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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandate of the Special Rapporteur on freedom of religion or belief

REFERENCE: AL G/SO 214 (56-23)
UZB 2/2013

26 July 2013

Dear Mr. Obidov,

I have the honour to address you in my capacity as Special Rapporteur on freedom of religion or belief pursuant to Human Rights Council resolution 22/20.

In this connection, I would like to bring to your Government's attention information I have received concerning the alleged persecution of Mr. **Khayrullo Tursunov** who, allegedly, had been peacefully practicing Islam.

According to the information received:

Mr. Khayrullo Tursunov, 38 years old, had been peacefully practicing his belief outside state-controlled Islam in his home town Karshi, Uzbekistan. In September 2009, he fled to Almaty, Kazakhstan, together with his family allegedly in fear of being persecuted for practicing his religious belief. Mr. Tursunov applied for refugee status through the UNHCR in Kazakhstan. The Almaty Department of Kazakhstan's Migration Committee rejected Mr. Tursunov's request for asylum on 6 October 2010.

Reportedly, on 18 January 2012, a criminal charge was brought against Mr. Tursunov in Uzbekistan under the Criminal Code's article 244-2 Part 1 on "Creation, leadership or participation in religious extremist, separatist, fundamentalist or other banned organisations". About a month later, on 24 February 2012, further criminal charges were opened under the Criminal Code's article 216-2 (b) on "Attracting believers of one faith to another (proselytism) and other missionary activities", article 155 Part 1 on "Terrorism", article 156 Part 3 (e) on "Incitement to Ethnic, Racial, or Religious Hatred – with previous planning or by a group of individuals", article 159 Part 3 (b) on "Violent attempts to change the constitutional order – by an organised group or in its interests", and article 223 Part 2 on "Illegal exit from or entry into Uzbekistan". Allegedly, Uzbekistan's authorities then ordered the arrest and extradition of Mr. Tursunov.

Reportedly, Mr. Tursunov, while travelling from Kazakhstan to the Russian Federation, was arrested by Kazakhstan's authorities in Aktobe, Kazakhstan, on 7 April 2012. Mr. Tursunov was allegedly transferred to a detention centre in Almaty in February 2013. On 14 February 2013, an individual complaint was filed to the UN Committee against Torture on behalf of Mr. Tursunov. Despite the fact that the Committee against Torture had called on Kazakhstan's authorities not to extradite him while the Committee considered his complaint, Mr. Tursunov was extradited to Uzbekistan on 13 March 2013. It is reported that Mr. Tursunov was arrested immediately upon his arrival in Uzbekistan's capital Tashkent. He is allegedly held in detention in Investigation Prison No. 5 in the village of Shaikhali near Karshi, Uzbekistan. In June 2013, Mr. Tursunov was sentenced to 12 years in prison by the Kashkadarya Regional Criminal Court, Uzbekistan, for alleged "extremist religious activity."

Without expressing at this stage an opinion on the allegations concerning the case of Mr. Khayrullo Tursunov, I would like to appeal to your Government to take all necessary measures to ensure Mr. Tursunov's right to freedom of thought, conscience and religion as set forth inter alia in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), to which Uzbekistan acceded on 28 September 1995.

I would like to respectfully recall to your Government of article 18(1) of ICCPR, which states that "everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or 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."

I would also like to draw the attention of your Government to article 18(3) of ICCPR, which stipulates that "freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." This provision has been interpreted by the Human Rights Committee in its General Comment 22 paragraph 8 to mean that "in interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner."

In this context, I would like to bring to your Government's attention the 1981 Declaration on the Elimination of All Forms of Religious Intolerance and of Discrimination Based in Religion or Belief (A/RES/36/55) in which the General Assembly in article 2(1) observes that "no one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief." Furthermore, it provides in articles 6(a) and 6(i) that the right to 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" as well as "to establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels."

Finally, I would like to refer to paragraph 4(f) of the Resolution 2005/40 of the former Commission on Human Rights, which urges States, "To ensure that no one within their jurisdiction is deprived of the right to life, liberty, or security of person because of religion or belief and that no one is subjected to torture or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights."

It is my responsibility under the mandate provided to me by the Human Rights Council to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I 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. Please provide the details, and where available the results, of any inquiries carried out in relation to this case.
3. Please provide information on measures taken to ensure the freedom of religion or belief, in particular the freedom to manifest one's religion or beliefs.
4. Please provide information in detail on the specific measures undertaken to implement articles 2(1), 6(a) and 6(i) of the General Assembly's 1981 Declaration, as well as paragraph 4(f) of Resolution 2005/40 of the former Commission on Human Rights.
5. Please provide information in detail on the criminal charges against Mr. Tursunov and please explain how those charges and his sentence are compatible with the aforementioned international human rights standards.

I would appreciate a response within sixty days. Your Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, I urge your Government to take all necessary steps to guarantee that the rights and freedoms of Mr. Tursunov is respected and, in the event that your investigations support or suggest the above allegations to be correct, that the accountability of any person responsible for the alleged violations is ensured. I also

request that your Government adopt effective measures to prevent the recurrence of such acts.

Please accept, Mr. Obidov, the assurances of my highest consideration.

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief