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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23–27 November 2020

Opinion No. 61/2020 concerning Amina Mohammed al-Abdouli and Maryam Suliman al-Balushi (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 30 June 2020, the Working Group transmitted to the Government of the United Arab Emirates a communication concerning Amina Mohammed al-Abdouli and Maryam Suliman al-Balushi. The Government has not replied to the communication. 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. Amina Mohammed al-Abdouli is a 40-year-old teacher and mother of five children. She is a national of the United Arab Emirates and normally resides in Al-Tayba, Emirate of Fujairah.

5. Maryam Suliman al-Balushi is a 24-year-old student in her final year of studies at the College of Technology in the city of Kulba. She is a national of the United Arab Emirates.

a. Arrest and secret detention

6. On 19 November 2015, Ms. Al-Abdouli was arrested without a warrant at her home by State Security agents in plain clothes. Other family members were also arrested. Shortly afterwards, Ms. Al-Abdouli's family contacted the Prosecution Office, but were not informed of her whereabouts or allowed to contact her.

7. Ms. Al-Abdouli initially spent seven and a half months in a secret detention facility before being transferred to Al-Wathba Prison on 30 June 2016. While secretly detained, Ms. Al-Abdouli was kept in solitary confinement in a narrow room with no windows. For the first three months, she was detained incommunicado, but was subsequently allowed to call her family once every two weeks until her transfer to Al-Wathba Prison.

8. The source alleges that while she was secretly detained, Ms. Al-Abdouli had been subjected to severe acts of torture, including being stripped naked, beaten, blindfolded, bound at the feet and deprived of sleep. After three months of detention, she began to experience a loss of sight in her left eye owing to repeated beatings. Ms. Al-Abdouli undertook several hunger strikes to protest against her treatment. At no point was she granted access to legal counsel.

9. While being interrogated by male investigators and a female investigator, Ms. Al-Abdouli was beaten, insulted, ordered to speak against her family, and threatened with the loss of custody of her children and the arrest of her relatives. On 9 February 2016, under the threat of further beatings, Ms. Al-Abdouli was coerced into signing a written confession with her fingerprint, despite having been denied permission to read it. This took place in the presence of the female investigator. She was not provided with any opportunity to communicate with legal counsel while secretly detained.

10. On 19 November 2015, Ms. Al-Balushi was arrested without a warrant at her home by State Security officers. Her family contacted the State Security office in Khor Fakkan, and the Prosecution Office in Abu Dhabi, in an attempt to establish her whereabouts. Ms. Al-Balushi was held at a secret detention centre for five months before being transferred to Al-Wathba Prison on 12 April 2016.¹

11. The source alleges that while she was secretly detained, Ms. Al-Balushi was interrogated, subjected to beatings, humiliated and threatened with rape. After three months of detention, Ms. Al-Balushi was allowed to contact her family. After she informed one of her relatives of the ill-treatment during one of their calls, the relative went to the State Security office in Khor Fakkan and advised them that the media would be alerted if Ms. Al-Balushi was not released. In response, the State Security office threatened to detain and deprive the relative of citizenship.

12. While being interrogated, Ms. Al-Balushi was coerced into making self-incriminating confessions and a false confession. Ms. Al-Balushi was not provided with any opportunity to communicate with legal counsel while secretly detained.

b. Trial proceedings

13. The source alleges that Ms. Al-Abdouli was first informed of the charges against her when her trial began on 27 June 2016, at which time she was still in secret detention. The

¹ The source had originally stated that Ms. Al-Balushi was arrested on 19 February 2015 and transferred to Al-Wathba Prison on 14 March 2016, but subsequently clarified the dates.

trial took place before the State Security Chamber of the Federal Supreme Court, in relation to the offences of “inciting hatred against the State and disturbing public order, undermining the reputation of the State institutions and publishing false information to endanger the State’s relations with its allies”, on the basis of Federal Law No. 5 of 2012, on combating cybercrime (the Cybercrime Law). These offences relate to comments she allegedly made on social media about the death of her father in the Syrian Arab Republic in 2013.

14. Ms. Al-Abdouli’s coerced self-incriminating confession was presented by the prosecution and admitted into evidence. On 10 October 2016, Ms. Al-Abdouli’s legal counsel asserted that her arrest, house searches and coerced confession were illegal. Furthermore, he emphasized that no such online messages had been found in connection with Ms. Al-Abdouli’s social media accounts. However, no investigation was initiated into these allegedly unlawful practices.

15. On 31 October 2016, the Federal Supreme Court sentenced Ms. Al-Abdouli to five years’ imprisonment. Decisions of the Federal Supreme Court are final and, as a result, Ms. Al-Abdouli has not been able to appeal.²

16. The source alleges that while held in secret detention, Ms. Al-Balushi was coerced into making self-incriminating confessions under torture. In February 2016, she appeared before the State Security Prosecution without the presence of legal counsel, and was formally charged under Federal Law No. 7 of 2014, on terrorism crimes (the Terrorism Law) and the Cybercrime Law. The charges included financing terrorism, which related to a \$600 donation she made to a Syrian family in 2014. While she was being charged, Ms. Al-Balushi was informed by the State Prosecutor that her charges were minor and would “only amount to a six-month sentence”. She was instructed to sign a paper so that she could be transferred to Al-Wathba Prison, but was not permitted to read it. After the paper had been signed, it was later presented during trial as a signed confession.

17. On 24 October 2016, the trial of Ms. Al-Balushi commenced before the Criminal Chamber of the Abu Dhabi Federal Appeal Court. Despite having been coerced, her confessions were admitted into evidence. On 22 February 2017, she was sentenced to five years’ imprisonment and a fine of 500,000 United Arab Emirates dirhams. On 8 May 2017, her appeal commenced before the State Security Chamber of the Federal Supreme Court. When the lawyer was informed of and able to attend the hearings, the judge systematically dismissed his claims and questions. Prior to the final two hearings, including the sentencing hearing, the prison administration denied Ms. Al-Balushi any contact with her family and with legal counsel. As a result, her lawyer was not informed of the final two hearings, and she therefore had no legal representation. On 5 June 2017, Ms. Al-Balushi’s sentence was upheld.

18. Both Ms. Al-Abdouli and Ms. Al-Balushi have made statements about their situation. Those statements were made public between 9 May 2018 and 29 November 2019.

19. On 12 February 2019, special procedure mandate holders sent an urgent appeal in relation to Ms. Al-Abdouli and Ms. Al-Balushi.³ The Government responded on 14 March 2019.⁴

c. Allegations of torture and ill-treatment

20. The source reports that since being transferred to Al-Wathba Prison, Ms. Al-Abdouli has been kept in hot, overcrowded, insect-infested cells. She has not had access to healthy food, potable water and clean blankets, and she has also been denied access to medical care. In addition, Ms. Al-Abdouli has been subjected to random and humiliating strip searches at night and has often been denied direct contact with her family.

² The Federal Supreme Court functioned as a court of first and last instance until November 2016, when Federal Law No. 11 was amended.

³ Communication ARE 2/2019, dated 12 February 2019. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24341>.

⁴ The response of the Government to the urgent appeal is available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=34572>.

21. In prison, Ms. Al-Balushi has sometimes been held in solitary confinement and subjected to humiliating conditions, including surveillance cameras placed inside her bathroom.

22. On 4 May 2019, six police officers raided the cell shared by both women, stepping on the Qur'an and confiscating their prayer books. Both women have been subjected to abuse by other inmates. However, despite reporting these incidents to the prison authorities, no measures have been taken to investigate them and to ensure the safety and well-being of the women.

23. In the 2019 annual report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, it was noted that Ms. Al-Abdouli and Ms. Al-Balushi had faced reprisals after information on their conditions of detention and health was shared with the United Nations.⁵

24. Ms. Al-Abdouli's health is poor. She is suffering from anaemia and experiencing excessive levels of bile. The cause is unknown, owing to the failure of the authorities to allow a medical examination, despite her requests.

25. Ms. Al-Balushi is suffering from liver cirrhosis and kidney stones. She was examined on 25 December 2018. She has not received any treatment since that time, however, and has been denied further medical examinations. She remains seriously ill.

d. Additional charges

26. On 30 July 2019, Ms. Al-Abdouli and Ms. Al-Balushi were brought before the Federal State Security Prosecution and three new charges were brought against them relating to their endeavours to raise public awareness of their cases, including with the special procedure mandate holders. The charges relate to "leaking wrong information", "affecting the reputation of the United Arab Emirates and Al-Wathba Prison negatively" and "causing problems between countries". These charges are reportedly a form of reprisal. It has also been reported that the charges were brought under the Cybercrime Law. Neither woman has had access to legal counsel in relation to these charges, and the trial has not yet begun.

e. Recent solitary confinement

27. Starting in early February 2020, Ms. Al-Abdouli and Ms. Al-Balushi were placed in solitary confinement every Sunday, Monday and Thursday for refusing to provide recorded self-incriminating confessions in relation to the latest charges. The confessions were reportedly to be broadcast on television. As Sundays, Mondays and Thursdays were the days on which they were authorized to contact their families, solitary confinement meant that they were effectively denied all contact with their relatives. On 23 February 2020, despite their poor health, Ms. Al-Abdouli and Ms. Al-Balushi began a hunger strike in protest against their solitary confinement and exposure to humiliating and degrading treatment.

28. On 8 March 2020, Ms. Al-Balushi cut a vein in her hand and was taken to the prison clinic to have the wound bandaged. Ms. Al-Abdouli's solitary confinement ended on 12 March 2020. She subsequently stated that she had not received any medical care since her solitary confinement ended, despite her deteriorating health.

f. Family contact

29. According to the source, during her first three months in secret detention, Ms. Al-Abdouli was denied all contact with her family. From the fourth month onward, she was allowed to call her family once every two weeks. Upon her transfer to Al-Wathba Prison, Ms. Al-Abdouli was permitted to contact her family. In 2019, Ms. Al-Abdouli requested a transfer to a prison in Fujairah City in order to be closer to her family, but she was never transferred. All family visits take place behind a glass barrier, even with her children. Ms. Al-Abdouli has not been able to receive visits from all family members, despite efforts having been made on numerous occasions. The last known attempt to visit that was made by one of

⁵ A/HRC/42/30, paras. 78–79.

her relatives was on 20 October 2019. The same relative has been repeatedly denied visitation rights.

30. During the first three months of detention, Ms. Al-Balushi was denied contact with her family. Afterwards, she was allowed to call her relatives once every three weeks. Upon her transfer to Al-Wathba Prison, Ms. Al-Balushi was initially permitted to contact her family, including being granted visitation rights. However, on 29 April 2018, the authorities denied Ms. Al-Balushi contact with her family, and ordered a relative who had visited the prison to return home. It is unknown whether similar visits have been disrupted since that time.

31. In the 2019 annual report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights, it was noted that the treatment of the family members of Ms. Al-Abdouli and Ms. Al-Balushi while visiting prison had worsened. The source reports that an officer threatened to bring Ms. Al-Balushi to trial again and bring new charges if she did not renounce her previous allegations.⁶

32. The extent to which the women have been able to communicate with their families since the end of their solitary confinement is unclear, but the source is aware that Ms. Al-Abdouli has received a telephone call from her family once since 12 March 2020. Neither woman is able to receive family visits owing to restrictions implemented following the outbreak of the global coronavirus disease (COVID-19) pandemic.

g. Analysis of violations

Category I

33. The source submits that on 19 November 2015, Ms. Al-Abdouli and Ms. Al-Balushi were arrested in their family homes, without warrants, by State Security agents in plain clothes. Neither of them was given any reason for the arrest and there were no circumstances that would give reasonable cause for an arrest in flagrante delicto. Their detention was not grounded in law, in violation of 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.

h. Right to be informed of the charges

34. During the first seven and a half months of detention until her trial commenced, Ms. Al-Abdouli was not informed of the charges against her, in violation of her right to be promptly informed of the reasons for the arrest and the charges under articles 99 and 104 of Federal Law No. 35 of 1992 (the Criminal Procedural Law);⁷ principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and article 14 (2) of the Arab Charter on Human Rights.

35. Similarly, Ms. Al-Balushi was not formally charged under the Terrorism Law and the Cybercrime Law until February 2016.

36. The source submits that the authorities violated Ms. Al-Balushi's right to be promptly informed of the reasons for the arrest and the charges against her. These rights are found in article 99 of the Criminal Procedural Law, principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 14 (2) of the Arab Charter on Human Rights.

37. In addition, the source notes that article 49 of the Terrorism Law states that by way of exception from the provisions of the Criminal Procedural Law, a remand order is to be issued by the Prosecution following the accused's investigation for a period of 14 days, which can

⁶ Ibid., annex I, paras. 105 and 108–109.

⁷ Available at: <https://legaladvice.com/legislation/156/uae-federal-law-35-of-1992-concerning-criminal-procedural-law>.

be extended for additional similar periods if the investigation interest so requires, provided that the period does not exceed 3 months. Such period may not be extended unless by virtue of an order issued by the court. Article 49 does not require individuals suspected of terrorism to be brought before a judicial authority within the first three months of detention, which is not in line with international standards.⁸

i. Rights to habeas corpus and to be brought promptly before a judicial authority

38. According to the source, Ms. Al-Abdouli and Ms. Al-Balushi were both held in secret detention for several months. As a consequence, both were placed outside the protection of the law and deprived of their legal safeguards as detainees, including their right to challenge the legality of their detention before an independent judicial authority and to be recognized as persons before the law. This is in violation of articles 14 (6) and 22 of the Arab Charter on Human Rights and articles 26 and 28 of the Constitution of the United Arab Emirates, which enshrine the right to personal liberty and the presumption of innocence. Furthermore, secret detention is a form of arbitrary detention per se and violates the right to be considered a person before the law under article 6 of the Universal Declaration of Human Rights.

39. The source submits that the periods of secret detention inflicted upon Ms. Al-Abdouli (from 19 November 2015 to 30 June 2016) and Ms. Al-Balushi (from 19 November 2015 until 12 April 2016) lacked a legal basis.

j. Detention after completion of sentence

40. Ms. Al-Balushi was arrested on 19 November 2015 and subsequently sentenced to five years' imprisonment. She was due to be released in November 2020. The source argues that Ms. Al-Balushi's detention since 19 November 2020 lacks a legal basis.

(i) Category II

41. Ms. Al-Abdouli was originally sentenced for "inciting hatred against the State and disturbing public order, undermining the reputation of the State institutions and publishing false information to endanger the State's relations with its allies", under the Cybercrime Law. The prosecution was based on the alleged publication of online messages by Ms. Al-Abdouli, although this was denied by the defence. The source submits that, regardless of whether such online messages exist, Ms. Al-Abdouli was sentenced for offences under the Cybercrime Law that are vague and violate the right to freedom of opinion and expression. The Cybercrime Law grants the authorities broad powers of censorship. Ms. Al-Abdouli was sentenced for undermining the reputation of State institutions, an offence under article 29 of the Cybercrime Law.⁹

42. Furthermore, the source argues that the latest charges against Ms. Al-Abdouli and Ms. Al-Balushi relate to their efforts to raise awareness of their prison conditions and ill-treatment by calling for the assistance of the international community and special procedure mandate holders in upholding their human rights. Each of the charges, which appear to fall under the Cybercrime Law and include "leaking wrong information", "affecting the reputation of the United Arab Emirates and Al-Wathba Prison negatively" and "causing problems between countries", constitute a violation of their right to freedom of opinion and expression, and were a form of reprisal.

43. The source asserts that Ms. Al-Abdouli was deprived of her liberty in violation of the right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights. The latest charges against both women are also in violation of this right.

(ii) Category III

44. The source submits that the detention of Ms. Al-Abdouli and Ms. Al-Balushi is arbitrary owing to severe violations of their right to a fair trial.

⁸ See text of Federal Law No. 7 of 2014, on combating terrorism offences. Available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/98658/117474/F399649256/LNME-FED-LAW-7-2014.pdf.

⁹ Opinion No. 58/2017, para. 51.

k. Right to legal assistance

45. Both Ms. Al-Abdouli and Ms. Al-Balushi were initially subjected to several months of secret detention with no access to legal counsel, despite the fact that they were interrogated and forced to make self-incriminating confessions during the period in question.

46. Furthermore, during Ms. Al-Balushi's hearings, the judge systematically dismissed her legal counsel's claims and questions and, for the final two hearings before the State Security Chamber of the Federal Supreme Court, she had no legal representation as she was unable to inform her legal counsel of the hearing dates.

47. The source argues that this amounted to a violation of their right to have their legal counsel in attendance during the investigatory stage of proceedings, as specified under article 100 of the Criminal Procedural Law. The source also claims a violation of the right to legal assistance, preparation for defence and equality of arms 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 United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court.

48. With regard to the latest charges, brought in 2019, the source submits that neither Ms. Al-Abdouli nor Ms. Al-Balushi has had access to legal counsel.

l. Principle of legality

49. In relation to the initial charges, Ms. Al-Balushi was sentenced under the Cybercrime Law and the Terrorism Law, and Ms. Al-Abdouli was sentenced under the Cybercrime Law. These laws do not meet the standard of legal certainty under article 11 (2) of the Universal Declaration of Human Rights and article 15 of the Arab Charter on Human Rights.¹⁰

50. Article 1 of the Terrorism Law defines a "terrorist result" in vague terms, stipulating that it includes opposing the country and influencing the public authorities of the country, defying the principle of legality.¹¹ Similarly, article 28 of the Cybercrime Law punishes with temporary imprisonment and a fine of up to 1,000,000 dirhams (\$239,371) anyone who establishes, manages or runs a website, or who uses information on a computer network or information technology with the intent of inciting acts or publishing or transmitting information that may endanger national security and the higher interests of the State, or afflicts its public order. Such vague provisions allow for arbitrary interpretation and make it impossible for individuals to ascertain how they should act in order to be in compliance with national law.¹²

m. Secret detention

51. Initially, Ms. Al-Abdouli and Ms. Al-Balushi were held in secret detention facilities, in solitary confinement, for seven and a half months and five months, respectively. During their confinement, they were subjected to ill-treatment amounting to torture, were not informed of their charges, were denied access to legal counsel and were prevented from informing their families of their whereabouts. Both women were subjected to other severe acts of torture and ill-treatment, in part for the purposes of coercing confessions from them. For Ms. Al-Abdouli, this included being beaten, insulted, ordered to speak against her family, and threatened with the loss of custody of her children and the arrest of her relatives. For Ms. Al-Balushi, this involved being beaten and threatened with rape. Secret detention enables torture and can constitute a form of torture in itself in relation to both the detained person and their relatives. By holding the women in secret detention, the authorities violated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 5 of the Universal Declaration of Human Rights.

¹⁰ Opinion No. 28/2019, para. 65.

¹¹ A/HRC/29/26/Add.2, para. 29.

¹² See text of Federal Law No. 5 of 2012, on combating cybercrime. Available at http://ejustice.gov.ae/downloads/latest_laws/cybercrimes_5_2012_en.pdf.

n. Torture and ill-treatment at Al-Wathba Prison

52. Since being transferred to Al-Wathba Prison, Ms. Al-Abdouli and Ms. Al-Balushi have been subjected to several periods of solitary confinement and have faced difficulties in communicating with their families. Examples include Ms. Al-Abdouli's unfulfilled request for a transfer and the repeated denial of visitation rights to her relatives, as well as the disruption of Ms. Al-Balushi's ability to contact her family. As a result, their rights under rule 58 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) have been violated.

53. In early February 2020, both women were placed in solitary confinement on the days on which they were permitted to contact their family. On 23 February 2020, they began a hunger strike.

54. Both Ms. Al-Abdouli and Ms. Al-Balushi have been subjected to torture and ill-treatment. They have suffered abuse at the hands of inmates and the authorities, and they have not received adequate medical care, despite the deterioration of their health. On 17 March 2020, the Special Rapporteur on torture and the Special Rapporteur on the right to health raised concerns regarding the conditions of detention facilities in the United Arab Emirates, urging the authorities to investigate and reform detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.¹³

55. The source submits that Ms. Al-Abdouli and Ms. Al-Balushi have been subjected to physical and psychological suffering amounting to torture, in contravention of article 5 of the Universal Declaration of Human Rights and article 2 of the Convention against Torture. Pursuant to article 13 of the Convention against Torture, the authorities are obliged to promptly and impartially investigate all allegations of torture. Furthermore, their solitary confinement amounted to torture, in violation of article 5 of the Universal Declaration of Human Rights and rule 43 of the Nelson Mandela Rules.

o. Right to access medical treatment

56. Ms. Al-Abdouli and Ms. Al-Balushi have been denied adequate medical care. One example is the failure to provide both women with appropriate medical treatment both during and after their hunger strikes, in violation of principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and rule 30 of the Nelson Mandela Rules.

p. Exclusionary rule

57. During the interrogations, Ms. Al-Abdouli was coerced into signing a written confession with her fingerprint, despite not having been permitted to read it. Similarly, Ms. Al-Balushi was coerced into making confessions during interrogations. She was told that she needed to sign a piece of paper that would authorize her transfer to Al-Wathba Prison. Instead, the paper was presented in court as a confession. Despite insistence by legal counsel that the confessions were coerced and false, both confessions were admitted as evidence in their respective trials. The authorities violated article 15 of the Convention against Torture and principle 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, the source notes that the United Arab Emirates lacks laws regulating the admission into evidence of confessions in criminal cases, severely undermining the ability to demand that the exclusionary rule be upheld.

q. Independence and impartiality of trial proceedings

58. The source asserts that the Federal Supreme Court, which sentenced Ms. Al-Abdouli and upheld the ruling against Ms. Al-Balushi, lacks independence and impartiality. The president and judges of the Federal Supreme Court are appointed by presidential decree, after approval by the Cabinet and ratification by the Federal Supreme Council. The Special

¹³ Office of the United Nations High Commissioner for Human Rights, "United Arab Emirates: UN human rights experts call for urgent reforms of degrading conditions of detention", 17 March 2020. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25726&LangID=E.

Rapporteur on the independence of judges and lawyers has raised concerns that the current mechanism for appointing judges lacks transparency and may expose them to undue political pressure.¹⁴ Furthermore, the judicial system in the United Arab Emirates is under the de facto control of the executive branch of the Government and cannot be considered to be independent or impartial.¹⁵ The trial of Ms. Al-Abdouli and Ms. Al-Balushi violated article 10 of the Universal Declaration of Human Rights.

r. Right to appeal

59. Ms. Al-Abdouli's case was heard at first instance in the Federal Supreme Court, denying her right to appeal. The Special Rapporteur on the independence of judges and lawyers highlighted that the exclusive competence of the Federal Supreme Court in certain criminal cases, without the possibility of review by a higher judicial court, violated international human rights standards.¹⁶ The Federal Supreme Court functioned as a court of first and last instance up until November 2016. Ms. Al-Abdouli was denied the right to appeal her conviction in violation of article 8 of the Universal Declaration of Human Rights and article 16 (7) of the Arab Charter on Human Rights.

Response from the Government

60. On 30 June 2020, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting detailed information by 31 August 2020 about the situation of Ms. Al-Abdouli and Ms. Al-Balushi. The Working Group also requested that the Government clarify the legal provisions justifying their detention, and the compatibility of those provisions with the obligations of the United Arab Emirates under international human rights law. Moreover, the Working Group called upon the Government to ensure the physical and mental integrity of both women.

61. The Working Group regrets that it did not receive a response from the Government to that communication. The Government did not request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

Discussion

62. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

63. In determining whether the deprivation of liberty of Ms. Al-Abdouli and Ms. Al-Balushi is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal 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 (A/HRC/19/57, para. 68). In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

Category I

64. The source alleges that Ms. Al-Abdouli and Ms. Al-Balushi were arrested on 19 November 2015. According to the source, both women were arrested without an arrest warrant, were not given any reason for their arrests and were not informed promptly of the charges against them. In particular, Ms. Al-Abdouli was not informed of the charges until her trial commenced on 27 June 2016, while Ms. Al-Balushi was not formally charged until February 2016. The Government did not respond to the Working Group's communication under its regular procedure and has therefore not submitted any information to challenge these allegations.

65. The Working Group considers that the source has established a credible prima facie case, which was not rebutted by the Government, indicating that the authorities had failed to

¹⁴ A/HRC/29/26/Add.2, para. 35.

¹⁵ Ibid., para. 33.

¹⁶ Ibid., para. 61.

present an arrest warrant at the time of the arrest of Ms. Al-Abdouli and Ms. Al-Balushi. There were no circumstances that would provide a reasonable cause for an arrest in flagrante delicto.¹⁷ It is not sufficient for there to be a law that authorizes an arrest. The authorities must invoke that legal basis and apply it through an arrest warrant.¹⁸ In the present case, the arresting officers did not present an arrest warrant at the time of arrest, in violation of articles 3 and 9 of the Universal Declaration of Human Rights.¹⁹

66. Furthermore, the Working Group finds that Ms. Al-Abdouli and Ms. Al-Balushi were not informed of the reasons for their arrest at the time of their arrest. It is also clear that they were not promptly informed of the charges against them. In order to invoke a legal basis for deprivation of liberty, the authorities should have informed Ms. Al-Abdouli and Ms. Al-Balushi of the reasons for their arrest when they were arrested and promptly informed them of the charges.²⁰ The failure to do so violated article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and rendered their arrest and detention arbitrary and without legal basis.

67. According to the source, Ms. Al-Abdouli was held in secret detention for seven and a half months and was also held incommunicado for the first three months, while Ms. Al-Balushi was held in secret detention for five months. As a result, neither of them was afforded the right to challenge the legality of the detention.

68. As the Working Group has stated in its jurisprudence, a person arrested and detained must be brought before a judge within 48 hours of arrest, and any longer delay must be absolutely exceptional and justified under the circumstances.²¹ In the absence of any explanation from the Government, the Working Group finds that Ms. Al-Abdouli and Ms. Al-Balushi were not afforded their right to be brought promptly before a court to challenge the legality of their detention, contrary to article 9 of the Universal Declaration of Human Rights and principles 11 and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The oversight of detention must be conducted by a judicial authority with the requisite independence to consider the lawfulness of the detention.²² The Working Group takes note of the source's submission, unchallenged by the Government, that the Terrorism Law does not comply with this standard because it allows the prosecution to extend remand for up to three months without judicial supervision.²³

69. Moreover, the Government did not provide any information to suggest that the detention of Ms. Al-Abdouli and Ms. Al-Balushi, relating to the latest charges brought against them, on 30 July 2019, had been subject to judicial control. If a person already detained on one criminal charge is also ordered to be detained to face an unrelated criminal charge, the person must be promptly brought before a judge for control of the second detention.²⁴ It appears that that has not occurred in the present case, as they were brought before the Federal State Security Prosecution in July 2019 rather than a court, thus rendering the continuing detention of both women without a legal basis.

70. The Working Group further observes that neither Ms. Al-Abdouli nor Ms. Al-Balushi was afforded the right to take proceedings before a court so that it might decide without delay on the lawfulness of their detention in accordance with articles 3 and 9 of the Universal

¹⁷ Opinion No. 9/2018, para. 38.

¹⁸ Opinions No. 46/2019, para. 51; No. 46/2018, para. 48; No. 36/2018, para. 40; No. 10/2018, para. 45.

¹⁹ Opinions No. 33/2020, para. 54; No. 31/2020, para. 41; No. 55/2019, para. 35; No. 28/2019, para. 59; No. 30/2018, para. 39; No. 76/2017, para. 55 (presentation of an arrest warrant is procedurally inherent in arts. 3 and 9 of the Universal Declaration of Human Rights). See also A/HRC/29/26/Add.2, para. 51.

²⁰ Opinions No. 33/2020, para. 55; No. 31/2020, para. 42; No. 55/2019, para. 35; and No. 28/2019, para. 60.

²¹ Opinions No. 31/2020, para. 45; No. 76/2019, para. 38; No. 56/2019, para. 80; No. 36/2019, para. 36; No. 26/2019, para. 89; and No. 20/2019, para. 66.

²² Opinions No. 41/2020, para. 60; No. 33/2020, para. 75; No. 32/2020, para. 44; No. 45/2019, para. 52; No. 44/2019, para. 53; No. 46/2018, para. 50; No. 35/2018, para. 37; and No. 75/2017, para. 48.

²³ A/HRC/29/26/Add.2, paras. 50 and 108.

²⁴ Opinion No. 2/2016, para. 36.

Declaration of Human Rights and principle 32 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Neither woman had access to a lawyer in the initial months of detention, an essential safeguard that might have assisted in challenging the legal basis for the detention.²⁵ 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.²⁶ 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.²⁷ Given that Ms. Al-Abdouli and Ms. Al-Balushi were not able to challenge their detention, their right to an effective remedy under article 8 of the Universal Declaration of Human Rights was also violated. Moreover, the secret detention of both women was per se arbitrary, and placed them outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.²⁸

71. Furthermore, in relation to the initial charges, both women were sentenced under the Cybercrime Law (Federal Law No. 5 of 2012), while Ms. Al-Balushi was also sentenced under the Terrorism Law (Federal Law No. 7 of 2014). According to the source, Ms. Al-Abdouli was sentenced under the Cybercrime Law for “inciting hatred against the State and disturbing public order, undermining the reputation of the State institutions and publishing false information to endanger the State’s relations with its allies”. The charges against Ms. Al-Balushi included financing terrorism, which related to a \$600 donation she had made. In addition, the latest charges against both women, which appear to fall under the Cybercrime Law, include “leaking wrong information”, “affecting the reputation of the United Arab Emirates and Al-Wathba prison negatively” and “causing problems between countries”.

72. The Working Group has previously expressed its concern about the vague and overbroad provisions under both the Cybercrime Law and the Terrorism Law, as they do not clearly define the type of criminal activity that may be penalized.²⁹ The principle of legality requires that laws be formulated with sufficient precision so that the individual can access and understand the law, and regulate his or her conduct accordingly.³⁰ The application of vague and overly broad provisions in the present case made it impossible to invoke any legal basis to justify the original arrest, detention and conviction of Ms. Al-Abdouli and Ms. Al-Balushi, as well as their ongoing detention on new charges that are similarly vague and overbroad. The Working Group notes that laws that are vaguely and broadly worded may have a deterrent effect on the exercise of the rights to freedom of movement and residence; freedom of asylum; freedom of thought, conscience and religion; freedom of opinion and expression; freedom of peaceful assembly and association, participation in political and public affairs, equality and non-discrimination, and protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.³¹ The Working Group refers the present case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

73. Finally, the source alleges that Ms. Al-Balushi was arrested on 19 November 2015 and initially sentenced to five years’ imprisonment. She was due to be released on 19

²⁵ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), principle 9 and guideline 8; and opinion No. 40/2020, para. 29.

²⁶ A/HRC/30/37, para. 2.

²⁷ *Ibid.*, para. 3.

²⁸ See Human Rights Council resolution 37/3, in which the Council stressed that no one is to be held in secret detention and called upon States to investigate all alleged cases of secret detention, including under the pretext of countering terrorism. See also A/HRC/13/42, paras. 18–23; opinions No. 32/2020, para. 36; No. 55/2019, para. 37; No. 30/2018, para. 42; No. 21/2017, para. 31; No. 14/2009, para. 19; and No. 3/2009, para. 31. In addition, see General Assembly resolution 68/156; and A/HRC/38/14, paras. 141.110 and 141.126.

²⁹ Opinions No. 28/2019, para. 65; and No. 58/2017, para. 51. See also A/HRC/29/26/Add.2, paras. 29 and 94; and A/HRC/38/14, paras. 141.123–141.125.

³⁰ Opinions No. 37/2020, para. 60; and No. 41/2017, paras. 98–101. See also opinion No. 62/2018, paras. 57–59.

³¹ See, for example, opinion No. 10/2018, para. 55.

November 2020.³² However, three new charges were brought against both women on 30 July 2019, and it appears that the women are being held pending trial for the new charges. The Government did not submit any information to rebut the allegations. As discussed above, the Working Group considers that the new charges are vague and without legal basis. As a result, the Working Group considers that the detention of both women from 19 November 2020 lacks a legal basis.³³

74. For these reasons, the Working Group concludes that the detention of Ms. Al-Abdouli and Ms. Al-Balushi has no legal basis. Their detention is arbitrary under category I.

Category II

75. The source alleges that Ms. Al-Abdouli was originally detained for offences that violate the right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights. Ms. Al-Abdouli was convicted in relation to the alleged publication of comments on social media about the death of her father, although she denies having posted such comments. In addition, the source argues that the latest charges against Ms. Al-Abdouli and Ms. Al-Balushi relate to their efforts to raise awareness of their prison conditions and ill-treatment by calling for the assistance of the international community and special procedure mandate holders in upholding their human rights. As a result, their ongoing detention on new charges is the result of the exercise of their right to freedom of opinion and expression. The Government did not address these allegations.

76. The Working Group recalls that article 19 of the Universal Declaration of Human Rights provides that everyone has the right to freedom of opinion and expression, and that that right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. The Working Group considers that Ms. Al-Abdouli's alleged posting of online messages fell within this right to freedom of opinion and expression and that her conviction for such conduct, even though she denies it, amounts to a violation of this right. Furthermore, the sending of recordings by Ms. Al-Abdouli and Ms. Al-Balushi to the international community, including the special procedure mandate holders, relating to their prison conditions and ill-treatment, also constitutes conduct that is protected by the freedom of opinion and expression.

77. There is nothing to suggest that the permissible limitations set out in article 29 (2) of the Universal Declaration of Human Rights would affect the findings in the present case. In particular, the Government has not presented any reasons that might have legitimized any restrictions on the freedom of opinion and expression. The Working Group is not convinced that the initial prosecution of Ms. Al-Abdouli and the new charges against both women were necessary to protect a legitimate interest under the provision, nor that detention is a proportionate response to their alleged conduct. Importantly, there is no evidence to suggest that either woman called for violence or that their conduct could reasonably be considered to threaten the rights and freedoms of others, morality, public order or the general welfare in a democratic society. Indeed, their prosecution on new charges appears to be a clear reprisal for seeking the assistance of the international community. Moreover, as noted in the discussion relating to category I above, the prosecution of the two women was based on vague and overly broad laws. The Working Group refers the present case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

78. The Working Group concludes that Ms. Al-Abdouli was initially detained in violation of the right to freedom of opinion and expression. Moreover, the ongoing detention of both women on new charges resulted directly from their peaceful exercise of the right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights. Their detention is arbitrary under category II.

³² The same argument presumably applies to Ms. Al-Abdouli, who was also arrested on 19 November 2015 and sentenced to five years' imprisonment. This takes into account time served prior to her trial.

³³ Opinions No. 2/2016, para. 35; No. 61/2012, para. 13; No. 18/2010, para. 14; and No. 21/2000, para. 16, in which it was found that holding a person after the completion of a sentence lacked a legal basis.

Category III

79. Given its finding that the detention of Ms. Al-Abdouli and Ms. Al-Balushi is arbitrary under category II, the Working Group emphasizes that no trial should have taken place, and the new charges brought against them should not proceed to trial. The Working Group considers that the information submitted by the source discloses violations of the right to a fair trial during the proceedings against both women.

80. According to the source, Ms. Al-Abdouli and Ms. Al-Balushi were initially subjected to several months of secret detention with no access to legal counsel. Furthermore, during Ms. Al-Balushi's hearings, the judge dismissed her legal counsel's claims and, for the final two hearings, she had no legal representation, as she was unable to inform her legal counsel of the hearing dates. With regard to the latest charges, brought in 2019, neither Ms. Al-Abdouli nor Ms. Al-Balushi has had access to legal counsel. The Government has not responded to these allegations.

81. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access is to be provided without delay.³⁴ The Working Group finds that the authorities failed to provide both women with immediate access to a lawyer following their initial arrest and in relation to the new charges, and also failed to ensure that Ms. Al-Balushi's lawyer was present and able to present claims throughout the proceedings. As a result, their right to adequate time and facilities to prepare and present a defence and to the equality of arms under articles 10 and 11 (1) of the Universal Declaration of Human Rights was violated. Ms. Al-Balushi's right to defend herself with the assistance of a lawyer under articles 10 and 11 (1) of the Universal Declaration was also violated.

82. Furthermore, the source alleges that Ms. Al-Abdouli and Ms. Al-Balushi have been subjected to torture and ill-treatment during their initial secret detention and their subsequent imprisonment at Al-Wathba Prison. According to the source, Ms. Al-Abdouli was stripped naked, beaten, blindfolded, bound at the feet and deprived of sleep. She was also insulted, ordered to speak against her family, and threatened with the loss of custody of her children and the arrest of her relatives while secretly detained. Similarly, Ms. Al-Balushi was beaten, humiliated and threatened with rape while in secret detention.

83. Since being transferred to Al-Wathba Prison, Ms. Al-Abdouli and Ms. Al-Balushi have allegedly been subjected to further torture and ill-treatment, including denial of contact with their families and poor detention conditions. According to the source, they have suffered abuse at the hands of inmates and the authorities and have not received adequate medical care despite the deterioration of their health. Ms. Al-Abdouli has been subjected to random and humiliating strip searches at night, while Ms. Al-Balushi has had surveillance cameras placed inside her bathroom. The cell shared by both women was reportedly raided by police officers, who stepped on the Qur'an and confiscated their prayer books. Moreover, the source alleges that Ms. Al-Abdouli and Ms. Al-Balushi were held in solitary confinement during their initial secret detention and have continued to be during their imprisonment. In February 2020, both women were placed in solitary confinement every Sunday, Monday and Thursday for refusing to provide confessions with regard to the latest charges brought against them.

84. The Working Group considers that the source has presented a credible prima facie case, which was not rebutted by the Government, indicating that both women have been subjected to physical and psychological suffering amounting to torture and ill-treatment during their secret detention and while imprisoned. Their alleged treatment appears to violate article 5 of the Universal Declaration of Human Rights, and articles 2 and 16 of the Convention against Torture, to which the United Arab Emirates is a State party. Moreover, the Working Group considers that the ability of both women to challenge the legality of their detention and to participate in their own defence would have been severely affected by the alleged torture and ill-treatment, in violation of their right to the equality of arms under

³⁴ United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, annex), principle 9 and guideline 8. See also A/HRC/29/26/Add.2, paras. 56 and 111; and A/HRC/45/16, para. 53.

articles 10 and 11 (1) of the Universal Declaration of Human Rights. Accordingly, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the Special Rapporteur on violence against women, its causes and consequences.

85. In addition, prolonged solitary confinement exceeding 15 consecutive days violates applicable standards, such as rules 43 to 45 of the Nelson Mandela Rules. According to rule 45 of the Nelson Mandela Rules, the imposition of solitary confinement must be accompanied by certain safeguards. That is, solitary confinement must only be used in exceptional cases as a last resort, for as short a time as possible, subject to independent review and authorized by a competent authority.³⁵ Solitary confinement may amount to torture or other cruel, inhuman or degrading treatment or punishment.³⁶ In the present case, the Working Group finds that the source has presented credible information that Ms. Al-Abdouli and Ms. Al-Balushi were held in solitary confinement, possibly for prolonged periods, during their secret detention and subjected to periods of such confinement during their current detention at Al-Wathba Prison. The use of solitary confinement has seriously impacted their physical and psychological health, adding weight to the conclusion that the equality of arms was not respected during the initial trial and during the bringing of new charges against the women.

86. The source further claims that Ms. Al-Abdouli and Ms. Al-Balushi were coerced into providing written confessions that were subsequently used against them as evidence. They were not permitted to read the documents, and Ms. Al-Balushi was deceived about the nature of one of the documents she signed. The Government did not address these allegations, nor has it responded to the source's claim that both women made confessions in the absence of legal counsel. The Working Group considers that the allegations in relation to the forced confessions are credible, and recalls that confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.³⁷ Further, the admission into evidence of a statement allegedly obtained through torture or ill-treatment renders the entire proceedings unfair, regardless of whether other evidence was available to support the verdict.³⁸ The burden is on the Government to prove that the confessions were given freely,³⁹ but it has not done so.

87. As a result, the authorities violated the right of both women to be presumed innocent and not to be compelled to confess guilt under article 11 (1) of the Universal Declaration of Human Rights. The use of a confession extracted under torture also violated article 15 of the Convention against Torture and principles 6 and 21 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁴⁰ The Working Group urges the Government to ensure that any statement made as a result of an act of torture may not be invoked as evidence in any proceedings, except against a person accused of that act of torture as evidence that the statement was made.

88. Moreover, the source claims that when the confessions of both women were presented in court, their legal counsel insisted that the confessions were coerced and false. Nevertheless, both confessions were admitted as evidence in their respective trials. The Working Group considers that the courts in the present case should have ordered the immediate exclusion of the confessions made by Ms. Al-Abdouli and Ms. Al-Balushi, but it failed to do so. The court should have also ordered a further separate and independent investigation into the alleged torture and ill-treatment. The failure by a judge to intervene when torture or ill-treatment is alleged amounts to a violation of the right to be tried by an independent and impartial tribunal

³⁵ Opinion No. 52/2018, para. 79 (d).

³⁶ General Assembly resolution 68/156. See also A/66/268, para. 71.

³⁷ Opinions No. 41/2020, para. 70; No. 15/2020, para. 76; No. 5/2020, para. 83; No. 73/2019, para. 91; No. 59/2019, para. 70; No. 14/2019, para. 71; and No. 1/2014, para. 22. See also E/CN.4/2003/68, para. 26 (e); and A/HRC/45/16, para. 53.

³⁸ Opinions No. 41/2020, para. 70; No. 5/2020, para. 83; No. 73/2019, para. 91; No. 59/2019, para. 70; No. 32/2019, para. 43; No. 52/2018, para. 79 (i); No. 34/2015, para. 28; and No. 43/2012, para. 51.

³⁹ Opinions No. 41/2020, para. 70; No. 15/2020, para. 76; and No. 5/2020, para. 83.

⁴⁰ Opinions No. 31/2020, para. 58; and No. 28/2019, para. 70. See also opinions No. 39/2018, No. 29/2017, No. 6/2017, No. 3/2017 and No. 48/2016.

under article 10 of the Universal Declaration of Human Rights,⁴¹ and of articles 12, 13 and 14 of the Convention against Torture.

89. Similarly, the source asserts that the Federal Supreme Court, which sentenced Ms. Al-Abdouli and upheld the ruling against Ms. Al-Balushi, lacks independence and impartiality. The president and judges of the Federal Supreme Court are appointed by presidential decree, after approval by the Cabinet and ratification by the Federal Supreme Council. In its jurisprudence, the Working Group has expressed concern on several occasions that the Federal Supreme Court is not independent and impartial because it is under the control of the executive branch.⁴² In the absence of any information from the Government to challenge these allegations, the Working Group considers that this constitutes a further violation of the right of Ms. Al-Abdouli and Ms. Al-Balushi to be tried by an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights. The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

90. Finally, the source claims that Ms. Al-Abdouli's case was heard at first instance in the Federal Supreme Court, denying her right to appeal. According to the source, the Federal Supreme Court functioned as a court of first and last instance up until November 2016. The Working Group has previously found that the absence of a right to appeal decisions of the Federal Supreme Court violates the right to a fair trial.⁴³ Ms. Al-Abdouli was denied the right to appeal her conviction in violation of article 8 of the Universal Declaration of Human Rights.

91. The Working Group concludes that these violations of the right to a fair trial were of such gravity as to give the detention of Ms. Al-Abdouli and Ms. Al-Balushi an arbitrary character under category III.

Concluding remarks

92. The Working Group is deeply concerned that Ms. Al-Abdouli and Ms. Al-Balushi are in very poor health. According to the source, the women have been denied adequate medical care, including in the period following their hunger strikes. The conditions of detention are unsanitary and overcrowded, with poor access to healthy food and potable water. The reported detention conditions are manifestly contrary to applicable standards such as rules 12–27 and 30–31 of the Nelson Mandela Rules and principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group urges the Government to immediately and unconditionally release Ms. Al-Abdouli and Ms. Al-Balushi, and to ensure that they receive the necessary medical treatment. Given the risks to the health of the two women, the Working Group has decided to refer 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.

93. The source also reports that during their secret detention and imprisonment at Al-Wathba Prison, Ms. Al-Abdouli and Ms. Al-Balushi have been denied contact with their families as a result of solitary confinement. In addition, a request for a transfer to another prison was denied, as were visits by certain family members. The Working Group considers that the restrictions placed on the contact by both women with their family members violates their right to contact with the outside world under rules 43 (3) and 58 of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

94. The Working Group has also taken note of the allegations that Ms. Al-Abdouli and Ms. Al-Balushi have faced reprisals, including ill-treatment in detention that appears to be based on their gender, for having brought their conditions of detention to the attention of

⁴¹ Opinions No. 31/2020, para. 56; No. 53/2018, para. 77 (b); No. 30/2018, para. 49; and No. 46/2017, para. 25. See also A/HRC/29/26/Add.2, paras. 53 and 109.

⁴² Opinions No. 31/2020, para. 60; No. 55/2019, para. 41; No. 21/2017, paras. 52–54; No. 60/2013, para. 23; No. 64/2011, paras. 23–24; and No. 34/2011, para. 11. See also A/HRC/29/26/Add.2, paras. 33, 35 and 100.

⁴³ Opinions No. 31/2020, para. 61; No. 55/2019, para. 41; No. 21/2017, para. 54; No. 60/2013, para. 23; and No. 34/2011, para. 11. See also A/HRC/29/26/Add.2, paras. 61 and 115.

special procedure mandate holders. The Working Group emphasizes that any reprisals for interacting with or seeking the assistance of the United Nations human rights mechanisms is unacceptable.

95. The present case is one of many cases brought before the Working Group in recent years concerning arbitrary detention in the United Arab Emirates.⁴⁴ These cases follow a familiar pattern, including a failure to follow arrest procedures; the use of secret detention; the use of forced confessions; prosecution under vaguely worded terrorism offences for the peaceful exercise of human rights; denial of access to legal counsel; failure to afford a fair hearing by an independent and impartial tribunal; the use of solitary confinement; and denial of access to the outside world and to medical care. This pattern indicates a systemic problem with arbitrary detention in the United Arab Emirates that, if it continues, may amount to a serious violation of international law.⁴⁵

96. The Working Group would welcome the opportunity to work constructively with the Government to address its concerns relating to arbitrary detention. The Working Group has previously made requests to the Government to undertake a country visit, and will continue to seek a positive response.

Disposition

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

The deprivation of liberty of Amina Mohammed al-Abdouli and Maryam Suliman al-Balushi, being in contravention of articles 3, 6, 8, 9, 10, 11 (1) and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

98. The Working Group requests the Government of the United Arab Emirates to take the steps necessary to remedy the situation of Ms. Al-Abdouli and Ms. Al-Balushi 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.

99. The Working Group considers that, taking into account all the circumstances of the case, including the risk of harm to the health of Ms. Al-Abdouli and Ms. Al-Balushi, the appropriate remedy would be to release both women immediately, and accord them an enforceable right to compensation and other reparations, in accordance with international law.⁴⁶ In the current context of the 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 their immediate release.

100. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Ms. Al-Abdouli and Ms. Al-Balushi, including their allegations of torture, and to take appropriate measures against those responsible for the violation of their rights.

101. The Working Group urges the Government to bring relevant legislation – in particular provisions of the Cybercrime and Terrorism Laws, under which the convictions and charges in the present case were used to restrict the right to freedom of expression – into conformity with the commitments of the United Arab Emirates under international human rights law.

102. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to: (i) the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, (ii) the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, (iii) the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, (iv) the Special Rapporteur on violence against women, its causes and

⁴⁴ Opinions No. 33/2020, No. 31/2020, No. 55/2019, No. 28/2019, No. 30/2018, No. 76/2017, No. 58/2017, No. 47/2017, No. 21/2017, No. 51/2015, No. 35/2015, No. 56/2014, No. 12/2014, No. 60/2013, No. 42/2013, No. 27/2013, No. 61/2012, No. 64/2011 and No. 34/2011.

⁴⁵ Opinion No. 47/2012, para. 22.

⁴⁶ A/HRC/45/16, annex I.

consequences, (v) the Special Rapporteur on the independence of judges and lawyers, and (vi) the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, for appropriate action.

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

Follow-up procedure

104. 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 Ms. Al-Abdouli and Ms. Al-Balushi have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Ms. Al-Abdouli and Ms. Al-Balushi;
- (c) Whether an investigation has been conducted into the violation of their 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.

105. 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.

106. 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.

107. 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.⁴⁷

[Adopted on 23 November 2020]

⁴⁷ Human Rights Council resolution 42/22, paras. 3 and 7.