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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its ninety sixth session, 27 March–5 April 2023

Opinion No 19/2023 concerning Omran Ali Hasan al-Radwan al-Harithi, Abdullah Abdulqader Ahmad Ali al-Hajiri, Ahmed Yousef Abdullah al-Zaabi, Mohammed Abdulrazzaq Mohammed al-Siddiq, Husain Moneif al-Jabri, Hasan Moneif al-Jabri, Sultan Bin Kayed Mohammed al-Qasimi, Khalifa Hilal Khalifa Hilal al-Nuaimi, Ibrahim Ismail Ibrahim al-Yasi, Mohammed Abdullah al-Roken, Abdulsalam Mohammed Darwish al-Marzooqi and Fouad Mohammed Abdullah Hasan al-Hmadi (United Arab Emirates)

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 51/8.
2. In accordance with its methods of work,¹ on 7 December 2022 the Working Group transmitted to the Government of United Arab Emirates a communication concerning the 12 individuals named above. The Government has not replied to the communication. 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);

¹ [A/HRC/36/38](#).

(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. The present case concerns 12 nationals of the United Arab Emirates:
 - (1) Omran Ali Hasan al-Radwan al-Harithi was arrested on 16 July 2012, sentenced to seven years' imprisonment and completed his sentence in July 2019 but remains detained;
 - (2) Abdullah Abdulqader Ahmad Ali al-Hajiri is an Emirati citizen who was arrested on 16 July 2012, as part of the UAE94 mass trial, was sentenced to seven years' imprisonment and completed his sentence in July 2019 but remains detained;
 - (3) Ahmed Yousef Abdullah al-Zaabi is an Emirati university professor was arrested on 26 March 2012, as part of the UAE94 mass trial, was sentenced to 10 years' imprisonment and completed his sentence in March 2022 but remains detained;
 - (4) Mohammed Abdulrazzaq Mohammed al-Siddiq² is an Emirati citizen who was arrested on 9 April 2012, as part of the UAE94 mass trial, was sentenced to 10 years' imprisonment and completed his sentence in April 2022 but remains detained;
 - (5) Husain Moneif al-Jabri is an Emirati citizen who was arrested on 9 April 2012, as part of the UAE94 mass trial. He was sentenced to 10 years' imprisonment and completed his sentence in April 2022 but remains detained;
 - (6) Hasan Moneif al-Jabri is currently stateless as his Emirati citizenship was revoked. He was arrested on 9 April 2012, as part of the UAE94 mass trial and was sentenced to 10 years' imprisonment. He completed his sentence in April 2022 but remains detained;
 - (7) Sultan Bin Kayed Mohammed al-Qasimi is an Emirati citizen who was arrested on 20 April 2012, as part of the UAE94 mass trial and was sentenced to 10 years' imprisonment. He completed his sentence in April 2022 but remains detained;
 - (8) Khalifa Hilal Khalifa Hilal al-Nuaimi³ is an Emirati citizen, who was arrested on 16 July 2012, as part of the UAE94 mass trial. He was sentenced to 10 years' imprisonment. He completed his sentence in July 2022 but remains detained;
 - (9) Ibrahim Ismail Ibrahim al-Yasi⁴ is an Emirati citizen, who was arrested on 16 July 2012, as part of the UAE94 mass trial. He was sentenced to 10 years' imprisonment. He completed his sentence in July 2022 but remains detained;
 - (10) Mohammed Abdullah al-Roken is an Emirati lawyer and the former president of the Emirates Jurists Association. He was arrested on 17 July 2012, as part of the UAE94 mass trial and was sentenced to 10 years' imprisonment. He completed his sentence in July 2022 but remains detained;
 - (11) Abdulsalam Mohammed Darwish al-Marzooqi is an Emirati educator born on 19 December 1970. He was arrested on 24 July 2012, as part of the UAE94 mass trial

² Also known as Mumammad Abdulrazzaq al-Abdouly (see opinion No. 60/2013).

³ Also known as Khalifa Hillel (see opinion No. 60/2013).

⁴ Also known as Ibrahim Ismail al-Yaqoub (see opinion No. 60/2013).

and was sentenced to 10 years' imprisonment. He completed his sentence in July 2022 but remains detained;

(12) Fouad Mohammed Abdullah Hasan al-Hmadi is an Emirati citizen, who was arrested on 31 July 2012, as part of the UAE94 mass trial. He was sentenced to ten years' imprisonment. He completed his sentence in July 2022 but remains detained.

Context

5. According to the source, in March 2011, after a group of 133 Emirati academics, judges, lawyers, students and human rights defenders signed a petition addressed to the President of the United Arab Emirates and the country's Federal Supreme Council calling for democratic reforms, the State Security Apparatus initiated a campaign of arrests against the individuals who had signed the document. It subjected those arrested to secret and prolonged incommunicado detention and severe acts of torture. The arrested individuals were later sentenced in the largest ever mass trial held in the United Arab Emirates, known as UAE94, before the Federal Supreme Court. In July 2013, the Emirati authorities convicted 61 of the 94 defendants, in addition to 8 individuals in absentia, on counter-terrorism and cybercrime charges.

6. The source recalls that the Working Group on Arbitrary Detention issued opinion No. 60/2013, in which it found that the detention of the 61 individuals convicted in the UAE94 trial was arbitrary. The 12 individuals named above were among the 61 individuals who were arbitrarily detained.

7. According to the source, not long after opinion No. 60/2013 was adopted, on 31 August 2014 Federal Law No. 7/2014 for the purpose of countering terrorism (the Counter-Terrorism Law) was promulgated in the United Arab Emirates. This law provides for the detention of individuals in *munasaha* centres on the basis that they appear to pose a terrorism threat. According to article 1 of the Counter-Terrorism Law, *munasaha* centres are: "Administrative units aiming at the enlightenment and reform of persons deemed to pose terrorist threat or those convicted of terrorist offences." The functioning of such centres was further regulated on 4 September 2019, when a law was issued, by decree, providing for the establishment of a national *munasaha* centre (the *Munasaha* Centre Law). According to the source, in article 4 (2) of that law, the mandate of the national *munasaha* centre exceeds that set out under the Counter-Terrorism Law and includes "the counselling and rehabilitation of holders of terrorist, extremist or deviant thought". The decision to place someone in a *munasaha* centre or to continue their detention under the *munasaha* regime are made by the State Security Prosecutor who has to file a request before the State Security Chamber of the Abu Dhabi Court of Appeal.⁵ Such decisions can only be challenged at the State Security Chamber of the Federal Supreme Court.

8. The source submits that all 12 individuals have completed their sentences, yet they remain in detention under the *munasaha* regime, whereby the Emirati authorities have extended their detention indefinitely under the pretext of "rehabilitation needs". For the reasons set out below, their continued detention, despite the completion of their sentences, is arbitrary.

9. Only Mr. al-Hmadi and Mr. al-Marzooqi were able to challenge the court's decision that they be placed in *munasaha* centres following the completion of their sentences. They were only provided with access to legal counsel after the initial decision to place them in *munasaha* centres was issued and they were set to appear before the State Security Chamber of the Federal Supreme Court on 22 September 2022.

Analysis of violations

i. Category I

10. The source submits that the detention of the 12 individuals is arbitrary as it does not respect the principle of non-retroactivity of criminal laws, nor the principle of legality. The

⁵ The source refers to articles 1 and 9 of the *Munasaha* Centre Law.

12 individuals are currently detained under the *munasaha* regime, regulated by the Counter-Terrorism Law and the *Munasaha* Centre Law, which were enacted in 2014 and 2019 respectively. They were convicted during the UAE94 trial, which took place in July 2013, before the enactment of those laws. Consequently, their placement under the *munasaha* regime was not ordered at the time of their conviction but at the expiry of their sentence, some six to nine years after their conviction. In that regard, their cases have close similarities to the cases considered in communications 1629/2007⁶ and 1635/2007,⁷ in which the Human Rights Committee found that the placement of the individuals concerned upon the expiry of their sentences in a preventive detention regime based on legislation enacted after their conviction made their detention arbitrary.⁸

11. The source argues that in the present case, the 12 individuals have already served their respective terms of imprisonment and yet they continue to be subjected to imprisonment in pursuance of a law that characterizes their continued incarceration under the same prison regime as detention, even though their initial sentence did not include any preventive order. This purported detention amounts, in substance, to a fresh term of imprisonment which, unlike detention proper, is not permissible in the absence of a conviction for which imprisonment is a sentence prescribed by law.

12. The source notes that imprisonment is penal in character and may only be imposed on conviction for an offence in the same proceedings in which the offence is tried. The continued imprisonment of the 12 individuals under the *munasaha* regime was the result of a decision of the State security prosecution, years after their conviction, in respect of predicted future criminal conduct, which had its basis in the offences for which they had already served their sentence. The source argues that their current detention is the result of fresh proceedings, although nominally characterized as a counselling programme (and thus administrative in nature), and falls within the prohibition of retroactive application of criminal laws (*nullem crimen sine lege*). Since the basis of the detention lies in the Counter-Terrorism Law and the *Munasaha* Centre Law, both of which were enacted after the convictions in 2013, the source states that the Counter-Terrorism Law and the *Munasaha* Centre Law are being retroactively applied.

13. Furthermore, according to the source, those two laws, on which the detention of the 12 individuals is based, are problematic, as they contain imprecise and ambiguous definitions that defy the principle of legal certainty, prescribed in article 11 of the Universal Declaration of Human Rights. This principle “requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offense and what would be the consequence of committing such an offense. This principle recognizes that ill-defined and/or overly broad laws are open to arbitrary application and abuse.”⁹

14. The source submits that in this regard, according to the Counter-Terrorism Law and the *Munasaha* Centre Law, a person can be detained at a *munasaha* centre on the grounds that they (a) appear to pose a terrorist threat¹⁰ or (b) were registered to undertake a counselling programme, further to an application by said person or their guardian, but failed or refused, without justification, to complete the programme.¹¹ The definition of posing a terrorism threat is set out in article 40 (1) of the Counter-Terrorism Law, which establishes that: “A person shall be deemed as posing a terrorist threat if said person adopts extremist or terrorist ideology to the extent that he/she seems likely to commit a terrorist offence.” However, the

⁶ *Fardon v. Australia* (CCPR/C/98/D/1629/2007).

⁷ *Tillman v. Australia* (CCPR/C/98/D/1635/2007).

⁸ The source notes that while these cases concern the application of the Covenant on Civil and Political Rights, to which the United Arab Emirates is not a party, the Committee lays out in them some important principles to prevent arbitrary detention.

⁹ Special procedures communication OL ARE 6/2020, p. 2, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25663>.

¹⁰ The source refers to article 40 (2) of the Counter-terrorism Law and article 8 of the *Munasaha* Centre Law.

¹¹ The source refers to article 10 of the *Munasaha* Centre Law.

law is vague as to the threshold at which a person will be deemed “likely” to commit a terrorist offence, nor is it clear how likelihood is assessed.

15. Furthermore, the source submits that the definition of a terrorist offence is equally vague and does not assist in the interpretation of these provisions. In accordance with article 1 of the Counter-Terrorism Law, a terrorist offence is defined as every criminal action or inaction criminalized under the Counter-Terrorism Law and every action or inaction constituting a felony or misdemeanour referred to in any other law, if committed for a terrorist purpose. This article is problematic as it does not define terrorism itself, but instead refers to the term terrorist purpose, the definition of which then refers to a terrorist result. This means that these definitions “essentially remain undefined, as one definition refers or defers to another without clearly providing a concrete and constrained definition of the activities they encompass”.¹²

16. The source recalls that the former Special Rapporteur on the independence of judges and lawyers noted that the Counter-Terrorism Law contained vague and broad definitions of criminal offences, in contravention of international human rights standards and defying the principle of legality.¹³ In 2020, multiple special procedure mandate holders expressed concern over the fact that the wording of the criminal provisions included in that legislation was sometimes imprecise and ambiguous, to the point that it might undermine the principle of legal certainty. This uncertainty led the Committee against Torture to recommend “that detentions in *munasaha* centres be based on clear and identifiable criteria established by law”.¹⁴

17. The source argues that while such identifiable criteria are lacking, the principle of legality is not respected and thus the detention of individuals under this regime, as is the case of the individuals in question here, is arbitrary. In that regard, the Human Rights Committee noted that: “An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law”.¹⁵ The Committee further stated that: “Any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.”¹⁶

ii. Category II

18. The source submits that the Working Group on Arbitrary Detention in its opinion No. 60/2013 considered that the detention of all 12 of the individuals concerned in the present opinion was arbitrary and that their “convictions are based on charges of acts that would fall under the rights to freedom of expression and of assembly”.¹⁷ In that regard, besides all the individuals concerned having signed a petition asking for democratic reforms, other activities may also have influenced their arrest and convictions. For instance, Mr. al-Harithi was arrested after he published online comments critical of the authorities and Mr. al-Roken’s arrest took place after he provided legal assistance to victims of human rights violations in the United Arab Emirates, including to other human rights defenders.

19. According to the source, beyond their original sentence the placement of the 12 individuals under the *munasaha* regime was also based on their exercise of their rights and freedoms. As mentioned above, the *munasaha* regime has its origin in the Counter-Terrorism Law. Multiple special procedure mandate holders have expressed the fear that the overly broad, imprecise and ambiguous wording of that law might have serious effects on the enjoyment of human rights and fundamental liberties in the United Arab Emirates. They further expressed concern “about the impact it may have on freedom of opinion and

¹² Special procedures communication OL ARE 6/2020, p. 4.

¹³ [A/HRC/29/26/Add.2](#), para. 29.

¹⁴ [CAT/C/ARE/CO/1](#), para. 18.

¹⁵ Human Rights Committee, general comment No. 35 (2014), para. 12.

¹⁶ *Ibid.*, para. 22.

¹⁷ Opinion No. 60/2013, para. 21.

expression and the freedom to receive and communicate information and ideas, the freedoms of peaceful assembly and of association, and the prohibition of arbitrary detention”.¹⁸

20. The source further notes that, for example, article 14 of the Counter-Terrorism Law considers as a terrorist offence any act, which threatens “the State’s stability, safety, unity, sovereignty or security, which contradicts the basic principles underlying the governance system of the State”. Similarly, article 15 states that: “Temporary imprisonment shall be imposed on whoever declares, by any means of communication, his opposition to the State, or to the ruling system therein or his non-allegiance to its leadership.” These provisions are overly broad and include non-violent conduct, allowing for the conflation of any public criticism or opposition with terrorism. In that regard, the United Nations High Commissioner for Human Rights has previously emphasized the risk of human rights violations when terms such as “extremism” are used to cover non-violent activity, asserting that: “States should ensure that the focus of their measures is on actual conduct, rather than mere opinions or beliefs.”¹⁹

21. The source also recalls that equally broad is the definition of “terrorist organization”, which relies on the vague definition of “terrorist offence”.²⁰ In the light of the fact that a terrorist offence could entail “threatening the unity of the State” in the form of peaceful criticism or political activism, the Counter-Terrorism Law subsequently qualifies as a “terrorist organization” any group of persons assembling for the purpose of advocating for change, establishing an opposition party or simply constituting a group of people with ideologies contrary to the status quo.

22. The source argues that it is these imprecise and ambiguous definitions that allowed the 12 individuals concerned in the present opinion to be placed under the *munasaha* regime. The charges at the UAE94 trial included, inter alia, creating a secret organizational structure aimed at turning public opinion against the Government and the leadership of the State and communicating with individuals and international and foreign entities to distort the image of the State.²¹

iii. Category III

23. According to the source, the 12 individuals are currently detained for counselling purposes, despite having served their sentences in full.

24. The source refers to the guidance of the Human Rights Committee²² on the application of non-punitive detention that follows the completion of a sentence, which states that: “When a criminal sentence includes a punitive period followed by a non-punitive period intended to protect the safety of other individuals, then once the punitive term of imprisonment has been served, to avoid arbitrariness, the additional detention must be justified by compelling reasons arising from the gravity of the crimes committed and the likelihood of the detainee’s committing similar crimes in the future. States should only use such detention as a last resort and regular periodic reviews by an independent body must be assured to decide whether continued detention is justified. State parties must exercise caution and provide appropriate guarantees in evaluating future dangers. The conditions in such detention must be distinct from the conditions for convicted prisoners serving a punitive sentence and must be aimed at the detainee’s rehabilitation and reintegration into society.”²³

¹⁸ Special procedures communication OL ARE 6/2020, p.1.

¹⁹ A/HRC/33/29, para. 61.

²⁰ Article 1 of the Counter-terrorism Law defines a terrorist organization as a “Group formed of two or more persons, which acquires legal personality ipso jure or which is created ipso facto, that commits a terrorist act, directly participates in, threatens of, aims at, plans, seeks, promotes or aids the commission of such act regardless of the name, form, place of establishment, location, nationality or place of existence of its members.”

²¹ Opinion No. 60/2013, para. 7.

²² The source notes that while this guidance refers to the application of the Covenant, to which the United Arab Emirates is not a party, it lays out some important principles to prevent arbitrary detention.

²³ Human Rights Committee, general comment No. 35 (2014), para. 21.

25. The source submits that detention in a *munasaha* centre is ordered by a decision of a court with jurisdiction over State security offences (since 2016, in the United Arab Emirates that is the State Security Chamber of the Abu Dhabi Federal Court of Appeal²⁴) upon a request by the State security prosecution.²⁵ The Counter-Terrorism Law does not explicitly require the court to determine the duration of detention at a *munasaha* centre for individuals considered as terrorist threats, nor does it explicitly require that any detention order be renewed. Instead, in accordance with article 40 (3) of the Counter-Terrorism Law and article 11 of the *Munasaha* Centre Law, the *munasaha* centre must submit to the prosecution a report every three months on each person detained at the centre. The prosecution then submits the report, along with its opinion as to whether or not it deems that said person is likely to commit a terrorist offence, to the court. The law states that it is then the responsibility of the court to order the release of the person, should it find that their “condition” so allow.

26. The source notes with concern that there are examples of previous *munasaha* detainees, including a blogger and human rights defender, making confessions and repenting in televised recordings.²⁶ The source is concerned that the Emirati authorities have established a system whereby a confession and repentance, possibly public, is required from individuals detained at *munasaha* centres before the prosecution will recommend they be released.

27. According to the source, this system led the Committee against Torture to express concern “over the use of *munasaha* (‘counselling’) centres to indefinitely extend the incarceration of convicted individuals considered to hold terrorist, extremist or deviant thoughts beyond the times provided for in their sentences”.²⁷ In that regard, the source notes that two of the individuals have been detained under the *munasaha* regime for over three years. In view of the risk of indefinite detention, the Committee against Torture called on the United Arab Emirates to ensure that “orders for such detentions are limited in duration, that maximum periods of detention in *munasaha* centres are clearly defined by law, and that detainees have the ability to challenge the legality of their detention”.²⁸

28. The source submits that although the imposition of an indefinite sentence has not been considered to violate international human rights law per se, international and regional treaty bodies have found that the tariff must be set by an independent tribunal and the preventive element should be justified by compelling reasons and must be regularly reviewed by a judicial body with the power to order release following the expiry of the tariff. Detention under the *munasaha* regime, however, does not follow such guidance. The State security prosecutor is responsible for requesting that individuals be placed under such a regime. The federal public prosecution falls under the direct supervision and control of the Minister of Justice and the appointment of its members is done by the President upon approval of the Council of Ministers.²⁹ That grants the executive great control over this body of the judiciary, which is supposed to act in an independent and impartial manner. Furthermore, the court that acts in such cases is the State Security Chamber of the Abu Dhabi Federal Court of Appeal. Judges of this court are appointed by decree, issued by the President of the United Arab Emirates, upon a recommendation of the Minister of Justice, himself appointed by the President.³⁰ The decisions issued by the Abu Dhabi Federal Court of Appeal may only be appealed at the State Security Chamber of the Federal Supreme Court, which is the court of last instance for State security and terrorism-related crimes.³¹

²⁴ The source refers to article 12 (bis) Federal Law No. 3 of 1983, as amended by Federal Law No. 11 of 2016.

²⁵ The source refers to article 40 (2) of the Counter-Terrorism Law and article 8 of the *Munasaha* Centre Law.

²⁶ Special procedures communication AL ARE 1/2018, available from <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23771>.

²⁷ CAT/C/ARE/CO/1, para. 17.

²⁸ Ibid., para. 18.

²⁹ A/HRC/29/26/Add.2, para. 71.

³⁰ Ibid., para. 22.

³¹ Article 33 (8), Federal Law No.10 concerning the Supreme Federal Court.

29. The source recalls that the Working Group on Arbitrary Detention has stated that it “considered the criminal proceedings before the Federal Supreme Court and found them to be in violation of the right to a fair trial”.³² The Working Group further expressed its concern that the judiciary in the United Arab Emirates, particularly the Federal Supreme Court, was not independent and impartial because it was under the control of the executive branch.

30. According to the source, reportedly the majority of the 12 individuals concerned in the present opinion have not had the opportunity to appear before the court in relation to the judgments to detain them on the grounds that they still posed a “terrorism threat”. In addition, the majority of them were not presented with said judgments prior to their detention. Only Mr. al-Hmadi and Mr. al-Marzooqui were able to challenge their placement in the *munasaha* regime. The source recalls that they did not receive all the necessary guarantees for their defence, since they were only provided with access to legal counsel after the initial decision to place them in *munasaha* centres had been issued, contrary to article 11 of the Universal Declaration of Human Rights.

31. The source further submits that their appeal was scheduled to be heard before the Federal Supreme Court on 22 September 2022. As mentioned above, however, that court will not render an independent decision. In that regard, the source recalls that the protections associated with the “right to a fair trial are applicable where sanctions, because of their purpose, character or severity, must be regarded as penal, even if, under national law, the detention is qualified as administrative”.³³

32. In the light of this, the source argues that it appears that detainees at *munasaha* centres, including all 12 individuals concerned in the present opinion, are being deprived of their right to challenge the legality of their detention before an independent judicial authority and to be recognized as persons before the law, in violation of articles 14 (6) and 22 of the Arab Charter and articles 26 and 28 of the Constitution of the United Arab Emirates, which enshrines the right to personal liberty and the presumption of innocence.

33. Furthermore, the source submits that in each of their cases, the 12 individuals completed their prison sentences before being detained at the *munasaha* centre of Al Razeen prison. Reportedly, all *munasaha* centres in the country are located within prison complexes. There is no evidence that the facilities and infrastructure of *munasaha* centres differ from the prisons in which they are situated. Indeed, all the 12 individuals concerned are detained in a wing of Al Razeen prison. The present cases indicate that there is no distinction between the Al Razeen *munasaha* centre and the Al Razeen prison complex in which it is situated. In that context, the source recalls that the Working Group has stated that “the conditions of preventive detention regimes must satisfy demanding proportionality requirements and establish a difference between the regimes for preventive detention and for ordinary prison sentences”.³⁴

34. According to the source, this shows that detention in *munasaha* centres is not in line with international standards and procedural safeguards are not sufficient to ensure that detention under such a regime is not arbitrary. Consequently, as the 12 individuals are subjected to such a regime, their detention is arbitrary.

iv. Category V

35. The source submits that the placement of the 12 individuals in detention under the *munasaha* regime has occurred in the context of a systematic crackdown on and repression of dissenting voices in the United Arab Emirates. The source thus claims that their detention is part of a widespread policy of discrimination against those who have political views that diverge from the official government discourse.

36. According to the source, this policy is marked by a legal framework that criminalizes any form of criticism against the Government. The Counter-Terrorism Law, in addition to the new Law on Combating Rumours and Cybercrime that came into force in January 2022,

³² Opinion No. 21/2017, para. 52.

³³ Opinion No. 31/2017, para. 30.

³⁴ Opinion No. 21/2015, para. 24.

plays a pivotal role in restricting civic space and free speech, as well as enabling the criminalization of the work of journalists, whistle-blowers, activists and peaceful critics, subjecting those engaged in lawful activities to harsh prison sentences and excessive fines. The Penal Code further contributes to this restrictive framework by criminalizing all speech criticizing the Government and its authorities. For example, according to the source, articles 183 and 184 criminalize acts that insult, mock or harm the reputation of the President, the flag, the national emblem or national symbols, the State itself, its institutions or officials, its founding members and the national anthem.

37. Furthermore, the source submits that the Government places great restrictions on freedom of assembly. Public meetings require government permits and unauthorized political or labour protests are subject to dispersal by the police, which leads to demonstrations being rare in practice. Non-governmental organizations must register with the Ministry of Social Affairs and can receive subsidies from the Government, which maintains broad discretion to interfere in and dictate the operations of associations in the country.

38. In that context, the source claims that the deprivation of liberty of the 12 individuals constitutes a violation of international law for reasons of discrimination based on status and is aimed at or can result in ignoring the equality of human rights. More specifically, their continued detention under the *munasaha* regime constitutes discrimination against them because of their work as lawyers, human rights defenders and peaceful critics.

39. The source recalls that when detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views. In addition, the 12 individuals appear to have been targeted for being who they are (namely among those convicted at the UAE94 trial), rather than for something that they did during their period of detention that would justify the need for rehabilitation. Consequently, the source argues that their detention is a discriminatory act against them due to their political opinions.

Response from the Government

40. On 7 December 2022, the Working Group transmitted the allegations from the source to the Government of the United Arab Emirates under its regular communications procedure. The Working Group requested the Government to provide, by 6 February 2023, detailed information about the current situation of the 12 individuals and to clarify the legal provisions justifying their continued detention, as well as its compatibility with the country's obligations under international human rights law. The Working Group also called upon the Government to ensure their physical and mental integrity.

41. The Working Group regrets that the Government did not respond to the allegations transmitted to it within the time limit of 60 days.

Discussion

42. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

43. In determining whether the detention of the 12 individuals was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal 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.³⁵ In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

44. At the outset, the Working Group refers to opinion No. 60/2013, in which it held that the detention of the 61 individuals convicted in the UAE94 trial was arbitrary. The 12 individuals named above were among the 61 individuals who were arbitrarily detained. The Working Group has considered the source's submissions in the present case on a fresh basis,

³⁵ [A/HRC/19/57](#), para. 68.

but notes its previous opinion as relevant context regarding the background to the current detention of the individuals concerned.

Category I

45. Under category I, the source alleges that the detention of the 12 individuals is arbitrary as it does not respect the principle of legality. According to the source, the individuals are currently detained under the *munasaha* regime, regulated by the Counter-Terrorism Law and the *Munasaha* Centre Law, which were enacted in 2014 and 2019 respectively. They were convicted during the UAE94 trial, which took place in July 2013, before the enactment of those laws.

46. Under article 11 (2) of the Universal Declaration of Human Rights on the principle of non-retroactivity of criminal laws: “No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.”

47. In the present case, the Working Group notes that the 12 individuals are currently being detained under the *munasaha* regime, regulated by the Counter-Terrorism Law and the *Munasaha* Centre Law, which were enacted in 2014 and 2019 respectively. This current detention therefore post-dates the events for which the 12 individuals were arrested and convicted in 2013. Accordingly, the Government’s actions violate the principle of non-retroactivity (*nullum crimen sine lege*), which prohibits the retroactive application of the law in criminal cases.³⁶

48. The source submits that the two laws, upon which the detention of the 12 individuals concerned is based, are vague as they contain imprecise and ambiguous definitions that defy the principle of legal certainty, as prescribed in article 11 of the Universal Declaration of Human Rights. According to the source, the definition of “posing a terrorism threat” is set out in article 40 (1) of the Counter-Terrorism Law, which establishes that “a person shall be deemed as posing a terrorist threat if said person adopts extremist or terrorist ideology to the extent that he/she seems likely to commit a terrorist offence.” However, the law is vague as to the threshold at which a person will be deemed “likely” to commit a terrorist offence, nor is it clear how “likelihood” is assessed. The source further states that the definition of a terrorist offence in relation to article 40 (1) of the Counter-Terrorism Law is vague and does not assist in the interpretation of the provision.

49. The Working Group has specified that one of the fundamental guarantees under international human rights law is the principle of legality, meaning that an act can be punished only if, at the time of its commission, the act was the object of a valid, sufficiently precise, written criminal law to which a sufficiently certain sanction was attached. That is important so that it is clear what types of behaviour and conduct constitute a criminal offence.³⁷ Conversely, vaguely and broadly worded provisions, which cannot qualify as *lex certa*, violate the due process of law that is undergirded by the principle of legality in article 11 (2) of the Universal Declaration of Human Rights.³⁸ The Working Group has further stated that such vaguely and broadly worded laws allow for excessively broad interpretations of their provisions, thereby resulting in unjustified and arbitrary usage and that proceedings in violation of article 11 (2) of the Universal Declaration of Human Rights are arbitrary for the purpose of article 9 of the Declaration, which states that: “No one shall be subjected to arbitrary arrest, detention or exile.”³⁹ The Working Group has in its jurisprudence noted that laws that are vaguely and broadly worded may have a chilling effect on the exercise of the right to freedom of expression, as they have the potential for abuse and may also violate the principle of legality under article 11 (2) of the Universal Declaration of Human Rights, as it makes it unlikely or impossible for the accused to have a fair trial.⁴⁰

³⁶ Opinion No. 19/2022, para. 56.

³⁷ Opinion No. 11/2021, para. 67.

³⁸ Opinion No. 10/2018, paras. 50–52.

³⁹ See also opinion No. 19/2022, para. 56.

⁴⁰ See, for example, opinion No. 88/2017, para. 50.

50. The Working Group considers that article 40 (1) of the Counter-Terrorism Law does not meet the standards of international human rights law set out above. It includes a circular definition (a person who poses a “terrorist threat” is defined in the law as someone who “adopts extremist or terrorist ideology to the extent that he/she seems likely to commit a terrorist offence”). This partially circular definition is all the more problematic as it does not provide guidance as to what is meant by the term “terrorism” in this context. Moreover, article 40 (1) also relies on the words “seems” and “likely”, both of which are broad terms, which are not elaborated on in terms of their parameters or thresholds. The Working Group also considers that detention imposed indefinitely under the pretext of “rehabilitation needs” does not alter the fact that the law results in the incarceration of persons and therefore must adhere to the applicable body of international human rights law. On that basis, the Working Group considers that the Counter-Terrorism Law creates significant risks of overbroad application and is thereby incompatible with article 11 (2) of the Universal Declaration of Human Rights.

51. Under category I, the source also submits that there is a violation, as the 12 individuals have already served their respective sentences but are still detained. As set out above, in its description of category I, the Working Group considers a deprivation of liberty as arbitrary under category I when it is impossible to invoke any legal basis justifying the deprivation of liberty, such as when a person is kept in detention after the completion of his or her sentence.⁴¹ That is precisely the situation here, according to the source’s unrefuted allegations. The detention of the 12 individuals therefore lacks a valid legal basis and is in violation of articles 3 and 9 of the Universal Declaration of Human Rights.

52. For these reasons, the Working Group finds that there is no valid legal basis justifying the detention of the 12 individuals and therefore concludes that their detention is arbitrary under category 1.

Category II

53. The source has submitted that the current deprivation of liberty of the 12 individuals arises from their exercise of the rights or freedoms guaranteed under of the Universal Declaration of Human Rights. The source asserts, in particular, that their deprivation of liberty resulted from, inter alia, the peaceful and legitimate exercise of their rights to freedom of expression and assembly under articles 19 and 20 of the Universal Declaration of Human Rights.

54. The Working Group notes that, under article 19, everyone has the right to freedom of expression and that that right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one’s choice. That right includes political discourse, commentary on public affairs, the discussion of human rights and journalism. It protects the holding and expression of opinions, including those which are critical of, or not in line with, government policy.⁴² Under article 20 of the Universal Declaration, everyone has the right to freedom of peaceful assembly and association.

55. The source mentions the Working Group’s decision in its opinion No. 60/2013, in which it found that the initial detention of the individuals concerned was arbitrary due to their arrest resulting from “acts that would fall under the rights to freedom of expression and of assembly”. It proposes that their placement under the *munasaha* regime is also a result of their exercise of the same rights under the Counter-Terrorism Law. The source submits that the broadness and ambiguity of these laws result in non-violent activity being considered as extremism and peaceful criticism being considered as a terrorist offence.

56. The Working Group has noted above that laws that are vaguely and broadly worded, such as the present laws addressed in category I above, may have a deterrent effect on the exercise of the rights to freedom of movement and residence, freedom of asylum, freedom of thought, conscience and religion, freedom of opinion and expression, and freedom of

⁴¹ A/HRC/19/57/Add.3, paras. 28 and 34.

⁴² Opinion No. 21/2021, para. 76.

peaceful assembly and association, as well as the rights to participation in political and public affairs, to equality and non-discrimination and to the protection of persons belonging to ethnic, religious or linguistic minorities, as they have the potential for abuse, including the arbitrary deprivation of liberty.⁴³ The Working Group has also expressed its concern that anti-terrorism laws “by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention”, with the consequence that: “Legitimate democratic opposition ... becomes a victim in the application of such laws.”⁴⁴

57. The Working Group notes that the source’s arguments appear to link the original cause of detention in the UAE94 trial and the current extended detention of the 12 individuals. In the absence of a convincing counter-argument from the Government, it appears that the 12 detainees were selected for ongoing incarceration under the Counter-Terrorism Law and the *Munasaha* Centre Law on the basis of their public activities involving the exercise of their rights to freedom of expression and of assembly, for which they were originally arbitrarily detained. Nothing in the materials provided substantiates the idea that these individuals would come under an exception to the right to freedom of expression. The Working Group notes that the Government has not provided any substantiated indication that these individuals would pose a threat to “national security or of public order (*ordre public*), or of public health or morals” if released at the time of completion of their sentences. The Working Group therefore considers that the source has given sufficient evidence that the extended detention of the 12 individuals has therefore resulted from their exercise of their guaranteed rights.

58. Given the above-mentioned observations, the Working Group considers that the deprivation of liberty of the 12 individuals is arbitrary, as it resulted from their exercise of the rights or freedoms guaranteed under article 19 of the Universal Declaration of Human Rights. The deprivation of liberty, therefore, falls under category II.

Category III

59. Given its findings under category II above, the Working Group considers that the legal proceedings pursuant to which the 12 detainees have been subjected to further ongoing detention should not have occurred. Nonetheless, it will address the specific category III allegations below.

60. The source submits that placing individuals in detention under the *munasaha* regime violates their right to a fair trial. The source reports that the prolonged detention was requested by the State security prosecution, which is under the supervision of the Minister of Justice, who is appointed by the President of the United Arab Emirates. The body of the judiciary responsible for deciding if the individuals will remain detained therefore lacks independence from the executive. Such decisions may only be appealed at the State Security Chamber of the Federal Supreme Court.

61. Article 10 of the Universal Declaration of Human Rights states that: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

62. The Working Group has previously found instances in which criminal proceedings before the Federal Supreme Court are in violation of the right to a fair trial guaranteed by article 10 of the Universal Declaration of Human Rights.⁴⁵ In addition, the Special Rapporteur on the independence of judges and lawyers noted after her visit to the country in 2014 that the current mechanism for appointing judges, including the president and other members of the Federal Supreme Court, by the highest representatives of the executive branch lacks transparency and may expose them to undue political pressure.

63. In the present case, the Government has not responded to the allegations of a lack of an independent tribunal involved in the decision to keep the 12 individuals in detention after

⁴³ Opinion No. 10/2018, para. 55.

⁴⁴ E/CN.4/1995/31, para. 25 (d).

⁴⁵ Opinion No. 21/2017, para. 52, and opinion No. 60/2013, para. 23.

they completed their sentences. Noting the unrefuted facts regarding the lack of independence, due to the court being under the effective control of the executive branch, and the link between the 12 detainees and their activities in the public sphere, in the Working Group's view the information provided by the source provides sufficient grounds for it to conclude that there has been a violation of the right to a fair trial guaranteed under article 10 of the Universal Declaration of Human Rights, which falls under category III.

64. The source has argued that a confession and repentance is required before individuals get a recommendation of release. It submits that a blogger and a human rights defender have appeared making confessions and repenting in televised recordings. As a matter of customary human rights law, all persons should have the right not to be compelled to testify against themselves or to confess guilt. The Working Group considers that the terrorism laws in question violate that right, particularly in circumstances when detainees have already served their sentences on other matters. That also impinges on the rights of detainees against self-incrimination.

65. According to the source, the majority of the individuals concerned had not had an opportunity to appear before the court in relation to the judgments to detain them. Only two individuals were able to challenge their placement in the *munasaha* regime and they only obtained legal counsel after the initial decision to place them in *munasaha* centres.

66. The Working Group recalls that all persons deprived of their liberty have the right to legal assistance by a counsel of their choice at any time during their detention, including immediately after their apprehension, and that such access is to be provided without delay.⁴⁶ The Government has failed to respond to the allegations by the source that the 12 individuals were not provided with lawyers in a timely manner. As a result, their right to adequate time and facilities to prepare and present a defence and to the equality of arms under articles 10 and 11 (1) of the Universal Declaration of Human Rights was violated.

67. On the basis of the foregoing, the Working Group considers that the violations are serious and render the detention arbitrary under category III.

Category V

68. Under category V, the source alleges that the continuous detention of the 12 individuals is part of a widespread policy of discrimination against those who have political views that diverge from the official government discourse. Under article 2 (1) of the Universal Declaration of Human Rights, "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 7 further states that: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

69. The Working Group notes that it was the activities of the 12 individuals as peaceful critics that led to their arrests and detention. However, the unrefuted claims indicate that their current detention at the *munasaha* centres is retaliatory in nature, directed against those who dare to criticize the Government. The 12 individuals have already served their respective sentences and their further detention amounts to a denial of the equality of human rights. The Working Group, in its jurisprudence, has held that when detention results from the active exercise of civil and political rights, there is a strong presumption that the detention also constitutes a violation of international law on the grounds of discrimination based on political or other views.⁴⁷

70. The Working Group finds that the 12 individuals have been arbitrarily deprived of their liberty on discriminatory grounds, owing to their status as human rights defenders and on the basis of their political or other opinion in seeking to hold the authorities to account.

⁴⁶ See 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.

⁴⁷ Opinion No. 21/2021, para. 92.

Their deprivation of liberty violates articles 2 and 7 of the Universal Declaration of Human Rights and is arbitrary under category V. The Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders.

Disposition

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

The deprivation of liberty of the 12 individuals, being in contravention of articles 2, 3, 7, 9, 10, 11 and 19 of the Universal Declaration of Human Rights is arbitrary and falls within categories I, II, III and V.

72. The Working Group requests the Government of United Arab Emirates to take the steps necessary to remedy the situation of the 12 individuals without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights.

73. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release all 12 individuals immediately and accord them an enforceable right to compensation and other reparations, in accordance with international law.

74. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary deprivation of liberty of the 12 individuals and to take appropriate measures against those responsible for the violation of their rights.

75. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on the situation of human rights defenders, for appropriate action.

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

Follow-up procedure

77. 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 the 12 individuals have been released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to the 12 individuals
- (c) Whether an investigation has been conducted into the violation of the rights of the 12 individuals 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.

78. 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.

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

80. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.⁴⁸

[Adopted on 30 March 2023]

⁴⁸ Human Rights Council resolution 51/8, paras. 6 and 9.