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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

REFERENCE: UA G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (3-3-16) G/SO 214 (53-24)
KGZ 5/2011

13 August 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 16/23, 17/2, 16/5, and 16/4.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the decision of the Supreme Court, on 20 December 2011, to uphold the sentence of life imprisonment of human rights defender Mr. **Azimjan Askarov**. Mr. Askarov is a prominent ethnic Uzbek human rights defender, and director of the human rights organization Vozdukh (Air), which forms part of the regional human rights network in southern Kyrgyzstan. He also worked with the OSCE Office for Democratic Institutions and Human Rights (ODIHR) on detention monitoring projects in southern Kyrgyzstan and has spoken out against police brutality.

Mr. Azimjan Askarov has been the subject of four previous communications sent by Special Procedures mandate holders addressed to your Excellency's Government namely on 22 June 2010 concerning his arrest and detention; on 18 August 2010 concerning allegations regarding breaches of fair trial procedures; on 29 October 2010 concerning alleged ill-treatment of Mr. Askarov while in detention and on 16 March 2011 following the decision of the Court of Appeal. We acknowledge receipt of replies by your Excellency's Government transmitted to these communications by way of letters dated the 25 June 2010, 21 August 2010, 16 December 2010 and 8 April 2011 respectively. However, the concerns expressed at the time remain, and they have been reinforced by new information the Special Rapporteurs have received.

According to the new information received:

On 20 December 2011, it is reported that, the Supreme Court issued its decision upholding the sentence of life imprisonment against Mr. Azimjan Askarov on charges of organising mass disorder, inciting inter-ethnic hatred, hostage-taking and incitement to murder.

On 26 January 2011, the Supreme Court had reportedly commenced a review of the case of Mr. Askarov and seven co-defendants in Bishkek following the return of a guilty verdict against them by the Court of Appeal in November 2010.

According to the information received, the judges of the Supreme Court failed to adequately address concerns related to violations of fair trial rights during the proceedings before lower courts, including allegations of torture, confessions extracted under duress, intimidation of defence witnesses and lawyers, failure to question key defence witnesses and difficulties experienced by Mr. Askarov in meeting with his lawyers.

It is reported that, in reviewing the admissibility of evidence allegedly obtained under torture, the Supreme Court relied exclusively on the fact that the General Prosecutor's Office did not initiate criminal proceedings into the torture allegations formally made by Mr Askarov's lawyers. It is suggested that the prosecutorial decision has not been fully explained despite a court order to the Prosecutor's Office to issue a ruling on the matter.

On 7 September 2010, the General Prosecutor along with officials and defence lawyers had reportedly visited the temporary detention centre of Nookan district where Mr. Askarov was being detained, in order to conduct a physical examination, following an order by the presiding judge the previous day. Allegedly, Mr. Askarov refused to undergo such an examination, given that it would have taken place in the detention centre.

We wish to reiterate the concerns expressed in previous communications sent to your Excellency's Government on the present case. We remain concerned that the charges brought against Mr. Azimjan Askarov may be directly related to his peaceful activities in defence of human rights, and in particular his work in protecting the rights of ethnic minority groups in Kyrgyzstan. We are concerned about the allegations of the absence of any thorough and impartial investigations into the allegations of torture and of violations of fundamental fair trial safeguards.

With respect to the alleged failure to properly investigate allegations of torture and other alleged violations of fair trial rights, we would like to make reference to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly

resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, and in particular:

- Principle 2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
- Principle 4. There shall not be any inappropriate or unwarranted interference with the judicial process [....].
- Principle 6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

We would also like to remind that, according to the Guidelines on the Role of Prosecutors, 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 (guideline 16) “When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice”.

With respect to the allegation that lawyers and defence witnesses were subject to intimidation and pressure, we would also like to refer your 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 16: Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics;

- principle 17: Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities;

- principle 18: Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions;

- principle 20: Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

We would also 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, 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." In this connection, we wish also to draw the attention of your Excellency's Government to the principle enunciated in Human Rights Council Resolution 12/16, which calls on States, while noting that the exercise of the right to freedom of opinion and expression carries with it special duties and responsibilities, to refrain from imposing restrictions which are not consistent with article 19, paragraph 3 of the ICCPR, including on (i) discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

Without in any way implying any determination on the facts of the case, In this connection, 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."

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

- article 6, point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; 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.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Azimjan Askarov 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.

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. Azimjan Askarov 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. Please provide more information on the basis on which the Supreme Court has decided that proceedings of lower courts were fair and in accordance with fair trial and human rights standards.
3. Were the allegations of torture, fair trial violations and confessions extracted through duress duly investigated at any stage of the proceedings, notably by the Supreme Court?
4. Please provide information on what were the actions taken by the General Prosecutor's Office to initiate criminal proceedings into the torture allegations formally made by Mr. Askarov's lawyers.

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.

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

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

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
opinion and expression