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CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 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 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 repeated threats and physical attack against **Mr. Darko Kenig**, a human rights activist working for the rights of lesbian, gay, bisexual and transgender (LGBT) people in Serbia. Mr. Kenig was a member of the Organizing Committee of the Pride Parade in Belgrade in 2010 and 2011. The Pride Parade was banned in 2011 and violent clashes between anti-demonstrators and police occurred in 2010. Mr. Kenig is also member of Gay-Straight Alliance and a trainer with the National Democratic Institute in the field of human rights.

A communication on the banning of the Pride Parade in Belgrade in 2011 was sent to your Excellency's Government on 28 October 2011, jointly by 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. Unfortunately, no response has been received to date.

According to the information received:

In May 2012, Mr. Kenig reported for the first time the threats he had been receiving on his mobile number, including threats against his physical integrity, in the form of text messages. He allegedly reported these incidents to the police as well as his fears that this could be connected to his human rights activism,

particularly around the organization of the Pride Parades in Belgrade in 2010 and 2011.

According to the source, between May and October 2012, Mr. Kenig was in contact with local police on various occasions regarding the investigation on the threats he had received and he was allegedly warned on several occasions that the police cannot do much only based on threats unless “something actually happens to him”. It is also reported that he never received a copy of his statement from the police.

On 21 November 2012, Mr. Kenig was physically attacked by two unknown individuals who paralyzed him with pepper-spray and beat him until some people passing by managed to stop the attack. As a result of this attack, Mr. Kenig suffered from severe facial injuries and fractures. According to the information received, Mr. Kenig reported the attack to the police providing all the details that he remembered from the incident. After this attack, Mr. Kenig has been subsequently in touch with local police but it is reported that little progress has been made in the investigation.

Serious concern is expressed about the physical and psychological integrity of Mr. Kenig given the threats received and the physical attack against him. Further concern is expressed about the reported protraction of the police investigation regarding his case. In addition, concern is expressed that the threats and attack against Mr. Kenig could be linked to his human rights activities, more specifically to his work against discrimination and in defence of the rights of LGBT people.

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 standards that are applicable to the issues brought forth by the situation described above.

In this connection, we would like 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, 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 interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others.”

Moreover, we would like to appeal to your Excellency's Government to take all necessary steps to ensure the right to freedom of association, as recognized in article 22 of the International Covenant on Civil and Political Rights, 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 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.”

Furthermore, in connection to the allegations indicating that the threat and attack against Mr. Kenig were directly linked to his human rights activities, 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”.

In addition, we would like to bring to the attention of your Excellency's Government 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.

We would also like to refer to article 7 of the Declaration on human rights defenders and to the fact that the right to develop and discuss new human rights ideas enshrined in the Declaration on Human Rights Defenders is as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some

contexts, may be perceived as new or unpopular because they address issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

Moreover, 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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the case accurate?
2. Has a complaint been lodged?
3. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecutions which have been undertaken; have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please indicate what measures have been taken in order to ensure that human rights defenders, particularly those working against discrimination and advocating for the rights of LGBT people, are able to carry out their important work without fear of intimidation or violence of any sort.

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 Mr. Kenig 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.

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