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PROCEDURES SPECIALES DU
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 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; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Independent Expert on minority issues.

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (56-23) G/SO 214 (107-9) G/SO 214 (3-3-16) Minorities (2005-4)
KAZ 1/2014

31 January 2014

Excellency,

We have the honour to address you in our capacity 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; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Independent Expert on minority issues pursuant to Human Rights Council resolutions 16/4, 24/5, 22/20, 16/5, 17/2, and 16/6.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning alleged persecution of Mr. **Yuriy Toporov**, who risks being deported to the Russian Federation due to his legal representation of the religious minority of Jehovah's Witnesses in the Republic of Kazakhstan, who are subjected allegedly to on-going crackdown and persecution. In the light of the allegations below, we urge your Excellency's Government that Mr. Toporov not to be deported, that the charges against him and other members of Jehovah's Witnesses for alleged illegal missionary activity to be withdrawn, as well as the raids of their religious meetings, and the banning of their religious publications to be discontinued.

According to the information received:

On 23 November 2013 Mr. Yuriy Toporov, a lawyer aged 36, was arrested by police and subsequently charged under article 375(3) of the Republic of Kazakhstan's Code of Administrative Violations (RK CAV) by the Almaty Department of Religious Affairs for alleged illegal missionary activity when he

participated in a weekly religious peaceful meeting of Jehovah's Witnesses at a legally rented facility. Reportedly, Mr. Toporov has lived in the Republic of Kazakhstan for more than ten years. He is a citizen of the Russian Federation married to a citizen of the Republic of Kazakhstan. Mr. Toporov provides full-time legal assistance to the Christian Center of Jehovah's Witnesses located in Almaty, Republic of Kazakhstan. According to the information received, Mr. Toporov's trial is scheduled to take place on 4 February 2014. If convicted under article 375(3) of the RK CAV, the judge has to impose a fine and mandatory deportation from the Republic of Kazakhstan. Reportedly, Mr. Toporov has challenged the legality of his arrest and prosecution through civil lawsuit, which is currently pending appeal at an appellate court in Almaty, Republic of Kazakhstan.

It is alleged that the arrest on 23 November 2013 and subsequent charges occurred in retaliation against Mr. Toporov in order to deport him from the Republic of Kazakhstan due to his legal representation of the Christian Center of Jehovah's Witnesses, in a lawsuit against the state Agency of Religious Affairs (hereafter referred to as "the Agency") for its censorship of 11 publications of Jehovah's Witnesses, including issues of "The Watchtower" and "Awake!" In addition, reportedly, Mr. Toporov has been involved in providing legal assistance to dozens of Jehovah's Witnesses, most of whom are citizens of Kazakhstan, who have been detained and convicted for illegal missionary activity, including attending their weekly religious meetings or peacefully discussing their religious beliefs with others.

Furthermore, serious concern is expressed that the arrest and charges against Mr. Toporov may be part of an on-going crackdown and persecution on members of the Jehovah's Witnesses in Kazakhstan. According to information received, the crackdown began with the implementation by the Agency of the new restrictions imposed by the Law "On Religious Activity and Religious Associations" adopted on 11 October 2011 (hereinafter "2011 Religion Law"). Articles 1(5) and 8(7) make it an offence for anyone, including a foreigner and a citizen of the Republic of Kazakhstan, to disseminate religious beliefs without obtaining prior permission (registration) from the Agency for Religious Affairs as a missionary. Allegedly the registration process takes months and is excessively arbitrary. Even if registration as a missionary is finally granted, it is valid only for a maximum of one year and only for one particular region specified by the local department of religious affairs.

Reportedly, in two letters dated 28 March 2013 and 16 May 2013, the Agency instructed the "Christian Center of Jehovah's Witnesses" to inform the more than 17,000 Jehovah's Witnesses in the Republic of Kazakhstan that it is illegal for them to preach outside their registered places of worship and that they must comply with the total ban on unregistered missionary activity.

Allegedly, since December 2012, the state officials have conducted a targeted campaign against Jehovah's Witnesses. Several of them, most of whom are citizens of the Kazakhstan, have been arrested, charged with illegal missionary activity under article 375(3) of RK CAV and ordered to pay fines of more than EUR 850 (USD 1,100) allegedly for speaking about their religious beliefs to relatives, friends and neighbours. Among them were reportedly Mr. **Dmitriy Bukin**, Mr. **Nurzhan Agalkov**, Ms. **Nadezhda Shefer**, Mr. **Sergey Chuvashkin**, Mr. **Eduard Malykhin** and Mrs. **Irina Malykhin**. Allegedly, at least 26 similar instances have taken place throughout the country, including in the towns of Aktau, Astana, Atyrau, Ayagoz, Esil, Karabalyk, Karaganda, Kokshetau, Kyzylorda, Mamlyutka, Merke, Pavlodar, Petropavlovsk, and Ust-Kamenogorsk.

Allegedly, the state authorities are now taking action to enforce the fines imposed on Jehovah's Witnesses and informing them that if they are not immediately paid, criminal proceedings would be initiated.

Furthermore, articles 6(1) and 9(3) of the 2011 Religion Law also prohibit the import of any religious literature, without first obtaining prior approval from the Agency. Allegedly, the religious organization must submit to that institution the materials it would like to import, which is then subjected to examination by one of its a religious experts. Once this is done, the Agency decides whether permission will be given to import the religious literature.

Reportedly, in September, October, and December 2012, Jehovah's Witnesses applied to Agency for approval to import ten religious publications, which they use in their regular weekly religious meetings and at home for personal and family worship. These publications include:

- a. The Watchtower magazine, 15 January 2013, 15 February 2013, and 15 March 2013 issues (Russian and Kazakh language editions);
- b. Awake! magazine, November 2012 issue (Russian language edition); and October-December 2012 issue (Kazakh language edition); and
- c. Examining the Scriptures Daily—2013, brochure (Russian and Kazakh language editions).

Allegedly, the Agency has banned the import of 11 publications of Jehovah's Witnesses, including the monthly issues of "The Watchtower" and "Awake!" magazines. In three decisions dated 31 January 2013, the Agency refused permission, claiming inter alia that these publications discouraged secular education and work, encouraged family breakup, and contained the religious belief of Jehovah's Witnesses that the Trinity is not taught in the Bible which could offend members of traditional Christian religions. The Agency directed

Jehovah's Witnesses to modify the content of the publications and resubmit the modified editions for approval.

Jehovah's Witnesses appealed to court. On 3 July 2013, the Astana Economic Court rejected the appeal and upheld the Agency's ban on the publications. A further appeal is now pending with the Astana City Court, the verdict of which is final. In the meantime, on 12 July 2013, the Agency banned the import of the 15 July 2013 issue of The Watchtower (Russian and Kazakh language editions).

Furthermore, it is reported that since 1 January 2013, police have raided at least six peaceful religious meetings of Jehovah's Witnesses, who gathered for worshipping and seized their personal copies of the Bible and other religious literature in the cities of Esil, Karazhal, Karabalyk, Kentau, Makinsk, and Sarykol, though Jehovah's Witnesses have legal registration in all regions of the Republic of Kazakhstan.

Furthermore, allegedly, a chief religious expert of the Kostanay Regional Department of Religious Affairs has concluded in an expert study that an unspecified number of the 900 books, magazines, and brochures of Jehovah's Witnesses seized during one of the raids in Karabalyk town on 6 April 2012 are "extremists". Reportedly, Jehovah's Witnesses have been informed by the police that the case has now been referred to the Kostanay Regional Prosecutor's office to determine whether court proceedings will be initiated to determine whether the publications are "extremist", a ruling which could result in the banning and criminal prosecution of Jehovah's Witnesses.

In her visit report following her official visit to the Republic of Kazakhstan in July 2009, the former Independent Expert on minority issues, noted that people whose faiths are considered to be "non-traditional" (including Jehovah's Witnesses, Baptists, evangelicals, Scientologists, non-recognized forms of Islam and others) feel that they are not equal before the law with regard to [religious] freedoms as traditional faith groups. She stated that "Rules for registration of certain religious groups, public statements and publications by the Government warning the population against certain religious faiths, confiscation of property, imposition of fines, arrests, deportations and other actions by police, national security agents and bureaucrats create a climate of repression for those religious groups."

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification on the information drawn to our attention and share our concerns in relation to the present circumstances in light of the applicable international human rights norms and standards.

We would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with

fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “Everyone 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.”

We would like to refer to article 21 of the 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.”

We would like to further refer to article 22 of the ICCPR, 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 also 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. Toporov is related to his legal work in defence of the right to freedom of religion or belief, 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 enshrine the right of everyone, individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms and state that States have the prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, including the right to defend human rights..

Furthermore, we would like to bring to the attention of your Excellency's Government article 9 para. 3 point c) of the mentioned Declaration which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

In this connection, we would like to refer your Excellency's Government to 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, and in particular principle 18, which states: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

Without expressing at this stage an opinion on the facts, we would like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief is protected in the Republic of Kazakhstan in accordance with the principles set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief and article 18 of the Universal Declaration of Human Rights (UDHR) and the ICCPR, which the Republic of Kazakhstan ratified on 24 January 2006.

With regard to allegations of legality of arrest and prosecution of Mr. Toporov and other aforementioned members of the Jehovah's Witnesses, as well as to the allegations related to enforcement of the total ban on unregistered missionary activity in the Republic of Kazakhstan, we would like to draw attention of your Excellency's Government to article 18 of the UDHR, which explicitly guarantees the freedom to change one's religion or belief as an inextricable component of the human right to freedom of religion or belief. While subsequent United Nations instruments use slightly different wording the right to conversion remains fully protected. In this context, article 18 of ICCPR provides that freedom of thought, conscience and religion includes "freedom to have or adopt a religion or belief of his choice". Article 18 (2) of ICCPR was included partly to reinforce the protection of the right to conversion, stating that "[n]o one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice". Article 1 of the 1981 Declaration refers to everyone's "freedom to have a religion or whatever belief of his choice".

In this regard, we would like to bring to your Excellency's Government's attention paragraph 18 of the interim report to the General Assembly (A/67/303), in which the Special Rapporteur of freedom of religion or belief explains in details that "as early as 1987, the then Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Elizabeth Odio Benito, concluded that while these provisions varied slightly in wording, they "all meant precisely the same thing: that everyone has the right to leave one religion or belief and to adopt another, or to remain without any at all" (see E/CN.4/Sub.2/1987/26, para. 21). In its General Comment 22, the Human Rights Committee also interprets the "have or adopt" formulation of the International Covenant on Civil and Political Rights to include the right to conversion — an interpretation to which the Special Rapporteur clearly subscribes: In General Comment 22, the Committee observes that "the freedom 'to have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as to retain one's religion or belief" (CCPR/C/21/Rev.1/Add.4, para. 5).

The General Assembly has repeatedly and by consensus urged States to ensure that their constitutional and legislative systems provide adequate and effective guarantees of freedom of thought, conscience and religion or belief to all without distinction, *inter alia*, by providing access to justice and effective remedies in cases where the right to freedom of thought, conscience and religion or belief or the right to freely practice one's religion, including the right to change one's religion or belief, is violated (see General Assembly resolutions 60/166, 61/161, 62/157, 63/181, 64/164, 65/211, 66/168, 67/179 and 68/170). In this context, we would like to draw the attention of your Excellency's Government to paragraph 68 of the interim report to the General Assembly (A/67/303), in which the Special Rapporteur of freedom of religion or belief calls upon States to consistently respect, protect and promote the human right to freedom of religion or belief in the area of conversion. He reiterates that the right to conversion and the right not to be forced to convert have the status of unconditional protection under international human rights law. Freedom of religion or belief includes the right to try to persuade others in a non-coercive manner; any restrictions on missionary activities deemed necessary by States must strictly abide by article 18 (3) of the ICCPR.

With regard to allegations that since 1 January 2013 police have raided at least six peaceful religious meetings of Jehovah's Witnesses, who gathered for peaceful worshiping and seized their personal copies of the Bible and other religious literature, we would like to recall to your Excellency's Government the principles set forth in the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief. In particular, article 6 (a), (c), (d) and (i) of the Declaration provides that the right to freedom of thought, conscience, religion or belief includes the freedom "to worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;" "to make, acquire and use the necessary articles and materials related to the rites or customs of a religion or belief;" "to write, issue and disseminate relevant publications in these areas;" as well as "to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels."

Also we would like to bring to the attention of your Excellency's Government paragraph 8(h) of the Human Rights Council resolutions 22/20 (A/HRC/RES/22/20) and paragraph 14 (h) of General Assembly resolution 68/170 (A/RES/68/170), which urge States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief, and to this end "to ensure, in particular, the right of all persons to worship, assemble or teach in connection with a religion or belief and their right to establish and maintain places for these purposes, and the right of all persons to seek, receive and impart information and ideas in these areas." Furthermore, in its General Comment 22 the Human Rights Committee observed that "in addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, [...] the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications" (CCPR/C/21/Rev.1/Add.4, para. 4).

With regard to three decisions dated 31 January 2013 of the Republic of Kazakhstan's state Agency for Religious Affairs to ban the import of 11 publications of Jehovah's Witnesses, including monthly issues of "The Watchtower" and "Awake!" magazines, as well as with regard to allegations that the Kostanay Regional Department of Religious Affairs has concluded in its expert study that an unspecified number of the 900 books, magazines, and brochures of Jehovah's Witnesses seized during one of the raids in Karabalyk town on 6 April 2012 are extremist, we would like to draw attention of your Excellency Government to paragraph 48 of the General Comments 34, in which the Human Rights Committee states that "prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. [] Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith."

We also wish to draw the attention of your Excellency's Government to international standards relevant to the protection and promotion of the rights of minorities, including religious minorities. Article 27 of the ICCPR establishes that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." Furthermore, the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities which requires under article 1.1 that States "shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." Article 2.1 states that "persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. Article 2.2 highlights that "persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life".

We would also like to bring to your Excellency's Government's attention that in the report by the former Independent Expert on minority issues following the visit to the Republic of Kazakhstan in 2009, the Independent Expert recommended to the Government of the Republic of Kazakhstan that the freedoms accorded to traditional religious groups be extended to all religious groups, including Jehovah's Witnesses, and also recommended a wide-ranging dialogue with "non-traditional" religious groups. She recommended that "existing laws on religious organizations and activities should be brought into compliance with the Constitution and international legal standards, and not restrict the legitimate activities of individuals or religious groups. Repressive measures against religious groups and their members must stop immediately."

We would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Toporov, Mr. Bukin, Mr. Agalkov, Ms. Shefer, Mr. Chuvashkin, Mr. and Mrs. Malykhins and other Jehovah's Witnesses in the Republic of Kazakhstan in compliance with the mentioned international instruments.

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. Please provide details of how the arrest and subsequent prosecution of Mr. Toporov, Mr. Bukin, Mr. Agalkov, Ms. Shefer, Mr. Chuvashkin, Mr. and Mrs. Malykhins and other Jehovah's Witnesses are compatible with the aforementioned international human rights norms and standards.
3. Please provide details, including the legal basis and reasons for conducting the raids of their religious meetings, and the banning of the religious publications and how these measures are compatible with the aforementioned international human rights norms and standards.
4. Please provide information and explain in details how articles 1(5), 6(1), 8(7) and 9(3) of the Law "On Religious Activity and Religious Associations" are in compliance with the aforementioned international human rights standards.
5. Please provide information in details on measures taken to ensure the freedom of religion or belief and the rights and freedoms, in particular the freedom to manifest one's religion or beliefs in line with the Republic of Kazakhstan's international human rights obligations.
6. Please provide information about the measures taken to ensure that those working for the defence and promotion of human rights and fundamental freedoms can do so in a safe and enabling environment, without fear of persecution or harassment of any sort.

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. Yuriy Toporov, Mr. Dmitriy Bukin, Mr. Nurzhan Agalkov, Ms. Nadezhda Shefer, Mr. Sergey Chuvashkin, Mr. Eduard Malykhin, Mrs. Irina Malykhin and other Jehovah's Witnesses in Kazakhstan 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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