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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 independence of judges and lawyers; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: AL G/SO 214 (3-3-16) G/SO 214 (53-24) Health (2002-7)
TJK 1/2014

31 January 2014

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 17/2, 24/6, and 16/23.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the circumstances of the death of Mr. **Umed Tojiev**.

According to the information received:

On 30 October 2013, Mr. Umed Tojiev, aged 34, a member of the opposition Islamic Renaissance Party, was arrested at a market in Sughd province. Mr. Tojiev was not allowed to see a defence lawyer until 13 November 2013. While in detention between 30 October and 2 November, and in order to extract a confession about his alleged involvement in terrorism, he was allegedly tortured or otherwise ill-treated. Mr. Tojiev was allegedly subjected to asphyxiation with plastic bags, sleep deprivation and the application of electric shocks through wet fabric in order to conceal physical marks on his body. While being carried into the police station meeting room as he could not walk, Mr. Tojiev was reportedly seen shaking and crying and was heard saying that he was forced to incriminate himself under torture. It is alleged that, on an unknown date, apparently in desperation, Mr. Tojiev jumped out of the third floor window of the police station. He was subsequently hospitalized with broken legs for four days and on 5 November 2013, he was placed in pre-trial detention. It is reported that although he was under the supervision of the detention medical officer, until his transfer to the prison hospital on 4 January 2014, he did not receive adequate medical

treatment. On 19 January 2014, Mr. Tojiev reportedly died at the Central Hospital of Main Directorate of Implementation of Criminal Punishment (MDICP) in Sughd region. According to his lawyer, the official reason given for his death was “thrombotic embolism.”

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the case of Mr. Tojiev. 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 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In this context, and with respect to the allegations according to which Mr. Tojiev was subjected to torture and other forms of ill-treatment, we would like to draw your Government’s attention to paragraph 1 of Human Rights Council Resolution 8/8 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

Furthermore, with respect to the allegations according to which Mr. Tojiev might have been forced to confess under duress, we would like to draw your Government’s attention to article 15 of the Convention against Torture provides that, “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” We also recall that paragraph 6c of Human Rights Council resolution 8/8 of 2008 urges States “to ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in Article 7 of the International Covenant on Civil and Political Rights.

We would further like to draw your Government’s attention to the fundamental principles applicable under international law to these cases. Article 7 of the International Covenant on Civil and Political Rights, to which Tajikistan is a party, provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Article 6 of the Covenant states that no one shall be arbitrarily deprived of his or her life. When the State detains an individual, it is held to a heightened level of diligence in protecting that individual’s rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility (see, for instance, the Human Rights Committee’s views in the case of *Dermat Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), paragraph 9.2).

In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a “thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances” (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). This principle was reiterated by the Human Rights Council in resolution 8/3, stating that all States have “to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions”.

The Council added that this includes the obligations “to identify and bring to justice those responsible, ..., to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions”. These obligations to investigate, identify those responsible and bring them to justice arise also under Articles 7 and 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We urge your Government to carry out an expeditious, independent and transparent inquiry into the circumstances surrounding the death of the above-mentioned person, also with a view to taking all appropriate disciplinary and prosecutorial action and ensuring accountability of any person guilty of the alleged violations, as well as to compensate his family. In this respect we note that Human Rights Council Resolution 8/8, paragraph 6 (b) and (e), urges States to hold responsible not only those who perpetrate torture, but also those “who encourage, order, tolerate or perpetrate acts of torture [...], to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed”.

Regarding his delayed access to a lawyer, 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 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.”

With regard to the allegations of the inadequate medical treatment, we would like to recall that this right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights (accession on 4 January 1999), which provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. In this connection, we wish to refer your Excellency's Government to General Comment No. 14

of the Committee on Economic, Social and Cultural Rights, which provides that States are under the obligation to respect the right to health by, inter alia, refraining from interfering directly or indirectly with the enjoyment of the right to health, from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal migrants, to preventative, curative and palliative health services, and from enforcing discriminatory practices as a State policy (para.34).

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 whether compensation has been provided to the family of the victim.

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 the above mentioned person 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.

Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
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Juan E. Méndez
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