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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE: AL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (33-27)
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13 August 2013

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 16/4, 15/21, and 17/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the case of Mr. **Abdulsalam Elmessmary**. Mr. Elmessmary was a prominent political activist and founder of the 17 February Coalition, which coordinated opposition groups in Benghazi during the movements that led to the fall of the Government ruled by Mr. Muammar Gaddafi. During Mr. Gaddafi's rule, Mr. Elmessmary had reportedly played an important role in supporting the demands for truth and justice of the families of the mass killing in Abu Salim Prison in 1996.

According to the information received:

On 26 July 2013, on his way back home from Albirka's Abu Ghoula mosque in Benghazi, Mr. Abdulsalam Elmessmary was shot by a man who was sitting in a car. He died on his way to the hospital. Reportedly, no investigation has been initiated in relation to the event.

A few days before his assassination, on 24 July 2013, Mr. Elmessmary reportedly appeared on a local television station and reported a series of unlawful killings. Allegedly, Mr. Elmessmary had also previously publicly criticized the Muslim Brotherhood on social media sites and local media networks. He was also known for having criticized the Political Isolation Act, barring Gaddafi-era officials from holding public offices, which was adopted in May 2013.

In May 2012, Mr. Elmessmary reported that he had been attacked by unknown assailants in front of the Tibesti hotel in Benghazi whereas in 2011, he had allegedly received death threats after criticizing the role of Islamist factions in the National Transitional Council.

It is alleged that the reported killing of Mr. Elmessmary is related to his activities as a political activist. Allegedly, more than 50 politically motivated killings have occurred in Libya since October 2011.

Grave concern is expressed about the killing of Mr. Elmessmary, as well as about the fact that it may be related to the exercise of his rights to freedom of association and of expression. Further serious concern is expressed about the security and the physical and psychological integrity of political activists, and more generally of any person voicing dissenting or minority views in Libya.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer to article 6 of the International Covenant on Civil and Political Rights (ICCPR), that Libya acceded to on 15 May 1970, which provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. In its General Comment No. 31, the Human Rights Committee observed that "...the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights. There may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. ... As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as summary and arbitrary killings (article 6)." (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18).

We would like to further draw the attention of your Excellency's Government to the duty to investigate, prosecute and punish all violations of the right to life by any State or non-State actor, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the Economic and Social Council resolution 1989/65). In particular, principle 9 provides that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances". Principle 18 further requires Governments to "ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice." We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to

fair and adequate compensation within a reasonable period of time pursuant to principle 20.

We would also like to recall the right to freedom of opinion and expression as set forth in article 19 of the ICCPR, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

We would also like to refer to article 22 of the ICCPR, which provides that “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

Since 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. Are the facts alleged in the above case accurate?
2. Has a complaint been lodged on behalf of Mr. Elmessmary?
3. Please provide the details, and where available the results, of any investigation, medical examination, and judicial or other inquiry which may have been carried out in relation to the killing of Mr. Elmessmary. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the alleged perpetrators are identified, please provide the full details of any prosecution which has been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please clarify whether compensation has been made available to the victim’s family?
6. Please indicate what measures have been taken, or are being taken to ensure that the physical and psychological integrity of those exercising the rights to freedom of association and of expression in Libya.

We would appreciate a response within sixty days. Your Excellency’s Government’s response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency’s Government to take all necessary measures to guarantee the rights to freedom of association and of expression and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be

ensured. We request your Excellency's Government to adopt effective measures to prevent the recurrence of these acts.

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

Frank La Rue
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freedom of opinion and expression

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