

Mandate of the Chair-Rapporteur of the Working Group on Arbitrary Detention.

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Excellency,

I have the honour to address you in my capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention pursuant to Human Rights Council resolution 15/18.

In this connection, I would like to draw the attention of your Excellency's Government to information I have received regarding the arrest and detention in Libya of **Mrs. Melinda Taylor, Mr. Alexander Khodakov, Mr. Esteban Peralta Losilla and Ms. Helene Assaf**, all staff members of the International Criminal Court (ICC).

According to the information received:

Mrs. Melinda Alicia Bertram Taylor, born on 13 January 1976, a citizen of Australia, usually residing in Piet Heinstraat 31, 2518 CB, The Hague, The Netherlands, works for the Office of Public Counsel for the Defence (OPCD) at the ICC in The Hague. Mrs. Taylor acts as a Counsel for Mr. Saif Al Islam Gaddafi and has been on a mission to Libya pursuant to a decision of the Pre-Trial Chamber I in *Prosecutor v. Saif Al Islam Gaddafi and Abdullah Al Senussi* (ICC-01/11-01/11-129). The Libyan authorities were requested and agreed to facilitate a privileged visit between the OPCD – Mrs. Taylor and Mr. Gaddafi, as well as a supporting visit by the Registry to discuss the issue of appointing counsel of Mr. Gaddafi's own choosing.

Following the visit to Mr. Gaddafi, Mrs. Taylor and three other members of the ICC delegation were arrested by the Zintan Brigade *Khaled Ibn Al-Waleed* on 7 June 2012. They were not presented with an arrest warrant nor any other decision by a public authority. It is alleged that their preventive detention was ordered either by the Minister of Defence or Prosecutor General in Libya on the grounds of endangering national security. Mrs. Taylor and her colleagues, who are covered by privileges and immunities from domestic prosecution, have not been informed of the reasons for their detention; they have had limited access to the outside world and have not been able to seek consular assistance.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mrs. Taylor and her colleagues is arbitrary, I would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their liberty, in accordance with article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR).

In light of the circumstances of the present case, I would like to draw the attention of your Excellency's Government to the fact that Mrs. Taylor and her colleagues, all employees of the ICC, are entitled to privileges and immunities in accordance with Article 48(3) of the Rome Statute of the ICC.

I would further recall that the United Nations Security Council in its Resolution 1970 (2011), adopted under Chapter VII of the Charter, decided at OP 5 that "the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court." Specifically, article 18(1) of the Agreement on the Privileges and Immunities of the International Criminal Court, which was adopted on 10 September 2002 by the Assembly of States Parties, provides that:

Counsel shall enjoy the following privileges, immunities and facilities to the extent necessary for the independent performance of his or her functions, including the time spent on journeys, in connection with the performance of his or her functions and subject to production of the certificate referred to in paragraph 2 of this article:

- (a) Immunity from personal arrest or detention and from seizure of his or her personal baggage;
- (b) Immunity from legal process of every kind in respect of words spoken or written and all acts performed by him or her in official capacity, which immunity shall continue to be accorded even after he or she has ceased to exercise his or her functions; (...)

Finally, I would like to recall that Mrs. Taylor and her colleagues of the ICC staff are entitled to immediate and unimpeded access to consular assistance pursuant to article 36 of the Vienna Convention on Consular Relations, to which Libya is a party.

I urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mrs. Taylor and her colleagues are respected 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. I also request that your Excellency's Government adopt effective measures to prevent the recurrence of any similar acts in the future.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mrs. Taylor and her colleagues in compliance with the above international instruments.

Moreover, it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mrs. Melinda Taylor, Mr. Alexander Khodakov, Mr. Esteban Peralta Losilla and Ms. Helene Assaf despite their privileges and immunities.
3. Please explain why access has been restricted to Mrs. Taylor, Mr. Alexander Khodakov, Mr. Esteban Peralta Losilla and Ms. Helene Assaf, and why they have not benefited from consular assistance.

I undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

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

El Hadji Malick Sow
Chair-Rapporteur of the Working Group on Arbitrary Detention