

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL TKM 1/2017

1 May 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 25/2, 25/18 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the alleged arbitrary detention, torture, judicial harassment and sentencing of Mr. **Gaspar Matalaev**.

Mr. Gaspar Matalaev is a human rights defender, photo-journalist, and reporter working for the *Alternative Turkmenistan News (ATN)*. On assignment from *ATN*, Mr. Matalaev has investigated and monitored cases of forced labour practices of students, public sector workers, including healthcare professionals and others in the agriculture sector.

According to the information received:

In September 2016, Mr. Matalaev repeatedly visited cotton collection points and travelled to cotton fields in the Lebap province of Turkmenistan in order to covertly document and photograph the alleged forced labour, and to conduct interviews with individuals allegedly coerced to work in the cotton fields by district authorities.

On 2 October 2016, *ATN* published online Mr. Matalaev's forced labour report, accompanied by extensive photographic evidence. The evidence he gathered reportedly revealed a widespread and systematic policy of compelling individuals, both adults and children to pick cotton fields in the Farab district of Lebap province in Turkmenistan. The article on the website did not reveal Mr. Matalaev as the author.

On 4 October 2016, at midnight, four police officers in plain clothes came to Mr. Matalaev's home, arrested him and confiscated both his mobile phone, as well as the mobile phone of a family member. No arrest warrant was presented. The police officials stated that the arrest was in connection with photos published on the Internet.

On 4 October 2016, at night, the police called Mr. Matalaev's family from his mobile phone and allegedly stated that he would be released two hours later. However, Mr. Matalaev was not released. The police later stated that the family could visit Mr. Matalaev on 6 October 2016, and requested that they bring a parcel for him with warm clothing and food.

On 6 October 2016, when Mr. Matalaev's family members came to the city police department, the parcel was accepted but the visit was denied.

According to the information received, while in police custody, Mr. Matalaev was interrogated by officers of the Ministry of National Security, who questioned him on his activities monitoring forced labour during the cotton harvest. He was asked questions about how he had transferred the photos to *ATN*, and whether he was paid for this. Mr. Matalaev admitted to sending the photos. It is alleged that he was subsequently subjected to torture, including electric shocks and eventually confessed to false charges of fraud. The charges related to a complaint lodged by a woman, who herself had been previously detained and interrogated for 15 days. She had reportedly visited cotton fields with Mr. Matalaev to conduct monitoring activities in September 2016.

Mr. Matalaev was held without access to his family until 9 November 2016.

On 9 November 2016, the Turkmenabat city court found Mr. Matalaev guilty of fraud under article 228 (Part 2, Chapter 3) of the Criminal Code of Turkmenistan and sentenced him to three years in an ordinary regime labour camp. He is currently being held in a labour camp in Seydi, Turkmenistan.

No written verdict was provided to Mr. Matalaev's lawyer or family. They only have access to part of a pre-trial investigation report approved by the Lebap Regional Prosecutor stipulating that Mr. Matalaev's case number is 93364. Mr. Matalaev was first represented by a state-appointed lawyer, who was given adequate access to her client. At the initiative of Mr. Matalaev's family, the state-assigned lawyer was replaced by another lawyer, who was subsequently refused full access to his client reportedly due to the fact that he was "independent". The lawyer was only able to meet Mr. Matalaev twice during the entire court process. The last meeting was held after the trial, during which Mr. Matalaev refused to appeal the decision.

Mr. Matalaev's family has reportedly been subjected to surveillance by unknown vehicles outside their home since October 2016.

While we do not wish to prejudge the accuracy of the information received, serious concern is expressed at the alleged arbitrary arrest, detention and sentencing to forced labour of Mr. Matalaev, which appears to be related to his human rights monitoring activities and represent a criminalization of the exercise of the right to

freedom of expression. We also express our grave concern at the allegations that Mr. Matalaev may have been subjected to torture or ill-treatment while in police custody in order to obtain a forced confession to the charges of fraud. We express additional concern that the court proceedings against and the sentencing of Mr. Matalaev appear not to fulfil the minimum standards for fair trial and due process under international human rights law.

Further concern is expressed at the chilling effect that the charges brought against Mr. Matalaev may have on the legitimate exercise of the right to freedom of expression, particularly by journalists, human rights defenders and civil society activists seeking to document forced labour practices in the cotton harvest in Turkmenistan.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legal basis for the arrest, detention and sentencing of Mr. Matalaev, and explain how this is compatible with Turkmenistan's obligations under international human rights law. In particular, please provide information about why Mr. Matalaev was questioned about his monitoring activities on forced labour in a criminal proceeding concerning a case of fraud. Please also provide information about the evidence used to convict Mr. Matalaev.
3. Please provide information about the legal basis for sentencing Mr. Matalaev to forced labour, and explain how this is compatible with Turkmenistan's obligations under international human rights law.
4. Please provide information about the legal basis for denying Mr. Matalaev visits from his family and access to a lawyer.
5. Please provide information regarding any inquiry or investigation, medical examinations, and judicial or other inquiries carried out in relation to the allegations of ill-treatment and torture of Mr. Matalaev by the police. Please provide the full details of any prosecutions which have been undertaken in relation to the alleged torture of Mr. Matalaev. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?

6. Please provide information as to the measures that are in place to ensure that Mr. Matalaev may report any instances of physical or psychological pressure exerted against him without fear of facing reprisals of any sort from the prison authorities, as provided by international human rights standards.
7. Please indicate what measures have been taken to ensure that the legitimate right to freedom of opinion and expression is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
8. Please indicate what measures have been taken to ensure that human rights defenders in Turkmenistan are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

We would appreciate receiving 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(s) responsible for 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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

José Guevara
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Nils Melzer
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 your Excellency's Government's attention to the following human rights standards:

Without expressing, at this stage, an opinion on the facts of the case and on whether the detention of Mr. Matalaev was arbitrary or not, we would like to refer your Excellency's Government to articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Turkmenistan on 1 May 1997, which respectively guarantee the right not to be deprived arbitrarily of one's liberty and the right to fair proceedings before an independent and impartial tribunal.

We would further like to refer your Excellency's Government to article 19 and 21 of the ICCPR that guarantee the rights to freedom of opinion and expression, which includes the right to seek, receive and impart information, as well as the right of peaceful assembly. Restrictions to these rights may only be imposed for one of the grounds set out in article 19(3) and in article 21, and must conform to the strict tests of necessity and proportionality. In this regard, we reiterate the principle in Human Rights Council resolution 12/16, which calls on States to refrain from imposing restrictions which are not consistent with article 19(3) of the ICCPR, including on reporting on human rights; discussion of government policies and political debate; government activities and corruption in government; and peaceful demonstrations or political activities.

We would also like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in article 7 of the ICCPR and articles 2 and 15 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Turkmenistan acceded to on 25 June 1999.

In this context, article 12 of the CAT requires competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT requires State parties to prosecute suspected perpetrators of torture. Paragraph 7b of Human Rights Council resolution 16/23 urges States to take note of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) as a useful tool in efforts to combat torture. Moreover, we would like to refer to The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, commonly known as the Istanbul Protocol, submitted to the United Nations High Commissioner for Human Rights on 9 August 1999. The Protocol contains internationally recognised standards and procedures on how to recognize and document symptoms of torture so that the findings may serve to inform judiciary and any other investigative bodies.

We would like to recall the updated United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) which lay out generally accepted principles and practice in the treatment of prisoners and prison management.

Moreover, we would like to refer to 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 which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Likewise, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights; and
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures 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 his or her legitimate exercise of the rights referred to in the Declaration.

We also wish to refer also to the Human Rights Council resolution 31/32, which in paragraph 2 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.