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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety-fourth session, 29 August–2 September 2022

Opinion No. 56/2022 concerning Rajab Zhileg (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 42/22.

2. In accordance with its methods of work,¹ on 4 March 2022 the Working Group transmitted to the Government of Libya a communication concerning Rajab Zhileg. 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. Rajab Zhileg was born in 1974. He is a citizen of Libya, whose passport (number withheld) was issued by Libyan authorities in Zliten. He is a freelance teacher with a master's degree in economics. He was a candidate in the General National Congress election of 7 July 2012. He usually resides in North Ezdo, Zliten, Libya.

Arrest and detention

5. The source submits that on 21 March 2013, a group of armed men arrested Mr. Zhileg, along with two other individuals, in front of Al-Huda Prison in central Misrata, where they were waiting for the release of one of Mr. Zhileg's relatives. The armed men are believed to belong to a militia group named Itihad Thuwar Misrata, the Misrata Union of Revolutionaries.² This militia group acts as an extension of and at the behest of the Libyan State. They did not show an arrest warrant or a decision issued by a public authority. The armed men told Mr. Zhileg that they would take him for a short investigation.

6. Following their arrest, Mr. Zhileg and the two other individuals were taken to the headquarters of the military police, where members of Itihad Thuwar Misrata beat and intimidated them for about six hours. After six hours, members of Itihad Thuwar Misrata transferred the three men to the Itihad Thuwar Misrata base, where they were detained. On 23 March 2013, Mr. Zhileg's relative, who was never released from Al-Huda Prison, was also brought to the Itihad Thuwar Misrata base.

7. On 16 April 2013, members of Itihad Thuwar Misrata transferred Mr. Zhileg and his relative to the Anti-Crime Police Detention Facility in Misrata. On 29 April 2013, they were transferred to Tomina Prison, the most infamous facility close to Misrata,³ where they continued to be detained.

8. Mr. Zhileg's family only learned about the arrest a few days later, when Mr. Zhileg managed to use the mobile phone of another detainee at the Itihad Thuwar Misrata base to call.

9. Following Mr. Zhileg's transfer on 16 April 2013, his family was no longer able to talk to him on the phone. Mr. Zhileg's family learned from another detainee that Mr. Zhileg was no longer detained at the Itihad Thuwar Misrata base. As members of Itihad Thuwar Misrata did not provide the family with any information about Mr. Zhileg's whereabouts, his family looked for him at a number of detention facilities, including at the military intelligence offices, Al-Huda Prison and Al-Sukt Prison. Mr. Zhileg's family finally found him at the Anti-Crime Police Detention Facility in Misrata and were allowed to see him for thirty minutes on 28 April 2013.

10. One day after the visit by his family, on 29 April 2013, a man who worked at the Anti-Crime Police Detention Facility informed the family that Mr. Zhileg had been taken to an unknown place of detention. He advised the family to look for Mr. Zhileg at Tomina Prison. Authorities at Tomina Prison informed the family that they would have to come on the dates assigned for family visits. The family was unable to see Mr. Zhileg until 13 July 2013, and then only for two minutes.

11. The source reports that on 12 May 2013, Mr. Zhileg's family filed applications with the General Prosecutor and the Ministry of Justice, calling for the relative's and Mr. Zhileg's release. However, they did not receive a response. Members of Itihad Thuwar Misrata threatened Mr. Zhileg's relatives that they would be kidnapped and would face the same fate as Mr. Zhileg if they did not stop calling for his release.

12. On 7 February 2016, Mr. Zhileg's family filed an application with the General Prosecutor in Misrata, requesting him to allow Mr. Zhileg to receive medical treatment and

² The source refers to [A/HRC/19/68](#), p. 2.

³ The source refers to [S/2016/209](#), para. 88; and to the United Nations Support Mission in Libya (UNSMIL) and Office of the United Nations High Commissioner for Human Rights (OHCHR) document entitled "Torture and deaths in detention in Libya", October 2013, p. 5.

to investigate Mr. Zhileg's case. On the same day, the General Prosecutor in Misrata wrote a letter to the director of Tomina Prison, forwarding the application. The General Prosecutor gave the family a copy of the letter, indicating that he had no control over the authorities of Tomina Prison. The family handed a copy of the letter to the prison guards, who told them that they would call to let them know if they decided to take Mr. Zhileg to a doctor. As the prison guards did not call back, the family followed up with the General Prosecutor in Misrata, and were told that Mr. Zhileg's case had been transferred for investigation and that the General Prosecutor would decide on the case shortly.

13. In June 2016, Mr. Zhileg's family submitted an application to the Attorney General at the Court of Appeal in Misrata to expedite the investigation into his case, who, in turn, forwarded the application to the General Prosecutor in Misrata. Following the further deterioration of Mr. Zhileg's health, on 7 August 2016 the family met with the General Prosecutor, who wrote a letter to the authorities of Tomina Prison, requesting them to bring Mr. Zhileg before him immediately. On 8 August 2016, the family learned that the authorities of Tomina Prison had refused to bring Mr. Zhileg before the General Prosecutor due to his state of health. Reportedly, Mr. Zhileg was taken by the prison authorities to a hospital on or about 6 August, 9 August and 12 August 2016, with the family being requested to cover the fees for medical tests and scans, without being able to see Mr. Zhileg.

14. On 14 August 2016, the family went again to see the General Prosecutor to inform him about Mr. Zhileg's state of health. Following a further request to the authorities of Tomina Prison, Mr. Zhileg was brought before the General Prosecutor in Misrata for interrogation on 15 August 2016. On 23 August 2016, the General Prosecutor ordered that Mr. Zhileg be released without bail from Tomina Prison. Mr. Zhileg was released on the same day.

15. Mr. Zhileg has not been informed of any judicial proceedings in the case since his release. Mr. Zhileg contacted the office of the General Prosecutor to inquire about the status of his case in December 2016 and requested that it provide him with a copy of the record of the case. The office of the General Prosecutor responded that Mr. Zhileg's case was closed and that the case file was no longer available as it had been sent to the archives of the General Prosecutor's office.

16. Since his release, Mr. Zhileg has been diagnosed with tuberculosis and has been receiving medical treatment at the National Centre for Tuberculosis Control in Tripoli. Mr. Zhileg had to travel to Tunisia three times and to Egypt to seek medical and psychological treatment. Despite his prolonged detention without charge, the conditions of his detention, the ill-treatment during his detention, and the health conditions that he now suffers from following his detention, Mr. Zhileg has not received any form of redress and his family have had to cover the costs of his medical tests and treatment.

Analysis of violations

17. The source submits that Mr. Zhileg was detained for three years and five months without ever having been informed of the reasons for his arrest. Militia members beat him and intimidated him and he was detained in conditions amounting to ill-treatment which have resulted in a serious deterioration of his health. As a result, the arrest, detention and ill-treatment of Mr. Zhileg violate, inter alia, the rights and freedoms established in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Mr. Zhileg's deprivation of liberty is arbitrary, and falls within category I of the Working Group as it is clearly impossible to invoke any legal basis justifying the deprivation of liberty.

Arbitrariness of the arrest and detention and failure to provide information about the reasons for the arrest and detention

18. According to the source, Mr. Zhileg's arrest was carried out in violation of the right to liberty and security of person as set out in article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights. Article 9 (1) of the Covenant requires that a deprivation of liberty must be lawful and not arbitrary. The

detention must be reasonable and necessary.⁴ Article 9 (2) of the Covenant provides that persons deprived of their liberty are to be informed of the reasons for their arrest and promptly informed of any charges against them. The right not to be subjected to arbitrary detention means that every person arrested should be informed, at the time of arrest, of the reasons for the arrest⁵ and that such reasons must be given in a language that the arrested person understands.⁶

19. In the present case, the militia members who arrested Mr. Zhileg failed to inform him of the reasons for his arrest, and never informed him of any charges against him. They did not present him with an order issued by a court, and no other legal basis was invoked for his arrest and detention on 21 March 2013. The militia members only stated that they would take Mr. Zhileg for “a short investigation”. Mr. Zhileg was then detained for three years and five months, at different places of detention.

Right to inform the family of the arrest

20. The source recalls that anyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, someone in the outside world that they have been taken into custody and where they are being held.⁷ Detainees also have the right to inform someone in the outside world if they are transferred from a place of detention.⁸

21. The source submits that Mr. Zhileg was not allowed to inform his family or anyone else about his arrest and detention. He was held in incommunicado detention for the first few days after his arrest and from 16 to 28 April 2013. The authorities never formally informed his family about his arrest and whereabouts. The family faced difficulties when visiting Mr. Zhileg at Tomina Prison, including the fact that they had to be at the prison gate at dawn to collect a visitor’s ticket and were only allowed to visit him for two minutes in the presence of prison guards. In addition, the prison guards provoked and pushed the family members while they were waiting for the two-minute visit.

Right to be brought promptly before a judge

22. The source recalls that article 9 (3) of the International Covenant on Civil and Political Rights provides for the right to be promptly brought before a judge or other officer authorized by law to exercise judicial power. In deciding whether a detainee was brought promptly before a judge in accordance with article 9 (3) of the Covenant, the Human Rights Committee has held that in its view 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing; any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.⁹ Article 9 (3) also includes the right of a detainee to meet and consult with a lawyer of his or her choice with a view to preparing the legal defence.¹⁰

23. As outlined above, Mr. Zhileg was never charged, and at no point during his detention of three years and five months did he see a judge. He was held in incommunicado detention following his arrest in violation of article 9 (3) of the International Covenant on Civil and

⁴ See, for instance, *Mukong v. Cameroon* (CCPR/C/51/D/458/1991), para. 9.8.

⁵ Human Rights Committee, general comment No. 35 (2014), para. 24.

⁶ *Ibid.*, para. 26.

⁷ Committee against Torture, general comment No. 2 (2007) on the implementation of article 2, para. 13.

⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 16 (1); and African Commission on Human and Peoples’ Rights, Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), guideline 25 (i).

⁹ Human Rights Committee, general comment No. 35 (2014), para. 33.

¹⁰ See, for instance, *Nazarov v. Uzbekistan* (CCPR/C/81/D/911/2000), para. 6.2; and *Umarova v. Uzbekistan* (CCPR/C/100/D/1449/2006), para. 8.5. See also the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, guideline 4.

Political Rights.¹¹ Mr. Zhileg was not able to contact a lawyer upon his arrest and has been denied access to counsel throughout his detention.

Right to habeas corpus

24. The source notes that in its general comment No. 35 (2014), the Human Rights Committee explained that the right to bring proceedings as set out in article 9 (4) of the International Covenant on Civil and Political Rights “applies in principle from the moment of arrest” and that “any substantial waiting period before a detainee can bring a first challenge to detention is impermissible”.¹² Mr. Zhileg remained in detention until 23 August 2016, and has been denied the right to have his detention judicially reviewed ever since his arrest on 21 March 2013.

Treatment and detention conditions

25. The source argues that Mr. Zhileg was subjected to and detained in conditions of detention amounting to treatment contrary to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, which provide that no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.¹³ According to the Human Rights Committee, the assessment of what constitutes treatment falling within the meaning of article 7 depends on all the circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects, and the sex, age and state of health of the victim.¹⁴

Beatings and intimidation

26. The source submits that beating of detainees constitutes a violation of article 7 of the International Covenant on Civil and Political Rights.¹⁵ Reportedly, men belonging to Itihad Thuwar Misrata beat and intimidated Mr. Zhileg for about six hours following the arrest and denied him the right to inform his family of his arrest.

27. According to the source, Mr. Zhileg was also placed in solitary confinement for five days in a very small cell, was not allowed to go to the toilet and was given a plastic packet to use instead of a toilet, and was fed one meal a day consisting of eight spoonfuls of pasta.

28. Following his release, Mr. Zhileg has suffered from a number of diseases, including tuberculosis, which he did not suffer from before his imprisonment, and which are attributed to the conditions of detention and his treatment during that detention.

29. In the above-mentioned context, the source also refers to the report of the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) stating that torture is most frequent immediately upon arrest and during the first days of interrogation as a means to extract confessions or other information; and that prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees or the conducting of criminal investigations, and with no effective judicial oversight, are major factors in facilitating the torture or other ill-treatment of detainees.¹⁶

Incommunicado detention

30. The source notes that the detention of an individual without permitting him or her contact with the outside world constitutes treatment in violation of article 7 of the

¹¹ Human Rights Committee, general comment No. 35 (2014), para. 35.

¹² *Ibid.*, para. 42. See also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 4; and General Assembly resolution 65/205.

¹³ See also Human Rights Committee, general comment No. 35 (2014), para. 2.

¹⁴ Human Rights Committee, *Vuolanne v. Finland*, communication No. 265/1987, para. 9.2.

¹⁵ *Kennedy v. Trinidad and Tobago* (CCPR/C/74/D/845/1998), para. 7.7.

¹⁶ UNSMIL and OHCHR, “Torture and deaths in detention in Libya”, October 2013, pp. 6–7.

International Covenant on Civil and Political Rights and can constitute inhuman treatment both of the detainee and of the family concerned.¹⁷

31. Following his arrest on 21 March 2013, Mr. Zhileg was not allowed to inform his family about the arrest, and his family only learned about it several days later when they managed to speak with him via another detainee's phone. Mr. Zhileg was again held incommunicado following his transfer on 16 April 2013, until 28 April 2013 when his family managed to locate him at the Anti-Crime Police Detention Facility. The periods of incommunicado detention were combined with Mr. Zhileg's transfer to three different places of detention following his arrest on 21 March 2013 up to his transfer to Tomina Prison on 29 April 2013, thereby increasing his vulnerability and anxiety.

Conditions of detention and lack of access to medical care

32. The source submits that prompt and regular access to independent medical personnel is an important safeguard against both torture and ill-treatment. Everyone, including an individual in custody, has the right to the highest attainable standard of physical and mental health. The right to health extends not only to timely and appropriate health care, but also to underlying determinants of health, such as adequate food, water and sanitation. Law enforcement officials and prison authorities are responsible for protecting the health of individuals in their custody. The protection of detainees requires that each person detained be afforded prompt and regular access to doctors. The failure to provide access to adequate health care has been held to violate the rights to respect for dignity and to health, as well as the prohibition of inhuman or degrading treatment.¹⁸

33. Reportedly, Tomina Prison lacks basic health and safety equipment, including an adequate ventilation system. Judging from the weight loss, Mr. Zhileg was not provided with sufficient food. Throughout the first year of Mr. Zhileg's detention in Tomina Prison, he was not provided with a blanket. The prison guards continued to refuse to accept the clothes and food items that family members brought along to Tomina Prison.

34. As a result of these conditions, Mr. Zhileg has reportedly suffered multiple diseases since his arrest, including skin infections. When the family visited him on 6 February 2016, they found him to be very sick. Mr. Zhileg was coughing, and had difficulties breathing, and his hands and feet were shaking, leading the family to believe that he was suffering from a serious chest infection. During the visit on 13 February 2016, the family was allowed to provide medicines to Mr. Zhileg, which made his health condition improve. However, the family continued to be seriously concerned about his state of health as he had not had access to medical care and had not been able to see a doctor. The causes of his worsening state of health had therefore not been determined. For the alleviation of immediate pain, Mr. Zhileg was dependent on medicines brought by his family.

35. According to the source, in August 2016 Mr. Zhileg's health deteriorated further. On 6 August 2016, during the two-minute family visit at Tomina Prison, Mr. Zhileg was constantly crying, he was unable to speak and his stomach was hurting. On the same day, Mr. Zhileg's family learned that he has been taken to Ras Altoba Hospital in Misrata. Although the family did not find Mr. Zhileg at the hospital, they spoke to the doctor who had examined him. On 9 August 2016, the family received a call from someone who identified himself as working at Tomina Prison, requesting that they go to Hikma Hospital in Misrata to cover the fees for the medical tests and ultrasound scans that Mr. Zhileg had taken. The family went to Hikma Hospital immediately on 9 August 2016 and paid the fees, but did not find Mr. Zhileg there. On 13 August 2016, the family visited Mr. Zhileg at Tomina Prison, finding that his state of health had further deteriorated. Mr. Zhileg sat on a chair and could not walk,

¹⁷ See, for instance, African Commission on Human and People's Rights, *Amnesty International, Comité Loosli Bachelard, Lawyers' Committee for Human Rights, and Association of Members of the Episcopal Conference of East Africa v. Sudan*, communication No. 48/90, No. 50/91, No. 52/91 and No. 89/93, para. 54; and *Zegveld and Ephrem v. Eritrea*, communication No. 250/02, para. 55.

¹⁸ See, for instance, *Engo v. Cameroon (CCPR/C/96/D/1397/2005)*, para. 7.5; and African Commission on Human and Peoples' Rights, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, communication No. 105/93, No. 128/94, No. 130/94 and No. 152/96, para. 91.

informing his family members that the prison guards had taken him to Ras Altoba Hospital in Misrata on 12 August 2016 where a doctor had drained fluids from his chest and stomach.

36. The source notes that the inadequate detention conditions and the lack of access to medical care reflect the failure of the State to take appropriate measures to ensure that the detained person's right to life and to physical and mental integrity are respected.

State responsibility

37. The source recalls that the Human Rights Committee has explained the scope of State responsibility under article 9 of the International Covenant on Civil and Political Rights as follows: When private individuals or entities are empowered or authorized by a State party to exercise powers of arrest or detention, the State party remains responsible for adherence and ensuring adherence to article 9. It must rigorously limit those powers and must provide strict and effective control to ensure that those powers are not misused, and do not lead to arbitrary or unlawful arrest or detention.¹⁹

38. According to the source, Mr. Zhileg was arrested by a group of armed men who are believed to belong to Itihad Thuwar Misrata. He was detained at Tomina Prison, which was run by Itihad Thuwar Misrata. The Central Bank of Libya disburses salaries to armed groups, and members of Itihad Thuwar Misrata act as an extension of and at the behest of the State. The source notes that in their 2015 report on the human rights situation in Libya, UNSMIL and OHCHR found that armed groups had been given salaries by successive governments and that some had also officially been given law enforcement and custodial functions under the justice, defence or interior ministries.²⁰ In their 2013 report on torture and deaths in detention in Libya, UNSMIL and OHCHR listed the Correction and Rehabilitation Institution in Tomina, Misrata, among "facilities fully or partially under the authority of armed brigades, which have been brought under the Ministry of Justice by joining the Judicial Police, or the Ministry of Defence as part of the military justice system, or the Ministry of the Interior".²¹ Reportedly, the Misratan authorities funded Tomina Prison and paid for the prison guards' salaries.

39. The source argues that the case exemplifies the ongoing failure of the State to protect the right to liberty and security of person and the rights of detainees to freedom from torture and ill-treatment.

Response from the Government

40. On 4 March 2022, 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 3 May 2022, detailed information about the current situation of Mr. Zhileg 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.

41. The Working Group regrets that the Government did not submit a reply, and neither did it seek an extension in accordance with paragraph 16 of Working Group's methods of work.

Discussion

42. 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.

43. In determining whether Mr. Zhileg'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

¹⁹ Human Rights Committee, general comment No. 35 (2014).

²⁰ UNSMIL and OHCHR, "Report on the human rights situation in Libya", 16 November 2015, p. 2.

²¹ UNSMIL and OHCHR, "Torture and deaths in detention in Libya", October 2013, p. 5.

detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations.²² In the present case, the Government has chosen not to challenge the *prima facie* credible allegations made by the source.

44. As a preliminary issue, the Working Group must firstly address the fact that Mr. Zhileg is no longer detained, as he was released following the order of the General Prosecutor of 23 August 2016. However, the Working Group notes the uncontested allegations that prior to that, he spent nearly three and a half years detained, without any charges, and was allegedly ill-treated. The Working Group will therefore proceed with the consideration of the case in accordance with paragraph 17 (c) of its methods of work.

45. As a further preliminary issue, the Working Group must address the issue that the detention of Mr. Zhileg took place at the hands of the Itihad Thuwar Misrata group, which is not under the *de facto* control and command of the Government of National Accord, which is the only Government recognized by the Security Council.²³

46. In this regard, the Working Group recalls the UNSMIL and OHCHR report of 2013, which clearly states that the Correction and Rehabilitation Institution in Tomina, in Misrata, and the Majer Correction and Rehabilitation Institution in Zliten, are both under the authority of the Judicial Police, specifying that these are officially under State authority but noting albeit that “the effective control by the relevant ministries on such facilities varies”.²⁴ Moreover, the source has submitted, and the Government has chosen not to contest, that the Itihad Thuwar Misrata group runs Tomina Prison where Mr. Zhileg was detained, that the Central Bank of Libya disburses salaries to armed groups, and that members of Itihad Thuwar Misrata act as an extension of and at the behest of the State (see para. 38 above).

47. Furthermore, the positive obligation of the State to prevent and punish crime to uphold its human rights duties remains intact irrespective of whether the actions of the Itihad Thuwar Misrata group 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 the Itihad Thuwar Misrata group, who carried out the detention of Mr. Zhileg and who are in control of Tomina Prison where he was held. In making this finding, the Working Group particularly recalls the conclusion by OHCHR and UNSMIL in 2018 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”.²⁵

48. In making these findings, the Working Group also notes that it was at the order of the Prosecutor General that Mr. Zhileg was released on 23 August 2016.

49. 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

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

51. According to the source, and uncontested by the Government, Mr. Zhileg was detained on 21 March 2013 by a group of armed men belonging to the Itihad Thuwar Misrata group, who neither showed an arrest warrant nor explained the reasons for the arrest, but merely stated that they were taking him for “a short investigation”.

52. The Working Group reiterates 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

²² A/HRC/19/57, para. 68.

²³ See Security Council resolution 2259 (2015).

²⁴ UNSMIL and OHCHR, “Torture and deaths in detention in Libya”, October 2013, p. 5.

²⁵ OHCHR and UNSMIL, “Abuse behind bars: arbitrary and unlawful detention in Libya”, p. 37.

arrest. The authorities must invoke a legal basis consistent with international human rights standards and apply it to the circumstances of the case.²⁶

53. International human rights law on detention includes the right to be presented with an arrest warrant in order 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.

54. When Mr. Zhileg was detained on 21 March 2013, 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.²⁷ Any deprivation of liberty without – as in the present case – a valid arrest warrant, is arbitrary and lacks legal basis, in violation article 9 of the Covenant.

55. The uncontested submission of the source is that following his detention, Mr. Zhileg 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 prescribed requirements under international law which also require that, in order to constitute a legal basis for deprivation of liberty, the authorities should inform the person detained of the reasons for their arrest, at the time of arrest, and of the charges against them, promptly.²⁸ 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.²⁹

56. The Working Group also recalls that article 9 (2) of the Covenant requires that anyone who is arrested not only be informed of the reasons for arrest but also promptly be informed of any charges against them. The right to be promptly informed of charges concerns notice of criminal charges, and as the Human Rights Committee has noted in its general comment No. 35 (2014), this right applies in connection with ordinary criminal prosecutions and also in connection with military prosecutions or other special regimes directed at criminal punishment.³⁰ This was denied to Mr. Zhileg, who throughout his nearly three-and-a-half

²⁶ 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.

²⁷ 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.

²⁸ 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.

²⁹ Opinions No. 46/2020, para. 40; No. 16/2020, para. 60; No. 46/2019, para. 51; and No. 10/2015, para. 34.

³⁰ Human Rights Committee, general comment No. 35 (2014), para. 29. See also opinions No. 2/2018, No. 4/2018, No. 42/2018, No. 43/2018, No. 79/2018 and No. 49/2019.

years of detention was never informed of any charges against him, in a blatant violation of article 9 (2) of the Covenant.

57. Furthermore, according to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge is to be brought promptly before a judge. As the Human Rights Committee has stated, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest, and any longer delay must remain absolutely exceptional and be justified under the circumstances.³¹ The Working Group finds that in the present case, the Government has violated articles 3 and 9 of the Universal Declaration of Human Rights, article 9 (3) of the Covenant and principles 11, 37 and 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in respect of Mr. Zhileg.

58. Article 9 (3) of the Covenant also requires that any pretrial detention should be the exception rather than the norm, and should be ordered for the shortest time possible.³² In other words, liberty is acknowledged under article 9 (3) of the Covenant as the core consideration, with detention merely as an exception.³³ 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.³⁴ Following his arrest, Mr. Zhileg was kept in detention facilities for varying periods without being brought before a competent judicial authority, and his overall detention lasted nearly three-and-a-half years with no charges ever being brought against him or any proceedings commencing. The Working Group therefore finds a further violation of article 9 (3) of the Covenant.

59. The source has also argued and the Government has chosen not to contest that Mr. Zhileg was held *incommunicado* from 16 to 28 April 2013. 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.³⁵ This view is consistent with that of the Human Rights Committee, which in its general comment No. 35 (2014)³⁶ stated that *incommunicado* detention that prevented prompt presentation before a judge inherently violated article 9 (3).

60. The Working Group recalls that judicial oversight of detention is a fundamental safeguard of personal liberty³⁷ and is essential in ensuring that detention has a legal basis. Given that Mr. Zhileg was unable to contact anyone and especially his lawyer, which is an essential safeguard to ensure 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.

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

62. The Working Group notes that Mr. Zhileg spent nearly three-and-a-half years in detention, without a charge or a trial, and that since his release, there have been no indications of any charges against him being pursued by the authorities. The Working Group observes that everyone has the right to be tried without undue delay, as required by article 14 (3) (c)

³¹ Human Rights Committee, general comment No. 35 (2014), para. 33; and [CAT/C/GAB/CO/1](#), para. 10. See 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.

³² [A/HRC/19/57](#), paras. 48–58.

³³ *Ibid.*, para. 54.

³⁴ Human Rights Committee, general comment No. 35 (2014), para. 38.

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

³⁶ See para. 35.

³⁷ 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](#)), para. 3.

of the Covenant. The Working Group considers that this further strengthens its findings under category I.

Concluding remarks

63. The Working Group is very disturbed at the uncontested allegations that Mr. Zhileg was beaten and intimidated upon his detention, and that he was held in a solitary confinement for five days in a very small cell, was not allowed to go to the toilet and was given a plastic packet to use instead of a toilet, and was fed one meal a day consisting of eight spoonfuls of pasta.

64. The treatment described reveals a prima facie breach of the absolute prohibition of torture, which is a peremptory norm of international law as well as of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (principle 6) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (rule 1). The Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

65. It is also uncontested that during his nearly three-and-a-half years of detention, Mr. Zhileg was not allowed proper medical care or provided with sufficient food; he was not provided with a blanket during his first year of detention. The Working Group feels obliged to remind 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 to the inherent dignity of the human person, and that denial of medical assistance constitutes a violation of the Nelson Mandela Rules – rules 24, 25, 27 and 30 in particular.

66. The source has also submitted, and the Government does not contest, that Mr. Zhileg has suffered serious health complications due to the treatment endured during his detention and has even had to seek treatment overseas. The Working Group wishes to emphasize that the Government is fully responsible for the treatment endured by detainees in custody, including that of Mr. Zhileg, and refers the case to Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

67. The Working Group also notes with concern the treatment of the family in the present case, who were never notified of Mr. Zhileg's detention, were allowed only very few visits of a very short duration, and, when visiting him, were pushed and provoked by the prison guards. The Working Group further notes the absence of a response by the Government in relation to these, and finds a violation of principle 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Disposition

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

The deprivation of liberty of Rajab Zhileg, being in contravention of articles 3, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 2 (3) and 9 of the International Covenant on Civil and Political Rights, is arbitrary and falls within category I.

69. The Working Group requests the Government of Libya to take the steps necessary to remedy the situation of Mr. Zhileg 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.

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

71. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr.

Zhileg and to take appropriate measures against those responsible for the violation of his rights.

72. 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, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

Follow-up procedure

74. 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 compensation or other reparations have been made to Mr. Zhileg;
- (b) Whether an investigation has been conducted into the violation of Mr. Zhileg's rights and, if so, the outcome of the investigation;
- (c) 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;
- (d) Whether any other action has been taken to implement the present opinion.

75. 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.

76. 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.

77. 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.³⁸

[Adopted on 1 September 2022]

³⁸ Human Rights Council resolution 42/22, paras. 3 and 7.