

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 43/4, 42/22, 45/3 and 43/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **what appear to be acts of reprisals, which included allegedly meritless charges, judicial harassment and seemingly arbitrary detention, against Mr. Nurgeldi Halykov, an independent journalist human rights defender, who was reportedly sentenced to four years in prison for fraud shortly after he had allegedly shared a photograph of a World Health Organisation (WHO) delegation that were visiting Turkmenistan in July 2020.**

Our concerns regarding other alleged cases of detained journalists in Turkmenistan were previously addressed in four communications sent by United Nations Special Procedures since 2017 (TKM 1/2020, TKM 2/2019 TKM 1/2019, TKM 1/2017). We thank your Excellency's Government for its response to TKM 1/2017, dated 01 May 2017, and detailed response to TKM 2/2019, which pertained to the death in custody of 27 individuals, including at least one journalist. We regret not having received an answer to the other two communications. We also note that the United Nations Working Group on Arbitrary Detention issued two Opinions in 2018 and 2015 (A/HRC/WGAD/2018/4 and A/HRC/WGAD/2015) which found the detentions of two journalists in Turkmenistan, one of whom was also subject of one of the previously-referenced communications, to be arbitrary under international human rights law.

According to the information received:

Mr. Halykov is a freelance journalist and long-time correspondent with an independent media and human rights group that is dedicated to promoting freedom of expression and the rule of law in Turkmenistan. Due to restrictions on media outlets and an alleged pattern of harassment of independent journalists, the said media organisation reportedly carries out its work from abroad. It appears that Mr. Halykov worked undercover as the Ashgabat correspondent of this organisation, although while he was on assignments, he would also sometimes visit other regions of Turkmenistan.

On 12 July 2020, Mr. Halykov allegedly sent a photo of members of a WHO delegation, that were visiting Ashgabat to study the situation in the country in relation to the COVID-19 pandemic, to his colleagues at the independent

media organization with the aim of raising awareness about such visit. The photo reportedly showed several members of the WHO team speaking in front of a hotel. It appears that Mr. Halykov had not taken the photo himself but had obtained it from the Instagram profile of an acquaintance of his.

On the following day, the said acquaintance unfollowed him on Instagram and asked if he had circulated the photo. His acquaintance had reportedly been identified by police through CCTV footage and she, as well as six other persons, had subsequently been summoned to a police station for questioning. Officers had then looked through all her photos, including personal ones, restored previously-deleted photos, and read all her recent correspondence. They then began to go through the contacts in her address book and her social media friends.

Later that day, at around 17:00, Mr. Halykov was reportedly also called by authorities, either by police officers or representatives of the Ministry of National Security of Turkmenistan (MNS), and summoned for questioning. However, this was the last known update Mr. Halykov directly gave to his colleagues. After this, contact with him through regular channels was reportedly lost.

Over the next few days, colleagues of Mr. Halykov attempted to ascertain his whereabouts, but to no avail.

On 26 July, his colleagues received a message that appeared to be from Mr. Halykov. The message indicated that he had been summoned because of a \$5,000 debt which he had taken on at the start of 2020. The creditor had allegedly written a complaint about him and, as a result, Mr. Halykov's was being summoned by the authorities on a daily basis. According to the information received, Mr. Halykov had never before indicated that he had an outstanding debt to pay, or had even taken one on in the first place.

On 15 September, the Bagtyyarlyk district court of Ashgabat sentenced Mr. Halykov to four years in prison. It appears that he was charged with fraud, under article 228, Chapter 2 of the Criminal Code of Turkmenistan. This verdict was reportedly unusual for this type of case, as debt-related cases in Turkmenistan are typically resolved amicably, after both parties have been summoned to a police station, where the borrower writes a statement confirming that he or she will return money. However, in this instance, it appears that Mr. Halykov was immediately detained and within 2 months was sentenced for fraud. It is unclear how exactly an unpaid debt evolved into a fraud charge or why pre-trial detention was immediately imposed against him, or whether he was able to challenge these decisions. It is also unknown whether Mr. Halykov had access to a lawyer during the investigation or trial, or since his conviction, although it is reportedly likely that a lawyer was provided by the State.

It has further been alleged that during his detention Mr. Halykov was interrogated about his work for the independent media organisation, possibly by agents of the MNS, while the authorities were simultaneously searching for and questioning acquaintances of his in order to find someone who could submit a complaint against him.

On 14 December, Mr. Halykov's relatives made his case public. It appears that they had previously received information suggesting that Mr. Halykov would be pardoned on 12 December in connection with Turkmenistan's Neutrality Day. However, Mr. Halykov was not released then and remained in prison, despite the fact that about 2,000 individuals were pardoned and released on that day.

Mr. Halykov is believed to be serving his sentence in LB-E/12 camp in Seydi, Lebap province.

Furthermore, due to COVID-19 restrictions, his family has reportedly not yet been able to visit him, or even confirm that he is actually imprisoned in Seydi, although Turkmenistan officially maintains that it has a total of 0 active COVID-19 cases and that the pandemic has not spread to the country. It is accordingly unclear why the family has not been permitted to visit him even once in the six months or so since his initial arrest.

It is reportedly likely that the number of such cases is significantly higher but under-reporting and self-censorship are common due to the high level of risk and a widespread environment of fear. Many individuals in Turkmenistan are unwilling to attempt to make their testimonies publicly known, and even when they do, the tightly-controlled media environment and extensive surveillance system mean that they do not often come to light.

While we do not wish to prejudge the accuracy of the above information, we express serious concern about the alleged arbitrary arrest, apparent short-term enforced disappearance, criminal prosecution, and arbitrary detention of Mr. Halykov, which appear to have been made in retaliation for his independent journalistic and human rights work. We are particularly concerned by allegations that the charges against Mr. Halykov were fabricated, and that the reason for his imprisonment was the dissemination of the previously-mentioned photograph of the WHO delegation, which would constitute an act of reprisals for cooperation with the UN. If confirmed, in addition to being contrary to international standards on freedom of expression even in normal circumstances, bearing in mind the global COVID-19 pandemic, and the particular and demonstrated importance of free and unhindered reporting on public health in this context, this would be particularly troubling and even potentially counter-productive to other public health efforts undertaken by Your Excellency's Government in this regard.

We express additional concern that the court proceedings against and sentencing of Mr. Halykov do not appear to have fulfilled the minimum standards for fair trial and due process under international human rights law. We are also deeply troubled by reports that Mr. Halykov may have been forcibly disappeared for around two months until his trial. The fact that his relatives appear to have been unable to visit him even once throughout the six months since his initial detention and disappearance is particularly concerning.

We underline that a failure to acknowledge deprivation of liberty by state agents and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. We maintain that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent possible

violations. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the hiring of a defence lawyer of one's choice.

Without prejudging the facts of this case, we also respectfully recall that incommunicado detention can significantly increase the risk of torture or other cruel, inhuman or degrading treatment or punishment, or other human rights violations being perpetrated against detainees.

Should these allegations be confirmed, they would be in violation of articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkmenistan on 1 May 1997, which guarantee the rights to not to be arbitrarily deprived of liberty, to fair proceedings before an independent and impartial tribunal, and to freedom of opinion and expression. They would also contravene the Declaration of the Protection on All Persons from Enforced Disappearance, in particular articles 2, 3, 7, 9, 13, and 19.

Further concern is expressed at the chilling effect that the disproportionate and seemingly punitive charges and extended detention imposed against Mr. Halykov may have on the exercise of the right to freedom of expression in Turkmenistan. The apparent similarities between this case and those of other independent journalists and human rights defenders, previously raised by United Nations Special Procedures, are particularly troubling. As indicated, the case of Mr. Halykov does not appear to be unique, as illustrated by the communications recently sent by United Nations Special Procedures and Opinions issued by the United Nations Working Group on Arbitrary Detentions, pertaining to other journalists who were also reportedly detained and sentenced for what appear to be legitimate journalistic and human rights related activities. For instance, one of these journalists was also charged for fraud, while others were detained in undisclosed locations, with limited or no access with the outside world, before being tried in a manner that allegedly did not meet international fair trial standards. We note with concern that all these journalists appear to have completed their full sentences, apart from one who died while in detention.

We are, in this context, concerned that this case may not be isolated but instead is reflective of a deliberate and systematic pattern of severe restrictions on freedom of expression in Turkmenistan, which could have the effect of further silencing other journalists, human rights defenders, civil society activists seeking to independently document and report on events in the country, and of generally deterring others from exercising their right to freedom of expression.

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 or comments you may have on the above-mentioned allegations.

2. Please provide information on the exact whereabouts and about the current status of Mr. Halykov's physical and mental integrity.
3. Please provide information on the legal and factual basis for the arrest, detention, and charges brought against the individual mentioned above, and how these are compatible with international human rights standards and your Excellency's Government's obligations under the ICCPR.
4. In particular, please elaborate upon why Mr. Halykov was immediately detained and ultimately imprisoned for four years for an outstanding \$5000 debt. Please also confirm whether or not, and if not why, Mr. Halykov has reportedly been unable to receive visits from his family, and communicate directly with them, in the six months since his initial detention. Please also provide information on whether he had regular, confidential, and meaningful access to a lawyer throughout his detention and trial. If he did not, please explain how this is in line with international human rights standards and your Excellency's Government's obligations under articles 9 and 14 of the ICCPR in particular.
5. More generally, please provide a detailed response to the persistent allegations of the systematic harassment, intimidation and retaliation against independent journalists in Turkmenistan. In this regard, please also indicate what concrete measures have been taken to protect journalists, as well as human rights defenders, civil society organisations, and others, so as to ensure that they are able to carry out their legitimate activities, including through the exercise of their rights to freedom of opinion and expression, in a safe and enabling environment without fear of threats or acts of harassment, intimidation and retaliation of any sort against either themselves or their families.
6. Regarding reported acts of intimidation and reprisals for cooperation with the UN, please indicate what measures have been taken to ensure that journalists and human rights defenders are able to carry out their work, including by freely and safely engaging with the UN and documenting and reporting on UN activities.
7. Please provide information on any legal framework and training of relevant authorities aimed towards protecting individuals in Turkmenistan against arbitrary detentions, enforced disappearances, and any allegations of torture and other cruel, inhuman, or degrading treatment or punishment potentially committed while in custody. In relation to the specific case described above; please provide the results of any investigations and related judicial processes that have been carried out into the above allegations.
8. In the context of COVID-19 pandemic in particular, please provide information about measures taken to ensure that the realisation of the right of the public to receive truthful and regular information, in line with Article 19 of the ICCPR.

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.

Moreover, 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 cases 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 allegation letter procedure and the regular procedure.

In light of the allegations of reprisals for cooperation with the United Nations in relation to the dissemination of information about its activities, we reserve the right to share this communication – and any response received from Your Excellency's Government - with other UN bodies or representatives addressing intimidation and reprisals for cooperation with the UN in the field of human rights, in particular the senior United Nations official designated by the Secretary General to lead the efforts within the United Nations system to address this issue.

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

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

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

Tae-Ung Baik
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to articles 9, 14 and 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkmenistan on 1 May 1997

Under article 9.1 of the ICCPR “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Moreover, article 9.2 stipulates that the person must be informed, at the moment of the arrest, about the reasons for such deprivation of liberty; in addition, the information about the charges against the person should be provided without delay. According to Article 9.3, anyone deprived of his or her liberty “shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.” Article 9.4 incorporates the right to initiate proceedings before a court to determine the lawfulness of the detention. These guarantees must be satisfied from the very start of the detention period and irrespective of its duration.

We recall that incommunicado detention is inherently arbitrary as it places the persons outside the protection of the law and deprive them of any legal safeguards. It also violates their rights under articles 9.3 and 9. of the ICCPR. We would also like to refer your Excellency’s Government to the recent report of the Working Group on Arbitrary Detention to the Human Rights Council (A/HRC/45/16, paras. 50-55), where the Working Group underlined that the right to legal assistance is one of the key safeguards in preventing the arbitrary deprivation of liberty. This right must be ensured from the moment of deprivation of liberty and, in the context of the criminal justice setting, prior to questioning by the authorities.

Article 14 of the ICCPR further stipulates that, in the determination of any criminal charge, everyone shall be entitled to adequate time to communicate with counsel of choice. Article 14 also guarantees the right to be tried without undue delay. The right to have access to a lawyer without delay and in full confidentiality is also enshrined in principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37), and the Basic Principles on the Role of Lawyers (Principles 7 and 8).

Article 19 of the ICCPR guarantees the right to freedom of expression, which includes “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. We would like to remind your Excellency’s Government that any limitation to the right to freedom of expression must meet the criteria established by article 19 (3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

Article 19 of the ICCPR protects, inter alia, political discourse, commentary on one’s own and on public affairs, discussion on human rights and journalism (Human Rights Committee, General Comment no. 34, CCPR/C/GC/34 para 11). As indicated by the Human Rights Committee, “the function of journalists includes not

only full-time reporters and analysts, but also bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”, CCPR/C/GC/34 para. 44. While all restrictions must comply with the requirements of necessity and proportionality, the penalisation of a journalist solely for being critical of the government or the political social system espoused by the government can never be considered to be a necessary restriction of freedom of expression, CCPR/C/GC/34 para 42. Furthermore, Human Rights Committee, in its General Comment No. 35 paragraph 53 has stated that detention purely due to peaceful exercise of rights protected by the Covenant may be arbitrary. This is also the position of the Working Group on Arbitrary Detention. Laws justified by national security, whether described by sedition laws or otherwise, can never be invoked to prosecute journalists, see CCPR/C/GC/34 para 30. Likewise, the arbitrary arrest or torture of individuals because of the exercise of their freedom of expression will under no circumstance be compatible with Article 19, CCPR/C/GC/34 para. 23.

As stated by the Committee, the deprivation of liberty of an individual for exercising their freedom of expression constitutes an arbitrary deprivation of liberty contrary to Article 9 of the Covenant, see CCPR/C/GC/35 para. 17, and a concurrent violation of Article 19. Such attacks against individuals for exercising their rights to freedom of expression should be “vigorously investigated in a timely fashion, and the perpetrators prosecuted”, CCPR/C/GC/34 para. 23.

In this regard, we would like to refer to the Human Rights Council resolution 45/18 on safety of journalists adopted on 6 October 2020, in which the Council expressed “deep concerns about all attempts to silence journalists and media workers, including by legislation that can be used to criminalize journalism, by the misuse of overbroad or vague laws to repress legitimate expression, including defamation and libel laws, laws on misinformation and disinformation or counter-terrorism and counterextremism legislation, when not in conformity with international human rights standards, and by business entities and individuals using strategic lawsuits against public participation to exercise pressure on journalists and stop them from critical and/or investigative reporting”.

Attacks on journalism are fundamentally at odds with protection of freedom of expression and access to information and, as such, they should be highlighted independently of any other rationale for restriction. Governments have a responsibility not only to respect journalism but also to ensure that journalists and their sources have protection through strong laws, prosecutions of perpetrators and ample security where necessary. (A/HRC/71/373 para. 35). It has indeed long been recognised that “journalism constitutes a necessary service for any society, as it provides individuals and society as a whole with the necessary information to allow them to develop their own thoughts and to freely draw their own conclusions and opinions” (A/HRC/20/17 para 3).

We would also like to refer your Excellency’s Government to article 11 of the ICCPR, whereby no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. International human rights law prohibits deprivation of liberty due to debt. That prohibition is non-derogable and in fact constitutes part of customary international law. We thus recall that detention due to inability to pay back a debt is in itself arbitrary deprivation of liberty, and it discriminates against individuals on the basis of their economic condition.

We would also like to refer to principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) which provide for the right to be visited by and to correspond with family and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations. In addition, the Human Rights Committee has observed in paragraph 58 of its general comment No. 35 on liberty and security of person that giving prompt and regular access to family members, as well as independent medical personnel and lawyers, is an essential and necessary safeguard for the prevention of torture as well as protection against arbitrary detention and infringement of personal security.

We also make reference to the Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances (Article 2) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). It also proclaims that each State shall ensure the right to be held in an officially recognized place of detention, in conformity with national law, and to be brought before a judicial authority promptly after detention; and accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest (Article 10). The Declaration outlines the obligation of States to promptly, thoroughly and impartially investigate any acts constituting enforced disappearance (Article 13) and that the victim and his/her family shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible (Article 19).

In this context, we would also 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. we would also like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

-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.

Regarding allegations indicating that the violations could be an act of intimidation and reprisals against those who cooperate with the UN in the field of human rights, we would like to refer to Human Rights Council resolutions 12/2, 24/24, 36/21, and 42/28 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies. In these resolutions, the Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The Council also urges States to ensure accountability for reprisals by providing access to remedies for victims, and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial and independent investigations, pursuing accountability, and publicly condemning all such acts.