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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022

Opinion No. 11/2022 concerning Omar Al Mukhtar Ahmed Al Daguel (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 44/22.
2. In accordance with its methods of work,¹ on 20 December 2021 the Working Group transmitted to the Government of Libya a communication concerning Omar Al Mukhtar Ahmed Al Daguel. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

¹ [A/HRC/36/38](#).

Submissions

Communication from the source

4. Omar Al Mukhtar Ahmed Al Daguel, born in 1979, is a Libyan residing in Libya.
 - a. Arrest, enforced disappearance and detention
 5. According to the source, Mr. Al Daguel was arbitrarily arrested at home on 13 July 2016 by heavily armed militias wearing military uniforms and controlled by General Khalifa Haftar. Reportedly, the men did not provide Mr. Al Daguel with any warrant or any reasons for his arrest.
 6. The source submits that Mr. Al Daguel was then forcibly taken to an unknown location and secretly detained for a month, before being transferred to Al Kouifya Prison in Benghazi in August 2016, where his family members were allowed to visit him for the first time. Reportedly, he was arrested because of his activities on Facebook while he was studying in Malaysia until late 2015. In particular, he had been vocal about human rights abuses committed by militias affiliated with General Haftar.
 7. According to the source, Mr. Al Daguel was able to receive visits in Al Kouifya Prison until December 2019, when his visitation rights were suspended without explanation. Reportedly, persons associated with him were able to receive informal information about his continued detention in prison until the end of March 2020, when he was transported out of prison, was disappeared and was held incommunicado in an unknown location. Repeated attempts to obtain information from the prison administration yielded no results. In June 2021, Mr. Al Daguel reappeared at Al Kouifya Prison, where he is currently arbitrary detained.
 8. The source reports that Mr. Al Daguel has never been brought before a judicial authority since his arrest.
 - b. Analysis of violations
 9. The source argues that despite his reappearance, Mr. Al Daguel has not yet been brought before a judge, and therefore his deprivation of liberty is arbitrary within the meaning of categories I, II and III of the Working Group's methods of work.
 - i. Category I
 10. The source reports that Mr. Al Daguel was arrested by militias controlled by General Haftar without the presentation of a warrant in violation of article 9 (1) of the International Covenant on Civil and Political Rights. In addition, the men, who were heavily armed, did not inform him of the reasons for his arrest nor the charges against him at the time of his arrest, in violation of article 9 (2) of the Covenant.
 11. Moreover, the source submits that Mr. Al Daguel was not brought promptly before a judge or afforded the right to take proceedings before a court in order to verify the lawfulness of his detention in accordance with article 9 (3) and (4) of the Covenant and principle 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
 12. The source recalls that, according to the Human Rights Committee, 48 hours is ordinarily sufficient to prepare an individual for a judicial hearing, and that any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.² However, Mr. Al Daguel has never been brought before a judge so that she or he may decide on the legality of his detention. Thus, he has been deprived of his fundamental right to challenge the legality of his detention, in violation of articles 2 (3) and 14 (1) of the Covenant.

² See the Committee's general comment No. 35 (2014) on liberty and security of person, para. 33.

13. In the light of the above, the source argues that Mr. Al Daguel's arrest and detention lack a legal basis and are thus arbitrary under category I of the Working Group's methods of work.

ii. Category II

14. The source submits that Mr. Al Daguel was arrested because of his posts on Facebook in which he criticized various human rights abuses committed by militias controlled by General Haftar. After his arrest, he was interrogated about his publications, and therefore the reasons behind his arrest are purely political.

15. The source recalls that freedom of opinion and expression and freedom of thought and conscience are fundamental human rights guaranteed in articles 18 and 19 of the Covenant. According to the Human Rights Committee, freedom of opinion is a right to which the Covenant permits no exception or restriction; the Committee states that "no person may be subject to the impairment of any rights under the Covenant on the basis of his or her actual, perceived or supposed opinions".³ With regard to the right to freedom of expression, which includes "the right to seek, receive and impart information and ideas of all kinds regardless of frontiers",⁴ the Committee recalls that article 19 of the Covenant allows restrictions only as provided by law and necessary for respect of the rights and reputations of others, and for the protection of national security or public order or of public health or morals.⁵

16. According to the source, Mr. Al Daguel was arbitrary arrested only because he had shared his point of view and peacefully expressed his thoughts about human rights violations committed by militias in Libya, within the legal framework of his right of expression.

17. In the light of the above, the source argues that the deprivation of liberty of Mr. Al Daguel results from the exercise of rights or freedoms guaranteed by articles 18 and 19 of the Covenant so that his arrest and detention are arbitrary under category II of the Working Group's methods of work.

iii. Category III

18. The source submits that Mr. Al Daguel was held incommunicado for several months, before reappearing in June 2021 in Al Kouifya Prison.

19. The source recalls that holding persons incommunicado is not permitted under international human rights law, since it violates the right to challenge the lawfulness of detention before a court, and considers that the incommunicado detention of the detainee violates articles 9, 10 and 11 (1) of the Universal Declaration of Human Rights.

20. According to the source, Mr. Al Daguel was prohibited from communicating with the outside world and in particular from notifying his family and lawyers, in disregard of principles 15–19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

21. Furthermore, the source notes that he was arrested without a warrant and was not promptly informed either of the reasons for his arrest or of any charges against him, in violation of article 14 (3) (a) of the Covenant.

22. According to the source, these procedural flaws compromised Mr. Al Daguel's due process and fair trial rights from the beginning of his detention.

23. In the light of the above, the source argues that the violation of Mr. Al Daguel's fundamental rights is of such gravity as to render his arrest and detention arbitrary under category III of the Working Group's methods of work.

³ See the Committee's general comment No. 34 (2011), para. 9.

⁴ *Ibid.*, para. 11.

⁵ *Velichkin v. Belarus* (CCPR/C/85/D/1022/2001), para. 7.3.

Response from the Government

24. On 20 December 2021, 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 18 February 2022, detailed information about the current situation of Mr. Al Daguel 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 of Libya to ensure his physical and mental integrity.

25. 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.

Discussion

26. 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.

27. In determining whether Mr. Al Daguel's detention was 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.

28. The Working Group wishes to reaffirm that the Government has the obligation to respect, protect and fulfil the right to liberty and that any national law allowing deprivation of liberty should be made and implemented in conformity with the relevant international standards set forth in the Universal Declaration of Human Rights, the Covenant 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 judicial proceedings and the law itself to determine whether such detention is also consistent with the relevant provisions of international human rights law.⁸

29. As a preliminary matter, the Working Group notes that Mr. Al Daguel was arrested and deprived of liberty by armed militias wearing military uniforms and controlled by General Haftar and was held in Al Koufiya Prison, an allegation which the Government has chosen not to contest.

30. As the Working Group has established in its earlier jurisprudence, the militias under the command of General Haftar are an armed group allied to Operation Dignity, a coalition of forces aligned to the Libyan National Army. The Libyan National Army was not, however, under the de facto control and command of the Government of National Accord, which is the only Government recognized by the Security Council.⁹

31. Nevertheless, the Government of Libya has not disputed that those who conducted the arrest of Mr. Al Daguel as alleged by the source and who control Al Koufiya Prison where he remains detained¹⁰ have significant links with the Government of National Accord through their affiliation with the Libyan National Army, which the Working Group has already

⁶ A/HRC/19/57, para. 68.

⁷ 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.

⁸ Opinions No. 1/1998, para. 13; No. 5/1999, para. 15; No. 1/2003, para. 17; No. 76/2017, para. 49; No. 94/2017, para. 47; and No. 13/2020, para. 39.

⁹ See Security Council resolution 2259 (2015).

¹⁰ Office of the United Nations High Commissioner for Human Rights (OHCHR) and United Nations Support Mission in Libya (UNSMIL), "Abuse behind bars: arbitrary and unlawful detention in Libya", p. 20.

examined in its previous jurisprudence.¹¹ As previously, the Working Group reiterates 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.

32. Moreover, the positive obligation of the State to prevent and punish crime and to uphold its human rights duties remains intact irrespective of whether the actions of the Libyan National Army can be attributed to the Government of National Accord. The Working Group therefore concludes that the Government of Libya – the Government of National Accord – is fully responsible for the actions of those militias affiliated with General Haftar who carried out the detention of Mr. Al Daguel and who are in control of Al Koufiya Prison where he remains deprived of liberty. In making this finding, the Working Group recalls particularly the 2018 conclusion by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Support Mission in Libya (UNSMIL) that “the reliance of transitional authorities on salary payments to and public praise for armed groups has empowered the latter and entrenched their sense of impunity”.¹²

33. The Working Group refers the present case to the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, for appropriate action.

Category I

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

35. The source submits, and the Government has not rebutted, that Mr. Al Daguel was arrested at home on 13 July 2016 by militias controlled by General Haftar, without providing him with any arrest warrant or furnishing him with any reasons for his arrest.

36. Following his arrest, Mr. Al Daguel was taken to an unknown location and secretly detained for a month, before being transferred to Al Koufiya Prison in Benghazi in August 2016, where his family members were allowed to visit him for the first time. The source submits that Mr. Al Daguel was held incommunicado for several months, before reappearing in June 2021 in Al Koufiya Prison.

37. The source considers that the Government’s failure to promptly provide Mr. Al Daguel with reasons for his arrest was in violation of his rights under article 9 (2) of the Covenant. The source thus considers the Government’s disregard for the procedural safeguards enshrined in the Covenant to render Mr. Al Daguel’s detention both unconstitutional and without legal basis, making his detention arbitrary under category I. The Working Group observes the allegation that Mr. Al Daguel was initially taken to an unknown location and was secretly detained for about a month, during which his whereabouts remained unknown. A similar thing happened again in the period between March 2020 and June 2021. Although these very serious allegations were presented to the Government, it failed to address them. The Working Group therefore finds that Mr. Al Daguel was subjected to de facto enforced disappearance following his arrest on 13 July 2016 until he was transferred to Al Koufiya Prison in Benghazi in August 2016, and once again in the period from March 2020 to June 2021, 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.¹³

38. Moreover, the Working Group recalls that “no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held

¹¹ See opinion 6/2017 concerning the arbitrary detention of individuals by an armed group allied to Operation Dignity, a coalition of forces aligned with the Libyan National Army, under the command of General Khalifa Haftar; see also opinion No. 3/2016 on the arbitrary detention of individuals by forces allied to the armed group Operation Dignity, whose ranks largely comprise elements of the Libyan army and other forces loyal to General Haftar.

¹² OHCHR and UNSMIL, “Abuse behind bars: arbitrary and unlawful detention in Libya”, p. 37.

¹³ 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.

outside the reach of law, without the possibility of resorting to legal procedures, including habeas corpus".¹⁴ Indeed, the Human Rights Council, in its resolution 37/3, stressed that no one is to be held in secret detention, and called upon States to investigate all alleged cases of secret detention, including under the pretext of countering terrorism.¹⁵ The Working Group consequently finds a breach of articles 3, 8 and 9 of the Universal Declaration of Human Rights and of articles 2 (3) and 9 of the Covenant.

39. Furthermore, the Working Group has stated that for a deprivation of liberty to be justified, it must have a legal basis. It is not sufficient for there to be a national law or practice authorizing the arrest. The authorities must invoke a legal basis consistent with international human rights standards and apply it to the circumstances of the case.¹⁶

40. International human rights law on detention includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security of person and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (1) of the Covenant, as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

41. When Mr. Al Daguel was arrested on 13 July 2016, there was no arrest warrant issued in respect of that arrest. The Working Group reiterates that the practice of arresting persons without a warrant renders their detention arbitrary.¹⁷ Any deprivation of liberty without, as in the present case, a valid arrest warrant, is arbitrary and lacks legal basis, in violation of article 9 of the Covenant.

42. The un rebutted submission of the source is that following his arrest, Mr. Al Daguel was not informed of the basis for his arrest at the time of the arrest. The Working Group has been presented with no valid exceptional grounds to justify a departure from the prescribed requirements under international law.

43. International human rights law also requires that, in order to constitute a legal basis for deprivation of liberty, the authorities should inform the person detained of the reasons for the arrest, at the time of arrest, and of the charges against him or her promptly.¹⁸ The failure to do so violates articles 3 and 9 of the Universal Declaration of Human Rights and article 9 (2) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders the arrest devoid of any legal basis.¹⁹

¹⁴ A/HRC/16/47, para. 54.

¹⁵ See paras. 8–9; and A/HRC/13/42, paras. 18–23.

¹⁶ See, for example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; 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. 65/2019, para. 59; No. 71/2019, para. 70; No. 72/2019, para. 40; No. 82/2019, para. 74; No. 6/2020, para. 39; No. 11/2020, para. 37; No. 13/2020, para. 46; No. 14/2020, para. 49; No. 31/2020, para. 40; No. 32/2020, para. 32; No. 33/2020, paras. 53 and 71; and No. 34/2020, para. 44.

¹⁷ See, for example, decisions No. 1/1993, paras. 6–7; No. 3/1993, paras. 6–7; No. 4/1993, para. 6; No. 5/1993, paras. 6 and 8–9; No. 27/1993, para. 6; No. 30/1993, paras. 14 and 17 (a); No. 36/1993, para. 8; No. 43/1993, para. 6; and No. 44/1993, paras. 6–7. For more recent jurisprudence, see opinions No. 38/2013, para. 23; No. 48/2016, para. 48; No. 21/2017, para. 46; No. 63/2017, para. 66; No. 76/2017, para. 55; No. 83/2017, para. 65; No. 88/2017, para. 27; No. 93/2017, para. 44; No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; No. 82/2018, para. 29; No. 6/2020, para. 40; No. 11/2020, para. 38; No. 13/2020, para. 47; No. 14/2020, para. 50; No. 31/2020, para. 41; No. 32/2020, para. 33; No. 33/2020, para. 54; and No. 34/2020, para. 46.

¹⁸ 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.

¹⁹ Opinions No. 10/2015, para. 34; No. 46/2019, para. 51; No. 16/2020, para. 60; and No. 46/2020, para. 40.

44. Furthermore, 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.²⁰ In other words, liberty is acknowledged under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception.²¹ 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.²² Following his arrest, Mr. Al Daguel was kept in detention facilities for varying periods without being brought before a competent judicial authority. Notably, he was held incommunicado, in circumstances of de facto enforced disappearance, for two periods, without access to his lawyers and family, from the time of his arrest on 13 July 2016 until his transfer to Al Kouifya Prison in Benghazi in August 2016 and again from the end of March 2020 to date, and has never been brought before a court or other judicial authority.

45. The Working Group has repeatedly stated that access to a lawyer is an essential safeguard in ensuring that article 9 (3) and (4) rights are upheld.²³ As regards incommunicado detention, the Working Group has consistently found that holding persons incommunicado violates their right to be brought before a court under article 9 (3) of the Covenant and to challenge the lawfulness of their detention before a court under article 9 (4) of the Covenant.²⁴ This view is consistent with that of the Human Rights Committee, which in its general comment No. 35 (2014)²⁵ stated that “incommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3” of article 9.

46. The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty²⁶ and is essential in ensuring that detention has a legal basis. Given that Mr. Al Daguel was unable to contact anyone and especially his lawyer, which is an essential safeguard in ensuring the ability of any detainee to personally challenge their 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. International standards set out in the Working Group’s jurisprudence prescribe that the arrested person is to be brought before a judge within 48 hours.²⁷ The Working Group finds that the Government violated articles 3 and 9 of the Universal Declaration of Human Rights, principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the 48-hour stipulation by the Human Rights Committee for article 9 (3) of the Covenant.

48. For the reasons articulated in the preceding paragraphs, the Working Group finds that that the deprivation of liberty of Mr. Al Daguel lacks a legal basis and is thus arbitrary and falls under category I.

Category II

49. The source asserts that the detention of Mr. Al Daguel resulted from the exercise of his fundamental right to freedom of expression and opinion through his postings on Facebook, in which he criticized various human rights abuses committed by militias controlled by General Haftar. This is confirmed by the fact that after his arrest, he was

²⁰ [A/HRC/19/57](#), paras. 48–58.

²¹ *Ibid.*, para. 54.

²² Human Rights Committee, general comment No. 35 (2014), para. 38.

²³ Opinions No. 40/2020, para. 29; and No. 61/2020, para. 70.

²⁴ See, for example, opinions No. 45/2017, No. 46/2017, No. 79/2017, No. 11/2018 and No. 35/2018.

²⁵ See para. 35.

²⁶ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court ([A/HRC/30/37](#), annex), para. 3.

²⁷ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; No. 82/2019, para. 76; No. 6/2020, para. 45; No. 14/2020, para. 53; No. 31/2020, para. 45; No. 32/2020, para. 38; No. 33/2020, para. 75; and No. 34/2020, para. 51. See also Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 33, citing *Kovsh v. Belarus* ([CCPR/C/107/D/1787/2008](#)), paras. 7.3–7.5; [CCPR/C/79/Add.89](#), para. 17; [CCPR/C/SLV/CO/6](#), para. 14; and [CCPR/CO/70/GAB](#), para. 13.

interrogated about what he had published. It is thus clear that the reasons behind his arrest are purely political and that he was arrested in direct retaliation for his criticism of the security forces. The Working Group is mindful that the Government has chosen not to present any explanation for the arrest of Mr. Al Daguel, although it had the opportunity to do so.

50. The Working Group observes that attempts to prevent Mr. Al Daguel from voicing his criticism through an arrest suppress the free expression and civic activism of individuals and constitute a violation of article 19 (2) of the Covenant and article 19 of the Universal Declaration of Human Rights.

51. The Working Group also notes the observation by the Human Rights Committee, in paragraph 8 of its general comment No. 25 (1996), that citizens participate in the conduct of public affairs by exerting influence through, inter alia, their capacity to organize themselves, and that this participation is supported by ensuring freedom of expression, assembly and association.

52. The Working Group also recalls that article 19 (2) of the Covenant provides that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. The Human Rights Committee states, in its general comment No. 34 (2011), that this right includes political discourse, commentary on public affairs, discussion of human rights, and journalism.²⁸ Moreover, as the restatement and interpretation of relevant international law by the four independent global human rights experts on freedom of expression and access to information make clear, “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’, are incompatible with international standards for restrictions on freedom of expression ... and should be abolished”.²⁹

53. Although freedom of opinion and expression is not without limitation, article 29 (2) of the Universal Declaration of Human Rights and article 19 (3) of the Covenant provide that the only legitimate limitations to the exercise of one’s rights and freedoms are for the purposes of securing due recognition and respect of the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. In the case of Mr. Al Daguel, the Government has not presented any legitimate reasons justifying the restrictions upon the right, nor has the Working Group been able to establish any itself. It therefore concludes that the legitimate limitations on the right do not apply in the present case.

54. The Working Group therefore finds that Mr. Al Daguel’s deprivation of liberty is arbitrary, falling within category II, as it resulted from his legitimate exercise of the rights and freedoms under article 19 of the Universal Declaration of Human Rights and article 19 (1) and (2) of the Covenant. The Working Group refers the case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

Category III

55. Given its finding that Mr. Al Daguel’s deprivation of liberty is arbitrary under category II, the Working Group wishes to emphasize that in such circumstances, no trial

²⁸ See para. 11. See also, for example, opinions No. 31/1998, No. 52/2013 and No. 45/2019 (finding that journalism falls within the protection of freedom of expression under article 19 of the Covenant). Even statements considered unacceptable, disrespectful and in very bad taste by the authorities are entitled to protection. See opinions No. 10/2018, para. 63; No. 61/2018, para. 56; No. 20/2019, para. 71; and No. 14/2020, para. 65.

²⁹ “Joint declaration on freedom of expression and ‘fake news’, disinformation and propaganda”, adopted in Vienna on 3 March 2017 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur for Freedom of Expression, and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information, para. 2 (a). The text is available at <https://www.ohchr.org/Documents/Issues/Expression/JointDeclaration3March2017.doc>.

should have ever taken place. Although Mr. Al Daguel has never appeared before any court to date, he remains detained, and the Working Group considers that his rights to a fair trial and due process have been significantly undermined.

56. The source has alleged that in Mr. Al Daguel's detention, there was non-observance of international norms relating to the right to a fair trial, which was of such gravity as to give Mr. Al Daguel's deprivation of liberty an arbitrary character under category III.

57. In the Working Group's view, a number of Mr. Al Daguel's rights were violated. The Working Group especially notes the denial of Mr. Al Daguel's right to contact his lawyer and receive visits from his family while being held incommunicado contrary to principles 15–19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and to 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 as well as for protection against arbitrary detention and infringement of personal security.³⁰ The Working Group reiterates that denial of access to a lawyer is a violation of article 14 (3) (d) of the Covenant, which guarantees the right for those accused of penal offences to defend themselves through legal assistance – a right affirmed in principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

58. The right to legal assistance at all times is inherent in the right to liberty and security of person as well as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law – in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, article 14 (1) and (3) (b) and (d) of the Covenant, principles 15, 17 and 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and principles 1, 5, 7, 8, 21 and 22 of the Basic Principles on the Role of Lawyers. The Working Group considers that this violation substantially undermined and compromised Mr. Al Daguel's capacity to defend himself in any judicial proceedings. As the Working Group has stated in principle 9 and guideline 8 of its Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court,³¹ 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 the moment of apprehension, and must be promptly informed of this right upon apprehension; nor should access to legal counsel be unlawfully or unreasonably restricted.³²

59. In the Working Group's view, Mr. Al Daguel's pretrial detention without an individualized judicial assessment since his arrest in July 2016 clearly undermined the presumption of innocence guaranteed under article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. It was also in violation of the right to be tried without undue delay, contrary to articles 10 and 11 (1) of the Universal Declaration of Human Rights.

60. Moreover, since his arrest in 2016, Mr. Al Daguel has never been brought before a judge and no formal charges have ever been presented. This means that he has been detained for more than six years without any formal notification of charges. The Working Group considers that this is a blatant denial of the right to a fair trial as enshrined in article 14 (1) of the Covenant, of the right to be notified of charges as stipulated in article 14 (3) (a) of the

³⁰ Opinions No. 10/2018, para. 74; No. 30/2018, para. 47; No. 35/2018, para. 39; No. 39/2018, para. 41; No. 47/2018, para. 71; No. 22/2019, para. 71; No. 36/2019, para. 56; No. 44/2019, paras. 74–75; No. 45/2019, para. 76; No. 56/2019, para. 83; No. 65/2019, para. 68; No. 6/2020, para. 54; No. 11/2020, para. 54; No. 31/2020, para. 51; No. 32/2020, para. 59; No. 33/2020, para. 87; and No. 34/2020, para. 57.

³¹ [A/HRC/30/37](#), annex.

³² *Ibid.*, paras. 12–15 and 67–71. See also Human Rights Committee, general comment No. 32 (2007), para. 34.

Covenant and of the right to be tried without undue delay under article 14 (3) (c) of the Covenant.

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

Concluding remarks

62. Given its finding that Mr. Al Daguel was and continues to be arbitrarily deprived of his liberty without any legal basis as a result of exercising his right to freedom of expression, and in violation of his right to a fair trial, the 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.

Disposition

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

The deprivation of liberty of Omar Al Mukhtar Ahmed Al Daguel, being in contravention of articles 3, 8, 9, 10, 11 and 19 of the Universal Declaration of Human Rights and articles 2, 9, 14 and 19 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II and III.

64. The Working Group requests the Government of Libya to take the steps necessary to remedy the situation of Mr. Al Daguel 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.

65. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al Daguel 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 Mr. Al Daguel.

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

67. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination and to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, for appropriate action.

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

Follow-up procedure

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

70. 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.

71. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

72. 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.³³

[Adopted on 31 March 2022]

³³ Human Rights Council resolution 42/22, paras. 3 and 7.