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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on freedom of religion or belief;
and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention, Special Rapporteur on freedom of religion or belief, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 14/11, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the detention and imminent extradition of Mr. **Makhset Abdullayevich Djabbarbergenov** to Uzbekistan.

According to the information received:

Mr. Djabbarbergenov, born in the Karakalpakstan Republic in 1980, is a citizen of Uzbekistan, married with children.

In 2000, Mr. Djabbarbergenov converted to Christianity and became an active house church leader in Nukus, the capital of Karakalpakstan Republic, where he reportedly set out to establish a Protestant church. He led the Pentecostal community in Nukus, Uzbekistan, since 2001. According to the information, Protestant churches do not have registration status in Karakalpakstan Republic therefore activities undertaken by members of Protestant communities are deemed "illegal". Reportedly, Mr. Djabbarbergenov was fined for his religious activity and had his books confiscated. Mr. Djabbarbergenov has reportedly been summoned to court six times.

In August 2007, the anti-terrorism police allegedly raided Mr. Djabbarbergenov's home on the ground that he was holding illegal religious meetings. After the raid, Mr. Djabbarbergenov and his family fled to from Nukus to Tashkent.

On 20 August 2007, Nukus police issued a wanted poster seeking the capture of Mr. Djabbarbergenov, on the allegations that Mr. Djabbarbergenov was a follower

of Isa Masih (Jesus Christ) and to face charges under Criminal Code Article 229-2 regarding the “violation of the procedure for teaching religion”.

On 11 September 2007, Mr. Djabbarbergenov reportedly crossed the border into Kazakhstan to avoid arrest. His wife and children joined him in 2008. Upon his arrival in Kazakhstan, Mr. Djabbarbergenov started procedures to seek asylum status for him and his family with the United Nations High Commissioner for Refugees (UNHCR) and was granted refugee status (file number 328-08C00001) on 26 February 2008.

In 2009, the procedure for granting refugee and asylum seeker status was reportedly transferred from the UNHCR to the Ministry of Migration of Kazakhstan. Reportedly, the Kazakh authorities disagreed with the decisions made by UNHCR and began to review all cases, including that of Mr. Djabbarbergenov, whose refugee status was eventually refused by the authorities.

Mr. Djabbarbergenov appealed against the decision of the Migration Committee and successive decisions in first instance, appeal and cassation courts in Almaty rejected his appeal arguing that the fact that a person has been granted refugee status by an international organization does not fulfill the criteria for rejection of extradition under Article 532 of the Criminal Proceedings Code of Kazakhstan. Mr. Djabbarbergenov further appealed to the Supreme Court of Kazakhstan and a decision is still pending.

On 29 February 2012, the Uzbek authorities allegedly put Mr. Djabbarbergenov on a wanted list of the Commonwealth of Independent States on grounds of having breached article 229-2 of the Criminal Code of Uzbekistan, as well as article 244-3 which sanctions “illegal manufacture, storage, import or distribution of religious literature”.

On 5 September 2012, Mr. Djabbarbergenov was allegedly detained by police officers in Almaty, Kazakhstan, and brought to Temporary Containment Cell in Almaty. The Court confirmed a 40-day detention with a view to his extradition. The detention period is estimated to expire on 14 or 15 October 2012.

The Bostandyk District Prosecutor, in Almaty city, reportedly requested the issuance of an arrest with a view to extradition against Mr. Djabbarbergenov on the basis of article 534 of the Criminal proceedings Code of Kazakhstan, which was purportedly approved by a Bostandyk District Court on 7 September 2012

On 8 September 2012, Mr. Djabbarbergenov was reportedly transferred to Almaty’s Investigation Prison. He is currently awaiting the decision of the Extradition Division of the International Co-operation Department at the General Prosecutor’s Office of Kazakhstan concerning his extradition to Uzbekistan.

Serious concern is expressed that Kazakh authorities may proceed to extradite Mr. Djabbarbergenov imminently despite the fact that he has faced religious persecution in his country, evidenced by the refugee status granted by UNHCR where he claims to face

threats to his life or freedom. Concern is also expressed that upon extradition to Uzbekistan, Mr. Djabbarbergenov may face serious charges for exercising his freedom of religion or belief and be at risk of torture.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to provide clarification concerning the arrest, detention and possible extradition of Mr. Djabbarbergenov to face charges in Uzbekistan for his religious beliefs and practices.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Djabbarbergenov is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would also like to recall the obligation of non-refoulement in article 33 of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, which your country has ratified on 15 January 1999: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

We would also like to appeal your Excellency's Government to ensure freedom of religion or belief of Mr. Djabbarbergenov and his family in accordance with the principles set forth in article 18 of the UDHR, as well as articles 2 (1) and 18 of the ICCPR, which your country has ratified on 24 January 2006.

In this connection, we would like to draw the attention of your Excellency's Government to Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, of which Art. 1 (1) provides that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." Art. 2 (1) also provides that: "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief." Furthermore, the General Assembly, in its resolution 64/164, urges States to step up their efforts to protect and promote freedom of thought, conscience and religion or belief.

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of the person named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would further like to draw your Excellency's Government's attention to article 3 of the CAT, which provides that no State party shall expel, return ("refouler"), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, paragraph 9 of General Comment 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties "must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement". Furthermore, paragraph 9 of the Resolution A/RES/61/253 of the UN General Assembly urges States "not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture".

Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States not to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, stressing the importance of the effective legal and procedural safeguards in this regard and recognizing that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.

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 the above-mentioned person 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 summary of the case accurate?
2. Has a complaint been lodged by or on behalf of Mr. Djabbarbergenov?
3. Please provide the details, and where available the results, of any investigation, medical examinations, 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.
4. Please provide information concerning the legal grounds for the detention and possible extradition to Uzbekistan of Mr. Djabbarbergenov, and how these measures are compatible with international norms and standards as stipulated in the ICCPR, the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.
5. Please provide information on the measures taken to ensure the freedom of religion or belief and the rights of the religious minorities are protected.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected 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. Djabbarbergenov 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.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment