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Human Rights Council Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14-23 November 2012

No. 60/2012 (Libya)

Communication addressed to the Government on 31 July 2012

Concerning Sayed Qaddafi Dam

The Government did not reply to the communication within the 60-day deadline but requested an extension of an additional 60 days.

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed that mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. In accordance with its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or 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

3. Mr. Sayed Qaddaf Dam is a 64-year-old citizen of Libya, usually residing in Syrte. In September 2011, he was arrested at his home in Syrte by the security forces. Mr. Qaddaf Dam was shown no arrest warrant and was allegedly being arrested for his family ties to Muammar Gaddafi. Mr. Qaddaf Dam is his cousin.

4. Following his arrest, Mr. Qaddaf Dam was subjected to a number of interrogation sessions by the High Investigating Unit of Misrata. As a result of these interrogations it was established that Mr. Qaddaf Dam had not had any political role during the last few years and he did not take part in the hostilities that took place in Libya.

5. Mr. Qaddaf Dam has been kept in detention at the Misrata prison, without any charge or trial and in a critical health condition. At the moment of his arrest, Mr. Qaddaf Dam was supposed to undergo spinal surgery. Due to his arrest, he has not been able to do so and no adequate medical assistance has been provided to Mr. Qaddaf Dam in the Misrata prison.

6. Mr. Qaddaf Dam's family has contacted the authorities to obtain his release. Mr. Mustafa Abdel Jalil, Chairman of the National Transitional Council, taking into account the results of the investigation, has recommended the release of Mr. Qaddaf Dam, in particular given his medical condition. However, the security forces in Misrata have failed to implement this recommendation.

7. The source maintains that Mr. Qaddaf Dam's detention is arbitrary being deprived of any legal basis. According to the information received, Mr. Qaddaf Dam has not been charged nor brought before a judge. He has not had the opportunity to contest the legality of his arrest and detention in violation of article 9 of the Universal Declaration of Human Rights (UDHR) and of the International Covenant on Civil and Political Rights (ICCPR).

Response from the Government

8. The Working Group forwarded a communication to the Government of Libya on 31 July 2012 and regrets that the Government has not provided the requested information.

9. According to paragraph 15 of the Working Group's revised methods of work, a Government is requested to reply to a communication within 60 days from the date of its transmittal. However, in accordance with paragraph 16, the Working Group may grant a Government a further period of a maximum of one month in which to reply.

10. On 28 September 2012, the Working Group received a request from the Government for a 60-day extension of the time limit to provide a response. It supported such a request for the following reasons:

According to the extraordinary condition of the transitional stage Libya is going through with the transfer of the authorities and responsibilities from the Libyan Transitional Council to the Libyan National General Congress, the reposition of the new Cabinet (Government) and the difficulties that prevented them from collecting the accurate information and data about the referred case, the Government of Libya would be grateful if a further delay of 60 days could be exceptionally granted. Indeed it will also enable the Libya General Attorney, whose severe medical condition (brain clot) kept him away from carrying out his duties during the last period of time, to prepare adequate answers and to render his decision.

11. The Working Group has considered the Government's request for an extension, which is for 60 days and not for the maximum of one month according to the Group's revised methods of work.

12. The Working Group wishes to underline that human rights also apply in periods of transition. Previous opinions adopted by the Group have emphasized that not only do human rights apply in periods of transition but so do the international system of supervision and international law on State responsibility. The Group has expressly rejected requests for extension based on similar reasons including from the Syrian Arab Republic¹ and from Egypt.²

13. The Working Group does not consider that the reasons demonstrated by the Government in the current case are sufficient to justify the extension, in particular in the light of the serious health concerns of the individual in detention.

Discussion

14. According to its revised methods of work, the Working Group is in a position to render an opinion on the case on the basis of the submissions that have been made.

15. The Working Group recalls the Report of the International Commission of Inquiry on Libya³ which was presented to the Human Rights Council's nineteenth session in March 2012 under agenda item 4, "Human rights situation that requires the Council's attention".

16. The Commission found that violations had continued in a "widespread and systematic manner" violating international human rights law, and that "the facts indicate that crimes against humanity have taken place". The Commission noted the efforts made by the interim Government to restore a functioning judiciary as well as its creation of the National Council for Civil Liberties and Human Rights and the adoption of a Transitional Justice Law. However, while acknowledging progress and the Government's expressed commitment to human rights, the Commission had serious reservations, particularly concerning the failure to hold accountable those "who have committed serious violations including unlawful killings and arbitrary arrests". The Commission concluded that this situation was "symptomatic of a lack of equal implementation of the law and a serious obstacle to the achievement of the objective of full accountability for serious crimes". The Commission made a number of recommendations, in particular that all violations of international human rights law and international humanitarian law described in the report be investigated and the alleged perpetrators prosecuted, irrespective of their location or affiliation.

¹ Opinion No. 26/2011 (Syrian Arab Republic).

² Opinion No. 50/2011 (Egypt).

³ A/HRC/19/68.

17. The source has made out a prima facie case that Mr. Qaddaf Dam is in detention and in a critical health condition, without any legal basis justifying his deprivation of liberty and in breach of the international norms relating to the right to a fair trial of such gravity as to give the deprivation of liberty an arbitrary character. The Government has neither provided any information about Mr. Qaddaf Dam's situation, nor has it challenged or rebutted the claims by the source.

18. The prohibition of arbitrary detention in article 9 of the UDHR and of the ICCPR extends to all forms of detention. The Working Group holds that the detention of Mr. Qaddaf Dam is arbitrary and in violation of article 9 of the UDHR and of the ICCPR as well as the due process rights in article 10 of the UDHR and article 14 of the ICCPR. The detention thus falls within categories I and III of the categories applicable to the cases submitted to the Group.

19. As the detention of Mr. Qaddaf Dam constitutes a breach of international human rights obligations, the principal remedy is immediate release.

20. The Working Group will remind Libya of its duties to comply with international human rights obligations, not to detain arbitrarily and to release persons who are arbitrarily detained, and to provide compensation to them. The positive obligation to protect individuals against arbitrary detention extends beyond acts by State agents.

21. The Working Group has in paragraphs 15-16 above recalled the findings of the International Commission of Inquiry on Libya that "the facts indicate that crimes against humanity have taken place".⁴ The Group recalls that under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violations of fundamental rules of international law, may constitute crimes against humanity. The Group reaffirms that duties to comply with international human rights that are peremptory and *erga omnes* norms such as the prohibition of arbitrary detention rest not only on the Government but extend to all officials, including judges, police and security officers, and prison officers with relevant responsibilities.⁵ No person can contribute to human rights violations.

Disposition

22. The Working Group on Arbitrary Detention renders the following opinion:

The detention of Sayed Qaddaf Dam is arbitrary and in violation of article 9 of the UDHR and of the ICCPR and of article 10 of the UDHR and article 14 of the ICCPR. The detention thus falls within categories I and III of the categories applicable to the cases submitted to the Working Group.

23. The Working Group requests the Government to take the necessary steps to remedy the situation, which are the immediate release of Sayed Qaddaf Dam, and to accord him an enforceable right to compensation in accordance with article 9, paragraph 5, of the ICCPR.

[Adopted on 20 November 2012]

⁴ Ibid.

⁵ See, for instance, opinion No. 47/2012 (Democratic People's Republic of Korea).