

Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE: AL
LBY 3/2014:

30 September 2014

Dear Mr. Elgannas,

We have the honour to address you in our capacities as Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 24/7 and 25/13.

In this connection, we would like to bring to the attention of your Government information we have received concerning allegations of torture and other cruel, inhuman or degrading treatment or punishment of Mr. [REDACTED], committed by Libyan law enforcement officials.

According to the information received:

On 19 November 2011, Mr. [REDACTED], (date of birth [REDACTED]), was captured and held as a prisoner of war in [REDACTED] and then in the town of Zintan, State of Libya, by forces of the National Transitional Council. He has been charged with a number of crimes under domestic law, including “killing, looting, incitement of civil war, as well as promotion and distribution of drugs, incitement of rape and kidnapping”. [REDACTED]

It is reported that Mr. [REDACTED] has been kept in solitary confinement and incommunicado detention for over 34 months, without access to his family or a lawyer. He has also not been given the opportunity to challenge his detention before a legitimate judicial authority, despite concerns expressed by the UN Security Council ([REDACTED]), Working Group on Arbitrary Detention ([REDACTED] finding Mr. [REDACTED]'s detention arbitrary), the African Commission on Human and People's Rights and the ICC. In this context it is reported that on 31 May 2013, the ICC rejected Libya's request to prosecute Mr. [REDACTED] and ordered Libya to surrender Mr.

████████ immediately to the ICC. The Appeals Chamber confirmed the finality of this decision on 21 May 2014. It is alleged that Libya's failure to surrender Mr. ██████████ to the custody of the ICC has meant that he continues to be held in incommunicado detention in ██████████, and has prevented him from challenging the legality of his detention before the ICC Chamber or from otherwise participating in his case, and has deprived him of the right to have regular privileged communications with his ICC counsel.

During his detention, Mr. Gaddafi has allegedly been subjected to various form of torture and other cruel, inhuman and degrading treatment. He has also been interrogated by unknown persons in absence of any legal representation, and forced to sign confessions apparently extracted under duress. ██████████

It is reported that independent non-governmental organizations have been permitted to meet Mr. ██████████ on a few occasions only. The meetings have not taken place at the location of his detention, and have not been in private. This may be affecting Mr. ██████████'s ability to raise sensitive matters concerning his case. It is also reported that during these meetings, Mr. ██████████ has appeared very agitated, not to be in a solid mental state and lacking coherence. ██████████

████████████████████. It is reported that, in response to questions about his condition and medical treatment Mr. ██████████ denied any mistreatment. However, at the same time he showed to the interlocutor ██████████. In this context it is also reported that Mr. ██████████ was also prosecuted for violating national security in relation to his attempt to communicate a document to his former ICC counsel, which set out details of violations of his rights.

Finally, it is alleged that the domestic proceedings in Mr. ██████████'s case are based on material collected by militia, often obtained from witnesses who have been subjected to torture, cruel, inhuman or degrading treatment, or others forms of ill-treatment and held in detention facilities which are not subject to the control of the Government.

Serious concern is expressed about the allegations of torture and other cruel, inhuman or degrading treatment or punishment of Mr. ██████████ while in detention. Serious concern is also expressed about Libya's failure to surrender Mr. ██████████ to the custody of the ICC, which meant that he continues to be held in incommunicado detention in ██████████. Additional concern is expressed about the alleged use of evidence obtained under torture, including evidence obtained from third parties.

In connection to the above alleged facts and concerns, please refer to the **Reference to international law Annex** 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 comment which you may have on the above mentioned allegations, including what steps have been taken to implement the order to surrender Mr. [REDACTED] immediately to the ICC.
2. Please provide detailed information on what steps have been taken to implement the recommendations of the Working Group on Arbitrary Detention pursuant to its Opinion [REDACTED].
3. Please provide detailed information, and where available, the results of any investigation, judicial or other inquiries carried out in relation the person mentioned above and the allegations that Mr. [REDACTED], as well as witnesses in the domestic proceedings have been subjected to torture, cruel, inhuman or degrading treatment, or others forms of ill-treatment. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. In the event that the investigations confirm that the allegations are correct, please provide detailed information of any accountability measure taken against any officer found to be responsible for the alleged violations.

We would appreciate a response within 60 days.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Mr. Elgannas, the assurances of our highest consideration.

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Juan E. Méndez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex
Reference to international human rights law

The Working Group in its Opinion no. 41/2013 has determined that the detention of Mr. [REDACTED] is arbitrary, as his detention is in contravention of the right not to be deprived arbitrarily of his liberty as set forth in article 9 of the Universal Declaration of Human Rights (UDHR) and article 9 of the International Covenant on Civil and Political Rights (ICCPR), as well as the right to fair proceedings before an independent and impartial tribunal, as set forth in article 10 of the UDHR and article 14 of the ICCPR.

We should like to appeal to your Government to seek clarification of the circumstances regarding the case of the person named above. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the UDHR, the ICCPR, acceded by Libya on 15 May 1970 and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Libya acceded on 16 May 1989.

In this context, we would like to draw the attention of your Government to paragraph 1 of Human Rights Council Resolution 16/23 which “Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”

We would also like to draw the attention of your Government to paragraph 8b of Human Rights Council Resolution 16/23, which reminds States that “Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished.”

Regarding allegations that Mr. [REDACTED] is held in solitary confinement since over 34 months, we would like to draw the attention of your Government to paragraph 6 of General Comment No. 20 of the Human Rights Committee. It states that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 [on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment] of the International Covenant on Civil and Political Rights (adopted at the 44th session of the Human Rights Committee, 1992). In this regard, we would also like to draw your attention to article 7 of the Basic Principles for the Treatment of Prisoners, which provides that “efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged” (adopted by the General Assembly by resolution 45/111 of 14 December 1990). In addition, I would like to draw the attention of your Government to my interim report to the General Assembly of 5 August 2011 (A/66/268) stating that where the physical

conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, it can amount to cruel, inhuman or degrading treatment or punishment and even torture. Paragraph 26 of the report states that, "of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. He is aware of the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful. He concludes that 15 days is the limit between "solitary confinement" and "prolonged solitary confinement" because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible."

We would also like to draw the attention of your Government to article 12 of the Convention Against Torture, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the Convention Against Torture, which requires State parties to prosecute suspected perpetrators of torture. In this context, we recall paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to 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."

Regarding alleged use of evidence obtained under duress before domestic courts, we would like to draw the attention of your Government to article 15 of the Convention against Torture provides that, "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

Finally, we would like to draw the attention of your Government to article 13 of the Convention against Torture, which requires that "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given," and to paragraph 3 (b) of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also known as the Istanbul Protocol,

which states that, “alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any form of intimidation that may arise pursuant to the investigation.” (General Assembly resolution 55/89 of 4 December 2000, Doc. A/55/89, Annex).