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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021**

### **Opinion No. 62/2021 concerning Abdelhakim Imbarak Muhammad Ali and Sulaiman Muhammad Salim Sulaiman (Libya)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 13 August 2021, the Working Group transmitted to the Government of Libya a communication concerning Abdelhakim Imbarak Muhammad Ali and Sulaiman Muhammad Salim Sulaiman. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Abdelhakim Imbarak Muhammad Ali, born in 1971, is a Libyan passport holder, residing in Tripoli.

5. Sulaiman Muhammad Salim Sulaiman, born in 1988, is also a Libyan passport holder, residing in the south-west region of Libya.

#### a. Context

6. The source reports that Special Deterrence Force, a Salafist militia led by Abdel Raouf Kara, is the main security force in Tripoli. The Special Deterrence Force is nominally under the authority of the Ministry of Interior but in fact acts autonomously. This militia, which controls many locations, including Mitiga international airport, is beyond the control of any judicial authority. Its members arbitrarily detain hundreds of people in a detention facility they control at Mitiga international airport (west of Tripoli).

7. According to the source, there have been numerous reports of human rights violations committed with impunity by militias, including the Special Deterrence Force. The source further explains that Mr. Ali and Mr. Sulaiman are among those Libyans who have been victims of abuses by Libyan militias. The source notes with concern the situation in Libya and underlines the importance of putting these militias under government supervision and efficient judiciary control.

#### b. Arrest and detention of Mr. Ali

8. The source reports that, on 16 October 2016 at 10 p.m., Mr. Ali was in the street in Ayn Zarah when he was abducted by members of the Special Deterrence Force, who, masked and wearing both civilian and military clothes, proceeded to arrest him without showing a warrant and without providing reasons for the arrest. They surrounded Mr. Ali and beat him while forcing him into one of their vehicles.

9. The source submits that, following the abduction, Mr. Ali's relatives went to inquire about his fate and learned from an informal source that he was being held at the Mitiga detention facility, located at Mitiga international airport, known to be under the control of the Special Deterrence Force.

10. The source highlights that, in an official letter dated 25 October 2016, the Attorney General requested that Mr. Ali be brought before him for investigation or released from prison. However, five years later, he still has not been brought before a judicial authority. He is still being held in the Mitiga detention facility, where no visit in person is allowed. His relative has been able to interact with him only a few times through a screen.

11. The source highlights that Mr. Ali and his family still do not know the official charges behind his arrest. Nonetheless, Mr. Ali was reportedly interrogated about his trip to Gaza during the blockade while he was working on a humanitarian mission. The source submits that there has been no further clarification regarding the case.

#### c. Arrest and detention of Mr. Sulaiman

12. The source submits that Mr. Sulaiman was arrested on 16 May 2016 by the Special Deterrence Force at his shop located in Khallat al-Furjan. Members of the Special Deterrence Force reportedly arrived in several civilian vehicles, armed and with their faces masked. They surrounded Mr. Sulaiman's shop and beat him while forcing him into one of their vehicles. The members of the Special Deterrence Force did not present a warrant nor did they inform Mr. Sulaiman of the reasons for his arrest.

13. According to the source, following Mr. Sulaiman's arrest, the family was able to discover from an informal source that Mr. Sulaiman was being held in the Mitiga detention facility. The informal source also informed them that Mr. Sulaiman was accused of belonging to a non-Salafist religious group.

14. According to the source, Mr. Sulaiman is still being held in the Mitiga detention facility. Since his arrest, his family has been able to visit him only five times in five years and for less than 10 minutes. Only two out of the five visits were face to face.

15. The source submits that, after discovering that Mr. Sulaiman was in detention in the Mitiga detention facility, his family did everything to seek clarification regarding his situation. The family reached the Attorney General, who informed them that the Special Deterrence Force had been asked to present Mr. Sulaiman for legal proceedings. However, the Attorney General reportedly never received a response despite his requests. The source submits that there has been no further clarification regarding the case.

d. Analysis of violations

16. The source argues that Mr. Ali and Mr. Sulaiman were arbitrarily arrested and detained in violation of international legal standards and that their deprivation of liberty is arbitrary, falling within categories I and III of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it. Furthermore, the source contends that Mr. Sulaiman's deprivation of liberty is arbitrary under category V.

i. Category I

17. The source submits that the detention of Mr. Ali and Mr. Sulaiman is arbitrary, because both of them have been in detention for almost five years without being charged. They were arrested without a warrant and no criminal charges have been brought against them. Their arrests were not carried out in accordance with the principle of legality and have no legal basis, contrary to article 9 (1) and (2) of the Covenant.

18. The source explains that Mr. Ali and Mr. Sulaiman were arrested by the Special Deterrence Force, affiliated with the Ministry of Interior and operating at the time with the Government of National Accord. The Special Deterrence Force actually continues to operate, in spite of the political change and the establishment of the new Government, without legal basis or judicial oversight.

19. The source submits that Mr. Ali and Mr. Sulaiman are being kept in detention without any court order. They were deprived of their right to challenge the lawfulness of their detention and guarantees set out in article 9 and article 2 (3) of the Covenant.

20. The source notes that the Human Rights Committee has clarified that the universal application of the right to challenge the lawfulness of detention before a court extends to all situations of deprivation of liberty and that no category of detainee may be denied taking such proceedings.<sup>2</sup> The source further recalls that the prohibition of arbitrary deprivation of liberty and the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the lawfulness of the detention are non-derogable, under both treaty law and customary international law.<sup>3</sup>

21. The source further recalls that, according to the consistent jurisprudence of the Human Rights Committee, persons deprived of their liberty should not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty and that they should be treated with humanity and with respect for their dignity.

22. The source submits that the conditions of detention of Mr. Ali and Mr. Sulaiman are not in compliance with their human dignity as enshrined in article 10 (1) of the Covenant. Both Mr. Ali and Mr. Sulaiman have been prohibited from communicating with the outside world and with their families. The source highlights that Mr. Sulaiman was initially held incommunicado for over one and a half years.

23. In view of the above, the source argues that the deprivation of liberty of both Mr. Ali and Mr. Sulaiman is arbitrary under category I.

<sup>2</sup> *Torres Ramírez v. Uruguay*, communication No. 4/1977, para. 18.

<sup>3</sup> [A/HRC/22/44](#), para. 47.

ii. Category III

24. The source submits that Mr. Ali and Mr. Sulaiman are being held in prolonged arbitrary detention without charge and without access to judicial authorities. The authorities that arrested them denied them all their fundamental legal safeguards, including regular contact with their relatives and access to legal counsel.

25. The source recalls that, according to the Human Rights Committee, detainees have the right to appear in person before a court, and the court must have the power to order the detainee to be brought before it. However, Mr. Ali and Mr. Sulaiman were not brought before a judicial authority in spite of the General Attorney's official request. The source therefore argues that their deprivation of liberty is arbitrary under category III.

iii. Category V

26. The source submits that Mr. Sulaiman's arrest is based solely on an alleged religious affiliation with a non-Salafist group. At the time of his arrest, he was questioned only about his religious beliefs, which therefore appear to be the reason for his arrest. Mr. Sulaiman's arbitrary detention is therefore based on the discriminatory grounds of his religious beliefs, contrary to articles 18 and 26 of the Covenant. The source therefore argues that his deprivation of liberty is arbitrary under category V.

*Response from the Government*

27. On 13 August 2021, the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested the Government to provide, by 12 October 2021, detailed information about the current situation of Mr. Ali and Mr. Sulaiman and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the obligations of Libya under international human rights law, and in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Libya to ensure their physical and mental integrity.

28. The Working Group regrets that it did not receive a reply nor did the Government request an extension in accordance with paragraph 16 of its methods of work<sup>4</sup>. The Working Group notes that it has not received a reply from the Government in response to its communications over the past five years<sup>5</sup> and invites the Government to engage with the Working Group constructively by taking the opportunity to respond to the communications.

**Discussion**

29. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

30. In determining whether the detention of Mr. Ali and Mr. Sulaiman was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has established a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.<sup>6</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

31. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty, and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set out in the Universal Declaration of Human Rights, the Covenant and other

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<sup>4</sup> [A/HRC/36/38](#).

<sup>5</sup> See opinions No. 3/2016, No. 4/2016, No. 6/2017, No. 39/2018, No. 18/2019, No. 85/2019 and No. 13/2020.

<sup>6</sup> [A/HRC/19/57](#), para. 68.

applicable international and regional instruments.<sup>7</sup> Consequently, even if the detention is in conformity with national legislation, regulations and practices, the Working Group is entitled and obliged to assess the judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>8</sup>

32. As a preliminary matter, the Working Group notes that Mr. Ali and Mr. Sulaiman were arrested and deprived of their liberty by the Special Deterrence Force, a militia group nominally under the authority of the Ministry of Interior of the Government of National Accord, which was recognized as the sole legitimate Government of Libya by the Security Council in its resolution 2259 (2015).<sup>9</sup> Furthermore, the source contends, and the Government does not dispute, that the Special Deterrence Force is a special security unit whose members and equipment are funded by that Government, although it effectively maintains its own command structure and operates with a significant level of autonomy.<sup>10</sup> The Working Group therefore considers that it is difficult to deny that Mr. Ali and Mr. Sulaiman have been deprived of liberty by State actors or by armed groups acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the Government.<sup>11</sup>

33. As developed in its previous opinions,<sup>12</sup> the Working Group notes that the above-mentioned descriptions indicate that the Special Deterrence Force must be considered a State organ, whose conduct should be considered an act of that State under international law for the purpose of article 4 of the draft articles on the responsibility of States for internationally wrongful acts, which restates customary law.<sup>13</sup> Even assuming *arguendo* that the Special Deterrence Force is not an organ of the State under article 4, its conduct must be considered an act of the State under international law in accordance with article 5 of the draft articles, as it has been empowered by the law to exercise elements of governmental authority and has been acting in that capacity in the present case, most prominently by virtue of Decree No. 555 (2018) of the Presidency Council, in which the Council authorizes the Special Deterrence Force to implement State security policy and combat organized crime and terrorism on behalf of the Government by arresting suspected offenders.<sup>14</sup>

34. Moreover, the positive obligation of the State to respect, protect and fulfil fundamental human rights, including personal liberty and security, by preventing and punishing their arbitrary deprivation by State or non-State actors remains intact irrespective of whether the actions of the Special Deterrence Force can be attributed to the Government. The Working Group therefore concludes that, in the present case, the Government is fully responsible for the actions of the Special Deterrence Force under international law.<sup>15</sup>

35. In that regard, the Working Group notes the recommendation of the United Nations High Commissioner for Human Rights that the Government urgently address the proliferation of armed groups, including through disarmament, demobilization and reintegration, and the building of national security forces under the command and control of the State. It also notes the recommendation of the High Commissioner that the Government address the situation of detainees, whether foreign or Libyan nationals, by ensuring that the

<sup>7</sup> See the fifth preambular paragraph of General Assembly resolution 72/180; Commission on Human Rights resolutions 1991/42, para. 2; and 1997/50, para. 15; and Human Rights Council resolutions 6/4, para. 1 (a); and 10/9.

<sup>8</sup> Opinions No. 1/1998, para. 13.; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 76/2017, para. 49; No. 94/2017, para. 47; and No. 13/2020, para. 39.

<sup>9</sup> Opinions No. 6/2017, para. 35; and No. 39/2018, para. 26.

<sup>10</sup> See also Office of the United Nations High Commissioner for Human Rights and United Nations Support Mission in Libya, "Abuse behind bars: arbitrary and unlawful detention in Libya", April 2018, p. 18.

<sup>11</sup> Opinion No. 3/2016, para. 15.

<sup>12</sup> See, for example, opinions No. 39/2018, No. 18/2019, No. 85/2019 and No. 13/2020.

<sup>13</sup> Opinion No. 6/2017, para. 37.

<sup>14</sup> Opinion No. 39/2018, para. 31. The Special Deterrence Force has also been legally empowered to exercise elements of governmental authority insofar as it runs one of the largest detention facilities in Tripoli, at Mitiga international airport.

<sup>15</sup> See opinions No. 6/2017, para. 38; and No. 39/2018, para. 32. See also principle 2 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions; and [A/HRC/34/42](#), para. 22.

State is in control of all detention facilities and that cases are screened with a view to detainees being released or charged and judged in a trial affording all procedural guarantees, in accordance with Libyan law and international standards.<sup>16</sup>

36. The source claims that the respective detentions of Mr. Ali and Mr. Sulaiman constitute arbitrary deprivation of their liberty under categories I and III as set out in the methods of work of the Working Group. Additionally, the source submits that the detention of Mr. Sulaiman constitutes arbitrary deprivation of his liberty, falling within category V.

#### *Category I*

37. The source maintains that the respective arrests and detentions of the two individuals are arbitrary under category I, as there was no legal basis or justification for them. There was, according to the source, complete disregard for the prohibition of arbitrary arrest and detention under various provisions of international human rights law. In particular, Mr. Ali and Mr. Sulaiman were arrested without being shown a warrant and without being notified of the reasons for their arrests, rendering their arrests arbitrary.

38. The source has indicated that neither of the two detainees was shown an arrest warrant at the moment of the deprivation of his liberty. The source states that, during his abduction on 16 October 2016, Mr. Ali was arrested in a street in Ain Zara by masked members of the Special Deterrence Force without being shown a warrant and without being informed of the reasons for his arrest.

39. Likewise, when members of the Special Deterrence Force, armed and with their faces masked, arrived in several civilian vehicles at Mr. Sulaiman's shop at Khallat al-Furjan on 16 May 2016, they surrounded the shop and beat him while forcing him into one of their vehicles. No warrant was presented nor was he informed of the reasons for his arrest. None of this information has been challenged by the Government, which never replied to the communication from the Working Group.

40. The Working Group has previously stated that, in order for a deprivation of liberty to have a legal basis, the authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant. Stated differently, international law on detention includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant, and principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>17</sup> That was not the case with regard to the two individuals,<sup>18</sup> and the Working Group has not been presented with any valid

<sup>16</sup> A/HRC/34/42, para. 86 (a) and (c).

<sup>17</sup> The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. See, for example, decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6 and 8–9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46. See also article 14 (1) of the Arab Charter on Human Rights.

<sup>18</sup> See, for example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; No. 46/2019, para. 51; No. 65/2019, para. 59; No. 71/2019, para. 70; No. 72/2019, para. 40; No. 82/2019, para. 74; No. 6/2020, para. 39; No. 11/2020, para. 37; No. 13/2020, para. 46; No. 14/2020, para. 49; No. 31/2020, para. 40; No. 32/2020, para. 32; No. 33/2020, paras. 53 and 71; and No. 34/2020, paras. 44–46.

grounds, such as arrest in flagrante delicto, to justify an exception to this principle in the present cases.

41. According to the source, since his arrest in October 2016, five years earlier, Mr. Ali has still not been brought before a judicial authority. He continues to be held in the Mitiga detention facility. No in-person visits are allowed. His relative has been able to interact with him only a few times through a screen.

42. As for Mr. Sulaiman, the source asserts that, since his arrest, he has been held in the Mitiga detention facility, with his family being able to visit him only five times in five years and for less than 10 minutes. Only two out of five of these visits were face to face. The source also highlights that Mr. Sulaiman was initially held incommunicado for over one and a half years.

43. The Working Group finds that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed each of the two individuals of the reasons for his arrest at the time of the arrest and promptly informed him of the charges against him. Their failure to do so is in violation of article 9 of the Universal Declaration of Human Rights, article 9 (2) of the Covenant and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It also renders their arrests devoid of any legal basis.

44. The Working Group has reiterated that, according to article 9 (3) of the Covenant, pretrial detention should be the exception rather than the norm and should be ordered for the shortest time possible. Put differently, liberty is recognized under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception. Detention pending trial must therefore be based on an individualized determination that it is reasonable and necessary for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>19</sup> As no such assessment was conducted by a judicial authority in the present case, the Working Group finds a violation of article 9 (3) of the Covenant.

45. The Working Group notes the source's submission that neither of the two individuals was brought promptly before a judge during his detention – that is, within 48 hours of his arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group's jurisprudence.<sup>20</sup>

46. The Working Group considers that judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis. Such oversight by an independent judicial authority was absent in the present case.

47. The Working Group further observes that Mr. Ali and Mr. Sulaiman have not been afforded the right to be brought before a court so that it could decide without delay on the lawfulness of their detention.

48. The Working Group therefore finds that the arrest and detention of Mr. Ali and Mr. Sulaiman is in violation of articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (3) and (4) of the Covenant, principles 11, 32, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and paragraph 2 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court. Furthermore, in the absence of oversight by an independent judicial authority, Mr. Ali's and Mr. Sulaiman's right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated.

49. As for the incommunicado detention of Mr. Sulaiman for over one year, which the Government has not rebutted, the Working Group has also repeatedly asserted that holding persons incommunicado is not permitted under international human rights law<sup>21</sup> and is in violation of their right to contest the legality of their detention before a court or tribunal under

<sup>19</sup> Human Rights Committee, general comment No. 35 (2014), para. 38. See also [A/HRC/19/57](#), paras. 48–58.

<sup>20</sup> See, for example, opinion No. 6/2020, para. 45.

<sup>21</sup> [A/HRC/13/39/Add.5](#), para. 156. See also opinion No. 6/2020, para. 44.

article 6 of the Universal Declaration of Human Rights and article 9 (4) of the Covenant. In the circumstances attending Mr. Sulaiman's deprivation of liberty, he was for some time unable to challenge his detention before a court and, as such, his rights under article 6 of the Universal Declaration of Human Rights and article 9 (4) of the Covenant were violated. Consequently, his rights to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant were also violated. He was also placed outside the protection of the law, in violation of his right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

50. Therefore, the Working Group finds that the Government has failed to establish a legal basis for the prolonged detention of Mr. Ali and Mr. Sulaiman, rendering their detention arbitrary under category I.

### *Category III*

51. The source submits that Mr. Ali and Mr. Sulaiman are being held in prolonged arbitrary detention without charge and without access to judicial authorities. The authorities that arrested them denied them all their fundamental legal safeguards, including regular contact with their relatives and their access to counsel.

52. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access should be provided without delay.<sup>22</sup> In view of the facts of the present case, the Working Group finds a violation of article 10 of the Universal Declaration of Human Rights and article 14 (1) and (3) (b) and (d) of the Covenant.

53. Mr. Ali's and Mr. Sulaiman's prolonged detention since 16 October 2016 and 16 May 2016, respectively, for over five years with no prospect of a trial, is in clear violation of the right to be tried without undue delay under article 14 (3) (c) of the Covenant. The Working Group also finds that such prolonged detention undermines the presumption of innocence guaranteed under article 11 (1) of the Universal Declaration of Human Rights, article 14 (2) of the Covenant and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.<sup>23</sup>

54. Furthermore, there can be no justification for such prolonged detention with no prospect of a trial, which is a manifest violation of the right to be tried without undue delay that is guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights and article 14 (1) and (3) (c) of the Covenant.<sup>24</sup>

55. According to the source, in the five years since Mr. Ali's arrest, his relative has been able to interact with him only a few times through a screen. Similarly, Mr. Sulaiman's family has been able to visit him only five times since his arrest five years earlier, and only two out of these five visits were face to face. In particular, Mr. Sulaiman was held in incommunicado detention, without access to the outside world or his family. The Working Group recalls that the rights of any detainee to communicate with the outside world and be visited by family are fundamental safeguards against any attempts by the authorities to violate their human rights, including by torture or any other ill-treatment and enforced disappearance.<sup>25</sup> The Working Group therefore finds that the denial of the due process rights of Mr. Ali and Mr. Sulaiman to be visited by and to correspond with their families and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, is contrary to principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or

<sup>22</sup> Human Rights Committee, general comment No. 32 (2007), paras. 32 and 34; and principle 9 and guideline 8 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

<sup>23</sup> Opinions No. 6/2020, para. 55; and No. 34/2020, para. 58.

<sup>24</sup> Opinions No. 6/2020, para. 56; and No. 13/2020, para. 64. See also article 7 (1) (d) of the African Charter on Human and Peoples' Rights; and article 13 (1) of the Arab Charter on Human Rights.

<sup>25</sup> See Human Rights Committee, general comment No. 35 (2014); and Working Group on Arbitrary Detention, opinion No. 42/2018.



Imprisonment and rules 43 (3) and 58 (1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

56. For these reasons, the Working Group finds that the violations of the fair trial rights of Mr. Ali and Mr. Sulaiman are of such gravity as to render their detention arbitrary under category III.

#### *Category V*

57. With regard to category V, the source claims that Mr. Sulaiman's arrest is based solely on an alleged religious affiliation with a non-Salafist group. At the time of his arrest, he was questioned only about his religious beliefs, which therefore appear to be the reason for his arrest. According to the source, Mr. Sulaiman's detention is therefore based on the discriminatory grounds of his religious beliefs and is contrary to articles 18 and 26 of the Covenant. The source therefore argues that his deprivation of liberty is arbitrary and falls within category V.

58. The Working Group recalls that article 2 (1) of the Covenant prohibits any difference of treatment between individuals based, inter alia, on political opinion. Accordingly, in its general comment No. 35 (2014), the Human Rights Committee confirmed that arrest or detention on discriminatory grounds, in violation of articles 2 (1), 3 or 26, was also in principle arbitrary.<sup>26</sup> The same applies to the treatment of detainees, which should not be discriminatory, according to principle 5 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

59. On the facts as submitted by the source, the Working Group considers that Mr. Sulaiman was targeted because of his religious beliefs and affiliation with a non-Salafist group. When a detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.<sup>27</sup> The Working Group therefore finds that Mr. Sulaiman was detained in violation of articles 18 and 26 of the Covenant and articles 2, 7 and 18 of the Universal Declaration of Human Rights. His detention is therefore arbitrary under category V.

#### *Concluding remarks*

60. The Working Group expresses its grave concern at the documented pattern of mass arbitrary detention in Libya.<sup>28</sup> The circumstances in the present case are also similar to those detailed in the report on the investigation by the Office of the United Nations High Commissioner for Human Rights on Libya.<sup>29</sup> The Working Group considers that the cases of Mr. Ali and Mr. Sulaiman are therefore not isolated incidents. In that regard, the Working Group observes that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>30</sup>

#### **Disposition**

61. In the light of the foregoing, the Working Group renders the following opinion:

(a) The deprivation of liberty of Abdelhakim Imbarak Muhammad Ali, being in contravention of articles 2, 3 and 6–11 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III;

<sup>26</sup> See also opinion No. 42/2018.

<sup>27</sup> Opinions No. 88/2017, para. 43; No. 13/2018, para. 34; and No. 59/2019, para. 79.

<sup>28</sup> See Office of the United Nations High Commissioner for Human Rights and United Nations Support Mission in Libya, "Abuse behind bars".

<sup>29</sup> [A/HRC/31/47](#).

<sup>30</sup> [A/HRC/13/42](#), para. 30. See also opinions No. 1/2011, para. 21; No. 83/2018, para. 68; No. 87/2018, para. 80; and No. 13/2020, para. 71.

(b) The deprivation of liberty of Sulaiman Muhammad Salim Sulaiman, being in contravention of articles 2, 3, 6–11 and 18 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16, 18 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

62. The Working Group requests the Government of Libya to take the steps necessary to remedy the situation of Mr. Ali and Mr. Sulaiman without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the Covenant.

63. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ali and Mr. Sulaiman immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate unconditional release of Mr. Ali and Mr. Sulaiman.

64. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Ali and Mr. Sulaiman and to take appropriate measures against those responsible for the violation of their rights.

65. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

66. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Ali and Mr. Sulaiman have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ali and Mr. Sulaiman;
- (c) Whether an investigation has been conducted into the violation of Mr. Ali's and Mr. Sulaiman's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Libya with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

67. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

68. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

69. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>31</sup>

*[Adopted on 17 November 2021]*

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<sup>31</sup> See Human Rights Council resolution 42/22, paras. 3 and 7.