

Mandates of the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7, 22/20 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the allegations of arbitrary detention and imminent risk of extradition of Mr. **Izblakhat Itakhunov**, from Kyrgyzstan to Uzbekistan and the alleged risk of torture. In the light of the information received we urge your Excellency's Government not to extradite and immediately release Mr. Itakhunov from detention.

According to the information received:

In November 2013, Mr. Izblakhat Itakhunov, an ethnic Uighur and citizen of Russian Federation, was arrested by the Kyrgyz authorities following a request for extradition, which was made by the authorities of Uzbekistan on 22 October 2010 and subsequently enforced through Interpol. Mr. Itakhunov has remained in detention since the time of his arrest and is currently held in Bishkek's pre-trial detention facility "SIZO No.1".

Reportedly, Uzbekistan's extradition request contains accusations against Mr. Itakhunov's involvement in advocacy of overthrowing the constitutional order (article 159 of the Penal Code of Uzbekistan (PCU)) and activities related to religious extremism (article 244² of the PCU respectively). Allegedly the extradition request is mostly based on two witnesses' reports, which claimed that Mr. Itakhunov was allegedly calling himself "Amir", promoting ideas of separatism and establishment of an "Islamic caliphate", and calling his group

“jihadist”. The order also mentions that Mr. Itakhunov was regularly training martial arts in a sports club. Reportedly, one of the witnesses was arrested by Uzbekistan’s authorities in April 2010 and sentenced to 5 years imprisonment for religious extremism.

Mr. Itakhunov was born on 22 February 1972 in the territory of Kyrgyzstan, at that time still USSR. He resided in Kyrgyzstan until 1994, when his father died. After that, he moved to Uzbekistan with his mother, who was originally from Uzbekistan. Until 2006, Mr. Itakhunov was a *de facto* stateless person, who did not possess any identity document, neither from Kyrgyzstan nor Uzbekistan. In 2006, he obtained Russian citizenship through a simplified procedure. The Russian Embassy in Tashkent provided him with a Russian passport. Mr. Itakhunov is married and has two daughters. In 2006 he moved to Kyrgyzstan with his family to his uncle and brother in Kara Balta town. From 2006 to 2010, he and his family commuted to Uzbekistan regularly without any problems.

According to the information received the Kyrgyzstan’s authorities have not yet decided on the Uzbekistan’s request for extradition due to the pending case on Mr. Itakhunov’s refugee status in Kyrgyzstan. Reportedly, he applied for asylum in Kyrgyzstan in May 2013, but was denied by the authorities due to the fact that Mr. Itakhunov is a citizen of Russian Federation and thus does not have any fear of persecution in his own country. Mr. Itakhunov’s numerous appeals against denial of refugee status have already gone unsuccessfully through domestic judicial procedures and reached the Supreme Court, which has scheduled the final hearing on 12 August 2014. Mr. Itakhunov allegedly may be extradited to Uzbekistan soon after his appeal on his refugee status is rejected by the Supreme Court of Kyrgyzstan.

Without prejudging the accuracy of the information made available to us, we would like to express our grave concern that Mr. Izblakhat Itakhunov is at imminent risk of being extradited to Uzbekistan, where he risks being persecuted for his religious beliefs, detained without access to a fair trial and being subjected to torture.

We would like to draw your Excellency's Government attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded by Kyrgyzstan on 5 September 1997, which provides that no State party shall expel, return (“refouler”), or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. In this regard, paragraph 9 of General Comment No. 20 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in which the Human Rights Committee states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement”.

We would also like to bring to the attention of your Excellency's Government that the General Assembly has repeatedly urged States not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognized that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement (General Assembly resolutions A/RES/60/148, A/RES/61/153, A/RES/62/148, A/RES/63/166, A/RES/64/153, A/RES/65/205, A/RES/66/150, A/RES/67/161 and A/RES/68/156).

In this context, we would like to bring to the attention of your Excellency's Government that on 14 November 2013, in paragraph 7 of its concluding observations on the fourth periodic report of Uzbekistan (CAT/C/UZB/CO/4), the United Nations Committee against Torture expressed concern about numerous, ongoing and consistent allegations that torture and ill-treatment are routinely used by law enforcement, investigative and prison officials, or at their instigation or with their consent, often to extract confessions or information to be used in criminal proceedings. While recognizing that Uzbekistan was not subject to the jurisdiction of the European Court of Human Rights, the Committee noted that in 2011 the Court determined that "the use of torture and ill-treatment against detainees in Uzbekistan is 'systematic', 'unpunished' and 'encouraged' by law enforcement and security officers" (European Court of Human Rights, application no. 7265/10, Yakubov v. Russia, judgment of 8 November 2011, para. 82).

Also we would like to bring to the attention of your Excellency's Government that on 10 March 2010, in its concluding observations on the third periodic report of Uzbekistan, the United Nations Human Rights Committee expressed concern regarding the limitations and restrictions on freedom of religion and belief, including for members of non-registered religious groups. It was concerned about persistent reports on charges and imprisonment of such individuals. The Committee remained concerned at the number of persons reportedly detained as suspects for involvement in extremist activities or on terrorist charges. It urged Uzbekistan to ensure that the rights of all persons suspected of involvement in terrorist activities are protected, that anyone arrested or detained on a terrorism charge has immediate access to a lawyer and that the grounds for detention are examined by a court (CCPR /C/UZB/CO/3, paras 15 and 19).

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Itakhunov is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his 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) acceded by Kyrgyzstan on 7 October 1994.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org /can be provided upon request.

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 persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify the facts in all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above mentioned allegations and concerns.
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. Itakhunov and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR, CAT and the ICCPR.
3. Please indicate which concrete measures are being taken by your Excellency's Government to fulfil its obligations under the principle of non-refoulement, in particular with regard to extradition to the countries, where torture is allegedly widespread and systematic. Please provide information on the risk assessment carried out in relation to Mr. Itakhunov's situation, and how it is compatible with the international standards mentioned above.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

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