

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

Ref.: AL RUS 8/2022
(Please use this reference in your reply)

21 June 2022

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; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 42/22, 45/3, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged enforced disappearance and ill-treatment of the journalists and human rights defenders Mr. Oleh Baturin and Mr. Serhiy Tsyhipa, as well as the alleged threats, physical violence, home searches, arbitrary detentions, enforced disappearances, and killings of human rights defenders, among other civil society representatives, in the territories of Ukraine occupied by the Russian Federation.**

Mr. **Oleh Baturin** is a journalist and human rights defender from the town of Kakhovka, in the Kherson region of Ukraine, who works for the *Novyi Den* (New Day) newspaper and reports on the Russian Federation's invasion of Ukraine.

Mr. **Serhiy Tsyhipa** is a citizen journalist and human rights defender from the town of Nova Kakhovka, in the Kherson region of Ukraine, who has been independently covering the news of his town occupied by the Russian Federation and providing humanitarian assistance to local residents.

The cases of Mr. Baturin and Mr. Tsyhipa were examined by the Working Group on Enforced or Involuntary Disappearances under its humanitarian procedure and transmitted to your Excellency's Government on 22 March 2022. The case of Mr. Baturin was then clarified based on information provided by sources on 29 April 2022. The case of Mr. Tsyhipa, however, remains outstanding, as his fate and whereabouts are unknown.

According to the information received:

Since 24 February 2022, agents of the Russian Federation, and persons and groups of persons acting with the authorisation, support or acquiescence of the Russian Federation, have reportedly been persecuting dozens of human rights defenders in the Ukrainian territories occupied during the invasion. Targeted human rights defenders reportedly include journalists, volunteers providing local residents with food and medicines and assisting with the evacuations, and peaceful protesters against the occupation. It is reported that they have allegedly been subjected to threats, physical violence, home searches, arbitrary

detentions, enforced disappearances, and killings for their legitimate human rights work.

In addition, we have been informed of two cases from the Kherson region of Ukraine, partially occupied by the Russian troops.

The case of Mr. Oleh Baturin

On 12 March 2022, at around 4 p.m., Mr. Oleh Baturin went to the Kakhovka bus station to meet an acquaintance. However, when he arrived at the station, he was abducted by approximately five armed men in military uniform, bulletproof vests and balaclavas, who were allegedly Russian military personnel. They reportedly pushed him to his knees, twisted his hands behind his back, and roughly handcuffed him.

It is reported that the men transported Mr. Baturin to the Nova Kakhovka Town Council in the car. On the way, they allegedly held him in the same twisted position and hit him several times with their feet and with the stock of a machine gun.

We've received reports that, in the Nova Kakhovka Town Council, Mr. Baturin was repeatedly interrogated and beaten with the stock of machine guns. The persons involved interrogated him in Russian. They reportedly did not understand Ukrainian and did not know the names of local settlements. They did not introduce themselves, put a hood over his head, and held him with his head pushed down during the interrogations. Among the people who interrogated him there allegedly were the Head of the Russian military administration in Nova Kakhovka and Russian Federal Security Service officers.

After the interrogations, Mr. Baturin was transported to the Nova Kakhovka Police Department. Unidentified persons allegedly further threatened and ill-treated him there. He heard the sound of machine gun shots and mock execution of other people in the building.

Around 8 p.m. that same day, Mr. Baturin was transported to the State Migration Service of the Kherson region. He was reportedly locked overnight in an unheated room, handcuffed to the radiator.

Around 9 a.m. on 13 March 2022, Mr. Baturin was reportedly taken to the Kherson Regional State Administration and interrogated there by unidentified persons.

On the same day, he was transferred to the Kherson Temporary Detention Center. Unidentified persons held him there until 20 March 2022. They allegedly took his fingerprints and his DNA samples.

Throughout the eight days of his captivity, Mr. Baturin was reportedly beaten by those persons and he suffered four broken ribs as a result. He was also allegedly insulted and received death threats. Mr. Baturin was also reportedly denied access to adequate drinking water, food, a toilet, and basic hygiene.

Mr. Baturin was reportedly never accused of any specific crimes, and no charges were ever formally presented against him. However, during the first interrogations, he was reportedly told that the men had been looking for him and wanted revenge on him as a journalist.

The case of Mr. Serhiy Tsyhipa

On 8 March 2022, Mr. Serhiy Tsyhipa wrote a social media post warning his friends that the Russian intelligence had started looking for him.

In the morning of 12 March 2022, Mr. Tsyhipa disappeared in the town of Nova Kakhovka shortly after leaving the house to walk his dog. The dog was found tied up in the town. A relative received unconfirmed information that Mr. Tsyhipa was being held in a detention centre in Kherson to prevent him from spreading information about the war. However, no contact has been made between Mr. Tsyhipa and his family since his disappearance.

On 23 April 2022, a video with Mr. Tsyhipa was circulated in the Russian media. In the video, he said that he had been in the Russian Federation for several weeks and made statements alleging that the Ukrainian military had been organising information and psychological provocations during the war. The video was reportedly recorded under duress, and Mr. Tsyhipa appeared pale and spoke in a manner untypical of him.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern at the alleged enforced disappearance and ill-treatment of the journalists and human rights defenders Mr. Oleh Baturin and Mr. Serhiy Tsyhipa, which appear to be connected with their legitimate human rights work. We are also gravely concerned at the alleged threats, physical violence, home searches, arbitrary detentions, enforced disappearances, and killings of human rights defenders and civil society representatives in the territories of Ukraine occupied by the Russian Federation, which appear to be part of a wider pattern of a crackdown on those expressing any form of dissent.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

We are issuing this appeal in order to safeguard the rights of Mr. Baturin and Mr. Tsyhipa from irreparable harm and without prejudicing any eventual legal determination.

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.

The full texts of the human rights instruments and humanitarian law standards recalled above are available on www.ohchr.org or can be provided upon request.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal and factual basis for the arrest and detention of Mr. Baturin.
3. Please provide information on the investigations into the perpetrators of the physical and verbal assault of Mr. Baturin, and the steps taken to ensure the accountability of these individuals.
4. Please provide detailed information on the fate and whereabouts of Mr. Serhiy Tsyhipa, his state of health, and the legal and factual basis for his detention and the lack of contact with his family, along with information on how these are compatible with your Excellency's Government's international human rights obligations.
5. Please indicate what measures have been taken to ensure that human rights defenders and civil society organisations in the territories of Ukraine occupied by the Russian Federation are able to carry out their legitimate work freely and 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, prevent any irreparable harm to the life and personal integrity of Mr. Serhiy Tsyhipa, prevent the re-occurrence of the alleged violations, 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 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 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.

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 a copy of this letter has been sent to the Government of Ukraine.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Mumba Malila
Vice-Chair of the Working Group on Arbitrary Detention

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

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

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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 articles 6, 9, 17, 19 and 21 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by the Russian Federation on 16 October 1973, which guarantee the non-derogable right to life, the right to liberty and security of person, the right not to be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence, the right to freedom of expression, and the right to freedom of assembly. With regard to the alleged enforced disappearances, these would amount to violations of articles 6, 7, 9 and 16 of the ICCPR, read alone and in conjunction with article 2(3). Equally, the right not to be subjected to an enforced disappearance is of a non-derogable nature and the prohibition of this crime has attained the status of *jus cogens*. Furthermore, enforced disappearance constitutes a particularly aggravated form of arbitrary detention¹ and such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention, lacks any valid legal basis under any circumstance and is inherently arbitrary, as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.

We would also like to refer your Excellency's Government to the absolute and non-derogable prohibition of torture and other cruel, inhuman, or degrading treatment or punishment, as enshrined in article 7 of the ICCPR and articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Russian Federation on 3 March 1987.

It is noteworthy that torture and enforced disappearances are also prohibited under customary international humanitarian law. The latter also establishes that, in times of conflict, journalists must be respected and protected.

We wish to refer your Excellency's Government to article 9 of the ICCPR, which provides for the absolute prohibition of arbitrary detention. We recall that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law, that the individual must be informed, at the moment of the arrest, about the reasons for such deprivation of liberty and that information about the charges against the person should be provided without delay. We also recall that an individual has the right to legal assistance, from the moment of arrest.² We further wish to underline that arrest and detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR, including articles 19 and 21, is arbitrary.³ In addition, a deprivation of liberty may be arbitrary, if it constitutes a violation of international law on the grounds of discrimination.

We wish to remind your Excellency's Government that according to Paragraph 10 of the Human Rights Committee's General Comment No. 31 [80]

¹ CCPR/C/GC/35, para. 17, as well as the jurisprudence of the Working Group on Arbitrary Detention.

² 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 in principles 7 and 8 of the Basic Principles on the Role of Lawyers. CCPR/C/GC/35, para. 17.

(CCPR/C/21/Rev.1/Add. 13), States Parties must respect and ensure the rights laid down in the ICCPR to anyone within their power or effective control, even if not situated within their territory. The enjoyment of the ICCPR rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, who may find themselves subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained.

We also make reference to the Human Rights Committee's General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights (CCPR/C/GC/36), in particular paragraphs 57-58, regarding enforced disappearances as an extreme form of arbitrary detention that is life-threatening in itself; as well as paragraph 63, on the State party obligation to respect and to ensure the rights under article 6 of all persons who are within its territory and all persons subject to its jurisdiction, that is, all persons over whose enjoyment of the right to life it exercises power or effective control.

Likewise, we wish to remind your Excellency's Government that according to Paragraph 5 of the Committee Against Torture's General Comment No. 2 (CAT/C/GC/2), no exceptional circumstances whatsoever (including a state of war or threat thereof, internal political instability or any other public emergency, any threat of terrorist acts or violent crime, armed conflict, international or non-international) may be invoked by a State Party to justify acts of torture in any territory under its jurisdiction. According to Paragraph 7, the concept of "any territory under its jurisdiction" must be applied to protect any person, citizen or non-citizen without discrimination subject to the de jure or de facto control of a State Party, and the State's obligation to prevent torture also applies to all persons who act, de jure or de facto, in the name of, in conjunction with, or at the behest of the State Party.

We would also like to remind your Excellency's Government about the obligations under the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, ratified by the Russian Federation on 10 May 1954, and the Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I), ratified by the Russian Federation on 29 September 1989.

We would also like to refer 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 Recognised 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, individually and in association with others, to promote and to strive for the protection and realisation 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.

Lastly, we draw your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes that no State shall practice, permit or tolerate enforced disappearances. The Declaration also proclaims that each State shall take effective

legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. We further recall that the Declaration sets out the necessary guarantees to be offered by the State. In particular, articles 9, 10, 11 and 12 relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty⁴; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to 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; and to the maintenance in every place of detention of official up-to-date registers of all detained persons. In this connection, we stress 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.

Furthermore, article 7 of the Declaration states 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.

⁴ Please refer to the [Guiding principles for the search for disappeared persons](#).