

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances

Ref.: UA USA 22/2023
(Please use this reference in your reply)

4 September 2023

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention and Working Group on Enforced or Involuntary Disappearances, pursuant to Human Rights Council resolutions 49/10, 51/8 and 45/3.

In this connection, we would like to bring to your Excellency's attention information we have received concerning the continued arbitrary detention and risk of alleged imminent forcible repatriation to the Russian Federation of **Mr. Ravil Mingazov** from the United Arab Emirates (UAE) where your Excellency's Government resettled Mr. Mingazov in 2017. We draw your attention to previous communications to your Excellency's Government (UA USA 17/2020) and acknowledge the reply on 15 January 2021 in which your Excellency's Government articulated that "host countries are in the best position to provide information on the current situation of Guantánamo transferees."¹ Mr. Mingazov was cleared for release and transferred from the detention facility at the U.S. Naval Station Guantánamo Bay to the United Arab Emirates on 19 January 2017. We are profoundly concerned that Mr. Mingazov may be subjected to forced repatriation against his will to his country of nationality, the Russian Federation, alongside his current detention in the United Arab Emirates as also detailed in previous communications on his case to the United Arab Emirates (ARE 3/2020; ARE 5/2021) where he has been held at various stages in incommunicado detention, subjected to torture and ill-treatment and to enforced disappearance. We underscore in this regard and related to the previous reply in 2021, your Excellency's Government continuing international law obligations to Mr. Mingazov and other former Guantánamo Bay detainees previously in your extended custody—obligations that apply extraterritorially and call for providing full reparation and remedy for serious violations of international human rights law and international humanitarian law, including the use of extraordinary rendition, torture, cruel, inhuman, and degrading treatment, and arbitrary detention.

We note in this regard the findings of the Joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42), by a group of Special Procedures mandate holders, as well as the follow-up report by the Special Rapporteur on the promotion and protection of human rights while countering terrorism (A/HRC/49/45). We further echo the findings and recommendations of the Special Rapporteur on the promotion and protection of human rights while countering terrorism from her technical visit to the United States, particularly as regards the

¹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35912>

rights of former detainees who have been repatriated and/or resettled.²

The Working Group on arbitrary detention (WGAD), in its opinion A/HRC/WGAD/2021/32,³ dated 8 October 2021, found the detention of Mr. Mingazov to be in contravention of articles 2, 3, 7, 9, 10 and 11 of the Universal Declaration of Human Rights and therefore is considered arbitrary under categories I, III and V. The WGAD further called on your Excellency's Government to immediately release Mr. Mingazov and grant him an enforceable right to compensation and other reparations, in accordance with international law. We therefore deeply regret that two years after the WGAD opinion, Mr. Mingazov remains in arbitrary detention and continues to be subject to torture and other forms of ill-treatment, amounting to persistent serious violations of your Excellency's Government obligations under international law.

According to the information received:

Mr. Ravil Mingazov is a 55-year-old man of Russian descent and of Muslim confession and of Tartar origin. He was captured by Pakistani security services in 2002 and rendered to United States custody in May 2002 and Guantánamo Bay in June 2002,⁴ where he was held until 19 January 2017 for nearly 15 years without trial. Mr. Mingazov was referred for prosecution by the Guantánamo Review Task Force (2009-2010), however he was never charged, and no legal proceedings were ever pursued against him.

On 21 July 2016, the Periodic Review Board—the interagency panel charged with reviewing whether continued detention of particular detainees remains necessary to protect against a continuing significant threat to the national security of the United States of America—determined by consensus that Mr. Mingazov's continued detention was unnecessary, considering, among other factors, “degree of involvement and significance in extremist activities appears to be that of a low-level fighter,” and his “record of compliance while at Guantánamo and history of positive engagement with the guard force.”⁵ In the Periodic Review Board's clearance determination, the Board recommended certain conditions for transfer: “appropriate security assurances as negotiated by the Special Envoys and agreed to by relevant United States Government departments and agencies.”⁶

After 21 July 2016, Mr. Mingazov was therefore eligible for transfer, subject to your Excellency's Government arranging the logistics of his release as well as all associated agreements to apply after his transfer in respect of the stated

² See Technical Visit to the United States and Guantánamo Detention Facility by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 14 June 2023, paras. 52-65 [hereinafter U.S. & GTMO Technical Visit].

³ https://www.ohchr.org/sites/default/files/2021-11/A_HRC_WGAD_2021_32_AdvanceEditedVersion.pdf

⁴ JTF - GTMO Detainee Assessment, 18 March 2008, available at: <https://int.nyt.com/data/documenttools/82625-isn-702-ravil-mingazov-jtf-gtmo-detainee/c0a7545edae1f77e/full.pdf>.

⁵ Period Review Board Determination, 21 July 2016, Unclassified Summary of Final Determination, https://www.prs.mil/Portals/60/Documents/ISN702/160721_U_ISN702_FINAL_DETERMINATION_PUBLIC_v1.pdf.

⁶ Period Review Board Determination, 16 July 2016, Unclassified Summary of Final Determination.

Periodic Review Board requirements, and other considerations including *non-refoulement*, which apply as a matter of treaty and customary international law to any such transfer by your Excellency's Government. Consistently since 2005, during the time between Mr. Mingazov's clearance for release and resettlement, and in prior processes,⁷ including Periodic Review Board filings and in Mr. Mingazov's habeas filings from 2006-2016 in U.S. District Court, Mr. Mingazov and his counsel repeatedly highlighted his fear of harm if repatriated and inconsistency of repatriation to the Russian Federation with international human rights law. Mr. Mingazov, including through his counsel, therefore communicated to the U.S. Joint Task Force, the Department of Defense, U.S. Department of State, and other relevant agencies engaged in the Periodic Review Board process credible fears for his life and safety were he to be returned to the Russian Federation. We understand that Mr. Mingazov allegedly highlighted his fear of torture and other forms of ill-treatment during the non-binding pre-departure interview with the International Committee of the Red Cross (ICRC)⁸. Moreover, alternative locations for resettlement were also communicated with the United States in 2015, including to the United Kingdom, on the basis of family reunification where a reunification application was also filed.

On 19 January 2017, the U.S. Department of Defense announced that Mr. Mingazov had been transferred to the Government of the United Arab Emirates (UAE). The press release further stated that your Excellency's Government "coordinated with the Government of the United Arab Emirates to ensure these transfers took place consistent with appropriate security and humane treatment measures" and "is grateful to the Government of the United Arab Emirates for its humanitarian gesture."⁹ Mr. Mingazov and his legal counsel relied heavily upon these diplomatic assurances when agreeing to the resettlement, including that such assurances included an absolute promise to never forcibly repatriate Mr. Mingazov to the Russia Federation.

Upon arrival in the UAE, however, it is alleged that Mr. Mingazov was immediately forcibly disappeared, detained and kept in solitary confinement, we believe though it is not confirmed at Al-Razeen prison, without legal process or access to legal counsel. His family and lawyers were not informed of his whereabouts, at the time. For three years, from 2017 to 2020, repeated requests made by his lawyers in the United States of America to the Ministry of Foreign Affairs of the UAE, to communicate with Mr. Mingazov, were left unanswered. There are serious concerns that he has been subjected to torture and cruel, inhuman, and degrading treatment.

Prior to transfer to the UAE, the United States of America (USA) officials have allegedly provided assurances to the detainees and their lawyers that following six months in a residential rehabilitation program, the UAE would

⁷ Ghanim Abdul-Rahman Al Harbi v. Barack Obama, et. al., Memorandum Opinion, 05-02479 (D.C. Cir. June 1, 2010), <https://www.documentcloud.org/documents/2502216-mingazov-unclassified.html>.

⁸ U.S. & GTMO Technical Visit, para. 57

⁹ Detainee Transfers Announced, 19 January 2017, <https://www.defense.gov/News/Releases/Release/Article/1054644/detainee-transfers-announced/>.

facilitate release into Emirati society and family reunification.¹⁰ However, after years of detention without charge or trial at Guantánamo Bay, the transferred detainees are facing further lengthy periods of detention without charge or trial in the UAE, and there are serious concerns that they have been victims of severe mistreatment including torture.¹¹

Mr. Mingazov accepted resettlement in the UAE based on a range of informal assurances, including a six-month stay in a residential rehabilitation program, followed by his release into Emirati society and reunion with his family. Those assurances further included access to medical care and social services, in addition to funding for family visits and communication and non-repatriation to Russia given his well-documented fear of refoulement as expressed repeatedly to the United States before his clearance for release and resettlement.¹²

After almost two years of detention, his family was solely able to visit him in the Prison on two occasions, from 20 November to 18 December 2018 and from 13 to 26 May 2019. Aside these two visits, family calls were sporadic, every two to four weeks, for lasted around 5 minutes.

During the period from May to November 2019, all contact between Mr. Mingazov and his family was suspended. In this period of complete familial and social isolation, he was reportedly subjected to torture and other forms of cruel, inhuman or degrading treatment by the prison guards, against which he initiated a 20-day hunger strike in November 2019. Mr. Mingazov was further denied medical care and moved to solitary confinement on several occasions between February and March 2020.

It has been alleged that following Mr. Mingazov's attempt to tell his family about his detention situation, his calls with family were put under surveillance and cut off whenever he spoke about his detention conditions and ill-treatment, before being completely suspended from 26 March 2021, for two and a half years.

From March 2021 until August 2023, Mr. Mingazov was held in solitary confinement, and was not allowed outside of his cell for walking or exercise. He was further denied access to books. Due to the lack of mobility, he had reportedly developed an ankle problem and high blood pressure, for which he did not receive medical care, and significantly lost weight. There are significant concerns regarding Mr. Mingazov's deteriorating health under the current conditions, which allegedly deny him access to medical care, movement, social interaction, and the required rehabilitative environment required for former detainees of Guantánamo Detention Facility in compliance with international human rights law.

¹⁰ UA USA 17/2020.

¹¹ UA USA 17/2020, ARE 3/2020, ARE 5/2021.

¹² UA USA 17/2020.

Throughout this period of complete isolation, Mr. Mingazov's family tried to contact him and sent him letters through humanitarian and human rights organisations but was unable to reach him.

In early August 2023, Mr. Mingazov's family were contacted by an Emirati Government official, informing them of the possibility to conduct a visit. The Government of the UAE organised and funded the travel and stay of family members to the UAE.

Renewed risk of forced repatriation to Russia

In January 2021, a delegation of Emirati officials accompanied by a Russian interpreter reportedly visited Mr. Mingazov in detention. Six months later, on 20 June 2021, Russian officials visited Mr. Mingazov's family in Russia to ascertain his identity and allegedly issue a passport for him. They also requested his family to provide Mr. Mingazov's birth certificate. These inquiries appeared to be in preparation for his imminent repatriation to Russia.

It had been recently reported that the Government of the UAE is negotiating the repatriation of Mr. Mingazov with the Russian Government. These negotiations are allegedly occurring despite ongoing and sustained concerns raised by Mr. Mingazov and his family members and well-documented fear of reprisal reprisals and substantial grounds for believing that, upon return to Russia, Mr. Mingazov could be in danger of being subjected to gross human rights violations.

As with other former detainees at Guantánamo Bay, Mr. Mingazov therefore could allegedly be risking forced repatriation to Russia where he is likely to face persecution, including torture and ill-treatment. Mr. Mingazov's repatriation to Russia would allegedly put him at risk of torture and persecution and enforced disappearance on the basis of his religious beliefs and status as a former detainee in Guantánamo Bay. These fears have been consistently conveyed to the UAE authorities at multiple occasions, including prior to and during the negotiation of his resettlement to UAE in 2017. The identified risk of refoulement has been documented in public reports, specifically those concerning seven Russian former detainees at Guantánamo Bay repatriated to Russia in 2004 who were all detained, beaten, and harassed, and one of them ultimately killed.

The decision to resettle Mr. Mingazov to the UAE instead of his repatriation to Russia was initially derived from the credible risk to his physical and moral integrity, if he was to be repatriated. This risk persists and Mr. Mingazov's repatriation to Russia is believed to be imminent.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our grave concern at these allegations which, if confirmed, would mean that Mr. Mingazov's continued detention in the United Arab Emirates does not meet your Excellency's Government's international law obligations and guarantees of humane treatment for former detainees. Moreover, we wish to further express our grave

concern that forced repatriation to the Russian Federation, if undertaken, remains within the purview of your Excellency's Government's international law obligation of *non-refoulement*, the cornerstone principle whereby no one shall be returned to a country where they would face torture, cruel, inhuman, or degrading treatment or punishment, and other irreparable harm. We remind your Excellency's Government that *non-refoulement* is a *jus cogens* and treaty law obligation and requires individuated assessments specific to detainees and in line with international human rights law. While we recognize that your Excellency's Government is no longer the detaining authority over Mr. Mingazov, we remind your Excellency's Government that the Convention against Torture, which the United States ratified on 21 October 1994, stipulates that the competent authorities "shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights" (art. 3). We observe with relevance to this assessment that UN experts have issued multiple assessments and communications to the Russian Federation regarding credible allegations of arbitrary detention, solitary confinement, torture and ill-treatment, forced confessions, and flagrant fair trial violations and disproportionate sentencing including life imprisonment and the death penalty, all under the pretext of counter-terrorism.¹³

In addition, it must be recalled that the prohibition of enforced disappearance has also attained the status of *jus cogens*, and article 8 of the Declaration on the Protection of All Persons from Enforced Disappearance, which enshrines customary international law, establishes that no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that this person would be in danger of enforced disappearance.

We reiterate the importance of securing each individual's informed consent as your Excellency's Government negotiates arrangements for release, whether to a home country or third country—with full recognition of the international human rights law obligations adhering before, during, and after each transfer. We underscore that such consent will be vacated entirely if countries of resettlement proceed to ignore the non-refoulement assessment and process in any secondary resettlement, and such human rights deficient transfer entirely undermines the commitment to 'humane treatment' in the US process of resettlement for current or former Guantánamo Bay detainees. We echo in this regard the finding of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, putting into question "the genuine nature of detainee consent to the countries selected for either resettlement or repatriation" and we reiterate the need for transparent transfer notification processes that honestly inform the detainee of the nature of the legal status, housing, health care, and other factors, including with regard to security measures, such as surveillance, to be expected upon arrival.¹⁴ We also observe that although the ICRC conducts an independent *non-refoulement* assessment including through confidential pre-departure interviews with detainees subject to their consent, their recommendations to authorities are non-binding and thus both their and the detainee's concerns could potentially be overridden by your Excellency's

¹³ See, e.g., UA RUS 5/2023, RUS 10/2022, RUS 2/2022, RUS 4/2020.

¹⁴ U.S. & GTMO Technical Visit, para. 56.

Government.

We are particularly concerned by the situation of Mr. Mingazov given the feasibility of other forms of resettlement that may be in compliance with international human rights law standards, including reunification with family in safe third countries. We observe that your Excellency's Government's prior referral to the host Government of the UAE evinces a failure to follow-up on the conditions of his repatriation and the well-being of Mr. Mingazov, including to ensure compliance with any humane treatment and other assurances. We note that Mr. Mingazov's physical and mental health is likely vulnerable to deterioration given his status as a torture victim and survivor stemming from his time in your Excellency's Government's custody, and prior state of anxiety and despair. We underscore that your Excellency's Government has an unequivocal legal obligation, including under article 14 of the Convention against Torture, to provide Mr. al-Mingazov with redress and reparation, including full torture rehabilitation.¹⁵ Moreover, where a transfer is made that is not compliant with the terms of the agreement made by your Excellency's Government and international law, and where there can be no certainty in preventing ongoing ill-treatment, your Excellency's Government must seek to find another second transfer solution.

We remain available to provide technical assistance to your Excellency's Government in order to support full compliance with your obligations under international law, including international human rights law, international humanitarian law, and international refugee law.

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 Mr. Mingazov from irreparable harm and without prejudicing any eventual legal determination.

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 information on the *non-refoulement* and any other risk assessment carried out by U.S. authorities to ascertain the risk of Mr. Mingazov being subjected to torture, ill-treatment and enforced disappearance in the United Arab Emirates and the subsequent risk of force repatriation to the Russian Federation, and how the Government

¹⁵ We also bring to the attention of your Excellency's Government the right to a remedy for victims pursuant to article 13 of the Convention Against Torture. We take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture," and "(t)o ensure that victims of cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation."

intends to approach the ongoing going obligations to Mr. Mingazov in compliance with the applicable international law standards.

3. Please provide the details of the agreement concluded by your Excellency's Government with the United Arab Emirates to resettle Mr. Mingazov, including any diplomatic assurances made regarding non-repatriation on the basis of non-refoulement concerns, mental and physical health care, including torture rehabilitation, housing, education and employment, family unification, and security measures, including potential monitoring and surveillance—as well as any financial support provided by your Excellency's Government to support such basic guarantees. This should include information on any agreement regarding the Periodic Review Board recommendation of a “comprehensive set of security measures including monitoring, travel restrictions and continued information sharing.”
4. Please indicate whether your Excellency's Government was notified in advance of the United Arab Emirate's intention to detain Mr. Mingazov or pursue in previous years or presently a forced repatriation to the Russian Federation. Please provide any details therein.
5. Please provide the details of any measures which have been taken, or which are foreseen, for the purpose of protecting Mr. Mingazov from further infliction of any form of ill-treatment, including consideration of resettlement and other alternative measures. This includes any information concerning the prospect to (re)settle Mr. Mingazov in agreement with the United Arab Emirates, including the feasibility of resettling Mr. Mingazov in a third-country, particularly in support family reunification with his wife, son or other family members reside, or any efforts made to locate a third country in which he will be humanely treated in full respect of his human rights.
6. Please explain what measures have been taken by Your Excellency's Government to implement the Working Group on Arbitrary Detention's Opinion no. 32/2021, concerning the arbitrary deprivation of liberty of Mr. Mingazov.

While awaiting a reply, we urge that all necessary measures be taken to halt the alleged forcible repatriation of Mr. Mingazov to Russia, and to prevent any irreparable damage to Mr. Mingazov's life and personal integrity, as well as to and to ensure a thorough and individualized assessment of the risks he may face upon repatriation, including of torture, ill-treatment, arbitrary detention and enforced disappearance. We further request your Excellency's Government to bring to an end the alleged violations to Mr. Mingazov's human rights, 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 of the alleged violations.

We may publicly express our concerns in the near future about this and previous similar or related cases as we are under the impression, given the information at hand, that this case illustrates a pattern of treatment of former Guantánamo detainees whom, according to our knowledge, have reasonably relied upon diplomatic assurances in their agreements to voluntarily resettle in a third-country that their rights would be protected. We also believe, that should this be the case, the wider public should be informed of the human rights implications of the ongoing obligations for the safeguarding of the rights of former detainees of the Guantánamo Detention Facility. Any expression of concern on our part will indicate that we have been repeatedly in contact with your Excellency's Government's to clarify the matter of this letter.

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.

Please note that a related communication is being sent to the Government of the United Arab Emirates.

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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

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