

**NATIONS UNIES**  
**HAUT COMMISSARIAT DES NATIONS UNIES**  
**AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU**  
**CONSEIL DES DROITS DE L'HOMME**

**Mandates of the Working Group on Arbitrary Detention; 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.**

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

**SPECIAL PROCEDURES OF THE**  
**HUMAN RIGHTS COUNCIL**

REFERENCE: UA G/SO 218/2 G/SO 214 (3-3-16) G/SO 214 (53-24)  
KGZ 2/2012

15 June 2012

Excellency,

We have the honor to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 Human Rights Council resolutions 15/18, 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. ██████████ ██████████, born in 1988, Uzbek national, unemployed, residing in 668 Lenin Str., Osh, the Kyrgyz Republic.

According to the information received:

On 30 March 2012, between 9:00 a.m. and 10:00 a.m., six men armed with submachine guns broke into Mr. ██████████'s apartment and took Mr. ██████████ and his pregnant wife to the Osh Oblast Interior Department. We assume that Mr. ██████████'s wife was released later the same day. It is reported that Mr. ██████████ was beaten by ten operative-investigative officers of Osh Oblast Interior Department. Reportedly, a plastic bag was put over Mr. ██████████'s head and electric shock was applied to his genitals. It is further reported that Mr. ██████████ had signed a testimony despite the fact that he is illiterate and can neither read nor write. The Interior Department personnel instructed him to give the same testimony during the trial.

Neither Mr. ██████████'s lawyer nor his relatives were allowed to see him until after five days following his detention. On 4 April 2012, Mr. ██████████'s lawyer visited him in temporary detention facility within the Raion Interior Unit of Kara Suu and observed multiple injuries in different parts of his body.

Following two statements issued before the Prosecutor General's office on 4 and 5 April 2012, respectively, by ██████████'s lawyer and the Deputy Ombudsman, a forensic examination was performed by the head of the Forensic Bureau in the Kara Suu Raion Unit of the Osh Oblast. The latter established that the bodily injuries corresponded to the allegations and could have been caused by beating.

On 14 April 2012, the Osh Oblast Prosecutor's Office turned down Mr. ██████████'s lawyer's request to open a criminal case into the allegations of torture and mistreatment citing article 28, part 2 paragraph 1 (Circumstances Ruling Out Criminal Proceedings), article 36 (Authorities of the Investigator) and 156 (Decisions of the Investigator and a Prosecutor Taken as Result of Consideration of Reports and Statements on Crimes) of the Criminal Procedure Code of the Kyrgyz Republic.

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

Furthermore, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. ██████████. We would 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 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context and with respect to the allegation that Mr. ██████████ was subjected to beating and other cruel, inhuman or degrading treatment, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would also like to draw your Excellency's Government's attention to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We would also like to draw your Excellency's Government's attention to paragraph 6b of Human Rights Council Resolution 8/8, which

urges States “To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment promptly and impartially examined by the competent national authority, to hold those who encourage, order, tolerate or perpetrate acts of torture responsible, to have them brought to justice and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and to take note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture”.

We would further like to draw your Excellency's Government's attention to article 15 of the CAT 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 6c of Human Rights Council resolution 8/8 of 2008 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”. In addition to being a crucial fair trial guarantee, this principle is also an essential aspect of the non-derogable right to physical and mental integrity set forth, inter alia, in article 7 of the International Covenant on Civil and Political Rights.

In addition, we would like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular:

- principle 5: “Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.”;

- principle 7: “Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.”; and

- principle 8: “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

Further, we would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 16, which states: "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave

violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice".

We would also like to refer Your Excellency's Government to 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 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular, principle 6 which states that: "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected."

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. [REDACTED] 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 information concerning the legal grounds for the arrest and detention of Mr. [REDACTED] and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.
5. Please provide information on the measures undertaken to ensure that any statements on confessions obtained under torture is excluded from judicial proceedings.

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 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.

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

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

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