

Mandates of the Special Rapporteur in the field of cultural rights and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
AL/LBY/2/2017

26 April 2017

Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 28/9 and 25/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning recent attempts by the Ministry for Endowments and Religious Affairs to take over the Historical Archives Centre in Tripoli, Libya.

According to the information received:

The Historical Archives Centre ("the Archives") in Tripoli holds around 30 million documents of official historical records, some of which are very ancient and fragile, relating to Libya's history. The Archives is a key research resource for academics, students and the general public. Despite the ongoing instability in Libya, the 200 employees of the Archives have continued to look after it, maintain and protect its documents, and keep it open for public and professional use.

The Archives is based in a building owned by Libya's Ministry for Endowments and Religious Affairs, "the Ministry of Awqaf and Zakat Affairs" ("The Awqaf"). The Archives has rented the building from the Awqaf since 1984.

On 15 November 2009, the first instance court, Court of North Tripoli, ruled that the Archives should pay rent of 2,000 Libyan Dinars per month (approximately USD 1,400) to the Awqaf. Subsequently, in December 2009, the Ministry received 4,000,000 Libyan Dinars from the Ministry of Finance as payment of future rent for the Archives. At a rate of 2,000 Libyan Dinars per month, this payment would cover the rent of the Archives for just over 166 years.

Following the Awqaf's receipt of the payment, no further action was taken until March 2016.

In March 2016, a committee was established to reassess the rent amount. The committee was made up of three representatives from the Awqaf and three representatives from the Archives. However, after six meetings, the representatives from the Awqaf stopped attending.

On 28 November 2016, the Awqaf's Director of the Tripoli Office issued an Order of Administrative Seizure. The Order demanded the seizure of the Centre's assets due to their failure to pay overdue rent worth 4,063,057 Libyan Dinars. This amount, taken together with the 4,000,000 Libyan Dinars the Awqaf had received from the Ministry of Finance in 2009, equates to a rent of 96,000 Libyan Dinars per month over the course of seven years.

The authority to issue the Administrative Order stems from the Awqaf's own regulation number 208 of 2014, which grants managers of Awqaf's offices the power to issue Orders of Administrative Seizure. The Order has resulted in the freezing of the Archive's assets. The Archive's employees have therefore not received salaries since November 2016.

On 18 December 2016, the Archives were raided by the Awqaf, which sought to evict the Archives' employees, who refused to leave. To avoid eviction and the substantial risks of damage to the documents that moving the archives to a new location would entail, the Archives, reportedly under threat, signed a letter agreeing to pay 4,000,000 Libyan Dinars that the Awqaf alleges is owed to them by the Archives.

The Archives has repeatedly sought to resolve the matter with the Awqaf directly, but the Awqaf has reportedly refused to engage with the Archives. On 4 February 2017, the Prime Minister of the internationally-recognized Government of National Accord (GNA), visited the Archives and promised to resolve the problem. However, to date, the Awqaf continues to demand payment of 4,063,057 Libyan Dinars for overdue rent.

Based on previous confiscation and destruction by the Awqaf of literary and cultural books deemed "morally lax," concerns have been expressed for the safety of the archives' documents should the specialist archivists not be able to attend to them anymore. In January 2017, the National Human Rights Commission in Libya called for the United Nations to take action against what it called "shameful and serious" acts carried out by the Awqaf, referring to the Awqaf's confiscation of books and accusations of apostasy against a Libyan author earlier in the month.

We express serious concern at the continued threat of eviction which puts at risk the security and safe preservation of historical records kept in the Archives, and thereby seriously threatens the records of and public access to information about Libya's cultural heritage. We likewise express concern at the freezing of the Archive's assets through an Administrative Order, which has led to the Archives' employees not receiving their salaries. Lack of appropriate specialist care to these documents could do irreparable harm to the cultural heritage of Libya, and to the human right of Libyans to access and enjoy it. We express concern at the Awqaf's use of an Administrative Order in violation of the Court Order of 2009, and we are also concerned that the Awqaf's disregard for the judicial decision sends a negative signal for future stabilization and transitional justice processes in Libya.

The above acts appear to be in contradiction with the right to freedom of opinion and expression as well as the right to culture, guaranteed under article 19 of the International Covenant on Civil and Political Rights (ICCPR), and article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Libya on 15 May 1970.

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.

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 therefore 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 information about how the issuing of the Administrative Order of 28 November 2016 is compatible with the judicial decision by the Court of North Tripoli on 15 November 2009.
3. Please provide information about how the assets freeze of the Archives, including the lack of payment to its employees, is compatible with the Court Decision of 15 November 2009 and the subsequent payment made by the Ministry of Finance in December 2009.
4. Please provide information about why the efforts to reach a settlement through the establishment of a committee did not succeed. In particular, please provide information about why the committee's representatives from the Awqaf stopped attending the meetings.
5. Please provide information about measures taken to secure the safety of the records of the Archives and ensure their continued accessibility.

We would appreciate receiving a response within 60 days.

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(s) responsible for the alleged violations.

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

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

Karima Bennoune
Special Rapporteur in the field of cultural rights

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Annex

Reference to international human rights law

In connection with the above concerns, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Libya on 15 May 1970, 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 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Libya on 15 May 1970, which urges States to take steps to ensure the realization of the right to cultural life for everyone, including steps necessary for the conservation and diffusion of science and culture. In this connection, we refer to General Comment 21 (2009) of the Committee on Economic, Social and Cultural Rights, which recalls that States have the obligation to respect and protect cultural heritage in all its forms, including in times of war and peace and natural disasters. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (E/C.12/GC/21, para.50). The Special Rapporteur in the field of cultural rights has underscored that States have a duty not to destroy, damage or alter cultural heritage, and to take measures to preserve and safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, and A/HRC/31/59).

In its resolution 33/20 on cultural rights and the protection of cultural heritage, the Human Rights Council noted that "the destruction of or damage to cultural heritage may have a detrimental and irreversible impact on the enjoyment of cultural rights." Cultural heritage is also a critical resource for safeguarding, questioning and transmitting historical knowledge and narratives of the past, and as such, are resources to ensure the right to education and training without any discrimination, as recognized in article 13 of the ICESCR. The Special Rapporteur in the field of cultural rights has underscored that States have a duty not to destroy, damage or alter cultural heritage, and to take measures to preserve and safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, and A/HRC/31/59).

The obligation to preserve and safeguard cultural heritage is also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy their own heritage, "whether or not it is inscribed on a list maintained by UNESCO or another international organization" (Section VI), and to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the protection of the World Cultural and Natural Heritage, ratified by your

Government on 13 November 1978, and the 1972 Recommendation concerning the Protection, at National Level, of the Cultural and Natural Heritage (Section IV). In addition, in 2011, UNESCO adopted the Universal Declaration on Archives, which states in its preamble that “Archives are a unique and irreplaceable heritage passed from one generation to another. Archives are managed from creation to preserve their value and meaning. They are authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory” and also invites all member States to work together in order that “archives are managed and preserved in ways that ensure their authenticity, reliability, integrity and usability.”

We finally would like to refer your Excellency’s Government to the statement made by the Special Rapporteur in the field of cultural rights in her recent report to the Human Rights Council, emphasizing that policies that combat discrimination in the right to take part in cultural life or promote freedom of expression, scientific freedom and education in accordance with international human rights norms are core aspects of combating fundamentalism and extremism (A/HRC/34/56).