

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human rights of internally displaced persons

Ref.: AL OTH 63/2023
(Please use this reference in your reply)

21 June 2023

Dear Mr. al-Sharief,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 51/8, 46/9, 52/9, 50/17, 52/10, 52/4 and 50/6.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including non-state actors) on allegations of abuses of human rights that fall within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights abuses, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this context, we are writing to you in light of your role as Commander of the Libyan National Army, de facto in control of the eastern region of Libya, and superior of, among others, the Tarek Ben Ziyad Brigade and Brigade 20/20, reportedly involved in the situation described below.

In this connection, we would like to bring to your attention information we have received concerning the **alleged forced evictions and demolition of many areas of Benghazi, including historic neighbourhoods, protected heritage sites and many residential units, as well as violence against, suppression of protests and arbitrary detention of residents and human rights defenders protesting against this destruction, in violation of the right to adequate housing, to freedom of expression, to freedom of peaceful assembly, to liberty and security of the**

Libyan National Army

person and of the cultural rights of the residents.

According to the information received:

The current municipal council of Benghazi has been appointed by the Libyan National Army (LNA), which took control of Benghazi in 2014, the elected municipal council having fled to Tripoli during the *Karama Operation*. No municipal elections were held in Benghazi since. In cooperation with the United Nations Development Programme, the municipality is leading post-war reconstruction efforts in line with the Benghazi Master Plan and supported by the Benghazi and Derna Construction Fund. In January 2023, the House of Representatives amended the composition of a new “Committee for the Reconstruction and Stability of Benghazi” to also include the Undersecretary of the Ministry of Interior and the Spokesperson of the Government of National Stability (GNS), governing the eastern region, including Benghazi. The mandate of this new Committee is to centralize financial contributions for the reconstruction of Benghazi. Decision (2/2023) of the House of Representatives states that the Committee is exempt from the regulations set by Libya’s administrative law.

In early March 2023, without coordinating with the Benghazi and Derna Construction Fund and without legal basis, order of demolition or any prior consultation with the residents, forced evictions and demolitions of important areas in the old city center of Benghazi started being reported. Initially, the oldest neighbourhoods around Souk al-Hout and Sidi Khreibish were targeted - including Omar al-Mukhtar Street, Municipal Square, Al Khalisa Square, Al Zawiya Al-Rifaeya Street, Al-Siyaj area, Souq Al Rabee, and Souq Al Hout. Subsequently, similar patterns of forced evictions and demolitions followed in other areas of Benghazi, extending towards the sea front and in other directions.

Forced evictions and arbitrary displacement, including of recent returnees

Around early March 2023, members of the Tarek Ben Ziyad Brigade and Brigade 20/20, two brigades part of the Libyan National Army, started informing residents (both home-owners and renters) of the old city centre of Benghazi that they would have to leave their homes within 3 days as those buildings would be demolished. They did not provide any information on the reasons for the evictions and demolitions, nor any assistance with finding new homes.

A compensation of LYD 100,000 (approx. USD 20,000) was offered in cash to homeowners, allegedly to pay for future rent, but that amount does not correspond to the cost of their properties that would be lost. The compensation in the amount of LYD 100,000 is being handed to owners only. Women living alone were provided a smaller amount of LYD 70,000. When receiving cash, the owners were asked to give away their property or ownership documents.

Evictions swiftly proceeded, executed by Tarek Ben Ziyad Brigade and Brigade 20/20, supported also by women prison guards who assisted to forcibly remove women residents. When residents refused to leave, they were threatened with water and electricity disconnections, and told that the houses

would be destroyed anyway, even with the residents inside.

Residents who are not owners are not given any compensation. Residents find themselves in varying forms of occupancy and ownership. Some of those who are being forcibly evicted, particularly in Sidi Khreibish, had only recently returned to and refurbished their homes, after having been internally displaced and their homes damaged in 2014 during the LNA's *Karama Operation*. Other homes being targeted are properties of internally displaced persons who have not returned but may be rented out to others who have made them their home. Still other residents have been allocated homes under the Qaddafi Law 4 - which took properties from people who owned more than one home and gave them to others who did not have any property - and have lived there up to 40 years, but do not have any documents to prove it.

Most displaced families are now either renting apartments in other areas of Benghazi, or staying with relatives. Some decided to stay in their homes, but continue to be threatened, and live in dire conditions with no access to electricity and water, surrounded by rubble making it difficult for them to buy water or food. Others are moving from place to place, and single women in particular found it challenging to find a place to rent. Residents of the affected Benghazi downtown and old city areas are mostly of Misratan origin or other tribes from western Libya, so the current evictions appear to have a disproportionate impact on these groups. Some estimates indicate that around 20,000 people may be displaced by the forced evictions, but the number could be higher.

Destruction of urban quarters, including of cultural heritage

Demolitions are conducted by an unspecified operator, and the affected areas remain closed to the public. Masked men allegedly operate the machinery demolishing buildings in the area which, besides a great number of homes, includes shops and restaurants, as well as historical buildings from the colonial and Ottoman era. Images of the areas show the irreversible nature of the demolitions.

The areas targeted by the ongoing destructions include heritage neighbourhoods, which bear witness of the history and development of the population that have lived there continuously over centuries. They also include buildings, streets and areas that are in acceptable condition and that do not need urgent renovation or reconstruction. It is alleged that the destruction is conducted without prior consultation of the concerned residents and without any publicly communicated decision-making process. No information was provided on the reasons for the evictions and demolitions, though it is presumed that they are taking place under the guise of reconstruction.

On 2 March 2023, old colonial-era buildings, such as the Italian Bernici Cinema and the Spring Market, were demolished, while the demolition of the old Bin-Kato mosque was stopped at the last moment.

The demolition also targeted cultural heritage sites, in particular parts of the Archaeological Site of Cyrene, which is on the UNESCO World Cultural Heritage list. Specifically, at the end of March, the lower part of the

Hesperides archaeological site – part of Cyrene, containing ruins and mosaics dating back to 525 BC, was completely covered by sand and cement. Around 3 April, both the directors of the Antiquities Department of Benghazi and the Archaeological Department of Benghazi University issued public statements condemning the demolition and lodged a complaint with the Public Prosecutor in Benghazi, and the Attorney-General in Tripoli. There has been no response since.

In addition, many artefacts may have been illegally destroyed or looted in the course of works in the old town of Benghazi, where experts say an archaeological team should have been present during the work to prevent illegal demolition. Other archaeological sites could be similarly at risk of being destroyed or damaged, including the higher part of Hesperides and the Berniqiya site in Sidi Khreibish.

The demolitions are ongoing and there is no advance public information available about the next areas that will be affected. However, residents have reportedly noticed blue fences being installed in newer areas of Benghazi where housing is in good condition, not previously affected by fighting. Similar blue fencing had been installed in areas earlier targeted for demolition.

Public protests against the demolitions and evictions and resulting intimidation of protestors

In April, residents, human rights defenders and civil society, including local leaders, denounced the demolition and forced evictions through petitions, highlighting how they contravene Libya's obligations under national and international law, including the protection of cultural rights and heritage, and the rights to housing, land and property.

On 7 May 2023, the Undersecretary of the Ministry of Interior of the GNS, member of the Committee for the Reconstruction and Stability of Benghazi, published a statement condemning any obstruction of the ongoing "construction" work and calling on the judiciary to take any necessary steps to prevent it. The GNS is recognized by Libya's House of Representatives, but not by the international community.

On 7 May 2023, a group of residents who had previously filed a complaint before the Public Prosecutor in Benghazi were informed that their file had been rejected and the Prosecutor refused to meet them. Similarly, the police refused to register complaints of those residents that approached them on the same issue. Activists and residents who have shared information about the demolitions or spoken against them on social media have been arbitrarily detained and released after different lengths of time in secret detention, either by the Tarek Bin Ziyad or 20/20 brigade. Reports about those arbitrary detentions mention violence against the victims, including forced shaving of their heads to force them to silence on this issue.

Several demonstrations have allegedly been prevented by the LNA or one of the 2 brigades Tarek Bin Ziyad and 20/20. On 8 May 2023, residents organized a demonstration which lasted only a couple of hours as it was dispersed by the Tarek Bin Ziyad Brigade. Several persons were intimidated,

and at least three persons were briefly detained for a few hours and then released. Tarek Ben Ziyad Brigade and Brigade 20/20 have also intimidated residents taking pictures of the demolition works, forcing them to delete them.

On 28 May, at least two other activists and human rights defenders were allegedly arrested in Benghazi by the Tarek Ben Ziyad Battalion, allegedly for protesting against, posting about the forced evictions and ongoing demolition of the city centre on Facebook and claiming reparation. Both persons remain missing since; their families could not find them in any detention centre of the city.

Due to the number of threats received and the highly sensitive nature of this case, very few inhabitants dare to speak.

Alleged business involvement

While the demolition works are being carried out in complete lack of transparency and without any accountability, some allegations and speculation have surfaced about the involvement of different domestic or foreign companies. Some claim that the bulldozers being used for the demolitions belong to the Tarek Bin Ziyad Agency for Services and Construction; others, to an Egypt-based company called “Nile Valley”. Both of these companies have been linked to Saddam Haftar, commander of the Tarek Bin Ziyad Brigade and son of Khalifa Haftar.

On 11 May 2023, news outlets featured an announcement¹ that the government of Prime Minister Fathi Bashagha, appointed by the House of Representatives, had on 10 May 2023, signed agreements with several international companies, namely BFi Limited coalition, China Railway International Group, and Arub International Engineering, to implement “infrastructure reconstruction projects”, including in Benghazi.

Without wishing to prejudge the accuracy of these allegations, we wish to express our utmost concerns regarding the irreparable harm caused by the intentional destruction of urban architectural and living heritage, the use of violence, forced evictions and demolition of homes in the old town and other parts of Benghazi, by the Tarek Ben Ziyad Brigade and Brigade 20/20, which, if confirmed, would violate several human rights of the residents of Benghazi, including their cultural rights, right to adequate housing, rights to freedom of expression and peaceful assembly, and the protection against arbitrary detention.

We wish to underscore that, notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced evictions, harassment and other threats. Authorities have an obligation to ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons. Given the reported denial of the opportunity to lodge a complaint and to obtain redress in courts and in light of the absence of procedural protections applied, the ongoing actions would clearly amount to forced evictions, prohibited under international human rights law. We are furthermore concerned at the secrecy with

¹ See for example <https://libyaupdate.com/bashagha-government-signs-agreement-with-international-companies-for-infrastructure-reconstruction-projects/>, accessed on 16 May 2023.

which demolitions are being carried out and the suppression of any publicly voiced criticism of the ongoing forced evictions and demolitions of homes and cultural heritage.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken to safeguard the rights of the persons affected by the ongoing forced evictions and demolitions in Benghazi, as well as steps to prevent the irreversibly damage to cultural heritage threatened by the same works, in compliance with international instruments.

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 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 information on the legal and factual basis for the ongoing forced evictions and demolitions of homes, businesses and cultural heritage, including protected sites, in Benghazi; and whether reasonable alternatives were explored. Please explain on whose authority and decision these works are being undertaken, with what justification, which areas of Benghazi will be affected and what is to be constructed in their place.
3. Please indicate the legal basis for the restrictions on protests, the arrests and intimidation of residents and human rights defenders, and how these are compatible with the international human rights obligations of Libya, in particular freedom of expression, freedom of peaceful assembly and protection from arbitrary arrest and detention.
4. Please indicate whether independent investigations have been planned or already instigated into the destruction of protected cultural heritage sites and the looting of artefacts, and whether the outcome of these investigations will be made public.
5. Please indicate what preventive and protective measures are being taken to preserve additional cultural heritage sites and historical artefacts in the area from intentional destruction and demolition.

6. Please explain whether, in accordance with Libya's international human rights obligations, in particular those relating to the right to adequate housing and arbitrary displacement, the residents displaced by the forced evictions and demolitions:
 - a. will be able to exercise their right to return - in case new residential buildings are being constructed; or
 - b. will be able to exercise their right to be resettled, following a process of adequate consultation including on the resettlement site;
 - c. whether owners will be provided with adequate, market-value compensation for any property affected, both personal and real;
 - d. whether renting residents will be assisted to find affordable housing elsewhere, as close as possible to their earlier homes.
7. Please provide information on all entities, including armed groups, foreign or domestic businesses, or investors, that are involved in the forced evictions and demolition works, as well as any relevant concluded agreements.
8. Please indicate what measures have been adopted or are planned to be adopted in order to ensure that human rights defenders are able to carry out their legitimate human rights work free of repression or threat.

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 and redress for the victims.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received 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.

Further, we would like to inform you that after having transmitted the information contained in the present communication to the Government, 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. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with the LNA to clarify the issue/s in question.

Please note that a letter expressing similar concerns was transmitted to the Speaker of the House of Representatives. A copy of this letter will also be sent to the Government of National Unity.

Finally, we stress that this letter does not in any way imply the expression of any opinion concerning the legal status of any country, territory, city or area, or of its authorities and is without prejudice to the United Nations position on these matters.

Please accept the assurances of our highest consideration.

Matthew Gillett
Vice-Chair of the Working Group on Arbitrary Detention

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

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

Clement Nyaletsossi Voule
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Balakrishnan Rajagopal
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Paula Gaviria
Special Rapporteur on the human rights of internally displaced persons

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, and without prejudging the accuracy of these allegations, we would like to draw your attention to the relevant international norms and standards.

We would like to refer you to articles recall articles 11 and 15 of the International Covenant of Economic, Social and Cultural Rights, acceded to by Libya on 15 May 1970, which recognize the right to adequate housing and the right for everyone to take part in cultural life.

As recalled by the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment 4, forced evictions are a gross violation of human rights and prima facie incompatible with the requirements of the International Covenant of Economic, Social and Cultural Rights and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.

Further, in its General Comment No. 7, CESCR clarifies that if an eviction is to take place, procedural protections are essential, including: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, Government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions should not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies; and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts”.

We wish to underscore that States shall, in any case, have an obligation to ensure that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights. Where those affected are unable to provide for themselves, they should be provided with adequate alternative housing, resettlement or access to productive land.

We would also like to remind you of the Guiding Principles on Internal Displacement, which recognize, inter alia, the right of everyone “to be protected against being arbitrarily displaced from his or her home or place of habitual residence”. Guiding principle 7 (1) establishes that “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether”. Guiding principle 7 (2) also stipulates that “The authorities undertaking such displacement shall ensure to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated”; and guiding principle 7(3) states that “(b) Adequate

measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation; (c) The free and informed consent of those to be displaced shall be sought; (d) The authorities concerned shall endeavor to involve those affected, particularly women in the planning and management of their relocation; (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities shall be respected”. Guiding principle 9 further provides that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

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Article 15 of the International Covenant of Economic, Social and Cultural Rights protects the right of all to take part in cultural life. In its general comment 21, the Committee on Economic, Social and Cultural Rights stressed that this right includes the right to access, participate and contribute to cultural life, including by freely taking part, in an active and informed manner and without discrimination, in the development of the community to which a person belongs, and in the definition, elaboration and implementation of policies and decisions that have an impact on the exercise of a person’s cultural rights (E/C.12 /GC/21, para. 9, 15 and 49).

The Committee noted the obligation of States to respect and protect cultural heritage in all its forms. Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. The obligations of all States to respect, promote and protect the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage, were reiterated in Human Rights Council resolutions 33/20, 37/17 and 49/7, adopted unanimously. Such obligations include the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group... to have access to their own

cultural and linguistic heritage and to that of others, the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others (paragraph 50).

States have a duty not to destroy damage or alter cultural heritage, and to take measures to preserve/safeguard cultural heritage from destruction or damage by third parties (A/HRC/17/38, in particular paras.78 and 80 and A/HRC/31/59, paras 52, 53, 60). The obligation to preserve and safeguard cultural heritage was also inscribed in the 2003 UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage, stressing the responsibility of States not to intentionally destroy their own heritage, “whether or not it is inscribed on a list maintained by UNESCO or another international organization” (Section VI). The UNESCO Declaration also stresses the responsibility of States to take all appropriate measures to protect cultural heritage in conformity with the principles and objectives of, inter alia, the 1972 Convention for the Protection of the World Cultural and Natural Heritage, ratified by Libya on 13 October 1978, and the 1976 Recommendation concerning the Safeguarding and Contemporary Role of Historic Areas (section IV). Article 4 of the 1972 Convention states that the duty of the state is “to protect the cultural and natural heritage”.

We would also like to refer you to articles 9, 19 and 21 of the International Covenant on civil and political rights, ratified by Libya on 15 May 1970, which recognize the rights to liberty and security of person, including protection from arbitrary arrest or detention, to freedom of opinion and expression and to freedom of peaceful assembly. In particular, article 9 of the ICCPR provides that no one shall be subjected to arbitrary arrest or detention or deprived of their liberty except on such grounds and in accordance with such procedure as are established by law. In accordance with the jurisprudence of the Working Group on Arbitrary Detention as well as General comment no. 35, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of peaceful assembly and association, is arbitrary.

Article 19 of the ICCPR guarantees the right to opinion and expression. In the general comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia ‘political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism’, subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. An attack on a person because of the exercise of his or her freedom of opinion or expression, including arbitrary arrest, torture, threats to life and killing, cannot be compatible with article 19 (GC34 paragraph 23).

Finally, as some of the victims are human rights defenders, we deem appropriate to remind you of the important and legitimate role that human rights defenders play and the protection they are entitled to by international law. We wish to highlight in particular the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human

Rights and Fundamental Freedoms also known as the Declaration on Human Rights Defenders, and which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Specifically, we would like to draw your attention to the General Assembly Resolution 68/181, which urges States to acknowledge publicly the important and legitimate role of women human rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against them (OP7). We invite you to refer to the Human Rights Council resolution 31/32 as well, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves (OP5, 19 and 20).