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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers.

REFERENCE: UA G/SO 217/1 Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (3-3-16)
RUS 3/2014

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances; Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolutions 16/16, 19/10, 24/5, 16/5, and 17/2.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the alleged enforced disappearance of Mr. Evgeny Vitishko**.

Mr. Evgeny Vitishko is an environmental rights defender working with Environmental Watch on North Caucasus (EWNC), an independent group that published a report on environmental damage caused by preparations for the 2014 Winter Olympic Games in Sochi. For years, the group has led protests and repeatedly spoken out publicly on these issues. It is reported that its members have previously been subjected to threats and harassment due to their work.

Since 2011, EWNC activists have been challenging the allegedly unlawful erection of a fence around the summer residence of Krasnodar's governor, Mr. Alexander Tkachev, which encompasses a large area of protected public coastal forest in Tuapse. EWNC filed complaints with the Krasnodar Forest Department and sent a letter to the then President Dmitry Medvedev. While the Forest Department denied that such a fence exists, the Natural Resources Department stated that the fence, the residence and other buildings inside the area were erected without the required environmental impact

assessment. At a peaceful protest organized against the fence in August 2011, EWNC activists were arrested and spent up to fifteen days in administrative detention on charges of “resisting the police”.

According to the information received:

On 13 November 2011, Mr. Vitishko, Mr. Suren Gazaryan, and other EWNC members attempted to map the disputed area around the summer residence of Krasnodar’s governor. In doing so, they allegedly damaged a section of the fence. They also reportedly sprayed slogans such as “this is our forest” on the fence.

An investigation on grounds of “grave hooliganism” was launched against them on the same day. Mr. Vitishko and Mr. Gazaryan pleaded not guilty to the charges. On 20 June 2012, they were found guilty of “causing significant damage to private property” under section 2 of Article 167 of the Criminal Code. They received prison sentences of three years, which were suspended subject to two years’ probation with a strict curfew. According to reports, the judge refused to investigate the legality of the fence.

On 4 November 2013, Mr. Vitishko was reportedly stopped twice by police while driving from Krasnodar, and his car was searched. On 21 November 2013, he received a summons to appear before the court on 28 November 2013 to account for an alleged violation of his probation.

On 28 November 2013, Tuapse City Court considered a request by the Federal Penitentiary Service for the Krasnodar region to imprison Mr. Vitishko on the ground of an alleged breach of one of the conditions of his probation: namely, the curfew. The conditions attached to his probation had allegedly been tightened arbitrarily in December 2012 in order to curtail his work promoting and protecting human rights. The hearing was adjourned to 19 December 2013.

On 20 December 2013, the Tuapse City Court approved the request by the Federal Penitentiary Service for the Krasnodar region to imprison Mr. Vitishko for the breach of curfew and decided to convert his three years suspended sentence to a custodial sentence to be served in a settlement colony. Mr. Vitishko appealed this decision. On 3 February 2014, the trial date of Mr. Vitishko's appeal against the conversion of this sentence was moved from 22 February 2014 to 12 February 2014.

On the morning of 3 February 2014, Mr. Vitishko reportedly went to the Penitentiary Inspection Office, where he has to report regularly according to the terms of his initial suspended sentence. As he was leaving the building, several police officers, who were waiting, outside allegedly arrested him on grounds of suspicion of theft. Mr. Vitishko was taken for questioning to the local police station in Tuapse city and two hours later, police reportedly stated that he was to

be detained on charges of petty hooliganism for “swearing” at a public bus stop on the morning of the same day.

When asked by Mr. Vitishko’s lawyer whether the charges were based on a formal complaint, police officers reportedly replied they had not yet received any such complaint, but that they expected to receive it soon. At 5:00 p.m. on 3 February 2014, the hearing took place at Tuapse City Court under Article 20.1 of the Administrative Code (hooliganism). The Court allegedly declined Mr. Vitishko’s request to notify his lawyer of the hearing and appointed a public defender, whose services Mr. Vitishko declined. The Court also refused to call in the two prosecution witnesses, who were supposedly present during the incident at the bus stop. At 6:00 p.m., Mr. Vitishko was reportedly sentenced to 15 days in prison and transferred directly to Tuapse detention centre.

On 17 February 2014, at a special hearing, the judge allegedly ordered that Mr. Vitishko was to be sent to a penal colony. Neither Mr. Vitishko nor his lawyers were notified of this special hearing. On 18 February 2014, having served his administrative sentence under Article 20.1 of the Administrative Code and instead of being released, Mr. Vitishko was transferred to pre-trial detention centre No.1 in the Krasnodar region. It is alleged that his lawyers were not notified of this transfer, and it reportedly took them some time to discover Mr. Vitishko’s whereabouts.

On 24 February 2014, whilst trying to give a parcel to him, a colleague of Mr. Vitishko was reportedly informed that he was no longer in pre-trial detention centre No.1, and that he would serve his sentence in a penal colony outside of the Krasnodar region. The authorities refused to inform Mr. Vitishko’s family and lawyers as to which colony he was held in. The last contact with Mr. Vitishko took place on 21 February 2014, when he was visited by his lawyer.

On 27 February 2014, it is reported that Mr Vitishko’s lawyer received a letter from the head of the pre-trial detention centre No.1 in Krasnodar region, where Mr Vitishko had been held before his disappearance. The letter reportedly states that Mr. Vitishko has been transferred to Tambov region to serve his sentence but did not specify where exactly he will serve his sentence. According to reports received, in Tambov region there is only one detention colony. In addition, Tambov region is more than 12 hours away from Mr Vitishko’s home town, which goes against the reportedly usual practice that such sentences are served in settlement colonies not far from the home of the detainee, in this case, Krasnodar region.

Concern is expressed about the physical and psychological integrity of Mr. Evgeny Vitishko. It is profoundly concerning that his detention since 21 February 2014 might amount to an enforced disappearance and that his situation could be linked to his work promoting and protecting human rights.

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.

In relation to the allegations according to which the fate and whereabouts of Mr. Evgeny Vitishko are currently unknown, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);
- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction); and
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance).
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest); and
- article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons).

We would like to refer to 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 24/5, and in particular operative paragraph 2 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."

Regarding allegations received indicating that the situation of Mr. Evgeny Vitishko is linked to his human rights work, 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, and in particular articles 1 and 2.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 9 para. 1 which establishes that in the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights; 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 allegations that Mr. Vitishko did not have access to a lawyer of his choice, we would like to refer your Excellency's Government to article 14(3) of the International Covenant on Civil and Political Rights, which states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; [...]"

The right to be assisted by a lawyer is also set forth in the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, in particular in principle 1, which states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings"; principle 5, which states: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."; and principle 8, which states: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship

and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Mr. Vitishko in compliance with the above international instruments.

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, when relevant to the case under consideration:

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 victim?
3. Please provide information on the fate and whereabouts of Mr. Vitishko, and on the reasons for his transfer to pre-trial detention centre No.1 in the Krasnodar region.
4. Please provide the details, and where available the results, of any investigation, 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. Please explain why, at the hearing dated 3 February 2014, the Court allegedly declined Mr. Vitishko’s request to notify his lawyer. Furthermore, please provide information on the reasons why neither Mr. Vitishko nor his lawyers were notified of the special hearing which took place on 17 February 2014.
6. Please indicate what measures have been taken to ensure that human rights defenders, including civil society and human rights activists, 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 undertake to ensure that your Excellency’s Government’s response will be available in the report we will submit 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. Evgeny Vitishko 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.

We would like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Mr Evgeny Vitishko as a case to the Working Group on Enforced or Involuntary Disappearances, it will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

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

Ariel Dulitzky
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Disappearances

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