

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; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL RUS 17/2022
(Please use this reference in your reply)

20 January 2023

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; Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 51/13, 45/3, 44/5, 51/15 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 recruitment of prisoners serving their custodial sentences in Russian penitentiary facilities, for the private military and security contractor known as the Wagner Group, and their deployment in Ukraine.

According to the information received:

Since February 2022, members of the so-called Wagner Group have been visiting correctional facilities located in different regions of Russia and offering prisoners to join the group and participate in the war in Ukraine. It is alleged that prisoners in various facilities have been offered amnesty or pardon after six months of service with the Wagner Group, and a monthly payment of between 100 and 200 thousand Russian roubles (EUR 1,600 – 3,200) to be paid to the prisoners' relatives. The information provided suggests that by the end of October 2022, Wagner Group recruiters have visited approximately 63 correctional facilities in 34 Russian regions, and that around 7,130 prisoners have been recruited. In some cases, the recruiters offered financial compensation of up to 5 million roubles (EUR 68,000, approximately) to the relatives if a prisoner was killed in action and 300 thousand roubles (EUR 4,000, approximately) in case of injury. Furthermore, members of the Wagner Group are said to be primarily recruiting prisoners convicted of murder or robbery and having good physical condition, while those convicted of sexual offences or terrorism are excluded.

It has been reported that, in some cases, the recruiters visiting the penitentiary facilities were accompanied by the officers of the regional Department of the Federal Penitentiary Service (the FSIN) or Federal Security Service (FSB), and the recruiters carried firearms while interacting with the inmates. Recruitment interviews were allegedly undertaken at the detention facilities, and prisoners were asked to declare whether they would be interested in taking

part in the conflict and their attitude towards the Russian authorities. It is reported that polygraphs were used during some of these interviews. There allegedly are also cases in which prisoners are being placed in disciplinary blocks after deciding not to join the Wagner Group. The allegations also indicate that in some cases after members of the Wagner Group left the prisons, so called “activists” or convicts who are used by the prison administration to enforce the discipline of other prisoners, exerted pressure on the inmates into accepting the offer and managed to persuade some of the prisoners to enlist with the Wagner Group. The use of such pressure tactics would suggest that recruitment was carried out under menace of penalty or intimidation and not on a strictly voluntary basis. Any work or service extracted from the prisoners by the Wagner Group under these conditions would therefore amount to forced or compulsory labour.

Reportedly, the communication with the correctional facilities has been disrupted when recruiters of the Wagner Group visit the facilities, particularly at some located in the Republic of Mordovia, Kostroma, Kurks, Novosibirsk, Sverdlovsk, and Orenburg regions. Other facilities have been closed down before, during and after these visits. Moreover, in some cases lawyers representing prisoners, prisoners’ relatives, and human rights defenders have been denied communication with prisoners who have already been recruited. The interruption of contact with the prisoners, exposes the inmates to the risk of being subjected to enforced disappearance, and some instances may amount to enforced disappearance.

Furthermore, recruited prisoners are reportedly taken to IK-2, a detention facility located in the Rostov region to undertake training before being deployed to Ukraine. The prisoners are allegedly transferred without their identification documents and required to sign a contract with the Wagner Group. In some cases, relatives of the inmates have been unable to contact them through the electronic correspondence service and informed by the prison authorities that they had been transferred to another facility. However, prisoners had not informed their relatives about the transfer, some of these instances as well may amount to enforced disappearances or at least expose the inmates to such a risk.

Moreover, some relatives also informed that after the transfer prisoners contacted them asking for their passport details in order to authorize them to receive their salaries.

Allegations also indicate that conscripted prisoners have been deployed in the Donetsk and Luhansk regions of Ukraine and involved in various activities including providing military services, rebuilding infrastructure in some Ukrainian cities, also directly participating in the conflict on the side of the Russian forces. The Wagner Group is also allegedly involved in the perpetration of violations of human rights and humanitarian law in the context of the ongoing armed conflict in Ukraine, including enforced disappearance of Ukrainian soldiers and officers they had captured in the context of hostilities with Ukrainian armed forces.

It is further reported that since the beginning of the recruitment drive, injured prisoners have been hospitalized in Luhansk and as of mid-October 2022,

more than 500 recruited prisoners were killed in Ukraine. Allegedly, the recruited prisoners deployed in Ukraine are regularly threatened and ill-treated by their superiors, several prisoners have been executed for attempted escapes and in some cases publicly gravely injured as a warning for the other recruited individuals. Furthermore, all labour performed under such threat of injury or capital punishment would amount to forced or compulsory labour.

The Wagner Group has also extended its recruitment to correctional facilities in the Donetsk Region of Ukraine. It is also reported that the Wagner Group has recruited foreign nationals serving sentence in Russia. Allegedly, in September 2022 over 40 foreign prisoners, including citizens of Ukraine, Uzbekistan, Tajikistan, Moldova, Serbia, and Egypt were recruited and transferred to Ukraine.

While we do not wish to prejudge the accuracy of this information, we are gravely concerned by the alleged exploitative and intimidatory recruitment of prisoners in Russian territory by the so-called Wagner Group and their deployment to Ukraine. We are also gravely concerned by the alleged failure of your Excellency's Government to regulate and oversee the operation including the recruitment of personnel by the Wagner Group, and also their status, activities, modes of incorporation, as well as the alleged involvement of national authorities in the recruitment process. We urge the authorities to investigate the alleged recruitment of prisoners by the so-called Wagner Group personnel, and the Group's involvement in military operations in Ukraine, including in alleged war crimes taking place, and also their alleged involvement in the perpetration of gross human rights violations, including enforced or involuntary disappearances. In this regard, we wish to reiterate the call made by the Human Rights Council to all Member 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 (A/HRC/RES/36/3, para. 5).

Furthermore, we are concerned that the lack of clarity and absence of regulation over how, where, and under what rules private contractors, such as the so-called Wagner Group, may be registered and operate creates legal gaps and incentives for serious misconduct and war crimes by private military and security companies being committed with impunity.

We wish to refer to the Working Group on the use of mercenaries' report on the evolving forms, trends and manifestations of mercenaries and mercenary-related activities (A/75/259), which notes that States should not outsource activities that constitute direct participation in hostilities and should prohibit the provision of for-profit services constituting direct participation in hostilities by private individuals and companies that are either registered or have their principal place of management in their territories.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights and humanitarian law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be

grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on any investigations undertaken in relation to the allegations mentioned above by relevant authorities of the Russian Federation.
3. Please provide information on any measures taken by your Excellency's Government to monitor the activities of the so-called Wagner Group in your country, including the recruitment of personnel from within Russian prisons.
4. Please provide information on the domestic legal framework and related regulation and oversight mechanisms applicable to private military and security services provided by Russian citizens and/or companies, particularly in relation to the use of force and the provision of private military and security services abroad and in conflict-affected areas.
5. Please provide detailed information about the Wagner Group, its registration status in Russia and its relationship, if any, with the authorities of the Russian Federation.
6. Please indicate the steps undertaken by your Excellency's Government, or is considering to take, to ensure access to domestic judicial mechanisms for victims of the above-mentioned alleged abuses by Russian private military personnel.
7. Please provide information as to the applicable legal provisions and procedures for the investigation and prosecution of human rights violations, including those allegedly carried out by personnel of the Wagner Group or other private military contractors and personnel.
8. Please provide information on the measures taken to ascertain through thorough, independent and impartial investigation, whether members of the Wagner Group are involved in the perpetration of gross human rights violations, including enforced disappearance.
9. Please indicate what measures your Excellency's Government has undertaken or envisages in line with its international commitments to address the use of forced and compulsory labour by companies domiciled, registered or operating in its territory and/or jurisdiction
10. Please indicate what channels your Excellency's Government has established or envisaged for victims of forced and compulsory labour to report such practices and access justice and remedy for the violations suffered.
11. Please provide detailed information on the measures taken or envisaged to ensure that persons deprived of their liberty in detention facilities in

the Russian Federation can communicate with without restrictions and be visited by their relatives, counsel or any other person of their choice.

12. Please provide detailed information on the measures taken or envisaged to ensure that relatives of disappeared persons, their counsel or any other person having a legitimate interest are informed without delay of any transfer and the whereabouts of persons deprived of liberty.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Ravindran Daniel Justin
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

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

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Alice Jill Edwards
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 to 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.

The obligation to protect, respect, and fulfil human rights, recognized under treaty and customary law entails a duty on the part of the State not only to refrain from violating human rights, but to exercise due diligence to prevent and protect individuals from abuse committed by non-State actors (see for example Human Rights Committee, General Comment no. 31 para. 8). States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

The absolute and non-derogable prohibition of torture and other cruel, inhuman, or degrading treatment or punishment applies at all times, including during armed conflict and other public emergencies. In the context of international and non-international armed conflict, or any other military operations, the obligation not to torture applies also to non-State actors. International humanitarian law prohibits any act of torture and other or cruel, humiliating and degrading treatment committed by organized armed groups in armed conflict. Furthermore, under international human rights law, torture or ill-treatment at the hands of non-State actors can give rise to a range of positive State obligations. This includes due diligence to protect individuals, in their territory or under their jurisdiction, by adopting effective legislative, administrative, judicial or other measures to prevent acts of torture or other ill-treatment; criminalising acts of torture, and the customary international law obligation to investigate, prosecute and punish all acts of torture and other ill-treatment, as well as provide just and adequate redress and reparation for victims.

The Human Rights Council, in its resolution A/HRC/RES/42/9, 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). 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).

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). This requires States to “state clearly that all companies domiciled within their territory and/or jurisdiction are expected to respect human rights in all their activities” (guiding principle 2). In addition, States should “enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights...” (guiding principle 3). 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 abuses as, in conflict-affected areas, the “host” State may be unable to adequately protect human rights due to a lack of effective control.

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 Working Group on the use of mercenaries has noted that predatory recruitment is an emerging phenomenon whereby individuals are recruited as mercenaries or mercenary-related actors in a way that takes advantage of their situation of vulnerability and may involve coercion (A/HRC/51/25). Often, they are lured into enlisting by false promises of economic stability, sometimes without clarity in relation to the activities in which they will be involved, or in other cases falling victim to enlistment by mercenary-related entities that later withhold their salaries or even arrest and detain them. Others are recruited under duress or out of fear of reprisals against themselves or their families. These practices raise concerns about forced recruitment and trafficking of people for the purpose of providing mercenary-related services and activities. Furthermore, the Working Group has noted that targets of predatory recruitment suffer from multi-layered aspects of victimization, and many recruits are themselves primarily victims of armed conflicts. Their vulnerability is exacerbated in the recruitment process and aggravated through deployment in hostilities in foreign countries, putting their lives, liberty and physical integrity at risk.

Furthermore, we would like to highlight that the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (adopted by the General Assembly on 17 December 2015 (A/RES/70/175), stipulate that prison labour must not be of an afflictive nature (rule 97) and that “where prisoners are employed in work not controlled by the prison administration, they shall always be under the supervision of prison staff. Unless the work is for other departments of the government, the full normal wages for such work shall be paid to the prison administration by the persons to whom the labour is supplied, account being taken of the output of the prisoners”. (rule 100).

Article 5 of the Slavery Convention of 1926, which the Russian Federation acceded to as amended on 8 August 1956, compels the High Contracting Parties to put an end to compulsory or forced labour practices, and insofar as such labour exists, to ensure that it is of an exceptional character and shall not involve the removal of the labourers from their usual place of residence. In all cases, the responsibility for any recourse to forced labour shall rest with the competent central authorities of the territory concerned.

Article 1 of the International Labour Organization (ILO) Forced Labour Convention 1930 (No. 29), which the Russian Federation ratified on 23 June 1956 obliges the States Parties to undertake to suppress the used of forced or compulsory labour, which is defined in Article 2 of the same Convention as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”

Article 1 of the ILO Abolition of Forced Labour Convention, 1957 (No. 105) which the Russian Federation ratified on 2 July 1998 obliges States Parties to suppress and not to make use of any form of forced or compulsory labour as a method of mobilising and using labour for purposes of economic development (1b) or as a means of labour discipline (1c). Article 2 of the Forced Labour Convention obliges States parties to take effective measures to secure the immediate and complete abolition of forced or compulsory labour as specified in Article 1.

The Working Group on Enforced or Involuntary Disappearances would like to emphasise on the absolute and non-derogable prohibition of enforced disappearance under the law. The prohibition of enforced disappearance and the corresponding obligation to investigate and punish perpetrators have attained the status of jus cogens, i.e. a principle of international law that cannot be set aside. Noteworthy in this regard is article 2 of the Declaration on the Protection of All Persons from Enforced Disappearance, according to which “[n]o State shall practice, permit or tolerate enforced disappearances.” Article 7 of the Declaration states that “[n]o 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.”

The Working Group recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, 11 and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; 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. Article 13 also stipulates that steps shall be taken to ensure that all involved in the investigation, including the complainant, relatives, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

Furthermore, enforced disappearances are also prohibited under Rule 98 of the customary international humanitarian law. Rule 117 of the customary IHL obliges parties to the conflict to “take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate.”