

**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 torture and other cruel, inhuman or degrading treatment or punishment**

Ref.: AL RUS 29/2023  
(Please use this reference in your reply)

27 December 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; 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 torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 52/4, 51/8, 54/14, 52/9 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 enforced disappearance of the Ukrainian woman human rights defender and journalist Victoria Roshchyna.

Ms. **Victoria Roshchyna** works to promote the rights to a fair trial and freedom of assembly, and also reports on the persecution of activists and public figures. She is a freelance journalist based in Kyiv whose work has appeared in Radio Liberty/Radio Free Europe (Ukrainian service), and Ukrainska Pravda.

Since the beginning of the invasion of Ukraine, Ms. Roshchyna has turned to collecting evidence of war crimes and documenting human rights violations, including in the Russian-occupied territories.

According to the information received:

On 25 July 2023 Ms. Roshchyna informed family members that she planned to travel to the Russian-occupied territories in southern Ukraine in order to gather information on the impact of the war on the civilian population there. She reportedly told her father that she would travel through Poland, Lithuania, Latvia and Russia in order to reach occupied south-eastern Ukraine.

On 3 August 2023, Ms. Roshchyna made a phone call to her sister but did not say where exactly she was, other than that she had passed through border checks. It is unclear what border checks she was referring to. This phone call was the last contact her family had with her.

On 12 August 2023, Ms. Roshchyna's family reported her missing to the Ukrainian authorities. On 20 September 2023, they filed a missing person's report with the State-run "Ukrainian National peace-building center", a national institution gathering information and documenting violations of international law in accordance with the Geneva Conventions for the Protection of War Victims. Additionally, on 9 October 2023, a missing person

report was filed with the National Police of Ukraine, by the editor-in-chief of the media outlet “Ukrainska Pravda”. On 17 October 2023, the police started the investigation under article 438 of Criminal Code of Ukraine (violation of the laws and customs of war).

Ms. Roshchyna’s family were reportedly subsequently informed by the Ukrainian National peace-building Centre that she had been detained by the Russian authorities. The Russian authorities have never formally acknowledged her detention, nor have they provided any information concerning her whereabouts.

Previously, in March 2022 Ms. Roshchyna, had reportedly been detained for 10 days in the Russian-occupied Zaporizhzhia region as she attempted to travel to Mariupol to report on human rights violations occurring there. As she later wrote in an article for Hromadske, she was interrogated by officers of the Russian Federal Security Service (FSB), who threatened her with imprisonment and sexual violence. She was released in exchange for recording a so-called “neutral interview” video.

At the time of writing, the fate and whereabouts of Ms. Victoria Roshchyna are unknown.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern over the reported enforced disappearance of Ms. Victoria Roshchyna, and her alleged arbitrary and incommunicado detention, which appear to be related to her legitimate human rights work and the exercise of her rights to freedom of expression and access to information. 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 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.

We are issuing this appeal in order to safeguard the rights of the above-mentioned individuals from irreparable harm and without prejudicing any eventual legal determination. It is relief *pendente lite*.<sup>1</sup>

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 fate and whereabouts of

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<sup>1</sup> Article 41 ICJ Statute ‘Interim Protection’: Part III, Section D (Incidental Proceedings), Subsection 1

Ms. Victoria Roshchyna.

3. If Ms. Roshchyna is in detention, please provide the legal and factual basis for the alleged deprivation of liberty, and explain how these actions comply with the Russian Federation's obligations under international human rights law. Please also provide information on the steps taken to ensure that Ms. Roshchyna communicates with and is visited by her family, counsel or any other person of her choice.
4. Please provide information on Ms. Roshchyna's detention conditions, her state of health, her access to adequate medical care and to a lawyer.
5. Please provide information as to the specific measures put in place to ensure that human rights defenders and civil society actors in the "occupied areas of Ukraine" can carry out their legitimate work in a safe and enabling environment, without fear of harassment and intimidation from the authorities or any other agent acting on their behalf or with their acquiescence.

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.

We would also like to inform your Excellency's Government that given the allegations of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit this case through its humanitarian procedure. The Government is required to respond separately for the present communication and the humanitarian procedure.

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 the fate and whereabouts of Ms. Victoria Roshchyna be disclosed without delay, and that all necessary interim measures be taken to prevent any irreparable harm to her life or personal integrity, 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.

In accordance with General Assembly resolution 68/262 on the territorial integrity of Ukraine, and taking into account General Assembly resolution 77/229 on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, we wish to inform you that a copy of this letter will also be sent to the authorities of Ukraine for their information.

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

Aua Baldé  
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

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 the attention of your Excellency's Government to articles 6, 9, 17 and 19 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 and the right to freedom of expression.

With regard to the alleged enforced disappearance, it 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 detention 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.

Pursuant to article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance, 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 disappearance. Moreover, articles 9-12 establish the guarantees to be afforded to any person deprived of liberty. 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. Article 13 of the Declaration sets forth the State's obligation to investigate promptly, thoroughly and impartially any complaints of enforced disappearance. Article 19 of the Declaration requires that victims of acts of enforced disappearance and their family obtain redress and integral reparation for the harm suffered. 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.

Pursuant to the 2019 Guiding Principles for the Search for Disappeared Persons, States are under an obligation to search for the disappeared. In particular, the search for a disappeared person should begin without delay (Principle 6) and is an obligation of continuing nature (Principle 7). Moreover, pursuant to Principle 4, in cases involving women who have disappeared, all stages of the search should be conducted with a gender perspective and staff, including female staff, who have received proper training.

We would like to remind your Excellency's Government that enforced disappearance has different impact depending on whom it targets. For instance, according to the Study on enforced or involuntary disappearances and economic, social and cultural rights by the Working Group on Enforced or Involuntary Disappearances (A/HRC/30/38/Add.5), human rights defenders are also targeted to

intimidate and prevent others from claiming and exercising their rights. Due to the collective character of certain economic, social and cultural rights, the disappearance of one person may have a negative effect on the larger community. Similarly, the General comment on women affected by enforced disappearances adopted by the Working Group on Enforced or Involuntary Disappearances (A/HRC/WGEID/98/2) stresses, *inter alia*, the differentiated effects of enforced disappearances in women and girls. In particular, States must acknowledge disappeared women, and recognize the particular types of harm they suffer based on their gender, including instances of sexual violence, and the resulting psychological damage and social stigma as well as the disruption of family structures.

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. We further wish to underline that arrest and detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR, including article 19, 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.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including *inter alia* 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of

opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with Article 19 (CCPR/C/GC/34, para 23).

We wish to remind your Excellency's Government that according to paragraph 10 of the Human Rights Committee's General Comment No. 31 (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 on article 6 of the ICCPR (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 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, individually and in association with others, 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.

