

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

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

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

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

**Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (53-24)  
NLD 3/2012

4 July 2012

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 16/4, 15/21, 16/5, 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. **Kurbanjan Mutalip**, an ethnic Uighur and Chinese national from the Xinjiang Uyghur Autonomous Region (XUAR) in China, whose asylum claims have been rejected by the Dutch authorities, and who is facing imminent deportation to the People's Republic of China.

According to the information received:

On 18 November 2009 Mr. Kurbanjan Mutalip first applied for asylum in the Netherlands. Mr. Mutalip is an ethnic Uighur and Chinese national from the Xinjiang Uyghur Autonomous Region (XUAR) in China. It is reported that he is a member of the East Turkistan Uighur Association and the Youth Uyghur Party in the Netherlands and that Mr. Mutalip participated on various occasions in demonstrations and other political and human rights activities protesting against Chinese policies.

It is reported that pictures showing Mr. Mutalip participating in demonstrations or at meetings of the Party of the Uyghur Youth have been posted on the Internet. It is also reported that Chinese authorities took pictures of Mr. Mutalip while protesting in front of the Chinese Embassy in February 2012. In addition Mr.

Mutalip's parents in China were reportedly harassed several times because of his activities in the Netherlands.

On 7 June 2012, Mr. Mutalip's appeal was rejected by the Court in Hertogenbosch (Den Bosch). Mr. Mutalip is currently held at Schiphol Aliens Detention Centre in the Netherlands and he is scheduled for forced removal from the Netherlands to the People's Republic of China on 4 July 2012.

It is also reported that the Chinese authorities allegedly maintain an extensive intelligence and espionage network overseas, targeted particularly at groups they consider "sensitive", including Uighurs and human rights activists. The Uighur community in the Netherlands is allegedly known to be a target of such intelligence gathering and espionage operations, as acknowledged in the annual report by the AIVD (Algemene Inlichtingen- en Veiligheidsdienst), which states that the Uighurs in particular are monitored by the Chinese authorities abroad.

Finally, it is reported that Uighurs who have been active in overseas political or human rights activities and who apply for asylum would allegedly face a heightened risk of human rights violations, including torture if they return or are forcibly returned to the People's Republic of China. The Chinese authorities allegedly have strongly condemned overseas Uighur groups, including representative Uighur associations such as the World Uyghur Congress (WUC) and its affiliates, as the "instigators" of the 5 July 2009 violence in Urumqi. Uighurs who have participated in activities organized by such organizations overseas and have spent a certain amount of time abroad would allegedly almost certainly be detained for interrogation upon arrival (see A/HRC/19/44, p. 46) and would be at risk of torture or other ill-treatment.

While we do not wish to prejudge the accuracy of these allegations, 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 Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would further like to draw your Excellency's Government's attention 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". Furthermore, paragraph 9 of the Resolution A/RES/61/253 of the UN General Assembly 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”.

Furthermore, paragraph 6d of Human Rights Council Resolution 8/8 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; the Council recognizes in this respect 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.

In this connection, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

Furthermore, we would like to bring to the attention of your Excellency’s Government the following provisions of the Declaration, and in particular to the article 12 paragraphs 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also 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 this connection, we would like to appeal to your Excellency's Government to ensure that the right to freedom of peaceful assembly, as recognized under article 21 of the International Covenant on Civil and Political Rights, is guaranteed to everyone without any fear of harassment, persecution, intimidation or reprisals. We would like to refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that "Calls upon States to respect and fully protect the rights of all individuals to assemble peacefully and associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

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. Mutalip 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. 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.
3. Please provide information concerning the legal ground for forcibly return asylum-seekers to the People's Republic of China and how these measures are compatible with international obligations of the Netherlands as stated in the International Covenant on Civil and Political Rights and the Convention against Torture.
4. Please provide details on whether any risk assessment was carried out by the authorities of the Netherlands to ascertain whether Mr. Kurbanjan Mutalip would be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately included in the reports 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 Mr. Mutalip are

respected. 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.

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

Maina Kiai  
Special Rapporteur on the rights to freedom of peaceful assembly and of  
association

Margaret Sekaggya  
Special Rapporteur on the situation of human rights defenders

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