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

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-seventh session, 28 August–1 September 2023**

### **Opinion No. 41/2023 concerning Osama Muhammad Saleh al-Ghafir al-Obeid (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 51/8.

2. In accordance with its methods of work,<sup>1</sup> on 6 June 2023 the Working Group transmitted to the Government of Libya a communication concerning Osama Muhammad Saleh al-Ghafir al-Obeid. 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

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

or any other status that aims towards or can result in ignoring the equality of human beings (category V).

**1. Submissions**

**(a) Communication from the source**

*i. Context*

4. Osama Muhammad Saleh al-Ghafir al-Obeid, born on 24 September 1971, is a national of Libya. He is married and usually resides in Tripoli. He is an officer within the Ministry of Defence of the Government of National Accord in Tripoli.

5. Colonel Al-Obeid was part of a battalion tasked with securing the oil fields in the Sirte region, under the command of the former Minister of Defence of the Government of National Accord.

*ii. Arrest and detention*

6. On 12 July 2016, while carrying out a mission in the Sirte oil fields, Colonel Al-Obeid was arrested by a group of soldiers from the Tariq bin Ziyad brigade, affiliated with the Libyan National Army and controlled by General Khalifa Haftar. While the brigade was fighting to take control of the oil fields, it arrested Colonel Al-Obeid and took him onboard a military aircraft to an unknown destination.

7. On 12 August 2016, after a month of unsuccessful attempts by Colonel Al-Obeid's family to obtain information about his fate and whereabouts, he appeared on a television programme on the Al-Hadath television channel, which is reportedly controlled by General Haftar and used to disseminate propaganda.

8. Colonel Al-Obeid appeared to be speaking under duress and showing signs of extreme fatigue, ill-treatment and torture, while he denied the legitimacy of his mission.

9. At that time, the family of Colonel Al-Obeid did not know about his fate and whereabouts, despite their many attempts to obtain such information through different official channels. After the Colonel's arrest, his family tried to get the Ministry of Defence and the Ministry of Justice of the Government of National Accord to intervene with the Eastern administration, but the Government refused, arguing that it had no control over militias under General Haftar's command.

10. Until 15 February 2022, when the family learned from an informal source that he was being held at the headquarters of the Tariq bin Ziyad brigade, they had no information about the fate and whereabouts of Colonel Al-Obeid. The Tariq bin Ziyad brigade operates in the Sidi Faraj area near Benghazi under the control of General Haftar's son.

11. According to the source, the detention centre, located in the Tariq bin Ziyad brigade headquarters, is supervised by a militia leader who is himself under the command of General Haftar.

12. Reportedly, it was observed that Colonel Al-Obeid was being subjected to extensive torture during interrogations by both the military leader and General Haftar. In particular, he was electrocuted, burned with boiling water and subjected to ill-treatment and humiliation before being forced to appear and testify on television.

13. The family appealed to the Prosecutor General of Benghazi and to the Human Rights Committee of the Ministry of Justice of the Government of National Accord, to no avail. In particular, the Prosecutor General reportedly informed the family that Colonel Al-Obeid had not been brought before him and that he was not registered as a detainee in any official prison register.

14. On 21 March 2022, the case of Colonel Al-Obeid was reported to the Working Group on Enforced or Involuntary Disappearances. In August 2022, a family member learned from an informal source that Colonel Al-Obeid was being held in solitary confinement by the Libyan National Army and its affiliated brigades in Gernada prison, in Shahat, in eastern Libya.

15. The source recalls that, according to a report of Office of the United Nations High Commissioner for Refugees and the United Nations Support Mission in Libya (UNSMIL), the Gernada Prison in Al-Baida, a correction and rehabilitation institution under the judicial police during the rule of Muammar Al-Qadhafi, is currently composed of separate wings under the oversight of different bodies: a military section under the control of the Chief-of-Staff of the Libyan National Army and Military Governor for Derna to Bin Jawwad, Abdel Razek al-Nazouri, a wing run by the General Intelligence Agency, commonly referred to as the Internal Security Agency, and a section used by a Madkhali Salafi armed group. UNSMIL highlighted a range of human rights concerns in this detention facility.<sup>2</sup>

iii. *Analysis of violations*

a. State responsibility for the arrest and incommunicado detention

16. The source recalls that Colonel Al-Obeid was arrested and is being detained by forces affiliated with the Libyan National Army, which is not under the de facto command and control of the Government of National Accord, recognized by the Security Council in its resolution 2259 (2015) as the sole legitimate Government of Libya.

17. While the Libyan National Army and its affiliated militias, including the Tariq bin Ziyad brigade, responsible for the arrest and current detention of Colonel Al-Obeid maintain their own command structure and operate autonomously, the source stresses that the payment of salaries and equipment to Libyan National Army personnel is ensured by the Government of National Accord.<sup>3</sup> As such, the Government of National Accord influences their behaviour by exercising financial control over the armed groups.

18. The source recalls that the Working Group on Arbitrary Detention has previously stated that it was difficult to deny that similar cases of deprivation of liberty in Libya had, in fact, been carried out 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>4</sup>

19. The source argues that this type of financial control is sufficient to establish in the present case that the Libyan National Army and its affiliated militias 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>5</sup>

20. The source notes that the positive obligation of the State to respect, protect and fulfil fundamental human rights, including personal liberty and security, by preventing and punishing the arbitrary deprivation of liberty by State or non-State actors remains intact irrespective of whether the actions of the Libyan National Army and its affiliated militias can be attributed to the Government of National Accord.<sup>6</sup> The source recalls that, in other similar cases, the Working Group has concluded on this basis that the Government was fully responsible for the actions of such armed groups in international law.<sup>7</sup>

21. The source submits that, in the present case, such a responsibility is established by the fact that the Government of National Accord exerts financial control over the Libyan National Army and its militias through the payment of their salaries and equipment and, ipso facto, the power to suspend such payments.

22. The source recalls that the Working Group has established in its earlier jurisprudence on arbitrary detention carried out by the Libyan National Army that, at a minimum, the Government of National Accord should have known of the actions carried out by the Libyan

<sup>2</sup> 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, pp. 4 and 12.

<sup>3</sup> S/2022/409, paras. 28 and 29.

<sup>4</sup> Opinion No. 62/2021, para. 32.

<sup>5</sup> Ibid., para 33.

<sup>6</sup> Ibid., para 34.

<sup>7</sup> Opinion No. 11/2022, para. 32.

National Army and its affiliates and should have taken measures to protect individuals, if such actions overstepped the boundaries of legality.<sup>8</sup>

23. The source also recalls that the Gernada prison has a military section under the control of the Chief-of-Staff of the Libyan National Army and Military Governor for Derna to Bin Jawwad.<sup>9</sup>

24. According to the source, as such, forces responsible for the arrest of Colonel Al-Obeid and those controlling the military section of the Gernada prison where he is allegedly detained have significant links with the Government of National Accord through their affiliation with the Libyan National Army.<sup>10</sup>

25. In this context, the source takes note of the conclusions by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and UNSMIL in 2018 that the reliance of the transitional authorities on salary payments to and public praise for armed groups has empowered the latter and entrenched their sense of impunity.<sup>11</sup>

26. The source recalls that, since 2020, a joint military commission composed of five senior officers appointed by the Government of National Accord and five senior officers appointed by the Libyan National Army has been participating in peace talks moderated by the Head of UNSMIL.<sup>12</sup>

27. The source highlights that State prerogatives cannot be dissociated from State responsibility. In the situation in Libya, while the Government of National Accord is the only Government recognized by the Security Council, UNSMIL communicates with the two competing administrations. Moreover, the existence of the Joint Military Commission indicates that both administrations are engaged in reunification efforts. The centralization of military payments in the entire country with the Government of National Accord also indicates that the Libyan National Army are de facto organs of the State.

28. Considering the foregoing, the source stresses that the duty to comply with international human rights standards that are peremptory and *erga omnes* norms, such as the prohibition of arbitrary detention, rests with all bodies and representatives of the State, all officials, including judges, prosecutors, police and security officers and prison officers with relevant responsibilities, and all other natural and legal persons.<sup>13</sup>

29. The forces affiliated with the Libyan National Army, like the eastern judicial administration, therefore cannot claim to be the legitimate exercise of official authority in the eastern part of the country without accepting the responsibilities that this entails. In other words, the eastern administration and the Libyan National Army cannot claim to exercise State authority, including security and law enforcement, without ensuring that their civilian and military personnel comply with peremptory and *erga omnes* international human rights norms.

b. Category I

30. The source recalls that the International Court of Justice has established that wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights.<sup>14</sup> The conventional and customary prohibition

<sup>8</sup> Ibid., para 31.

<sup>9</sup> OHCHR and UNSMIL, “Abuse behind bars”, p. 12.

<sup>10</sup> See opinion No. 11/2022, para. 31.

<sup>11</sup> OHCHR and UNSMIL, “Abuse behind bars”, p. 37.

<sup>12</sup> UNSMIL, “The 5+5 Libyan Joint Military Commission starts its meeting in Geneva today”, press release, 3 February 2020. Available at <https://unsmil.unmissions.org/55-libyan-joint-military-commission-starts-its-meeting-geneva-today>.

<sup>13</sup> Opinions No. 1/2016, para. 43; No. 91/2017, para. 102; No. 94/2017, para. 73; No. 40/2018, para. 49; and No. 61/2018.

<sup>14</sup> *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, *Judgments, I.C.J. Reports 1980*, p. 3, para. 91. See also opinions No. 10/2013, para. 23; No. 22/2014,

of arbitrary detention has been authoritatively recognized as a peremptory norm of international law by the Human Rights Committee, in paragraph 11 of its general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, as well as by the Working Group, in paragraphs 51 and 75 of its deliberation No. 9<sup>15</sup> concerning the definition and scope of arbitrary deprivation of liberty under customary international law.<sup>16</sup>

31. According to the source, Colonel Al-Obeid was arrested on 12 July 2016 by military personnel of the Tariq bin Ziyad brigade affiliated with the Libyan National Army, while he was on an official mission to secure the oil fields in the Sirte region. The mission had been ordered by the only officially recognized Government, the Government of National Accord, and Colonel Al-Obeid was acting under the command of the Minister of Defence of the Government.

32. The source alleges that the Tariq bin Ziyad brigade therefore had no authority to arrest Colonel Al-Obeid, who was exercising public power prerogatives on behalf of the Government of National Accord. Moreover, the source argues that the arrest of Colonel Al-Obeid cannot be considered an in flagrante delicto situation, as he was carrying out an official mission.

33. The source notes that, given the circumstances of Colonel Al-Obeid's arrest, his position within the Government of National Accord and his mission, as well as the conditions in which he is being held, the situation can only be described as one of unlawful arrest, imprisonment and torture of a State agent by an armed group under the control of a rival administration, as a form of retaliation (see sect. d below).

34. The source recalls that, since his arrest, Colonel Al-Obeid has been continuously deprived of all contact with the outside world, has not been registered in any official prison register and has not been brought before the Prosecutor General of Benghazi, who is typically the competent authority to hear the cases of detainees held by the Libyan National Army and its affiliated militias.

35. The source notes that, after Colonel Al-Obeid appeared in the propaganda video of 12 August 2016, showing visible signs of torture and ill-treatment, he remained unaccounted for until 15 February 2022. During this period of more than four years, he remained in a state of enforced disappearance. His family did not know his fate and whereabouts, despite numerous attempts to obtain such information through various official channels.

36. On 15 February 2022, the family of Colonel Al-Obeid reportedly learned through unofficial channels that he was still being held by the Tariq bin Ziyad brigade at its headquarters near Benghazi and that he was being subjected to various forms of severe torture and ill-treatment in detention.

37. The source recalls that the General Prosecutor of Benghazi informed the family that Colonel Al-Obeid had not been brought before him and that he was not registered as a detainee in any official prison register.

38. However, the source also recalls that, according to OHCHR and UNSMIL, the military wing of the Gernada prison in Al-Baida is under the control of the Chief-of-Staff of the Libyan National Army and Military Governor for Derna to Bin Jawwad.<sup>17</sup>

39. Although the family has received information that Colonel Al-Obeid is detained in Gernada, they are reportedly still not allowed to communicate with him.

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para. 18; No. 37/2014, para. 32; No. 63/2017, para. 51; No. 30/2018, para. 40; and No 61/2018; and *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, *Merits, Judgment*, *I.C.J. Reports 2010*, p. 639, paras. 75–85, and *Separate Opinion of Judge Caçado Trindade*, p. 729, paras. 107–142.

<sup>15</sup> A/HRC/22/44, sect. III.

<sup>16</sup> Opinions No. 24/2010, para. 28; No. 10/2013, para. 32; No. 15/2011, para. 20; No. 16/2011, para. 12; No. 63/2017, para. 51; and No. 61/2018.

<sup>17</sup> OHCHR and UNSMIL, "Abuse behind bars", pp. 4 and 12.

40. The source notes that, in similar cases, the Working Group has highlighted that enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.<sup>18</sup> The source argues that such practices constitute a violation of the victim's right to life, liberty and security (arts. 6 (1), 7, 9 and 10 of the Covenant), as well as a denial of his right to be recognized as a person before the law, which is a foundational guarantee for rights holders to access all the rights enshrined in the Covenant (art. 16 of the Covenant). Furthermore, such fundamental guarantees in detention, including the right to habeas corpus, constitute *erga omnes* obligations of any detaining authority, regardless of the status of the detained person, military or civilian.

41. The source recalls that no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods and held outside the reach of law, without the possibility of resorting to legal procedures, including habeas corpus.

42. Since 12 July 2016, Colonel Al-Obeid has been detained by General Haftar's militia in several successive locations without any legal procedure nor official registration with the competent judicial authorities.

43. In the light of the foregoing, the source submits that the deprivation of liberty of Colonel Al-Obeid cannot be grounded in law and violates the obligations articles 6, 7, 9, 10 and 16 of the Covenant. Accordingly, the source argues that his detention must be considered arbitrary under category I of the arbitrary detention categories referred to by the Working Group when considering cases submitted to it.

c. Category III

44. Although Colonel Al-Obeid has not been yet brought before any competent judicial authority, the source submits that any eventual trial would be manifestly unfair.

45. The source recalls that, on 12 August 2016, i.e. a month after his arrest, and while he was forcibly disappeared, Colonel Al-Obeid appeared on a television programme broadcast on the Al-Hadath television channel, which is controlled by General Haftar and used for the dissemination of propaganda. Colonel Al-Obeid reportedly showed signs of extreme fatigue, mistreatment and torture and appeared to be speaking under duress to disavow the legitimacy of his mission.

46. The source argues that Colonel Al-Obeid is detained without any access to a judicial authority and to the outside world and *a fortiori* to legal assistance. The source notes that, in such conditions, there can be no prospect for a fair trial before a competent, independent and impartial tribunal established by law and that therefore the deprivation of liberty of Colonel Al-Obeid must be considered arbitrary under category III.

d. Category V

47. The source submits that the deprivation of liberty of Colonel Al-Obeid constitutes a violation of international law for reasons of discrimination based on his status as an official of the Government of National Accord and aims towards and results in ignoring the equality of human rights.

48. The source argues that, while characterizing the deprivation of liberty of Colonel Al-Obeid, consideration should be given to his position within the Government of National Accord and the fact that he was seized as a government official by the Libyan National Army, which challenges the legitimacy of the Government of National Accord.

49. It is reported that, while the Libyan National Army and the Government of National Accord are engaged in negotiations, General Haftar, the commander of the forces affiliated with the Libyan National Army that are responsible for the arrest and incommunicado detention of Colonel Al-Obeid has repeatedly expressed hostility towards the Government of National Accord and in particular its officials.

<sup>18</sup> Opinions No. 5/2020, No. 6/2020, No. 11/2020, No. 13/2020 and No 11/2022. See also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 17.

50. In this regard, the source refers to the report of the Secretary-General on UNSMIL of 9 December 2022, in which he reported that in statements during visits to Ghat and Birak al-Shati on 19 and 26 September, General Haftar criticized the country's political class over alleged incompetence and inability to address the problems of the Libyan people. He called upon the population to revolt against the political class, promising the support of the Libyan National Army. On 17 October, General Haftar attended a Libyan National Army military parade in Sabha, where he further criticized the Government of National Unity for alleged corruption and reiterated his call for a popular uprising.<sup>19</sup>

51. According to the source, the reasons for the arrest and subsequent disappearance, torture and solitary confinement of Colonel Al-Obeid by the Libyan National Army-affiliated militias are, at the least, in retribution for his official role within the Government of National Accord.

52. The source recalls that, after his arrest, Colonel Al-Obeid was subjected to severe torture, including electrocution, burns by boiling water and other degrading and humiliating treatment, to punish him for his role in the mission of the Ministry of Defence of the Government of National Accord to take control of the Sirte oil fields.

53. On 12 August 2016, one month after his arrest and during his enforced disappearance, Colonel Al-Obeid appeared on a television programme broadcast by the Al-Hadath television channel, which is controlled by General Haftar and used for the dissemination of propaganda. He appeared to be speaking under duress to deny the legitimacy of his mission and the Government of National Accord, showing signs of extreme fatigue, ill-treatment and torture.

54. The source argues that the current secret detention and removal from the protection of the law of Colonel Al-Obeid by forces affiliated with the Libyan National Army arises from his position as a military officer of the Government of National Accord, denying him equal access to the protection of the law.

55. The source submits that the deprivation of liberty of Colonel Al-Obeid therefore constitutes a violation of international law for reasons of discrimination based on his status as a government official, which aims towards and results in ignoring his equal access to fundamental rights and guarantees in detention, making his detention arbitrary under category V.

**(b) Response from the Government**

56. On 6 June 2023, 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 7 August 2023, detailed information about the current situation of Colonel Al-Obeid and to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of Libya under international human rights law, in particular with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government of Libya to ensure Colonel Al-Obeid's physical and mental integrity.

57. The Working Group regrets that it received no reply from the Government, nor did the Government seek an extension in accordance with paragraph 16 of its methods of work.<sup>20</sup> The Working Group notes that it has not received a reply from the Government in response to its communications since 2006<sup>21</sup> and invites the Government to engage with the Working Group constructively by taking the opportunity to respond to communications.

<sup>19</sup> S/2022/932, para. 33.

<sup>20</sup> A/HRC/36/38.

<sup>21</sup> See opinions No. 18/2006, No. 16/2007, No. 1/2010, No. 6/2011, No. 60/2012, No. 41/2013, No. 3/2016, No. 4/2016, No. 6/2017, No. 39/2018, No. 18/2019, No. 85/2019, No. 13/2020, No. 62/2021 and No. 11/2022.

## 2. Discussion

58. 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.

59. In determining whether the detention of Colonel Al-Obeid is 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>22</sup> In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

60. The Working Group wishes to reaffirm that States have the obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of person, and that any national law allowing for 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 Covenant and other applicable international and regional instruments.<sup>23</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 circumstances of the detention and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.<sup>24</sup>

61. As a preliminary matter, the Working Group notes that Colonel Al-Obeid was arrested and deprived of liberty by the Tariq bin Ziyad brigade, which is affiliated with the Libyan National Army. Although the Libyan National Army and its affiliated militias, including the Tariq bin Ziyad brigade, maintain their own command structure and operate autonomously from the Government of National Accord, the only Government recognized by the Security Council,<sup>25</sup> it has been reported by the source, without any rebuttal from the Government, that the payment of salaries and equipment to personnel of the Libyan National Army is ensured by the Government of National Accord. In this regard, the Working Group recalls its past jurisprudence on detentions carried out by the Libyan National Army, whereby it expressed that, at a minimum, the Government of National Accord should have known of the actions carried out by the Libyan National Army and its affiliates and should have taken measures to protect individuals if such actions overstepped the boundaries of legality.<sup>26</sup>

62. Moreover, the Working Group recalls that the positive obligations of the State to prevent and punish crime and to uphold its human rights duties remain intact irrespective of whether the actions of the Libyan National Army can be attributed to the Government of National Accord.<sup>27</sup> The Working Group therefore concludes that the Government of Libya, i.e. the Government of National Accord, is fully responsible for the actions of those militias affiliated with the Libyan National Army that carried out the arrest and subsequent detention of Colonel Al-Obeid. In doing so, the Working Group recalls the conclusions of OHCHR and UNSMIL in 2018 that the reliance of the transitional authorities on salary payments to and public praise for armed groups has empowered the latter and entrenched their sense of impunity.<sup>28</sup>

### a. Category I

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

<sup>22</sup> A/HRC/19/57, para. 68.

<sup>23</sup> 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.

<sup>24</sup> See opinions No. 1/1998, para.13; No. 82/2018, para.25; No. 36/2019, para.33; No. 42/2019, para.43; No. 51/2019, para.53; No. 56/2019, para.74; No. 76/2019, para.36; No. 6/2020, para.36; No. 13/2020, para.39; No. 14/2020, para.45; and No. 32/2020, para. 29.

<sup>25</sup> See Security Council resolution 2259 (2015).

<sup>26</sup> A/HRC/2011/11, para. 31.

<sup>27</sup> *Ibid.*, para. 32. See also opinion No. 62/2021, para. 34.

<sup>28</sup> OHCHR and UNSMIL, "Abuse behind bars", p. 37.



64. The source submits, and the Government has not rebutted, that Colonel Al-Obeid was arrested on 12 July 2016 by a group of soldiers from the Tariq bin Ziyad brigade affiliated with the Libyan National Army and controlled by General Haftar. Colonel Al-Obeid was taken onboard a military aircraft to an unknown destination. This was done without providing him with any warrant of arrest or informing him of the reasons for his arrest at the time of his arrest.

65. The Working Group recalls that a detention is considered arbitrary under category I if it lacks legal basis. As it has previously indicated, for a deprivation of liberty to have a legal basis, it is not sufficient that there is a law that may authorize the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case.<sup>29</sup> This is typically<sup>30</sup> done through an arrest warrant or arrest order or equivalent document.<sup>31</sup> In addition, any form of detention or imprisonment should be ordered by, or be subjected to, the effective control of a judicial or other authority under the law, whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, in accordance with principle 4 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group finds that this was denied to Colonel Al-Obeid, in violation of articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

66. Article 9 (2) of the Covenant requires that the authorities inform the person detained of the reasons for his arrest, at the time of arrest, and of the charges against him or her promptly.<sup>32</sup>

67. The source alleges that, following his arrest, Colonel Al-Obeid was not promptly informed of the reasons for his arrest. The Government has chosen not to rebut those allegations and has provided no valid exceptional grounds to justify a departure from prescribed requirements under international law. The Working Group considers that the authorities' failure to inform Colonel Al-Obeid of the reasons for his arrest, at the time of his arrest, was contrary to articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (2) of the Covenant and principle 10 of the Body of Principles, and therefore renders his arrest devoid of any legal basis.<sup>33</sup>

68. The source submits that, following the arrest of Colonel Al-Obeid on 12 July 2016, his family did not know about his fate and whereabouts until 15 February 2022, when they learned from an informal source that he was being held at the headquarters of the Tariq bin Ziyad brigade. On only one previous occasion, on 12 August 2016, when he appeared in broadcast television, did his family have an indication of his fate and whereabouts. The source indicated that Colonel Al-Obeid's case was reported to the Working Group on Enforced or Involuntary Disappearances on 21 March 2022 and that it was later learned that Colonel Al-Obeid was in fact being held in solitary confinement by the Libyan National Army and its affiliated brigades in Gernada prison, in Shahat, eastern Libya. The source notes that Colonel Al-Obeid has been held incommunicado since his arrest on 12 July 2016, without access to his lawyers and family or any legal procedure or official registration with the competent judicial authorities. The Government has chosen not to contest those allegations, although it was provided with the opportunity to do so.

69. In this context, the Working Group considers that Colonel Al-Obeid was subjected to enforced disappearance and incommunicado detention following his arrest on 12 July 2016,

<sup>29</sup> In cases of in flagrante delicto, the opportunity to obtain a warrant will not be typically available.

<sup>30</sup> Human Rights Committee, general comment No. 35 (2014), para. 21; see also opinions No. 88/2017, para. 27; 3/2018, para. 43; and No. 30/2018, para. 39; and Arab Charter on Human Rights, art. 14 (1).

<sup>31</sup> Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

<sup>32</sup> See, for example, opinion No. 10/2015, para. 34. See also opinions 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. 51/2019, para. 57; No. 56/2019, para. 78; No. 65/2019, para. 60; No. 71/2019, para. 71; No. 82/2019, para. 74; No. 6/2020, para. 41; No. 13/2020, para. 48; No. 14/2020, para. 51; No. 31/2020, para. 42; No. 33/2020, para. 55; and No. 34/2020, para. 47.

<sup>33</sup> Opinions No. 10/2015, para. 34; No. 46/2019, para. 51; No. 16/2020, para. 60; and No. 46/2020, para. 40.

in breach of article 9 (1) of the Covenant. Enforced disappearances are prohibited by international law and constitute a particularly aggravated form of arbitrary detention.<sup>34</sup>

70. The Working Group recalls that deprivation of liberty that entails a wilful refusal to disclose the fate or whereabouts of the persons concerned or to acknowledge their detention lacks any valid legal basis under any circumstances. It is also inherently arbitrary, as it places the person outside the protection of the law, in violation of article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights. The Government's failure to provide notification of the arrest and the location of detention to Colonel Al-Obeid's family is also contrary to principle 16 (1) of the Body of Principles. Furthermore, the Working Group has repeatedly asserted that holding persons at secret, undisclosed locations and in circumstances undisclosed to the person's family violates their right to contest the legality of their detention before a court or tribunal under article 9 (3)<sup>35</sup> and (4) of the Covenant.<sup>36</sup> Judicial oversight of any detention is a central safeguard for personal liberty<sup>37</sup> and is critical to ensuring that the detention has a legitimate basis.

71. In the circumstances surrounding the incarceration of Colonel Al-Obeid at an undisclosed location, the Working Group concludes that he was unable to challenge the legality of his detention before a court, in violation of article 9 (3) and (4) of the Covenant, and that he was placed outside the protection of the law, in violation of article 16 of the Covenant and article 6 of the Universal Declaration of Human Rights. As he was unable to challenge the legality of his detention, his 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.

72. 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.<sup>38</sup> In other words, liberty is acknowledged under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception.<sup>39</sup> 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>40</sup> Following his arrest, Colonel Al-Obeid was reportedly held in various detention facilities without being brought before a competent judicial authority. To date, over seven years later, it appears that no charges have been brought against him and no proceedings have commenced. Noting that the Government has not contested those allegations or provided any information indicating that Colonel Al-Obeid's detention is based on an individualized determination that it is reasonable and necessary, the Working Group finds a further violation of article 9 (3) of the Covenant.

73. Consequently, the Working Group finds that the Government failed to establish a legal basis for Colonel Al-Obeid's detention. His detention is therefore arbitrary under category I.

#### b. Category III

74. The source alleges that the non-observance of international norms relating to the right of Colonel Al-Obeid to a fair trial was of such gravity as to give his deprivation of liberty an arbitrary character under category III and contends that, although Colonel Al-Obeid has not yet been brought before any competent judicial authority, any eventual trial would be manifestly unfair.

75. The Working Group takes note of the source's allegations that Colonel Al-Obeid remains detained without any access to a judicial authority and to the outside world, and *a fortiori*, to legal assistance. In such conditions, the source argues there can be no prospect for any fair trial before a competent, independent and impartial tribunal established by law.

<sup>34</sup> See opinions No. 5/2020; No. 6/2020; No. 11/2020 and No. 13/2020. See also Human Rights Committee, general comment No. 35 (2014), para. 17.

<sup>35</sup> Human Rights Committee, general comment No. 35 (2014), para. 35.

<sup>36</sup> See opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

<sup>37</sup> [A/HRC/30/37](#), para. 3.

<sup>38</sup> [A/HRC/19/57](#), paras. 48–58.

<sup>39</sup> *Ibid.*, para. 54.

<sup>40</sup> Human Rights Committee, general comment No. 35 (2014), para. 38.

76. As noted above, Colonel Al-Obeid was taken to an unknown location and secretly detained incommunicado following his arrest. 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 must be provided without delay.<sup>41</sup> The Working Group considers that the failure to provide Colonel Al-Obeid with access to his lawyers from the outset of his detention was in violation of article 14 (3) (b) of the Covenant and article 10 of the Universal Declaration of Human Rights, and was contrary to principle 9 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, principles 11, 15 and 17 (1) of the Body of Principles and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Giving prompt and regular access to family members, as well as lawyers, is an essential and necessary safeguard for the prevention of torture and protection against arbitrary detention and infringement of personal security.<sup>42</sup> In this regard, the Committee against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>43</sup> and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently argued that the use of incommunicado detention is unlawful.<sup>44</sup> The Working Group considers that these violations substantially undermined and compromised Colonel Al-Obeid's capacity to defend himself in any judicial proceedings.

77. The Working Group takes note of the source's uncontested allegations that Colonel Al-Obeid has been detained since 12 July 2016 without being afforded the right to be tried within a reasonable time frame and without undue delay. The Government has offered no justification for the delay, despite having been given the opportunity to do so. The right to be tried within a reasonable time frame and without undue delay is one of the fair trial guarantees embodied in articles 9 (3) and 14 (3) (c) of the Covenant. The reasonableness of any delay in bringing a case to trial must be assessed given the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was handled by the authorities.<sup>45</sup> In the light of the fact that Colonel Al-Obeid has been detained for over seven years without ever having been brought to trial, the Working Group finds a violation of his rights under articles 9 (3) and 14 (3) (c) of the Covenant.

78. As the Working Group noted above, Colonel Al-Obeid was forced to appear in a television programme and deny the legitimacy of the official mission that he was carrying out before being arrested, while reportedly showing signs of extreme fatigue, ill-treatment and torture during the broadcast. As the Working Group has indicated before, confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>46</sup> The admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence available supports the verdict.<sup>47</sup>

79. The Working Group is concerned about the source's allegations of torture against Colonel Al-Obeid. In the Working Group's view, not only is torture a grave violation of human rights per se, but it also undermines the ability of persons to defend themselves and hinders their exercise of the right to a fair trial, especially in the light of the right to be presumed innocent under article 14 (2) of the Covenant and the right not to be compelled to

<sup>41</sup> [A/HRC/30/37](#), principle 9. See also Human Rights Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 34.

<sup>42</sup> Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

<sup>43</sup> For example, [A/54/44](#), para 182 (a).

<sup>44</sup> For example [A/54/426](#), para. 42; and [A/HRC/13/39/Add.5](#), para. 156.

<sup>45</sup> Human Rights Committee, general comment No. 35 (2014), para. 37; and general comment No. 32 (2007), para. 35.

<sup>46</sup> [A/HRC/45/16](#), para 53. See also opinions No. 1/2014, para. 22; No. 14/2019, para. 71; No. 59/2019, para. 70; and No. 73/2019, para. 91; and [E/CN.4/2003/68](#), para. 26 (e).

<sup>47</sup> Opinions No. 43/2012, para. 51; No. 34/2015, para. 28; No. 52/2018, para. 79 (i); No. 32/2019, para. 43; No. 59/2019, para. 70; and No. 73/2019, para. 91.

confess guilt under article 14 (3) (g) of the Covenant. In this context, the Working Group shall refer the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

80. Given foregoing, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Colonel Al-Obeid's deprivation of liberty an arbitrary character that falls within category III.

c. Category V

81. The source submits that the deprivation of liberty of Colonel Al-Obeid constitutes a violation of international law for reasons of discrimination. According to the source, Colonel Al-Obeid was arrested and detained in retribution for his official role within the Government of National Accord.

82. The source contends that the commander of the Libyan National Army and its affiliated forces responsible for the arrest and subsequent detention of Colonel Al-Obeid has repeatedly expressed hostility towards the Government of National Accord and that Colonel Al-Obeid was detained because of his role as an official of the Government of National Accord. The Government has chosen not to refute those allegations, although it was given an opportunity to do so.

83. The Working Group notes that any deprivation of liberty 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 constitutes a violation of international law and falls under category V.

84. The Working Group recalls that article 2 (1) of the Covenant prohibits any difference of treatment between individuals based, *inter alia*, on political opinion. In its general comment No. 35 (2014) on liberty and security of person, the Human Rights Committee indicated that arrest or detention on discriminatory grounds, in violation of articles 2 (1), 3 or 26 of the Covenant, was also in principle arbitrary.<sup>48</sup> The same applies to the treatment of detainees, which should not be discriminatory, in accordance with principle 5 of the Body of Principles.

85. In the present case, the Working Group takes note of the source's uncontested allegations that, while carrying out a mission in the Sirte oil fields, Colonel Al-Obeid was arrested by a group of soldiers from the Tariq bin Ziyad brigade affiliated with the Libyan National Army. The Working Group recalls the allegations by the source whereby Colonel Al-Obeid was forced to appear in a television programme on the Al-Hadath television channel and deny the legitimacy of his mission, while reportedly showing signs of extreme fatigue, ill-treatment and torture.

86. The Working Group considers that the facts submitted by the source indicate that Colonel Al-Obeid's deprivation of liberty and targeting by the Libyan National Army-affiliated militia were on account of his political views as an officer under the command of the former Minister of Defence of the Government of National Accord. Noting that the Government has provided no information demonstrating that Colonel Al-Obeid was arrested and detained on the basis of suspicion or commission of any crimes or offences, the Working Group finds that Colonel Al-Obeid was targeted because of his political opinion and position as an officer of the Ministry of Defence within the Government of National Accord, in violation of article 26 of the Covenant and articles 2 and 7 of the Universal Declaration of Human Rights. His detention is therefore arbitrary under category V.

d. Concluding remarks

87. The Working Group is concerned that Colonel Al-Obeid was and continues to be arbitrarily deprived of his liberty without having been charged with or tried for a crime. The

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<sup>48</sup> See also opinion No. 42/2018.

Working Group reiterates that the duty to comply with international human rights standards rests with all State organs, officers and agents, as well as all other natural and legal persons.

### 3. Disposition

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

The deprivation of liberty of Osama Muhammad Saleh al-Ghafir al-Obeid, being in contravention of articles 2, 3, 6, 7, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 9, 14, 16 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V.

89. The Working Group requests the Government of Libya to take the steps necessary to remedy the situation of Colonel Al-Obeid 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.

90. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Colonel Al-Obeid immediately and accord him 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 Colonel Al-Obeid.

91. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Colonel Al-Obeid and to take appropriate measures against those responsible for the violation of his rights.

92. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further consideration.

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

### 4. Follow-up procedure

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

95. 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.

96. 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 of any failure to take action.

97. 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>49</sup>

*[Adopted on 29 August 2023]*

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Advance Edited Version

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<sup>49</sup> Human Rights Council resolution 51/8, paras. 6 and 9.