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**Human Rights Council**  
Working Group on Arbitrary Detention**ADVANCE UNEDITED VERSION****Opinions adopted by the Working Group on Arbitrary Detention at its seventy-third session, 31 August– 4 September 2015****No.35/2015 (United Arab Emirates)****Communication addressed to the Government on 15 September 2014****Concerning Mahmoud Abdulrahman Al Jaidah****The Government has replied to the communication.****The State is not a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights, which extended and clarified the Working Group's mandate in its resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102 and extended it for a three-year period in its resolution 15/18 of 30 September 2010. The mandate was extended for a further three years in resolution 24/7 of 26 September 2013. In accordance with its methods of work (A/HRC/30/69), the Working Group transmitted the above-mentioned communication to the Government.

2. 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 the detainee) (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 International Covenant on Civil and Political Rights (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 for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

## Submissions

### *Communication from the source*

3. Mahmoud Abdulrahman Al Jaidah (محمود عبد الرحمن الجيدة) is a Qatari national ordinarily residing in Doha, Qatar. He is married and is the father of eight children. Prior to his arrest, Mr. Al Jaidah worked as a senior medical practitioner at Qatar Petroleum.

4. According to the information received, while complying with routine security procedures, Mr. Al Jaidah was arrested by UAE State security forces on 26 February 2013, at Dubai international airport, as he was transiting through Dubai on his way home from Thailand to Qatar. He was reportedly not presented with a warrant at the time of his arrest, nor was he notified of the charges against him.

5. The source informs that on 8 March 2013, Mr. Al Jaidah's wife received a brief phone call from him. He appeared unable to speak freely, evading her questions. Mr. Al Jaidah informed his wife that he was detained in an unknown place in the United Arab Emirates and that he was unaware of the reasons for his detention.

6. According to the source, Mr. Al Jaidah was detained incommunicado for eight months before being charged with committing an offence. During this time it is alleged that he was tortured by prison guards, including having been deprived of sleep, beaten on the soles of his feet and repeatedly punched in the face.

7. According to the source, the reasons for Mr. Al Jaidah's detention are politically motivated as surmised from the questions repeatedly put to him by the State Security interrogators about his political convictions and his alleged connection to the 'Muslim Brotherhood'.

8. It is reported that on 23 May 2013, Mr. Al Jaidah was asked to sign a 39-page document without being able to read its contents. Mr. Al Jaidah was told by an individual known as "Abu Khamis" that once he had signed these papers he would be released and transported to the airport so he could return home. It is alleged that this document contained confessions from Mr. Al Jaidah obtained under torture.

9. The source informs that on 26 May 2013, Mr. Al Jaidah was brought to the office of Prosecutor Saqr Naqb. Although he was informed by the Prosecutor that he would very soon be able to return home, he was instead returned to prison. It is alleged that the Prosecutor replicated the confessions obtained under torture in the formal charge sheet against Mr. Al Jaidah. Therefore, on 26 May 2013, Mr. Al Jaidah was charged with helping and funding an "illegal secret organisation". It is alleged that he never received a written notification of these charges and has never been allowed to read what he was forced to sign.

10. On 4 November 2013, Mr. Al Jaidah's trial began before the Federal Supreme Court. At the first hearing in his case the court issued an order that Mr. Al Jaidah be transferred to public jail. On 16 or 17 November 2013, Mr. Al Jaidah was transferred to Al Razeen prison, where he remains to date. Nine hearings took place until 3 March 2014, when the court delivered its verdict condemning Mr. Al Jaidah to seven years imprisonment

for “helping an illegal secret organisation”. It is reported that because Mr. Al Jaidah was directly presented to the Supreme Federal Court, the sentence is definitive and cannot be appealed, pursuant to article 67 of the Supreme Federal Court Law.

11. The source reports that Mr. Al Jaidah was directly tried before the UAE Supreme Federal Court, instead of being deferred to a court of first instance, without any justification for doing so provided by the prosecution. It submits this infringes article 25 of the Emirati constitution which guarantees equality before the law to all citizens, as well as article 40 which guarantees foreign nationals enjoyment of the rights and the liberties provided for in international conventions and treaties to which the United Arab Emirates is party to.

12. The source informs that Mr. Al Jaidah was not allowed to consult or be represented by a lawyer until 30 December 2013, at which time he was able to meet with a lawyer for one hour prior to the 6th hearing of his trial. It is alleged that this only meeting with the lawyer took place in the presence of State Security agents and was recorded in violation of article 16 (3) of the Arab Charter of Human Rights ratified by the UAE in 2008.

13. The source submits that the deprivation of liberty of Mr. Al Jaidah is arbitrary and falls under category I of the Working Group’s defined categories of arbitrary detention prior to the start of his trial on 4 November 2013. The source reports that he was arrested without any warrant and he was not informed of the charges against him until his appearance before the court. As a consequence, he had been deprived of his liberty without any legal basis from the time of his arrest. It is alleged that Mr. Al Jaidah was detained incommunicado for eight months by the State Security Services, and as a consequence was denied the possibility of being able to challenge the legality of his detention before a judicial authority. It is also submitted that this constitutes a breach of article 26 of the UAE Constitution which guarantees freedom from torture and the arbitrary deprivation of liberty, as well as article 9 of the Universal Declaration of Human Rights (UDHR).

14. The source further submits that the deprivation of liberty of Mr. Al Jaidah falls under category II of the Working Group’s defined categories of arbitrary detention. The source emphasizes that Mr. Al Jaidah was interrogated about his political convictions and his alleged connections with the Muslim Brotherhood. His detention is alleged to be politically motivated and thereby constitutes a violation of the right to freedom of opinion and expression and the right of freedom of peaceful assembly as guaranteed by article 30 of the UAE Constitution and articles 19 and 20 of the UDHR.

15. The source submits that the deprivation of liberty of Mr. Al Jaidah falls under category III of the Working Group’s defined categories of arbitrary detention, as his right to a fair trial has been violated and he has been denied the possibility of seeking an effective remedy, in contravention of articles 8, 9 and 10 of the UDHR.

16. According to the source, Mr. Al Jaidah was not informed of the charges brought against him until his appearance before the court eight months following his arrest. He was detained incommunicado for these eight months and his confessions were allegedly extracted under torture during this time. The source adds that he was convicted on the sole basis of the document he was coerced to sign without having been granted the right to read it. He was not allowed to consult or be represented by a lawyer apart from just one meeting lasting one hour.

17. Furthermore, Mr. Al Jaidah was directly presented to the Supreme Federal Court, without first appearing before a court of first instance. He also does not have the possibility of appealing the sentence of the Supreme Federal Court, nor the ability to challenge the lawfulness of his detention.

*Response from the Government*

18. The Working Group forwarded a communication to the Government of the United Arab Emirates on 15 September 2014 and the Government has replied to the communication on 28 October 2014.

19. The government contends that he was arrested at Dubai International Airport on 26 February 2013 pursuant to an arrest warrant which was shown to him at the time of his arrest. The charges against him were explained and he was detained in a State prison. His family and his country's embassy were informed of his arrest and detention and of the reasons therefor and neither of them lodged a legal protest challenging the reasons for his detention. His family and the Qatari ambassador were given permission to visit him.

20. The government also submits that he was not subjected to any physical or moral coercion through ill-treatment or torture during his interrogation by law enforcement officials or the Public Prosecutor. And the competent court refuted and rejected to accept contrary assertions as being unfounded.

21. It further submits that he had committed the criminal offence of collaborating with and subscribing to a secret organization which had been outlawed in the United Arab Emirates. That organization, which advocates opposition to the fundamental principles underpinning the system of national governance in order to take over control of the State, had been dissolved under the terms of a judgement handed down in case No. 79/2012 (crimes against State security). The accused had financed and attempted to restructure the organization, thereby contravening article 180, paragraph 2, of the Federal Criminal Code (Act No. 3 of 1986), as amended. All the national and international legal rights and safeguards to which accused persons are entitled were respected when he was interrogated by the Public Prosecutor on the charges against him and confronted with the evidence.

22. The government further contends that he confessed, before law enforcement officials and the Public Prosecutor, to the charges against him and, contrary to the allegations made in the communication, signed the interrogation records of his own free will and without coercion after having read them. During the trial, neither he nor his lawyer claimed that any coercion had been exerted when he made his confession before the competent Public Prosecutor and, in considering the evidence substantiating the charges against the accused, the Court based its findings, inter alia, on that confession. The Federal Supreme Court took due care to ensure that the accused enjoyed all the statutory safeguards during his trial, allowing him to meet with his lawyer and present his defence. The proceedings were then closed pending judgement

23. According to the government, he was allowed to meet with his counsel in private and, in accordance with instructions from the Public Prosecutor, no law enforcement officers were present at those meetings.

24. It submits that, at the hearing on 3 March 2014, in its capacity as the competent judicial body, the Federal Supreme Court delivered its judgement in case No. 302/2013 (crimes against State security) in the presence of the accused. The government confirms that he was sentenced to a term of 7 years' imprisonment, together with expulsion from the State, on the charges against him and is currently serving his sentence in Al-Wathba Central Prison.

25. Under the State's Constitution, the government explains that the Federal Supreme Court is the judicial body competent to hear crimes against State security irrespective of whether the accused are citizens of the United Arab Emirates or foreigners. Contrary to the impression that he is attempting to give, he was not treated in a discriminatory manner. Judgements handed down by the Federal Supreme Court are subject to objection and review on appeal.

*Comments from the source to the reply of the Government*

26. The source submits that incrimination in this case is based on articles 180 and 180/1 of the UAE criminal code. According to the source, this article has been already considered as contravening to International Human Rights guarantees since it criminalises the exercise of the Right to Peaceful Assembly and Association.<sup>1</sup>

27. The source also stresses that evidences used in this case are resting solely on the statement Mr. Al Jaidah was forced to sign without even being given the possibility to read it, under the duress of torture. According to the source, the Government is not denying such a thing since it states in paragraph 4 that the court built the charges on the statement he had signed. The source argues that the admission of such a statement, despite the fact Mr Al Jaidah denied the facts and mentioned to the judge that he had been tortured, is a clear breach of UAE's obligation under article 15 of the Convention against Torture (CAT) obligation and shows even more the disregard for the basic rights of Mr Al Jaidah to be free from torture.

28. According to the source, in addition to referring to overly broad charges, based on facts that would fall under the rights to freedom of expression and of assembly, the evidences themselves have been gathered in a blatant violation of the Convention against torture. The source also points out that the security services are directly controlled by the executive as well as the judges of the security branch of the Supreme Court. Thus, the source contends that the investigation was not independent and rested solely on witnesses from and statements made by the State Security Services.

29. The source also points out that Article 67 of the Supreme Federal Court Law states that "sentences by the Supreme Court shall be final and binding on all and not subject to appeal by any of the methods of appeal, except in judgments *in absentia* in criminal matters". According to the source, the courts are not independent from the executive since all the judges are appointed by the executive and that the decisions of this court are definitive and cannot be appealed.

30. The source considers that the affirmation that Mr. Al Jaidah was not ill-treated does not reflect the reality. It adds that the mere fact that he was held in secret detention for eight months without being given the possibility to challenge his detention is *per se* amounting to torture since it believes the aim of such a practice is to make the detainee sign statements in exchange of his "re-appearance".

31. Moreover, the source contends that the fact that a special jurisdiction of exception refuses to take into account allegations and declaration of the accused and his lawyer about the torture he has been subjected to does not, and cannot not, constitute a proof that he was not ill-treated.

32. Additionally, the source submits that the Government does not explain what it considers as being a "not serious" allegation of torture and wishes to recall the obligation of the authorities to investigate any allegation of torture or cruel inhumane and degrading treatment made by an individual under article 12 of the CAT to which the state is a party. Indeed, the source contends, given the reliable testimonies from detainees it has received and has been already transmitted to the WGAD in the "UAE 94" case, there are more than reasonable grounds to believe that the UAE authorities have been derelict in their duty to prevent torture and in their duty to take allegation of torture seriously and to investigate them. Consequently, the source wished to recall the obligation of the state party to consider as non-admissible evidence that have been obtained under torture 15 of the CAT.

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<sup>1</sup> See WGAD Opinion No. 2013/60 of 22 November 2013.

33. The source repeats its contention that first, the authorities were not able to provide with other evidence of this accusation than statements signed by the accused under the duress of torture and without being given the possibility to read it at all, let alone to contest the facts.

34. According to the source, the case to which the UAE Government is referring to as case No. 2012-79 is the “UAE94” case on which the Working Group already issued an Opinion stating that in these cases violations of fair trial rules were so serious and evident that the detention is arbitrary under Category III. The case of Mr Al Jaidah is similar to the one cited and the UAE Government is expressly linking them with each other. Just like in the latter, the incrimination for the case of Mr Al Jaidah is based on articles 180 and 180/1 of the UAE Criminal Code, which had already been confirmed, by the WGAD, as violating the exercise of the Right to Peaceful Assembly and Association.

35. The source recalls that Mr Al Jaidah was detained incommunicado and without legal justification following his arrest. In this sense the source disagrees with the Government on the fact that he was granted fair trial guarantees since incommunicado detention is a *prima facie* form of arbitrary detention. The source repeats the contention that Mr. Al Jaidah was not allowed to consult nor be represented by a lawyer until 30 December 2013, when he was able to meet with a counsel for an hour prior to the sixth hearing of his trial. Moreover, the answer of the government reports, as if it were a favour done to the accused, that the later had the opportunity to meet with his lawyer in confidentiality during the trial

36. The source submits again that eight months after his arrest does not constitute an exceptional favour for a detained person. The source reaffirms that his wife, Mr. Al Jaidah has received a call from him only eight days after his arrest, and that she could not visit him for eight months during which she was completely unaware of his whereabouts.

37. Contrary to the affirmation of the government, the source submits again that Mr Al Jaidah has never acknowledged the accusation made against him, despite the torture that he had been subjected to in order to make him sign the statement. The source maintains that during his trial he has clearly said to the tribunal that the accusations were false and that he had never committed a crime under Emirati laws.

38. The source highlights the extremely severe and extremely disproportionate sentence that has been issued against Mr. Al Jaidah following an unfair trial on charges that he has been denied all along the process. The source also stresses the disproportionate character of the sentence for an incrimination that goes against recognised guarantees under international human rights law namely the right to peaceful assembly and to freedom of expression.

39. Additionally to the nature of such articles 180 and 180/1 of the UAE criminal code regarding freedom of peaceful assembly and freedom of expression, the source highlights that they are also overly broad and being used to prosecute charges that are vague. Thus the source believes that the vagueness and the broad nature of both the legislation and the charges show that they were used, in bad faith, to keep Mr. Al Jaidah detained in order to fabricate charges against him rather than truly establishing justice for any alleged crimes committed.

### **Discussion**

40. In light of the above, the Working Group considers that there have been grave violations of fair trial throughout the procedures from arrest to conviction in violation of article 10 of the Universal Declaration of Human Rights (UDHR).

41. The Working Group recalls the judgement of the International Criminal Court, according to which “where the breaches of the rights of the accused are such as to make it

impossible for him/her to make his/her defence with the framework of his rights, no fair trial can take place [...]. Unfairness in the treatment of the suspect or the accused may rupture the process to an extent making it impossible to piece together the constituent elements if a fair trial”.<sup>2</sup>

42. The Working Group recalls its Opinions No. 56/2014, No. 12/2014, No. 60/2013, No. 64/2011 and No. 8/2009 concerning the UAE, in which the Working Group found violations of freedom of opinion and expression and freedom of peaceful assembly and association, guaranteed under articles 19 and 20 of the UDHR; of the right to fair trial, guaranteed under articles 8 and 10 of the UDHR; and of the right to freedom from arbitrary detention, guaranteed under article 9 of the UDHR. Furthermore, the Working Group notes the recurring communications received by the Working Group from various reliable and credible sources concerning a systematic practice of torture, *incommunicado* and prolonged solitary confinement. In this regard, the Working Group is concerned over what appears to be a pattern of gross human rights violations in UAE and recalls the obligation of the Government to comply with international human rights law.

43. The Working Group considers that the deprivation of liberty of Mr. Al Jaidah, made prior to the start of his trial on 4 November 2013, is arbitrary and falls under category I of the Working Group’s defined categories of arbitrary detention. He was not informed of the charges against him until his appearance before the court. As a consequence, he had been deprived of his liberty without any legal basis from the time of his arrest. Furthermore, he was detained *incommunicado* for eight months by the State Security Services, and as a consequence was denied the possibility of being able to challenge the legality of his detention before a judicial authority. The Working Group considers that this is in violation of article 26 of the UAE Constitution which guarantees freedom from torture and the arbitrary deprivation of liberty, and of article 9 of the UDHR.

44. Furthermore, the Working Group considers that the deprivation of liberty of Mr. Al Jaidah falls under category II of the Working Group’s defined categories of arbitrary detention. Mr. Al Jaidah was interrogated about his political convictions and his alleged connections with the Muslim Brotherhood. His detention thus appears to be politically motivated and thereby constitutes a violation of the right to freedom of opinion and expression and the right of freedom of peaceful assembly as guaranteed by article 30 of the UAE Constitution and articles 19 and 20 of the UDHR.

45. The Working Group also considers that the deprivation of liberty of Mr. Al Jaidah falls under category III of the Working Group’s defined categories of arbitrary detention, as his right to a fair trial has been violated and he has been denied the possibility of seeking an effective remedy, in contravention of articles 8, 9 and 10 of the UDHR.

46. The Working Group notes that Mr. Al Jaidah was not informed of the charges brought against him until his appearance before the court eight months following his arrest. He was detained *incommunicado* and his confessions were allegedly extracted under torture during this time. He was also convicted on the sole basis of the document he was coerced to sign without having been granted the right to read it. He was not allowed to consult or be represented by a lawyer apart from just one meeting lasting one hour.

47. Furthermore, he was directly presented to the Supreme Federal Court, without first appearing before a court of first instance. He also does not have the possibility of appealing

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<sup>2</sup> See International Criminal Court, *Judgement on the appeal of Mr Thomas Lubanga Dyilo against the Decision of the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2) (a) of the Statute of 3 October 2006*, Case No. ICC-01/04-01/06 (OA 4), 14 December 2006, para 39.

the sentence of the Supreme Federal Court, nor the ability to challenge the lawfulness of his detention.

**Disposition**

48. In the light of the foregoing, the Working Group on Arbitrary Detention renders the following opinion:

The deprivation of liberty of Mr. Mahmoud Abdulrahman Al Jaidah is arbitrary, being in contravention of articles 8, 9, 10, 19 and 20 of the UDHR; it falls within categories I, II and III of the categories applicable to the consideration of the cases submitted to the Working Group.

49. Consequent upon the Opinion rendered, the Working Group requests the Government of the UAE to take the necessary steps to remedy the situation of Mr. Al Jaidah without delay. The Working Group believes that, taking into account all the circumstances of the case, the adequate remedy would be to immediately release Mr. Al Jaidah and grant him reparation for the harm he has suffered during the period of his arbitrary detention.

50. In light of the above, in accordance with article 33 (a) of the revised methods of the Working Group, it refers the allegation of torture as well as the unwillingness of the UAE authorities to comply with several of its obligations as a State Party to the CAT including those under article 12 and article 15, to the Special Rapporteur on Torture for further action.

The Working Group also encourages the UAE to accede to the International Covenant on Civil and Political Rights to end the practice of arbitrary arrests, detentions, incommunicado and torture that has become systematic in its territory.

[Adopted on 4 September 2015]

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