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Opinion No. 51/2015 concerning Salim Alaradi, Kamal Ahmed Eldarrat, Momed Kamal Eldarrat, Moad Mohammed al-Hashmi and Adil Rajab Nasif (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 July 2015 the Working Group transmitted a communication to the Government of the United Arab Emirates concerning Salim Alaradi, Kamal Ahmed Eldarrat, Momed Kamal Eldarrat, Moad Mohammed al-Hashmi and Adil Rajab Nasif. The Government replied to the communication on 15 September 2015. 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. The present case concerns five nationals of Libya, including two Libyan-Americans and one Libyan-Canadian citizen, who were arrested in the United Arab Emirates in August 2014 by State security personnel. The source argues that they are currently being arbitrarily detained without any legal process. The source also expresses great concern for their physical and mental integrity and welfare as they have been, and still are, at high risk of torture, ill-treatment and unfair trial.

5. Salim Alaradi is a citizen of Canada and Libya, born on 10 February 1968. He is married and has five children. Prior to his arrest, he was a businessman and Chief Executive Officer of Hommer International, a global competitor in home appliances. He usually resides in Dubai, United Arab Emirates. Mr. Alaradi was arrested on 28 August 2014 and is currently being held at Al Wathba prison in Abu Dhabi.

6. On 28 August 2014, Mr. Alaradi was on vacation with his family in the Atlantis, The Palm, hotel in Dubai. At approximately midnight, he received a telephone call in his room requesting his presence in the lobby of the hotel. Mr. Alaradi was told that State security personnel wanted to ask him some questions. When Mr. Alaradi descended to the lobby, he was arrested by the State security personnel, who were dressed in civilian clothes. The source submits that Mr. Alaradi was neither shown an arrest warrant, nor informed of the reasons for his arrest. His family members immediately informed the authorities of Canada. Mr. Alaradi's brother was also arrested on the same day, but was released four months later without any charges and without having been brought before a judge.

7. Mr. Alaradi has reportedly not yet been charged with any offence, despite being held in custody for nearly 10 months. The source reports that during the interrogations, the State security personnel asked him about his support for the Libyan revolution and the current Government of Libya in Tripoli, all of which Mr. Alaradi denied.

8. During 130 days he was initially held incommunicado and in an undisclosed location, which might have been a military air force base. The source submits that during the initial two months and nine days the State security personnel denied that he had been arrested and detained. After Mr. Alaradi had been forcibly disappeared for that period of time, his wife received a telephone call from him informing her that he was alive and in good health. The call lasted between two and three minutes. Since then, Mr. Alaradi has been allowed to reach his family by telephone only twice (on 4 January and 15 March 2015). As the calls were monitored, the source argues that Mr. Alaradi was not able to speak freely about his real health conditions.

9. Approximately three months after his arrest, the Embassy of Canada received permission to visit Mr. Alaradi. The Canadian diplomats were, however, only able to see

Mr. Alaradi from a distance, just enough to confirm his identity. The source claims that the diplomats were not allowed to come closer to Mr. Alaradi in order that signs of torture be hidden from their sight.

10. On 4 January 2015, Mr. Alaradi was transferred to Al Wathba prison in Abu Dhabi, where he has been detained since then. Furthermore, he has been denied the right to adequate access to legal representation since his arrest. His family attempted to contact an extensive list of lawyers. None of them have, however, accepted to provide legal counselling. According to the source, the lawyers explained their refusal to take up the case by saying that Mr. Alaradi's detention was extraordinary and outside the existing legal framework of the United Arab Emirates. The lawyers also explicitly spoke about their fears of taking up cases of detention dealing with State security.

11. On 11 February 2015 (after five and a half months of detention), the first visit by a family member was allowed. Mr. Alaradi's wife was permitted to visit for one hour, a visit that was very restrictive and fully monitored. She clearly saw marks of torture, including burn marks on his hands.

12. Despite the steps taken by the Canadian consular office to communicate with the authorities of the United Arab Emirates, in accordance with the 1961 Vienna Convention on Diplomatic Relations, by requesting explanations, visits from the family or the consul as well as medical care, the authorities have constantly refused to cooperate and have provided no adequate response to the communications from the Embassy of Canada.

13. Father and son, Kamal Ahmed Eldarrat and Momed Kamal Eldarrat, are citizens of the United States of America and Libya. Both usually reside in Dubai. Kamal Eldarrat is a businessman, is married and has four children. Momed Eldarrat, born on 25 June 1981, is single and a businessman. Kamal Eldarrat and Momed Eldarrat are being held incommunicado presumably at the Al Wathba prison in Abu Dhabi, although their whereabouts have not been officially disclosed to their family.

14. In the evening of 26 August 2014, Momed Eldarrat was at home when he received a telephone call requesting him to go to the Bur Dubai police station without any explanation. About two hours after he had left his house for the police station, Momed Eldarrat was escorted back home by approximately 20 members of the State security department in plain clothes, who searched his house without a warrant and confiscated information technology equipment, identification and other documents. On 28 August 2014, the same happened to his father, Kamal Eldarrat. He received a telephone call in the evening requesting him to go to the police station. Shortly afterwards he was escorted home by members of the State Security department in plain clothes, who searched the house and collected the personal belongings of Kamal Eldarrat. After the arrests, the family sought consular assistance from both the Libyan and the United States consulates in the United Arab Emirates, but to no avail.

15. From the dates of their arrest until 19 December 2014, Kamal Eldarrat and Momed Eldarrat were transferred between different unknown State security facilities. The source submits that those facilities were comparable to being in a haunted house with frightening sounds, crying, screams and uncomfortable lighting conditions for instilling fear into the detainees. No public authority acknowledged their detention before early December 2014, when the family went to the Public Prosecutor who told them that indeed both father and son were under State security custody but did not disclose their location. The source argues that Kamal Eldarrat and Momed Eldarrat were the victims of enforced disappearance from the moment of their arrest until 19 December 2014. Furthermore, since their location has never been officially disclosed and since they have never been officially authorized to call or receive visits from their family and lawyer, the source argues that they are currently the victims of incommunicado detention.

16. On 19 December 2014, Kamal Eldarrat and Momed Eldarrat were apparently transferred to the Al Wathba prison in Abu Dhabi, where they are currently detained, but this has not been officially confirmed. The source reports that their family members have tried to go to that prison on several occasions, but the prison authorities told them that neither Kamal Eldarrat nor Momed Eldarrat were there and that they did not know who they were talking about.

17. On 4 February 2015 and 1 April 2015, family members were allowed to see Kamal Eldarrat and Momed Eldarrat briefly at the State security Prosecutor's Office. The source submits that such short meetings were impromptu and cannot be considered as fulfilling their right to visits from their family.

18. On 15 June 2015, Kamal Eldarrat's wife went to see the Public Prosecutor to ask why her son and husband were still detained without charges after almost a year. The Public Prosecutor answered that there was nothing he could do and that if it was only in his power he would have brought them in front of a judge, but that there were higher orders requiring him to keep them in that situation. The source submits that those higher orders are the de facto control of the justice system by the Ministry of the Interior and State Security, as described by the Special Rapporteur on the independence of judges and lawyers in her report (A/HRC/29/26/Add.2).

19. Five months after the arrest, the family of Kamal Eldarrat and Momed Eldarrat hired a lawyer specialized in State security cases. The lawyer, however, has not been allowed access to the prosecution file, and has not been allowed to contact his clients or to visit them. The Public Prosecutor has given only one reason concerning the refusal to gain access to the file, simply saying that there is no file.

20. Moad Mohammed al-Hashmi is a citizen of Libya, born on 8 September 1987 in Jeddah, Saudi Arabia. He usually resides in Dubai, United Arab Emirates. Mr. Al-Hashmi was arrested on 28 August 2014. Adil Rajab Nasif is a citizen of Libya, born on 22 February 1971, who usually resides in Ain Zara, Tripoli, Libya. He was arrested on 24 August 2014.

21. The source submits that the circumstances surrounding the arrest and detention of Mr. Al-Hashmi and Mr. Nasif are serious and extraordinary. Both of them were arrested at coffee shops in Dubai by State security personnel, in plain clothes. According to the witnesses present at the time of the arrests, the State security personnel neither showed an arrest warrant nor explained the reasons for the arrests. Both men have been denied the right to contact their family members, lawyers and the Libyan consulate.

22. The source claims that Mr. Al-Hashmi and Mr. Nasif have been kept incommunicado since their arrest. Their families have never been officially informed of their whereabouts. Apparently their families received a telephone call from an unidentified source, telling them that Mr. Al-Hashmi and Mr. Nasif were in Al Wathba prison in Abu Dhabi. It has not been possible for the families to verify that statement with the authorities.

23. Mr. Al-Hashmi and Mr. Nasif have never been charged, and their families do not know the reasons for their arrest. Mr. Al-Hashmi and Mr. Nasif have not been allowed to receive visits from their families and have been denied the right to legal counsel. After inquiries made of the government authorities about Mr. Al-Hashmi and Mr. Nasif's fate, the families learned that no prosecution file or criminal case had been registered against them. Furthermore, the source argues that Mr. Al-Hashmi and Mr. Nasif have been the victims of enforced disappearance since 28 August 2014. It is not clear whether they are dead or alive.

24. The source claims that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been subjected to severe physical and psychological torture from

the moment of their arrest. In particular, they were subjected to extensive hours of intense interrogation without having access to a lawyer. Their interrogations lasted for 24 hours a day for over nine days and after that they were interrogated for more than 12 hours while being deprived of sleep. Furthermore, the source submits that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been subjected to the treatment described below in order to coerce them to sign a confession. The source argues that each act alone, or together with other acts, may amount to torture given their level of severity. In particular, they have been:

- (a) Subjected to prolonged sleep deprivation, in some cases for 20 days, including the first seven days in a row;
- (b) Forced to keep stress positions and be hooded during the interrogation sessions;
- (c) Subjected to waterboarding;
- (d) Beaten regularly on their hands and legs until they could no longer walk;
- (e) Placed in solitary confinement immediately after their arrest for several months in a cell without a bed or mattress;
- (f) Exposed to continuous light, as well as laser beam lighting that caused excruciating headaches, dizziness, hallucinations and muscle spasms;
- (g) Received threats against their female relatives, including threats of rape in front of their eyes;
- (h) Placed in a cell with a dysfunctional open toilet without a flush;
- (i) Deprived of drinking water;
- (j) Soaked in ice cold water and placed in an extremely cold room with the air conditioning on;
- (k) Subjected to electric shocks in an electric chair;
- (l) Beaten with a stick and whipped;
- (m) Hanged with a rope around their neck;
- (n) Subjected to constant death threats with guns pointed at their head;
- (o) Received numerous injections that resulted in their losing consciousness;
- (p) Consistently drugged by their food, which caused severe stomach pain;
- (q) According to some accounts, placed in a freezer for 45 minutes.

25. Furthermore, the source reports that the family of Kamal Eldarrat and Momed Eldarrat was informed that both had asked the prison authorities on multiple occasions to have access to a physician to treat the pain and suffering resulting from the torture, but all their requests had been denied. When the family saw Kamal Eldarrat and Momed Eldarrat in the Public Prosecutor's Office, it observed that both were in poor physical condition. They had significantly lost weight. Momed Eldarrat informed his family that his request for medical treatment for an ear infection had been denied by the prison authorities.

26. In addition to the aforementioned treatment, the source submits that Mr. Alaradi has been subjected to skin burns. He also suffers from serious health conditions, some of which existed prior to his arrest and others that were contracted owing to the prison conditions and torture to which he has been subjected. Those health conditions include asthma, high cholesterol and vulnerabilities due to open-heart surgery, which he had undergone prior to his arrest. Mr. Alaradi developed extreme back pain, major weight loss, an eye infection

and bronchitis after his arrest. Despite numerous requests from the Canadian consulate, Mr. Alaradi was denied medical care until 18 May 2015, when a single visit to a non-independent physician was allowed. The Canadian authorities informed the family that Mr. Alaradi was only allowed to raise a single medical issue and no medical reports were provided to the family or to the Embassy of Canada. The Canadian Consul in the United Arab Emirates has been allowed to see Mr. Alaradi only three times. After those visits the Canadian authorities informed the family that his health conditions were rapidly worsening.

27. The source asserts that, owing to the extraordinary situation and circumstances of Mr. Al-Hashmi and Mr. Nasif's enforced disappearance following their arrest on 28 August 2014, the state of their health raises grave concern. The source claims that such enforced disappearance makes Mr. Al-Hashmi and Mr. Nasif extremely vulnerable to torture and other ill-treatment.

28. The source argues that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif's deprivation of liberty is arbitrary and falls under categories I, III and V as classified by the Working Group.

29. In particular, Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif's deprivation of liberty has no legal basis justifying their arrest, as they were arrested by State security personnel without a court warrant and were subsequently detained outside the existing framework of the law of the United Arab Emirates. The source reports that the actions of the State security personnel who arrested and detained Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif are not subject to judicial oversight. The source points out that, according to the law on State security of the United Arab Emirates, the State security forces enjoy powers that are not subjected to checks and balances. Article 12 of the law states that the head of State security should issue whatever instructions he deems necessary to implement the assignments of the State in a manner ensuring the protection of the security and safety of the State. All bodies and institutions concerned should abide by those instructions. This clearly violates the principle that all forms of detention or imprisonment must be ordered by, or subject to, the effective control of a judicial authority. Furthermore, it appears that the victims have been placed outside the protection of the law.

30. The source argues that the legal authority justifying their arrest and detention has not been made accessible to the victims, their families or their lawyers. Moreover, all families were officially informed that the case files against Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif did not exist. The lawyers to whom the families have been turning for counselling said that they could not be of any assistance because the arrests and detentions were carried out outside the framework of the law. These reasons clearly show the lack of a legal basis for the arrest and detention of Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif. In addition there have not been any charges brought against them to date. Their families do not know if and when the hearing will take place (category I).

31. Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been deprived of their liberty in violation of due process rights and in the absence of minimum guarantees of a fair trial. In particular, they were arrested in the absence of an arrest warrant issued by the court; the reasons for their arrest were neither communicated to them nor to the members of their families. Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been deprived of the right to challenge their arrest and detention before the judicial authorities. They have been subjected to enforced disappearance, secret and incommunicado detention. All the detainees have been denied the right to contact their families and to receive regular visits. They have never been allowed to have access to legal counsel. The prosecution has never provided the victims and their families with access to the case file.

32. Moreover, the source argues that the horrific accounts of torture that the families received multiply the magnitude and gravity of the violations of Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif's rights and freedoms. The source asserts that the reason why all the victims have been deprived of their liberty, tortured and ill-treated is to make them sign fabricated confessions that could be used as the basis for prosecution at the State security court. No charges have reportedly been brought to date and the families do not know if and when the hearing will take place. The source also claims that this case follows the same pattern of detention in the United Arab Emirates as in opinion No. 60/2013 rendered by the Working Group (category III).

33. The source also claims that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been subjected to arbitrary deprivation of liberty and an extreme level of pain and suffering because they are originally from the western part of Libya. The wave of arrests against Libyan citizens residing in the United Arab Emirates, who are originally from the western part of Libya, reportedly happened within 24 hours or a few days after the United Arab Emirates launched its air strikes against Libya. The source asserts that the State security personnel arrested Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif on suspicion of being sympathetic to the elected Transitional Government of Libya in Tripoli. In the case of Kamal Eldarrat and Momed Eldarrat, they were possibly arrested owing to their alleged involvement in aid work during and after the Libyan revolution of 2011 (category V).

Response from the Government

34. In its response, the Government provided the Working Group with the following information.

35. According to information received from the relevant authorities of the United Arab Emirates, Salim Alaradi, Kamal Eldarrat and Momed Eldarrat were arrested in accordance with the applicable laws and were searched, on the basis of a search warrant delivered by the Public Prosecution Office. They were informed of the charges against them at the time of their arrest. On 24 November 2014, they appeared before the competent prosecution office under communication No. 49/2014 and criminal case No. 137/2014. The following charges were brought against them: financing, supplying and cooperating with terrorist organizations. Their cases are still being investigated and they are currently provisionally detained in Al Wathba central prison in Abu Dhabi following a decision by the Public Prosecution Office. They are completely free to choose, appoint and meet with a lawyer according to the rules of procedures governing correctional institutions.

36. Adil Rajab Nasif was arrested in accordance with applicable laws and was searched on the basis of a search warrant delivered by the Public Prosecution Office. He was informed of the charges against him at the time of his arrest. On 24 December 2014, he appeared before the competent prosecution office under communication No. 37/2014 and criminal case No. 157/2014. The following charges were brought against him: being a member of two terrorist organizations, financing a terrorist organization while knowing the purpose of such financing and cooperating with a terrorist organization while knowing the purposes of such organization. His case is still being investigated and he is currently provisionally detained in Al Wathba central prison in Abu Dhabi following a decision by the Public Prosecution Office. He is completely free to choose, appoint and meet with a lawyer according to the rules of procedures governing correctional institutions.

37. Moad Mohammed al-Hashmi was arrested in accordance with applicable laws and was searched, on the basis of a search warrant delivered by the Public Prosecution Office. He was informed of the charges against him at the time of his arrest. On 29 December 2014, he appeared before the competent prosecution office under communication No. 37/2014 and criminal case No. 159/2014. The following charges were brought against

him: being in the United Arab Emirates after committing a terrorist crime in Libya, founding and becoming a member of a terrorist organization (Libya Dawn operations) while aware of its terrorist nature and financing and cooperating with a terrorist organization while knowing the purposes of such organization. On 2 June 2015, his case was referred to the competent court and a hearing was scheduled for 13 July 2015 and then postponed to 14 September 2015 so that Mr. Al-Hashmi might appoint a lawyer to state his case. The case is still being investigated and he is currently provisionally detained in Al Wathba central prison in Abu Dhabi following a decision by the Public Prosecution Office. He is completely free to choose, appoint and meet with a lawyer according to the rules of procedures governing correctional institutions.

38. The response from the Government was transmitted to the source on 17 September 2015.

Further comments from the source

39. The source in its response of 28 September 2015 argued that the arrests and detentions violated the law of the United Arab Emirates and that State security officials failed to provide both a legal basis and evidence of any involvement in a crime under the laws of the country.

40. The source reported that the United Arab Emirates legal order including the Constitution forbids arbitrary arrests and detentions (art. 26). It also enshrines the principle of individual criminal responsibility and fair trial rules (art. 28).

41. In the view of the source, the refusal to permit Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif to challenge their detention is also a clear violation of the rules of the Constitution (art. 41).

42. Furthermore the source said that the Code of Criminal Procedure provides that no one may be arrested, searched, detained or imprisoned except under the circumstances and conditions mentioned in the law. Detention and imprisonment may only take place in places designated for that purpose and for the period specified in the warrant issued by the competent authority (art. 2). Moreover, the torture inflicted on all the above-mentioned individuals is in clear violation of the obligations of the United Arab Emirates under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 2 (3) of the Code, which states that it is forbidden to cause bodily or moral harm to the accused or subject any person to torture or degrading treatment.

43. In the opinion of the source, the arrests and detentions carried out by State security personnel outside the framework of the law should be considered as falling under category I, as no legal basis has been invoked by the authorities to justify the deprivation of liberty of the individuals for more than 10 months. The authorities have detained Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif outside the framework and protection of the law from the onset of the arrests until the present day.

44. In all cases, the legal authority justifying the detention has not been made accessible to the victims, their families or their lawyers. This is in violation of international human rights standards according to which an individual may only be lawfully deprived of his or her liberty on specified grounds and according to procedures established by law.

45. The source asserts that none of the victims were arrested on the basis of an arrest warrant and that the lawyers and families still do not know the reasons for the arrests and detentions nor under which law the individuals have been arrested and detained. All the families who have been trying to gain access to the prosecution files, either directly or through a lawyer, have been denied this right. While the authorities argue that it is because there is no file, lawyers to whom the families have been turning in the United Arab

Emirates said that they could not be of any assistance because the arrests and detentions have been carried out outside the framework of the law. These two reasons clearly show the lack of a legal basis for all the arrests and detentions. No charges have been brought to date and the families do not know if and when a hearing will take place.

46. According to the source, the process has been under the complete de facto control of the Ministry of the Interior and no effective judicial oversight has been exercised since the arrests until present. This clearly violates the principle that all forms of detention or imprisonment must be ordered by, or subject to, the effective control of a judicial authority. The source submits that that is the reason why none of the arrests and detentions have been carried out on a legal basis. This has effectively placed Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif beyond the scrutiny of the law since their arrests. The source argues that according to the law on State security, State security officials enjoy powers that are not subjected to checks and balances. According to the source, article 12 of that law states that the head of the State security department should issue whatever instructions he deems necessary to implement the assignments of the department in a manner ensuring the protection of State security and safety. All bodies and institutions concerned should abide by those instructions.

47. The source also argues that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been victims of grave violations of their fundamental rights to liberty and security from the onset of the arrests up until the present day and have been continuously deprived of their rights to challenge their detentions. Violations of their pretrial rights have been systematic and serious and all the detainees have been placed outside the protection of the law since their arrests through enforced disappearance and secret and incommunicado detention. Moreover, the horrific accounts of torture that the families received add to the magnitude of the violations and are of such gravity that they give the deprivation of liberty of Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif an obvious arbitrary character.

48. Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been denied the right to contact their families and all of them have been denied the right to receive regular visits. This violation has been continuous since the arrests and on the occasion of every single transfer carried out until the present day. The source submits that none of the above-mentioned individuals have been allowed to see or contact their families or that they have been able to see them very briefly and during monitored meetings. The restriction of this right has been to such an extent as to render the visits inadequate and contrary to international standards. This is with the exception of Mr. Alaradi, who is being allowed sporadic monitored calls. None of the other victims have been allowed to speak directly to their loved ones.

49. The refusal of the authorities to provide the individuals with legal counsel and their constant refusal to allow lawyers hired by the families to gain access to the prosecution file since it is non-existent violate the right to legal counsel. This also explains why none of the detainees have been able to challenge the lawfulness of their detentions or have knowledge of the cases against them.

50. The source reports that none of the above-mentioned individuals have been charged, which is in complete violation of both domestic and international laws and standards as explained above. Furthermore, according to the source, if the victims end up being charged and tried, the procedures will take place in front of the State Security Chamber of the Federal Supreme Court of the United Arab Emirates. The source highlights that cases relating to offences directly affecting the interests of the State, including so-called State security crimes, fall under the exclusive jurisdiction of the Court and that those cases are therefore considered in first and last instance by the State Security Chamber of the Federal Supreme Court with no possibility of review by a higher tribunal. This has been described

as a breach of international human rights standards by the Special Rapporteur on the independence of judges and lawyers (see A/HRC/29/26/Add.2).

51. The right to be free from torture or other ill-treatment while undergoing questioning by the authorities is applicable at all times and should be respected by all State agents, including intelligence officers. However, the horrific accounts of torture given by detainees through indirect means and the testimonies of former detainees, including Mr. Alaradi's brother, show clearly that the State security officials use torture as a way of punishing and coercing victims to sign statements that they are not allowed to read beforehand nor afterwards. Far from respecting the principle enshrined in their obligations under the Convention against torture and other cruel, inhuman or degrading treatment or punishment that statements and other forms of evidence obtained as a result of torture or other ill-treatment of any person must be excluded from evidence, State security officials in the United Arab Emirates have been in the past years using that practice to obtain signed confessions that are used as sole evidence against the victim before the State Security Chamber of the Federal Supreme Court.

52. The source asserts that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif were denied the right to have access to a doctor or, if it was granted, the right was so restricted that it was rendered virtually ineffective and non-existent. Those who had the opportunity to see a medical doctor were either sent there for the removal of signs of torture or were only authorized to raise one single medical issue. Despite requests from families and consular officials, medication that the victims needed was not given to them (case of Kamal and Momed Eldarrat). The authorities did not issue any medical reports on the state of health of the detainees despite the deep concerns of the families regarding the testimonies that torture was being inflicted on their relatives.

53. International standards require that foreign nationals be informed of their right to communicate with consular officials or an appropriate international organization. In all the present cases, and despite requests from both families and consular authorities, the right to consular protection has been denied to all victims in violation of the Vienna Convention on Consular Relations. Only in the case of Mr. Alaradi did the authorities accept visits from officials of the Canadian consulate, but their access was so limited and cooperation non-existent that it rendered the guarantee void.

54. The source argues that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been arrested and detained on the sole basis of their Libyan citizenship and their origins from the western part of Libya, which elected the Transitional Government in Tripoli. The source also submits that, according to information from the families of Libyan nationals arrested in August 2014, the wave of arrests of Libyans who are originally from western Libya, happened within 24 hours to a few days after the United States State Department announced that the United Arab Emirates was carrying out air strikes against Libya. The source believes that State security personnel arrested the men simply because they were from western Libya, where the strikes happened and that they were suspected of being sympathetic to the elected Transitional Government of Libya in Tripoli. In the case of the Eldarrat family, it is suspected that their detention is due to their aid work during and following the Libyan revolution.

55. In all the present cases, no specific charges have been brought and the prolonged detention seems to be motivated by a clear will to punish individuals who are considered by the authorities as sympathetic to the Transitional Government of Libya in Tripoli. Moreover, this sympathy is evaluated on the mere fact of their being originally from western Libya. The source argues that discrimination, especially in this case, might not necessarily be defined by the way the victims define themselves (for example as pro-Tripoli Government or not) but rather by the way in which the authorities discriminating against them define their political affiliation. In this case, the authorities defined the detainees'

alleged political affiliation according to their city/region of origin in Libya. In this regard, the source believes that the victims are being discriminated against on the basis of their nationality, regional origin and on the basis of alleged direct and indirect links with the Government in Tripoli. In the past, numerous citizens from Arab States had been arrested and detained under the same circumstances in the United Arab Emirates, namely, because of their alleged affiliation with political movements that are deemed antagonistic to the State's interests in the region. The source argues that it does not exclude that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif may have been arrested for the same motives, since no reason can be invoked in law for their detention.

56. In the light of the above information, the source submits that the individuals in question are currently in arbitrary detention, falling under categories I, III and V of the categories applicable to the consideration of the cases submitted to the Working Group.

Discussion

57. The Working Group points out that the State did not profit from the opportunity to present sufficient evidence to sustain its views. In its constant jurisprudence the Working Group has previously stated that: "A public authority is generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law — if such was the case — by producing documentary evidence of the actions that were carried out. In general the burden rests with the Government: it is for the Government to produce the necessary proof. More generally, the matter of the evidentiary burden arises where the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention. Regrettably, in some cases, Governments have not responded to the request from the Working Group to provide it with information. In the absence of such information, the Working Group must base its Opinion on the *prima facie* case as made out by the source. Furthermore, mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations; that follows from the nature of the prohibition of arbitrary detention" (see A/HRC/19/57, para. 68). Therefore the Working Group in conformity with its methods of work and in accordance with the information obtained is in a position to render an opinion.

58. The Working Group considers that States are legitimately able to investigate and prosecute the crime of terrorism in conformity with national law and with international customary law obligations that are applicable in all times and circumstances. The Working Group recalls the reaffirmation in numerous Security Council resolutions, including in resolution 2170 (2014), of the duty of Member States to comply with all their obligations under international law, in particular international human rights, refugee and international humanitarian law, underscoring also that effective counter-terrorism measures and respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing (see A/HRC/30/37, para. 15).

59. Furthermore the Working Group has recognized, in its recent report (see A/HRC/30/37, para. 93) that where persons who have or are suspected to have engaged in the preparation, commission or instigation of acts of terrorism are deprived of their liberty:

(a) They shall be immediately informed of the charges against them, and be brought before a competent and independent judicial authority as soon as possible, within a reasonable period of time;

(b) They shall enjoy the effective right to judicial determination of the arbitrariness and lawfulness of their detention;

(c) The exercise of the right to judicial oversight of their detention shall not impede the obligation of the law enforcement authority responsible for the decision to detain or to maintain the detention to present suspects before a competent

and independent judicial authority within a reasonable period of time. Such persons shall be brought before the judicial authority, which will then evaluate the accusations, the basis of the deprivation of liberty and the continuation of the judicial process;

(d) In the proceedings against them, suspects shall have a right to enjoy the necessary guarantees of a fair trial, access to legal counsel and the ability to present exculpatory evidence and arguments under the same conditions as the prosecution, all of which should take place in an adversarial process.¹

60. The Working Group also points out that secret detention or incommunicado detention may put individuals under pressure to confess to a crime and infringe the right not to be compelled to testify against oneself under article 11 of the Universal Declaration of Human Rights. In the conclusions of the 2010 joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42),¹ it is reiterated that international law clearly prohibits secret detention, which violates a number of human rights and humanitarian law norms that may not be derogated from under any circumstances.

61. In view of the above, the Working Group received convincing information that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif were arrested in the absence of an arrest warrant issued by the court; and that the reasons for their arrest were neither communicated to them nor to the members of their families. All of them were deprived of the right to challenge their arrest and detention before the judicial authorities and subjected to enforced disappearance and secret and incommunicado detention. All of them have been denied the right to contact their families and to receive regular visits. Their right to access to legal counsel has been obstructed. The prosecution has never provided the victims and their families with access to the case file, no charges have been brought to date and the families do not know if and when the hearing will take place. The two Libyan-Americans and one Libyan-Canadian citizen were denied or obstructed in the exercise of their right to be assisted by their respective consulates. The Working Group also received reliable information on the acts of torture inflicted upon the four victims, and did not receive any information on criminal investigations against the presumed perpetrators of torture and other cruel or inhuman treatment.

62. The Working Group therefore finds that Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif have been victims of serious violations of the international norms relating to the right to a fair trial, as enshrined in international law, especially in articles 8-11 of the Universal Declaration of Human Rights. The gravity of such violations qualifies them to fall within category III of the categories applicable to the consideration of the cases submitted to the Working Group.

Disposition

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

The deprivation of liberty of Salim Alaradi, Kamal Ahmed Eldarrat, Momed Kamal Eldarrat, Moad Mohammed al-Hashmi and Adil Rajab Nasif is arbitrary and falls

¹ Undertaken by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced and Involuntary Disappearances.

within categories I and III of the categories applicable to the consideration of the cases submitted to the Working Group.

64. Consequent upon the opinion rendered, the Working Group recommends that the Government of the United Arab Emirates provide adequate and full reparation to Messrs. Alaradi, Kamal Eldarrat, Momed Eldarrat, Al-Hashmi and Nasif, starting with their immediate release subject to guarantees to appear for trial or alternatively that their trial be conducted as expeditiously as possible in full respect of due process as enshrined in applicable international law.

65. In accordance with article 33 (a) of its methods of work, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for appropriate action.

[Adopted on 4 December 2015]
