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HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates of the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on extrajudicial, summary or arbitrary executions; 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 Special Rapporteur on freedom of religion or belief; Special Rapporteur on extrajudicial, summary or arbitrary executions; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 14/11, 17/5, 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 case of Ms. **Khadijeh Mohibati** and the risk of her deportation on 28 March 2013, from Turkey to the Islamic Republic of Iran.

According to information received:

Ms. Khadijeh Mohibati, born on 1 August 1977, in Babol, Islamic Republic of Iran, is a citizen of the Islamic Republic of Iran, who has been living in Nevsehir, Turkey, since 2008, under the status of an asylum seeker. On 13 March 2013, the Nevsehir Police Department reportedly issued an order for deportation of Ms. Mohibati. Her deportation from Turkey to the Islamic Republic of Iran is reportedly scheduled for 28 March 2013. Allegedly, if forcibly returned to the Islamic Republic of Iran, Ms. Mohibati is at high risk of being tortured and executed, due to the pending death penalty sentence imposed against her in this country.

Ms. Mohibati had been granted refugee status on 1 August 1998 by the Embassy of the United States of America in Islamabad, Pakistan, based on which she resided legally in the United States of America from 1998 to 2007. During her stay in the United States of America, Ms. Mohibati allegedly changed her religion from Islam to Christianity. Ms. Mohibati reportedly returned voluntarily to the Islamic Republic of Iran in 2007.

Upon her arrival in 2007 at the international airport in Tehran, Islamic Republic of Iran, Ms. Mohibati was allegedly arrested by the Iranian State Security officers, who detained and interrogated her during three days. It is reported that the reason for Ms. Mohibati's detention was the allegation that she converted to Christianity, as well as that she had been engaged in non-coercive persuasion of others to change their religion. Ms. Mohibati was allegedly subjected to physical and mental torture while in detention.

It is further reported that later in 2007, Ms. Mohibati was prosecuted and tried for changing her religion as well as for non-coercive persuasion of others to change their religion, which are allegedly considered as criminal offences in the Islamic Republic of Iran. Reportedly, the applicable domestic law in the Islamic Republic of Iran provides for the imposition of the death penalty for those who converted to Christianity. After the first hearing, the court in Tehran reportedly released Ms. Mohibati on bail.

Ms. Mohibati fled from the Islamic Republic of Iran to Turkey in 2008. It is reported that shortly after Ms. Mohibati fled to Turkey, she was allegedly sentenced to death in the Islamic Republic of Iran.

Ms. Mohibati was registered to have entered the territory of Turkey on 8 February 2008, in Van. While in Turkey, Ms. Mohibati allegedly submitted a request to the Consulate of the United States of America in Ankara to assist her repatriation to the United States of America, which was reportedly rejected due to the fact that she voluntarily returned to the country of her origin and thus lost her refugee status. Shortly afterwards, Ms. Mohibati reportedly submitted a new asylum seeker application to Turkish authorities. It is reported that Ms. Mohibati withdrew voluntarily her application in early 2013, for unknown reasons.

Without prejudging the accuracy of the information made available to us, we would like to express concern that Ms. Khadijeh Mohibati is at imminent risk of being deported to a country, where she risks being tortured and executed for changing her religion from Islam to Christianity, as well as for non-coercive persuasion of others to change their religion, which is not considered as most serious crime, and moreover is protected as part of freedom of religion or belief under international human rights law.

In this regard, we would like to draw the attention of your Excellency's Government to Principle 5 on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. It states that "no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become victim of extra-legal, arbitrary or summary execution in that country." In this respect, the Special Rapporteur on extrajudicial, summary or arbitrary executions has pointed out that any death sentence undertaken in contravention of a Government's international obligations is tantamount to an arbitrary execution.

In relation to the death sentence allegedly imposed by the court in Tehran, the Islamic Republic of Iran, we would like to draw your Excellency's Government attention to Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, provides that countries that retain the death penalty as punishment may only impose it for the "most serious" crimes, which has been interpreted by the Human Rights Committee to mean offences that result in the loss of life, i.e. murder. This view has been reiterated by the mandate on extrajudicial, arbitrary or summary executions in a report submitted to the Human Rights Council which found that a death sentence can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life (A/HRC/4/20, para. 53). Converting to Christianity does not amount to a "most serious" crime under international law.

We like to refer your Excellency's Government to the paragraphs 73 and 74 of the report A/67/275 to the General Assembly, in which the Special Rapporteur on extrajudicial, summary or arbitrary executions underlined that "in the context of the death penalty, the application of the non-refoulement principle differs between abolitionist States and States that retain the death penalty in law. States that have abolished the death penalty are absolutely prohibited from transferring a person when they know or ought to know that there is a real risk of the imposition of the death penalty (A/HRC/18/20, para. 45)." Your Excellency's Government has abolished completely the death penalty as a form of punishment in 2004 and must therefore not transfer Ms. Mohibati to the Islamic Republic of Iran where she faces execution.

In this connection, we would also like to draw the attention of your Excellency's Government to article 3 of the Convention against Torture, other cruel, inhuman, degrading treatment and punishment, acceded by Turkey on 2 August 1988, 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 bring to 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, [...].”

Also we would like to respectfully remind your Excellency’s Government that article 18(2) of the ICCPR provides that “no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” This provision has been interpreted by the Human Rights Committee in its General Comment 22 para 3 to mean that “article 18 does not permit any limitations on whatsoever on the freedom of thought and conscience or the freedom to have or adopt a religion or belief on one’s choice.” Further in para 5 of the same Comment “the Committee observes that the freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief. Article 18(2) bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. [..]”

In view of the urgency of the matter, we urge your Excellency’s Government not to deport Ms. Khadijeh Mohibati to the Islamic Republic of Iran and we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of Ms. Khadijeh Mohibati in compliance with the above international instruments.

Moreover, as 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, we would be grateful for 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 details of the reasons of deportation of Ms. Mohibati to the Islamic Republic of Iran and how this is compatible with the above-mentioned international norms and standards, including the right to freedom of religion and belief. Please specify how the risk of torture and execution of a death sentence against Ms. Mohibati in the Islamic Republic of Iran was taken into consideration within the process of deciding on her deportation from Turkey.

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 Ms. Khadijeh Mohibati 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.

Heiner Bielefeldt
Special Rapporteur on freedom of religion or belief

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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