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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. 34/2020 concerning Abdullah Awad Salim Al Shamsi (United Arab Emirates)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.
2. In accordance with its methods of work (A/HRC/36/38), on 9 December 2019 the Working Group transmitted to the Government of the United Arab Emirates a communication concerning Abdullah Awad Salim Al Shamsi. The Government replied to the communication on 28 January 2020. The State is not a party to the International Covenant on Civil and Political Rights.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
 - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);
 - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);
 - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);
 - (d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);
 - (e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

Submissions

Communication from the source

4. **Mr. Abdullah Awad Salim Al Shamsi** is an Omani national born in 1998. At the time of the arrest, Mr. Al Shamsi was a student attending high school in the UAE. He usually resides in El Ein district, Abu Dhabi, United Arab Emirates (UAE).

a. Arrest and detention

5. The source reports that on 18 August 2018 at 11 am, Mr. Al Shamsi was returning from Industrial Area, Abu Dhabi to his home in El Ein district when State Security Forces arrested him on the road near Green Mubazzarah, Al Ein, Abu Dhabi. They did not show any arrest warrant.

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

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

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

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

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

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

12. According to the source, Mr. Al Shamsi is suffering from a malignant tumour in his remaining kidney. Years prior to his arrest he had his other kidney removed and was subsequently treated for cancer. At that time, he was unable to study in school so continued his studies at home during the long treatment period. Mr. Al Shamsi also suffers from a psychiatric condition, and has met with the prison doctors. However, his condition has worsened recently. Reportedly, he had been subjected to "hypnosis sessions" once at Khalifa Medical Hospital, while the aim of and methodology used in such sessions is unclear.

b. Analysis of violations

i. Category I

c. Arbitrary arrest

13. The source argues that on 18 August 2018, Mr. Al Shamsi was arrested without a warrant whilst coming back to his residence from Industrial Area, Al Ein. He was not provided with any reason for his arrest and there do not appear to be any circumstances surrounding his arrest which would give reasonable cause for an arrest in flagrante delicto. As such, his detention was not grounded in law, in violation of Mr. Al Shamsi's rights under articles 3 and 9 of the Universal Declaration of Human Rights, principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ("Body of Principles") and article 14(1) of the Arab Charter.

d. Right to be informed of the charges

14. According to the source, during the first six months of his detention, Mr. Al Shamsi was forcibly disappeared and was allegedly not informed of the charges against him, in violation of his right to be promptly informed of the reasons for the arrest, and the charges being brought against him, under article 99 of Federal Law No. (35) of the 1992 Concerning The Criminal Procedural Law ("UAE Criminal Procedural Law"), Guideline 17 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 ("Basic Principles"), principle 10 of the Body of Principles, and 14(2) of the Arab Charter. It remains unclear as to whether or not Mr. Al Shamsi has been formally charged yet.

e. Right to be considered a person before the law

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

f. Right to habeas corpus and the right to be brought promptly before a judicial authority

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

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

ii. Category III

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

g. Right to legal assistance

19. The source argues that despite his prolonged detention, Mr. Al Shamsi remains unable to meet with legal counsel, has not been provided with access to his case file, and believes that he has not formally been informed of the charges against him. The source considers that this is in violation of Mr. Al Shamsi's right to have the attendance of legal counsel during

the investigatory stage of proceedings under article 100 of UAE Criminal Procedural Law, as well as violating the essence 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, and principle 9 of the Basic Principles. Moreover, Mr Al Shamsi's initial forced disappearance inherently negated the essence of the right to legal assistance, preparation for defence and free communication with legal counsel under article 11(1) of the Universal Declaration of Human Rights.

h. Access to consular assistance

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

i. Allegations of torture and coerced confessions

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

22. The source submits that the torture occurred as a means of forcing Mr. Al Shamsi to confess to working with his uncle for the benefit of Qatar and against the UAE. At the first hearing of the trial of Mr. Al Shamsi's uncle, the prosecutor advised Mr. Al Shamsi's uncle that the confessions of Mr. Al Shamsi incriminate himself and his uncle. Therefore, there is a high risk that the confessions extracted from Mr. Al Shamsi under torture will be invoked as evidence in the court proceedings of Mr. Al Shamsi and his uncle, in violation of article 15 of the UN Convention against Torture and Guideline 12 of the Basic Principles.

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

Response from the Government

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

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

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

27. The Government claims that Mr. Al Shamsi was neither arbitrarily detained, held in solitary confinement, tortured, physically abused nor deprived of his personal rights. Instead, he was housed with other prisoners in one of the qualified penal establishments that meet all the required standards to ensure the safety of prisoners in terms of food, environment, air conditioning and ventilation.

¹ The source refers to *Francisco Dionel Guerrero Larez v Bolivarian Republic of Venezuela*, 2015, Decision of the UN Committee against Torture No. 456/2011.

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

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

Further comments from the source

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

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

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

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

34. The source likewise maintains that the Government has failed to provide evidence which substantiates its claims that Mr Al Shamsi was not held in solitary confinement.

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

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

37. The source further indicates that the Government did not address the allegation that Mr. Al Shamsi had been denied access to legal counsel and consular assistance in violation of article 100 of criminal procedural code, articles 10 and 11 (1) of the Universal Declaration of Human Rights, article 16 of the Arab Charter, principle 9 of the Basic Principles, article 36(2) of the Vienna Convention on Consular Relations and principle 13(2) of the Body of Principles.

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

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

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

Discussion

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

42. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a *prima facie* case for breach of international 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 (see A/HRC/19/57, para. 68).

i. Category I

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

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

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

46. International law includes the right to be presented with an arrest warrant to ensure the exercise of effective control by a competent, independent and impartial judicial authority, which is procedurally inherent in the right to liberty and security and the prohibition of arbitrary deprivation under articles 3 and 9 of the Universal Declaration of Human Rights as well as principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment³ The Working Group has been presented with no valid grounds such as arrest *in flagrante delicto*, to justify exception to this principle in the present case.

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

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

49. The Working Group recalls that enforced disappearance constitutes a particularly aggravated form of arbitrary detention as it places the person outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights.⁶ The Working Group therefore refers the present case to the Working Group on Enforced or Involuntary Disappearances.

² See, for example, opinions No. 10/2018, par. 45-46; No. 36/2018, paras. 40; No. 46/2018, par. 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; No. 46/2019, para. 51.

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

⁴ See, 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; No. 46/2019, para. 51.

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

⁶ See 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.

50. The Working Group and other experts also stated in the Joint study on global practices in relation to secret detention in the context of countering terrorism, 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*.⁷ In accordance with Human Rights Council resolution 37/3, the Working Group stresses that no one shall be held in secret detention, and urges the Government of the United Arab Emirates to close down promptly all secret detention facilities.⁸

51. The Working Group observes that thereupon Mr. Al Shamsi was not brought promptly before a judge, within 48 hours of the arrest barring absolutely exceptional circumstances, as per the international standard set out in the Working Group's jurisprudence.⁹ Furthermore, his pre-trial 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 is 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.¹⁰ Therefore, the Government has violated article 9 of the Universal Declaration as well as principles 11, 37 and 38 of the Body of Principles.¹¹

52. The Working Group further observes that Mr. Al Shamsi was not afforded the right to take proceedings before a court so that it may decide without delay on the lawfulness of his detention in accordance with articles 3, 8 and 9 of the Universal Declaration and principles 11, 32 and 37 of the Body of Principles.¹² The UN 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) affirms that 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 (paras. 2-3). In addition, the Working Group notes that judicial oversight of the deprivation of liberty is a fundamental safeguard of personal liberty and is essential in ensuring that detention has a legal basis.¹³

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

ii. Category III

54. The Working Group notes that Mr. Al Shamsi does not appear to have had access to legal counsel of his choice for 20 months from the time of his arrest by the State Security Directorate (SSD) on 18 August 2018.

55. In the Working Group's view, the authorities failed to respect Mr. Al Shamsi's right to legal assistance at all times, which is inherent in the right to liberty and security of person as well as 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 has stated in principle 9 and guideline 8 of its Basic Principle (A/HRC/30/37), 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; nor should

⁷ See A/HRC/16/47, para. 54.

⁸ A/HRC/RES/37/3, paras. 8, 9 and 16.

⁹ See opinions No. 11/2019, para. 63; No. 20/2019, para. 66; No. 26/2019, para. 89; No. 30/2019, para. 30; No. 36/2019, para. 36; No. 42/2019, para. 49; No. 51/2019, para. 59; No. 56/2019, para. 80; No. 76/2019, para. 38; and No. 82/2019, para. 76.

¹⁰ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 38. See also Report of the Working Group on Arbitrary Detention, A/HRC/19/57, (26 December 2011), paras. 48-58.

¹¹ See also articles 14 (1) and (5) and 23 of the Arab Charter on Human Rights.

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

¹³ See 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.

access to legal counsel be unlawfully or unreasonably restricted (paras. 12-15 and 67-71). The Working Group therefore finds serious violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights as well as principles 15, 17 and 18 of the Body of Principles.¹⁴

56. The Working Group also notes the Government's failure to observe Mr. Al Shamsi's rights, including the right to be informed of his right to consular assistance under article 36 (1) (b) of the Vienna Convention on Consular Relations. This and other violations of the rights guaranteed under article 36 (1) (a), (b) and (c) of the Vienna Convention on Consular Relations constitute grave violations of rights to due process and to a fair trial under articles 10 and 11 (1) of the Universal Declaration and principle 16 (2) of the Body of Principles. In fact, Mr. Al Shamsi's parents notified the Omani embassy the day after his disappearance and the Omani consular officials sought to visit and have access to him only to be turned back by the Government.

57. The Working Group further notes the denial of Mr. Al Shamsi's due process right to be visited by and to correspond with his family and to be given adequate opportunity 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).¹⁵

58. In the Working Group's view, Mr. Al Shamsi's ongoing pretrial detention for 20 months in prison has undermined the presumption of innocence guaranteed under articles 11 (1) of the Universal Declaration as well as principle 36 (1) of the Body of Principles.¹⁶ Furthermore, there can be no justification for prolonged pretrial detention for 20 months with no prospect for trial, during which time he remains 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.¹⁷ He has yet to be informed of the charges against him.¹⁸

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

60. With respect to Mr. Al Shamsi's 6-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 or prolonged solitary confinement in excess of 15 days, whereby some of the harmful psychological effects of isolation can become irreversible (A/63/175, para. 56 and A/66/268, para. 61)¹⁹ or *incommunicado* detention in a secret place may amount to torture as described in article 1 of the Convention against Torture (A/56/156, para. 14).

61. The Working Group observes that the competent authorities not only failed to conduct a prompt and impartial investigation into the allegations of torture, but also failed to take action to prevent the statement extracted under torture to be used in during the proceedings against Mr. Al Shamsi as well as his uncle.

62. In this respect, the Working Group recalls that, after her official visit to the United Arab Emirates in 2014, the Special Rapporteur on the independence of judges and lawyers reported that more than 200 complaints relating to torture and/or ill-treatment had been presented before judges and/or prosecutors over the previous few years, but that those complaints had not been taken into account in judicial proceedings and no independent investigation into them had allegedly taken place (A/HRC/29/26/Add.2, para. 53).²⁰

¹⁴ See also articles 12, 13 (1) and 16 (2) and (3) of the Arab Charter on Human Rights.

¹⁵ See opinions No. No. 35/2018, para. 39; No. 44/2019, paras. 74-75; and No. 45/2019, para. 76.

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

¹⁷ See also article 13 (1) of the Arab Charter on Human Rights.

¹⁸ See also articles 14 (3) and 16 (1) of the Arab Charter on Human Rights.

¹⁹ Rule 44 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) likewise refers to solitary confinement for a time period in excess of 15 consecutive days as prolonged solitary confinement.

²⁰ See opinions No. 21/2017, para. 48 and No. 76/2017, para. 76.

63. The Working Group finds that the source presented credible allegations that the absolute prohibition of torture, enshrined in article 5 of the Universal Declaration of Human Rights, and articles 2 (1)16 (1) of the Convention against Torture²¹ has been violated.²² The Government's failure to take remedial measures also violates articles 12, 13 and 14 (1) of the Convention against Torture²³ and principle 33 of the Body of Principles. Accordingly, the Working Group refers the present case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for further consideration.

64. The Working Group further recalls that torture also undermines 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. 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.²⁴

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

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

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

68. In its 29-year history, the Working Group has found the United Arab Emirates in violation of its international human rights obligations in at least 26 cases.²⁵ 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.²⁶

Disposition

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

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

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

²¹ See also article 8 (1) of the Arab Charter on Human Rights.

²² See also principles 1 and 6 of the Body of Principles and rule 1 of the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). The prolonged solitary confinement in particular violates rules 43-45 of the Nelson Mandela Rules.

²³ See also article 8 (2) of the Arab Charter on Human Rights.

²⁴ See opinions No. 48/2016, No. 3/2017, No. 6/2017, No. 29/2017 and No. 39/2018.

²⁵ See, for example, opinions No. 28/2017, No. 47/2017, No. 58/2017, No. 76/2017, No. 30/2018, No. 28/2019 and No. 55/2019.

²⁶ See A/HRC/13/42 (20 May 2010), 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; No. 87/2018, para. 80.

71. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al Shamsi immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law. In the current context of the global coronavirus disease 2019 (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 his immediate release.

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

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

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

Follow-up procedure

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

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

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

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

78. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.²⁷

[Adopted on 1 May 2020]

²⁷ See Human Rights Council resolution 42/22, paras. 3 and 7.