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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on freedom of religion or belief

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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USA 34/2012

20 December 2012

Excellency,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on freedom of religion or belief pursuant to Human Rights Council resolutions 15/18, 16/4, and 14/11.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the possible trial of a conscientious objector, Ms. **Kimberly Rivera**.

According to information received:

In early 2007, while Ms. Kimberly Rivera was on leave from her deployment to Iraq, she reportedly left the army without authorization. It was reported that she went to Canada after she decided that she could not participate in the war in Iraq or other conflicts for conscientious objection reasons.

When Ms. Rivera was in Canada, she publicly spoke out about her objection to the conflict in Iraq. Her application for protection as a refugee in Canada was allegedly rejected on appeal. Ms. Rivera was subsequently deported back to the United States where she has been reportedly detained by the US military authorities since 20 September 2012, after being arrested for desertion from the army.

It was reported that within the next few weeks, the Commanding General at Fort Carson will likely make a decision to try Ms. Rivera before a court martial. If convicted, Ms. Rivera could face up to five years of imprisonment.

Concern is expressed at the potential conviction of Ms. Rivera for exercising her rights to freedom of religion through the expression of conscientious objection.

While we do not wish to prejudge the accuracy of these allegations, we wish to appeal to your Excellency's Government to seek clarification on the information drawn to our attention and share our concerns in relation to present circumstances in light of the applicable international human rights norms and standards.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Ms. Kimberly Rivera is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee her right not to be deprived arbitrarily of her liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would also like to appeal to your Excellency's Government to ensure the right to freedom of religion or belief in accordance with the principles set forth article 18 of the UDHR and the ICCPR that your Government ratified on 8 June 1992.

In addition, we would also like to draw your Excellency's Government's attention to paragraph 11 of the Human Rights Committee General Comment 22 "[M]any individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18 of ICCPR, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service."

In connection with Ms. Rivera publicly speaking out about her objection to the conflict in Iraq, we would 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 ICCPR, 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 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 Ms. Kimberly Rivera in compliance with the forementioned 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:

1. Are the facts alleged in the summary accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Ms. Kimberly Rivera and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

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.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Ms. Kimberly Rivera are respected and, in the event that your investigations support or suggest the 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.

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief