

Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the human rights to safe drinking water and sanitation

REFERENCE:
AL TKM 2/2019

29 November 2019

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 35/15, 42/22, 36/6, 42/16, 34/5, 34/19 and 42/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged enforced disappearances and deaths in custody of at least 27 individuals due to torture, inhumane treatment, degrading detention conditions, and denial of medical assistance in the Turkmen prison system, in particular at the maximum-security prison Ovadan Depe.**

The case of **Ms. Ogulsapar Karlievna Muradova**, was the subject of previous communications to your Excellency's Government dated 29 June 2006 (TKM 3/2006), 24 July 2006 (TKM 5/2006), 19 September 2006 (TKM 7/2006) and 2 January 2007 (TKM 1/2007). We regret that to date, we have not received any response to these communications. The concerns expressed in this case, remain.

On 5 October 2018, the UN Working Group on Enforced or Involuntary Disappearances sent a general allegation to the Government of Turkmenistan concerning at least 121 cases of enforced disappearances in the prison system of Turkmenistan since 2002, including the case of Ms. Muradova. The Government has not responded to the general allegation.

According to the information received:

Harsh detention conditions, credible reports of widespread torture and ill-treatment in pre-detention facilities and prisons, and sentences extended when close to completion, point to a wider trend of enforced disappearances and deaths

in custody in the Turkmen prison system over the past 17 years, potentially amounting to serious violations of the right to life, personal integrity, fair trial, and freedom from torture.

At present, no domestic or international monitors are allowed access to detention facilities; however, credible sources report accounts of ill-treatment, deprivation of medical assistance, and inhumane detention conditions of a severity amounting to torture. Both prisoners and suspects under investigation endure these treatments.

At least 27 individuals have been victim of alleged enforced disappearances and deaths in custody since 2002. Most of these individuals were held at the maximum-security prison Ovadan Depe. Located 50 kilometers northwest of Ashgabat in the Karakum desert, temperatures spike to over 50 degrees centigrade in the summer, and may drop to minus 20 in the winter, with wide fluctuations from day to night.

Despite these extreme weather conditions, the prison does not have proper ventilation or working heating. Windows without glass and concrete walls provide insufficient insulation. Reportedly, cells windows are covered so that the inmates cannot see anything outside. Verbal communication between cells is strictly forbidden, and some of the convicted prisoners are held in specially guarded block of the prison, in 2 or 4 person's cells, or in solitary confinement. The only way prisoners are able to communicate with each other is to yell or tap on the walls, but any form of communication between them results in beatings.

Ovadan Depe is also infested with mosquitoes. Food is scarce and of poor quality, causing detainees diarrhea and intestinal distress. Water sources inside the cells are filthy, and toilets are located inside cells without any privacy for the inmates.

There are serious reports of punishment amounting to torture with the use of long needles, regular beatings, and the application of medical substances including psychotropic drugs. Dogs are also used against prisoners. Prisoners are often beaten with batons which may result in their losing consciousness, internal organ damage, including kidney ailments, and the inability to walk. Punishment cells called "kartsers" (cylindrical dark solitary confinement cells) are used as a means of torture. The miniscule amounts of food and water, combined with mosquito infestation and extreme temperatures, made the stays in the kartsers an act of torture. Hunchback cells, which are 1.5 meters tall, require inmates to be permanently hunched.

The individuals who died in custody seem to fall into four broad categories: persons accused of attempting to overthrow the Government, public officials convicted on charges of corruption and abuse of power, individuals convicted on charges of religious extremism, and civil rights defenders. Convicted persons are given sentences between 12 and 25 years, and on occasion life imprisonment,

although this is not a legal punishment in Turkmenistan's law.

In several of the cases of death in detention, medical assistance was reportedly denied, because it was inappropriate or non-existent. Those held incommunicado are also denied receipt of any parcels, including those of a medical nature. The causes of death have been described as hepatitis, beatings and ill-treatment, heart attacks, and thrombosis. Some of the bodies showed signs of malnutrition, and even starvation, as well as bruises. Prior to their deaths, some of the relatives had no information about the whereabouts of their loved-ones. Reportedly, some of the remains of these individuals were not handed over to their families.

The case of Ms. Ogulsapar Karlievna Muradova

Ms. Ogulsapar Karlievna Muradova, a human rights defender and journalist, was detained on 18 June 2006. Along with two other individuals, she was accused of inciting public discontent, contact with foreign secret services and “subversive centers”. Following international outcry, the charges were replaced by illegal possession of ammunition which were reportedly planted in her colleagues' car. On 25 August 2006, Ms. Muradova was charged with weapons-related crimes under article 287 of the Criminal Code and sentenced to 6 years of imprisonment. An appeal was later turned down.

Ms. Muradova was held incommunicado since her arrest in June 2006 and reportedly kept in a temporary detention facility of the Ministry of Internal Affairs. According to information from the Government of Turkmenistan provided to the United Nations Human Rights Committee in December 2015, Ms. Muradova committed suicide by hanging herself in September 2006 (a specific date was not provided). Her body, which allegedly bore marks of torture, was handed over to her family the day after the alleged suicide. The autopsy to her body and its results were never disclosed to the family or made public.

However, other reports indicate that Ms. Muradova died during an interrogation by the Ministry for National Security (MNB) officials of Ovadan Depe prison, during which torture was used. According to another version, she had died from torture while in the pre-trial detention prison of the MNB in Ashgabat, before she could be brought to Ovadan Depe.

On 6 April 2018, the Human Rights Committee found violations in respect of Muradova's rights to life, freedom from torture, personal liberty and security, fair trial, and freedom of expression. The Committee found the Government of Turkmenistan to be under an obligation to conduct a thorough, prompt and impartial investigation into Ms. Muradova's arbitrary arrest and detention, torture and death in custody; provide full redress to her family, including adequate compensation and rehabilitation for the name of Ms. Muradova for the violation of her rights; and provide all information regarding the investigation, including the findings of the autopsy and copies of trial transcripts and the court judgment to

her lawyer and the family members. Furthermore, the Committee indicated that Turkmenistan is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future (CCPR/C/122/D/2252/2013).

While we do not wish to prejudge the accuracy of the information received, serious concern is expressed at the allegations of enforced disappearances, deaths in custody or detention, widespread use of torture, poor detention conditions, denial of access to medical assistance, as well as unfair trial and restrictions to freedom of expression in violation of, inter alia, articles 6 (1), 7, 9 (1), 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which Turkmenistan acceded on 1 May 1997; and articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), also acceded by Turkmenistan on 1 May 1997.

Further concern is expressed at the wider pattern of suppression of civil liberties, impunity, and the serious failure of the State to ensure independent inquiries into such deaths. We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. This especially applies where a State detains an individual, as it is held to a heightened level of diligence in protecting that individual's rights. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility.

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.

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 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 a list of names of detainees who died in State custody or detention in Turkmenistan since 2002, including the details about the causes of their death.
3. Please provide information regarding any inquiry or investigation, medical examinations, and judicial or other inquiries carried out in relation to the alleged deaths in custody of detainees in State detention facilities in Turkmenistan.
4. Please provide the full details of any prosecutions which have been undertaken.

5. Please provide the results of autopsy reports and indicate whether these were conducted by an independent forensic pathologist, or in the presence of an independent observer.
6. Please provide information on the measures taken to prevent the torture or ill-treatment of detainees and prisoners, and on the existing mechanisms to monitor the implementation of these measures and ensure that all persons in the custody of the State are treated humanely and with respect;
7. Please provide information about the basis for denying detainees contact with their families, and explain how this is compatible with Turkmenistan's obligations under international human rights law.
8. Please indicate if steps have been taken to implement the recommendations adopted by the Human Rights Committee on the case of Ms. Muradova.
9. Please provide information on what steps have been taken to ensure that detainees have access to appropriate medical care and legal assistance.
10. Please provide any information on measures in place to ensure that detainees have access to sufficient food and drinking water for personal use, both for consumption and for personal hygiene?
11. 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. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We would like to inform your Excellency's Government that having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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Nils Melzer
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punishment

Léo Heller
Special Rapporteur on the human rights to safe drinking water and sanitation

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to articles 6 (1), 7, 9(1), 14 and 19 of the ICCPR, which provide for the right to life, the absolute and non derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to be equal before the courts and tribunals, and the right to freedom of expression.

If confirmed, these allegations also constitute serious violations of Article 1 of the Convention Against Torture (CAT), which guarantees the non-derogable right to life, to personal security, and to freedom from torture and other cruel, inhuman or degrading treatment or punishment. The right to be protected from torture and other such treatment is an absolute and non-derogable right, as an international norm of *jus cogens*, and as mirrored, *inter alia*, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

Furthermore, in the context of detainees or prisoners, we also wish to remind your Excellency's Government that the responsibility for their fate rests mainly with the detaining authorities, who must guarantee the protection of their life and physical integrity. In its communication no. 84/1981, the Human Rights Committee has indicated that when a death occurs as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. (*Dermit Barbato v. Uruguay*, communication no. 84/1981 (21/10/1982), para 9.2). Should a death occur, a prompt and independent official investigation must be conducted; in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles). This principle was reiterated by the Human Rights Council in Resolution 35/15 on the "Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions". The Council added that this includes the obligation "to identify and bring to justice those responsible (...) to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and prevent the recurrence of such executions."

In regards to the reportedly continuing pattern of incommunicado detention, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular that no State shall practice, permit or tolerate enforced disappearances (Article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). These protections are non-derogable in any circumstances, even if in the context of a threat of war, a state of war, internal political instability or any other public emergency. (Article 7)

Once in custody, the State is expected to promptly provide accurate information on the detention of such persons and their place or places of detention, including transfers, to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned. The denial of communications with family and friends under reasonable supervision (whether through correspondence or visits) is absolutely prohibited under Rule 58 of the Standard Minimum Rules for the Treatment of Prisoners (the so-called “Mandela Rules,” adopted unanimously by the UN General Assembly in by resolution 70/175 of November 2015).

We would also like to draw the attention of your Excellency’s Government to paragraph 27 of GA 68/156 (February 2014), which “reminds all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment”. In this context, we reiterate that international human rights law and standards require States to treat all persons under any form of detention or imprisonment with humanity and with respect for the inherent dignity of the human person (GA 43/173 of 9 December 1988). There can be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment (Principle 3, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment).

In regards to the treatment of prisoners and detention conditions, the right to life has been interpreted as including negative obligations on part of the State to ensure adequate conditions of detention, including access to food and water (in sufficient quantities and of adequate quality), as well as to medical care, and guaranteeing their safety and security. The Mandela Rules outline in detail standards of appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation (Rules 12 to 17), requirements to be met regarding personal hygiene (Rule 18), clothing and bedding (Rules 19 to 21), food (Rule 22) and exercise and sport (Rule 23). In light of allegations of extended solitary confinement and ‘kartsers’, we would remind that Rule 43 of the Mandela Rules prohibit the use of prolonged solitary confinement under any circumstances.

Furthermore, **in regards to allegations of the denial of medical treatment**, we wish to highlight Article 12 of the ICESCR, recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights observed in General Comment No. 14 (2000) that States must refrain from denying or limiting equal access for prisoners or detainees to preventive, curative and palliative health services (para. 34).

In addition, the Mandela Rules establish States’ responsibility to provide adequate access to health care for prisoners (Rules 24 to 35). In particular, Rule 27 stresses the responsibility to ensure prompt medical attention in urgent cases and transfers to specialized institutions or civil hospitals when prisoners require specialised treatment or surgery.

Water services must be physically accessible for everyone within or in the immediate vicinity of all spheres of their lives, particularly at home, but also in educational institutions, the workplace, prisons, and public places. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified prisoners and detainees are provided with sufficient and safe water for their daily individual requirements, taking note of the requirements of international humanitarian law and the United Nations Standard Minimum Rules for the Treatment of Prisoners (General Comment no. 15, para 16(g)).

In regards to the situation of human rights defenders and the case of Mrs. Ogulsapar Karlievna Muradova, in its General Comment 36, the Human Rights Committee indicates that States are required to take special measures of protection towards persons in situation of vulnerability, whose lives have been placed at particular risk, because of specific threats or pre-existing patterns of violence, including human rights defenders. States have an obligation under international human rights law to create an enabling environment for the exercise of freedom of expression vital to the necessary, legitimate, and peaceful work of human rights defenders. Part of this duty includes the obligation to combat impunity in relation to attacks against individuals for their work in bringing into light information of public interest, such as corruption.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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.

Furthermore, 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 (b) and c) which provide that everyone has the right, individually and in association with others to freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- 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 would also like to refer 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 realisation 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. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

General Assembly Resolution 68/181 expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. As highlighted by the Working Group on discrimination against women in law and in practice (A/HRC/23/50), stigmatization, harassment and outright attacks have been used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex; they may experience intimidation, attacks and death. Violence against women defenders is sometimes condoned or perpetrated by State actors. In this respect, in addition to protection against torture, ill-treatment, and enforced disappearances, the situation of women human rights defenders requires states to integrate a gender perspective in their efforts to create a favorable environment for the defense of human rights.