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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixtieth session, 2–6 May 2011

No. 6/2011 (Libyan Arab Jamahiriya*)

Communication addressed to the Government on 19 January 2011

Concerning: Imed Al Chibani

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 adopted on 30 September 2010.
2. The Working Group regrets that the Government has not provided the requested information.
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 sentence or despite an amnesty law applicable to him) (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 International Covenant on Civil and Political Rights (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);

* The name of the former Libyan Arab Jamahiriya has been changed to Libya as of 16 September 2011.

(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 the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. The source reported to the Working Group on Arbitrary Detention that Mr. Al Chibani, born in 1978 in Benghazi, usually resides at Ard Azwaw, Benghazi.

5. According to the information received, in the morning of 10 July 2007, Mr. Al Chibani was arrested near his residence by agents of Al Amn Addakhili, the internal security services, wearing civilian clothes. Mr. Al Chibani was allegedly taken to the offices of the internal security forces located close to the An nahr Assinyi clinic, Benghazi, where he was kept incommunicado.

6. According to the source, detainees released from that prison on 15 July 2007 testified to the alleged acts of torture inflicted upon Mr. Al Chibani from the moment of his arrest. The source informs that Mr. Al Chibani had already been the victim of alleged enforced disappearance; he had been taken by the internal security forces on 5 December 2005 and reportedly tortured, detained incommunicado for 10 months before being released on 14 October 2006. Mr. Al Chibani was never presented before a judge or any other competent authority.

7. His relatives are unaware of the reasons justifying Mr. Al Chibani's arrest and his current detention, but suspect that it may be related to the fact that following his release on 14 October 2006, Mr. Al Chibani had allegedly received threats due to his use of the Internet. Mr. Al Chibani's mother has taken a number of measures to obtain information about Mr. Al Chibani's fate and whereabouts. It was not until May 2008 that the internal security services acknowledged that they were detaining Mr. Al Chibani at Assaka prison, and his family could visit him.

8. On 28 May 2008, Mr. Al Chibani's family was able to visit him for the first time, and noted that his state of health had gravely deteriorated. According to the information received, Mr. Al Chibani's family was informed that Mr. Al Chibani had been subjected to alleged acts of torture following his arrest, and that no legal proceedings had taken place nor had any official charges been formulated.

9. The source argues that both periods of detention, that is, from 5 December 2005 to 14 October 2006, and the current detention since 10 July 2007, lack any legal basis and are not in conformity with Libyan domestic law, nor with international law. In this context, the source refers to the State party's fourth periodic report to the Human Rights Committee dated 10 May 2007 (CCPR/C/LBY/4), which states that "the Libyan Arab Jamahiriya is a State governed by the rule of law and where penalties cannot be imposed without reference to the law, i.e. outside the jurisdiction of the courts" (para. 6). In paragraph 12(a) of the same document, the State party to the International Covenant on Civil and Political Rights reaffirmed that "according to the Great Green Document of Human Rights in the Age of the Masses, the sons of Jamahiri society revere, protect and prohibit the curtailment of human freedom". Further reference is made to article 14 of the Promotion of Freedom Act No. 20 of 1991, according to which "no one can be deprived of his freedom, searched or

questioned unless he has been charged with committing an act that is punishable by law, pursuant to an order issued by a competent court, and in accordance with the conditions and time limits specified by law; [...] accused persons must be held in custody at a known location, which shall be disclosed to their relatives, for the shortest period of time required to conduct the investigation and secure evidence”.

10. The source contends that Mr. Al Chibani has not been entitled to such legal guarantees. Instead, Mr. Al Chibani was held incommunicado without any formal charges or trial. Reportedly, Mr. Al Chibani’s family had not been informed about his place of detention during the first period of detention from 5 December 2005 to 14 October 2006, and only learned about his place of detention since 10 July 2007 on 28 May 2008. According to the information received, to date, Mr. Al Chibani has not been brought before a judge, nor has he benefited from any legal assistance or a fair trial.

Response from the Government

11. The Working Group regrets that no reply has been received from the Government. The Government did not request the extension of the time limit for its reply in accordance with paragraphs 15 and 16 of the Working Group’s methods of work. The Working Group is in a position to render an opinion on the case in the light of the allegations made, notwithstanding the Government’s failure to provide its version of the facts and an explanation about the circumstances of the case.

Discussion

12. The Government did not provide any information to refute the following facts: (a) Mr. Al Chibani was arrested by the police officers in civilian clothing on 10 July 2007 and held in incommunicado detention; his fate and whereabouts were unknown to his family until May 2008; (b) he had been previously detained from 5 December 2005 until 14 October 2006, tortured and held incommunicado for more than 10 months; (c) following his release in 2006, Mr. Al Chibani received threats relating to his use of the Internet; and (d) he was never presented before any judicial or other competent authority.

13. Regarding his second detention from 10 July 2007, despite continuous searches by his mother and relatives, Mr. Al Chibani’s fate and whereabouts were not known to his family until 11 months after his arrest. His family found out that Mr. Al Chibani’s health condition was critical and that he had been subjected to acts of torture.

14. The Working Group reminds the Government of Libya that article 9, paragraph 2, of the International Covenant on Civil and Political Rights states that “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Both the Human Rights Committee and the former Commission on Human Rights have clarified that the fundamental aspect of such right consists in the possibility of contesting the legality of one’s detention. Resolution 1992/35 adopted by former Human Rights Commission on 28 February 1992, called on all States that have not yet done so to establish a procedure, such as habeas corpus, in order for all persons deprived of their liberty to institute proceedings before a court, which should decide without delay the lawfulness of his or her detention, and order his or her release if detention is found to be unlawful.

15. Mr. Al Chibani has been effectively deprived of his right to contest the legality of his arrest and detention. He has not been brought before a judge, nor has he been informed of any charges pending against him or notified of the reasons justifying his continued detention. Mr. Al Chibani has had no access to a lawyer or legal assistance, and has been kept incommunicado for extensive periods of his detention.

16. In light of the information received, and given that the Government has not provided any reasons to doubt the above allegations, the Working Group is of the opinion that the Libyan Arab Jamahiriya has violated articles 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights as well as articles 2, 3, 7, 9, 10, 12 and 14 of the International Covenant on Civil and Political Rights. Consequently, the Working Group qualifies Mr. Al Chibani's detention as arbitrary under categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

17. Moreover, considering that the most apparent motive for Mr. Al Chibani's detention and the abuses committed against him relates to his exercise of the right to freedom of opinion and expression in the form of his use of the Internet, the Working Group considers his detention arbitrary under category II of the categories applicable to the consideration of the cases submitted to the Working Group.

18. The foregoing considerations are also applicable to Mr. Al Chibani's detention between 5 December 2005 and 14 October 2006.

Disposition

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

The deprivation of liberty of Mr. Al Chibani during the period from 5 December 2005 and 14 October 2006, and during his current detention since 10 July 2007 is arbitrary, being in contravention of articles 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 3, 7, 9, 10, 12 and 14 of the International Covenant on Civil and Political Rights, and falling under categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

20. Consequent upon the opinion rendered, the Working Group requests the Government of the Libyan Arab Jamahiriya to immediately release Mr. Al Chibani, and in conformity with article 9, paragraph 5, of the International Covenant on Civil and Political Rights, provide him with adequate reparation.

[Adopted on 3 May 2011]