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OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 Terrorism (2005-4) G/SO 214 (53-24)
RUS 10/2011

24 August 2011

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; 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 15/18, 15/15, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the situation of Mr. X, born in 1972, national of the Republic of Uzbekistan, married, permanent resident of Kokand, Ferganskiy district, Uzbekistan. Since 2 August 2008, Mr. X has been temporarily residing in Ozerki, Nijedorodskiy district, in the Russian Federation.

According to the information received:

On 25 July 2011, at around 03:30 p.m., Mr. X was arrested by representatives of the border police of the Republic of Kazakhstan while he was crossing the border at Uralsk, Republic of Kazakhstan, where he intended to apply for an extension of temporary residency in the Russian Federation. It is reported that the border police did not present any judicial warrant, nor did they explain the reasons for his arrest. Mr. X was reportedly taken to a pre-trial detention centre of the Ministry of Internal Affairs in Uralsk, Kazakhstan, where he is currently awaiting imminent deportation to Uzbekistan. It is claimed that the deportation is scheduled for 24 August 2011. Reportedly, Mr. X was not provided with a legal counsel nor was he allowed to meet with his advocate.

It is reported that Mr. X faces extradition to Uzbekistan on charges brought against him under article 155 (Terrorism), article 159 (Attempts on the Constitutional Order), article 244, part 3 (Illegal Exit from or Entry into Uzbekistan), article 248-1 (Illegal Possession of Arms, Ammunition, Explosive Substances, or Explosive Assemblies), article 244-1 (Production and Dissemination of Materials Containing a Threat to Public Security and Public Order), article 244-2 (Establishment, Direction of or Participation in Religious Extremist, Separatist, Fundamentalist or Other Banned Organizations), article 248-1 (Illegal Possession of Arms, Ammunition, Explosive Substances, or Explosive Assemblies) of the Criminal Code of Uzbekistan.

It is also reported that on 20 February 2003, while still in Uzbekistan, Mr. X was presented an arrest warrant issued by the Prosecutor's Office in Kokand, Uzbekistan. During the subsequent interrogation, Mr. X had reportedly denied the charges brought against him. It is further reported that the passport number and the address of residence indicated in the 2003 arrest warrant did not correspond to the personal data of Mr. X. On 7 November 2007, the head of the Department of Internal Affairs of Kokand, the Republic of Uzbekistan had issued a written statement confirming that Mr. X, a national of the Republic of Uzbekistan, permanent resident of Kokand, Ferganskiy district, the Republic of Uzbekistan, is not included in the list of persons under arrest warrant.

Serious concern is expressed about the reported forthcoming extradition of Mr. X to Uzbekistan where there are substantial grounds to believe that he would be in danger of being subjected to torture and that harsh sentences, including life-term imprisonment, would be imposed on him.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. X 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).

We would also like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

With respect to substantial grounds to believe that Mr. X would be in danger of being subjected to torture in Uzbekistan, we would like to draw your Excellency's Government attention to the conclusions and recommendations of the Committee against Torture in relation to Uzbekistan. The Committee expressed concern about: "(a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and

investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings; (b) Credible reports that such acts commonly occur before formal charges are made, and during pre-trial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel. [...]” (CAT/C/UZB/CO/3, para. 6).

Furthermore, we would like to draw the attention of your Excellency’s Government to article 3 of the CAT, 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 draw the attention of your Excellency’s Government to paragraph 16 of the Resolution A/RES/65/205 of the UN General Assembly which urges 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 recognizes 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.”

Furthermore, paragraph 7d of Human Rights Council Resolution 16/23 urges States “(n)ot 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, [...]”

In relation to the allegations that Mr. X faces extradition to Uzbekistan on the basis of charges brought against him in Uzbekistan, inter alia, under Article 155 (Terrorism), article 159 (Attempts on the Constitutional Order), article 244-1 (Production and Dissemination of Materials Containing a Threat to Public Security and Public Order), and article 244-2 (Establishment, Direction of or Participation in Religious Extremist, Separatist, Fundamentalist or Other Banned Organizations) of the Criminal Code of Uzbekistan, we are mindful of the fact that both the Republic of Kazakhstan and the Republic of Uzbekistan are Parties to the “Shanghai Convention on combating terrorism, separatism and extremism” of 15 June 2001, which requires them to cooperate in the area of prevention, identification and suppression of acts of terrorism, extremism, and separatism (article 2, para. 1), and to consider such acts as extraditable offences (article 2, para. 2). Without expressing an opinion on the definition of terrorism-related offences in the Shanghai Convention itself, we note that its article 2, para. 3, provides that “[w]ith regard to issues concerning extradition and legal assistance in criminal cases, the Parties shall cooperate in conformity with international treaties to which they are parties [...]”. In this context, we would like to stress that the principle of legality in criminal law, enshrined in several international human rights instruments such as article 15 of the

ICCPR and made non-derogable in times of public emergency, implies that the requirement of criminal liability is limited to clear and precise provisions in the law, so as to respect the principle of certainty of the law and ensure that it is not subject to interpretation which would broaden the scope of the proscribed conduct.

In our view, at the national level, the specificity of terrorist crimes is usually defined by the presence of two cumulative conditions: (1) The means used, which can be described as deadly or otherwise serious violence against members of the general population or segments of it, or the taking of hostages; and (2) the intent, which is to cause fear among the population or to compel the government or an international organization to doing or refraining from doing something, usually in the advancement of a political, religious or ideological cause. It is only when these two conditions are fulfilled that an act may be criminalized as terrorist. When based on terrorism-related charges any State's consideration of an extradition request by another State must equally comply with these conditions before it can be answered.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. X 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 Mr. X 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 this case 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. Has a complaint been lodged by or on behalf of Mr. X?
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 information concerning the legal ground to forcibly return Mr. X to Uzbekistan and how these measures are compatible with international obligations of Kazakhstan as stated in the ICCPR and the CAT.
5. Please provide details on whether any risk assessment of Mr. X's return was carried out.

6. Please also indicate whether and how the requirements of the principle of legality have been observed in relation to the definition of the terrorist-related crimes that have reportedly formed the basis of the extradition request against Mr. X.

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.

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

Ben Emmerson
Special Rapporteur on the promotion and protection of human rights and
fundamental freedoms while countering terrorism

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