

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL LBN 2/2017

3 October 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 27/1, 35/15, 26/7 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the alleged torture to death in custody of four Syrian refugee men, and the arbitrary detention and disappearance of several others. The information received also concerns the pressure exercised on the legal representation of the families of the victims and the lack of independence of the military court presiding over the case.**

According to the information received:

On 30 June 2017, the Lebanese Armed Forces (LAF) raided two informal refugee settlements, known as Al-Nour and Al-Qariya, in the Aarsal area, Bekaa region, in the context of security operations. They were met with armed resistance resulting in injuries to seven soldiers.

On 4 July 2017, the LAF issued a statement that four Syrian men, Anas Hussein al-Hasiki, Mustafa Abdulkarim Abse, Khaled Hussein el-Mleis and Othman Merhi el-Mleishad, who had been taken into custody following these armed clashes had died in detention citing natural causes. The LAF did not state any reason for their arrests, did not provide information on where the men had been detained, and did not inform the families of their deaths.

On 15 July 2017, the LAF issued another statement indicating that 356 people had been detained following these operations. It is reported that several children were among those taken into military custody. Nine bodies were returned to the Aarsal municipality (not including the remains of the four men mentioned above) after they also died in custody. The whereabouts of several other detainees remain unknown to date.

According to official statements, the deaths of the four men in custody were the result of chronic health issues that were aggravated by climate conditions. The official forensic medical reports of three of the four men more specifically

concluded that they had suffered heart attacks and a stroke, and noted that the bodies did not show marks of physical violence.

However, independent forensic examinations carried out through photographs taken of the bodies of three of the victims after they first appeared at the Elias Hrawi government hospital in Zahle, concluded that the forensic report indicating that these persons had died of natural causes was inconsistent with what the photographs showed. The latter indeed showed clear marks on the bodies that would lead to the reasonable conclusion that they had been tortured, and had died as a result.

The marks on the bodies comprised large physical trauma of the lower and upper extremities, injuries indicating that they had been inflicted while the victims were restrained or otherwise unable to protect themselves, and lacerations caused by suspension from the wrists. Family members of the deceased further reported that the individuals did not have any pre-existing medical conditions. The remains of the fourth man, Mr. Othman Merhi el-Mleishad, were not returned to his family.

A lawyer representing the families of the four victims received judicial permission for a forensic doctor to examine the bodies, to conduct an autopsy, and to take medical samples to investigate and ascertain the cause of death. X-rays, CT scans, and medical autopsy examination were carried out. However, under pressure from Military Intelligence personnel and the general prosecutor in Beirut, that evidence was confiscated. To date, the evidence remains with these authorities.

The LAF concluded its investigation into the deaths of the four men. The cases are currently pending before the military court. The results of the investigation have, however, not been made public nor shared with the legal representative of the families of the victims. The proceedings before the military court reportedly take place behind closed doors and the judges are mostly military officers.

Without prejudging the accuracy of the information made available to us, we express grave concern over these allegations. 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 entrusted to us by the United Nations Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following :

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations. In particular, we would be grateful to understand the context in which the military operations of 30 June were launched against what appear to be refugee camps.

2. Please provide information on the legality of the LAF raids, targeting the Al-Nour and Al-Qariya refugee settlements, in the Arsal area that took place on 30 June 2017.
3. Please provide detailed information, including lists of names, about all individuals killed and injured during these operations. This information should include clarification of the fate and whereabouts of all persons arrested and detained, including women and children, the legal basis for their deprivation of liberty, the charges brought against them and their current legal status. If the fate and whereabouts of those arrested are unknown, please provide the details on any investigation or other queries that may have been carried out to clarify and ascertain what has happened to them. If no enquiries have taken place, or if they have been inconclusive, please explain why.
4. Please provide detailed information about the treatment in custody of all the persons arrested and detained during and since the security operations of 30 June, and the precautions taken to protect them against any violation of their physical and psychological integrity while detained. In particular, we would be grateful for detailed information regarding the status of the investigations and the judicial proceedings underway in connection with the death in custody of Messrs. Anas Hussein al-Hasiki, Mustafa Abdulkarim Abse, Khaled Hussein el-Mleis and Othman Merhi el-Mleishad. This information should include a clarification of what happened to the body of Mr. Othman Merhi el-Mleishad, which was reportedly not returned to his family.
5. Please provide information on any investigation, judicial or otherwise, conducted in connection with the allegations of extrajudicial killings and torture perpetrated in connection with these operations by elements of the LAF. Has any military personnel been investigated, prosecuted or sanctioned?
6. Please provide information on the military court in charge of judicial proceedings against the persons, civilians or otherwise, arrested and detained in connection with these operations, including its structure and functioning, as well as how the independence of its judges is being guaranteed.
7. Please provide information on whether the family members of the detained persons were notified of their arrest, where they were detained and if they were able to meet with them. Please also provide information on whether the family members of the deceased were informed of their deaths and whether or not they were able to collect their bodies for burial.
8. Please provide detailed information about the measures taken by your Excellency's Government to effectively protect, and ensure the safety of refugees and communities at risk in the Arsal area, as well as to prevent future occurrence of similar incidents in the context of security operations.

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.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the allegation letter and the regular procedure.

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.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

Article 6(1) of the International Convention on Civil and Political Rights (ICCPR), ratified by Lebanon on 3 November 1972, provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. In General Comment No. 6, the Human Rights Committee reiterates that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation. Moreover, in General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

We would like to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in territories under their jurisdiction regardless of the citizenship of the persons concerned (E/CN.4/2003/3, para. 55). Moreover, the duty to protect the right to life demands that Lebanon take special measures to protect vulnerable persons and groups, including refugees and asylum seekers. This was also highlighted by the Human Rights Committee in its concluding observations on Kenya (CCPR/C/KEN/CO/3, para. 12).

Furthermore, Article 7 of the ICCPR guarantees the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Attention of the Government is also drawn to article 2(2) and 16 of the Convention Against Torture (CAT), to which Lebanon acceded on 5 October 2000, which contain an absolute and non-derogable prohibition of torture and provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

We would additionally like to recall that every individual has the right to liberty and security of person and that no one shall be subjected to arbitrary arrest or detention, in accordance with article 9 of the ICCPR.

Under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8). According to the Basic Principles and the UN Code of Conduct for Law

Enforcement Officials, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated.

We would also like to remind your Excellency's Government of the duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. This duty to investigate is also well reflected in regional norms¹.

The duty to investigate is heightened with regard to loss of life in custody because such incidents create a presumption of arbitrary deprivation of life by State authorities. On this point, the Human Rights Committee has ruled in *Eshonov v. Uzbekistan*, Communication No. 1225/2003, that "a death in any type of custody should be regarded as prima facie a summary or arbitrary execution, and there should be thorough, prompt and impartial investigation to confirm or rebut the presumption, especially when complaints by relatives or other reliable reports suggest unnatural death."

The *Minnesota Protocol on the Investigation of Potentially Unlawful Death* (2016), which reiterates that the duty to investigate is an essential part of upholding the right to life, highlights that the right to know the truth extends to family members and society, particularly given the public interest in preventing international law violations. Therefore, absent a compelling need to protect the public interest or the legal rights of the victims and their families, the State party must disclose relevant details about the investigation to the victim's next of kind and make its findings public.

In relation to the allegations that the fate and whereabouts of an unknown number of detainees remain unknown, we would like to draw your Excellency's Government attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we would like to recall the prohibition to practice, permit or tolerate enforced disappearance (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention, and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

¹ See for instance, ECtHR, *McCann and Others v. United Kingdom* and IACtHR, *Montero-Aranguren and others (Detention Center of Catia) v. Venezuela*.