

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the independence of judges and lawyers

Ref.: UA RUS 12/2022
(Please use this reference in your reply)

22 August 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 43/16, 42/22, 42/16 and 44/8.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the continued detention and criminalisation of Mrs. Zarema Musaeva, allegedly in relation to the legitimate human rights work of her son, human rights defender Mr. Abubakar Iangulbaev, as well as the lack of protective measures despite the death threats from the local public officials and the lack of specialised medical care in detention.

Mr. **Abubakar Iangulbaev** is a human rights defender and lawyer of Chechen origin.

Mrs. **Zarema Musaeva** is Mr. Abubakar Iangulbaev's mother.

We previously wrote to your Excellency's Government about Mrs. Zarema Musaeva's case on 31 March 2022 (AL RUS 4/2022). We raised concerns regarding the alleged disproportionate use of force during her transfer from Nizhny Novgorod to Grozny, her alleged arbitrary detention, criminalisation, and denial of access to legal assistance. We also brought to the attention of your Excellency's Government the alleged smear campaign and death threats from Chechen public officials against her son Mr. Abubakar Iangulbaev and their entire family. We acknowledge the reply from your Excellency's Government dated 28 April 2022 but remain concerned given the allegations below.

According to the new information received:

Criminal cases

On 10 March 2022, a criminal case into fraud was opened against Mrs. Musaeva. On 27 April 2022, she was reportedly charged under

article 159 (3) (“large-scale fraud”) and article 318 (2) (“use of violence against a public official, endangering their life or health”) of the Criminal Code.

On 12 May 2022, Mrs. Musaeva’s charges were reportedly updated with a detailed description of each fraud episode, while the scope and substance of the charges reportedly remained unchanged.

On 18 May 2022, the indictment was issued. According to the indictment, Mrs. Musaeva allegedly committed two crimes:

- On an unspecified date in June or July 2017, Mrs. Musaeva allegedly planned a loan fraud scheme and suggested another person to carry it out and split the proceeds. On an unspecified date in February 2018, she allegedly proposed to bring the fraud scheme into action. The person allegedly used the fraud scheme and on an unspecified date in October 2019 handed over Mrs. Musaeva’s part of proceeds to an unknown man. The accusations are reportedly based on uncorroborated testimonies of the person charged with the loan fraud, as part of their plea-bargaining agreement, and hearsay evidence.
- On 21 January 2022, Mrs. Musaeva allegedly scratched the face of a police officer who was documenting her administrative offence at the police station. The accusations are based on testimonies by the victim and witnesses, all of whom are Chechen police officers. Although there were reportedly CCTV cameras at the police station, the footage of the alleged offence is not available.

On 5 July 2022, the Leninsky District Court of Grozny held a preliminary hearing, which was postponed because Mrs. Musaeva lost consciousness. The judge recused himself from examining the criminal case, as he previously considered an administrative case against Mrs. Musaeva. The new preliminary hearing has not been scheduled yet.

Detention

Since 1 February 2022, when Mrs. Musaeva was placed in pre-trial detention centre (the Grozny SIZO), the term of her detention has been allegedly repeatedly extended: on 29 March and 20 April by the Staropromyslovsky District Court of Grozny, on 7 June 2022 by the Zavodskoy District Court of Grozny, and most recently on 5 July 2022 by the Leninsky District Court of Grozny. The Leninsky District Court extended the detention until 12 September 2022, despite Mrs. Musaeva’s alleged unconsciousness during the hearing and the judge’s self-recusal immediately after ordering the extension.

Mrs. Musaeva’s defence lawyers reportedly lodged appeals in respect of all court decisions with the Supreme Court of the Chechen Republic. The appeal

regarding the latest decision is pending, while all previous decisions were reportedly upheld.

State of health

Concerns remain regarding Mrs. Musaeva's health and her access to specialised medical care. It is reported that these events had negative impact on her health resulting in increased blood sugar levels, high blood pressure, and loss of consciousness. On 11 March 2022, she reportedly could not participate in the investigation actions because she felt so unwell and was disoriented. On 5 July 2022, she reportedly lost consciousness during the hearing at the Leninsky District Court of Grozny, an ambulance was called, and the emergency first aid was provided to her. Her pre-trial detention centre reportedly lacks doctors specialising in diabetes. According to some reports, she also has difficulty walking.

Protective measures, investigation into the alleged violations, fair trial concerns

Neither the federal nor the Chechen authorities reportedly took any steps to ensure Mrs. Musaeva's physical and psychological security and integrity following the alleged death threats from high-ranking Chechen public officials.

It is also unclear whether any investigation has been initiated into these threats or Mrs. Musaeva's alleged ill-treatment during her transfer to Grozny. Mrs. Musaeva's lawyers allegedly have no access to the relevant materials and information, despite their requests (including, but not limited to, the requests for information filed with the Investigation Department of the Investigative Committee of Nizhniy Novgorod Region on 27 May 2022).

Considering the threats, there are also doubts about whether Mrs. Musaeva's right to a fair trial in the Chechen Republic have been upheld. On 9 February 2022, Mrs. Musaeva's lawyers reportedly requested the Investigative Committee Chairman to transfer her criminal case to another region's investigative committee or the federal investigative committee. Despite this request, her criminal case was investigated in the Chechen Republic and is pending trial there.

It was also reported that unknown men followed Mrs. Musaeva's lawyers during their trips to Grozny. For example, on 5 July 2022, seven or eight men reportedly shadowed three defence lawyers who arrived at Grozny to participate in the court hearing. For five hours, persons conducting surveillance reportedly followed them everywhere, including to a café, the court, and the airport. On 25 July 2022, the lawyers reportedly lodged a complaint concerning the surveillance and potential threat to life with the Federal Security Service. The result is unclear.

Without wishing to prejudge the accuracy of the information received, we wish to express our concern at the continued detention and criminalisation of Mrs. Zarema Musaeva, despite her weak health and the alleged lack of access to the specialised medical care in detention. We are profoundly concerned about the alleged lack of protective measures despite the alleged death threats received from local public officials. We raise concern that the impunity enjoyed by those who allegedly physically threatened the human rights defender Mr. Abubakar Iangulbaev and his family and allegedly ill-treated his mother Mrs. Zarema Musaeva may have a chilling effect and discourage other human rights defenders from carrying out their peaceful and legitimate activities in Russia and particularly the Chechen Republic.

In connection with the above-alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

We would like to refer your Excellency's Government to articles 6, 9, 14 of the International Covenant on Civil and Political Rights ("ICCPR"), ratified by the Russian Federation on 16 October 1973, which guarantee everyone the right to life, the right to liberty and security of person, and the right to a fair trial.

In particular, we would like to remind the Government of your Excellency that, in accordance with article 9 of the ICCPR, no one shall be subjected to arbitrary arrest or detention and 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. Further, as reiterated in the jurisprudence of the Working Group on Arbitrary Detention, no one should be deprived of liberty for the crimes, real or not, committed by their family member by birth or marriage in a free, democratic society. Further, as per the jurisprudence of the Working Group on Arbitrary Detention, and as stated by the Human Rights Committee in its General Comment No. 35, it is a well-established norm of international law that pretrial detention should be the exception and not the rule, and that it should be ordered for as short a time as possible.

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.

We would also like to remind your Excellency's Government of its obligations under the International Covenant on Economic, Social and Cultural Rights, ratified by the Russian Federation on 16 October 1973, in particular, articles 2.2 and 12, which enshrines the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including prisoners and detainees. In addition, General Comment No. 14, adopted by the Committee on Economic, Social and Cultural Rights reiterates that "States are obliged to respect the right to health by inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services". 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 (the Mandela Rules), in particular, rule 24 that recognizes the responsibility of States to provide health care for prisoners, free of charge without discrimination.

We also wish to draw the attention of your Excellency's Government to article 14 of the Covenant, which guarantees the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. In its General Comment No. 32, the Human Rights Committee emphasizes that the requirement of impartiality entails that the tribunal must appear impartial to a reasonable observer. Article 14 of the Covenant also guarantees the right to be presumed innocent until proved guilty according to law. As stated in General Comment No. 32, public authorities have a duty to refrain from prejudging the outcome of a trial, including by abstaining from making public statements affirming the guilt of the accused, and the media should avoid news coverage undermining the individual's presumption of innocence.

We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers. Principles 1, 2, 7 and 8, in particular, contain the States' obligations to ensure prompt and effective access to lawyers. Principle 16 requires governments to ensure that lawyers are (a) able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; and (b) able to travel and to consult with their clients freely. According to principle 21, it is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

Furthermore, we would 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.

Likewise, we would like to bring to the attention of your Excellency's Government article 12 (2) and (3) of the UN Declaration on Human Rights Defenders, 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 their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in

violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

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

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

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

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 detailed information on the state of health of Mrs. Zarema Musaeva and the steps taken to ensure that she has regular access to specialised medical health care required for diabetes and any other chronic illnesses;
2. Please provide information as to the factual and legal basis for the arrest and detention of Mrs. Zarema Musaeva, and explain how her arrest and detention are compatible with Russia's international human rights obligations;
3. Please provide detailed information about the steps taken to ensure Mrs. Zarema Musaeva the right to a fair trial and please specify whether her lawyers are provided with all relevant information and documents and are able to work without intimidation, hindrance, harassment or improper interference;
4. Please provide the full details of any protective measures put in place to ensure the physical and psychological security and integrity of Mrs. Zarema Musaeva and her family;
5. Please provide the details, and where available the results, of any investigation, which may have been carried out in relation to the allegations of Mrs. Zarema Musaeva's ill-treatment and physical threats against her and her family. If no investigation has taken place, or if it has been inconclusive, please explain why and how this is compatible with your Excellency's Government international human rights obligations under the ICCPR.

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 responsible

We would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit specific cases relating to the circumstances outlined in this communication through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the present communication and to the regular procedure.

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.

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

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Special Rapporteur on the situation of human rights defenders

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

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
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