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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. 48/2023 concerning Ali Suleiman Masoud Abdel Sayed (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,¹ on 5 May 2023 the Working Group transmitted to the Government of Libya a communication concerning Ali Suleiman Masoud Abdel Sayed. 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,

¹ [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

4. Ali Suleiman Masoud Abdel Sayed, born on 4 March 1969, is a Libyan national and a holder of a Libyan passport. He was an employee at the Hadbah Prison. He is married and usually resides in Ayn Zara, Libya.

(i) Background

5. According to the source, Mr. Abdel Sayed was one of those in charge of the Hadbah Prison, in which senior leaders and the main collaborators of the former regime were held. It is alleged that the prison was violently attacked, in 2014, by different rival militias, including the Special Deterrence Force, which took control. Reportedly, Mr. Abdel Sayed was abducted as a retaliatory measure against actors of the Libyan uprising.

(ii) Arrest and deprivation of liberty

6. On 17 August 2016 at 10 p.m., Mr. Abdel Sayed was in the street in the vicinity of the Al-Gargarni service station in Ayn Zara with a family member when he was reportedly abducted by members of the 8th Security Division, which is affiliated to the Ministry of the Interior of the Government of National Accord.

7. Allegedly, the security personnel, who were wearing uniforms, proceeded to arrest Mr. Abdel Sayed without showing him any warrant and without providing reasons for the arrest. Mr. Abdel Sayed was taken to an unknown location and to this day remains disappeared.

8. After Mr. Abdel Sayed's arrest, the family member reportedly went looking for him without success at different police stations, as well as at the 8th Security Division of the Ministry of the Interior. The family member also approached the Ministry of the Interior and the General Prosecutor who reportedly refused to take any action to search for Mr. Abdel Sayed or to inform the family.

9. On 9 June 2017, the Working Group on Enforced or Involuntary Disappearances transmitted Mr. Abdel Sayed's case to the State party, which allegedly never responded.

10. Reportedly, Mr. Abdel Sayed's family received information through unofficial channels that he had been successively detained in several detention centres controlled by various militias in Tripoli.

11. Allegedly, after being held in several secret detention centres run by militias, Mr. Abdel Sayed was finally transferred to Ruwaymi Prison at the end of 2017 and remained there until 2020, before being handed over to militias affiliated with the Special Deterrence Force. According to the source, Mr. Abdel Sayed is currently held at the Mitiga detention centre controlled by those militias. The militias claim to be under the authority of the Ministry of the Interior and the Attorney General of Tripoli but act independently.

12. It is reported that Mr. Abdel Sayed, who has allegedly been detained for more than six years without legal proceedings, has received a total of only seven visits from his family, the last of which was in October 2022. The source reports that Mr. Abdel Sayed was subjected to acts of torture by the militias. The last phone contact he had with his family was in January 2022.

13. On 14 April 2021, that is, five years after his arrest, Mr. Abdel Sayed was reportedly brought before the public prosecution for the first time. It was only on that occasion that he learned about being charged with "concealing facts". The public prosecutor reportedly informed him that he would be released pending trial on 17 December 2022.

14. Nevertheless, Mr. Abdel Sayed was not released. Reportedly, the above-mentioned family member was personally threatened by militiamen affiliated with the Special

Deterrence Force at the Office of the General Prosecutor when the relative went there to request Mr. Abdel Sayed's release.

15. On 17 December 2022, Mr. Abdel Sayed was finally brought before the third chamber of the Criminal Court of Tripoli. On 20 February 2023, the Court of Appeal of Tripoli reportedly acquitted Mr. Abdel Sayed of all charges against him.

16. However, the source notes that, despite the acquittal, the Special Deterrence Force took Mr. Abdel Sayed back to the detention centre and refused to release him.

17. The source reports serious concerns about the deterioration of Mr. Abdel Sayed's condition of health as he allegedly suffers from various problems.

(iii) *Analysis of violations*

a. Category I

18. The source submits that Mr. Abdel Sayed was initially apprehended by the 8th Security Division affiliated to the Ministry of the Interior of the Government of National Accord. He was not arrested pursuant to any warrant issued by a judge in accordance with national law nor was he informed promptly of the reasons for his arrest and continued detention. The source adds that Mr. Abdel Sayed was not informed of the charges against him until he was brought before an authorized judicial authority, on 14 April 2021, five years after his arrest, when he was reportedly brought before the public prosecutor.

19. The source argues that such a situation is a clear violation of article 9 (1) and (2) of the Covenant, which requires that all those who are arrested must be promptly informed of the reasons for their arrest and of any charges brought against them.

20. The source recalls that the right to be promptly informed of charges concerns notice of criminal charges. As the Human Rights Committee has noted, that right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.² Nevertheless, Mr. Abdel Sayed was reportedly arrested without knowing the reasons for his arrest and was detained for more than five years without being informed of the formal charges against him.

21. Therefore, the source argues that the authorities have not formally invoked any legal basis justifying his detention, in violation of article 9 (2) of the Covenant.

22. Furthermore, the source contends that Mr. Abdel Sayed's current detention is void of a legal basis since he is being arbitrarily detained despite his acquittal on 20 February 2023.

23. The source thus submits that the deprivation of liberty of Mr. Abdel Sayed from his arrest until the date when he was brought before the public prosecutor – that is, from 17 August 2016 to 14 April 2021 – and from his acquittal on 20 February 2023 to date lacks a legal basis and is thus arbitrary, falling under category I.

b. Category III

24. The source submits that the deprivation of liberty of Mr. Abdel Sayed has not been carried out in accordance with the international norms of due process and fair trial guarantees, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the Covenant. The source notes that he has been held in pretrial detention since his arrest, in violation of article 9 (2)–(4) of the Covenant.

25. Following his arrest, Mr. Abdel Sayed was reportedly not informed of the nature and cause of the charge against him and was held in detention despite the absence of evidence, in violation of article 14 (1)–(3) of the Covenant.

26. The source further argues that Mr. Abdel Sayed was denied the right to communicate with a counsel and to be brought to trial without undue delay, in violation of article 14 (3) (b)–(d) of the Covenant. Indeed, he was reportedly not granted effective and timely access to legal representation or access to his case files during the pretrial stage, which also impeded

² Human Rights Committee, general comment No. 35 (2014), para. 29.

his ability to challenge the legality of his detention. The source adds that the fact that Mr. Abdel Sayed was denied the assistance of a lawyer also constitutes a violation of principle 17 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and of 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.

27. Furthermore, the source submits that Mr. Abdel Sayed was not given the opportunity to challenge the legality of his detention before a court, as envisaged by article 9 (4) of the Covenant. The source notes that, according to the Basic Principles, the right to challenge the lawfulness of detention before a court is a self-standing human right, which is essential to preserve legality in a democratic society.³ The source notes that that right, which is a peremptory norm of international law, applies to all forms of deprivation of liberty not only to detention for purposes of criminal proceedings. The source recalls that any form of deprivation of liberty on any ground must be subject to effective oversight and control by the judiciary.

28. The source concludes that the failure to bring Mr. Abdel Sayed before a judge so as to allow him to challenge the legality of his arrest and detention for more than six years constitutes a flagrant violation of article 9 (3) and (4) of the Covenant.

29. In view of the above, the source considers that the deprivation of liberty of Mr. Abdel Sayed is not founded in law, is arbitrary under category III and violates the obligations of the State under articles 7, 9, 10 and 14 of the Covenant.

(b) Response from the Government

30. On 5 May 2023 the Working Group transmitted the allegations from the source to the Government under its regular communications procedure. The Working Group requested that the Government provide, by 4 July 2023, detailed information about the current situation of Mr. Abdel Sayed 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 and, in particular, with regard to the treaties ratified by the State. Moreover, the Working Group called upon the Government to ensure his physical and mental integrity.

31. 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 Working Group's methods of work.⁴ The Working Group notes that it has not received a reply from the Government in response to its communications since 2006.⁵ The Working Group invites the Government to engage with it constructively by taking the opportunity to respond to the communications.

2. Discussion

32. 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.

33. In determining whether the detention of Mr. Abdel Sayed 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.⁶ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

34. The Working Group wishes to reaffirm that States have an obligation to respect, protect and fulfil all human rights and fundamental freedoms, including the liberty of person,

³ [A/HRC/30/37](#), annex, paras. 2 and 3.

⁴ [A/HRC/36/38](#).

⁵ 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, No. 11/2022 and No. 56/2022.

⁶ [A/HRC/19/57](#), para. 68.

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 and other applicable international and regional instruments.⁷ 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.⁸

35. As a preliminary matter, the Working Group notes that Mr. Abdel Sayed has been arrested and deprived of liberty by members of the 8th Security Division, which is affiliated to 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.⁹ Mr. Abdel Sayed was reportedly later handed over to the Special Deterrence Force militias, which claim to be under the authority of the Ministry of the Interior and the Attorney General of Tripoli.

36. The Working Group recalls its past jurisprudence on detentions carried out by those militia groups, whereby it considered that they must be considered a State organ, the conduct of which 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 enshrine customary law.¹⁰ The Working Group also takes note that, in its recent report on the situation of arbitrary detention in Libya, the Office of the United Nations High Commissioner for Human Rights (OHCHR) stated that the Special Deterrence Force received support, including salaries, uniforms and equipment, from the State, but effectively maintained its own command structures and operated with a significant level of autonomy.¹¹ The Working Group recalls the decree issued by the Presidency Council,¹² which, inter alia, authorizes the Special Deterrence Force to implement State security policy and to effect arrests on behalf of the Government. It reiterates its earlier finding that that document demonstrates that the Special Deterrence Force is affiliated with the Ministry of the Interior.¹³

37. Article 5 of the articles on responsibility of States for internationally wrongful acts, which represents customary international law, clarifies that the conduct of a person or entity that is not an organ of the State but that is empowered by the law of that State to exercise elements of governmental authority is considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.¹⁴ In the present case, and in light of the above, the Working Group considers that, at a very minimum, the Government should have known of the actions carried out by the Special Deterrence Force and should have taken measures to protect individuals.

⁷ General Assembly resolution 72/180, fifth preambular paragraph; and Human Rights Council resolution 41/2, second preambular paragraph; resolution 41/6, para. 5 (b); resolution 41/10, para. 6; resolution 41/17, first preambular paragraph; resolution 43/26, thirteenth preambular paragraph; resolution 44/16, twenty-fifth preambular paragraph; resolution 45/19, ninth preambular paragraph; resolution 45/20, second preambular paragraph; resolution 45/21, third preambular paragraph; and resolution 45/29, third preambular paragraph. See also Commission on Human Rights resolution 1991/42, para. 2; and resolution 1997/50, para. 15; Human Rights Council resolution 6/4, para. 1 (a); and resolution 10/9, para. 4 (b); opinions No. 41/2014, para. 24; No. 3/2018, para. 39; No. 18/2019, para. 24; 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.

⁸ 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.

⁹ Security Council resolution 2259 (2015).

¹⁰ Opinions No. 6/2017, No. 39/2018, No. 18/2019, No. 13/2020, No. 11/2022 and No. 56/2022.

¹¹ OHCHR, "Abuse behind bars: arbitrary and unlawful detention in Libya" (Geneva, 2018), p. 18.

¹² Decree No. 555 (2018), establishing the Al Radaa Authority, read in the light of a 2011 decree of the National Transitional Council, in which the Special Deterrence Force was converted to armed brigades under the Supreme Security Council and were later placed under the control of the Ministry of the Interior (see resolution No. 191 of 2011 dissolving the Supreme Security Council).

¹³ Opinion No. 39/2018.

¹⁴ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, principle 2. See also [A/HRC/34/42](#), para. 22.

38. Lastly, the Working Group recalls that the positive obligation of the State to prevent and punish crime and to uphold its human rights duties remain intact irrespective of whether the actions of the 8th Security Division and the Special Deterrence Force can be attributed to the Government of National Accord.¹⁵ The Working Group therefore concludes that the Government – namely, the Government of National Accord – is fully responsible for the actions of those militias affiliated with the Ministry of the Interior that carried out the arrest and subsequent detention of Mr. Abdel Sayed.

(a) Category I

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

40. The source submits, and the Government has not contested, that Mr. Abdel Sayed was initially arrested on 17 August 2016 by the 8th Security Division, which is affiliated with the Ministry of the Interior of the Government of National Accord, and was neither shown an arrest warrant nor informed promptly of the reasons for his arrest and continued detention. The source contends that Mr. Abdel Sayed was only informed of the charges against him five years after his arrest, on 14 April 2021, when he was brought before the public prosecutor, thus violating article 9 (1) and (2) of the Covenant. Furthermore, the source argues that Mr. Abdel Sayed's current detention is arbitrary since he remains detained despite having been acquitted of all charges on 20 February 2023. The Government has chosen not to contest those allegations, although it was given the opportunity to do so.

41. The Working Group recalls that a detention is considered arbitrary under category I if it lacks a legal basis. As it has previously stated, 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.¹⁶ This is typically¹⁷ done through an arrest warrant or arrest order (or equivalent document).¹⁸ 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. The Working Group has been presented with no valid exceptional grounds to justify a departure from prescribed requirements under international law. The Working Group thus finds that the authorities violated articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant.

42. Furthermore, article 9 (2) of the Covenant requires that the authorities inform those detained of the reasons for their arrest, at the time of arrest, and of the charges against them promptly.¹⁹ The Working Group considers that the source has established a credible prima facie case, unrebutted by the Government, that the authorities failed to inform Mr. Abdel Sayed of the reasons for his arrest, at the time of his arrest, in violation of 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.²⁰

43. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge should be brought promptly before a judge. As the Human Rights Committee has

¹⁵ Opinion No. 62/2021, para. 34.

¹⁶ In cases of in flagrante delicto, the opportunity to obtain a warrant will not be typically available.

¹⁷ Human Rights Committee, general comment No. 35 (2014), para. 21. See also opinions No. 88/2017, para. 27; No. 3/2018, para. 43; and No. 30/2018, para. 39. See further Arab Charter on Human Rights, art. 14 (1).

¹⁸ Human Rights Committee, general comment No. 35 (2014), para. 27; and opinion No. 30/2017, paras. 58 and 59.

¹⁹ 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.

²⁰ Opinions No. 10/2015, para. 34; No. 46/2019, para. 51; No. 16/2020, para. 60; and No. 46/2020, para. 40.

stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing detainees “promptly” before a judge following their arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.²¹ In the present case, Mr. Abdel Sayed does not appear to have been brought before a judicial authority within 48 hours of his arrest. Rather, he was reportedly arrested on 17 August 2016 and brought for the first time before the public prosecutor on 14 April 2021. The Working Group recalls that a prosecutorial body cannot be considered a judicial authority for the purposes of article 9 (3) of the Covenant.²² According to the un rebutted allegations from the source, Mr. Abdel Sayed was only brought before a judge on 17 December 2022, more than six years after his arrest took place, when he was brought before the Criminal Court of Tripoli. The Working Group thus considers that the authorities’ failure to bring Mr. Abdel Sayed before a judicial authority within 48 hours of his arrest violated his right under article 9 (3) of the Covenant.

44. The Working Group takes note of the source’s uncontested allegations that, following his arrest, Mr. Abdel Sayed’s situation and whereabouts remained unknown to his family. His family members reportedly went to different police stations, as well as the 8th Security Division of the Ministry of the Interior, without ever getting any answers to their requests for information. When approached by the family, the Ministry of the Interior and the General Prosecutor allegedly refused to provide any information on the whereabouts of Mr. Abdel Sayed or to take any responsibility. It was only as a result of written messages received through unofficial sources that Mr. Abdel Sayed’s family learned that he had been successively detained in several detention centres controlled by various militias in Tripoli.

45. In that context, the Working Group considers that Mr. Abdel Sayed was subjected to enforced disappearance following his arrest on 17 August 2016, 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.²³ The Working Group recalls that the 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 circumstance. It is also 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. The Government’s failure to provide notification of the arrest and location of detention to Mr. Abdel Sayed’s family is also contrary to principle 16 (1) of the Body of Principles. Additionally, the Working Group has repeatedly asserted that holding persons at secret, undisclosed locations and in circumstances undisclosed to their families violates their right to contest the legality of their detention before a court or tribunal under article 9 (3)²⁴ and (4) of the Covenant.²⁵ Judicial oversight of any detention is a central safeguard for personal liberty²⁶ and is critical in ensuring that the detention has a legitimate basis.

46. In the circumstances attending the incarceration of Mr. Abdel Sayed at undisclosed locations, and noting the absence of a reply from the Government refuting these claims, 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 6 of the Universal Declaration of Human Rights and article 16 of the Covenant. 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.

47. 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.²⁷ In other words, liberty is acknowledged under article 9 (3) of the Covenant as the core consideration and

²¹ Human Rights Committee, general comment No. 35 (2014), para. 33; and [CAT/C/GAB/CO/1](#), para. 10.

²² Human Rights Committee, general comment No. 35 (2014), para. 32. See also opinions No. 14/2015, para. 28; No. 5/2020, para. 72; and No. 41/2020, para. 60; and [A/HRC/45/16/Add.1](#), para. 35.

²³ 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.

²⁴ Human Rights Committee, general comment No. 35 (2014), para. 35.

²⁵ Opinions No. 45/2017, No. 46/2017, No. 35/2018, No. 9/2019, No. 44/2019 and No. 45/2019.

²⁶ [A/HRC/30/37](#), para. 3.

²⁷ [A/HRC/19/57](#), paras. 48–58.

detention merely an exception.²⁸ Detention pending trial must thus 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.²⁹ In the present case, Mr. Abdel Sayed was reportedly held in several detention centres for more than six years until being brought before a competent judicial authority. Noting that the Government has not rebutted those allegations nor provided any information indicating that Mr. Abdel Sayed's pretrial detention is based on an individualized determination that is reasonable and necessary, the Working Group finds a further violation of article 9 (3) of the Covenant.

48. Furthermore, the source has submitted that, on 20 February 2023, the Court of Appeal of Tripoli acquitted Mr. Abdel Sayed of all charges against him and, despite this ruling, he was not released and was instead taken to a detention centre by the Special Deterrence Force. Noting that the Government has not contested those allegations, the Working Group considers that Mr. Abdel Sayed's continued detention, despite having been acquitted, is void of any legal basis and a flagrant violation of his right under article 9 (1) of the Covenant.³⁰

49. Consequently, the Working Group concludes Mr. Abdel Sayed's detention is arbitrary under category I.

(b) Category III

50. The source argues that the non-observance of international norms relating to the right of Mr. Abdel Sayed to a fair trial was of such gravity as to give his deprivation of liberty an arbitrary character under category III.

51. The Working Group notes the source's un rebutted allegations that Mr. Abdel Sayed remained detained for more than six years, since his arrest on 17 August 2016, without being afforded the right to be tried within a reasonable time and without undue delay. Instead, the source contends that Mr. Abdel Sayed was first brought before a criminal court on 17 December 2022 and later acquitted of all charges against him on 20 February 2023. The Government did not offer any justification for his detention without trial for more than six years. The right to be tried within a reasonable time and without undue delay is one of the fair trial guarantees embodied in articles 9 (3) and 14 (3) (c) of the Covenant. The Working Group recalls that the reasonableness of any delay in bringing a case to trial must be assessed in 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 dealt with by the authorities.³¹ In the light of the fact that Mr. Abdel Sayed was only tried more than six years after his arrest and subsequent detention, and absent any explanation from the Government to justify such long delays, the Working Group finds a violation of his rights under articles 9 (3) and 14 (3) (c) of the Covenant.

52. The Working Group takes note of the source's uncontested allegations that Mr. Abdel Sayed was denied the right to communicate with counsel and was not granted access to his case files during the pretrial stage. In that regard, the Working Group recalls its finding above that Mr. Abdel Sayed was held in several secret detention centres following his arrest. It recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.³² The Working Group considers that the source has established a credible prima facie case, unrefuted by the Government, that Mr. Abdel Sayed was not provided with access to legal counsel from the outset of his detention, in violation of article 10 of the Universal Declaration of Human Rights and article 14 (3) (b) of the Covenant and contrary to principle 9 of the Basic Principles, principles 11, 15 and 17 (1) of the Body of Principles and rule 41 (3) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Giving

²⁸ Ibid., para. 54.

²⁹ Human Rights Committee, general comment No. 35 (2014), para. 38.

³⁰ Ibid., para. 41.

³¹ Ibid., para. 37; and Human Rights Committee, general comment No. 32 (2007), para. 35.

³² 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. See also Human Rights Committee, general comment No. 32 (2007), para. 34.

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.³³ The Working Group considers that those violations substantially undermined and compromised Mr. Abdel Sayed's capacity to defend himself in any judicial proceedings.

53. The Working Group is concerned about the source's un rebutted allegations of torture against Mr. Abdel Sayed. 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) and the right not to be compelled to confess guilt under article 14 (3) (g) of the Covenant. In that context, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

54. The Working Group concludes that the violations of the right to fair trial are of such gravity that the detention of Mr. Abdel Sayed must be considered arbitrary under category III.

(c) Concluding remarks

55. The Working Group is concerned that Mr. Abdel Sayed was and continues to be arbitrarily deprived of his liberty, even after having been acquitted of all charges against him, and 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.

56. The Working Group also notes with grave concern the source's unrefuted allegations that Mr. Abdel Sayed's health has deteriorated during his detention. The Working Group reminds the Government that, in accordance with article 10 of the Covenant, all persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. Furthermore, the Working Group recalls that the Nelson Mandela Rules, specifically rules 1, 24, 27 and 118, require that all persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity as human beings, including by enjoying the same standards of health care that are available in the community.

3. Disposition

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

The deprivation of liberty of Ali Suleiman Masoud Abdel Sayed, being in contravention of articles 3, 6, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 16 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I and III.

58. The Working Group requests the Government of Libya to take the steps necessary to remedy the situation of Mr. Abdel Sayed 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.

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

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

³³ Human Rights Committee, general comment No. 35 (2014), para. 58.

61. 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 appropriate action.

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

4. Follow-up procedure

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

64. 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.

65. 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.

66. 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.³⁴

[Adopted on 30 August 2023]

³⁴ Human Rights Council resolution 51/8, paras. 6 and 9.