

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on minority issues and the Special Rapporteur on freedom of religion or belief

Ref.: AL OTH 130/2024
(Please use this reference in your reply)

1 October 2024

Mr. al-Sharief,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on minority issues and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 51/8, 52/5 and 49/5.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the special procedures system of the United Nations, which has 60 thematic and country mandates on a broad range of human rights issues. 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 companies) on allegations of abuses of human rights that come 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 violations, 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 connection, we would like to bring to your attention information we have received concerning the alleged arbitrary arrest and detention of Sufi cleric, Sheikh Muftah Al-Amin Al-Biju and Sufi religious leaders, allegations of attacks and incitement against Sufis, and attacks on places of Sufi religious worship, which appear to be related to the legitimate exercise of their rights to freedom of religion or belief.

According to the information received:

Followers of the Sufi orders (Tareqa) in Libya follow Sufism, a form of mysticism that some Muslims follow. They have historically been harassed by security actors across the country, often accused of sorcery, witchcraft, and heresy by influential Salafist groups in the east, south and west of Libya. Tension between Sufis and Salafists in Libya reportedly dates back to the Gaddafi-era and increased after 2011. Some other groups also condemn Sufism and the veneration of the tombs of Sufi spiritual leaders as heterodox.

Libyan National Army

Since February 2023, there has allegedly been several incidents against members of the Sufi order, including arbitrary arrests and detentions.

Alleged arbitrary arrest and detention of Sheikh Muftah Al-Amin Al-Biju

On 4 February 2024, a 74 year-old prominent Sufi cleric, Sheikh Muftah Al-Amin Al-Biju was arrested in Benghazi, eastern Libya. Sheikh Al-Biju is the leader of the Qadiriyya Sufi order in Libya, which is one of the widely spread Sufi orders in the country. His farm includes a Zawiya (a place of religious worship) and a Quranic memorization school. He was reportedly abducted from his farm in the Abu Atni area south of Benghazi by a group of masked armed men wearing civilian clothes, who arrived in four civilian vehicles, and took him to an undisclosed location.

It is alleged that armed individuals believed to be associated with the Interior Ministry's Directorate Support Apparatus, under the de facto authorities in the east, forcefully raided the cleric's farm, breaking doors and terrorizing women and children. The assailants did not identify themselves, nor did they produce any warrant from the public prosecutor authorizing the arrest or search of the house.

Additionally, it is alleged that the individuals arresting Sheikh Al-Biju stole a sum of money and personal belongings. Surveillance cameras from a neighbouring house captured footage of the armed individuals breaking into the house.

Since then, Sheikh Al-Biju's family has had no information about his whereabouts, and no official authorities have declared his detention. Furthermore, according to the information received, all prison administrations and detention centres in Benghazi deny detaining him or having any knowledge of his arrest.

The family of Sheikh Al-Biju has filed an official complaint to the Public Prosecutor's Office in Benghazi, sending a copy to the General Commander of the LNA, Field Marshal Khalifa Haftar. However, they have not received any response or acknowledgment of the complaint from any authorities as of the date of sending this letter.

On 15 June 2024, Sheikh Al-Biju's family informally learnt that he had been transferred to Gernada Prison, located 230 kilometres east of Benghazi. This prison is notorious for serious human rights violations, including murder and torture, according to UN reports.¹ Sheikh Al-Biju's family has attempted to visit him and inquire into his health within the prison, but they were turned away several times at the prison gate and they have been unsuccessful. However, they have been reliably informed that Al-Biju is alive.

¹ UN Security Council doc [S/2019/19](#) of 7 January 2019, and UN Security Council doc [S/2022/409](#) of 20 May 2022

Other alleged arbitrary arrests, detentions, attacks and confiscations

We are further concerned of information of other Sufi preachers being arrested and detained and allegations of confiscation of property and attacks against places of worship in both east and west of Libya.

It is alleged that followers of the Islamic Sufi order face regular harassment, threats, intimidation, and, in some cases, torture, abduction, and even killing by armed groups affiliated with the State and other Islamic groups. These groups have armed themselves, formed military and security units, and seek revenge against their opponents and anyone who opposes their ideologies.

It is alleged that successive authorities in Libya since the fall of the Gaddafi regime in 2011 have failed to protect Sufi religious sites from attacks and destruction by armed groups. These attacks targeting mosques, shrines, and Sufi sanctuaries reportedly go unpunished, leading to an atmosphere of fear, terror, and impunity.

It is further alleged that the Ministry of Endowments and Religious Affairs in Benghazi and Tripoli are dominated by Salafists who enjoy significant support from armed groups and governments in both the Eastern and Western regions. It is reported that they impose their policies on many events, situations, and locations based on their prevailing authority. They hold significant internal and external political, social, military, and security influence. Followers of the Sufi order have expressed concern about the influence of new religious officials in the country being swayed by Salafi groups and their ideologies. They have appointed clerics from both extremist and moderate Salafi groups to mosques. Some of these new clerics have pressured authorities to replace imams from Sufi orders with imams from Salafi groups.

Without prejudging the accuracy of these allegations, we would like to express our grave concern about the alleged continuation of a pattern of violent attacks, arbitrary arrests and detention, and overt calls for violence against the Sufi religious minority and their religious sites by authorities.

Moreover, we are deeply concerned about the alleged arrests and incommunicado detention of Sufi cleric, Sheikh Muftah Al-Amin Al-Biju in Benghazi. We remain concerned of the alleged arbitrary arrests of several other Sufi clerics, which suggests a systematic pattern of harassment against religious leaders of a particular community.

We further express concern over reports of vandalization of Sufi religious buildings and the adoption of a law criminalizing “witchcraft, sorcery, divination and the like” that risks adversity affecting the religious practices of the Sufi community. Under this law, religious leaders could be subjected to punishments ranging from imprisonment to the capital punishment.

We wish to express our particular concern about the lack of accountability related to these attacks against the Sufi religious minority.

Should they be confirmed, these allegations would contravene articles 2 (non-discrimination), 6 (right to life), 9 (liberty and security of person), 18 (freedom of

religion or belief) and 27 (rights of minorities) of the International Covenant on Civil and Political Rights, acceded to by Libya on 15 May 1970.

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 concerning the factual and legal basis for the arrest and detention of Sheikh Muftah Al-Amin Al-Bijuan and inform of his current location of detention. Please also provide information as to the potential role played by religious discrimination as a motivation for his arrest and detention.
3. With regard to the arrests of detention of Sufi religious figures, please clarify factual and legal basis for their arrest and detention and the extent to which their detention is compatible with international human rights law and standards, in particular articles 2, 9, 18, 19 and 27 of the International Covenant on Civil and Political Rights (ICCPR).
4. Please provide information on the status of any investigation into confiscation of property and attacks against places of worship.
5. Please clarify how the law on witchcraft complies with international law and standards, particularly article 6 and 18 of the ICCPR, as well as the fundamental principle of legal certainty under international law.
6. Please provide information on measures taken by the de facto authority to counteract public calls for violence and discrimination against the Sufi community in accordance with international standards including article 20 of the ICCPR.
7. Please provide information on constitutional, legislative, or policy measures taken by the de facto authority to protect the Sufi community against any form of discrimination.

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 you that having transmitted a communication, 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 recipient is required to respond separately to this letter and the regular procedure.

We further wish to inform you that having transmitted a communication, the Working Group on Enforced or Involuntary Disappearances may also document the acts tantamount to enforced disappearance in these cases through its humanitarian 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(s) responsible for the alleged violations.

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 your Excellency's Government's to clarify the issue/s in question.

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 note that a copy of this letter has been sent to the Government of National Accord of Libya.

Please accept, Mr. al-Sharief, the assurances of our highest consideration.

Ganna Yudkivska
Vice-Chair on communications of the Working Group on Arbitrary Detention

Nicolas Levrat
Special Rapporteur on minority issues

Nazila Ghanea
Special Rapporteur on freedom of religion or belief

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 the International Covenant on Civil and Political Rights (ICCPR), acceded to by Libya on 15 May 1970. Article 18 of the ICCPR states that that "Everyone shall have the right to freedom of thought, conscience and religion. These rights shall include freedom [...] either individual or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." The Human Rights Committee has noted in general comment No. 22, paragraph 3, that article 18 of the ICCPR "Does not permit any limitations whatsoever on the freedom of thought and conscience [...]". Thus, peaceful expression of one's thought and conscience cannot be restricted unless such restrictions have fulfilled stringent tests of legality, proportionality and necessity.

Article 9(1) of the ICCPR states that: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law." In accordance with the jurisprudence of the Working Group on Arbitrary Detention, and 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 religion, is arbitrary. The Human Rights Committee further clarified that security detention not in contemplation of prosecution on a criminal charge presents severe risks of arbitrary detention. If in this regard a "present, direct, and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures" (paragraph 15). We further wish to underline that the Working Group on Arbitrary Detention has reiterated that enforced disappearances constitute an aggravated form of arbitrary detention.

Article 2(1) of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55) which states that "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other belief." In article 4(1), the Declaration states that: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]". Its article 4(2) upholds that: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter." In accordance with article 9, paragraph 5 of the ICCPR: "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

Article 6(1) of the ICCPR provides that every individual has the right to life and that no person shall be arbitrarily deprived of his or her life. We refer to the Human Rights Committee's, general comment 36 which notes that the right to life is the supreme right from which no derogation is permitted (paragraph 2). It is most precious for its own sake as a right that inheres in every human being, but it also constitutes a fundamental right, whose effective protection is the prerequisite for the

enjoyment of all other human rights and whose content can be informed and infused by other human rights. General comment 36 makes clear that the right to life must be respected and ensured without distinction of any kind, including race.

The Human Rights Committee in general comment 31 considers article 6(1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces. Permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant.

There is a duty to conduct thorough, prompt, and impartial investigations of all suspected cases of extra-legal, arbitrary or summary executions and the obligation to bring to justice all persons identified by the investigation as having participated in those executions as laid down in the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989. The United Nations Revised Manual for the Effective Investigation of Extra-Legal, Arbitrary and Summary Executions (The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) provides detail on the duty to investigate potential unlawful deaths “promptly, effectively and thoroughly, with independence, impartiality and transparency.” It notes the authorities must investigate as soon as possible and proceed without unreasonable delays.

According to the 1992 Declaration on the Protection of All persons against Enforced Disappearance which is absolute in affirming that investigations related to enforced disappearance must be carried out until the fate of the disappeared person has been clarified. In its General Comment on Enforced Disappearance as a continuous crime, the Working Group on Enforced or Involuntary Disappearances established that the act of enforced disappearance begins at the time of the abduction and extends for the whole period of time until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.

The Working Group on Enforced or Involuntary Disappearances has emphasized on multiple occasions that disappeared persons whose fate and whereabouts are not determined cannot be declared dead. In its General Comment on the right to recognition as a person before the law in the context of enforced disappearances, the Working Group stipulated that the act of enforced disappearance denies the disappeared person’s legal existence and, as a consequence, prevent him or her from enjoying all other human rights and freedoms, in a situation of total defenselessness. In addition, the Working Group has also established that placing a person outside the protection of the law means that all protections, including those intended to secure economic, social and cultural rights, cease to exist.

Principle 1 of the guiding principles for the search for disappeared persons stipulates that the search should be conducted under the presumption that the disappeared person is alive, regardless of the circumstances of the disappearance, the date on which the disappearance began and when the search is launched.

Article 26 of the ICCPR stresses that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal

and effective protection against discrimination on any ground such as [...] religion or other status [...].”

Article 27 of the ICCPR guarantees minorities, inter alia, the right to profess and practice their own religion. Moreover, article 1 of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities establishes the obligation of States to protect the existence and identity of religious minorities within their territories and to adopt the appropriate measures to achieve this end, while article 2 recognizes that persons belonging to religious minorities have the right to profess and practice their own religion without discrimination and article 4 requires States to ensure that persons belonging to minorities, including religious minorities, may exercise their human rights without discrimination and in full equality before the law.