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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-ninth session, 21-25 August 2017

Opinion No. 58/2017 concerning Taysir Hasan Mahmoud Salman (United Arab Emirates)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed that mandate and most recently extended it for a three-year period in its resolution 33/30 of 30 September 2016.

2. In accordance with its methods of work (A/HRC/33/66), on 19 May 2017 the Working Group transmitted to the Government of the United Arab Emirates a communication concerning Taysir Hasan Mahmoud Salman. The Government replied to the communication on 17 July 2017. 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. Taysir Hasan Mahmoud Salman is a 44-year-old Jordanian reporter, who usually resides in Abu Dhabi. He is married.

Arrest and detention

5. According to the source, Mr. Salman was supposed to fly to Jordan on vacation on 3 December 2015 but was prevented from boarding his flight by the airport authorities. He was subsequently able to return to his home but, 10 days later, he was reportedly contacted by the Criminal Investigation Department of Abu Dhabi, which requested that he come to their headquarters to be informed of the reasons why he was not allowed to leave the country. Upon his arrival at the headquarters, at around 7 p.m. that day, Mr. Salman was arrested by members of the State Security Department and taken to an unknown location.

6. The source reports that Mr. Salman was detained incommunicado and in solitary confinement until 18 February 2016, when he was first allowed to telephone his family in Jordan and inform them that he was detained at the Al Wathba prison in Abu Dhabi. Until then, his whereabouts had remained unknown. During that call, Mr. Salman told his family that he believed he had been detained because of a Facebook post he had published in 2014, before moving to the United Arab Emirates, in which he had criticized the support of the United Arab Emirates for the actions of Egypt in Gaza. Mr. Salman indicated to his family that the State security agents only interrogated him about the post.

7. According to the source, on 26 February 2016, Mr. Salman was presented for the first time to the State Security Prosecutor. However, he was not charged and remained under interrogation until 16 October 2016. On 27 October 2016, almost a year after his arrest, he was reportedly presented for the last time to the Prosecutor and charged with publishing online information with the "intent to ridicule or damage the reputation, prestige or stature of the State or any of its institutions or its President, Vice-President, any of the rulers of the Emirates, their crown princes, or the deputy rulers of the Emirates, the State flag, the national peace, its logo, national anthem or any of its symbols", under article 29 of Federal Decree-Law No. (5) of 2012 on combating cybercrimes.

8. From the time of his arrest until 26 February 2016, Mr. Salman reportedly was not presented to a judicial authority and, until 27 October 2016, he had not been formally charged. Throughout his detention, he was prohibited from receiving visits from his family and had no access to a lawyer. However, he did receive three visits by representatives of the Jordanian embassy, who were reportedly only able to visit him after exerting strong efforts to convince the Emirati authorities.

9. The trial of Mr. Salman began on 18 January 2017 before the Federal Appeal Court. In this respect, the source notes that, in accordance with Decree-Law No. 11 of 2016, the competence over national security cases was transferred from the State Security Chamber of the Federal Supreme Court to the Federal Appeal Court.

10. According to the source, on 15 March 2017, Mr. Salman was sentenced to three years in prison and 300,000 Dirhams. The Court further sentenced him to shut down his social media accounts and to deport him to Jordan once his sentence had been served. At the time of the submission by the source, Mr. Salman was still awaiting the official notification of the judgment in order to appeal his sentence.

Arbitrary nature of Mr. Salman's detention

11. In the light of the above information, the source submits that the detention of Mr. Salman is arbitrary, falling under categories I, II and III.

Category I — absence of legal basis justifying the deprivation of liberty

12. According to the source, Mr. Salman was detained in secret for a period of more than two months. He was presented to a judicial authority on 26 February 2016, more than two months after his detention, and was only informed of the charges against him almost a

year after his arrest. Mr. Salman was reportedly placed outside the protection of the law for that period and was thus deprived of his liberty without legal basis from his arrest until he was charged in October 2016.

13. The source therefore submits that his detention is arbitrary under category I.

Category II — deprivation of liberty results from the exercise of a fundamental freedom

14. The source underlines that Mr. Salman's interrogation focused on a Facebook post he had published, in which he had criticized the support of the United Arab Emirates for the action of Egypt in Gaza, without calling for or inciting to any form of violence, hostility or discrimination. According to the source, Mr. Salman's peaceful criticism was considered as "insulting and undermining the state's prestige and reputation and insulting one of its symbols", under article 29 of the Decree-Law on combating cybercrimes, which clearly shows that he was tried and imprisoned solely for exercising his right to freedom of expression.

15. The source recalls that, in his report to the Human Rights Council, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression reiterated that "the right to freedom of expression includes expression of views and opinions that offend, shock or disturb. Moreover, as the Human Rights Council has also stated in its resolution 12/16, restrictions should never be applied, inter alia, to discussion of Government policies and political debate" (see A/HRC/17/27, para. 37).

16. As Mr. Salman's detention results from the exercise of his right to freedom of opinion and expression, the source therefore submits that his detention is arbitrary under category II.

Category III — non-observance of fair trial guarantees

Arbitrary arrest and secret detention

17. According to the source, Mr. Salman was arrested without a warrant and without being informed of the reasons for his arrest, in violation of article 9 of the Universal Declaration of Human Rights and of principle 11 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

18. Mr. Salman was subsequently reportedly detained in secret for 80 days, during which time he was unable to contact his family or a lawyer. The source submits that this type of detention places the detainee outside the protection of the law and as such is in violation of article 6 of the Universal Declaration of Human Rights, which provides that everyone has the right to recognition as a person before the law. Furthermore, his secret detention is in direct contravention of principle 16 of the Body of Principles.

Secret detention and solitary confinement as a form of torture

19. The source furthermore argues that the long period of time during which Mr. Salman was held in secret detention and in solitary confinement amounts to a form of torture and cruel, inhuman and degrading treatment.

20. In this respect, the source refers to repeated statements by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, that prolonged solitary confinement — i.e. when a person is detained in isolation in excess of 15 days — amounts to torture and ill-treatment (see A/66/268, para. 61, and A/63/175, para. 56). Furthermore, the Special Rapporteur has declared that prolonged incommunicado detention in a secret place may amount to torture as described in article 1 of the Convention against Torture (see A/56/156, para. 14).

Violation of the right to be brought promptly before a judicial authority

21. Mr. Salman was reportedly first brought before a judicial authority on 26 February 2016, over two months after his arrest. According to the source, he was therefore unable to challenge the legality of his detention during that period and was thus denied his right to habeas corpus in violation of principle 11 of the Body of Principles.

22. In the light of the number and gravity of the alleged violations of international norms relating to the right to a fair trial, the source submits that the deprivation of liberty of Mr. Salman is arbitrary, falling under category III.

Response from the Government

23. On 19 May 2017, the Working Group transmitted the allegations from the source to the Government under its regular communication procedure, requesting the Government to provide detailed information by 18 July 2017 about the current situation of Mr. Salman and any comment on the source's allegations. The Working Group also requested the Government to clarify the factual and legal grounds justifying his continued detention and to provide details regarding the conformity of the relevant legal provisions and proceedings with international law. Moreover, the Working Group called upon the Government to ensure Mr. Salman's physical and mental integrity.

24. In its response dated 17 July 2017, the Government submits that, on 13 December 2015, Mr. Salman was arrested in accordance with the rules and laws in force in the United Arab Emirates after being informed of the reason for his arrest and of the authority carrying out the arrest and the search. He was also provided with regular health care.

25. According to the Government, Mr. Salman was referred to the competent office of the prosecution on 28 February 2016, which informed him of the charges against him. On 19 October 2016, the prosecution referred the case to court, under the charge of creating and managing a website and using it to mock and ridicule the United Arab Emirates, its history and its symbols, and for circulating and sharing posts on social media and other websites, in violation of the Decree-Law on combating cybercrimes. He was allowed to appoint a defence attorney.

26. On 18 January 2017, the first hearing of his trial was reportedly held in public and was attended by the media, members of civil society, Mr. Salman's lawyer and representatives of the Jordanian embassy, including the Consul and the public relations officer. The charges against Mr. Salman were read in public, the defendant was provided with his case file, and all of his rights to defence before the court were guaranteed in coordination with his lawyer.

27. On 15 March 2017, the State Security Chamber of the Abu Dhabi Federal Appeal Court reportedly sentenced Mr. Salman to three years in prison, a fine of 500,000 Dirhams, and deportation after having fully served his sentence. The Court further decided to confiscate the communication devices seized, close the website used, remove the incriminating information, and that the defendant should incur the prescribed judicial expenses.

28. The Government further submits that, on 19 June 2017, the Federal Supreme Court rejected Mr. Salman's appeal and the verdict and sentences against him became final.

Further comments from the source

29. The response from the Government was transmitted to the source for its further comments on 17 July 2017. In its response of 24 July 2017, the source notes that the Government failed to refute any of its original allegations.

30. The source notes the statement by the Government that Mr. Salman was first brought before the public prosecution on 28 February 2016, when he was reportedly informed of the charges brought against him. The source reiterates that Mr. Salman's right to be brought promptly before a judge was therefore violated, and the Government did not refute the allegation that Mr. Salman was held incommunicado during that period.

31. The source adds that the Government further confirmed the charges brought against Mr. Salman under the Decree-Law on combating cybercrimes, thereby establishing that his detention is a result of his exercising the fundamental right to freedom of expression.

32. In the light of the additional information provided by the Government, the source maintains that Mr. Salman's detention is arbitrary and falls under categories I, II and III.

Discussion

33. The Working Group has in its jurisprudence established the ways in which it deals with evidentiary issues. If the source has established a prima facie case for breach of international requirements constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations (see A/HRC/19/57, para. 68).

34. The Working Group recalls that, where it is alleged that a person has not been afforded, by a public authority, certain procedural guarantees to which he or she was entitled, the burden of proof should rest with the public authority, because the latter is in a better position to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law.[1]

35. The Working Group wishes to reaffirm that any national law allowing deprivation of liberty should be made and implemented in compliance with the relevant international provisions set forth in the Universal Declaration of Human Rights, and other relevant international legal instruments. Consequently, even if the detention is in conformity with national legislation, the Working Group must assess whether such detention is also consistent with the relevant provisions of international human rights law.[2]

36. The Working Group considers that it is entitled to assess the proceedings of a court and the law itself to determine whether they meet international standards.[3] However, the Working Group reiterates that it has consistently refrained from taking the place of the national judicial authorities or acting as a kind of supranational tribunal when it is urged to review the application of national law by the judiciary.[4]

37. At the outset, the Working Group notes with concern a series of cases over the past few years in which the Government has subjected its citizens and foreign nationals to secret detention or incommunicado detention.[5] The Working Group recalls that such practices of incommunicado detention effectively place the victims outside the protection of the law and deprive them of any legal safeguards. More specifically, the Working Group has heard many complaints of arbitrary deprivation of liberty of foreigners by the agents of the State Security Department in the context of the Arab Spring and its aftermath. For example, the Working Group notes that there are disturbing similarities between the factual patterns of the present case and those of opinions No. 51/2015 (on the detention of five Libyan nationals), No. 35/2015 (on the detention of a Qatari national), No. 56/2014 (on the detention of 13 Egyptian nationals) and No. 21/2017 (on the detention of a Syrian national), in which the Working Group found the deprivation of liberty to be arbitrary.

Category I

38. The Working Group will first determine whether it is clearly impossible to invoke any legal basis justifying Mr. Salman's arrest and detention between December 2015 and October 2016, rendering it arbitrary in accordance with category I.

39. While the Government states that Mr. Salman was arrested in accordance with law, it has failed to substantiate its statements in order to refute the source's prima facie allegations. In the present case, the Government has offered no documentary evidence, such as a copy of the arrest warrant, the case file or the record of court proceedings, which reportedly took place on 28 February 2016.

[1] See *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, pp. 639 and 660-661, para. 55; see also opinions No. 41/2013, para. 27; and No. 59/2016, para. 61.

[2] See opinions No. 20/2017, para. 37; No. 48/2016, para. 41; and No. 28/2015, para. 41.

[3] See opinion No. 33/2015, para. 80.

[4] See opinions No. 59/2016, para. 60; No. 12/2007, para. 18; No. 40/2005, para. 22; and No. 10/2002, para. 18.

[5] See opinions 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. 21/2017.

40. The Working Group therefore considers that Mr. Salman's arrest and prolonged detention by the State Security Department lack any plausible legal basis, in violation of article 9 of the Universal Declaration of Human Rights and principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, falling under category I.[6]

Category II

41. The source argues that Mr. Salman's arrest, trial and imprisonment for violating the Decree-Law on combating cybercrimes fall within category II, as they resulted from the legitimate exercise of his rights and freedoms.

42. According to the established practice of the Working Group, restrictions placed on freedom of expression by way of deprivation of liberty can only be justified when it is shown that the deprivation of liberty has a legal basis in national law, does not violate international law and is necessary to ensure respect for the rights or reputation of others, or for the protection of national security, public order, public health or morals, and is proportionate to the pursued legitimate aims.[7]

43. The source states, and the Government does not refute, that Mr. Salman was charged and convicted for his peaceful online criticism of government foreign policy, which allegedly damaged the reputation, prestige or stature of the State, in violation of article 29 of the Decree-Law on combating cybercrimes.

44. The Working Group recalls that holding and expressing opinions, including those that are not in accordance with official government policy, are protected by article 19 of the Universal Declaration of Human Rights.[8]

45. More specifically, as mentioned in paragraph 15 above, the Special Rapporteur on the right to freedom of opinion and expression has reiterated that "the right to freedom of expression includes expression of views and opinions that offend, shock or disturb". The Human Rights Council also stated in its resolution 12/16 that restrictions on discussion of government policies and political debate are not consistent with article 19 (3) of the Covenant.

46. The Working Group notes that, during the universal periodic review held on 28 January 2013, the United Arab Emirates delegation reaffirmed the country's commitment to the rule of law and respect for human rights and freedoms even in the matters of public order and national security (see A/HRC/23/13, para. 104).

47. The Working Group notes that Mr. Salman's online criticism of government policy falls within the boundaries of the right to expression of opinion, which is protected under article 19 of the Universal Declaration of Human Rights, article 29 (2) of which provides that the only legitimate limitations to the exercise of that right must be for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.[9]

48. In its jurisprudence with regard to the application of the principle of necessity and proportionality, the Working Group has earlier applied the four-prong test of: (a) whether the objective of the measure is sufficiently important to justify the limitation of a protected right; (b) whether the measure is rationally connected to the objective; (c) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective; and (d) whether, balancing the severity of the measure's

[6] See opinions No. 21/2017, para. 37; No. 17/2017, para. 37; No. 39/2016, para. 45; and No. 20/2016, para. 28. See also articles 12, 13, 14, 21 and 22 of the Arab Charter on Human Rights, and Human Rights Committee general comment No. 35 (2014) on liberty and security of person.

[7] See E/CN.4/2006/7, para. 43. See also opinion No. 21/2017, para. 40.

[8] See opinions No. 20/2017, para. 38; No. 48/2016, para. 42; and No. 28/2015, para. 42. See also article 32 of the Arab Charter on Human Rights, and Human Rights Committee general comment No. 34 (2011) on the freedoms of opinion and expression, para. 38.

[9] See opinion No. 48/2016, para. 44.

effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.[10] In view of the standard as described above, the Working Group finds that the situation in the present case falls short of such requirement.

49. The Working Group finds that Mr. Salman's deprivation of liberty under article 29 of the Decree-Law on combating cybercrimes, as well as the criminal provision itself, cannot be justified as a reasonable limitation in a democratic society, and it cannot be used to justify the interference in the right to freedom of opinion and expression. Therefore, Mr. Salman's arrest, prosecution and imprisonment can only be regarded as arbitrary.

50. The Working Group is of the view that the application of article 29 of the Decree-Law to Mr. Salman's case also raises other questions. While the suppression of violent incitement for the preservation of public order may require legitimate limitations to fundamental rights and freedoms, it must not be arbitrary. The Working Group, in its deliberation No. 9, confirmed that the notion of "arbitrary" *stricto sensu* includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary (see A/HRC/22/44, para. 61).

51. In that context, the application of clauses such as article 29 of the Decree-Law, coupled with the vagueness of the provisions and their overly broad application, render the law itself at odds with the relevant norms of international law on the administration of criminal justice.

52. In the light of the above-mentioned observations, the Working Group considers that the deprivation of liberty of Mr. Salman is arbitrary, as it resulted from the exercise of the rights or freedoms guaranteed under article 19 of the Universal Declaration of Human Rights. Accordingly, his deprivation of liberty falls within category II.

Category III

53. The Working Group will now consider whether the violations of the right to a fair trial and due process suffered by Mr. Salman were of such gravity as to give his deprivation of liberty an arbitrary character, falling within category III.

54. In particular, the Working Group will examine the allegations that Mr. Salman was subjected to arbitrary arrest and incommunicado detention; that he was subjected to prolonged solitary confinement amounting to torture and other cruel, inhuman or degrading treatment; that he was interrogated without legal counsel; and that his rights to be brought promptly before a judicial authority and to challenge the legality of his detention were not respected.

55. According to the information provided by the source, which the Government failed to rebut with credible evidence, Mr. Salman was arrested without a warrant and was promptly informed neither of the reasons for his arrest, nor of any charges against him. Such arrest is arbitrary and in violation of article 9 of the Universal Declaration of Human Rights, and principles 2 and 10 of the Body of Principles.[11]

56. Subsequently, Mr. Salman was detained incommunicado by the State Security Department for two months. This placed him outside the protection of the law. Furthermore, the incommunicado detention entailed the denial of his right to notify and communicate with his family, lawyer and consular officers in accordance with principles 15, 16, 17, 18 and 19 of the Body of Principles, and his right to be brought promptly before a judge and to be tried within a reasonable time as stipulated in principles 37 and 38 of the Body of Principles. All in all, it resulted in the cumulative violation of articles 6, 8, 9, 10 and 12 of the Universal Declaration of Human Rights.[12]

[10] See opinion No. 41/2017, para. 86.

[11] Opinions No. 48/2016, para. 48; and No. 21/2017, para. 46. See also article 14 of the Arab Charter on Human Rights.

[12] See also articles 12, 13, 14, 21 and 22 of the Arab Charter on Human Rights.

57. As mentioned in paragraph 20 above, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has defined solitary confinement in excess of 15 days as "prolonged", whereby some of the harmful psychological effects of isolation can become irreversible;[13] such prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment and, in certain instances, may amount to torture. As also mentioned in paragraph 20 above, the Special Rapporteur has also stated that prolonged incommunicado detention in a secret place may amount to torture as described in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Working Group reminds the Government of the legal obligations undertaken by it as a State party to that Convention.[14]

58. The Working Group shall refer the present case to the Special Rapporteur on torture.

59. In addition, the Working Group notes with concern that Mr. Salman was not allowed to have his lawyer present during his interrogation or to have legal assistance at that stage. The Working Group has clarified in principle 9 of the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Rights of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court that all persons deprived of their liberty should have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension.

Article 36 of the 1963 Vienna Convention on Consular Relations

60. The Working Group notes that the Government failed to take the formal procedures necessary to establish the legal basis for the arrest and detention of a foreign national under the provisions of article 36 of the 1963 Vienna Convention on Consular Relations, to which the United Arab Emirates is a party.

61. Article 36 (1) (b) of the Convention provides that a foreign national "arrested or committed to prison or to custody pending trial or is detained in any other manner" should be informed "without delay" of his or her rights to inform consular officers about his or her detention and to have any communication addressed to them forwarded "without delay". This is in addition to the consular officers' right to be informed of detention and to maintain communication (para. 1 (b)) as well as their right to arrange for legal representation and to visit in person (para. 1 (c)).

62. Furthermore, the Body of Principles recognizes in principle 16 (2) the importance of consular assistance for a detained or imprisoned foreign national by specifically mentioning his or her right to "communicate by appropriate means with a consular post of the diplomatic mission of the State of which he [or she] is a national".

63. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) also provides, in rule 62 (1), that "[p]risoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong".[15]

64. Given the limited availability of remedies for individuals in the international sphere, consular protection affords an invaluable protection for foreign nationals who are disadvantaged by the lack of familiarity with the local law, custom and even language. Furthermore, it should be noted that the institution of consular protection not only serves the interests of the detained foreign individual and of the State that espouses such interests, but also furthers the interest of the international community as a whole by facilitating

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

[14] See Opinions No. 10/2011, para. 19; No. 11/2011, para. 15; and No. 17/2011, para. 18. See also article 8 of the Arab Charter on Human Rights.

[15] See also guideline 21 (110) 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, stipulating the monitoring of all places of immigration detention and public reporting by consular officials (conditional upon request by persons in immigration detention).

international exchange and reducing the potential for friction between States over the treatment of their nationals.

65. In the present case, the consular officers of the Jordanian embassy were able to visit Mr. Salman only after exerting "strong efforts" to convince the Emirati authorities, who had prohibited his family and lawyer from visiting him during his detention. The Working Group wishes to recognize the efforts of Jordan to extend consular protection to Mr. Salman, and it notes that Jordanian consular officers appear to have been allowed access to Mr. Salman's trial.

66. In the light of the factual and legal considerations above, the Working Group considers that the Government of the United Arab Emirates has failed to respect Mr. Salman's right to consular protection under article 36 of the Vienna Convention during his initial arrest and detention in violation of article 9 of the Universal Declaration of Human Rights and principle 16 (2) of the Body of Principles.

67. The Working Group considers that the above violations of Mr. Salman's right to a fair trial are of such gravity as to give his deprivation of liberty an arbitrary character. Accordingly, his deprivation of liberty falls within category III.

68. In conclusion, the Working Group would welcome an invitation from the Government to undertake its first country visit to the United Arab Emirates so that it can work constructively with its authorities in addressing serious concerns relating to the arbitrary deprivation of liberty. In November 2016, the Working Group sent a request to the Government to undertake a country visit and awaits a positive response. The human rights record of the United Arab Emirates will be subject to review during the third cycle of the universal periodic review in January 2018, and this is an opportunity for the Government to enhance its cooperation with the special procedure mandate holders and to bring its laws and practices into conformity with international human rights law.

Disposition

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

> The deprivation of liberty of Taysir Hasan Mahmoud Salman, being in contravention of articles 8, 9, 10, 11, 12 and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within Categories I, II and III.

70. Consequent upon the opinion rendered, the Working Group requests the Government of the United Arab Emirates to take the steps necessary to remedy the situation of Mr. Salman without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the Universal Declaration of Human Rights.

71. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Salman immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.

72. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

73. The Working Group urges the Government to bring the relevant legislation, particularly article 29 of the Decree-Law on combating cybercrimes, which has been used to restrict the right to freedom of expression, into conformity with the commitments of the United Arab Emirates under international human rights law.

Follow-up procedure

74. 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. Salman has been released and, if so, on what date;

(b) Whether compensation or other reparations have been made to Mr. Salman;

(c) Whether an investigation has been conducted into the violation of Mr. Salman'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.

75. 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.

76. The Working Group requests the source and the Government to provide the above information within six months of the date of the 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.

77. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and 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.[16]

[*Adopted on 24 August 2017*]

[16] See Human Rights Council resolution 33/30, paras. 3 and 7.