

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

REFERENCE:
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17 May 2018

Excellency,

We have the honour to address you in our capacities as 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 33/30 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 abduction, followed by the what appears to be the arbitrary detention, of Mr. **Hannibal Kaddhafi**, son of the former head of state of Libya.

According to the information received:

On 11 December 2015, a Lebanese armed group, following orders of a former Lebanese parliamentarian, abducted Mr. Kaddhafi on Syrian territory. The group brought him to the Bekaa Valley in Lebanon. During a few days, he was detained by the abductors and was severely beaten, tortured and harassed in order to confess information on the disappearance of the Imam Moussa Sadr and of another person which occurred in 1978 in Libya. At the time, Mr. Kaddhafi, who was born in 1976, was two years old.

The same day, the TV channel Al-Jadeedd broadcasted a video of Mr. Kaddhafi whose face bore marks of beatings and bruises. During this video, the abductors forced him to call for people who would have information or evidence regarding the disappearance of this Imam.

The abductors then delivered Mr. Kaddhafi to the Lebanese police, which kept him in detention and deferred him to an *ad hoc* investigative judge. No arrest warrant was presented to him. The Prosecutor of the Court of Cassation did not exercise public action. In other words, the Investigative Judge has not been formally seized by the Prosecutor to arrest and question Mr. Kaddhafi.

However, on 13 December 2015, the Investigative Judge questioned Mr. Kaddhafi firstly as a witness, then after his testimony, as a suspect. At this point, the Investigative Judge delivered an arrest warrant against him based on the offense of dissimulation of information regarding the disappearance of the Imam in Libya in 1978 (as provided by article 405 of the Lebanese Criminal Code). This questioning took three hours, and was conducted in the presence of his lawyer and lawyers of the "victim's family".

This *ad hoc* Judge had, between 1981 and 2008, investigated the case of the disappearance in Libya in 1978 of the Lebanese Imam Moussa Sadr. According to an indictment in 2008, the father of Hannibal Kaddhafi, Mouammar Kaddhafi, orchestrated the abduction of this Imam. Hannibal Kaddhafi, on the other hand, has never, during this timeframe, been summoned for questioning or suspected to be involved in this case.

This indictment of 21 August 2008 has resulted in seizing the Court of Justice. The indictment therefore put an end to the investigation of the Judge and his *seisin* (jurisdiction). Therefore, he does not have any power to arrest and detain Mr. Kaddhafi.

In 16 February 2016, Mr. Kaddhafi filed a request to disqualify the Investigative Judge before the Court of Cassation on the basis of legitimate suspicion of misuse of power by detaining him. On 19 May 2016, the Criminal Chamber of the Court of Cassation reached the decision to recuse the Investigative Judge due to the fact that he acted without being seized and outside of his jurisdiction. This decision was appealed before the plenary assembly of the Court of Cassation which then decided to suspend the execution of the decision until its final judgement. On 21 March 2018, the Court of Cassation sentenced Hannibal Kaddhafi to 15 months and to a fine of 1320 USD for “contempt of court”. Given that he was first detained on 13 December 2015, Mr. Kaddhafi should have been released, having thus far spent more than two and a half years in prison. He has been detained in Beirut by the Ministry of Interior security forces.

Without prejudging the accuracy of the information made available to us, we express grave concern that the detention of Mr. Kaddhafi since 2015 appears to violate his right not to be arbitrarily deprived of his liberty, as enshrined in articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), his right not to be tortured as guaranteed by Article 7 of the ICCPR, as well as the obligations of Lebanon under the Convention against Torture. Both instruments were ratified by Lebanon on 3 November 1972 and 5 October 200 respectively. 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.
2. Please provide information on the abduction of Mr. Kaddhafi in 2015, the different places where he has been detained, the authorities responsible for his detention in each location, and the treatment he was subjected to since his abduction.

3. Please provide information about any investigation ordered into the allegations that Mr. Kaddhafi was tortured at the hands of those abducting and detaining him, in contravention of Lebanon's international legal obligations. If no investigation was undertaken, please explain how this is compatible with Lebanon's obligations under the Convention against torture.
3. Please provide information on the factual and legal grounds for the arrest, detention and trial of Mr. Kaddhafi and how these measures are compatible with international human rights norms for fair trial to which Lebanon is bound. Specifically, please clarify on what legal ground did the Investigative Judge order the detention of Mr. Kaddhafi and the execution of the Decision of the Court of Cassation of 19 May 2016.
4. Please provide information concerning the measures taken to ensure the physical and psychological integrity of Mr. Kaddhafi.
5. Please provide information on the reasons why, in spite of the fact that Mr. Kaddhafi was sentenced to 15 months in prison, but has thus far been detained since December 2015, he is still in prison.

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

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.

In particular, we would like to refer your Excellency's Government to the right to life, liberty and security of person, the rights of the defense and to a fair trial set forth in articles 3, 9, 10 and 11 of the Universal declaration of Human Rights and articles 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Lebanon on 3 November 1972.

In particular, articles 9 and 14 of the ICCPR establish the rights to liberty and security as well as the right to fair proceedings before a competent, independent and impartial tribunal. In this regard, General Comment No. 32 of the Human Rights Committee notes that the element of independence requires the judiciary to be free from political interference by the executive branch, as well as the legislature. The Committee notes in particular that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal (General Comment No. 32, para. 19, CCPR/C/GC/32).

Moreover, we wish to highlight that "[t]he right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused are denied bail by the court, they must be tried as expeditiously as possible. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgement on appeal. All stages, whether in first instance or on appeal must take place 'without undue delay'"(General Comment No. 32, para. 35, CCPR/C/GC/32).

We also wish to reiterate the Principles defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, especially Principle 2, according to which the "[a]rrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent

officials or persons authorized for that purpose, Principle 9, stating that “[t]he authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority” and Principle 11.1 highlights the right to be heard *promptly* by a judicial authority. We also wish to highlight Principle 16 on the consular protection.

Furthermore, article 7 of the ICCPR guarantees the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The attention of your 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. Moreover, article 15 of the CAT 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.