

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; 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 promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL RUS 4/2020

29 July 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; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 34/5, 42/22, 34/18, 42/16, 40/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the continued persecution of human rights defenders from Crimea¹.

Mr. **Server Mustafayev** is a human rights defender and former Coordinator of Crimean Solidarity, a civil society initiative, which aims to protect the rights of detainees in Crimea, and provide support for their families. Its activities include monitoring and documenting alleged human rights violations committed against Crimean Tatars in places of detention and observing and reporting on the cases of Crimean Tatars who are undergoing trials in the Russian judicial system. They also provide legal aid and financial support to the families of the defendants. Mr. Mustafayev was arrested in 2018 and charged with "participating in activities of a terrorist organization". The charges relate to allegations of involvement with Hizb-ut-Tahrir, a group designated as a terrorist organisation under Russian law. In Ukraine, Hizb-ut-Tahrir is not regarded as a terror organisation under Ukrainian law.

Mr. Mustafayev was the subject of one previous communication, RUS 14/2018, written to your Excellency's Government on 11 July 2018. We thank you for the response received to this communication, however we regret that the allegations of Mr. Mustafayev's arrest, detention as well as the search of his house and seizure of his property were not addressed.

¹ As recognized by UN General Assembly resolutions 71/205 and 72/190

Mr. **Emir-Usein Kuku** is a human rights defender and Chairperson of the Crimean Contact Group on Human Rights, based in the city of Yalta, Crimea. The non-governmental organisation monitors human rights violations, provides legal support and investigates enforced disappearances. He is also a member of the Crimean Human Rights Movement and has advocated for the rights of the Muslim ethnic minorities, including Crimean Tatars, who frequently face discrimination in the region. Mr. Kuku was arrested in 2016 for alleged membership of Hizb ut-Tahrir and sentenced in November 2019 for “participation in the activities of a terrorist organisation” and “planning to violently seize state power”.

Mr. Emir-Usein Kuku has been the subject of two previous communications, RUS 17/2018 and RUS 10/2019, sent to your Excellency’s Government on 18 July 2018 and 21 January 2020 respectively. We thank your Excellency’s Government for the replies received to both of these communications, particularly the latter, which addressed the allegations.

According to the new information received:

Mr. Server Mustafayev

Mr. Server Mustafayev has remained in detention since his arrest on 22 May 2018. On 12 September 2019, Mr. Mustafayev was transferred from Penitentiary Unit #1 in Simferopol, Crimea to SIZO-1 detention centre in Krasnodar in the Russian Federation. On 3 November 2019 he was transferred to SIZO-1 in Rostov-on-Don, in the Russian Federation. His first court hearing began on 15 November 2019 in North Caucasus District Military Court in Rostov-on-Don.

Mr. Mustafayev was reportedly being held in poor conditions while in pre-trial detention in Penitentiary Unit #1, in Simferopol, where he was kept in pre-trial detention until 12 September 2019. He was frequently moved to different cells, each measuring between 7 and 12 square metres, in a complex that has no recorded renovations since its construction, in 1803. Ventilation in the cells is “natural”; via a small window and Mr. Mustafayev has all activities monitored under additional surveillance due to the terrorism-related charges levied against him.

In June 2019, Mr. Mustafayev’s copy of the Qur'an and a prayer guidebook were confiscated, for an “extremist check” despite having received a stamp permitting him to possess them in the prison. Mr. Mustafayev’s requests to the Director of the Simferopol Penitentiary Unit that they be returned to his lawyer once the “checks” had taken place were unanswered or refused. On 13 December 2019, the Prosecutor’s Office of Krasnodar informed his lawyer that there is no separate standard of nutrition or substitute food item for people who do not eat pork. Mr. Mustafayev, who is a Muslim, therefore frequently cannot eat at mealtime. The Prosecutor also acknowledged that at times, prison authorities have violated

Federal Law No. 103-Φ3 in not providing Mr. Mustafayev with a sanitary zone, (living space), of at least four square metres.

According to the information received, Mr. Mustafayev's ability to prepare his defense was hindered by the length of hearings and the frequency with which they took place. On occasion, Mr. Mustafayev has spent over 12 hours in court. Additionally, complaints about the lack of adequate time given for consultation with his lawyer during court proceedings have been rejected on the basis that such discussions could take place in the detention centre. However, according to the information received, the waiting list for prison visits have at times been longer than the time between court hearings. On days where his hearings take place, Mr. Mustafayev and other individuals on trial allegedly do not receive sufficient food, usually consisting of a cup of tea, two to three biscuits and a zucchini caviar (kabachkovaya ikra).

On 19 March 2020, an ambulance arrived at the courtroom to attend to Mr. Mustafayev, who was displaying symptoms consistent with the COVID-19 virus. Despite recording a body temperature of 37.4C, dry coughing, headache and overall fatigue and tiredness, he was reportedly only given paracetamol and his condition was declared satisfactory to continue with the hearing. His temperature rose to 38C during the court proceedings, and he was again transferred to the ambulance. According to information received, there were no COVID-19 tests available. Mr. Mustafayev was administered an injection to reduce the fever symptoms and was told to continue in the courtroom, where there were reportedly no physical distancing or other protective measures taken against COVID-19. The court questioned the ambulance staff, but the defence was not given an opportunity to do the same. Mr. Mustafayev was allegedly too weak to actively participate in the proceedings.

Mr. Mustafayev has made numerous complaints to the Military Prosecutor's Office of the Southern Military District regarding the above-mentioned COVID-19 related symptoms as well as the limitation on receiving parcels, denial of access to the showers and heavily limited access to the yard. According to information received, his concerns have not been addressed.

On 13 April 2020, Mr. Mustafayev's request for bail was denied again. The Southern District Military Court Rostov-on-Don instead extended his pre-trial detention until 12 August 2020. The court ruled that the medical services and physical distancing measures implemented in the prison were sufficient to protect detainees such as Mr. Mustafayev from contracting the COVID-19 virus. According to information received, few protection measures have been put in place in the prison, apart from mask wearing for prison staff, but not for prisoners. As of 25 May 2020, there were 238 inmates and detainees who were COVID-19 positive in Russian Federation and another 980 penitentiary system employees COVID-19 positive according to the data of the Russian Federal Penitentiary Service.

Mr. Emir-Usein Kuku

On 22 and 25 June 2020, the Military Court of Appeals in Vlasika, Moscow Oblast heard Mr. Emir Usein Kuku's appeal of his 12-year sentence. According to information received, the court refused the defense's request to hear an expert opinion, who alleged that the recordings of meetings obtained as evidence may have been edited. According to a testimony given by a Federal Security Service (FSB) investigator, there was no evidence that Mr. Kuku planned any violent acts or to which authority he reported to in the cell of Hizb ut-Tahrir of which he is accused to have been a member.

On 26 June 2020, Mr. Emir-Usein Kuku's sentence was upheld by the Military Court of Appeals in Vlasikha. He remains at Detention Centre #1 in Rostov-on-Don, awaiting transfer to a strict regime correctional colony where he will spend his 12-year sentence.

Without prejudging the accuracy of the allegations, we would like to express our deep concern for the prolonged pre-trial detention of Mr. Server Mustafayev, and the long-term detention of Mr. Emir-Usein Kuku. We would like to reiterate our concern regarding the legal and factual basis for the charges and sentences against Mr. Mustafayev and Mr. Kuku, which appear to employ counter-terrorism legislation to criminalise their human rights advocacy and work in Crimea, including with regard to the promotion and protection of the right to freedom of religion or belief. We are particularly concerned about the treatment of Mr. Mustafayev while in detention, with reports emerging of inappropriate sanitary, dietary, and living accommodations, compounded with higher risks of exposure to COVID-19 in detention. We request your Excellency's Government to ensure that, as long as they remain in detention, their prison conditions are consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as "the Mandela Rules".

We are also concerned about the negative impact that the detention of Mr. Mustafayev and Mr. Kuku may have on the civic space in Crimea, and the right of civil society actors to freely and peacefully conduct their human rights activities, and we express particular concern at the fate and vulnerability of all those prisoners and families of prisoners with whom the two human rights defenders have worked for a number of years.

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 information about the measures taken to prevent the spread of COVID-19 in prisons and courtrooms.
3. Please provide information on the treatment of Mr. Mustafayev in his place of detention, including how sanitary and health care considerations, as well as his solitary confinement, are consistent with the UN Standard Minimum Rules for the Treatment of Prisoners.
4. Please provide information on the nutrition provided to detainees in prison and in courtrooms, particularly on the reasons why dietary requirements of those of different faiths may not be adequately accommodated. Please provide information on the measures undertaken to ensure that all detainees in general, and Messrs. Mustafayev and Kuku in particular, are free to observe and worship their religion or belief without fear of intimidation, reprisal or harassment of any sort.
5. With regards to previous communication RUS 14/2018, please provide detailed information on the legal and factual bases for the arrest and detention of, and charges against Mr. Mustafayev, as well as the search of his house and seizure of his property, and explain how these are compatible with Russia's obligations under international human rights standards, especially with regard to the International Covenant on Civil and Political Rights.
6. Please provide information on the factual and legal basis for the 12-year detention handed down to Mr. Kuku given that there was allegedly no evidence to support claims that he planned to commit violent acts.
7. Kindly indicate what measures have been taken to ensure that human rights defenders, including those working on and advocating for the rights of religious minorities, 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, freedom of thought, conscience and religion or belief, and freedom of association, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

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 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 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 issue/s 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.

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.

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Elina Steinerte
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

Dainius Puras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex
Reference to international human rights law

While we do not wish to prejudge the accuracy of the abovementioned allegations, we refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR) acceded to by your Excellency's Government on 16 October 1973, and the International Covenant on Economic Social and Cultural Rights (ICESCR), ratified by the Russian Federation on 16 October 1973.

General legal obligations

As to the law applicable to the territory occupied by the Russian Federation in Crimea, we refer to the general obligations under international humanitarian law, expressed in 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"). Moreover, in accordance with article 2(1) of the ICCPR, the scope of application of the Covenant extends beyond the State's own territory to all areas within the State's "jurisdiction". As authoritatively affirmed by the Human Rights Committee, jurisdiction is exercised for example where the State exercises power over an individual or has effective control over territory, such as in situations of occupation. Consequently, the Russian Federation, as an occupying power over Crimea, is under an obligation to respect and ensure the rights under the Covenant (see Human Rights Committee General Comments nos. 31, para. 11, and 36, para. 63).

The right to freedom of expression

We would like to remind your Excellency's Government of the right to freedom of expression enshrined in article 19 of the ICCPR. The scope of Art. 19 (2) is broad, including political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, ... and religious discourse. ... The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive", subject to permissible restrictions under article 19 (3) and article 20 (general comment 34 para 11). The arbitrary detention of individuals for exercising their freedom of expression will constitute a concurrent violation of article 19 (2) (*id.* para. 23). Moreover, the freedom of opinion in Article 19 (1) is absolute. As indicated by the Human Rights Committee, the freedom of opinion includes opinions of a moral or religious nature (*id.* para. 9) "No person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions" (*id.*). Any such impairment would constitute a violation of Article 19 of the Covenant.

The right to freedom of religion or belief

We would like to recall article 18 of the ICCPR which stresses "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include

freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” Human Rights Committee General Comment No. 22 further explains that “[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the use of ritual formulae and objects and the display of symbols. In addition, the observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or headcoverings, participation in rituals associated with certain stages of life, the use of a particular language customarily spoken by a group, and the freedom to prepare and distribute religious texts of publications (CCPR/C/21/Rev.1/Add.4, para. 4).

We would like to respectfully remind your Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1): “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief.” In Article 4 (1), the General Assembly further states that: “All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]” Furthermore, we would like to refer your Government to Article 4(2) according to which: “All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter. Furthermore, according to article 6 (d), the right to freedom of thought, conscience, religion or belief includes also the freedom “to write, issue and disseminate relevant publications in these areas”.

Arbitrary deprivation of liberty

We would like to remind your Excellency’s Government that arrest or detention is considered prima facie arbitrary when it constitutes a punishment for the legitimate exercise of the rights to freedom of opinion and expression, of assembly and association (under articles 19, 21 and 22), or when it is carried out over the basis of discriminatory grounds (in violation of articles 2 and 26). (See CCPR/C/GC/35, para. 17).

We would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right of all detained persons not to be deprived arbitrarily of their liberty, to be treated humanely, to the presumption of innocence and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9, 10 and 14 of the ICCPR

We recall that article 9 of the ICCPR requires that arrests be carried out in accordance with the law and the procedure prescribed by it. Paragraph 3 stipulates that anyone arrested or detained on a criminal charge shall be brought promptly before a judge and shall be entitled to a trial within a reasonable time. Paragraph 3 also requires

that detention in custody of persons awaiting trial shall be the exception rather than the rule. It should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances (See CCPR/C/GC/35, para. 38). Under Paragraph 4, anyone deprived of his liberty by arrest or detention is entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the individual's detention and order their release if it is not lawful.

We recall that article 14(1) of the ICCPR states that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law and 3(b) that everyone has the right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing

The right to health

We would also like to remind your Excellency's Government of its obligations under Article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), ratified by the Russian Federation on 16 October 1973, which guarantees all individuals, including prisoners and detainees, the right to the highest attainable standard of physical and mental health. Moreover, Article 12(2)(c) obliges States to take the steps necessary for the prevention, treatment and control of epidemic, endemic, occupational and other diseases. We also recall that States have a duty to protect the health of prisoners and detainees, in accordance with the UN Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules. In particular, Rule 30(d) establishes that in cases where prisoners are suspected of having contagious diseases, authorities should provide for the clinical isolation and adequate treatment of those prisoners during the infectious period.

Human rights defenders

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)

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".

The use of counter-terrorism measures

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.

Conditions of detention

The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment.

The reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the "Mandela Rules") provide inter alia for 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), exercise and sport (rule 23) and standards of health care (rule 24). We would also like to draw your attention to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988.

The Subcommittee on Prevention of Torture (SPT) advice relating to the pandemic (25 March 2020), calls on states to take full account of all the rights of persons deprived of liberty and their families and detention and health care staff, taking cognizance of the principles of 'do no harm' and 'equivalence of care' when implementing measures to combat the pandemic. As such, conditions of detention must respect the dignity and human rights of persons deprived of their liberty and States are called upon to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment (GA Res 68/156, para 28).