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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

Mandates 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 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 former Prime Minister of Tajikistan, Mr. Abdulmalik Abdullodzhonov.

According to information received:

Mr. Abdulmalik Abdullodzhonov, while travelling to Ukraine on a valid travel document issued by the United States of America with a Ukrainian visa, was allegedly detained upon arrival at Kyiv's Boryspil International Airport on 5 February 2013, and has remained in detention since then. Reportedly, he was detained due to the pending extradition request to Tajikistan.

On 15 March 2013, Kyiv's Shevchenko District Court decided to continue the detention of Mr. Abdullodzhonov for up to twelve months, while the General Prosecutor's Office of Ukraine continues its investigation related to the extradition request by Tajikistan. While ordering Abdullodzhonov's continued detention, the Court allegedly acknowledged that the materials provided as evidence confirm the existence of his refugee status. It is reported that Mr. Abdullodzhonov is currently in custody at the SIZO No. 13 in Kyiv. It is further alleged that if Mr. Abdullodzhonov is extradited to Tajikistan, he will be at risk of being tortured.

Furthermore, the General Prosecutor's Office has reportedly given permission for three officials from Tajikistan, including the Ambassador to Ukraine, a consular official, and an official from the General Prosecutor's Office of Tajikistan, to visit Mr. Abdullodzhonov in detention. Allegedly, Mr. Abdullodzhonov refused to

speak with them. During the court hearing on 15 March 2013, he reportedly expressed fear of meeting with Tajik officials, who he believed might attempt to cause him physical harm.

Mr. Abdullodzhonov served as Prime Minister of Tajikistan in 1992-1993 during the civil war, and is a prominent opposition leader. He also ran for the Presidency of Tajikistan in 1994, and according to official reports, lost to Emomali Rahmon, Tajikistan's current president. In 1995, Mr. Abdullodzhonov reportedly started to receive warnings allegedly delivered through high-ranking officials that he was a target. Allegedly there were three attempts on his life that year. After he fled Tajikistan in 1995, several of his political associates were reportedly killed. In 1997, there was allegedly an attempt on the life of President Emomali Rahmon in Mr. Abdullodzhonov's hometown of Leninabad in Tajikistan. Mr. Abdullodzhonov was accused of being involved in this assassination attempt, as well as in organized crime and terrorism, though he was no longer living in Tajikistan. Mr. Abdullodzhonov's brother was arrested in relation to the attack, found guilty, and sentenced to death, which was carried out. Reportedly, Mr. Abdullodzhonov denies these charges and was granted political asylum in the United States in June 1999.

Mr. Abdullodzhonov's refugee status in the United States was recognized by a decision of the Department of Justice dated 17 June 1999. In accordance with applicable law of the United States, a person is eligible for asylum if he or she is a refugee according to the definition of the 1951 Convention relating to the Status of Refugees. Reportedly Ukrainian domestic refugee law in its article 31(2) stipulates that individuals recognized as refugees by other States parties to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol shall not be forcibly returned to a country where their rights or freedoms would be threatened. Provisions of the Law on the Legal Status of Foreigners article 31(1) and the Code of Criminal Procedure article 589(1) (5) echo these guarantees.

Without prejudging the accuracy of the information made available to us, we would like to express concern that Mr. Abdulmalik Abdullodzhonov, despite the fact that he is a registered refugee of the United States, is at imminent risk of being extradited to Tajikistan, where he risks being tortured. In this regard we urge your Excellency's Government not to extradite him and immediately release him from detention allowing his repatriation to the United States.

In this context, we would like to draw your Excellency's Government attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, acceded by Ukraine on 24 February 1987, 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”.

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 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, stressing the importance of effective legal and procedural safeguards in this regard, and recognizing 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 connection with the decision of the General Prosecutor’s Office of Ukraine to allow officials from Tajikistan to visit Mr. Abdullodzhonov in detention and his expressed fear that they may cause him physical harm, we would like to the attention of your Excellency's Government paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that “intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture;” To this effect, it is clear that the representatives of the country of origin should be denied access to a recognized refugee who is detained.

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

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. Abdullodzhonov 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 Mr. Abdullodzhonov? In this regard please provide the details, and where available the results, of any investigation and judicial or other inquiries carried. If no inquiries have taken place, or if they have been inconclusive, please explain why.
3. Please provide details of the reasons of investigation by the Prosecutor's Office of Ukraine related to the extradition request by Tajikistan of Mr. Abdullodzhonov and how this is compatible with the above-mentioned international norms and standards, in particular with the norms protecting him as a recognized refugee. Please also specify how the risk of torture of Mr. Abdullodzhonov in Tajikistan is taken into consideration within the process of deciding on extradition.
4. Please provide information concerning the legal grounds for the arrest and detention of Mr. Abdullodzhonov and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR and the ICCPR.

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 Mr. Abdullodzhonov 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.

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

Juan E. Méndez
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