

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

REFERENCE: UA Health (2002-7) G/SO 214 (3-3-16) G/SO 214 (53-24)
UZB 3/2012

13 April 2012

Excellency,

We have the honor to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/22, 17/2, 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 situation of Mr. [REDACTED], national of the Republic of Tajikistan, currently serving his sentence in a high security prison N 64/47 in Kiziltepa, Navoi region, Uzbekistan.

According to the information received:

Mr. [REDACTED], born in 1965, a former senior employee at Amantaytau Goldfields A.G.F. gold-mining Uzbek-British joint venture in Uzbekistan, was arrested by the Uzbek National Security Service officers while crossing the border from Uzbekistan to Tajikistan on 5 March 2011. Mr. [REDACTED] was not presented an arrest warrant nor was he explained the reasons of his arrest. He was reportedly searched, interrogated and subsequently detained by Uzbek authorities on charges of "espionage" based on alleged secret information reportedly found by specialists of Uzbek Government-owned Navoi Mining Factory in a USB device belonging to Mr. [REDACTED]. Reportedly, Mr. [REDACTED] was initially charged with espionage (Article 160 of the Criminal Code of Uzbekistan (CC)); disclosure of State secrets (Article 162 of the CC); illegal collection, disclosure or use of information (Parts 1 and 2 of Article 191 of the CC) and was subsequently transferred to temporary detention centre of Navoi city Department of Internal Affairs. Shortly afterwards, upon receiving the court order authorizing the pre-trial detention, Mr. [REDACTED]

was transferred to Kattakurgan pre-trial custody N 7 in Samarkand region, Uzbekistan where he remained detained until the end of pre-trial investigation when on an unknown date he was transferred to a pre-trial custody No1 in Tashkent, awaiting his trial before the military Court of Uzbekistan.

On 18 June 2011, Mr. ██████'s case was reportedly heard at a closed trial at a so-called garrison court in Navoi and continued in the military court of Tashkent, Uzbekistan. On 9 August 2011, Mr. ██████ was reportedly found guilty of espionage under Article 160 Part 1 of the Criminal Code and was sentenced to 12-year imprisonment. It is also reported that the evidence submitted in defense of the accused was excluded from the proceedings with no reason given for that decision. Reportedly, in response to the petition for clarification, no explanation of the legal basis for such refusal was provided either. It is further reported that at no stage has there been any evidence brought forward to substantiate the charges brought against Mr. ██████. Mr. ██████'s counsel has been unable to offer information on the lead-up to the trial as, following a signing of a non-disclosure document, as, reportedly, had he disclosed any information related to the criminal case, he could be held criminally liable for disclosing State secrets.

It is also reported that at least three persons, two of whom former colleagues of Mr. ██████, confirmed having been forced to testify against Mr. ██████ under threats of torture and punishment. It is further reported that at least one witness was beaten for the purpose of extracting testimony.

On 6 October 2011, an Uzbek military court rejected Mr. ██████'s appeal against his sentence. The Supreme Court hearing that was initially scheduled to take place in February 2012, has not yet taken place.

It is reported that Mr. ██████'s counsel has had access to him while in pre-trial custody and prison N 64/47 for more than ten times. Mr. ██████'s relatives have reportedly visited him on 9 June 2011, in October and December 2011, and have subsequently reported about his deteriorating health. Mr. ██████ was reportedly given access to a general practitioner but, despite multiple requests and petitions, he has not been seen by a specialist to treat his chronic hepatitis, which he allegedly developed while in custody. It is also reported that Mr. ██████'s health has further dramatically deteriorated while in prison as he developed several new conditions, including pneumonia, bronchitis, haemorrhoids, cardiac conditions, kidney pain and high blood pressure. Mr. ██████ has reportedly been experiencing psychiatric problems accompanied with hallucinations and constant depression. It is also reported that despite his exacerbated hepatitis B and chronic pneumonia, Mr. ██████ is required to perform forced labour which involved lifting heavy loads.

According to the information received, following the military court ruling, although Mr. ██████ was to serve his sentence in Bekabad prison near Tashkent, on 20 October 2011, he was transferred to a high security prison No. 64/47 in

Kiziltepa town in Navoi region (approximately 600 km far from Tashkent) with no explanation whatsoever given to his counsel. It is alleged that the remote location of the prison where Mr. ██████ is currently detained makes the supply of food and medicine more difficult, and that health services in the prison are inadequate for the treatment of Mr. ██████'s health condition. Reportedly, all efforts to transfer Mr. ██████ to Tashkent prison-hospital facility N 64/18 have so far been unsuccessful.

While we do not wish to prejudge the accuracy of these allegations, we would appreciate information from your Excellency's Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of Mr. ██████. This right is reflected, *inter alia*, in the article 12 of the International Covenant on Economic, Social and Cultural Rights (acceded on 28 September 1995), which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical 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. We also wish to refer your Government to General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, which holds that, "States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum seekers and illegal immigrants, to preventive, curative and palliative health services..." (para.34).

With regard to the information that Mr. ██████ was brought to closed trial before military courts, we would like to draw the attention of your Excellency's Government to Article 14 1) of the International Covenant on Civil and Political Rights, stating that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Furthermore, we would like to stress that everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures in accordance with Paragraph 5 of 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). In addition, in paragraph 22 of its General Comment No. 32, the Human Rights Committee stipulated that "trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials." This argument was also underscored by the Committee in its decision concerning communication 1172/2003 (*Madani vs. Algeria*). In this decision, the Committee considered "[t]hat the State party must demonstrate, with regard to the specific class of individuals at issue, that the regular civilian courts are unable to undertake the trials, that other alternative forms of special or high-security civilian courts are inadequate to the task and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14. [...] Nor does the mere

invocation of domestic legal provisions for the trial by military court of certain categories of serious offences constitute an argument under the Covenant in support of recourse to such tribunals."

Regarding the allegations that the evidence submitted in defense of the accused was excluded from the proceedings, we would like to further refer your Excellency's Government to article 14 3 e) of the International Covenant on Civil and Political Rights, which states that "in the determination of any criminal charge against him, everyone shall be entitled to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him". Basic Principle 6 on the Independence of the Judiciary, requiring that judicial proceedings are conducted fairly and that the rights of the parties are respected.

We would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "(s)ick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "(t)he medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed" (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). Furthermore, we would also like to refer your Excellency's Government to the Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation" (Principle 9).

With respect to allegations indicating that least three persons, two of whom former colleagues of Mr. ██████████, confirmed having been forced to testify against Mr. ██████████ under threats of torture and punishment, and that at least one witness was reportedly physically beaten for the purpose of extracting testimony, we would like to draw the attention of your Excellency's Government 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 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 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.

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 the alleged victim?
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 the full details of any prosecutions which have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide information on measures taken to ensure the physical and mental integrity of Mr. [REDACTED].
6. Please provide information on the measures taken to ensure the enjoyment of the right to the highest attainable standard of health by Mr. [REDACTED].
7. Please explain in detail how the procedural safeguards of fair trial are guaranteed within the judicial proceedings launched against Mr. [REDACTED].

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.

Anand Grover

Special Rapporteur on the right of everyone to the enjoyment of the highest
attainable standard of physical and mental health

Gabriela Knaul

Special Rapporteur on the independence of judges and lawyers

Juan E. Méndez

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment