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Human Rights Council
Working Group on Arbitrary Detention**Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, 30 November – 4 December 2015****Opinion No. 51/2015 concerning Salim Alaradi (سليم العرادي), Kamal Ahmed Eldarrat (كمال احمد الضراط) and Momed Kamal Eldarrat (محمد كمال الضراط), Moad Mohammed Al Hashmi (معاذ محمد الهاشمي) and Adil Rajab Nasif (عادل رجب ناصف) (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. The Human Rights Council assumed the mandate in its decision 1/102 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.

2. In accordance with its methods of work (A/HRC/30/69), on 15 July 2015 the Working Group transmitted a communication to the Government of United Arab Emirates concerning Salim Alaradi (سليم العرادي), Kamal Ahmed Eldarrat (كمال احمد الضراط) and Momed Kamal Eldarrat (محمد كمال الضراط), Moad Mohammed Al Hashmi (معاذ محمد الهاشمي) and Adil Rajab Nasif (عادل رجب ناصف). The Government replied to the communication on 15 September 2015. 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 sentence or despite an amnesty law applicable to him) (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, that aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

4. The case has been reported to the Working Group on Arbitrary Detention as follows:

5. Five Libyans, including two Libyan-Americans and one Libyan-Canadian citizen who were arrested in the United Arab Emirates in August 2014 by the State Security personnel. The source argues that they are currently being arbitrarily detained without any legal process. The source also expressed a great concern for their physical and mental integrity and welfare as they have been, and still are, at high risk of torture, ill-treatment and unfair trial.

6. **Salim Alaradi** (سليم العرادي) is a Canadian and Libyan citizen, born on 10 February 1968. He is married and has five children. Prior to his arrest, he was a businessman and CEO of Hommer International, a global competitor in home appliance. He usually resides in Dubai, United Arab Emirates. Mr Alaradi was arrested on 28 August 2014 and is currently being held at Al Wathba prison in Abu Dhabi.

7. On 28 August 2014, Mr Alaradi was on vacation with his family in the Atlantis Palm Jumaira Hotel in Dubai, United Arab Emirates. At approximately midnight, he received a phone call in his room requesting his presence in the lobby of the hotel. Mr. Alaradi was told that the personnel of the State Security wanted to “ask him some questions”. When Mr. Alaradi descended to the lobby, he was arrested by the State Security personnel, who were dressed in civilian clothes. The source submits that Mr. Alaradi was neither shown an arrest warrant, nor informed the reasons of his arrest. The family members immediately informed Canadian authorities. Mr. Alaradi’s brother was also arrested on the same day and he was released four months later without any charges and without having been presented to a judge.

8. Reportedly, Mr. Alaradi has not yet been charged with any offence, despite being held in custody for nearly 10 months. The source reports that during the interrogations, the United Arab Emirates’ State Security personnel asked him about his support to the Libyan revolution and the current Libyan government of Tripoli, which Mr. Alaradi denied.

9. During the initial 130 days he was held *incommunicado* and in an undisclosed location, which might have been a military air force base. The source submits that during the initial two months and nine days the United Arab Emirates’ State Security denied his arrest and detention. After having been forcibly disappeared for that period of time, Mr. Alaradi’s wife received a phone call from him informing he was “alive and in good health”. The call lasted between two to three minutes. Since then Mr. Alaradi has been allowed to reach his family via phone only two times (respectively on 4 January and 15 March 2015).

As the phone calls have been monitored, the source argues that Mr. Alaradi was not able to speak freely about his real health conditions.

10. Approximately three months after the arrest, the Canadian embassy was allowed to visit Mr Alaradi. However, the Canadian diplomats were only able to see Mr Alaradi from a distance, just enough to confirm his identity. The source claims that the diplomats were not allowed to come closer to Mr. Alaradi in order to hide signs of torture from their sight.

11. On 4 January 2015, Mr. Alaradi was transferred to Al Wathba Prison in Abu Dabi, where he is being detained since then. Furthermore, he has been denied the right to adequate access to legal representation since his arrest. The family attempted to contact an extensive list of lawyers. However, none of them have accepted to provide legal counselling. According to the source, the lawyers explained their refusal to take up the case by saying that “Mr. Alaradi’s detention was extraordinary and outside of the existing legal framework of the United Arab Emirates”. Also the lawyers explicitly spoke about their fears of dealing with cases of detention under the United Arab Emirates’ State Security.

12. On 11 February 2015 (after 5 months and a half of detention), the first visit by a family member was allowed. Mr. Alaradi’s wife was approved for that visit, which lasted for an hour and was very restrictive and fully monitored. His wife clearly saw marks of torture, including burn marks on his hands.

13. Despite the steps undertaken by the Canadian consular office to communicate with the United Arab Emirates authorities in accordance with the Vienna Convention on Diplomatic Relations of 1961 through requesting explanations, visits for the family or consul, as well as medical care, the authorities have constantly refused to cooperate and have provided no adequate response to the Canadian Mission’s communications.

14. Father and son, **Kamal Ahmed Eldarrat** (كمال احمد الضراط) and **Momed Kamal Eldarrat** (محمد كمال الضراط), are American and Libyan citizens. Both usually reside in Dubai, United Arab Emirates. Mr. Ahmed Eldarrat is a businessman, married and has four children. Mr. Kamal Eldarrat, born on 25 June 1981, is single and a businessman. Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat are held *incommunicado* presumably at the Al Wathba Prison in Abu Dabi although their whereabouts have not been officially disclosed to their family.

15. On 26 August 2014, in the evening, Mr. Ahmed Eldarrat was home when he received a phone call requesting him to go to the Bur Dubai police station without any explanation. About two hours after Mr. Ahmed Eldarrat left his house for police station, he was escorted back home by approximately 20 plain clothes members of the United Arab Emirates State Security, who searched without a warrant his house and confiscated IT equipment, identification and other documents. On 28 August 2014, the same happened to his father Mr. Kamal Eldarrat. He received a phone call in the evening requesting to come to police station, shortly after he was escorted home by the plain clothes members of the United Arab Emirates’ State Security, who searched the house and collected the personal belongings of Mr. Kamal Eldarrat. After the arrests, the family have been seeking consular assistance from the Libyan and the US consulates in the United Arab Emirates but no avail.

16. From the dates of their arrest until 19 December 2014, Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat were transferred between different unknown State Security facilities. The source submits that those facilities were “comparable to being in a haunted house with frightening sounds, crying, screams, and uncomfortable lighting conditions to instil fear into the detainees”. No public authority acknowledged their detention before early December 2014, when the family went to the Public Prosecutor who told them that indeed both father and son were under State Security custody but did not disclose their location. The source argues that Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat were the victims of enforced disappearance from the moment of their arrest until 19 December 2014.

Furthermore, since their location has never been officially disclosed and since they have never been officially authorised to call or receive visits from their family and lawyer, the source argues that they are currently the victims of *incommunicado* detention.

17. On 19 December 2014, Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat were apparently transferred to Al Wathba prison in Abu Dhabi, where they are currently detained, but this has not been officially confirmed. The source reports that the family members have tried to go on several occasions to Al Whathba prison, but the prison authorities told them that Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat weren't there and that they "did not know who they were talking about".

18. On 4 February 2015 and 1 April 2015, the family were allowed to see briefly Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat at the State Security Prosecutor's Office. The source submits that such short meetings were *impromptu* and cannot be considered as fulfilling Mr. Ahmed Eldarrat's and Mr. Kamal Eldarrat's right to visits from the families.

19. On 15 June 2015, Mr. Ahmed Eldarrat's wife went to see the Public Prosecutor to ask why her son and husband were still detained without charges for almost a year. The Public Prosecutor answered that there was "nothing he could do" and that if it was only in his power he would have brought them in front of a judge but that there were "higher orders" requiring him to keep them in this situation. The source submits that those 'higher orders' are the *de facto* control of the justice system by the Ministry of Interior and State Security as described by the Special Rapporteur on Independence of Judges and Lawyers in her report.

20. Five months after the arrest, the family of Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat hired a lawyer specialised in State Security cases, however, the lawyer has not been allowed to access the prosecution file, and has not been allowed to contact his clients or to visit them. The Public Prosecutor has given only one reason concerning the denial to the lawyer to access the file, simply saying that there is no file.

21. **Moad Mohammed Al Hashmi** (معاذ محمد الهاشمي) is a Libyan citizen, born on 8 September 1987 in Jeddah, Saudi Arabia. He usually resides in Dubai, United Arab Emirates. Mr Al Hashmi was arrested on 28 August 2014. **Adil Rajab Nasif** (عادل رجب ناصف) is a Libyan citizen, born on 22 February 1971 and usually resides in Ain Zara, Tripoli, Libya. He was arrested on 24 August 2014.

22. The source submits that the circumstances surrounding the arrest and detention of Mr. Al Hashmi and Mr. Nasif are grave and extraordinary. Both of them were arrested at the coffee shops in Dubai by the plain clothes members of the United Arab Emirates' State Security. According to the witnesses present at the moment of the arrests, the State Security personnel neither showed an arrest warrant nor explained the reasons of their arrests. Both have been denied the right to contact his family members, his lawyer and the Libyan consulate.

23. The source claims that Mr. Al Hashmi and Mr. Nasif are kept *incommunicado* since their arrest. Mr. Al Hashmi and Mr. Nasif's families have never been informed officially about their whereabouts. Apparently their families have received a phone call from an unidentified source, telling them that Mr. Al Hashmi and Mr. Nasif are in Al Wathba Prison in Abu Dabi. This could not have been possible for the family to verify with the authorities.

24. Mr. Al Hashmi and Mr. Nasif have never been charged, and their families do not know the reasons of their arrest. Mr. Al Hashmi and Mr. Nasif have not been allowed to receive visits from their family and they have been denied the right to legal counsel. After inquiring with the governmental authorities about Mr. Al Hashmi and Mr. Nasif's fate, the families learned that there was not registered a prosecution file or criminal case against them. Furthermore, the source argues that Mr. Al Hashmi and Mr. Nasif have been the

victims of an enforced disappearance from 28 August 2014. It is not clear if both are dead or alive.

25. **Torture allegations:** The source claims that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif have been subjected to severe physical and psychological torture from the moment of their arrest. In particular, they were subjected to extensive hours of intense interrogation without having access to a lawyer. Their interrogations lasted for 24 hours a day for over 9 days and after that they had being interrogated for more than 12 hours while being deprived of a sleep. Furthermore, the source submits that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif have been subjected to the treatment described below in order to coerce them to sign confession. The source argues that each act alone, or together with other acts, may amount to torture given the level of severity. In particular, they have been:

- (a) subjected to prolonged sleep deprivation, in some cases for 20 days including the first 7 days in a row;
- (b) forced to keep stress-positions and were hooded during these interrogation sessions;
- (c) subjected to water-boarding;
- (d) beaten regularly on their hands and legs until they could no longer walk;
- (e) placed into solitary confinement immediately after arrest for several months in a cell without a bed or mattress;
- (f) exposed to continuous light, as well as laser beam lighting that caused extreme excruciating headaches, dizziness, hallucinations and muscle spasms;
- (g) threatened against female relatives, including threats of rape in front of their eyes;
- (h) placed into a cell with dysfunctional open toilet without a flush;
- (i) deprived from drinking water;
- (j) soaked in ice cold water and placed in an extremely cold room with air conditioning on;
- (k) subjected to electric shocks with an electric chair;
- (l) beaten with a stick, whippings
- (m) hung with a rope around the neck;
- (n) constant death threats with guns being placed at the head;
- (o) numerous injections that resulted in losing consciousness;
- (p) consistently drugged of food causing severe stomach pain;
- (q) some of them recounted being placed in a freezer for 45 minutes.

26. Furthermore, the source reports that the family of Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat was informed that both asked the prison authorities on multiple occasions to have access to a physician to treat the pain and suffering resulting from the torture but all their requests have been denied. When the family saw Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat the Prosecutor's office they observed that both were in poor physical condition. They lost weight significantly. Mr. Kamal Eldarrat informed his family that his request of medical treatment for an ear infection had been denied by the prison authorities.

27. In addition to the aforementioned treatment, the source further submits that Mr. Alaradi has been also subjected to skin burns. Also he suffers from serious health conditions, some of which existed prior to his arrest and others were contracted due to the prison conditions and torture he has been subjected to. Those health conditions include *inter alia* asthma, high cholesterol and vulnerabilities due to an open-heart surgery, which he had undergone prior to his arrest. Mr. Alaradi has developed extreme back pain, major weight loss, eye infection and bronchitis after his arrest. Despite numerous requests from the Canadian consulate, Mr. Alaradi was denied medical care until 18 May 2015, when a single visit to a non-independent physician was allowed. The Canadian authorities informed the family that Mr. Alaradi was only allowed to raise a single medical issue and no medical reports have been provided to the family or the Canadian Mission. The Canadian Consul in the United Arab Emirates has been allowed to see Mr. Alaradi only three times. After those visits the family was informed by the Canadian authorities that his health conditions rapidly worsening.

28. Also the source asserts that due to extraordinary situation and circumstances of Mr. Al Hashmi and Mr. Nasif's enforced disappearance following their arrest on 28 August 2014, their life and the state of their health raise a grave concern. The source claims that such enforced disappearance makes Mr. Al Hashmi and Mr. Nasif extremely vulnerable to torture and other ill-treatment.

29. The source argues that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif's deprivation of liberty is arbitrary, and falls under Categories I, III and V as classified by the Working Group.

30. In particular, Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif's deprivation of liberty had no legal basis justifying their arrest, as they were arrested by State Security personnel without court warrant and subsequently detained outside of the existing framework of United Arab Emirates' law. The source informs that the actions of the State Security personnel, who arrested and detained Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif are not subjected to judicial oversight. The source points out that according to United Arab Emirates' Law on State Security, these forces enjoy powers that are not subjected to checks and balances. Article 12 of this law states that "the Head of the State Security shall issue whatever instructions he deems necessary to implement the assignments of the State Security in a manner ensuring the protection of the State security and safety. All concerned bodies and institutions shall abide by these instructions." This clearly violates the principle that all forms of detention or imprisonment must be ordered by, or subject to, the effective control of a judicial authority. Furthermore, it appears that the victims are placed outside of the protection by the law.

31. Also the source argues that the legal authority justifying their arrest and detention has not been made accessible to the victims, their families or their lawyers. Moreover, all families were officially informed that the case files against Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif do not exist. The lawyers to whom the families have been turning to for counseling said that they could not be of any assistance because their arrest and detention have been carried out outside the framework of the law. These reasons clearly show the lack of legal basis for arrest and detention of Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif. Also there have been no charges brought against them to date. Their families do not know if and when the hearing will take place. (Category I).

32. Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif were deprived of their liberty in violation of due process rights and in the absence of minimum guarantees of fair trial. In particular, they were arrested in the absence of an arrest warrant issued by the court; the reasons of their arrest were neither communicated to them nor to the members of their families. Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al

Hashmi and Nasif are deprived of the right to challenge their arrest and detention before the judicial authorities. They have been subjected to enforced disappearance, secret and incommunicado detention. All detainees have been denied the right to contact their families and all of them have been denied the right to receive regular visits. They have never been allowed to have access to the legal counsel. The prosecution has never provided to the victims and their families to have an access to the case file.

33. Moreover, the source argues that the horrific accounts of torture that the families received multiply the magnitude and gravity of the violations of Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif's rights and freedoms. The source asserts that the reason why all victims are deprived of their liberty, tortured and ill-treated is to make them sign fabricated confessions that could be used as the basis for prosecution at the State Security Court. Reportedly, no charges have been brought to date and the family do not know if and when the hearing will take place. The source further claims that this case follows the same pattern of detention in the United Arab Emirates as exemplified in the Working Group on Arbitrary Detention Opinion No. 60/2013. (Category III).

34. The source further claims that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif are subjected to arbitrary deprivation of liberty and the extreme level of pain and suffering because they are originally from the western part of Libya. Reportedly, the wave of arrests against Libyan citizens residing in the United Arab Emirates, who are originally from the western part of Libya, happened within 24 hours or few days after the United Arab Emirates launched its air strikes against Libya. The source asserts that the State Security arrested Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif due to a suspicion of being sympathetic to the elected transitional government of Tripoli. In the case of Mr. Ahmed Eldarrat and Mr. Kamal Eldarrat, they were arrested possibly due to their alleged involvement in the aid work during and after the Libyan revolution of 2011. (Category V).

Response from the Government

35. In its response, the Government provided the Working Group with the following information:

36. According to information received from the relevant authorities of the UAE, Messrs Salim ALARADI, Kamal Ahmed ELDARRAT, Momed Kamal ELDARRAT have been arrested in accordance with applicable laws and have been searched, on the basis of a search warrant delivered by the Public Prosecution. They were informed about the charges against them at the time of their arrest. On 24 November 2014, they appeared before the competent prosecution office under Communication no. 49/2014 and Criminal Case number: 137/2014. The following charges were brought against them: financing, supplying and cooperation with terrorist organizations. Their cases are still being investigated and they are currently provisionally detained in Al Wathba Central Prison (Abu Dhabi) following a decision by the Public Prosecution Office. They are completely free to choose, appoint and meet with a lawyer according to the rules of procedures governing correctional institutions.

37. Mr. Adil Rajab Nasif has been arrested in accordance with applicable laws and has been searched, on the basis of a search warrant delivered by the Public Prosecution. He was informed about the charges against them at the time of their arrest. On 24 December 2014, he appeared before the competent prosecution office under Communication no. 37/2014 and Criminal Case number: 157/2014 State Security Crime. The following charges were brought against him: being a member of two terrorist organizations, financing a terrorist organization while knowing the purpose of such financing, cooperation with a terrorist organization while knowing the purposes of such organization. His case is still being investigated and he is currently provisionally detained in Al Wathba Central Prison (Abu

Dhabi) following a decision by the Public Prosecution Office. He is completely free to choose, appoint and meet with a lawyer according to the rules of procedures governing correctional institutions.

38. Mr. Moad Mohammed AL HASHMI has been arrested in accordance with applicable laws and has been searched, on the basis of a search warrant delivered by the Public Prosecution. He was informed about the charges against them at the time of their arrest. On 29 December 2014, he appeared before the competent prosecution office under Communication no. 37/2014 State Security Department and Criminal Case number: 159/2014. The following charges were brought against him: being in the UAE after committing a terrorist crime in Libya, founding of and becoming a member of a terrorist organization (Libyan Dawn operations) while its nature, as well as financing and cooperation with a terrorist organization while knowing the purposes of such organization. On 2 June 2015, his case was referred to the competent court and a hearing has been scheduled on 13 July 2015 and then postponed to 14 September 2015 so that Mr AL HASHMI could appoint a lawyer to state his case. The case is still being investigated and he is currently provisionally detained in Al Wathba Central Prison (Abu Dhabi) following a decision by the Public Prosecution Office. He is completely free to choose, appoint and meet with a lawyer according to the rules of procedures governing correctional institutions.

39. The response from the Government has been transmitted to the source on 17 September 2015.

Further comments from the source

40. The Source in its response from 28 September 2015 argued that the arrests and detentions violate UAE law and that State Security official failed to provide a legal basis as well as evidence of any involvement in a crime under UAE laws.

41. The source informed that the UAE legal order including the Constitution forbids arbitrary arrests and detentions (Article 26). It also enshrines the principle of personalisation of penalty and fair trial rules (Article 28).

42. In the view of the source the refusal to permit Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif to challenge their detention is also a clear violation of Constitutional rules (Article 41).

43. Furthermore the source said that the UAE's Criminal Procedure Code provides that "No person may, as well, be arrested, searched, detained or imprisoned except in the cases and under the conditions provided for in this Law. Detention and imprisonment may not occur except in the places specially reserved for each and for the period specified in the order issued by the competent authority" (article 2). Moreover, the torture inflicted to all above-mentioned individuals is in clear violation of the UAE obligations under the Convention against Torture as well as paragraph 3 of article 2 of the Criminal Procedure Code which states that: "It is forbidden to cause bodily or moral harm to the accused or subject any person to torture or degrading treatment".

44. In the opinion of the source the arrests and detentions having been carried out by State Security and outside the framework of the law, should be considered as falling under Category I as no legal basis has been invoked by the authorities to justify the deprivation of liberty of the individuals for more than 10 months. The authorities have detained Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif outside this framework and the protection of the law from the onset of the arrest until now.

45. In all cases, the legal authority justifying the detention has not been made accessible to the victims, their families or their lawyers. This is in violation of international human

rights standards according to which an individual may only be lawfully deprived of his or her liberty on specified grounds and according to procedures established by law.

46. The source asserts that none of the victims were arrested on the basis of an arrest warrant, the lawyers and families still do not know the reasons of the arrest and the detentions and do not know under which law the individuals have been arrested and detained. All the families who have been trying to access the prosecution files, either directly or through a lawyer have been denied this right. While the authorities argue that it is because there is no file, lawyers to whom families have been turning to in the UAE said that they could not be of any assistance because “the arrests and detentions have been carried out outside the framework of the law”. These two reasons clearly show the lack of legal basis for all the arrests and detentions. No charges have been brought to date and the family does not know if and when a hearing will take place.

47. For the source the process has been under the complete *de facto* control of the Ministry of interior and that no effective judicial oversight has been exercised since the arrest until now. This clearly violates the principle that all forms of detention or imprisonment must be ordered by, or subject to, the effective control of a judicial authority. The source submits that that is the reason why none of the arrests and detentions have been carried out under a legal basis. This effectively places Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif beyond the scrutiny of law since their arrests. The source argues that according to the Law on State Security, the official of the security forces enjoy powers that are not subjected to checks and balances. According to the source, article 12 of that law states that “the Head of the State Security Organism shall issue whatever instructions he deems necessary to implement the assignments of the State Security Organism in a manner ensuring the protection of the State security and safety. All concerned bodies and institutions shall abide by these instructions.”

48. The source also argues that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif have been victims of grave violations to their fundamental rights to liberty and security from the onset of the arrests, up until now and have been continuously deprived of their rights to challenge their detentions. The violations of pre-trial rights have been systematic and grave and all the detainees have been placed outside the protection of the law since their arrests through enforced disappearance, secret detention and incommunicado. Moreover, the horrific accounts of torture that the families received add to the magnitude of the violations and make them of such gravity that it gives the deprivation of liberty of Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif an obvious arbitrary character.

49. Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif have been denied the right to contact their families and all of them have been denied the right to receive regular visits. This violation has been continuous since the arrest and after arrest at the occasion of every single transfer carried out and until now. The source submits that all the above mentioned individuals have not been allowed to see or contact their families at all or they have been able to see them very briefly and during monitored meetings. The restriction of this right has been to such extent as to render the visitations inadequate and not in-keeping with international standards. This is with the exception of Mr Alaradi, who is being allowed sporadic monitored calls. None of the other victims has been allowed to speak directly to their loved ones.

50. The refusal of the authorities to provide the individuals with a legal counsel and their constant refusal to allow lawyers hired by the families to access to the prosecution file since it is inexistent violate the right to legal counsel. This also explains why none of the detainees have been able to challenge the lawfulness of their detentions or know the cases against them.

51. The source reports that none of the above mentioned individuals have been charged, this is in complete violation of both domestic and international laws and standards as explained above. Furthermore, according to the source if the victims end up being charged and tried, the procedures will take place in front of the Security Chamber of the Federal Supreme Court. The source highlights that cases related to offences directly affecting the interests of State, including so-called State security crimes, fall under the exclusive jurisdiction of the Federal Supreme Court and that those cases are therefore considered in first and last instance by the State security chamber of the Federal Supreme Court with no possibility of review by a higher tribunal. This has been described as a “breach of international human rights standards” by the Special Rapporteur on Independence of Judges and Lawyers.

52. The right to be free from torture or other ill-treatment while undergoing questioning by the authorities is applicable at all time and should be respected by all state agents, including intelligence officers. However, the horrific accounts of torture given by detainees through indirect means and the testimonies of former detainees, including Mr. Alaradi’s brother show clearly that the State security officials use torture as a way to punish and coerce victims to sign statements that they are not allowed to read beforehand and afterwards. Far from respecting the principle enshrined in their conventional obligations that statements and other forms of evidence obtained as a result of torture or other ill-treatment of any person must be excluded from evidence, the UAE state security has been in the past years using this practice to obtain signed confession that are used as sole evidence against the victim in front of the State Security Court.

53. The source asserts that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif were denied the right to have access to a doctor or it was given to them, the right was so restricted that it was rendered virtually ineffective and inexistent. Those who had the opportunity to see a medical doctor were either sent in order to “remove sign of torture” or were only authorised to raise one single medical issue. Despite requests from families and Consular representations, medications that the victims needed were not given to them (case of Mr Eldarrat). The authorities did not issue any medical report as per the health state of the detainees and this despite the deep concerns of the families due to testimonies of torture being inflicted to their relatives.

54. International standards require foreign nationals to be informed of their rights to communicate with consular officials or an appropriate international organization. In all the cases, and despite requests from both families and consular authorities, the right to consular protection has been denied to all victims in violation of the Vienna Convention on Consular Relations. Only in the case of Mr. Alaradi, the authorities accepted visits from the Canadian consulate but the access was so limited and the cooperation inexistent that it made the guaranty void.

55. The source argues that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif have been arrested and detained on the sole basis of their Libyan citizenship and their origins from the west part of Libya which has elected the government in Tripoli. The source further submits that, according to the information from the families of Libyans nationals arrested in August 2014, the wave of arrest against Libyans who are originally from the west of Libya, happened within 24 hours to few days after the US State Department announced that UAE was air striking Libya. The source believes that State Security arrested their relatives simply because they were from the West part of Libya, where the strikes happened and were suspected of being sympathetic to the elected transitional government of Tripoli. In the case of the Eldarrat family, it is suspected that their detention is due to their aid work during and following the Libyan revolution.

56. In all the cases, no specific charges have been brought and the prolonged detention seems to be motivated by a clear will to punish individuals who are considered by the

authorities as sympathetic to the Tripoli government. Moreover, this sympathy is evaluated on the mere fact of being originally from western Libya tribes. The source argues that discrimination, especially in this case, might not necessarily be defined by the way the victims define themselves (for example as pro- Tripoli government or not) but rather by the way in which the authorities discriminating against them defines their political affiliation. In this case, the authorities define Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif alleged political affiliation according to their city/region of origin in Libya. In this regard, the source believes that the victims are being discriminated against on the basis of their nationality, regional origin and on the basis of alleged direct and indirect links with the Government of Tripoli. In the past, numerous citizens from Arab States have been arrested and detained in the same circumstances in the UAE, namely, because of their alleged affiliation with political movements that are deemed antagonistic to the UAE's interests in the region. The source argues that it does not exclude that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif might have been arrested for the same motives, since no reason can be invoked in law for their detention.

57. In light of the above information, the source submits that the individuals in question are currently arbitrarily detained, falling under category I, III and V of the categories applicable to the consideration of cases submitted to the Working Group.

Discussion

58. The Working Group notes that the State did not profit from the opportunity to present sufficient evidence to sustain its views. In its constant jurisprudence the Working Group has previously stated that: "a public authority is generally able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law – if such was the case – by producing documentary evidence of the actions that were carried out. In general the burden rests with the Government: it is for the Government to produce the necessary proof. More generally, the matter of the evidentiary burden arises where the source has established a prima facie case for breach of international requirements constituting arbitrary detention. Regrettably, in some cases, Governments have not responded to the request from the Working Group to provide it with information. In the absence of such information, the Working Group must base its Opinion on the prima facie case as made out by the source. Furthermore, mere assertions that lawful procedures have been followed will not be sufficient to rebut the source's allegations; that follows from the nature of the prohibition of arbitrary detention."¹ Therefore Working Group in conformity with Rules 16 and 17 of its Methods of Work and in accordance to the information obtained is in a position to render an opinion.

59. The Working Group considers that States are legitimated to investigate and prosecute the crime of terrorism in conformity with national law and with international customary law obligations that are applicable in all times and circumstances. The Working Group recalls the reaffirmation in numerous Security Council resolutions, including in resolution 2170 (2014), of the duty of Member States to comply with all their obligations under international law, in particular international human rights, refugee and international humanitarian law, underscoring also that effective counter-terrorism measures and respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing.²

60. Furthermore the Working Group has recognised, in its recent report presented to the Human Rights Council entitled *United Nations Basic Principles and Guidelines on*

¹ A/HRC/19/57, paragraph 68

² A/HRC/30/37, paragraph 15

Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court that where persons who have or are suspected to have engaged in the preparation, commission or instigation of acts of terrorism are deprived of their liberty:

(a) They shall be immediately informed of the charges against them, and be brought before a competent and independent judicial authority as soon as possible, within a reasonable period of time;

(b) They shall enjoy the effective right to judicial determination of the arbitrariness and lawfulness of their detention;

(c) The exercise of the right to judicial oversight of their detention shall not impede the obligation of the law enforcement authority responsible for the decision to detain or to maintain the detention to present suspects before a competent and independent judicial authority within a reasonable period of time. Such persons shall be brought before the judicial authority, which will then evaluate the accusations, the basis of the deprivation of liberty and the continuation of the judicial process;

(d) In the proceedings against them, suspects shall have a right to enjoy the necessary guarantees of a fair trial, access to legal counsel and the ability to present exculpatory evidence and arguments under the same conditions as the prosecution, all of which should take place in an adversarial process.³

61. The Working Group also notes that secret detention or *incommunicado* detention may put individuals under pressure to confess to a crime and infringe the right not to be compelled to testify against oneself under article 11 of the UDHR. In the conclusions of the 2010 *Joint study on global practices in relation to secret detention in the context of countering terrorism*,⁴ it is reiterated that international law clearly prohibits secret detention, which violates a number of human rights and humanitarian law norms that may not be derogated from under any circumstances.⁵

62. In view of the above, the Working Group received convincing information that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif were arrested in the absence of an arrest warrant issued by the court; the reasons of their arrest were neither communicated to them nor to the members of their families. All of them were deprived of the right to challenge their arrest and detention before the judicial authorities and subjected to enforced disappearance, secret and incommunicado detention. All of them have been denied the right to contact their families and denied the right to receive regular visits. They have been obstructed in their right to access to legal counsel. The prosecution has never provided to the victims and their families to have an access to the case file, no charges have been brought to date and the families do not know if and when the hearing will take place. The two Libyan-Americans and one Libyan-Canadian citizen were denied or obstructed in the exercise of their right to be assisted by their respective consulates. Also, the Working Group received reliable information on the acts of torture infringed to the four victims, and

³ A/HRC/30/37, paragraph 93

⁴ Joint study on global practices in relation to secret detention in the context of countering terrorism, undertaken by the Special Rapporteurs on the promotion and protection of human rights and fundamental freedoms while countering terrorism; on torture and other cruel, inhuman or degrading treatment or punishment and the Working Groups on Arbitrary Detention and Enforced and Involuntary Disappearances, A/HRC/13/42, 19 February 2010

⁵ A/HRC/13/42, 19 February 2010, [8]-[97].

did not receive information on criminal investigations against the presumed perpetrators of torture and other cruel or inhumane treatment.

63. The Working Group therefore finds that Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif were victims by UAE of serious violations of the international norms relating to the right to a fair trial, as enshrined in international law, especially in Articles 8, 9, 10 and 11 of the UDHR. The gravity of such violations qualifies them for category III of the categories applicable to the consideration of cases submitted to the Working Group.

Disposition

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

The Working Group considers that the detention of Salim Alaradi (سليم العرادي), Kamal Ahmed Eldarrat (كمال احمد الضراط) and Momed Kamal Eldarrat (محمد كمال الضراط), Moad Mohammed Al Hashmi (معاذ محمد الهاشمي) and Adil Rajab Nasif (عادل رجب ناصف) is arbitrary and falls under categories I and III of the categories applied by the Working Group in the consideration of the cases brought to its attention.

65. In conformity with this Opinion, the Working Group recommends the Government of the United Arab Emirates to provide with an adequate and full reparations to Messrs. Alaradi, Ahmed Eldarrat, Kamal Eldarrat, Al Hashmi and Nasif, starting with their immediate release subject to guarantees to appear for trial or alternatively his trial conducted as expeditiously as possible in full respect of their due process of law guarantees as enshrined in applicable international law.

66. In accordance with Rule 33(a) of the Methods of Work of the Working Group, the Working Group considers it appropriate to refer the allegations of torture to the Special Rapporteur on torture for appropriate action

[Adopted on 4 December 2015]
