



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Special Rapporteur on the situation of human rights defenders; 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

2 June 2014

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; 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 25/18, 17/2, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning events surrounding the death and alleged torture of Mr. **Hamza Ikromzoda** at Dushanbe's penal colony No. 1; the subsequent trial of a prison warden in connection with Mr. Ikromzoda's death; and the alleged subsequent retaliation, torture, trial and sentencing of Mr. Ikromzoda's fellow inmate Mr. **Sadriddin Toshev** and Mr. **Sunattulo Rizoev** as well as other inmates.

According to information received:

On 20 September 2012, Mr. Sadriddin Toshev and Mr. Sunattulo Rizoev along with several other prisoners witnessed the torture and death of fellow inmate Mr. Hamza Ikromzoda, who died at Dushanbe's penal colony No. 1. It is reported that, although Mr. Ikromzoda's body displayed signs of torture, prison authorities denied these allegations, claiming instead that Mr. Ikromzoda had hanged himself and that the marks on his body were the result of attempts to resuscitate him.

In connection with this incident, it is reported that a court in Dushanbe's Ismoili Somoni district sentenced a prison warden to five and a half years' imprisonment over the death of Mr. Ikromzoda. The prison warden was however not convicted of torture, but instead charged under Article 316(3) of the Penal Code for abuse of power. It is further alleged that despite numerous requests by Mr. Ikromzoda's counsel and family members, the court refused to permit the testimony of Mr. Toshev and three other witnesses to Mr. Ikromzoda's death, who had offered to testify at the then-pending trial.

In early November 2012, 53 prisoners including Mr. Toshev, Mr. Sunattulo Rizoev and other witnesses to Mr. Ikromzoda's death, were transferred from Dushanbe penal colony No. 1 to Khujant prison No 2/3 in Sogd region. It is

reported that immediately upon their arrival, Mr. Toshev and the other prisoners were beaten by Khujant prison guards. It is further reported that complaints were filed by the families of Mr. Toshev and the other prisoners with the Prosecutor General's Office on 7 November 2012 in connection to these events, and that the authorities did not provide a prompt response to the allegations.

Mr. Toshev was again beaten and tortured by officials at the Khujant prison on 5 November 2012 in the presence of about 40 prisoners, in an apparent reprisal for his meeting and cooperation with the mandate of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment during his first official visit to Tajikistan in May 2012 of. It is reported that the prison authorities who beat Mr. Toshev made explicit verbal references to his interactions and cooperation with the Special Rapporteur, and the "UN" and "human rights defenders" more generally. It is further reported that after the beatings, Mr. Toshev and another prisoner recorded the signs of torture on their bodies with a mobile telephone. As of today, the prison authorities did not carry out an impartial investigation into their complaints.

It is reported that in the aftermath of the events of 5 November 2012, Mr. Toshev and Mr. Sunattulo Rizojev, as well as other prisoner were charged with fraud for deliberately inflicting wounds on their bodies with the aim of slandering prison officials. It is reported that Mr. Toshev and the other prisoner were tried in closed court proceedings and charged under Article 332.2 (Disrupting the functioning of the penitentiary system) and Article 346.2 (False Denunciation). It is further reported that in October 2013, they were sentenced by the Khujand City Court to nine and seven years' imprisonment, respectively, for distribution of false information and attempting to disorganize the work of a penitentiary institution. An appeal was reportedly rejected and the sentences were upheld by the Sughd regional court on 25 January 2014.

Without in any way implying any conclusions as to the facts of this case, we would like to appeal to your Excellency's Government to seek clarification of the circumstances surrounding Mr. Toshev's and Mr. Rizojev's transfer to Khujant prison, alleged torture in that facility, as well as their trial and conviction. In particular, whether any investigation has been initiated into the alleged torture of Mr. Toshev, Mr. Rizojev and their fellow inmates and whether the torture, the trial and the conviction was in reaction to Mr. Toshev's communications with the Special Rapporteur on torture or due to Mr. Toshev's and Mr. Rizojev's offers to testify as a witness during the trial related to the torture and subsequent death of Mr. Hamza Ikromzoda. Additionally, we appeal to your Excellency's Government to provide clarification on the nature of the conviction of the prison warden for crimes other than torture, following his role in the death of Mr. Ikromzoda.

Regarding the allegations that the torture and subsequent conviction of Mr. Toshev and Mr. Rizojev and their fellow inmates was related to an engagement and interaction with the mandate as the Special Rapporteur on torture, we would like to recall that we have asked for, and received assurance from your Excellency's Government that instructions are given to all relevant authorities indicating that neither any form of

intimidation nor physical abuse of individuals cooperating with the mandate of the Special Rapporteur will be tolerated prior, during and after the visit, including the follow-up visit to Tajikistan in February 2014.

In connection with above alleged facts and concerns, please refer to the Reference to international law Annex where the applicable international human rights instruments and standards that we would like to recall are outlined.

Since it is our responsibility under the mandate provided to us by the Human Rights Council to seek to clarify 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;
2. Please provide details, and when available the results, of any investigation, medical and judicial or other inquiries carried out in relation to the alleged acts of torture against Mr. Toshev and Mr. Rizojev and other inmates?
3. Has any investigations been initiated to clarify whether the torture, trial and conviction of Mr. Toshev, Mr. Rizojev and other inmates in Khujant constituted a case of reprisal against them as a result of their communication with the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and their participation as witness in the trial related to the torture and subsequent death of Mr. Hamza Ikromzoda?
4. Please provide information regarding steps taken by your Excellency's Government to prevent reprisals against inmates who report instances of torture to human rights organizations or who offer to testify on these matters in court proceedings.
5. Please explain how the trial of the prison guard related to the death of Mr. Hamza Ikromzoda complies with the International Human Rights standards, especially regarding refusal of witnesses' testimonies.
6. Please provide information and the legal basis for the conviction of the prison guard related to the death of Mr. Hamza Ikromzoda under the crime of abuse of authority and explain how this measure is compatible with the ICCPR and CAT?
7. What measures have been implemented by the Government to guarantee reparations and rehabilitation to the families of Mr. Toshev, Mr. Rizojev and Mr. Ikromzoda?
8. Please explain how the trial of Mr. Toshev, Mr. Rizojev and the other prisoner complies with the International Human Rights standards, especially regarding the allegation of closed court proceedings.

We would appreciate a response within 60 days.

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.

Michel Forst
Special Rapporteur on the situation of human rights defenders

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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

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to paragraph 1 of the 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 like to further draw your Excellency's Government's attention to paragraph 7(b) of Human Rights Council Resolution 16/23, which urges States "[t]o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, 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 and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We also recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, "condemns all acts of intimidation or reprisal by Governments and non-state actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and "calls upon all states to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or who have cooperated with the United Nations, its representatives and mechanisms in the field of human rights [...]" (OP 3).

Additionally, we would like to draw you Excellency's Government to UN General Assembly Resolution A/C.3/68/L.33/Rev.1 which "[u]rges States, as an important element in preventing and combating torture and other cruel, inhuman or degrading treatment or punishment, to ensure that no authority or official orders, applies, permits or tolerates any sanction, reprisal, intimidation or other prejudice against any person, group or association, including persons deprived of their liberty, for contacting, seeking to contact or having been in contact with any national or international monitoring or preventive body active in the prevention and combating of torture and other cruel, inhuman or degrading treatment or punishment."

We also like to refer your Excellency's Government to article 2(3) of the International Covenant on Civil and Political Rights, which states: "Each State Party to

the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.”

We would like to draw your Excellency’s Government’s attention to article 14(3) of the International Covenant on Civil and Political Rights, which states: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”

In this connection, we would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration, and to article 12, paragraphs 2 and 3, which urges States to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of the legitimate exercise of the rights referred to in the Declaration.

In addition, we would like to refer to resolution 24/24 of the Human Rights Council, which calls on States to refrain from and to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations human rights mechanisms, including the independent experts of the Human Rights Council.

Additionally, we would like to refer your Excellency's Government to article 14(1) of the International Covenant on Civil and Political Rights, which states: “[...] everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”