

**Mandates of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

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Excellency,

We have the honour to address you in our capacities as Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/9, 42/22, 35/15 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations that Russian private military personnel were involved in the abduction and extrajudicial killing of Mr. Abu Ajila Ali Enbis, Mr. Muhannad Abu Ajila Ali Enbis and Mr. Hamza Ammar Juma' Burbash and attempted killing of Mr. Husam Abu Ajila Ali Enbis and Mr. Mohammad Abu Ajila Ali Enbis near the Libyan capital Tripoli, among further reports that Russian private military personnel took direct part in hostilities near Tripoli.**

According to the information received:

On the afternoon of 23 September 2019, a group of around six Russian private military personnel in camouflage uniforms, armed with assault rifles and driving in a white pick-up vehicle, reportedly entered and searched a civilian house in Al-sbeaa' village, some 47 km south of the Libyan capital Tripoli, seemingly without any legal justification. The Russian private military personnel found five local men, members of the same family who were living in the house, confiscated their mobile phones and forced them on to their vehicle. They were blindfolded and taken to a nearby farm, where a larger group of foreign armed men was present.

After a short stop at the farm, the men were transferred to a different vehicle and driven to another location in the direction of Qasr Bin Ghasir, 30 km south of Tripoli. There, the five men were asked to lay on the ground while their hands were tied and their eyes blindfolded and then moved inside a vehicle. They were provided with drinking water and were allowed to use the bathroom.

In the night, two Russian private military personnel drove the five locals back to the farm in Al-sbeaa' where they spent the night. In the early morning, four members of the armed personnel transported the five civilians to a nearby farm

and asked them to kneel down. The armed personnel then opened fire at the five victims and rapidly drove away from the scene. Three of the family members (Mr. **Abu Ajila Ali Enbis**, Mr. **Muhannad Abu Ajila Ali Enbis** and Mr. **Hamza Ammar Juma' Burbash**) were killed, while one was injured (Mr. **Husam Abu Ajila Ali Enbis**) and another one (Mr. **Mohammad Abu Ajila Ali Enbis**) avoided the fire by quickly falling to the ground. As a result of the injuries sustained in the shooting, Mr. Husam Abu Ajila Ali Enbis' right leg was later amputated up to the knee.

At the time of the incident, the area had become part of the conflict zone between forces loyal to the Libyan National Army and forces affiliated with the Government of National Accord, with alleged Russian private military personnel support to the Libyan National Army. The name of one private military company (ChVK Wagner also referred to as Wagner Group) has been cited in this connection. Reportedly, up to around 1,500 private Russian military personnel were deployed to Libya on at least two occasions, in early September and November 2019.

Some were allegedly moved to the conflict frontline near Tripoli where they operated as snipers and provided, inter alia, support in directing and detecting incoming artillery fire from the opposing party to the conflict. Their operations in support of the Libyan National Army appeared to have had a direct impact on the conflict dynamics in Tripoli in the last quarter of 2019 by increasing the capacity and precision of the Libyan National Army to strike forces affiliated with the Government of National Accord.

More recently, reports have emerged suggesting that Russian citizens and/or companies may have been involved in recruiting and deploying Syrian fighters to support the Libyan National Army in exchange for monetary compensation.

As of 31 March 2020, in the one year since the offensive on Tripoli was launched, there were at least 685 civilian casualties, around 150,000 people displaced and some 893,000 people in need of humanitarian assistance. Since the beginning of April, these figures have significantly increased due to a further escalation of the fighting and despite the threat of the Covid-19 pandemic.

While we do not wish to prejudge the accuracy of these allegations, we express our utmost concern at the killing of Mr. Abu Ajila Ali Enbis, Mr. Muhannad Abu Ajila Ali Enbis and Mr. Hamza Ammar Juma' Burbash and the attempted killing of Mr. Husam Abu Ajila Ali Enbis and Mr. Mohammad Abu Ajila Ali Enbis. In particular, we are concerned that the deaths did not occur in the context of combat, that the victims were unarmed and did not pose a threat to the attackers, and that they were taken in the custody of the Russian private military personnel and seem to have been summarily executed at point blank. If confirmed, the alleged conduct of the Russian private military personnel would have thus contravened the prohibition of summary executions of persons *hors de combats* well as the jus cogens norms prohibiting arbitrary detention, arbitrary

deprivation of life and torture or other cruel, inhuman or degrading treatment or punishment.

We are concerned about challenges to achieving accountability in this case given the difficulties of holding foreign private military personnel accountable for their actions, including in situations of armed conflict, as noted by the Working Group on the use of mercenaries in its global study on national regulations of private military and security companies (A/HRC/36/47).

In this particular case, the pursuit of accountability is hampered by the lack of transparency over the status and role of the alleged perpetrators, which also curtails efforts to ensure respect for international human rights law and international humanitarian law and makes it hard for victims to seek justice and effective remedies for human rights abuses committed by such actors. This is exacerbated given the lack of clarity about those responsible for the recruitment, financing, deployment and operational and tactical command and control over the Russian private military personnel operating in Libya.

Further accountability concerns arise due to the lack of clarity over how, where and under what rules private military companies, such as the Wagner Group, may be registered. In this respect, it appears that the provision of private military services is not regulated in the law of the Russian Federation, whereas mercenarism is prohibited by article 359 of the Criminal Code. We note that, in response to a question at a press conference in December 2018, the President of the Russian Federation stated that private military contractors, such as the Wagner Group, must respect domestic law.

In addition, we are concerned that the precise nature and affiliation of the private military personnel in question may be deliberately opaque, in part as a means to avoid the qualification of a mercenary and therefore evade related obligations under international law, including under the arms embargo imposed by the UN Security Council 1970 (2011). Further allegations regarding possible recruitment and deployment of Syrian fighters to Libya are also of concern in this respect.

We also express our concern at the impact the deployment and rotation of foreign military personnel and/or fighters may have in the current context of the Covid-19 pandemic, should this practice continue. The conflict in Libya has left local communities severely ill-prepared to face the pandemic, and the deployment of foreign private military personnel to sustain a continuation of hostilities would be in disregard for the health and safety of the civilian populations as well as for the repeated calls by the Secretary-General for a humanitarian pause.

For further specific references to international human rights instruments and standards relevant to these allegations, please refer to the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandate 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 indicate whether the above-mentioned allegations, including the abduction, detention and subsequent killing of the five civilians by Russian private military personnel, have been or are the subject of an investigation and/or prosecution by the relevant authorities of the Russian Federation and provide information about their outcomes, including as regards remedies for the victims.
3. Please provide information regarding Russian citizens and companies providing private military and security services in Libya, notably with regard to the nature of their activities, their clients, and the modes of recruitment, contracting and payment.
4. Please provide detailed information about “ChVK Wagner” (“Частная Военная Компания Вагнера” also referred to as Wagner Group), its registration status in Russia and its relationship, if any, with the authorities of the Russian Federation.
5. Please explain the domestic legal framework and related regulation and oversight mechanisms applicable to private military services provided by Russian citizens and/or companies, particularly in relation to the use of force and the provision of private military services abroad and in conflict-affected areas.
6. Please provide information concerning the recruitment, funding and deployment of third-country nationals, such as Syrians, to take part in hostilities in Libya and any involvement of Russian citizens and/or companies in this regard.
7. Please indicate what measures your Excellency’s government has taken, or is considering to undertake, in order to prevent and protect against human rights violations and abuses in the context of the provision of private military services provided by Russian citizens and/or companies abroad, particularly in conflict-affected areas and in the current context of the Covid-19 outbreak.

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 measures be taken to investigate the allegations raised above and to prevent their re-occurrence, and in the event that the investigations confirm these allegations, to ensure the accountability of all persons responsible.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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 allegation letter and the regular procedure.

Please note that letters expressing similar concerns were sent to the Government of National Accord of Libya and the Libyan National Army.

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

Chris Kwaja  
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of  
violating human rights and impeding the exercise of the right of peoples to self-  
determination

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

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 the above-mentioned allegations, 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 wish to refer to the inherent right to life and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, as enshrined in article 3 and 5 of the Universal Declaration of Human Rights (UDHR) and in article 6 and 7 of the ICCPR, the latter ratified by the Russian Federation in 1973, as well as to common article 3(1)(a) of the Geneva Conventions that categorically prohibits, "violence to life and persons in particular murder of all kinds, mutilation, cruel treatment and torture", against those not taking active part in the hostilities. Both the inherent right to life and the principle of distinction between combatants and those not taking direct part in hostilities are rules recognized as part of customary international law and are universally binding at all times.

Both international humanitarian law and international human rights law require States to carry out thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions, and war crimes committed by their nationals or armed forces, or on their territory by a foreign State, or over which they have jurisdiction. Furthermore, States must take appropriate measures to bring perpetrators to justice and to provide effective remedies to victims. The right to an effective remedy is enshrined in the UDHR (article 8) and the ICCPR (article 2(3)). We wish to also refer to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly Resolution 60/147, Chapter II) and the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ECOSOC resolution 1989/65 of 24 May 1989), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

We would like to further recall that it is now widely accepted that States' obligations to protect and fulfil human rights, such as the right to life, extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private actors, and to take positive steps to fulfil human rights. This includes taking appropriate measures to prevent, punish, investigate and bring perpetrators to justice and redress harm caused by both State and private actors (CCPR/C/21/Rev.1/Add.13, para. 8).

Specifically with respect to the right to life, States are required to effectively regulate, monitor and control the conduct of private individuals or entities empowered or authorized to employ force with potentially lethal consequences, as recalled by the Human Rights Committee (CCPR/C/GC/36, para 15). For example, States are responsible to take adequate measures to ensure that, "persons who were involved or are currently

involved in serious human rights violations or abuses are excluded from private security entities empowered or authorized to employ force” (Ibid). The Human Rights Committee also recalled the obligation to take adequate measures to “prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as [...] private security firms” (para 21).

The preventive obligations of States with respect to the right to life are synergetic with the obligation States have to respect and ensure respect of the Geneva Conventions as provided by their common Article 1. To this end, States are required to adopt all measures necessary to ensure respect for the Geneva Conventions not only by their organs but also by private individuals within their jurisdictions as well as other States and non-State parties, as outlined in the ICRC Commentary on the First Geneva Convention (2016).

The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict recalls existing legal obligations of States and private military and security companies and their personnel and draws on various international humanitarian and human rights agreements and customary international laws, including the references above. In particular, States where a private military and security company is registered or incorporated, or where a private military and security company has its principal place of management, as well as States that directly contract for the services of private military and security companies have an obligation, within their power, to ensure respect of these companies for international humanitarian law. Such States have an obligation not to encourage or assist in, and to take appropriate measures to prevent and suppress violations of international humanitarian law committed by the personnel of private military and security companies through appropriate means such as administrative or other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate. Moreover, States are required to enact legislation to provide effective penal sanctions, to search, and to bring before its courts persons alleged to have committed or ordered to be committed the wilful killing or wilfully causing great suffering or serious injury to body or health of a civilian.

The responsibility of States to take appropriate steps to prevent, investigate, punish and redress human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises, is further reiterated by the UN Guiding Principles on Business and Human Rights (endorsed by A/HRC/RES/17/31, Guiding Principle 1). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur. In particular, the Guiding Principles recognise the heightened risk of gross human rights violations in conflict-affected areas and require States to help ensure that business enterprises operating in those contexts are not involved with such abuses (Guiding Principle 7). In this respect, particular consideration needs to be given to the role of “home” States of transnational corporations in ensuring that businesses are not involved with human rights abuse as, in conflict-affected areas, the “host” State may be unable to adequately protect human rights due to a lack of effective control.

We wish to recall that both international humanitarian law and international human rights law continue to apply in a situation of armed conflict. In its General Comments 31 (CCPR/C/21/Rev.1/Add.13, para 11) and 36 (CCPR/C/GC/36, para. 64), the Human Rights Committee has affirmed the applicability of the International Covenant on Civil and Political Rights (ICCPR) and international human rights law more generally to situations of armed conflict.

Finally, we wish to refer here to the definition of a mercenary in international law, notably in article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and in article 47 of the Protocol Additional I to the Geneva Conventions. The definition contains several cumulative criteria, including inter alia: being specially recruited to fight in an armed conflict, being motivated by private gain, not being a national of a party to the conflict, and not being a member of the armed forces of a party to the conflict.

The arms embargo imposed by the UN Security Council in Resolution 1970 (2011) prohibits the provision of armed mercenary personnel to Libya. Recently, the UN Security Council reiterated its demand for full compliance with the arms embargo, including by ceasing all support for and withdrawing all armed mercenary personnel in Resolution 2510 (2020).

We wish to stress that the recruitment, use, financing and training of mercenaries impedes the right of peoples to self-determination and violates the purposes and principles enshrined in the Charter of the United Nations, as recalled by the Human Rights Council (A/HRC/RES/42/9). This resolution requests all States to “exercise the utmost vigilance in banning the use of private companies offering international military consultancy and security services when intervening in armed conflicts or actions to destabilize constitutional regimes” (para 5). Similarly, General Assembly resolution A/RES/74/138 of 2019, supported by 127 States including the Russian Federation, stresses concerns over the “impact of the activities of private military and security companies on the enjoyment of human rights, in particular when operating in armed conflicts” and noted that such “companies and their personnel are rarely held accountable for violations of human rights” (para 7).