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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. 31/2020 concerning Abdullah Hani Abdullah (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 23 December 2019 the Working Group transmitted to the Government of the United Arab Emirates a communication concerning Abdullah Hani Abdullah. The Government replied to the communication on 19 February 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 Hani Abdullah is 53 years old and a Lebanese citizen residing legally in the United Arab Emirates since 1974. Prior to his arrest, Mr. Abdullah worked as the manager of a private demolition contractor business.

a. Arrest and detention

5. The source reports that on 26 September 2013, at approximately 4 p.m., a group of 10 men and a woman raided Mr. Abdullah's house in Abu Dhabi. They introduced themselves as State Security personnel and presented a search warrant. During the search, they confined Mr. Abdullah's relatives who were present in one room for several hours with no access to food, water or a bathroom. They also seized all electronic devices, including personal and work laptops, mobile phones, cameras and memory cards.

6. According to the source, upon the request of the State Security personnel, Mr. Abdullah then accompanied them to his office for another search. He never returned home.

7. The source submits that five days after the arrest, Mr. Abdullah was able to call his relatives for the first time. He asked them not to inform the Lebanese authorities of his arrest, adding that he expected to be released soon thereafter. He was then unable to contact his relatives for the next 14 months. When he was finally able to speak to his relatives once again 14 months later, he told them that he had been coerced into saying what he had said during his first call.

8. The source adds that during the initial 14 months of detention, Mr. Abdullah was held incommunicado in an undisclosed location. When his relatives inquired about his whereabouts in police stations and State Security departments, State Security agents denied knowledge of his arrest and detention.

9. The source goes on to relate that in April 2014, the Department of Naturalization and Residency in Abu Dhabi summoned two of Mr. Abdullah's relatives for questioning. At that point, Mr. Abdullah's location was still undisclosed. The first relative summoned was asked general questions and did not receive any answers to queries about Mr. Abdullah's whereabouts, but a family member of the relative was taken away and filmed naked. The second relative was summoned twice, and in both instances was blindfolded and transferred to a different facility for interrogation involving being beaten on the arms, requested to undress and filmed naked. When Mr. Abdullah was able to contact his relatives eight months later, he told them that his interrogators had shown him the films to coerce him into making false confessions.

10. The source contends that after 14 months of incommunicado detention, Mr. Abdullah resumed contact with his relatives in a sporadic manner, each call lasting two to three minutes. As the phone calls were monitored, he was not able to speak freely about his prison conditions. He was still not allowed visits and did not see his relatives before his first hearing, in January 2016.

11. The source then indicates that on 28 September 2015, State Security personnel raided the house of a third relative of Mr. Abdullah, seized electronic devices including laptops and mobile phones, and arrested a fourth relative without disclosing the reasons for the arrest. The latter was blindfolded, handcuffed and driven to an unknown place, then held incommunicado and interrogated for 21 days before being allowed a phone call to relatives. The relative was held in solitary confinement for 91 days, without being informed of the reasons for the detention or being allowed access to a lawyer, then deported to Lebanon on 24 November 2015.

12. According to the source, Mr. Abdullah was held in solitary confinement for approximately 30 months, during which he told his relatives that he was interrogated for long periods of time while handcuffed and blindfolded and was tortured. He suffered several injuries as a result, including a fractured rib bone, a broken jaw, ripped-out toenails and skin burns.

13. The source reports that Mr. Abdullah's trial before the State security chamber of the Federal Supreme Court in Abu Dhabi started on 15 January 2016. Five very brief hearings took place, each lasting approximately five minutes, during which the confessions extracted under torture were admitted as evidence. Several defendants were judged during the same hearing. Mr. Abdullah and his lawyers were allowed to submit written statements only, not to make oral pleadings.

14. The source submits that the Court sentenced Mr. Abdullah on 31 October 2016 to life imprisonment on charges of providing classified information about the oil production with maps of oil- and gas fields, in addition to setting up an international group intended to be a branch of Hizbullah, without an official licence.

15. The source recalls that since the trial took place before the Supreme Federal Court, the sentence was definitive and could not be appealed. On 29 November 2016, Federal Law No. 11/2016 was implemented, which, in particular, introduced an appellate procedure for cases relating to State security. However, the law did not have a retroactive effect and Mr. Abdullah could not benefit from it.

b. Analysis of violations

16. The source affirms that in the present case, Mr. Abdullah's interrogation and deprivation of liberty fall under categories I and III as classified by the Working Group.

17. The source describes that Mr. Abdullah was deprived of his liberty in violation of due process rights and in the absence of minimum guarantees of fair trial. In particular, he was arrested in the absence of an arrest warrant issued by the court, and the reasons for his arrest were communicated neither to him nor to his relatives.

18. The source indicates that Mr. Abdullah was subjected to enforced disappearance for 14 months with no access to legal counsel and with no recourse to a judicial authority, thus being prevented from challenging the lawfulness of his detention. Those measures are in clear violation of principles 10 and 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and articles 9, 10 and 11 of the Universal Declaration of Human Rights.

19. Moreover, the source insists that the prolonged incommunicado and solitary confinement and the torture inflicted on Mr. Abdullah are in violation of the obligations of the United Arab Emirates under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and principle 6 of the Body of Principles, as well as under article 2 of the Code of Criminal Procedure of the United Arab Emirates. Accounts of torture against Mr. Abdullah and other detainees in the case were not investigated by judicial authorities.

20. The source also submits that Mr. Abdullah was allowed communication with Lebanese consular officials only once, in late 2018, two years after he was sentenced. This is a clear violation of the Vienna Convention on Consular Relations, to which the United Arab Emirates is a party and which gives the right to any foreigner deprived of liberty abroad to have access to the consular authorities of his or her country of origin.

21. Lastly, the source recalls that the impossibility of appealing a sentence contradicts the basic principles of international standards for a fair trial, in particular article 8 of the Universal Declaration of Human Rights.

22. The source therefore concludes that Mr. Abdullah's detention is arbitrary under categories I and III.

Response from the Government

23. On 23 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 19 February 2020, detailed information about the situation of Mr. Abdullah and any comments on the source's allegations. Moreover, the Working Group called upon the Government to ensure Mr. Abdullah's physical and mental integrity.

24. The Government replied on 19 February 2020. According to the Government, Mr. Abdullah was arrested on 12 October 2014, in accordance with the legal procedures in force in the United Arab Emirates. He was informed of the reason for his arrest and an arrest warrant was produced, which he was able to study in detail, read and understand. He was told which authority was carrying out the arrest and the location in which he would be held.

25. According to the Government, Mr. Abdullah was referred to the competent prosecutor on 10 January 2015, and was brought before the Federal Supreme Court on 16 December 2015 on charges of setting up an illegal group on State territory with a view to undermining national security and stability.

26. The Government claims that Mr. Abdullah received a fair and independent trial before a competent court. All the court sessions and proceedings of his trial were held in public. Moreover, the charges were read out in public and in his presence, and he was able to examine them in detail. The judge allowed him to comment on the charges against him during the trial and granted him the right to defend himself.

27. Under the laws of the United Arab Emirates, all criminal defendants have the right to appoint a lawyer in their defence. This is in line with the principle of the right to defence, which is enshrined in domestic legislation for all persons without distinction or discrimination. If an accused person is unable to appoint a lawyer for him- or herself, one is appointed by the court at no charge. In the present case, a lawyer was appointed by the court to defend Mr. Abdullah.

28. In the Government's version of events, on 31 October 2016, the Federal Supreme Court handed down a life sentence against Mr. Abdullah and ordered that he be expelled from the country upon completion of his sentence.

29. According to the Government, Mr. Abdullah is currently serving his sentence in a penitentiary institution that is monitored and overseen by the Office of Public Prosecution. The institution meets all the standards required under international instruments for the well-being of prisoners in terms of food, environment, accommodation and ventilation.

30. The Government adds that penitentiary institutions in the United Arab Emirates provide the medical care necessary to ensure the well-being and health of inmates. In addition, regular medical tests are conducted on inmates to ensure they are not suffering from any diseases. They are continually monitored by specialist doctors inside the institution itself and are immediately referred for treatment if medical intervention is required.

31. 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. Abdullah's relatives.

Further comments from the source

32. The source states that the evidence supplied by the Government, or lack thereof, supports the source's account of events concerning Mr. Abdullah's detention.

33. Concerning the date of arrest, the source points out that Mr. Abdullah's relatives, who were present at the time of his arrest, asserts that it occurred on 26 September 2013, while the Government has offered no documentary evidence, such as a copy of the arrest warrant, proving that the arrest took place on 12 October 2014.

34. With respect to the allegation of Mr. Abdullah's incommunicado detention, according to the source, Mr. Abdullah's relatives assert that, other than the one telephone call that they received after his arrest, they did not hear from him or know his whereabouts for at least 14 months. The Government has supplied visitation and telephone records, which show no contact between Mr. Abdullah and his relatives prior to 10 November 2016. One entry is dated to 5 January 2012, but this is clearly a mistake as this date precedes his arrest. The records thus indicate a gap of over two years between the date of arrest and his first contact with relatives, even assuming the Government's date of arrest to be correct. The Government does not state in its response that they are partial records, and refers to what it has supplied as "the record of calls and visits". The evidence supplied by the

Government therefore tends to confirm the relatives' contention that Mr. Abdullah was held incommunicado for well over a year.

35. Lastly, the source also alluded to the question of due process and fair trial rights. While the Government submits in its response that Mr. Abdullah's arrest and detention were carried out "in accordance with the law and legal procedures of the United Arab Emirates", it provided little to no detail as to the circumstances surrounding his detention. It did not provide custodial records proving when Mr. Abdullah was referred to each authority and, as noted above, has not supplied a copy of a search warrant or arrest warrant, wherein it finds the legal basis. The Government also states in its response that the court appointed Mr. Abdullah's lawyer at the beginning of the trial, which supports the source's contention that he did not have access to legal counsel during his pretrial detention. Moreover, the Government did not provide trial transcripts proving that Mr. Abdullah was given the opportunity to speak in court. The source reiterates that when Mr. Abdullah's lawyer attempted an oral defence of his client in court, the judge stopped him and ordered him to submit his arguments in writing.

Discussion

36. The Working Group thanks the source and the Government for their submissions in relation to Mr. Abdullah's deprivation of liberty.

37. 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 law 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

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

39. The source submits, and the Government has failed to substantiate its claim to the contrary, that Mr. Abdullah was not presented with an arrest warrant or informed of the reasons for his arrest at the time of arrest by the State Security Directorate on 26 September 2019.

40. 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, but rather 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.¹

41. 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.² 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.

42. The Working Group also finds that, in order to invoke a legal basis for deprivation of liberty, the authorities should have informed Mr. Abdullah of the reasons for his arrest,

¹ For example, opinions No. 93/2017, para. 44; No. 10/2018, paras. 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.

² 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.

at the time of arrest, and informed him of the charges against him promptly.³ 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.⁴

43. The source further maintains, and the Government has not substantiated its claim to the contrary, that Mr. Abdullah was subjected to enforced disappearance and incommunicado detention for 14 months from 26 September 2013. 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.⁵ The Working Group therefore refers the present case to the Working Group on Enforced or Involuntary Disappearances.

44. 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.

45. The Working Group observes that thereupon Mr. Abdullah 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.⁶ 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.⁷ 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.⁸

46. The Working Group further observes that Mr. Abdullah 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.⁹ Under 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 (A/HRC/30/37, annex), 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

³ 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.

⁴ See also article 14 (1) and (3) of the Arab Charter on Human Rights.

⁵ 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.

⁶ Opinions No. 57/2016, paras. 110–111; No. 2/2018, para. 49; No. 83/2018, para. 47; 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.

⁷ 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.

⁸ See also article 14 (1) and (5) of the Arab Charter on Human Rights.

⁹ See also articles 14 (1) and (6) and 23 of the Arab Charter on Human Rights.

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.¹⁰

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

Category III

48. Turning to category III, the Working Group notes that Mr. Abdullah did not appear to have had access to legal counsel of his choice from the time of his arrest by the State Security Directorate on 26 September 2013 to the start of his trial on 15 January 2016.

49. In the Working Group's view, the authorities failed to respect Mr. Abdullah'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 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, 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 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.¹¹

50. The Working Group also notes the Government's failure to observe Mr. Abdullah'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. Abdullah was forced to call his relatives five days after his arrest to ask them not to inform the Lebanese authorities; he was inexplicably only once allowed to communicate with the Lebanese consular officials, in late 2018: in other words, five years after his arrest and two years after his life sentence.

51. The Working Group further notes the denial of Mr. Abdullah's due process right to be visited by and to correspond with his relatives 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).¹²

52. In the Working Group's view, Mr. Abdullah's pretrial detention for 30 months in prison 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.¹³ Furthermore, there can be no justification for his prolonged trial, during which time he 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.¹⁴

¹⁰ 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.

¹¹ See also articles 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

¹² Opinions No. 35/2018, para. 39; No. 44/2019, paras. 74–75; and No. 45/2019, para. 76.

¹³ See also article 16 of the Arab Charter on Human Rights.

¹⁴ See also article 13 (1) of the Arab Charter on Human Rights.

53. The Working Group also expresses its grave concern at the prima facie allegation of torture during Mr. Abdullah's pretrial detention, including 30-month solitary confinement and physical injuries that resulted in a fractured rib bone, a broken jaw, extracted toenails and skin burns. The medical report submitted by the Government alludes to medical examinations from 17 November 2016, years into his detention and after he had been sentenced to life imprisonment. The Government also offered no explanation to rebut the allegation that the authorities filmed Mr. Abdullah's relatives naked, a serious human rights violation in and of itself, to coerce Mr. Abdullah into making false confessions.

54. With respect to Mr. Abdullah's 30-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 some of the harmful psychological effects of isolation can become irreversible (A/63/175, para. 56, and A/66/268, para. 61),¹⁵ 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.

55. In the Working Group's view, the competent authorities not only failed to proceed to a prompt and impartial investigation, but also invoked a statement extracted under torture as evidence in a trial that resulted in conviction and a life sentence.

56. 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).¹⁶

57. 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,¹⁷ has been violated.¹⁸ The Government's failure to take remedial measures also violates articles 12, 13 and 14 (1) of the Convention against Torture,¹⁹ 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.

58. 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.²⁰

59. Furthermore, the Working Group considers that Mr. Abdullah's trial before the State security chamber of the Federal Supreme Court in Abu Dhabi did not meet international standards. In addition to the failure to order a prompt and impartial investigation of allegations of torture and the admission of a statement extracted under torture as evidence, the court held just five five-minute hearings before convicting and sentencing him to life imprisonment on the basis of written submissions and no oral pleadings.

60. 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 the current mechanism whereby judges, including the president and judges of

¹⁵ 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.

¹⁶ Opinions No. 21/2017, para. 48, and No. 76/2017, para. 76.

¹⁷ See also article 8 (1) of the Arab Charter on Human Rights.

¹⁸ 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.

¹⁹ See also article 8 (2) of the Arab Charter on Human Rights.

²⁰ See opinions No. 48/2016, No. 3/2017, No. 6/2017, No. 29/2017 and No. 39/2018.

the Federal Supreme Court, were appointed by the highest representatives of the executive branch lacked transparency and might expose judges to undue political pressure (A/HRC/29/26/Add.2, para. 35). The Special Rapporteur also raised concerns that so-called State security crimes were considered in first and last instance by the State security chamber of the Federal Supreme Court with no possibility of review by a higher tribunal – as the Federal Supreme Court was the highest tribunal in the United Arab Emirates – in breach of international human rights standards (*ibid.*, para. 61).

61. As the Federal Supreme Court acts as the court of first and last instance, there is no avenue of appeal to review any substantive or procedural errors that it may make. The absence of a right to review by a higher tribunal violates the right to an effective remedy and the right to a fair trial under articles 8, 10 and 11 (1) of the Universal Declaration of Human Rights. The Working Group has in the past expressed concern in relation to this issue and found that the absence of a right to appeal decisions of the Federal Supreme Court violates the right to a fair trial.²¹ The present case is therefore referred to the Special Rapporteur on the independence of judges and lawyers, for further consideration.

62. Given all of 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. Abdullah's deprivation of liberty an arbitrary character, falling within category III.

Additional observations

63. The Working Group wishes to comment on other serious allegations made in the present case, namely the grave human rights violations suffered by Mr. Abdullah's relatives in connection with his deprivation of liberty. In April 2014, while Mr. Abdullah was still being subjected to enforced disappearance at a secret site, the Department of Naturalization and Residency in Abu Dhabi summoned his relatives to be filmed naked so that their photos could be used to coerce him into making false confessions. On 28 September 2015, the State Security Directorate raided the house of another relative's and seized electronic devices including laptops and mobile phones; yet another relative was arrested and held incommunicado at a secret location for 21 days and held in solitary confinement for 91 days without being informed of the reasons for detention or being allowed access to a lawyer, before being deported to Lebanon on 24 November 2015.

64. The Working Group is alarmed at these grave allegations and, as the Government did not address them, accepts them as established as part of the source's *prima facie* case. Under no circumstances is it ever acceptable to subject relatives of a detained person to such grave human rights abuses. The Government must conduct a thorough investigation into these alleged incidents and, if the investigation reveals the allegations to be well-founded, prosecute the offenders. The Working Group has decided to include these allegations in its referral of the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

65. 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.²² 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 imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.²³

Disposition

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

²¹ Opinions No. 34/2011, para. 11; No. 60/2013, para. 23; and No. 21/2017, para. 54.

²² See, for example, opinions No. 21/2017, No. 47/2017, No. 58/2017, No. 76/2017, No. 30/2018, No. 28/2019 and No. 55/2019.

²³ 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.

The deprivation of liberty of Abdullah Hani Abdullah, 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.

67. The Working Group requests the Government of the United Arab Emirates to take the steps necessary to remedy the situation of Mr. Abdullah 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.

68. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Abdullah 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. Abdullah.

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

70. 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.

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

Follow-up procedure

72. 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. Abdullah has been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Abdullah;
- (c) Whether an investigation has been conducted into the violation of Mr. Abdullah'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.

73. 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.

74. 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.

75. 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.²⁴

[Adopted on 1 May 2020]

²⁴ Human Rights Council resolution 42/22, paras. 3 and 7.