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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-second session, 15–19 November 2021**

### **Opinion No. 53/2021 concerning Ahmed Majed Ahmed al-Atoum (United Arab Emirates)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 5 August 2021 the Working Group transmitted to the Government of the United Arab Emirates a communication concerning Ahmed Majed Ahmed al-Atoum. The Government replied to the communication on 4 October 2021. The State is not a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Ahmed Majed Ahmed al-Atoum is a Jordanian national born in 1975. Since 2014, he has resided in Shakhbout, Abu Dhabi. He is married and is the father of two children.

5. According to the source, Mr. Al-Atoum works as a teacher in a private school. He is a peaceful online activist who has campaigned against corruption in Jordan. A few months before his arrest, he had submitted a request for asylum to the Embassy of the United Kingdom of Great Britain and Northern Ireland in the United Arab Emirates, out of fear of being subjected to reprisals in Jordan.

#### a. Arrest and detention

6. The source reports that on 14 May 2020, while Mr. Al-Atoum was buying bread in a bakery in Shakhbout, Abu Dhabi, he was arrested by the State security forces. The members of the security forces who conducted the arrest were wearing balaclavas and did not present an arrest warrant at the time of arrest. The employees of the bakery witnessed the arrest.

7. According to the source, after Mr. Al-Atoum's arrest, the security forces entered his house by force and took his passport, laptop and mobile telephone, and then searched his car and removed its contents. The authorities have thus far refused to acknowledge that his passport was taken during the search. Mr. Al-Atoum's family is afraid that the retention of his passport will be used to facilitate his deportation to his home country. Later, on 12 August 2020, Mr. Al-Atoum's Facebook account was deactivated, before being reactivated again.

8. The source alleges that, immediately after his arrest, Mr. Al-Atoum was sent to Al-Wathba prison in Abu Dhabi, where he was detained incommunicado for nearly two and a half months. He was detained there in solitary confinement until 14 January 2021.

#### b. Charges and trial

9. The source reports that on 27 July 2020, Mr. Al-Atoum was referred to the State Security Chamber of the Federal Court of Appeal in Abu Dhabi. He was charged on the basis of the Federal Decree-Law No. 5 of 2012 on combating cybercrimes (Cybercrimes Law) for some of his Facebook posts, which criticized the authorities of Jordan on issues related to corruption.

10. Specifically, Mr. Al-Atoum was charged with deliberately taking action against a foreign country that harms political relations, using the means of information technology to publish information that endangers the security of the State and its higher interests and harms public order, and intentionally broadcasting false and malicious news and data that disturb public security and harm the public interest.

11. Mr. Al-Atoum's court hearings took place on 28 July 2020, 12 August 2020 and 23 September 2020. On 7 October 2020, he was sentenced to 10 years' imprisonment, combined with a deportation order at the end of his sentence, in addition to the confiscation of his communication devices and the deletion of his social media accounts.

12. According to the source, the court ruling on Mr. Al-Atoum's sentence referred to the posts listed below, which he had allegedly written on his Facebook account. The source has been unable to find all of the quoted posts on Mr. Al-Atoum's Facebook profile. The source considers that it is possible that the authorities changed the content of the profile when they seized his telephone and gained access to his account after his arrest:

(a) Post 1, dated 10 November 2019: "The king (Jordanian King) admits that the homeland is his responsibility and that speech should not be directed to anyone else"; "all that we pass through in terms of poverty, humiliation, prisons and lack of freedom of expression is because of the king's failure, may God guide him";

(b) Post 2, dated 14 November 2019: "By praying to the Prophet, so that you know that there is no such thing which its name is Jordan ... the government only serves Abu Al-Hussein and his family, I think now that the Ministry of Transport and Foreign Affairs, that was previously run by Prince Hassan's relative, the properties of this ministry have been

transferred to Queen Rania’s relatives, and this means new projects for the Queen in this field and her global marketing”;

(c) Post 3, dated 14 November 2019: “The accusation of undermining the regime, the regime is hereditary monarchic with a parliamentary system of representation. Anyone who says with astonishment that they see a member of Parliament on Sunday, should be tried on charges of undermining the regime of the state, this if it was a state of law and institutions”;

(d) Post 4, dated 14 November 2019: “In response to the Ukrainian President, Head of the State of Sacred Corruption, we warn citizens that any citizen who reveals a corruption case will be held responsible for that case completely, and will be rewarded with two cases of personal assassination and undermining the ruling system, and the State’s experience on this matter will be transferred to the grieving neighbouring state”.

13. According to the source, the court concluded that Mr. Al-Atoum was “intending to publish the above post with mockery of Jordan, which in his opinion, says that those who report corruption cases in Jordan are facing arrests”. It is also asserted in the ruling that “the accused admitted that he hates the Jordanian government because he was harassed by the security services before leaving”.

14. Mr. Al-Atoum was sentenced for having violated articles 82, 166, 197 (2) and 201 (7) of the Penal Code and articles 24, 28 and 42 of the Cybercrimes Law.

15. The source reports that in its ruling, the court explained that these provisions were related to the following:

(a) “[D]eliberately taking action against a foreign country (Jordan) that would offend political relations through his Facebook account and through publishing news and information that include mockery and insulting of the Hashemite Kingdom of Jordan, its king and its government in disgraceful words, which would offend the relations between the United Arab Emirates and the Hashemite Kingdom of Jordan”;

(b) “[P]ublishing on the aforementioned website (Facebook), describing the first accusation and using the means of information technology to promote and favour ideas that would incite discord and disturb public order and social peace”;

(c) “[U]sing the means of information technology and the website referred to (Facebook) as the first accusation in disseminating the information indicated in the report that endangers the security and supreme interests of the State and harms public order”.

16. On 4 November 2020, Mr. Al-Atoum’s lawyer applied for judicial review before the Federal Supreme Court. On 28 December 2020, the request was deemed inadmissible.

c. Analysis of violations

i. Category I

17. The source claims that on 14 May 2020, Mr. Al-Atoum was arrested without being presented with a warrant. He was not provided with any reason for his arrest. The source notes that he was not arrested in flagrante delicto, which might have obviated the need for an arrest warrant.

18. As such, Mr. Al-Atoum’s detention was not grounded in law and was thus in violation of article 101 of the Code of Criminal Procedure, which provides that the public prosecution must, “according to circumstances”, issue a judicial warrant to the arrested person. Mr. Al-Atoum’s arrest also violated his rights under articles 3 and 9 of the Universal Declaration of Human Rights, principles 2, 4 and 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and article 14 (1) of the Arab Charter on Human Rights.

19. The source alleges that for the first two and a half months of his detention, Mr. Al-Atoum was not informed of the charges against him. He was informed of the charges only on 27 July 2020, in violation of his right to be promptly informed of the reasons for the arrest and the charges brought against him, enshrined in article 99 of the Code of Criminal Procedure, principle 10 of the Body of Principles and article 14 (3) of the Arab Charter.

20. Mr. Al-Atoum was forcibly disappeared for two and a half months. The source argues that enforced disappearance is a prima facie form of arbitrary detention, and therefore that the period during which Mr. Al-Atoum was forcibly disappeared constituted a violation of his right to recognition as a person before the law, in contravention of article 6 of the Universal Declaration of Human Rights and article 22 of the Arab Charter. The enforced disappearance of Mr. Al-Atoum also violated articles 26 and 28 of the Constitution of the United Arab Emirates, which provide for the right to personal liberty and the presumption of innocence.

21. The source claims that by being placed outside of the protection of the law for two and a half months, Mr. Al-Atoum was deprived of the legal safeguards to which persons deprived of liberty are entitled, including the right to challenge the legality of his detention (habeas corpus) and the right to be brought promptly before a judicial authority. This amounted to a violation of Mr. Al-Atoum's rights under articles 8, 9 and 10 of the Universal Declaration of Human Rights, articles 14 (6) and 22 of the Arab Charter, principles 11, 32 and 37 of the Body of Principles, and principles 8 and 10 of the 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.<sup>2</sup>

22. The enforced disappearance of Mr. Al-Atoum deprived him of his right to challenge the extension of his detention beyond the lawful period of seven days (renewable for another period not exceeding 14 days) under article 110 of the Code of Criminal Procedure.

ii. Category II

23. According to the source, Mr. Al-Atoum was originally sentenced for “deliberately taking action against a foreign country (Jordan) that would offend political relations through his Facebook account”, “publishing on [his Facebook account], describing the first accusation and using the means of information technology to promote and favour ideas that would incite discord and disturb public order and social peace”, and “using the means of information technology and the website referred to (Facebook) ... in disseminating the information indicated in the report that endangers the security and supreme interests of the State and harms public order”.

24. Notwithstanding the question as to whether the Facebook posts that he was accused of having published existed,<sup>3</sup> the source submits that Mr. Al-Atoum was sentenced for offences under the Penal Code and the Cybercrimes Law that are vaguely defined and violate the right to freedom of opinion and expression enshrined in article 19 of the Universal Declaration of Human Rights.

25. Mr. Al-Atoum was sentenced under article 166 of the Penal Code, which provides for a maximum of 10 years' imprisonment for anyone who commits any hostile act against a foreign country that could expose the United Arab Emirates to the danger of war or cause the severance of diplomatic relations. The source recalls that this provision was used against a scholar from the United Arab Emirates who was sentenced to two years' imprisonment for having posted a series of tweets that directly or implicitly criticized the authorities of Egypt, and whose detention was previously considered by the Working Group.<sup>4</sup>

26. The source argues that, equally concerning, article 197 (2) of the Penal Code, also invoked against Mr. Al-Atoum, punishes whoever makes use of any means of communication to diffuse information or news or to instigate acts that expose the State security to danger or are incompatible with public policy. The fact that “public policy” is not defined in the Penal Code leaves this provision open to broad interpretation and abuse.

27. In addition, the source claims that Mr. Al-Atoum was sentenced on the basis of several provisions contained in the Cybercrimes Law. This legislation grants the authorities broad

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<sup>2</sup> A/HRC/30/37, annex.

<sup>3</sup> According to the source, it is impossible to verify the accusation made by the authorities of the United Arab Emirates in relation to the content allegedly published by Mr. Al-Atoum, since his Facebook account was temporarily suspended by the authorities.

<sup>4</sup> Opinion No. 76/2017, para. 70.

powers of censorship, in violation of international standards.<sup>5</sup> Mr. Al-Atoum was sentenced for vague offences, such as publishing on his Facebook account “information to promote and favour ideas that would incite discord and disturb public order and social peace”, punishable under article 24 of the Cybercrimes Law. He was also sentenced for having published news that could endanger national security and the higher interests of the State or afflict its public order, under article 28 of the Cybercrimes Law.

28. According to the source, Mr. Al-Atoum was unfairly deprived of his liberty, in clear violation of the right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights. According to the source, the provisions under which Mr. Al-Atoum was sentenced lack legal certainty, given the requirement that a norm, to be characterized as a “law”, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.<sup>6</sup>

29. Regarding the application of the principles of necessity and proportionality, the source affirms that Mr. Al-Atoum’s arrest, detention, prosecution and conviction for his online comments cannot be considered proportionate. While the maintenance of friendly relations with a foreign nation – Jordan, in this case – may be a legitimate aim, silencing an individual who has peacefully commented on allegations of corruption on social media cannot be rationally connected to that aim.

### iii. Category III

30. The source submits that Mr. Al-Atoum’s detention is arbitrary owing to the severe violations of his right to a fair trial.

31. Despite his prolonged detention, Mr. Al-Atoum was able to meet with his legal counsel during his court hearings only. His lawyer was not able to visit him in prison in order to prepare his defence ahead of the trial. The source submits that this amounted to a violation of Mr. Al-Atoum’s right to the attendance of legal counsel during the investigatory stage of the proceedings, pursuant to article 100 of the Code of Criminal Procedure. It also constituted a violation of the right to legal assistance, to have adequate time and facilities for the preparation of a defence, and to equality of arms, as guaranteed under articles 10 and 11 (1) of the Universal Declaration of Human Rights, article 16 of the Arab Charter and principle 9 of the Basic Principles and Guidelines.

32. Moreover, Mr. Al-Atoum’s initial enforced disappearance inherently negated the essence of the right to legal assistance, to adequate time and facilities for the preparation of a defence and to free communication with legal counsel, as guaranteed under article 11 (1) of the Universal Declaration of Human Rights.

33. The source states that Mr. Al-Atoum was sentenced by the State Security Chamber of the Federal Court of Appeal in Abu Dhabi on 7 October 2020. According to the source, his case was thus examined at the appeal level without having been examined by a court of first instance. When the Federal Court of Appeal in Abu Dhabi sits as a State security court, it acts as a court of first instance and appeal.

34. On 4 November 2020, Mr. Al-Atoum’s lawyer applied for judicial review before the Federal Supreme Court.

35. The source recalls that judicial review must be distinguished from an appeal process. While an appeal is usually brought to challenge the outcome of a particular case based on a thorough examination of the merits, a judicial review analyses the way in which a public body reached its decision in order to determine whether or not that decision was lawful. If the Federal Supreme Court considers that an application for judicial review is admissible, it may order a retrial before a lower court, which would have been the Federal Court of Appeal in Abu Dhabi in the present case. In any event, the judicial review lodged by Mr. Al-Atoum’s lawyer was not deemed admissible.

<sup>5</sup> See Access Now, submission for the third cycle of the universal periodic review of the United Arab Emirates, January 2018. Available at <https://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRUnitedArabEmiratesStakeholdersInfoS29.aspx>.

<sup>6</sup> Human Rights Committee, general comment No. 34 (2011), para. 25.

36. As a result, the source argues that the defendant's right to have his conviction and sentence reviewed by a higher tribunal was not respected, contrary to articles 10 and 11 of the Universal Declaration of Human Rights, as well as peremptory norms (*jus cogens*) of customary international law, and article 16 (7) of the Arab Charter.

37. The source submits that despite the Convention's recognition of judicial independence, the principle of the separation of powers is not explicitly guaranteed in the Constitution and there is no clear demarcation of the competence of the different branches of power.<sup>7</sup> In fact, the executive branch effectively controls the judiciary, in practice and under several laws.

38. In 2015, the former Special Rapporteur on the independence of judges and lawyers expressed concern that the current mechanism for appointing judges lacked transparency and might expose them to undue political pressure. Most notably, the president and judges of the Federal Supreme Court are appointed by presidential decree after approval by the Cabinet and ratification by the Federal Supreme Council. Other federal judges are appointed by presidential decree upon the proposal of the Minister of Justice.<sup>8</sup>

39. The source argues that neither the Federal Court of Appeal nor the Federal Supreme Court, which examined the application for judicial review submitted by Mr. Al-Atoum's lawyer, qualifies as an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights.

iv. Additional elements

40. The source submits that Mr. Al-Atoum has been denied access to adequate medical care, even though he is suffering from an electrolyte imbalance in his brain. The authorities of the United Arab Emirates are obliged to provide a proper medical examination to detained persons as promptly as possible after their admission to the place of detention, and thereafter to provide medical care and treatment whenever necessary, in accordance with principle 24 of the Body of Principles and rule 30 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

41. The source reports that although Mr. Al-Atoum's family members are in the United Arab Emirates, the authorities have not allowed them to visit him since his arrest. His family is also being prevented from speaking in public about the case or communicating with the Embassy of the United Kingdom to follow up on the request for asylum submitted by Mr. Al-Atoum.

42. According to the source, Mr. Al-Atoum was forcibly disappeared and held incommunicado for the first two and a half months of his detention. He was detained in solitary confinement from his arrest until 14 January 2021. Given that a disappeared person is placed outside of the protection of the law, enforced disappearance enables torture and ill-treatment, and it constitutes a form of torture in itself, in relation both to the disappeared person and possibly to the person's relatives.<sup>9</sup> Furthermore, according to rule 43 (1) (b), in combination with rule 44, of the Nelson Mandela Rules, prolonged solitary confinement, for a period in excess of 15 consecutive days, constitutes torture or other cruel, inhuman or degrading treatment or punishment.

43. Mr. Al-Atoum's family had still not been allowed to meet with him as at the date of the source's submission. His family is concerned about his physical and psychological well-being in prison and the effect of solitary confinement. The source recalls that prolonged incommunicado detention and solitary confinement reveal a prima facie breach of the absolute prohibition of torture as a peremptory norm of international law, and of article 5 of the Universal Declaration of Human Rights.<sup>10</sup> Moreover, by forcibly disappearing Mr. Al-Atoum and holding him in prolonged solitary confinement, the United Arab Emirates

<sup>7</sup> A/HRC/29/26/Add.2, para. 30.

<sup>8</sup> Ibid., para. 35.

<sup>9</sup> *Hernández Colmenarez and Guerrero Sánchez v. Bolivarian Republic of Venezuela* (CAT/C/54/D/456/2011), para. 6.4.

<sup>10</sup> Opinion No. 47/2017, para. 26.

violated its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

*Response from the Government*

44. On 5 August 2021, the Working Group transmitted the allegations to the Government under its regular communication procedure. The Working Group requested the Government to provide detailed information by 5 October 2021 about the situation of Mr. Al-Atoum. The Working Group also requested the Government to clarify the legal provisions justifying his continued detention, as well as its compatibility with the obligations of the United Arab Emirates under international human rights law.

45. The Government responded on 4 October 2021. The Government notes that, on 14 May 2020, Mr. Al-Atoum was arrested in accordance with the legal rules and principles applicable in the United Arab Emirates. Mr. Al-Atoum was informed of the reason for his arrest, and an arrest and search warrant was presented to him, which he reviewed in detail and was able to understand. Mr. Al-Atoum was also informed of the authority that carried out the arrest and search, and the place of his arrest.

46. On 7 June 2020, Mr. Al-Atoum was referred to the public prosecution. On 27 July 2020, the public prosecution referred the case file to the competent court and charged Mr. Al-Atoum with the following offences:

- (a) Carrying out a hostile act against a foreign country;
- (b) Using information technology to disseminate information that would endanger the security of the State and its higher interests and jeopardize public security;
- (c) Deliberately disseminating false and tendentious news and statements that disturb public security and harm the public interest;
- (d) Creating a website on an information network or via information technology to promote or favour any programmes or ideas that would stir up sedition, hatred, racism or sectarianism, or harm national unity or social peace, or disturb public order and public morals.

47. On 7 October 2020, the Federal Court of Appeal in Abu Dhabi sentenced Mr. Al-Atoum to 10 years' imprisonment and deportation from the country at the sentence. Mr. Al-Atoum appealed the ruling. On 28 December 2020, the Federal Supreme Court rejected the appeal and upheld the previous ruling.

48. The Government emphasizes that Mr. Al-Atoum was not arbitrarily arrested. He was arrested in accordance with the procedures applicable in the United Arab Emirates. He is currently serving his sentence in a penal facility that is subject to the control and oversight of the public prosecution. The facility meets all the standards required to ensure the safety of prisoners in terms of the provision of food, the environment, air conditioning, ventilation, entertainment, visits from family members and communications, in accordance with the provisions of Federal Law No. 43 of 1992 on the regulation of penal facilities.

49. In addition, the Government states that Mr. Al-Atoum has not been subjected to any form of torture or other cruel or inhuman treatment, or deprived of the rights guaranteed to him under federal legislation in force in the country, which are in accordance with universal principles of human rights. The Constitution makes provision for the equality of all persons before the law, and prohibits degrading treatment in any form.

50. Mr. Al-Atoum has been allowed to receive visits and telephone calls. Following the outbreak of the coronavirus disease (COVID-19) pandemic and in the light of precautionary measures taken in the country to protect inmates in penal institutions from infection, communication was limited to telephone calls. However, Mr. Al-Atoum has had continuous contact with his family members, with the last call being on 3 September 2021.

51. Under federal legislation in force in the United Arab Emirates, every accused person whose case is being heard before the court has the right to appoint a lawyer in order to give effect to the principle of the right to defence guaranteed by law to all persons without discrimination or differentiation. Where accused persons are unable to appoint a lawyer at

their own expense, a lawyer must be assigned by the court with no expenses incurred by the accused. Accordingly, a lawyer was assigned to represent Mr. Al-Atoum at all stages of the proceedings.

52. The proceedings against Mr. Al-Atoum, from the investigation phase to when the judgment was handed down, took place within the legal framework under applicable federal laws. The public prosecution supervises the investigation and inference work. As for the procedures for investigation, accusation and interrogation, the public prosecution undertakes them as the only competent authority. Each trial is required to be heard before a fair and competent court and by specialized judges who enjoy integrity and complete independence in issuing judgments and performing their duties in accordance with the Constitution and national law. The law also guarantees the rules of a fair trial.

53. All inmates in penal facilities in the United Arab Emirates have the right to health care, guaranteed pursuant to article 7 of Federal Law No. 43 of 1992 on the regulation of penal facilities. That provision requires the preparation of a comprehensive file on the physical and psychological well-being of each inmate. In this regard, the Government notes that Mr. Al-Atoum continues to receive the necessary medical care, he is in good health, and his last examination took place on 1 September 2021, including a COVID-19 test, which produced a negative result.

54. The Government states that, in the light of the COVID-19 pandemic, it has made a great effort to intensify COVID-19 testing among members of society, and equally among individuals detained in penal facilities, to ensure that they are free from infection. If infection is confirmed, the patient is isolated and quarantined and receives the necessary health care. The United Arab Emirates pays great attention to persons placed in penal facilities in order to meet all the standards required under international human rights principles.

*Additional comments from the source*

55. The source maintains that the members of the security forces who arrested Mr. Al-Atoum did not present a warrant. The source notes that the Government did not specify the authority responsible for issuing the arrest warrant, nor the forces responsible for conducting the arrest. Moreover, the Government offered no documentary evidence, such as a copy of the arrest and search warrant.

56. The source refers to the statement by the Government that Mr. Al-Atoum was brought before the prosecution on 7 June 2020. Mr. Al-Atoum was therefore deprived of his liberty for 24 days before being presented before the prosecution, despite the fact that article 47 of the Code of Criminal Procedure states that persons who are arrested must be referred to a prosecutor within 48 hours. This provision is overridden by article 28 of Law No. 2 of 2003 on the State security apparatus, legislation which the authorities have not made public. This law allows State security to hold a detainee for up to 90 days without referring the case to the public prosecution if authorized to do so by the chief of the State security apparatus. The Government does not specify whether Mr. Al-Atoum was subject to this legal framework.

57. Furthermore, the Government's response raises the question of respect for the right to be brought promptly before a judge and the obligation to ensure judicial oversight of detention. According to the Government, Mr. Al-Atoum was informed of the charges against him on 27 July 2020, more than 10 weeks after his arrest, when his case was "referred ... to the competent court". The source submits that this delay violated Mr. Al-Atoum's right to be promptly informed of the charges against him. Between 14 May 2020 and 27 July 2020, Mr. Al-Atoum was unable to effectively challenge the lawfulness of his detention as he was unaware of the charges against him.

58. The Government's response indicates that Mr. Al-Atoum was not promptly brought before a judge. Delays of more than 48 hours following arrest are considered excessive. Yet the Government confirms that Mr. Al-Atoum was presented before a judicial authority only on 27 July 2020, the day before his trial commenced. While the Government may claim that Mr. Al-Atoum was referred to the public prosecution on 7 June 2020, prosecutors do not generally qualify as judicial officers for this purpose, as they do not have the necessary institutional objectivity and impartiality to act as judicial officers in determining the legality of detention.



59. The source refers to article 110 of the Code of Criminal Procedure, which provides that the prosecutor is entitled to extend pretrial detention up to a maximum of 21 days. Beyond that period, the detainee must be brought before a judge, who can extend the detention further. The Government's response does not reflect this domestic obligation.

60. While the Government recalls the charges brought against Mr. Al-Atoum, it does not address his unfair detention for having exercised his right to freedom of opinion and expression. Mr. Al-Atoum was charged and later sentenced for offences under the Penal Code and the Cybercrimes Law that are vaguely defined and violate the right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights.

61. In addition, the source notes the Government's statement that Mr. Al-Atoum was not arrested arbitrarily and was arrested in accordance with the legal rules and procedures applicable in the United Arab Emirates. According to the Government, Mr. Al-Atoum is currently serving his sentence in a penal facility that is subject to the control and oversight of the public prosecution. The source emphasizes that the Government did not provide the rules applied to justify Mr. Al-Atoum's deprivation of liberty.

62. The Government states that the penal facility in which Mr. Al-Atoum is in custody meets all the standards required to ensure the safety of prisoners. However, it has not provided a detailed account of the detention facilities where Mr. Al-Atoum is being held, and addresses only the current detention of Mr. Al-Atoum, without addressing the period when he was detained incommunicado for nearly two and a half months.

63. Mr. Al-Atoum's case is consistent with the findings of the former Special Rapporteur on the independence of judges and lawyers. While the Code of Criminal Procedure prescribed that, unless an individual was arrested in flagrante delicto, an arrest warrant must be presented, the Special Rapporteur had received many reports of people being arrested without a warrant. Such cases very often concerned persons who were later accused of State security crimes. After being arrested by State security agents, most of those individuals were taken to secret detention facilities and kept incommunicado for days, weeks or even months, sometimes in solitary confinement. Such detentions might sometimes have amounted to enforced disappearance, as the authorities refused to acknowledge that they had detained the person and/or refused to confirm their fate and whereabouts.<sup>11</sup>

64. The source refers to the Government's denial that Mr. Al-Atoum has been subjected to torture or other cruel or inhuman treatment, or deprived of the rights guaranteed to him under federal legislation. Mr. Al-Atoum was forcibly disappeared and held in incommunicado for the first two and a half months of his detention. In addition, he was detained in solitary confinement until 14 January 2021. The Government did not comment on Mr. Al-Atoum's incommunicado detention or his placement in solitary confinement.

65. Regarding the right to receive visits and telephone calls, the Government addresses only Mr. Al-Atoum's current situation, without discussing the initial period of his detention. When Mr. Al-Atoum was detained incommunicado, he was not able to contact his family to inform them about his fate and whereabouts. While he was detained in solitary confinement, he was only permitted to call a family member once a month for two minutes. He is now communicating with the family member every week. Mr. Al-Atoum has not received any visits since the beginning of his detention. He is not allowed to make international calls, even though, with the exception of one family member, his family is currently abroad.

66. With reference to the Government's claim that Mr. Al-Atoum was able to meet with his lawyer when he was brought to court and during the subsequent court proceedings, the source submits that this is an admission that Mr. Al-Atoum did not have access to counsel from the outset of his detention, including during questioning. The source submits that this violated principle 1 of the Basic Principles on the Role of Lawyers. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has recommended that anyone who has been arrested should be given access to legal counsel within 24 hours of the arrest.<sup>12</sup>

<sup>11</sup> [A/HRC/29/26/Add.2](#), para. 51.

<sup>12</sup> [E/CN.4/1990/17](#), para. 272 (c); [E/CN.4/1995/34](#), para. 926 (d); and [A/56/156](#), para. 39 (f).

67. The Government claims that the proceedings against Mr. Al-Atoum took place within the legal framework under applicable federal laws. However, the source recalls that Mr. Al-Atoum was tried before the State Security Chamber of the Federal Court of Appeal in Abu Dhabi and that his application for judicial review was examined by the Federal Supreme Court. These tribunals cannot be described as “independent and impartial” within the meaning of article 10 of the Universal Declaration of Human Rights, as the executive branch effectively controls the judiciary in the United Arab Emirates.

68. In addition, the source states that the Government did not provide clarification on the breach of Mr. Al-Atoum’s right to have his conviction and sentence reviewed by a higher tribunal. Under current legislation, when the Federal Court of Appeal in Abu Dhabi sits as a State security court, it acts as a court of first instance and appeal. In relation to the Federal Supreme Court’s ruling of 28 December 2020, the source recalls that this Court had also examined a request for judicial review introduced by the defence on 4 November 2020.

69. Lastly, the source notes the information provided by the Government in relation to Mr. Al-Atoum’s health and the situation in penal facilities during the COVID-19 pandemic. The source states that in the early stages of the pandemic, the authorities – including at Al-Wathba prison, where Mr. Al-Atoum has been detained – did not take the necessary measures to prevent the pandemic from spreading.

### **Discussion**

70. The Working Group thanks the source and the Government for their submissions.

71. In determining whether Mr. Al-Atoum’s detention is arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case for breach of international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if it wishes to refute the allegations. Mere assertions by the Government that lawful procedures have been followed are not sufficient to rebut the source’s allegations.<sup>13</sup>

#### *Category I*

72. The source alleges that on 14 May 2020, Mr. Al-Atoum was arrested by individuals wearing balaclavas while he was buying bread in a bakery in Abu Dhabi. According to the source, Mr. Al-Atoum was not presented with an arrest warrant and he was not provided with any reason for his arrest. In its response, the Government confirms that Mr. Al-Atoum was arrested on 14 May 2020, but asserts that the arrest took place in accordance with the legal rules and principles applicable in the United Arab Emirates. Mr. Al-Atoum was informed of the reason for his arrest, and an arrest and search warrant was presented to him, which he reviewed in detail and was able to understand.

73. The Working Group considers that the source has established a credible prima facie case, which was not rebutted by the Government, that the authorities did not present an arrest warrant at the time of Mr. Al-Atoum’s arrest.

74. Notably, the Government did not provide specific information to support its assertion that an arrest warrant was presented to Mr. Al-Atoum, including details about the arrest warrant (such as the date of issue), the authority that had issued it and the forces responsible for conducting the arrest. Those details should be readily available to the authorities, particularly given the Government’s statement that Mr. Al-Atoum was informed of the authority that carried out the arrest and search, and the place of his arrest.

75. As the Working Group has stated, it is not sufficient that there is a law that authorizes an arrest. The authorities must invoke that legal basis and apply it through an arrest warrant.<sup>14</sup> In the present case, the Working Group finds that the authorities did not present an arrest warrant at the time of Mr. Al-Atoum’s arrest, in violation of articles 3 and 9 of the Universal

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<sup>13</sup> A/HRC/19/57, para. 68.

<sup>14</sup> Opinions No. 61/2020, para. 65, and No. 34/2020, para. 45.

Declaration of Human Rights and principles 2 and 4 of the Body of Principles.<sup>15</sup> As a result, the authorities did not establish a legal basis for Mr. Al-Atoum's arrest.

76. Similarly, the source claims that after Mr. Al-Atoum's arrest, the security forces entered his house by force and took his passport, laptop and mobile telephone, and then searched his car and removed its contents. In its response, the Government states that a search warrant was presented to Mr. Al-Atoum when he was arrested, though it again provided no details in relation to the search warrant to support its assertion. The Government did not address the source's claim that items belonging to Mr. Al-Atoum were seized.

77. In its jurisprudence, the Working Group has established that detention is arbitrary when evidence obtained without a search warrant is used in judicial proceedings.<sup>16</sup> In the present case, the source has established a credible case, which was not rebutted by the Government, that a search and seizure was conducted without a search warrant. However, it is not clear whether the seized evidence was used against Mr. Al-Atoum during his trial. Nevertheless, the fact that Mr. Al-Atoum's home and car were searched without a search warrant strengthens the Working Group's conclusion that the authorities did not follow the necessary investigative procedures to ensure that the arrest and detention had a legal basis.<sup>17</sup>

78. In addition, as the Working Group has stated, in order to invoke a legal basis for an arrest and detention, the authorities must inform the arrested individual, either in writing or orally, of the reasons for the arrest at the time of arrest.<sup>18</sup> The source and the Government put forward conflicting claims as to whether Mr. Al-Atoum was informed of the reasons for his arrest. As a result, the Working Group is not in a position to determine whether Mr. Al-Atoum's right to be informed of the reasons for his arrest was violated.

79. The source further alleges that during the first two and a half months of his detention, Mr. Al-Atoum was not informed of the charges against him. He was informed of the charges only on 27 July 2020, more than 10 weeks after his arrest, and was thus unable to challenge the legal basis of his detention between 14 May 2020 and 27 July 2020. The Government confirms that Mr. Al-Atoum was charged by the public prosecution on 27 July 2020. The Working Group considers that Mr. Al-Atoum was not promptly informed of the charges, in violation of article 9 of the Universal Declaration of Human Rights and principle 10 of the Body of Principles.<sup>19</sup>

80. Furthermore, the source claims that Mr. Al-Atoum was forcibly disappeared and held incommunicado for two and a half months following his arrest, and was thus deprived of his rights to be brought promptly before a judicial authority and to bring proceedings before a court to challenge the lawfulness of his detention. While the Government states that Mr. Al-Atoum was referred to the public prosecution on 7 June 2020 and that his case file was referred to the competent court on 27 July 2020, it offers no justification for the delay in the consideration of his case by a judicial authority.

81. The Working Group considers that a person who is arrested and detained must be brought before a judicial authority within 48 hours of arrest, and any longer delay must be absolutely exceptional and justified under the circumstances.<sup>20</sup> Mr. Al-Atoum was not brought before a judge until 27 July 2020, the day before his trial commenced and 74 days following his arrest. He was clearly not afforded his right to be brought promptly before a court to challenge the legality of his detention, contrary to article 9 of the Universal Declaration of Human Rights and principles 11 and 37 of the Body of Principles.

82. While the Government states that Mr. Al-Atoum was referred to the prosecution on 7 June 2020, this does not satisfy the requirement under international law of bringing the accused promptly before a judge. Oversight of detention must be conducted by a judge and

<sup>15</sup> Opinions No. 37/2020, para. 52, and No. 33/2020, para. 54 (presenting an arrest warrant is procedurally inherent in articles 3 and 9 of the Universal Declaration of Human Rights); and [A/HRC/29/26/Add.2](#), para. 51.

<sup>16</sup> Opinion No. 83/2019, para. 51. See also opinions No. 33/2019, No. 31/2019 and No. 83/2018.

<sup>17</sup> Opinion No. 37/2021, para. 69.

<sup>18</sup> Opinions No. 33/2020, para. 55, and No. 31/2020, para. 42.

<sup>19</sup> Opinion No. 61/2020, para. 66.

<sup>20</sup> Opinions No. 76/2019, para. 38, and No. 56/2019, para. 80.

not a prosecutorial body, as the latter does not possess the requisite degree of independence to assess the necessity and proportionality of detention.<sup>21</sup> In any event, Mr. Al-Atoum was only presented before the prosecution 24 days after his arrest, which cannot be considered as prompt presentation before a judicial authority.

83. The Government did not address the allegation that Mr. Al-Atoum was held incommunicado and disappeared for two and a half months following his arrest, focusing instead on his current custodial conditions. In the absence of a rebuttal by the Government, the Working Group considers that Mr. Al-Atoum was held incommunicado and was disappeared for two and a half months,<sup>22</sup> and refers this case to the Working Group on Enforced or Involuntary Disappearances.

84. As the Working Group has stated, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court.<sup>23</sup> In addition, enforced disappearance constitutes an aggravated form of arbitrary detention that has no legal basis.<sup>24</sup> Mr. Al-Atoum was denied the right to bring proceedings before a court to challenge the initial legality, and subsequent extension, of his detention, contrary to article 9 of the Universal Declaration of Human Rights and principle 32 of the Body of Principles. He was denied the right to an effective remedy under article 8 of the Universal Declaration of Human Rights. He was also held outside the protection of the law for the first two and a half months of his detention, in violation of article 6 of the Universal Declaration of Human Rights.<sup>25</sup>

85. The Working Group concludes that the authorities failed to establish a legal basis for Mr. Al-Atoum's detention, which is therefore arbitrary under category I.

#### *Category II*

86. The source alleges that Mr. Al-Atoum was detained for exercising his right to freedom of opinion and expression under article 19 of the Universal Declaration of Human Rights. Mr. Al-Atoum was charged with offences under the Penal Code and the Cybercrimes Law in relation to several Facebook posts which criticized the authorities of Jordan on issues related to corruption (see paragraph 12 above). On 7 October 2020, he was sentenced to 10 years' imprisonment, deportation at the end of his sentence, the confiscation of his communication devices and the deletion of his social media accounts.

87. Specifically, the source alleges that Mr. Al-Atoum was sentenced under article 166 of the Penal Code, which provides for a maximum of 10 years' imprisonment for anyone who commits any hostile act against a foreign country that could expose the United Arab Emirates to the danger of war or cause the severance of diplomatic relations. Article 197 (2) of the Penal Code, also invoked against Mr. Al-Atoum, punishes whoever makes use of any means of communication to diffuse information or news or to instigate acts that expose the State security to danger or are incompatible with public policy. Lastly, the source claims that Mr. Al-Atoum was sentenced under articles 24 and 28 of the Cybercrimes Law for having published "information to promote and favour ideas that would incite discord and disturb public order and social peace" and news that could endanger the national security and the higher interests of the State or afflict its public order.

88. The Government states that Mr. Al-Atoum was charged with several offences, including carrying out a hostile act against a foreign country, using information technology to disseminate information that would endanger the security of the State and jeopardize public security, deliberately disseminating false and tendentious news and statements that disturb public security and harm the public interest, and creating a website to promote or favour any programmes or ideas that would stir up sedition, hatred, racism or sectarianism, or harm national unity or social peace, or disturb public order and public morals. The

<sup>21</sup> Opinions No. 61/2020, para. 68, and No. 33/2020, para. 75; and [A/HRC/29/26/Add.2](#), paras. 71–74.

<sup>22</sup> [A/HRC/16/48/Add.3](#) and [A/HRC/16/48/Add.3/Corr.1](#), para. 21.

<sup>23</sup> Opinions No. 36/2020, para. 53, and No. 16/2020, para. 62. See also opinions No. 61/2020, para. 70 and No. 40/2020, para. 29 (the absence of legal counsel deprives a detainee of an essential safeguard in challenging detention).

<sup>24</sup> Opinion No. 37/2021, para. 65.

<sup>25</sup> Opinions No. 61/2020, para. 70, and No. 76/2017, para. 58; and [A/HRC/29/26/Add.2](#), para. 108.

Government does not refer to any legislative provisions that formed the basis of these charges.

89. The Government confirms Mr. Al-Atoum's sentence of 10 years' imprisonment and deportation. Notably, however, the Government does not address the source's allegations that Mr. Al-Atoum was detained for exercising his right to freedom of opinion and expression.

90. Article 19 of the Universal Declaration of Human Rights provides that everyone has the right to freedom of opinion and expression; this right includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers. The Working Group considers that Mr. Al-Atoum's Facebook posts fall within the protection of article 19 and that he was detained for exercising his right to freedom of opinion and expression. That right protects the expression of opinions even when they may shock, offend or disturb,<sup>26</sup> and when they involve criticism of a foreign Government.<sup>27</sup> Indeed, the Working Group has held that detention pursuant to similar charges was arbitrary in another case involving the United Arab Emirates, as it violated the freedom of opinion and expression.<sup>28</sup>

91. There is nothing to suggest that the permissible limitations set out in article 29 (2) of the Universal Declaration of Human Rights would apply in the present case. The Government has not presented any reasons that may have legitimized any restrictions on Mr. Al-Atoum's freedom of opinion and expression.<sup>29</sup> Moreover, the Working Group is not convinced that prosecuting Mr. Al-Atoum was necessary to protect a legitimate interest under that provision, or that his sentence was a proportionate response to criticism of the authorities of Jordan. There is no evidence to suggest that his posts called, directly or indirectly, for violence, or that they could reasonably be considered to threaten morality, public order or the general welfare in a democratic society. The Working Group refers this case to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

92. The Working Group concludes that Mr. Al-Atoum's detention resulted from the peaceful exercise of his right to freedom of opinion and expression, in violation of article 19 of the Universal Declaration of Human Rights. His detention is therefore arbitrary under category II.

93. The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.<sup>30</sup> The cited provisions of the Penal Code and Cybercrimes Law contain numerous terms that are vague and undefined, and thus open to arbitrary application.<sup>31</sup> This includes references to acts that are "hostile", "incompatible with public policy", "incite discord and disturb public order", "endanger the national security of the State" or "afflict its public order". The Working Group reiterates that laws may be so lacking in detail of the conduct that is to be penalized that it is impossible to invoke a legal basis justifying the detention.

### *Category III*

94. Given its finding that the detention of Mr. Al-Atoum is arbitrary under category II, the Working Group emphasizes that no trial should have taken place. However, Mr. Al-Atoum was tried, and was subsequently sentenced on 7 October 2020. On 28 December 2020, his application for judicial review before the Federal Supreme Court was deemed inadmissible.

95. The source alleges that Mr. Al-Atoum was denied his right to legal assistance, as he was able to meet with his lawyer during his court hearings only. His lawyer was not able to visit him in prison in order to prepare his defence ahead of the trial. Moreover, Mr. Al-

<sup>26</sup> Opinion No. 37/2020, para. 56.

<sup>27</sup> Opinion No. 76/2017, para. 66.

<sup>28</sup> See opinion No. 76/2017.

<sup>29</sup> While the charges cited by the Government refer to possible grounds for restriction (for example, promoting ideas that would disturb public morals), the Government does not advance any arguments to this effect.

<sup>30</sup> Opinions No. 62/2018, paras. 57–59, and No. 41/2017, paras. 98–101.

<sup>31</sup> [A/HRC/29/26/Add.2](#), para. 29.

Atoum's enforced disappearance inherently negated his right to legal assistance, to adequate time and facilities for the preparation of a defence and to communicate with legal counsel.

96. The Government states that under federal legislation in the United Arab Emirates, every accused person whose case is being heard before the court has the right to appoint a lawyer. Mr. Al-Atoum was provided with legal counsel free of charge by the court, and the lawyer was assigned to represent him at all stages of the proceedings. In its additional comments, the source interprets this response as an admission that Mr. Al-Atoum did not have access to counsel from the outset of his detention, including during questioning.

97. All persons deprived of their liberty have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the moment of apprehension, and such access must be provided without delay.<sup>32</sup> The Government did not specifically address the source's claim that Mr. Al-Atoum could not meet with his lawyer outside of court hearings. By failing to provide Mr. Al-Atoum with access to his lawyer from the outset of his detention, and regular access thereafter, the authorities impaired his ability to prepare a defence, in violation of articles 10 and 11 (1) of the Universal Declaration of Human Rights, principles 17 and 18 of the Body of Principles and principle 1 of the Basic Principles on the Role of Lawyers.<sup>33</sup>

98. The source further argues that neither the Federal Court of Appeal nor the Federal Supreme Court, which examined the application for judicial review, qualifies as an independent and impartial tribunal under article 10 of the Universal Declaration of Human Rights. According to the source, the executive branch controls the judiciary in the United Arab Emirates. The president and judges of the Federal Supreme Court are appointed by presidential decree after approval by the Cabinet and ratification by the Federal Supreme Council. Other federal judges are appointed by presidential decree upon the proposal of the Minister of Justice. In its response, the Government states that the proceedings against Mr. Al-Atoum took place within the applicable legal requirements, including that trials be heard by a fair and competent court and by specialized judges who enjoy complete independence in performing their duties.

99. The Working Group has expressed concern that the judiciary in the United Arab Emirates, particularly the Federal Supreme Court, is not independent and impartial because it is under the control of the executive branch.<sup>34</sup> The Working Group considers that Mr. Al-Atoum was not tried and did not have his judicial review adjudicated by an independent and impartial tribunal, in violation of article 10 of the Universal Declaration of Human Rights. The Working Group refers this case to the Special Rapporteur on the independence of judges and lawyers.

100. Lastly, Mr. Al-Atoum was sentenced by the State Security Chamber of the Federal Court of Appeal in Abu Dhabi. The source claims that his case was examined at the appeal level without having been examined by a court of first instance. When the Federal Court of Appeal in Abu Dhabi sits as a State security court, it acts as a court of first instance and appeal. The application for judicial review by Mr. Al-Atoum's lawyers was not an appellate proceeding, and Mr. Al-Atoum was denied his right to appeal. The Government did not address these allegations. In the absence of a rebuttal by the Government, and noting similar findings in other cases,<sup>35</sup> the Working Group concludes that Mr. Al-Atoum's right to have his conviction and sentence reviewed by a higher tribunal was not respected, contrary to articles 8, 10 and 11 (1) of the Universal Declaration of Human Rights.

101. The Working Group finds that these fair trial violations are of such gravity as to give Mr. Al-Atoum's detention an arbitrary character under category III.

<sup>32</sup> Basic Principles and Guidelines, principle 9 and guideline 8; and [A/HRC/45/16](#), para. 51.

<sup>33</sup> [A/HRC/29/26/Add.2](#), para. 56.

<sup>34</sup> Opinions No. 61/2020, para. 89; No. 31/2020, para. 60; No. 55/2019, para. 41; and No. 21/2017, paras. 52–54. See also [A/HRC/29/26/Add.2](#), paras. 30–39, 96 and 100.

<sup>35</sup> Opinions No. 61/2020, para. 90, and No. 31/2020, para. 61; and [A/HRC/29/26/Add.2](#), paras. 61 and 115.

*Concluding remarks*

102. The source made several allegations relating to Mr. Al-Atoum's treatment during his detention, including that he has been denied adequate medical care, despite suffering from an electrolyte imbalance in his brain. Mr. Al-Atoum's family has not been able to visit him since his arrest. He was detained in solitary confinement from his arrest until 14 January 2021. The source submits that his prolonged incommunicado detention, enforced disappearance and solitary confinement violate the Convention against Torture.

103. The Government states that Mr. Al-Atoum has not been subjected to torture or ill-treatment, and has been guaranteed his rights under the law. He has been allowed to receive visits, but this was limited to telephone calls during the COVID-19 pandemic. Mr. Al-Atoum continues to receive medical care and is in good health.

104. The Working Group recalls that solitary confinement exceeding 15 consecutive days violates rules 43 to 45 of the Nelson Mandela Rules. Furthermore, prolonged incommunicado detention and solitary confinement reveal a prima facie breach of the absolute prohibition of torture under article 5 of the Universal Declaration of Human Rights.<sup>36</sup> The Working Group refers this case to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

105. The Working Group urges that Government to ensure that conditions in all places of detention meet international standards. This includes the Nelson Mandela Rules, particularly rules 24 to 27, relating to health care, and rules 43 (3) and 58, on contact with the outside world.<sup>37</sup> The Working Group also urges the Government to immediately and unconditionally release Mr. Al-Atoum and ensure that he receives the necessary medical care.

106. According to the source, a few months before his arrest, Mr. Al-Atoum submitted an asylum request to the Embassy of the United Kingdom in the United Arab Emirates, as he feared reprisals in Jordan. The Working Group considers that, if Mr. Al-Atoum is returned to Jordan, this could violate the principle of non-refoulement, and article 3 of the Convention against Torture, and urges the Government to refrain from doing so.

107. The present case is one of many cases brought to the Working Group in recent years concerning arbitrary detention in the United Arab Emirates.<sup>38</sup> Under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity.<sup>39</sup>

**Disposition**

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

The deprivation of liberty of Ahmed Majed Ahmed al-Atoum, being in contravention of articles 3, 6, 8, 9, 10, 11 (1) and 19 of the Universal Declaration of Human Rights, is arbitrary and falls within categories I, II and III.

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

110. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to release Mr. Al-Atoum immediately and accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>40</sup> In the current context of the global COVID-19 pandemic and the threat that it poses in

<sup>36</sup> Opinion No. 47/2017, para. 26; General Assembly resolution 68/156, paras. 27–28; and [A/66/268](#), para. 71.

<sup>37</sup> See also deliberation No. 11 ([A/HRC/45/16](#), annex II).

<sup>38</sup> See, for example, opinions No. 88/2020, No. 61/2020, No. 34/2020, No. 33/2020, No. 31/2020, No. 55/2019, No. 28/2019, No. 30/2018, No. 76/2017, No. 58/2017, No. 47/2017 and No. 21/2017.

<sup>39</sup> Opinion No. 47/2012, para. 22.

<sup>40</sup> See deliberation No. 10 ([A/HRC/45/16](#), annex I).

places of detention, the Working Group calls upon the Government to take urgent action to ensure the immediate release of Mr. Al-Atoum.

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

112. The Working Group urges the Government to bring relevant legislation, including articles 166 and 197 (2) of the Penal Code and articles 24 and 28 of the Cybercrimes Law, into conformity with its obligations under international human rights law.

113. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, for appropriate action.

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

#### **Follow-up procedure**

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

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

116. 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.

117. 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.

118. 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.<sup>41</sup>

*[Adopted on 16 November 2021]*

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<sup>41</sup> Human Rights Council resolution 42/22, paras. 3 and 7.