

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 34/18, 33/9 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 arbitrary detention and torture of Mr. **Silman Sweissi Said Gashout** and Mr. **Mohamed Ali Yahubi**.

Mr. Silman Sweissi Said Gashout is a journalist, and former program presenter in Libya Awalan TV Channel. He is the Head of the Septimius Award. Since 2012, the Septimius Award has been annually awarded to professionals in radio and television, singers and actors in Libya.

Mr. Mohamed Ali Yaghubi is an engineer, and the Executive Director of the Septimius Award.

According to the information received:

On 28 March 2018, the Septimius Award was organized in Tripoli. The day following the award, photographs of the two organizers of the event, Mr. Gashout and Mr. Yaghubi, and another programme presenter, were circulating on social media. On one Facebook page, belonging to "You Love Your Beloved Libya", the two men were accused of immorality. Mr. Gashout's photo was posted and under it was written that "he should be put with Deash and Jihad", describing Mr. Gashout as a "pimp". Mr. Gashout reportedly received several threatening messages, leading him to flee his home in Tripoli for ten days.

On 29 April 2018, Mr. Gashout and Mr. Yaghubi were arrested and deprived of liberty from different locations within Tripoli by members of the Special Deterrence Force (SDF). The SDF is an armed group, aligned to the Presidency

Council (PC) and under the Ministry of Interior of the Government of National Accord. The SDF receives salaries from the GNA through the Ministry of Defense and the Ministry of Interior. A report published by UNSMIL in March 2018, documented a pattern of prolonged arbitrary detention, torture, enforced disappearances and extrajudicial killings by the SDF.

Mr. Yaghubi was seized by armed men from the street who stopped his private vehicle. Reportedly, his vehicle and other personal property were taken. After this, Mr. Yaghubi called Mr. Gashout while he was sitting in a café and asked him his whereabouts. After this, eight masked and armed men, wearing military style camouflage uniforms raided the café and arrested Mr. Gashout and detained him.

The two men were reportedly detained without a warrant and were brought to the Mitiga detention facility in Tripoli, run by the SDF. They remain in arbitrary detention there, without access to judicial authorities.

On 30 April 2018, the families received a phone call from the spokesperson of the SDF and were summoned to go to the SDF headquarter in Mitiga detention facility in Tripoli. The families went to the detention facility where the spokesperson confirmed the arrests. He allowed Mr. Yaghubi's relative to see him for a short period. Since the visit, the relatives of the two families have repeatedly called the spokesperson of the SDF requesting visits, but were not granted further access. The SDF spokesperson published a statement in the media on 30 April, indicating that Mr. Gashout and Mr. Yaghubi were arrested by the SDF and denied that their detention was related to the Septimius Award.

On 10 May 2018, relatives of Mr. Gashout submitted a written appeal to the General Prosecutor's Office in Tripoli, requesting information on the reason for the arrest and continued incommunicado detention of Mr. Gashout and demanding that Mr. Gashout either stand trial or be released.

On 24 May 2018, Mr. Gashout's family was granted access to see him at the Mitiga detention facility. He indicated that he had been subjected to physical and verbal abuse, torture including electric shocks and beatings. Mr. Gashout had marks of torture and was not able to stand or walk. He had also reportedly been threatened and tortured during interrogation by members of the SDF, who were trying to force him to confess that he is homosexual and that he had had sexual relations with two men who are the sons of political figures in Libya. According to Mr. Gashout, he refused to confess whereas he indicated that Mr. Yaghubi had been forced, through the methods of torture, to confess.

Mr. Gashout and Mr. Yaghubi have reportedly been held in detention with 70 other detainees in a three by four metre room in Mitiga. Mr. Gashout has been

suffering from stomach complications for several years and has reportedly been denied access to his medication in prison.

On 24 May 2018, a relative of Mr. Yaghubi submitted a written appeal to the General Prosecutor's Office in Tripoli, requested information on the reason for his arrest and continued incommunicado detention and demanding that Mr. Yaghubi either be brought before a judicial authority or released.

We express grave concern at the arbitrary arrest, incommunicado detention, torture and ill-treatment of Mr. Gashout and Mr. Yaghubi, which appear to be directly linked to the exercise of their right to freedom of expression through their organization of the Septimius Award. We express additional concern that the two men have not been brought before judicial authorities and that the legitimacy of SDF as an armed group holding arrest and detention powers. Moreover, we are concerned about the denial of continued medical treatment while in detention.

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, acceded by Libya 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 either orally, in writing or in print, in the form of art, or through any other media of his choice.

In addition, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee the right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR. Moreover, we would like to remind that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge (see Human Rights Committee, General comment No. 35, which indicates that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9 (3)).

We would further like to refer to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance and in particular article 2 which states that no State shall practice, permit or tolerate enforced disappearances, and article 7 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. We further highlight that according to article 10 (2) of the Declaration, accurate information on the detention of persons deprived of liberty and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information.

Moreover, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Libya acceded on 16 May 1989, and Article 7 of the International Covenant on Civil and Political Rights, which provides that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." In particular, we would like to draw the attention of your Excellency's Government to Rule 43 (d) of the reviewed Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") which strictly prohibits the use of corporal punishment.

We would like to finally refer to article 12 of the International Covenant on Economic, Social and Cultural Rights acceded to by Lybia in May 1970. This article establishes the right to physical and mental health and States' corresponding obligations. Furthermore, the Mandela Rules stress that States' have direct responsibility over the provision of healthcare for prisoners in a way that, inter alia, it ensures continuity of treatment and care (Rule 24).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

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 any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the factual and legal basis for the arrest and detention of the above individuals, and how these measures are compatible with Libya's obligations under international human rights law. Please specify if any charges have been brought against the two individuals.
3. Please provide details on the measures taken to ensure the physical and mental integrity of the above individuals while in detention, including any measures to ensure their access to adequate healthcare.
4. Please provide information about the allegations of torture and ill-treatment. In particular, please provide information about whether any investigation has been initiated. If no such investigation has taken place, please explain why.

5. Please indicate the measures taken to ensure that Mr. Gashout and Mr. Yaghoubi have access to appropriate healthcare while in detention, and to particularly ensure that Mr. Gashout has adequate access to, and continuation of, his specific medical treatment.

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.

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

We would like to inform your Excellency's Government that after having transmitted an urgent appeal 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 appeals in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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

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

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

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

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