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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; and the Special Rapporteur on the situation of human rights defenders

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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 your Excellency's Government's attention information we have received concerning the **alleged dispersal of and attack against the St. Petersburg lesbian, gay, bisexual, transgender and intersex (LGBTI) pride parade, and the possible connection between this and current legislative trends in the Russian Federation.**

More specifically, the draft federal law No. 44554-6 introducing amendments to the Code of the Russian Federation on Administrative Offences regarding the "propaganda of homosexuality" was the subject of a communication sent to your Excellency's Government on 12 December 2012, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders. On 1 February 2013, the mentioned experts issued a public statement calling on the Duma to scrap the mentioned bill. We thank your Excellency's Government for the reply to this communication, dated 24 January 2013, however serious concerns remain over the issues discussed on that occasion.

According to the information received:

On 29 June 2013, some participants of the St Petersburg LGBTI pride parade, who were promoting ideals such as marriage equality and non-discrimination on the basis of sexual orientation and gender identity, were reportedly attacked by

various groupings of members of the public. It is alleged that police officers at the site of the attack failed to act in a manner which would have afforded protection to the participants in the parade, and later broke up the parade. Sources inform that at least seven people were later hospitalised and one person was seriously injured.

It is reported that the organisers and participants in the parade had followed all the requirements to hold such an event, however it is contended that the Russian authorities failed to provide adequate safety measures. Additionally, it is alleged that security forces arrested, for between four and six hours, almost fifty of the participants. It is further alleged that one of the organisers was detained overnight, whilst the remainder of the detainees were released on the same day.

The attack was allegedly planned in advance by well-known anti-LGBTI and extremist groups who reportedly justified their actions under the mentioned law of your Excellency's Government which bans 'propaganda' of 'non-traditional sexual relations'. The mentioned bill was reportedly signed by the President on 29 June and came into effect on 30 June 2013. It is also reported that the police broke up the gathering on the basis of the same law.

It is alleged that, in conjunction with your Excellency's Government's Law on Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organizations which Carry Functions of Foreign Agents, adopted on 21 November 2012, also known as 'Foreign Agents' law, the space in which LGBTI rights defenders and organizations working for the rights of LGBTI people can safely operate is being severely restricted.

Serious concern is expressed at the physical and psychological integrity of those defenders and activists working for the rights of LGBTI people, particularly in the light of the alleged lack of police protection and climate of impunity in which attacks and acts of intimidation can take place. Moreover, we are very concerned at the fact that the current legal framework severely restricts the legitimate work of human rights defenders, in particular those working for the rights of LGBTI people, and contributes to a hostile environment for them, in which they are prone to be victims of acts of intimidation and violence, as the one reported in this communication.

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 refer your Excellency's Government to article 19 of the International Covenant on Civil and Political Rights (ICCPR), that Russia ratified on 16 October 1973, which provides that "[e]veryone 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 to article 21 of the ICCPR, which provides that “[t]he 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.”

We would also 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.”

Moreover, we would like to mention the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council, in which he “stresse[d] that States have a positive obligation to actively protect peaceful assemblies. Such obligation includes the protection of participants of peaceful assemblies from individuals or groups of individuals, including agents provocateurs and counter-demonstrators, who aim at disrupting or dispersing such assemblies” (para. 33, A/HRC/20/27).

We would like to further 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 7 which states that “[e]veryone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance”; 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.

Regarding the allegations received indicating that the perpetrators of the violations reported are non-State actors, we would like to call to the attention of your Excellency’s Government the Human Rights Council resolution 13/13 of 15 April 2010, which recognizes “the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence, and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms for all” as well as to adopt the necessary measures to prevent such acts. In this resolution, the Human Rights Council also “urges States to promote a safe and enabling environment in which human rights defenders can operate free from hindrance and insecurity”.

Furthermore, the Special Rapporteur on the situation of human rights defenders, in paragraphs 28 and 29 of her report to the General Assembly (A/65/223 of 4 August 2010), stated that “the responsibility of non-State actors to respect the rights of human rights defenders does not relieve the State of its obligations under human rights law to respect, protect and fulfill human rights, including those of human rights defenders. (...)” The Special Rapporteur argued that the State’s obligation to protect “first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Failure to protect could, in particular circumstances, engage the State’s responsibility.

Secondly, States should provide defenders victims of human rights violations with an effective remedy. To that end, all violations of the rights of defenders should be investigated promptly and impartially and perpetrators prosecuted. Fighting impunity for violations committed against defenders is crucial in order to enable defenders to work in a safe and conducive environment.”

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 your observations on the following matters:

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 of demonstrators and how these measures are compatible with international human rights law, specifically with article 9 of the ICCPR.
4. Please indicate what measures have been taken to ensure that human rights defenders, including LGBTI rights defenders, can operate in a safe and enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

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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