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## Human Rights Council Working Group on Arbitrary Detention

### Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session, 31 August-4 September 2015

#### Opinion No. 35/2015 concerning Mahmoud Abdulrahman al-Jaidah (United Arab Emirates)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 1/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013.

2. In accordance with its methods of work (A/HRC/30/69), on 15 September 2014 the Working Group transmitted a communication to the Government of the United Arab Emirates concerning Mahmoud Abdulrahman al-Jaidah. The Government replied to the communication on 28 October 2014. The State is not 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 sentence or despite an amnesty law applicable to him) (category I);

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

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

(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).

## **Submissions**

### *Communication from the source*

4. Mahmoud Abdulrahman al-Jaidah is a Qatari national ordinarily resident in Doha. He is married and is the father of eight children. Prior to his arrest, Mr. Al-Jaidah worked as a senior medical practitioner at Qatar Petroleum.

5. According to the information received, while complying with routine security procedures, Mr. Al-Jaidah was arrested by State Security forces of the United Arab Emirates on 26 February 2013 at Dubai international airport as he was transiting through Dubai on his way home from Thailand to Qatar. He was reportedly not presented with a warrant at the time of his arrest, or notified of the charges against him.

6. The source reports that, on 8 March 2013, Mr. Al-Jaidah's wife received a brief telephone call from him. He appeared unable to speak freely, as he was evading her questions. Mr. Al-Jaidah informed his wife that he was detained in an unknown place in the United Arab Emirates and that he was unaware of the reasons for his detention.

7. According to the source, Mr. Al-Jaidah was detained incommunicado for eight months before being charged with committing an offence. During that time, it is alleged that he was tortured by prison guards, including by being deprived of sleep, beaten on the soles of his feet and repeatedly punched in the face.

8. According to the source, Mr. Al-Jaidah's detention was politically motivated, as surmised from the questions repeatedly put to him by the State Security interrogators about his political convictions and his alleged connection to the Muslim Brotherhood.

9. It is reported that, on 23 May 2013, Mr. Al-Jaidah was asked to sign a 39-page document without being allowed to read its contents. Mr. Al-Jaidah was told by an individual known as Abu Khamis that once he had signed the papers, he would be released and transported to the airport so he could return home. It is alleged that the document contained confessions from Mr. Al-Jaidah that were obtained under torture.

10. The source reports that on 26 May 2013, Mr. Al-Jaidah was taken to the office of the prosecutor Saqr Naqb. Although Mr. Al-Jaidah was informed by the prosecutor that he would be able to return home very soon, he was instead returned to prison. It is alleged that the prosecutor replicated the confessions obtained under torture in the formal charge sheet against Mr. Al-Jaidah. Therefore, on 26 May 2013, Mr. Al-Jaidah was charged with helping and funding an illegal secret organization. It is also alleged that he never received written notification of the charges and has never been allowed to read the document he was forced to sign.

11. On 4 November 2013, Mr. Al-Jaidah's trial began before the Federal Supreme Court. At the first hearing in his case, the court issued the order that Mr. Al-Jaidah be transferred to a public jail. On 16 or 17 November 2013, Mr. Al-Jaidah was transferred to Al-Razeen prison, where he remains to date. Nine hearings took place before 3 March 2014, when the court delivered its verdict condemning Mr. Al-Jaidah to seven years' imprisonment for helping an illegal secret organization. It is reported that because Mr. Al-Jaidah appeared directly before the Federal Supreme Court, the sentence is definitive and cannot be appealed, pursuant to article 67 of the Federal Supreme Court Law.

12. The source reports that Mr. Al-Jaidah was tried directly before the Federal Supreme Court of the United Arab Emirates instead of being deferred to a court of first instance, and that the prosecution provided no justification for that. The source submits that that infringes article 25 of the Constitution of the United Arab Emirates, which guarantees equality before the law to all citizens, and article 40, which guarantees foreign nationals enjoyment of the rights and the liberties provided for in international conventions and treaties to which the United Arab Emirates is a party.

13. The source reports that Mr. Al-Jaidah was not allowed to consult or be represented by a lawyer until 30 December 2013, at which time he was able to meet with a lawyer for one hour prior to the sixth hearing in his trial. It is alleged that that was his only meeting with the lawyer and that it took place in the presence of State security agents and was recorded, in violation of article 16 (3) of the Arab Charter on Human Rights, which the United Arab Emirates ratified in 2008.

14. The source submits that Mr. Al-Jaidah's deprivation of liberty is arbitrary and falls under category I of the Working Group's defined categories of arbitrary detention prior to the start of his trial on 4 November 2013. The source reports that he was arrested without a warrant and he was not informed of the charges against him until his appearance before the court. As a consequence, he had been deprived of his liberty without any legal basis from the time of his arrest. It is alleged that Mr. Al-Jaidah was detained incommunicado for eight months by the State Security Services, and as a consequence was denied the possibility of challenging the legality of his detention before a judicial authority. It is submitted that that constitutes a breach of article 26 of the Constitution of the United Arab Emirates, which guarantees freedom from torture and the arbitrary deprivation of liberty, and article 9 of the Universal Declaration of Human Rights.

15. The source submits that Mr. Al-Jaidah's deprivation of liberty also falls under category II of the Working Group's defined categories of arbitrary detention. The source emphasizes that Mr. Al-Jaidah was interrogated about his political convictions and his alleged connections with the Muslim Brotherhood. His detention is alleged to be politically motivated and therefore constitutes a violation of the right to freedom of opinion and expression and the right to freedom of peaceful assembly, as guaranteed under article 30 of the Constitution of the United Arab Emirates and articles 19 and 20 of the Universal Declaration of Human Rights.

16. The source submits that Mr. Al-Jaidah's deprivation of liberty also falls under category III of the Working Group's defined categories of arbitrary detention, as his right to a fair trial has been violated and he has been denied the possibility of seeking an effective remedy, in contravention of articles 8, 9 and 10 of the Universal Declaration of Human Rights.

17. According to the source, Mr. Al-Jaidah was not informed of the charges brought against him until his appearance before the court eight months after his arrest. He was detained incommunicado for those eight months and his confessions were allegedly extracted under torture during that time. The source adds that he was convicted on the sole basis of the document he was coerced to sign without having been granted the right to read it. He was not allowed to consult or be represented by a lawyer apart from just one meeting lasting one hour.

18. Furthermore, Mr. Al-Jaidah appeared directly before the Federal Supreme Court, without first appearing before a court of first instance, so does not have the possibility of appealing the sentence of the Federal Supreme Court or the ability to challenge the lawfulness of his detention.

*Response from the Government*

19. The Working Group transmitted a communication to the Government of the United Arab Emirates on 15 September 2014. The Government replied on 28 October 2014.

20. The Government contends that Mr. Al-Jaidah was arrested at Dubai international airport on 26 February 2013 pursuant to an arrest warrant which was shown to him at the time of his arrest. The charges against him were explained and he was detained in a State prison. His family and his country's embassy were informed of his arrest and detention and of the reasons therefor and neither party lodged a legal protest challenging the reasons for his detention. His family and the ambassador of Qatar were given permission to visit him.

21. The Government submits that Mr. Al-Jaidah was not subjected to any physical or moral coercion through ill-treatment or torture during his interrogation by law enforcement officials or the Public Prosecutor. The competent court refuted and refused to accept the assertions made in the communication as being unfounded.

22. The Government also submits that Mr. Al-Jaidah had committed the criminal offence of collaborating with and subscribing to a secret organization that had been outlawed in the United Arab Emirates. That organization, which advocates opposition to the fundamental principles underpinning the system of national governance in order to take over control of the State, had been dissolved under the terms of a judgement handed down in case No. 79/2012 (crimes against State security). The accused had financed and attempted to restructure the organization, thereby contravening article 180, paragraph 2, of the Federal Criminal Code (Act No. 3 of 1986), as amended. All the national and international legal rights and safeguards to which accused persons are entitled were respected when he was interrogated by the Public Prosecutor on the charges against him and confronted with the evidence.

23. The Government contends that Mr. Al-Jaidah confessed before law enforcement officials and the Public Prosecutor to the charges against him and, contrary to the allegations made in the communication, signed the interrogation records of his own free will and without coercion, after having read them. During the trial, neither he nor his lawyer claimed that any coercion had been exerted when he made his confession before the competent Public Prosecutor and, in considering the evidence substantiating the charges against the accused, the Court based its findings, inter alia, on that confession. The Federal Supreme Court took due care to ensure that the accused enjoyed all the statutory safeguards during his trial, allowing him to meet with his lawyer and to present his defence. The proceedings were then closed pending the judgement.

24. According to the Government, Mr. Al-Jaidah was allowed to meet with his counsel in private and, in accordance with instructions from the Public Prosecutor, no law enforcement officers were present at those meetings.

25. The Government submits that at the hearing on 3 March 2014, in its capacity as the competent judicial body, the Federal Supreme Court delivered its judgement in case No. 302/2013 (crimes against State security) in the presence of the accused. The Government confirms that Mr. Al-Jaidah was sentenced to a term of seven years' imprisonment, together with expulsion from the State, and he is currently serving his sentence in Al-Wathba Central Prison.

26. The Government indicates that, under the Constitution, the Federal Supreme Court is the judicial body competent to hear crimes against State security irrespective of whether the accused are citizens of the United Arab Emirates or foreigners. Contrary to the impression that he is attempting to give, he was not treated in a discriminatory manner. Judgements handed down by the Federal Supreme Court are subject to objection and review on appeal.

*Comments from the source on the response from the Government*

27. The source submits that incrimination in the present case is based on articles 180 and 180/1 of the Criminal Code of the United Arab Emirates. According to the source, that article has already been considered as contravening international human rights standards as it criminalizes the exercise of the rights to peaceful assembly and freedom of association (see Working Group opinion No. 60/2013).

28. The source also stresses that the evidence used in the present case rested solely on the statement Mr. Al-Jaidah was forced to sign under the duress of torture, without even being given the opportunity to read it. According to the source, the Government is not denying that the court built the charges on the statement he had signed. The source argues that the Government's admission that such a statement exists, despite the fact Mr. Al-Jaidah denied the facts and mentioned to the judge that he had been tortured, is a clear breach of the obligations of the United Arab Emirates under article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and underlines the Government's disregard for Mr. Al-Jaidah's basic right to be free from torture.

29. According to the source, in addition to referring to overly broad charges based on facts that would fall under the rights to freedom of expression and of assembly, the evidence itself was obtained in a blatant violation of the Convention against Torture. The source points out that the Security Services are directly controlled by the executive and the judges of the security branch of the Supreme Court. Thus, the source contends that the investigation was not independent and rested solely on witnesses from and statements made by the State Security Services.

30. The source also points out that article 67 of the Federal Supreme Court Law states that sentences by the Supreme Court shall be final and binding on all and not subject to appeal by any of the methods of appeal, except in judgements in absentia in criminal matters. According to the source, the courts are not independent from the executive since all the judges are appointed by the executive and the decisions of the Supreme Court are definitive and cannot be appealed.

31. The source considers that the affirmation that Mr. Al-Jaidah was not ill-treated does not reflect reality. The fact that he was held in secret detention for eight months without being given the opportunity to challenge his detention in itself amounts to torture since, in the source's opinion, the aim of such a practice is to make the detainee sign a statement in exchange for his "reappearance".

32. Moreover, the source contends that the fact that the court refused to take into account allegations and the declaration of the accused and his lawyer about the torture to which he was subjected does not and cannot constitute proof that the accused was not ill-treated.

33. Additionally, the source submits that the Government does not explain what it considers to be an unfounded allegation of torture and wishes to recall the obligation of the authorities to investigate any allegation of torture or other cruel, inhuman or degrading treatment made by an individual under article 12 of the Convention against Torture, to which the State is a party. Indeed, the source contends, given the reliable testimonies it has received from detainees and that have already been transmitted to the Working Group in the "UAE 94" case, there are more than reasonable grounds to believe that the authorities of the United Arab Emirates have been derelict in their duty to prevent torture, take allegations of torture seriously and investigate them. Consequently, the source wished to recall the obligation of the State party to consider as inadmissible evidence that has been obtained under torture, in accordance with article 15 of the Convention against Torture.

34. The source repeats the contention that the authorities were not able to provide any other evidence of the accusation than a statement signed by the accused under the duress of torture and without being given the opportunity to read it, let alone contest the facts.

35. According to the source, the case to which the Government of the United Arab Emirates refers as case No. 79/2012 is the “UAE 94” case, on which the Working Group has already issued an opinion in which it stated that in those cases, violations of fair trial rules were so serious and evident that the detention is arbitrary under Category III (see Working Group opinion No. 60/2013). The case of Mr. Al-Jaidah is similar to the one cited and the Government of the United Arab Emirates is expressly linking them. As in that case, the incrimination for the case of Mr. Al-Jaidah is based on articles 180 and 180/1 of the Criminal Code of the United Arab Emirates, which had already been confirmed by the Working Group as violating the exercise of the rights to peaceful assembly and association.

36. The source recalls that Mr. Al-Jaidah was detained incommunicado and without legal justification following his arrest. In that regard, the source disagrees with the Government on the fact that he was granted fair trial guarantees since incommunicado detention is a *prima facie* form of arbitrary detention. The source repeats the contention that Mr. Al-Jaidah was not allowed to consult or be represented by a lawyer until 30 December 2013, when he was able to meet with counsel for an hour prior to the sixth hearing of his trial. Moreover, in the response from the Government, that meeting is reported in a way that suggests that, by allowing Mr. Al-Jaidah the opportunity to have a private meeting with his lawyer during the trial, the Government had done him a favour.

37. The source submits again that the right to hold such a meeting eight months after being arrested does not constitute an exceptional favour for a detained person. The source reaffirms that Mr. Al-Jaidah’s wife received a telephone call from him only eight days after his arrest, and that she could not visit him for eight months, during which she was completely unaware of his whereabouts.

38. Contrary to the affirmation of the Government, the source submits again that Mr. Al-Jaidah has never acknowledged the accusation made against him, despite the torture to which he was subjected in order to make him sign the statement. The source maintains that, during his trial, he clearly stated that the accusations were false and that he had never committed a crime under the laws of the United Arab Emirates.

39. The source highlights the extremely severe and disproportionate sentence that was handed down to Mr. Al-Jaidah following an unfair trial on charges that he has denied throughout the process. The source also stresses the disproportionate character of the sentence for an incrimination that goes against recognized guarantees under international human rights law, namely, the right to peaceful assembly and to freedom of expression.

40. Additionally, the source highlights that articles 180 and 180/1 of the Criminal Code of the United Arab Emirates regarding freedom of peaceful assembly and freedom of expression are overly broad and are being used to bring charges that are vague. Thus the source believes that the vagueness and the broad nature of both the legislation and the charges show that they were used in bad faith to keep Mr. Al-Jaidah detained in order to fabricate charges against him rather than truly establishing justice for any alleged crimes that might have been committed.

### **Discussion**

41. In the light of the above, the Working Group considers that there have been grave violations of fair trial throughout the procedures from arrest to conviction, in violation of article 10 of the Universal Declaration of Human Rights.

42. The Working Group recalls the judgement of the International Criminal Court, according to which “where the breaches of the rights of the accused are such as to make it impossible for him/her to make his/her defence within the framework of his rights, no fair trial can take place ... Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements of a fair trial”.<sup>1</sup>

43. The Working Group recalls its opinions No. 56/2014, No. 12/2014, No. 60/2013, No. 64/2011 and No. 8/2009 concerning the United Arab Emirates, in which the Working Group found violations of freedom of opinion and expression and freedom of peaceful assembly and association, guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights; of the right to fair trial, guaranteed under articles 8 and 10 of the Universal Declaration of Human Rights; and of the right to freedom from arbitrary detention, guaranteed under article 9 of the Universal Declaration of Human Rights. Furthermore, the Working Group notes the recurring communications received by the Working Group from various reliable and credible sources concerning a systematic practice of torture, incommunicado detention and prolonged solitary confinement. In this regard, the Working Group is concerned at what appears to be a pattern of gross human rights violations in the United Arab Emirates and recalls the obligation of the Government to comply with international human rights law.

44. The Working Group considers that the deprivation of liberty of Mr. Al-Jaidah prior to the start of his trial on 4 November 2013 is arbitrary and falls under category I of the Working Group’s defined categories of arbitrary detention. He was not informed of the charges against him until his appearance before the court. As a consequence, he had been deprived of his liberty without any legal basis from the time of his arrest. Furthermore, he was detained incommunicado for eight months by the State Security Services, and as a consequence was denied the opportunity to be able to challenge the legality of his detention before a judicial authority. The Working Group considers that this is in violation of article 26 of the Constitution of the United Arab Emirates, which guarantees freedom from torture and arbitrary deprivation of liberty, and of article 9 of the Universal Declaration of Human Rights.

45. Furthermore, the Working Group considers that the deprivation of liberty of Mr. Al-Jaidah falls under category II of the Working Group’s defined categories of arbitrary detention. Mr. Al-Jaidah was interrogated about his political convictions and his alleged connections with the Muslim Brotherhood. His detention thus appears to be politically motivated and thereby constitutes a violation of the right to freedom of opinion and expression and the right to freedom of peaceful assembly as guaranteed by article 30 of the Constitution of the United Arab Emirates and articles 19 and 20 of the Universal Declaration of Human Rights.

46. The Working Group also considers that the deprivation of liberty of Mr. Al-Jaidah falls under category III of the Working Group’s defined categories of arbitrary detention, as his right to a fair trial has been violated and he has been denied the opportunity of seeking an effective remedy, in contravention of articles 8, 9 and 10 of the Universal Declaration of Human Rights.

47. The Working Group notes that Mr. Al-Jaidah was not informed of the charges brought against him until his appearance before the court eight months after his arrest. He was detained incommunicado and his confessions were allegedly extracted under torture

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<sup>1</sup> See International Criminal Court, Judgement on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision of the Defence Challenge to the Jurisdiction of the Court pursuant to article 19 (2) (a) of the Statute of 3 October 2006, Case No. ICC-01/04-01/06 (OA4), 14 December 2006, para. 39.

during this time. He was also convicted on the sole basis of the document he was coerced to sign without having been granted the right to read it. He was not allowed to consult or be represented by a lawyer apart from just one meeting lasting one hour.

48. Furthermore, he was directly presented to the Federal Supreme Court, without first appearing before a court of first instance. He also does not have the possibility of appealing the sentence of the Federal Supreme Court, nor the ability to challenge the lawfulness of his detention.

#### **Disposition**

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

The deprivation of liberty of Mahmoud Abdulrahman al-Jaidah is arbitrary, being in contravention of articles 8, 9, 10, 19 and 20 of the Universal Declaration of Human Rights, and falls within categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

50. Consequent upon the opinion rendered, the Working Group requests the Government of the United Arab Emirates to take the steps necessary to remedy the situation of Mr. Al-Jaidah without delay. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to release Mr. Al-Jaidah immediately and grant him reparation for the harm he has suffered during the period of his arbitrary detention.

51. In the light of the above, in accordance with paragraph 33 (a) of its methods of work, the Working Group refers the allegation of torture and the unwillingness of the authorities of the United Arab Emirates to comply with several of its obligations as a State party to the Convention against Torture, including those under articles 12 and 15, to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for further action.

52. The Working Group also encourages the United Arab Emirates to accede to the International Covenant on Civil and Political Rights and to end the practice of arbitrary arrests, incommunicado detentions and torture that has become systematic in its territory.

*[Adopted on 4 September 2015]*