

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

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February 1, 2013

Aida Salyanova

Prosecutor General of Kyrgyzstan

139 Toktonaliev Street

Bishkek, Kyrgyzstan

Dear Prosecutor General Aida Salyanova:

I am writing to express my grave concern about the possible extradition to Uzbekistan of Khabibullo Sulaimanov, an Uzbek national, who is currently in the custody of the State Committee on National Security (GKNB) on religious extremism related charges filed by the Uzbek authorities in 1999. Mr. Sulaimanov is currently in the process of appealing an extradition order issued by the Prosecutor Generals office from November 13, 2012. The appeal hearing is scheduled for February 5, 2013 at the Bishkek City Court.

I am of the firm and unequivocal belief that Mr. Sulaimanov is at a real risk of torture and ill-treatment if returned to Uzbekistan, and therefore, under Kyrgyzstans obligations under international law, he must not be extradited. I therefore urge the Prosecutors office to withdraw its extradition order.

Torture is widespread and systematic in every part of Uzbekistans criminal judicial system, and people held on religion related charges are often subjected to especially harsh ill-treatment, including torture. As you know, Kyrgyzstan is bound by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Kyrgyzstan acceded in 1997, as well as to the International Covenant on Civil and Political Rights, to which Kyrgyzstan acceded in 1994. Under these conventions, Kyrgyzstan is strictly prohibited from expelling or extraditing a person to a country where they face a risk of torture or inhuman or degrading treatment. Thus, under no circumstances and regardless of the nature of the charges the Uzbek authorities have brought against him, Kyrgyzstan may not extradite or otherwise return Khabibullo Sulaimanov to Uzbekistan.

Furthermore, these international obligations prevail over Kyrgyzstan's obligations under bilateral and regional agreements relating to extradition, such as the Convention on Legal Assistance and Conflicts of Law in Matters of Civil, Family and Criminal Law (The Minsk Convention), or agreements between members of the Shanghai Cooperation Organization (SCO). Extraditing Mr. Sulaimanov would constitute a serious breach of Kyrgyzstans obligations under international law and call into question Kyrgyzstans willingness to respect its international commitments.

A number of UN Human Rights Committee decisions have raised similar concerns in recent years. For example, in its first decision on Kyrgyzstan (Maksudov et al. v. Kyrgyzstan) the Committee ruled on July 16, 2008 that Kyrgyzstan breached the rights to personal liberty, freedom from torture, and right to life of four Uzbek refugees extradited to Uzbekistan in August 2006. The decision stressed the obligations of Kyrgyz authorities to refrain from returning individuals wanted by Uzbekistan's government taking into account the great risk of torture there.

The Committee noted that ... there were widely noted and credible public reports that Uzbekistan resorted to consistent and widespread use of torture against detainees and that the risk of such treatment was usually high in the case of detainees held for political and security reasons. In the Committee's view, these elements in their combination show that the authors faced a real risk of torture in Uzbekistan if extradited... The procurement of assurances from the Uzbek General Prosecutor's Office, which, moreover, contained no concrete mechanism for their enforcement, was insufficient to protect against such risk.

In light of these commitments, Human Rights Watch urges you to personally review the decision to approve the extradition order and asks you to withdraw it.

We also respectfully ask you to inquire as to whether the authorities have inappropriately stalled the efforts of the UN High Commissioner for Refugees (UNHCR) and the Ministry of Youth, Employment and Labor to process Mr. Sulaimanovs asylum claim.

According to court documents on file with Human Rights Watch, the Ministry of Youth, Employment and Labor received Mr. Sulaimanovs claim on November 21, 2012. Yet, apparently the Ministry has not yet registered Mr. Sulaimanovs claim, as they have still not met with Mr. Sulaimanov at the GKNBs temporary detention facility.

In addition, it appears the GKNB has not granted the UN High Commissioner for Refugees access to Mr. Sulaimanov, despite their requests to meet with him. UNHCR informed Human Rights Watch that Mr. Sulaimanov Khabibullo is known to UNHCR Representation in Kyrgyzstan and [h]e is considered to be a person of concern to UNHCR. Yet, to date, UNHCR has not been allowed to conduct an interview with Mr. Sulaimanov at the GKNBs temporary detention facility, a step required for registration and assessment of his asylum claim.

As you are aware, Kyrgyzstan acceded to the 1951 Convention relating to the Status of Refugees in 1996 and is under an obligation not to expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. Thus, until the Ministry of Youth, Employment and Labor, and UNHCR can meet with Mr. Sulaimanov and process his asylum claim, Kyrgyzstan must not extradite or expel him under any circumstances.

While states have the right to regulate their migration and asylum policies, they must ensure that applicants can freely exercise the right to seek asylum and access the necessary procedures. The process of registering as an asylum seeker is the first step in accessing the process of refugee status determination, and should be available to anyone who has a claim that they are in danger in their country of origin.

Two months have lapsed since Mr. Sulaimanov submitted his asylum claim. Kyrgyzstan should ensure that state officials act within the limits established by the law and are held accountable for failing to carry out their duties.

The government of Kyrgyzstan has undertaken important efforts to host hundreds of refugees and asylum seekers from Uzbekistan, Afghanistan, and other countries. However, in recent years these efforts have been marred by the governments failure to fully implement its obligations in international and national law regarding the protection of asylum seekers and refugees from Uzbekistan.

Since 2005, more than a dozen asylum seekers and refugees have been forcibly returned or extradited to Uzbekistan, despite the risk of torture there, and Kyrgyzstan failed to investigate and hold accountable those officials who have been complicit in such forced returns and extraditions (see <https://www.hrw.org/news/2008/12/09/letter-president-bakiev-ensuring-refugee-rights>). Also worrisome is the lack of public information about whether investigations into disappearances of asylum seekers from Uzbekistan were conducted and, if so, what the results were.

The widespread torture of detainees in Uzbekistan has been well-documented. The UN Special Rapporteur on torture concluded in 2003 that torture in Uzbekistan was systematic, and there is no evidence to suggest that the situation has improved since. The UN Committee Against Torture concluded in November 2007, after its periodic review of Uzbekistan's compliance with the Convention against Torture, that torture and ill-treatment remain widespread in Uzbekistan and continue to occur with impunity.

In our November 2007 report, *Nowhere to Turn*, Human Rights Watch documented widespread torture and ill-treatment in Uzbekistan that goes largely unpunished (see <https://www.hrw.org/reports/2007/11/05/nowhere-turn>). Human Rights Watchs December 2011 report, *No One Left to Witness: Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan*, also documented the continuing, widespread use of torture and ill-treatment in pre-trial detention in Uzbekistan (see <https://www.hrw.org/reports/2011/12/13/no-one-left-witness-0>). Human Rights Watch found that common methods of torture and ill-treatment include beatings with truncheons and bottles filled with water, electric shock, asphyxiation with plastic bags and gas masks, sexual humiliation, and threats of physical harm to relatives.

Since 2008, and as recently as September 2012, one of the preeminent authoritative human rights institutions, the European Court of Human Rights, has repeatedly found that to send an individual back to Uzbekistan would be a violation of Article 3 of the European Convention on Human Rights that is the absolute prohibition on torture and inhuman or degrading treatment. (See cases **Ismoilov and others v Russia**, Application 2947/06, Judgment of 24/04/2008; **Muminov v Russia**, Application 42502/06, Judgment 11/12/2008; **Yuldashev v Russia**, Application 1248/09, Judgment 08/07/2010; **Abdulazhon Isakov v Russia**, Application 14049/08 Judgment 08/07/2010; **Karimov v Russia**, Application 54219/08 Judgment 29/07/2010; **Sultanov v Russia**, Application 15303/09, Judgment 04/11/2010; **Yakubov v Russia**, Application 7265/10 Judgment 08/11/2011; **Ergashev v Russia**, Application 12106/09 Judgment 20/12/2011; **Umirov v Russia**, Application 17455/11 Judgment 18/09/2012).

All of the judgments cited above include extensive extracts from international bodies, such as the UN special rapporteur on torture, that document the use of torture. In the November 2011 judgment on *Yakubov v Russia*, the European Court of Human Rights said:

81. in several judgments concerning expulsion or extradition to Uzbekistan it noted, with reference to materials from independent sources covering the time span between 2002 and 2007, that the practice of torture against those in police custody was systematic and indiscriminate (see, for example, *Muminov* and *Ismoilov and Others*, both cited above, 93 and 121 respectively, with further references). In its recent judgments concerning the same subject, after having examined the latest available information, the Court pointed out that there was no concrete evidence to demonstrate any fundamental improvement in that area (see *Abdulazhon Isakov v. Russia*, cited above, 109; *Yuldashev v. Russia*, no.1248/09, 93, 8 July 2010; and *Sultanov v. Russia*, no.15303/09, 71, 4 November 2010).

82. The [Russian] Government did not argue that the situation in Uzbekistan had improved during the period under consideration in the present case. Having examined recent materials originating from reliable and objective sources the Court is also unable to find elements

which would be indicative of such an improvement. Quite the contrary, it follows from the latest reports by Human Rights Watch, Amnesty International and the US Department of State, as well as the information of other organisations to which they refer in their documents, that the use of torture and ill-treatment against detainees in Uzbekistan is systematic, unpunished and encouraged by law-enforcement and security officers. According to those sources, despite the Uzbek authorities' assertions that such practices had significantly decreased, reports of torture and ill-treatment of detainees and prisoners continued unabated. Against this background the Court cannot but conclude that the ill-treatment of detainees remains a pervasive and enduring problem in Uzbekistan.

The Court has also addressed the question as to whether the government of Uzbekistan could offer assurances that an individual would not be tortured as a safe guard against the risk of torture. In September 2012, the Court in *Umirov v Russia* said:

121. Lastly, the Court has taken note of the assurances provided by the Uzbek authorities. However, like in some previous cases, cited above, having examined their contents, the Court is not persuaded that these assurances were sufficient to dispel the alleged risk of ill-treatment in the event of the applicants' extradition to Uzbekistan. In this respect, the Court reiterates that it has already cautioned against reliance on diplomatic assurances against torture from States where torture is endemic or persistent. Furthermore, it should be pointed out that even where such assurances are given, that does not absolve the Court from the obligation to examine whether such assurances provided, in their practical application, a sufficient guarantee that the applicant would be protected against the risk of treatment prohibited by the Convention (see, *Chahal*, 105 and *Saadi*, 148, both cited above). The Court finds unconvincing the national authorities' reliance, without any assessment or discussion, on such assurances for dispelling the risk of ill-treatment.

Our research, and that of the UN special rapporteur on torture, has found that individuals who, like Mr. Sulaimanov, face extremism-related charges are specifically at risk of torture in Uzbekistan, and that torture is part of the governments' unrelenting, multi-year campaign of arbitrary detention and arrest of Muslims who practice their faith outside strict state controls. Human Rights Watch documented these practices in numerous reports, including in the 2004 report *Creating Enemies of the State: Religious Persecution in Uzbekistan*, as well as in many subsequent documents (see <https://www.hrw.org/reports/2004/03/29/creating-enemies-state>).

Thousands of people in Uzbekistan languish in prison on religion-related charges for non-violent offenses. The Uzbek government has a well-documented record of unlawful arrest or detention of those who meet privately for prayer or Islamic study, those who belong to Islamic groups not registered with the government, or those who possess Islamic literature not generated by the government, often singling them out as extremists for no reason other than the peaceful expression of their religious beliefs. Authorities make dozens of new arrests and convictions on charges related to extremism each year.

The legal basis for this campaign has been the Law on Freedom of Conscience and Religious Organizations, adopted in 1998, and several subsequent amendments to the Criminal and Administrative Codes. Article 244-1 of the Criminal Code criminalizes the publishing, storing, and distributing of materials containing ideas of religious extremism, separatism and fundamentalism. Since Uzbekistan's laws lack any precise definition of the terms religious extremism and fundamentalism, they can be applied to practically any kind of religious literature and, in practice, are used expansively to persecute citizens for their perceived religious or political convictions.

Article 244-2 of Uzbekistan's Criminal Code criminalizes the creation of, leadership of, [or] participation in religious extremist, separatist, fundamentalist or other forbidden organizations, even where the organization's activities are non-violent. Under Uzbek law, it is a criminal offense punishable by up to five years imprisonment, to organize an illegal religious group (a group that is merely unregistered) or to resume such a group's activities after it has been denied registration or ordered to disband. Those who participate in prohibited groups face a maximum sentence of up to 20 years imprisonment.

The Uzbek government has also used article 159 of the Criminal Code, attempting to overthrow the constitutional order, quite broadly, including almost any activity or idea that is at variance with official ideology, even if these activities have not been accompanied by violence.

### ***Personal Circumstances of Khabibullo Sulaimanov***

According to a November 15, 2012 court document (on file with Human Rights Watch), a warrant for Khabibullo Sulaimanov's arrest was issued by Uzbek authorities on December 16, 1999 on charges of article 159, part 3, for alleged membership in an organized criminal group aimed at overthrowing the constitutional order. Since December 2006, he has been included in the Shanghai Cooperation Organizations unified registry of wanted persons. The extradition order issued by your office on November 13 (copy on file with Human Rights Watch), and signed by senior prosecutor Kanabek Uzakbaev, states that Mr. Sulaimanov will be extradited to Uzbekistan to stand trial on charges under article 244, part 1 and 244 part 3 of the Uzbek Criminal Code, but not for charges under article 159, part 3 and article 223, part 2, as there are no equivalent criminal charges in Kyrgyz legislation.

In his November 19, 2012 asylum claim (on file with Human Rights Watch), Mr. Sulaimanov stated that he had worked as an imam in Uzbekistan's Tashkent region starting in 1989, and that during the years he worked at the mosque, he experienced pressure from the authorities. In 1996, large-scale persecution of religious people began, he wrote. They summoned me to the ROVD (police station) [and] wanted to fabricate a cemetery vandalism case. But it did not work out. They held me for three days and released me.

This information is consistent with a 1996 Human Rights Watch report entitled *Persistent Human Rights Violations and Prospects for Improvement* (see [https://www.hrw.org/legacy/reports/1996/UZBEK.htm#N\\_59](https://www.hrw.org/legacy/reports/1996/UZBEK.htm#N_59)). The report states: The vandalism was apparently a government provocation against the Islamic religious community; it has led to some thirty detentions and served as the pretext for numerous summonses to the NSS and police for questioning and intimidation of the local Islamic community. Mr. Khabibulla Suleimanov (an alternative spelling of his name) was listed in this report as amongst the religious leaders who were reportedly detained and later released.

In the same report, Human Rights Watch documented how Mr. Sulaimanov's sister was also targeted by the authorities at that time. The report states: [I]n November 1995, Fatima Sulaimanova, an Islamic specialist, professor, and sister of Khabibulla Sulaimanov, who was detained following the desecrations of Tashkent cemeteries (see *Crackdown Against Independent Muslims*), was effectively stripped of her profession because of government threats.

Mr. Sulaimanov stated in his asylum claim that after his detention, he was afraid for his life. In 2001, he fled to Kyrgyzstan.

On October 6, 2012, after peacefully residing in Kyrgyzstan for over 10 years, Mr. Sulaimanov was detained by GKNB agents at his home. His family told Human Rights Watch that four officers in civilian clothes entered their home demanding to see their passports. None of the officers stated their names or their positions. When Mr. Sulaimanov's wife asked to see the officers' identification, one of the officers retorted don't act smart. He then briefly flashed his identification, but not long enough for Mr. Sulaimanov's family to see the officers' name or position.

Human Rights Watch is concerned that the Kyrgyz authorities committed other violations or acted in a manner inconsistent with their professional responsibilities. For example, after she expressed concern about access to her husband in detention, Mr. Sulaimanov's wife told Human Rights Watch that senior prosecutor Kanabek Uzakbaev informed her that Mr. Sulaimanov does not need a lawyer, as courts in Uzbekistan, not Kyrgyzstan, will consider the case on the merits. Additionally, Mr. Sulaimanov's family was not informed in advance of the November 9, 2012 court hearing sanctioning Mr. Sulaimanov's arrest, and thus was denied the right to hire counsel of their choosing and to attend the hearing.

As Human Rights Watch has indicated at the outset, the prohibition on return to torture is absolute. Mr. Sulaimanov's return would clearly violate this prohibition and Kyrgyzstan's obligations under the International Covenant on Civil and Political Rights and the Convention on Torture. We therefore urge you to withdraw the extradition order regarding Mr. Sulaimanov so that Kyrgyzstan will not breach its obligations on the prohibition on the return to torture.

I thank you for your immediate attention to these urgent concerns.

Sincerely,

Hugh Williamson

Executive Director  
Europe and Central Asia division

Police Torture and Abductions in Turkey

Turkey's Post-Coup Suspension of Safeguards Against Torture

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