

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL RUS 10/2019

21 January 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/5, 42/22, 34/18 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the sentencing of human rights defender Mr. Emir Usein Kuku to 12 years' imprisonment in a strict-regime correctional colony.

Mr. **Emir Usein Kuku** is a human rights defender residing in Crimea and chairman of the Yalta-based **Crimean Contact Group on Human Rights**. The organisation monitors human rights violations, provides legal support, and reports on enforced disappearances in Crimea. He is a member of the Crimean Human Rights Movement and has advocated for the rights of the Muslim ethnic minorities, including Crimean Tatars, who have been subjected to discrimination and persecution, particularly since the Russian Federation's occupation of Crimea in 2014.

The pretrial detention of and charges brought against Mr. Kuku were the subject of a joint communication sent by Special Procedures mandate holders on 18 July 2018 (case no. RUS 17/2018). We acknowledge receipt of the response of your Excellency's Government dated 3 August 2018 but we regret that it failed to address the questions raised in our communication. We further remain concerned by the new allegations detailed below.

According to the new information received:

As detailed in the previous communication, in December 2017, Mr. Kuku was transferred from Crimea, where he had been detained, to Rostov-on-Don in the Russian Federation, more than 700 kilometres from his family. He was charged with "involvement in a terrorist organisation", "preparation of a crime", "commission of a crime by a group of persons by previous concert" and "planning to violently seize state power" under part 2 of Article 205.5, part 1 of Article 30, part 2 of Article 35 and Article 278 of the Criminal Code of the Russian Federation, respectively.

The charges against Mr. Kuku related to allegations of his involvement with Hizb ut-Tahrir, which is designated as a terrorist organisation by the Russian Federation but not by Ukraine. They were reportedly brought against him on the basis that he was attending religious gatherings and reading religious literature. Mr. Kuku denied all charges, noting that he is being persecuted for his human rights activities and for his refusal to act as an informant for the Russian Federation's Federal Security Service (FSB).

On 12 November 2019, the Southern District Military Court in Rostov-on-Don found Mr. Kuku guilty of "participation in the activities of a terrorist organisation" under Part 2 of Article 205.5 and "planning to violently seize state power" under Part 1 of Article 30, and Article 278 of the Criminal Code. He was sentenced to 12 years of imprisonment in a strict-regime correctional colony, a type of prison which combines penal detention with compulsory work.

Poor detention conditions and the hunger strike Mr. Kuku underwent in June and July 2018 have reportedly had a negative impact on his health. His eyesight has reportedly weakened, he suffers from joint pain and dental problems, and his kidneys are damaged. He has allegedly not received adequate medical care.

Mr. Kuku remains in Rostov-on-Don's pre-trial detention facility no. 1. It is unknown which strict-regime correctional colony he will be transferred to after the court verdict comes into force. According to the Penitentiary and Prison Law, detainees should be kept in a facility close to their home.

We would like to express our serious concern about the sentencing of Mr. Kuku to 12 years in a strict-regime correctional colony, which appears to be directly linked to his peaceful and legitimate work in defence of human rights. Further concern is expressed over the use of counter-terrorism legislation to criminalise Mr. Kuku's human rights work, and the chilling effect it may have on other human rights defenders working in Crimea. We would also like to reiterate our concerns at the targeting of human rights defenders, artists and political activists for their peaceful human rights activities in Crimea.

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 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 detailed information on how the detention, charges against and sentencing of Mr. Kuku are in conformity with international human rights law, especially with regards to articles 9 and 14 of the ICCPR and principles 11 and 20 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173). In particular, please provide information about the evidence used to substantiate the charges against Mr. Kuku.
3. Please provide information on the measures taken to guarantee Mr. Kuku's access to adequate medical care while in detention.
4. Please provide information in details of how your Excellency's Government's counter-terrorism and extremism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174, in particular with international human rights law, refugee law, and humanitarian law contained therein.
5. Kindly indicate what measures have been taken to ensure that human rights defenders under the jurisdiction of the Russian Federation in Crimea, in line with UN General Assembly resolutions 71/205 and 72/190, are able to carry out their legitimate work, and exercise their rights to freedom of expression and freedom of association, 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. Thereafter, 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.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their recurrence 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.

Finally, we would like to inform your Excellency's Government that after having transmitted an urgent appeal 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 appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

With reference to General Assembly resolutions 68/262 (27 March 2014), 71/205 (19 December 2016) and 72/190 (19 December 2017), we wish to inform you that a copy of this letter has been sent to the authorities of Ukraine for their information.

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

Leigh Toomey  
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

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental  
freedoms while countering terrorism

## **Annex**

### **Reference to international human rights law**

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contravention with articles 9, 14 and 19, of the International Covenant on Civil and Political Rights (ICCPR) acceded to by your Excellency's Government on 16 October 1973, which guarantee the right to liberty and security of person, to not be subjected to arbitrary arrest or detention, to a fair trial, and to freedom of opinion and expression.

We would also like to inform your Excellency's Government that the above mentioned allegations appear to be in contravention with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988. Principle 20 stipulates that a detained person shall be kept in a place of detention near their usual residence if they so request.

We would like to also 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 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;
- 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.

In addition, we would like to recall that UN General Assembly resolutions 71/205 and 72/190 urge the Russian Federation:



- “To take all measures necessary to bring an immediate end to all violations and abuses against residents of Crimea, in particular reported discriminatory measures and practices, arbitrary detentions, torture and other cruel, inhuman or degrading treatment, and to revoke all discriminatory legislation; (A/RES/72/190 para.3.c) and
- To immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice, as well as those transferred or deported across internationally recognized borders from Crimea to the Russian Federation;” (A/RES/72/190 para.3.e)

The obligations of the Russian Federation as an Occupying Power are set out under international humanitarian law and include, under article 43 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the Fourth Convention Respecting the Laws of War on Land signed in The Hague on 18 October 1907 (“Hague Regulations”) and article 64 of the Fourth Convention Relative to the Protection of Civilian Persons in Time of War signed in Geneva on 12 August 1949 (“Geneva Convention IV”), the obligation to respect the laws of the occupied territory.

In its resolution 73/263 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine" adopted on 22 December 2018, the UN General Assembly expressed deep concern about “the ongoing arbitrary detentions and arrests by the Russian Federation of Ukrainian citizens[...], including Mr. Kuku”. The General Assembly also urged the Russian Federation to “create and maintain a safe and enabling environment for journalists and media workers, human rights defenders and defence lawyers to perform their work independently and without undue interference in Crimea”.

We respectfully remind your Excellency’s Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law contained therein.

We would like to bring to the attention of your Excellency’s Government the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism A/70/371 on the impact of counter-terrorism measures on civil society, in particular , paragraph 46(c) that urges States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.

In addition, we would like to refer to article 12 of the International Covenant on Economic Social and Cultural Rights acceded to by Russia in October 1973 which

establishes the right to physical and mental health and States' obligation to refrain from denying or limiting equal access, including to prisoners or detainees, to health services. The UN Standard Minimum Rules for the Treatment of Prisoners, known as the "Mandela Rules", further establish States' responsibility to provide healthcare for prisoners (rules 24 – 35), including prompt access to medical attention in urgent cases and the transfer of prisoners who require specialized treatment to specialized institutions or civil hospitals (Rule 27).