

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 Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL RUS 14/2021
(Please use this reference in your reply)

13 December 2021

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 Enforced or Involuntary Disappearances; 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, 45/3, 44/5, and 43/20.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the inaction and failure of the Russian authorities to investigate and prosecute alleged torture, enforced disappearance, and execution of a Syrian citizen named [REDACTED] (also known as [REDACTED]), allegedly committed by individuals affiliated to the so-called Wagner Group.**

According to the information received:

Violations allegedly committed in Syria

On 30 June 2017, a video from unknown sources published online showed a group of men, dressed in military uniform, speaking Russian and violently beating an unarmed man in civilian clothing.

In 2019, new video footage surfaced showing the same man being beaten, tortured, beheaded, and his body was subsequently dismembered and set on fire. The individual was identified by several persons, including his close family members, as [REDACTED] who had been forcibly disappeared in Syria since April 2017.

Allegedly, one of the suspects identified is a Russian national named [REDACTED]. It is alleged that Mr. [REDACTED] is affiliated to the so-called Wagner Group, which is linked to EvroPolis LLC, a Russian-registered company, which had been contracted by the Syrian Government to provide security services, namely the guarding of oil and gas facilities in Northern Syria. The place where the incident had taken place was identified as Al-Shaer gas plant, in Homs, Syria.

The legal proceedings

On 11 March 2021, a criminal complaint was filed on behalf of the victim's brother [REDACTED] (Complaint No. 3/12-470/2021) with Russia's Investigative Committee (IC), seeking the initiation of a criminal investigation based on alleged violations of Article 105.2 of the Russian Criminal Code (murder), Article 356 (war crimes) and Article 356 of the Penal code (mercenarism).

The IC failed to initiate an investigation or provide any update on the matter upon the conclusion of the prescription of 3, 10 and 30-day period required under the Code of Criminal Procedure.

On 26 March 2021, Mr. [REDACTED]'s legal representatives requested information from the IC about the fate of the complaint, and received no answer.

On 19 April 2021, his lawyers refiled a complaint in the Basmanny District Court of Moscow challenging the inaction of the IC including the non-inclusion of the criminal case in the Crime Reporting Book; the absence of any preliminary inquiry; and lack of procedural decision about initiating a criminal proceeding. In a judgment issued on the same day, the Judge held that the Complaint failed to indicate Mr. [REDACTED]'s place of residence, citing inability to schedule and invite him to a court hearing. This ruling is allegedly contrary to the Code of Criminal Procedure since the plaintiff was represented by his lawyer, and while the address of the plaintiff was not included in the initial complaint for security reasons, the address of his lawyer based in Russia was known to the IC and courts from the very beginning of the filing of the legal complaint.

On 4 May 2021, the lawyers rectified the address and renewed their complaint. The court did not set a date for consideration, as it was obliged to according to the law, and information about the fate of this complaint was only provided after repeated requests by the lawyers. Specifically, on 20 May 2021, the court office informed Mr. [REDACTED]'s lawyers that the complaint had been forwarded for consideration to a Judge.

On 2 July 2021, the plaintiff was told that the complaint had been returned to his lawyers on 12 May 2021. A copy of the order to return the complaint was not provided however, and the reasons for the return of the complaint were not given. A complaint on the lack of response was presented to the Chairman of the Basmanny Court with a request to provide a copy of the document sent on 12 May 2021. The document was shared with Mr. [REDACTED]'s lawyers and stated that the complaint was returned because there was no evidence that the plaintiff had actually filed a criminal complaint with the IC. The lawyers received the original by mail two months later, on 14 July 2021.

On 19 July 2021, Mr. [REDACTED]'s lawyers presented a third complaint having fulfilled all of the additional requirements of the court, and attaching the proof and post receipt of the complaint filed. No response was received.

On 1 October 2021, his lawyers submitted a request to the Chairman of the Basmany Court asking for information in writing about the decision taken on the complaint. No response followed.

On 13 October 2021, Mr. ██████'s lawyers sent a new request to the IC with a request to provide information on the registration of the plaintiff's application as well as on the progress and results of the preliminary investigation. They also requested copies of the procedural documents. To date they have not received a response.

On 29 November 2021, Mr. ██████'s lawyers received a citation for a hearing scheduled to take place on 7 December 2021 at the Basmany court in Moscow, regarding the complaint on the inaction of the Investigative Committee.

On 7 December 2021, the lawyers attended the court hearing, however the hearing was postponed to 21 December 2021, because the representatives of the respondent to the complaint, the Investigative committee, did not attend the hearing.

While we do not wish to prejudge the accuracy of this information, we are gravely concerned by the initial failure by your Excellency's Government to investigate the alleged violations committed against Mr. ██████ since 2017, in particular, the possible role played by Russian citizens and by the so-called Wagner Group. We are also gravely concerned by the inaction of and failure to prosecute by the competent Russian authorities in response to the complaint brought to their attention regarding the alleged enforced disappearance, torture, and execution of Mr. ██████.

We would like to remind your Excellency's Government that the above-mentioned allegations, if confirmed, would contravene the absolute and non-derogable prohibition of torture, which is not territorially limited, meaning that States have a duty to prevent, investigate, prosecute and punish all acts of torture and to criminalize such acts wherever they occur. The same obligations also arise as a matter of international criminal law in case of human rights violations amounting to war crimes or crimes against humanity. Further, a State may be held responsible for its failure to prevent or remedy illicit conduct not directly attributable to it, such as when it fails to meet its due diligence obligations to prevent and protect persons from grave violations of human rights.

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 any comment you may have on the above mentioned allegations.

2. Please provide detailed information on the measures taken by your Excellency's Government to carry out prompt, impartial, independent and effective investigations into the alleged torture, enforced disappearance and execution of Mr. [REDACTED] and to ensure that the perpetrators are brought to justice. In case no measures have been taken, please explain why.
3. Please provide detailed information on the measures taken by your Excellency's Government when cases of human rights violations committed by Russian private military and security companies abroad have been brought to the attention of the courts, including the sanctions applied and reparation and redress provided to the victims and their families.
4. Please provide any information on the legal status of the so-called "Wagner Group" and its relationship to other State and non-State entities.
5. Please provide detailed information on the State policies and practice of your Excellency's Government's when engaging Private Military and Security Companies (PMSC) for military and security tasks in countries in armed conflict.
6. Please provide detailed information on the legal and or institutional mechanisms in place for exercising oversight over Russian PMSC operating in armed conflicts abroad, particularly the so-called Wagner Group.

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 alleged violations, 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 to clarify the issue/s in question.

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

Sorcha MacLeod

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

Luciano Hazan

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

Morris Tidball-Binz

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

We 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, 7, 9 and 16 of the ICCPR, alone and in conjunction with article 2.3, 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. Similarly, the prohibition of torture and enforced disappearance are rules of customary international law.

Both international humanitarian law and 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).

We would also like to draw the attention of your Excellency’s Government to articles 5 and 6 of the Convention Against Torture, requiring State Parties to establish jurisdiction over acts of torture if they are committed in any territory under its jurisdiction; when the alleged offender is a national of that State and when the victim is a national of that State if that State considers it appropriate. Furthermore, article 7 goes on to provide that State Parties must either extradite alleged offenders or submit the case to its competent authorities for the purpose of prosecution. In addition, under international customary law, all States have an international customary law obligation to investigate, prosecute and punish all acts of torture and other ill-treatment and to criminalize such acts wherever they occur. States should establish universal criminal jurisdiction over extraterritorial acts of torture. Under the principle of *aut dedere aut judicare*, States are required to prosecute alleged perpetrators of torture under their jurisdiction or to ensure their presence at criminal or extradition proceedings. The Special Rapporteur calls upon States to exercise jurisdiction over acts of torture and ill-treatment, regardless of the locus where wrongfulness took place. A State may be held responsible for its failure to preempt or remedy illicit conduct not directly attributable to it, such as when it fails to meet its due diligence obligations to prevent and protect persons from grave violations of human rights.

We also refer to article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance, which stipulates that each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation. We also recall article 17 of the Declaration stipulating that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared and these facts remain unclarified. In accordance with their humanitarian obligations, States should ensure that search efforts are promptly initiated to determine the fate and whereabouts of disappeared persons.

In its report on standards and public policies for an effective investigation of enforced disappearances (A/HRC/45/13/Add.3), the Working Group on enforced or

involuntary disappearances has recommended that States: define enforced disappearance as an autonomous crime in national legislation and establish different modes of criminal liability, including abetting, instigating, acquiescing and actively covering up an enforced disappearance, as well as criminal liability for command or superior responsibility; and create mechanisms that can promptly receive and process complaints of enforced disappearances, under the responsibility of authorities who are independent of the institutions to which the alleged perpetrators belong or may be linked. These mechanisms should be empowered to trigger prompt investigations of the complaints received.

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.

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).