

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
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11 August 2017

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 35/15.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning violations of and threats to the right to life of migrants and refugees in Libya, including those intercepted by the Libyan coast guard in the context of Search and Rescue Operations and returned to and detained in the country.

I am also informing you that I have sent a letter to the European Union and Italy dated 8 August 2017 (OL OTH 18/2017 and OL ITA 3/2017) related to the Italian Search and Rescue operations, and the announced enhanced assistance by the European Union to the Libyan authorities, including a 46 million Euro project designed to support Libya in its SAR capabilities.

According to the information received:

Throughout their journeys through Libya, migrants and refugees face abuse and sometimes extreme forms of violence, including threats to and violations of their right to life, from outright killings to deaths as a result of malnutrition, medical neglect, as well as other forms of ill-treatment and even torture. Hospitals and morgues across Libya routinely receive bodies of sub-Saharan African migrants, uncovered in the desert, forests, and streets. Some bear gunshot wounds; others seemingly died as a result of thirst, suffocation or exhaustion.

In one of its reports (A/HRC/34/42), OHCHR concluded that Libya has not been able to ensure effective protection for migrants stranded in the country. Various human rights organizations have issued similar warnings and detailed cases of summary executions and other forms of unlawful deprivation of life of migrants and refugees. Perpetrators reportedly include State officials, members of armed groups, traffickers, smugglers and ordinary criminals. The United Nations High Commissioner for Refugees (UNHCR) has reported that life-threatening insecurity, instability, difficult economic conditions plus widespread exploitation and abuse are currently prevailing in Libya.

For example, on 7 March 2017, at least 13 bodies of Sub-Saharan Africans were uncovered in the Telil forest near Sabrattah. The circumstances of their deaths remain unclear, amid reports that some of the deceased bore gunshot wounds.

Moreover, on 4 June 2017, seven sub-Saharan African migrants suffocated inside a truck, allegedly after being locked in and abandoned by smugglers in the area of Garabulli. Officials with the Ministry of Interior uncovered the truck with deflated tires, but apparently did not open the doors until hours later once it was towed to Tripoli.

Violations by the Libyan coast guards have also been alleged, including of the right to life during the interception of migrants and refugees, mostly using rubber dinghies or sometimes wooden boats, attempting to cross the Mediterranean. These interceptions have reportedly included shooting at vessels and otherwise attacking them as well as using dangerous interception techniques. It is reported that often migrants and refugees that are intercepted while attempting to cross the sea will try again until they succeed to escape the conflict and their extremely vulnerable situation in Libya.

For instance, on 10 May 2017, a Libyan coastguard patrol boat reportedly intervened in an ongoing rescue operation of some 500 people in a wooden vessel carried out by an NGO in international waters, some 20 nautical miles from Libyan shores. Testimonies from the rescue crew and survivors indicate that members of the Libyan coastguard pointed their weapons at the people onboard, threatened and shouted at them, and rammed into their wooden boat twice. Officials then moved hundreds of them from the wooden vessel to the Libyan patrol boat without life jackets. Others were left in the wooden vessel, also without life jackets, and towed back to shore.

Following rescues or interceptions at sea, coastguard officials routinely fail to identify and meet the particular needs of the persons rescued, including those in need of particular medical attention due to pre-existing medical conditions, or pregnancy, or illness acquired during their journey. Instead, they are handed over to the Department of Combatting Illegal Migration (DCIM), to face indefinite detention in dire and inhumane conditions and at risk of torture and other ill-treatment, including sexual violence, which may threaten their lives.

In this context, it has also been reported that the number of migrants and refugees intercepted and taken to shore is much higher than the number taken to detention centers, indicating that a part of these persons is instead routed to unofficial places of detention where they are unaccounted for and face great risks of serious abuses, including killings.

Many DCIM officials, possibly affiliated with armed groups, are reported to be themselves implicated in the smuggling or trafficking of people “business”. I understand that the prospect of EU funding has already sharpened competition between the various armed groups operating various detention centers in Libya, intent on demonstrating that they are combating irregular migration. The end-product is, allegedly, more violence against migrants and refugees.

I am gravely concerned at the situation of the right to life of migrants and refugees in Libya. These include arbitrary killings by State and non-State actors, deaths resulting from substandard detention conditions in official and unofficial detention centers, and from dangerous interceptions in the Libyan territorial waters by the Libyan coast guards.

In this context, I would like to recall that article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), acceded by Libya on 15 May 1970, provides that every individual has the right to life and that no one shall be arbitrarily deprived of one's life.

The Human Rights Committee in its General Comment 6, has said that it considers article 6(1) 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 same Committee recalled 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. 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.

According to the jurisprudence of the Human Rights Committee, the State party to the ICCPR has a special responsibility of care for an individual's life when in custody, and must 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 that presumption, there must be a thorough, prompt and impartial investigation into the causes, circumstances and responsibilities for the death.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I 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 elaborate on the current policy, its implementation and the practical measures taken to protect the right to life of migrants and refugees in Libya, including in places of detention, legal or otherwise.
3. Please provide detailed information on any investigation carried out into reported killings and unlawful deaths of migrants and refugees by State actors, including due to substandard conditions in places of detention. If no investigation has been carried out, please explain why.

4. Please provide detailed information on any investigation carried out by Libyan authorities into reported killings and unlawful deaths of migrants and refugees by non-State actors, inside or outside unofficial places of detention managed by these actors. If no investigation has taken place, please explain why.
5. Please also provide information on other measures put in place by the Government to ensure the protection of migrants and refugees in Libya from abuses by non-State actors, including in unofficial places of detention.
6. Please provide detailed information on any investigation carried out into reported killings, unlawful deaths or threats to the lives of migrants and refugees, including as a result of excessive use of force, by the Libyan coast guard.
7. Please elaborate on mechanisms in place or foreseen to be put in place to prevent violations of the right to life during and after interception of migrants and refugees in the Libyan territorial waters, by State and non-State actors, in particular the Libyan coast guard.

While awaiting a reply, I 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.

I intend to publicly express my concerns in the near future as, in my view, the information upon which this concern is based appears to be sufficiently reliable to indicate a matter warranting the most serious attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned issues. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s 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 the assurances of my highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions