

## **General Allegation**

**132<sup>nd</sup> Session (29 January to 2 February 2024)**

### **Libya**

The Working Group received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, 'the Declaration') in Libya.

1. The Working Group received alarming allegations related to the arbitrary deprivation of liberty and enforced disappearance of migrants, refugees and asylum-seekers in Libya, including women, children (often unaccompanied), and disabled persons. The information gathered suggests that the mentioned violations take place either in clandestine detention centres, or in official detention centres in Libya managed by the Libyan Directorate to Combat Illegal Migration, including the centres of Abu Salim and Ain Zara. In both cases, persons deprived of their liberty are reportedly subjected to abuses and torture and placed outside the protection of the law, while there do not seem to be effective remedies to ensure that perpetrators are held accountable and that victims obtain redress.
2. According to the information received by the Working Group, migrants, refugees and asylum-seekers arrested in urban settings or intercepted at sea in their attempts to leave Libya, are deprived of their liberty and frequently held captive for months in clandestine detention centres (including private buildings, hangars or warehouses) by militias or other armed groups, acting with the direct or indirect support of the State. The people held captive in these circumstances, which amount to secret detention, are placed outside the protection of the law and deprived of the possibility to exercise any of their fundamental rights.
3. In other cases, upon detention, migrants, asylum-seekers and refugees are brought to officially recognised detention centres managed by the Libyan Directorate to Combat Illegal Migration across Libya, five of which are located in Tripoli. Pursuant to data confirmed also by the International Organization for Migration and the United Nations High Commissioner for Refugees, around 75% of the more than 3000 people held in these facilities would be in the five detention centres located in Tripoli.
4. However, sources informed that the official registers and records of persons deprived of liberty of the said detention centres are not complete nor up-to-date and access to them would be extremely difficult. The situation is reportedly worsened by the fact that, according to the information received, upon arrest or transfer to the detention centre, detainees would be routinely stripped of their documents and personal belongings (including mobile phones). This practice jeopardises the compilation and maintenance of accurate data on all persons deprived of their liberty and makes contact with the outside world virtually impossible. At the same time, when any person with a legitimate interest seeks to have access to information on persons held in the said detention centres, the lack of accurate registration or incomplete data further complicates the determination of their fate and whereabouts.
5. According to the information received, persons deprived of their liberty in official and unofficial detention centres are usually not enabled to communicate with, and be visited by, their families, counsel or any other person of choice, or consular authorities. With regard to

official detention centres in particular, the Working Group has learned that, albeit those held there are foreigners, only a few embassies of the countries of origin are accessing the facilities to provide consular services to their nationals. In general, as it will be further detailed below, access of civil society organisations to these detentions sites is severely restricted.

6. Sources informed the Working Group that persons placed in the both official and unofficial detention centres are subjected to inhumane living conditions, including chronic overcrowding, poor sanitation and lack of basic hygiene, insufficient access to healthcare, inadequate food and inconsistent access to clean water and no possibility for infection prevention measures. Reportedly, women, including pregnant and lactating, children, including unaccompanied and new-borns, are held in conditions that are especially detrimental to their physical and mental health. According to the information received, the circumstances described, the lack of contact with the outside world and the indefinite duration of their detention cause serious psychological damage to the persons concerned.
7. Moreover, the Working Group was informed that persons placed in official and unofficial detention centres are frequently subjected to abuses and gross human rights violations, including torture, forced labour and sexual violence. Reportedly, even in cases where migrants held in official or unacknowledged detention sites eventually regain their freedom, they face long-lasting consequences for the harm suffered, including post-traumatic stress disorder. According to the sources, the Government does not offer any effective remedy or programme of psychosocial support to address the described situations.
8. The Working Group learned that, in some instances, the conditions or the abuses referred to in the previous paragraph, have led to the death of persons deprived of their liberty in both official and unofficial detention centres. However, when this happened, no accurate investigations and forensic examinations were carried out to ascertain and record the circumstances and cause of death and the destination of the remains, thus hampering the right to know the truth of relatives of these persons. It is equally unclear whether authorities undertake any measures to preserve the mortal remains and to facilitate their subsequent identification and return to the countries of origin.
9. Furthermore, sources informed that civil society organisations aiming at monitoring conditions of detention and assisting persons held captive in facilities managed by the Libyan Directorate to Combat Illegal Migration experienced hindrances in their activities and are often denied access to the detention centres. The reported situation further isolates persons deprived of their liberty and exposes them to the risk of enforced disappearance.
10. The Working Group was informed that, reportedly, persons held in the said detention centres would not be enabled to bring proceedings before competent authorities to determine whether their deprivation of liberty is lawful and, when authorities decide to transfer or expel or extradite them, they would be unable to challenge in any ways such decisions, including when they may amount to a violation of the principle of *non-refoulement* and expose them to the danger of enforced disappearance.
11. Finally, according to information received by the Working Group, there are no instances of investigations on the above-mentioned circumstances and abuses, which are reportedly

covered by impunity and there would not be any effective remedy available to obtain redress for the harm suffered in the detention centres concerned.

12. The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegations:

#### *Article 3*

*Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.*

#### *Article 9*

*1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.*

*2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.*

*3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.*

#### *Article 10*

*1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.*

*2. Accurate information on the detention of such persons 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 unless a wish to the contrary has been manifested by the persons concerned.*

*3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.*

#### *Article 11*

*All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.*

#### *Article 12*

*1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.*

*2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.*

### *Article 13*

*1. 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.*

*2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.*

*3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.*

*4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.*

*5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.*

*6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.*

### *Article 19*

*The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.*

13. Moreover, the Working Group would like to bring to the attention of your Excellency's Government the obligations spelled out in its [thematic report on enforced disappearances in the context of migration](#), as well as in the [Guiding Principles for the Search for Disappeared Persons](#) and, in particular, in Principles 4 and 9, which respectively establish that the search should follow a differential approach, especially when women, girls and children are concerned, and should take into account the particular vulnerability of migrants. We recall also the general comments on [women affected by enforced disappearances](#) and on [children and enforced disappearances](#).

14. The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

- a) Please provide any additional information and any comment you may have on the above-mentioned allegations.
- b) Please provide detailed information on the measures taken to uphold the prohibition of secret detention and to carry out investigation into the allegations of the existence of clandestine detention centres where migrants, refugees and asylum-seekers are held across the country, to locate such centres and free and assist all those arbitrarily held there, and to identify the persons who set up and run these facilities, prosecute and hold them accountable.
- c) Please provide detailed information on the legal grounds for indefinitely depriving the liberty of migrants, asylum-seekers and refugees and holding them in facilities managed by the Libyan Directorate to Combat Illegal Migration without access to due process rights.
- d) Please provide detailed information on whether official up-to-date registers of all persons deprived of their liberty in detention centres managed by the Libyan Directorate to Combat Illegal Migration are maintained and on the measures taken to ensure that relatives of persons deprived of their liberty, their counsel or any other person having legitimate interest have access to the information contained in such registers.
- e) Please provide information on the measures adopted to ensure that any person deprived of liberty held in facilities managed by the Libyan Directorate to Combat Illegal Migration is authorised to communicate with, and be visited by, his or her family, counsel or any other person of choice, including consular authorities.
- f) Please provide detailed information on the measures adopted to ensure that those held in facilities managed by the Libyan Directorate to Combat Illegal Migration live in humane conditions and have access to medical assistance and care, food and clean water. Moreover, kindly inform on the measures taken to ensure that they are not subjected to abuses and gross human rights violations, including torture, sexual violence and forced labour and that allegations in this regard are subjected to prompt, independent, impartial, thorough and effective investigations and those responsible are prosecuted and sanctioned.
- g) Please provide detailed information on the measures taken when a person held in one of the detention facilities managed by the Libyan Directorate to Combat Illegal Migration dies to determine and register the circumstances and cause of death, and the mark of the place where the mortal remains are buried.
- h) Please provide detailed information on the measures adopted to ensure that civil society organisations aiming at assisting persons deprived of their liberty in facilities managed by the Libyan Directorate to Combat Illegal Migration are regularly granted access to the detention centres and that their activities are not subjected to arbitrary or unlawful interferences and restrictions.
- i) Please provide detailed information on the measures adopted to ensure that persons deprived of their liberty in facilities managed by the Libyan Directorate to Combat Illegal Migration are entitled to take proceedings without delay before a court to determine the lawfulness of

their deprivation of liberty and to challenge decisions of transfer, expulsion or extradition that may expose them to the danger of enforced disappearance, in contravention of the principle of *non-refoulement*.

- j) Please provide detailed information on how your Government ensures that any person having knowledge or legitimate interest, who alleges that a person has been subjected to enforced disappearance is able to lodge a complaint to a competent and independent State authority. Furthermore, please inform on how your Excellency's Government ensures that enforced disappearances are promptly, thoroughly and impartially investigated, even if there has been no formal complaint.
  - k) Please provide information on the measures taken to guarantee that any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to, or participates in, an enforced disappearance, is held criminally responsible.
  - l) Please provide detailed information on the measures taken to cooperate with other States, including the States of origin, transit or destination of migrants, refugees and asylum-seekers, in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and respecting and returning their remains. In particular, kindly provide information on the measures taken to ensure that foreigner persons deprived of their liberty in Libya are allowed to communicate with their consular authorities.
  - m) Please provide information on the measures taken to search and find disappeared persons – in particular migrants, refugees and asylum-seekers – in line with the Guiding Principles for the Search for Disappeared Persons.
  - n) Please provide detailed information on the applicable legislation and the measures undertaken to ensure that any victim of enforced disappearance (thus including the disappeared person and any other person having suffered a direct harm) obtains adequate compensation and integral reparation, including measures of rehabilitation and satisfaction, for the harm suffered.
15. The Working Group requests your Excellency's Government to provide a response to the above questions within 60 days. The text of the general allegation will be published along with the Working Group's post-session report and on its website, where also any response received by your Government will be uploaded.