

Mandates of the Working Group on Enforced or Involuntary Disappearances; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
UA TKM 2/2018

27 November 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 36/6 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged reprisals against [REDACTED] and her husband, for her cooperation with the United Nations, its representatives and mechanisms in the field of human rights, specifically with the Working Group on Enforced or Involuntary Disappearances.** [REDACTED] is the wife of Mr. [REDACTED] whose case is under review by the Working Group.

According to the information received:

Mr. [REDACTED] born on 17 July 1986, was sentenced by a court in Ashgabat city, on [REDACTED] 2016, and is currently being detained at an unknown location in Turkmenistan. In April 2017, his wife, [REDACTED] filed a complaint with the Working Group on Enforced or Involuntary Disappearances (WGEID), and has since maintained contact with the Working Group.

[REDACTED] is a Russian national. Since the detention of her husband, she has received the assistance of the Embassy of the Russian Federation in Turkmenistan, including with regard to her application for visas to Turkmenistan, in order to visit her husband in prison.

On 4 April 2018, [REDACTED] received a first response from the Migration Agency of Turkmenistan, turning down her request for a visa to enter Turkmenistan.

On 8 May 2018, the Embassy of the Russian Federation in Turkmenistan wrote to [REDACTED] informing her that the Embassy had sent a note to the competent authorities in Turkmenistan requesting authorization for her to visit her husband.

██████████ then received a reply from the Ministry of Foreign Affairs of Turkmenistan, via the consulate of the Russian Federation, on 10 July 2018. The reply stated that “in accordance with the prescribed manner” she would be able to travel to Turkmenistan and see her husband in prison. However, on 21 September 2018, the Embassy of Turkmenistan in the Russian Federation sent ██████████ a letter which stated: “in accordance with article 88 of the criminal executive code of Turkmenistan, the convicted ██████████ [...] is denied the right to a short-term visit because of a violation of internal rules of the penitentiary facility”.

This reply was sent one week after ██████████ met with the Working Group in Geneva, on 14 September 2018. This also took place after she spoke about her husband’s case at a side event on enforced disappearances at the Human Dimension Implementation Meeting of the Organization for Security and Cooperation in Europe (OSCE). During this time, ██████████ met with several diplomats from OSCE participating states, and also attempted to communicate with the delegation of Turkmenistan, yet to no avail.

It is believed that the denial of a visa and of visitation rights for ██████████ is an act of reprisals for her cooperation with the Working Group on Enforced Disappearances and a retaliation for her engagement with the OSCE member States in order to clarify the fate and whereabouts of her husband, and seek the protection of his rights.

While we do not wish to prejudge the accuracy of these allegations, we express concern that if they were confirmed, they would constitute an act of retaliation for Ms. ██████████ cooperation with United Nations Human Rights mechanisms and other bodies, in connection with her efforts to clarify the disappearance of her husband.

In this context, we would like to refer your Excellency’s Government to Human Rights Council Resolutions 12/2, 24/24 and 36/21, which reaffirm the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. In these resolutions, the Human Rights Council calls on States to prevent and refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies [as well as the issuance of appropriate guidance to national authorities] in order to effectively protect those who seek to cooperate, cooperate or have cooperated with the United Nations. The Council also urges States to ensure accountability for any act of intimidation or reprisal by ensuring impartial, prompt and thorough investigations of any alleged act of intimidation or reprisal in order to bring the perpetrators to justice; to provide access to effective

remedies for victims in accordance with their international human rights obligations and commitments; and to prevent any recurrence.

In accordance with Article 32 of the Methods of Work of the Working Group on Enforced or Involuntary Disappearances, the “cases of intimidation, persecution or reprisal against relatives of disappeared persons [...] are transmitted to the pertinent States, with the appeal that they take steps to protect all the fundamental rights of the persons affected [...]”

Finally, we would also like to refer your Excellency's Government to articles 1, and 2 of the UN Declaration on Human Rights Defenders, which state that everyone has the right to promote and to strive for the protection and realization of human rights.

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

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 the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to my attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please indicate the precise place of detention of Mr. [REDACTED] and provide further details as to the factual and legal basis for the denial of his visitation rights.
3. The sequence of events described above point to a possible connection between the denial of visitation rights of Mr. [REDACTED] and the refusal of a visa to his wife for her active engagement with the Working Group on Enforced or Involuntary Disappearances. In this context, please provide further details as to the reasons for which a visa has been denied for Ms. [REDACTED]
4. Kindly indicate what measures have been taken to ensure that human rights defenders in Turkmenistan – especially those working to stop the practice of enforced disappearances - are able to carry out their legitimate work in an enabling environment without fear or reprisal of any kind.

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 responsible of the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a copy of this communication will be sent to the Government of the Russian Federation.

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

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Michel Forst
Special Rapporteur on the situation of human rights defenders