

Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights in the Russian Federation and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL RUS 14/2023
(Please use this reference in your reply)

21 July 2023

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; Special Rapporteur on the situation of human rights in the Russian Federation and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/4, 51/8, 51/25 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the treatment and state of health of human rights defender Emir-Usein Kuku while in detention.

Mr. **Emir-Usein Kuku** is a human rights defender, father of two, and Chairperson of the Crimean Contact Group on Human Rights, based in the city of Yalta, Crimea. The non-governmental organisation monitors human rights violations, provides legal support and investigates enforced disappearances. He is also a member of the Crimean Human Rights Movement and has advocated for the rights of Muslim ethnic minorities, including Crimean Tatars, who frequently face discrimination in the region. Mr. Kuku was arrested in 2016 for alleged membership of Hizb ut-Tahrir, and sentenced to 12-years imprisonment in November 2019 for "participation in the activities of a terrorist organisation" and "planning to violently seize state power".

Mr. Kuku has been the subject of three previous communications by Special Procedures mandate holders, respectively addressed to your Excellency's Government on 18 July 2018 (RUS 17/2018), 21 January 2020 (RUS 10/2019) and 29 July 2020 (RUS 4/2020). We thank your Excellency's Government for its engagement in response to these communications, however, we remain extremely concerned at the continued detention of Mr. Kuku and his state of health.

According to the information received:

Since his detention in 2016, and following his conviction in 2019, Mr. Kuku's state of health has substantially deteriorated, with issues arising concerning his eyesight, joints, teeth, kidneys, and weight. He has been repeatedly sanctioned by prison authorities, including being placed in solitary confinement for what appear to be minor infractions of prison rules. In these instances, the human rights defender has been held in a punishment cell located in a damp basement, where he is forced to either sit or stand between 6 a.m. and 10 p.m.

In September 2021, he was placed under heightened supervision, reportedly as a result of an event concerning the killing of a prison officer at a separate facility to that in which he is detained. One month later, in October 2021,

while Mr. Kuku was being held in a punishment cell, his regular cell was raided and searched, with most of his belongings confiscated, including medicine.

On 21 June 2023, Mr. Kuku was hospitalised from a detention facility in Salavat, Russia, where he is currently being detained. It is reported he was suffering acute pain and kidney issues. He underwent surgery to treat an intestinal problem and at the time of finalising this communication was reported to be recuperating under medical observation at Salavat City Hospital No. 2, in the Bashkortostan Republic of the Russian Federation. The prison authorities did not inform the human rights defender's family of his hospitalisation or health issues

Without wishing to prejudge the accuracy of the information received, we express our grave concern at the ongoing detention of Mr. Kuku, including his alleged ill-treatment in prison. We reiterate our concerns previously communicated to your Excellency's Government that Mr. Kuku has been targeted in retaliation for his peaceful and legitimate work in defense of human rights, and underline that his continued detention would strongly appear to amount to the instrumentalization of the narrative and measures connected to combatting terrorism to sanction and repress human rights defenders and the exercise of fundamental freedoms.

We express concerns as to the state of health of Mr. Kuku, and urge your Excellency's Government to take all available measures to ensure his access to adequate and appropriate medical treatment and care.

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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to Mr. Kuku's state of health and the measures taken to ensure his right to health in detention, including through access to necessary medication and appropriate treatment. Please also confirm his place of detention.
3. Please provide information as to any sanctions that have been imposed on Mr. Kuku by prison authorities, including their legal basis and factual motivation. Please also provide information as to the rationale and legal basis for placing Mr. Kuku under a heightened supervision scheme, outline the impact of the same and avenues to appeal its imposition.

We would appreciate receiving a response within 60 days. Past 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.

Further, 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 the case 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 allegation letter and the regular procedure.

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.

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Matthew Gillett
Vice-Chair on communications of the Working Group on Arbitrary Detention

Mariana Katzarova
Special Rapporteur on the situation of human rights in the Russian Federation

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 refer your Excellency's Government to the international human rights law and standards outlined in prior communications concerning Mr. Kuku's case, and to re-emphasize the following general and specific obligations.

In particular, we would like to refer your Excellency's Government to article 5 of the Universal Declaration of Human Rights (UDHR); article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Russian Federation on 16 October 1973; and articles 1, 2, 15 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by the Russian Federation on 3 March 1987, which establish the absolute prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

We stress that, attached to such prohibition, are obligations to investigate all acts of torture or other cruel, inhuman or degrading treatment or punishment, to prosecute or extradite suspects, to punish those responsible and to provide remedies to victims.

Victims of torture are to be protected from reprisals or intimidation (article 13 CAT) and have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (article 14 CAT).

We would also like to again make reference to the obligations of your Excellency's Government under article 9 of the ICCPR, which guarantees the right to freedom from arbitrary detention. We recall that in elaborating on States obligations under article 9, the Human Rights Committee, in its general comment no. 35, made clear that detention is considered *prima facie* arbitrary when it constitutes a punishment for the legitimate exercise of the rights to freedom of opinion and expression, of assembly and association (under articles 19, 21 and 22), or when it is carried out over the basis of discriminatory grounds (in violation of articles 2 and 26) (CCPR/C/GC/35, para. 17). According to the same General Comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. Further, the Working Group on Arbitrary Detention has reiterated that a deprivation of liberty is arbitrary when it constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings. In this respect, the Working Group on Arbitrary Detention has concluded that being a human rights defender is a protected status under article 26 of the ICCPR.

In connection with the above, we wish to recall the law applicable to the territory occupied by the Russian Federation in Crimea. We refer to the general obligations under international humanitarian law, expressed in article 43 of the Regulations Respecting the Laws and Customs of War on Land, annexed to the

Fourth Convention Respecting the Laws of War on Land signed in The Hague on 18 October 1907 (“Hague Regulations”) and article 64 of the Fourth Convention Relative to the Protection of Civilian Persons in Time of War signed in Geneva on 12 August 1949 (“Geneva Convention IV”).

We underline that in accordance with article 2(1) of the ICCPR, the scope of application of the Covenant extends beyond the State’s own territory to all areas within the State’s “jurisdiction”. As authoritatively affirmed by the Human Rights Committee, jurisdiction is exercised for example where the State exercises power over an individual or has effective control over territory, such as in situations of occupation. Consequently, the Russian Federation, as an occupying power over Crimea, is under an obligation to respect and ensure the rights under the Covenant (see Human Rights Committee general comments nos. 31, para. 11, and 36, para. 63). We underline that in accordance with article 2(1) of the ICCPR, the scope of application of the Covenant extends beyond the State’s own territory to all areas within the State’s “jurisdiction”. As authoritatively affirmed by the Human Rights Committee, jurisdiction is exercised for example where the State exercises power over an individual or has effective control over territory, such as in situations of occupation. Consequently, the Russian Federation, as an occupying power over Crimea, is under an obligation to respect and ensure the rights under the Covenant (see Human Rights Committee general comments nos. 31, para. 11, and 36, para. 63).

In addition, we would like to remind your Excellency’s Government of its obligations under article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), ratified by the Russian Federation on 16 October 1973, which guarantees all individuals, including prisoners and detainees, the right to the highest attainable standard of physical and mental health.

We also wish to 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, also known as the Mandela Rules. We would like to refer your Excellency's Government to rules 24 to 35, on the responsibility of States to provide health-care services for prisoners, and in particular rule 27, on access to prompt medical attention in urgent cases.

We would further like to refer to rules 36 to 46 of the Mandela Rules, and in particular rule 43.1(e), which prohibits collective punishment of prisoners.

We would also like to underline 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.

In addition, we would like to highlight article 12 of the Declaration, 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 therein.

We also recall UN General Assembly resolutions 71/205 and 72/190, which urge the Russian Federation:

- “To take all measures necessary to bring an immediate end to all violations and abuses against residents of Crimea, in particular reported discriminatory measures and practices, arbitrary detentions, torture and other cruel, inhuman or degrading treatment, and to revoke all discriminatory legislation; (A/RES/72/190 para. 3.c)

And

- To immediately release Ukrainian citizens who were unlawfully detained and judged without regard for elementary standards of justice, as well as those transferred or deported across internationally recognized borders from Crimea to the Russian Federation;” (A/RES/72/190 para. 3.e).

We note once more that, in its resolution 73/263 "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine" adopted on 22 December 2018, the UN General Assembly expressed deep concern about “the ongoing arbitrary detentions and arrests by the Russian Federation of Ukrainian citizens[...], including Mr. Kuku”. The General Assembly also urged the Russian Federation to “create and maintain a safe and enabling environment for journalists and media workers, human rights defenders and defence lawyers to perform their work independently and without undue interference in Crimea”.

We respectfully remind your Excellency’s Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174. All these resolutions require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law contained therein.