

Mandates of the Working Group on Arbitrary Detention; and the Working Group on Enforced or Involuntary Disappearances

REFERENCE:
UA LBY 3/2018

28 August 2018

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; and Working Group on Enforced or Involuntary Disappearances, pursuant to Human Rights Council resolutions 33/30 and 36/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of arbitrary arrest and enforced disappearance of Mr. [REDACTED] in direct retaliation for his legitimate exercise of the right to seeking the truth about the fate and whereabouts of his father and reprisals for his cooperation with United Nations human rights mechanisms.

Mr. [REDACTED], is the son of [REDACTED] ([REDACTED]) on whose behalf an urgent procedure by the Working Group on Enforced or Involuntary Disappearances was sent on [REDACTED].

According to the information received:

On 6 August 2018 at around 10 pm., Mr. [REDACTED] ([REDACTED]), a Libyan national, born on [REDACTED] in Libya, an entrepreneur, was arrested at his home in the [REDACTED] district of Tripoli by members of the "Department of General Investigation" (مباحث العامة), which is constituted of a former militia also known as the "Bab Tajour Brigade".

The day of the incident, members of the Department of General Investigation arrived at Mr. [REDACTED] home. They instructed him to follow them to provide clean clothes to his father, [REDACTED], who was arrested on [REDACTED]. Before leaving the house, the militiamen ransacked the house and confiscated all the family members' identification documents. Mr. [REDACTED] followed them along with two family members. When they arrived in front of the Department's headquarters, persons associated with Mr. [REDACTED] were instructed to wait outside while [REDACTED] followed them into the building. As he did not reappear after a few hours, a person associated with him tried to enter the premises in order to enquire about him, but was then threatened by guards at gunpoint. Since then, the Department has failed to inform [REDACTED] relatives of his fate or whereabouts.

It is believed that [REDACTED] was arrested in retaliation to the steps taken to clarify the fate and whereabouts of his father, including with UN mechanisms.

It is further alleged that a person associated with Mr. [REDACTED], currently residing in Germany, received threats through messages from a member of the Department of General Investigation intimating to stop contacting UN mechanisms, failing which this and his family's lives would be at risk.

Since Mr. [REDACTED] father's arrest, persons associated with him filed several complaints to different national and international institutions. On [REDACTED], they went to the Police station of Tripoli to file a complaint with the authorities for abduction. The complaint did not lead to any result as the force (Department of General Investigation) is not under the supervision of the Ministry of Justice. They also inquired with the Department of General Investigation via the members of the High Council of Reconciliation and were reportedly told that they would not release him nor provide them with information on his fate, whereabouts and reason of his arrests unless they hand them their family house.

At the time of the present communication, the fate and whereabouts of Mr. [REDACTED] remain unknown.

We are gravely concerned at the allegations of arbitrary arrest and enforced disappearance of Mr. [REDACTED] in direct retaliation for his legitimate exercise of the right to seek the truth about the fate and whereabouts of his father and reprisals for his cooperation with United Nations bodies. Concerns are also expressed at the allegations that other persons associated with Mr. [REDACTED] have similarly been subjected to acts of intimidation in relation to their cooperation with the United Nations human rights mechanisms.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer to articles 2, 9, 10, 12, 13 (3) and Article 13 (5) of the Declaration on the Protection of all Persons from Enforced Disappearance; to resolution 7/12 of the Human Rights Council; to articles 9, 10 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Libya in 1976.

We also wish to refer to Human Rights Council resolutions 12/2 and 24/24 which, inter alia, condemn all acts of intimidation or reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights and calls upon all States to ensure adequate protection from intimidation or reprisals for cooperation with the United Nations, its representatives and mechanisms in the field of human rights.

We would also like to refer to Human Rights Council resolution 22/6, which provides for the right to "unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal

periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”.

Moreover, the 2015 report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/30/29) reiterates the Secretary-General’s firm position that any act of intimidation or reprisal against individuals or groups for their engagement with the United Nations, its mechanisms and representatives in the field of human rights is completely unacceptable and must be halted, immediately and unconditionally (para. 47).

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

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 concerning the legal grounds for the arrest of Mr. [REDACTED] and how these are compatible with Libya’s international human rights obligations.
3. Please provide information about whether any investigation and judicial or other inquiry has been undertaken in relation to these allegations. If no inquiries have taken place, or if they have been inconclusive, please explain why.
4. Please explain what measures have been taken to ensure the physical and mental integrity of the above-named individuals and relatives.
5. Please explain what measures have been taken to ensure that individuals or groups in Libya are able to carry out their legitimate exercise of the right to seek the truth about their relatives without fear of threats, acts of intimidation or reprisals of any kind, including for cooperating with the United Nations, its representatives and mechanisms in the field of human rights.

We would like to inform your Excellency’s Government that after having transmitted an urgent appeal to the Government, the Working Group on Enforced or Involuntary Disappearance may transmit the case through its regular procedure to register

the case. The Government is required to respond separately for the urgent appeal procedure and the regular procedure. The Working Group on Arbitrary Detention may also 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.

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.

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