

OPINION No. 6/2011 (LIBYAN ARAB JAMAHIRIYA)

Communication addressed to the Government on 19 January 2011

Concerning Mr. Imed Al Chibani (hereinafter Mr. 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 by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50. The Human Rights Council assumed the mandate by its decision 2006/102. The mandate was extended for a further three-year period by 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:

I. 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);

II. 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);

III. 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).

IV. When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);

V. 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 case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows: 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 nearby his residence by agents of the internal security services, 'Al Amn Addakhili', wearing civil clothes. Mr. Al Chibani was allegedly taken to the offices of internal security forces, located close to the clinic 'An nahr Assinyi', Benghazi, where he was kept incommunicado.

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

7. The 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 previous release on 14 October 2006, Mr. Al Chibani had allegedly received threats due to his use of internet. Mr. Al Chibani's mother has undertaken 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 recognized that they were detaining Mr. Al Chibani, that he was kept at Assaka prison and that his family could render him a visit.

8. On 28 May 2008, Mr. Al Chibani's family was for the first time able to visit him and to note that his state of health has gravely deteriorated. According to the information received, Mr. Al Chibani's family was reassured that Mr. Al Chibani had been subjected to alleged acts of torture following his arrest, and that no legal proceedings have taken place or any official charges have been formulated.

9. The source argues that both periods of detention, i.e. between 5 December 2005 and 14 October 2006 and the ongoing detention since 10 July 2007 lack any legal basis and are not in conformity with Libyan domestic law as well as international law. In this context, the source refers to the fourth periodic report to the Human Rights Committee dated 10 May 2007 (UN Doc. CCPR/C/LBY/4), which in its paragraph 6 provides 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". In paragraph 12(a) of the same document, the State Party to the International Covenant on Civil and Political Rights reaffirmed that "[a]ccording 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 "[n]o 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; [a]ccused 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 has not been informed about his place of detention neither during the first period of detention between 5 December 2005 and 14 October 2006 nor from 10 July 2007 until 28 May 2008. According to the information received, to date, Mr. Al Chibani has not been brought before a judge, has not benefited from any legal assistance and has not had 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 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 that the Government has failed to provide its version of facts and explanations on the circumstances of the case.

Discussion

12. The Government did not refute the following facts: (a) Mr. Al Chibani was arrested by the police officers in civil clothing on 10 July 2007, he was subsequently held in incommunicado detention and 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 internet; and (d) he was never presented before any judicial or other competent authority.

13. On the occasion of his second detention since 10 July 2007, and despite continuous searches undertaken by his mother and relatives, Mr. Al Chibani's fate and whereabouts were made known to his family only 11 months after the arrest. His family found out that Mr. Al Chibani was in a critical health condition and had been subjected to acts of torture.

14. The Working Group will remind the Government of Libyan Arab Jamahiriya that Article 9(2) of the International Covenant on Civil and Political Rights provides 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 so that the court may 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. Neither has he 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 lawyer or legal assistance and has been kept incommunicado for extensive periods of his detention.

16. In light of the information available before it, and owing to the fact that the Government has not given any reasons to question the above allegations, the Working Group holds that the following obligations have been violated by the Libyan Arab Jamahiriya: articles 1, 2, 3, 5, 6, 7, 8, 9, 10, and 11 of the Universal Declaration of Human Rights and 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 indicated in the Working Group's methods of work.

17. Moreover, considering that the most apparent motive for Mr. Al Chibani's detention and abuses committed against him relates to his exercise of the right to freedom of opinion and expression in the form of his use of Internet, the Working Group holds that his detention is arbitrary under Category II of the categories indicated in the Working Group's methods of work.

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

Disposition

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

The deprivation of liberty of Mr. Al Chibani during the period between 5 December 2005 and 14 October 2006 and the ongoing detention since 10 July 2007 is arbitrary, being in contravention to articles 1, 2, 3, 5, 6, 7, 8, 9, 10, and 11 of the Universal Declaration of Human Rights and 2, 3, 7, 9, 10, 12 and 14 of the International Covenant on Civil and Political Rights. It falls under categories I, II and III of the categories applicable to 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(5) of the International Covenant on Civil and Political Rights, provide him with adequate reparation.

Adopted on 3 May 2011