

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences**

REFERENCE:  
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2 February 2017

Dear Mr. Elhwat,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 33/30, 27/1, 26/19 and 24/3.

In this connection, we would like to bring to the attention of your Government information we have received concerning the partnership framework under discussion between your Excellency's Government, the Government of Italy and the European Union, as well as allegations of widespread human rights violations, including the detention, unlawful killings, abductions, hostage-taking, forced labour, trafficking, enforced disappearances and torture of migrants.

According to information received,

Your Government is negotiating a Memorandum of Understanding with the Government of Italy and the European Union, in order to strengthen the cooperation between the two countries to “disrupt the smuggling of migrants and trafficking of humans in the Central Mediterranean route”. Reportedly, the foundations of such an agreement are currently under discussion, and include provisions establishing Italian support to your Government authorities in migration management-related activities. The Partnership Framework would include the provision of capacity-building services to your Government authorities, as well as permit the Italian Navy in Libyan territorial waters, supporting search and rescue operations conducted by your Government. Furthermore, the anti-smuggling and anti-trafficking strategy would include the closure of the Libyan border with Niger, which is considered to be the main passageway into Libya for the majority of migrants arriving in the Sicily Channel.

In a Communication of 25 January 2017, the European Commission stated its intention of further strengthening support to Libya's coast guard and navy.

Reportedly, the ongoing conflict and insecurity in Libya has led to severe challenges faced by the justice system, which have been exacerbated by the proliferation of armed groups, criminal gangs, smugglers and traffickers.

According to information received, parties to the conflict and criminal groups have perpetrated widespread violations and abuses of international human rights law, including unlawful killings, abductions, hostage-taking, enforced disappearances and torture.

According to information received, migrants in Libya are amongst the most vulnerable people in the country and are subject to gross violations of human rights. It has been reported that migrants transiting through Libya are often the victims of arbitrary detention by the Department for Combatting Illegal Migration (DCIM) or criminal gangs, extortion, torture, unlawful killings and enforced disappearance, trafficking in persons, forced labor sexual exploitation and other forms of contemporary forms of slavery, with no protection provided by Libya's law enforcement agencies. Reportedly, migrant children and migrant women are the most exposed. Allegedly, the latter often fall victims of rape, or other sexual violence and trafficking for sexual exploitation. Moreover, according to the information received migrants leaving Libya are often subject to physical violence and intimidation. It has been reported that migrants are embarked at gun point after several weeks of forced labor and other human rights abuses while in the country.

It is alleged that consistent and widespread pattern of abuses are also perpetrated by governmental authorities, including by members of the Department for Combatting Illegal Migration (DCIM) and the Libyan Coast Guard. According to information received, the interceptions conducted by the Libyan Coast Guard are carried out in dangerous and life-threatening manner, followed by incidents of physical violence and the confiscation of personal property by members of the Coast Guard. Pursuant to Libyan Law, once intercepted at sea, migrants are subject to mandatory and indefinite detention in inhuman and degrading conditions in detention facilities run by the DCIM.

According to the information received, detention – whether run by DCIM or criminal gangs – is characterized by the lack of formal registration, legal process or access to lawyers or judicial authorities. The deaths of migrants in detention often go unreported or migrants disappear. Furthermore, the detention facilities fail to adhere to any international legal standards. Migrants are held in overcrowded conditions, lack access to water, food, toilets and washing facilities which leads to infectious diseases, respiratory problems and malnutrition. There is allegedly a widespread pattern of guards beating migrants with guns and knives and female detainees reportedly being raped. Allegedly, migrants in detention are also subject to forced labor and extortion.

Reportedly, some officials of State institutions as well as local government officials have also participated in trafficking and smuggling operations and are

involved in the extortion of migrants. Exploitation and the buying and selling of migrants have taken place frequently. Migrants subject to forced labor allegedly receive death threats and are physically assaulted by DCIM staff, employers, smugglers and traffickers.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our grave concern over the gross violence perpetrated against migrants across the country – committed by armed groups and government entities involved in migrant management-related activities. We are particularly concerned about the inhuman and degrading conditions prevailing in government-run detention facilities, in which migrants are detained, including following their interception at sea. Furthermore, allegations of unlawful killings and disappearances, forced labor, physical and sexual violence against migrants, perpetrated by law enforcement officials and armed groups, are of serious concern.

In this regard, we would like to recall to your Government that the International Covenant on Civil and Political Rights (ICCPR), 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 (article 6). The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces. Additionally, in its General Comment No. 31, the Human Rights Committee recalls the responsibility of State parties to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice or redress the harm caused by non-state actors (CCPR/C/21/Rev.1/Add.13, paras. 8 and 18). Moreover, the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, in particular principle 9, recall the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

We would further like to recall the jurisprudence of the Human Rights Committee, according to which the State party has a special responsibility of care for an individual's life when in custody, and that it has to take adequate and appropriate measures to protect his/her life. When an individual dies as a consequence of injuries sustained while in State custody, there is a presumption of State responsibility. In order to overcome the presumption of State responsibility for a death resulting from injuries sustained in custody, there must be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions.

We would like to draw attention to article 9.1 of ICCPR, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be

available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add. 13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (art. 9 (4)). We would also like to draw your attention to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. In this context we wish to draw your Excellency’s Government to the absolute prohibition of torture and other ill-treatment as enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Your Excellency’s Government.

Furthermore, we would also like recall the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by your Excellency’s Government. We would like to draw your attention particularly to its Article 11, which states that “No migrant worker or member of his or her family shall be held in slavery or servitude and No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.”

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

For your information a letter with the same allegations has been sent to the European Union and a communication has been sent to the Government of Italy.

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 all information or additional comments in relation to these allegations.
2. Please provide information on the migration programmes and policies which your Government might implement, renew or reinforce, and what effective independent oversight mechanism your Government intends implementing in order to ensure respect of international human rights obligations.

3. Please specify how trainings received by your Government's authorities under such programmes address the human rights of migrants in a comprehensive way and how they are implemented.
4. Please provide information on existing mechanisms to promote capacity-building and support search and rescue operations conducted by Libyan authorities under already existing partnership framework approaches, as well as their respective human rights implications assessments, in accordance to your Excellency's Government's obligations under international law.
5. Please explain whether your Government considers amending legislation to decriminalize irregular migration and to develop alternatives to detention. Please explain any measures taken to close detention centres not managed by DCIM.
6. Please outline the measures taken to ensure the protection and assistance of migrants in detention centres and please explain particular attention given to vulnerable groups of migrants, such as women and children.
7. Please explain whether any investigation on allegations of abuse and death in detention has been initiated and what the results of such an investigation are. Please explain whether investigations against allegedly abusive DCIM and Libyan Coast Guard staff has been initiated and what the results of such investigations are.
8. Please explain your Government strategy to improve the protection of migrants on its territory, especially concerning situations of arbitrary detention and torture and other cruel and inhumane treatment and punishment, unlawful killings and forced disappearance, forced labour, and sexual exploitation of migrants.
9. Please explain how you ensure protection of migrants who may be particularly vulnerable to human rights violations, including children, persons with disabilities, lesbian, gay, bisexual, trans - and intersex (LGBTI), the elderly, victims of torture or victims of gender violence or trafficking?
10. Please also provide information on measures and precautions envisaged to rapidly and accurately identify, assist and protect potential victims of trafficking and those at risk of trafficking?
11. Please explain how discussions on closing the border with Niger would be in accordance with international human rights obligations and standards,

particularly the principle of non-refoulement and the prohibition of collective expulsions?

While awaiting a reply, we urge that all necessary interim measures be taken 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 responsible of the alleged violations.

We intend to publicly express our concerns as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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. Elhwat, the assurances of our highest consideration.

José Antonio Guevara Bermúdez  
Vice Chair of the Working Group on Arbitrary Detention

Houria Es-Slami  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

François Crépeau  
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