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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention 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 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 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 continued detention in Uzbekistan of Mr. Erkin Musaev, Uzbek national, a former UNDP employee, currently held in high security prison No. 64/47 in Kiziltepa town in Navoi region. Mr. Musaev was arrested by the Uzbek National Security Service on 31 January 2006, when he was on his way to attend a UN Conference in Bishkek, Kyrgyzstan in his capacity as a UN staff member. His family was not informed about his whereabouts for 20 days. During detention Mr. Musaev was subjected to severe beating which caused him several injuries, including broken jaw. On 13 June 2006, following a reportedly secret and flawed trial Mr. Musaev was found guilty of high treason (article 157 of the Uzbek Criminal Code), disclosure of state secrets (article 162), abuse of office (article 301) and negligence (article 302) and sentenced to 15 years of imprisonment by the Uzbek military court in Tashkent. On 14 June 2006, following a second trial, Mr. Musaev was accused of embezzlement of UN funds and was sentenced to six years of imprisonment. A related UNDP-statement, dated July 2006, reads: "... UNDP conducted its internal investigation on the matter and found no basis for the accusations...".

Mr. Musaev was the subject of joint communications sent to your Excellency's Government on 9 March 2007; 23 February 2009; and 21 March 2011, by the UN Special Procedures mandate holders. We received the responses of your Excellency's Government dated 12 May 2011 and 24 March 2011, respectively.

On 9 May 2008, the Working Group on Arbitrary Detention rendered the following Opinion:

“The deprivation of liberty of Mr. Musaev is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the cases submitted to the Working Group”.

The case of Mr. Musaev has also been raised in the reports of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/14/19 and A/HRC/18/19).

According to new information received:

In February 2011, Mr. Musaev was transferred from prison n. 64/21 in Bekabad city, Tashkent region to high security prison n. 64/47 in Kiziltepa town, Navoi region with no explanation whatsoever given to him. It is reported that Navoi prison is known for its severe regulations and extreme temperatures inside the cells. It is reported that Mr. Musaev has been subjected to ‘special’ treatment while detained in Navoi prison. He is reportedly in poor health and has multiple burns and wounds to his body. Mr. Musaev sleeps on a thin mattress on the floor and has limited access to a shower. It is alleged that he had reportedly been subjected to intermittent beating whenever he failed to perform forced labour which he often did due to poor health. It is reported that Mr. Musaev’s family was threatened on several occasions not to file complaints.

Grave concern is expressed about the physical and mental integrity of Mr. Musaev. Further concern is expressed at the total non-observance by your Excellency’s Government of the recommendations made in the Opinion No. 14/2008, rendered by the Working Group on Arbitrary Detention and at the fact that no steps have been taken to remedy the situation. On the contrary, Mr. Erkin Musaev has allegedly been regularly placed in solitary confinement and reportedly beaten and ill-treated.

In this connection, we should like to appeal to your Excellency’s Government to seek clarification of the circumstances regarding the case of Mr. Musaev. 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, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

With respect to the allegations that Mr. Musaev has been subjected to beating and cruel, inhuman 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 further like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners (adopted by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977). We would also like to draw your Excellency's Government's attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988. (Adopted by General Assembly resolution 43/173 of 9 December 1988). The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Erkin Musaev 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. Erkin Musaev in compliance with the forementioned 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 complaints 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 on the measures taken to ensure the safety as well as physical and mental integrity of Mr. Erkin Musaev.

5. Please provide information about the measures taken to implement the recommendations made by the Working Group on Arbitrary Detention in its Opinion No. 14/2008.

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

Juan E. Méndez
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punishment