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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017

Opinion No. 6/2017 concerning Yousif Abdul Salam Faraj Ahbara, Abubakr Hamad Ali Dayoum, Masoud Abdel Azeim al-Shafei, Abdu Rabo al-Sharief Abdu Rabu al-Mabrouk, Abdul Rahman Abdul Jalil Mohammed al-Firjani, Ahmed Mahmoud Mohamed al-Farisi and Abdalla Faraj Abdalla Aburas Ali (Libya)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 29 December 2016 the Working Group transmitted to the Government of Libya a communication concerning Yousif Abdul Salam Faraj Ahbara, Abubakr Hamad Ali Dayoum, Masoud Abdel Azeim al-Shafei, Abdu Rabo al-Sharief Abdu Rabu al-Mabrouk, Abdul Rahman Abdul Jalil Mohammed al-Firjani, Ahmed Mahmoud Mohamed al-Farisi and Abdalla Faraj Abdalla Aburas Ali. 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. Mr. Ahbara, born in 1985, is a driver at Benien airport and normally lives in the Al-Leith neighbourhood of Benghazi, Libya.

5. Mr. Dayoum, born on 31 July 1978, is the father of two children. He works at a restaurant and usually lives in the Al-Kish neighbourhood of Benghazi.

6. Mr. Al-Shafei, born on 3 June 1996, works in a restaurant and usually lives in the Al-Sabri neighbourhood of Benghazi.

7. Mr. Al-Mabrouk, born on 31 July 1992, is a student at the faculty of law of the University of Benghazi. He runs a small workshop and usually lives in the Al-Leith neighbourhood of Benghazi.

8. Mr. Al-Firjani, born on 17 February 1997 (he was 17 years old at time of arrest), usually lives in the Tourg Naphag al-Hadaig neighbourhood of Benghazi.

9. Mr. Al-Farisi, born on 1 August 1997 (he was 17 years old at the time of arrest), is a secondary school student. He usually lives in the Ardi Zawawa neighbourhood of Benghazi.

10. Mr. Aburas Ali, born on 1 January 1993, is a student at a nursing institution in Al-Hadig, Benghazi. He also works as a barber and usually lives in the Sidi Younis neighbourhood of Benghazi.

11. The source reports that the seven aforementioned individuals, two of whom were minors at the time of arrest, are all Libyan nationals who were arrested in 2014 or 2015 reportedly by members of the Department of Combating Terrorism, an armed group allied to Operation Dignity, a coalition of forces aligned with the Libyan National Army (LNA), under the command of General Khalifa Haftar. They were initially detained at the Birsis detention centre and are currently detained in the Kuwiefiya detention centre.

12. According to the information received, the Kuwiefiya detention centre has a military wing that is under the authority of the Ministry of Defence and an internal security wing that is under the authority of the Ministry of the Interior. In effect, the Kuwiefiya detention centre is under the control of Operation Dignity forces. However, it should be noted that the individuals who conducted the arrest and the Operation Dignity forces currently in control of the two detention facilities receive salaries from the Government of National Accord through the Ministry of Defence and the Ministry of the Interior.

13. The source provided the information set out below in relation to the seven individuals.

14. Mr. Ahbara was arrested on 10 October 2014, together with nine relatives, at a checkpoint in the Birsis neighbourhood. He was arrested by members of the Department of Combating Terrorism without a warrant and taken to the Birsis detention centre. On 11 October 2014, Mr. Ahbara's relatives were released without charge. Mr. Ahbara continued to be held for four months, during which time he was denied family visits. He was subjected to torture and ill-treatment. He appeared twice on the Libya Awalan television channel to make confessions: in February 2015, he confessed to killing 84 people in separate incidents and, in April 2015, he confessed to killing 23 individuals in separate incidents. According to the source, the confessions were made under duress. In addition, his photograph was posted on Facebook, together with a statement indicating that he had confessed to killing 82 individuals. On 21 June 2015, he was transferred to the military wing of the Kuwiefiya detention centre, where he had access to family visits. On 27 December 2015, Mr. Ahbara was transferred back to the Birsis detention centre. On 2 April

2016, he was once again transferred to the internal security wing of the Kuwiefiya detention centre. It is believed that he was detained because of his perceived association with a fighter belonging to the Benghazi Revolutionaries Shura Council, a military coalition opposing Operation Dignity. The source reports that Mr. Ahbara was denied access to a lawyer.

15. Mr. Dayoum was arrested on 6 December 2014, from his home, by members of the Department of Combating Terrorism. No warrant was presented at the time of arrest. Mr. Dayoum was taken to the Birsis detention centre. He was subjected to torture, including beatings with electric cables and water pipes. Initially, his family was allowed to visit him, however, on 20 January 2015, personnel at the detention centre denied such visits. On 28 January 2015, the family received a telephone call from the leader of the Department, who told them that Mr. Dayoum had confessed to killing 120 people in separate incidents. The leader also warned the family to leave Benghazi. On 29 January 2015, Mr. Dayoum's family fled to Tripoli. On the same day, they received information indicating that their apartment had been set on fire.

16. In May 2015, Mr. Dayoum bore signs of torture, including a severe wound on his leg. He had no access to doctors or medical treatment. On 22 June 2015, he was transferred to the military wing of the Kuwiefiya detention centre. In Kuwiefiya, Mr. Dayoum could receive family visits. On 20 August 2015, he was transferred to the internal security wing and denied family visits. On 20 December 2015, he was transferred back to the Birsis detention centre and interrogated by a member of the armed group running the centre. In January 2016, he was transferred back to the internal security wing of the Kuwiefiya detention centre. In March 2016, he was transferred again to the Birsis detention centre, where he was again subjected to torture and severely beaten, as a result of which he ended up with a broken hand. His picture appeared on the Facebook page of the Birsis detention centre, where it was indicated that he had killed 90 people and slaughtered 10 others. On 2 April 2016, he was once again transferred to the internal security wing of the Kuwiefiya detention centre. At no time was he brought before a prosecutor or a court. He has not been informed of any charges against him and has been denied access to a lawyer.

17. On 22 December 2014, Mr. Al-Shafei turned himself in at the Birsis detention centre. The Department of Combating Terrorism had detained his brother four days earlier and indicated that, if Mr. Al-Shafei turned himself in, it would release his brother. Mr. Al-Shafei's brother was released on 26 December 2014. Mr. Al-Shafei was held incommunicado for seven days. An interrogator informed his family that he was a criminal and had confessed to organizing an explosion and to killing several people, including his neighbours in the Al-Sabiri neighbourhood. According to the source, in February 2016, Mr. Al-Shafei appeared on the Libya Awalan television channel, on which he was forced to confess to killing 96 people in separate incidents. On 15 June 2016, he was transferred to the internal security wing of the Kuwiefiya detention centre, where he was held in solitary confinement for three months. There, he was tortured and beaten with water pipes. On 15 June 2016, his family visited him. Since then, he has been denied family visits. It is believed that the reason for his arrest and detention is his perceived association with the Benghazi Revolutionaries Shura Council. The source indicates that Mr. Al-Shafei is a civilian and has never been a fighter. The source also reports that Mr. Al-Shafei has been denied access to a lawyer.

18. Mr. Al-Mabrouk was arrested on 24 December 2014, along with his two brothers, from his father's workshop in the Abdouzaira neighbourhood of Benghazi by members of the Department of Combating Terrorism who reportedly confiscated his vehicle and some equipment. The three men were arrested without a warrant. Mr. Al-Mabrouk's brothers were taken to Birsis detention centre, where they were held for 30 days incommunicado and then released without charge. On the day of his detention, Mr. Al-Mabrouk was brought to the Budizira detention facility, which is under the command of Faraj Qeiam, where he was held for seven days, and then transferred to the Birsis detention centre, where he was held for four months. He was denied access to a lawyer and family visits during his detention. Mr. Al-Mabrouk was subjected to torture and beaten with water pipes and electricity cables that left bruises on his body. In February 2015, he was shown on the Libya Awalan

television channel, which is allied to Operation Dignity, on which he confessed to killing four people using planted explosives in separate incidents.

19. On 21 June 2015, he was transferred to the military wing of the Kuwiefiya detention centre. His family was able to visit him there. He was later transferred to Birsis detention centre, where he spent 40 days and where he was tortured and forced to confess to killing 16 people in separate incidents. Between August and December 2015, Mr. Al-Mabrouk was transferred several times between the military wing and the internal security wing of the Kuwiefiya detention centre. On 27 December 2015, he was transferred again to the Birsis detention centre, where he was held until 2 April 2016 and where he was subjected to torture and ill-treatment. His name was listed with those of seven other detainees on the Facebook page of the Birsis detention centre, where it was indicated that he had killed four people in separate incidents. He has not been brought before a prosecutor or a court or been informed of any charges against him.

20. Mr. Al-Firjani was arrested on 27 December 2014, at his home, by members of the Department of Combating Terrorism. At the time of arrest, Mr. Al-Firjani was 17 years old. Department members reportedly raided his home and confiscated a laptop and a telephone. He was arrested without a warrant and brought to the Budizira detention facility in Benghazi, where he was held incommunicado for three days. Mr. Al-Firjani was denied access to a lawyer and to his family.

21. On 30 December 2014, Mr. Al-Firjani was transferred to the Birsis detention centre. During his detention there, relatives were able to visit him twice. He was beaten all over the body with various objects, including electricity cables and water pipes, and denied access to the toilet. In April 2015, he was forced to appear on the Libya Awalan television channel and confess to the killing and assassination of nine people in separate incidents. According to the source, his mouth was visibly swollen when he appeared on television. In reaction to the broadcast, some people attacked and burned his family home on the same day. On 21 June 2015, Mr. Al-Firjani was transferred to the military wing of the Kuwiefiya detention centre where his family was able to visit him.

22. On 15 August 2015, Mr. Al-Firjani was moved to the internal security wing of the prison, where he was unable to receive visitors. There, he was subjected to torture and ill-treatment. He was beaten all over his body, including on his head and back, around the kidney area. His head was submerged in water. At times, he lost consciousness. A member of the group that interrogated him stepped on his head and threatened to harm him if he changed his confession. On 15 November 2015, Mr. Al-Firjani was moved back to the military wing of the Kuwiefiya detention centre, where he was allowed to receive family visits. On 27 December 2015, he was transferred to the Birsis detention centre, where he was again subjected to torture and ill-treatment and denied access to a lawyer and family visits. His name appeared on the Facebook page of the Birsis detention centre, in a post stating that he had killed 17 people.

23. On 2 April 2016, Mr. Al-Firjani was transferred to the internal security wing of the Kuwiefiya detention centre. On 8 May 2016, a relative of his requested a visit but was told that Mr. Al-Firjani was not available. According to the information received, Mr. Al-Firjani's health had deteriorated and he had been transferred to the Benghazi Medical Hospital for medical treatment and then returned to the prison on the same day. On 15 May 2016, the family of Mr. Al-Firjani submitted a written application to the military prosecutor asking him to investigate the allegations of torture and facilitate the transfer of Mr. Al-Firjani to the Benghazi Medical Centre so that a forensic doctor could assess the injuries resulting from torture and ill-treatment, as well as other health concerns, including shortness of breath and pain in the urinary tract. On 20 June 2016, Mr. Al-Firjani was checked by a doctor provided by the prosecutor but the family has not received any report regarding the medical check.

24. Mr. Al-Firjani has not been brought before a court or been informed of any charge against him. According to the source, the reason for his detention appears to be that Mr. Al-Firjani was accused of sending text messages from his telephone to his neighbour indicating that persons from Operation Dignity had carried out raids on 25 December 2014 in their

neighbourhood. He remains in detention in the military wing of the Kuwiefiya detention centre.

25. In January 2015, at the age of 17, Mr. Al-Farisi was arrested with his brother by members of the Department of Combating Terrorism. The two brothers were taken to the Abudazira detention centre, also run by the armed group, accused of being terrorists. They were released on the same day. On 15 February 2015, a member of the Department took Mr. Al-Farisi from his home in Benghazi. Mr. Al-Farisi was held incommunicado in the Birsis detention centre for two months. In April 2015, he was subjected to torture and forced to broadcast a confession on the Libya Awalan television channel. It appears that he was tortured into confessing. Viewers of the broadcast could see bruises and swellings on his face. On television, he confessed to killing 17 people in separate incidents. Reportedly, the house of his relatives was burned down on the same day. The family fled to another location in Benghazi. After the broadcast, his family was able to visit him twice in Birsis, where he was again reportedly subjected to torture and beatings, which resulted in a broken leg that was later put in plaster. In June 2015, Mr. Al-Farisi was transferred to the military wing of the Kuwiefiya detention centre. In July 2015, he was moved to the internal security section of the same detention centre. In February 2016, he was transferred back to the military wing, where he is currently detained. Mr. Al-Farisi has not been taken before a court or formally charged with a criminal offence; he has been denied access to a lawyer.

26. Mr. Aburas Ali was arrested on 18 March 2015 on the street by members of the Department of Combating Terrorism. He was arrested without a warrant and taken to the Birsis detention centre. His family visited him there and were informed by facility personnel that Mr. Aburas Ali would be released in three days. After three days, Mr. Aburas Ali's family returned to the Birsis detention centre and requested to see him. However, the prison authorities said that Mr. Aburas Ali was a terrorist, that he had confessed to killing 67 people in separate incidents and that he would not be allowed to receive visitors for four months. The prison authorities asked the family to leave Benghazi, warning them that another armed group, the Awlia al-Dam Brigade, wanted to retaliate against the family. On 24 March 2015, the family fled to Tripoli and received news that the family house had been taken over by a military figure allied to the Brigade. A relative of Mr. Aburas Ali travelled to Benghazi to find out whether that was true; when he visited the family house, a commander of the military intelligence brigade, Salah Bulgib, arrested him and held him for seven days. In April 2016, Mr. Aburas Ali was forced to appear on the Libya Awalan television channel and to confess to killing four people in separate incidents.

27. In July 2015, Mr. Aburas Ali was transferred to the military wing of the Kuwiefiya detention centre, where his family visited him several times, then was transferred to the Birsis detention centre, where he was held for four months. Between August and December 2015, he was transferred a number of times between the military wing and the internal security wing of the Kuwiefiya detention centre. On 27 December 2015, he was transferred again to the Birsis detention centre and held there until 2 April 2016; during that time, he was subjected to torture and ill-treatment. A relative of his was detained in the Birsis detention centre for nine days after he requested to visit Mr. Aburas Ali in the detention centre. His relative was released without charge and told to leave Benghazi, which he did. Mr. Aburas Ali is now being held in the Kuwiefiya detention centre.

28. Mr. Aburas Ali's name was listed with those of seven other persons on the Facebook page of the Birsis detention centre, in a post stating that he had killed four people in separate incidents. He has not been brought before a prosecutor or a court or been informed of any charges against him; he has been denied access to a lawyer.

29. The source submits that the deprivation of liberty of the seven aforementioned individuals is arbitrary and falls within categories I and III (see para. 3 above). In its view, all seven individuals were arrested and detained without any legal basis, in violation of article 9 (1) of the Covenant.

30. Furthermore, the source submits that none of the persons who are the subject of the present opinion has been guaranteed the international norms relating to the right to a fair trial during the period of their deprivation of liberty, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. They have

been detained without charges, have not been granted access to a lawyer, have been subjected to ill-treatment and torture, have not been brought before a court in order to challenge the legality of their continued detention and some of them, namely Mr. Al-Farisi, Mr. Al-Firjani, Mr. Ahbara, Mr. Al-Shafei, Mr. Aburas Ali and Mr. Al-Mabrouk, have been forced to make confessions on a television channel aligned with Operation Dignity. The source submits that all of these acts constitute violations of article 14 (3) (a)-(c) and (g) of the Covenant and that the men's detention is arbitrary and falls under category III.

Response from the Government

31. On 29 December 2016, 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 27 February 2017, detailed information about the current situation of Mr. Ahbara, Mr. Dayoum, Mr. Al-Shafei, Mr. Al-Mabrouk, Mr. Al-Firjani, Mr. Al-Farisi and Mr. Aburas Ali. The Working Group requested that the Government provide any comments it may have on the above-mentioned allegations. The Working Group requested clarification of the factual and legal grounds justifying the detention of the seven men and information regarding the conformity of the detention and judicial proceedings of these persons with international human rights law, in particular the treaties that Libya has ratified, including the Covenant. Finally the Working Group invited the Government to provide detailed comments on its relationship with the Department of Combating Terrorism, an armed group allied to Operation Dignity.

32. The Working Group regrets that it did not receive a response from the Government, 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

33. 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.

34. 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 (see 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.

35. Before considering the substance of the allegations made by the source, the Working Group takes note of the fact that the seven individuals in question have been detained by the Department of Combating Terrorism, an armed group allied to Operation Dignity, a coalition of forces aligned to LNA. LNA is not, however, under the de facto control and command of the Government of National Accord, which is the only Government recognized by the Security Council (see resolution 2259 (2015)).

36. Nevertheless, the source has argued and the Government of Libya has not challenged the allegation that those who conducted the arrests and who control the detention facilities where the seven individuals in question are held, in fact receive salaries from the Government of National Accord through the Ministry of Defence and the Ministry of the Interior (see para. 12 above).

37. The Working Group considers the fact that they are on the State's official payroll to be significant, as it demonstrates a close link between the Government of National Accord and LNA. Article 4 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts clarifies that the conduct of any State organ, be it a person or an entity, irrespective of the position held, is to be considered an act of the State under international law. In the present case, as a minimum, the Government of National Accord should have known of the actions carried out by LNA and should have taken measures to protect individuals should such actions overstep the boundaries of legality.

38. Moreover, the positive obligation of the State to prevent and punish crime in order to uphold its human rights duties remains intact irrespective of whether the actions of LNA

can be attributed to the Government of National Accord. The Working Group, therefore, concludes that the Government of Libya, the Government of National Accord, is fully responsible for the actions of LNA in the present case.

39. The source has submitted and the Government has not challenged the allegation that all seven individuals were arrested, at different times, by the Department of Combating Terrorism without a warrant. None of the seven individuals were given any reasons for the arrest at the time of the arrest, nor were they presented with charges during their subsequent detention. The Working Group recalls that article 9 (2) of the Covenant requires everyone who is arrested to be promptly informed of the reasons for the arrest and of any charges brought against them. The right to be promptly informed of charges concerns notice of criminal charges and, as the Human Rights Committee has noted in paragraph 29 of its general comment No. 35 (2014) on liberty and security of person, this right “applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment”.

40. In the present case, the seven individuals have remained in detention, for different periods of time, since 2014 and 2015. All are still to learn of any formal charges against them. In other words, the authorities have not formally invoked any legal basis justifying their detention. The Working Group therefore concludes that their arrest and continued detention constitute arbitrary detention under category I.

41. The Working Group notes with grave concern that the seven individuals were arrested by the antiterrorism forces and held, for various periods of time, in military prisons and that none of them has had an opportunity to challenge the legality of their detention before a judge. The Working Group wishes to reiterate that, according to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential for preserving legality in a democratic society. This right applies to all cases of deprivation of liberty, including to cases of detention during armed conflicts and emergency situations, administrative detention for security reasons and the detention of individuals considered civilian internees under international humanitarian law (see A/HRC/30/37, paras. 2-3 and 9).

42. Failure to bring the seven individuals before a judge so as to allow them to challenge the legality of their arrest and detention for time periods ranging from 24 to 30 months constitutes a flagrant violation of article 9 (3) and (4) of the Covenant. Noting that all seven individuals were reportedly arrested because of alleged links to terrorist organizations, although no charges have been brought to date, the Working Group deems it necessary to refer the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

43. The Working Group is concerned about the allegations of torture and ill-treatment, including for the extraction of confessions, made by the source in relation to all seven individuals. Those allegations have not been challenged by the Government of Libya. The treatment described reveals prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle 6) and of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (rule 1). The Working Group therefore refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

44. The Working Group is also concerned about the allegations that all seven individuals were made by the authorities to confess to numerous killings through broadcasts aired either on the Libya Awalan television channel or Facebook. Such public broadcasting of the alleged confessions constitutes a complete disregard for the presumption of innocence enshrined in article 14 of the Covenant. It is particularly alarming given that the seven individuals have never been charged with an offence and has had devastating implications for the family members of the detainees who have had to flee and whose

homes have been set on fire. The Working Group wishes to remind the Government of Libya that it is under a positive duty to protect the families of all its residents against such acts of retaliation.

45. Moreover, the fact that the seven individuals were denied assistance by a lawyer constitutes a violation of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle 17.1) and 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 (principle 9).

46. The Working Group notes the allegations that Mr. Al-Shafei was held in incommunicado detention for seven days, Mr. Al-Mabrouk for 30 days and Mr. Al-Farisi for two months, and that these allegations have not been challenged by the Government. The Working Group, in its practice, has consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge.¹ Articles 10 and 11 of the Universal Declaration of Human Rights also confirm the impermissibility of incommunicado detention. Furthermore, the Committee against Torture has made it clear that incommunicado detention creates conditions that may lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see, e.g., A/54/44, para. 182 (a)); the Special Rapporteur on torture has consistently argued that the use of incommunicado detention is unlawful (see, e.g., A/54/426, para. 42, and A/HRC/13/39/Add.5, para. 156); and the Human Rights Committee has argued that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9 (3) of the Covenant (see general comment No. 35, para. 25).

47. The facts presented by the source, and not challenged by the Government of Libya, also reveal the prima facie violations of the rights of all seven individuals under articles 10 (1) (the right to be treated with humanity and respect during detention) and 10 (2) (a) (the right of unconvicted persons to be treated in accordance with their status as not convicted) of the Covenant. The failure to allow Mr. Ahbara, Mr. Dayoum, Mr. Al-Shafei, Mr. Al-Mabrouk and Mr. Al-Firjani contact with their families during various and prolonged periods of time is a violation of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle 19). Finally, denial of proper medical care to Mr. Dayoum and Mr. Al-Firjani is a violation of the Nelson Mandela Rules (rules 24, 25, 27, 30 and 32 in particular).

48. The Working Group consequently finds that the 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 Libya is of such gravity as to give the deprivation of liberty of the seven men who are the subject of the present opinion an arbitrary character (category III).

Disposition

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

The deprivation of liberty of Yousif Abdul Salam Faraj Ahbara, Abubakr Hamad Ali Dayoum, Masoud Abdel Azeim al-Shafei, Abdu Rabo al-Sharief Abdu Rabu al-Mabrouk, Abdul Rahman Abdul Jalil Mohammed al-Firjani, Ahmed Mahmoud Mohamed al-Farisi and Abdalla Faraj Abdalla Aburas Ali, being in contravention of articles 9-11 of the Universal Declaration of Human Rights and of articles 9, 10 and 14 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

50. Consequent upon the opinion rendered, the Working Group requests the Government of Libya to take the steps necessary to remedy the situation of the aforementioned men without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights and the Covenant.

¹ See, e. g., opinions No. 53/2016 and No. 56/2016.

51. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release the men immediately and accord each one of them an enforceable right to compensation and other reparations, in accordance with international law.

Follow-up procedure

52. 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 the seven individuals have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to them;
- (c) Whether an investigation has been conducted into the violation of their 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.

53. 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.

54. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

55. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.²

[Adopted on 19 April 2017]

² See Human Rights Council resolution 33/30, paras. 3 and 7.