

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

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 rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)
UZB 1/2014

16 April 2014

Dear Mr. Nurmetov,

We have the honour to address you in our capacity as 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 torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/5, 25/18, and 25/13.

In this connection, we would like to bring to your Government's attention information we have received concerning allegations of torture while in detention of **Mr. Fakhriddin Tillaev**, and his sentencing to eight years and three months of imprisonment.

Mr. Fakhriddin Tillaev has been a member of the Maslum Human Rights Centre since 2003. In 2002-03, he was the head of the Surkhandarya branch of the Human Rights Society of Uzbekistan. In 2004-05, Mr. Tillaev was Chairman of the Surkhandarya branch of Independent Human Rights Organisations of Uzbekistan (IHROU). In 2012, he was a founding member of the Union of Independent Trade Unions, which works in support of labour migrants.

According to the information received:

On 23 August 2013 at 09:00 p.m., an intoxicated, naked woman reportedly came to the house of Mr. Tillaev. The woman is allegedly a neighbour of Mr. Tillaev. It is reported that eight unidentified men knocked on the door shortly thereafter and a man who introduced himself as the woman's husband reportedly led her out of Mr. Tillaev's house against her will. Later, a police officer reportedly took a statement from the woman, who had reported alleged sexual harassment against Mr. Tillaev.

On 20 September 2013, the Chilonzar District Criminal Court reportedly sentenced Mr. Tillaev to fifteen days' administrative detention under article 40 of the Administrative Code for libel, which carries a fine of 1,372,950 Soums (about 600 USD). Mr. Tillaev was also fined under article 52 for causing unintended bodily harm, which carries a fine of 183,060 Soums (about 80 USD), and under article 183 for disorderly conduct (fifteen days' administrative detention). Reports indicate that, while in detention, Mr. Tillaev was forced to confess that he was a terrorist. An appeal regarding the fine was reportedly filed, but neither Mr. Tillaev nor his lawyer received details of the appeal proceedings. Mr. Tillaev was released on 5 October 2013.

On 2 January 2014, Mr. Tillaev was arrested on a court warrant, despite reports that the arrest warrant was dated 4 January 2014. On 21 January 2014, it is reported that Mr. Tillaev could not hear out of his right ear and that it was bleeding periodically. Reports indicate that Mr. Tillaev had been forced to stand for hours under a faucet from which water dripped on his head. It is also reported that needles had been inserted between Mr. Tillaev's fingers and toes. On 22 January 2014, a petition for a forensic medical examination was presented to the investigator.

On 14 February 2014, it is reported that Mr. Tillaev was interrogated, charged, and the case was transferred to the prosecutor's office. He was allegedly charged with "trafficking in persons" under article 135(3)(d) of the Criminal Code.

On 5 March 2014, the investigator confirmed that the petition for a forensic medical examination had been sent to Tashkent Prison administration for review. That afternoon, Mr. Tillaev's lawyer reportedly learned of the date of the trial with less than one day's notice.

On 6 March 2014, the trial of Mr. Tillaev was allegedly scheduled for 11:00 a.m., but began at 1:00 p.m. The trial proceedings reportedly lasted until 5:00 p.m. and were filmed for *UzTV Channel One*. It is reported that the court accepted the prosecution's evidence, which relied on the testimonies of the alleged victims of human trafficking from Uzbekistan to Kazakhstan, who stated that they had no relation with Mr. Tillaev. Furthermore, in the case file it is reported that the alleged victims had freedom of movement, access to telephones, and free accommodation and food, and received payment for 25 days of work, which was transferred from Kazakhstan to their relatives in Uzbekistan upon their request. In the case materials, there was reportedly no information about inquiries from the investigation in Kazakhstan, about the victims being paid for their labour, nor about the employers having restrained or deprived them of freedom of movement.

The court reportedly sentenced Mr. Tillaev to ten years and eight months of imprisonment. However, the court reportedly applied the Amnesty Act that had been passed by the Senate of Uzbekistan, which reduced the sentence to eight

years and three months of imprisonment. It is reported that Mr. Tillaev has been held in Tashkent prison (Tashtyurma) since his arrest on 2 January 2014. The appeal proceedings were scheduled to take place on 10 April 2014.

Very serious concern is expressed regarding the allegations received indicating that Mr. Tillaev was victim of torture while in detention. Grave concern is expressed about reports indicating lack of due process in Mr. Tillaev's trial, and about the severity of the sentencing. Moreover, concern is expressed at allegations received indicating that the situation of Mr. Tillaev is related 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 Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In this context, we would like to draw the attention of your Government to paragraph 1 of Human Rights Council resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We also recall that paragraph 7c of Human Rights Council resolution 16/23 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, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;"

We would also like to draw your Government's attention to paragraph 7b of Human Rights Council resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We would like to refer to article 22 of the International Covenant on Civil and Political Rights, which Uzbekistan acceded on 28 September 1995 and 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”.

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. Tillaev is linked to his legitimate human rights work, we would like to refer your 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 Government the following provisions of the Declaration:

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- 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.

We would also like to refer to Human Rights Council resolution 22/6, which explicitly indicates that domestic law and administrative provisions, and their application, should facilitate the work of human rights defenders, including by avoiding their criminalization or stigmatization, or by imposing any impediments, obstructions or restrictions to their work. States should take concrete steps to prevent and stop the use of legislation to hinder or unduly limit the ability of human rights defenders to exercise their work, including by reviewing and, where necessary, amending relevant legislation and its implementation in order to ensure compliance with international human rights law. (resolution 22/6, PPs 10-13)

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights and physical integrity of Mr. Tillaev 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. Kindly indicate the basis for the sentencing of Mr. Tillaev in September 2013 for libel, unintended bodily harm and disorderly conduct.
3. Please kindly provide information about the state of health of Mr. Tillaev, as well as details of his access to independent medical professionals, independent legal representation and family members.
4. 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.

5. Please provide the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

6. Please explain what measures have been taken to ensure that all human rights defenders in Uzbekistan, in particular trade unionists, can carry out their peaceful and legitimate activities without fear restrictions or criminalization of any sort.

We undertake to ensure that your 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 Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Tillaev 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 Government adopt effective measures to prevent the recurrence of these acts.

Please accept, Mr. Nurmetov, the assurances of our highest consideration.

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

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