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**Human Rights Council
Working Group on Arbitrary Detention****Opinions adopted by the Working Group on Arbitrary
Detention at its eighty-fourth session, 24 April–3 May 2019****Opinion No. 18/2019 concerning Mohamed Arjili Ghoma (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 33/30.

2. In accordance with its methods of work (A/HRC/36/38), on 21 December 2018 the Working Group transmitted to the Government of Libya a communication concerning Mohamed Arjili Ghoma. 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).

Submissions

Communication from the source

4. Mohamed Arjili Ghoma is a citizen of Libya and was born on 19 June 1972. Mr. Ghoma is married. He has a doctorate in computer science and is a lecturer at the Faculty of Science at the University of Ajdabiyah. Mr. Ghoma has also lectured in computer programming at the Higher Institute of Medical Professions, in Ajdabiyah. In addition, Mr. Ghoma served as Undersecretary of the Ministry of Martyrs and Missing Persons from November 2012 to March 2014. At the time of his arrest, he was residing in Al-Zohour district, Abu Salim, Tripoli.

5. According to the source, Mr. Ghoma was arrested at a security checkpoint at Bab-Tajoura, Souq al-Jumu'a district, Tripoli, on 8 June 2016. The checkpoint is operated by a local militia called Bab-Tajoura Battalion, which is under the authority of the Ministry of the Interior.

6. The source indicates that Mr. Ghoma was detained and subjected to enforced disappearance for over a year before a member of his family managed to locate him and to talk to him on the phone. Mr. Ghoma himself did not have any information as to the location of his detention.

7. In addition, the source reports that, during the year of his disappearance, security agencies of the Government of National Accord in Tripoli denied having Mr. Ghoma in their custody and stated that they had no knowledge of his whereabouts.

8. The source also indicates that, on four occasions, while he was subjected to enforced disappearance, someone had contacted the family through third parties, asking for a ransom in order to release Mr. Ghoma. Four months after Mr. Ghoma's initial disappearance, this individual was demanding 6 million Libyan dinars. A few months later, in early 2017, he reduced his demand to 4 million dinars, and in May or June 2017, reduced the amount further, to 2 million dinars. According to the source, Mr. Ghoma's family did not have the means to pay such a ransom.

9. The source explains that, initially, the commander of the Bab-Tajoura Battalion denied that they had abducted Mr. Ghoma. He threatened the relatives of Mr. Ghoma with detention if they ever enquired again. A year later, the same commander contacted a member of Mr. Ghoma's family and declared that Mr. Ghoma was being held by the Special Deterrence Force.

10. At the end of June 2017, the same member of Mr. Ghoma's family contacted the Special Deterrence Force through its Facebook page. The Special Deterrence Force acknowledged after more than a year of denials that it had taken Mr. Ghoma into custody, and arranged a phone call with him. During the call, Mr. Ghoma explained that he was being held at Mitiga Detention Centre and that he had been brought there about three days prior.

11. The source indicates that the Special Deterrence Force is a militia that operates as a special force under the Ministry of the Interior of the Government of National Accord, the internationally recognized Government of Libya. The Special Deterrence Force is regarded as a State agent, since it is officially recognized by the Ministry of the Interior as a special security unit, and it receives its salaries and equipment from the Government of National Accord.

12. The source alleges that these militias are more powerful than the police force, that the Government relies on them to protect its premises and that no authority is willing to question them or hold them accountable.

13. According to the source, it is not known whether an arrest warrant was shown to Mr. Ghoma or whether he was informed of the charges. However, the source adds that, according to the facts on the ground, these militias never produce a warrant.

14. The source specifies, however, that the authorities who ordered the detention of Mr. Ghoma are the Criminal Investigations Department of the Souq al-Jumu'a branch of the Ministry of the Interior. An officer in this department explained that Mr. Ghoma was arrested at a checkpoint and deprived of liberty because he was driving a car belonging to the Ministry

of the Interior. They subsequently interrogated him and found out that he was from eastern Libya, and he was detained without being brought before the Public Prosecutor's Office.

15. The source indicates that the family of Mr. Ghoma approached the local Council of Souq al-Jumu'a district and its Council of Dignitaries to try to influence the local militias (Bab-Tajoura Battalion and the Special Deterrence Force) to release him, but without success.

16. According to the source, Mr. Ghoma has been held without charges and without being tried since 8 June 2016. In addition, he has been held incommunicado for more than two years, the last 15 months of which were at the Mitiga Detention Centre.

17. The source reports that this detention facility has a notorious reputation of excessive use of torture and inhuman and degrading treatment, with detainees being held in inhumane conditions in extremely overcrowded cells, deprived of adequate food and medical care. The prevalence of torture and deaths while in custody at Mitiga are well documented. Therefore, the source expresses concern that Mr. Ghoma's life is in danger.

18. According to the source, Mr. Ghoma was visited by his family in September 2017, and they have learned that he had been diagnosed with leukaemia. Afterwards, a member of Mr. Ghoma's family went to the Office of the General Attorney of Libya and asked the Office to intervene and to release Mr. Ghoma on health grounds, but to no avail. His illness is reportedly at an advanced stage and requires treatment in a specialized medical centre. However, Mr. Ghoma, who is being held by the Special Deterrence Force, is being deprived of urgent medical treatment. Indeed, a relative of Mr. Ghoma has procured the medication he requires, but is unable to get it to him, because the militia at the Mitiga Detention Centre refuse to guarantee the delivery of the medicine to him. Allegedly, the relative was told to leave it at the reception desk. The source is not convinced that they will give the treatment directly to Mr. Ghoma without delay. The source further explains that it is a very expensive medicine (one course of treatment costs 2,700 dinars, or \$1,900).

19. The source submits that Mr. Ghoma's detention is arbitrary, based on the following facts: (a) Mr. Ghoma has been arrested and detained without a legal warrant, (b) he was the victim of enforced disappearance for over a year, (c) he has not been brought before a court and (d) he has not officially been charged with any crime.

Response from the Government

20. On 21 December 2018, the Working Group transmitted the allegations made by the source to the Government through its regular communication procedure. The Working Group requested the Government to provide, by 19 February 2019, detailed information about the current situation of Mr. Ghoma and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Ghoma's physical and mental integrity.

21. The Working Group regrets that it did not receive a response from the Government to that communication, nor did the Government request an extension of the time limit for its reply, as provided for in the Working Group's methods of work.

Discussion

22. 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.

23. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

24. 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 forth in the Universal Declaration of Human Rights, the International Covenant

on Civil and Political Rights and other applicable international and regional instruments.¹ 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.²

25. Before considering the substance of the allegations made by the source, the Working Group notes that Mr. Ghoma was reportedly arrested by the Bab-Tajoura Battalion. However, he has subsequently been held by the Special Deterrence Force. Both are militia groups nominally under the authority of the Ministry of the Interior of the Government of National Accord, which has been recognized as the sole legitimate Government of Libya by the Security Council in its resolution 2259 (2015) of 23 December 2015.³ Further, 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.⁴ In the present case, Mr. Ghoma's detention was ordered by the Criminal Investigation Department of the Ministry of the Interior. The Working Group thus considers that it is difficult to deny that Mr. Ghoma has 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.⁵

26. 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 articles on responsibility of States for internationally wrongful acts, which restates customary law.⁶ 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 thereof, as it has been empowered by the law to exercise elements of the governmental authority and has been acting in that capacity in this particular instance, most prominently by virtue of the Presidency Council's Decree No. 555 (2018), which authorizes the Special Deterrence Force to implement State security policy and to combat organized crime and terrorism on behalf of the Government by arresting suspected offenders.⁷

27. 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.⁸

28. In this regard, the Working Group notes the High Commissioner's recommendation that the Government urgently address the proliferation of armed groups, including through

¹ See General Assembly resolution 72/180, fifth preambular paragraph; 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.

² Opinions No. 1/1998, para. 13; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 76/2017, para. 49; and No. 94/2017, para. 47.

³ Opinions No. 6/2017, para. 35, and No. 39/2018, para. 26.

⁴ See "Abuse behind bars: arbitrary and unlawful detention in Libya", prepared by the Office of the United Nations High Commissioner for Human Rights in cooperation with the United Nations Support Mission in Libya, April 2018, p. 18.

⁵ Opinion No. 3/2016, para. 15; see also the Declaration on the Protection of all Persons from Enforced Disappearance.

⁶ Opinion No. 6/2017, para. 37.

⁷ 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 the Mitiga airbase. See "Abuse behind bars", p. 18.

⁸ Opinions No. 6/2017, para. 38, and No. 39/2018, para. 32. See also the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 2, and A/HRC/34/42, para. 22.

disarmament, demobilization and reintegration, and the building of national security forces under the command and control of the State. The Working Group also notes the High Commissioner's recommendation that the Government also address the situation of detainees, whether foreign nationals or nationals of Libya, by ensuring that the State is in control of all detention facilities and that cases are screened, with a view to either releasing detainees or charging and judging them in a trial affording all procedural guarantees, in accordance with both national law and international standards.⁹

Category I

29. The Working Group will first consider whether there have been violations under category I, which concerns deprivation of liberty without any legal basis being invoked.

30. The source submits, and the Government does not contest, that Mr. Ghoma was not presented with an arrest warrant or informed of the reasons for his arrest when he was taken into custody on 8 June 2016, and that he was not promptly informed of any charges against him.

31. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. The Working Group notes that Mr. Ghoma was arrested without an arrest warrant and without being informed in a timely manner of the reasons for his arrest, in violation of articles 3 and 9 of the Universal Declaration of Human Rights, articles 9 (1) and 9 (2) 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.¹⁰

32. The Working Group also notes that the authorities did not inform Mr. Ghoma of the charges against him promptly, in violation of article 9 (2) of the Covenant and article 9 of the Universal Declaration of Human Rights.¹¹

33. The source maintains, and the Government again does not dispute, that Mr. Ghoma was subjected to enforced disappearance for over a year and held incommunicado for more than two years, the last 15 months of which were at the Mitiga Detention Centre. Such deprivation of liberty, entailing a refusal to disclose the fate or whereabouts of a person or to acknowledge his or her detention, lacks any valid legal basis under any circumstance and is inherently arbitrary as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.¹²

34. The Working Group finds that Mr. Ghoma was not brought promptly before a judge or afforded the right to take proceedings before a court so that it could decide without delay on the lawfulness of his detention, in violation of articles 3, 8 and 9 of the Universal Declaration of Human Rights; articles 2 (3), 9 (1), 9 (3) and 9 (4) of the Covenant; and principles 11, 32 and 37 of the Body of Principles.¹³ In addition, the report of the Working Group on 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 (A/HRC/30/37) indicates that the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and

⁹ See A/HRC/34/42, paras. 86 (a) and (c).

¹⁰ Opinions 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; and No. 82/2018, para. 29. See also article 6 of the African Charter on Human and Peoples' Rights and article 14 (1) of the Arab Charter on Human Rights.

¹¹ See also article 14 (3) of the Arab Charter on Human Rights.

¹² See the Declaration on the Protection of all Persons from Enforced Disappearance; opinion No. 82/2018, para. 28; article 5 of the African Charter on Human and Peoples' Rights; and article 22 of the Arab Charter on Human Rights.

¹³ See also article 6 of the African Charter on Human and Peoples' Rights and articles 12, 14 (1), 14 (5), 14 (6) and 23 of the Arab Charter on Human Rights.

is essential to preserving legality in a democratic society (paras. 2 and 3). This right applies to all forms and situations of deprivation of liberty.¹⁴

35. In addition to these violations, the Working Group considers that the ransom demand made to Mr. Ghoma's family to secure his release lays bare the unlawful nature of his deprivation of liberty.

36. The Working Group therefore considers that Mr. Ghoma's arrest and detention lack a legal basis and are thus arbitrary, falling under category I.

Category III

37. The Working Group will now consider whether the alleged violations of the right to a fair trial and due process were grave enough to give Mr. Ghoma's deprivation of liberty an arbitrary character, so that it falls within category III.

38. The Working Group observes that Mr. Ghoma has been held without being charged since 8 June 2016, in violation of article 14 (3) (a) of the Covenant,¹⁵ and there is no prospect of a trial taking place. In this case, the absence of a trial for almost three years constitutes a violation of his right to a fair trial under article 10 of the Universal Declaration of Human Rights and article 14 (1) of the Covenant. It also constitutes a violation of the right to be tried without delay under article 14 (3) (c) of the Covenant.

39. Furthermore, the authorities failed to respect Mr. Ghoma's right to unrestricted access to legal assistance, which is inherent to his right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3 and 9 of the Universal Declaration of Human Rights and articles 9 (1) and 14 (1) of the Covenant.¹⁶

40. The Working Group expresses its concern about the allegations of a lack of appropriate treatment, including alleged denial of medical treatment for leukaemia, which is reportedly at an advanced stage, and reminds the Government of its obligations under international law to preserve the life and well-being of Mr. Ghoma. The Working Group is also concerned about the source's allegations of the use of torture and ill-treatment at the detention facility at Mitiga, where Mr. Ghoma is being held, in particular as such allegations have been made in other cases involving the facility.¹⁷ The Working Group therefore refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

41. Given the concerns detailed above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Ghoma's deprivation of liberty an arbitrary character that falls within category III.

42. The Working Group expresses its grave concern at the documented pattern of mass arbitrary detention.¹⁸ 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 (A/HRC/31/47). The Working Group considers that Mr. Ghoma's case is thus not an isolated incident. In this 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.¹⁹

¹⁴ Opinion No. 39/2018, para. 35.

¹⁵ See also article 16 (1) of the Arab Charter on Human Rights.

¹⁶ See also article 7 (1) of the African Charter on Human and Peoples' Rights and article 13 (1) of the Arab Charter on Human Rights.

¹⁷ Opinion No. 39/2018, para. 42.

¹⁸ "Abuse behind bars", prepared by the Office of the United Nations High Commissioner for Human Rights in cooperation with the United Nations Support Mission in Libya.

¹⁹ A/HRC/13/42, para. 30; opinions No. 1/2011, para. 21; No. 37/2011, para. 15; No. 38/2011, para. 16; No. 39/2011, para. 17; No. 4/2012, para. 26; No. 68/2018, para. 60; No. 73/2018, para. 69; No. 82/2018, para. 53; No. 83/2018, para. 68; and No. 87/2018, para. 80.

43. Moreover, the Working Group would welcome the opportunity to visit Libya in order to engage with the Government in a constructive manner.

Disposition

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

The deprivation of liberty of Mohamed Arjili Ghoma, being in contravention of articles 3, 6, 8–10, 11 (1) and 25 of the Universal Declaration of Human Rights and articles 2 (3), 9 (1)–(4), 10, 14 (1), 14 (3) (a)–(d) and (g), and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

45. The Working Group requests the Government of Libya to take the steps necessary to remedy the situation of Mr. Ghoma 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 International Covenant on Civil and Political Rights.

46. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Ghoma immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

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

48. The Working Group encourages the Government to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

49. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

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

Follow-up procedure

51. 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. Ghoma has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Ghoma;
- (c) Whether an investigation has been conducted into the violation of Mr. Ghoma'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.

52. 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.

53. 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.

54. 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.²⁰

[Adopted on 30 April 2019]

²⁰ Human Rights Council resolution 33/30, paras. 3 and 7.