Covenant on Civil and Political Rights.

Article 4 of the law reportedly provides for the establishment of a committee of organizers responsible for maintaining public order. Such an obligation would not be consistent with international standards related to freedom of peaceful assembly detailed in para. 31 of the aforementioned report. Further, article 6 (b) of the law reportedly refers to the prosecution of organizers of a protest in case they fail to meet the aforementioned requirements. These requirements unduly burden organizers and may deter individuals from exercising their legitimate right to freedom of peaceful assembly.

It is also reported that article 6 (a) gives the authorities the power to change the time and place of an assembly and that such ability may prevent individuals from delivering their message to their target audience, thereby unduly limiting their rights to freedom of peaceful assembly and to freedom of expression. In this regard, reference is made to paragraph 40 of the aforementioned report, which makes clear that “restrictions must be facilitated within “sight and sound” of its object and target audience”.

Article 8 reportedly provides for the dispersal of an assembly for minor reasons and does not comply with the best practices identified by the Special Rapporteur, who recommended that individuals should be able to continue to enjoy the right to peaceful assembly even when there is sporadic violence or other punishable acts committed by others in the course of the demonstration, as long as the individuals in question remain peaceful in their own intentions or behaviour (A/HRC/20/27, para. 25).

Article 10 of the law stipulates that anyone who organizes a protest or a sit-in or calls for the organization of such a protest without notifying the appropriate bodies shall be subject to a maximum of 6 months imprisonment and a fine of maximum 5,000 dinars. Such a provision does allegedly not comply with paragraph 84 c) of the thematic report of the Special Rapporteur, which recommends that States “ensure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association”.

Concerns are expressed that the aforementioned provisions may hamper the rights to freedom of peaceful assembly and to freedom of opinion and expression.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to take all necessary steps to ensure the right of peaceful assembly as recognized in article 21 of the International Covenant on Civil and Political Rights (ICCPR), 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 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.”

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 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 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; and

- 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.

Moreover, since 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 observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate how the Government intends to ensure that Law no. 65/2012 is implemented in a way that allows individuals to assemble freely and without undue limitations, as prescribed by international standards related to freedom of peaceful assembly.
3. Please indicated avenues and mechanisms for remedy that are available to individuals whose rights to freedom of peaceful assembly and opinion and expression have been violated.

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 awaiting your response, we urge your Excellency's Government to take all necessary measures to guarantee that the right to freedom of peaceful assembly is respected.

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

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freedom of opinion and expression

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