

Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Working Group on Arbitrary Detention; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the rights to freedom of peaceful assembly and of association; Working Group on Arbitrary Detention; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 41/12, 42/22, and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged **violations of fundamental freedoms in the Russian Federation (Russia) in the context of nation-wide protests that were organised on 23 January 2021 in response to Mr. Navalny's arrest and trial**. In particular we call attention to various alleged human rights violation reportedly committed on 23 January, including instances of excessive use of force against protesters and mass arrests, as well as a broader pattern of heightened restrictions to fundamental freedoms in the build-up to these protests.

Mr. Navalny is a Russian politician, lawyer, and an anti-corruption activist, and a prominent figure in the political opposition. He was previously the subject of three communications issued by United Nations Special Procedures: RUS 11/2020, RUS 7/2020, RUS 4/2012. We appreciate the reply to RUS 7/2020, received on 26 October 2020, which related to an alleged attempt against his life in August 2020.

According to the information received:

On 20 August 2020, on a flight from Tomsk to Moscow, Mr. Navalny was allegedly subjected to an attempted killing. On 22 August, Mr. Navalny, who was in an induced coma at the time, was flown to Berlin for specialized treatment. Mr. Navalny spent around five months in Germany recuperating. During this time, he reportedly produced various social media posts, including videos on his widely-followed *Youtube* page in which he exposed details which purportedly implicated Federal Security Service agents in the alleged attempt against his life. In late December 2020, it appears that Mr. Navalny was placed on a wanted list, by the Federal Prison Service, for failure to regularly report to his probation officers while he was undergoing treatment and rehabilitation in Germany.

On 17 January 2021, Mr. Navalny returned to Russia. It has been alleged that his flight was initially supposed to land at Moscow's Vnukovo airport, but was ultimately re-directed to Moscow's Sheremetyevo airport, in an apparent attempt to prevent his supporters from meeting him on arrival. Those who had gathered at Vnukovo airport were forced to leave by police officers, who resorted to physical violence and arrests in some instances.

Shortly after Mr. Navalny had landed in Sheremetyevo he was detained by police officers for the alleged parole violations. The following day, the authorities brought a judge to the police station for an extraordinary hearing. While this trial was taking place, Mr. Navalny posted a video online, in which he called for mass protests to be organised across Russia on 23 January.

On 19 January, Moscow authorities announced that applications to organise protests would be rejected due to the ban on public events imposed in the city since November 2020 in light of the COVID-19 pandemic. Authorities in several other cities across Russia subsequently issued similar decisions, quoting pandemic restrictions or noncompliance with the minimum 10-day advance notification rule to hold assemblies. The State Duma Commission on the Investigation of Foreign Interference in Russia's Internal Affairs, subsequently announced that it would be investigating the growing calls for protests.

Many young Russians took to social media to express support for Mr. Navalny. On 20 January 2021, the State body for media oversight, issued a warning to two social media platforms, TikTok and VKontakte, indicating that they were obliged to take down content that called on underage persons to participate in protests. The following day, the same body reportedly requested social media platforms operating in Russia to take down such content or to face fines in case of failure. On 27 January 2021, the State body for media oversight fined several social media companies, namely Facebook, Instagram, Twitter, YouTube, TikTok, VKontakte and Odnoklassniki, for a reported failure to block a total of 170 posts. According to information received, administrative authorities in several state universities, colleges, and schools scheduled mandatory classes on 23 January 2021, which fell on a Saturday.

On 22 January 2021, a number of official bodies indicated that potential protesters and organisers of assemblies would face criminal prosecution. For instance, it appears that the Russian Interior Ministry announced that they had initiated an inquiry against individuals who had been accused of “organizing provocations and violent actions”, and recruiting minors to take part in unauthorized protests by disseminating false information. Similarly, the Investigative Committee initiated a criminal case for involving children in the planned protests, claiming they were endangering their health and lives due to the pandemic. The General Prosecutor's Office also warned that in the event of “attempts at violent actions” they could invoke mass riot charges, which are punishable by up to 12 years imprisonment for organizers and eight for participants.

Various members of Mr. Navalny's team and other well-known activists were detained or intimidated in the days leading up to 23 January. According to information received around 60 political activists or opposition figures have been detained in this period and on the day of the protests itself.

On 23 January 2021, despite the restrictions, tens of thousands of people participated in protests in support of Mr. Navalny in cities across Russia. The protests began in or around the central squares of Vladivostok and several Siberian cities before reaching those of Moscow, St. Petersburg and other western cities seven hours later. Several of the planned protest locations had

been cordoned off by police, such as Moscow's Pushkin Square.

Moscow experienced the largest protests that day. Ahead and during the Moscow protest, authorities reportedly warned people through loudspeakers to avoid mass gatherings, maintain social distancing, and wear masks and gloves in accordance with Covid-19 related public health rules.

A large police presence had been deployed in several cities. Initially it appears that the police largely did not interfere with the mass gatherings. There were nevertheless several isolated arrests of persons who were participating, particularly of high-profile opposition figures. Loud-speaker announcements were made in many cities, including Moscow, Vladivostok, Nizhny Novgorod, Kaliningrad and many others, to make clear that the gatherings were illegal and to demand that protesters leave.

Over the course of the day, the authorities began to more actively attempt to disperse the crowds and to arrest protesters. Furthermore, there were numerous allegations of excessive use of force by police officers against protesters in various cities, including severe beatings with batons and truncheons. In several cities, there were reports of riot police apprehending some protesters, apparently at random, before dragging them to police vehicles. In others, detained protesters were allegedly beaten, dragged, or stomped upon by police officers. Although many of these alleged instances of violence were caught on video or camera, it is unclear if they have been subsequently investigated. In addition, several of the persons who were detained were allegedly crammed in groups in police vehicles for several hours, in an apparent disregard for COVID-19 guidelines, before being taken to detention centres.

While the nation-wide protests were overwhelmingly peaceful, we have received reports of isolated instances of alleged violence by protesters, which appear to have primarily occurred after the police moved in to bring the protests to an end. There were reports of isolated violent altercations between protesters and police officers in Moscow, St. Petersburg, and Vladivostok. Several protesters and police officers were reportedly injured. Separately, in Moscow, a man who had been holding an anti-Navalny poster, was also badly beaten.

Over 4000 peaceful protesters were arrested across the country for their participation in the assemblies on 23 January 2021. A large part of the total number of arrests appears to have been carried out in Moscow.

On 2 February 2021, a Moscow court ruled that Mr. Navalny had violated the terms of his probation in relation to the 2014 fraud/embezzlement case and sentenced him to three and a half years in prison for said violation.

Further peaceful protests have subsequently been organised by the political opposition. According to information received, at least 5500 protesters were arrested on 31 January 2021 and 1500 protesters on 2 February 2021.

From 17 January 2021 to 14 February 2021, at least 9000 administrative cases on violations of rules regulating holding of public events were filed, with more than 5000 being filed in Moscow courts. According to a statement by the

Ministry of Internal Affairs from 11 February 2021, 90 criminal cases have been opened in connection with the protests. At least 27 people remain in pre-trial detention centres and at least 13 are under house arrest, amongst them people from Mr. Navalny's team or people close to him.

While we do not wish to prejudge the accuracy of these allegations, we express our deep concern at the reported arrests of several members of the political opposition and supporters of Mr. Navalny, both in the days leading up to and during the 23 January protests. We are troubled by the fact that these allegations could be reflective of a broader and seemingly systematic effort to restrict the political opposition, and expressions of dissent towards the Government more broadly. In this regard we are particularly concerned by alleged efforts to restrict the operation of social media platforms in the build-up to said protests, and to restrict the holding of peaceful assemblies, through instances of excessive use of force and possibly arbitrary detentions of numerous protesters. If confirmed, this alleged pattern of heightened silencing of dissent would be in violation of your Excellency's Government's obligations under international human rights law, in particular Articles 9, 14, 19, 21 and 25 of the International Covenant on Civil and Political Rights (ICCPR).

Although restrictions to freedom of peaceful assembly based on public health concerns may be justified under certain limited conditions, we recall that COVID-19 related restrictions should not be used as a pretext to suppress fundamental rights in general or the rights to freedom of peaceful assembly and of association in particular. These rights may be limited in a situation like the current COVID-19 pandemic, but such limitation must be necessary, proportionate, and based on law. Although we acknowledge that the 23 January protests were unauthorised, we emphasise that international standards related to freedom of peaceful assembly do not require prior authorisation for the holding of an assembly. While we further recognise the challenges posed by large-scale nation-wide demonstrations even in normal circumstances, we are deeply concerned by allegations of indiscriminate physical violence against protesters as well as by the reports of thousands of arrests. While noting that in some limited cases a small number of protesters resorted to violence, this does not deprive the assembly in general of the protections provided under international human rights law. The widespread allegations of indiscriminate use of force and mass arrests by the authorities would, if confirmed, constitute a manifestly disproportionate response to isolated violence. In this regard, we recall that the primary responsibility of the authorities when policing assemblies is to protect peaceful protesters and to facilitate the exercise of the right to freedom of peaceful assembly.

We further recall that freedom of expression on matters of general interest enjoys particularly strong protection. This is a consequence of the principles of democracy and political pluralism underlying article 19 (2). Similar to what has been expressed in our earlier communication, and previously by the European Court of Human Rights, we are concerned at what seems to be an attempt by the authorities to silence voices of political opposition in the country. In this regard, we note the arrests of several opposition figures and prominent activists. Moreover, we note that the purpose of the protests was to show political support for an opposition politician and to react against the human rights violations which he allegedly had suffered at the hands of the authorities.

Lastly, we express concern at the orders issued by the State body for media oversight to social media companies to take down content on their platforms. In this regard, we note that the State remains responsible for the implementation orders given to private actors. Thus, any takedown order must, in order to be compatible with the Covenant, be provided by law, pursue a legitimate aim and be necessary and proportionate. In this regard, we fear that the orders constituted undue restrictions to the rights of children to exercise their civil and political rights.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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:

1. Please provide any additional information and any comment you may have on the abovementioned allegations.
2. Please explain how the restrictions on internet platforms in relation to the protests on 23 January 2021 were necessary and proportionate and consistent with your Excellency's Government's obligations under international human rights law, in particular article 19 of the ICCPR.
3. Please provide information as to how the Government is protecting the right to peaceful assembly and association, in line with its obligations under article 21 of the ICCPR, including by ensuring that COVID-19 related restrictions are not arbitrarily used to hamper the right to freedom of peaceful assembly.
4. Please provide information on investigations into the use of force by police during the protests, especially if such force was proportionate and necessary.
5. Please provide information on the official number of persons arrested during the protests and the legal basis justifying their detention, as well as the fundamental safeguards lawfully ensured for the detainees, including the right to contact a next of kin, the right to contact a lawyer and the right to be privately examined by independent medical personnel, in order to be screened for contagious diseases and potential signs of ill-treatment.
6. Please indicate what measures have been taken to ensure that the political opposition in the Russian Federation are able to carry out their legitimate work, including through the exercise of their rights to freedom of opinion and expression, and of peaceful assembly and of association in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within

60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 9, 14, 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973, which guarantee the rights not to be arbitrarily deprived of liberty, to a fair trial, to freedom of opinion and expression and to freedom of association, respectively.

We would like to draw the attention of your Excellency's Government to article 9 of the ICCPR, which in its first paragraph guarantees the right to freedom from arbitrary detention and establishes that no one shall be deprived of their liberty except on such grounds and in accordance with such procedure as established by law. We wish to recall that any deprivation of liberty resulting from the legitimate exercise of the rights guaranteed by the ICCPR is arbitrary (see also CCPR/C/GC/35, para. 17). We would also like to refer your Excellency's Government to article 9(4) of the ICCPR, whereby anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

We further recall that detained persons should have access, from the moment of arrest, to legal assistance of their own choosing. In its most recent report to the Human Rights Council (A/HRC/45/16), the Working Group on Arbitrary Detention highlighted that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty, and that such assistance should be available at all stages of criminal proceedings, namely, during pretrial, trial, re-trial and appellate stages, to ensure compliance with fair trial guarantees (see paras. 50-55).

The freedoms of opinion and expression form a basis for the full enjoyment of a wide range of other human rights. It is integral to the enjoyment of the rights to freedom of assembly and association, para. 4 of General Comment 34. The right to freedom of expression protects all types of expression. However, the Human Rights Committee has emphasised that certain forms of expression enjoy particularly strong protection, including the dissemination of political opinions, debate on human rights (Compare CCPR/C/21/Rev.1/Add.7 and CCPR/C/GC/34 para. 20). Moreover, Article 19 (2) "protects all forms of expression and the means of their dissemination", CCPR/C/GC/34, para. 12. Consequently, the right applies equally online and offline, and applies also to expressions in the context of assemblies. Restrictions on these forms of expression will thus constitute a restriction on the right guaranteed under Article 19(2) ICCPR.

The Human Rights Committee has affirmed that "States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression and that paragraph 3 (of Article 19) may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights". (General Comment 34 para. 23) The penalisation of individuals solely for expressing critical opinions about the government or the social system espoused by the government is incompatible with article 19 (compare *id.* para. 42. Moreover, attacks on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack

as arbitrary arrest, torture, threats to life and killing, are incompatible with article 19. (id.) “All such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims, or, in the case of killings, their representatives, be in receipt of appropriate forms of redress.” (id.)

We also recall that according to Article 21 of the ICCPR, “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.” The ‘provided by law’ requirement means that any restriction ‘must be made accessible to the public’ and ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly’ (CCPR/C/GC/34).

We wish to underscore that failure to notify authorities of an assembly does not render it unlawful, and consequently should not be used as a basis for dispersing the assembly. We further note that this applies equally in the case of spontaneous assemblies, where prior notice is otherwise impracticable or where no identifiable organizer exists. (A/HRC/31/66 para. 23). We would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”, and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force. Only the minimum force necessary may be used where this is required for a legitimate law enforcement purpose during an assembly. Once the need for any use of force has passed, such as when a violent individual is safely apprehended, no further resort to force is permissible.(Code of Conduct for Law Enforcement Officials, Art.3). Law enforcement officials may not use greater force than is proportionate under the circumstances for the dispersal of an assembly, prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders.(Code of Conduct for Law Enforcement Officials, commentary to art. 3.)

In particular, we wish to remind your Excellency’s Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued. In this regard, we remind that the State has the burden of proof to demonstrate whether the restrictions implemented are compatible with the requirements under the Covenant.

The legitimate aims must be restricted to those exhaustively listed in the ICCPR, see CCPR/C/21/Rev.1/Add. 13 para. 6. Furthermore, the requirement of legality entails that the law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution”, para 25. Lastly, the proportionality requirement entails that the restriction “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected”, para. 34.

The general norm should be to permit the open and free use of the Internet and other digital tools. Resolution 15/21 of the Human Rights Council makes it clear that to be permissible restrictions should be “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”. 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.”

We would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- and article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

Furthermore, we would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

Finally, would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2007 (A/62/225, paras. 91 and 93), which underlines the importance of human rights monitors during demonstrations in providing an impartial and objective account of what takes place and in deterring human rights violations.