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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020

Opinion No. 34/2020 concerning Abdullah Awad Salim al-Shamsi (United Arab Emirates)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work (A/HRC/36/38), on 9 December 2019 the Working Group transmitted to the Government of the United Arab Emirates a communication concerning Abdullah Awad Salim al-Shamsi. The Government replied to the communication on 28 January 2020. 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 or her sentence or despite an amnesty law applicable to him or her) (category I);

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

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

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

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. Abdullah Awad Salim al-Shamsi is a national of Oman born in 1998. At the time of the arrest, Mr. Al-Shamsi was a student attending high school in the United Arab Emirates. He usually resides in Al-Ain district, Abu Dhabi.

a. Arrest and detention

5. The source reports that on 18 August 2018 at 11 a.m., Mr. Al-Shamsi was returning from the industrial area of Abu Dhabi to his home in Al-Ain district when State security forces arrested him on the road near Green Mubazzarah, Al-Ain district. They did not show an arrest warrant.

6. According to the source, on 19 August 2018, Mr. Al-Shamsi's parents reported his disappearance at the police station in Zakhir, in Al-Ain district, and were subsequently informed that the police did not know his whereabouts. On the same day, Mr. Al-Shamsi's parents notified the Embassy of Oman in Abu Dhabi of the arrest, but the Embassy was not given the opportunity to visit Mr. Al-Shamsi and access has been denied by the authorities of the United Arab Emirates.

7. The source submits that, after his arrest, Mr. Al-Shamsi was taken to a secret detention centre and was held incommunicado in solitary confinement for the first six months of his detention. The room in which he was detained had no windows, and he could not identify the location of his detention and is uncertain as to whether or not it was underground.

8. According to the source, one month after Mr. Al-Shamsi's arrest, security forces raided his parents' home and forcibly isolated the family in one room while they searched the rest of the house and took an old mobile phone and the student's laptop. At a similar time, in connection with Mr. Al-Shamsi's arrest the previous month, his uncle was arrested. His uncle, who has been working in Qatar for more than 10 years, has been charged, and his trial began on 30 October 2019 on the basis of charges related to "sharing information with the State of Qatar".

9. The source reports that during the first three months of his detention, Mr. Al-Shamsi was subjected to torture carried out by State security members, including beatings, harassment, threats, electrocution, nail removal, starvation and prolonged sleep deprivation. The torture was allegedly designed to force Mr. Al-Shamsi to confess that he had been working with his uncle for the benefit of Qatar and in opposition to the United Arab Emirates. In connection to this claim, the authorities have also informally alleged that Mr. Al-Shamsi received financial support from his uncle. However, reportedly these allegations are fabricated given that the relationship between Mr. Al-Shamsi's family and his uncle broke down many years ago.

10. In the light of the above, the source argues that Mr. Al-Shamsi has been targeted to provide a coerced confession against his uncle. This is particularly concerning as, during the first hearing of his uncle's trial, on 30 October 2019, the prosecutor stated that Mr. Al-Shamsi had made confessions that incriminated himself and his uncle.

11. The source reports that in early February 2019, Mr. Al-Shamsi was transferred to Al-Wathba prison in Abu Dhabi. His parents have been able to visit him every Thursday since then, but he has been unable to meet with a lawyer as he has not yet been referred to trial and it remains unclear as to whether Mr. Al-Shamsi has been formally charged. The State Security prosecutor has been extending Mr. Al-Shamsi's detention on a regular basis without providing any legal grounds for doing so or providing any possibility for Mr. Al-Shamsi to challenge his deprivation of liberty.

12. According to the source, Mr. Al-Shamsi has a malignant tumour in his remaining kidney. Years prior to his arrest, he had his other kidney removed and was subsequently treated for cancer. At that time, he was unable to study in school so continued his studies at home during the long treatment period. Mr. Al-Shamsi also has a psychiatric condition, and has met with the prison doctors. However, his condition has worsened recently. Reportedly,

he had been subjected to “hypnosis sessions” at Khalifa medical hospital, while the aim of and methodology used in such sessions is unclear.

b. Analysis of violations

i. Category I

13. The source argues that on 18 August 2018, Mr. Al-Shamsi was arrested without a warrant while returning from the industrial area of Abu Dhabi to his residence in Al-Ain district. He was not provided with any reason for his arrest and there do not appear to be any circumstances that would give reasonable cause to arrest him in flagrante delicto. As such, his detention was not grounded in law, in violation of Mr. Al-Shamsi’s rights under articles 3 and 9 of the Universal Declaration of Human Rights, principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 14 (1) of the Arab Charter on Human Rights.

14. According to the source, during the first six months of his detention, Mr. Al-Shamsi was forcibly disappeared and was allegedly not informed of the charges against him, in violation of his right to be promptly informed of the reasons for the arrest and the charges being brought against him, under article 99 of Federal Law No. (35) of 1992 concerning the Criminal Procedural Law (“Criminal Procedural Law”), guideline 17 of the Basic Principles and Guidelines on Remedies and Procedures on the Right of Persons Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), principle 10 of the Body of Principles and article 14 (3) of the Arab Charter on Human Rights. It remains unclear as to whether Mr. Al-Shamsi has been formally charged yet.

15. The source recalls that enforced disappearance is a prima facie form of arbitrary detention. The period during which Mr. Al-Shamsi was forcibly detained therefore constituted a violation of his right to be considered a person before the law, in contravention of article 6 of the Universal Declaration of Human Rights and article 22 of the Arab Charter on Human Rights. The enforced disappearance of Mr. Al-Shamsi further violates articles 26 and 28 of the Constitution of the United Arab Emirates, which enshrine the right to personal liberty and the presumption of innocence.

16. The source alleges that in placing him outside of the protection of the law, the enforced disappearance of Mr. Al-Shamsi deprived him of his legal safeguards as a detainee, including the right to habeas corpus and the right to be promptly before a judicial authority, in violation of Mr. Al-Shamsi’s rights under articles 8, 9 and 10 of the Universal Declaration of Human Rights, articles 14 (6) and 22 of the Arab Charter on Human Rights, principles 11, 32 and 37 of the Body of Principles and principles 8 and 10 of the Basic Principles and Guidelines. In addition, the enforced disappearance of Mr. Al-Shamsi deprived him of his right to submit a grievance in relation to the extension of his detention beyond the lawful period of seven days, renewable for another period not exceeding 14 days, under article 110 of the Criminal Procedural Law.

17. In the light of the above, the source argues that Mr. Al-Shamsi’s detention is arbitrary under category I.

ii. Category III

18. The source further submits that Mr. Al-Shamsi’s detention is arbitrary owing to the severe violations of his right to a fair trial.

19. The source argues that despite his prolonged detention, Mr. Al-Shamsi remains unable to meet with legal counsel, has not been provided with access to his case file, and believes that he has not been formally informed of the charges against him. The source considers that this is in violation of Mr. Al-Shamsi’s right to have the attendance of legal counsel during the investigatory stage of proceedings under article 100 of the Criminal Procedural Law, as well as violating the essence of the right to legal assistance, preparation for defence and equality of arms as guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights, article 16 of the Arab Charter on Human Rights and principle 9 of the Basic Principles and Guidelines. Moreover, Mr. Al-Shamsi’s initial enforced disappearance inherently negated the essence of the right to legal assistance,

preparation for defence and free communication with legal counsel under article 11 (1) of the Universal Declaration of Human Rights.

20. According to the source, notwithstanding efforts made by the Embassy of Oman, Mr. Al-Shamsi was denied his right to have access to consular assistance under article 36 (2) of the Vienna Convention on Consular Relations and principle 16 (2) of the Body of Principles.

21. The source alleges that Mr. Al-Shamsi was forcibly disappeared and held in solitary confinement for the first six months of his detention. In addition, Mr. Al-Shamsi was subjected to other forms of torture, including beatings, harassment, threats, electrocution, nail removal, starvation and prolonged sleep deprivation. The use of torture contravenes the absolute prohibition of torture as enshrined in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 5 of the Universal Declaration of Human Rights and principle 6 of the Body of Principles. It also violates article 8 of the Arab Charter on Human Rights and article 26 of the Constitution.

22. The source submits that the torture occurred as a means of forcing Mr. Al-Shamsi to confess to working with his uncle for the benefit of Qatar and in opposition to the United Arab Emirates. At the first hearing of the trial of Mr. Al-Shamsi's uncle, the prosecutor advised Mr. Al-Shamsi's uncle that Mr. Al-Shamsi's confessions incriminated himself and his uncle. There is therefore a high risk that the confessions extracted from Mr. Al-Shamsi under torture will be invoked as evidence in the court proceedings of Mr. Al-Shamsi and his uncle, in violation of article 15 of the Convention against Torture and guideline 12 of the Basic Principles and Guidelines.

23. The source argues that moreover, enforced disappearance enables torture and constitutes a form of torture per se, in relation to both the disappeared persons and to their relatives.¹ As such, by forcibly disappearing Mr. Al-Shamsi, the authorities of the United Arab Emirates violated their obligations under the Convention against Torture.

Response from the Government

24. On 9 December 2019, the Working Group transmitted the allegations made by the source to the Government through its regular communications procedure. The Working Group requested the Government to provide, by 7 February 2020, detailed information about the situation of Mr. Al-Shamsi and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Al-Shamsi's physical and mental integrity.

25. In its response of 28 January 2020, the Government states that Mr. Al-Shamsi was arrested in accordance with the rules and legal principles followed in the United Arab Emirates, after having been informed of the reason for his arrest and presented with the arrest and search warrants, which he reviewed in detail.

26. According to the Government, on 15 November 2018, Mr. Al-Shamsi was referred to the competent prosecution, and on 13 January 2020, he was referred to the competent court, for committing criminal acts in violation of the laws in force.

27. The Government claims that Mr. Al-Shamsi was not arbitrarily detained, held in solitary confinement, tortured, physically abused or deprived of his personal rights. Instead, he was housed with other prisoners in one of the qualified penal establishments that met all the required standards to ensure the safety of prisoners in terms of food, environment, air conditioning and ventilation.

28. The Government adds that Mr. Al-Shamsi has received the necessary medical attention with periodic treatment by doctors, who provide medication and perform other procedures.

¹ The source refers to *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011).

29. Lastly, the Government maintains that visits and telephone calls, which are allowed and are regulated by the procedures followed by the penitentiary institution, have been made by Mr. Al-Shamsi's relatives.

Further comments from the source

30. In its response, the source states that the evidence supplied by the Government, or lack thereof, supports the source's account of events concerning Mr. Al-Shamsi's detention.

31. Concerning the allegation of arbitrary arrest, the source points out that the Government provided no supporting evidence, such as a copy of the arrest warrant, to corroborate its claim that Mr. Al-Shamsi was informed of the reason for his arrest and presented with arrest and search warrants.

32. The source also notes that the Government has not directly addressed the allegation that Mr. Al-Shamsi was subjected to six months of enforced disappearance, which in and of itself constitutes a form of arbitrary detention.

33. With respect to the Government's claim that Mr. Al-Shamsi was not held in solitary confinement, the source emphasizes that the records provided by the Government demonstrates that he was not in contact with the outside world for five months, since they show that he did not make a phone call until 20 February 2019, after his transfer to an official detention facility, and did not receive visits until 31 January 2019, even though his arrest was on 18 August 2018.

34. Furthermore, the source maintains that the Government has failed to provide evidence to substantiate its claims that Mr. Al-Shamsi was not held in solitary confinement.

35. According to the source, the Government has confirmed in its response that Mr. Al-Shamsi was arrested on 18 August 2018 but was not brought before the prosecution until 15 November 2018 and was not referred to the court until 13 January 2020. The Government provides no information as to the charges faced by Mr. Al-Shamsi and no reasons to justify his pretrial detention for nearly one and a half years.

36. In addition, the source notes that the Government's timeline of events indicates a clear violation of Mr. Al-Shamsi's right to habeas corpus and the right to be brought promptly before a judicial authority. He was clearly deprived of his right to submit a grievance in relation to the extension of his detention beyond the lawful period of 7 days, renewable for another period not exceeding 14 days, under article 110 of the Criminal Procedural Law.

37. The source further indicates that the Government did not address the allegation that Mr. Al-Shamsi had been denied access to legal counsel and to consular assistance in violation of article 100 of Criminal Procedural Code, articles 10 and 11 (1) of the Universal Declaration of Human Rights, article 16 of the Arab Charter on Human Rights, principle 9 of the Basic Principles and Guidelines, article 36 (2) of the Vienna Convention on Consular Relations and principle 16 (2) of the Body of Principles.

38. The source adds the update that, following Mr. Al-Shamsi's referral to the court on 13 January 2020, his first hearing took place on 5 February 2020. However, his lawyer has not yet been granted access to his case file, severely undermining his right to equality of arms.

39. With respect to the allegation of torture and ill-treatment, the source maintains that the Government has failed to substantiate its position with evidence. The source states that between the Working Group's communication sent to the Government on 9 December 2019 and the latter's response on 28 January 2020, Mr. Al-Shamsi was tortured into making false confessions on video on 7 January 2020. He has also been harassed by the authorities, who threatened to arrest his mother and siblings if he did not make a confession.

40. Lastly, the source asserts that the Government continues to deny access to Mr. Al-Shamsi's medical records and that his health remains in poor condition as he has not received proper treatment.

Discussion

41. The Working Group thanks the source and the Government for their submissions in relation to Mr. Al-Shamsi's deprivation of liberty.

42. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Furthermore, mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source's allegations (A/HRC/19/57, para. 68).

Category I

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

44. The source submits, and the Government has failed to substantiate its claim to the contrary, that Mr. Al-Shamsi was not presented with an arrest warrant or informed of the reasons for his arrest by the State Security Directorate at the time of arrest on 18 August 2018.

45. As the Working Group has stated, in order for a deprivation of liberty to have a legal basis, it is not sufficient for there to be a law authorizing the arrest. The authorities must invoke that legal basis and apply it to the circumstances of the case through an arrest warrant, which was not done in the present case.²

46. International law includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation of liberty under articles 3 and 9 of the Universal Declaration of Human Rights and principles 2, 4 and 10 of the Body of Principles.³ The Working Group has been presented with no valid grounds, such as arrest in *flagrante delicto*, to justify an exception to this principle in the present case.

47. The Working Group also finds that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed Mr. Al-Shamsi of the reasons for his arrest, at the time of arrest, and informed him of the charges against him promptly.⁴ Their failure to do so violates article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles, and renders his arrest devoid of any legal basis.⁵

48. The source further maintains, and the Government has not substantiated its claim to the contrary, that Mr. Al-Shamsi was subjected to enforced disappearance and incommunicado detention for six months from 18 August 2018.

49. The Working Group recalls that enforced disappearance constitutes a particularly aggravated form of arbitrary detention as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.⁶ The Working

² For example, opinions No. 10/2018, para. 45–46; No. 36/2018, para. 40; No. 46/2018, para. 48; No. 9/2019, para. 29; No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

³ The Working Group has maintained from its early years that the practice of arresting persons without a warrant renders their detention arbitrary. For example, opinions No. 3/2018, para. 43; No. 10/2018, para. 46; No. 26/2018, para. 54; No. 30/2018, para. 39; No. 38/2018, para. 63; No. 47/2018, para. 56; No. 51/2018, para. 80; No. 63/2018, para. 27; No. 68/2018, para. 39; and No. 82/2018, para. 29. See also article 14 (1) of the Arab Charter on Human Rights.

⁴ For example, opinion No. 10/2015, para. 34. See also opinions No. 32/2019, para. 29; No. 33/2019, para. 48; No. 44/2019, para. 52; No. 45/2019, para. 51; and No. 46/2019, para. 51.

⁵ See also article 14 (1) and (3) of the Arab Charter on Human Rights.

⁶ Opinions No. 82/2018, para. 28; No. 18/2019, para. 33; No. 22/2019, para. 67; No. 26/2019, para. 88; No. 28/2019, para. 61; No. 29/2019, para. 54; No. 36/2019, para. 35; No. 41/2019, para. 32; No. 42/2019, para. 48; No. 51/2019, para. 58; and No. 56/2019, para. 79. See also article 22 of the Arab Charter on Human Rights.

Group therefore refers the present case to the Working Group on Enforced or Involuntary Disappearances.

50. The Working Group and other experts also stated, in the joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42), that no jurisdiction should allow for individuals to be deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus (A/HRC/16/47 and Corr.1, para. 54). In accordance with Human Rights Council resolution 37/3 (paras. 8, 9 and 16), the Working Group stresses that no one is to be held in secret detention, and urges the Government of the United Arab Emirates to close down promptly all secret detention facilities.

51. The Working Group observes that thereupon Mr. Al-Shamsi was not brought promptly before a judge, within 48 hours of the arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group's jurisprudence.⁷ Furthermore, his pretrial detention, which should be the exception rather than the rule, lacked a legal basis as it was not based on an individualized determination that it was reasonable and necessary taking into account all the circumstances, for such purposes specified in law as to prevent flight, interference with evidence or the recurrence of crime, accompanied by consideration of alternatives, such as bail, electronic bracelets or other conditions, rendering detention unnecessary in the particular case.⁸ Therefore, the State has violated article 9 of the Universal Declaration of Human Rights and principles 11, 37 and 38 of the Body of Principles.⁹

52. The Working Group further observes that Mr. Al-Shamsi was not afforded the right to take proceedings before a court so that it might decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration of Human Rights and principles 11, 32 and 37 of the Body of Principles.¹⁰ Under the Basic Principles and Guidelines, the right to challenge the lawfulness of detention before a court is a self-standing human right, the absence of which constitutes a human rights violation, and is essential to preserve legality in a democratic society (A/HRC/30/37, paras. 2–3). In addition, the Working Group notes that judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹¹

53. For these reasons, the Working Group considers that Mr. Al-Shamsi's deprivation of liberty lacks a legal basis and is thus arbitrary, falling under category I.

Category III

54. Turning to category III, the Working Group notes that Mr. Al-Shamsi does not appear to have had access to legal counsel of his choice for 20 months, since the time of his arrest by the State Security Directorate on 18 August 2018.

55. In the Working Group's view, the authorities failed to respect Mr. Al-Shamsi's right to legal assistance at all times, which is inherent in the right to liberty and security of person and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, in accordance with articles 3, 9, 10 and 11 (1) of the Universal Declaration of Human Rights. The Working Group considers that this violation substantially undermined his capacity to defend himself in any subsequent judicial proceedings. As the Working Group stated in the Basic Principles, persons deprived of their

⁷ Opinions No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; and No. 82/2019, para. 76.

⁸ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38. See also A/HRC/19/57, paras. 48–58.

⁹ See also articles 14 (1) and (5) and 23 of the Arab Charter on Human Rights.

¹⁰ See also articles 12, 14 (1), (5) and (6) and 23 of the Arab Charter on Human Rights.

¹¹ Opinions No. 35/2018, para. 27; No. 83/2018, para. 47; No. 32/2019, para. 30; No. 33/2019, para. 50; No. 44/2019, para. 54; No. 45/2019, para. 53; No. 59/2019, para. 51; and No. 65/2019, para. 64.

liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and must be promptly informed of this right upon apprehension (principle 9); and access to legal counsel should not be unlawfully or unreasonably restricted (guideline 8). The Working Group therefore finds a serious violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights and principles 15, 17 and 18 of the Body of Principles.¹²

56. The Working Group also notes the Government's failure to observe Mr. Al-Shamsi's rights, including the right to be informed of his right to consular assistance under article 36 (1) (b) of the Vienna Convention on Consular Relations. This and other violations of the rights guaranteed under article 36 (1) (a), (b) and (c) of the Vienna Convention on Consular Relations constitute grave violations of the rights to due process and to a fair trial under articles 10 and 11 (1) of the Universal Declaration of Human Rights and principle 16 (2) of the Body of Principles. In fact, Mr. Al-Shamsi's parents notified the Embassy of Oman the day after his disappearance and the Omani consular officials sought to visit and have access to him, only to be turned away by the Government. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the human rights of migrants, for appropriate action.

57. The Working Group further notes the denial of Mr. Al-Shamsi's due process right to be visited by and to correspond with his family and to be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations, in accordance with principles 15 and 19 of the Body of Principles and rules 43 (3) and 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).¹³

58. In the Working Group's view, Mr. Al-Shamsi's ongoing pretrial detention in prison, for 20 months to date, has undermined the presumption of innocence guaranteed under article 11 (1) of the Universal Declaration of Human Rights and principle 36 (1) of the Body of Principles.¹⁴ Furthermore, there can be no justification for his prolonged pretrial detention for 20 months with no prospect for trial, during which time he has remained deprived of liberty, a manifest violation of the right to be tried without undue delay, guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights.¹⁵ He has yet to be informed of the charges against him.¹⁶

59. The Working Group also expresses its grave concern at the prima facie allegation of torture during Mr. Al-Shamsi's pretrial detention, including beatings, electrocution, nail removal, starvation and prolonged sleep deprivation. The medical examination dated 21 January 2020 does not reliably rebut the allegations of torture over the previous 16 months to extract confessions from Mr. Al-Shamsi incriminating himself and his uncle. The Government also offered no explanation to rebut the allegation of threats against his family.

60. With respect to Mr. Al-Shamsi's six-month solitary confinement, the Working Group recalls that the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has deemed that prolonged solitary confinement, meaning solitary confinement in excess of 15 days, at which point some of the harmful psychological effects of isolation can become irreversible (A/63/175, para. 56, and A/66/268, para. 61),¹⁷ or prolonged incommunicado detention in a secret place (A/56/156, para. 14) may amount to torture as described in article 1 of the Convention against Torture.

61. The Working Group observes that the competent authorities not only failed to conduct a prompt and impartial investigation into the allegations of torture, but also failed to take action to prevent the statements extracted under torture from being used during the proceedings against Mr. Al-Shamsi and his uncle. In accordance with paragraph 33 (a) of

¹² See also articles 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

¹³ Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

¹⁴ See also article 16 of the Arab Charter on Human Rights.

¹⁵ See also article 13 (1) of the Arab Charter on Human Rights.

¹⁶ See also articles 14 (3) and 16 (1) of the Arab Charter on Human Rights.

¹⁷ Likewise, under rule 44 of the Nelson Mandela Rules, prolonged solitary confinement refers to solitary confinement for a time period in excess of 15 consecutive days.

its methods of work, the Working Group refers the present case to the Special Rapporteur on the independence of judges and lawyers, for appropriate action.

62. In this respect, the Working Group recalls that, after her official visit to the United Arab Emirates in 2014, the Special Rapporteur on the independence of judges and lawyers reported that more than 200 complaints relating to torture and/or ill-treatment had been presented before judges and/or prosecutors over the previous few years, but that those complaints had not been taken into account in judicial proceedings and no independent investigation into them had allegedly taken place (A/HRC/29/26/Add.2, para. 53).¹⁸

63. The Working Group finds that the source presented credible allegations that the absolute prohibition of torture, enshrined in article 5 of the Universal Declaration of Human Rights and articles 2 (1) and 16 (1) of the Convention against Torture,¹⁹ has been violated.²⁰ The Government's failure to take remedial measures also violates articles 12, 13 and 14 (1) of the Convention against Torture,²¹ and principle 33 of the Body of Principles. Accordingly, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

64. The Working Group further recalls that torture undermines the minimum guarantees necessary for one's defence, especially in the light of the right not to be compelled to testify against oneself or to confess guilt, under article 11 (1) of the Universal Declaration of Human Rights. The use of a confession extracted through torture is also contrary to article 15 of the Convention against Torture and principle 21 of the Body of Principles.²²

65. The Working Group expresses its grave concern at Mr. Al-Shamsi's worsening physical and psychological condition, including a malignant tumour in his remaining kidney. Accordingly, the Working Group refers the present case to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the rights of persons with disabilities, for further consideration.

66. Given the above, the Working Group concludes that the violations of the right to a fair trial and due process are of such gravity as to give Mr. Al-Shamsi's deprivation of liberty an arbitrary character, falling within category III.

Additional observations

67. The Working Group wishes to comment on other serious allegations made in the present case, namely the harassment suffered by Mr. Al-Shamsi's family in connection with his deprivation of liberty. In September 2018, while Mr. Al-Shamsi was still being subjected to enforced disappearance at a secret site, the security forces raided his parents' home and confiscated an old mobile phone and the student's laptop. As the Government did not address these allegations, the Working Group accepts them as established as part of the source's prima facie case. Under no circumstances is it ever acceptable to subject family members of a detained person to such harassment.

68. In its 29-year history, the Working Group has found the United Arab Emirates to be in violation of its international human rights obligations in at least 26 cases.²³ The Working Group is concerned that this indicates a systemic problem with arbitrary detention in the United Arab Emirates, which amounts to a serious violation of international law. The Working Group recalls that under certain circumstances, widespread or systematic

¹⁸ Opinions No. 21/2017, para. 48, and No. 76/2017, para. 76.

¹⁹ See also article 8 (1) of the Arab Charter on Human Rights.

²⁰ See also principles 1 and 6 of the Body of Principles and rule 1 of the Nelson Mandela Rules. The prolonged solitary confinement in particular violates rules 43–45 of the Nelson Mandela Rules.

²¹ See also article 8 (2) of the Arab Charter on Human Rights.

²² See opinions No. 48/2016, No. 3/2017, No. 6/2017, No. 29/2017 and No. 39/2018.

²³ See, for example, opinions No. 47/2017, No. 58/2017, No. 76/2017, No. 30/2018, No. 28/2019 and No. 55/2019.

imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.²⁴

Disposition

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

The deprivation of liberty of Abdullah Awad Salim al-Shamsi, being in contravention of articles 3, 6, 8, 9, 10 and 11 (1) of the Universal Declaration of Human Rights, is arbitrary and falls within categories I and III.

70. The Working Group requests the Government of the United Arab Emirates to take the steps necessary to remedy the situation of Mr. Al-Shamsi without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights. The Working Group encourages the Government to accede to the International Covenant on Civil and Political Rights.

71. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Shamsi immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease (COVID-19) pandemic and the threat that it poses in places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Al-Shamsi.

72. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of Mr. Al-Shamsi and to take appropriate measures against those responsible for the violation of his rights.

73. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the human rights of migrants and the Working Group on Enforced or Involuntary Disappearances, for appropriate action.

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

Follow-up procedure

75. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Al-Shamsi has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Al-Shamsi;
- (c) Whether an investigation has been conducted into the violation of Mr. Al-Shamsi's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of the United Arab Emirates with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

²⁴ A/HRC/13/42, para. 30. See also, for example, opinions No. 68/2018, para. 60; No. 73/2018, para. 69; No. 82/2018, para. 53; No. 83/2018, para. 68; and No. 87/2018, para. 80.

76. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

77. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

78. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²⁵

[Adopted on 1 May 2020]

²⁵ Human Rights Council resolution 42/22, paras. 3 and 7.