

Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

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(Please use this reference in your reply)

12 January 2022

Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolutions 45/3, 44/5 and 43/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged lack of investigations into the killing and subsequent concealment and disappearance of the mortal remains of South African-Austrian photojournalist Anton Lazarus Hammerl on 5 April 2011, in the desert on the outskirts of Brega, eastern Libya, reportedly by troops loyal to Colonel Muammar al-Gaddafi.**

According to the information received:

Mr. Anton Lazarus Hammerl was a 41-year-old photojournalist, known internationally for his work covering conflict zones. He was a national of South Africa and Austria and resident in the United Kingdom. He went to Libya as a freelance photographer to cover the violent uprising against Colonel al-Gaddafi.

On Monday 4 April 2011, Mr. Hammerl called his family to inform them that he would drive the next day with a group of journalists to a rural location a few kilometres from Benghazi, in order to report on the frontline of the conflict.

On 5 April 2011, he was travelling between Tripoli and Brega with three other journalists and members of an armed group. Once the journalists got out of the car, they came under fire by two oncoming armoured military trucks, reportedly carrying armed forces supporting President al-Gaddafi, who were firing bullets over their heads using AK-47s. The four journalists threw themselves to the ground in order to protect themselves. The members of the armed group, who had remained in the vehicle, managed to escape, leaving the journalists behind. However, the armed forces continued to fire at the journalists as they approached them, which seems to indicate that they were deliberately targeted.

Mr. Hammerl was reportedly fatally wounded after being shot in the abdomen. The surviving journalists surrendered, were tied up and taken away. It is unclear whether Mr. Hammerl was still alive, but he was reportedly bleeding heavily at the time he was left behind. Mr. Hammerl was easily identifiable as a photographer, carrying cameras in his hand and strapped around his neck.

Following the attack, two of the surviving journalists were held for 20 days in solitary confinement in a “government stronghold” of Sirte, on suspicion of illegally entering the country. The third journalist who survived the attack was separated from them and held in a women’s civilian prison in Tripoli.

After the attack, for approximately 45 days, the Libyan authorities told Mr. Hammer’s family that he was alive and detained. This meant that crucial time to immediately investigate the circumstances of his death and to locate his remains was lost. During this period, several requests were made to the Libyan authorities for the safe release of Mr. Hammerl and the other journalists.

On 17 May 2011, the three journalists who survived the attack appeared in court for entering the country illegally and were given a one-year suspended sentence and released. However, Mr. Hammerl was not among them. Following their release on 18 May 2011, two of the journalists revealed that Mr. Hammerl had been shot during the attack of 5 April 2011 and left behind, without attention or care. They did not know what happened to him afterwards.

On 19 May 2011, the Libyan authorities denied that Mr. Hammerl was detained and stated that “if anyone was mistreated then we extend our apologies.”

On 20 May 2011, Mr. Hammerl’s family received confidential information that Libyan officials were in possession of his passport, which led the family to believe that the authorities may also be in possession of his remains.

On 3 May 2012, Mr. Hammerl’s relatives were informed that his passport had been sent to South African government officials in Tripoli a week before. On the same day, a news report indicated that the Libyan authorities had collected 100 DNA samples from a grave exhumed in March 2012 and that one of the bodies exhumed might have been that of Mr. Hammerl.

In 2016, Mr. Hammerl’s original passport was returned to the family through the South African consulate.

In November 2017, a member of the UK Parliament contacted the Libyan Embassy in London to request help to locate Mr. Hammerl’s remains, as Mr. Hammerl had been residing in the UK prior to his death.

On 14 February 2018, the Libyan Embassy in London confirmed that an official request had been sent to the Libyan authorities. The Libyan Embassy’s response stated that: “...tracing the remains of [Mr. Hammerl] is at high importance... I approached the Authorities in Libya and sent them official request to do their utmost to help. I did included [sic] all details ...”

A death certificate issued by the South African authorities lists Mr. Hammerl’s cause of death as “murdered shot dead” on 5 April 2011 in Libya.

There have been no further communications from the Libyan, South African and Austrian authorities.

Ten years since Mr. Hammerl's killing, no effective search has been conducted to determine the circumstances of his death. Likewise, there has been no criminal investigation into his killing and therefore no individuals have subsequently been held accountable. Furthermore, the whereabouts of Mr. Hammerl's remains are still unknown.

While we do not wish to prejudge the accuracy of these allegations, we are seriously concerned that there seems to have been no serious effort to investigate the circumstances of Mr. Hammerl's killing and that there may have been subsequent concealment and disappearance of his mortal remains since 2011.

We highlight the importance of conducting an effective, thorough, independent, impartial and transparent investigation into the killing of Mr. Hammerl in accordance with the United Nations *Minnesota Protocol on the Investigation of Potentially Unlawful Death*¹ and in line with Libya's human rights obligations. In this respect, there is also an obligation to clarify the circumstances of Mr. Hammerl's death and locate, respect and return his remains to his family in accordance with the UN Committee on Enforced Disappearances Guiding principles for the search for disappeared persons (CED/C/7- Principles 1 and 7.3).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international humanitarian and 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 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/or comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information on the cause, location and circumstances of the death of Mr. Hammerl;
3. Please provide information on the efforts made to rescue Mr. Hammerl after he was shot, and provide him medical care;
4. Please provide precise information on any investigation, judicial or otherwise, carried out into his killing in order to identify perpetrators and to bring them to justice;
5. Please provide precise information on the efforts made to identify Mr. Hammerl's body, to preserve his remains and to return them to his family.
6. Please provide information on any effort to inform the family in due time about what happened to Mr. Hammerl, as well as to provide

¹ Available at: <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

reparation to his family.

7. Please provide information on the capacity of the Libyan judiciary and law enforcement services to conduct prompt, impartial and effective investigations, into potentially unlawful deaths and disappearance of the mortal remains of Mr. Hammerl in line with international standards. Please include information on the implementation of the United Nations Minnesota Protocol on the Investigation of Potentially Unlawful Death and the UN Committee on Enforced Disappearances Guiding principles for the search for disappeared persons, on forensic capacities and on any scope for cooperation including technical assistance from special procedures in this regard.
8. Please indicate what measures have been taken to ensure that journalists in Libya can operate in an enabling environment and can carry out their legitimate activities without fear of threats, intimidation, harassment or acts of violence of any sort.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would like to inform your Excellency's Government that a copy of this communication will be sent to the Governments of South Africa, Austria and the United Kingdom of Great Britain and Northern Ireland.

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

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to articles 6 (1) and 19 of the International Covenant on Civil and Political Rights (ICCPR), which Libya acceded to on 15 May 1970, which respectively provide that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life", and that everyone shall have the right to freedom of opinion and expression. In this regard, we would like to highlight that the enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), para. 10).

We would like to refer to Human Rights Committee General Comment No. 36. The General Comment states that an important element of the protection afforded to the right to life by the Covenant is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents. In particular, paragraph 58 of the General Comment, recalls that States parties must take adequate measures to prevent the enforced disappearance of individuals, and conduct an effective and speedy inquiry to establish the fate and whereabouts of persons who may have been subject to enforced disappearance. States parties should also ensure that the enforced disappearance of persons is punished with appropriate criminal sanctions, and introduce prompt and effective procedures for cases of disappearance to be investigated thoroughly by independent and impartial bodies that operate, as a rule, within the ordinary criminal justice system. They should bring to justice the perpetrators of such acts and omissions and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation and are provided with full reparation. Under no circumstances should families of victims of enforced disappearance be obliged to declare them dead in order to be eligible for reparation. States parties should also provide families of victims of disappeared persons with the means to regularize their legal status in relation to the disappeared persons after an appropriate period of time.

According to paragraph 27 and 28 of General Comment 36, investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations must always be independent, impartial, prompt, thorough, effective, credible and transparent. In the event that a violation is found, full reparation must be provided, including, in view of the particular circumstances of the case, adequate measures of compensation, rehabilitation and satisfaction

We wish to recall that both international humanitarian law and international human rights law continue to apply in a situation of armed conflict. In its General

Comments 31 (CCPR/C/21/Rev.1/Add.13, para 11) the Human Rights Committee has affirmed the applicability of the ICCPR and international human rights law more generally to situations of armed conflict.

In particular, in General Comment No. 36, the Human Rights Committee noted “Like the rest of the Covenant, article 6 continues to apply also in situations of armed conflict to which the rules of international humanitarian law are applicable, including to the conduct of hostilities. While rules of international humanitarian law may be relevant for the interpretation and application of article 6 when the situation calls for their application, both spheres of law are complementary, not mutually exclusive. Use of lethal force consistent with international humanitarian law and other applicable international law norms is, in general, not arbitrary. By contrast, practices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields would also violate article 6 of the Covenant. States parties should, in general, disclose the criteria for attacking with lethal force individuals or objects whose targeting is expected to result in deprivation of life, including the legal basis for specific attacks, the process of identification of military targets and combatants or persons taking a direct part in hostilities, the circumstances in which relevant means and methods of warfare have been used, and whether less harmful alternatives were considered. They must also investigate alleged or suspected violations of article 6 in situations of armed conflict in accordance with the relevant international standards (para. 64)”.

Article 19 of the ICCPR provides the right to freedom of opinion and expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. In this regard, we would also like to highlight that the Human Rights Committee in General Comment No. 34 has stated that under no circumstance can an attack on a person, because of the exercise of his freedom of opinion or expression be compatible with article 19. The Committee furthermore states that as journalists are frequently subjected to threats, intimidation and attacks because of their activities, all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted (CCPR/C/GC/34). As underlined by the Special Rapporteur on freedom of expression, an attack against a journalist is not only a violation of his or her right to impart information, but also undermines the right of individuals and society at large to seek and receive information, both of which are guaranteed under articles 19 of the ICCPR. An attack against a journalist is therefore an attack against the principles of transparency and accountability, as well as the right to hold opinions and to participate in public debates, which are essential for democracy (A/HRC/20/17).

In this connection, we refer to resolution 12/16 of the Human Rights Council, which calls upon States to investigate effectively threats and acts of violence, including terrorist acts, against journalists, and to bring to justice those responsible to combat impunity.

The rules of customary international law also establish that: Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities (Rule

34). Enforced disappearance and murder are prohibited (Rules 98 and 89). Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction (Rule 112). Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited (Rule 113). Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them (Rule 114). The dead must be disposed of in a respectful manner and their graves respected and properly maintained (Rule 115). With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves (Rule 116.). Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate (Rule 117).

Further, pursuant to the jurisprudence of the Human Rights Committee, not being able to learn the whereabouts of the remains of a loved one and to obtain the corpse, where possible, to perform the last rituals, may amount to a form of ill-treatment against the relatives of the victim and an undue interference in their right to privacy and family life (arts. 7 and 17 of the ICCPR, read alone and in conjunction with art. 2.3).

Article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance stipulates that each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation. We also recall article 17 of the Declaration stipulating that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared and these facts remain unclarified. In accordance with their humanitarian obligations, States should ensure that search efforts are promptly initiated to determine the fate and whereabouts of disappeared persons. The good practices in searching effectively for disappeared persons, arising from States' obligation to search can also be found into the UN Committee on Enforced Disappearances Guiding Principles for the Search for Disappeared Persons.

In General Comment on the right to the truth, the UN Working Group on Enforced or Involuntary Disappearances recalled that the right to know the truth about the fate and the whereabouts includes, when the disappeared person is found to be dead, the right of the family to have the remains of their loved one returned to them, and to dispose of those remains according to their own tradition, religion or culture. The remains of the person should be clearly and indisputably identified, including through DNA analysis. The State, or any other authority, should not undertake the process of identification of the remains, and should not dispose of those remains, without the full participation of the family and without fully informing the general public of such measures. States ought to take the necessary steps to use forensic

expertise and scientific methods of identification to the maximum of its available resources, including through international assistance and cooperation (para. 6).